

Release Date: August 1st, 2003

**THE PROVINCIAL COURT OF MANITOBA
Winnipeg Centre**

IN THE MATTER OF:

The Fatality Inquiries Act, S.M. 1989-90, C.30 – Cap. F52

AND THE MATTER OF:

ABRAHAM HIEBERT, Deceased
(Date of Death: December 16th, 1997)

**Report on Inquest and Recommendations of
The Honourable Judge Charles N. Rubin
Issued this 28th day of July, 2003**

Appearances:

Mr. D. Abra, Q.C., and Mr. F. Trippier	- Counsel to the Inquest
Mr. H. Pollock, Q.C. and Mr. M. Pollock	- Counsel for the Estate of the Deceased
Mr. K. LaBossiere and Mr. W. Olson, Q.C.	- Counsel for the Winnipeg Police Service Association
Mr. H. Weinstein, Q.C.	- Counsel for Sergeant Leonard Small
Mr. M. Samphir and Mr. G. Schumacher	- Counsel for the Winnipeg Police Service
Mr. J. Sinclair and Mr. B. Sychuk	- Counsel for Wilma Cameron

[1] In accordance with the written direction of the Chief Medical Examiner, Dr. A. Thambirajah Balachandra, MBBS, FRCPC, FCAP, dated November 15th, 1999, pursuant to Section 19(3) of the *The Fatality Inquiries Act*, an Inquest into this matter is mandatory, as Mr. Hiebert came to his death, on the 16th day of December, 1997, as a result of an act or omission of a Peace Officer in the course of his duty.

[2] The Inquest commenced on the 31st day of January, 2000 and continued thereafter, from time to time, for a further fifteen days until the 25th day of May, 2000.

[3] Upon the completion of the Inquest, pursuant to section 33(1) of the *Act*, the presiding Provincial Judge is required to

(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.

[4] It should be noted that, whereas the first part of the section is mandatory in its application, the same legislation provides for discretion in the Provincial Judge as to the making of recommendations.

[5] Although section 33(1)(a) requires a Provincial Judge to forward a written Report of the Inquest to the Minister, setting forth those specifics set out in this subparagraph, the Provincial Judge is deemed to have complied with the legislation if he submits the report to the Chief Medical Examiner (section 35 of the *Fatality Inquiries Act*).

Cause of Death

[6] The deceased met his death on the 16th day of December 1997 as a consequence of having been shot in the chest by a police officer, who was in the process of attempting to serve a search warrant on him at his residence. He was transported to the Health Sciences Centre, but despite resuscitative efforts, he was pronounced dead shortly after arrival. The immediate cause of death was gunshot wound to the chest.

Underlying Facts

[7] The deceased, Abraham Hiebert, resided at 479 Dufferin Avenue, in the City of Winnipeg, in the Province of Manitoba. He was known to members of the Vice Division of the Winnipeg Police Service as having previously been arrested for selling Talwin and Ritalin, which are commonly known as T & R's, in the drug community from his home address. He had been charged for this as of December 16th, 1997 and those charges were still before the court.

[8] Evidence given by Constable D. D. McMillan (McMillan) on February 8th, 2000, respecting his previous dealings with Mr. Hiebert, was as follows:

Q. And, what involvement had you had with him prior to December of '97?

A. Well, dating back to May of '96, acting in an undercover capacity, I would attend his residence on several occasions and make undercover buys.

Q. Of Ts and Rs?

A. Yes, sir.

Q. And he was eventually arrested, I understand, in October of '96 related to that particular operation?

A. Yes.

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Q. And how many times between May and October would you have gone to Mr. Hiebert's residence and bought Ts and Rs?

A. I would have attended to the residence 10 to 12 times. Out of those 10 to 12 times, probably eight times I'd buy Ts and Rs from either Mr. Hiebert or Ms. Cameron.

The Vice Division Plain Clothes Shift

[9] Detective Sergeant Garry Schmidt (Schmidt) gave evidence that he and Detective Sergeant Leonard Small (Small) were street supervisors for this shift, and responsible for street operations. He said:

The plainclothes shift consists of a nine hour shift. The hours of operation for the vice division, which is common practice, is four o'clock in the afternoon to one o'clock in the morning. And that's a standardized shift. I mean, there is some variation from that, but as a rule, that's the hours of operation or was within that time frame.

The vice division, from my experience in the length of time that I've been there, at the start of all our shifts our unit, our drug unit collectively has a shift meeting and that is for the purpose of laying out the day's events to determine, firstly, what tasks are to be completed that particular day and prioritize those tasks so that they're completed in such a fashion, and that everybody knows what everybody is doing throughout the course of that evening.

Upon arriving at work and having our meeting at four o'clock collectively with the drug unit members, part of the discussions in that meeting were from Sgt. Small addressing the fact that he was going to be preparing an information to obtain a search warrant for the Dufferin Street address of Abe Hiebert and it was at that point in time that there was

some dialogue with respect to prior activity and prior contact with respect to 479 Dufferin.

I believe, some of the conversation that did come up was relative to Cst. Dale McMillan, who is a constable on the shift, and prior to my coming to the shift I was well aware of an undercover operation that was taking place whereby Cst. McMillan was attending to 479 Dufferin and dealing directly with Abe Hiebert and buying Talwin and Ritalin in an undercover capacity. This predated December 16th by some time in that particular operation had come already to a conclusion, and Abe Hiebert was presently on charge.

My understanding that that particular search warrant there was very little resistance offered upon the execution of that search warrant. . . . They had been there before. They had dialogue with Abe Hiebert not only with regards to Dale McMillan's operation, but there had been another occasion that they had been there, as well, and had been offered very little resistance.

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Involved in this discussion would have been everybody on my shift, which would be Bob Freeman was present, who is my shift supervisor. There was Len Small. There was myself. There was Colleen Bellingham. There was Harold Schlamp. There was Dale McMillan. And I believe Brent Benoit. As well, Murray Gwyllt.

Q. I gather that the whole shift went on this search warrant, did they?

A. Yes.

Q. And this discussion took place amongst all of you?

A. Yes. The boardroom that we sit in has one door and its basically set up with a single long table with chairs around it and it's designated as a meeting room, and that's where we do our shift meetings prior to the start of our shift.

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Q. So the information then was that Small was going to go and get or attempt to get the search warrant, and the rest of you were then to be on standby to execute it in the event the warrant was obtained. Was that how the meeting was left off?

A. Yes.

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From my experience, the individual who is obtaining the search warrant is the most educated with regards to the goings on within that residence. They're responsible for doing the background of the residence and doing a scene drive-by and checking the property with regards to the best avenue of entry for those other officers that are attending along. That's the responsibility of the person obtaining the warrant.

Q. Now, the attendance of eight officers on the execution of a search warrant, is that usual or unusual?

A. That's usual.

Q. Okay. What's the reason for that?

A. Any search warrant that we execute within the vice division we make sure that, firstly, that we have all the equipment that's available to us in the event that we are offered resistance. And we anticipate resistance on every search warrant that we execute in advance to make sure all that equipment is there should that present itself.

[10] As a consequence of the foregoing, Small was left with the task of completing the particulars and application for the search warrant, and eventually attending to a Magistrate for that purpose. The entire shift would subsequently meet later on in

the evening, and all of the members of that shift would be required for the search warrant's execution.

The Social Event (Party)

[11] Detective Sergeant Schmidt explained that the shift meeting ended at approximately 5:00 p.m. The members of the shift were aware that they would need to take time to have something to eat, and that Canada Customs had a contact luncheon, which he had attended in previous years. This is primarily held at a location at The Forks in their offices and basically it is an open room with a substantial amount of food that is available. The purpose of this particular function is to meet some of those individuals that you deal with during the course of the year, and some of those individuals you deal with on a personal basis as well.

The time of the year facilitates this type of function and for the most part, that's why we attend. It seemed to our advantage to go there and take advantage of the food that was available at no cost to any of the members that would be attending. And again, Sgt. Freeman was present during that and reiterated the fact that we had been given the okay to attend this particular function.

We were given to understand that our divisional commander, Gary Walker, was well aware that we were attending, and he was also designated to attend this particular function.

There was a formal invitation that was sent over which was actually posted on the wall within the division making us aware of, obviously, the time, date and location.

Everyone on our shift with the exclusion of Sgt. Small, attended to get some dinner so that it would not interfere with what was going to take place later on in the evening. (i.e. the search warrant execution).

Let's go. Let's have something to eat and get it out of the way. The food has always been wonderful, and I think that was the motivating factor to go to begin with.

The group arrived approximately at the same time. At the front reception desk you checked in, and there were even name tags. There was a larger room with a table set up with an abundance of food and some chairs, and a bar was set up down the hallway off that room. One had to leave the room where the food was - the common area - walk down the hallway to where the bar was set up and request either a soft drink, liquor or beer. If you were going to consume liquor or beer, there was an area closer to the elevators where you came in and purchased drink tickets. It was a cash bar.

The only cost associated with attending this particular function were that if you were going to have an alcoholic beverage, you had to buy a ticket, which you personally had to pay money for. If you were going to have a non-alcoholic beverage, there was no cost associated to that, or the consumption of food.

Q. During that time you're telling His Honour that you had one beer?

A. Yes, Sir.

I only bought one drink and no one else supplied me with a drink ticket or consume any further alcoholic beverages, which I wouldn't have done in any event.

Q. Is it permissible for officers to drink on duty at social occasions like this? You were on duty?

A. I was on duty, and no, it is not permissible.

[12] The consensus and evidence of the officers that attended this function, most of whom admitted to having one drink, agreed that in accordance with Police Department policy, drinking on duty is a prohibited activity.

[13] Regardless of the Departmental policy with respect to drinking on duty, however, the evidence disclosed that many officers who had attended the event had the view that there was an implied and unofficial consent to having an alcoholic beverage drink while participating in the function. They had the view that it was part of the social intercourse of mingling and meeting with various members of the Customs and Immigration Department, as well as lawyers who were also invited and attended.

[14] As a consequence of this disclosure in the course of the Inquest, all of the officers were disciplined by the Police Service and were issued a conduct form relative to the consumption of alcohol during the course of duties. This is attached to their service file, and remains there for a period of one year. If no other breaches are created within the 12-month period, that particular conduct form is removed from their services files. That entire action is as a result of the agreement that the Police Association has with the Winnipeg Police Service.

[15] Detective Sergeant Schmidt and Constables Schlamp, Bellingham, and Gwyllt (hereinafter referred to by last name only), left and returned to the Vice Division office together. McMillan had left earlier, having had an opportunity of a ride back. They recalled arriving at the office at approximately 6:15 p.m. According to their collective and individual recollection, there did not appear to be any indication that any of the members were under the influence of alcoholic beverages, or demonstrating any of those symptoms which would be consistent with over indulging.

[16] This recollection and observation is subsequently confirmed during the course of the Inquest by the testimony of a number of well-respected members of the legal community, who gave evidence of their attendance and observations of the vice squad members.

[17] Mr. Kenneth Sydney Zaifman, Barrister and Solicitor, practicing as an immigration lawyer for a number of years, gave evidence as follows:

Q. You also were invited to the Christmas party that was being held at the Department of Immigration at Johnson Terminal in The Forks?

A. Yes. . . .

I arrived approximately 4:30 p.m. I stayed 'til approximately 6:30. . . .

I think the name tags had a designation of a person's name and the department, or the entity that they were with.

Q. Can you give His Honour some guestimate of the number of people that may have been wearing badges that said Winnipeg Police Service?

A. I'd say anywhere from maybe six to ten people that I can recall seeing.

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Q. Now, the people that you saw, that were identified as being members of the Winnipeg Police Service, did any of them act in a manner that made you think that they may be under the influence of liquor – or could you tell whether, in fact, any of them were drinking liquor?

A. Well, I mean, everyone was – if they had a cup in their hand, were drinking. What they were drinking, I couldn't say. I may have seen some purchase liquor, but no one in my mind was under the influence. It was a rather casual party. It was a pretty congenial kind of affair. It was in the afternoon, so no one was really, at least displayed the signs of being, excessively loud or boisterous and the usual things, I guess, that are associated with excessive drinking.

I didn't know what they were drinking, but they didn't strike me as being under the influence.

[18] As the group returned to the Vice Division, they met Small leaving the parking lot. They had a brief conversation with him through the windows of the vehicle, which dealt basically with the fact that he updated them with respect to the search warrant. He advised that he was not completely done with it yet, and was taking his supper break in order to attend his son's Christmas concert for a brief time. He wanted to make his presence known there and would be returning. He further

indicated that the execution of the search warrant would be pushed off, initially anticipating being between 9:00 p.m. and 10:00 p.m.

[19] Sergeant. Freeman (Freeman) subsequently advised Schmidt that he had received a telephone call from Small (who had departed the Magistrate's office), saying that the warrant was signed and he was on his way back to the vice office. He also said that they should start gearing up – that is, putting on their appropriate equipment – to execute the search warrant.

[20] Small indicated that he had a conversation with Freeman about substantiating his information to obtain a search warrant, and made Freeman aware that he was soliciting information from Cst. Klassen (Klassen). He attended the shift briefing and informed the members that it was planned to do the search warrant later on in the evening, perhaps anytime after 7:00 p.m. or 8:00 p.m..

[21] Small also informed Freeman that he had an appointment with a physician, and was contemplating going to his son's Christmas play at his school during his lunch break.

[22] Small had also spoken to Klassen and gave the following evidence concerning that conversation:

He indicated he had a confidential informant who had attended to that location within the previous day, and made a purchase of Talwin and Ritalin from Mr. Hiebert at that location.

[23] This conversation took place between 4:00 and 4:30 p.m. Shortly after that period of time, he left for his doctor's appointment and returned to find that the entire shift had obviously left the office and, to his knowledge, were attending the social event.

My son's play was for 7:00 that evening, and I left the vice office sometime after 6:00 p.m. It would probably have been in around 6:30, any time after 6:15, to afford me enough time to travel to the school, which was in the West Kildonan area.

I returned back to the office after 8:00 p.m. sometime, but in route from the play to the vice office, again, since my son's play was in West Kildonan, I would have to pass right by Mr. Hiebert's place, and prior to doing my search warrant, I wanted to get a better understanding and confirm in my mind what the layout of Mr. Hiebert's place was. I drove by Mr. Hiebert's place a few more times, and the intent and the focus of this drive-by was not to gain evidentiary information, although if it was there, I would certainly have gleaned it and made a note of it, but it was to just get a basic layout of the structure of the property, and what the entry points were going to be, so that when I had a briefing later on, prior to briefing my shift, I would know what I could expect to tell my shift as to which way would probably be best to enter, and what other hazards may or may not be at that location.

I wanted to reconsolidate that in my mind so that I was accurate. It was getting closer to the time that I felt we'd

probably be doing the search warrant, although it wasn't going to be as early as I thought it would have been originally, at the beginning of the shift.

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I know I was familiar with the situation, but at that point I also realized that there had been some change in the rear entrance to the house, in that from the time I was in the house previously.

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I just wanted to re-confirm in my own mind what the layout and the planning of that premise was going to be.

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Yes, I drove by several times. I didn't count how many times I went by. Sometimes I would drive up the lane, sometimes I would not drive up the lane, but continue straight down Powers.

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Yes, I had already started to actually compile the search warrant in text form, but I was continuing to do that after my return.

Preparation for Search Warrant Execution

[24] All the members of the Vice Division who were preparing for the warrant execution briefing had been previously advised to accumulate various equipment, which they would be taking with them. They were also to take care of other preparations, which included breaching devices such as a ram for the door, pry bars and the equipment supplied such as pepper spray, hasp, handcuffs and a firearm.

[25] The hasp is a new defender baton – a retractable hard-handed defense mechanism which could be hung from the belt or carried in a back pocket. It is a striking tool to disable someone to either facilitate the ease of arrest, or to put someone down that is resisting and not complying to being handcuffed. It can also be used for defensive motion. Extensive training is required for the use of the hasp before one is issued.

[26] Pepper spray is used over and above the verbal commands to get an individual to comply. With the use of pepper spray, the officer can stand at some distance and employ the spray and cause discomfort, disorientation. This would hopefully have the effect that the individual will be able to be overcome and put down, and if they are carrying a weapon – to be relieved of same.

[27] Additionally, all members of the Vice Division that evening wore what are euphemistically called raid jackets. They are all identical and all members within the Vice Division wore the same jacket, and they read “Police” front and back, or they read “Winnipeg Police” on the front and “Police” on the back in large letters.

The Raid Plan

[28] Located in the parade room, where all the desks are spread out collectively and there are no partitions to block anyone's view, is a chalk board at one end of the room. When Small arrived back at the office with the warrant, the squad assembled for their briefing.

[29] When Small arrived back at the Vice Division, he drew a plan of the house at 479 Dufferin Avenue, showing the doors, front and back, and basically describing the layout of the house. He then reviewed the history again with regard to the target Abraham Hiebert. The members of the squad were given specific roles and assignments, which were recorded by Schmidt in his notes, relative to what each person's responsibility was going to be during the execution of the search warrant.

[30] Small designated an arresting officer, officers to operate the ram if it was required, officers who were going to be responsible for searching, and officers who would be responsible for seizing items.

[31] In this particular case, he felt that it was responsible and prudent to bring Freeman along rather than leaving him behind to be the contact person at the station. The purpose for

that would be so that he would deal with the dog which was known to be tethered in the back yard of the home.

[32] The notes that Schmidt made included the following descriptions:

10:10 p.m. - 97/12/16
479 Dufferin Avenue
Schmidt/Schlamp (ram)
Small - warrant
Benoit - arrest
Gwyllt - seizing
Bellingham/Freeman / McMillan
(dog)

So obviously Freeman, McMillan and Bellingham were designated for the purpose of searching. They would be going through the house to find any drugs that might be there. Once the use of the ram is completed, if necessary, Schmidt and Schlamp were going to assist with the search as well. Once in the premises and securing any or all occupants and eliminating any threats that might be present, any individual secured would be brought into one particular room and Sgt. Freeman would have been designated to stay and control whoever was found in the house. They are not actually placed under arrest, but they are detained while the search is taking place so they can't interfere.

This is a typical execution of any search warrant.

The reason they are all brought together in one room for the most part is that it is easier to keep them collectively in one place. They are always handcuffed and one officer is responsible for dealing with them. At that point, the arresting officer will start taking notes relative to who they are, their background information and wait for signs of a seizure being made. In the event that they are made, at that point he would be responsible for reading them their rights relative to whatever charge is appropriate according to the seizure.

[33] Small also informed them of previous dealings with Mr. Hiebert, presently on charge, and that entry was going to be made via the front veranda, because of there being a large dog in the rear yard. This was the primary entrance point. All the names and assignments were written on the chalk board for clarity.

[34] Schlamp and Schmidt took possession of the large ram, which weighs approximately 80 - 100 pounds and is approximately 40 inches in length. It is solid steel and takes the effort of two to carry it down the stairs from the Vice Division and put it into the van. It has four handles on it where one officer will stand on each side to work in harmony with one another for it to be effective, and to use its mass for the purpose of assisting in gaining entrance to premises.

The Premises at 479 Dufferin

[35] The house located at these premises is a one-story bungalow with a glass veranda. McMillan, who had attended at these premises in an earlier occasion with respect to an undercover operation for which Mr. Hiebert was presently charged, described the front of the house as follows:

There are two doors; an outside door and inside door that lead onto the veranda, and that is an outside door and inside door that go from the veranda into the house – four doors.

Q. So you would knock at the door, and were there instances where Mr. Hiebert attended the door after you knocked?

A. Yes.

Q. And it would be that outside door?

A. Yes.

Q. Did Mr. Hiebert ever seem to not hear your knocking on the door on instances when you'd attended there previously?

A. No.

Q. Were there instances where you rang the bell?

A. Yes.

Q. Were there instances where Mr. Hiebert answered the door after you had rung the bell?

A. Yes.

Q. Did he seem to be hard of hearing?

A. No.

Q. When you spoke to him, was it necessary for you to raise your voice at all?

A. No.

Q. You'd just speak in a normal tone of voice as you are now?

A. Yes, I would.

Q. What about his vision? Did he have any, did he appear to have any difficulty with respect to seeing?

A. Not that I was aware of, no.

. . .
Yeah, he had glasses.

Q. And he wore them whenever you dealt with him?

A. Yes.

Q. Can you give us some idea over that four-month period how many times you were involved with Mr. Hiebert, Cst. McMillan?

A. With him personally, probably 15 different times I had contact with him. Ten of those times would be in person, five of those times would be phone conversations.

. . . .

Sgt. Small . . . puts a diagram on the board of the residence. . . . I had indicated in one of my reports while doing an undercover investigation, . . . after leaving, after a buy, an individual which was partners with Mr. Hiebert, was barricading a door with what I believed to be two by six.

Q. Which door was that?

A. One of the outside veranda doors - the door that opened inward from the veranda - from the outside to the veranda.

So the possibility existed that, that door may be locked when we go there, therefore we'd have to go to plan B, so to speak, and go to the back door.

[36] Schmidt gave evidence as to what followed:

. . . .I can see now the dog alongside the house. Because there is a sidewalk that goes along the east side of the house

and I can look up the entire length of the house along the sidewalk, see that there is a raised deck off the back of the house. The back yard is lit up like daylight, and I can see that the dog is up on the deck with its head stuck around the corner of the house.

As I went in a northerly direction on the east side of the house along the sidewalk which was clear of any debris, it was obviously something that was used on a regular basis.

There was a large halogen light that was illuminating the entire deck and yard as bright or if not brighter than what it is here in the courtroom.

It was basically a rectangular-type floodlight.

. . . .
I was at the back side of that deck at the stairs which lead up onto that deck.

This is a steel insulated door - and I guess you have to envision the fact that there's two panes of glass. It's almost similar to that of a check rail window where the top pane is equal to - in size - to the lower pane. The lower pane, for the most part, will move up and down to allow air to go in and out through a screen.

Attempted Entry of House

[37] When the raid squad arrived at the house, they parked their vehicles east of 479 Dufferin on the street. Sergeant. Benoit (Benoit) then approached the front door and immediately reached up and tried to open it, but it sounded to be locked. The entire squad was at the front of the house.

[38] Schmidt went on to say:

Well, Benoit, he turned the door knob and it was obvious that the door was not opening, that it was in fact secured. And without hesitation, I said, Let's go to the back.

[39] The entire raid squad, with Schmidt and Schlamp leading, proceeded down the eastside of the house towards the back of the house. There were two windows on the eastside of the house, and as they passed them Schmidt was able to glance in and see that lights were on. He indicated that it was readily apparent to him that there appeared to be someone in the house.

[40] As they approached the rear of the house, Schmidt said:

There was a large halogen light that was illuminating the entire deck and yard as bright or if not brighter than what it is here in the courtroom.

[41] He had no problem seeing the dog from the distance of the whole length of the house until the time they got to the back. As they advanced, the dog retreated somewhat to the center of the deck area off where the back door was. Schmidt deployed his hasp in order to ward off the dog, should it attack. As they got along side of the deck, the dog retreated to the rear of the deck. Schmidt recalls slowing down to allow the dog to clear the stairs to move away, and it was at that point at the bottom of the stairs, that the dog had cleared the deck.

[42] Schmidt then said:

And while I'm standing in this illuminated back yard, I can see at the back door, this particular door which is a steel insulated door .

I could immediately see a male standing in the doorway. I could actually see Abe Hiebert standing and looking out the window even before I'd even got up the stairs. The dog was making enough noise that anybody would have come out to look what the dog was doing, because up until that point, we had not said anything or started yelling and screaming.

He was standing. I could see mid-torso, I guess. The inside door was fully ajar, was wide open up against the wall. This door was secured, and he was standing in the window looking directly out at us coming up the deck.

Once I was at the bottom of the stairs, even before I went up on the stairs, I yelled 'Police - search warrant', and went up the stairs.

I was standing directly in front of the glass of the door while Abe Hiebert was on the opposite side of the glass. And it was at that time I yelled out - 'Police, Abe. Open the door. Open the door now'. He continued to look in a fashion where his face up against the glass. If the glass wasn't there I could reach in and touch him. I'm standing on the right-hand side of the ram, and Harold Schlamp is standing on the left side of the ram.

I vocalized for Abe to open the door, and I know that Cst. Schlamp did the same thing, yelling for Abe, open the door. Ordering him to open the door and giving him the opportunity to open the door without causing any damage.

To be honest with you, when I asked him to open the door, I wasn't even checking on the configuration of the door to realize that the door swung out.

The Assault on the Door

[43] Schmidt continued on:

After giving him the initial advisement that Winnipeg Police search warrant and the two commands that I gave at the door, I said, 'Let's hit it'. So it was at that point in time, and I have to work collectively with Cst. Schlamp in swinging the ram at the same time, and it was at that, that we started to strike the door just before the handle locking mechanism with the ram and continued to hit it eight, ten times. And during the course of hitting this door, we observed it to start to crease and it was obviously wasn't giving way, and I realized after the first hit that this door swings out and it's going to take a lot more than this ram and our physical strength to push that door through because the whole door frame is going to have to go through.

Once we started hitting the door, we hit it maybe two or three times and it was at that time that Abe Hiebert went into the house off to my right. . . . If I'm looking through the door, there's a hallway that goes straight further into the house, or deeper into the house towards the living room area, and all I saw was him go to the right out of my sight, that I could no longer see him while we were hitting the door.

I recall someone yelling, 'throw the ram through the window'. So that was probably a good suggestion at the time, thinking about it, but both Cst. Schlamp and I collectively took the ram and threw it through the glass that was within the door.

We took the whole ram and threw it through the window and recognizing that the pane or the glass completely shattered because there was glass debris everywhere. When the ram was thrown through, I could see it hit the floor on the other side. The intermediate cross-member which is still partially intact, was still present.

It was at this point in time I took a quick glance in the window. With that cross-member being there, with my left

foot I raised it up about chest level, and I kicked the cross-member out with my left foot.

Now I'm leading with my left foot through the opening in the doorway, and I'm able to get up to mid-thigh on the window ledge of that doorway inside the residence. Just as I started taking my upper torso, I put both my hands in the window opening and started to put the upper portion of my body through while the back of my thigh is resting on the doorway, or the window ledge. I saw basically a body movement and immediately I felt. . .

The Assault on Detective Sergeant Schmidt

I heard a whack which was louder than a firecracker, and it was impact that I felt. All I felt was light-headedness and stars, and I realized that I had taken a large impact to the mid-shin of my leg.

It was at that time the force of that blow and the pain that I was feeling caused me to lean back and it was at that point that the momentum of my upper body went back. Although I was able to maintain my balance, I was falling back and as I was falling back I was struck a similar force and pain on the more fleshy part of the side of my leg as I was falling out of the window.

I was hit two more times on the fleshy part of my left leg - probably center between my knee and my ankle. I knew the pain was excruciating, and initially I thought I was going to pass out from the pain.

As I was falling back I suffered the two additional blows to the side or fleshy part of my leg. I lost my balance, and as I was falling out the door, I also got hit on the bottom of the foot as I was falling out of the doorway.

[44] As a consequence of this assault, Schmidt stumbled onto the deck and moved himself away from the doorway to the

side of the deck. As he crouched at the side of the deck, he watched in amazement as his pants started pooling in blood from the blow to his leg.

[45] The original purpose for which the police attended was to execute the search warrant on Mr. Hiebert. As a consequence of this violent physical assault on Schmidt, the task now became two-fold – to execute the search warrant, and to arrest Mr. Hiebert for the violent assault upon the police officer.

[46] Seeing Schmidt fall backwards out of the doorway injured, Schlamp moved in and took his place at the doorway of the house. In his statement, Schlamp described what he saw as follows:

There was a lot of confusion and I took a quick peek through the window and observed Abe (Hiebert) standing along the north wall, west of the doorway. He had in his hand a baseball bat and was in a batting stance. At that point, I had Cst. Bellingham to my right and she had pepper spray in her hand. I took the pepper spray out of her hand, took a quick peek inside and observed Abe standing in the same location with the same bat, in the same stance.

I took the pepper spray from her hand, put it in my left hand, again acquired a quick peek, ascertained where my target was, be Abe Hiebert, and again put my left arm through the window of the doorway, put my head through and began spraying. I wanted to make sure that my spray was catching his facial area, not his body.

[47] Schmidt continued to observe the assault on the back door, and witnessed Schlamp reaching inside the opening in the door and pulling on the door.

[48] By placing himself in the threshold of the door, Schlamp exposed himself to any further action by Mr. Hiebert, which he describes as follows:

I was met with a soaking of what I believed to be pepper spray. While I was doing that I was, my face is obviously within the plane of the house, I was inside the house, I received a soaking similar to being hit by a super soaker.

This had the effect of immediately experiencing pain in his eyes with involuntary closure of his eyes, restricted his breathing, disorientated him and compromised his situation. His vision was blurred, but he was able to discern Mr. Hiebert's presence to the west of him, still holding the baseball bat.

[49] As Schlamp did this, Schmidt was able to observe that the door started to crease from the top hinge to just below the regular handle latch. Once Schlamp got it open enough, basically he duplicated the same motion that Schmidt had previously attempted through the broken window portion of the door. He put his leg in this partially folded over door that was still secured, to a large degree, on the inside and on the bottom,

which is obviously the bottom deadbolt. The door, however, was still intact and still in place, but the top triangle of the door had peeled out, because Schlamp had placed his leg between the doorway and doorframe. He is trying to breach the door between his back and the doorframe with his arms.

[50] At this point Schmidt observed Small standing on the sidewalk to the left of the deck, very close to the corner of the house. He observed him pull himself up on the deck with the use of the railing so that he was up on the deck on the outside of the railing.

[51] Schmidt then observed that Small had pulled out his pepper spray and he could see the spray of pepper going into the residence, and could actually see spray coming back out.

[52] It was during this exchange of sprays through the opening in the doorway, that Schmidt noticed that Schlamp was still hung up in the doorway and was now basically saying out loud, "I've been sprayed. I got pepper spray." He was obviously in pain and covering up his eyes. The pain and disorientation had caused him to crouch down as he tried to retreat out of the doorway. He was calling out, "I can't see, I can't see nothing. I can't see."

The Confrontation

[53] It was while Schlamp was doubled over and trying to get out of the doorway that Schmidt noticed the pepper spray battle going on. At one point in time, Small dropped down again and then came up again and Schlamp realized that Small had his firearm in his right hand. He had his arm up, deployed, and had his service revolver up and in a loud voice said, “Abe, drop the bat. Drop the bat now or I’ll shoot. Abe, drop the bat.” And then Schmidt heard “Pow” – one pop and then it was silent.

[54] Schmidt indicated that he could see an object being swung in front of the door similar to the same thing that happened to him.

[55] As all of this was happening, Schmidt was to the side of the deck observing Schlamp trying to clear the doorway. It was apparent to him that Schlamp was having a lot of difficulty doing so. In Schmidt’s opinion, Schlamp was both visually disabled and he was disorientated, and was now very much been in harms way while in retreat from the door, as his head was now completely exposed to any assault.

[56] Schlamp was able to clear the doorway, and because of his weight, the door was now substantially peeled down. Then Gwylt got his arms around the inside of the doorway and began to tug on the door to the part where the hinges let go and the entire door came crashing down onto the deck.

[57] At that point, Gwylt and Bellingham immediately entered the residence and went straight down the hall towards the living room. Schmidt entered the residence and observed Mr. Hiebert lying flat on his back with his arms and legs fully extended. He examined Mr. Hiebert and determined he was alive and breathing, but not responding. He noticed the wound to the right upper shoulder where blood was beginning to pool. Schmidt returned to the deck and found Schlamp there in a disorientated condition. He took Schlamp into the residence to the bathroom. He turned the water on and allowed Schlamp to irrigate his eyes with the water to remove the contaminate.

[58] Schmidt realized that he had cut his hand while falling out of the doorway and was bleeding profusely. He immediately wrapped his hand with a towel from the bathroom, and then went back out to check on the fallen Mr. Hiebert. Mr. Hiebert had not moved and was still gasping for air. Schmidt had instructed Gwylt to proceed to perform CPR on Hiebert when the

ambulance attendants arrived on the scene and took over the care and control of Mr. Hiebert.

Use of Force Authorities and Training

[59] As is expected at an Inquest hearing of this nature, the counsel for the Inquest called experts in the use of force by police officers with respect to the nature of training that the officers received. There was evidence with respect to the use of force, perimeters and the overview of the training and policy issues in place within the Winnipeg Police Service and elsewhere.

[60] To accomplish this end, we were privileged to hear the evidence of Sergeant Randy LaHaie, the Officers' Safety Coordinator of the Winnipeg Police Service from whose report and analysis I will be quoting extensively.

[61] As well, we heard the expert evidence of Mr. Doug Ashton of Cambridge, Ontario, who has given evidence in this regard in a number of different forums. In addition to having been a full time police officer for nineteen years, for the last twelve years or more Mr. Ashton has been used as a consultant to the Ministry of the Solicitor General. He has also specialized in the use of force training, including defensive tactics, use of force judgement and firearms training.

[62] In the course of their work as police officers, the men and women of the Winnipeg Police Service often find that their work involves the application of force for the purpose of arrest and control of a member of the public. As a consequence of the confrontational nature of some of these engagements, there exists authorities within the law which allows police officers to exercise force and administer it in the performance of their duties.

[63] In his report, Doug Ashton indicated:

The primary authority for police officers to use force is derived from the Criminal Code of Canada, Section 25. This is the general authority for the officer, when authorized to use as much force as is necessary for the enforcement of the law. Section 25(1) states:

Every one who is required or authorized by law to do anything in the administration or enforcement of the law is, if he acts on reasonable grounds, is justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.

Section 25(3) states:

A person is not justified for the purpose of subsection (1) in using force that is intended or is likely to cause death or grievous bodily harm unless the person believes on reasonable grounds that it is necessary for self-preservation of the person or the preservation of any one under that person's protection from death or grievous bodily harm.

This section of the Criminal Code is generally associated with an arrest, whereby the officer experiences resistance and uses force to overcome the resistance of a subject. In the case of lethal force application, the officer must be able to articulate the justification and show that the force was necessary to preserve himself or someone else from grievous bodily harm or death.

Individual police department policies often mirror and expand the Criminal Code authorities and usually separate out various force options and identify under what type of circumstances that that type of force should be used.

[64] And in Sergeant Randy LaHaie's report, it is further indicated:

The Winnipeg Police Service policy reiterates the Code by identifying four criteria when considering the use of deadly force by a member:

1. *The police officer's life is in immediate danger;*
2. *The life of another person is in immediate danger;*
3. *The police officer is in immediate danger of grievous bodily harm; or*
4. *Another person is in immediate danger of grievous bodily harm.*

The policy defines grievous bodily harm as:

. . . a bodily injury that creates a substantial risk of death; causes serious permanent disfigurement; or results in long-term lost or impairment or the functioning of any bodily member or organ.

Even though the Code provides police with the authority to use force, it does not provide specific instruction or direction on exactly what constitutes necessary or appropriate force.

Police administrators and trainers needed to develop use of force policies that were more useful in defining appropriate police responses. A more objective framework is required to

prepare police to evaluate situations and determine whether or not to apply force, and if so, how much.

[65] “Use of Force Models” have been developed by different police departments in various forms. However, they all offer the same information and correspond to the authorities set out in the *Criminal Code*.

[66] The force model used by the Winnipeg Police Services is called the “Justified Force Doctrine”. This doctrine identifies two broad criteria as the basis of selecting, applying and justifying force. Subsequently, continuums and concepts were developed to assist in the application of that criteria.

[67] The two parts of the Justified Force Doctrine are:

1. Escalation: The need for an amount of force applied by a police officer is based on the resistive or aggressive behavior presented by the subject. It is the subject who determines the need for force by how vigorously or violently he or she resists.
2. Preclusion: The police officer must believe that the force used is appropriate and less forceful methods were either attempted unsuccessfully or considered inappropriate.

[68] Regardless of which use of force model is being used in police work, the criteria throughout – with a comparison between the Ontario model and the Winnipeg Police Service model – is

consistent in that one requirement is that the behavior being encountered and assessed must be identified. Secondly, that the responses employed by the police officer subsequently must be justified. In some instances, the profile behavior encountered are defined in Doug Ashton's report as follows:

Compliance: Co-operation with the officer's commands

Passive Resistance: Verbal defiance, little or no physical response

Active Resistance: Physical reaction of defensiveness often exhibiting verbal refusals, pushing, running away, and open angry verbal refusal

Assaultive: Active hostile resistance whether an assault has occurred or is about to occur

Serious Bodily Harm or Death: Actions that could cause serious bodily harm or death

[69] This assesses the behavior of the subject allowing the police officer to then elect a controlled response appropriate to the behavior being encountered.

[70] The Control Continuum organizes police response options to allow them to be associated to resistance. Police response options are also organized on the hierarchy-based intensity or potential for inflicting injury.

[71] Unfortunately, this process cannot be as simple as associating each level of resistance to control option. There will always be variables unique to each encounter that will result in more or less force being required.

[72] The two experts who gave evidence at the Inquest, made significant explanations and examples so that the writer could understand and appreciate that a force model is a training aid, designed to train police officers in making more consistent and reasonable decisions. This involves identifying and organizing types of subject resistance and police control, and pre-associated them to each other.

[73] It was pointed out, however, that the process is not reflective of the (real world) performances in the field. In the case of an encounter, things seldom happen in isolation sequences or with predictability. Response decisions are often made in a state of urgency, stress and often stimulate an outcome that is ambiguous.

Various Options as Presented

Officer Presence/Tactical Communication

[74] The presence of an officer as associated with a uniform or some type of police identification, other types of identification

may also include the police officer's badge, non-uniform raid jackets, and police vehicles attending upon the scene.

[75] An officer in such a situation must project a strong position of authority. This is generally used in an attempt to de-escalate situations by employing calming verbal tactics and non-verbal language. This may mean offering empathy to an individual, or effectively listening to what they have to say. As an example, should an officer be required to deliver Oleoresin Capsicum (OC spray) to a subject, the corresponding tactical communications would direct the person to the ground or have them stop an assault.

Empty Hand Techniques

[76] This is the only physical force option that is always available to an officer. An officer may use their hands to physically escort a person, to lever them to the ground, or to strike back and repel an assault. The decision to use empty hands is often based upon the spontaneity of an altercation, and the ability of the officer to effectively control the situation without resorting to any weapons.

[77] Different officers will possess different abilities, strengths, expertise and knowledge that would assist them in using empty hand skills, which are diverse in nature.

Aerosol Weapons

[78] From 1993 to 1995 there was a strong movement in Canada to implement OC spray as a force option to deal with aggressive individuals. Virtually every police service in Canada has adopted the product, which has been effectively used in situations when empty hand tactics would have been ineffective or inappropriate.

[79] OC, commonly called “pepper spray” is derived from the cayenne pepper plant. The active ingredient is mixed with a carrier and placed into a pressurized canister that is discharged from the officer’s hand. OC has a degree of ineffectiveness and often will not impact strongly on individuals who are on stimulant type drugs or have goal oriented mindsets. The product works by causing the mucous membranes to inflame, producing an involuntary closure of the eyes and a restriction in breathing. This will often take the fight out of an individual and allow the officer to gain control.

[80] Physiologically the product produces temporary blindness, which severely hinders an individual's ability to function. Psychologically, the effects cause a feeling of helplessness due to the pain from the eyes and the inability to breathe properly.

[81] During training, officers are generally exposed to a contaminated environment that allows them to fully understand the effects of OC, and how they would respond physically and psychologically. It also creates a certain empathy for the victim of its use, and perhaps some restraint with respect to over use.

Impact Weapons

[82] Currently, the most common impact weapon is the expandable metal straight baton. It is designed to strike a person, and training teaches strikes to target areas, which effectively immobilize the subject while causing minimal injury. Most target areas are located in the arms and legs and are known as motor points. The baton is usually deployed in circumstances where officers experience higher levels of resistance.

Firearms

[83] The firearm represents an officer's highest level of force available. It is issued to deal with situations that could cause

death or grievous bodily harm. When an officer discharges a firearm, the officer is trained to aim at the largest mass available. The intention of discharging the firearm is the same as any other force option – to control the situation and eliminate the threat. Therefore, an officer would continue to discharge a firearm if the threat was still imminent and the situation had not been controlled.

[84] There is a new evolving technique for firearm use when officers are met with confrontations in which time and distance are minimized. During a high stress confrontation, the officer will lose the ability to use the sights of the firearm, hence the point and shoot system. This ultimate option is complex and often results in grievous bodily harm to the victim. The officer must not only be able to clearly show the justification for its use, but also preclude other applications of force.

Disengagement

[85] Disengagement is generally considered a tactical option and not a use of force option. It is, however, an important response and should be considered in all situations. Issues that impact on disengagement include:

1. Distance, time, and ability to physically separate oneself from the scene,
2. The degree of threat to all present, including the potential threat to others, and
3. The necessity to carry out the original task for the arrest.

[86] In some cases, a disengagement may increase an officer's safety, however, jeopardize the safety of others. During a retrospective analysis of an incident, disengagement may have a strong appeal knowing the outcome of the incident. However, the decision of the officer(s) is only based upon the information present at that time.

Situational Assessment

[87] During each moment of a conflict, an officer is required to assess the situation, make a plan, and then act on that plan. The impact factors an officer brings to a call include experience, abilities, knowledge, physical size, fitness and skills. Each officer will assess a situation differently, and may in fact respond differently.

[88] This is only reasonable, since use of force cannot be measured with exactitude, and must offer a degree of latitude to

account for officer impact factors. Police officers are expected to make a split second decision based upon what he or she perceives.

[89] Patrol Sergeant LaHaie may have said it in the most significant way possible, when trying to understand the use of force concept and dynamics.

What one must understand, that the decisions are made from a very different perspective. Force decisions are made from a position of ambiguity. One must act quickly, with whatever perceptions are available, without the benefit of knowing what the end result will be. These factors must be kept in mind when reviewing any such encounter.

What is seldom acknowledged is the degree of physiological, psychological and emotional overload that accompanies a high level force encounter. Any person when subjected to a sudden, high stress encounter will experience psychological and physiological phenomena that will interfere with motor skill performance, narrow perceptions, and can impair “normal” cognitive functions.

[90] The following quotation taken from “*Legal Aspects of Policing*” by Paul Ceysens, says as follows:

It is both unreasonable and unrealistic to impose an obligation on the police to employ the least amount of force which might successfully achieve their objective. To do so would result in unnecessary danger to themselves and others. They are justified and exempt from liability in these situations if they use no more force than necessary having regard to their reasonable held assessment of the circumstances and the dangers in which they find themselves.

[91] Realistic standards include:

Reasonableness

Were the actions taken by the police officer consistent with what another police officer, with similar training, experience and capabilities, might have also done under the same circumstances?

Good Faith

Was the police officer acting in good faith, to the best of his or her abilities and without malice or prejudice toward the subject?

[92] Police are trained that deadly force is justified only to thwart death or serious injury to themselves or another person.

[93] The concept of threat assessment is a process that helps establish the justification for a controlled response, as earlier discussed. If one of the three components is not present, it can be argued that the threat was not imminent or legitimate.

Those components are as follows:

Weapon (Capability)

The subject must possess the capability to administer force to the intended victim. The “weapon” may be an object such as a gun, club, or knife, but it could also include anatomical weapons such as fists, feet, teeth, etc. that could be used to inflict injury.

Delivery System (Opportunity)

The subject must have the opportunity to deliver the force to the intended victim. This is usually, but not limited to, the distance between the aggressor and his intended victim. The type of weapon can dramatically effect its delivery system. For example, the extended range of a firearm has a dramatically different delivery system than a contact weapon such as a club or knife.

Intent

The presence of a weapon and the opportunity to use it must be accompanied by the intent to carry out the threatening action. Assessing intent may include previous subject behavior, verbal threats or overt actions that indicate that he is about to carry out the aggressive act.

Control Response to a Deadly Threat

[94] Police are trained to consider an initial response of deadly force when confronted by a deadly threat. That is usually, but not limited to, drawing and presenting the police officer's sidearm.

[95] However, there may be circumstances unique to an encounter, which may result in the officer involved considering other, less lethal responses.

Evidence of Wilma Ann Cameron

[96] The evidence given at the Inquest by the co-occupant of the house, and sometimes common-law partner of the

deceased, Abraham Hiebert, is not only instructive and informative, but in some respects, clarifies from her perspective, the event at 479 Dufferin Avenue on the evening of the 16th of December, 1997.

[97] Ms. Cameron was present in the home during the entire course of the evening. She was candid in her evidence and appeared to be forthright with respect to the questions that were put to her. She described her relationship with Mr. Hiebert of almost twenty years duration as off and on, and for approximately three to four years she had lived in the house at 479 Dufferin Avenue.

[98] Ms. Cameron further confirmed that Abraham Hiebert was selling the drugs known as T & R's from that premise, and that they were arrested with respect to these sales in October of 1996. She indicated that the sales were being made mostly to young women who came to the front door to make these purchases, and then eventually it changed to the back door.

Q. Now, the doors to the veranda of the front of the house, were they normally kept locked or unlocked?

A. After he got beat up we kept them fairly well locked. He was beat up just a while before the first bust.

I was in bed and all of a sudden, somebody came into my bedroom and said, stay where you are, just like that.

I heard a commotion, and I thought, no, I'm not staying here.
I went out and there was a guy with a very large knife.

And he was kind of shaking it around.

And the other two guys just kept beating on him.

Q. Where was Mr. Hiebert at this point?

A. He was on the floor between the dining room and the kitchen.

Q. And he was being beaten up by two men?

A. Yes.

He was quite bruised, his face was swelled very badly, and his eye was black, and he was quite bruised and sore.

Q. Was this incident reported to police?

A. No it wasn't.

I remember the first arrest, he was still pretty badly swollen and beaten.

They were there to rob him or get drugs.

Q. Did they get some drugs?

A. Yes they did.

[99] In describing the various aspects of the house, the change of the configuration of the house, particularly at the back door, and also with respect to the maintenance of locked doors at the front of the house, particularly the front windowed veranda, Ms. Cameron explained this as follows:

Q. Now, what about the back door? There was a door that opened in and a door that opened out?

A. That door wasn't there for a long time. There was a door going into his bedroom and then he changed.

Q. Off the outside you mean?

A. Yes.

Q. It went right into his bedroom did it?

A. Yes.

Q. Off the deck?

A. Yes.

And then he changed that, the doorway so it would come into the kitchen. He put the deck on and changed the door so it would come into the kitchen.

He did that in either October or November of '97.

Q. I see. So up until October of '97, which is just two months before his death, the back door actually went into Mr. Hiebert's bedroom, did it?

A. Yes it did.

It was either October or November. It was just before we got the alarm system.

Q. And then you had an alarm system put in as well?

A. Yes.

November of '97.

[100] Ms. Cameron went into a rather lengthy and complete description about the trafficking that took place from the home. She described the packing of the drugs and the manner in which she assisted Mr. Hiebert in selling drugs, and where these drugs were kept and the amounts they were sold for.

[101] She further described that, in the past, Mr. Hiebert had some serious intestinal surgery for cancer and had been in hospital twice, but was recovering. In response to questions about his general health and well being, she further indicated that he had lost the sight in one eye. As a consequence, he wore glasses but was able to function reasonably well with the vision in one eye.

[102] She described further:

Q. Now, what about his hearing?

A. He was not good at hearing at any time.

Q. So for the years that you'd known Mr. Hiebert, he had difficulty hearing, did he?

A. Yes.

Q. You've told us earlier that when the doorbell rang, sometimes he heard it, sometimes he didn't, but often he did?

A. Right.

Q. And if there was knocks at the back door, he usually heard those and was able to answer it?

A. If he was in that end of the house.

Q. But he would watch television and be able to follow the program, as far as you were aware and could hear the program?

A. As far as I'm aware.

Q. Now, Mr. Hiebert was arrested again in April of '97 we've heard evidence. That was his second charge?

A. Yeah.

Q. Now I understand that an arrangement had been made that Mr. Hiebert was going to be pleading guilty in January of '98?

A. Yeah.

Q. And that related to the charges from both the first bust and the second bust?

A. Yes.

Q. And there was an arrangement made that you were going to get a period of probation?

A. Yes.

Q. And that Mr. Hiebert was going to go to jail?

A. Right.

Q. For how long?

A. Approximately 26 months.

Q. And they entered into what we commonly call a plea bargain, had they?

A. Right.

Q. This was to take place in January of '98?

A. Yes.

Q. And, was the reason that it was to be put off to January of '98 so that Mr. Hiebert would stay out of jail for Christmas of '97?

A. Yes.

Q. Now, after he was busted the first time, and then he was rearrested in April of '97, I gather he still continued to sell drugs, did he?

A. Yes.

Q. In fact, the night that he actually died, I gather he made some drug transactions, did he?

A. Yes.

Q. Were you home when he made those drug transactions?

A. I was home that whole evening.

Q. Now, Mr. Hiebert had pepper spray in the house?

A. Yes.

Q. More than one, or do you know?

A. Usually more than one, yes.

Q. Where did he keep it?

A. He had one on the table by the phone and he usually carried one in his pocket.

Q. Why did he have the pepper spray?

A. Well, he had gotten beaten up and he was not going to get beaten up again.

Q. Now, he also had a baseball bat in the house?

A. Yes.

Q. And where did he keep it?

A. In his bedroom.

Well, no, I think actually it was for his own protection.

[103] Ms. Cameron then goes on during her testimony to explain how the events of the evening unfolded for her.

I heard the dog making a commotion, like as if there was someone out there, and I said to Abe, there's someone out there, go check and see what's up with the dog. And he sat there for a few seconds. I said, Abe, there's somebody out there. Oh, okay. So he got up and went to the door. So, I stayed in the living room. Then I heard voices and I got up and I went to the door and I said to him, who is it. Just go get me the other pepper spray he said. Okay. So I kind of peeked out the door. I saw heads down at the side of the deck, and I pushed the police button on the alarm.

I went into the living room to get the pepper spray and I heard glass shatter. I come out, Mr. Hiebert was on the floor. I went to the side of the door and, all of a sudden, I saw the battering ram on the floor with "police" on it. And that was the first time I knew it was the police.

[104] And by further way of explanation, she went on:

Q. Okay. And what happened then?

A. I heard a commotion.

And I come out and I said, who is it. You go get me the pepper spray and he was going to get the baseball bat. So I just kind of looked out the back door, saw heads, and I pushed the alarm.

Q. Did you hear a shot all?

A. No, up till this day I have not heard that shot.

[105] It was not difficult to understand that in the commotion and shock of the events that took place around the witness at that particular time, her memory was not absolute, but she attempted, it would seem, to be as candid as possible in answering the questions. She was not sure what the position of the door was when she returned to the kitchen and found Abraham Hiebert lying on the floor. However, she was not quite sure that the battering ram on the floor had "police" written on it. She could not say whether the door was inside or outside, but she did recall that a woman police officer was in attendance, and went on to say:

Q. Okay. I understand. What happened then? A woman police officer came in?

A. Yes.

Q. Did you recognize the - did you see the jacket that she was wearing that said "police"?

A. I can't honestly say that there was a police jacket.

I can't say there was and I can't say there wasn't.

Q. I understand. The first time you knew it was the police was the battering ram that said "Winnipeg Police" on it; is that what

A. Just "Police".

[106] Subsequent to this series of questions and answers, Ms. Cameron was cross-examined by counsel Mr. Pollock.

Q. So who did you think was breaking in at that particular point in time?

A. At that time, we had the Indian Posse, we had the Warriors, we had the L.B.s I mean, three gangs right in the north end. You never knew.

Q. So the point being, then, is that it could have been any one of those?

A. Could have been that or it could just be individuals trying to break in.

[107] Another insightful exchange took place with respect to the deceased Mr. Hiebert and his activities. This was Ms. Cameron's cross-examination by counsel Mr. Weinstein.

Q. Do you remember saying to Det. Sgt. Paul Brown that his death was a result of his life style? Do you remember saying that, ma'am?

A. If I said it, it's true of a drug dealer.

Q. And, again, in your statement of July 2nd, '98, you stated, I feel the reason that he reacted the way he did at the door with the police because he didn't want to go to jail. You said that?

A. Yes.

But like I said, who wants to go to jail?

Q. I appreciate that. And he certainly did not want to go to jail?

A. Well, he was just happy to be able to spend that Christmas with the family.

[108] Another interesting aspect of Ms. Cameron's evidence was that, in her view, Mr. Hiebert drank quite regularly and daily.

Q. Just on the point of drinking, Abe drank every day?

A. Yes

Q. From your audio-ed statement, just on this point, you told, I think it was Mr. Abra that on the night in question, he only had two drinks and was just on or starting his third, correct?

A. Right.

Q. He was starting on this third?

A. Yes, because it was still on the table.

Q. Was he a fast drinker, normal?

A. There was times.

Q. Time. Was this one of those times?

A. Well, it's like I said, you had to know Abe. There was times he could sip on a drink. There was other times that he

would drink one or two drinks fast and then sip on the other one.

[109] The interesting aspect of this testimony, was that the toxicology reports done at the RCMP Forensic Laboratory indicated that all the tests carried out by the lab concluded that Mr. Hiebert's blood was negative for alcohol.

[110] The significance of the evidence of Ms. Cameron in the course of the Inquest and its subsequent veracity, was somewhat compromised as a consequence of her unfortunate death on the 19th day of April, 2001 at the Health Sciences Centre, as a result of lung cancer.

[111] A conversation took place between Ms Cameron and her daughter Sandy on Good Friday, April 13th, 2001. Sandy and her son Robert Lavallee, 22 years of age, were visiting with her mother at the hospital. Ms. Cameron told them that during the raid by police at 479 Dufferin Avenue, she clearly recalls that the police officers were wearing their jackets and that they did yell, "Police, search warrant", as they were entering the home.

[112] Subsequent to her mother's death, and believing that her mother was telling the truth in her hospital death bed statement to her, Sandy contacted the City of Winnipeg Police

Services, who then attended upon her and her son Robert. The police officers took statements from both of them respecting this matter. The police then brought this to the attention of counsel for the Inquest, Mr. Abra, who then disclosed it to all other counsel involved in the Inquest.

[113] It was my view that since the Inquest is an inquiry and not an adversarial proceeding, that all information that might be relative to the inquiry should become and form part of its record. Therefore, this has been included in my Report.

[114] The information contained in this disclosure is somewhat consistent with the evidence given by Ms. Cameron in cross-examination by counsel Mr. Weinstein, during the Inquest, as follows:

I knew it was a female officer.

Q. Do you see the, even though you don't recognize, do you see the jacket she's wearing?

A. Yes

Q. You told Det. Sgt. Paul Brown she was wearing a police jacket. Do you remember telling him that ma'am?

A. No.

Q. No?

A. I do remember saying I could not tell whether they had on police jackets or not.

Q. I'm just asking, ma'am, about the female officer. Do you recall telling Det. Sgt. Paul Brown that the female had her gun out and was wearing a police jacket?

A. I said a blue jacket.

Q. You said a blue jacket?

A. I believe I did.

Q. Looked something like this jacket in photograph number 51, ma'am?

A. It could have. I believe it was a blue jacket.

Q. Yeah. With writing on it?

A. I honestly couldn't believe, or tell you whether it had writing on it or not.

[115] The significance of this testimony and the particulars contained within it is of serious consequence. It points out, and to some extent, helps us understand some of the more troubling aspects of the events leading up to the death of Abraham Hiebert.

[116] It is obvious that the police intelligence with respect to the residence at 479 Dufferin Avenue was deficient. Substantial changes had been made to the rear entrance of the house with the addition of a newer deck, the change of location of the door, and the type of door that was installed.

[117] Additionally, the police were not aware that there had been a home invasion, and an assault and robbery of the deceased. Nor did they seem to be aware that, with respect to his pending charges, a plea bargain with the Crown had been struck and that he was anticipating a jail sentence early in the new year.

[118] All of this information would have, and could have been of major significance with respect to the manner in which the search warrant would have been executed, and what they might have expected to anticipate in their confrontation with Abraham Hiebert.

The Aftermath

[119] Sergeant Freeman, who attended with the raid team at 479 Dufferin Avenue, rather than remaining behind as the contact member at the office, was designated to deal with the dog in the back yard. As a consequence, he stood in the next yard east of the premises and, with the use of pepper spray, kept the dog at bay while the other officers attended to the back door and the sequent of events unfolded.

[120] Freeman was a seasoned and experienced officer with some twenty-six years with the Winnipeg Police Service. He

outranked Small and Thiessen in terms of the hierarchy of the department. He had been in the Vice Department at this go-around for approximately four years.

[121] Freeman indicated that throughout the activities at the rear of the house, his major focus was directed to the dog and ensuring that it did not interfere with the officers who were there.

Q. You heard a shot?

A. Yes, sir.

Q. Did you – so you don't know where Small was; you didn't see him fire the shot?

A. No, I didn't, no.

Q. Did you hear anything said at all?

A. No, I was yelling at the dog. I had my attention focused on him. I had my back turned away from them and I was paying attention to the dog.

Q. You recognized the sound as being a shot?

A. Yes, sir.

Q. What happened then, Sgt. Freeman?

A. I said, 'What happened', or something similar to that. Lennie Small, Sgt. Small was now down on the bottom portion of the ground, the walkway there, and he said words to the effect that, 'I shot him'.

[122] Freeman then described that after the shooting, there were other officers starting to gain entry to the house. He gave them instructions with respect to being careful and that there are possibly other people in the house. He checked with Schmidt, who was now on his feet and was standing and trying to walk. He directed him to do certain things within the house. He decided to get the two officers who had been left in the front yard (Benoit being one of those officers), and as they arrived in the back yard, he instructed them to secure the back yard. He also instructed them to make the necessary notifications to the Communication Centre, and telephone for an ambulance immediately.

[123] Freeman then attended on Small, who was still standing at the sidewalk area near the rear deck, and directed him as follows:

Q. What discussion did you and Small have?

A. I asked him if he was okay.

Q. And what did he say?

A. He acknowledged he was all right.

He looked pretty distressed.

Q. I gather you seized his service weapon?

A. At that time there, I did.

Q. He gave it to you?

A. Yes, he did.

Q. All right. Now, this procedure for the seizure of a firearm that has been used in a shooting of this nature, is there a standard procedure that is followed in that regard?

A. Yes, Sir.

Q. And it is laid out by the Police Service?

A. That's correct.

Q. You were aware of it?

A. Yes, Sir.

Q. And what is that procedure specifically?

A. That the senior officer on scene will seize the weapon. He will hold onto it and turn it over to the shift supervisor attending the scene or the duty inspector, whichever comes first.

[124] Freeman did this and subsequently turned the firearm that he had seized over to Patrol Sergeant Smarts, the north end supervisor who arrived on the scene. He further took action in accordance with his understanding of his responsibilities as follows:

Q. Now I gather you also charged and cautioned Small?

A. Yes, I did.

Q. When was that?

A. That was after walking him to the front, putting him in the seat of the car.

Q. You charged and cautioned him with what?

A. Charged and cautioned him with careless use of a firearm, attempted murder and/or similar charges.

Q. What was the reason for charge and caution?

A. I charged and cautioned him because I am aware that it was possibly policy. I wasn't totally aware if it was but I thought it might be. As well as that, I knew he would have to justify his actions in a court of law at a later time.

Q. So you charged and cautioned him. Did he make any response to you?

A. He nodded his head yes and indicated he understood. I would like to add that at that time there I think that he was suffering some form of stress or post-traumatic stress.

Q. He wasn't acting as he normally does?

A. No, he wasn't.

Q. Is there a protocol that is to be followed in that regard when there has been a use of force by an officer, specifically use of a firearm?

A. Yes, I am aware that they are all investigated by the Division 20 Homicide.

[125] As a sequel to all these events, all the participants in the execution of the search warrant – the members of the Vice Division – were conveyed by other officers back to the Public Safety Building. They were then separated and placed in different rooms in order to be interviewed in the subsequent investigation that took place.

[126] Freeman further confirmed that he had been at the search warrant execution briefing, and that he subsequently learned that a number of the officers had attended a social event at the Customs and Immigration Office. However, it was his opinion that all the officers that went on the execution of this search warrant were sober and none seem to be acting under the influence of alcohol at all. He also confirmed that there was no alcohol consumed in the Vice Division between his arrival at 7:00 p.m. and 10:00 p.m., when he went out on the execution of the search warrant.

Post-Event Investigation

[127] Sergeant J. R. Thiessen (Thiessen), had been a member of the Winnipeg Police Service for approximately 21 years at the time of the event. He holds the rank of Detective Sergeant and is assigned to the Homicide Division of the Winnipeg Police Service.

[128] Thiessen was called out by the Duty Inspector with respect to the police shooting at 479 Dufferin Avenue. It was the policy of the Winnipeg Police Service that police shootings were investigated by the Homicide Division. It was their mandate as long as the Homicide Division was not directly involved. In the

event that that occurred, then the Major Crime Unit would have been mandated to do the investigation.

[129] Thiessen described the investigation as follows:

A police related shooting such as this is probably investigated more thoroughly than a homicide. An attempt is made to ensure that all the t's are crossed, and the i's are dotted.

[130] He was briefed initially when called in with the information that was available to date. He was advised that the Major Crime Unit Investigator had been called out to organize a canvass. This involved police officers attending to homes in the immediate area of the incident. They canvassed the individual occupants and decided who resided therein, and who may have been at home at the time of the incident, and whether or not they saw or heard anything that night that might be related to the case. They would typically cover an area involving approximately a block in either direction, in all four directions, of the home that was involved in the incident.

[131] Sergeant Marshall (Marshall), who was a supervisor on duty at the time, became the focal point of the investigation. All information was funneled through him, and from time to time, he held briefings with members of the investigating homicide crew and coordinated the information that was delivered to him.

[132] In the course of the investigation, when all the officers involved were sequestered in the Public Safety Building in individual offices, a representative of the Winnipeg Police Association – Mr. Gord Campbell, and also Keith Labossiere who was counsel for the Association attended. They advised that the vice officers who had been involved in the incident were considering their options as to whether or not they wished to discuss the incident with the investigators at that particular time, or reserve their conversations for a later date.

[133] The investigators were interested in obtaining witness statements as soon as possible, as well as seizing items of clothing, etc. that may have been significant to their investigation.

[134] A further discussion was held with respect to the information obtained early in the investigation that related to the attendance at the social event earlier in the evening by a number of these same officers. There was some discussion held with respect to the taking of blood samples from the members involved. Subsequently all of those members declined to provide blood samples.

[135] It was the investigators' desire to receive statements as quickly as possible in order to get a first hand account of the recollection of the witnesses of the events being investigated.

[136] A number of those officers, in their testimony before the Inquest, indicated they would have rather waited a day or two before giving their statements. They also indicated they felt uncomfortable with talking about the incident immediately after the event. Eventually, however, they were all interviewed by the investigating officers, with the exception of Small and Schmidt

[137] Schmidt had been conveyed to the Health Sciences Centre for treatment of the injury to his leg. He was then returned to the Public Safety Building, but was in considerable pain and had been given pain-related medication at the hospital. Under the circumstances, he was not fit to give a statement on that particular occasion.

[138] This was described by Sergeant Thiessen in his evidence as follows:

I accepted that, and to be honest with you, as an investigator I wouldn't have taken a statement from him at that time considering the condition that he was in. It was obvious to me that he was in a great deal of pain. He'd indicated to me that he had taken some medication. I wouldn't have felt right taking that statement from him at that time.

Schmidt was then escorted to his home.

[139] They subsequently attended on Small and were in fact the ones who had advised him that the victim Mr. Hiebert was deceased. Small reacted emotionally to this information. He further indicated that since he had been charged and cautioned, he had consulted with his counsel and would be providing a statement at a later date. He also readily agreed to provide a blood sample, although he was not at the impugned social event prior to the warrant execution undertaking.

[140] Thiessen candidly explained to Small in the following terms:

We told him almost immediately that from the information that we had received up to this point this was not a charge and caution matter, but that we wanted to talk to him about this incident, and that depending on what answers he provided us, or told us at that time, that some charges may arise in the near future, and that as a result of these, he had the opportunity to talk to or consult counsel.

And further on, he said:

There were no circumstances or no information or evidence of any type which seemed to indicate that this was a criminal matter, based on the information we had received to this point.

[141] Subsequent to this, the investigation proceeded with the investigators interviewing and receiving statements from all the officers who were involved.

[142] An issue arose with respect to instructions allegedly received by these officers that they were not to make notes as they might normally do. The practice had arisen that police officers in these situations were treated as witnesses to an incident, essentially, and their statements became their account of what had occurred.

[143] They further attempted to resolve any continuing issue with respect to the attendance by members of group to the social event at the Customs and Immigration Office. In response to specific questions , Sergeant Thiessen answered as follows:

Q. The contact that you had with any of the officers, did any of them seem to be under the influence of alcohol at all?

A. No, sir.

Q. Any reason for you to question their sobriety?

A. No, sir. I would have, as indicated, or as I've indicated in the past, had we not been informed that these individuals had been at a function earlier that evening, there would have been no indication provided by them that they had been drinking earlier that night.

Q. Did any of the other officers that you were working with from the homicide division who had more significant contact with the various vice officers raise any issue with

you about their sobriety or advise you that any of them seemed to be under the influence of alcohol?

A. No. I know for a fact that their impressions of these officers were consistent with mine.

[144] Subsequent to these events and further on in the investigation, Thiessen was able to obtain a written statement from Schmidt on the 18th of December, 1997. Then further on the 22nd of December, he received a written statement from Small, which he indicated had been prepared in consultation with his counsel. He further indicated that he would answer any questions that the investigators had arising out of that statement. He had, in fact accommodated the investigators in that regard.

[145] Further on in the investigation, the coordinating officer Marshall raised an issue which had come to his attention. This was with respect to whether or not any of the officers involved in the incident had anything else to drink from the time they had been at the social function at the Immigration Office, to the time of the search warrant execution.

[146] The investigators attended on the Winnipeg Police Association offices, where all the officers involved were in attendance and were specifically asked whether they had consumed any alcohol between the time they left the Department

of Customs and Immigration party and the time of Mr. Hiebert's death at approximately 10:30 p.m. The questions were put to each and every officer, with the exception of Small who had not attended this function. In each case, each officer's response was, 'no, they had not'. They were interviewed separately for this purpose, and this was to put to rest that rather disquieting suggestion with respect to the behavior of these officers.

Subsequent Review

[147] As a consequence of the completion of the investigation by the Winnipeg Police Services, Homicide Division, a provision in the *Manitoba Provincial Police Act* came into play. The title of this act is *The Police Equipment Regulation*, specifically referred to as Section 20(c). That particular section provided:

If the discharge of a firearm by a member or a chief of police in the performance of his or her duties or employment results in the death or injury of a person, the police commission shall as soon as practicable

(c). . . cause the investigation and the report to be reviewed by a major police department that is not otherwise involved in the matter.

[148] Because of this provision, the R.C.M.P. were asked to review the Winnipeg Police Service's investigation into this matter. This review was carried out on behalf of the R.C.M.P., by

Staff Sergeant William Anderson (Anderson), who prepared a report, that was subsequently filed as an exhibit in the Inquest. Anderson was a member with approximately twenty-seven years of service at the time of the review. He was the Service Area Commander for the Spruce Plains Detachment, which included Neepawa, Carberry and Gladstone. He had previously been in charge of the Serious Crimes Unit of the R.C.M.P. Anderson's mandate was homicides and serious crimes within the R.C.M.P. jurisdiction, in the Province of Manitoba. This also involved the supervision of the six members of that unit.

[149] Pursuant to the request by the Minister of Justice related to the Winnipeg Police Service investigation of the Abraham Hiebert incident, the investigator was provided with a copy of the full police report. This report related to the statements that had been taken from all the witnesses, investigation narrative reports that had been prepared by all the officers, and any forensic material that had been obtained. His duties basically entailed reviewing the investigation, determining if it was a proper investigation, or whether there were any other avenues that could have been done, or whether it was a competent and thorough investigation.

[150] Upon completing that review, Anderson prepared a report to his superior officer, R. J. Embury, Chief Superintendent Officer in Charge of Criminal Operations, Manitoba.

[151] The substance of his final report, filed as Exhibit 47 at the Inquest, was summarized in a letter to The Honourable Vic Toews, Minister of Justice (at that time), by Chief Superintendent R. J. Embury, as follows:

Our review included the following steps:

1. An examination by our Serious Crime Unit personnel with respect to the thoroughness and completeness of the overall investigation;
2. Statement analysis of the statements provided by WPS members and civilian witnesses, all of whom were interviewed during the WPS investigation;
3. An examination by our Forensic Identification Services Manager of the Forensic Identification work completed during the WPS investigation; and
4. An overall final review by Criminal Operations staff.

This work established that the WPS appropriately utilized laboratory personnel, forensic identification personnel, a "Use of Force" expert, a "Post Event Analysis" expert and many other seasoned investigators to fully investigate this fatal shooting. At the conclusion of the investigation, a comprehensive investigative brief was provided to the RCMP for our review.

Our review established to our satisfaction that the WPS investigation was professional, competent and thorough, with only minor issues that could be further clarified.

[152] The minor issues raised in the report were related to further and more extensive interviews of a number of the witnesses whose statements had already been taken for clarification, and this was done. Also there was the clarification of issues raised from the Winnipeg Police Services Communications Centre tape, to clarify the incident in the inaudible portions of the tape, could be examined for enhancement potential.

[153] These minor issues were seen as enhancements only of the evidence already provided with the material by the Winnipeg Police Service for their review. These further matters were attended to and clarified to the satisfaction of the R.C.M.P. investigator.

Summary

[154] It was my view that during the course of the Inquest, a number of collateral issues were introduced which tended to cloud and create an atmosphere of suspicion and doubt with respect to the veracity of the actions of the Vice Squad. It was subsequently proven to be unfounded and did not, in the end, affect nor diminish the professionalism of the investigation or its ultimate resolution.

[155] However, this did provide me with the opportunity for a reflective approach to the concern for these secondary and subordinate issues.

[156] These issues could possibly be attributed to a developing culture within the Winnipeg Police Service that encourages some members to believe that they are, in fact, outside the area of responsible and accountable behaviour, which is required within the Service as a whole.

[157] The belief that a breach of the absolute injunction, with respect to drinking on duty, was acceptable on special occasions and on social occasions, because more senior personnel have in fact been guilty of the same type of behaviour. It brings into question the veracity of the injunctive policy prohibiting drinking while on duty, and creates an enforcement problem to maintain a consistent standard throughout the Service.

[158] Another issue that arose and requires consideration is the oft expressed view that the police should not be investigating themselves. This issue has long been debated, from time to time, in different forums and different jurisdictions within Canada.

[159] In 1991 the Manitoba Aboriginal Justice Inquiry made certain recommendations in their report, specifically with respect to the issue, and particularly in regard to Aboriginal communities and policing within them. It is, however, significant to note that the authorities, namely the Province, have not seen fit to deal with that particular issue to this date.

[160] I have carefully reviewed and considered the process which is in place for the Winnipeg Police Service with respect to shootings, deaths, or other serious criminal actions, that may be attributed to police officers. It is my determination that the protocol and policy in place at the time of this occurrence was appropriate and timely. It was also professionally performed.

[161] That is, within literally minutes of the shooting being reported to the Communication Centre, the Senior Inspector on duty, at that time, had the investigation initiated. The Homicide Division was alerted and activated within an hour of the event. As well, other officers involved began the process of removing and isolating the members of the Vice Squad from the scene, except for those requiring medical attention at the time. The investigators were not only on the scene in a timely fashion, but other officers attending secured the scene, concluded the major part of their investigatory interviews with members of the Vice Squad and other significant witnesses, within hours of the event.

[162] There had been some suggestion that some of the members would have preferred to have 24 hours from the event before being asked for their statements. Other suggestions were that they should have made notes in the course of the events, in order to consolidate their recollections.

[163] However, from my view of the proceedings and the evidence that I heard, I am satisfied that the earliest and most accurate recollections were in fact those captured by the interviews following the event. If in fact witnesses have a clear recollection in retrospect at a later time, those additional recollections can be communicated and made supplemental to the original witness statements without cause for concern.

[164] Another series of events that further added to the concerns during the hearing is the fact that some of the police intelligence respecting the residence of the deceased, and facts about the deceased himself, were not as current as might have been desirable. For example, we now know that prior to the December 16th event, as a consequence of a home invasion, Mr. Hiebert was not only assaulted, but in fact was robbed within his own home in the presence of Ms. Cameron. As well, the back door of the house had been moved from its entrance into his bedroom to the kitchen area of the house. In the

process, a new deck was installed at the back of the house, as well as a medal-clad door that opened out rather than inward. The residents were, as well, now in the habit of locking the front veranda door most of the time.

[165] The explanation for this lack of intelligence, of course, was the fact that neither Mr. Hiebert or Ms. Cameron had ever reported the home invasion to the police or complained about it. If they had, that might have made the police aware of it, and they might have anticipated a change in attitude or behavior by Mr. Hiebert as a result of this.

[166] Further to the above, there appeared to have been a plea bargain struck between Mr. Hiebert and the Crown Attorneys dealing with his earlier matter. The Crown would have him plead guilty to the previous narcotic offences for which he had been charged and released. By agreement, he was to receive a sentence of twenty-six months with the understanding that he would be allowed to spend the Christmas season at home, and would have the sentence imposed in January. If this information had been available to Small, perhaps the view that there would be no resistance to the search warrant execution as Hiebert had always been cooperative and submissive, might have been put in issue. The ensuing violent confrontation might have been avoided.

[167] The R.C.M.P. investigator who had reviewed the investigation of the Homicide Division of the Winnipeg Police Services and their conduct of it, described their actions as professional, competent and thorough. I am satisfied that the process is in good hands, and that their report is accurate and reflects the professionalism, integrity and competence of the Homicide Division in this most demanding of tasks.

Recommendations

[168] In concluding my report, I would make the following recommendations:

1. When the execution of search warrants are to take place by a group of police officers, such as the vice squad, a fully detailed plan of that activity should be made in writing. The various tasks and the individual officers designated for that activity should be included, so that there is a permanent record.
2. In conjunction with a written record of the activity that is planned to take place, a formal de-briefing with respect to the execution and

completion of the activity be undertaken within 24 hours. Then a practical report analysis and correction of any of the difficulties that may have been encountered, which had not been anticipated, would be officially recorded for future reference and improvement.

3. Where a deficiency or lack of equipment is recognized, identified and can be readily corrected, it should be incumbent on the senior officers involved in that particular area of activity to undertake to rectify the situation, in the interest of efficiency, safety and public identification. It was recognized in this particular event where the raid jackets belonged to individual members rather than to the department, and that which was supplied by the department and described as “pinnies”, were flimsy and inappropriate, should be replaced.

[169] In conclusion, it is always a tragic circumstance when police, in the execution of their sworn duties, are confronted by violent situations, which places their members in harms way, and subsequently result in death or injury of another human being.

[170] I do not, however, find it productive or an acceptable practice in my opinion, to speculate or second-guess the modus of which gave rise to these unfortunate and serious circumstances.

I respectfully submit my recommendations and conclude this Report, this 28th day of July, 2003, at the City of Winnipeg, in Manitoba.

I hereby order that all exhibits, save but for Police Exhibit #104 – a Winnipeg Police Service firearm, will be forwarded to the Chief Medical Examiner’s office.

Pursuant to the provisions of section 33(3) of the ***Fatality Inquiries Act***, I hereby order that the said Police Exhibit #104 be returned to the Winnipeg Police Service.

Original signed by:

Judge Charles N. Rubin

Copies to:

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

The Honourable
Chief Judge Raymond Wyant
Provincial Court of Manitoba

The Honourable Gord Mackintosh
Minister of Justice

Chief Jack Ewatski
Winnipeg Police Service

The Honourable Bruce MacFarlane
Deputy Minister of Justice

Mr. Brian Kaplan
Director, Winnipeg Prosecutions