RELEASE DATE: July 9, 2021

Manitoba

THE PROVINCIAL COURT OF MANITOBA

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

AND IN THE MATTER OF: An Inquest into the Death of Richard Kakish

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Report on Inquest and Recommendations of
Judge Wanda Garreck
Issued this 6th day of July, 2021

APPEARANCES:

Mandy Ambrose and Georgia Couturier, Inquest Counsel
Kimberly Carswell, Counsel for the Winnipeg Police Service
Daniel Ryall and Denis Le Heiget, Counsel for Winnipeg Regional Health Authority, Shared Health Inc., Seven Oaks General Hospital
Sean Boyd and Jim Koch, Counsel for Manitoba Justice-Community Safety Division
Cheryl Frost, Counsel for Doctors Gourlay, Meyers, Yaffe and Blouw
Noah Globerman, Counsel for the family of Richard Kakish

Manitoba

THE FATALITY INQUIRIES ACT
REPORTED BY PROVINCIAL JUDGE ON INQUEST

RESPECTING THE DEATH OF: RICHARD KAKISH

Having held an Inquest respecting the said death beginning on September 21, 2020, with final written submissions January 7, 2021, at the City of Winnipeg in Manitoba, I report as follows:

The name of the deceased is: Richard Kakish.

The deceased came to his death on the 13th day of August 2017, at Health Sciences Centre in the City of Winnipeg in the Province of Manitoba.

The cause of death was due to hypovolemic shock due to laceration of the spleen due to blunt force trauma of the torso.

Based on a review of the circumstances I make recommendations as set out in the attached report.

Dated at the City of Winnipeg, in Manitoba, this 6th day of July, 2021.

"Original signed by:"
Judge Wanda Garreck
Provincial Court of Manitoba

Copies to:

1. Dr. John Younes, Chief Medical Examiner (2 copies)
2. Chief Judge Margaret Wiebe, Provincial Court of Manitoba
3. Honourable Cameron Friesen Minister Responsible for *The Fatality Inquiries Act.*
4. Mr. David Wright, Deputy Minister of Justice & Deputy Attorney General
5. Jeremy Akerstream, Assistant Deputy Attorney General
6. Mandy Ambrose and Georgia Couturier, Counsel to the Inquest
7. Kimberly Carswell, Counsel for the Winnipeg Police Service
8. Daniel Ryall and Denis Le Heiget, Counsel for Winnipeg Regional Health Authority, Shared Health Inc., Seven Oaks General Hospital
9. Sean Boyd and Jim Koch, Counsel for Manitoba Justice-Community Safety Division
10. Cheryl Frost, Counsel for Doctors Gourlay, Meyers, Yaffe and Blouw
11. Noah Globerman, Counsel for the family of Richard Kakish
12. Exhibit Coordinator, Provincial Court
13. Aimee Fortier, Executive Assistant and Media Relations, Provincial Court

Manitoba

THE FATALITY INQUIRIES ACT
REPORTED BY PROVINCIAL JUDGE ON INQUEST

RESPECTING THE DEATH OF: RICHARD KAKISH

I. INTRODUCTION

The Circumstances of Richard Kakish's Death

[1] Richard Kakish was arrested by members of the Winnipeg Police Service (WPS) on August 9, 2017, for possession of a weapon believed to be a firearm. Force was used by WPS during the course of the arrest and processing at District 3 police station.

[2] Following the arrest, Mr. Kakish remained in police custody and was transported by WPS to Seven Oaks General Hospital (SOGH) for medical treatment. WPS officers were given a medical clearance document from SOGH for Mr. Kakish.

[3] WPS transported Mr. Kakish to the Winnipeg Remand Centre (WRC) where he was detained from August 9, 2017, until August 11, 2017, when his medical condition deteriorated. Mr. Kakish was then transported to Health Sciences Centre (HSC) via Winnipeg Fire Paramedic Service (WFPS). Prior to leaving WRC and again at HSC, CPR was administered as Mr. Kakish went into cardiac arrest, and a pulse was regained.

[4] Once at HSC, Mr. Kakish required surgery which identified internal bleeding due to laceration of the spleen. Removal of the spleen stopped the bleeding but Mr. Kakish's condition failed to improve over the following days. It was determined there was injury to the brain from lack of oxygen during the earlier cardiac arrest and the decision was made to remove Mr. Kakish from life-support. Mr. Kakish was pronounced deceased on August 13, 2017, at HSC in Winnipeg, Manitoba.

The Ordering of the Inquest

[5] By way of letter dated November 13, 2018, Chief Medical Examiner, Dr. John K. Younes directed an Inquest be held into the death of Richard Kakish under s. 19(5)(a) of *The Fatality Inquiries Act.*

> Presumption of inquest
>
> 19(5) Subject to subsections (6) and (7), an inquest into a death must be held if
>
> > (a) The chief medical examiner has reasonable grounds to believe that the deceased person died as the result of the use of force by a peace officer who was acting in the course of duty; or

(b) At the time of death, the deceased person was

(i) In the custody of a peace officer,
(ii) A resident in a custodial facility,
(iii) An involuntary resident in a facility under *The Mental Health Act*, or
(iv) A resident in a developmental centre as defined in *The Vulnerable Persons Living with a Mental Disability Act*.

[6] The purpose of the Inquest is to establish the facts necessary to complete a report as required by s. 26.2(1) of *The Fatality Inquiries Act*:

> 26.2(1) An inquest is a non-adversarial proceeding held for the sole purpose of establishing the facts necessary to enable the presiding provincial judge to prepare a report into the death under section 33.

Inquest Report

[7] The report prepared by the Inquest Judge must include the following as required by s. 33(1) of *The Fatality Inquiries Act*:

> 33(1) After completion of an inquest, the presiding provincial judge must provide the minister with a written report that sets out his or her findings respecting the following:
>
> (a) the identity of the deceased;
> (b) the date, time and place of death;
> (c) the cause of death;
> (d) the manner of death;
> (e) the circumstances in which the death occurred.

Recommendations in Inquest Report

[8] The report the Inquest Judge completes may contain recommendations that are specific in scope according to s. 33(1.1) of *The Fatality Inquiries Act*:

> 33(1.1) The report under subsection (1) may contain recommendations on changes to provincial laws or the programs, policies and practices of the provincial government or of public agencies or institutions to prevent deaths in similar circumstances.

[9] In the report, the Inquest Judge is prohibited from expressing an opinion or making findings such that any person could be identified as a culpable party in the death, by s. 33(2)(b) of *The Fatality Inquiries Act.*

[10] The Inquest is a fact finding exercise conducted in the public interest that is non-adversarial in nature. As Justice Steel said in *Hudson Bay Mining & Smelting Co. Ltd. v. Cummings*, 2006 MBCA 98, at paragraph 47:

> Thus, an inquest is designed to be an impartial, non-adversarial and procedurally fair, fact-finding inquiry committed to receiving as much relevant evidence about the facts and issues surrounding the death of a community member as is in the public interest, but without making findings of criminal or civil responsibility.

Standing Hearing

[11] Ms. Ambrose and Ms. Couturier were appointed counsel for the Inquest and at a standing hearing on March 22, 2019, the following parties were granted standing:

- Family of Richard Kakish represented by Noah Globerman;
- Government of Manitoba (Department of Justice, Community Safety Division (Corrections)) represented by Sean Boyd and Jim Koch;
- Winnipeg Police Service represented by Kimberly Carswell;
- Winnipeg Regional Health Authority, Seven Oaks General Hospital, and Shared Health Inc. represented by Daniel Ryall at the hearing and at present Denis Le Hieget;
- Doctors Gourlay, Meyers, Yaffe and Blouw represented by Cheryl Frost.

[12] The Inquest hearing began on September 21, 2020, and continued during the course of five weeks until October 16, 2020. Written submissions were filed from all parties, with the last received January 7, 2021.

[13] Twenty-one witnesses appeared in person and a number of exhibits were reviewed outside of the in-person appearances. The exhibits are part of the record of evidence and are all contained on a USB marked as Exhibit 1.

[14] I want to thank all counsel and the family of Mr. Kakish for their patience and cooperation in ensuring a safe proceeding in accordance with the COVID-19 pandemic protocols in place during the hearing of this matter.

II. EVIDENCE

[15] A number of witnesses were called in person during the Inquest hearing. In addition, the electronic file on a USB, of information relevant to the death of Mr. Kakish was all reviewed and marked as Exhibit 1.

[16] As part of the record of evidence referred to at the Inquest hearing a number of items from the USB were specifically reviewed at counsel's request, including the following: witness interviews done by the Independent Investigation Unit of Manitoba (IIU) during their investigation into the death of Mr. Kakish, reports of Winnipeg Remand Centre (WRC) corrections officers, video footage showing Mr. Kakish arriving at District 3 Winnipeg Police Service (WPS) station and arrival at the Central Processing Unit (CPU) of WPS Headquarters, video footage from several locations within the WRC during the time Mr. Kakish was in custody including his interaction and arrival in the admissions department, within the WRC and on the medical unit at the WRC.

[17] During the Inquest, counsel for the WPS, counsel for WRHA, Shared Health Inc., SOGH, and counsel for Corrections, provided the Court with relevant policies and practices and answered questions relevant to the agencies represented before the Court in order to assist the Court in fulfilling the statutory obligation required under *The Fatality Inquiries Act*. I appreciate the very able and professional contributions and helpful questions and suggestions of all counsel in this Inquest.

Mr. Richard Kakish as Shared by his Family

[18] Ms. Angela Wall, sister to Mr. Kakish, testified at the Inquest and gave the Court information about Mr. Kakish that can only be given by those who grew up with him, who knew him throughout his lifetime, who knew him as a son, a brother, a father and a friend. She shared her insight into who he was, what gifts he had, the lives he touched and the people he loved and that loved him.

[19] I appreciate her participation in this Inquest and recognize the value of her evidence. It assists in understanding who the person, Mr. Kakish, was and the impact to others from the loss of his life, for which this Inquest has been called.

[20] Thank you to Ms. Wall and other family members who attended the Inquest. This Inquest was held during the fall of 2020 at a time the COVID-19 pandemic restrictions did not allow for all members of the family or the public to attend. I am certain this was a challenge for them and I do appreciate their attendance, patience and cooperation.

[21] Ms. Wall shares biological mother, Cindy, aunt and uncle, Barbara and Brian, who became Mr. Kakish's adopted parents. Richard Kakish was born April 25, 1973,

and was 44 years old at the time of his death. His biological parents were Cindy and Albert. Ms. Wall described Cindy as a young mother who made the difficult decision out of her love for Mr. Kakish, to have him adopted by her sister and brother-in-law.

[22] Mr. Kakish's aunt Barbara and her husband Brian became his adopted parents when he was 2 ½ years old. His biological family remained an important part of his life and he was brother to siblings both from his biological family and from his adopted family. Ms. Wall described Mr. Kakish as their brother, their protector and their rock who would do anything for them.

[23] She described his early years through school and into his adult years. Then as a father, a grandfather and an uncle, with his achievements, his personal challenges and all the gifts he shared with those who knew him. Ms. Wall spoke of the significant impact the loss of her brother has had on all who knew him and the struggles of his family at losing him at such a young age.

[24] Thank you Ms. Wall for being willing to share who your brother was, with the Court. The statement prepared and read by Ms. Wall is part of Exhibit 1.

Contact with WPS

Evidence of Arrest of Mr. Kakish

[25] On August 9, 2017, WPS received information that Mr. Kakish would be leaving the address of 576 Manitoba Avenue with a firearm in a black duffle bag. As a result of this information WPS attended just before 16:30 hours to the area of McGregor Street and Pritchard Avenue. One police unit was in a marked cruiser car, the other in an unmarked cruiser car, all officers were in uniforms.

[26] Officers saw a person matching the suspect, and later identified as Mr. Kakish, running toward the unmarked cruiser car. Mr. Kakish looked toward the unmarked cruiser car, dropped the duffle bag he was carrying and ran. Cst. Holowka exited the unmarked cruiser car and ran after Mr. Kakish shouting commands; "stop, police, you're under arrest." Cst. Holowka described Mr. Kakish ahead of him 10 to 15 feet when he appeared to slip on the wet grass in a yard and landed on his back. Mr. Kakish was in the process of turning over to his front to get to his feet while Cst. Holowka ran toward him shouting commands to stay on the ground.

[27] As Mr. Kakish was in the process of standing up, Cst. Holowka described Mr. Kakish's hand moved to his waistband and as Mr. Kakish was standing up, Cst. Holowka kicked with the top of his right foot to Mr. Kakish's left side abdomen area. Cst. Holowka described his footwear as a light sneaker, high boot, zip on the side with a light sole.

[28] Mr. Kakish fell back down to the ground after the kick and was told to show his hands. As Mr. Kakish was going to push up onto his feet, Cst. Holowka told him to stay on the ground and delivered one punch to the back area of Mr. Kakish's head with a closed fist using his right hand. Mr. Kakish stayed on the ground at which point Cst. Holowka and Cst. Ross handcuffed Mr. Kakish.

[29] Cst. Holowka said he did not see any injuries at that point but that Mr. Kakish was complaining his left side was sore. Csts. Ross and Holowka assisted Mr. Kakish getting up from the ground as he was handcuffed and Mr. Kakish walked to the cruiser car.

[30] Cst. Holowka and Cst. Peters said Mr. Kakish was sweating profusely, was very agitated and they believed Mr. Kakish might be under the influence of methamphetamine or some intoxicant. These observations were made after Mr. Kakish was placed in the cruiser car. Mr. Kakish did not say anything about use of intoxicants or methamphetamine at that time.

[31] Mr. Kakish complained his ribs were sore or broken during the transport from the scene of arrest to the District 3 station. Upon arrival at District 3, the video without audio surveillance shows Mr. Kakish walking from the cruiser car into the station. It appears consistent with the condition described by the officers that he was favouring his side, but he was able to exit the police car and walk into the station without assistance, his hands cuffed behind.

Evidence from District 3 WPS Station

[32] Mr. Kakish was viewed in the District 3 station at 16:45 hours by Sgt. Friesen. A form titled WPS Prisoner Log Sheet was filled out upon his arrival. Notes made on the form include "no" in the box under "intoxicated" and in response to being asked "Do you require medical attention?", Sgt. Friesen noted Mr. Kakish said "yes," and "complained about soreness to ribs". (Prisoner Log Sheet, Binder 1, Tab 21.)

[33] Cst. Holowka described what occurred once Mr. Kakish was taken to the holding room at District 3. During the search process, Mr. Kakish kicked Cst. Holowka in the right shin at which point he pushed Mr. Kakish backwards. Mr. Kakish raised his right arm over his head in a fist, and Cst. Peters grabbed Mr. Kakish's arm and punched him somewhere in the abdomen. At that point Mr. Kakish slumped down, handcuffs were reapplied and a pat down search was completed. Cst. Holowka said he did not notice any injuries on Mr. Kakish at that time but Mr. Kakish was still complaining his left side was sore.

[34] Cst. Holowka explained during the arrest his hand was injured and as a result he was unable to type so a Use of Force Report was dictated later and typed by Cst. Ross.

[35] Cst. Peters described the interaction in the holding room. During the search process Mr. Kakish kicked Cst. Holowka who then pushed him back toward the wall, Mr. Kakish then raised his right hand to throw a punch, at which point Cst. Peters grabbed hold of Mr. Kakish's hand and punched his abdominal area. Mr. Kakish dropped down, the handcuffs were put on again and he calmed down. Cst. Peters said it happened very quickly, and he could not say where exactly his punch landed. He said it was toward the right and middle abdominal area. Cst. Peters said Mr. Kakish was still complaining of his ribs saying they were sore and broken.

[36] The physical interaction and use of force during the arrest and while at the District 3 station was described by officers who testified at the Inquest. There is no video recording of these physical interactions.

[37] As a result of the physical contact with Mr. Kakish and his complaints of soreness to his ribs, a decision was made to take Mr. Kakish to Seven Oaks General Hospital (SOGH) to receive medical treatment. Two officers, who were not involved in the arrest, were assigned to transport Mr. Kakish to the hospital.

[38] I was made aware of WPS policies related to report writing when there is a use of force incident and medical attention is directed for the person in custody.

Evidence from WPS Transporting Officers

[39] Csts. Kuklik and Collins transported Mr. Kakish to SOGH. They were told Mr. Kakish assaulted the arresting unit and both officers injured their hands. They were told Mr. Kakish was complaining of sore ribs and he was to be taken for

medical attention for that injury. There was some discrepancy in the evidence on whether Cst. Holowka verbally gave them any information.

[40] The transporting officers said they did not have any information on how the injuries occurred other than what was included on the Prisoner Log Sheet. The Prisoner Log Sheet was described as a sheet that followed Mr. Kakish through his custody with WPS until it was turned over to the WRC. The relevant notation on the Prisoner Log Sheet at that point was "complained about soreness to ribs".

[41] At 17:29 hours the officers tasked with transporting Mr. Kakish to SOGH took over care and custody of him. They said he did not complain or tell them about his injuries or how he was injured. They did not see any visible injuries. Before leaving the station at 18:20 hours, Mr. Kakish was allowed to call his lawyer.

[42] The IIU interviewed the lawyer who spoke to Mr. Kakish. The lawyer had some notes and recalled Mr. Kakish yelling, screaming, swearing, upset and very agitated during the call. It sounded like he was screaming at someone and it was difficult to understand because of his agitated state.

[43] The lawyer wrote what he believed was said: officers kicked the shit out of him in a cell, they had him in cuffs and kicked him. He was charged with assault because the officer said he tried to kick them. There was a lot of profanity used.

[44] The lawyer tried to get information from Mr. Kakish and calm him down, it was difficult. At the end of the call the yelling escalated and the call ended. The lawyer could hear another voice and Mr. Kakish yelling before the call ended.

[45] Once at SOGH, Mr. Kakish remained handcuffed with his arms behind his back. He was seated in a chair while speaking to the triage nurse and the two officers stood behind him.

[46] Cst. Kuklik described Mr. Kakish as uncooperative with the nurse. When the nurse asked what happened, Mr. Kakish turned his head so others in the room could hear and said, "We beat him and planted a gun on him." He was yelling, swearing and uncooperative. Cst. Kuklik said they were not asked any questions by the nurse but if they had been asked and could answer they would have done so.

[47] Both officers testified in their opinion Mr. Kakish was capable of speaking for himself and they did not see any need to intervene or interfere with him being able to say what he wanted to say. They did not recall making any negative gesture to

contradict Mr. Kakish's assertion that he had been knocked out, as was noted in the triage nurse's notes. They assumed Mr. Kakish would tell how he was injured.

[48] The officers did not have any information to contradict or know if Mr. Kakish was leaving out any relevant details or if he was mistaken in any information given to the triage nurse. Mr. Kakish had no issues standing, walking or sitting but was complaining of sore ribs and was in pain.

[49] Cst. Kuklik said they remained in the lobby area for a couple of hours until Mr. Kakish was moved to an examination room. During the waiting time, Cst. Kuklik described Mr. Kakish's demeanour changed; he became calmer and was speaking normally. The handcuffs were moved to the front of his body and he was taken outside for a cigarette.

[50] The transporting officers remained with Mr. Kakish in the hospital waiting room and did eventually communicate with him about his life and his desire to change his lifestyle. They discussed his drug use and based on their observations they formed the belief he may be coming down from using methamphetamine. Neither officer recalled sharing information on their observations or beliefs about Mr. Kakish's drug use with medical personnel.

[51] Cst. Kuklik said during the wait time Mr. Kakish was complaining of pain to his ribs, so at 19:52 hours he asked the triage nurse for T3's and Mr. Kakish was given pain medication. At 20:30 hours Mr. Kakish was taken to the examination room.

[52] At 21:20 hours Mr. Kakish was complaining he had not eaten in five days and his stomach was sore so he was given a sandwich and some juice. He told the officers he did not sleep for a week and had only a few hours of sleep the night before. He fell asleep after complaining of being cold and the officers got a blanket for him. The officers remained in the room with him.

[53] The transporting officers were not involved in providing any information or answering any questions to the hospital medical staff or doctors on what happened or what injuries Mr. Kakish suffered, or what mechanism may have caused any injuries. The transporting officers had no information on what or how any injuries may have occurred to Mr. Kakish.

[54] Cst. Kuklik said Mr. Kakish was seen by the doctor, received an X-ray and at 22:45 Dr. Gourlay said Mr. Kakish's ribs were not broken and he was medically cleared for the WPS to take him to Central Processing Unit (CPU). Cst. Kuklik did not recall or have any notes about the doctor's examination. Cst. Kuklik testified Mr. Kakish was very able to communicate and they had no need to provide any information to the hospital staff. He did not note or recall receiving any discharge instructions and said anything from the hospital would be on the medical clearance document provided to them.

[55] The form referred to as the medical clearance form is titled Seven Oaks General Hospital Illness/Injury Form. (Binder 1, Tab 11.) Dr. Gourlay signed the note dated August 9, 2017, 22:45 hours which said, "Pt. is medically cleared to be discharged from hosp." The officers understood the form meant Mr. Kakish was medically checked and cleared to be released from the hospital.

[56] Officers transported Mr. Kakish to CPU, 245 Smith Street, arriving at 23:08 hours. Mr. Kakish was turned over to officers in the CPU and the Prisoner Log Sheet was left with CPU. The medical note from the hospital was provided to CPU Sgt. Peters.

[57] Evidence before the Court confirmed the only information that went with Mr. Kakish to the hospital was that contained in the Prisoner Log Sheet which was not provided to the hospital.

[58] Any reports regarding the use of force or injury suffered were done later by the WPS officers involved and were reviewed according to the WPS policy by supervising officers following a chain of command as set out in the policy. These reports are for internal WPS purposes and are not forwarded to the hospital or the WRC.

[59] I was informed of the WPS policy that sets out requirements for submitting reports within the WPS, where there is a use of force incident. In this case the report of the officers involved did not begin until after they returned from receiving medical attention for injury to their hands. It was dictated on August 9, 2017, and entered into the system for review by officers according to the WPS policy. (WPS Use of Force Summary Report, Binder 1, Tab 4.)

[60] I was made aware of a document titled WPS Prisoner Injury Report which is an internal document used by WPS and covered under WPS policy. (WPS Prisoner Injury Report, Binder 1 Tab 20.)

[61] These reports are not made available for purpose of medical treatment, to the transporting officers or hospital/medical staff even if completed in time, they are for internal WPS use. During the Inquest hearing, it was noted that the reports varied from what was recorded in the Prisoner Log Sheet and the Prisoner Injury Report.

Contact with SOGH

[62] Mr. Kakish was seen by the triage nurse at SOGH at 18:32 hours on August 9, 2017, and he answered questions and provided information on his injuries and complaints.

[63] The IIU interview of the triage nurse and the Emergency Treatment Record from SOGH include the triage assessment notations: "states they broke his lt ribs - states kicked to ribs - worse with deep breath - complaint of pain to head, back and face - no signs of trauma to face - states was kod but police state no loc - no shortness of breath noted, denies drugs or alcohol, unable to take blood pressure due to presentation. The location of pain indicated on the diagram was left chest area." (Binder 2, Tab 1, pages 3-4.)

[64] The triage nurse said the vital signs she took were all within the normal range and she was unable to take blood pressure because he was in handcuffs. He complained of pain of eight out of ten which she downgraded to two due to his presentation, he did not present as an acutely ill person, he was not sweating, no rapid heart rate and no shortness of breath.

[65] She said she normally interacts only with the patient not with the police unless they can offer something, because the patient is the one there to see her not the police. Unless there is a mental health issue or they are under the influence and cannot give a history, she would not ask the police for information.

[66] The Emergency Visit Summary included notations; discharge time 23:02 hours, and discharge instructions; "Tylenol as needed for pain, follow up with own MD next week, copies to be sent to primary care MD." Included under clinical findings; requesting X-ray to RO left rib FX, also has headache, patient states, "I was kicked in the ribs was struck in the head when arrested by the police." Vital

signs recorded: on admission: heart rate 76 beats/min regular, respiratory rate 20 breaths/min regular, blood pressure 142/85, SpO2 100% and prior to discharge noted as the same. (Binder 2, Tab 1, pages 8-9.)

[67] The Assessment Emergency - Nursing chart includes notation; Entrance complaint - Chest pain non cardiac, Patient states was kicked by police to left ribs and states he has broken ribs, patient moaning. (Binder 2, Tab 2, page 13.)

[68] Further information including vital signs, examinations and other notes were reviewed and are included in the documents in Exhibit 1, Binder 2, Tabs 1 and 2.

[69] Mr. Kakish was examined by physician assistant, Tim Duthie at approximately 22:00 hours. Mr. Duthie said; an X-ray of the chest area was requested to rule out certain types of injuries. Mr. Kakish told him, "I was kicked in the ribs was struck in the head when arrested by police." Mr. Kakish had pain in his left lateral ribs, worse with deep inspiration, denies cough, no fevers/chills, no night sweats, no nausea or vomiting, denies changes in vision, denies neck or back pain. He said he was not knocked out. (Exhibit 1, Binder 2, Tab 1 page 8.)

[70] Mr. Duthie noted on the examination of Mr. Kakish; touched his feet and shook his leg vigorously to wake him up, which tells him Mr. Kakish was comfortable. He sat up without visible difficulty, he was not wincing in pain. Because of the complaint of head injury Mr. Duthie did a series of checks which he described in his evidence as all normal.

[71] He described the examination as difficult in getting Mr. Kakish to participate and answer his questions. Mr. Duthie said Mr. Kakish did not appear intoxicated to him. His physical examination showed Mr. Kakish was tender on the left lateral side of the sixth to ninth ribs.

[72] Mr. Duthie said the vital signs were stable, he looked well and he examined well. He was not concerned anything bad or serious was going on. He estimated spending about 10 to 15 minutes examining Mr. Kakish. Mr. Duthie said if he received any other complaints from Mr. Kakish he would have recorded them as is his practice.

[73] Mr. Duthie's reason for ordering an X-ray was to rule out any injury such as hemothorax injury, air accumulation outside the chest wall and blood outside the chest wall. He said an X-ray would show blood accumulating in that spot.

[74] The X-ray was reviewed on the computer that evening with Dr. Gourlay and determined no hemothorax injury and they did not see any fractures on that X-ray. The X-ray would not have shown the spleen. He also did not believe a radiologist was on duty that evening.

[75] No other tests were ordered as he said there was no reason to conduct any tests based on the examination. He did not suspect any internal bleeding based on the examination. He said signs that may have suggested a problem such as internal bleeding were not present but may include unstable, low blood pressure, elevated heart rate above 100 beats/minute, and elevated respiration rate. The patients presentation may also appear as uncomfortable and not wanting to move which he did not observe with Mr. Kakish. The vital signs taken earlier at 20:30 hours were normal.

[76] Mr. Duthie said if the rib fracture had been noticed, it would call for the same pain management and the patient would be told to take big deep breaths and cough every hour so they do not develop pneumonia. They would also be told if things get worse to come back. He said even if aware of a rib fracture, Mr. Kakish would have been discharged with the same instructions he was given.

[77] Mr. Duthie said the discharge instructions given verbally to Mr. Kakish were use Tylenol for pain, and if developed cough, fever, shortness of breath he should return, otherwise to follow up with his doctor in the week. He said discharge instructions are not normally given in writing for this type of injury.

[78] He confirmed there is no medical care for a rib fracture other than pain medication. He said if they became aware of a rib fracture of any significance they would have contacted the attending doctor for the person. He was uncertain of what the practice was if the patient was in custody.

[79] When Mr. Duthie was asked about the examination he did with respect to Mr. Kakish's abdomen, he said it is a standard of practice including palpating his spleen and other organs and he does it in all cases. He only notes if he sees something of significance or anything to note from the abdominal examination. Mr. Duthie said he was unaware and was not told Mr. Kakish had any abdominal pain or was punched in the abdomen.

[80] When asked if the examination or treatment would have been any different or if it would have changed had he known about a punch to the abdomen, Mr. Duthie

said he would have paid more attention to his abdominal examination. He went on to explain he may have done more investigation or bloodwork to see if anything was going on. He described the abdomen is soft without the ribs to protect, and confirmed the spleen is in the abdomen.

[81] Mr. Duthie did not ask any questions of and did not receive any information from the WPS officers present with Mr. Kakish. He was not expecting them to give him any information regarding Mr. Kakish. He was unaware of the specific details of how Mr. Kakish was injured other than what Mr. Kakish said.

[82] While Mr. Duthie agreed he did not know Mr. Kakish was punched in the stomach he said it is information he would want to know and he agreed it may have changed the way he assessed and the tests he ordered.

[83] Mr. Duthie agreed he did not know Mr. Kakish was a methamphetamine user and said it is information he would want to know and he may have then ordered bloodwork or done further investigation. He was aware Mr. Kakish denied drug use when asked at triage.

[84] Mr. Duthie was asked several questions about not documenting certain information in Mr. Kakish's medical file and agreed some notes were forgotten or left out that ought to have been included. He testified he recalled a conversation with the Chief Medical Officer for the hospital, after learning Mr. Kakish had passed away, where Mr. Duthie said he recalled doing the abdominal examination but forgot to document it in the medical file.

[85] Dr. Gourlay, the SOGH attending emergency department physician, testified he did not personally examine Mr. Kakish but Mr. Duthie, physician assistant, consulted with him and together they reviewed the X-ray which showed no concerns. The medical records contain the note "X-ray no hemo/pneum thorax, no rib Fx noted." Dr. Gourlay signed off on the SOGH Illness/Injury form prepared by Mr. Duthie.

[86] Dr. Gourlay confirmed any health care practitioner can access all of a person's health information, without the patient's consent, if they feel it is required for the purpose of providing medical care to that person.

[87] Both Dr. Gourlay and Mr. Duthie explained the verbal discharge instructions given to Mr. Kakish and confirmed they were not all included in the medical chart.

[88] The X-ray was scanned and available in the e-Chart system. The e-Chart system was described as a provincial data base of medical information that any authorized health care provider can access. It is a repository of information containing a running record of dates of hospital attendances, lab results, X-rays and other diagnostic images or test result.

[89] The discharge instructions were not part of the repository of information entered into the e-Chart system at that time. Mr. Duthie and Dr. Gourlay confirmed the SOGH Illness/Injury form (referred to as medical release document in the Inquest), in this case was filled out by Mr. Duthie and signed off on by Dr. Gourlay.

[90] They confirmed it said, "Pt. medically cleared to be discharged from hosp." Dr. Gourlay explained this is a form often used by the hospital when people need medical clearance for their employers. It contains no information on the patients condition, or the medical care provided or any discharge instructions. It is for the patient only, to provide to whomever they may need. In this case the form was provided to the WPS transporting officers by the SOGH.

[91] Dr. Gourlay reviewed the medical file for Mr. Kakish confirming the examinations were indicated based on the history presented and he would not have requested any other tests or examinations.

[92] Dr. Gourlay outlined the purpose of the X-ray was to look for any underlying injuries more than for the actual rib fractures. He confirmed they did not see any fractures or underlying injuries in the X-ray. He testified rib fractures can be notoriously difficult to see on X-ray. He confirmed the X-ray would not show the spleen.

[93] Dr. Gourlay testified the examination findings and observations presented nothing in his medical opinion to order any other tests and nothing to indicate signs of internal bleeding.

[94] Dr. Gourlay agreed it would be helpful to have police confirm or support information if the patient is reporting police use of force.

[95] Dr. Meyers was the radiologist who reviewed Mr. Kakish's X-ray. He explained he was the first radiologist on shift the morning after Mr. Kakish's X-ray was done. His review of the X-ray noted a fracture to the left tenth rib which was

included in the report immediately available on e-Chart, which was on August 10, 2017, at 7:22 a.m.

[96] He testified he may have contacted the emergency department to leave a message for Dr. Gourlay given Dr. Gourlay did not detect the fracture in his review of the X-ray the night before.

[97] Dr. Meyers explained how a fracture described in this case as minimally displayed and given its location, could be very difficult to see and could be missed even by an experienced radiologist. Of the four X-ray views, Dr. Meyers was able to see the fracture on one view only.

[98] The fracture was described as minimally displaced, not exactly aligned and he recalled was a bit of an offset of 1 to 2 mm. Everything else appeared normal in the X-ray. He said it is not uncommon for rib fractures to get missed in as high as 50% of cases even by a radiologist, according to the literature.

[99] He explained that a rib fracture is not a critical incident and usually the X-ray is to assess if there are any complications resulting from that rib fracture.

[100] He confirmed generally the spleen is not something that can be seen on an abdominal X-ray and it would be unusual to see a spleen on a chest X-ray.

[101] When asked if the type of rib fracture seen on the X-ray can be reason to suspect a spleen injury and if it is associated with a spleen injury, Dr. Meyers testified it would be less than 10% of such cases that would have any associated spleen trauma caused by a minor displaced fracture.

[102] He explained in the vast majority of cases, the rib fracture is caused by trauma and that trauma may be associated with a spleen injury as well, but it is not common for this type of rib fracture itself to cause injury to the spleen.

[103] Dr. Meyers said the vast majority of rib fracture cases are not related to spleen injury. Spleen injuries are more likely related to high velocity traumas such as motor vehicle accidents or other high velocity traumas.

[104] The Court received information from the health professionals as well as counsel on requirements under *The Personal Health Information Act* (PHIA) governing when and how health care information is maintained and when it can be accessed or released.

[105] Health care records and health care information and the release of that information is monitored and protected carefully for privacy reasons. The legislation is an important consideration when making recommendations involving health care information in various situations, including the circumstances surrounding Mr. Kakish's death.

Contact at WPS CPU

[106] Once Mr. Kakish was discharged from SOGH, he was transported by the officers to CPU. Mr. Kakish was seen on arrival at 23:17 hours by Sgt. Peters, the officer in charge of the unit.

[107] In the interview, with the IIU, Sgt. Peters indicated Mr. Kakish was bent over holding his ribs, he said he had an injury to his ribs, and was having rib pain and was sore. He said he wanted a lunch and to sleep as he had not slept in a couple of days.

[108] She received information from WPS transporting officers there was a use of force incident and they confirmed Mr. Kakish was seen by a doctor for medical assistance. They gave her the doctor's note from SOGH, which she attached to the Prisoner Log Sheet.

[109] She made the following notations on the Prisoner Log Sheet "no meth since yesterday, hasn't slept in couple days, sore ribs, doctor's note".

[110] According to Sgt. Peters, Mr. Kakish was held at CPU for approximately 2 hours and was checked on every 15 minutes, before being transported to WRC by 2 officers from the WPS (CPU) along with 2 other inmates.

[111] The WPS transporting officers from CPU to WRC testified they arrived at WRC approximately at 1:25 a.m. Mr. Kakish was holding his side rib area and was in pain.

[112] Upon attendance to the WRC Mr. Kakish was escorted into a holding room until the admissions department was ready to take custody of him at which point he was brought to the desk by WPS transporting members and turned over to the custody of the WRC.

Contact at WRC

Admissions Department

[113] Mr. Kakish was brought to the basement area of the WRC by WPS transporting officers for admission. Exhibit 1 includes the video/audio footage and transcript of the audio recording of the interaction at the admissions desk. (Exhibit 1, Binder 3, WRC Video and Tab 55.)

[114] The WPS Prisoner Log Sheet was given to WRC. One of the intake officers, Justin Allan, testified information is gathered from the Prisoner Log Sheet and used by WRC, including details from the hospital and on injuries.

[115] The video/audio from the admissions desk shows Mr. Kakish is in pain, he is repeating complaints of sore ribs, he is repeatedly asking not to be touched in the area of his ribs and he is in physical discomfort.

[116] During the intake process, Mr. Kakish is asked what he is sick with and he answers, “I don’t know, the doctor said something was wrong with my heart. Cops beat the shit out of me and broke my ribs. I am sick, sick, sick."

[117] Intake officer, Justin Allen, described Mr. Kakish to be in a bit of stress, favouring his midsection, and he recalled him say sore ribs or kind of sore torso abdomen area. The intake officer did not see any injuries. Mr. Kakish was holding himself and he was hunched over favouring one side in some level of pain or discomfort.

[118] He described Mr. Kakish as alert, and he did not believe he was intoxicated. He said Mr. Kakish was able to answer questions and walk on his own.

[119] According to WRC Standing Order #15.11, when no nurse is on duty at WRC during the admission process, which was the case for Mr. Kakish, injured inmates must be seen at hospital prior to being accepted to WRC. The intake officer completes the Medical Checklist which the Shift Operations Manager (SOM) uses to determine placement within the institution. (Exhibit 1, Binder 3, Tab 36, WRC Post Orders #15.11.)

[120] The intake officer doing the Medical Checklist interview was aware of the Injury/Illness medical clearance note from SOGH, attached to the Prisoner Log

Sheet. He testified if the person was seen by a doctor and has a medical clearance note, then WRC relies on that to mean they are fit to be taken into custody at WRC.

[121] In this case, after review of the medical note, Medical Checklist, and Prisoner Log Sheet, the SOM, Mr. Happychuck, decided to place Mr. Kakish on the medical unit in a cell with a closed circuit camera. The admissions department officers do not have medical training but they have basic first aid and CPR courses.

[122] The admissions department officers confirmed that a list of all incoming inmates not seen by a nurse at admissions, is left on the medical unit for the nurse to review. It is ultimately up to a nurse to decide if the inmate will stay in the medical unit or if they will go out for further medical treatment or be transferred off the medical unit.

[123] A review of the Medical Checklist completed by admissions for Mr. Kakish includes the following notations: "Do you have any injuries? Yes. If yes, where are they? Ribs sore. Medical note attached - cleared @ hospital." There were no details provided or further questions asked or answered in relation to the injuries. (Exhibit 1, Binder 3, Tab 72 - WRC Medical Checklist.)

[124] The Medical Checklist did not reference any of the comments made by Mr. Kakish as heard on the audio/video at the admissions desk. The comment "the doctor said something was wrong with my heart. Cops beat the shit out of me and broke my ribs. I am sick, sick, sick," was not included. The complaints about sore ribs and not to touch him were not referenced on the checklist.

[125] The Court was provided information on WRC Standing Order #55.8 regarding Documenting Injuries on New Arrivals. (Exhibit 1, Binder 3, Tab 34.) The Standing Order sets out the purpose and process for documenting inmate injuries upon arrival which appears to contemplate a more fulsome gathering and exchange of information than occurred during Mr. Kakish's intake process.

[126] The Standing Order, among other requirements includes; "During the intake process, any injuries which are disclosed by the inmate or observed by officers are to be documented in detail by all officers present in a COMS report" and if there is any allegation of assault that is to be documented.

[127] The section of the form in relation to Mr. Kakish's injuries and complaints said only "sore ribs" and there was no mention of his comment "cops beat the shit

out of me" and no details of the nature of the assault or how he was assaulted. The form did not detail how he became injured other than the sore ribs notation. There is very limited space on the form to detail injuries or comments.

[128] The intake officer testified the policy now but not at the time Mr. Kakish arrived, is to put information about an injury into the COMS computer system under a tab called an incident report and the nurses can access it. However, the Court heard evidence that the medical unit does not routinely access or look at the COMS part of the inmate's file.

[129] The SOM, Mr. Happychuck, agreed information on how an injury occurred and what caused it could be helpful. He said it could assist the SOM in deciding where to locate inmates and to ensure there are enough beds to meet the needs of the inmates for best placement within the institution.

[130] Mr. Happychuck testified he saw Mr. Kakish in admissions, he was bent over saying he was in pain, that his ribs were sore and he felt police broke his ribs. He was able to communicate with them. The running record said recent meth use, and clearance from hospital and there was no nurse on duty.

[131] Mr. Happychuck did not recall looking at the Prisoner Log Sheet and while he agreed more information is good, they rely on the medical clearance form from the hospital that comes in with the inmate. WRC relies on the inmate to tell them about any injury although he said sometimes they do get verbal information from the police. Mr. Happychuck did not have a recommendation on whether there should be mandatory recording of information from police or other sources, other than to say it should be looked at but that was all he could say.

[132] A note made by admissions in the running record says; "Recommend placement on 3 Medical due to mobility issues and current injuries." Mr. Happychuck's note on the COMS system says; "cleared for initial placement on 3M 342, due to no nurse on duty, and I/M admitting to recent meth use, and clearance from hospital prior to WRC".

[133] Mr. Happychuck testified because there was no nurse on duty when Mr. Kakish was brought in and he admitted consuming methamphetamine, the decision was made to place him on the medical. He was to be checked by CCTV every 15 minutes and visual security checks every 30 minutes and it would be the nurse for the next day to review.

[134] Mr. Happychuck was satisfied Mr. Kakish was properly admitted to remand and could be managed. He relied on the doctor who has cleared the person and said he is not in a position to override the doctor.

[135] Mr. Happychuck said had he known there was a broken rib, he would not have done anything differently because there is no treatment for a broken rib. He felt he would make the same decision and the nurse on duty the next day would see Mr. Kakish. The information for Mr. Kakish would be passed on the next morning through the shift briefing from him to the next SOM. He did not feel there was any reason to flag Mr. Kakish to the medical unit based on his review of the reports and his dealings with him.

[136] Mr. Happychuck confirmed the WRC policy when no nurse is on duty, requires the inmate to be medically cleared by a doctor/hospital before being accepted at WRC. Mr. Happychuck testified that during the time period when Mr. Kakish was admitted, there were "more times than he cared to remember" where there was no nurse on duty overnight, he estimated that occurred approximately 6 to 8 times a year on his shifts.

[137] I also heard from corrections officers about the concern for compliance with legislation regarding health care information and inmate privacy when gathering and noting health care issues in institutional records.

Movement and Interaction with Corrections Officers

[138] Mr. Kakish was moved from admissions to the medical unit around 2:30 a.m. on August 10, 2017. The escorting corrections officers did not have any information other than he was going to the medical unit. They recalled Mr. Kakish being in pain, being hurt and he was hunched over and moving very slowly.

[139] Video footage shows Mr. Kakish walking from the elevator to the cell area. One escorting officer believed he asked afterwards why Mr. Kakish was being admitted because he looked hurt. He was told there was a doctor's note, which satisfied him that was all they needed. Mr. Kakish was lodged in cell 342 on the third floor in the medical unit.

[140] In the afternoon of August 10, 2017, corrections officer, Ashley Griffith, from the central control station observed Mr. Kakish going to the interview room on the main floor to see his lawyer. She testified Mr. Kakish looked a little pale when he

went into the room. She noticed he looked very pale in complexion on exiting the room. Mr. Kakish said he did not feel well and asked to see medical.

[141] Ms. Griffith spoke directly to the medical unit nurse, Ms. Koscian. She advised the inmate looked pale in complexion, kind of gray in colour, did not look well and was requesting medical attention.

[142] Ms. Griffith escorted Mr. Kakish to the medical unit, she did not note anything about his walking, but his complexion stood out to her, he did not look right and he said he was in pain.

[143] Ms. Griffith recalled the nurse taking vital signs for Mr. Kakish then she escorted him back to his cell when the examination was finished.

[144] Video footage from cell 342 on the medical unit, from hallways, elevators and the main floor, show Mr. Kakish throughout his time at WRC between August 9-11, 2017. He is seen in various states: sleeping, eating and moving around in the cell and within the institution.

[145] From the video with no audio, Mr. Kakish appears at times to be experiencing restlessness, discomfort and pain to varying degrees throughout his time in the cell and when moving through the institution, with other times showing less obvious or pronounced signs of his injury.

[146] At some point in the afternoon of August 11, 2017, supervising corrections officer, Ms. Sobering had contact with Mr. Kakish as he was on his way to see his lawyer on the main floor and upon his return to his cell. She described him "looking rough" which was not an uncommon description of inmates in her experience.

[147] Mr. Kakish told her his ribs were killing him, he was walking on his own, he returned from his meeting on the main floor and returned to his cell. Ms. Sobering said she would have asked if he had seen medical and she would have checked with medical, but she had no specific recollection of that conversation.

[148] Ms. Sobering described the role of corrections officers to observe and relay concerns or changes in behaviour to the medical department. However, corrections officers cannot interpret medical information and in her opinion it is important to let the medical professionals do their work and not put too much of that responsibility on the corrections officers, given the difference in training and their different roles in the institution.

[149] August 11, 2017, video coverage from cell 342, during the afternoon at 14:30 hours, shows the noticeable change in appearance and physical condition as described by corrections officers. Mr. Kakish is seen walking toward officers at the cell door when he collapsed to the floor. He is assisted by corrections officers to stand and walk to the medical examination room.

[150] Mr. Kakish's condition deteriorated quickly, a code red was called at 14:40 hours while Mr. Kakish was in the nurses examination room. CPR was administered and WFPS arrived at 14:51 hours. Treatment including CPR was administered and Mr. Kakish was transported by ambulance to HSC leaving the WRC at 15:17 hours.

The Medical Unit at WRC

[151] The medical unit of the WRC is located on Level 3 and was described as a long pod with a desk shared by nursing staff and one corrections officer.

[152] In 2017, the medical unit held inmates in need of observation, inmates with mobility issues and intoxicated inmates. The observation area referred to as the pod, was described as a bubble looking out to the cells of the medical unit. There were five cells on the medical side of the unit, four equipped with CCTV cameras.

[153] The CCTV cameras were located overhead in the pod area and monitored by the corrections officer. These cameras were not visible to the nurses' side of the desk but nurses could view the cameras by walking to that side of the desk area. The overhead cameras were labeled with the name of the person in the cell and the reason for observations. Mr. Kakish's label said "med.obs", explained as medical observation, no further information was provided to the corrections officer.

[154] Video footage reviewed from WRC shows Mr. Kakish in his cell throughout his time on the medical unit. The video is included in Exhibit 1. (A summary of the video by Mr. Pittman, Associate Director of Operations for Corrections Manitoba, is at Tab 2, page 44 of Binder 3.)

[155] The corrections officers were not given health information or told why an inmate was in a cell for observation. However, they were trained to look for general things including whether the inmate was moving, breathing or if they started to act differently the officer would check in with them and ask if they are okay. Sometimes the nursing staff did tell the officers what to look for but generally it was described

as vague or general information due to requirements under privacy legislation relating to health care information.

[156] The medical portion of an inmate's file was kept separate from the corrections side of the inmate's file. The corrections officers do not have access to an inmate's medical file.

[157] An intercom system allowed the corrections officer to speak with the inmate in the cell and it allowed the inmate to buzz from the cell to the observation desk, if they had any requests or concerns.

[158] Corrections officers working on the medical unit conducted security rounds every 15 or 30 minutes depending on requirements of the inmate. These checks were logged on a check sheet where the time of the check and any notes made by the corrections officer are documented.

[159] If anything was noted by the corrections officer, the nurse was notified and asked to check on the inmate. The officers act as a conduit of concerns for the inmate to the nursing staff. If there was no medical staff available and it was deemed necessary by the supervising officer, then outside medical assistance is requested by ambulance or transport by a corrections officer for medical attention, depending on the urgency of the situation.

[160] An inmate on the medical unit can request to see a doctor or the nurse can request the inmate see a doctor. If an inmate is to see a doctor the corrections officers escort them to the examination room in the medical department.

[161] Services of medical doctors is provided to WRC under contract with outside physicians who attend Monday to Friday for one hour per day. They are available on an on call basis as needed and outside of that time seven days per week if the nurses require assistance.

[162] If an inmate is referred to the doctor but refuses to attend, corrections officers attempt to persuade them to attend, but they do not force them. Nursing staff are notified if the inmate refuses to attend.

[163] It was not clear how the notification or refusal to see the doctor is documented or if the corrections officers, nurse or doctor follow any protocol when a referred inmate refuses to attend.

Interaction with Nursing staff on the Medical Unit at WRC

[164] The area for medical examinations was in an area with the doctor's office, the nurses' office, the treatment room and the manager's office, separate from the medical unit cell area.

[165] Ms. Koscian, a registered nurse, was the first nurse on duty during the day shift following Mr. Kakish's admission to WRC. She was the first nurse to have contact with Mr. Kakish at 15:00 hours on August 10, 2017.

[166] Ms. Koscian said generally corrections officers monitor the cameras to the medical cells and are asked to primarily look for seizures. The nurses themselves look at the cameras from time to time and she makes it a practice herself.

[167] Ms. Koscian referred to a shift report binder to see which inmates are in the medical cells and for what reason. The notation in the shift report for Mr. Kakish was "cell 342 med. obs." It does not flag which inmates have not yet been seen by a nurse.

[168] Ms. Koscian said she typically would have a verbal discussion with the previous nursing shift to familiarize herself with the reason the inmate is on the unit and would typically attend to the medical unit observation area to figure out who was in the medical cells. In this case there was no nurse on duty the previous shift.

[169] Ms. Koscian indicated that priority was not necessarily given to those who were not yet seen by a nurse at the intake process in admissions, or those housed on the medical unit, but generally the medical unit should be the priority.

[170] She described a number of tasks the nurses are responsible for that take priority such as, assessment of inmates coming into custody, administering medications within the institutions, changing dressings and assisting with the physicians clinic.

[171] She described reviewing the medical charts as a practice she did at some point during the day, to familiarize herself with an inmate on the medical unit. She said the medical doctor also reviewed the charts for medications regardless of whether the doctor was to see the inmate or not.

[172] She described the medical chart as follows: a Medical Checklist from admissions, a Health Service Progress Note used to document any interaction

between a nurse or doctor and the inmate/patient, and a Health Care Assessment form.

[173] Ms. Koscian said nurses do the assessments if one is on duty at the intake process in the admissions department during which the Health Care Assessment form is completed. Vital signs are not always taken by a nurse upon admission, and it depends on each situation, there is no specific place on the intake form to record vital signs for each case. In Mr. Kakish's case, there was no nurse on duty when he was admitted to the WRC so the Health Care Assessment was not on file.

[174] The WRC policy requires an inmate to be assessed by a nurse within 24 hours of arrival to the WRC if one was not done at the time of admission. Ms. Koscian was the nurse who completed the Health Care Assessment form for Mr. Kakish on the medical unit on August 10, 2017, at 15:00 hours.

[175] Ms. Koscian's contact with Mr. Kakish came after corrections officer, Ms. Griffin from the main level, called expressing concern about his medical condition and was directed to bring Mr. Kakish to the medical examination area for Ms. Koscian to examine.

[176] Ms. Koscian described her interaction with Mr. Kakish as follows: he was walking independently but was bracing his left rib cage, his colour was slightly pale, he was able to sit in the chair at her direction, and she took his vital signs and asked some basic questions about his wellbeing. She completed the Health Care Assessment form at the same time. (Exhibit 1, Binder 3, Tab 70.)

[177] Ms. Koscian indicated the following from her examination of Mr. Kakish; no medical issues, no prescription medications, he had sore ribs on his left side which was why he was holding his left rib cage. He did not complain of any history of seizures or blackouts, he was not suicidal. He had no difficulty breathing, and his breathing was adequate.

[178] He denied alcohol use but disclosed using methamphetamine daily. She may have asked when he last used methamphetamine but she did not document that.

[179] He disclosed he was beat up by the police. Ms. Koscian agreed he did not mention a strike to the head or a punch to the abdomen. She was unaware when the assault that Mr. Kakish complained of occurred. She assumed the injury happened

the same day he was taken into custody but she did not know or document that. She was not aware of any treatment or any discharge instructions from a hospital.

[180] Ms. Koscian said the injury section on the Health Care Assessment form does not have enough room to write out what she needed to write so she used the Health Services Progress note. She noted "sore ribs" on the Health Care Assessment form.

[181] She agreed she should have noted he was seen at hospital. She was not aware if he had pain medication at the hospital but agreed it would probably be useful, although she would assume in her nursing judgment that meant Motrin or Tylenol. She agreed overall it would be helpful to know what was done for the person at the hospital, not only the pain treatment.

[182] Ms. Koscian charted Mr. Kakish's vital signs taken August 10, 2017, at 15:00 hours in the Health Service Progress notes but not on the Health Care Assessment form. She noted the vital signs as stable, BP 113/78, pulse 101, respiration rate 18/minute, 98% O2. She testified all vital signs were within the normal range. (Exhibit 1, Binder 3, Tab 73.)

[183] The Health Service Progress notes made by Ms. Koscian say "I/M brought up from central with corrections officer, complaining of pain to ribs and difficulty breathing, states was assaulted by WPS prior to coming in, during arrest."

[184] She agreed a complaint of shortness of breath and difficulty breathing can be signs the person is in medical distress and is concerning to a nurse. When there is a complaint of soreness of ribs, Ms. Koscian said she always looks for shortness of breath, and inflation of both lungs by listening to them, along with the O2 saturation level in the body. In the case of sore ribs or fracture her primary concern is the lungs.

[185] She asked Mr. Kakish to lift his shirt, she did not see any bruising or bulging. She listened to his breathing from the back, he would not let her touch anything or listen from the front because of pain. She noted his breathing was adequate and O2 was adequate, she wrote; "no visible injuries, lungs sound clear," in the progress note.

[186] Given the complaint of sore ribs and the note from SOGH, she talked to him about healing taking from four to eight weeks, she offered him Motrin for pain and told him she would refer him to the doctor's clinic for some regular pain control.

[187] Ms. Koscian said even if she had been aware there was a fractured rib, she may not have necessarily assigned Mr. Kakish to the medical unit because there is typically no concerns or treatment for sore or fractured ribs.

[188] She said if she was aware of a rib fracture she would not ask the corrections officers to look for anything in particular. She did not think it would matter if she knew there was a rib fracture nor would it have changed the way she dealt with Mr. Kakish.

[189] Ms. Koscian described her experience and training in relation to suspecting and checking for identifying internal bleeding in patients. She said, even if the rib fracture was known, she would not have suspected internal bleeding because there were no physical signs to suspect any internal bleeding.

[190] She said she would have done an abdominal examination if Mr. Kakish had complained of any abdominal discomfort. If there was any bruising, she may have proceeded with an abdominal examination, if Mr. Kakish would have allowed it.

[191] Ms. Koscian said her instructions to Mr. Kakish to limit laying on the affected side and limit his movements would not have changed if she had known about the rib fracture. There is no other treatment for a fractured rib.

[192] Ms. Koscian said had she known there was a kick to the ribs or a punch to the abdomen it would not have changed her treatment of Mr. Kakish because there were no signs to indicate an abdominal injury and she would not suspect internal bleeding.

[193] When asked if it would change her investigation if she knew Mr. Kakish was punched in the head and abdomen as well as kicked to the ribs, Ms. Koscian said probably not.

[194] Ms. Koscian agreed information such as a punch to the head or to the abdomen or a kick to the ribs would possibly assist a nurse to figure out what may be going on in a case where an inmate's physical condition decompensated while in custody. She said it would help in knowing what to look for; that is, different things are considered with head injuries versus abdominal injuries versus limb injuries. She agreed it would be valuable information to have in a situation where an inmate's condition decompensated while in custody.

[195] Ms. Koscian described her understanding of the requirements for obtaining information from SOGH about the treatment or tests done, how long she believed it

could take and the forms required. She described e-Chart at the time allowed access to the entrance complaint at hospital and access to tests or bloodwork done. At that time, the discharge instructions of other hospital records were not available on the e-Chart system.

[196] Ms. Koscian did not think she needed any of Mr. Kakish's health care records given that he presented as well, his vitals were stable, his colour was not off, he did not have a headache and was not nauseated. There was nothing to indicate any further investigation was necessary from her examination of Mr. Kakish.

[197] When shown the vital signs from SOGH during the Inquest, compared to those taken by her at WRC, Ms. Koscian said they would not necessarily trigger or cause any concern. Factors such as the level of stress while at the hospital, willingness to be there, and last drug use would all have to be known and considered.

[198] Ms. Koscian confirmed the medical file at WRC contains a form called Major Medical Problem List. The form is kept on the inside front folder of the medical chart. Its purpose is a quick reference of problems from all contacts with WRC. She confirmed it is generally filled out by the nurse upon admissions assessment.

[199] In this case, Ms. Koscian agreed she should have listed the injury to the rib on that sheet and she did not. She agreed her notes were not as detailed as they should have been.

[200] Ms. Koscian confirmed she has access to the Corrections file but they do not typically review that before their assessment. She confirmed the Prisoner Log Sheet is not part of the medical file.

[201] Ms. Koscian described in 2017 there was no nurse supervisor as there is now. The nurse supervisor does chart audits to review for proper charting and appropriate documentation and to ensure nothing is missing, as well as for follow up on patients in the medical cells. She described the current situation as an improvement from 2017.

[202] I was informed by counsel for Corrections that all medical unit staff at WRC, now have access to the e-Chart system.

[203] I was provided updated information in the written materials from counsel for Shared Health Inc. et al that a project is currently underway with a division in Shared

Health Inc., to include emergency department discharge summaries on e-Chart, with an anticipated completion date of summer 2021.

[204] In this case I was provided information that after Mr. Kakish's passing, the WRC medical supervisor, Ms. Reeves, sent a request for medical records to SOGH and received the reply of information within 24 hours. Counsel for the hospital indicated this would be the expected turn around time, not weeks.

[205] Counsel referred to *The Personal Health Information Act* (PHIA) guidelines for access and release of information pointing out information is only requested if needed for providing health care services. Release of personal health care information is monitored and health care professionals are trained on the specific requirements of the *Act*, to ensure protection of personal health care information, and ensure unnecessary access to or gathering of health care information.

[206] Ms. Koscian was aware through her training on PHIA that collection of personal health information is restricted if there is no reason or need for that information. She said there were no signs of anything clinically or acutely wrong with the patient to require any further health care records.

[207] In 2017, Ms. Mueller, a registered psychiatric nurse and medical nurse, was the acting health service manager and is now manager of the medical unit at WRC. In 2017, she was responsible for overseeing the medical department. She also filled in as a medical or psychiatric nurse if the unit was short staffed. Prior to 2017 she worked as a psychiatric nurse on the unit.

[208] Ms. Mueller said there was no set practice or policy to give priority to those on the medical unit. Ms. Mueller described other tasks that took priority included; giving out medications in the morning, giving out and checking insulin for diabetic inmates and assisting with the doctor's clinic held Monday to Friday. She said the inmates are supposed to be medically stable at intake in order to be admitted as they have been seen at hospital and have the doctor's clearance note.

[209] There was no formal system in place to flag inmates who were not assessed by a nurse during the admission process. These new admissions would be assessed by a nurse within 24 hours of their admission, according to the policy. Generally the new arrivals were seen right after the doctor's clinic.

[210] Ms. Mueller said the corrections officers watch the CCTV screens for the medical cells. They are looking for anything out of the ordinary or any changes, in which case the medical staff want to be notified.

[211] Generally the medical staff do not give corrections officers instructions on what to look for, but they may let them know if there is a medical withdrawal issue. The information given to the corrections officers is limited to what the medical staff can tell them because of privacy over health care information.

[212] Ms. Mueller said inmates on the medical unit interact with the nurses as needed on a case by case basis. They do not see the doctor unless there is a request or the nurses have a concern and make the referral.

[213] Ms. Mueller confirmed the nurses have the admissions checklist but no other information on the person when they do the health care assessment. They have a shift report from the previous shift, where any concerns are shared for each inmate in each cell. If there is nothing beside the cell number on this sheet the nurses check the medical chart for information.

[214] She described how doctors look at all medical charts for medication review with the Drug Program Information Network (DPIN). DPIN is an electronic network which links all community pharmacies for residents of Manitoba listing all medications dispensed to that person. The doctors also review any charts the nurses have put forward for review or where the person asked to see the doctor.

[215] Ms. Mueller said the medical staff now have access to e-Chart but they did not all have full access in 2017. E-Chart has limited information but does include lab results, diagnostic imaging results and where and when the person was discharged. At the time, e-Chart did not include what the person was seen for or the treatment provided. Ms. Mueller said further health care information would only be requested if it was relevant to treatment, otherwise request of information without reason is a breach of the PHIA.

[216] Ms. Mueller understood that in order to get access to further health care information a signed consent for release was required. At the time, she believed it could take anywhere from hours to sometimes weeks to receive medical information once requested. She agreed information could be requested on an urgent basis, but said sometimes that would not work any faster. Ms. Mueller said she would expect the nurse to review e-Chart at some point in looking after a patient.

[217] Ms. Mueller had contact with Mr. Kakish on August 11, 2017 when she was working as the psychiatric nurse that day. Mr. Kakish was brought to the medical examination area by a corrections officer who advised her that Mr. Kakish was there for vital signs. She knew the medical unit was short staffed that day so she took the vital signs for Mr. Kakish.

[218] Ms. Mueller was not aware who or why vital signs were requested. She did not speak to the other nurse on duty about why the vitals were required and Mr. Kakish's chart was not available when she looked for it.

[219] Ms. Mueller described Mr. Kakish's colour as fine and she did not see anything that needed to be documented in her contact with him. She recalled Mr. Kakish made some comment about sore ribs or broken ribs. She understood he was in the medical department for vital signs to be taken, so that was the only thing she did.

[220] She noted the vital signs on a sticky note because the chart was unavailable at the time. The vital signs were noted as: Pulse 117, Blood Pressure 121/88, and O2 saturation 98%. Ms. Mueller described the blood pressure as good, the oxygen level as good, and the pulse as a bit elevated. The increased pulse was not unexpected to her because with bruised ribs Mr. Kakish was moving around and experiencing pain which would lead to the expectation for the slight increase in heart rate.

[221] Ms. Mueller did not do an examination she just took the vital signs. She said nothing stood out visually otherwise she would have written it down and gone for the chart or the other nurse. She did not recall giving him any instructions or anything to ease the pain.

[222] Ms. Mueller said she initially wrote the vital signs on a sticky note because the chart was not available and later wrote them in the chart as a catch up note. She explained it was a late entry and ought to have been flagged as such. Her entry was made on the chart as 13:17 hours which followed an entry made at 13:20 hours by Mr. Bardarson, another nurse on shift.

[223] Ms. Mueller did not feel she needed to look at the chart before dealing with Mr. Kakish. She was unaware he had been discharged from SOGH previously. Ms. Mueller had no information on the circumstances of Mr. Kakish's refusal to see the doctor. Ms. Mueller had no discussions with Mr. Bardarson about his dealing with Mr. Kakish.

[224] Ms. Mueller said about an hour after she dealt with Mr. Kakish, she saw him coming down the hall with Mr. Bardarson and a corrections officer. Mr. Kakish did not look the same way as an hour earlier when she dealt with him. She said he looked gray in colour, he sat in the chair, and he was cold to the touch.

[225] They determined something was going on and an ambulance was called. One of their concerns would be internal bleeding. She believed they called the ambulance then took vital signs, although she was not sure and none were recorded on the medical chart for that time.

[226] Ms. Mueller said they tried to administer oxygen repeatedly but Mr. Kakish was not able to cooperate. She explained a hypoxic state is when oxygen saturation is low and the person becomes disoriented and combative. When asked what can cause a hypoxic state she said internal bleeding, oxygen not getting through the body and a heart issue can cause this, as well as a few other things.

[227] Mr. Kakish deteriorated shortly after WFPS arrived. They were doing CPR so she stepped out of the room. Mr. Bardarson was providing information to WFPS. Ms. Mueller said generally they provide WFPS with a referral form if they have time to prepare one, she could not recall if they did in this case.

[228] Ms. Mueller said had she known there was a rib fracture it would not have changed the way she dealt with Mr. Kakish. The treatment for a rib fracture is Motrin for pain and there is no other treatment. It has to heal on its own and she would tell the person to let them know if there are any changes in their condition.

[229] Ms. Mueller said if she knew Mr. Kakish was kicked to the ribs or punched to the abdomen that would not have changed how medical staff dealt with him. She said if aware there was a punch to the stomach she would hope an abdominal examination was done at the hospital. She said an abdominal examination is not something they routinely do at WRC. If they suspect internal bleeding they would send the person out as they should be in a hospital.

[230] She agreed the medical clearance note did not provide any information on the complaint or discharge instructions. When asked about having information from the hospital she agreed it could be helpful in determining if the complaint is getting worse. She agreed they would like some information and sometimes they do get it and sometimes the police provide it.

[231] Ms. Mueller agreed the location of the injury is relevant if considering any underlying trauma, and the skin colour can be an indication a person is not doing well. Being pale or grey can mean internal bleeding which is important to document.

[232] She agreed giving Motrin can be contraindicated if there is internal bleeding. She agreed it is important to know what medications the person is on or received either at hospital or from corrections officers.

[233] She agreed having information from the hospital on what to look for would be helpful. She agreed any information the hospital would have provided would be helpful. She said sometimes the police bring the information from the hospital in a sealed or unsealed envelope with the person in custody.

[234] She agreed knowing something about the use of force or trauma and where the impact was on the body could be helpful to managing the health care of the person. She had never seen nor did she believe they had access to the Prisoner Log Sheet.

[235] She confirmed the Major Medical Problem List on the medical chart is kept on the inside cover of the medical file for ease of access if a person were to decompensate. She agreed use of an existing form rather than creating a referral form would speed up transfer of medical information in an emergency situation. Although she said a referral form would have more information and history leading up to the urgent situation.

[236] She said in her experience she has not been able to get medical records from outside facilities without a signed patient consent even though it was suggested in some situations she should be able to do so.

[237] She agreed even if she had the information from the hospital, in this case it would not have changed what she did. Even after reading the notes in the medical file after her contact with Mr. Kakish she did not see any concerns that needed any further investigation or follow up at that time.

[238] In 2017, Mr. Bardarson was a registered nurse at WRC. Mr. Bardarson confirmed that PHIA requirements do not permit sharing of health care information with corrections officers. He said the nurses do at times ask the corrections officers to let medical staff know if any changes are noticed in their observations of an inmate.

[239] Mr. Bardarson said it was up to each nurse to prioritize their daily duties, with handing out medications and doctors clinics being a priority. Seeing those on the medical unit would be a priority over those on other floors. Completing the health assessments for admissions not yet seen by a nurse at intake would fall into the day where they could fit them in.

[240] Mr. Bardarson said his practice was to follow up with request for information if he was aware someone was seen at the hospital. His practice was to always get a consent form for more information from the hospital to determine what the next process was in the treatment of the person. He indicated gathering that information could take from 24 hours up to a week.

[241] When Mr. Bardarson was asked about the medical clearance note on Mr. Kakish's file, he described it as a very typical response, very vague and not very helpful. He said even with e-Chart there is still a need for further information.

[242] On August 11, 2017, Mr. Bardarson was asked to see Mr. Kakish at his cell, but he could not recall the reason for the request. He did not recall if he looked at the chart first and he could not say that he knew there was a medical release from the hospital before he saw Mr. Kakish.

[243] Mr. Bardarson went to Mr. Kakish's cell with two corrections officers at 13:20 hours. He described Mr. Kakish appeared quite distressed and kind of angry. Mr. Kakish said his ribs were sore. Mr. Bardarson said Mr. Kakish could speak clearly, he was engaged and looked well other than he was agitated.

[244] Mr. Bardarson said he felt a bit unsafe as Mr. Kakish became more agitated. He had Mr. Kakish lift his shirt to show his chest wall, Mr. Bardarson was about 10 feet away from where Mr. Kakish was sitting on the bed.

[245] Mr. Bardarson noted Mr. Kakish was breathing fine, there were no signs of external injury, no bruising, no scuff marks or scrapes. He told Mr. Kakish to calm down, relax, to use breathing techniques and they would get things figured out and then revisit. Mr. Kakish was not happy and told him to fuck off so he discontinued the interaction. This interaction was part of the WRC video surveillance from the camera in the cell.

[246] Mr. Bardarson could not recall if he reviewed the medical chart before he saw Mr. Kakish. He was not sure if he knew that Ms. Mueller had just taken Mr. Kakish's

vital signs minutes before his interaction. He could not recall if the corrections officer told him they had just given Mr. Kakish Motrin. Corrections officers can give over the counter medications up to three times a day.

[247] Mr. Bardarson described Mr. Kakish as agitated and anxious, restless, unsettled and bothered by some thought he might be having. It did not seem to Mr. Bardarson like a presentation of pain, he appeared physically stable, alert, conscious and had no mechanism of injury on his chest wall. Mr. Bardarson did not recall if Mr. Kakish requested an inhaler, as noted by one of the corrections officers who attended the cell with him.

[248] Mr. Bardarson could not remember if he gave any instructions to the corrections officer of what to watch for. He said if Mr. Kakish was not so agitated, he would have taken him to the medical examination room for a head to toe assessment. Mr. Bardarson said he planned to go back to assess Mr. Kakish again, maybe a half hour later.

[249] Corrections officers next alerted Mr. Bardarson they had concerns about Mr. Kakish's behaviour and overall health status. He asked the corrections officers to bring Mr. Kakish to the examination room to do a thorough assessment which was at 14:30 hours.

[250] Mr. Bardarson said Mr. Kakish appeared to be walking okay, but it looked like he was guarding his ribs, on the left side. He appeared sweaty and a little more disoriented. He was a little bit hunched over but was able to bring himself to the medical unit about a 10 second walk. He was breathing heavily which Mr. Bardarson said is not uncommon if a person is having a panic attack.

[251] Mr. Bardarson first got a paper bag for Mr. Kakish to breathe into. When Mr. Kakish lifted his head, Mr. Bardarson noticed his face was ashen, his lips were bluing and he was sweating. Mr. Bardarson said he knew this was not a panic attack, it was hypoxia and he needed oxygen immediately. They provided an oxygen face mask and were trying to get his vitals, but he was combative and trying to fight them off because of the hypoxia. Mr. Bardarson knew right away this was not a good situation and they called 911 as WRC did not have the tools to help Mr. Kakish.

[252] Mr. Bardarson explained hypoxia is low blood oxygen levels. It could be related to a cardiac event, it could be respiratory or it could be circulatory, related to the blood volume.

[253] There was no room in the examination room to put Mr. Kakish in an elevated position if it had been a volume of blood issue, which he did not believe it was. Mr. Bardarson's goal was to treat Mr. Kakish with oxygen to correct the hypoxia and to encourage his blood oxygen levels to increase.

[254] WFPS arrived and took over treatment of Mr. Kakish. Shortly after their arrival Mr. Kakish stopped breathing and a corrections officer initiated CPR while a paramedic inserted an intravenous line. The WFPS Patient Care Report notes Narcan was given for the possibility of a drug overdose, prior to the cardiac arrest. Epinephrine was given during the cardiac arrest and CPR continued during transport to the main level. When Mr. Kakish left the WRC at 15:17 hours his heartbeat had been re-established.

[255] Mr. Bardarson said if he knew there was a fractured rib he would have thought more about the substructures where the injury was. Secondary injuries that can result on the left side can include a lacerated spleen, intestine, lungs, or anything under the area. Mr. Bardarson said he would have encouraged Mr. Kakish to be more proactive in allowing the examination to proceed and he would ask the corrections officers to watch for increasing pain and any change in respiratory condition. He said generally the corrections officers are good at noticing change in behaviour and letting a nurse know.

[256] In answer to whether he would have suspected internal bleeding if he knew there was a fractured rib, Mr. Bardarson could not say looking back, he would have to make that decision in real time. He said had he known there was a rib fracture he thinks he would have done a more thorough assessment of Mr. Kakish and of the abdomen and respiratory system, looking above and below to see if there may be any injury as a result.

[257] Mr. Bardarson agreed that knowing the mechanism of injury would help determine the extent and depth of force of the injury, which is important considering the underlying structures can be easily injured or torn as a result of blunt force trauma. With that knowledge it would have changed the way he did his assessment and it would have been a fulsome head to toe assessment.

[258] Mr. Bardarson said it would help to know Mr. Kakish was cleared by the emergency department physician and to have the records from the hospital triage

and the vital signs to help narrow down what the specific areas of concern were for Mr. Kakish. He said he would want that information as early as possible.

[259] Mr. Bardarson said he thought Mr. Kakish's symptoms were partially withdrawal effects of methamphetamine. In hindsight, he agreed having information from the hospital could better direct his treatment decisions. He agreed the hospital triage notes and notes from the physician assistant would have been helpful information.

[260] When asked, Mr. Bardarson agreed that knowing there was a kick or punch in the abdomen would mean a need for further follow up. He agreed a description of the use of force from police would be helpful in conjunction with hospital information and would assist to determine treatment for the injury.

[261] WFPS were dispatched to WRC at 14:43 hours and were at Mr. Kakish's side at 14:49 hours. WFPS left WRC with Mr. Kakish at 15:17 hours and arrived at HSC at 15:25 hours.

Contact at HSC

[262] Mr. Kakish arrived at the HSC emergency department on August 11, 2017, at 15:25 hours. The emergency department physician was concerned Mr. Kakish may have an injury to his abdomen, possibly the spleen or other type of injury. Consultation was requested with Dr. Yaffe who was part of the surgery team for high-level trauma situations.

[263] The emergency department team was in the process of resuscitating Mr. Kakish with fluids and blood, and had already assessed him for an internal injury. Dr. Yaffe described Mr. Kakish as quite ill and in unstable condition.

[264] Mr. Kakish's blood pressure was low which meant he could still be losing blood or there was some other reason it was low. His abdomen was tense which could be an indication of fluid in the abdomen. This was substantiated by other findings in the emergency department and with the Focused Abdominal Sonography Test (FAST). FAST is an ultrasound examination that can indicate or identify fluid such as blood in the abdomen or other areas of the body.

[265] Given the low blood pressure reading, the low hemoglobin and the change from a normal abdominal examination initially in the emergency department to the

tense abdomen, they concluded there was a significant amount of blood in the abdomen.

[266] Because Mr. Kakish was unstable and they felt he was continuing to bleed, other tests were not safe to do and the next step was to operate to identify where the suspected bleed was coming from. No other tests were ordered because of his state and there was no time for additional tests.

[267] Surgery was performed on the abdomen and an injury to the spleen was determined to be the cause of the bleeding. The injury was not visible at first but upon further exploration, a laceration to the back side part of the spleen was located.

[268] Due to the severity of the injury, the stability of the patient and the history of what had happened to him, the decision to remove the spleen was reached. They felt it in Mr. Kakish's best interest to remove the spleen rather than try to repair it. The concern was that he may not survive if the bleeding started again.

[269] Dr. Yaffe said it was not a huge injury and described it as a laceration that continued to ooze. There was lots of blood in the area and they suspected the bleed was going on for awhile.

[270] During the hearing, Dr. Yaffe was asked to review the vital signs from the SOGH examination on August 9, 2017. He described them as normal or within normal range, although he noted the systolic blood pressure may be on the higher side a little bit but otherwise was normal.

[271] Dr. Yaffe reviewed the vital signs recorded at WRC, in the Health Progress notes of Ms. Mueller on August 11, 2017. He described the pulse as a little bit on the higher side compared to what it was at SOGH and the systolic blood pressure was down a little compared to August 9, 2017. Dr. Yaffe said the vital signs were still in the normal range.

[272] When asked to comment on whether he would have expected these vital signs in the 2 hours and 20 minutes prior to seeing Mr. Kakish, Dr. Yaffe said it is hard to judge. While the pulse was a little elevated the blood pressure was in the normal range. Dr. Yaffe described the pulse as tachycartic and said it could be from pain, he was not able to comment on that.

[273] Dr. Yaffe was asked his opinion on whether the vital signs taken at WRC on August 11, 2017, would lead him to expect internal bleeding; he said apart from the

tachycartia, nothing really indicates internal bleeding, but said it would be speculating.

[274] Dr. Yaffe agreed an individual may have normal hemoglobin and still have internal bleeding. He explained it typically takes a while before the body responds to internal bleeding with a drop in blood pressure. It depends how fast the bleeding is and over what period of time. He said the body can restrict where blood flows, which is why blood pressure is sometimes maintained with an internal bleed.

[275] Dr. Yaffe said he did not see the fracture to the rib during surgery but he was aware of it after the fact. When asked whether the rib fracture could cause the spleen injury he said while it is possible he would be speculating. He did say 25% of rib fractures from the ninth to the twelfth rib area, are associated with splenic injuries.

[276] Dr. Yaffe said a person could sustain an injury to the spleen that is minor without much consequence but then have a significant bleed anywhere from a day to six weeks later. Dr. Yaffe could not say if the injury to Mr. Kakish's spleen could have been a delayed rupture. He said there really is not a lot of forewarning that would tell of a delayed rupture or a delayed bleed.

[277] Dr. Yaffe explained when investigating for internal bleeding, blood pressure is one factor, taking vital signs, external blood loss, bleeding outwardly, pulse rate, sweaty or pale and feeling faint are all things that would go through his mind when considering internal bleeding.

[278] Dr. Yaffe agreed, speculating only, that if a person was grey and pale at the time the vital signs were taken, he would look at the whole person and the vital signs are just one part. If the person is also sweaty, pale and grey and a little tachycartic, he said he would wonder what was going on, and he would check it out but it would not mean he was bleeding.

[279] After the surgery, Mr. Kakish became medically stable. However, Dr. Yaffe talked about Mr. Kakish's presentation related to the loss of oxygen to the brain during the two cardiac arrests when Mr. Kakish's heart stopped beating. One cardiac arrest while at WRC and the other in the emergency department at HSC.

[280] Dr. Yaffe characterized the downtime as substantial and speculated it possibly contributed to the brain sequela seen in Mr. Kakish post surgery. He cautioned he is not a neurologist.

[281] Dr. Yaffe responded to questions about whether the mechanism of how the injury was caused would have made a difference to the management of treatment. He answered it would be speculating but did not think the mechanism of injury would have made a difference. He agreed that if he was aware there was punching or kicking that may have indicated where the bleeds were located in the abdominal cavity. Dr. Yaffe said nothing in the emergency department record of the examination of Mr. Kakish's abdomen indicated a splenic injury or even a bleed.

[282] Dr. Yaffe agreed the emergency department examination of the abdomen at first was normal, noted as soft and not distended and then noted a change to rigid.

[283] Dr. Yaffe was asked if he could offer an explanation for that change in the abdomen and he said while it would be speculation, the fact Mr. Kakish had a cardiac arrest in the emergency department and was resuscitated could lead to the possibility he suffered a delayed bleed or a more serious bleed following that resuscitation. In effect, possible damage to the spleen may have got worse after CPR. He was very clear this was a speculative possibility to explain the differences between the initial normal abdominal examination and the second abdominal examination that noted changes.

[284] Dr. Yaffe was asked if the rib fracture could lead to the tear of the spleen. He answered it is possible but he did not think so as the rib fracture was only a minimally displaced 1 to 2 mm fracture and he thought it would be less likely the cause of the tear.

[285] He agreed if there was substantial internal bleeding there would more likely be a change in blood pressure and pulse rate and they would not likely be normal if there was substantial internal bleeding.

[286] Dr. Yaffe was asked about the post-surgical pathology report for the removed spleen which noted three different lacerations. He testified that two may have been small as they were not noticed during the surgical procedure. It was the largest laceration that was noticed during the surgical procedure.

[287] Dr. Blouw managed Mr. Kakish's care after the surgery when he was transferred from the surgical ICU to the medical ICU. Mr. Kakish required invasive life support intervention to keep him alive after surgery. He suffered a severe brain injury resulting in a severely reduced level of consciousness. He could not breath or protect himself from aspirating without help from life support equipment.

[288] During Mr. Kakish's time in the ICU, there were observations and tests which suggested serious brain damage. Mr. Kakish was experiencing seizure activity while in ICU. The seizures were reviewed in the context of Mr. Kakish having a prolonged period without pulse and inadequate blood supply to the brain.

[289] The medical records indicated Mr. Kakish was without adequate blood flow in the range of 14 minutes. The lack of oxygen to the brain for this length of time along with the abnormal brain activity in the days following the surgery led to the belief there was severe brain injury. The very difficult decision was made in consultation with the family to remove Mr. Kakish from the life supporting equipment. Mr. Kakish passed away on August 13, 2017, at HSC.

[290] Dr. Younes conducted the autopsy on August 16, 2017. He reached the conclusion that Mr. Kakish's death was due to complications of hypovolemic shock, due to or a consequence of laceration of the spleen due to blunt trauma to the torso. This conclusion is consistent with the evidence heard at the Inquest and I accept Dr. Younes' opinion on the cause of death.

III. SUBMISSIONS

[291] After the conclusion of the hearing counsel provided written submissions with proposed recommendations for the Court's consideration.

[292] Counsel for Corrections submitted that the former language of s. 33(1) of *The Fatality Inquiries Act* allowed the Inquest Judge to make recommendations if "such changes would serve to reduce the likelihood of deaths in similar circumstances", compared to the current version which permits recommendations "to prevent deaths in similar circumstances".

[293] Counsel for Corrections submits the change of wording from "reduce the likelihood" to "prevent" is a substantive change. They submit, that any recommendations must be more than merely helpful or incidentally reduce the likelihood of death but rather must focus on the prevention of death.

[294] I refer to and agree with Pullan J. in *An Inquest into the Death of Errol Green*, (June 26, 2019) at paragraph:

> 587. The change in recommendation obligation from "reduce the likelihood of deaths in circumstances similar to those that resulted in the death" to "prevent deaths in

> similar circumstances", I find, has not meaningfully changed the focus and obligation of the Inquest Judge.
>
> 588. The newer wording is clearer, and more succinct. A review of the legislation as a whole, including section 26.2(1) of the *FIA*, confirms the well understood and clear role of an Inquest Judge - to determine the events leading up to the death, the cause, manner, and circumstances of the death, and make recommendations to prevent deaths in similar circumstances. Although other areas of concern may come to light as a result of the evidence, the recommendation obligation and power flows directly from the authority given and directed by *The Fatality Inquiries Act* itself, together with judicial decisions interpreting that power. It is clear there must be a nexus, in recommendations made pursuant to section 33(1.1) of the *FIA*, between the prevention of deaths in similar circumstances and the recommendation. The Fatality Inquiries Act does not permit recommendations beyond that authority.

[295] In *An Inquest into the Death of Craig Vincent McDougall* (May 9, 2017), Judge Krahn A.C.J. commented as follows:

> [259] I recognize that there is a need for an Inquest Judge to carefully monitor the scope of the Inquest and the recommendations that arise from the circumstances of death so that it does not become a roving inquiry into matters of general public concern. But at the same time, there must be sufficient jurisdiction to meaningfully deal with all of the circumstances surrounding the death to "check public imagination" to ensure that government policies are developed that respect human life. This is a context specific inquiry into those matters which are implicated in the death before the Court. (At para. 259)

[296] The recommendations in this report are intended to prevent deaths in similar circumstances and address issues which arose out of the material circumstances of the death.

[297] I am unable to, and precluded from, making recommendations unrelated to the death, and on matters for which insufficient evidence was heard at the Inquest.

IV. RECOMMENDATIONS

[298] I thank counsel for their thoughtful reflection and thoroughness in suggesting recommendations for the Court's consideration. Whether or not they were adopted or integrated in the Court's recommendations, each of the suggestions together with the submissions of all parties were extremely helpful in reaching the conclusions in this report.

[299] It is intended that the recommendations made as a consequence of this Inquest into the death of Richard Kakish will prevent deaths in similar circumstances. It is

further intended that the recommendations are sufficiently practical to be capable of implementing.

Summary of Evidence in Support of Recommendations

[300] In the course of the Inquest, it became apparent there is room for improvement in the area of communication and access to information relating to injuries and the resulting physical/health care condition of persons in custody or detained.

[301] It may be difficult or impossible for the witnesses to articulate precisely how or what different actions or steps they may have taken in the care of Mr. Kakish had they known certain information about his injuries. However, as suggestions were made to them in the course of the Inquest, the medical witnesses from SOGH and WRC agreed they would have or may have taken some additional steps and investigated different questions, in the course of dealing with Mr. Kakish.

[302] It is difficult in hindsight to know whether the additional information would have assisted the medical personnel to come to a different interpretation and understanding of Mr. Kakish's behaviour, his complaints and changes in physical appearance. Therefore, it is difficult to know whether that would have assisted in coming to an earlier awareness of the more serious problem or an earlier or more specifically focused medical intervention.

[303] While it is difficult to say with certainty whether better communication would have changed the final outcome for Mr. Kakish because of the fact his condition deteriorated so rapidly, I am satisfied that improved communication in similar situations could prevent deaths in the future.

WPS Documentation and Sharing of Information

[304] There was no dispute that use of force during the arrest of Mr. Kakish resulted in the need for medical care. Evidence regarding the force used came from a number of WPS officers and an interview done by the IIU of a civilian witness, who overheard but did not see, the police arrest Mr. Kakish.

[305] The injuries or use of force were documented by WPS in a Prisoner Log Sheet and a Use of Force Report a well as a Prisoner Injury Report. There were differences in how the incident was described and recorded in each of these documents.

[306] The Prisoner Log Sheet was passed from the arresting officers, to the Acting Patrol Sergeant viewing Mr. Kakish into the station, to the officers escorting Mr. Kakish to hospital, to the CPU and ultimately to the admissions unit at the WRC where it was entered into the COMS file and kept separate from the medical file.

[307] The Prisoner Log Sheet was the only document that followed Mr. Kakish from WPS and it did not contain all available information heard in the Inquest about Mr. Kakish's injuries or the use of force. The Prisoner Log Sheet was not provided to SOGH medical staff or WRC medical staff.

[308] No information from the WPS was provided to the hospital, although an interview note included in evidence of the triage nurse suggested one of the officers shook his head in the negative responding to Mr. Kakish's comment that he was knocked out. That officer did not recall or believe he gave that information to the nurse.

[309] There appears to be no practice in place with the WPS, to collect or encourage the gathering of information from those involved, those who witnessed, or those in receipt of information or from the person in custody, where there is a use of force or injury to that person; for the purpose of passing it on to those providing health care or to the WRC.

[310] This would include information provided or known with respect to the use of force, how and what injuries were sustained, any information given that may be relevant to medical attention or care while in custody including suspected use or disclosure about use of drugs or alcohol or other intoxicants, that may impact medical care.

[311] Given the evidence before me, this is an area where practice and policy need to be reviewed and developed. There should be a method for collecting and conveying the details of how an injury occurred to a person in custody, what the mechanism of force was that caused the injury and if possible, the area on the body impacted by the use of force and the details of injuries sustained.

[312] This information should include details readily or reasonably capable of being gathered from the person in police custody as well as from officers present, and involved or officers who witnessed or received information about the use of force or the injury, including any knowledge or disclosure made about use of substances that may be important for care or medical attention of the person in custody.

[313] It is therefore recommended,

> 1. *WPS develop policy on gathering available or reasonably obtainable information from officers who were involved, who witnessed, who have knowledge or received information about a police use of force and the injuries to the person in custody and for the sharing of that information with health care providers and the WRC if detained.*

Gathering and Communication of Information by SOGH

[314] WPS provided no information to SOGH about any injuries sustained or any force used by WPS in the arrest of Mr. Kakish, other than the triage nurse's note of the officer's negative head shake in response to one of Mr. Kakish's comments. The medical personnel all relied on Mr. Kakish to provide information on his medical condition throughout his dealings at the hospital.

[315] The physician assistant and the attending physician at SOGH testified it was not uncommon for a patient's story to change from triage to treatment, whether intentionally or unintentionally, depending on the circumstances in which the patient finds themselves at the time they provide the information.

[316] Recommendations in this area are informed by the context in which Mr. Kakish presented to hospital. He was in police custody alleging an assault by them, he may have used methamphetamine at some time prior to the attendance and his presentation and demeanour are relevant in considering the reliability and accuracy of the history he provided. In fact, Mr. Kakish did not report the full extent of the force used or the area of the body impacted.

[317] Given medical personnel at the Inquest agreed information from police would have assisted in the treatment of Mr. Kakish, it is noted that none of them asked the officers transporting Mr. Kakish for any information in relation to why Mr. Kakish presented for medical treatment or the circumstances of his injuries.

[318] Mr. Duthie, physician assistant, agreed that information from police may have assisted the direction of his examination of Mr. Kakish and may have led to further investigations. He gave examples of how further information may have led to bloodwork or if he had known there was a punch to the stomach he may have focused more attention to the abdominal examination.

[319] Dr. Gourlay, attending physician, agreed in general that it would be helpful to receive information from police, but that may be more beneficial if the patient was not able to provide the history himself. In the Inquest, we heard Mr. Kakish did not provide a full or complete history himself.

[320] Mr. Duthie explained that discharge instructions that are considered common, are not written out or recorded. They are given verbally as they were to Mr. Kakish. Dr. Gourlay said only abnormal or uncommon discharge instructions are documented.

[321] The discharge instructions were not disclosed or known to WPS and they were not forwarded by SOGH or WPS to WRC. The hospital provided WPS with a form entitled Illness/Injury Report confirming Mr. Kakish was medically cleared for discharge from hospital. No other information was included on that form or provided by SOGH to WPS or WRC. Mr. Duthie and others referred to patient privacy and their obligation to comply with limitations on sharing of personal health information under PHIA and FIPPA.

[322] Dr. Gourlay and Mr. Duthie did not observe the rib fracture on their review of the X-ray taken while at SOGH. The morning after Mr. Kakish's release from hospital, the radiologist, Dr. Meyers, reviewed the X-ray and noted a minimally displaced fracture to the left tenth rib. His report was included in the e-Chart system the same morning. It was not clear if the emergency department became aware of the radiologist's report. Dr. Meyers' finding of the rib fracture was not communicated to Mr. Kakish.

[323] Dr. Meyers testified the type of rib fracture identified did not require any further or follow up medical care. The witnesses involved in providing medical care to Mr. Kakish all testified that the type of rib fracture itself would not have changed the treatment provided or recommended.

[324] Mr. Duthie did say he would have given a further discharge instruction relating to regular deep coughing. He would have considered bloodwork and more scans if he had known about the fracture, but Mr. Kakish would have been discharged with the same instructions.

[325] Dr. Gourlay testified no further tests would be indicated even if he had known of the rib fracture. Dr. Gourlay said had he known of the fracture he would have

attempted to relay the updated information to Mr. Kakish, but there would not be any changes to his treatment.

[326] The doctors at SOGH and at HSC as well as the three WRC nurses, all testified had they known of the fractured rib it would not have changed the medical treatment for Mr. Kakish. All confirmed there is no medical treatment for a fractured rib other than management of pain.

[327] In general, medical personnel including from SOGH and WRC, agreed that knowing the type of physical force used and where the impact was on the body, may have assisted decisions on other course of treatment. They agreed this information may have assisted in determination of the cause of Mr. Kakish's accelerated decline during his last hours at WRC; and would assist in ruling out such theories as drug ingestion or overdose, or head injury/brain hemorrhage versus abdominal injury/internal bleeding and in ruling out unnecessary treatments such as the administration of Narcan.

[328] Counsel for WRHA, SOGH and Shared Health Inc. informed the Court of a current project underway for upgrading the e-Chart system to add emergency department discharge summaries to e-Chart. The expected completion date for the project is summer 2021. WRHA, SOGH and Shared Health Inc. endorse a recommendation in relation to this upgrade.

[329] Counsel provided information on the availability and circumstances in which health care information can be requested and shared between health care providers without the consent of the individual. (s.22(2) PHIA and WRHA Disclosure Policy)

[330] In this case, medical personnel did not ask or use the WPS as a source of information gathering in relation to the injuries or the health care concerns and WPS did not have or offer any information on their own initiative.

[331] Based on the evidence, knowing health care providers would find it helpful to have information from the WPS to assist in the care and treatment planning; a policy not only for WPS to provide information, but also for the hospital personnel to be proactive in seeking information from police, is an area for improvement.

[332] It is therefore recommended,

> *2. The WPS and WRHA/SOGH/Shared Health Inc., work to develop policy on how such information referred to in recommendation number 1 will be shared, collected and recorded.*
>
> *3. That Shared Health Inc. and WRHA take steps to ensure that emergency department summaries and discharge instructions from Winnipeg hospitals are included on e-Chart to allow the WRC to have timely access in respect to individuals in police custody then detained at WRC.*

WRC Documentation and Sharing of Information

[333] When Mr. Kakish arrived at WRC admissions department there was no nurse on duty. Admissions received the WPS Prisoner Log Sheet and the SOGH Injury/Illness form from the WPS officers. No other information on Mr. Kakish's injuries or condition was provided to WRC staff by WPS or SOGH.

[334] Audio and video of Mr. Kakish in the admissions unit showed he was in pain, he was bent over holding his left side and he gave information about his injuries and the source of pain.

[335] The Inquest heard about the WRC Standing Order, Documenting Injuries on New Arrivals. The policy sets out requirements to record detail of the injuries and comments. In this case, almost none were included on Mr. Kakish's Medical Checklist, other than "sore ribs". It appears the policy for the Medical Checklist was not followed completely.

[336] It was also noted the form had insufficient room to record detail on injuries or comments/disclosures made by Mr. Kakish during the time of admission, as later seen and heard on the admissions video surveillance footage.

[337] As a result, there was incomplete information forwarded to the medical unit for the nurse next on duty and responsible for completing the Health Care Assessment of Mr. Kakish.

[338] Mr. Pitman, Associate Director of Operations for Corrections Manitoba, conducted an incident review of the circumstances of Mr. Kakish's death. His report included in Exhibit 1, notes an area of deficiency in training; "There is evidence of

deficiency related to the process in documenting/managing inmate/police related assault disclosures."

[339] Mr. Pitman also recommends "A review of WRC Standing Order, Documenting Injuries On New Arrivals. In relation to this incident, managing documentation and reporting lines of inmate disclosures" and "A review of Health Care Assessment form Appendix A. The HCA does not address how injuries may have been obtained."

[340] This is an area for review and improvement in training and compliance with policy and review of the forms used, in order to facilitate the gathering, recording and communication of information on injuries and disclosures, regardless of whether there is a medical clearance form from hospital. I agree with the recommendations made by Mr. Pitman.

[341] It is therefore recommended,

> *4. WRC review and improve the WRC Standing Order, Documenting Injuries on New Arrivals, with a view to improving the space, manner and training for recording the details of injuries from the person, from anyone escorting them, and of the observations or disclosures of physical symptoms and the communication of this information to the medical unit or incoming nurse responsible for completing the Health Care Assessment form.*

[342] Mr. Kakish's admission was questioned by a corrections officer who escorted him to the medical unit. Upon learning there was a medical clearance note, the officer was satisfied. Mr. Kakish was next brought to the attention of nursing staff during his first afternoon at WRC when a corrections officer noticed his skin colour, spoke to him then took him from the main floor to the medical unit to see the nurse, Ms. Koscian.

[343] A second contact was made with nursing staff after corrections officers brought Mr. Kakish to the medical unit on his second afternoon to have vital signs taken by a nurse, Ms. Mueller. The results of the vital signs were not recorded in the medical chart at the time they were taken as she did not or could not locate his medical chart.

[344] There was no information available on who, where or why the request was made for Mr. Kakish to see a nurse for vital signs at the time Ms. Mueller saw him. Ms. Mueller was unaware of any medical information on Mr. Kakish at the time.

[345] There was a note in the medical file that Mr. Kakish had refused to see the doctor at some time that day, but it was not clear who referred him or if he had requested to see the doctor. The circumstances of the refusal to see the doctor and any follow up on his refusal were unknown.

[346] It is therefore recommended,

> *5. WRC review and develop a practice for dealing with and documenting the situation where an inmate refuses to see the doctor after referral, to improve communication of potentially relevant health care information.*

[347] The third time Mr. Kakish saw a nurse, Mr. Bardarson, was at the request of corrections officers. Mr. Bardarson was asked to attend the cell after officers spoke to Mr. Kakish and noticed concern with his physical condition. This was shortly after Ms. Mueller saw Mr. Kakish in the medical unit to take vital signs. Neither of these contacts were known to the other nurse at the time and neither spoke to the other.

[348] The final contact with the nurses was after corrections officers were sent to the cell as a result of concerns observed on the CCTV from Mr. Kakish's cell. Mr. Kakish collapsed while approaching the corrections officers at the door to his cell and was then walked to the medical unit where his condition quickly deteriorated and led to WFPS arrival and transport to HSC.

[349] I was given the Corrections policy on Nursing Documentation which incorporates by reference, the College of Registered Nurses of Manitoba Documentation and Guidelines for Registered Nurses.

[350] It was clear from the evidence, there was an issue with the medical chart availability and recording of notes in the medical chart. There is room for improvement in the area of collection, recording and sharing of health information between the WRC medical personnel and within the medical chart, and to ensure access and availability of the medical chart.

[351] There was evidence about a form called Major Medical Problems List which is located on the inside folder of the medical chart. The form was not properly completed in this case. It is designed to be a quick, easy access, reference for

information of importance. If used properly, this form may have been a helpful resource to give to the WFPS team as a referral rather than relying on a verbal exchange or delay to provide a written referral, which was not done in this case.

[352] It is therefore recommended,

> *6. WRC review and improve the policy and practice of documenting and sharing health care information between the WRC medical personnel and the medical record to ensure proper compliance and training is in place. This would include review of the Health Care Assessment form to include an area for documenting injuries from inmate/police assault interactions, and a review of the purpose and proper use of the Major Medical Problems document.*
>
> *7. WRC review and improve availability and access to the medical chart by medical personnel. It is encouraged the review consider an electronic format for the health records for improving mobile access to the medical chart by medical personnel, throughout the WRC.*

[353] The corrections policy in place allows for new arrivals not yet seen by a nurse, to be seen no later than 24 hours after admission. However, there was some uncertainty on how the nursing staff become aware of a new arrival in need of assessment. Mr. Kakish was seen by a nurse within the 24 hour time frame when Ms. Griffith escorted him to the nurse. I make no formal recommendation in this area but suggest a review to determine if there is room for improvement in how the nurses become aware of a new admission requiring a nurse assessment.

[354] There was evidence of nursing staffing shortages and challenges with completing multiple competing duties and tasks in 2017 with several occasions that a nursing shortage resulted in unavailability to complete the intake health care assessments for new arrivals.

[355] I was advised that subsequent to the *Green Inquest Report* in 2019, a review of the nursing and staffing requirements in the medical unit was done by the Director of Health Services in consultation with the Executive Director of Custody. I was advised changes implemented since 2017 include the addition of 1.5 nursing positions as well as a nurse supervisor position for the medical unit at WRC.

[356] I was provided information that recruitment and retention are an ongoing factor but the situation is regularly reviewed and a Strategic Plan is in place for regular review which has streamlined the hiring process. The nurses appearing at the Inquest were of the view these changes have brought needed improvement to the WRC medical unit, so long as there are no shortages in the available nurses.

[357] I encourage continuation of regular review and improvement to the recruitment and retention of nursing staff to ensure proper management of resources are maintained by the medical unit at WRC. I make no recommendation in this area.

[358] I was advised all WRC nurses have e-Chart access now so no recommendation is required, except insofar as will be necessary to update the policy and practice in accessing discharge summaries once they are available and included in e-Chart.

[359] It is therefore recommended,

> *8. WRC review and update policy on accessing e-Chart to obtain the discharge summaries from health care providers who assessed the person prior to admission to WRC.*

[360] There was a belief on the part of at least one of the nurses that a consent form was required to obtain health information from another provider when required to provide health services. This appears contrary to the provisions of the PHIA, the requirements of which the nurses are trained on and with which they should be familiar. I make no recommendation on this area, but suggest the PHIA requirements for obtaining health care information without consent be brought to the attention of and reviewed with all current and future nursing staff.

[361] There was discussion before me on whether improved training or further medical training ought to be in place for corrections officers working on the medical unit. I was provided the policy and process outlined in the Standing Order 50.10 Medical Observations, prepared June 2020.

[362] The only suggestion is to review the "observations listing" in the Standing Order, to determine if it could be improved by adding skin colour changes to the list, keeping in mind Mr. Kakish's skin colour triggered several corrections officers to seek attention for him. The Inquest evidence identified skin colour as a potential medical consideration depending on other factors.

[363] The corrections officers in this case appear to have made several astute observations which were referred to nursing staff for follow up. The evidence does not support any need for recommendations in the area of training for corrections officers making observations.

Other Areas Considered

[364] Counsel on behalf of the family made submissions in relation to police body cameras and continuous video recording. After careful consideration, the position articulated does not address prevention of deaths in similar circumstances. Therefore, I make no recommendations in this area given the evidence heard on the Inquest.

[365] Mr. Kakish was told he had no rib fractures as a result of the incorrect interpretation of the X-ray by the attending physician. In fact, the radiologist later confirmed the X-ray showed a mildly displaced rib fracture but Mr. Kakish was never made aware of the fracture. According to the evidence, the type of rib fracture described would almost certainly not have caused the laceration to the spleen which ultimately caused the internal bleeding suffered by Mr. Kakish that led to his death. Therefore, I make no recommendation in this area.

List of Recommendations

1. *WPS develop policy on gathering available or reasonably obtainable information from officers who were involved, who witnessed, who have knowledge or received information about a police use of force and the injuries to the person in custody and for the sharing of that information with health care providers and the WRC if detained.*

2. *That WPS and WRHA/SOGH/Shared Health Inc., work to develop policy on how such information referred to in recommendation number 1 will be shared, collected, and recorded.*

3. *That Shared Health Inc. and WRHA take steps to ensure that emergency department summaries and discharge instructions from Winnipeg hospitals are included on e-Chart to allow the WRC to have timely access in respect to individuals in police custody then detained at WRC.*

4. *WRC review and improve the WRC Standing Order, Documenting Injuries On New Arrivals with a view to improving the space, manner and training for recording the details of injuries from the person, from anyone escorting them, and of the observations or disclosures of physical symptoms and the communication of this information to the medical unit or incoming nurse responsible for completing the Health Care Assessment form.*

5. *WRC review and develop a practice for dealing with and documenting the situation where an inmate refuses to see the doctor after referral, to improve communication of potentially relevant health care information.*

6. *WRC review and improve the policy and practice of documenting and sharing health care information between the WRC medical personnel and the medical record to ensure proper compliance and training is in place. This would include review of the Health Care Assessment form to include an area for documenting injuries from inmate/police assault interactions, and a review of the purpose and proper use of the Major Medical Problems document.*

7. *WRC review and improve availability and access to the medical chart by medical personnel. It is encouraged the review consider an electronic format for the health records for improving mobile access to the medical chart by medical personnel, throughout the WRC.*

8. *WRC review and update policy on accessing e-Chart to obtain the discharge summaries from health care providers who assessed the person prior to admission to WRC.*

V. FINAL NOTES

[366] The management of the proceedings in the Inquest into the death of Richard Kakish, gave rise to some unique challenges given it was heard during the COVID-19 pandemic restrictions. Everyone involved in these proceedings, including the parties, counsel, the witnesses, the clerks, the sheriffs and facilities coordinators contributed, in significant fashion, to keeping this Inquest running

safely and smoothly and in assisting me in producing a report that is intended to achieve the goals of *The Fatality Inquiries Act*.

[367] I thank the number of individuals involved with arranging for a venue that was excellent to allow the number of people involved to participate, and the need to comply with the health requirements to keep everyone safe. I know this was accomplished with a lot of hard work and dedication by court facilities, sheriffs and the facility, all were excellent.

[368] Richard Kakish was a son, a brother and a father, and his untimely death is a significant loss to those who loved him. I sincerely hope that the recommendations contained in this report will serve to prevent deaths in similar circumstances.

I respectfully conclude and submit this Report on this 6th day of July 2021, at the City of Winnipeg, in the Province of Manitoba.

"Original signed by:"
Judge Wanda Garreck
Provincial Court of Manitoba

Manitoba

THE FATALITY INQUIRIES ACT
REPORT BY PROVINCIAL JUDGE ON INQUEST

RESPECTING THE DEATH OF: RICHARD KAKISH

WITNESS LIST

Winnipeg Police Department Officers
Cst. Holowka
Cst. Ross
Cst. Kuklik
Cst Collins
Cst. Peters

Seven Oaks General Hospital
Tim Duthie
Dr. Gourlay
Dr. Meyers

Winnipeg Remand Centre Corrections Officers
Christopher Pitman
Justin Allen
Mark Cruz
Kelly Happychuck
Cary Hawkins
Ashlee Griffin
Michelle Sobering

Winnipeg Remand Centre Medical Unit
Chris Bardarson
Allyson Mueller
Malgorzata Koscian

Health Sciences Centre
Dr. Yaffe
Dr. Blouw

Family of Richard Kakish
Angela Wall

Manitoba

THE FATALITY INQUIRIES ACT
REPORT BY PROVINCIAL JUDGE ON INQUEST

RESPECTING THE DEATH OF: RICHARD KAKISH

EXHIBIT LIST

Exhibit No.	Description	Note
1	USB (Sealed)	Table of Contents for Exhibit 1 (unsealed) - Marked as Appendix 1 to this Exhibit List Orders dated May 28, 2019 and July 3, 2019 (unsealed) - Marked as Appendix 2 to this Exhibit List Paragraph 6 allows for Public access to the content of Exhibit 1, on Application to the Court.

Appendix 1

EXHIBIT 1 OF THE INQUEST of RICHARD KAKISH
TABLE OF CONTENTS

Appendix 2

THE PROVINCIAL COURT OF MANITOBA
WINNIPEG CENTRE

IN THE MATTER OF:	***The Fatality Inquiries Act***
AND IN THE MATTER OF:	**Richard Kakish, Deceased**
AND IN THE MATTER OF:	**An Application by Inquest Counsel for an Order for Disclosure of Third Party Records and Information**

CONSENT ORDER

Georgia Couturier
Inquest Counsel

Manitoba Justice
Prosecutions Division
510 – 5th Floor, 405 Broadway
Winnipeg, Manitoba, R3C 3L6
Phone No. 945-2852; Fax No. 945-1260

THE PROVINCIAL COURT OF MANITOBA
WINNIPEG CENTRE

THE HONOURABLE)
) The 28 day of May, 2019
JUDGE W. GARRICK)

IN THE MATTER OF: ***The Fatality Inquiries Act***

AND IN THE MATTER OF: **Richard Kakish, Deceased**

AND IN THE MATTER OF: **An Application by Inquest Counsel for an Order for Disclosure of Records and Information**

CONSENT ORDER

ON GRANTING standing to The Winnipeg Police Service as represented by Kimberly Carswell; the Winnipeg Regional Health Authority, Shared Health Inc., and the Seven Oaks General Hospital as represented by Daniel Ryall; Manitoba Justice - Community Safety division as represented by Sean Boyd and Jim Koch; and the family of Richard Kakish as represented by Noah Globerman (collectively the "Parties with Standing"); and

WITH THE CONSENT of Inquest Counsel and counsel for the Parties with Standing:

THIS COURT ORDERS, pursuant to *The Manitoba Evidence Act*, C.C.S.M. c. E150, *The Fatality Inquiries Act*, C.C.S.M. c. F52, *The Freedom of Information and Protection of Privacy Act* C.C.S.M. c. F175, *The Personal Health Information Act*, C.C.S.M. c. P144 and *The Regional Health Authorities Act*, C.C.S.M. c. R34;

1. That the Parties with Standing shall produce to the Court a copy of all records in their possession relating to the material circumstances of the death of Richard Kakish, including, for greater certainty, any records, documents, reports or policies that relate to the care, treatment and detention of Richard Kakish, for distribution to Inquest Counsel and each of the Parties with Standing, subject to any statutory or common law claim of privilege that may be applicable;

2. That any parties who may in the future be granted standing but who are not represented by counsel (the "Unrepresented Parties") shall have access to the said records at the office of Georgia Couturier, Inquest Counsel, as follows:

   a) said Unrepresented Parties seeking access shall arrange with Inquest Counsel mutually convenient times for such access;

   b) said Unrepresented Parties may review the records and make notes but shall not remove or make copies of the records from Inquest Counsel's office; and

   c) Inquest Counsel shall arrange for the records to be made available to the said Unrepresented Parties for use in the courtroom while the Inquest is in session.

3. That the copies of the records so produced under this Order not be utilized for any purpose other than these proceedings;

4. That upon completion of these proceedings, the copies of the records so produced under this Order shall be returned to the applicable party or destroyed by counsel;

5. That no dissemination to the public be made of the copies of the said records produced under this Order;

6. That any copies of said records so produced under this Order that are filed in these proceedings be sealed, and may only be made available to members of the public upon application to the Court, with notice to Inquest Counsel and the Parties with Standing;

7. That paragraphs 3, 4, 5 and 6 of this Order apply, with such modifications as are necessary, to records so produced under this Order that are tendered and admitted as evidence to these proceedings;

8. That a copy of this Order be served upon counsel for the Parties with Standing by way of facsimile transmission.

9. Nothing in this Order precludes any party to this proceeding from using knowledge or information acquired in this proceeding from obtaining, or applying for production of, documents for use in any other proceeding.

Date: May 28/19

HER HONOUR WANDA GARRICK

JUDGE WANDA GARRECK

APPROVED AS TO FORM AND CONTENT BY:

Georgia Couturier, Manitoba Justice
Counsel to the Inquest

APPROVED AS TO FORM AND CONTENT BY:

Kimberly D. Carswell
Counsel for the Winnipeg Police Service

Daniel Ryall
Counsel for the Winnipeg Regional Health Authority,
Shared Health Inc. and Seven Oaks General Hospital

Sean Boyd
Counsel for Manitoba Justice - Community Safety Division

Noah Globerman
Counsel for the family of Richard Kakish

THE PROVINCIAL COURT OF MANITOBA
WINNIPEG CENTRE

IN THE MATTER OF:	***The Fatality Inquiries Act***
AND IN THE MATTER OF:	**Richard Kakish, Deceased**
AND IN THE MATTER OF:	**An Application by Inquest Counsel for an Order for Disclosure of Third Party Records and Information**

CONSENT ORDER

Georgia Couturier
Inquest Counsel

Manitoba Justice
Prosecutions Division
510 – 5th Floor, 405 Broadway
Winnipeg, Manitoba, R3C 3L6
Phone No. 945-2852; Fax No. 945-1260

THE PROVINCIAL COURT OF MANITOBA
WINNIPEG CENTRE

THE HONOURABLE)
) The 3 day of July, 2019
JUDGE W. GARRICK)

IN THE MATTER OF:	***The Fatality Inquiries Act***
AND IN THE MATTER OF:	**Richard Kakish, Deceased**
AND IN THE MATTER OF:	**An Application by Inquest Counsel for an Order for Disclosure of Third Party Records and Information**

CONSENT ORDER

ON GRANTING standing at the Inquest to the Winnipeg Police Service as represented by Kimberly Carswell; the Winnipeg Regional Health Authority, Shared Health Inc., and the Seven Oaks General Hospital as represented by Daniel Ryall; Manitoba Justice - Community Safety Division as represented by Sean Boyd and Jim Koch; and the family of Richard Kakish as represented by Noah Globerman (collectively the "Parties with Standing"); and

WITH THE CONSENT of Inquest Counsel and counsel for the Parties with Standing; and

WITH THE CONSENT of counsel for the Independent Investigation Unit (Department of Justice, Government of Manitoba):

THIS COURT ORDERS, pursuant to *The Manitoba Evidence Act*, C.C.S.M. c. E150, *The Fatality Inquiries Act*, C.C.S.M. c. F52, *The Freedom of Information and Protection of Privacy Act* C.C.S.M. c. F175;

1. That the Independent Investigation Unit shall produce to the Court a copy of all records in their possession relating to the material circumstances of the death of Richard Kakish, including, for greater certainty, any records or reports that relate to Richard Kakish, for distribution to each of the Parties with Standing, subject to any statutory or common law claim of privilege that may be applicable;

2. That notwithstanding that the hearing for standing was heard on March 22, 2019, any party who may in the future be granted standing but who are not represented by counsel (the "Unrepresented Parties") shall have access to the said records at the office of Georgia Couturier, Inquest Counsel, as follows:

   a) said Unrepresented Parties seeking access shall arrange with Inquest Counsel mutually convenient times for such access;

   b) said Unrepresented Parties may review the records and make notes but shall not remove or make copies of the records from Inquest Counsel's office; and

   c) Inquest Counsel shall arrange for the records to be made available to the said Unrepresented Parties for use in the courtroom while the Inquest is in session.

3. That the copies of the records so produced under this Order not be utilized for any purpose other than these proceedings;

4. That upon completion of these proceedings, the copies of the records so produced under this Order shall be returned to the applicable party or destroyed by counsel;

5. That no dissemination to the public be made of the copies of the said records produced under this Order;

6. That any copies of said records so produced under this Order that are filed in these proceedings be sealed, and may only be made available to members of the public upon application to the Court, with notice to the Parties with Standing;

7. That paragraphs 3, 4, 5 and 6 of this Order apply, with such modifications as are necessary, to records so produced under this Order that are tendered and admitted as evidence to these proceedings;

8. That a copy of this Order be served upon counsel for the Parties with Standing and counsel for the Independent Investigation Unit by way of facsimile transmission.

9. Nothing in this Order precludes any party to this proceeding from using knowledge or information acquired in this proceeding from obtaining, or applying for production of, documents for use in any other proceeding.

Date: July 3 '19

HER HONOUR WANDA GARRECK

JUDGE WANDA GARRECK

APPROVED AS TO FORM AND CONTENT BY:

Georgia Couturier, Manitoba Justice
Counsel to the Inquest

APPROVED AS TO FORM AND CONTENT BY:

Kimberly D. Carswell
Counsel for the Winnipeg Police Service

Daniel Ryall
Counsel for the Winnipeg Regional Health Authority,
Shared Health Inc. and Seven Oaks General Hospital

Sean Boyd
Counsel for Manitoba Justice - Community Safety Division

Noah Globerman
Counsel for the family of Richard Kakish

APPROVED AS TO FORM AND CONTENT BY:

Eli Goldenberg
Counsel for the Independent Investigation Unit,
Department of Justice, Government of Manitoba