COMMISSION FOR PUBLIC COMPLAINTS AGAINST THE RCMP

CHAIR'S FINAL REPORT AFTER COMMISSIONER'S NOTICE

RCMP Act
Subsection 45.46(3)

Complainant:

Chair of the Commission for Public Complaints Against the RCMP

November 28, 2007

File No.: PC-2006-1532

CHAIR'S FINAL REPORT AFTER COMMISSIONER'S NOTICE

This is the Final Report that I have prepared pursuant to subsection 45.46(3) of the *RCMP* Act (the Act) in response to the RCMP's disposition of my Chair-initiated complaint into the circumstances leading to the death of Mr. Ian Bush.

Mr. Bush was fatally shot by Constable Paul Koester on October 29, 2005 in Houston, British Columbia. Constable Koester was in the process of releasing Mr. Bush from custody at the RCMP detachment after he had been arrested for obstruction for giving Constable Koester a false name. Constable Koester had initially detained Mr. Bush for having open liquor during the intermission at a local hockey game.

I considered the circumstances surrounding Mr. Bush's arrest and subsequent death in my Interim Report dated August 30, 2007 (attached as **Schedule 1**). The two main allegations under review were whether Constable Koester was justified in using lethal force and whether the RCMP conducted an adequate and timely investigation into the circumstances.

After carefully considering the circumstances, I concluded that Constable Koester had a reasonable apprehension of death and believed that he could not otherwise preserve himself from death other than to use lethal force. Accordingly, Constable Koester acted in self-defence. In addition, given Constable Koester had tried lesser forms of intervention that were not successful, Constable Koester was authorized under the RCMP's use of force policy to use lethal force.

Mr. Bush's death was investigated by the RCMP's "E" Division North District Major Crime Unit based in Prince George, British Columbia. After carefully considering the details of the investigation, I concluded that the North District Major Crime Unit conducted a highly professional investigation into Mr. Bush's death and exemplified the best practices for major crime investigations. In addition, the investigation into Mr. Bush's death was conducted in a timely manner and free from any manner of conflict of interest, bias or partiality.

It should be noted that although the Commission's primary function is to review RCMP members' conduct to determine whether or not the conduct was proper, the Commission must also assess whether or not any remedial behaviour is required and whether there are any systemic issues identified that require attention from the RCMP.

In addition to my findings on the two main allegations specific to Constable Koester's use of force and the RCMP's investigation of Mr. Bush's death, I have also made a number of other findings and recommendations related to issues that arose from the circumstances of Mr. Bush's death. This was necessary because the circumstances of Mr. Bush's death raised issues that applied not only to RCMP members in Houston, British Columbia and "E" Division, but also to RCMP members on a national level.

These recommendations related to the process for successful completion of RCMP members' field training, the use of closed circuit television (CCTV) in RCMP detachments, the location for release of prisoners from a secure area in RCMP

detachments, the need for policy to be developed to guide on-scene RCMP members in situations where the police investigate the police, the need to develop policy related to RCMP members' duty to account statements and the development of a media and communications strategy specifically for police-involved shooting investigations including a publicly available general investigative outline and timeline.

A summary of my findings and recommendations can be found in Appendix E of my Interim Report dated August 30, 2007 at pages 89 to 92. Each finding and recommendation is discussed in detail in the body of the Interim Report.

The Commissioner of the RCMP reviewed my complaint in light of the findings and recommendations set out in my Interim Report. The Commissioner is required to notify the Chair of any further action that has been or will be taken with respect to the complaint and, when the Commissioner decides not to act on any of the Commission's findings or recommendations, the Commissioner must include the reasons for this decision. In a letter dated November 2, 2007, the Commissioner provided his Notice (attached as **Schedule 2**) in response to the Interim Report.

The Commissioner agreed with the majority of findings and recommendations including that RCMP policy be amended to reflect that new members who are completing their field training and who are the subject of an ongoing service investigation or a disciplinary action/sanction will not be promoted until the investigation is completed, unless exceptional circumstances exist. In the case of Constable Koester, he had been promoted from field training shortly after the incident occurred and well before the completion of the investigation.

The Commissioner agreed that Constable Koester receive operational guidance and/or refresher training regarding the need to conduct thorough searches of prisoners. Constable Koester had failed to locate a full unopened bottle of beer on Mr. Bush's person.

The Commissioner agreed that RCMP policy be developed to provide direction to on-scene RCMP members in major cases involving investigation of police conduct, i.e. situations where the police investigate the police, including the need to ensure real and perceived impartiality. In addition, the Commissioner agreed to develop policy that dictates the requirement, timeliness and use of the duty to account that RCMP members are obliged to report.

Although not raised by the Commission, the Commissioner noted that Staff Sergeant Rod Holland, the senior NCO on the scene in charge of the investigation pending the arrival of the North District Major Crime Unit failed to make adequate notes. The Commissioner advised that Staff Sergeant Holland would receive appropriate operational guidance on the importance of adequate note-taking.

The Commissioner partially agreed with the recommendation that the RCMP install automated CCTV recording equipment in every RCMP detachment in areas where prisoners are dealt with and released. While the Commissioner agreed that this "would be desirable", he was "not convinced that it is absolutely necessary." The Commissioner

noted that the Solicitor General of British Columbia "directed that all police agencies in the province install CCVE (Closed Circuit Video Equipment) in their cellblocks" and advised that the RCMP's "E" Division is part of a working group to meet this target by the fall of 2008. In regards to the rest of Canada, the Commissioner noted that "funding and cost-benefit analyses will be determining factors elsewhere."

I disagree with the Commissioner that CCTV in RCMP detachments where prisoners are dealt with and released is desirable but not absolutely necessary. Given the issues of public perception about the police investigating the police and the safety concerns raised, it is my view that CCTV is necessary in such locations in RCMP detachments, particularly to enhance, maintain and promote public confidence in the accountability and impartiality of the RCMP when it investigates its own members.

I acknowledge the Commissioner's advice that it is not strictly within his power to implement this type of recommendation in all jurisdictions. I commend the Solicitor General of British Columbia for taking the action to ensure that all police cell blocks in British Columbia be equipped with CCTV. I also acknowledge that the municipalities in British Columbia, due to funding structures, must participate to meet this direction. To assist with furthering this issue, I will be sending copies of my Final Report to all solicitors general in each province and territory in Canada as well as to all municipalities and reserves that are policed by the RCMP.

The Commissioner partially agreed with a recommendation related to developing a media and communications strategy specifically for police-involved shootings that recognizes the need for regular, meaningful and timely updates to the media and to the public. The Commissioner noted that "E" Division has developed a "crisis management model to support local media relations officers in sensitive, high profile events" as well as a publicly available website "through which the public can be accurately informed in response to erroneous or sensationalised media reports." The Commissioner advised that he will assess the "feasibility of implementing a similar model Force-wide."

The latter half of the recommendation related to including a "publicly available general investigative outline of the steps to be taken and the anticipated timeline for each step." The Commissioner did not specifically address this part of the recommendation. This type of information would help educate the public about the reasons that police-involved shooting investigations typically take longer than non-police-involved shooting investigations, i.e. due to the extra level of scrutiny and accountability that police-involved shootings require. I reiterate my recommendation in this regard.

The Commissioner disagreed with my recommendation that the Houston RCMP Detachment and other RCMP detachments as required be retrofitted to incorporate a separate area within the cell block in which to deal with prisoners and from which to release them. The Commissioner noted that the Houston RCMP Detachment has a booking-in area in the cell block designed for dealing with and releasing prisoners from. While this response would be persuasive if the Houston booking-in area was used in this fashion, the evidence in this case was that prisoners at the Houston RCMP Detachment are dealt with and released primarily in the interview room, the place where Mr. Bush was shot and which would not be subject to capture on cell block CCTV.

The Commissioner also disagreed that prisoners be dealt with and released from the cell block in all RCMP detachments. The Commissioner noted that RCMP members routinely deal with and release prisoners from various locations inside and outside of RCMP detachments. My Interim Report clearly outlined (at pages 20-21) that this recommendation related to prisoners in RCMP detachments and not other locations. It did not advocate bringing all prisoners back to the RCMP detachment for release.

There is clearly a different dynamic when someone is released at the roadside versus when someone is arrested, handcuffed and transported back to an RCMP detachment. Given the inherent risks associated with dealing with prisoners and the need to enhance, maintain and promote public confidence in the RCMP as it relates to accountability and impartiality, in my view it is necessary to deal with prisoners in RCMP detachments in a secure area which has CCTV.

The Commissioner's response fails to address the fact that dealing with prisoners in a secure area in RCMP detachments which is subject to CCTV recording will help to minimize risk and enhance the integrity of investigations of RCMP conduct related to events involving prisoners in custody in RCMP detachments. Had Constable Koester dealt with Mr. Bush in the Houston RCMP Detachment cell block and had the events been recorded on videotape, this would have dramatically reduced the public outcry and negative perception about the RCMP that have stemmed from Mr. Bush's death while in RCMP custody.

The Commissioner disagreed with my finding that it was improper for Constable Woroshelo, Constable Koester's trainer, to speak with Constable Koester in private behind closed doors about the incident soon after it occurred. The Commissioner reasons that there is no indication that Constable Woroshelo was there for any reason other than to provide emotional support and that Constable Koester could not be left alone due to his emotional state. The Commissioner further reasoned that Corporal Durand, the member in charge at the scene, had a duty to ensure that Constable Koester received the emotional support that he required.

This finding about Constable Woroshelo's conduct is directly related to the issue of impartiality of the police investigating the police, an issue that is at the forefront of public concern. It was one of the main factors that necessitated my recommendation that the RCMP develop policy to provide direction to on-scene RCMP members in major cases involving investigation of police conduct, including the need to ensure real and perceived impartiality, a recommendation which the Commissioner agreed with. This issue is discussed on pages 28 and 29 of my Interim Report.

The issue is not only whether Constable Woroshelo spoke to Constable Koester for an improper purpose, which I agree that there is no evidence of, but also whether Constable Woroshelo's actions resulted in a perception of impropriety. It is not simply the fact that Constable Woroshelo spoke to Constable Koester in private that is of concern. Rather, it is the fact that he did so when he himself was directly involved in the decision to take Mr. Bush to the RCMP Detachment and to charge Mr. Bush with obstruction; a situation in which Constable Woroshelo had an obvious vested interest in the outcome.

Regardless of actual impropriety, this type of situation invites dangerous speculation about whether or not Constable Woroshelo conspired with Constable Koester in regards to what occurred. This was an unnecessary consequence that could have been avoided by utilizing one of the other four RCMP members present to console Constable Koester pending the arrival of a Victims Services worker approximately ten minutes later. This type of situation clearly results in a perceived lack of impartiality which could have seriously affected the integrity of the RCMP's investigation of Mr. Bush's death.

The Commissioner's refusal to recognize the existence of the perception of a lack of impartiality in this situation is unfortunate and fails to enhance public confidence in the ability of the police to investigate the police. This situation in particular and the circumstances relating to Mr. Bush's death in general aptly demonstrate the challenges related to public perception that the RCMP faces when investigating a fellow RCMP member. Despite the highly professional investigation that was conducted by the RCMP's "E" Division North District Major Crime Unit, there remains a public perception of possible wrongdoing.

It should be noted that the RCMP's "E" Division has taken many steps to attempt to address the issue of impartiality of police investigations. The commitment of the "E" Division to transparency and police accountability is demonstrated with the creation of the "E" Division Office of Investigative Standards and Practices and by participation in the CPC Independent Observer Pilot Project. It is further demonstrated by the level of cooperation by "E" Division with the Commission in regards to public complaints and matters involving the Independent Observer Pilot Project.

Notwithstanding the recent efforts of the RCMP's "E" Division, there remain concerns across Canada relating to the propriety of RCMP members investigating other RCMP members in cases involving serious injury or death. Accordingly, I have decided to launch a Chair-initiated complaint concerning the conduct of such investigations with a view to assessing their impartiality and adequacy. The details of this complaint (attached as **Schedule 3**) can be found on the Commission's website: www.cpc-cpp.gc.ca.

After considering the Commissioner's Notice, I am submitting my report pursuant to subsection 45.46(3) of the *RCMP Act*.

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Chair

Paul E. Kennedy
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COMMISSION FOR PUBLIC COMPLAINTS AGAINST THE RCMP

CHAIR'S INTERIM REPORT

RCMP Act
Paragraph 45.42(3)*a*)

Complainant:

Chair of the Commission for Public Complaints Against the RCMP

August 30, 2007

File No.: PC-2006-1532

CHAIR'S INTERIM REPORT

INTRODUCTION

The unexpected loss of human life, particularly that of a young person as in this case, is a tragedy. It forecloses a world of possibilities as to the contribution that the person could have made to the enrichment of the community and the lives of family and friends. The wounds felt by the immediate family and friends are profound and are often of a nature that not even time can heal.

A life taken cannot be restored. When the life is lost due to the actions of another, the depth of the tragedy is deepened. The problem becomes more complex as there is a natural inclination to ascribe fault to the other. Human interaction, however, is complex and rarely lends itself to a mechanistic analysis of cause and effect.

Nevertheless, there is a duty to investigate the circumstances that gave rise to the loss of life in order to have a better understanding of what happened and to ascertain what may be done to reduce future occurrences.

The challenge in the present case is further compounded by public concerns surrounding the impartiality of police investigating the police and the equal treatment of all before the law. I have endeavoured to provide a fair and objective assessment of the facts and offer some recommendations for improvement at both the individual and institutional level.

OVERVIEW

On October 29, 2005, Mr. Ian Bush, a 22-year-old sawmill worker, was attending a local hockey game at the arena in Houston, British Columbia.[1] Constable Paul Koester, a member of the Houston RCMP with five and a half months service and still in field training, observed Mr. Bush with an open bottle of beer in his hand during an intermission at the hockey game. Constable Koester detained Mr. Bush to serve him with a violation ticket for consuming alcohol in a public place. Mr. Bush provided a false name to Constable Koester and was warned by Constable Koester that he could be charged with obstruction if he did not give his real name.

Mr. Bush provided another false name to Constable Koester and Constable Koester arrested Mr. Bush for obstruction. Constable Koester took Mr. Bush to the Houston RCMP Detachment, approximately two blocks away, to release him on a Promise to Appear for the obstruction charge. Constable Darren Woroshelo, Constable Koester's trainer, and Auxiliary Constable Shane Ketchell also attended the detachment shortly after Constable Koester and Mr. Bush, but they had to leave to attend to a male with possible mental health problems. Constable Koester was left at the Houston RCMP Detachment alone with Mr. Bush.

[1] See **Appendix A** for a condensed timeline of the events related to this incident and **Appendix B** for a list of RCMP members and others involved in the incident and investigation.

Constable Koester dealt with Mr. Bush in the detachment's interview room which had closed circuit television ("CCTV") capability. Constable Koester used the CCTV to monitor Mr. Bush when Constable Koester was out of the room but he did not at any time use the recording capabilities of the CCTV system. A violent struggle ensued between Constable Koester and Mr. Bush when Constable Koester was in the process of releasing Mr. Bush. Constable Koester shot Mr. Bush in the back of the head and Mr. Bush died from his injuries.

On September 28, 2006, as the Chair of the Commission for Public Complaints Against the RCMP, I initiated a complaint pursuant to subsection 45.37(1) of the *RCMP Act*. The complaint, attached as **Appendix C**, questioned whether Constable Koester and the other RCMP members involved in the events of October 29, 2005, from the moment of initial contact until Mr. Bush's death, complied with all appropriate policies, procedures, guidelines and statutory requirements for the arrest and treatment of persons taken into and released from custody and whether such policies, procedures and guidelines are adequate.

In addition, my complaint questioned whether the RCMP members involved in the criminal investigation of Mr. Bush's shooting complied with RCMP policies, procedures, guidelines and statutory requirements for the conduct of such an investigation and whether such policies, procedures and guidelines are adequate and, further, whether such an investigation was carried out in an adequate and timely fashion

As required by the *RCMP* A*ct*, the complaint was investigated by the RCMP, who provided me with a letter of disposition dated May 8, 2007. In the letter of disposition, attached as **Appendix D**, the RCMP informed me that "all policies, procedures, guidelines, and statutory requirements pursuant to the arrest, treatment and processing of Mr. Bush were complied with and the unforeseen, sudden attack by Mr. Bush on Constable Koester would suggest that no changes in policies, procedures and guidelines are required." In addition, the letter of disposition did not identify any shortcomings in the subsequent investigation of Mr. Bush's death.

Pursuant to subsection 45.42(1) of the *RCMP Act*, the Commission is required to review any complaint initiated pursuant to subsection 45.37(1) of the Act. This report constitutes my review of the RCMP investigation into the issues raised in my complaint, and the associated findings and recommendations. A summary of my findings and recommendations can be found in **Appendix E**.

COMMISSION'S REVIEW OF THE COMPLAINT

It is important to note that the Commission for Public Complaints Against the RCMP is an agency of the federal government, distinct and independent from the RCMP. When reviewing a Chair-initiated complaint, the Commission does not act as an advocate either for the complainant or for RCMP members. As Chair of the Commission, my role is to reach conclusions after an objective examination of the evidence and, where judged appropriate, to make recommendations that focus on steps that the RCMP can take to

improve or correct conduct by RCMP members. In addition, one of the primary objectives of the Commission is to ensure the impartiality and integrity of RCMP investigations involving its members.

My findings, as detailed below, are based on a careful examination of the following materials: the RCMP's extensive investigation into the death of Mr. Bush, including the original Report to Crown Counsel; the RCMP's responses to the Commission's questions and concerns identified through the Chair-initiated complaint process; the RCMP's letter of disposition; and applicable law and RCMP policy. I am grateful for the assistance of a former senior British Columbia Crown Counsel and a former senior member of the Vancouver Police Department who assisted in reviewing the issues involving the Crown, the adequacy of the RCMP's investigation and the adequacy of RCMP training.

A Coroner's Inquest into the death of Mr. Bush was held in Houston, British Columbia from May 22 to 25, 2007, and from July 3 to 6, 2007. The purpose of an inquest is to ascertain how, when, where and by what means the deceased died. Although the mandate of an inquest is quite limited, I considered the evidence heard to be an important part of the fact finding process related to Mr. Bush's death. It is for this reason that a representative from the Commission was present for all testimony given during the Inquest. The Commission also reviewed relevant excerpts contained in the Inquest transcripts.

To better understand the physical location where the incident occurred, the Commission's representative viewed the inside of the Houston RCMP Detachment and the exterior of the Houston arena. To ensure the accuracy of the times noted in the report, the Commission's representative listened to the original RCMP North District Operational Communication Centre audio recordings[2] played on the RCMP's proprietary software and viewed the software's contemporaneous display of the continuous time readout for the audio recordings.

It should be noted that the RCMP's "E" Division provided complete cooperation to the Commission throughout the Chair-initiated complaint process. In addition, the RCMP provided unfettered access to the Commission of all materials contained in the original investigative file and of all materials identified as part of the Chair-initiated complaint investigation.

To assist with reviewing the original criminal investigation, the RCMP arranged for a detailed briefing for me and senior members of the Commission at "E" Division Headquarters. The presentation was given by the primary investigator and team leader who completed the original investigation into Mr. Bush's death. Finally, the RCMP assigned a senior RCMP Superintendent as the RCMP's investigator into the Chair-initiated complaint.

[2] Including telephone calls from the Houston RCMP detachment to the Operational Communication Centre.

FIRST ALLEGATION: Whether Constable Koester and the other RCMP members involved in the events of October 29, 2005 from the moment of initial contact until Mr. Bush's death, complied with all appropriate policies, procedures, guidelines and statutory requirements for the arrest and treatment of persons taken into and released from custody and whether such policies, procedures and guidelines are adequate.

Background

Mr. Ian Bush and his family lived in the town of Houston, British Columbia, which is located approximately 430 kilometres west of Prince George, British Columbia, and has a population of approximately 4,500 people. Given the nature of the events and the possible competing theories about what occurred in the interview room, it is useful to look at both Mr. Bush's and Constable Koester's backgrounds.

Mr. Bush was 22 years old in October 2005 and worked at a saw mill in Houston. Mr. Bush was described by his friends as "easy going" and "laid back". Mr. Bush was known by members of his family to be loving and generous. According to some of his friends, Mr. Bush had been known to get drunk and to get into fights in the past, but they clarified that he had not done so recently and when he had gotten into fights, he had not started the fight and he was not out to hurt anybody.

Mr. Bush was 6 feet (180 cm) tall and weighed approximately 187 pounds (84.8 kg). Mr. Bush had several prior encounters with different members of the Houston RCMP from 1998 to 2004, including occasions in 1998 and 2002 for events related to being involved in fights.[3] In the majority of occasions that Mr. Bush came into contact with the Houston RCMP, the consumption of alcohol was noted or suspected to be a factor in the events. Although Mr. Bush had been charged with many motor vehicle related offences during this time frame, he had never been charged with a criminal offence. One of Mr. Bush's friends testified at the Inquest into Mr. Bush's death that Mr. Bush felt as if he was singled out by the police.

Constable Paul Koester was twenty-eight (28) years old in October 2005. He was 6 foot 4 inches (190 cm) tall and weighed approximately 180 pounds (82 kg). Constable Koester had prior peace officer experience working as a seasonal Conservation Officer. Constable Koester testified at the Inquest into Mr. Bush's death that as a Conservation Officer, he had incident management (use of force) training similar to that taught to RCMP members. In addition, Constable Koester testified that, as a seasonal Conservation Officer, he did not carry a gun, but he did carry a defensive baton and OC spray.

Constable Koester's Cadet and Field Training

Constable Koester graduated from the RCMP's six-month long Cadet Training at Depot Division in May 2005 and immediately started work as an RCMP member at the Houston

[3] See **Appendix F** – Events Related to Mr. Bush's History.

RCMP Detachment. He received many positive comments in his final evaluation at RCMP Depot including stating that he was "easy going" and "respectful" of those with whom he came into contact. There were no concerns identified with Constable Koester's Cadet training and normal supervision was recommended for Constable Koester's field training.

RCMP members are required to complete six months of field training when they first start working as police officers. At the time of the incident, Constable Darren Woroshelo of the Houston RCMP was Constable Koester's field trainer. Constable Woroshelo successfully completed the required five-day Field Coaching Course on June 4, 2005, approximately one month into Constable Koester's field training. Constable Woroshelo had two and a half years of service as an RCMP officer at the time that he acted as Constable Koester's trainer. In addition, Constable Woroshelo had six years experience as an Auxiliary Constable of the RCMP in One Hundred Mile House, British Columbia.[4]

Constable Woroshelo advised that Constable Koester "executes his duties in a fair, confident and professional manner" and that Constable Koester "exercises great patience when dealing with [the] public." On October 29, 2005 Constable Koester had completed approximately five and a half months of his six-month field training. Constable Koester was noted to have successfully completed his six-month field training in November 2005. This appears to have been on the basis of Constable Koester's performance up until the time of the incident involving Mr. Bush. The fact that there was an outstanding investigation into Constable Koester's shooting of Mr. Bush does not appear to have been taken into consideration.

As part of its investigation of Mr. Bush's shooting, the RCMP reviewed two other instances where Constable Koester had used some level of force during interaction with others. The instances were brought to the attention of the RCMP, in one case by a member of the Bush family and in the other case by the person who had been arrested (but who did not recall what had happened due to his level of intoxication).[5] In both cases, the level of force used by Constable Koester was considered to be appropriate. The Commission has reviewed the police files including witness statements related to the incidents. I am satisfied that there were no concerns about the level of force used by Constable Koester in the two incidents identified.

The Commission has reviewed the cadet training records for Constable Koester from Depot Division and from Constable Koester's field training after he was posted to

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[4] Auxiliary Constables are not members of the RCMP under the *RCMP Act* but are designated as peace officers under the British Columbia *Police Act*. RCMP Auxiliary Constables assist RCMP members with policing duties and do not carry firearms.

[5] In one case, Constable Koester used soft empty hand control to take an intoxicated male to the ground to be handcuffed. Soft empty hand control includes such things as soft physical restraint methods, restraining techniques, joint locks, pain compliance, distractions and hand cuffing. In the other case, Constable Koester was one of four RCMP members who dealt with an intoxicated, aggressive and large male in RCMP cells. The male attempted to leave his cell and was pushed back against the wall, taken to the ground and held there while the RCMP members left the cell one by one until the cell door could be closed. After the incident, the male was noted to have a bleeding nose.

Houston. There were no concerns identified regarding any of Constable Koester's training. In addition, there were no concerns brought to the attention of the RCMP by the public or anyone else about Constable Koester's performance in general.

Given that Constable Koester stated that Mr. Bush was choking him, the Commission also reviewed the content of the RCMP's Police Defensive Tactics training manual which includes specific training techniques for breaking free from a chokehold. The RCMP training manual notes it can be almost impossible to get out of a chokehold like that described by Constable Koester. There is no indication that Constable Koester lacked any of the skills taught in the RCMP's Police Defensive Tactics training.

In addition, the Commission has reviewed the Depot Division training information related to use of force, arrest of prisoners and firearms training. There were no obvious deficiencies identified in the RCMP's cadet training material that was reviewed that could reasonably have contributed to the events that led to Mr. Bush's death. Similarly, there were no obvious deficiencies identified in Constable Koester's field training that could reasonably have contributed to the events that led to Mr. Bush's death. I am satisfied that the training received by Constable Koester was sufficient.

Constable Koester appears to have been well trained and prepared for police work; this is particularly so given his mature age and previous experience as a seasonal Conservation Officer. Given the circumstances, I am satisfied that there was no failure in Constable Koester's training that contributed to Mr. Bush's death.

FINDING: **Constable Koester's cadet and field training were sufficient and there was no failure in Constable Koester's training that contributed to Mr. Bush's death.**

As noted above, Constable Koester was considered to have successfully completed his field training shortly after the shooting despite the fact that there was an outstanding investigation into Constable Koester's shooting of Mr. Bush. The fact that there was an outstanding investigation into the shooting of Mr. Bush should have been identified at the time the evaluation of Constable Koester's field training was undertaken. Furthermore, the decision to conclude Constable Koester's period of field training should have been held in abeyance until the conclusion of the investigation. The process related to field training evaluations should be amended so as to ensure that outstanding investigations are accounted for before the final assessment of member field training is completed.

FINDING: The RCMP should not have completed the evaluation of Constable Koester's field training until after the investigation into the shooting of Mr. Bush was concluded.

RECOMMENDATION 1: The RCMP amend its field training evaluation procedures to ensure that the final field evaluation of new members is not concluded until all outstanding member investigations, of a serious nature, are

concluded.

Planned Liquor Enforcement on the Evening of October 29, 2005

Constable Koester was working on Saturday evening, October 29, 2005, and was driving a police pickup truck. Constable Woroshelo was also working and was driving a police car. In addition, Auxiliary Constable Shane Ketchell was working on the evening of October 29, 2005. Auxiliary Constable Ketchell had been an Auxiliary Constable in Houston for 18 years. There were other local Houston RCMP members present in the community on the evening of October 29, 2005, but they were not scheduled to be working.

On that evening, the Houston Luckies hockey team was playing its first game of the new season. There had been problems, in the past, with alcohol consumption by persons attending the Houston Luckies hockey games. A check of the RCMP Police Information Retrieval System indicated that for the previous hockey season, there were two files generated relating to calls for service to the Houston arena during hockey games, one of which was a request that some high school kids attending the hockey game be monitored and that patrols be done.

Constable Woroshelo stated that during the hockey games "people are notorious for going out to their cars and drinking and then going back and forth into the arena and then usually by the end we have a whole bunch of intoxicated people to deal with." When it was suggested to Auxiliary Constable Ketchell at the Inquest by counsel for the Bush family that there had been no particular problems at the Houston Luckies games in the last five years, Auxiliary Constable Ketchell did not agree. No further details were elicited about why Auxiliary Constable Ketchell did not agree with this suggestion.

To assist with addressing alcohol consumption at the hockey game, another RCMP member from Burns Lake, Corporal Derek Donovan, was asked to assist the Houston RCMP on the evening of October 29, 2005. Constable Koester, Constable Woroshelo, Auxiliary Constable Ketchell and Corporal Donovan discussed conducting foot patrols at the arena during intermissions at the hockey game.

Constable Koester testified at the Inquest that it was his understanding they were going to "have a strong presence there, pour out any alcohol, issue tickets, that sort of thing." Constable Woroshelo testified that he planned to give tickets so people would know that alcohol consumption would not be tolerated at the hockey game.

Each of Mr. Bush's friends, who testified at the Inquest, testified that they had never seen a liquor ticket given out in Houston. Constable Koester confirmed that this was the first time that he had given out a liquor ticket at an organized event such as a hockey game, but that he had in fact written liquor tickets previously. Constable Woroshelo testified that he checked the tickets written by Constable Koester and that Constable Koester had written a liquor ticket the day before.

Sergeant Sheila White, the Houston RCMP Detachment Commander, confirmed that there were a total of 37 tickets written for consuming liquor in a public place in 2005 and 54 in 2006.[6]

Mr. Bush's State of Sobriety

In the afternoon of October 29, 2005, Mr. Bush and four of his friends went to the liquor store where they each purchased a case of beer and three of them purchased 26 oz bottles of whiskey. Mr. Bush and his friends went to another friend's place across from the hockey arena to socialize and consume alcohol before the hockey game started. Opinions as to Mr. Bush's state of sobriety varied. According to one of his friends, Mr. Bush was drunk, but not falling down drunk. Another of his friends described that he had a "buzz" on. Some of Mr. Bush's friends testified at the Inquest that they did not believe Mr. Bush had drunk that much that evening because he had heartburn.

The group went to the arena across the street to watch the first period of the hockey game. During the first intermission, some people in the group returned to the apartment to socialize and to consume more alcohol. The landlady for the apartment building requested that the group not return to the apartment as they were being too loud for the tenants below. At the second intermission some persons in the group went to the apartment and brought beer back to the arena for consumption.

Toxicology tests and expert analysis[7] by the manager of the RCMP forensic lab toxicology services confirmed that Mr. Bush's blood alcohol level at the time of his death was approximately 170 mgs%.[8] The alcohol analysis report concluded that Mr. Bush would have had to have consumed seven to fourteen bottles of beers to achieve a blood alcohol level of 170 mgs%. Further testing was conducted and determined that Mr. Bush had no steroids in his system.

RCMP Foot Patrols at the Arena

Constable Koester, Constable Woroshelo, Auxiliary Constable Ketchell and Corporal Donovan went to the Houston arena to conduct foot patrols during the second intermission of the hockey game. Constable Koester and Corporal Donovan initially dealt with some people in the parking lot who had open cases of liquor in their vehicles.

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[6] A search of the detachment's liquor ticket bulk files for 2005 and 2006 revealed these numbers. The numbers do not include tickets written on files where other charges have also been laid which would be "scored" (indexed) based on the other charges.

[7] Expert analysis was required to determine the level of alcohol at the time of death because a person's alcohol level will continue to increase after death due to post-mortem changes. These factors were taken into account in the alcohol analysis report.

[8] 170 mgs% = 170 milligrams of alcohol in 100 millilitres of blood (0.17). The legal limit to drive is 80 milligrams in 100 millilitres of blood (.08).

Both Constable Koester and Corporal Donovan seized liquor from different persons and required others to dump out their alcohol. Constable Koester testified at the Inquest that none of the people he dealt with other than Mr. Bush had open bottles of liquor.

Constable Woroshelo and Auxiliary Constable Ketchell also conducted foot patrols at the arena and dealt with persons with alcohol. Constable Woroshelo testified at the Inquest that there were so many people with alcohol that he decided not to give out any tickets but instead to deal with as many people as possible. Constable Woroshelo testified that most of the people were coming to their vehicles to get liquor and that he dealt with two people with open bottles of liquor. In each case, Constable Woroshelo made the individuals dump out their liquor.

Some of Mr. Bush's friends at the arena believed that Constable Koester was being too "by the book" and was giving people a hard time in regards to having or consuming alcohol. One of Mr. Bush's friends stated that all of the RCMP members were, in essence, giving everyone a hard time in regards to having or consuming alcohol. Other of Mr. Bush's friends, however, stated that the police were acting "normal," their attitudes were "really good" and "nothing was wrong." All of the witnesses who were asked, including those that believed that Constable Koester was giving people a hard time, confirmed that none of the RCMP members were aggressive or exhibited any kind of hostility.

The Arrest of Mr. Bush

At approximately 9:00 p.m., Constable Koester and Corporal Donovan proceeded to the front of the arena where Constable Koester saw a "bunch of guys" and indicated that he thought a fight might be starting out. A person working at the arena had already called for security in regards to the "fight". As Constable Koester got closer, he realized it was some males "just fooling around." Constable Koester noticed one male near the entrance doors with an open beer bottle in his hand who was "either pushed or moving himself to the back of the group near the wall." Constable Koester approached the male and advised him to come with him away from the group. The male was Mr. Bush. According to Constable Koester, he did not know Mr. Bush and had never dealt with him before.

Constable Koester and Mr. Bush walked towards the street while Constable Koester poured out the bottle of beer and asked Mr. Bush his name. Mr. Bush told Constable Koester that his name was Jeremy, the name of one of Mr. Bush's friends. Constable Koester testified that he could smell alcohol on Mr. Bush and on his breath. Constable Koester advised Mr. Bush that he was going to be issued a ticket for "open alcohol." According Constable Koester, one of Mr. Bush's friends called to Mr. Bush saying "Come on Jeremy, let's go, he's not going to write you a ticket." Constable Koester stated that he told Mr. Bush that he had to stay and that he would be issuing him a ticket.

One of Mr. Bush's friends testified that he was "pissed off" that Constable Koester chose to charge Mr. Bush when everyone else was only getting their beer dumped out. Another of Mr. Bush's friends testified that everyone was upset that Mr. Bush was being charged and that no one else was getting charged. According to one of Mr. Bush's friends, there

were “quite a few people” saying “oh come on, what are you doing” in response to Constable Koester’s dealings with Mr. Bush.

Constable Woroshelo and Auxiliary Constable Ketchell drove up in Constable Woroshelo’s police car, a Chevrolet Impala, and Constable Koester advised Constable Woroshelo that he was issuing Mr. Bush a ticket. Constable Woroshelo suggested that Constable Koester use the police car, which Constable Koester did as he believed “it would be easier and safer to do it in the car.” Constable Woroshelo stated that there was “quite a crowd gathered around.”

Constable Woroshelo also stated that he “didn’t pay close attention to who the young man was (that Constable Koester had detained to give a violation ticket) at the time.” Constable Woroshelo went into the arena to speak with arena security people about his concerns regarding the number of persons present with alcohol while Constable Koester dealt with Mr. Bush.

Constable Koester asked Mr. Bush if he had any identification and Mr. Bush stated that he did not have any on him. Constable Koester “quickly checked around [Mr. Bush’s] waist for weapons, and looked at his back pocket for the bulge of a wallet” but found none. Constable Koester asked Mr. Bush to sit in the back of the police car so he could write him the ticket. According to Constable Koester, Mr. Bush stated that it was not even his beer and he was just holding it for somebody. Mr. Bush’s friends later confirmed that this was the case.

Constable Koester asked Mr. Bush how his name was spelled but Constable Koester noted that the pronunciation of the last name by Mr. Bush did not seem to match the spelling. Constable Koester suspected that Mr. Bush had given him a false name. According to Constable Koester, he told Mr. Bush: “I know you’ve had a few drinks so I’m going to give you the benefit of the doubt, but I need you to tell me the truth – what your name is, otherwise you could be charged with obstructing a Peace Officer, which is a Criminal Code offense (*sic*) and is serious.”

Constable Koester stated that Mr. Bush said, “Well, why didn’t you say so?” and then gave him the name of another one of Mr. Bush’s friends. Despite Constable Koester’s warning, Mr. Bush had given Constable Koester a second false name. Constable Koester recorded both names in his notebook. Constable Koester noted that Mr. Bush appeared to have difficulty spelling the second last name and was unsure of his exact address. Constable Koester started to prepare a violation ticket to serve on Mr. Bush using the information that Mr. Bush had provided.

At approximately 9:07 p.m., Constable Koester used his radio to ask the RCMP dispatcher to do a computer check on the second name and date of birth provided by Mr. Bush. The computer check indicated that the person whose name Mr. Bush had given had no driver’s licence. Constable Koester thought that this was unusual.

Constable Koester exited the police car intending to release Mr. Bush and give him the violation ticket. Constable Koester then saw Auxiliary Constable Ketchell and asked him

if he knew the male in the police car. Auxiliary Constable Ketchell only knew Mr. Bush by his first name so he asked one of Mr. Bush's friends who identified the male as Ian Bush. Auxiliary Constable Ketchell testified at the Inquest that Mr. Bush's friends wanted to talk to Mr. Bush so Auxiliary Constable Ketchell talked to them to keep them from getting into trouble.

Constable Koester got back into the police car and asked Mr. Bush why he had lied to him. According to Constable Koester, Mr. Bush replied that it was because he wanted to get out of the liquor ticket. At approximately 9:14 p.m., Constable Koester advised Mr. Bush that he was being arrested for obstructing a peace officer. Constable Koester got Mr. Bush out of the police car and searched him and handcuffed him before placing him back into the police car. Constable Koester found Mr. Bush's wallet in a cargo pocket on Mr. Bush's pants and put it back without opening it. The wallet contained Mr. Bush's driver's licence.

Constable Koester stated that one of his reasons for handcuffing Mr. Bush was to let him know that lying to a police officer is serious. Constable Koester clarified when he testified at the Inquest that he was trained to handcuff every person that is transported in the back of a police vehicle.

After arresting Mr. Bush, Constable Koester radioed for Constable Woroshelo to return to the scene. Constable Woroshelo stated that when he returned he looked at the male that Constable Koester had arrested and believed that it was "Ian Bush." Constable Woroshelo asked another local young person, who was one of Mr Bush's friends, to "verify" that it was "Ian Bush." According to Constable Woroshelo, he went over to Constable Koester who was in the driver's seat of the police vehicle and said: "yeah, it's Ian Bush."

Constable Koester testified that later after he had transported Mr. Bush to the RCMP detachment he performed computer checks on the status of Mr. Bush's driver's licence because he "wanted to make sure [he] was dealing with -- who [Mr. Bush] said he was."

Constable Koester's Decision to Charge Mr. Bush with "Open Liquor"

On the night in question, a variety of actions were taken by Constable Koester which have been the subject of many questions. For example, it has been asked why Constable Koester chose to charge Mr. Bush when others observed to be consuming alcohol were not charged. Constable Koester and Constable Woroshelo both intended to write liquor tickets before they attended the hockey arena but Constable Woroshelo changed his approach when he saw how prevalent the presence of alcohol was at the arena.

It was apparent from Constable Koester's testimony at the Inquest that Mr. Bush was the first person that Constable Koester encountered who had an open bottle of beer, whereas the other persons that Constable Koester had previously dealt with only had open cases.[9] Constable Koester had discretion to charge persons with liquor offences based on the

[9] Having an open case of liquor is not sufficient grounds to charge someone with consuming liquor in a public place.

circumstances and his discretion was not affected by Constable Woroshelo's decision not to write any tickets. Constable Koester had written a liquor ticket as recently as the day before and, despite assertions to the contrary, the Houston RCMP had written many tickets for consuming liquor in a public place in 2005.

Constable Koester did not know Mr. Bush and given that Mr. Bush was the first person that Constable Koester saw with an open bottle of beer, it cannot be said that he was singled out. The very nature of discretion in the context of police work is that it allows a police officer to make decisions based on an assessment of the circumstances at the time that they occur and within a range of acceptable outcomes. Accordingly, decisions involving the exercise of discretion are entitled to some level of deference.

The issue in regards to Constable Koester's decision to charge Mr. Bush for consuming liquor in a public place is not whether someone else would have made the same decision but whether the discretion exercised by Constable Koester was exercised reasonably and for a proper purpose. In other words, was Constable Koester's decision to charge Mr. Bush unreasonable or made for an improper purpose?

The evidence from witnesses about Constable Koester's initial interaction with Mr. Bush was that neither Constable Koester nor Mr. Bush was aggressive. Constable Koester had never dealt with Mr. Bush before and did not know Mr. Bush. Constable Koester was authorized as a peace officer to enforce the provisions of the *Liquor Control and Licensing Act* and he was aware that there had been problems with alcohol consumption in the past at the Houston Luckies hockey games. A subsequent disturbance on 14th Street across from the arena after Mr. Bush's arrest is an example of such a problem.[10] There is no evidence that Constable Koester chose to charge Mr. Bush for an improper purpose.

Mr. Bush did advise Constable Koester that he was only holding the liquor for someone else, which was later corroborated. Although this could be a defence to the charge of consuming liquor in a public place, Constable Koester had seen Mr. Bush holding the liquor, moving to the back of the crowd he was standing near and he could smell alcohol on Mr. Bush's breath. Accordingly, I am satisfied that Constable Koester had reasonable grounds to believe that Mr. Bush had committed the offence of consuming liquor in a public place. Given the circumstances, I am satisfied that Constable Koester acted reasonably when he chose to charge Mr. Bush for consuming liquor in a public place.

FINDING: Constable Koester's decision to charge Mr. Bush for consuming liquor in a public place was reasonable.

Constable Koester's Decision to Arrest Mr. Bush for Obstruction

Constable Koester intended to give Mr. Bush a violation ticket at the scene and did not arrest Mr. Bush for consuming liquor in a public place. Consuming liquor in a public

[10] The disturbance related to approximately 20 persons across from the arena breaking beer bottles and causing a disturbance.

place is not an offence for which someone can be arrested. Constable Koester put Mr. Bush into Constable Woroshelo's police car, which was nearby, to complete the violation ticket and explained that this was "easier and safer." Given the location and the people outside the arena during the intermission, this was a reasonable approach.

Mr. Bush proceeded to provide Constable Koester with two false names and Constable Koester went so far as to complete a violation ticket for the second false name that Mr. Bush had provided. Constable Koester had warned Mr. Bush after the first false name that he could be charged with obstruction if he did not tell the truth. Mr. Bush said words to Constable Koester that conveyed he understood he should tell the truth but Mr. Bush still gave Constable Koester the second false name. After confirming that the second name was also false, Constable Koester concluded that Mr. Bush had committed the offence of obstruction.[11]

Given Constable Koester was acting in the execution of his duty by enforcing the *Liquor Control and Licensing Act* and Mr. Bush provided two false names to Constable Koester, I am satisfied that Constable Koester had reasonable grounds to believe that Mr. Bush had committed the offence of obstruction.[12] Constable Koester advised Mr. Bush that he was under arrest for obstruction. There are, however, limitations on the power to arrest a person without a warrant.[13] In circumstances such as these, a police officer may not arrest a person unless they believe on reasonable grounds that the public interest, having regard to all of the circumstances, including the need to establish the identity of the person, may not be satisfied without arresting the person.[14]

Constable Koester did not know Mr. Bush and had never dealt with him before. Mr. Bush initially gave Constable Koester a false name which someone in the group nearby also used in an effort to mislead Constable Koester about Mr. Bush's identity. Auxiliary Constable Ketchell did not know Mr. Bush other than by his first name and had to ask someone else in the group who Mr. Bush was. Although Constable Woroshelo had dealt with Mr. Bush before, even he felt compelled to ask someone in the crowd to verify who Mr. Bush was. By this point, however, Constable Koester had already arrested Mr. Bush.

Given the circumstances, including: that Constable Koester did not know Mr. Bush; Mr. Bush's efforts to conceal his identity by lying to Constable Koester about his name, about his particulars and about whether or not he had any identification; the fact that someone in the group of persons that Mr. Bush was with also attempted to mislead Constable Koester about Mr. Bush's identity; and the uncertainty by Auxiliary Constable Ketchell

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[11] *Criminal Code*, R.S.C. 1985, c. C-46, para. 129(*a*).

[12] Although there are limitations on the power of arrest, it was reasonable for Constable Koester to arrest Mr. Bush in order to establish his identity. *Criminal Code*, R.S.C. 1985, c. C-46, sub. 495(2).

[13] *Criminal Code*, R.S.C. 1985, c. C-46, ss. 495(2).

[14] There are two other limitations on the power to arrest without a warrant related to the need to secure or preserve evidence of or relating to the offence and to prevent the continuation or repetition of the offence or the commission of another offence. Although the first limitation is clearly inapplicable, without deciding the issue, it could also be argued, given the public interest concerns regarding the consumption of liquor in public places, that Constable Koester was authorized to arrest Mr. Bush to prevent the continuation or repetition of the liquor offence or the commission of another liquor offence.

and Constable Woroshelo about Mr. Bush's identity, I am satisfied that Constable Koester had a reasonable belief that it was necessary in the public interest to arrest Mr. Bush in order to establish his identity.

FINDING: It was reasonable for Constable Koester to arrest Mr. Bush for the offence of obstruction.

Constable Koester's Search of Mr. Bush

When Constable Koester advised Mr. Bush that he was going to be arrested for obstructing a peace officer, he got Mr. Bush out of the police car and searched him and handcuffed him before placing him back in the police car. During the search Constable Koester located Mr. Bush's wallet. Constable Koester did not look for or examine Mr. Bush's driver's licence which was in fact in Mr. Bush's wallet. Had he done so it would not have affected the reasonableness of his decision to arrest Mr. Bush for the offence of obstruction. Constable Koester had already concluded that Mr. Bush had committed the offence of obstruction and that he was going to arrest him.

During the subsequent examination of the interview room where Mr. Bush was shot a full unopened bottle of Budweiser beer was found on the floor. The bottle had Mr. Bush's fingerprint on it but the quantity of DNA did not meet the minimum requirement for further processing. When later asked about how the bottle of beer got there,[15] Constable Koester replied that he had "no idea."

There is no evidence to suggest that the beer bottle located in the interview room with Mr. Bush's fingerprint on it came from anywhere else other than from Mr. Bush. The beer bottle must have been located somewhere on Mr. Bush's person when Constable Koester searched Mr. Bush prior to placing him in the police car. Constable Koester obviously missed finding the beer bottle when he searched Mr. Bush.

An Independent Reviewing Officer[16] concluded that Constable Koester's search of Mr. Bush was substandard in that he failed to find the beer bottle and recommended that Constable Koester receive operational guidance. He also concluded that this oversight had no impact on the final outcome of the incident. Constable Koester was off work for an extended period of time and immediately transferred away from the Houston RCMP Detachment. As a result, operational guidance was not in fact given to Constable Koester. This should be done forthwith.

FINDING: Constable Koester's search of Mr. Bush, after his arrest, was inadequate.

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[15] During an interview on February 8, 2006.

[16] According to RCMP Policy, the Independent Officer Review is a fact finding enquiry to ensure a thorough, professional and unbiased investigation; approved procedures, tactics and policy were appropriate and followed; the member's conduct was in accordance with the *RCMP Act* and regulations; appropriate information was provided to partner agencies; and, the "root problem", if any, is identified and a proactive response is developed.

RECOMMENDATION 2: Operational guidance and/or refresher training be provided to Constable Koester regarding the need to conduct thorough searches of prisoners.

The Decision to Transport Mr. Bush to the RCMP Detachment

One of Mr. Bush's friends stated that Constable Koester had pulled Mr. Bush's hat down when he put him back in the police car and that Mr. Bush said words to the effect: "this is fucking bullshit." At the Inquest, three of Mr. Bush's friends claimed that they saw Constable Koester pull or push Mr. Bush's hat down as he placed him in the police car. Each friend described a different reaction from Mr. Bush: one said that Mr. Bush did not look very happy; one said that he did not see Mr. Bush look unhappy and, in his opinion, Mr. Bush did not think that the hat incident was appropriate but Mr. Bush got over it; and another said that Mr. Bush did not seem upset after he was put back in the car.

Constable Koester testified that he did not recall pushing Mr. Bush's hat down but that he sometimes puts his hands on a person's head as he is putting them into the police car "so they don't scrape or bang their heads on top of the doorway." One of Mr. Bush's friends testified that it did not appear that Constable Koester had done this on purpose. Mr. Bush's friends described that Mr. Bush had a smirk or smile on his face as he sat in the police car.

After Constable Woroshelo returned to the scene in response to Constable Koester's request over the radio, Constable Koester asked him if he had a Promise to Appear so that he could release Mr. Bush at the scene with a date to appear in court for the obstruction charge. Constable Woroshelo thought he had a Promise to Appear in his bag in the police car but suggested that Constable Koester take Mr. Bush back to the RCMP detachment and give Mr. Bush a ride home after he was released. Constable Woroshelo stated that taking Mr. Bush to the RCMP detachment was for "safety and convenience." Constable Koester testified that he anticipated he might end up dealing with Mr. Bush alone at the RCMP detachment.

The RCMP detachment was located approximately two blocks away. When asked if it was "normal practice" to give an appearance notice at the scene, Constable Koester testified that he had seen it done both ways, i.e. people released roadside and at the detachment, where the person was arrested "right near the detachment." Constable Koester drove Mr. Bush to the RCMP detachment in Constable Woroshelo's police car.

At approximately 9:20 p.m., Constable Koester parked near the back door of the RCMP detachment and did not use the secure garage bay as there was a police vehicle in it. Constable Koester took Mr. Bush into the interview room of the RCMP detachment rather than the cell block. This was because Constable Koester intended to release Mr. Bush without keeping him in custody at the RCMP detachment. A civilian witness walking nearby observed Constable Koester arrive at the RCMP detachment with Mr.

Bush and stated that Mr. Bush "seemed to be really calm," there was no struggle and neither Constable Koester nor Mr. Bush appeared to be upset.

As previously stated, Constable Koester initially intended to release Mr. Bush on a Promise to Appear at the scene, but at Constable Woroshelo's suggestion, decided to take Mr. Bush back to the RCMP detachment to release him. This was due to the fact that a crowd had gathered at the scene, some of whom who had consumed alcohol and were being vocal about their displeasure regarding Mr. Bush's detention, and the RCMP detachment was a short distance away. Given the circumstances, this was a reasonable decision and there is no evidence that Constable Koester acted with an improper motive.

FINDING: The decision to transport Mr. Bush to the Houston RCMP Detachment was reasonable.

Constable Woroshelo's and Auxiliary Constable Ketchell's Initial Attendance at the RCMP Detachment after Mr. Bush was Arrested

Corporal Donovan had already left the arena and was doing a road check when he heard on the radio that Constable Koester was returning to the RCMP detachment with a prisoner. Corporal Donovan asked Constable Koester if he required assistance but Constable Koester advised that he did not. As Constable Koester was leaving to take Mr. Bush back to the RCMP detachment, Constable Woroshelo was advised by the RCMP dispatcher that there was a request for assistance from the Prince Rupert RCMP Detachment and that an electronic file would be sent to the Houston RCMP Detachment. Constable Woroshelo and Auxiliary Constable Ketchell returned to the Houston RCMP Detachment and arrived shortly after Constable Koester and Mr. Bush.

After taking Mr. Bush into the RCMP detachment Constable Koester asked Mr. Bush if there would be any "funny stuff" if he took the handcuffs off. According to Constable Koester, Mr. Bush stated: "Well, there hasn't been anything yet." Constable Koester heard Constable Woroshelo and Auxiliary Constable Ketchell arrive at the detachment as he removed the handcuffs from Mr. Bush. Constable Koester left Mr. Bush in the interview room while he conducted further computer checks to confirm Mr. Bush's identity. Constable Koester activated a television monitor connected to a camera in the interview room that allowed him to keep watch on Mr. Bush.

Constable Koester went into the interview room after completing his computer checks and asked Mr. Bush to confirm his full name, date of birth and address. Constable Koester stated that at one point Mr. Bush looked like he was going to cry. Constable Koester explained that he went to talk to Constable Woroshelo and discussed releasing Mr. Bush with only the liquor ticket. According to Constable Koester, Constable Woroshelo asked him if he was aware that Mr. Bush was suspected of having run away on foot when he was stopped in his vehicle by another Houston RCMP member (in October 2004, referred to in **Appendix F**). Constable Woroshelo advised Constable Koester that charging Mr. Bush with obstruction was "quite appropriate" in the circumstances.

Constable Woroshelo reviewed the request for assistance from the Prince Rupert RCMP Detachment. The request related to a man in Topley, near Houston, with possible mental health problems, whose wife had contacted the Prince Rupert RCMP. The man's wife had concerns about her husband's mental well-being and also advised the Prince Rupert RCMP that her husband had a "problem with authority." Given the circumstances, Constable Woroshelo decided that it would be better for Auxiliary Constable Ketchell to go with him to check on the man instead of remaining at the RCMP detachment with Constable Koester.

Constable Woroshelo testified at the Inquest that Constable Koester had progressed to working alone after two months of field training. He explained that this was the minimum amount of time that a new RCMP member can progress to working alone and that Constable Koester was in fact ready to work alone before that time. Constable Woroshelo testified that, in general, he had no concerns with Constable Koester's ability to work alone on October 29, 2005.

Constable Woroshelo asked Constable Koester if he would be all right and Constable Koester indicated that he would but asked Constable Woroshelo to have a talk with Mr. Bush before leaving. Constable Koester testified at the Inquest that he had asked Constable Woroshelo to talk with Mr. Bush because Constable Woroshelo had dealt with Mr. Bush before. According to Constable Woroshelo, he opened the door to the interview room and told Mr. Bush that he should not lie to the police and that he had "gone from getting a violation ticket now to having to show up to court to answer to *Criminal Code* charges for obstructing a police officer." Constable Woroshelo told Mr. Bush that he would be released and given a ride home. Constable Woroshelo recommended to Mr. Bush that he stay at home or else he might make more bad decisions. Constable Woroshelo believed that Mr. Bush was upset that he was getting charged but stated that Mr. Bush had not shown any "real signs of aggression."

At approximately 9:30 p.m. Constable Woroshelo and Auxiliary Constable Ketchell left the Houston RCMP Detachment to go to Topley. Auxiliary Constable Ketchell testified at the Inquest that Mr. Bush appeared to be angry and upset but that by the time they left Mr. Bush was not as angry and was "more relaxed." Constable Woroshelo advised Corporal Donovan, who was conducting a road check in Houston, that Constable Koester was at the detachment, alone.

Constable Koester Alone with Mr. Bush at the RCMP Detachment

Constable Koester had removed Mr. Bush's handcuffs after they arrived at the RCMP Detachment. Whether or not to handcuff a person and when to remove handcuffs from a handcuffed person is a matter of discretion for RCMP members; there is no specific RCMP policy dictating when to take either action (although Cadets may be trained to handcuff for transport as noted by Constable Koester). Notwithstanding the fact that Mr. Bush had been uncooperative in that he provided false names, he had not demonstrated any physical resistance and there was no indication that he would do so at the time that Constable Koester removed Mr. Bush's handcuffs.

There is no specific RCMP policy that required another RCMP member to accompany Constable Koester to the RCMP detachment to deal with Mr. Bush. Constable Koester had progressed in his field training three and a half months earlier to the point where he was competent to work on his own without supervision from Constable Woroshelo or anyone else.

Constable Woroshelo and Auxiliary Constable Ketchell did in fact attend the RCMP detachment soon after Constable Koester arrived with Mr. Bush but had to leave shortly after arriving to attend the call in Topley related to a male with possible mental health problems who had "a problem with authority." Constable Woroshelo chose to take Auxiliary Constable Ketchell with him instead of leaving him with Constable Koester, who was dealing with Mr. Bush. Given that Constable Koester indicated he would be all right alone, that Mr. Bush had given no indication that he would cause any problems and that the male with possible mental health problems objectively posed a higher risk from an officer safety perspective, this was a reasonable decision.

Given all of the factors known to Constable Woroshelo and Constable Koester at the time, there was a low risk of any problems occurring with Mr. Bush. This conclusion would be different if Mr. Bush was known to be violent towards the police but this was not the case. Put simply, there was no objectively foreseeable risk that the events would unfold as they did. Given the circumstances, I find no fault with the fact that Constable Koester remained at the RCMP detachment alone to deal with Mr. Bush. Indeed, this type of situation where an RCMP member must deal with arrested persons alone likely occurs on a daily basis without incident in many areas of Canada.

FINDING: The decision to leave Constable Koester alone with Mr. Bush was reasonable.

COMMENT

Regarding RCMP Proposed Backup Policy

The jury at the inquest into Mr. Bush's death recommended that the RCMP "review the working alone policy such that when a person of interest is detained by a police officer in the detachment he or she must have an additional person within the employ of the RCMP present until the detained person is released and exited the building or the person has been placed in a cell."

Although not directly applicable to the circumstances in this case given the low risk that Mr. Bush posed, the RCMP has recently developed policy, not yet in force, that would require the presence of more than one RCMP member in specific situations including: occurrences involving calls of violence, or where a history of violence is known; a

disturbance at a public gathering or licensed premises; a domestic dispute; an occurrence involving the use, display or threatened use of a weapon; an occurrence involving a subject who may be emotionally disturbed or may suffer from a mental illness, for example the call relating to the male in Topley; an occurrence in areas where communications are known to be deficient; and any occurrence or patrol where the member believes he/she requires a multiple member response based on their risk assessment

Constable Koester's Decision not to use the CCTV in the Interview Room

The television monitor that Constable Koester activated to keep watch on Mr. Bush was connected to a closed circuit television (CCTV) camera in the interview room and also to a recording device (utilizing VHS videotapes) in the constables' working area. Constable Koester did not activate the recording capabilities of the CCTV system. Constable Woroshelo testified at the Inquest that sometimes the monitor could be left on for weeks at a time (without recording anything).

At the Houston RCMP Detachment, the CCTV recording capabilities for the interview room must specifically be activated by inserting a videotape and pressing a "record" button on the recording system. Various RCMP witnesses testified at the Inquest that this is ordinarily only done when an RCMP member is gathering evidence, for example taking a warned statement, and not on occasions when someone is simply being processed to be released from custody. The RCMP advised the Commission that this is the normal practice for RCMP detachments which have video-taping capabilities in interview rooms.

Constable Woroshelo testified at the Inquest that he would never activate the recording capabilities when simply releasing someone in the interview room. Sergeant Chuck Duncan, the forensic identification member who later attended the Houston RCMP Detachment as part of the RCMP's investigation, was asked when he testified at the Inquest if one of the uses for the camera was to record a situation where someone is being released on a Promise to Appear. Sergeant Duncan replied: "I would never do that."

The camera in the Houston interview room is positioned to record the portion of the interview room where a table and chairs are situated in the corner opposite the camera; this is the location where Constable Koester subsequently spoke to Mr. Bush to explain his release documents to him. Had the recording capabilities been activated, only the beginning and middle portion of the altercation (details of the altercation are discussed below) would have been recorded; the final struggle and shooting would not have been within the view of the camera as they occurred in an area of the room outside the view angle of the camera.

At the time that Constable Koester placed Mr. Bush in the interview room and chose, consciously or otherwise, not to record the events, Mr. Bush had given no outward signs of trouble. As stated above, there was no objectively foreseeable risk that the events would unfold as they did. Although Constable Koester could have utilized the manual CCTV recording capabilities for the interview room, this was not the normal practice of

the RCMP for interview rooms. Given this context, I am satisfied that Constable Koester acted reasonably when he did not record his dealings with Mr. Bush in the interview room.

The Use of CCTV by the RCMP when Dealing with Prisoners

The jury at the Inquest into Mr. Bush's death recommended, in essence, that the RCMP install audio and visual recording equipment in every RCMP detachment, that the equipment require minimal human intervention, that its use be mandatory and that there be proper signage, etc. advising of the equipment. The circumstances in this case reasonably demonstrate the value of using CCTV in RCMP detachments.

CCTV is one of the most significant and impartial investigative tools available to the police. CCTV is a tool that can be used to ensure not only a thorough investigation of any event that is captured on CCTV but also to ensure that the best evidence is available for analysis. Although there is RCMP policy covering the general use of CCTV, there is no policy requirement that CCTV be used where CCTV capability exists such as in an interview room.

The fact that it is not the normal practice by the RCMP to use CCTV to record routine dealings with people in an interview room where manual recording capabilities exist does not address whether or not such a practice is reasonable given the public safety and officer safety issues that arise when RCMP members deal with prisoners in RCMP detachments. While CCTV would likely not have changed the tragic outcome in this case, CCTV records would have significantly assisted the subsequent RCMP investigation by providing independent evidence of the incident, enhancing the credibility of the investigation.

Police-involved shootings can occur in any location, not just in RCMP detachments as has been demonstrated in the last ten years in Western Canada by police-involved shootings in Whitehorse, Yukon in September 1998, in Vanderhoof, British Columbia in December 2004, in Norway House, Manitoba in January 2005 and near Williams Lake, British Columbia in August 2006, where the deceased persons were shot in locations away from RCMP detachments. In addition to Mr. Bush, there were police-involved shootings in Jasper, Alberta in April 1997 and in Pincher Creek, Alberta in October 1999 where the deceased persons were also shot inside RCMP detachments, but more specifically they were shot in RCMP cell blocks. None of these three shootings inside RCMP detachments were captured on CCTV.[17]

Of note is that the majority of the police-involved shootings referred to occurred in non-urban areas and involved only one RCMP member. In the majority of the cases, there were no other witnesses to the shootings. These types of events including the shooting of Mr. Bush highlight the risk that RCMP members face on a daily basis, particularly by RCMP members working in more remote locations where RCMP members are more

[17] In the two police-involved shootings in Alberta, the RCMP detachments did not have CCTV capability at that time.

likely to be dealing with persons by themselves. CCTV would provide some assurance to both members of the public and to RCMP members that there is a reliable and impartial record of such incidents.

CCTV may also provide a measure of deterrence where its use is known to a person in RCMP custody. It is unknown whether or not Mr. Bush was aware of the CCTV camera in this case or the fact that although he was being monitored, he was not being recorded. Although knowledge of CCTV will not likely deter all persons, it is reasonable to conclude that specific knowledge that their actions are being recorded will act as a deterrent to most persons. Similarly, knowledge of being recorded on CCTV may encourage adherence by RCMP members to applicable policy and procedures when dealing with prisoners.

There are practical considerations that must be addressed when discussing the need for CCTV for RCMP detachments. The most obvious practical consideration is funding for the installation and ongoing maintenance of the CCTV systems and storage of the recorded media.[18] RCMP detachments have limited budgets as does the RCMP itself when acting as the provincial police force in any given province, as is the case in British Columbia. Accordingly, effective funding for CCTV systems in RCMP detachments would have to be provided by the appropriate municipal, provincial and/or federal government(s).

While the trend is towards more and varied use of CCTV applications as technology advances, I am also mindful that there are privacy limitations on the wholesale video recording of the public by the RCMP.[19] Persons in an RCMP detachment, however, have a significantly reduced expectation of privacy and many larger RCMP detachments already have in place sophisticated CCTV systems. There is no compelling reason that small, rural and remote RCMP detachments should not benefit from the same technology. CCTV technology is also an important instrument to help address the inherent risk that RCMP members face when dealing with prisoners in RCMP detachments.

Given that the issue of CCTV is in part dictated by safety concerns, considering whether or not CCTV should be used in interview rooms when releasing prisoners in RCMP custody partially misdirects the focus on the issue due to the various competing uses for interview rooms, many of which are not required to be recorded on CCTV. Rather, given the inherent risks associated with dealing with persons in RCMP custody, as were aptly demonstrated in this case, dealings with prisoners in RCMP detachments should not only be recorded on CCTV but should also occur in a secure area in the RCMP detachment, i.e. in the RCMP cell block. The circumstances in this case highlight a significant safety concern where prisoners are not dealt with in a secure area.

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[18] See **Appendix G** for a more detailed discussion regarding funding of CCTV for RCMP detachments.

[19] For example, see the Privacy Commissioner's finding on video surveillance by the RCMP in Kelowna, http://www.privcom.gc.ca/cf-dc/pa/2001-02/02_05_b_011004_e.asp .

Constable Koester dealt with Mr. Bush in the interview room as this was the only practical location to use at the Houston RCMP Detachment to release Mr. Bush. Sergeant White, the Houston RCMP Detachment Commander, explained to the Commission that the Houston RCMP Detachment does not have a separate room in the cell block from which to release people. Accordingly, essentially all persons at the Houston RCMP Detachment are released from the interview room. In addition, Sergeant White advised the Commission that the interview room is also used to allow persons in custody to access legal counsel by telephone because there is no separate telephone room in the Houston RCMP Detachment cell block. Prisoners in custody must be escorted through the working area of the RCMP Detachment to and from the interview room.

Escorting prisoners through the working area of the RCMP detachment jeopardizes the safety of the other persons in the RCMP Detachment which can include RCMP members, RCMP civilian staff and even members of the public. There do not appear to be any guidelines in RCMP policy with respect to where within a detachment prisoners are to be dealt with and released. This is a safety issue that should be assessed for all RCMP detachments and immediately addressed by the RCMP as it permits unnecessary exposure to risk. Similar to the issue of funding for CCTV, the funding for capital expenditures such as physical changes to RCMP detachments would have to be provided by the appropriate municipal, provincial and/or federal government(s).

FINDING: The use of CCTV in RCMP detachments where prisoners are dealt with and released is necessary to provide an independent record of events, to promote compliant behaviour by both prisoners and RCMP members and to minimize the risk of dealing with prisoners alone.

RECOMMENDATION 3: The RCMP install automated CCTV recording equipment in every RCMP detachment in areas where prisoners are dealt with and released.

FINDING: The facilities at the Houston RCMP Detachment pose a significant safety concern in that there is no separate area in the cell block for dealing with prisoners and for processing prisoners for release.

RECOMMENDATION 4: The RCMP immediately retrofit the Houston RCMP Detachment to incorporate a separate area within the cell block in which to deal with prisoners and from which to release them.

RECOMMENDATION 5: The RCMP amend national policy to require that prisoners be dealt with and released from the cell block in all RCMP detachments.

RECOMMENDATION 6: The RCMP retrofit RCMP detachments that do not have a separate area in the cell block in which to deal with prisoners and from

which to release them.

COMMENT

Regarding Funding for CCTV and Capital Expenditures

By statute, my recommendations are not binding upon the Commissioner of the RCMP. Regardless of their merit, the Commissioner of the RCMP must weigh recommendations, particularly those that have financial implications against other pressing priorities. Recommendations that I have made in respect of funding for CCTV and the availability of a room in the RCMP detachment cell block area pose such a difficulty for the Commissioner.

There is the possibility that reallocation of existing funding by the RCMP to address these issues will create gaps in other areas of public safety. I would encourage the various levels of government that are parties to the police service agreements, as described in **Appendix G**, to make additional funding available to address these important public safety concerns.

The Altercation in the Interview Room and Mr. Bush's Death

Constable Koester stated that he completed filling out the liquor ticket and Promise to Appear and went into the interview room and asked Mr. Bush to sit in a chair at the table in the corner. Constable Koester closed the door and sat at the table with the corner of the table between him and Mr. Bush. Constable Koester explained the liquor ticket and had Mr. Bush sign it acknowledging that he had received his copy. Constable Koester then explained the Promise to Appear to Mr. Bush.

While Constable Koester was explaining the Promise to Appear to Mr. Bush, at 9:41:42 p.m. the police dispatcher asked if there was a "unit or two clear for a disturbance." At 9:41:50 p.m., Constable Koester asked the police dispatcher to repeat the information and was told that there was a disturbance in Houston "over on 14th street." At 9:42:01 p.m., Constable Koester responded for the police dispatcher to "stand by." Although Constable Koester could have replied that he was not available to take the call, he did not do so. This suggests that at that point Constable Koester anticipated being available without too much further delay.

At 9:43:42 p.m., Corporal Donovan asked the police dispatcher about the disturbance on 14th Street and was advised that it related to approximately twenty people across from the Houston arena breaking beer bottles and causing a disturbance. Constable Koester recalled that he was almost finished with Mr. Bush when he heard Corporal Donovan radio that he would respond to the disturbance on 14th Street.

According to Constable Koester, Mr. Bush replied that he understood the liquor ticket but that he did not understand why Constable Koester was issuing him a Promise to Appear and sounded frustrated. Constable Koester explained to Mr. Bush that it was because Mr. Bush had given him a false name twice. Constable Koester finished explaining the

Promise to Appear and asked Mr. Bush to sign it and told Mr. Bush that he would then give him a ride home. Constable Koester described that he was looking down at the Promise to Appear where Mr. Bush was to sign it when Mr. Bush stated loudly: "Why don't I just punch you in the fucking face!"

Constable Koester "perceived [Mr. Bush's] tone to be threatening" and he started to reach up to key his portable radio mic to ask for backup. According to Constable Koester, Mr. Bush "immediately lunged toward [him] and struck [him] hard on the left side of [his] face before [he] could key the Mic." Constable Koester explained that he did not see the blow coming but "felt the blow connect" and was "caught completely off guard." Constable Koester was unsure if he was knocked out of his chair but remembered next being on his feet by the desk where he had been sitting. Constable Koester described how he grabbed on to Mr. Bush's jacket while Mr. Bush continued to hit him in the head.

Constable Koester stated that they crashed into the opposite corner of the room across from the table where there was a couch[20] and that Mr. Bush was still hitting him in the head and face. Constable Koester stated: "It seemed like he was above me and I was dazed." Constable Koester described that Mr. Bush was still hitting him as he held on to Mr. Bush's coat and stated that: "It still felt as if he were higher than me and that I was looking down towards the floor." Constable Koester described that he could see his radio mic dangling to the floor but he could not reach it. Constable Koester recalled thinking that he needed to get to his defensive baton.

Constable Koester stated that Mr. Bush hit him again in the head causing Constable Koester to go down hard on his knees after which Mr. Bush wrapped his left arm around Constable Koester's neck and started to choke him. Constable Koester stated that it felt like Mr. Bush was behind him and to his right side. He also said that he was able to turn his head slightly to the right enough so that he could tell Mr. Bush: "Ian, the fight's over, that's it, just leave, you can go." According to Constable Koester, Mr. Bush yelled: "I'm not leaving so you can arrest me again." Constable Koester stated that he tried to stand up but he fell forward onto the couch and Mr. Bush never let go of him and fell with him.

Constable Koester described that he tried to pull at Mr. Bush's hair and he was able to grab Mr. Bush's left ear and tried to pull it away from him but Mr. Bush did not let go. Constable Koester explained that Mr. Bush still had his arm wrapped around his neck and his "vision was starting to close in" and his "sight was dimming." Constable Koester stated that he tried to take some breaths "at least four times and could not get air" because Mr. Bush was choking him so hard. According to Constable Koester, Mr. Bush stated: "Take your last breaths" as a result of which Constable Koester concluded: "I knew that he was trying to kill me." Constable Koester stated that he "knew from training that a carotid chokehold[21] like this could kill [him] in just minutes."[22]

[20] The couch was located across from the table and chairs along the outside wall of the interview room in a parallel manner and not diagonally across the room.

[21] The carotid control hold involves compressing the carotid arteries on a person's neck.

Constable Koester indicated that he tried to push Mr. Bush's arm over his head but he was "getting weak and couldn't muster enough strength." Constable Koester said that Mr. Bush "kept squeezing [his] neck" and that his face was pressed into the couch. Constable Koester stated that he tried to hit at Mr. Bush's face with his left hand but he could not do it nor could he reach Mr. Bush's neck to apply a carotid hold with his right hand. Constable Koester indicated that he grabbed the back of the couch and "tried to pull [himself] out of the hold but [he] was too weak."

Constable Koester stated that he was able to bring out his service pistol with his right hand and swung it to hit Mr. Bush who was still choking him. Constable Koester believed that he hit Mr. Bush in the head or neck area three times although "[i]t didn't seem as if [he] could swing very hard." Constable Koester thought to himself: "He'll know that this is my gun and he'll let me go." Constable Koester stated that he thought he was "going to be dead in seconds" and "[i]t was getting black while [he] was swinging" the pistol. According to Constable Koester, he "started to see stars" and his "vision was becoming dark and there were little bits of light."

Constable Koester stated that he stopped swinging his gun while it was still up at Mr. Bush's head and Mr. Bush kept squeezing his neck. He said that he was "going unconscious" and "knew that [he] had to pull the trigger in order to save [his own] life." According to Constable Koester, he pulled the trigger just before blacking out and he neither heard nor felt the shot. Constable Koester "[did not] even recall pulling the trigger" but knows that he did. Constable Koester stated that he was not sure if he did actually black out but he ended up lying on the floor and did not know how he got there and he was too weak to get up.

At 9:44:11 p.m., Constable Koester used his radio and frantically called for help. This was 29 seconds after Corporal Donovan first contacted the police dispatcher to ask about the disturbance on 14th street. Just over two minutes had elapsed since Constable Koester ended his last radio transmission advising the police dispatcher to stand by in relation to the disturbance on 14th Street.

Corporal Donovan was driving on Highway 16, the main road through town, on his way to the disturbance on 14th Street across from the Houston arena when he heard Constable Koester's calls for help. Corporal Donovan immediately made his way to the RCMP detachment and arrived in the RCMP parking lot at 9:44:48 p.m., 37 seconds after Constable Koester first called for help. Corporal Donovan entered the RCMP Detachment through the back door and immediately smelled gun powder.

The Events Immediately after the Shooting

Corporal Donovan first looked for Constable Koester in the cell block area assuming that Constable Koester had been dealing with an intoxicated person in cells. Constable Koester directed Corporal Donovan over the radio to the interview room which had the

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[22] The RCMP training materials indicate that a properly applied carotid control hold may render a person unconscious in 5-20 seconds, can result in brain damage if held for 60 seconds or more and death is probable if it is maintained for more than three minutes.

door closed. Corporal Donovan cautiously entered the interview room and observed Constable Koester on his left side in a semi-prone position on the floor. At 9:45:31 p.m., Corporal Donovan radioed that he was with Constable Koester. Corporal Donovan stated that Constable Koester was crying and "quite distraught."

Corporal Donovan noted that Constable Koester appeared to have been in a struggle and had some obvious facial injuries. According to Corporal Donovan, Constable Koester had injuries to his face and to his left hand and his pants at the left knee were torn. In addition, Corporal Donovan stated that Constable Koester complained of pain in his neck and when Constable Koester later took his tie off, he observed some visible marks on Constable Koester's neck and throat area.

Corporal Donovan stated that Mr. Bush was slouched over with his upper body face down on the now broken couch and his lower body off the couch. Corporal Donovan noted that Mr. Bush was not moving. Corporal Donovan located Constable Koester's gun on the floor and placed it on the table. Corporal Donovan noted that some of the cushions from the couch were overturned and some of the window blinds near the couch were bent.

Corporal Donovan checked Mr. Bush and observed that "there was no signs of life at all, no pulse," "his skin was kind of a bluish purple, the blood was already clotted" and "there was no movement at all in his chest or anything." Corporal Donovan observed that Mr. Bush had a large wound to the back of his head that he assumed was from a gunshot and that Mr. Bush had a "pool of blood underneath his facial area." Corporal Donovan requested that the RCMP Dispatcher call an ambulance.

Constable Woroshelo, along with Auxiliary Constable Ketchell, overheard Constable Koester's radio call for help and immediately turned around to drive back from Topley. Constable Woroshelo asked the RCMP dispatcher to call out off duty Houston RCMP members Corporal Troy Durand and Constable Dave Leonard to go to the RCMP detachment. Constable Woroshelo also requested that an ambulance be called.

Corporal Donovan assisted Constable Koester to Sergeant White's[23] office and remained with him until Corporal Durand arrived at the RCMP detachment at approximately 9:50 p.m. Corporal Donovan updated Corporal Durand after which they briefly viewed the interview room and then closed the door. According to Corporal Durand they locked the door and the interview room was considered a crime scene.

Constable Leonard arrived shortly after Corporal Durand. Constable Woroshelo and Auxiliary Constable Ketchell arrived back at the Houston RCMP Detachment at approximately 10:00 p.m. or shortly before. According to Constable Leonard, at approximately 10:05 p.m., he and Corporal Donovan took photographs of Constable Koester. Constable Kirsten Latvala, an RCMP member from Granisle[24] who heard the

[23] Sergeant White was the Houston RCMP Detachment Commander and was out of town but was scheduled to return to work on Monday, October 31, 2005.

[24] Granisle is a satellite detachment of the Houston RCMP Detachment. Granisle is located approximately 80 kilometres northeast of Houston.

radio call for help, also attended the Houston RCMP Detachment arriving at approximately 10:21 p.m.

Constable Koester's Utterances

Corporal Donovan stated that Constable Koester made various comments to him in the moments after he found him including that: he had been choked, that he was "seeing stars," that he could not breathe, that he thought he was going to die, that he could not get Mr. Bush off of him and that Mr. Bush was younger than him. This was the first of two spontaneous utterances that Constable Koester made immediately following the incident.[25] Corporal Donovan noted that Constable Koester was crying and "very emotional"; Corporal Donovan told Constable Koester several times that it was not his fault.

Constable Woroshelo stated that when he arrived at the RCMP detachment Corporal Donovan advised him that Constable Koester had "got into a fight with the prisoner and as a result he had to use lethal force." Constable Woroshelo stated that Corporal Durand told him to go check on Constable Koester so he went into Sergeant White's office to see Constable Koester. Constable Woroshelo testified at the Inquest that this conversation occurred when he was alone with Constable Koester for approximately four to five minutes with the door closed.

According to Constable Woroshelo, Constable Koester "spontaneously kind of told [him] what happened" including: that Mr. Bush had hit him in the side of the head after which a fight ensued; Mr. Bush was able to get on his back and then choked him from behind; that he could not break the chokehold and was starting to lose consciousness; that he tried hitting Mr. Bush in the head with his gun a few times to get him off but he could not; that he feared for his life and thought he was going to die; and that he shot Mr. Bush. This was the second of the two spontaneous utterances Constable Koester made immediately following the incident.

Constable Koester made a third utterance to Constable Darren Dodge, another local Houston RCMP member, later in the evening. At approximately midnight, Corporal Durand had called Constable Dodge, who was off duty, to come to the RCMP detachment to seize Constable Koester's clothing. Constable Dodge attended the detachment and entered Sergeant White's office at approximately 12:20 a.m. According to Constable Dodge, Constable Koester told him that he thought he was going to die and that he was thinking of his wife.

The area of spontaneous utterances has been considered by the courts and legal commentators as an exception to the hearsay rule.[26] A spontaneous utterance has been described as a "statement that describes or explains an event or condition made while the

[25] See **Appendix H** for a detailed description of Constable Koester's utterances.

[26] Hearsay evidence is testimony from one witness about what another person said. Hearsay evidence is generally inadmissible unless it falls within one of the many exceptions which provides for admissibility. See Black's Law Dictionary.

person was perceiving the event or condition, or immediately thereafter."[27] The test regarding the admissibility of spontaneous utterances is whether the "statement was so clearly made in circumstances of spontaneity or involvement in the event that the possibility of concoction can be disregarded."[28]

In this case Constable Koester made spontaneous utterances to Corporal Donovan immediately after the shooting and to Constable Woroshelo approximately fifteen minutes after the shooting. The utterance made to Constable Dodge was made well after the shooting and, although it is some evidence of Constable Koester's stated fear for his safety, it is not in the same time category as the first two utterances, nor does it contain any real detail about the events. Accordingly, I am of the view that the utterance made to Constable Dodge is of no real assistance in assessing the reliability of Constable Koester's subsequent formal statements.

[27] See D.M. Paciocco and L. Stuesser, The Law of Evidence, Fourth Edition (2005), Chapter 5, Hearsay Exceptions, 10. Spontaneous Statements (Res Gestae).
[28] *Ratten v. R.*, [1971] 3 All E.R. 801 at 807 (P.C.).

Constable Koester's Spontaneous Utterance to Corporal Donovan

Constable Koester made his first spontaneous utterance to Corporal Donovan approximately ninety seconds after calling for help. It is reasonable to believe that Constable Koester called for help immediately after he shot Mr. Bush. Very little time had elapsed from the occurrence of the events described by Constable Koester. According to Corporal Donovan, Constable Koester was on the floor in a weakened state, was crying and had obvious injuries indicative of a struggle. Although Corporal Donovan was known to Constable Koester, he was from another RCMP detachment.

Given these circumstances, I am satisfied that Constable Koester's spontaneous utterance to Corporal Donovan was made in "circumstances of spontaneity or involvement in the event that the possibility of concoction can be disregarded." Accordingly, I attach considerable weight to it.

Constable Koester's Spontaneous Utterance to Constable Woroshelo

Constable Koester's spontaneous utterance to Constable Woroshelo is not so straightforward. The difficulty with the spontaneous utterance made to Constable Woroshelo is due to the close relationship between Constable Koester and Constable Woroshelo and because of the manner in which it was received. Although there were four other RCMP members[29] at the Houston RCMP Detachment, Constable Woroshelo chose to speak with Constable Koester in private behind the closed door of Sergeant White's office.

The fact that Constable Woroshelo spoke to Constable Koester when asked to check on him by Corporal Durand is not by itself overly problematic. It is understandable that Constable Woroshelo would want to speak to Constable Koester given he was Constable Koester's trainer. However, the fact that Constable Woroshelo spoke to Constable Koester in private behind closed doors about the shooting soon after it occurred does not avoid the real or perceived lack of impartiality that is required in circumstances such as these. Someone else should have accompanied Constable Woroshelo to speak with Constable Koester and to record the conversation (as Constable Leonard later did). In addition, the door should not have been closed.

These circumstances make it difficult to assign the same degree of weight to the spontaneous utterance made to Constable Woroshelo as the spontaneous utterance made to Corporal Donovan. Although the details of the event that Constable Koester relayed to Constable Woroshelo were consistent with what Constable Koester had told Corporal Donovan, the fact that they were relayed in circumstances that lacked the necessary real or perceived impartiality lessens the weight that I can afford them.

Although it can be said that Constable Woroshelo was not specifically acting in an investigative capacity on behalf of the RCMP's North District Major Crime Unit (NDMCU) who would later attend to investigate Mr. Bush's death, Constable Woroshelo

[29] Including Auxiliary Constable Ketchell.

did attend the scene as an RCMP officer in response to Constable Koester's call for help. In this capacity, Constable Woroshelo was by default a part of the initial RCMP response to the shooting until the NDMCU arrived to take over the investigation. As a part of the initial response to the events, every effort should have been made to ensure the impartiality of the investigation.

As the on-scene local senior RCMP member, Corporal Durand should have taken more care when he asked Constable Woroshelo to check on Constable Koester. Corporal Durand did subsequently ask Constable Leonard to stay with Constable Koester and record any conversations with Constable Koester. Unfortunately, Constable Leonard did not start recording his notes about Constable Koester until 10:15 p.m., approximately ten minutes after Constable Woroshelo had already talked to Constable Koester.

Initial Investigation of Police-Involved Events by On-Scene RCMP Members

The circumstances surrounding Constable Woroshelo's private conversation with Constable Koester bring an important issue to the forefront about investigations of police-involved events. Prior to the arrival of the Major Crime Unit (MCU), what is the role of other RCMP members who are present or attend at an event, such as a police-involved shooting? There is RCMP policy which directs that police-involved shootings are to be investigated by a MCU, but there is no policy that provides guidance for on-scene RCMP members while they wait for the appropriate MCU to arrive.

There is certainly a duty on RCMP members at the scene to take some immediate steps in relation to the investigation, for example to secure the crime scene. Aside from the critical stages of an investigation that are required to be addressed immediately, it is likely better for more substantive avenues of investigation to be conducted by the MCU, who has expertise in major crime investigations. At a minimum, the role of an on-scene RCMP member is to avoid any real or perceived lack of impartiality. Any real or perceived lack of impartiality will risk diminishing the credibility of the subsequent substantive RCMP investigation.

Another example from the investigation of Mr. Bush's shooting is useful to further illustrate this point. Later in the early morning hours, after obtaining medical treatment, Constable Koester was taken to Constable Dodge's residence where he stayed until leaving town. Constable Dodge became involved in the investigation of Mr. Bush's shooting when Corporal Durand directed him to come in to work and seize Constable Koester's clothing and working gear. Accordingly, Constable Dodge was even more directly involved in the actual investigation than Constable Woroshelo.

There is no evidence that Constable Dodge acted improperly in relation to his role of seizing Constable Koester's clothing and working gear but the fact that Constable Koester then went to Constable Dodge's residence for lodging does not maintain the appearance of impartiality. It is inconceivable that an RCMP member would seize clothing of a private citizen as part of an investigation and would then invite the person to their residence for lodging. Constable Dodge should have played no role in the

investigation of Constable Koester or, once he assumed a role, he should not have provided lodging for Constable Koester.

The actions of Constable Woroshelo by speaking in private with Constable Koester and the actions of Constable Dodge by providing lodging to Constable Koester resulted in a perceived lack of impartiality. It was improper for Constable Woroshelo to speak with Constable Koester as he did in private. I recognize, however, that responsibility for this conduct must also be shared in part by the RCMP for failing to provide guidelines to on-scene RCMP members in major cases involving investigation of police conduct. Both Constable Dodge and Constable Woroshelo would have benefited from guidance as to their roles and responsibilities as on-scene RCMP members after Mr. Bush's death.

The actions of Constable Woroshelo and Constable Dodge, both immediate co-workers of Constable Koester, can be contrasted with the actions of Corporal Donovan, who found Constable Koester, and Corporal Doug Stone, who subsequently attended in his capacity as a Member Employee Assistance representative. As detailed in the immediate following section, both Corporal Donovan and Corporal Stone made conscious choices that demonstrated their awareness to avoid any real or perceived lack of impartiality when dealing with Constable Koester which could affect the integrity of the RCMP's investigation.

FINDING: It was improper for Constable Woroshelo to speak with Constable Koester in private behind closed doors about the incident soon after it occurred.

FINDING: The lack of RCMP policy providing direction to on-scene RCMP members in the police-involved shooting death of Mr. Bush may have contributed to the actions of Constable Woroshelo and Constable Dodge which resulted in a perceived lack of impartiality.

RECOMMENDATION 7: The RCMP develop policy that provides direction to on-scene RCMP members in major cases involving investigation of police conduct, i.e. situations where the police investigate the police, including the need to ensure real and perceived impartiality.

Constable Koester's State of Mind and Medical Treatment

An RCMP Victim Services worker attended the detachment at approximately 10:09 p.m. to provide emotional support for Constable Koester. Victim Services workers are community volunteers who provide emotional support, information, referrals and practical assistance to victims of crime and trauma.[30] The Victim Services worker testified that Constable Koester was extremely distraught, very distressed, crying, and in no state to be alone.

[30] See http://www.pssg.gov.bc.ca/victim_services/publications/VSFactSheet.pdf.

At approximately 11:15 p.m., Corporal Doug Stone arrived from Smithers as part of the RCMP's Member Employee Assistance Program (MEAP). The MEAP is a confidential counselling program, similar to those used by large organizations and in other branches of government. Corporal Stone testified that Constable Koester was totally devastated, an emotional wreck, unresponsive and catatonic at times, and sobbing uncontrollably at other times. Corporal Stone testified that Constable Koester's response was consistent with other persons he has dealt with who have experienced a major traumatic event.

Both the RCMP Victim Services worker and Corporal Stone as the MEAP representative were not acting in an investigative capacity. Rather, they were acting in a support capacity for Constable Koester. Corporal Stone advised Constable Koester that he was a "referral agent and a critical incident debriefer" and that he was "there to support him through this incident." Corporal Stone also advised Constable Koester "first and foremost, that [he] was a police officer and that [he] did not want to know any of the details of the incident at all, that if [Constable Koester] divulged incident related details to [him he] could become a compellable witness in the case." Corporal Stone advised Constable Koester that "there will be a time and a place" for him to tell his story.

Corporal Stone and the Victim Services worker took Constable Koester to the Smithers hospital where he was treated at approximately 1:50 a.m.[31] on October 30, 2005. Constable Leonard also attended this first visit to the hospital with Constable Koester in his note taking capacity. Corporal Stone took Constable Koester back to the hospital again in the afternoon later that same day. The medical records indicate that Constable Koester was observed to have abrasions and bruises on his face and forehead, an abrasion on his left shoulder and an abrasion on his left knee. In addition, Constable Koester reported tenderness and pain in his neck. In the latter examination, Constable Koester was also noted by the examining doctor to have bruising on the front of his neck.

Constable Koester saw his family doctor in follow-up on November 3, 2005 and December 7, 2005. In addition to post traumatic symptoms, Constable Koester was noted to have various healing abrasions and bruises but "no visible strangulation marks" on the front of his neck which Constable Koester reported had already cleared up. Constable Koester continued to have difficulty with neck pain.

Corporal Donovan testified that Constable Koester was very distraught and he was trying to console Constable Koester. Corporal Donovan testified that in his opinion Constable Koester was in no state to give a statement. Corporal Donovan also testified that he did not think it was proper for him to take a statement from Constable Koester because he knew him. Corporal Donovan confirmed that he knew that the shooting would be investigated by a Major Crime Unit.

Types of Statements the RCMP can take During an Investigation

[31] The time on the hospital form is in fact 12:50 a.m. because the hospital clocks had already been set back one hour for daylight saving time, scheduled to occur at 2:00 a.m.

As a general rule, persons in Canada are under no legal obligation to provide a statement to the police. The police may request that a person provide a statement to them during an investigation but, absent some statutory or common law duty to comply, they have no means to enforce the request. If the police have reasonable grounds to arrest a person and keep them in custody, the police may attempt to interrogate the person in circumstances where the person's liberty has been taken away from them, but there is still no requirement that the person cooperate with the police.

RCMP members are required to provide an "accounting" of their activities when directed to do so. This is termed a "duty to account" statement. The authority to compel RCMP members to provide a duty to account statement is derived from the fact that RCMP members are required to obey a lawful order from another RCMP member who is superior in rank or who has authority over the member.[32] There is no similar requirement for ordinary citizens in the ordinary course of police investigations.

Given the mandatory nature of duty to account statements, they are likely not voluntary and not admissible in criminal proceedings.[33] It is clear that the duty to account is primarily viewed as an administrative process. For example, it may be used for the purpose of code of conduct proceedings. Although the duty to account is not specifically considered part of the criminal investigation process, this type of statement can provide general information from which to commence a criminal investigation.

Constable Koester's Duty to Account Statement

At approximately 10:40 p.m. on the night of the shooting, Staff Sergeant Glen McRae, the North District Advisory NCO,[34] called the Houston RCMP Detachment and spoke to Corporal Durand to "see how things were going and to advise that he was on his way." Corporal Durand asked Staff Sergeant McRae to request that legal counsel be contacted for Constable Koester. Staff Sergeant McRae contacted Mr. Brian Gilson, a lawyer from Prince George, on Constable Koester's behalf. Mr. Gilson called the Houston RCMP Detachment at approximately 11:00 p.m. and spoke to Constable Koester.

NDMCU investigators arrived in Houston at around 2:15 a.m. At approximately 3:35 a.m., after Constable Koester had returned from the Smithers hospital, Corporal Rick Murray, the NDMCU's primary investigator, approached Constable Koester, who was sitting in a vehicle outside the detachment along with the Victim Services worker. Constable Leonard (who was still recording any conversations with Constable Koester) was also present, but outside the vehicle. According to Corporal Murray, Constable Koester was "in no shape to provide any information and advised that he had spoken to a lawyer." Corporal Murray advised Constable Koester that "at some point in the near future investigators would like to speak to him regarding the incident."

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[32] *Royal Canadian Mounted Police Regulations*, S.O.R./1988-361, s. 40.

[33] Although there are no reported criminal court cases dealing with the "duty to account," in general, compelled statements are not admissible in criminal court proceedings. See *R. v. White*, [1999] 2 S.C.R. 417.

[34] Staff Sergeant McRae is an advisory Non-Commissioned Officer (NCO) to the District Officer for the RCMP's North District and is not a member of the NDMCU.

At approximately 1:15 p.m. on October 30, 2005, Corporal Murray and Sergeant Judy Thomas, the NDMCU Team Leader for the investigation, went to Constable Dodge's house to request that Constable Koester provide an account of the events. According to Corporal Murray, Constable Koester asked to speak to his lawyer so Corporal Stone, the MEAP representative who was also present, called Mr. Gilson for Constable Koester.[35] Sergeant Thomas spoke to Mr. Gilson and advised him that Constable Koester would need to provide an account of the events. After consulting with Mr. Gilson, Constable Koester advised that he would prepare a written statement. Corporal Murray and Sergeant Thomas left Constable Dodge's residence at approximately 2:00 p.m.

According to Corporal Stone, Corporal Mike Ingles, a Staff Relations representative, arrived in Houston at approximately 6:00 p.m. that same day and gave Constable Koester a "short overview of the staff relations duty" in this type of instance. Corporal Stone testified that the duty to account statement is meant to be a brief account detailing the circumstances. Corporal Stone stated that Constable Koester then prepared his "duty to account" statement from approximately 6:30 p.m. to 10:15 p.m.[36] Corporal Ingles provided the statement to Corporal Murray the following morning.

Although it is generally understood that RCMP members are required, when directed, to provide an account of their activities, there is no specific policy regarding a member's duty to account. The result of this is uncertainty about what is specifically required to meet the obligation. Other police departments, for example the Vancouver Police Department, have specific policy governing required "statements and duty reports."[37] Specific policy would not only aid RCMP members but it would also assist the public in understanding the RCMP members' duty to account.

Given the uncertainty that exists regarding an RCMP member's duty to account, including what is required, when it is required and to what use it can be put, the RCMP should develop policy governing an RCMP member's duty to account.

FINDING: Constable Koester completed his required duty to account statement on the same day that it was requested, on October 30, 2005.

FINDING: The lack of RCMP policy in respect of a member's duty to account results in uncertainty about what is specifically required to meet the obligation.

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[35] Corporal Stone stated (in a statement taken on November 1, 2005) that he called Mr. Gilson at the suggestion of Corporal Murray and Sergeant Thomas. This is not reflected in Corporal Murray's and Sergeant Thomas' notes from the meeting and was disputed by Corporal Murray at the Inquest into Mr. Bush's death.

[36] Contrary to some media reports, Constable Koester did not prepare his duty to account statement (from 6:30 p.m. to 10:15 p.m. on October 30, 2005) with the assistance of Corporal Murray and Sergeant Thomas.

[37] See the "Statements and Duty Report" policy located on pages 660-661 of the Vancouver Police Department Regulations and Procedures Manual, http://www.city.vancouver.bc.ca/police/Planning/RPM/RPM.pdf.

RECOMMENDATION 8: The RCMP develop a policy that dictates the requirement, timeliness and use of the duty to account that members are obliged to provide.

Constable Koester's November 17, 2005 Statement

Sergeant Ted Vanoverbeek of the "E" Division Major Crime Unit in Vancouver attended Houston to assist the NDMCU with the investigation. Sergeant Vanoverbeek was assigned the task to interview Constable Koester. On November 1, 2005, Sergeant Vanoverbeek spoke to Constable Koester's lawyer, Mr. Gilson, to request that Constable Koester be interviewed. According to Sergeant Vanoverbeek, Mr. Gilson contacted him the following day and advised that he had started to take a statement from Constable Koester, but Constable Koester broke down sobbing when he got to the point of the arrest. Mr. Gilson advised Sergeant Vanoverbeek that Constable Koester would write out what happened to him which would help him "get it out [without] breaking down."

On November 3, 2005, Corporal Murray contacted Constable Koester's family, who advised that Constable Koester was still emotionally distraught so they did not want police investigators to attend their house at that time. Corporal Murray contacted Constable Koester's family again on November 4, 2005, and was advised that Constable Koester was under his doctor's care and that the family did not want to meet with the investigative team at that time, but perhaps the following week.

On November 7, 2005, Sergeant Vanoverbeek contacted Mr. Gilson's office again to request a statement but Mr. Gilson was in court out of town. On November 10, 2005, Sergeant Vanoverbeek contacted Mr. Gilson again and Mr. Gilson advised him that Constable Koester was preparing a thirteen- to fourteen-page statement that should be ready the following week. On November 16, 2005, Mr. Gilson contacted Sergeant Vanoverbeek and advised that he had a draft statement ready for him to review. Sergeant Vanoverbeek and Constable Karina Desrosiers, also of the "E" Division Major Crime Unit, attended Mr. Gilson's office later that morning and were offered a draft statement from Constable Koester to review.

Prior to reading the draft statement, Sergeant Vanoverbeek asked Mr. Gilson if Constable Koester would provide a "pure version statement" where investigators could ask Constable Koester whatever questions they wanted to. Sergeant Vanoverbeek recorded in his notes that Mr. Gilson stated that he did not feel Constable Koester could give an audio/video taped statement without breaking down. Constable Desrosiers recorded in her notes that Mr. Gilson stated that he would not advise Constable Koester to give a pure version as the typed statement is very detailed, and because Constable Koester was "still very fragile and emotional."

Sergeant Vanoverbeek and Constable Desrosiers did not review the draft statement; instead they consulted with Corporal Murray and Sergeant Thomas and decided to wait until the final signed statement, which was expected to be ready later that day or the following day. According to Corporal Murray, Mr. Gilson advised Corporal Murray that

he could make Constable Koester available later to answer questions to clarify the typed statement. The following morning on November 17, 2005 Sergeant Vanoverbeek attended Mr. Gilson's office and received Constable Koester's typed statement, twenty pages in length and signed by Constable Koester.

When asked at the Inquest why it took so long to prepare his statement, Constable Koester testified that it was a "long process in which [he] could only do a small amount at a time before [he] would feel exhausted and not be able to continue." Constable Koester testified that it "took a long time because [he] was in the process of recovering both physically and mentally." Although much has been made of the fact that the NDMCU did not obtain a statement from Constable Koester until November 17, 2005, I am satisfied that Constable Koester's explanation for the delay is reasonable.

More importantly, it needs to be understood that once Constable Koester provided his duty to account statement, he was under no legal obligation to provide any further statements. Given Constable Koester was under no legal obligation to provide a further statement and NDMCU investigators fulfilled their investigational obligations by requesting a further statement, I can find no fault with the time it took for Constable Koester's to prepare his November 17, 2005 statement, a statement that Constable Koester provided voluntarily.

Constable Koester's November 17, 2005 statement indicates that it was "typed directly from extensive notes setting out these events made on November 2, 2005 and the few days following that date." Constable Koester testified at the Inquest that he prepared the notes on the advice of his lawyer. At some point, Constable Koester destroyed the notes which he used to prepare his statement. Constable Koester testified that he had prepared approximately twenty pages of notes and that "the statement was exactly as the notes were."

The fact that Constable Koester destroyed his notes was raised as an issue at the Inquest. While the RCMP does have specific policy regarding the retention of notes, this policy applies to a member's notebook and notes ordinarily made in the course of their law enforcement duties. The notes referred to here were prepared on the advice of legal counsel and for the purpose of preparing a statement that Constable Koester was under no legal obligation to provide. These were not police officer notes that were made in the course of law enforcement duties and thus there was no obligation to preserve them. Given this context, I can find no fault with the fact that Constable Koester destroyed the notes that he used to prepare his November 17, 2005 statement.

FINDINGS: Once Constable Koester provided his duty to account statement he was under no legal obligation to provide a further statement but he voluntarily did so on November 17, 2005.

The notes that Constable Koester used to prepare his November 17, 2005 statement were made on the advice of legal counsel and were not notes ordinarily made in the course of his law enforcement duties. Accordingly, Constable Koester was under no obligation to maintain his notes.

Constable Koester's February 8, 2006 Statement

There were several areas that NDMCU investigators wanted to clarify with Constable Koester. Given Mr. Gilson's previous offer to make Constable Koester available to answer any questions to clarify Constable Koester's November 17, 2005 statement, on January 5, 2006, Sergeant Vanoverbeek attended Mr. Gilson's office and provided him with a list of 18 questions that they wanted to ask Constable Koester. Mr. Gilson advised Sergeant Vanoverbeek that he had no problem with the questions. An interview was subsequently arranged for February 8, 2006 at Mr. Gilson's office and Constable Koester was asked the questions during an audio taped interview.

The fact that NDMCU investigators submitted questions in advance to Constable Koester's lawyer was given much attention during the Inquest into Mr. Bush's death. This practice is not uncommon among criminal defence lawyers. Again, Constable Koester was under no legal obligation to answer any questions and it cannot be said to be improper that NDMCU investigators acceded to the process suggested by Constable Koester's lawyer to obtain further answers from Constable Koester.

FINDING: The NDMCU investigators acted appropriately in providing Constable Koester's lawyer with a list of 18 questions in advance of the February 8, 2006 interview of Constable Koester.

The RCMP Investigation

At approximately 9:52 p.m., just over seven minutes after arriving at the RCMP detachment, Corporal Donovan telephoned the RCMP North District Operational Communication Centre (OCC) in Prince George to request that the NDMCU, based in Prince George, be notified of the police-involved shooting so that they would attend to investigate the matter. Corporal Durand also contacted the OCC at approximately 9:57 p.m. to ensure that the appropriate RCMP North District personnel would be called.

The Prince George OCC immediately contacted Sergeant Judy Thomas with the NDMCU after being advised of the shooting. Sergeant Thomas first contacted Corporal Rick Murray to call out other members of the NDMCU and then contacted Corporal Durand at the Houston RCMP Detachment at approximately 10:05 p.m. Sergeant Thomas confirmed that the interview room had been secured and advised that she would call the appropriate people including the coroner, the North District RCMP Operations Officer and the RCMP Forensic Identification Section.

Sergeant Thomas, the designated team leader for the investigation, assembled her investigative team and identified Corporal Murray as the Primary Investigator and Corporal Suzanne McKelvie as the File Coordinator. These are the three main positions

in the Major Case Management "triangle."[38] Sergeant Thomas, Corporal Murray and Corporal McKelvie all have significant experience in investigating serious or major crimes. Corporal Blaine Hawkins was assigned the task of Exhibit Person and other NDMCU members were assigned as investigators for the file.

Sergeant Thomas and the other members of the NDMCU left Prince George at 12:15 a.m. on the RCMP plane to fly to Smithers, which had the closest airport for the plane to land. In addition to the named RCMP members, four more RCMP members with the NDMCU and two RCMP members from the "E" Division Major Crime Unit[39] based in Surrey, British Columbia attended Houston to assist with the investigation. Inspector Leon Van De Walle, the Officer in Charge of the RCMP's "E" Division Major Crime Unit, oversaw the investigation.[40]

Auxiliary Constable Ketchell was initially assigned the task of recording all persons who came in and out of the RCMP detachment. This function was later taken over by Constable Latvala, the member from Granisle, and later by other RCMP members. The scene security log was maintained until the scene was released in the afternoon on November 1, 2005. As noted above, Constable Leonard stayed with Constable Koester to record any conversations starting at 10:15 p.m. and continued to do so until approximately 5:45 a.m. the following morning.

At approximately 10:35 p.m., an ambulance attendant was escorted into the interview room by Corporal Donovan and Corporal Durand to examine Mr. Bush's body. The ambulance attendant confirmed that Mr. Bush was deceased. The ambulance attendant inadvertently wiped her gloved hand, which had blood on it, on Mr. Bush's pant leg. The ambulance attendant then examined Constable Koester who was still in Sergeant White's office. The ambulance attendant noted that Constable Koester had contusions to his forehead, face and left knee. In addition, Constable Koester had redness on his left shoulder and he complained of pain in his left little finger and in the left side of his neck. The ambulance attendant did not observe any marks on Constable Koester's neck.

Constable Dodge of the Houston RCMP attended the RCMP detachment just after midnight and at 12:40 a.m. seized all of Constable Koester's clothing, except for his underwear, as well as all of Constable Koester's working gear. Constable Dodge secured the exhibits in the detachment exhibit locker and at approximately 4:10 a.m., turned them over to Corporal Hawkins with the NDMCU, the primary exhibit person. Constable Dodge stated that he observed red marks on Constable Koester's neck.

Sergeant Chuck Duncan of the Terrace RCMP Detachment Forensic Identification Section was called to attend the Houston RCMP Detachment. Sergeant Duncan was in Smithers at the time assisting with an unrelated investigation and arrived at approximately 12:10 a.m. on October 30, 2005. Sergeant Duncan obtained photographs of Constable Koester and of the scene. Sergeant Duncan did not observe any injury to

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[38] See discussion of Major Case Management in the Second Allegation - *Impartiality of the Investigation* and footnote number 67.

[39] Sergeant Vanoverbeek and Constable Desrosiers referred to above.

[40] Inspector Van De Walle was subsequently promoted to Superintendent and retired in June 2007.

Constable Koester's neck, but noted that Constable Koester complained of pain in his neck. In addition, Sergeant Duncan spoke with Sergeant Jim Hignell, an RCMP bloodstain pattern analyst from the RCMP Forensic Lab in Vancouver, to request that he attend the scene.

As noted above, at approximately 2:15 a.m. Sergeant Thomas, Corporal Murray and the other NDMCU members arrived at the Houston RCMP Detachment.

Sergeant Duncan sealed the interview room before he left the RCMP detachment at approximately 4:00 a.m. Sergeant Duncan re-entered the interview room at approximately 11:40 a.m. on October 30, 2005, and noted that the sealing exhibit sticker was intact. Sergeant Hignell attended the Houston RCMP Detachment at approximately 12:25 p.m. Sergeant Duncan and Sergeant Hignell entered the interview room at approximately 3:00 p.m. and obtained additional photographs and then measured and sketched the scene.

Various exhibits were identified, seized and turned over to Corporal Hawkins, the primary exhibit person.[41] The seized items included such things as swab samples for DNA analysis, the violation ticket and Promise to Appear that Constable Koester had prepared for Mr. Bush, Constable Koester's pistol, the empty bullet casing, Mr. Bush's baseball cap, the full unopened bottle of beer[42] that was not discovered by Constable Koester during his search of Mr. Bush and other loose items noted in the interview room.

At approximately 6:20 p.m. on October 30, 2005, the coroner attended the Houston RCMP Detachment to view the scene. Later that evening at approximately 8:45 p.m., Mr. Bush's body was removed from the scene by the British Columbia Coroner's Service. The delay in removing Mr. Bush's body was because it had to remain in place until the initial forensic identification and bloodstain pattern work could be completed. This was complicated by the fact that Sergeant Hignell had to travel from Vancouver to Houston to attend the scene. Given the need to properly commence and complete key forensic procedures, I am satisfied that the time that Mr. Bush's body remained in the interview room was necessary.

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[41] During the Inquest, counsel for the Bush family questioned different RCMP witnesses (but not Sergeant Hignell) about the movement of one of Mr. Bush's shoes and the back of Mr. Bush's shirt as shown in different photographs from the scene. It is clear from reviewing the photographs on the RCMP's disclosure CD that the photographs where Mr. Bush's shoe and shirt have been moved were taken as Sergeant Hignell progressed through his examination of the interview room laying out his exhibit markers. Sergeant Hignell's first scene photograph shows the shoe and shirt in the same position as Sergeant Duncan's scene photograph.

[42] Corporal Donovan had prepared a sketch of the interview room, but the sketch did not show the bottle of beer or a wheeled chair underneath which the bottle lay. Corporal Donovan explained, when asked by the jury at the Inquest, that he prepared the sketch from memory approximately two hours after he had been in the interview room. Corporal Donovan described in a statement to NDMCU investigators at the time that he did not initially see the bottle of beer when he first entered the interview room but that he saw it underneath a wheeled chair off to the left when he went into the interview room a second time to accompany the ambulance attendant to examine Mr. Bush's body.

Sergeant Hignell and Sergeant Duncan continued their examination of the scene in the evening of October 30, 2005 and the following morning on October 31, 2005. Sergeant Hignell completed his examination of the scene shortly after noon on October 31, 2005. Corporal Murray released the scene at 3:38 p.m. on November 1, 2005.

Mr. Bush's body was transported to the Prince George morgue arriving at approximately 1:00 a.m. on October 31, 2005 and was subsequently transported to Royal Inland Hospital in Kamloops, British Columbia for an autopsy.

The Autopsy on Mr. Bush

On November 1, 2005, Dr. John Stefanelli, a pathologist with Royal Inland Hospital, performed the autopsy on Mr. Bush. Corporal Hawkins, the NDMCU member in charge of exhibits, and Sergeant Duncan, from the Terrace Forensic Identification Section who was the forensic identification specialist, also attended the autopsy to seize exhibits and take photographs respectively. During the Inquest the appropriateness of these key members of the investigative team attending the autopsy was raised. It is normal practice for RCMP members to attend autopsies in circumstances where a death is being investigated.[43]

At approximately 11:40 a.m., the autopsy commenced. DNA samples were taken from both Mr. Bush and Constable Koester for comparison with samples taken from the interview room. The autopsy report dated February 17, 2006 concluded that Mr. Bush died from a single "incomplete contact" gunshot wound to the head.

The incomplete contact referred to the fact that part of the pistol muzzle was touching Mr. Bush's skull but at an angle and not at 90 degrees. The bullet trajectory through Mr. Bush's skull was noted to enter from the posterior (back) left side of the scalp and travelled from the back of the head towards the face and slightly left to right. Although there was an exit wound on the right side of Mr. Bush's forehead, the bullet itself did not exit Mr. Bush's skull. Subsequent firearms analysis confirmed that the bullet lodged in Mr. Bush's skull was fired from Constable Koester's pistol.

Mr. Bush was also noted to have three small crescent shaped lacerations to the back of his scalp near the gunshot wound. The lacerations were each measured to be approximately nine millimetres in length. Constable Koester's gun had Mr. Bush's DNA on it in various places including around the front sight. According to Sergeant Hignell, the RCMP's bloodstain pattern analyst, the front sight on Constable Koester's pistol measures approximately 8 millimetres in length. Both Sergeant Hignell and Dr.

[43] Dr. Stefanelli was cross-examined at the Inquest about the presence of the two RCMP members and asked if they had suggested scenarios to him. Dr. Stefanelli testified that the RCMP members did speculate about various scenarios but he did not think that they asked him if Constable Koester was innocent; they asked general comments about if it could have happened in front, behind, lying down, etc. Dr. Stefanelli later clarified that when presented with a scenario, he can say whether it might have happened that way or not but it would not exclude other possibilities. Dr. Stefanelli testified that he believed the scenarios from the RCMP were helpful.

Stefanelli testified at the Inquest that the lacerations were consistent with having been caused by the sight on Constable Koester's gun.

In addition to the injuries noted to Mr. Bush's head, Mr. Bush was noted to have abrasions to his right shoulder, right knee and left knee; scabbed lesions to his right shin and left shin; and a small bruise on his left upper back. Although not noted in the autopsy report, Mr. Bush also had a large bruise-type mark on the inside of his left thigh that was identified by Dr. Stefanelli as a skin infection. The mark was the subject of much debate at the Inquest. It was eventually determined that the mark was in fact a bruise. [44]

Constable Koester was asked during the Inquest if he had kneed Mr. Bush during the altercation in the interview room. Constable Koester replied that he did not remember kneeing Mr. Bush during the altercation but agreed that his training included "things like punching a person in the testicles" and "kneeing a person in the testicles." Dr. Stefanelli agreed in his testimony that assuming the bruise was from blunt force trauma, it was not inconsistent with an altercation.

Dr. Stefanelli was also asked during the Inquest about the effect of decomposition and confirmed that decomposition can cause lividity (discolouration similar to bruising). Dr. Stefanelli testified that, although it is possible for the effects of decomposition to mask bruises, he did not believe it had done so here. Dr. Stefanelli testified that any decomposition that was present did not interfere with his ability to determine the cause of death.

Mr. Bush was noted to have swelling and bruising around both eyes. Dr. Stefanelli testified that a gunshot will cause extensive fracturing to the skull which can extend to the eyes where the bruising is caused by damaged blood vessels. Dr. Stefanelli also testified that bruising to the eyes can be caused from being struck in the face or eyes. Dr. Stefanelli noted that there were no scrapes, lacerations or evidence of obvious blunt force trauma on Mr. Bush's face. Dr. Stefanelli also advised that there was no evidence of a depressed skull fracture from the three lacerations on Mr. Bush's head.

FINDING: The attendance of Corporal Hawkins, the member in charge of exhibits, and Sergeant Duncan, the forensic identification specialist, at the autopsy was consistent with normal practice for police investigations of human deaths.

Bloodstain Pattern Analysis Evidence

[44] Dr. John Butt, "a highly-qualified specialist in forensic medicine and pathology," consulted by counsel for the Bush family, advised the coroner's counsel that the mark was "consistent with bruising resulting from blunt force trauma. See http://www.pathfinderforum.com/personal.htm for more information about Dr. Butt. In addition, the coroner requested an opinion from Dr. Richard Crawford, a University of British Columbia clinical professor in pathology who also specializes in dermatology. Dr. Crawford's expert opinion was that the mark was a bruise.

Sergeant Hignell concluded in his bloodstain pattern analysis expert report that the bloodstains were consistent with Mr. Bush having been shot while positioned with his head at or near sitting level height of the couch, i.e. that the height of Mr. Bush's head would have been somewhere between the sitting portion and the top of the back of the couch. In addition, Sergeant Hignell concluded that bloodstains noted on Constable Koester's pistol would have been created when Constable Koester hit Mr. Bush in the head with his pistol[45] and from being in close proximity to Mr. Bush's head. Sergeant Hignell testified at the Inquest that the bloodstain pattern evidence was consistent with Constable Koester's version of events.

Analysis of the DNA samples from the interview room confirmed that the identified samples of blood on Constable Koester's patrol jacket were his own, that the blood on the couch and wall in the interview room was from Mr. Bush and that Mr. Bush had some of Constable Koester's blood on his left hand as well as Mr. Bush's own blood on his shirt. Further DNA testing was conducted and confirmed that other spots of blood on Constable Koester's patrol jacket were from Constable Koester, that the blood on Mr. Bush's pants (where the ambulance attendant wiped their hand) was from Mr. Bush and that blood on Mr. Bush's right front sleeve was from Constable Koester. Further DNA analysis of spots on Mr. Bush's shirt sleeves did not reveal sufficient DNA for testing.

Counsel for the Bush family engaged a private bloodstain pattern analysis expert, Mr. Joseph Slemko, to review the bloodstain evidence related to the death of Mr. Bush. Mr. Slemko reviewed the RCMP disclosure package and a booklet of "bloodstain pattern analysis specific" photographs. Mr. Slemko concluded that Constable Koester could not have shot Mr. Bush as he had described, i.e. while facing down on the couch under Mr. Bush. Mr. Slemko concluded that Constable Koester had to have been in a position to the side or to the back of Mr. Bush when Mr. Bush was shot.

In the law of evidence, an opinion means an "inference from observed fact."[46] As a general rule, witnesses may only testify to observed facts, and it is then up to the trier of fact to draw inferences from those facts.[47] A lay witness will be permitted to give an opinion only with respect to matters that do not require special knowledge and in circumstances where it is virtually impossible to separate the facts from the inferences based on those facts.[48]

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[45] Sergeant Hignell testified that the front sight of the gun had a blood transfer stain on it and that impact stains near the front sight were caused from using the gun to hit Mr. Bush. Mr. Slemko (the bloodstain pattern expert engaged by the Bush family) disagreed that the front sight caused the lacerations to the scalp of Mr. Bush. However, Mr. Slemko agreed in cross-examination that he could not say definitively that Sergeant Hignell's opinion on this point was wrong. Dr. Stefanelli, the pathologist who performed the autopsy on Mr. Bush, and Dr. Butt, the pathologist consulted by counsel for the Bush family (see footnote 39) both confirmed that the front sight was consistent with something that could have caused the three scalp lacerations.

[46] *R. v. Collins* (2001), 160 C.C.C. (3d) 85 at para. 17 (Ont. C.A.).

[47] *Ibid.*

[48] *Ibid.*

Expert opinion evidence is admissible to assist a trier of fact in drawing appropriate inferences from the observed facts. As the trier of fact for the purposes of this Chair-initiated complaint, I can accept or reject the expert opinions proffered to assist me in reaching my conclusions. Given the differing expert opinion conclusions, it is necessary to closely examine Sergeant Hignell's and Mr. Slemko's opinions and the basis for them.

A witness can give expert opinion evidence where they are shown to "have acquired special or peculiar knowledge through study or experience in respect of the matters on which he or she undertakes to testify."[49] As long as an expert witness is "sufficiently experienced in the subject-matter at issue," it is not a concern whether the skill "was derived from specific studies or by practical training, although that may affect the weight to be given to the evidence."[50]

Having reviewed both Sergeant Hignell's and Mr. Slemko's curriculum vitaes, I am satisfied that they both appear to have sufficient experience to be considered experts in the area of bloodstain pattern analysis.[51]

Sergeant Hignell testified at the Inquest that he had attended numerous crime scenes, "twenty or so," where the fatal injury was a gunshot wound to the head. When questioned about possible locations of Constable Koester at the time of the shooting, Sergeant Hignell agreed that the bloodstain analysis evidence does not allow a "categorical determination of just one way Constable Koester could have been positioned," and that he could only go as far as to say that "there was contact at the end of the gun to a blood source." Although Sergeant Hignell testified that the bloodstain evidence was consistent with Constable Koester's version of the events, he agreed that it was not the only way it could have occurred.

Mr. Slemko testified that Sergeant Hignell's analysis was not "in any way misleading or a misinterpretation of the obvious bloodstain evidence" and that he was in "total agreement with Sergeant Hignell" regarding the height of where Mr. Bush was likely shot. Mr. Slemko testified that he was just "taking it to the next step and saying if that's the case [Mr. Bush's] head is too low to be above Constable Koester." According to Mr. Slemko, in order for Mr. Bush to have been shot while on top of Constable Koester, Mr. Bush would have had to have been higher than the height that both he and Sergeant Hignell agreed that Mr. Bush was at when he was shot.

Mr. Slemko utilized a photograph of Mr. Bush lying on the couch after he had been shot and superimposed a circle on the photograph above Mr. Bush's head meant to represent the approximate height of Mr. Bush's head if he were lying on top of Constable Koester (using Mr. Bush's body in the photograph as a reference point for where Constable Koester would have been when being choked by Mr. Bush). Mr. Slemko testified that the

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[49] *R. v. Mohan*, [1994] 2 S.C.R. 9 at para. 27.

[50] *R. v. Marquard*, [1993] 4 S.C.R. 223 at para 35.

[51] For a more complete discussion regarding the experience of Sergeant Hignell and Mr. Slemko, see **Appendix I**.

modified photograph was an "illustration of [his] observations" and not a "scientific fact."

When asked about his assumption of Mr. Bush's position on top of Constable Koester, Mr. Slemko testified:

> Mr. Bush is on top in a controlling position … so that his body mass is on top of Constable Koester in order to control him. He can't be off to the side either way because then he's not in a controlling position. He can't be to the right of him because then he's – Constable Koester is not going to be allowed to access his firearm and get his shoulder and his gun out.

Mr. Slemko clarified that Mr. Bush's head could have been within a range of ten centimetres either way but would still have been at the same height. Mr. Slemko confirmed that in assuming that Mr. Bush's head was on top of Constable Koester's head he was assuming that "[Mr. Bush's] body mass is on top of [Constable Koester] in order to control him" and explained that "[i]f he's off to the side, he's no longer in control of him." Mr. Slemko's reference to Mr. Bush's head being on "top" of Constable Koester's head reflects the body positioning of Constable Koester being bent over the couch. Accordingly, the head position reference to being on "top" is also consistent with one head being behind the other.

When it was suggested that this (assumption regarding the height) would not be correct if Mr. Bush was off at a 45-degree angle to Constable Koester, Mr. Slemko replied: "No, he still has to have his body mass on top of him and his body mass dictates where your head is going to be." When asked if his theory was that "it has to be one head on top of the other," Mr. Slemko replied: "Yes, he has to be in order to be in a controlling position, his body has to be above." Mr. Slemko confirmed that this was the "whole basis" of his theory about the relative positions of Constable Koester and Mr. Bush.

Mr. Slemko's assumption about head positioning was not consistent with a demonstration from the RCMP's use of force expert, Corporal Chris Knight, at the Inquest.[52] Counsel for the Bush family asked Corporal Knight to demonstrate how to perform three different types of carotid chokeholds that are taught to RCMP members. Corporal Knight demonstrated the three carotid chokeholds on another RCMP member. In each case, Corporal Knight's head ended up more to the side of the head of the person he was "choking" than behind.

Corporal Knight was asked by the Commission to describe the expected head positioning of the respective persons during application of the carotid control technique. Corporal Knight advised that "[d]uring the application of the technique, the recipients head needs to be controlled and this is best done by pulling it to the shoulder of the arm that is used for the technique." Corporal Knight explained that "officers heads are never directly behind the head of the recipient as this position makes it very difficult to properly apply

[52] Corporal Knight testified before Mr. Slemko and Mr. Slemko was not present for Corporal Knight's testimony.

the hold, and it also allows the recipient more freedom to move his head, especially to the rear (head butt)."

Corporal Knight advised that there are "several variables that influence head positioning during the technique," including: officer versus subject size, officer versus subject flexibility, neck size, arm size (length and girth) and clothing (kevlar vest, winter coats, etc). Corporal Knight advised that in a dynamic situation, the head of the person applying the hold and the head of the recipient could in fact be positioned anywhere in relation to one another.

Mr. Slemko was cross-examined at the Inquest about the dynamic nature of the struggle between Constable Koester and Mr. Bush, but was reluctant to acknowledge that there was a dynamic struggle. When it was suggested to him that there was a "very significant struggle," Mr. Slemko replied: "There's no evidence. Physical Evidence." I find that there was evidence of a significant struggle including Constable Koester's facial injuries and ripped pants, disarray in the interview room, Mr. Bush's right shoe that had come off, the broken couch, the bent blinds and transfer marks from the wall on the back of the couch where it had been rubbed against the wall.

When asked if the three lacerations to Mr. Bush's head indicated that this was "very clearly a dynamic rather than a static event," Mr. Slemko replied: "Not necessarily, no." When asked if he was suggesting that Mr. Bush would not have moved away if he was hit on the head, Mr. Slemko replied: "the wounds are all clustered in one area and that's generally consistent with a static event." When asked if it was his evidence that "assuming there was a fight, that Mr. Bush and Mr. Koester would not have been moving around on that couch," Mr. Slemko replied: "I can't say anything."

Mr. Slemko stated in his report that "no blood stain or DNA evidence originating from Constable Koester was found on the front and sleeve areas of the shirt worn by Mr. Bush (even though it is alleged that Constable Koester had sustained bleeding facial injuries prior to the firearm being discharged)." DNA reports confirmed that there was some of Constable Koester's blood found on Mr. Bush's left hand and right sleeve which, as implicitly acknowledged by Mr. Slemko, supports Constable Koester's version of the events. Mr. Slemko testified that he had reviewed the DNA reports but acknowledged during cross-examination that he had missed this evidence in his review.

Mr. Slemko testified at the Inquest that there was "no evidence at all consistent with any movement of [Mr. Bush] after the shot was fired," i.e. there was no evidence that would be "consistent with any lateral movement of Constable Koester escaping" out from under Mr. Bush. In support of this opinion, Mr. Slemko explained that there was "no blood evidence that's been found on the back of Constable Koester consistent with Mr. Bush bleeding on top of him or transferring any DNA evidence." Mr. Slemko questioned how Constable Koester could have gotten out from under Mr. Bush without some possible blood transfer or dripping getting on him.

Mr. Slemko later agreed that blood will flow "much slower than water" but maintained that there would be some blood flow as soon as the wound was generated. Mr. Slemko

was asked if Constable Koester could have avoided "any transfer stain caused by the passive loss of blood flow through the entry and exit wounds" if he was positioned to the left of Mr. Bush. This positioning would have been more consistent with Constable Koester's description of how he and Mr. Bush were positioned at the time of the shooting. Mr. Slemko agreed that this would be the case, but added that he did not believe Constable Koester was in such a position for the reasons he had already given (related to his assumption that Mr. Bush would not be able to control Constable Koester if he was off to the side).

In regards to positioning, Dr. John Butt, a pathologist consulted by the lawyer for the Bush family[53] advised the coroner's counsel that "it is not within the expertise of forensic pathology to comment on or analyze Constable Koester's assertion as to the relative positions of himself and Mr. Bush at the time the scalp injuries were inflicted or when the fatal bullet wound occurred." Dr. Butt also advised the coroner's counsel that he had earlier recommended to counsel for the Bush family that the analysis of relative positioning may be within the expertise of an expert in kinesiology, biomechanics or even a physiotherapist.

Mr. Slemko's expertise is in the area of bloodstain pattern analysis. Mr. Slemko has no obvious expertise in the areas of pathology, biomechanics, kinesiology or use of force that would allow him to comment on the likely positions of Mr. Bush and Constable Koester, let alone conclude that there is only one position that they could have been in. Mr. Slemko's reluctance to accept the overwhelming and obvious evidence of a violent struggle and his adherence to a factual framework that supports his opinion to the exclusion of other reasonable explanations undermines any weight to be given to his opinion.

In making his speculative assumption about positioning, Mr. Slemko has gone beyond his area of expertise. Accordingly, Mr. Slemko's opinion that Constable Koester could not have shot Mr. Bush as Constable Koester described must be afforded little weight. The same concerns do not exist in regards to Sergeant Hignell who acknowledged that his expertise did not allow him to comment definitively on the positioning of Constable Koester and Mr. Bush at the time that Mr. Bush was shot. Therefore, I prefer the expert opinion evidence of Sergeant Hignell that the bloodstain pattern evidence is consistent with Constable Koester's version of events, although it is not the only explanation that could account for the bloodstain patterns.[54]

Constable Koester's Use of Force

Constable Koester was the only witness to the physical altercation that led to Mr. Bush's death. Constable Koester explained that he was punched by Mr. Bush without warning and then choked from behind close to the point of unconsciousness before he resorted to using lethal force. Prior to using lethal force, Constable Koester stated that he tried a variety of techniques to escape from the chokehold but was unsuccessful. Although there

[53] See footnote number 44.

[54] See **Appendix J** for a discussion of other bloodstain pattern analysis expert opinion topics.

were no other witnesses to the altercation, there is other evidence to consider in determining whether or not Constable Koester's version of events is both credible and probable.

Constable Koester suffered obvious facial injuries consistent with being punched in the face. Although the evidence differed regarding whether Constable Koester had visible marks or bruising on his neck, the absence of bruising by itself is not inconsistent with Constable Koester's description of being choked with Mr. Bush's arm across his neck. Dr. John Stefanelli, the pathologist who performed the autopsy on Mr. Bush, testified at the Inquest that when someone is choked by an arm across the neck, as described by Constable Koester, there would not necessarily be any observable external damage to the neck. Several witnesses noted that Constable Koester exhibited subjective symptoms consistent with having been choked.

Mr. Bush suffered injuries to his head consistent with being hit three times by Constable Koester's gun, and the size of the three small lacerations to Mr. Bush's head is consistent with the size of the sight on Constable Koester's gun. The bruise on Mr. Bush's inner thigh is not inconsistent with Constable Koester's evidence and by itself is not determinative of any wrongdoing. Although Constable Koester did not recall doing so, he acknowledged that he is trained to kick someone in the groin area and it is clear from the physical evidence that there was a brief violent exchange between Constable Koester and Mr. Bush.

Corporal Knight, the RCMP's use of force expert, testified at the Inquest that someone being choked would not be able to tell the exact position of the person choking him. Accordingly, it is reasonable to conclude that Constable Koester could not know the exact position that Mr. Bush was in behind him. Constable Koester was cross-examined at the Inquest about Mr. Bush's position and testified Mr. Bush was on top of him at an angle, that he was underneath Mr. Bush and that he "[couldn't] really tell exactly where" Mr. Bush was at.

The fact that Mr. Bush was shot in the back of the head is consistent with the description given by Constable Koester about their position at the time that he shot Mr. Bush, i.e. that Mr. Bush was behind him and to the right with his arms wrapped around Constable Koester's neck choking him. There is no persuasive evidence that Constable Koester could not have shot Mr. Bush in the back of the head as he described. As noted above, the bloodstain pattern evidence is consistent with Constable Koester's version of events.

Constable Koester was not noted to be aggressive towards Mr. Bush at the time of the arrest and Mr. Bush's arrest appears to have been very "routine" with no obvious problems. Although one or more witnesses believed that Constable Koester had pulled Mr. Bush's hat down as Constable Koester placed Mr. Bush in the police vehicle causing Mr. Bush to swear, Mr. Bush did not appear to be overly upset about it and it is just as likely that Mr. Bush was swearing because he was being arrested. A subsequent witness believed that nothing appeared to be out of the ordinary when he observed Constable Koester arrive at the RCMP detachment with Mr. Bush. Constable Woroshelo and

Auxiliary Constable Ketchell did not note any inappropriate conduct by Constable Koester towards Mr. Bush during the time they were at the RCMP detachment.

Constable Koester's voice during his last radio transmissions immediately prior to the shooting appears to be very relaxed with no "excitement" in it.[55] Constable Koester's demeanour immediately after the shooting was consistent with having gone through a life-threatening struggle. Constable Koester made spontaneous statements that were consistent with his version of events that he had been choked and, in essence, forced to shoot Mr. Bush.

Although Constable Koester did not remember some things from the incident, for example, he did not actually hear the shot that killed Mr. Bush or remember falling to the floor; this is not surprising given his evidence that he was on the verge of blacking out and considering the traumatic nature of the event. Constable Koester's apparent loss of motor control after the shooting is consistent with the symptoms that have been experienced by other police officers involved in shootings. [56]

Given Constable Koester's spontaneous statement to Corporal Donovan, the bloodstain evidence that was consistent with Constable Koester's version of events and the various physical evidence that was consistent with Constable Koester's version of events, I am satisfied that Constable Koester's version of events is reliable. I accept Constable Koester's evidence including that he was punched without provocation and then choked by Mr. Bush.

It appears that Mr. Bush initially did not think that being ticketed for consuming liquor in a public place was to be taken seriously, nor did he think that lying to the police was a serious matter. However, by the time he was actually being processed and charged with a criminal offence back at the RCMP detachment, it appears that Mr. Bush began to apprehend the seriousness of his conduct. Although Mr. Bush's actions may have been out of character for him in his everyday life, he did have a history of poor decision making, to varying degrees, when intoxicated. Accordingly, it is of little assistance to gauge Mr. Bush's conduct at the RCMP detachment by comparison to his everyday reasonable behaviour when not intoxicated.

Subsection 25(1) of the *Criminal Code* authorizes a police officer who is acting in the administration or enforcement of the law to use as much force as is necessary for that purpose. Subsection 34(2) of the *Criminal Code* authorizes any person who is unlawfully

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[55] The Commission has listened to the entirety of the OCC radio communications up to and after the incident.

[56] The physiological effects on police officers involved in police-involved shootings have been studied from an academic perspective. Police officers involved in police-involved shootings have commonly reported perception of time, visual and auditory distortions. Some specific symptoms include: the encounter appeared to occur in slow motion, vision was focused with minimal awareness of the events taking place around them, shots were heard as muffled sounds, and a loss of fine motor co-ordination upon conclusion of the deadly encounter. See Parent, Richard (2004) *Aspects of Police Use of Deadly Force in North America: The Phenomenon of Victim-Precipitated Homicide*. Burnaby, BC: Simon Fraser University. (Unpublished Dissertation Submitted in Partial Fulfillment of the Requirements for the Degree of Doctor of Philosophy.)

assaulted to use force that causes death or grievous bodily harm in self-defence to repel the assault. To rely on this protection, the person must have a reasonable apprehension of death or grievous bodily harm and must also believe that he cannot otherwise preserve himself from death or grievous bodily harm.

The RCMP utilizes the Incident Management/Intervention Model ("IM/IM") to train and guide members in the use of force, promote risk assessment and depict various levels of resistance, behaviours and reasonable intervention options. Among others, the IM/IM is based on the principle that the best strategy is the least intervention necessary to manage risk. Accordingly, the best intervention causes the least harm or damage. RCMP members are trained to utilize one level of intervention higher than the demonstrated resistance level of the person they are dealing with.

The IM/IM authorizes a variety of levels of intervention in a circular fashion where any level of intervention is available, depending on the level of risk posed by the person that is being dealt with. The levels of intervention include officer presence, verbal intervention, tactical repositioning, soft and hard empty hand control, intermediate devices such as pepper spray and Taser, impact weapons such as batons, and finally, lethal force which is only authorized where there is a threat of death or grievous bodily harm.

As discussed above, Constable Koester had lawfully arrested Mr. Bush and was in the process of releasing him when Mr. Bush punched Constable Koester and started to choke him from behind. Constable Koester articulated that he believed he was on the verge of passing out and that he was aware from training that he could be killed from being choked in the manner that Mr. Bush was choking him. Mr. Bush's statement to Constable Koester saying that he was to take his last breaths, accepting that it was made, plainly conveyed Mr. Bush's intent to Constable Koester supporting Constable Koester's belief that he would be killed.

Constable Koester tried several techniques learned in RCMP training to get out of the chokehold including advising Mr. Bush that he could leave but Mr. Bush indicated that he would not leave because he would just be arrested again. Despite being on the verge of blacking out, Constable Koester exercised notable restraint by hitting Mr. Bush in the head three times with his gun to give Mr. Bush a final opportunity to release him before actually using his gun. When Mr. Bush did not cease choking him Constable Koester used his gun to shoot Mr. Bush one time in the head.

Constable Koester followed RCMP policy by attempting lesser levels of intervention that were not successful in stopping the assault by Mr. Bush. Given the circumstances, I am satisfied that Constable Koester had a reasonable apprehension of death and believed that he could not otherwise preserve himself from death. Accordingly, I am satisfied that Constable Koester was authorized under the IM/IM to use lethal force to stop Mr. Bush from continuing to choke him and from the logical consequences of being choked in these circumstances, i.e. death. I am also satisfied that Constable Koester clearly meets the requirements in subsection 34(2) of the *Criminal Code* to avail himself of the protection of self-defence.

My findings regarding Constable Koester's use of force must be considered in conjunction with my findings in the second allegation that the NDMCU conducted a highly professional investigation into Mr. Bush's death in a timely manner and free from any manner of conflict of interest, bias or partiality. Although separated for convenience, an adequate investigation is a necessary prelude to making findings based on facts obtained through the investigation.

FINDINGS: Constable Koester had a reasonable apprehension of death and believed that he could not otherwise preserve himself from death other than to use lethal force. Accordingly, Constable Koester acted in self-defence.

Given Constable Koester had tried lesser forms of intervention that were not successful, Constable Koester was authorized under the IM/IM to use lethal force.

SECOND ALLEGATION: Whether the RCMP members involved in the criminal investigation of Mr. Bush's shooting complied with RCMP policies, procedures, guidelines and statutory requirements for the conduct of such an investigation and whether such policies, procedures and guidelines are adequate and, further, whether such investigation was carried out in an adequate and timely fashion.

The Investigational Timeline

The interview room was sealed off soon after the shooting occurred. From a forensic perspective, the "crime scene" was ideal in that it was easily controlled and maintained without outside contamination. The North District Major Crime Unit (NDMCU) assumed conduct of the investigation and was on site within approximately four and a half hours from the time of the shooting. None of the RCMP members on the investigative team had any substantial connection to the Houston RCMP Detachment or to Constable Koester.[57]

As part of its investigation, the RCMP obtained statements from Constable Koester, from all of the other RCMP members working on the evening of October 29, 2005, and from all of the civilian witnesses who had any involvement with the events that evening. The vast majority of statements were obtained soon after the incident, within a matter of days. Only a small number of statements were taken after November 10, 2005, as new information came to light.

The RCMP examined Mr. Bush's prior involvement with the Houston RCMP and reviewed previous files where Constable Koester had used force when dealing with other persons. The RCMP seized copies of all radio communications on the evening of October 29, 2005, and reviewed the telephone logs for the RCMP detachment.

The RCMP collected forensic evidence from the interview room, from Constable Koester and from Mr. Bush for analysis. The majority of the forensic samples were sent to the lab for analysis on November 9, 2005. Corporal Murray requested that the samples "be deemed a priority and the examinations be conducted as soon as possible." The results were received back on December 9, 2005, and after further discussion with the forensic lab about the initial results and other possible samples for testing, additional samples were sent to the forensic lab on January 4, 2006.[58] The further results were received back on March 1, 2006. The toxicology and firearms analysis were requested in mid-November and received back in late November and early December.

It should be noted that the expected time period to receive results from the forensic lab is primarily dependent on the prioritization of the current inventory waiting for analysis at

[57] Four of the RCMP members had met or worked with Corporal Durand previously; one RCMP member had met Corporal Donovan on a course; two of the RCMP members had met or worked with the Houston RCMP Detachment Commander, Sergeant White, previously; and one RCMP member, assigned to be the liaison with the Bush family, had previously participated in Major Crime Unit investigations in the general area of Houston and also knew Constable Woroshelo – although not certain, he believed that he may have met Constable Koester in the summer of 2005.

[58] The additional samples were from Mr. Bush's shirt and pants.

the lab. In May 2007, the Auditor General of Canada reported on the RCMP forensic lab turnaround times. According to the Auditor General's Report, the average turnaround time for biology (DNA) samples is 114 days, far in excess of the RCMP's target turnaround times of 15 days for urgent matters and 30 days for routine matters. The 30-day and 56-day lab turnaround times for the DNA samples in this case were well within the current average turnaround time and not far off the target turnaround times.

The RCMP utilized a bloodstain pattern analysis expert to analyze the bloodstains in the interview room. The bloodstain pattern analysis expert's report was completed on December 20, 2005. A subsequent report from the bloodstain pattern analysis expert was completed on April 4, 2006. The subsequent report considered analysis of bloodstain patterns on Mr. Bush's shirt and pants which bloodstains were also the subject of the January 4, 2006 request for analysis from the RCMP forensic lab. The pathologist's autopsy report was not received by the RCMP until February 27, 2006.

The RCMP investigative team sought the assistance of an RCMP use of force expert, Corporal Chris Knight[59] of the North District Firearms Training Unit, to determine whether Constable Koester's actions "were aligned with RCMP intervention training, Policy and Criminal Code authorities in place at that time." Corporal Knight had not trained and did not know Constable Koester. Corporal Knight concluded in December 2005 that Constable Koester had used an "appropriate level of intervention when considering the circumstances confronting him" and that Constable Koester's actions were "aligned" with applicable law and RCMP policy.

The circumstances related to the shooting of Mr. Bush were reviewed as part of an Independent Officer Review by the Officer in Charge of the Terrace RCMP Detachment (since transferred to the RCMP's "K" Division in Alberta), who had no connection to the Houston RCMP Detachment or to Constable Koester, and who was not involved in the incident or the investigation.

The Independent Reviewing Officer completed his initial report in early March 2006 and concluded that the conclusions of the investigative team and use of force expert, i.e. that Constable Koester's actions were supported under the *Criminal Code* with no evidence to support charges, were sound.

Once the investigative file was substantially complete in March 2006, Corporal Murray sent a copy of the file to the "E" Division Major Crime Unit on March 15, 2006 for review. Inspector Russ Nash who had recently transferred to the "E" Division Major Crime Unit, and who had no involvement in the original investigation of Mr. Bush's death, reviewed the file. After the final bloodstain pattern analysis report was received in early April, Corporal Murray sent a final version of the investigative file to the "E" Division Major Crime Unit. Inspector Nash completed his review and provided the results of his review to Chief Superintendent Richard Bent, the Deputy Criminal

[59] At the time of his report, Corporal Knight had extensive experience as a police officer and had been qualified in British Columbia Provincial Court as an expert in use of force matters on two occasions.

Operations Officer, Community, Contract and Aboriginal Policing Services, for the RCMP "E" Division.

On May 8, 2006, Chief Superintendent Bent requested that the Deputy Chief Constable for the New Westminster Police Service[60] review the investigative file to comment on the investigation itself, including "with respect to any investigative avenues which [the RCMP] could consider or explore" and "whether the amount of force used in the circumstances was excessive or within the protection of persons acting under authority, Section 25(1) of the *Criminal Code*." There was no specific provision for this type of further review in RCMP policy and, according to Chief Superintendent Bent, the purpose of the review was to "ensure [the RCMP] had an independent review of the investigation by an experienced senior investigator before referring to the Crown for review."

It should be noted that, while the RCMP had a role in investigating the police-involved shooting by a New Westminster Police Officer in August 2005, that investigation was actually conducted by the Lower Mainland's Integrated Homicide Investigation Team (IHIT), which is composed mainly of RCMP members, but also of members from other Lower Mainland municipal police forces.[61] IHIT investigates all homicides as well as all police-involved shootings resulting in injury or death that occur in the Lower Mainland of British Columbia, but not including those that occur in Vancouver.[62]

The New Westminster Police Service completed its review on June 19, 2006, and concluded that the investigation was conducted in a "thorough, objective and detailed fashion," and that the deadly use of force by Constable Koester was justified in the totality of the circumstances.

The New Westminster Police Service had several recommendations and comments including: that certain police officers' notes be obtained;[63] that one or more further witness interviews be considered; that the violation ticket did not appear to have any creases; that the telephone calls from the Houston RCMP Detachment after the shooting be reviewed; that Constable Koester's training related to chokeholds and self-defence be reviewed; that a re-enactment be considered, that efforts be made to clarify the bruise on Mr. Bush's inner thigh; that an independent third party use of force opinion be sought; and that submitting the investigation to Regional Crown Counsel for their independent review and comment be considered to provide an "added level of independence and objectivity to the overall investigation process."

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[60] The New Westminster Police Service is a non-RCMP municipal police force located in New Westminster in the Lower Mainland of British Columbia.

[61] The composition of IHIT is based on a statistical formula taking into account the level of crime in the communities represented by IHIT. As the municipalities in the Lower Mainland that employ the RCMP are overall substantially larger than their counterparts that employ municipal police forces, the contribution to IHIT by way of investigators from the municipalities that employ RCMP is logically much greater.

[62] The Vancouver Police Department investigates police-involved shootings involving members of the Vancouver Police Department.

[63] The RCMP members identified were: Staff Sergeant Rod Holland, a senior NCO who attended Houston from Smithers pending the arrival of the NDMCU; Corporal Stone, the MEAP member who attended from Smithers; Corporal Durand, the Houston second in charge who was called out immediately after the shooting; and Constable Woroshelo, who was working on the evening of October 29, 2005.

On July 5, 2006, the RCMP responded to the recommendations made by the New Westminster Police including: that the named police officers did not make any notations in their notebooks but their involvement was clearly documented in investigational reports;[64] that the liquor violation ticket was viewed in its sealed plastic exhibit bag and did not appear to have been crumpled up;[65] that Inspector Van De Walle advised that the training records did not need to be obtained;[66] that only the telephone calls to OCC were recorded and other telephone calls were made either to police officers or Constable Koester's family; that a further witness was identified and spoken to but the witness had no knowledge of the incident; that the pathologist had stated that the bruise on Mr. Bush's inner thigh was possibly a skin infection (but, as noted earlier, was determined during the Inquest into Mr. Bush's death to be a bruise); that they had asked Crown counsel if an independent use of force report was necessary; a re-enactment was not done because it was not clear what the positioning of Constable Koester and Mr. Bush was and this would lead to speculation about how the events unfolded; and, that the file had been forwarded to Crown counsel for review.

On June 26, 2006, the RCMP submitted a Report to Crown Counsel to the Regional Crown Counsel office to determine whether charges against Constable Koester were appropriate. On August 8, 2006, Crown counsel received the RCMP's responses to the questions raised in the New Westminster Police review. Crown counsel determined that there was no substantial likelihood of conviction because it was believed that Constable Koester's use of force was not excessive and that the self-defence provisions of the *Criminal Code* would be a justifiable defence in the circumstances. On September 5, 2006 the Criminal Justice Branch of the British Columbia Ministry of the Attorney General advised the public that no charges would be laid against Constable Koester.

Adequacy of the Investigation

An adequate investigation in a major case such as a police-involved shooting resulting in death will include: securing and maintaining the scene; interviewing all known witness and identifying other witnesses to be interviewed who may have material evidence about the event; examining the backgrounds of both the deceased and the RCMP member; obtaining and processing relevant forensic evidence including photographic evidence, non-DNA physical evidence, DNA-related evidence and evidence related to the firearm used in the shooting; canvassing surrounding areas for any further information about the event that may be relevant; and utilizing appropriate experts.

With the exception of not specifically looking at Constable Koester's cadet and field training in any detail, the RCMP investigative team pursued all of these avenues of investigation in relation to the shooting of Mr. Bush. The RCMP investigative team did

[64] Corporal Durand and Constable Woroshelo completed continuation reports (Form 1624) and were also interviewed; Staff Sergeant Holland and Corporal Stone were interviewed.

[65] Constable Koester testified during the Inquest that Mr. Bush scrunched it up (and demonstrated with his hand open on top of the paper and drawing the middle of the paper up towards his palm) as he slid the ticket to the side but that he did not actually crumple it up.

[66] All of Constable Koester's training records were obtained and reviewed as part of the Chair-initiated complaint.

review specific incidents identified during the investigation where Constable Koester had previously used force. In addition to pursuing standard avenues of investigation, however, an adequate investigation must also be conducted in an appropriate manner devoid of any conflict of interest, bias or partiality.

Impartiality of the Investigation

RCMP "E" Division policy requires that all deaths of persons in RCMP custody be investigated by a Major Crime Unit. In this case, the North District Major Crime Unit (NDMCU) from Prince George investigated Mr. Bush's death. None of the NDMCU members had any substantive connection to Constable Koester or to the Houston RCMP Detachment. Pursuant to RCMP policy, the investigative team followed the Major Case Management model[67] which is a "framework" designed to ensure a "competent and consistent effort in every investigation." Major Case Management training includes training to avoid "tunnel vision"[68] by using an "evidence based approach."

In addition to the steps taken to conduct the original investigation, the RCMP utilized both an Independent Officer Review and the services of an external police agency to review the investigation. Finally, the investigation was sent to Crown counsel for review as an extra measure of external review even though, on the face of it, there was no evidence that Constable Koester had acted other than in self-defence. All of these steps taken enhanced the impartiality of the investigation into Mr. Bush's death.

As discussed above, the actions of Constable Woroshelo talking to Constable Koester in private shortly after the shooting and those of Constable Dodge granting Constable Koester lodging after he had participated in the investigation by seizing Constable Koester's clothing did not have the appearance of impartiality. These actions were taken by members of the local RCMP and were not within the control of the NDMCU, who was charged with conducting the investigation into the circumstances relating to Mr. Bush's death. Although not ideal, I am satisfied that they did not taint the subsequent NDMCU investigation.

Different Treatment for RCMP Members in Police Investigations

One of the primary concerns raised during the Inquest into Mr. Bush's death was whether it is appropriate for the RCMP to investigate incidents involving other RCMP members

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[67] The Major Case Management model (MCM) is "a methodology for managing major incidents which provides accountability, clear goals and objectives, planning, utilization of resources and control over the speed, flow and direction of the investigation." MCM is managed by the Major Case Management Team (MCMT) illustrated by the "command triangle", which includes the Team Commander (formerly called Team Leader), the Primary Investigator and the File Coordinator. The Team Commander has "ultimate authority, responsibility and accountability for the MCMT, its resources (human and physical) and its mandate." The Primary Investigator controls the "overall investigative process." The File Coordinator is "responsible for the control, supervision, organization and disclosure of the file documentation."

[68] The Commission on Proceedings Involving Guy Paul Morin defined tunnel vision to mean "the single-minded and overly narrow focus on a particular investigative or prosecutorial theory, so as to unreasonably colour the evaluation of information received and one's conduct in response to that information."

where there is the possibility of some criminal culpability. There was a suggestion that a measure of bias exists when the RCMP investigates one of its own members. In addition, there was a suggestion that the RCMP investigators in this particular case failed to conduct an adequate investigation due to this suggested bias. This is always a concern where the investigative body may have some relationship with the subject of the investigation. These concerns are not restricted to the policing community, but have their counterparts in such self-regulating bodies as the legal and medical professions.

As an example of bias, it was suggested during the Inquest into Mr. Bush's death that Constable Koester was not arrested because he was a police officer and, thus, assumed not to be at fault. Corporal Murray testified that this was not correct and that such a decision would be case specific. It was suggested at the Inquest that RCMP members in situations like this receive preferential treatment during the criminal investigation that an ordinary citizen would not. In my view, there is some legitimacy to the suggestion that RCMP members in their respective roles as peace officers receive different but not preferential treatment in circumstances like these for the obvious reason that RCMP members are in a substantially different position of authority than non-RCMP civilian persons in similar situations.

RCMP members have a duty to preserve peace, prevent crime and maintain law and order.[69] To perform their duty, RCMP members are authorized to use as much force as necessary including lethal force in the execution of their duties.[70] To this end, RCMP members are authorized to possess and use a variety of controlled items which are not lawfully available for possession or use by the general public.[71] These items include: prohibited and restricted firearms,[72] including handguns, Tasers and other special purpose long barrel firearms; prohibited weapons such as pepper spray; prohibited devices such as the 15-cartridge magazine for the RCMP handgun; and prohibited ammunition.[73]

Given the extraordinary powers that RCMP members are entrusted with to perform their policing duties, it is difficult to envision an analogous situation involving a non-RCMP member in Constable Koester's position. In addition, when discussing the use of force by RCMP members, it is a significant consideration that RCMP members are specifically trained to assess and utilize an appropriate level of intervention for a given situation, including situations where the use of lethal force is authorized. The same consideration is not extended to non-RCMP persons who may have no training regarding appropriate levels of force.

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[69] For a complete list of the duties prescribed to RCMP members, see section 18 of the *RCMP Act* and section 17 of the RCMP Regulations, S.O.R./1988-361.

[70] *Criminal Code*, R.S.C. 1985, c. C-46, s. 25.

[71] *Public Agents Firearms Regulations*, S.O.R./1998-203.

[72] There are some very limited circumstances in which non-police persons can carry a prohibited handgun related to protection of life and lawful profession or occupation. *Authorizations to Carry Restricted Firearms and Certain Handguns Regulations*, S.O.R./1998-207, ss. 2, 3.

[73] *Regulations Prescribing Certain Firearms and other Weapons, Components and Parts of Weapons, Accessories, Cartridge Magazines, Ammunition and Projectiles as Prohibited or Restricted*, S.O.R./1998-462.

Given this context, in situations where an RCMP member has used lethal force, it is reasonable for RCMP investigators to exercise discretion regarding the decision not to arrest the RCMP member who used lethal force, in the absence of cogent evidence that the use of lethal force was excessive. This would not preclude the RCMP investigators from reassessing the grounds for arrest as the investigation proceeds. While this deference could be considered preferential treatment, it is treatment that is reasonable in the circumstances and does not by itself support a conclusion of bias.

Regardless of the reasonableness of exercising discretion in regards to the decision to arrest in police-involved shooting cases, the facts in this particular case do not support that Constable Koester received any preferential treatment when he was not arrested. When viewed objectively, it is clear that there were no grounds to arrest Constable Koester in these circumstances based on the available evidence, evidence that clearly supported that Constable Koester had acted in self-defence.

Another example of suggested bias had to do with the fact that Constable Koester was not pressed for a statement and, when he did give a statement, he was provided the questions in advance. Constable Koester was required to provide a duty to account statement which would not have been required of an ordinary citizen. Once he provided the required duty to account statement, Constable Koester was under no legal obligation to provide any further statements to the police. NDMCU investigators appropriately continued to seek a statement from Constable Koester and obtained two further statements in discussion with Constable Koester's lawyer.

It is important to note that the NDMCU investigators afforded Constable Koester the same liberties as any person involved in an event in Canada for which no grounds to arrest exist. This context has not, thus far, been well explained to the public or to the Bush family.

The issue of bias has been addressed on occasion by the Commission with the RCMP in the context of public complaints where the RCMP's investigator into the public complaint had a working relationship with the subject member, for example a reporting relationship, which has led to either actual or perceived bias apparent on the face of the file. As discussed above, there was no substantive connection between the RCMP's investigative team and Constable Koester, so there was no perceived bias in this case by virtue of any working relationship.

While there is always intense scrutiny when the RCMP investigates the actions of an RCMP member in circumstances like these, having reviewed the entire RCMP investigation, I can see no cause for concern in regards to the impartiality of the investigation by the NDMCU. Given all of the circumstances, I am satisfied that the RCMP NDMCU members who investigated Mr. Bush's death did so in a manner free from any conflict of interest, bias or partiality.

FINDING: The RCMP Major Crime Unit members who investigated Mr. Bush's death did so in a manner free from any conflict of interest, bias or partiality.

COMMENT

Regarding Investigation of RCMP Members by the RCMP

The public expectations regarding police accountability in general, and civilian review in particular, have been recently highlighted by the Commission.[74] Civilian review is an essential feature of an effective accountability regime and the nature and scope of the mandate exercised by the Commission has not kept pace with the expansion of RCMP powers. In November 2006, the Commission recommended legislative reform that would create a more effective, visible and critical mechanism for overseeing law enforcement activities in Canada, including measures to enhance the accountability and transparency related to the issue of the police investigating the police.[75]

The RCMP's recourse to review by an outside police agency in this case is a direct response on the part of the RCMP to concerns about police accountability. The RCMP has also responded in some provinces in cases involving Aboriginal persons by the appointment of an Aboriginal observer. An Aboriginal observer was appointed with positive results in another police-involved shooting in Manitoba.[76] In British Columbia, the RCMP "E" Division has signed a protocol which provides for the appointment of a First Nations representative to avert or help resolve conflict or crisis in First Nation Communities.

The RCMP has also established a proposal to create a national Office of Investigative Standards and Practice (OISP) in an effort to address the risks associated with failed major case investigations. The first OISP has been established in the RCMP "E" Division in British Columbia. The purpose of the OISP is to assume internal review of high risk cases and to "champion the principles of Major Case Management."[77] The OISP oversees accreditation of Team Commanders who have ultimate authority in major case investigations, proactively monitors major cases for risk and conducts field audits of ongoing cases.

On March 21, 2007, the Commission and the RCMP announced an agreement to establish the Independent Observer Pilot Project.[78] The Independent Observer Pilot

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[74] See my recommendation in response to the need for legislative enhancements in the Commission's 2005–2006 Annual Report, http://www.cpc-cpp.gc.ca/DefaultSite/Reppub/index_e.aspx?articleid=1203#4.5.

[75] See the draft legislative model at http://www.cpc-cpp.gc.ca/DefaultSite/Whatsnew/index_e.aspx?articleid=1266. The measures include empowering the Commission to establish criteria to ensure the impartiality and integrity of investigations conducted by the RCMP of its members and authorizing the Commission to monitor such investigations and, where it deems appropriate, to direct that the Commissioner of the RCMP refer the matter for investigation by a different police force.

[76] Dennis St. Paul, Commission File No. 2005-0016. Mr. St. Paul was shot in Norway House, Manitoba, on January 3, 2005.

[77] See footnote 67 for an overview of Major Case Management.

[78] See the Commission's Media Advisory at http://www.cpc-cpp.gc.ca/DefaultSite/Whatsnew/index_e.aspx?ArticleID=1343.

Project is designed to address public concerns about the police investigating the police by assessing the impartiality of RCMP investigations in the first instance. Commission staff will be assigned to observe[79] and report to me on selected RCMP investigations of high-profile or sensitive cases in British Columbia, including ones involving serious injury, or death, or possible public allegations of conflict of interest.[80]

I will convey the Commission's observations and recommendations for improvement to the RCMP, and this should enhance the transparency of these investigations, enable more effective reviews of RCMP policing and, hence, strengthen public confidence in the impartiality of police investigations of police conduct.

The creation of the Independent Observer Pilot Project is a positive step towards meeting one of the Commission's primary objectives to ensure the impartiality and integrity of investigations conducted by the RCMP of its members. It remains to be seen what practical effect the Pilot Project will have on public perception of police investigations of police conduct. The Pilot Project will be reviewed after one year and at that time the merits of the program will be considered.

Timeliness of the Investigation

Another area of concern regarding the investigation is the amount of time it took to complete the investigation.[81] Although the majority of the investigation was completed before the end of December 2005, the investigation was delayed pending receipt of expert reports, including the pathologist's report received at the end of February 2006, the forensic lab report received in early March 2006 and the bloodstain pattern analyst's report received in early April 2006. These delays were not entirely within the control of the RCMP.

Once the investigation was complete in early April 2006, the file was first reviewed by the RCMP "E" Division Major Crime Unit and then sent in early May 2006 to an outside police agency for further review. Once that review was conducted, the file was submitted on June 26, 2006 to Crown counsel for consideration of whether charges should be laid against Constable Koester. Crown counsel completed their review in late August 2006 and confirmed their decision on September 5, 2006, just over ten months after Mr. Bush was shot.

As can be seen from the above timeline, the earliest the file could have been sent to Crown counsel was sometime in April 2006, after the final expert report was received. The further delay to June 26, 2006 to allow time for the "E" Division Major Crime Unit to review the file and for the file to be reviewed by an independent police agency was not

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[79] The Commission's Independent Observer and an OISP member will attend at the commencement of a criminal investigation. The Commission's Observer will liaise with the OISP member.

[80] The Independent Observer Pilot Project currently involves only the RCMP "E" Division in British Columbia. The discussions about the Pilot Project have, however, included discussion with the RCMP at a national level. The Pilot Project is scheduled to be reviewed after one year and depending on the merits of the program and the outcome of the evaluation, the approach may be implemented nationally.

[81] See **Appendix K** for a condensed analysis of the investigation timeline.

on the face of it unreasonable, given the amount of information involved and given the seriousness of the event. Although the Commission does not have jurisdiction over the conduct of Crown counsel, the amount of time it took Crown counsel to review the file and make its decision was within reasonable limits and not excessive.

It should be noted that the act of requesting an outside police agency to review the file and referring the file to Crown counsel for review added approximately five months to the time before a final outcome was known. This further delay was likely only due to the fact that Constable Koester was a police officer and not simply an ordinary citizen. While an extra measure of vigilance is necessary where the police investigate the police, I acknowledge the effect this delay had on Constable Koester, on the Bush family and on the public perception about the vigour and impartiality of the RCMP's investigation.

Having considered the specific time periods of the investigation and the reasons for any delay, I am satisfied that there was no unreasonable delay in the RCMP's investigation of Mr. Bush's death and that the investigation was completed in a timely manner.

FINDING: There was no unreasonable delay in the RCMP's investigation of Mr. Bush's death and the investigation was completed in a timely manner.

FINDING: The NDMCU conducted a highly professional investigation into Mr. Bush's death in a timely manner and free from any manner of conflict of interest, bias or partiality.

RCMP Media Relations

Constable Lorne Wood, the RCMP officer assigned to be the liaison with the Bush family, met with or spoke to the Bush family on approximately 23 separate occasions from October 30, 2005, to May 25, 2006. On three of these occasions, soon after the incident occurred, Inspector Van De Walle, the Officer in Charge of the "E" Division Major Crime Unit, also met with the Bush family. On one of the three occasions that Inspector Van De Walle met with the family, Sergeant White, the Houston RCMP Detachment Commander, also met with the Bush family.

On October 30, 2005, Corporal Tom Seaman of RCMP Media Relations released a media notice advising that Mr. Bush had died after he became violent when he was being released from custody. The media release was prepared by the investigative team and approved by Inspector Van De Walle. According to both Constable Wood and Sergeant Thomas who met with the Bush family and discussed the media release, the Bush family was upset about the media release and asked that it be modified to be more "generic". Constable Wood contacted Corporal Seaman but was advised that modifying the press release would do "little good" because all of the major news agencies already had a copy.

On October 31, 2005, Constable Wood was contacted by Mr. Bush's sister who, according to Constable Wood, was upset that Mr. Bush was being portrayed as being violent by a reporter for a national media agency. Constable Wood recorded in his notes

that the family wanted "no comment" from the RCMP. On November 1, 2005, Constable Wood and Inspector Van De Walle met with the Bush family and confirmed the cause of death. According to Constable Wood, the Bush family requested that there be no further press releases. Constable Wood advised the RCMP Media Relations office of this request.

Staff Sergeant John Ward of the RCMP Media Relations office advised Corporal Murray that once it became public knowledge that an autopsy was complete they would be inundated with calls from the media. Staff Sergeant Ward advised Corporal Murray that the RCMP's position would be that, in conjunction with the wishes of the Bush family, there would be no further comment. Constable Wood recorded in his notes that he spoke with Mr. Bush's sister at 5:10 p.m. on November 1, 2005, and that the family was in agreement with this approach. The RCMP did not issue any further media releases in relation to the incident or the investigation. The RCMP did not have a specific media strategy in place to deal with inquiries about the incident or the investigation, except to the extent noted.

On November 6, 2005, a television news story cited a source close to the investigation saying that Constable Koester was "sucker punched" and choked. This information did not come from an official source and was considered to be a "media leak." It should be noted that there were also many non-RCMP persons involved to varying degrees in the investigation, including medical personnel, victim services persons and the Coroner's office. Constable Wood advised the Bush family that the RCMP would do whatever they could to find out where the leak came from. Despite this, for reasons that are not apparent, the RCMP did not take any steps to identify the source of the media leak. The passage of time would militate against any possibility of success of identifying the media leak at this stage.

In April 2006, a member of the media representing the Globe and Mail newspaper conducted an interview with Staff Sergeant John Ward with the RCMP "E" Division Media Relations office. According to the Globe and Mail article, Staff Sergeant Ward was asked about the public's right to know about RCMP policies related to handling prisoners and replied that: "The public doesn't have a right to know anything." According to Staff Sergeant Ward, however, what he stated was to the effect: "While we have ongoing investigations, we do not make public the nature, content, etc. of the investigation to the public."

According to the RCMP, the former RCMP Commissioner Beverly Busson, then Commanding Officer of the RCMP "E" Division, provided a written rebuttal to the Globe and Mail but the Globe and Mail did not publish it. Accordingly, the RCMP did not publicly correct the alleged misquote from Staff Sergeant Ward. The RCMP did subsequently create a new Internet Web page on the RCMP British Columbia Media Relations website called "Setting the Record Straight" which it now uses to "rebut erroneous or sensationalized media stories."

The shooting of Mr. Bush has been continually covered in the media. Notwithstanding being inundated with inquiries from the media about the case, the RCMP has released

only one media release dated October 30, 2005, confirming that Mr. Bush's death followed a "violent struggle." The decision not to issue any further media releases was due to the RCMP's adherence to a request by the Bush family to make no further comment.

While the RCMP's decision to respect the wishes of the Bush family is understandable, the absence of any further information being released to the public in an investigation such as this is extremely problematic. Where no further information about an incident is publicly disclosed, there is a significant risk that further public discussion about the incident will be misinformed. This inevitably results in a situation where any reported information to the public that is not based on confirmed facts may create a misperception about the incident and erode public confidence in the police.

The RCMP must balance the risk associated with creating the climate for such a situation with the need to maintain the substantive integrity of the investigation itself. In addition, there are times when the RCMP must also balance the interests of the victim's family as is the case here. However, it should have been apparent to the RCMP that taking the position that no further information would be released to the public would lead to a misperception about the incident and would negatively affect public perception of the vigour and impartiality of the RCMP's investigation.

It is apparent from the criticism by the media of the RCMP's investigation into Mr. Bush's death that the RCMP's media strategy in this case was inadequate and failed to keep the public adequately apprised of the status of the investigation. Although it would not be appropriate for the RCMP to release excessive details about an incident while there is an ongoing investigation that could lead to either criminal charges or civil litigation, there is general progress information that can always be released to the public with minimal concern for affecting the integrity of the investigation.

Regular updates regarding where the investigation was at in this case would have kept the public up to date, respected the wishes of the Bush family and maintained the integrity of the investigation. The British Columbia Integrated Homicide Investigation Team, comprised of RCMP members and municipal police officers from the Lower Mainland of British Columbia, successfully utilizes a similar media strategy that balances the needs of the investigation, the needs of the policing partners, the needs of the media and the needs of the public.

In cases such as police-involved shootings, scrutiny by the media and the public is much greater than in other major crime investigations. In response, an effective media strategy should provide regular, meaningful and timely updates to the media and to the public. As was demonstrated in this case, a final outcome can be significantly delayed where a lethal use of force involves a police officer. Although extra measures may be undertaken in police-involved shooting investigations to ensure transparent decision making, if those measures are unknown to or misunderstood by the public, the perception will be that there is a lack of transparency. Accordingly, the RCMP's media strategy for police-involved shooting investigations should include a publicly available general investigative outline of the steps to be taken and the anticipated timeline for each step.

FINDING: The RCMP media strategy for the investigation into Mr. Bush's death failed to keep the public adequately apprised of the status of the investigation.

RECOMMENDATION 9: The RCMP develop a media and communications strategy specifically for police-involved shooting investigations that recognizes the need for regular, meaningful and timely updates to the media and to the public. In addition, the media and communications strategy should include a publicly available general investigative outline of the steps to be taken and the anticipated timeline for each step.

CONCLUDING SUMMARY

Constable Koester was well trained and prepared for work as a police officer. Although Constable Koester only had five and a half months of service as an RCMP member at the time that Mr. Bush was shot, Constable Koester's level of experience and training did not contribute to the events that led to Mr. Bush's death. However, Constable Koester's final field training evaluation should have been delayed pending conclusion of the RCMP's investigation into Mr. Bush's death.

On October 29, 2005, Constable Koester and other members of the RCMP planned to conduct liquor enforcement at the Houston Luckies hockey game in Houston, British Columbia. Constable Koester properly identified Mr. Bush as a person who had committed the offence of consuming alcohol in a public place. Constable Koester intended to release Mr. Bush with a violation ticket but when Mr. Bush provided two false names to Constable Koester, Constable Koester reasonably exercised his discretion to lawfully arrest Mr. Bush. Constable Koester failed to locate a full unopened bottle of beer on Mr. Bush's person and requires operational guidance for this failure.

Constable Koester transported Mr. Bush back to the Houston RCMP Detachment to release him from custody. Although Constable Woroshelo and Auxiliary Constable Ketchell also initially attended the RCMP detachment, they left to deal with a male with mental health problems and left Constable Koester alone with Mr. Bush. Mr. Bush had given no indication that he would cause any problem and there was no evidence of any aggression between Constable Koester and Mr. Bush. There was no objectively foreseeable risk that the events would unfold as they did. Accordingly, it was reasonable for Constable Koester to remain at the RCMP detachment alone with Mr. Bush.

Although it was reasonable in the circumstances for Constable Koester to not video record his dealings with Mr. Bush in the Houston RCMP Detachment interview room, I am satisfied that the use of CCTV in RCMP detachments where prisoners are dealt with and released is necessary to provide an independent record of events, to promote compliant behaviour by both prisoners and RCMP members and to minimize the risk of dealing with prisoners alone. Accordingly, I have recommended that the RCMP install automated CCTV recording equipment in every RCMP detachment in areas where prisoners are dealt with and released.

Given the inherent risks of dealing with persons in RCMP custody, I have also recommended that the RCMP amend national policy to require that prisoners be dealt with and released from the cell block in all RCMP detachments. As the Houston RCMP does not have a separate room in its cell block to deal with prisoners, I have recommended that the RCMP retrofit the Houston RCMP Detachment and any other detachments that lack adequate cell block facilities to deal with prisoners.

Constable Koester stated that he was sitting at a table in the RCMP detachment interview room with Mr. Bush and was in the process of releasing Mr. Bush when Mr. Bush punched him in the left side of his face. According to Constable Koester he did not see the blow coming. Constable Koester stated that he ended up struggling with Mr. Bush

going first into the opposite end of the interview room by the couch and then back near the middle of the room in front of the window. Constable Koester stated that Mr. Bush continued to punch him.

Constable Koester stated that Mr. Bush then punched him so hard that he went down to his knees after which Mr. Bush started to choke him from behind and to the right. Constable Koester ended up on the couch in the interview room with Mr. Bush, still on top of him, choking him. Constable Koester stated that he tried various things to break free from the chokehold including telling Mr. Bush that he could leave, trying to pull at Mr. Bush's ear, trying to push Mr. Bush's arm over his head, trying to hit at Mr. Bush's face and finally hitting Mr. Bush in the head or neck with his gun by bringing his arm up between him and Mr. Bush who was behind him and off to his right.

Constable Koester stated that he could not breathe, that he was seeing stars, that he was getting weak, that his vision was starting to close in and going dim, that he was "going unconscious" and that Mr. Bush told him to take his last breaths. Constable Koester stated that he was aware from training that he could be killed from being choked in the manner that Mr. Bush was choking him. Constable Koester stated that he still had his gun up at the back of Mr. Bush's head (from when he had hit Mr. Bush with his gun) and that he used his gun to shoot Mr. Bush one time in the back of the head "in order to save his life." Mr. Bush immediately ceased choking Constable Koester and Constable Koester was able to get out from under Mr. Bush. Constable Koester ended up lying on the floor unable to get up and radioed for help.

Corporal Derek Donovan, a Traffic Services RCMP member from Burns Lake who was in Houston to assist with the anticipated alcohol problems from the hockey game, arrived at the interview room within approximately 90 seconds after Constable Koester's call for help. At that time Mr. Bush showed no signs of life. Corporal Donovan assisted Constable Koester to Sergeant White's office, the Houston RCMP Detachment Commander.

Approximately seven minutes after arriving on the scene, Corporal Donovan called the North District Operational Communication Centre in Prince George to request that the North District Major Crime Unit (NDMCU) be called to investigate the police-involved shooting. Corporal Troy Durand, the Houston RCMP second in charge, was called to attend the RCMP Detachment and arrived within approximately five minutes after the shooting and secured and locked the interview room.

Constable Dave Leonard, another local RCMP member, attended the detachment within a few minutes of Corporal Durand. Constable Woroshelo and Auxiliary Constable Ketchell arrived back at the detachment approximately 15 minutes after the shooting. Auxiliary Constable Ketchell was assigned the task of recording all persons who entered and left the RCMP detachment. At approximately 10:15 p.m., Constable Leonard commenced recording all conversations with Constable Koester.

While the on-scene RCMP members did not conduct any of the substantive investigation, the actions of the on-scene RCMP members to secure the scene and to maintain the

physical integrity of the investigation pending the arrival of the NDMCU was an important prelude to the NDMCU investigation.

The NDMCU arrived on the scene within approximately four and a half hours and took over the investigation. A total of 11 RCMP members from the NDMCU and the "E" Division Major Crime Unit attended Houston to conduct the investigation. The majority of witness statements, taken from both RCMP members and civilian witnesses, were taken within a few days.

The NDMCU requested that Constable Koester provide a mandatory duty to account statement approximately fourteen and a half hours after the shooting. Constable Koester prepared his duty to account statement later that same day. However, given the uncertainty regarding the duty to account, I have recommended that the RCMP amend national policy to provide guidance about the duty to account.

NDMCU investigators subsequently made several attempts to obtain a further statement from Constable Koester. Although Constable Koester was under no legal obligation to provide a statement, Constable Koester acceded to the requests from NDMCU investigators and voluntarily provided a typed 20-page statement on November 17, 2005. Constable Koester reasonably explained that the delay in preparing his statement was because he was recovering both physically and mentally.

Constable Koester destroyed the notes that he used to prepare his November 17, 2005 statement. Given there was no duty on Constable Koester to maintain the notes, which had been prepared on the advice of legal counsel and were not made in the ordinary course of his law enforcement duties, Constable Koester was entitled to do whatever he wanted to with the notes. There is no evidence that Constable Koester destroyed the notes for an improper purpose; Constable Koester testified at the Inquest into Mr. Bush's death that the notes were the same as his statement.

Constable Koester later agreed to answer some prepared questions during an audio taped interview with NDMCU investigators on February 8, 2006. Constable Koester was under no legal obligation to provide a further statement and he did so voluntarily. The fact that NDMCU investigators provided the list of questions in advance to Constable Koester's lawyer was not improper and this practice is not uncommon among defence lawyers.

An RCMP Forensic Identification member arrived at the Houston RCMP Detachment approximately two and a half hours after the shooting to document the scene and identify exhibits. An RCMP bloodstain pattern analyst, Sergeant Jim Hignell, was called and attended the Houston RCMP Detachment the following day. Various physical exhibits and DNA samples were seized as were Constable Koester's clothing and working gear.

An autopsy concluded that Mr. Bush died from a single gunshot wound to the back of his head. The forensic identification member and the NDMCU member in charge of exhibits attended the autopsy. The attendance of the two RCMP members at the autopsy was consistent with the normal practice for police investigations of human deaths.

DNA and firearms samples were submitted for analysis in early to mid-November 2005 and initial results were received in December. The initial bloodstain pattern analysis report was received in December. Sergeant Hignell testified at the Inquest into Mr. Bush's death that the bloodstain patterns were consistent with Constable Koester's version of events, although not the only explanation. An RCMP use of force expert was consulted and concluded that Constable Koester's use of force was justified.

Counsel for the Bush family engaged a private bloodstain pattern analysis expert, Mr. Joseph Slemko, to review the bloodstain pattern evidence. It was Mr. Slemko's opinion that Constable Koester could not have shot Mr. Bush as he described. Mr. Slemko's opinion relies on an assumption about Constable Koester's and Mr. Bush's positioning that is neither consistent with the known evidence nor is it an area within Mr. Slemko's areas of expertise. Accordingly, I attach little weight to Mr. Slemko's evidence and prefer the evidence of Sergeant Hignell.

The RCMP engaged a number of independent reviews to ensure transparency of the investigation. These included an Independent Officer Review, review by a new member of the "E" Division Major Crime Unit who had no involvement with the original investigation, review by the New Westminster Police Service and review by Crown counsel. The extra measures of review were due to the fact that Constable Koester is not an ordinary citizen but is a police officer. In each case, the reviews concluded that Constable Koester was justified in using lethal force.

Despite the extra measures taken to ensure the highest level of impartial accountability, the media strategy in this case failed to keep the public adequately apprised of the status of the investigation. I have recommended that the RCMP develop a media and communications strategy specifically for police-involved shooting investigations including a publicly available investigative outline of the steps to be taken and the anticipated timeline for each step. This should provide the requisite degree of transparency for the public.

The NDMCU conducted all relevant avenues of investigation in a timely manner and received a high priority turnaround time for the forensic laboratory samples. The investigative file was sent forward to each level of review as soon as reasonably practicable. There were no unreasonable delays in the steps taken by the NDMCU in the investigation into Mr. Bush's death.

The members of the NDMCU investigative team had no substantive connection to Constable Koester or to the Houston RCMP Detachment. The NDMCU is based in Prince George, British Columbia, located approximately 320 kilometres east from Houston. The NDMCU investigation was conducted in a manner free from any manner of conflict of interest, bias or partiality. While RCMP members who are the subject of major case investigations may receive different treatment due to their substantially different positions of authority than ordinary citizens, Constable Koester did not receive any preferential treatment from the NDMCU investigators.

The NDMCU applied the RCMP's Major Case Management model which is a methodology for managing major incidents utilizing a "command triangle" comprised of the Team Commander, Primary Investigator and File Coordinator to manage the investigation. Sergeant Judy Thomas, the Team Commander, Corporal Rick Murray, the Primary Investigator and Corporal Suzanne McKelvie, the File Coordinator ensured that the investigation proceeded in a highly professional manner and exemplified the best practices for major crime investigations.

The RCMP "E" Division exhibited a similar level of professionalism in response to my Chair-initiated complaint, providing a thorough response to the concerns identified by the Commission during the RCMP's Chair-initiated complaint investigation. In addition, the RCMP's "E" Division provided complete cooperation to the Commission in every aspect of its handling of my Chair-initiated complaint.

FINDINGS RELATED TO THE RCMP INVESTIGATION:

The North District Major Crime Unit conducted a highly professional investigation into Mr. Bush's death and exemplified the best practices for major crime investigations.

The North District Major Crime Unit conducted the investigation into Mr. Bush's death in a timely manner and free from any manner of conflict of interest, bias or partiality.

Constable Koester was the only witness to the events that occurred in the interview room. Constable Koester made two spontaneous utterances about the incident soon after the shooting, the first to Corporal Donovan, and the second to Constable Woroshelo, who is Constable Koester's trainer.

The spontaneous utterance made to Corporal Donovan was made immediately following the shooting in "circumstances of spontaneity or involvement in the event that the possibility of concoction can be disregarded" and, thus, it can be afforded considerable weight. Constable Koester told Corporal Donovan that Mr. Bush had choked him, that he was seeing stars, that he could not breathe and that he thought he was going to die. Constable Koester's spontaneous utterance to Corporal Donovan supported that Constable Koester acted in self-defence.

The spontaneous utterance made to Constable Woroshelo was made approximately fifteen minutes after the shooting but was made in private behind closed doors. Accordingly, although Constable Koester's utterance to Constable Woroshelo was consistent with what Constable Koester had told Corporal Donovan, the manner in which the utterance was conveyed lacked real or perceived impartiality which reduced the weight to be attached to it.

Constable Woroshelo's actions in speaking with Constable Koester in private, behind closed doors, risked diminishing the integrity of the subsequent RCMP investigation. Similarly, so did the actions of Constable Darren Dodge, a local RCMP member who was

initially called in to seize Constable Koester's clothing and working gear but who then provided temporary lodging to Constable Koester. To address this issue, I have recommended that the RCMP develop policy that provides direction to on-scene RCMP members in major cases involving investigation of police conduct including the need to ensure real and perceived impartiality.

There was physical evidence of a violent struggle including Constable Koester's facial injuries and ripped pants, disarray in the interview room, Mr. Bush's right shoe that had come off, the broken couch, the bent blinds and transfer marks from the wall on the back of the couch where it had been rubbed against the wall. In addition, Mr. Bush had three small lacerations on his head consistent with having been made by the front sight on Constable Koester's gun. Constable Koester's demeanour after the shooting was consistent with having been in a life-threatening situation.

Given Constable Koester's spontaneous statement to Corporal Donovan, the bloodstain evidence that was consistent with Constable Koester's version of events and the various physical evidence that was consistent with Constable Koester's version of events, I am satisfied that Constable Koester's version of events is reliable. I accept Constable Koester's evidence that he was punched without provocation and then choked by Mr. Bush. Constable Koester tried various levels of intervention to break free from Mr. Bush's chokehold but was unsuccessful.

The *Criminal Code* authorizes a police officer who is acting in the administration or enforcement of the law to use as much force as is necessary for that purpose. In addition, the *Criminal Code* authorizes any person who is unlawfully assaulted to use force that causes death or grievous bodily harm in self-defence to repel the assault provided they have a reasonable apprehension of death or grievous bodily harm and believe that they cannot otherwise preserve themselves from death or grievous bodily harm. The RCMP's use of force policy, the Incident Management/ Intervention Model, authorizes RCMP members to use lethal force where there is a threat of death or grievous bodily harm.

Constable Koester articulated that he believed he was on the verge of passing out, that he was aware from training that he could be killed from being choked in the manner that Mr. Bush was choking him and that he had to use lethal force to save his own life. Mr. Bush's statement to Constable Koester to take his last breaths plainly conveyed Mr. Bush's intent to Constable Koester and supports Constable Koester's belief that he would be killed. Given the circumstances, I am satisfied that Constable Koester had a reasonable apprehension of death and believed that he could not otherwise preserve himself from death. Accordingly, Constable Koester acted in self-defence and was authorized under the IM/IM to use lethal force to stop Mr. Bush from continuing to choke him.

FINDINGS RELATED TO CONSTABLE KOESTER'S USE OF FORCE:

Constable Koester had a reasonable apprehension of death and believed that he could not otherwise preserve himself from death other than to use lethal force. Accordingly, Constable Koester acted in self-defence.

Given Constable Koester had tried lesser forms of intervention that were not successful, Constable Koester was authorized under the IM/IM to use lethal force.

COMMENT

Regarding Funding for CCTV and Capital Expenditures

In conclusion, I want to reiterate a comment that I made earlier in this report. By statute, my recommendations are not binding upon the Commissioner of the RCMP. Regardless of their merit, the Commissioner of the RCMP must weigh recommendations, particularly those that have financial implications against other pressing priorities. Recommendations that I have made in respect of funding for CCTV and the availability of a room in the RCMP detachment cell block area pose such a difficulty for the Commissioner.

There is the possibility that reallocation of existing funding by the RCMP to address these issues will create gaps in other areas of public safety. I would encourage the various levels of government that are parties to the police service agreements, as described in **Appendix G**, to make additional funding available to address these important public safety concerns.

We cannot eliminate entirely the tragic outcomes that are inherent in police work which has the use of force as one of its characteristics. I would strongly urge not only the RCMP but also the different levels of government that hold part of the solution to shoulder their responsibility and help ensure that recourse to deadly force becomes an even rarer event.

Having considered the complaint, I hereby submit my Interim Report in accordance with paragraph 45.42(3)*a*) of the *RCMP Act*.

_____

Paul E. Kennedy
Chair

Appendix A – Condensed Timeline of Events Related to Shooting

October 29, 2005

Time	Event
9:00 p.m.	Constable Koester observes Mr. Bush at the hockey arena with an open bottle of beer and detains him.
9:14 p.m.	Constable Koester arrests Mr. Bush for obstruction for providing a false name.
9:20 p.m.	Constable Koester transports Mr. Bush to the Houston RCMP Detachment.
9:30 p.m.	Constable Darren Woroshelo and Auxiliary Constable Shane Ketchell leave the Houston RCMP detachment for Topley leaving Constable Koester alone with Mr. Bush.
9:37:45 p.m.	A female calls the Houston RCMP Detachment and the call is forwarded to the Prince George Operational Communication Centre (OCC) to report a group of approximately 20 people smashing beer bottles in an apartment parking lot across from the hockey arena.
9:41:42 p.m.	The OCC asks if there is a unit or two clear to respond to a disturbance.
9:41:52 p.m.	Constable Koester asks the OCC to repeat the query and the OCC replies that they have a disturbance on 14th Street.
9:42:03 p.m.	Constable Koester acknowledges the query and asks the dispatcher to "standby."
9:43:42 p.m.	Corporal Derek Donovan radios the OCC to ask about the disturbance on 14th Street.
9:44:11 p.m.	Constable Koester radios "10-33" for help.
9:44:21 p.m.	Constable Koester radios "Ah no, 10-33."
9:44:37 p.m.	Constable Koester radios "Help me, 10-33."
9:44:48 p.m.	Corporal Donovan arrives at the back door of the detachment and enters first looking in the cell block area for Constable Koester.
9:45:14 p.m.	Constable Koester radios to Corporal Donovan that he is in the interview room.
9:45:31 p.m.	Corporal Donovan radios the OCC to advise that he is with Constable Koester. Constable Koester makes spontaneous utterances to Corporal Donovan about what happened. After checking both Constable Koester and Mr. Bush, Corporal Donovan assists Constable Koester to Sergeant Sheila White's office.
9:45:44 p.m.	Constable Woroshelo radios the OCC to call an ambulance and to call Corporal Troy Durand and Constable Dave Leonard to request that they attend the office.
9:50 p.m.	Corporal Durand arrives at the RCMP detachment. Constable Leonard arrives shortly after.
9:52:12 p.m.	Corporal Donovan telephones the OCC to update on what had happened and request that the Major Crime Unit be called.
9:57:05 p.m.	Corporal Durand telephones the OCC to ensure the appropriate North District personnel would be called.
9:57 p.m. - 10:00 p.m.	Constable Woroshelo and Auxiliary Constable Ketchell return from Topley and arrive at the RCMP detachment.

Approx. 10:00 p.m.	Constable Woroshelo talks alone with Constable Koester for 4-5 minutes in Sergeant White's office and Constable Koester tells Constable Woroshelo what occurred.
10:05 p.m.	Constable Leonard and Corporal Donovan take photos of Constable Koester.
10:05 p.m.	The ambulance arrives at detachment but is told to wait outside.
10:09 p.m.	A Houston RCMP Victim Services worker arrives at the RCMP detachment to be with Constable Koester.
10:15 p.m.	Constable Leonard starts to stay with Constable Koester and record interactions.
10:39 p.m.	The ambulance attendant is escorted into the interview room to check Mr. Bush.
11:00 p.m.	Constable Koester speaks with a lawyer, Mr. Brian Gilson.
11:15 p.m.	Corporal Doug Stone and Staff Sergeant Rod Holland arrive from Smithers. Corporal Stone is assigned to be the Member Employee Assistance Program representative and Staff Sergeant Holland is the senior NCO on the scene pending arrival of the Major Crime Unit.

October 30, 2005

Time	**Event**
12:12 a.m.	Constable Darren Dodge arrives at the Houston RCMP Detachment.
12:14 a.m.	Sergeant Chuck Duncan, Terrace Forensic Identification Unit, arrives from Smithers to examine the scene.
12:25 a.m.	Sergeant Duncan takes photographs of Constable Koester.
12:37 a.m.	Constable Dodge seizes Constable Koester's clothes and working gear.
12:54 a.m.	Constable Koester leaves for hospital with the Victim Services worker, Constable Leonard and Corporal Stone.
1:53 a.m.	Constable Koester et al. attend the Smithers emergency room.
2:17 a.m.	Sergeant Judy Thomas, Corporal Rick Murray and other members from the North District Major Crime Unit (NDMCU) arrive in Houston.
3:35 a.m.	Corporal Murray speaks with Constable Koester in the Houston RCMP Detachment parking lot.
4:07 a.m.	Constable Koester is taken to Constable Dodge's residence; present are Constable Dodge's wife, Constable Leonard, Corporal Stone and the Victim Services worker.
4:10 a.m.	Constable Dodge turns over Constable Koester's clothing and working gear to Corporal Blaine Hawkins, the NDMCU member in charge of exhibits.
5:46 a.m.	Constable Dodge returns home and Constable Leonard concludes recording notes of interactions with Constable Koester.
12:26 a.m.	Sergeant Jim Hignell, RCMP Forensic Lab Bloodstain Pattern Analyst, arrives at the Houston RCMP Detachment.
1:18 p.m.	Sergeant Thomas and Corporal Murray attend Constable Dodge's residence to speak to Constable Koester and request that he provide a statement.
1:31 p.m.	Sergeant Thomas speaks with Mr. Gilson and requests that Constable Koester provide an account of the events.

2:00 p.m. Sergeant Thomas and Corporal Murray leave Constable Dodge's residence.

5:24 p.m.	Sergeant Hignell and Sergeant Duncan complete the initial examination of the interview room and turn over the interview room to Corporal Hawkins to collect exhibits.
6:00 p.m.	Corporal Mike Ingles, Staff Relations representative, arrives at Constable Dodge's residence.
6:24 p.m.	The British Columbia Coroner arrives at the RCMP detachment to view the scene.
6:30 p.m. to 10:15 p.m.	Constable Koester prepares his duty to account statement.
7:01 p.m.	Corporal Hawkins completes the initial seizure of exhibits.
8:45 p.m.	Mr. Bush's body is removed by the Coroner's Service Body Removal Unit and transported first to Prince George and later to Kamloops, British Columbia.

October 31, 2005

Time	**Event**
8:51 a.m.	Corporal Murray receives Constable Koester's duty to account statement from Corporal Ingles.

November 1, 2005

Time	**Event**
11:40 a.m.	The autopsy on Mr. Bush commences.
3:38 p.m.	The scene (interview room) is released by Corporal Murray.

Appendix B – RCMP Members and Related Persons Involved in Incident and Investigation (positions and ranks noted as at the time of the events)

RCMP Members working in Houston and Granisle on the Evening of October 29, 2005

Person	Detachment	Position	Role
Cst. Paul Koester	Houston	General Duty	Arrested and shot Mr. Bush
Cpl. Derek Donovan	Burns Lake	Traffic Services	Assisted Houston on Oct. 29/05 and first member to attend scene
Cst. Darren Woroshelo	Houston	General Duty	Gave advice to Cst. Koester and spoke to Mr. Bush at detachment
Aux. Cst. Shane Ketchell	Houston	General Duty	Assisted RCMP members
Cst. Kirsten Latvala	Granisle	General Duty	Attended Houston in response to Cst. Koester's calls for help

Other RCMP Members and non-RCMP persons who attended Houston on October 29 and 30, 2005 after the shooting of Mr. Bush.

Person	Detachment	Position	Role
Cpl. Troy Durand	Houston	General Duty, Second in Command	Called out after shooting, first senior RCMP member on scene
Cst. Dave Leonard	Houston	General Duty	Called out after shooting, stayed with Cst. Koester and recorded interaction
Cst. Darren Dodge	Houston	General Duty	Called out after shooting, seized Cst. Koester's clothing, Cst. Koester stayed at his residence
S/Sgt. Rod Holland	Smithers	Officer in charge	Attended as senior NCO pending arrival of MCU
Sgt. Chuck Duncan	Terrace	Forensic Identification	Attended as part of investigation of shooting, attended autopsy
Sgt. Jim Hignell	RCMP Forensic Lab	Bloodstain Pattern Analyst	Attended as part of investigation of shooting
Sgt. Sheila White	Houston	Officer in Charge	Away on leave but returned
Cpl. Doug Stone	Smithers	General Duty	Member Employee Assistance Program Representative
Cpl. Mike Ingles	"E" Div. HQ	Staff Relations	Attended as Staff Relations rep.
S/Sgt Glen McRae	North District	Advisory NCO	Attended in administrative

capacity

M.D.	Houston	RCMP Victim Services worker	Civilian volunteer who attended to assist Cst. Koester

RCMP Members from the Major Crime Unit who attended Houston to investigate the shooting death of Mr. Bush

Person	Posting	Role
Insp. Leon Van De Walle	"E" Div. Major Crime Unit	Supervised investigation
Sgt. Judy Thomas	North District Major Crime Unit (NDMCU)	Team Commander
Cpl. Rick Murray	NDMCU	Primary Investigator
Cpl. Suzanne McKelvie	NDMCU	File Coordinator
Cpl. Blaine Hawkins	NDMCU	Exhibit Person, attended autopsy
Cpl. Vince Foy	NDMCU	Investigator
Cst. Les Hobenshield	NDMCU	Investigator
Cst. Derek Santosuosso	NDMCU	Investigator
Cst. Lorne Wood	NDMCU	Investigator, family liaison
Sgt. Ted Vanoverbeek	"E" Div. Major Crime Unit	Investigator, assigned task to interview Cst. Koester
Cst. Karina Desrosiers	"E" Div. Major Crime Unit	Investigator, assigned task to interview Cst. Koester

Other RCMP members involved in the investigation of the shooting death of Mr. Bush

Person	Detachment	Position	Role
Cpl. Chris Knight	North District	NCO i/c North District Firearms Unit	Use of Force Expert
Chief Sup. Dick Bent	"E" Div. HQ	Deputy Criminal Operations Officer ("CROPS")	Referred file to New Westminster Police for review
Insp. Russ Nash	"E" Div. HQ	CROPS	Reviewed file for CROPS
Insp. Marlin Degrand	Terrace	Officer in Charge	Independent Reviewing Officer
Sup. Wade Blizard	"E" Div. HQ	"E" Division CIS Operations Officer	RCMP's Investigator for the Chair-Initiated Complaint

APPENDIX C

Chair's Complaint

SUBJECT: IAN BUSH B.C. SHOOTING DEATH

As Chair of the Commission for Public Complaints Against the RCMP, I am initiating a public complaint into the shooting death of Mr. Ian Bush, formerly of Houston, British Columbia.

On October 29, 2005, Mr. Bush died of a gunshot wound at the Houston RCMP Detachment in British Columbia. The RCMP completed a criminal investigation into the shooting death of Mr. Bush. The investigation was reviewed by the New Westminster Police Department and forwarded to the Crown Prosecutor's Office. The Attorney General of the Province of British Columbia determined that no criminal charges would be laid.

I am satisfied that there are reasonable grounds to investigate the circumstances surrounding the shooting death of Mr. Ian Bush. Accordingly, pursuant to subsection 45.37(1) of the *RCMP Act*, I am initiating a complaint into the conduct of the RCMP officers involved in this incident from the point of first contact with Mr. Bush, to his death, and the criminal investigation related to his death. Specifically:

1. Whether the RCMP officers involved in the events of October 29, 2005 from the moment of initial contact until Mr. Bush's subsequent death complied with all appropriate policies, procedures, guidelines and statutory requirements for the arrest and treatment of persons taken into and released from custody, and whether such policies, procedures and guidelines are adequate.
2. Whether RCMP officers involved in the criminal investigation of the officer who shot Mr. Bush complied with the RCMP policies, procedures, guidelines and statutory requirements for the conduct of such an investigation and whether such policies, procedures guidelines are adequate, and, further, whether such investigation was carried out in an adequate and timely fashion.

APPENDIX D

RCMP Letter of Disposition

Royal Canadian Mounted Police / Gendarmerie royale du Canada

"E" Division
657 West 37th Avenue
Vancouver, B.C.
V5Z 1K6

Security Classification / Designation
Classification / Désignation sécuritaire

Your file / Votre référence

May 8, 2007

Our file / Notre référence

Mr. Paul E. Kennedy
Office of the Chair
Commission for Public Complaints Against the RCMP
P.O. Box 3423, Station D
Ottawa, ON K1P 6L4

Dear Mr. Kennedy:

Re: In Custody Shooting Death of Mr. Ian BUSH

This letter is in response to the independent, Chair-initiated public complaint against the RCMP, pursuant to the RCMP 'in custody' shooting death of Mr. Ian BUSH, at Houston, British Columbia, October 29, 2005. Your public complaint was received by "E" Division, Professional Standards on October 12th, 2006.

A comprehensive investigation has been conducted into your allegations. This investigation into your concerns regarding *'the conduct of the RCMP Officers involved in this incident from point of first contact with Mr. BUSH, to his death, and, the criminal investigation related to his death"* has been terminated. I am now in a position to comment on your concerns.

This letter of disposition is being written giving consideration that the full investigative report was provided to your office and that we have already fully responded to a series of questions posed by your analysts as this investigation has progressed. The purpose of this letter is then to focus on specific areas of interest and which require a fuller explanation.

BACKGROUND INFORMATION

On September 28th, 2006 you lodged a public complaint against the RCMP being satisfied that there are reasonable grounds to investigate the circumstances surrounding the shooting death of Mr. Ian BUSH on October 29th, 2005 while in custody at the Houston RCMP Detachment. The Houston RCMP Detachment is a seven member Detachment, (fully staffed on the date in question), policing a large rural area

Canada

as well as the Town of Houston and other communities. Houston Detachment also has a two member 'satellite' office in Granisle two hours North West of Houston.

SUMMARY OF CHAIR INITIATED ALLEGATIONS:

Specifically:

> 1. *Whether the RCMP officers involved in the events of October 29, 2005 from the moment of initial contact until Mr. BUSH's subsequent death complied with all appropriate policies, procedures, guidelines and statutory requirements for the arrest and treatment, of persons taken into and released from custody, and whether such policies, procedures and guidelines are adequate.*
>
> 2. *Whether RCMP officers involved in the criminal investigation of the officer who shot Mr. BUSH complied with the RCMP policies, procedures, guidelines and statutory requirements for the conduct of such an investigation and, further, whether such investigation was carried out in an adequate and timely fashion.*

Given the complexities surrounding the facts and circumstances of this investigation, both allegations will be addressed separately and distinct of one another, and the findings commented on in chronological 'order of events'.

FIRST ALLEGATION: *Conduct of RCMP officers involved in this incident from the point of first contact with Mr. BUSH, to his death.*

Pursuant to the first allegation, a comprehensive time line has been compiled to provide an overview of the activities of Mr. Ian BUSH and the RCMP members on shift during the evening of October 29th, 2005 as follows:

Mr. Ian BUSH and his friend, Scott STAPLETON, met at the Arena in Houston at approximately 1530 hrs. They watched a hockey game and then went to the residence of another associate, Robin TOBINS, which is an apartment in a complex directly across the street from the Arena in Houston. Both later attended the Houston "LUCKIES" Hockey Game.

Cpl. Derek DONOVAN, a Traffic Section member commenced his shift signing on into police vehicle 1C2. Of note, Cpl. DONOVAN is based out of Burns Lake Detachment, approximately one hour away from Houston, however patrols to Houston to provide additional member presence, given the history of alcohol related complaints that have emanated from the arena when the Houston "LUCKIES" are playing. By 1811 hours, Cpl. DONOVAN began patrolling the Houston area.

At 1613 hours, Cst. KOESTER signed on shift and into police vehicle 10A1. Cst. D. WOROSHELO, Cst. KOESTER's recruit field trainer, signed on shift into police vehicle 10A2. Cst. WOROSHELO is accompanied by Auxiliary Cst. KETCHELL. Auxiliary Cst.

KETCHELL has approximately twenty years experience as an auxiliary constable. This was the 'shift' working for the evening of October 29th, 2005. In British Columbia, a 'predictive based' method or formula is utilized to make an informed determination on the number of members and support employees required at individual Detachments. This formula, amongst other things, is based on the number of Criminal Code Offences; Police Officer Case Burdens; population; calls for service, and other factors, in a particular geographic area. The results of this type of research is applied evenly and consistently across the Division. The 2005 Auditor General of Canada Report states: *that under the Provincial Contract Policing agreements the RCMP is responsible for determining the minimum standard of policing needed to maintain law and order and the safety of peace officers.* Houston Detachment was determined to be adequately staffed, had no vacancies, and an appropriate shift schedule was in place by the NCO in charge. It should be recognized that no formula can preclude those inevitable occasions or circumstances where our members will be required to work alone.

At 2100 hours Cpl. DONOVAN and Cst. KOESTER commenced foot patrols at the Houston Arena. About the same time Cst. WOROSHELO and Auxiliary Cst. KETCHELL also attended the Houston Arena area on foot patrol. It is recognized that these foot patrols and overt police presence in areas of historical and potential complaints and disturbances remain a viable and proactive policing technique to decrease, if not eliminate disturbances and public safety concerns.

It had been reported a number of individuals were in possession of open liquor in public as well as in vehicles in this immediate area, specifically in the parking lot area of the Houston Arena.

At approximately 2100 hours Cst. KOESTER's attention was drawn to a group of males pushing and shoving, shortly determined to be play fighting. Cst. KOESTER observed one of the males holding an open bottle of beer, approached the male and initiated an investigation pursuant to the open liquor and a Liquor Act violation. This male was eventually identified as Ian BUSH. Cst. KOESTER's decision to approach this male and initiate this investigation was both lawful, a sound use of judgment, and certainly within the scope of his duties.

Of note, considerable attention and scrutiny was dedicated to Cst KOESTER's progress as he advanced through Cadet Training in Regina, as well as his performance throughout his Cadet Field Training Regimen under the direct supervision of Cst. WOROSHELO. Specifically, KOESTER received *'professional'* ratings in all competencies while in training, as well as '*superior'* ratings for mid-term and final exams, pursuant to knowledge of 'Law and Policy'. Shotgun and 'course of fire' standards for firearm use and qualifications were reported as *'superior'* and no negative feedback appears on his training file. Cst. KOESTER graduated May 16th, 2005 from basic training at the RCMP Academy, some five months prior. Progress reports and Course Training Standards are examined as part of this investigation. Cst. KOESTER was reported on as a highly motivated, conscientious performer. It is reported that he

was considered to be a leader, and was highly successful in training. Cst. KOESTER was equally reported on favourably during his Recruit Field Training at his two, four, and six month assessments. KOESTER's was appropriately certified and current in all required Operational Skills areas, specifically firearms and Use of Force qualification. No concerns pursuant to the *2005 Auditor General's Report* with respect to recruit and field training were identified in this incident.

Subsequent to Cst. KOESTER initiating his investigation pursuant to the Liquor Act it was determined that the male, Ian BUSH, gave two false names to Cst. KOESTER, thus obstructing his investigation. When asked why he provided these false names (Jeremy STAPLETON and Tyler POZNIKOFF) BUSH replied he wanted to "get out" of the liquor ticket. An exhibit later seized in the North District Major Crime Unit investigation was the Liquor Ticket Cst. KOESTER made out in the name of Tyler POZNIKOFF, as well as Cst. KOESTER's notebook showing the names he ran on the Canadian Police Information Centre (CPIC) and times when he did so. This aided in developing an accurate time line. The names STAPLETON and POZNIKOFF were queried at 2104 hours. Cst. KOESTER had the true identity of Ian BUSH made known to him by two people in the crowd which had begun to encroach on the police car 10A1 which Cst. KOESTER and BUSH were in . By that time, Cst. KOESTER expanded his investigation of Ian BUSH by forming the opinion he had been obstructed in his duties. Cst. KOESTER subsequently arrested and handcuffed BUSH. In a search of BUSH, Cst. KOESTER located a wallet. BUSH had said he did not have identification with him. Cst. KOESTER had a brief conversation with Cst. WOROSHELO whereby a decision was made to depart this area to continue the investigation at the Detachment, in order to get away from the crowd in the parking lot near the police vehicle. It should be noted that BUSH had been warned about lying after BUSH gave his first false name, and that to continue to do so could cause him to be charged with Obstructing a Peace Officer which Cst. KOESTER advised was a Criminal Code offence. BUSH then provided another false name as is corroborated by the two names, STAPLETON and POZNIKOFF, queried by Cst. KOESTER and verified through CPIC offline searches. Cst. KOESTER was lawfully and properly executing his duties to determine the identity of BUSH for the purposes of issuing him a Liquor Act Violation ticket based on the evidence he had gathered to that point in time. Cst. KOESTER, in his attempt to 'establish identity' was provided two false names by BUSH. The second false name was provided by BUSH after he had been warned about obstruction. Cst. KOESTER had actually completed the liquor ticket and was about to have BUSH sign it, however, still suspicious, asked Aux/Cst. KETCHELL if he knew who this male was. KETCHELL did not, however, Scott STAPLETON, who was in the crowd, advised KETCHELL it was Ian BUSH. Cst. KOESTER then arrested Ian BUSH for obstructing a peace officer at 2114 hours advising BUSH of his *Charter* rights and provided the police caution or warning. Circumstances, clearly support an investigation under Section 129(a) of the *Criminal Code* "... resists or wilfully obstructs a public officer or peace officer in the execution of his duty ..." BUSH, by his own admission, advised he had lied to avoid being issued the liquor ticket. The Criminal Code states two of the elements of the

offence of obstruction of a peace officer are *'the purpose of the accused's actions were to obstruct the officer, and, that the officer was engaged in the execution of his duties'.*

After handcuffing and placing BUSH in 10A1, a marked police vehicle with a 'prisoner cage', Cst. KOESTER had a brief conversation with Cst. WOROSHELO and the decision was made to process the release of Ian BUSH by issuing a Promise to Appear, and that would best be accomplished by releasing BUSH back at the RCMP Detachment, given the number of intoxicated individuals around the police car who were being 'mouthy' in the words of WOROSHELO. This was a safety consideration, and the detachment was only two blocks away. The purpose of leaving the area of the Arena was to preclude any further problems arising from this incident. A decision was further made, and communicated to Ian BUSH that upon his release, he would be driven home. This course of action further satisfied stipulations of Sec 495 pursuant to *'establish identity'*, and to *'prevent continuation or repetition of the offence'*. It was prudent and most appropriate in this case that Cst. KOESTER return BUSH to the office two blocks away to process his release. Cst. KOESTER's proposed course of action was concurred with by his trainer, Cst. WOROSHELO.

At 2120 hours, Cst. KOESTER radioed his status as being at the detachment. Ian BUSH was led into the interview room and not cells, as Cst. KOESTER had no plans on booking him into cells but to release him. Cst. WOROSHELO and Aux/Cst. KETCHELL also returned to the office to obtain information on a file they had just been dispatched to. Cst. KOESTER attended the monitor room area of the detachment and proceeded to conduct computer checks in furtherance of his investigation to confirm a date of birth and driver's license information for BUSH. Those queries took place at 2125 hours. The interview room in which BUSH had been placed was equipped with closed circuit video equipment capable of recording. KOESTER had turned on a video monitor in the interview room so that he could keep an eye on BUSH from the monitor room while he conducted the computer queries and prepared the release documents. No video recording was activated as there was nothing 'evidentiary' to be gleaned, it was simply a precautionary measure to monitor someone in custody. The RCMP Operations Manual 16.4.4.1.2 advises..."...video recording occurs only during incidents related to law enforcement activities". While Cst. Koester was involved in law enforcement activities it would not be normal practice to record a routine police procedure such as the release of a person under these circumstances. Had video been activated this would not have prevented this incident from occurring, however may have provided an accurate videotaped accounting of the struggle and subsequent shooting.

Cst. KOESTER, in his effort to confirm BUSH's identity, re-entered the interview room and completed a "Shriver's Test" with BUSH which satisfied KOESTER as to the true identity of who this individual was. KOESTER left the interview room to complete the liquor ticket. KOESTER heard Cst. WOROSHELO tell BUSH in a brief conversation that BUSH would be released and given a ride home. Cst. WOROSHELO exited the room and he and Aux/Cst. KETCHELL departed the detachment at approximately 2130

nours to attend to the complaint in Topley, leaving BUSH and Cst. KOESTER alone. It should be noted this is a five person detachment which polices an extremely large rural area and 'response to call' policing very often requires members to be working by themselves without assistance or cover. The shift schedule called only for WOROSHELO and Cst. KOESTER to be on shift, assisted by Auxiliary KETCHELL, and on this evening, the support of Cpl. DONOVAN was a discretionary request given the potential problem that could, and did, occur at the arena during the hockey game.

Very shortly after Cst. WOROSHELO and Aux/Cst. KETCHELL left, Cst. KOESTER re-entered the interview room with the liquor ticket and the Promise to Appear, now both in the name of the true individual Cst. KOESTER was dealing with. Cst. KOESTER explained the liquor ticket and BUSH signed it. Cst. KOESTER stated that BUSH appeared to be listening and was cooperative. Cst. KOESTER initiated his explanation of the Promise to Appear, first the charge of obstruction, the court date, and the Identification of Criminals Act portion wherein BUSH would need to attend the detachment to provide his fingerprints.

Contributing to establishing an accurate time line is Cst. KOESTER's recollection of a disturbance complaint being dispatched to the arena. Cst. KOESTER was carrying a portable radio on his duty belt. This particular dispatch that Cst. KOESTER heard 'over the air' was at 2141:42 hours. It was a request from the Operational Communications Centre requesting a unit or two clear to attend. Cst. KOESTER was still explaining the Promise to Appear to BUSH, however stopped to transmit into his microphone at 2142:03 stating, "Yeah, 10-4, stand by." The recordings suggest that Cst. KOESTER was calm and there is no indication in his voice of stress or anything wrong. At 2143:42 Cpl. DONOVAN was dispatched to the complaint at the arena. Cst. KOESTER recalls hearing this and indicated that nothing had gone wrong in his dealings with BUSH up to at this time. Next Cst. KOESTER asked BUSH to sign the Promise to Appear to which time BUSH replies, "Why don't I just punch you in the fucking face!" KOESTER attempted to key his microphone but was punched by BUSH on the left side of his face. A brief, violent and ultimately fatal struggle ensued, the details of which are related in Cst. KOESTER's statement. The scene examination, which corroborated Cst. KOESTER's account, is reported in more detail in the investigation undertaken by North District Major Crime Unit, however, will be commented in Part II of the Findings, concerning the second allegation of the Commission of Public Complaints.

After the struggle which ended with BUSH having been shot, Cst. KOESTER keyed his microphone making a "10-33" - Officer in Trouble - (Member needs help, quick) call at 2144:11 hours. The time between Cpl. DONOVAN being dispatched and Cst. KOESTER's call to stand by, and Cst. KOESTER's emergency call for assistance was "twenty-nine (29) seconds". The entire physical altercation between BUSH and Cst. KOESTER took place in this short time frame.

Cst. KOESTER described that he was dazed from the initial punch and subsequent strikes to his head. He advised the struggle took place over different areas of this room. KOESTER recollected thinking about, but unable to access, his defensive baton. Cst. KOESTER reported that he is able to say, "Ian the fight's over, that's it, just leave, you can go." BUSH replied, "I'm not leaving so you can arrest me again." The intense struggle continued. Attempts by Cst. KOESTER to extricate himself from the choke hold BUSH had him were futile. Cst. KOESTER recollected beginning to lose consciousness and at this time BUSH stated, "Take your last breaths." Cst. KOESTER felt BUSH's intent was to kill him. KOESTER was able to remove his service pistol and struck BUSH on the head three times, (this was corroborated at autopsy). Cst. KOESTER ultimately pulled the trigger of his service pistol firing a single, fatal shot to the head of Ian BUSH. KOESTER's next recollection is calling "10-33" on his radio, and of Cpl. DONOVAN arriving in the interview room lending him assistance. It is noted from a time line perspective that Cpl. DONOVAN arrived at the Houston Detachment at 2144:48 hours, 37 seconds after the 10-33. DONOVAN found Cst. KOESTER in a fetal position on the floor. The recordings of the radio dispatches made by Cst. KOESTER revealed an extreme change in his voice and demeanor between his three radio calls of 2141:50, 2142:03, and 2144:11.

As indicated, this portion of the Letter of Disposition references only the Commission for Public Complaint's first allegation pursuant to the conduct of the members from moment of initial contact with BUSH.

Additional Comments:

The Cadet Training Program is a comprehensive integrated program based on Adult Learning Principles. Cadets are continually assessed by professional training staff and may only graduate by obtaining "professional" ratings in all competencies by conclusion of the program. Many competencies exist requiring a 'professional' rating, however, significantly relevant to this investigation, are the following, as obtained from the RCMP Course Training Standard - Progress Report:

- *Ethics / Integrity*
- *Communication Skills*
- *Knowledge of Law, Policy and Procedures*
- *Crime Scene Investigation / Evidence Gathering*
- *Conflict Resolution*
- *Incident Risk Management*
- *Public and Police Safety*
- *Decision Making*
- *Care and handling, Arrest and release, Suspects / Prisoners*
- *Firearms / Police Defensive Tactics*

Cst. KOESTER was rated at least 'professional' in all and 'superior' in many. During Cst. KOESTER's field training under the direction of trainer, Cst. Darren WOROSHELO, Cst. KOESTER was very highly reported on with 'superior' ratings being anticipated on his final assessment. No concerns or complaints were ever received from the community or from his peers. The Field Coach Program is based on the principle of 'Diminished Supervision.' Cst. KOESTER successfully passed his field training November 16th, 2005. Of note, KOESTER's trainer, Cst. WOROSHELO, is described by Sgt. Sheila WHITE, the non-commissioner officer in charge of Houston Detachment, as an 'outstanding member' and had at the time, 21/2 years service.

The decisions, actions and conduct of the members, Cst. KOESTER, Cst. WOROSHELO, and Cpl. DONOVAN were professional, within the *'scope of the execution of their duties'* and were lawful. The investigations initiated by Cst. KOESTER, with respect to BUSH, (*Liquor Control & Licensing Act* and *Criminal Code* Obstruction) are not complex investigations. Cst. KOESTER has appropriately attended to the 'elements of the offence' for both. His arrest of BUSH was lawful and the decision to release BUSH at the office, for the reasons previously described, was proper and demonstrated the use of sound judgment. Cst. KOESTER had the requisite training to assume conduct of all functions around both investigations and there is nothing that comes from this review to contradict that.

Accordingly, all policies, procedures, guidelines, and statutory requirements pursuant to the arrest, treatment and processing of Mr. BUSH were complied with and the unforeseen, sudden attack by Mr. BUSH on Cst. KOESTER would suggest that no changes in policies, procedures and guidelines are required.

The following excerpt of the report from Cpl. McKNIGHT, source expert in use of force:

> *After reviewing the statements provided in conjunction with the other investigative material, it is clear that Cst. KOESTER felt that the continuous assault on him by Mr. BUSH would cause his death if not terminated. It is my opinion that Cst. KOESTER used an appropriate level of intervention when considering the circumstances confronting him. It is also my opinion that the actions are aligned with Principles of the RCMP Incident Management Model. RCMP Workforce Policy; Discharge of Firearms Policy; as well as the use of force authority granted to Peace Officers under the Criminal Code of Canada.*

SECOND ALLEGATION: *That; the criminal investigation of the officer who shot Mr. BUSH, complied with RCMP policies, procedures, guidelines and statutory requirements for the conduct of such an investigation and whether such policies, procedures and guidelines adequate, and whether the investigation was carried out in an adequate and timely fashion.*

Pursuant to the second allegation, the concerns advanced by the Commission of Public Complaints were scrutinized in two ways: First, a time line was constructed with reference to the progress and 'advancement' of the investigation, and second, the advancement of the investigation was measured against the requirements and principles of Major Case Management.

With respect to the timeliness of the investigation some of the significant 'benchmarks' within the investigation are highlighted as follows:

a) On October 29th, 2005, Cpl. DONOVAN responded to Cst. KOESTER's "10-33", arriving at 21:44:48. DONOVAN checked Ian BUSH for a pulse, then removed KOESTER from the interview room and secured the scene. The scene remained intact as Houston Detachment members secured same and BC Ambulance personnel attended. North District Major Crime Unit attendance was immediately requested.

b) October 30th, 2005, 01:38 hours: North District Major Crime Unit arrived from Prince George and initiated the first investigational 'briefing'. The Command Triangle was established. All investigators were apprised as to events that had occurred as they were known to that point, and direction and focus was established from this point on with assignments being given to the investigational team.

c) October 30th, 2005: After returning from the hospital in Smithers, Cst. Paul KOESTER gave the first of three statements.

d) November 9th, 2005: First submission to Forensic Laboratory (DNA, firearm; textile testing).

e) November 17th, 2005: KOESTER provided another detailed statement.

f) November 17th, 2005: Second submission of investigational material forwarded to Forensic Laboratory.

g) December 1st, 2005: Submission to Laboratory 'Alcohol' Section.

h) March 1st, 2006: Final lab results were received.

I) March 15th, 2006: Cpl. MURRAY forwards two compact discs and other relevant material to "E" Division Major Crime Unit for review. The entire investigation was reviewed by Insp. Russ Nash, who had just been transferred into Major Crimes and had no previous knowledge or involvement in the investigation. Once this internal review was completed

and there was satisfaction with the quality of the investigation, the investigation was forwarded to New Westminster Police Services for an independent review.

Further to the 'time line' but separate and 'after' the investigation:

j) May 10th, 2006: New Westminster Police Service receives the investigative material for their review.

k) June 19th, 2006: New Westminster Police Service complete their review supporting the quality, accuracy and thoroughness of the North District Major Crime Unit investigation.

l) June 26th, 2006: The investigative material hand delivered to Prince George Regional Crown Oleh KUZMA for review and opinion.

m) September 5th, 2006: Crown advised there would be no criminal charges relating to this matter.

It is clear that the initial attendance and follow up conducted by North District Major Crime Unit was immediate and timely. The majority of this investigation, from scene examination, interviews of all individuals, and the gathering of all relevant information, was completed within the first ten days of the incident. The time frames around the laboratory analyses and reports accordingly were well within the normal time frames for such a priority investigation. Inclusive of immediate attendance, the initial scene examination, interviews, up to and including the completion of the laboratory analysis, was a four month period.

With reference to the thoroughness of the investigation it is important to point out that this incident, as do all serious police involved matters, utilized the strict application of the principles of Major Case Management. Incidents such as this are require an impartial police investigation, one which will withstand the closest scrutiny in order to maintain public confidence in the police and the criminal justice system. Major Case Management is recognized as a 'best practice' with reference to the oversight, speed, flow and direction of a complex and serious investigation. Major Case Management is vital where critical thinking, as well as the management of information and evidence is crucial.

There was a proper command triangle established for the investigation of the BUSH shooting. Sgt. Judy THOMAS, the Team Commander, has sixteen years experience in the investigation of serious/complex crime. Cpl. Rick MURRAY, the Primary Investigator and Cpl. Suzanne McKELVIE the file coordinator, are both members of the Major Crime Unit with considerable experience. Members of the investigative team are screened to ensure that there has not been a previous close working or personal relationship with any of the subject members. In this case, none of the investigative team had any close relationship with Cst. KOESTER.

The first briefing, considered critical to Major Case Management, was convened within four hours of this incident occurring. From the time of the first briefing and the subsequent briefings and direction given, the investigators were consistently and regularly informed and given assignments relative to the circumstances and various situational 'problem solving' that was used. Various experts were involved as necessary, for example: the Blood Spatter expert, other Forensic Scene examiners, and 'Use of Force' experts. The only verbal account possible of the circumstances and events that occurred in the Houston Detachment interview room involving KOESTER and BUSH came from KOESTER's statement, therefore, it was critically important that the scene examination, in conjunction with findings at autopsy and lab testing, be thorough and used to look for consistencies or inconsistencies in the verbal accounting by the member involved. The following are the most relevant results determined during North District Major Crime Unit investigation:

a) The evidence of a significant fight or struggle in the interview room.

b) There was evidence of contusions and lacerations to Cst. KOESTER consistent with KOESTER's statement.

c) DNA and blood spatter corroborate the sequence of events and are consistent with KOESTER's statement.

d) Injuries to the head of Ian BUSH are consistent with the three 'blows' administered by KOESTER to Ian BUSH, as well as the evidence of the shot fired causing BUSH's death described by Cst. KOESTER as attempts to free himself from the choke hold.

e) The presence of a 'signed' violation ticket signed by Ian BUSH and an 'unsigned' Promise to Appear.

f) Toxicology results revealed no drugs in BUSH's system, but a final finding advising BUSH's alcohol level to be 170 milligrams of alcohol in 100 milliliters of blood.

g) Firearm testing determined KOESTER's firearm was functioning properly; that it had been discharged with the muzzle of the pistol in contact with the back of Ian BUSH's head, and; that the bullet and fragments removed from BUSH's head during autopsy had been fired from Cst. KOESTER's firearm.

h) Significant in the review are the radio broadcasts made by Cst. KOESTER at:

October 29th, 2005 - 2141:50 "10-9"
- 2142:03 "Yeah, 10-4, um, standby"
- 2144:11 "10-33" call

The distinct change in Cst. KOESTER's voice and demeanor during the "10-33" call on the radio is compelling.

Notwithstanding the presence of physical evidence as detailed, many interviews were conducted by North District Major Crime Unit investigators, from which the following relevant information was determined:

a) Scott STAPLETON indicates that his friend, Ian BUSH, had been drinking prior to, and during, the hockey game. Scott STAPLETON identified BUSH to Aux/Cst. KETCHELL, who informed Cst. KOESTER.

b) Jeremy STAPLETON confirmed Ian BUSH had been 'play fighting' and had a beer in his hand, which had been handed to him, when the police walked up. He advised BUSH had a 'buzz on' but wasn't drunk. Jeremy STAPLETON advises BUSH's friends were becoming a little 'puffy' using aggressive language around the police car in which BUSH was seated.

c) James MacINNES advised he and his friends were 'cat calling' the members because Ian BUSH was in the back seat of the police car.

d) Ian BROCKERVILLE advised he knew BUSH to fight a lot, but hasn't known him to fight in the last year. He advised BUSH was the type of person who used to fight when drunk and enjoyed fighting, but he wouldn't hit someone when they were down and was never out to hurt someone.

The following comments extracted from statements made during the investigation aid in better understanding the atmosphere during Cst. KOESTER's involvement with BUSH:

a) When BUSH was asked by KOESTER why he lied: "Well, I just wanted to get out of the liquor ticket."

b) At the time of his arrest BUSH is heard by James MacINNES: "This is fucking bullshit."

c) When in the interview room KOESTER asked if, when the cuffs are taken off, there would be any 'funny stuff', BUSH's reply: "Well there hasn't been anything yet."

d) BUSH's comment to Cst. WOROSHELO, in the interview room when Cst. WOROSHELO tells him he shouldn't have lied to the police and would now have to show up for court. BUSH replied, "I'm getting charged!"

e) When KOESTER was reviewing the Promise to Appear with BUSH, explaining the charge, court attendance, and Identification of Criminals Act portion, KOESTER advised that BUSH sounded frustrated in stating he understood the liquor ticket, but not the Promise to Appear. When

informed his signature was required and he would be given a ride home, BUSH replied loudly: "Why don't I just punch you in the fucking face!"

f) In his attempt to surrender to the ongoing assault upon him, Cst. KOESTER states, "Ian, the fight's over, that's it, just leave, you can go.", BUSH replied, "I'm not leaving so you can arrest me again," and then "Take your last breaths."

From the comments and demeanor of Ian BUSH, to the time of first contact with Cst. KOESTER, to the firing of the fatal shot, it appears BUSH is becoming more aware of his jeopardy pursuant to the criminal charge for obstruction. The request to sign the Promise to Appear would be the catalyst that initiated BUSH's attack on Cst. KOESTER.

Cst KOESTER provided three statements to the investigators. There is no policy or differential treatment afforded police officers involved in these type of incidents. RCMP members, and indeed all peace officers, have the right to counsel, however the investigation is guided by circumstances and the investigation's quest to 'follow the evidence'.

Our review shows that North District Major Crime Unit utilized a coordinated investigative team approach. The investigation was evidence driven, with the speed, flow, and direction appropriately managed through daily briefings and Task Action reports. Information and evidence management was appropriate up to and including the investigative package produced by North District Major Case Unit.

It should be noted that this investigation, given the sensitivities and circumstances involved, was completed in a thorough and expedient manner. The forensic support units are essentially a support to, and act under, the broad direction of the investigators. The "turnaround" in laboratory analysis was faster than normal, given the immense workload on laboratory personnel and the system of prioritization by which the Forensic Laboratories attend to investigational requests for service.

As indicated earlier, New Westminster Police Service conducted their review, finding KOESTER *to be acting in the lawful execution of his duty, exhibiting a calm and professional demeanor*. New Westminster Police Service, among their other findings, indicate BUSH *committed the criminal offence of obstructing a Police Officer, committed an unprovoked assault on Cst. KOESTER, and that KOESTER reasonably concluded his life to be at risk responding with deadly force that, in the totality of the circumstance was justified*.

With respect to our request to the New Westminster Police Service to review the adequacy and thoroughness of the Major Crimes investigation, they found the investigation to be *appropriately organized and controlled, keeping the elements of Major Case Management in mind.* New Westminster Police Service made the recommendation that the investigative package be forwarded to Crown Counsel for their review and opinion.

On September 5th, 2005, Crown advised there would be no criminal charges relating to this matter.

GENERAL COMMENTS:

During our investigation, there were questions raised about the fact that there was video recording equipment available to record the conversations and activity in the interview room where the altercation between BUSH and Cst. KOESTER occurred. It is stating the obvious that a recording of the incident would not have prevented this incident from occurring, but would have been valuable in having an independent accounting of what happened. It is important to put this incident in context. The arrest and release of a suspect in similar circumstances is a routine police activity replicated likely hundreds of times a day across Canada. The arrest was lawful, the decision to return BUSH to the detachment for processing with a small group gathering around was sound, and the decisions to release BUSH on a Promise to Appear and to drive him home were certainly appropriate. Cst. KOESTER was not gathering any further evidence and therefore felt no need to record the interaction in the interview room. It would be inappropriate to create a policy requiring the recording of every interaction between police and the public based on one incident. There are literally thousands of police contacts with the public every day in Canada therefore it is simply not practicable to do so.

The RCMP investigators met regularly with the BUSH family to provide as much information about the circumstances, and the progress of the investigation, as possible. One of our investigators was assigned to be a liaison with the family and maintained regular contact. Immediately following the decision from the Attorney General's office that there would not be any criminal charges against Cst. KOESTER, Supt. Van De Walle and the investigators met with the BUSH family and provided a complete explanation of the findings of the investigation. This approach to dealing with the family is a standard practice in such incidents.

Concerning our media strategy, which was subject to some criticism in this incident, a new "E" Division Communications Strategy was in 'draft' and "E" Division Strategic Communications Section was, on 2005 Oct. 29th, guided by National Communications Policy, OM11.16. Specifically, S/Sgt. John Ward, Non-Commissioner Officer in charge of "E" Division Strategic Communications Section, advises that first and foremost they are not, through policy, to compromise the integrity of an ongoing investigation.

Secondly, communications follow the direction of the Major Crime Commander, in this instance Supt. Leon Van De Walle, who authorized the releases. S/Sgt. Ward reported a number of interviews were held with the media, always referencing remarks to the original press release. S/Sgt. Ward advised it became apparent that some of the media had an 'agenda' not necessarily built on full and accurate information. Ward advises any efforts to correct the record and the media of their misconceptions about these types of investigations and the rules the police are bound by, had little effect. S/Sgt Ward further advised that the Bush family were kept current as much as the investigation would allow and were quite upset when the media managed to get an interview with the family and distorted their statements during the media reports. Contrary to the media portrayal of a community holding animosity towards the police, the Mayor and Council wrote an article of support for Detachment members. As a result of the unprofessional behaviour of some reporters in this incident "E" Division Strategic Communications have developed a new webpage called "Setting the Record Straight," wherein we can rebut erroneous or sensationalized media stories. Further, a 'crisis management model' is utilized to support our local media relations officers. S/Sgt. Ward advised that, recognizing the disadvantage the police endure by being unable to make 'full and frank disclosure' relative to ongoing investigations, and that the media have shown little concern that the police will hold themselves fully accountable for their actions and words, a survey was undertaken to gauge the public's trust and confidence in the RCMP. What was revealed via the survey was that the trust level has been maintained in the high 80% range, consistent with previous survey results.

Certain media misquoted S/Sgt. Ward with respect to his response to a question about the public's right to know. S/Sgt. Ward indicated that the police are fully accountable to the public in the proper forum and that at the early stages of an investigation, when the facts are not clear or substantiated, that it was important not to release unverified information. S/Sgt. Ward further indicated that there were proper forums, such as Coroner's Inquests, during which sworn evidence is gathered in a quasi-judicial setting open to the public. The media reported that S/Sgt. Ward had stated the public "did not have a right to know." It is important to note that in an effort to correct the public record, then Deputy Commissioner Busson wrote a letter to the editor of the Globe and Mail clearly describing the police position and the commitment to be accountable to the public. Her letter was never published. It is our view that the reporting of some media was not balanced and in many cases the information was inaccurate and misleading.

To overcome some of the public concern there have been some recent efforts to secure the utmost public confidence in the police and Justice System in those high profile and sensitive cases. The main efforts are:

a) The creation of a pilot "Observer Program" between the RCMP in "E" Division and CPC, which allows for the monitoring of such investigations and the resulting confirmation that the investigation be complete, and impartial. In addition CPC

will be working with the Office of Investigative Standards and Practice (OISP) whose role is to ensure that the investigations are carried out by competent investigators in a professional manner.

b) A proposal to establish a National Office of Investigative Standards and Practices (OISP) has been approved. This will see the use of a National Accreditation program and oversee the creation of Regional or Divisional OISP's. A stated function of this national body is to establish effective working relationships with existing civilian oversight bodies or affected community groups to facilitate the immediate establishment of Observer/Monitor roles in selected investigations. The OISP would be the portal through which appropriate observers / monitors would gain access to the investigation under terms and conditions that respected the interests of the oversight body, community group/interest and investigation.

Concluding Comments:

There are times when we review the circumstances of an incident and find that given all the information available to our members that we would not have done anything differently. This was an unfortunate and tragic event. Cst. KOESTER was very capable and qualified in carrying out the duties and activities he did in investigating the liquor offence and obstruction of a peace officer, and in releasing BUSH on the Promise to Appear and Violation Ticket. These are routine matters which Cst. KOESTER had demonstrated competence in carrying out. Sometimes, regardless of following proper procedures and doing things right, things go horribly wrong. There is a human element involved. We will never know why Ian BUSH initiated the action he did. That will be difficult for the BUSH family to comprehend and find a satisfactory explanation.

The conduct of the RCMP officers pursuant to their dealings and contact with Ian BUSH on the evening of 2005 October 29 appropriately complied with all policies, procedures, guidelines and statutory requirements for the arrest and treatment of persons taken into and released from custody. Such policies, procedures and guidelines referenced in this incident are deemed adequate and not in need of revision.

Furthermore, RCMP officers involved in the criminal investigation of the officer who shot Mr. BUSH, appropriately complied with RCMP policies, procedures, guidelines and statutory requirements for the conduct of such an investigation and such policies, procedures, and guidelines are adequate.

Please be advised that pursuant to Section 45.4 of the *RCMP Act*, I am notifying you that the investigation into your complaint has been concluded.

Yours truly,

Richard C. Bent, Chief Superintendent
Deputy Criminal Operations Officer (Contract)
"E" Division - British Columbia

Appendix E – Summary of Findings and Recommendations

FIRST ALLEGATION: Whether Constable Koester and the other RCMP members involved in the events of October 29, 2005 from the moment of initial contact until Mr. Bush's death, complied with all appropriate policies, procedures, guidelines and statutory requirements for the arrest and treatment of persons taken into and released from custody and whether such policies, procedures and guidelines are adequate.

FINDING: Constable Koester's cadet and field training were sufficient and there was no failure in Constable Koester's training that contributed to Mr. Bush's death.

FINDING: The RCMP should not have completed the evaluation of Constable Koester's field training until after the investigation into the shooting of Mr. Bush was concluded.

RECOMMENDATION 1: The RCMP amend its field training evaluation procedures to ensure that the final field evaluation of new members is not concluded until all outstanding member investigations, of a serious nature, are concluded.

FINDING: Constable Koester's decision to charge Mr. Bush for consuming liquor in a public place was reasonable.

FINDING: It was reasonable for Constable Koester to arrest Mr. Bush for the offence of obstruction.

FINDING: Constable Koester's search of Mr. Bush, after his arrest, was inadequate.

RECOMMENDATION 2: Operational guidance and/or refresher training be provided to Constable Koester regarding the need to conduct thorough searches of prisoners.

FINDING: The decision to transport Mr. Bush to the Houston RCMP Detachment was reasonable.

FINDING: The decision to leave Constable Koester alone with Mr. Bush was reasonable.

FINDING: The use of CCTV in RCMP detachments where prisoners are dealt with and released is necessary to provide an independent record of events, to promote compliant behaviour by both prisoners and RCMP members and to minimize the risk of dealing with prisoners alone.

RECOMMENDATION 3: The RCMP install automated CCTV recording equipment in every RCMP detachment in areas where prisoners are dealt with and released.

FINDING: The facilities at the Houston RCMP Detachment pose a significant safety concern in that there is no separate area in the cell block for dealing with prisoners and for processing prisoners for release.

RECOMMENDATION 4: The RCMP immediately retrofit the Houston RCMP Detachment to incorporate a separate area within the cell block in which to deal with prisoners and from which to release them.

RECOMMENDATION 5: The RCMP amend national policy to require that prisoners be dealt with and released from the cell block in all RCMP detachments.

RECOMMENDATION 6: The RCMP retrofit RCMP detachments that do not have a separate area in the cell block in which to deal with prisoners and from which to release them.

FINDING: It was improper for Constable Woroshelo to speak with Constable Koester in private behind closed doors about the incident soon after it occurred.

FINDING: The lack of RCMP policy providing direction to on-scene RCMP members in the police-involved shooting death of Mr. Bush may have contributed to the actions of Constable Woroshelo and Constable Dodge which resulted in a perceived lack of impartiality.

RECOMMENDATION 7: The RCMP develop policy that provides direction to on-scene RCMP members in major cases involving investigation of police conduct, i.e. situations where the police investigate the police, including the need to ensure real and perceived impartiality.

FINDING: Constable Koester completed his required duty to account statement on the same day that it was requested, on October 30, 2005.

FINDING: The lack of RCMP policy in respect of a member's duty to account results in uncertainty about what is specifically required to meet the obligation.

RECOMMENDATION 8: The RCMP develop a policy that dictates the requirement, timeliness and use of the duty to account that members are obliged to provide.

FINDINGS: Once Constable Koester provided his duty to account statement he was under no legal obligation to provide a further statement but he voluntarily did so on November 17, 2005.

The notes that Constable Koester used to prepare his November 17, 2005 statement were made on the advice of legal counsel and were not notes ordinarily made in the course of his law enforcement duties. Accordingly, Constable Koester was under no obligation to maintain his notes.

FINDING: The NDMCU investigators acted appropriately in providing Constable Koester's lawyer with a list of 18 questions in advance of the February 8, 2006 interview of Constable Koester.

FINDING: The attendance of Corporal Hawkins, the member in charge of exhibits, and Sergeant Duncan, the forensic identification specialist, at the autopsy was consistent with normal practice for police investigations of human deaths.

FINDINGS: Constable Koester had a reasonable apprehension of death and believed that he could not otherwise preserve himself from death other than to use lethal force. Accordingly, Constable Koester acted in self-defence.

Given Constable Koester had tried lesser forms of intervention that were not successful, Constable Koester was authorized under the IM/IM to use lethal force.

SECOND ALLEGATION: Whether the RCMP members involved in the criminal investigation of Mr. Bush's shooting complied with RCMP policies, procedures, guidelines and statutory requirements for the conduct of such an investigation and whether such policies, procedures and guidelines are adequate and, further, whether such investigation was carried out in an adequate and timely fashion.

FINDING: The RCMP Major Crime Unit members who investigated Mr. Bush's

death did so in a manner free from any conflict of interest, bias or partiality.

FINDING: There was no unreasonable delay in the RCMP's investigation of Mr. Bush's death and the investigation was completed in a timely manner.

FINDING: The NDMCU conducted a highly professional investigation into Mr. Bush's death in a timely manner and free from any manner of conflict of interest, bias or partiality.

FINDING: The RCMP media strategy for the investigation into Mr. Bush's death failed to keep the public adequately apprised of the status of the investigation.

RECOMMENDATION 9: The RCMP develop a media and communications strategy specifically for police-involved shooting investigations that recognizes the need for regular, meaningful and timely updates to the media and to the public. In addition, the media and communications strategy should include a publicly available general investigative outline of the steps to be taken and the anticipated timeline for each step.

CONCLUDING SUMMARY

FINDINGS RELATED TO THE RCMP INVESTIGATION:

The NDMCU conducted a highly professional investigation into Mr. Bush's death and exemplified the best practices for major crime investigations.

The North District Major Crime Unit conducted the investigation into Mr. Bush's death in a timely manner and free from any manner of conflict of interest, bias or partiality.

FINDINGS RELATED TO CONSTABLE KOESTER'S USE OF FORCE:

Constable Koester had a reasonable apprehension of death and believed that he could not otherwise preserve himself from death other than to use lethal force. Accordingly, Constable Koester acted in self-defence.

Given Constable Koester had tried lesser forms of intervention that were not successful, Constable Koester was authorized under the IM/IM to use lethal force.

Appendix F – Events Related to Mr. Bush's History

In June 1998, a person reported to the Houston RCMP that Mr. Bush had punched him when he had requested that Mr. Bush return a lighter to him. The complainant's mother requested that the police speak with Mr. Bush and his parents. Constable V. Brooks was assigned to investigate the file but was unable to contact Mr. Bush or his parents before going on leave for two weeks. The complainant's mother advised Constable Brooks "not to bother contacting" Mr. Bush or his parents and that "if another incident arose they would call police." There is no further documentation on the file. Constable Brooks was no longer in Houston at the time that Mr. Bush was shot.

In November 2002, Mr. Bush was ejected from a bar for fighting. Mr. Bush returned to the bar and threw a rock through the bar window. Constable J. Gilmour investigated the incident and submitted a Report to Crown Counsel recommending charges against Mr. Bush for mischief. Charges were not approved as Mr. Bush was referred to adult alternative measures. Mr. Bush successfully completed the Adult Alternative Measures Program and made full restitution to the bar for the damaged window. Constable Gilmour was no longer in Houston at the time that Mr. Bush was shot.

In July 2003, Mr. Bush drove a snowmobile across a neighbour's lawn during a party and damaged the lawn that had just been levelled and seeded. Constable Woroshelo was assigned the file to investigate and subsequently spoke to Mr. Bush. Constable Woroshelo recommended to Mr. Bush that he apologize to his neighbour, which Mr. Bush did. According to Constable Woroshelo, the neighbour was "very happy" that the RCMP was able to facilitate an apology and commented to Constable Woroshelo that Mr. Bush "seemed sincere." Although Constable Woroshelo had prepared a violation ticket for driving with no insurance, he did not issue the violation ticket once Mr. Bush had apologized to his neighbour.

In December 2003, Constable G. Learning of the Houston RCMP Detachment observed three persons at 2:30 a.m. walking in front of the Houston Motor Inn. One of the persons was observed to damage some Christmas trees and lights placed by the District but fled up a hill when Constable Learning approached. The other two persons advised that they did not know who the third person was. Constable Learning subsequently located Mr. Bush at the top of the hill who was "intoxicated, breathing heavy and had snow all over him." Constable Learning was unable to positively confirm that it was Mr. Bush that had fled so Mr. Bush was simply given a ride to a friend's house (one of the other two persons observed walking). Constable Learning was no longer in Houston at the time that Mr. Bush was shot.

In October 2004, Constable Stanzell attempted to stop Mr. Bush after Mr. Bush failed to stop at a stop sign at 2:20 a.m. Mr. Bush pulled his vehicle into a convenience store/gas station parking lot, and exited the vehicle and fled. Constable Stanzell did not pursue Mr. Bush because he immediately recognized Mr. Bush and his identity was known to him. One of the males in Mr. Bush's vehicle advised Constable Stanzell that Mr. Bush was

back at the local pub. Constable Woroshelo arrived on scene and made patrols to find Mr. Bush but did not locate him. Constable Stanzell later spoke to the other male who had been in Mr. Bush's vehicle and the male advised Constable Stanzell that he did not know who was driving Mr. Bush's vehicle. Constable Stanzell later spoke to Mr. Bush, who did not admit to being the driver or running away from Constable Stanzell.

Constable Stanzell considered charges of impaired driving and obstruction, but Mr. Bush was not charged due to a lack of evidence. Mr. Bush was charged with disobeying a stop sign and failing to stop for the police under the British Columbia *Motor Vehicle Act*. In regards to a charge of obstruction, Constable Stanzell could not say that Mr. Bush fled from Constable Stanzell to avoid being charged. Constable Stanzell was no longer in Houston at the time that Mr. Bush was shot.

In April 2004, Constable J. McNaul observed Mr. Bush walking in downtown Houston with a beer in his hand. Constable McNaul took the beer out of Mr. Bush's hand which, according to Constable McNaul, caused Mr. Bush to clench his fists and take a "fighting stance." Constable McNaul stated that he had interacted with Mr. Bush "several times" before. Constable McNaul indicated that he put Mr. Bush into his police vehicle and "talked him down" and then indicated that he offered some advice to Mr. Bush about alcohol consumption. Constable McNaul did not charge Mr. Bush with any offence nor did he start an RCMP file. Constable McNaul was no longer in Houston at the time that Mr. Bush was shot.

In June 2004, at approximately 12:36 a.m., Constable Learning gave Mr. Bush a 24-hour driving suspension after Mr. Bush was stopped for speeding and exhibited symptoms of alcohol consumption. Sometime in September 2004, at approximately 3:05 a.m., Constable Stanzell gave Mr. Bush a 24-hour driving suspension after Mr. Bush was stopped for leaving a convenience store at a high rate of speed and exhibited symptoms of alcohol consumption.

Mr. Bush had been given 11 *Motor Vehicle Act* violation tickets between May 2001 and October 2004. Mr. Bush's many driving infractions had resulted in him receiving three administrative driving prohibitions, in 2001, 2002 and 2004.

Appendix G – Discussion of CCTV Funding

The RCMP is contracted to be the provincial police force in British Columbia pursuant to the British Columbia *Police Act*[82] and the Provincial Police Services Agreement. As the provincial police force, the RCMP provides policing services to unincorporated areas of British Columbia, municipalities with a population of up to 5,000 persons and municipalities with a population of more than 5,000 persons that contract with the minister to engage the provincial police force to act as the municipal police department in their municipalities.[83]

The funding for RCMP detachments varies based on the population of the municipality they serve. In general, RCMP detachments in municipalities under 5,000 people, such as Houston, are funded by the Province of British Columbia (70%) and the Government of Canada (30%); RCMP detachments in municipalities between 5,000 and 15,000 people are funded by the municipality (70%) and the Government of Canada (30%); and RCMP detachments in municipalities over 15,000 people are funded by the municipality (90%) and the Government of Canada (10%). The financing of local police services in British Columbia is an area that has been extensively studied.[84]

The source of funding specific to each RCMP detachment directly affects the RCMP detachment's ability to install and utilize resources such as CCTV. RCMP detachments in larger municipalities tend to have more sophisticated CCTV systems. In smaller RCMP detachments, such as Houston, the CCTV systems, if any, tend to be less sophisticated. This tendency, likely due to the source of funding, leads to an imbalance of CCTV modernization among RCMP detachments, assuming the RCMP detachment even has CCTV.

This difficulty with funding for capital expenditures such as CCTV was demonstrated when Sergeant White, the Houston RCMP Detachment Commander, testified at the Inquest into Mr. Bush's death that each RCMP detachment has a different CCTV setup and that the setup for CCTV in any particular detachment is dependent on funding from the individual detachment's budget or by approval from "E" Division for a capital expenditure.

Sergeant White testified that after Mr. Bush's death, she had purchased a newer recording system for the interview room with more storage capability (up to 284 hours) and an infrared remote control that could be operated from inside the interview room. Sergeant White explained that she had purchased the newer CCTV system from her own detachment budget but that her spending authority, like all RCMP detachment

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[82] *Police Act*, RSBC 1996 C. 367, s. 14.

[83] *Police Act*, RSBC 1996 C. 367, sub. 3(1).

[84] See the Government of British Columbia, Ministry of Public Safety and Solicitor General, Police Services Division website: http://www.pssg.gov.bc.ca/police_services/publications/documents and the documents under the title "Financing Local Police Services."

commanders, is limited.[85] Sergeant White testified that the upgraded CCTV system for the interview room is still a manual system left to the discretion of each RCMP member.

Sergeant White also testified that she was not aware of the specific process regarding how requests for capital expenditure are approved but that she already had an outstanding request for a capital expenditure to upgrade the cells in Granisle, a satellite office of the Houston RCMP Detachment. According to Sergeant White, upgrading the cells would likely be a higher priority than installing CCTV.

When asked during her testimony at the Inquest if she had thought of using the interview room CCTV for when RCMP members are at the RCMP detachment alone with a prisoner in the interview room, Sergeant White testified that this was a "great idea" but that the issue was one of storage. In the case of the new CCTV system for the interview room, Sergeant White advised the Commission that she would have to download the recorded images onto another storage media when the hard drive is full, which would take a significant period of time.

In addition to the cost to purchase CCTV, there are costs associated with storing the data recorded on CCTV. The RCMP policy regarding retention of recorded media is dependent on the category that is assigned to the recorded media. For recorded media that is used for an administrative purpose, i.e. in a decision-making process that directly affects the person, the retention period is two years. For recorded media that is a transitory record, i.e. required only for a limited time to ensure the completion of a routine action or the preparation of a subsequent record, there is currently no retention period.

[85] Sergeant White subsequently advised the Commission that her spending authority is limited to purchases up to $5,000.

Appendix H – Constable Koester's Spontaneous Utterances

Corporal Donovan made some notes at approximately 10:14 p.m., roughly thirty minutes after the shooting, and noted the following:

> [Constable Koester] stated – he was choking me out, I was seeing stars, I couldn't get him off.

Corporal Donovan provided a statement to the North District Major Crime Unit (NDMCU) investigators at 2:38 a.m. on October 30, 2005. Corporal Donovan stated the following:

> [I] don't recall the exact words but it was something that you know that he was choking me and he said I was seeing stars, I thought I was going to die and that's about as far as he went. I don't recall him saying anything further.
> …
> Basically it was a lot of sobbing, he wasn't saying a whole bunch and he just kept on saying you know I was seeing stars Derek, I was seeing stars, I was passing out, that's all he said it two or three times …
> …
> just remember him saying Derek he's younger than me.
> …
> I believe it was prior to that though he stated he was being choked out and that he was you know, he used the word that he was seeing stars and couldn't breathe.

Corporal Donovan provided a second statement to NDMCU investigators at 12:55 p.m. on November 1, 2005. Corporal Donovan stated the following:

> [Constable Koester was] saying that he was being choked and I don't recall he said he felt that he was dying but he said he was, the word dying he used but the indication of what he said was blacking out, I felt that from what he was telling he was referring to he thought he was going to die, a lot of crying and sobbing and, and going on and I just came on saying it's not your fault, you know we're to, I'm here now and, and then I remember him kind of looking before I checked on, on the male, referring he's younger than me, Derek he's younger than me …
> …
> he says I couldn't get him off me Derek, I couldn't get him off me and, and then went on about blacking out, seeing stars, which I, he didn't say black out but he said seeing stars.

In his continuation report (From 1624) Constable Woroshelo recorded:

> Cst KOESTER told Cst WOROSHELO that he wanted BUSH to sign the PTA and BUSH told him "what if I don't want to fucking sign it, what if I want to punch you in the fucking head". Cst KOESTER then said he went to radio for someone to return to the office when BUSH hit him in the head and the fight began. Cst KOESTER then said BUSH got on his back and began choking him out. Cst KOESTER said he could not break the choke and then hit BUSH several times with his pistol trying to break his grip before finally having to shoot him.

Constable Woroshelo provided a statement to NCMCU investigators at 2:52 a.m. on October 30, 2005. Constable Woroshelo stated:

> When I walked in he was emotionally distraught and you could tell he'd been crying. He had cuts to his face and his side of his head, his pants were ripped, he, he looked just exhausted. He, he could barely talk, he was, you could tell he was very upset, he'd been crying, he, very, very shaken up. I sat down and told him that he had done a good job and that he should be proud of himself for being the one that's still alive and when it comes down to it you have to do what you have to do. He then, you know, spontaneously kind of told me what happened. At that point he told me he said he went in with the Promise to Appear and told him to sign the Promise to Appear and Ian BUSH told him what if I don't want to sign the fucking Promise to Appear or what if I don't want to fucking sign it. What if I want to punch you in the fucking head. Constable KOESTER then told me he went to radio for help and he actually gestured to his, his radio to show me what he did and he said as he went to key up the mike he got hit in the side of the head and the fight ensued and they were wrestling and fighting in the interview room. He said Ian BUSH managed to get on his back and was choking him from behind and he couldn't break the chokehold and he was trying and trying and trying to break the chokehold and he couldn't and he drew his pistol and he said he reached back and he tried hitting him on the head with his pistol, trying to again get him off of him and then he said he just feared for his life, thought he was going to die and he shot him.

Constable Woroshelo provided another statement to NDMCU investigators at 1:23 p.m. on October 30, 2005. Constable Woroshelo stated:

> I came in he was sitting in a chair just right beside the door here and he just looked mentally and physically exhausted or beat, he really was just you know slumped in the chair, had blood on his face and cuts by his right temple or left temple and he, he was just slumped over there and you could tell he just, you know, been through the wringer. And then I, I gave him a hug and I told him it was going to be okay and told him I was proud of him and that he did what he had to do and it wasn't his fault and the first rule of police work is to go home at the end of your shift and I sat with him for a few minutes and he made some comments to me about what had happened after we had left, he had told me that he went to get him to sign the Promise to Appear and he was sitting there and he said what if I don't want to fucking sign it, what if I want to punch you in the fucking head and then he reached, he, he gestured with his hand to his radio while

> he was talking to me and he said you know I went to call for you guys and then he got hit and then a fight ensued and they were wrestling in the interview room and, and BUSH got onto his back and was choking him from behind and you know he said he, he couldn't break the chokehold and he was starting to lose consciousness and he got his pistol and he said he actually tried hitting him in the head with his pistol a couple of times to try to get him off of him and he couldn't and then he had to shoot him. He was very emotionally distraught, he was crying, he was upset, he was obviously very scared as to what was going to happen. I just kept reassuring him that he had, had done what he had to do and was forced to do.

Constable Dodge provided a statement to NDMCU investigators at 4:13 a.m. on October 30, 2005. Constable Dodge stated:

> I encouraged him, I said Paul from what I understand you've done the right thing, he was shaking, he was crying, I had my arm around him, he was trying to drink water, he, he did say, he said I thought I was going to die, I kept, I was thinking of Tammy, Tammy is his wife, that's what he said and I just reassured him over and over again I, I hugged him and told him we were all supportive and behind him and we were there for him and we believed in him.

The test for spontaneous utterances is as follows:[86]

> [T]he test should be not the uncertain one whether the making of the statement was in some sense part of the event or transaction. This may often be difficult to establish: such external matters as the time which elapses between the events and the speaking of the words (or vice versa), and differences in location being relevant factors but not, taken by themselves, decisive criteria. As regards statements made after the event it must be for the judge, by preliminary ruling, to satisfy himself that the statement was so clearly made in circumstances of spontaneity or involvement in the event that the possibility of concoction can be disregarded.

Other factors to consider in regards to spontaneous utterances include:[87]

> 1. The primary question which the judge must ask himself is - can the possibility of concoction or distortion be disregarded?
>
> 2. To answer that question the judge must first consider the circumstances in which the particular statement was made, in order to satisfy himself that the event was so unusual or startling or dramatic as to dominate the thoughts of the victim, so that his utterance was an instinctive reaction to that event, thus giving no real opportunity for reasoned reflection... .

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[86] *Ratten v. R.*, [1971] 3 All E.R. 801 at 807 (P.C.), quoted in *R.* v. *Clark* (1983), 35 C.R. (3d) 357 at 373 (Ont. C.A.).

[87] *R. v. Andrews*, [1987] 1 A.C. 281 at 300-1 (H.L.).

3. In order for the statement to be sufficiently “spontaneous” it must be so closely associated with the event which has excited the statement, that it can be fairly stated that the mind of the declarant was still dominated by the event. Thus the judge must be satisfied that the event, which provided the trigger mechanism for the statement, was still operative. The fact that the statement was made in answer to a question is but one factor to consider under this heading.

4. Quite apart from the time factor, there may be special features in the case, which relate to the possibility of concoction or distortion ....

5. As to the possibility of error in the facts narrated in the statement, if only the ordinary fallibility of human recollection is relied upon, this goes to the weight to be attached to and not to the admissibility of the statement and is therefore a matter for the jury. However, here again there may be special features that may give rise to the possibility of error.

Appendix I – Bloodstain Pattern Analysis Experts' Qualifications

Sergeant Jim Hignell joined the RCMP in 1989 and started working in the RCMP Forensic Identification Section in April 1999. Sergeant Hignell has specialized in the area of bloodstain pattern analysis and crime scene examination since November 2002. Sergeant Hignell completed a one-year understudy training period as a bloodstain pattern analysis expert and achieved his certification in bloodstain pattern analysis in December 2003. In addition, Sergeant Hignell has attended a Basic Bloodstain Pattern Analysis course in 2003 and an advanced Bloodstain Pattern Analysis Math/Physics course in 2003.

In 2005 and 2006, Sergeant Hignell taught a Basic Bloodstain Pattern Recognition course at the Canadian Police College, a course developed in part by Mr. Slemko. Sergeant Hignell is a member of the Canadian Identification Society and a member of the International Association of Bloodstain Pattern Analysts (IABPA), and attended the IABPA 2004 and 2006 annual conferences. Sergeant Hignell has been qualified as an expert and has testified in both the British Columbia Provincial Court and in the Supreme Court of British Columbia. Sergeant Hignell continues to work as a bloodstain pattern analysis expert in British Columbia, where he is based.

Mr. Joseph Slemko is a Constable with the Edmonton Police Service (EPS) but also works as a private bloodstain pattern analysis consultant. Mr. Slemko joined the EPS in 1986 and started working in the EPS Forensic Identification Services Section in August 1992. Mr. Slemko attended a five-day blood spatter workshop in April 1994, a three-day advanced seminar on bloodstain pattern analysis in October 1994 and a ten-day advanced bloodstain pattern course in March 1997. In February 1998, Mr. Slemko completed his tenure in the Forensic Identification Services Section and returned to general investigative duties.[88] Mr. Slemko worked for six months in the Forensic Identification Services Section in 2002–2003 to assist with the workload.

Mr. Slemko is also a member of the Canadian Identification Society and the IABPA. Mr. Slemko is a member of the International Association for Identification and the Association of Crime Scene Reconstruction, both being multidisciplinary in nature, including covering the area of bloodstain pattern analysis. In 1998, Mr. Slemko and two RCMP members founded the Northwest Bloodstain Pattern Association and collectively developed the Bloodstain Pattern Recognition course, which was subsequently adopted by the Canadian Police College. In addition to the Bloodstain Pattern Recognition

[88] Mr. Slemko testified at the Inquest into Mr. Bush's death that police officers may only spend seven years in each unit before they are required to be reassigned and that, although he had asked for an exemption to this rule, he was advised that it could not be done as it would allow others to seek a similar exemption. Mr. Slemko testified that he applied for a promotion to get back in the unit but was not successful. Mr. Slemko acknowledged that one of the current constables in the unit had been there for thirteen years, beyond the normal seven-year tenure.

course, Mr. Slemko has taught, presented or lectured on several other bloodstain-related courses. Mr. Slemko has attended many of the annual IABPA conferences.

From 1997 to 1999, Mr. Slemko conducted experiments related to bloodstains on fabric and wrote a paper on his findings. This paper was later published in the IABPA News, a peer-reviewed publication, in December 2003. Mr. Slemko's research was subsequently acknowledged in a bloodstain pattern analysis textbook.

Mr. Slemko has been qualified as an expert for the prosecution and has testified in the Alberta Provincial Court and in the Court of Queen's Bench of Alberta. The majority of cases where Mr. Slemko testified on behalf of the prosecution occurred between 1995 and 2000. These cases were related to cases he worked on while in the Forensic Identification Services Section.[89] Mr. Slemko has not actively practiced as a bloodstain pattern analysis expert since he left the Forensic Identification unit (in the sense that he no longer attends crime scenes as a bloodstain pattern analyst).

In December 1998, after leaving the Forensic Identification Services Section, Mr. Slemko established a private bloodstain pattern analysis consulting business. As a private consultant, Mr. Slemko has testified for the defence in Canada (in Manitoba in 2000 and in British Columbia in 2007) and in England. Mr. Slemko has conducted bloodstain pattern analysis reviews on various other cases, primarily on behalf of the defence, including cases in Canada, in the US, in Australia, in England and in Thailand.

[89] Mr. Slemko testified in one re-trial in 2001 and in a trial in 2006 (relating to a case he worked on when he worked in the forensic Identification Services Section for six months in 2002–2003).

Appendix J – Other Bloodstain Opinion Evidence Topics

Mr. Slemko commented in his report and also testified that the bloodstain patterns should have been "mapped" and the data then used to determine more precisely the origin of the blood source, for example using a computer program such as "BackTrack." Mr. Slemko agreed in cross-examination that "it's a question of judgment of the individual officer attending the scene as to whether or not he or she thinks there's enough data available at the scene to input into the computer to generate a meaningful result."

This issue was not put to Sergeant Hignell by counsel for the Bush family when Sergeant Hignell testified at the Inquest. From a review of Sergeant Hignell's CV it is apparent that in 2003 he attended the course that teaches the application of the different mapping techniques, the same course attended by Mr. Slemko in 1997. According to Mr. Slemko, the course was developed by the RCMP as was, in part, the BackTrack computer program.

Sergeant Hignell was contacted by the Commission to comment on the decision not to use a mapping technique. According to Sergeant Hignell, this "method of examination was considered during [his] scene analysis," but the "patterns present were found to be unsuitable for such an examination." Sergeant Hignell explained that the "reason for this determination was the resulting drops of blood within the pattern areas on the wall were poorly defined and did not survive impact due to the wall's rough texture." The textured nature of the wall is present in Sergeant Hignell's photographs of the interview room.

Given Sergeant Hignell's explanation and considering that he was in the best position to assess whether a mapping technique should be used, I am satisfied that his decision not to use a mapping technique was reasonable.

Mr. Slemko also arranged to do a reconstruction of the shooting using two students from a course that he teaches. The reconstruction was not put before the jury at the Inquest into Mr. Bush's death; Mr. Slemko's report was amended for the purposes of the Inquest. The Commission reviewed both the original report and the amended report prepared by Mr. Slemko. His reconstruction adopted the same assumptions that he relied upon in coming to his conclusion that Constable Koester could not have shot Mr. Bush as he described.

As discussed in the main report, Mr. Slemko's opinion is based on an assumption about the positioning of Constable Koester and Mr. Bush. This subject matter is beyond Mr. Slemko's area of expertise. For the same reasons that I attached little weight to Mr. Slemko's opinion evidence that Constable Koester could not have shot Mr. Bush as he described, I also attach little weight to Mr. Slemko's reconstruction. Even aside from the resulting effect on the weight that can be placed on Mr. Slemko's reconstruction due to his assumption about positioning, there are other concerns with his reconstruction, which also substantially affect any weight that it could be afforded.

There is a marked difference in size between the participants in Mr. Slemko's reconstruction and Constable Koester and Mr. Bush. In addition, in Mr. Slemko's reconstruction, the student representing Constable Koester swung his right arm and hand up (to strike and shoot the student representing Mr. Bush) on the right side of the student representing Mr. Bush who was behind the student representing Constable Koester whereas Constable Koester described that he swung his arm up in between him and the left side of Mr. Bush's body as Mr. Bush was behind and to the right of him. Accordingly, the reconstruction is not based on the established facts.

Corporal Murray explained that the investigative team considered performing a re-enactment but chose not to because it was "not clear as to the positioning of Constable Koester and [Mr. Bush] except that [Mr. Bush] was positioned in some fashion on top of Constable Koester." Corporal Murray noted that "[t]his creates a number of different scenarios. By conducting all the scenarios investigators would be injecting what they believed may have happened and not what actually happened."

Given Corporal Murray's explanation, in particular the uncertainty regarding Constable Koester's and Mr. Bush's positioning, this was a reasonable decision.

Appendix K – Condensed Timeline of Events Related to Investigation

Date	Event
October 29, 2005	Constable Koester shoots Mr. Bush after a violent struggle in the Houston RCMP Detachment interview room.
October 30, 2005	Constable Koester prepares his mandatory duty to account statement (handwritten).
October 31, 2005	Constable Koester's duty to account statement is provided to RCMP lead investigator.
November 9, 2005	The majority of forensic samples are sent to the RCMP forensic lab for analysis.
November 16, 2005	Firearm samples are submitted to the RCMP forensic lab for analysis.
November 17, 2005	Constable Koester provides his voluntary typed statement.
November 17, 2005	Toxicology samples are submitted to the Provincial Toxicology Centre for analysis.
November 28, 2005	The Toxicology Report is completed.
November 30, 2005	Firearm analysis results are completed.
December 1, 2005	An expert alcohol analysis is requested.
December 6, 2005	The Expert Alcohol Analysis Report is completed.
December 9, 2005	The first set of forensic lab results is completed.
December 20, 2005	The Bloodstain Pattern Analysis Report is completed.
December 2005	The Use of Force Report is completed; it concludes that the force used was justified.
January 4, 2006	Further forensic samples are sent to the RCMP lab for analysis.
February 8, 2006	Constable Koester is voluntarily interviewed (audio taped) to clarify questions arising from his November 17, 2005 typed statement.
February 14, 2006	Toxicology/steroid testing results are completed.
February 17, 2006	The Autopsy Report is completed.
March 1, 2006	The second set of forensic lab results is completed.
March 2, 2006	The Independent Officer Review Update Report is completed recommending that Constable Koester receive operational guidance for his "substandard" search of Mr. Bush and concluding that the evidence does not support charges against Constable Koester.
March 15, 2006	Initial findings from the investigation are sent to "E" Division Major Crime Unit for review.
April 4, 2006	A supplementary Bloodstain Pattern Analysis Report is completed.
April 2006	The completed investigation file is sent to "E" Division Major Crime Unit for review.
May 8, 2006	The file is sent to the New Westminster Police Service for review.
June 19, 2006	The New Westminster Police Service review is completed and recommendations are provided to the RCMP. The review concludes that the RCMP has conducted a thorough and objective investigation of Mr. Bush's death and that the use of deadly force was justified in the circumstances.

June 26, 2006	The RCMP submits the file to Crown counsel for review.
July 5, 2006	The RCMP responds to the recommendations by the New Westminster Police Service review.
September 5, 2006	The Criminal Justice Branch of British Columbia's Ministry of the Attorney General confirms that no charges will be laid against Constable Koester because it is believed that the use of force was not excessive and that self-defence would be a justifiable defence in the circumstances.

Royal Canadian Mounted Police
Commissioner

Gendarmerie royale du Cana
Commissaire

Guided by Integrity, Honesty, Professionalism, Compassion, Respect and Accountability

Les valeurs de la GRC reposent sur l'intégrité, l'honnêteté,
le professionnalisme, la compassion, le respect et la responsabilisation

November 2, 2007

Mr. Paul E. Kennedy
Chair
Commission for Public Complaints Against
the Royal Canadian Mounted Police
P.O. Box 3423, Station "D"
Ottawa, Ontario
K1P 6L4

Dear Mr. Kennedy:

I acknowledge receipt of your interim report dated August 30, 2007, and materials relevant to your complaint concerning the death of Mr. Ian Bush, your file reference PC-2006-1532.

On October 22, 2007, I completed my review of your interim report including your findings and recommendations. This notice is provided pursuant to subsection 45.46(2) of the *Royal Canadian Mounted Police (RCMP) Act*.

Generally speaking, I am in agreement with most of your 23 findings; however, I have a few concerns which I will address before I respond to the nine recommendations presented in your report.

1200 Vanier Parkway
Ottawa, Ontario
K1A 0R2

1200, promenade Vanier
Ottawa (Ontario)
K1A 0R2

1. **The RCMP should not have completed the evaluation of Constable [Paul] Koester's field training until after the investigation into the shooting of Mr. Bush was concluded.**

I agree with your findings, however, it leads me to question what exactly makes a case serious enough to justify suspending the evaluation of a new member's field training, especially as in this case, where the new member had already met all the requirements? Is it the seriousness of the allegation or the incident? Or is it the amount of evidence available that may tend to indicate deficiencies of criminal or professional misconduct in the new member's performance?

I am of the view that such matters must be examined on a case-by-case basis and on their own merits. Although the subject matter of an investigation may be serious, it may or may not have any merit. It seems to me that it is not the severity alone of the allegation or event under investigation which makes a case serious enough to hold a new member's field training in abeyance, and the evidence intimating misconduct or performance deficiencies on the part of the new member should also be considered. This is an important distinction in my view and must be taken into consideration in these types of cases prior to making a determination to conclude a new member's field training.

2. **The use of CCTV [Closed Circuit Television] in RCMP detachments where prisoners are dealt with and released is necessary to provide an independent record of events, to promote compliant behaviour by both prisoners and RCMP members and to minimize the risk of dealing with prisoners alone.**

I agree that the use of CCTV in RCMP detachments where prisoners are dealt with and released is desirable. I will elaborate on my reasoning when I address your corresponding recommendation.

3. **The facilities at the Houston RCMP Detachment pose a significant safety concern in that there is no separate area in the cellblock for dealing with prisoners and for processing prisoners for release.**

The Houston Detachment has a booking-in area in the cellblock, which is an area designed for dealing with and releasing prisoners. Therefore, I disagree that the facilities at Houston Detachment pose a significant safety concern.

4. **It was improper for Constable [Darren] Woroshelo to speak with Constable Koester in private behind closed doors about the incident soon after it occurred.**

I agree that this was not a desirable situation, but I cannot agree that it was improper. There is no evidence to suggest that Constable Woroshelo spoke to Constable Koester in private behind closed doors for an improper purpose. In fact, there is no indication that Constable Woroshelo was there for any reason other than to provide emotional support. Clearly, Constable Koester could not be left alone at that time given his emotional state. Corporal Troy Durand and Corporal Derrick Donovan were too busy protecting the scene and tending to other investigational steps to personally tend to Constable Koester.

Furthermore, the member in charge at the scene, Corporal Durand, had a duty to ensure that Constable Koester received the emotional support he required (as with any one involved in a traumatic event). Given his close relationship with Constable Koester, Constable Woroshelo was an appropriate choice, at least until the arrival of the victims' services worker.

Corporal Durand advised that the door to the office was purposely closed to give Constable Koester some privacy because he was upset and crying, and since people were coming and going out of the main office area. Closing the door also served to help maintain the integrity of the ongoing investigation.

I will now address your nine recommendations.

Recommendation 1

The RCMP amend its field training evaluation procedures to ensure that the final field evaluation of new members is not concluded until all outstanding member investigations, of a serious nature, are concluded.

RCMP policy in this regard was amended in 2006 and states in part:

> A New Member's FCP [Field Coaching Program] may be interrupted and/or suspended in certain cases if he or she becomes the subject of a criminal or internal investigation (which includes code of conduct investigations). ... As not every situation will be exactly the same, each case should be weighed on its own with the final decision resting with the [HRO (Human Resource Officer)] or Designate.

As mentioned, successful completion of the FCP is essential to be promoted to Level 3 in the Constable rank. The two are inextricably linked. Present policy provides the following direction to the HRO:

> A member meeting the requirements for promotion will be promoted when the member is the subject of an ongoing service investigation or has been the subject of a disciplinary action/sanction, unless exceptional circumstances exist.

I believe this policy should be amended to reflect that new members completing their FCP will **not** be promoted to level 3 Constable until such time as the investigation is completed, unless exceptional circumstances exist. I will ask the Director, National Staffing Policy Directorate, to ensure that this is done in a timely manner.

Recommendation 2

Operational guidance and/or refresher training be provided to Constable Koester regarding the need to conduct thorough searches of prisoners.

For the reasons as you have indicated, I support this recommendation. I will ask the Commanding Officer, "E" Division, to ensure that this is done in a timely manner.

Recommendation 3

The RCMP install automated CCTV recording equipment in every RCMP detachment in areas where prisoners are dealt with and released.

While I agree that it would be desirable to have CCTV recording equipment in every RCMP detachment in areas where prisoners are dealt with and released, I am not convinced that it is absolutely necessary.

In the RCMP's Pacific Region, approximately three-quarters of our detachments have CCTV installed in their cellblocks. As you are no doubt aware, following recommendations formulated by the Coroner's Inquest in this case, the Solicitor General of British Columbia directed that all police agencies in the province install CCVE (Closed Circuit Video Equipment) in their cellblocks.

The RCMP in "E" Division are key participants in a working group formed by the Police Services Division, British Columbia Solicitor General, to set standards and have CCVE installed according to these standards in all police cellblocks by the fall of 2008. It is anticipated that the RCMP in "E" Division will meet this target.

I recognize that this initiative only partially addresses your recommendation as it only deals with one province in which the RCMP operates. Funding and cost-benefit analyses will be determining factors elsewhere.

Recommendation 4

The RCMP immediately retrofit the Houston RCMP Detachment to incorporate a separate area within the cell block in which to deal with prisoners and from which to release them.

As I have previously noted with respect to finding three, Houston Detachment has a booking-in area in the cellblock which is an area designed for dealing with and releasing prisoners. Accordingly, I do not support this recommendation.

Recommendation 5

The RCMP amend national policy to require that prisoners be dealt with and released from the cell block in all RCMP detachments.

I do not agree with this recommendation. RCMP members do not only release arrested persons or serve official documents to them in the cell block at the detachment. Our members routinely deal with and release prisoners at the roadside, inside a patrol car, at a community policing office (CPO), in an interview room or at the front counter of a detachment or CPO. It would be impractical and unduly onerous, in my view, to impose such a requirement on our members.

Our members are trained to use continuous risk assessment in the interests of public and police safety. Depending on the situational factors present, a member (whether working alone or with a partner) may well decide that it is advantageous to utilize the cell block area (whether equipped with CCTV or not) in certain circumstances. In many cases, it will be entirely appropriate to deal with and release prisoners from areas other than the cellblock of an RCMP detachment.

Recommendation 6

The RCMP retrofit RCMP detachments that do not have a separate area in the cell block in which to deal with prisoners and from which to release them.

I do not agree with this recommendation for the reasons I have already outlined.

Recommendation 7

The RCMP develop policy that provides direction to on-scene RCMP members in major cases involving investigation of police conduct, i.e. situations where the police investigate the police, including the need to ensure real and perceived impartiality.

I support this recommendation and will ask the Director, Community, Contract and Aboriginal Policing Services, to ensure that this is done in a timely manner.

Recommendation 8

The RCMP develop a policy that dictates the requirement, timeliness and use of the duty to account that members are obliged to provide.

I support this recommendation and will ask the Director, Community, Contract and Aboriginal Policing Services, to ensure that this is done in a timely manner.

Recommendation 9

The RCMP develop a media and communications strategy specifically for police involved shooting investigations that recognizes the need for regular, meaningful and timely updates to the media and to the public. In addition, the media and communications strategy should include a publicly available general investigative outline of the steps to be taken and the anticipated timeline for each step.

I support this recommendation, but I am cognizant that each case is unique and, as such, it will not always be feasible or appropriate to provide all information in the manner envisioned in your recommendation. Current RCMP communications policy provides for a transparent and responsive approach in investigations, including providing information about the steps of an investigation.

The intent is to provide meaningful and timely updates to the media and the public, while balancing the need for full and frank disclosure with the necessity not to compromise or prejudice ongoing investigations.

Most divisions in the RCMP, have a publicly available Website providing information and updates in the form of news releases. Since this incident, the "E" Division Strategic Communications Section has developed a crisis management model to support local media relations officers in sensitive, high profile events (such as police involved shooting investigations). It has also developed a publicly available Webpage called "setting the record straight" through which the public can be accurately informed in response to erroneous or sensationalised media reports.

I will ask the Director General, National Communication Services, to address the feasability of implementing a similar model force-wide.

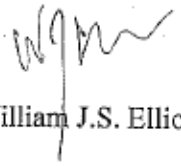
Finally, although not the subject of a specific finding or recommendation in your report, the issue of Staff Sergeant Rod Holland's notes is a concern to me. Unfortunately, the issue of inadequate note-taking has arisen in a number of investigations that have been the subject of your reports. Although appropriate training and policy are in place, too often members continue to make less than adequate notes.

It was incumbent on Staff Sergeant Holland to make adequate notes in this case, since he was involved in the investigation and was, in effect, in charge of the investigation until the arrival of the North District Major Crime Unit (NDMCU). Although, for future processes, he would be able to refer to the statement he provided to the NDMCU investigator, the statement would not assist him in recalling details not contained in the statement but which might have been contained in his notes.

Accordingly, I deem it appropriate to direct that operational guidance be provided to Staff Sergeant Holland on the importance of adequate note-taking. I will ask the Commanding Officer, "E" Division, to ensure that this is done in a timely manner.

I appreciate the advice in this matter, and I look forward to receiving your final report.

Yours sincerely,



William J.S. Elliott

SCHEDULE 3

CHAIR-INITIATED
PUBLIC COMPLAINT

File No. 2006-1532

SUBJECT: Police Investigating Police – RCMP Investigations into other RCMP Members in Cases involving Serious Injury or Death

November 28, 2007

As Chair of the Commission for Public Complaints Against the RCMP, I am initiating a complaint into the conduct of those unidentified RCMP members who have conducted criminal investigations into the activities of other RCMP members, in cases that involved serious injury or death, which have taken place anywhere in Canada between April 1, 2002 and March 31, 2007.

Various members of the public and the media have expressed concern about the propriety of RCMP members investigating other RCMP members, especially in cases of this nature.

I am satisfied that there are reasonable grounds to investigate the conduct of those members of the RCMP who have conducted criminal investigations into the activities of other RCMP members in cases that involved serious injury or death. Accordingly, pursuant to subsection 45.37(1) of the *RCMP Act*, I am today initiating a complaint into the conduct of the RCMP members involved in such investigations during the time period shown above, specifically:

1. whether the RCMP members involved in these investigations conducted the investigations free of actual or perceived conflict of interest, whether they responded appropriately and proportionately to the gravity of the incident, whether they responded in a timely fashion and whether their conduct adhered to the standards set out in section 37 of the *RCMP Act*;
2. whether these same RCMP members complied with all appropriate policies, procedures, guidelines and statutory requirements for such investigations; and
3. whether existing RCMP policies, procedures and guidelines are adequate to ensure that fair, effective, thorough and impartial investigations are carried out by RCMP members when investigating fellow RCMP members.

Furthermore, I am instituting a public interest investigation into this complaint, pursuant to subsection 45.43(1) of the *RCMP Act*.

POLICE INVESTIGATING POLICE

PUBLIC INTEREST INVESTIGATION

TERMS OF REFERENCE

GENERAL SCOPE

- The Commission for Public Complaints Against the RCMP (CPC) will conduct a public interest investigation into the following Chair-initiated complaint:

    - Complaint into the conduct of those unidentified RCMP members who have conducted criminal investigations into the activities of other RCMP members, in cases that involved serious injury or death, which have taken place anywhere in Canada between April 1, 2002 and March 31, 2007.

- In conducting its public interest investigation, the CPC will not necessarily examine all such criminal investigations; rather, a sample of cases will be selected from across Canada drawn from the five regions policed by the RCMP.

STANDARDS AGAINST WHICH CONDUCT IS TO BE ASSESSED

1. Whether the RCMP members involved in these investigations conducted the investigations free of actual or perceived conflict of interest, whether they responded appropriately and proportionately to the gravity of the incident, whether they responded in a timely fashion and whether their conduct adhered to the standards set out in section 37 of the *RCMP Act*.

    More specifically:

    - Line management
        - Whether any actual or perceived conflict of interest.
        - Appropriateness of management structure and reporting relationships.

    - Appropriate level of response
        - Whether RCMP investigative team response to the incident was appropriate and proportionate to the gravity of the incident.
        - Whether qualified investigators have been assigned.

    - Timeliness of the response
        - Whether members of the RCMP investigative team responded in a timely fashion to the incident.

- Conduct
  - Whether the conduct of members of the RCMP investigative team during the course of the investigation was consistent with section 37 of the *RCMP Act*.

2. Whether these same RCMP members complied with all appropriate policies, procedures, guidelines and statutory requirements for such investigations.

3. Whether existing RCMP policies, procedures and guidelines are adequate to ensure that fair, effective, thorough and impartial investigations are carried out by RCMP members when investigating fellow RCMP members.