

COMMISSION FOR PUBLIC COMPLAINTS AGAINST THE RCMP

**CHAIR'S PUBLIC INTEREST INVESTIGATION
RE IN-CUSTODY DEATH OF ROBERT THURSTON KNIPSTROM**

RCMP Act
Subsections 45.37(1) and 45.43(1)

November 25, 2009

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EXECUTIVE SUMMARY

Introduction

The death of a person following an intervention by police often raises questions from the public about the use of force involved, the training of officers, the appropriateness of the police investigating the police and the expected level of transparency of authorities. As Canada's largest police force and British Columbia's major police service provider, the RCMP must demonstrate that, when faced with such an incident, it is able to conduct a transparent and proficient investigation that addresses those concerns. At stake is the public's confidence in the RCMP and its legitimacy to act with the necessary public support.

In recognition of the concerns expressed about the use of force by RCMP members, the Commission for Public Complaints Against the RCMP (the Commission) will on occasion exercise its authority on behalf of the public, to examine in depth the facts that give rise to the public's concern as well as the adequacy of the RCMP's investigation of the events in question. This report examines the RCMP's response to a call for assistance on November 19, 2007, that involved an altercation with and was followed by the death of Robert Thurston Knipstrom. I have examined the facts of this case in detail, with a view to determining:

1. whether the members involved in the events, from the moment of initial contact until Mr. Knipstrom's transfer to the care of emergency health personnel, complied with all appropriate policies, procedures, guidelines and statutory requirements; and
2. whether the RCMP conducted an adequate investigation of the incident.

For the reasons set out below, I have found that the subject members acted reasonably and that the investigation was conducted appropriately for the most part. However, I have identified several concerns with the investigation that have been identified in numerous other reports by the Commission and require immediate addressing by the RCMP.

Commission's Review of the Facts

On November 19, 2007, shortly before 3:00 p.m., Mr. Knipstrom was allegedly involved in a hit and run on Yale Road near Airport Road in Chilliwack, B.C. Mr. Knipstrom immediately left the scene and continued on to an equipment rental centre to return a wood chipper he had rented. As he arrived at the counter, the phone rang. It was a witness to the hit and run, who asked Mr. Walsh, the store owner, about the driver of the pickup truck parked outside the rental store. The caller advised Mr. Walsh that she was going to call the RCMP regarding the erratic driving and involvement of the driver in the hit and run. As Mr. Walsh listened on the telephone, Mr. Knipstrom apparently said: "It's a lie," suggesting that he overheard the conversation.

Mr. Knipstrom paid his bill and called his father to pick him up, claiming that his truck would not start. While he was waiting, he began displaying odd behaviour, including going up and down the stairs that led to the second floor where female staff worked, stating that he would feel safer there. Mr. Walsh, the store owner, prevented him from going in the upstairs area and eventually asked Mr. Knipstrom to leave the premises. Mr. Knipstrom's behaviour continued and he would not leave, so Mr. Walsh asked the store manager, Bradley McCrea, to contact the RCMP to ask for assistance.

Constables Chad Mufford and Annie Labbe were dispatched and arrived at the store approximately 15 minutes after the initial call. When they arrived, Mr. Knipstrom was sitting near the bottom of the stairs with Mr. Walsh standing a few steps above him. Mr. Walsh and Constable Labbe left the stairway to discuss the situation, while Constable Mufford attempted to engage Mr. Knipstrom in conversation. Mr. Knipstrom abruptly stood up and pushed past Constable Mufford. Mr. Knipstrom would not comply with Constable Mufford's instructions to stop and adopted a boxer's stance with his fists clenched. A violent struggle ensued as Constable Mufford attempted to physically restrain Mr. Knipstrom, who was pushing, punching and lunging at Constable Mufford. The officer resorted to a variety of hand techniques and intermediary and impact weapons, including oleoresin capsicum (OC) spray, a conducted energy weapon¹ (CEW) and his baton. Constable Labbe also deployed her OC Spray and CEW during the altercation. All attempts and techniques used had little or no effect on Mr. Knipstrom, as he continued to fight and pursue Constable Mufford around the store. Eventually, backup arrived and they were able to take Mr. Knipstrom to the floor. It took a number of members to restrain and handcuff him.

First responders and Emergency Health Services (EHS) were dispatched to the scene and Mr. Knipstrom was transported to the Chilliwack Hospital, where he suffered a cardiac arrest shortly after his arrival. Resuscitation efforts by hospital staff were successful, although Mr. Knipstrom never regained consciousness. He was subsequently transferred to the Surrey Memorial Hospital, where he died on November 24, 2007.

Key Issues Addressed in This Report

1. Use of Force and Medical Treatment

In executing their duties, police officers are authorized by section 25 of the *Criminal Code* to use as much force as necessary. However, the officer must be acting on reasonable grounds. Section 27 permits officers to use as much force as is reasonably necessary to prevent the commission of an offence for which a person may be arrested without warrant, and that would be likely to cause immediate and serious injury to the person or property of anyone; or to prevent anything being done that he or she believes, on reasonable grounds, would be the commission of such an offence. It is important to note that the officer is not expected to measure the force used with exactitude.

¹ The conducted energy weapons used by the RCMP are commonly referred to by the brand name of the models authorized for use by RCMP policy: Taser®, which is manufactured by TASER International.

Prior to utilizing force, it is incumbent upon a peace officer to perform a risk assessment, which is accompanied by a consideration of the situational factors specific to each incident. These include subject size in relation to the member, presence of weapons, number of subjects and of police officers, as well as a host of other incident-specific considerations. In addition, RCMP members are trained to utilize one level of intervention higher than the demonstrated resistance level of the person they are dealing with.

The statements of Constables Mufford and Labbe indicate that they were aware of the following situational factors: There were a number of items in the rental store that could have been used as weapons, and a number of persons in the store. Mr. Knipstrom almost immediately became violent. Mr. Knipstrom would not comply with Constable Mufford's commands and continued to attack and stand up after being ordered to stop and to sit down or stay down. Mr. Knipstrom exhibited an unusual amount of strength and endurance, and appeared to be impervious to pain. The force options used by the members had little to no effect on him.

There were also situational factors that the members were not aware of. Mr. Knipstrom had just been involved in a minor motor vehicle accident. He had a history of illegal drug abuse and, based on the pathologist's findings, Mr. Knipstrom was under the influence of a potentially lethal amount of illegal drugs as he entered the equipment rental centre. Family accounts confirm that his behaviour changed dramatically when he was under the influence of drugs, that he often became "paranoid" and "delusional." The members were also unaware that Mr. Knipstrom had been confronted by the police earlier that year and was the subject of multiple CEW deployments. At that time, he was apprehended and taken to the hospital. Hospital records indicate that he was diagnosed with drug-induced acute psychosis and mania.

Initial Interaction

At the time that Constables Mufford and Labbe came into contact with Mr. Knipstrom, they were investigating a complaint for a man causing a disturbance and refusing to leave the store. As they walked into the store, it quickly became clear that Mr. Knipstrom was the subject of the complaint. Constables Labbe and Mufford began their investigation by attempting to speak to Mr. Walsh and Mr. Knipstrom separately, and were clearly acting in the course of their duty when doing so. They were investigating a disturbance but needed to gather more information in order to assess the situation and adopt a proper course of action.

Rather than answer a question posed by Constable Mufford, Mr. Knipstrom abruptly got up and knocked into Constable Mufford. Based on all of the information available to Constable Mufford at that point of time, he had reasonable grounds to *suspect* that Mr. Knipstrom was causing a disturbance, contrary to section 175 of the *Criminal Code*, and had a duty to pursue the matter further. To that end, Constable Mufford directed Mr. Knipstrom to stop. In my view, this was a justifiable use of police powers in these

circumstances. Furthermore, as the situation evolved and Mr. Knipstrom resisted and physically attacked Constable Mufford, he had made himself arrestable by committing an assault on a police officer.

FINDING: The members entered into their interactions with Mr. Knipstrom lawfully and were duty-bound to do so.

Use of Pepper (OC) Spray and Baton

After Mr. Knipstrom's initial lunge at Constable Mufford, the officer tried unsuccessfully to take Mr. Knipstrom to the ground. However, Mr. Knipstrom continued yelling, punching and grabbing. At that point, Constable Mufford deployed his pepper spray canister in Mr. Knipstrom's face, but it had no deterrent effect. Constable Labbe subsequently did the same, but it also had no effect. Constable Mufford then pulled out and extended his baton and used it to block Mr. Knipstrom's punches. Constable Mufford stated that some strikes inadvertently hit Mr. Knipstrom on the head or face area, but were aimed at his arms and shoulders. I find that this explanation is reasonable, given the position of Mr. Knipstrom's head at Constable Mufford's chest at the time. However, they too had no deterrent effect.

The two civilian witnesses present throughout this series of events confirm that the members were on the defensive and that Mr. Knipstrom continued his pursuit no matter what action was taken. Given the level of combativeness exhibited by Mr. Knipstrom, I find that it was not unreasonable for the members to use OC spray and a baton in the manner that they did, and that it was in compliance with RCMP use of force policy.

FINDING: It was not unreasonable for the members to use OC spray and a baton in the manner that they did, and it was in compliance with RCMP use of force policy.

Use of CEW

The CEW is currently classified by the RCMP as an intermediate device. At the time of this incident, weapons in this category could be used against subjects who exhibited resistant or combative behaviour. As I noted above, Mr. Knipstrom became combative upon being told by Constable Mufford to stop and to sit on the ground. In addition, other force options were utilized prior to the CEW, which appeared to have no effect. At this time, Constable Mufford chose to deploy his CEW. He shot the probes into Mr. Knipstrom's back. They did not appear to have any effect, possibly because the probes did not penetrate his thick jacket.

Constable Labbe stated that she believed that the CEW was the best tool available for controlling Mr. Knipstrom. She first deployed her CEW after Constable Mufford's deployment had no effect and Mr. Knipstrom had hit her in the upper chest. She fired it in probe mode and believed that it had some effect, as the intensity of Mr. Knipstrom's struggle seemed to lessen. He started to roll around, attempted to remove the probes,

and tried to get to his feet. Constable Labbe warned Mr. Knipstrom to stay on the ground or she would Taser® him. He continued to try to remove the probes, and she cycled the CEW a second time. She indicates that she was surprised to see that it had no effect, and believed that it was likely because one of the probes had broken contact. Therefore, she changed cartridges. As she did, Mr. Knipstrom started towards the exit, with his back to her. She fired the probes from the new cartridge, but turned off the CEW as backup officers entered the store.

When Constable Kardos and other officers arrived, Constables Mufford and Labbe were telling Mr. Knipstrom to lie down on the ground. Mr. Knipstrom continued to yell and scream incoherently. He stood up and walked in the direction of Constable Kardos. Constable Kardos instructed him to stop. Mr. Knipstrom held his hands near his chest, partially clenched. Constable Kardos took out his CEW, pointed it at Mr. Knipstrom and told him to stop. He did not respond to the commands, or change his demeanour in any way. Constable Kardos deployed his CEW in probe mode at the centre of Mr. Knipstrom's chest. He appeared to be unaffected. He recycled the CEW, which appeared to have no effect. Mr. Knipstrom was subsequently taken to the ground by another officer.

According to the members' accounts, Mr. Knipstrom was potentially subjected to the CEW for a total of six cycles (one by Constable Mufford, three by Constable Labbe, and two by Constable Kardos). All three members indicate that the CEW appeared to have little to no effect on Mr. Knipstrom. Statements of several of the members and civilian witnesses indicated that they *heard* the CEW being deployed. This supports the members' belief that the CEWs were not functioning properly, either because of the interference caused by Mr. Knipstrom's coat, or some problem with the CEW itself.

CEWs are known to make what is often referred to as a clacking noise. RCMP members are taught that the sound indicates that the device is either not effective, or the effects are limited. For example, when a probe gets hung up in a piece of clothing, depending on how the person is standing and the movement of the clothing, there is an air gap that interferes with the ability of the electrical energy to complete the circuit and to cause neuromuscular disruption. The effects may be intermittent as the clothing moves. The clacking noise is a result of arcing, i.e. the electricity jumping across the air gap. The officer can assess the effects on the person both based on the sound emitted by the device (or lack thereof) and through visual observations of the person.

Based on the foregoing, I find that it was reasonable for the members to conclude that Mr. Knipstrom was not receiving the full effects of the CEW deployments, if any at all from some deployments. I also find that it was reasonable for Constable Labbe to recycle her CEW, and to attempt to use a second cartridge when the recycling did not appear to fix whatever was causing the CEW to have a limited effect.

Another issue arose with respect to a discrepancy between the number of times that Constables Mufford and Labbe state that they deployed their CEWs and the number of times indicated in the download reports. The reports indicate three activations of

Constable Mufford's CEW, and five activations of Constable Labbe's. It is impossible to determine the reason for the discrepancies with any certainty. However, Constable Mufford's call for backup at 15:35:35 indicates that Mr. Knipstrom had been "Tasered twice," which supports his statement that he believed he deployed his CEW once and heard Constable Labbe subsequently deploy her CEW. The RCMP's use of force analysis suggests that the additional deployments may have been the result of a sympathetic nerve response. For example, Constable Mufford continued to hold the CEW in his hand while struggling with and striking at Mr. Knipstrom and his finger would have stayed on the trigger. As the CEW did not appear to be affecting Mr. Knipstrom, it is likely that the members would not notice any such unintended activations, if that were the case.

Once the members decided to deploy their CEWs, it was incumbent on them to do so the least number of times necessary to control Mr. Knipstrom. In these unique circumstances, given the exhibited strength and endurance of Mr. Knipstrom and the fact that his jacket appeared to be interfering with the effects of the CEW, I find that the number of deployments was reasonable. I note that while the RCMP policy that was in effect at the time of the incident discouraged repeated cycling of the CEW unless situational factors dictate otherwise, I find that the members reasonably concluded that the situational factors dictated otherwise in this case.

FINDINGS

- **It was reasonable for the members to use the CEW when other use of force options (empty hand techniques, OC spray, baton) appeared to have no effect on Mr. Knipstrom.**
- **Constable Mufford's deployment of the CEW was reasonable in the circumstances.**
- **Constable Labbe's decision to deploy her CEW following Constable Mufford's deployment was reasonable in the circumstances.**
- **Constable Kardos' deployments of the CEW were reasonable in the circumstances.**
- **It was reasonable for the members to conclude that Mr. Knipstrom was not receiving the full effects of the CEW deployments, if any from some deployments.**
- **Constable Labbe's decision to recycle her CEW, and to attempt to use a second cartridge when the recycling appeared to have little to no effect, was reasonable in the circumstances.**

Conclusion re Use of Force Options

It is important to recognize that this was a very dynamic event that occurred within a six-minute time frame and required decisive action. It must also be remembered that the level of MDMA (methylenedioxymethamphetamine, also known as "Ecstasy") and MDA (methylenedioxyamphetamine, a metabolite of MDMA) found in Mr. Knipstrom's blood indicates that he suffered from a significant degree of intoxication. Considering all available information and taking into consideration the behaviour displayed by

Mr. Knipstrom, I find that Constables Mufford, Labbe and Kardos exercised their use of force options in a manner consistent with the policies of the RCMP and the legal statutes.

FINDING: Constables Mufford, Labbe and Kardos exercised their use of force options in a manner consistent with the law and RCMP policy.

Restraint Following Arrest

RCMP policy at the time of the incident dictated that Mr. Knipstrom be removed from the prone position as soon as possible, when safe to do so. Following his arrest, Mr. Knipstrom was held in the prone position, i.e. face down on his stomach, until medical personnel arrived. He was ultimately maintained in that position until he went into cardiac arrest. Attempts were made by EHS and the members on scene to remove Mr. Knipstrom from the prone position but his strong resistance and agitation led them to leave him that way to avoid further injuries. To the extent that the subject members were involved in the decision to maintain Mr. Knipstrom in the prone position, I find that it was reasonable for them to do so as they reasonably believed that it would have caused more harm to Mr. Knipstrom to do otherwise.

FINDING: To the extent that the subject members were involved in the decision to maintain Mr. Knipstrom in the prone position after his arrest, it was reasonable for them to do so in the circumstances.

Obtaining Medical Treatment

Mr. Knipstrom had been subjected to multiple CEW deployments and was clearly injured. As such, the members had a duty to obtain medical attention for him as soon as possible. A review of the actions by the members subsequent to the deployment of the CEW confirms that medical attention for Mr. Knipstrom was sought during the altercation, and repeatedly afterwards. The medical responders confirm that the members appropriately communicated the force options used against Mr. Knipstrom.

FINDING: The members appropriately sought and obtained medical treatment for Mr. Knipstrom.

Conclusion re Appropriateness of Members' Actions

In conclusion, I find that the actions of the subject members related to the care to be provided to a person injured and/or subjected to a CEW discharge while being taken into custody in relation to Mr. Knipstrom were conducted according to RCMP policy that was in effect at the time of the incident.

FINDING: The RCMP members involved in the events involving Mr. Knipstrom on November 19, 2007, from the moment of initial contact until transfer to the care of emergency health personnel, complied with all appropriate policies, procedures, guidelines and statutory requirements for the arrest and treatment of persons taken into custody.

2. Adequacy of the RCMP Investigation

The incident was investigated by an integrated team of investigators from the RCMP's "E" Division Major Crime Unit (MCU), the Integrated Homicide Investigation Team (IHIT) and the Abbotsford Police Department.

When evaluating the adequacy of a criminal investigation, it is important to consider the steps taken during the investigation. The proper investigation of any serious incident requires in part, that a member pursue all leads provided promptly and effectively, interview all possible sources and suspects promptly and effectively, request all relevant forensic tests/reports to check for physical evidence and consult with other experts with specialized knowledge, follow related RCMP policy and reference other related police technical texts as required, and maintain good case management of the file, ensuring that properly written notes support the actions taken during the investigation as well as support any subsequent prosecution.

Immediately after the ambulance left with Mr. Knipstrom, the store area was locked down and the employees were kept away from the scene. Access was restricted to forensic, investigation and supervisory personnel only. Their identities and time of arrival and departure were noted. I am satisfied from the evidence that the scene was properly secured following the incident.

The Chilliwack General Investigation Section took charge of the initial investigation steps, which included securing the scene, identifying immediate witnesses, taking their statements and seizing evidence. Members from the Forensic Identification Section also attended the scene. When Mr. Knipstrom's medical condition took a turn for the worse, an "independent" investigation team was called in, in accordance with RCMP policy in cases of serious injury or death.

FINDINGS

- **The scene was properly secured.**
- **The appropriate personnel were dispatched to the scene at the appropriate times.**
- **An "independent" investigation team was assembled in a timely manner, in accordance with RCMP policy.**

Major Case Management

Under the Major Case Management (MCM) model the command triangle roles were assigned to members of the "E" Division Major Crime Unit. Staff Sergeant Randy Hundt

assumed the role of Team Commander and assigned Sergeant Matthew Toews as Primary Investigator and Corporal Karina Desrosiers as File Coordinator. Corporal Jennifer McDonald later took over the role of File Coordinator. They were all trained and qualified members with experience in serious crime investigation.

All members of the investigation team completed an impartiality questionnaire developed by the RCMP to insure the highest possible level of objectivity by the members involved in such a case. Although some members had contacts in the past with members of the Chilliwack Detachment during training or investigations, none were so significant as to present a risk of conflict of interest and no member of the investigation team was acquainted with Constables Mufford, Labbe or Kardos.

FINDING: The investigation was managed in accordance with the Major Case Management principles.

Witnesses

Statements were taken from the civilian witnesses on scene immediately following the incident. Between November 19th and 22nd, the investigators conducted over 60 interviews with police and civilian witnesses, and collected physical evidence. The neighbourhood was canvassed in an effort to locate additional witnesses as well as video surveillance evidence that could shed more light on the events leading up to the altercation.

FINDING: All of the relevant witnesses were interviewed.

Member Statements

RCMP members are required to provide an “accounting” of their activities when directed to do so. This is termed a “duty to account” statement. There is no similar requirement for ordinary citizens in the ordinary course of police investigations.

Immediately following the incident, Constable MacIntosh was instructed by Sergeant Manj to return to the detachment with Constables Mufford and Labbe to take their statements. He obtained an audiotaped statement from Constable Labbe. Constable Mufford provided his statement in the form of a written Duty Report that same day, and provided a further report on December 21, 2007. There is no indication of whether Constable MacIntosh requested a taped statement at that time. After their initial reports, both Constables Mufford and Labbe opted to provide only written statements through their legal counsel, as they were entitled to do. The record indicates that investigators attempted to set up face-to-face interviews with Constables Mufford and Labbe, which were denied. However, the investigators did put additional questions to the members, to which they provided written responses.

While it would have been preferable to have the benefit of a taped interview/statement from Constable Mufford, and a further taped statement from both members to address

any follow-up questions (which would likely have resulted in more fuller information and clarification from both), I find that the investigators made reasonable efforts to obtain same and that the members were within their rights to deny those requests.

Written and audio statements were obtained from the remaining members who attended the scene during the incident.

FINDING: The investigators acted reasonably in their efforts to interview and take statements from the involved members.

Involvement of the Staff Relations Representative

Incidents of this nature continue to bring into question the propriety of the involvement of the Staff Relations Representative (SRR). Duty to account statements related to serious incidents are at times taken following a meeting between the SRR and the member involved. That practice can sometimes call into issue the credibility of the statements that are then given.

Corporal Baier, who was at the scene of the incident after Mr. Knipstrom had been taken to the ground and was being restrained, met with Constables Mufford and Labbe in his role as SRR. He notes that he did not discuss the incident with them, but he enquired as to their well-being and if they required anything. He also advised the members of the expectations regarding their duty to accounts.

Investigative basics are that witnesses should be separated immediately to remove the potential opportunity for them to tailor their evidence or to concoct a version of events. Meetings such as the meeting with Corporal Baier concern me because of the potential for inappropriate influence or interfering with an investigation. I note that Constable Labbe's statement was taken prior to her meeting with the SRR. However, the first report made by Constable Mufford notes a time that follows the meeting with the SRR. I am concerned that the meeting could have influenced Constable Mufford's statement, and about the fact that Constables Labbe and Mufford were in the same room prior to Constable Mufford completing his statement. It is a further concern that Corporal Baier was a witness to some of the events that took place, albeit the events following Mr. Knipstrom's initial restraint.

The investigator is at liberty to conduct the interview of the involved member without the SRR potentially having first discussed the facts of the situation with the member. I find that an SRR should not have been allowed to meet alone with the members prior to the completion of the duty to account statements.

If there is a need to explain a member's obligation to complete the statement, that explanation would more appropriately be given in the presence of the investigator. However, the issue of the duty to account statement has arisen previously and I have recommended the need to address the propriety of the involvement of the SRR. In my

decision in the Ian Bush matter,² I recommended that the RCMP develop a policy that dictates the requirement, timeliness and use of the duty to account that members are obliged to provide. On November 2, 2007, RCMP Commissioner Elliott responded:

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.

To date, it has not been confirmed with the Commission that this recommendation has been implemented.

FINDING: An SRR should not have been allowed to meet alone with Constable Mufford prior to him completing his duty to account statement, or with either Constable Mufford or Constable Labbe prior to the arrival of the investigation team.

RECOMMENDATIONS

- **If the protocol of SRR attendance is to continue, the RCMP should formalize the attendance of the SRR to provide clear policy and guidance to ensure that the SRR knows the bounds of his or her involvement and the required protocols with respect to such attendance.**
- **I reiterate my recommendation in the Ian Bush decision (November 2007) and St. Arnaud decision (March 2009) that “[t]he RCMP develop a policy that dictates the requirement, timeliness and use of the duty to account that members are obliged to provide.”**

Appropriateness of Assigned Interviewers

As noted above, the investigation started immediately following the incident by officers at the scene, which was approximately two hours before investigators from the Major Crime Unit were assigned to the matter. In the Ian Bush decision, I recommended that the RCMP develop policy to provide direction to on-scene RCMP members’ major cases involving the investigation of police conduct, including the need to ensure real and perceived impartiality. The Commissioner agreed with that recommendation.

This matter was further complicated in that it was not determined that the investigation would be conducted by a special investigation team until after Mr. Knipstrom went into cardiac arrest. However, at a minimum steps should have been taken to avoid any real or perceived lack of impartiality.

² Commission File No.: PC-2006-1532, November 27, 2007.

a) Rank of Interviewers

I have recently commented on the inappropriateness of a member involved in an incident being interviewed by a member who is of the same or lower rank.³ It risks the potential for intimidation of the investigator by the higher ranking subject member. The possibility also exists that the investigator could potentially be supervised at a later date by the subject member, thereby creating the potential for a junior ranking investigator affording the higher ranking subject member preferential treatment in favour of future considerations. This potential conflict of interest must be taken into consideration. However, where a criminal investigation is managed under the MCM model, it is sufficient for the Team Commander to be of a higher rank than that of the subject member. I note that once the Major Case Management Team (MCMT) was formed, the Team Commander was of an appropriate higher rank.

However, prior to the formation of the MCMT, many of the subject members were interviewed. Unfortunately, a number of those interviews were conducted by another member of the same or lower rank. For example, Constable Labbe was interviewed by Constable MacIntosh. Constable MacIntosh was also assigned to interview Sergeant Preto. While this type of interviewing technique did not have any negative impact on the outcome, the potential did exist for a conflict of interest (either real or perceived).

FINDING: It is inappropriate for subject members to be interviewed by members of the same or lower rank in cases where the MCM model has not been employed.

RECOMMENDATION: All interviews of members involved in serious incidents should be conducted by members of a higher rank in cases where the MCM model has not been employed.

b) Number of Interviewers

I also noted in the Police Investigating Police report that assigning a single investigator to a member investigation is a particular concern. Interviewing anyone involved (particularly the subject member) is best conducted by a two-member team. Prior to the formation of the integrated investigative team, Constable Labbe was interviewed by a single member, who, as noted above, was of the same rank as her. Ideally, two officers will conduct such interviews. I note that two members did generally conduct the witness interviews once the integrated investigative team was in place.

RECOMMENDATION: All witness interviews in serious incidents should be conducted by a two-member team.

³ See the Commission's report on Police Investigating Police, available at www.cpc-cpp.gc.ca/prr/rep/rev/chair-pre/pipR/pip-pep-finR-0908-eng.aspx.

c) Connection of Interviewer to the Incident

RCMP policy specifies that a member shall not investigate a complaint where that member may be in a conflict of interest situation.⁴ Section 37 of the *RCMP Act* also requires that members avoid actual, apparent, or perceived conflict of interest. I note that Constable Kardos was instructed to interview the two main civilian witnesses immediately following the incident; however, given that he was involved in the application of force against Mr. Knipstrom, I find that it was inappropriate for Constable Kardos to conduct those interviews. While Mr. Knipstrom had not gone into medical distress at the time of the interviews, the incident was sufficiently serious and there were a sufficient number of other members available that it would have been more appropriate for another member who was not involved in the incident to have conducted those interviews. It was a conflict of interest for Constable Kardos to interview any of the witnesses to the incident.

FINDING: It was inappropriate for Constable Kardos to be assigned to interview the two main civilian witnesses, as he was involved in the incident and was in a conflict of interest situation.

d) Summary

Ideally, no interviews would have been conducted before the formation and arrival of the MCMT. However, given that the decision to call in the integrated team was not made until after Mr. Knipstrom went into cardiac arrest, the interviewers should have been persons who had no involvement in the incident, and who were ideally of a higher rank than the subject members. In addition, interviews of anyone involved (particularly the subject members) are best conducted by a two-member team.

CEW Testing

A CEW Download Report, dated November 24, 2007, was prepared by Staff Sergeant Steven Wade of the Langley RCMP Detachment, based on data downloaded from the three CEWs used in the incident. The details of that report are referred to in the use of force analysis.

A decision was not made to send the CEWs used during this incident for independent testing to determine their functionality until nearly a year following the incident. At the time of the incident, RCMP policy was somewhat unclear. In addition, the decision of whether to send a CEW for testing was at an investigator's discretion. As it happened, policy changes were in the works as of November 2008, and the investigators were instructed to have the CEWs pulled and tested. Several months later, the new policy came into effect, which provides clear direction that all CEWs be sent for independent testing when an incident involves injury requiring medical treatment or death proximal to the use of a CEW.

⁴ RCMP Administrative Manual, Commissioner's Standing Orders, Section 9.

FINDING: The RCMP policy regarding the testing of CEWs that was in place at the time of the incident was inadequate. However, I am satisfied that the change in RCMP policy has clarified when the testing should be done where a CEW has been involved in an in-custody death situation.

Investigative Theory and Examination of Mr. Knipstrom's Background

While trying to understand what had led to the aggressive behaviour displayed by Mr. Knipstrom, investigators examined his past encounters with police and interviewed his friends and relatives. This is not uncommon in an investigation that strives to explain an apparently unprovoked attack by a person on a police officer preceded by a bizarre behaviour. In my view, the investigators remained within the appropriate limits for collecting and using such information.

The RCMP also looked at the role of a group of symptoms displayed by Mr. Knipstrom (termed "excited delirium" [ED] by RCMP policy at that time) which may have played in the incident from very early on. There was some focus in the investigation on that theory. However, the investigative file indicates that Sergeant Toews appeared to recognize that confirming whether Mr. Knipstrom was experiencing ED would add to the existing evidence but that *[c]ategorizing the behaviour exhibited by [Mr. Knipstrom], would not have an impact upon whether or not the action taken by the responding members was appropriate.* I find that the investigators did not place an inappropriate amount of focus on a diagnosis of ED as a way to explain Mr. Knipstrom's death.

FINDING: The extent to which the investigators looked into Mr. Knipstrom's background and used that information was reasonable and appropriate in the circumstances.

FINDING: The extent to which the investigators explored the role of excited delirium in the death of Mr. Knipstrom was not unreasonable in the circumstances.

Communications with the Coroner Prior to Mr. Knipstrom's Death

It is in the public interest that sudden or unexplained deaths are investigated, and in the case of an in-custody death, a coroner's inquest is mandatory in the Province of British Columbia. Police officers are required to report the facts and circumstances surrounding the death of any person who dies while in their custody, or as a result, directly or indirectly, of an act of a police officer performed in the course of his or her duty. In this case, the RCMP chose to report the incident to the Coroner prior to Mr. Knipstrom's death.

Primary Investigator Sergeant Toews made several contacts with the Coroner's office prior to Mr. Knipstrom's death. He discussed the excited delirium implication in the case, inquired about the possibility of conserving the subject's brain for examination of ED indicators, and discussed the issue of possible post mortem examinations if

Mr. Knipstrom expired, including possible brain examination by an American ED specialist.

Although input from the police is very important to the Coroner's work, there is always a danger that such communications may be perceived as an undue attempt to influence the Coroner in its findings. However, in my view, Sergeant Toews' actions did not interfere with the independence of the Coroner's office in terms of determining what examinations to conduct, and were not unreasonable in the circumstances.

FINDING: The RCMP's communications with the coroner's office prior to Mr. Knipstrom's death were not unreasonable or inappropriate in the circumstances.

Independent Officer Review

The circumstances related to the death of Mr. Knipstrom were also reviewed as part of an Independent Officer Review (IOR). An IOR is an internal administrative review. An initial review determined that the investigation was conducted in a thorough, professional and unbiased manner. However, a final review was to be completed following the Coroner's Inquest, and I understand that that is underway.

Review by an Outside Agency

In many in-custody death situations, an outside police agency is asked to conduct an external independent review of the death and to comment on whether a thorough, professional and unbiased investigation has been conducted by the RCMP. That was not done in this case, and there is no indication in the record of the reasons why an outside review was not performed. I make no findings or recommendations of whether or not the RCMP should do so, as I have recently stated in my report on the Police Investigating Police the Commission's position that such investigations be conducted by an outside agency in the first instance.⁵

No Review by Crown Counsel

In British Columbia, the Crown must approve any charges to be laid. Depending on what information is revealed by the investigation, the RCMP may submit a Report to Crown Counsel before determining whether to lay charges against a member. Policy directs RCMP members to do so if there is evidence to support a prosecution. The investigators in this case chose not to submit a Report to Crown Counsel; however, I find that there was no evidence to support a prosecution and that it was reasonable not to send it to Crown counsel.

FINDING: There was no evidence to support a prosecution and it was reasonable for the RCMP not to submit a Report to Crown Counsel for review.

⁵ See the Commission's August 11, 2009, news release on the Police Investigating Police report, found at www.cpc-cpp.gc.ca/nrm/nr/2009/20090811-eng.aspx.

Timeliness of Investigation

Another area of concern regarding the investigation is the amount of time it took to complete the investigation. In my Police Investigating Police report, I set out a baseline definition of what constitutes a “timely” response by the investigative team. The key features of appropriate timeliness of member investigations include that member investigations preferably be undertaken and completed within six months, and should not exceed one year.

The key aspects of the investigation were completed within six months of the incident. The physical evidence gathering part of the investigation was completed within a 24-hour period. Expert reports were submitted within the generally accepted time frame for those types of analysis. By the end of April 2008, the only outstanding expert report was the pathologist’s report, which was not within the RCMP’s control and was received on September 3, 2008. The Knipstrom family was briefed on the investigation on October 14, 2008, and told that the investigation ruled out any criminal behaviour on the part of the subject members. While some “housekeeping” was performed with respect to the investigation file after that date, the investigation was, for all intents and purposes, concluded. I am satisfied that there was no unreasonable delay in the investigation, and that it was completed in a timely manner.

However, I note that there was a delay in briefing the three members who were the primary subjects of the investigation—Constables Mufford, Labbe and Kardos. Their briefing was held on December 10, 2008, nearly two months after the briefing of the Knipstrom family. There is no explanation given in the record for the delay, although there was some indication that at least one member (Constable Mufford) had been told by the Team Commander, Staff Sergeant Hundt, some months earlier that he was cleared of any wrongdoing. It is not clear whether the other members received a similar communication. I would like to emphasize the importance of notifying not only the family but the subject members of the results of the investigation as early as possible to allow them to deal with the outcome (good or bad) and to move forward. This is particularly critical when an investigation questions the propriety of a member’s conduct that has either directly or indirectly led to serious injury or death.

I also note that the Final Report, while drafted several months prior, was not finalized until March 11, 2009. I understand that where a conclusion has already been reached that there has been no criminal wrongdoing, and where no report is being submitted to Crown counsel, there may be a tendency to give the Final Report a lower priority. However, it is important that the Final Report be completed in a timely manner to, at a minimum, assure the public that the matter has been treated as a priority and that the investigation team was diligent in their efforts. Delays in the delivery of the final investigation report, which officially signifies the conclusion of the investigation, can undermine the credibility of the investigation and the report.

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

Conclusion

Any incident where a person dies following an altercation with the police raises a number of concerns for the public, particularly when the investigation of such an event is carried out by the same police agency as that of the subject police officers. The altercation with Mr. Knipstrom, his death, and the subsequent investigation conducted by the RCMP is such a case. With this report, I have endeavoured to provide a fair and objective assessment of the incident and investigation. While I have found that the subject members acted reasonably and that the investigation was conducted appropriately for the most part, there were several concerns identified with the investigation that have been identified in numerous other reports by the Commission. I strongly urge the RCMP to take timely action to ensure that these issues are finally addressed if public confidence in the integrity of RCMP investigations is to be regained and maintained.

Summary of Findings and Recommendations

FINDING: Constables Mufford, Labbe and Kardos had current RCMP certified training in the use of force options available to members in the performance of their duties.

FINDING: The members entered into their interactions with Mr. Knipstrom lawfully and were duty-bound to do so.

FINDING: : It was not unreasonable for the members to use OC spray and a baton in the manner that they did, and it was in compliance with RCMP use of force policy.

FINDING: It was reasonable for the members to use the CEW when other use of force options (empty hand techniques, OC spray, baton) appeared to have no effect on Mr. Knipstrom.

FINDING: Constable Mufford's deployment of the CEW was reasonable in the circumstances.

FINDING: Constable Labbe's decision to deploy her CEW following Constable Mufford's deployment was reasonable in the circumstances.

FINDING: Constable Kardos' deployments of the CEW were reasonable in the circumstances

FINDING: It was reasonable for the members to conclude that Mr. Knipstrom was not receiving the full effects of the CEW deployments, if any from some deployments.

FINDING: Constable Labbe's decision to recycle her CEW, and to attempt to use a second cartridge when the recycling appeared to have little to no effect, was reasonable in the circumstances.

FINDING: Constables Mufford, Labbe and Kardos exercised their use of force options in a manner consistent with the law and RCMP policy.

FINDING: To the extent that the subject members were involved in the decision to maintain Mr. Knipstrom in the prone position after his arrest, it was reasonable for them to do so in the circumstances.

FINDING: The members appropriately sought and obtained medical treatment for Mr. Knipstrom.

FINDING: The RCMP members involved in the events involving Mr. Knipstrom on November 19, 2007, from the moment of initial contact until transfer to the care of emergency health personnel, complied with all appropriate policies, procedures, guidelines and statutory requirements for the arrest and treatment of persons taken into custody.

FINDING: The scene was properly secured.

FINDING: The appropriate personnel were dispatched to the scene at the appropriate times.

FINDING: An "independent" investigation team was assembled in a timely manner, in accordance with RCMP policy.

FINDING: The investigation was managed in accordance with the Major Case Management principles.

FINDING: All of the relevant witnesses were interviewed.

FINDING: The investigators acted reasonably in their efforts to interview and take statements from the involved members.

FINDING: An SRR should not have been allowed to meet alone with Constable Mufford prior to him completing his duty to account statement, or with either Constable Mufford or Constable Labbe prior to the arrival of the investigation team.

RECOMMENDATION: If the protocol of SRR attendance is to continue, the RCMP should formalize the attendance of the SRR to provide clear policy and guidance to ensure that the SRR knows the bounds of his or her involvement and the required protocols with respect to such attendance.

RECOMMENDATION: I reiterate my recommendation in the Ian Bush decision (November 2007) and St. Arnaud decision (March 2009) that “[t]he RCMP develop a policy that dictates the requirement, timeliness and use of the duty to account that members are obliged to provide.”

FINDING: It is inappropriate for subject members to be interviewed by members of the same or lower rank in cases where the MCM model has not been employed.

RECOMMENDATION: All interviews of members involved in serious incidents should be conducted by members of a higher rank in cases where the MCM model has not been employed.

RECOMMENDATION: All witness interviews in serious incidents should be conducted by a two-member team.

FINDING: It was inappropriate for Constable Kardos to be assigned to interview the two main civilian witnesses, as he was involved in the incident and was in a conflict of interest situation.

FINDING: The RCMP policy regarding the testing of CEWs that was in place at the time of the incident was inadequate. However, I am satisfied that the change in RCMP policy has clarified when the testing should be done where a CEW has been involved in an in-custody death situation.

FINDING: The extent to which the investigators looked into Mr. Knipstrom’s background and used that information was reasonable and appropriate in the circumstances.

FINDING: The extent to which the investigators explored the role of excited delirium in the death of Mr. Knipstrom was not unreasonable in the circumstances.

FINDING: The RCMP’s communications with the coroner’s office prior to Mr. Knipstrom’s death were not unreasonable or inappropriate in the circumstances.

FINDING: There was no evidence to support a prosecution and it was reasonable not to submit a Report to Crown Counsel for review.

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

INTRODUCTION

The death of a person following an intervention by police often raises questions from the public about the use of force involved, the training of officers, the appropriateness of the police investigating the police and the expected level of transparency of authorities. As Canada's largest police force and British Columbia's major police service provider, the RCMP must demonstrate that, when faced with such an incident, it is able to conduct a transparent and proficient investigation that addresses those concerns. The RCMP must demonstrate that its members are subjected to the highest level of training available and that the investigation is conducted with impartiality and professionalism. At stake is the public's confidence in the RCMP and its legitimacy to act with the necessary public support.

In recognition of the concerns expressed about the use of force by RCMP members, the Commission for Public Complaints Against the RCMP (the Commission) will on occasion exercise its authority on behalf of the public, to examine in depth the facts that give rise to the public's concern as well as the adequacy of the RCMP's investigation of the events in question. This report examines the circumstances of the arrest of Mr. Robert Thurston Knipstrom on November 19, 2007, and his subsequent death.

The Incident Management Intervention Model (IM/IM), Major Case Management (MCM) model, and other RCMP policies and procedures will be the principles by which this intervention will be reviewed, as well as relevant regulatory and legal standards. This report will focus particularly on the events leading to the altercation with Mr. Knipstrom, the level of force used to subdue him, the actions of the RCMP members involved in the altercation and arrest, the following investigation, its adequacy and timeliness and the RCMP policies and procedures underlying this event.

On January 15, 2009, I also initiated a complaint into the conduct of those unidentified RCMP members present at, or engaged in, incidents where individuals in the custody of the RCMP died following the use of a conducted energy weapon (CEW), which incidents have taken place anywhere in Canada between January 1, 2001 and January 1, 2009. The arrest and subsequent death of Mr. Knipstrom will also be addressed in that report.

OVERVIEW⁶

On November 19, 2007, shortly before 3:00 p.m., a man driving a pickup truck with a trailer attached was involved in a hit and run on Yale Road near Airport Road in Chilliwack, B.C. The minor accident was witnessed by three people. The driver of the pickup, later identified as Robert Thurston Knipstrom, drove off without identifying himself to the occupants of the other vehicle.

⁶ 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.

Mr. Knipstrom continued on to the Eze Rent-It Centre located on Airport Road, across the street from the RCMP Chilliwack Community Police Office, to return a wood chipper he had rented. While inside the store, Mr. Knipstrom is believed to have overheard a phone conversation between store owner Russel Walsh and one of the witnesses to the hit and run, who was advising Mr. Walsh of the accident after following the truck to his store. As Mr. Walsh listened on the telephone, Mr. Knipstrom apparently said: "It's a lie."

Mr. Knipstrom paid his bill and called his father to pick him up, claiming that his truck would not start. While he was waiting, he started displaying odd behaviour, including going up and down the stairs that led to the second floor where female staff worked, stating that he would feel safer there. Mr. Walsh prevented him from going in the upstairs area and eventually asked Mr. Knipstrom to leave the premises. Mr. Knipstrom did not leave and his behaviour continued; consequently, Mr. Walsh asked the store manager, Bradley McCrea, to call the RCMP for assistance.

Constables Chad Mufford and Annie Labbe were dispatched and arrived at the store approximately 15 minutes after the initial call. When they arrived, Mr. Knipstrom was sitting near the bottom of the stairs with Mr. Walsh standing a few steps above him. Mr. Walsh and Constable Labbe left the stairway to discuss the situation, while Constable Mufford attempted to engage Mr. Knipstrom in conversation. Mr. Knipstrom abruptly stood up and pushed past Constable Mufford. Mr. Knipstrom would not comply with Constable Mufford's instructions to stop and adopted a boxer's stance, with his fists clenched. A violent struggle ensued as Constable Mufford attempted to physically restrain Mr. Knipstrom, who was pushing, punching and lunging at Constable Mufford. The officer resorted to a variety of hand techniques and intermediary and impact weapons, including oleoresin capsicum (OC) spray, a conducted energy weapon⁷ (CEW) and his baton. Constable Labbe also deployed her OC spray and CEW during the altercation. All attempts and techniques used had little or no effect on Mr. Knipstrom as he continued to fight and pursue Constable Mufford around the store.

Both Constables Mufford and Labbe requested backup several times, as the situation became increasingly difficult. Among the first backup officers to arrive were Constables John Kardos, Joe Bellia and Tara Mason, Corporal Bruce Abbott and Sergeant Suki Manj. When they arrived, Mr. Knipstrom was ignoring the officers' demands to stay down on the floor. He headed towards the other officers and Constable Kardos deployed his CEW, which had little to no effect. Constable Mason was then able to bring Mr. Knipstrom to the floor and several members assisted in handcuffing him.

First responders and Emergency Health Services (EHS) were dispatched to the scene and Mr. Knipstrom was transported to the Chilliwack Hospital, where he suffered a cardiac arrest shortly after his arrival. Resuscitation efforts by hospital staff were successful, although Mr. Knipstrom never regained consciousness. He was

⁷ The conducted energy weapons used by the RCMP are commonly referred to by the brand name of the models authorized for use by RCMP policy: Taser®.

subsequently transferred to the Surrey Memorial Hospital, where he died on November 24, 2007.

THE CHAIR-INITIATED COMPLAINT AND PUBLIC INTEREST INVESTIGATION

On November 20, 2007, as Chair of the Commission for Public Complaints Against the RCMP, I initiated a complaint pursuant to subsection 45.37(1) of the *RCMP Act*.⁸ It questioned whether the members involved in the events of November 19, 2007, from the moment of initial contact until Mr. Knipstrom's transfer to the care of emergency health personnel, complied with all appropriate policies, procedures, guidelines and statutory requirements for the arrest and treatment of persons 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. Knipstrom's death 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.

On January 30, 2009, I notified the RCMP Commissioner⁹ that I considered it advisable in the public interest for the Commission to investigate this complaint pursuant to subsection 45.43(1) of the *RCMP Act*.

Pursuant to subsection 45.43(3) of the *RCMP Act*, I am required to prepare a written report setting out my findings and recommendations with respect to the complaint. This report constitutes my 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**.

THE BCCLA COMPLAINT

On November 27, 2007, the British Columbia Civil Liberties Association (BCCLA) filed a complaint with the Commission with respect to the treatment of Mr. Knipstrom.¹⁰ The substance of the complaint read:

“The BCCLA is concerned that the RCMP members failed to meet appropriate professional standards in discharging their duty of care

⁸ See **Appendix C** to view the complaint, initially titled “In-custody serious injury in Chilliwack, B.C., November 19, 2007, involving the use of a conducted energy weapon”.

⁹ See **Appendix D** to view a copy of the notice.

¹⁰ See **Appendix F** to view a copy of the complaint.

towards him. A transparent and independent investigation is warranted in this case in the public interest.

If the RCMP is found to have acted within the guidelines of existing policy and conduct standard we ask that you undertake a review to assess whether such policies are adequate.”

On February 18, 2008, the RCMP sent a letter to the BCCLA indicating that it was terminating the complaint pursuant to paragraphs 45.36(5)(a) and (c) of the *RCMP Act*. The reason given was to “avoid unnecessary multiplicity of proceedings,” citing the criminal investigation and coroner’s inquest. On April 11, 2008, the BCCLA requested a review of that decision.

In similar cases, I have not accepted the reasoning provided by the RCMP to the BCCLA to justify its decision not to investigate the public complaint.¹¹ The desire to avoid unnecessary multiplicity of proceedings is not a specific ground pursuant to subsection 45.36(5). Furthermore, the fact that there is a criminal investigation into a matter does not mean that other investigations, such as a public complaint investigation or a coroner’s inquest, are not necessary or reasonably practicable. Different types of investigations pursue different purposes and rely on different procedural and evidentiary rules. In fact, in serious matters such as this one, it is normal practice to conduct more than one type of investigation. The RCMP Commissioner has agreed with my findings and recommendations in the cases noted.

That being said, the subject matter of this public interest investigation encompasses that of the BCCLA’s complaint. In addition, the BCCLA’s original complaint stated that it believed that an independent investigation was warranted due to the public interest, rather than a public complaint investigation performed by the RCMP. As such, the Commission will treat this report as a full response to the BCCLA’s complaint and request for review.

INDEPENDENT OBSERVER PILOT PROJECT

In March 2007, a project known as the Independent Observer Pilot Project was undertaken between the Commission and the RCMP in British Columbia (known as “E” Division). The Program was formalized in September 2008.

Through the Program, Commission staff are assigned to observe and assess the impartiality (not the adequacy) of RCMP investigations that include the examination of the conduct of other RCMP members who are involved in high-profile and serious incidents, such as in-custody deaths. The Program is operated in conjunction with the RCMP’s Office of Investigative Standards and Practices (OISP) in British Columbia, to address the public’s concerns with respect to the impartiality of RCMP investigations involving the conduct of RCMP members.

¹¹ See for example CPC File Nos. PC-2007-1886, PC-2007-1888, and PC-2007-2318.

On November 19, 2007, the date of Mr. Knipstrom's arrest, the Commission was notified by the RCMP that the incident had occurred. The Commission assigned an Independent Observer to meet with investigators and observe the investigative process to assess its impartiality. Specifically, the Independent Observer was assigned to:

- Make an initial assessment as to the impartiality of the RCMP's integrated team of investigators from the "E" Division Major Crime Unit, the Integrated Homicide Investigation Team, the Abbotsford Police Department, and the Vancouver Island Integrated Major Crime Unit, who were assembled to investigate this incident.
- Monitor progress so as to ensure that any future issues as they relate to the impartiality of the investigation are identified and addressed.

The Independent Observer completed an assessment as to the impartiality of the investigative team and identified no issues. Further detail on the Independent Observer Pilot Program and the role of the Independent Observer during the investigation may be found at **Appendix G** to this report.

COMMISSION'S REVIEW OF THE FACTS SURROUNDING THE EVENTS

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 conducting a public interest investigation, 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. The Commission's role is not to make findings of criminal or civil liability.

My findings, as detailed below, are based on a careful examination of the extensive investigation materials, the RCMP's criminal investigation report, and the applicable law and RCMP policy.

A coroner's inquest into the death of Mr. Knipstrom was held in Burnaby, British Columbia, on November 16 through 19, 2009. 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. Knipstrom's death. It is for this reason that a representative from the Commission was present for all testimony given during the inquest.

It should be noted that the RCMP's "E" Division provided complete cooperation to the Commission throughout the Chair-initiated complaint and public interest investigation

process. In addition, the RCMP provided the Commission with unfettered access to all materials contained in the original investigative file and all materials identified as part of the public interest investigation.

FIRST ISSUE: THE ARREST – Whether members of the RCMP complied with all appropriate policies, procedures, guidelines and statutory requirements in the arrest and treatment of Robert Thurston Knipstrom and whether such policies, procedures and guidelines are adequate.

Background

Mr. Knipstrom lived in the city of Chilliwack, British Columbia, which is a community of approximately 80,000 people, located 100 kilometres east of the city of Vancouver. Mr. Knipstrom was a self-employed tree trimmer and also sold energy drinks. Mr. Knipstrom was 36 years old at the time of this incident. He was 5'6" and was physically fit. He held a brown belt in martial arts and trained regularly at a local gym.

According to his family and friends, he was a regular consumer of drugs and alcohol. They reported that when he was not under the influence of drugs or alcohol, he was a great guy to be around. However, after consuming such substances, his behaviour would radically change. Mr. Knipstrom was associated with 29 police files over the period between 1993 and 2007 and was known to display aggressive and bizarre behaviour. During one such encounter with police on March 17, 2007, Mr. Knipstrom was apprehended under the *Mental Health Act* following a physical altercation with police that involved use of the CEW, a police defensive baton and other physical force.

At the time of the incident, Constable Chad Mufford worked as an RCMP member at the Chilliwack RCMP Detachment located on Airport Road in Chilliwack, B.C. He graduated 19½ months earlier from the six-month-long cadet training at the RCMP training academy ("Depot"). Constable Mufford had never encountered Mr. Knipstrom prior to November 19, 2007. Constable Mufford was certified on the CEW on February 18, 2007 with an expiry of February 18, 2010. Constable Mufford was also certified on the use of force options of ASP baton, carotid control and OC spray on February 6, 2006, with an expiry of February 6, 2009.

Constable Annie Labbe also worked as an RCMP member at the Chilliwack RCMP Detachment. She graduated 25 months earlier from cadet training at Depot. Constable Labbe also had never encountered Mr. Knipstrom before November 19, 2007. Constable Labbe was certified on the CEW on January 21, 2007 with an expiry of January 21, 2010. Constable Labbe was also certified on the use of force options of ASP baton, carotid control and OC spray on October 3, 2005, with an expiry of October 3, 2008.

Constable John Kardos worked as a general duty officer at the Chilliwack RCMP Detachment. Constable Kardos also had never encountered Mr. Knipstrom prior to November 19, 2007. Constable Kardos was certified on the CEW on February 18, 2007

with an expiry of February 18, 2010. Constable Kardos was also certified on the use of force options of ASP baton, carotid control and OC spray on December 19, 2005, with an expiry of December 19, 2008.

FINDING: I find that Constables Mufford, Labbe and Kardos had current RCMP certified training in the use of force options available to members in the performance of their duties.

The events of November 19, 2007

The following account of events flows from witness statements provided during the initial police investigation. I put these facts forward, as they are either undisputed or because, on the preponderance of evidence, I accept them as a reliable version of what transpired.

I note that while more than 50 witnesses were interviewed as part of the criminal investigation, there were four main witnesses to the physical altercation between Mr. Knipstrom and the members—the members themselves (Constables Mufford and Labbe), Mr. Walsh (the store owner) and Mr. McCrea (the store manager). Other witnesses who were on-site were either in the shop portion of the store or outside of the business as the events unfolded. This is not to say that their contributions to the investigation were not significant, but direct witnesses' accounts are generally conferred a higher degree of reliability. I also note that Mr. McCrea's evidence was limited, as he was on the telephone and dealing with customers through much of the altercation and only witnessed pieces of it.

The evidence of these four witnesses is reasonably consistent with respect to the interaction between the officers and Mr. Knipstrom, and as such, I have relied heavily on their evidence. Any differences in their accounts can largely be attributed to the different focus and vantage points of each individual, and the difficulty of recalling minute details in a high-stress situation.

a) The hit and run

On November 19, 2007, shortly before 3:00 p.m., Mr. and Mrs. A were driving northbound on Yale Road approaching Airport Road in Chilliwack, B.C. They observed a vehicle driving erratically behind them. The driver was changing lanes and forcing other drivers out of the lane he was moving into, almost side-swiping several vehicles. At Airport Road, Mr. and Mrs. A stopped their vehicle in the curb lane several cars back from the red light. The vehicle tried to pull in behind them but could not fit and in trying to move to the lane furthest from the curb, the passenger side front bumper of the vehicle hit the driver's side rear bumper of the A's car. At that point, the light turned green and the traffic in front of them started moving. The driver of the suspect vehicle pulled in front of Mr. and Mrs. A and turned onto Airport Road.

Mr. and Mrs. A stated that when the driver of the suspect vehicle pulled in front of them, he looked directly at them and put his hands in the air. He continued on driving and made no attempt to stop. They described the vehicle as being a light coloured, older pickup truck with a utility trailer on the back, with what would later be identified as a wood chipper on it.

Mr. and Mrs. A reported the incident to a female complaint taker at the Airport Road Detachment. They provided the licence plate number of the suspect truck, and described the driver as a Caucasian male with short hair. He would later be identified as Mr. Knipstrom.

Meanwhile, Ms. B, another driver who witnessed the accident, followed the suspect vehicle on Airport Road to the Eze Rent-It Centre. She subsequently called the RCMP from her workplace, which was not far from the rental store, to inform them of the suspect's location. She also called the store owner, Mr. Walsh, to advise him that he had a hit and run driver inside his business, either as an employee or a customer.

b) The events at the Eze Rent-It Centre prior to police intervention

Mr. Knipstrom walked into the Eze Rent-It Centre¹² with his dog shortly after 3:00 p.m. He entered through the front door and made his way to the service counter, where Mr. Walsh was standing. As he arrived at the counter, the phone rang. It was Mrs. B, who asked about the driver of the pickup truck parked outside the rental store and advised Mr. Walsh that she was going to call the RCMP regarding the erratic driving and involvement of the driver in an accident earlier on Yale Road. As Mr. Walsh listened on the telephone, Mr. Knipstrom apparently said: "It's a lie," suggesting that he overheard the conversation.

Mr. Walsh hung up the phone and took the paperwork that Mr. Knipstrom was handing to him. He pulled out the rental contract. Mr. Knipstrom indicated that he wanted to pay the rental with cash and that the wood chipper worked very well. Mr. Walsh refunded the credit card used to rent the equipment, which was under Mr. Knipstrom's father's name. Mr. Knipstrom did not mention the hit and run incident.

Mr. Knipstrom asked for permission to use the phone. He called his father and told him he had returned the chipper and that everything was okay. After he hung up, he asked to use the telephone again and called his father back. He told him that his truck would not start, and asked him to pick him up at the rental store. After this call, Mr. Knipstrom paid his bill in cash and informed Mr. Walsh that he had truck trouble and that he was waiting for a lift from his father. Mr. Walsh indicated in his statement that he was faced with a dual problem: Mr. Knipstrom's truck was parked in the middle of the yard blocking access, and he thought that the RCMP would be looking for the vehicle. With the yard being out of sight from the road, he was worried the RCMP would not see it. He asked one of his employees, Brian Woods, a mechanic, to have a look at the truck and see if he could get it started so it could be moved.

¹² See **Appendix H** for a diagram and photograph of the inside of the store where the incident occurred.

According to his statement, Mr. Woods asked Mr. Knipstrom for his keys, which he gave him. Mr. Woods proceeded to the truck and started it by simply turning the key in the ignition. He left the truck running and went back into the store to inform Mr. Knipstrom that his truck was running okay and he could move it out of the way. Mr. Knipstrom went out and moved the truck, with some difficulty.

Mr. Woods had encountered Mr. Knipstrom at the rental center previously, as he had rented that same equipment a few times before. On that day, he described Mr. Knipstrom as jumpy and nervous, and he mentioned to him that he was involved in an accident but couldn't remember the details. Mr. McCrea, the store manager, indicated that Mr. Knipstrom's eyes were really big, that he looked strange, somewhat disturbed.

After moving his truck, Mr. Knipstrom came back into the rental center and informed Mr. Walsh that he would be waiting there for his father. Mr. Walsh proceeded up the stairs to the offices located on the second floor of the store. As he was going up the stairs, Mr. Knipstrom started to follow him. As they got to the top of the stairwell, Mr. Walsh stopped and informed him that this area was for employees only. He told him that he would have to wait for his father downstairs. Mr. Knipstrom went back down about a third of the way and sat on the stairs. Mr. Walsh could see that both female employees working in the office on the second floor were feeling uncomfortable with Mr. Knipstrom's behaviour. He then removed his glasses, pens, and any sharp objects from his pocket. At the Coroner's Inquest, Mr. Walsh indicated that he did so because he did not know what would happen. He also directed his staff to leave through the back stairs. He then went down the stairs to where Mr. Knipstrom was sitting. He observed that Mr. Knipstrom was "twitching and fidgeting and very erratic." He asked him again to go downstairs to wait for his father.

Mr. Walsh told Mr. Knipstrom that he was making the women upstairs uncomfortable and that if he went downstairs, everything would be okay. Mr. Walsh also mentioned that if he insisted on staying on the stairs, he would have to make a phone call. Mr. Knipstrom replied: "I feel really comfortable here. I just want to wait here." He asked who he would call and Mr. Walsh told him the police. After this, Mr. Walsh told him again to go downstairs; Mr. Knipstrom did not respond. At that time Mr. Walsh asked Mr. McCrea, the store manager, to call the police. On the recording of the 911 call, Mr. McCrea describes the situation in the following terms:

"Can you send a member over here, we've got a gentleman in here that doesn't want to leave, and he keeps running up and down the stairs. Our girls are pretty scared right now."

Between ten and fifteen minutes later, the RCMP called back to ask if the person was still there. Mr. McCrea answered positively and asked for police presence, as they were "trying to run a business." During that time, Mr. Knipstrom had shown concern about new customers coming into the store, asking Mr. Walsh if he knew them and what they

were carrying. Mr. Walsh described Mr. Knipstrom's concerns as very paranoid. Mr. Walsh indicated that Mr. Knipstrom seemed like a "caged animal backed into a corner." At one point, Mr. Knipstrom went down the stairs to get his dog. Mr. Walsh took that opportunity to physically block Mr. Knipstrom's way back up. He had to put his hand on Mr. Knipstrom's chest and shoulder to push him back, as he was still trying to pass by him. After these failed attempts, Mr. Knipstrom asked if he could sit down, to which Walsh answered "yes." Mr. Walsh moved back a few stairs so that Mr. Knipstrom would not feel any pressure from his close proximity. According to Mr. Walsh and the dispatch time logs, the RCMP showed up within a few minutes of the second call.

c) Actions of the first members on scene prior to physical altercation

After confirming that the situation was still ongoing at the Eze Rent-it Centre and having no free car to send, dispatcher Sandra Clemons contacted Corporal Finnen, the team leader on duty at the Chilliwack Detachment, to ask if he could provide members to deal with the call. Corporal Finnen asked Constables Mufford and Labbe, who were in the general duty room of the detachment, to attend the rental store.

At 15:32:08, two minutes after the call back to the rental center from RCMP dispatch, Constable Mufford is heard on the air enquiring about the nature and the location of the call. Constable Mufford was told that there was a male who was running up and down the stairs, refusing to leave the business. After getting this information from dispatch, Constables Mufford and Labbe walked across the street to the Eze Rent-It Centre.

Upon arriving at the store, both members observed two men in the stairway leading to the second floor. One was standing (later identified as Mr. Walsh) and one was sitting on a stair (later identified as Mr. Knipstrom). The officers also observed the presence of a large dog near the bottom of the stairs. Constable Labbe noted that there was something unusual about Mr. Knipstrom's eyes, and that they were extremely wide. Constable Mufford noted that Mr. Walsh had an "uncomfortable, worried look on his face." Constable Labbe enquired about the dog's owner and Mr. Knipstrom indicated that it was his and called the dog back to him. Constable Mufford asked what was happening and if there was a problem, but indicated that Mr. Knipstrom looked at him with a strained and bothered look and said something fast, which he could not understand. Mr. Walsh indicated that Mr. Knipstrom said something to the effect that he had truck problems and was waiting for his dad.

At this time, Mr. Walsh signalled the members that he wanted to speak to them in private so Constable Labbe followed him to a distance of 10 to 15 feet from Mr. Knipstrom, positioned so that she could speak with Mr. Walsh while keeping an eye on the stairs. Meanwhile, Constable Mufford attempted to engage Mr. Knipstrom in a conversation, asking again what was happening. According to his duty report, Constable Mufford used a calm and relaxed voice. However, Mr. Knipstrom abruptly got up and walked past Constable Mufford, bumping his left arm.

d) Interaction, escalation, and physical altercation with Mr. Knipstrom

While walking away from him, Constable Mufford directed Mr. Knipstrom to sit down. Mr. Knipstrom stopped in an area near rows of products, about 1.5 metres away. Constable Mufford told him in a loud voice to sit on the ground, several times. Mr. Knipstrom did not comply. Instead, Mr. Knipstrom faced him with clenched fists, with an aggressive look and posture. Constable Mufford ensured that the tools on his belt were accessible, as he felt that Mr. Knipstrom was threatening to be combative and becoming unpredictable.

According to statements from Constables Mufford and Labbe, Mr. Walsh and Mr. McCrea, Mr. Knipstrom started to scream: “Don’t Taser me, don’t Taser me!” However, neither member had pulled out their CEWs nor mentioned the CEW. Both members thought Mr. Knipstrom was addressing them individually so they reacted to defuse the situation by showing they had no intention to use a CEW on him. Constable Labbe raised her hands to show Mr. Knipstrom that her hands were empty and stated: “We won’t Taser you, but you have to listen to what we say.” Constable Mufford again directed Mr. Knipstrom to sit on the floor. According to his statements and witness accounts, he repeated this command several times in a loud assertive voice.

Mr. Walsh and Mr. McCrea confirm the members’ statements that Mr. Knipstrom adopted a boxing stance with both fists raised in front of his face. They also confirm that the two members had nothing in their hands at the time that would indicate an intention of using the CEW.

Constable Mufford indicated in his statement that at this point, he had reasonable and probable grounds to believe that Mr. Knipstrom was causing a disturbance, threatening and trespassing on the property, and that he was concerned for the safety of the people in the store. Constable Mufford attempted to grab Mr. Knipstrom’s wrist, but Mr. Knipstrom moved behind the counter. Constable Mufford had some concern that Mr. Knipstrom may be concealing a weapon. He again asked Mr. Knipstrom to sit on the floor. Constable Mufford stated that his intent was to get Mr. Knipstrom to sit so that he could try to calm him down and then decide whether to arrest him or escort him from the store. Constable Mufford first called for backup at about this time.

Not having received a response to his commands, Constable Mufford approached Mr. Knipstrom slowly and attempted to grab his right arm, but he could not move it. He then tried grabbing his wrists. Constable Mufford stated that Mr. Knipstrom pushed him with unexpected strength and lunged towards his upper body and head. Constable Labbe, Mr. Walsh, and Mr. McCrea confirm Mr. Knipstrom’s lunge at Constable Mufford. Constable Mufford pushed back, trying to knock him off balance, but he indicated that Mr. Knipstrom was unexpectedly and extremely solid—he did not move. Constable Mufford turned to empty hand techniques and punched Mr. Knipstrom in the back, as Mr. Knipstrom had put his head into Constable Mufford’s lower chest.

Mr. Knipstrom's arms were flailing at Constable Mufford's head. Constable Mufford attempted to take him to the ground, but was unable to do so.

Mr. Knipstrom continued to yell, punch and grab at Constable Mufford. Constable Mufford backed up and sprayed his OC canister in Mr. Knipstrom's face. It had no effect, and Mr. Knipstrom kept attacking him. Constable Labbe indicated that she subsequently delivered a concentrated stream of OC spray to the side of Mr. Knipstrom's face, but it also had no effect. Constable Mufford stated that he determined that Mr. Knipstrom was a determined and strong opponent who wanted to cause bodily harm. He pulled out his ASP baton and extended it, using it to block punches and lunges from Mr. Knipstrom. He attempted to strike Mr. Knipstrom's arms and shoulders as he was trying to back up; however, Mr. Knipstrom kept advancing towards him. Mr. Walsh confirms that Constable Mufford was always backing up, trying to gain control, but that he was continually being charged at by Mr. Knipstrom, who was "screaming like a wild banshee."

The order of the next series of events may not be exact, as there are some discrepancies in the various accounts; however, I am satisfied that any differences in the order of these events are slight and do not impact on my determination of the appropriateness of the actions that were taken.

Constable Mufford removed his CEW from his duty belt. Mr. Knipstrom was grabbing onto him, so Constable Mufford pulled him down and towards him, so that he was reaching over him, and deployed the probes into Mr. Knipstrom's back.¹³ The CEW had no effect on Mr. Knipstrom; Constable Mufford thought the probe possibly did not penetrate Mr. Knipstrom's thick corduroy jacket.

As they passed by Constable Labbe, Constables Labbe and Mufford indicate that Mr. Knipstrom hit her in the upper chest area, knocking her radio microphone off her shoulder. Constable Mufford moved in and delivered baton strikes at Mr. Knipstrom's arms, shoulders and back in an attempt to defend his partner and subdue Mr. Knipstrom. Constable Labbe sought to recover her mike and requested backup.

¹³ This is known as deploying the CEW in probe mode. The CEW can be used in two modes, which was described by Commissioner Thomas Braidwood in his report "Restoring Public Confidence – Restricting the Use of Conducted Energy Weapons in British Columbia", at page 66, as follows:

- **Push-stun mode**—if the trigger is pulled when the end of the conducted energy weapon is pressed against the person's skin (*e.g., arm*). The electrodes are close together, which means that the electrical current is localized to the muscles in that area. In that case it serves a pain compliance purpose, to persuade the person to let go of something, or to otherwise comply in order to avoid further shocks.
- **Probe mode**—when the probes are deployed they are normally imbedded in the person farther apart than the electrodes are in the push-stun mode. In that case, the electrical current spreads out more and goes deeper into the body, engaging more and more excited tissue. In addition to the same pain experienced in the push-stun mode, the electrical current now interferes with the person's neuromuscular system. The person typically becomes incapacitated, and falls to the ground with no ability to put his or her hands out to break the fall."

Constable Labbe then removed her CEW and fired it in the probe mode. One probe struck Mr. Knipstrom in the lower back; the other penetrated his jacket. Constable Mufford attempted to hold Mr. Knipstrom down. Constable Labbe stated that the CEW appeared to have some effect, as the intensity of his struggle seemed to lessen. Mr. Knipstrom attempted to remove the probe, and pushed himself up so that he was on his hands and knees. Constable Labbe stated that she warned him to stay on the ground and that if he did not, she would use the CEW again. He continued to try and remove the probes from his back. Constable Labbe recycled the CEW, but it had no effect; she believed that one of the probes may have broken contact. She changed the cartridge as Knipstrom stood up and turned towards the door. She deployed the CEW again, firing probes into the back of his jacket. She stated that she turned the CEW off right away, as backup arrived and she did not hear the electrical sounds.

At one point during the struggle, Constable Mufford's CEW fell to the ground. Mr. Knipstrom attempted to grab it, but Constable Mufford was able to recover it first. Constable Mufford again called for backup and EHS, as Mr. Knipstrom had sustained hits to the head and face from his baton plus multiple CEW discharges. At this point, Mr. Knipstrom was on the ground and Constables Mufford and Labbe were yelling at him to stay down.

e) Calls for backup

Constables Mufford and Labbe arrived at the rental centre at approximately 3:32 p.m. Transcripts from the communications show that Constable Mufford first requested backup at 15:34:08. At 15:34:55, Constable Labbe was heard on air directing Mr. Knipstrom to get on the floor. At 15:35:35, both Constables Mufford and Labbe were heard on air requesting backup. Constable Mufford indicated that they required EHS. At 15:36:37, RCMP dispatch called the B.C. Ambulance Service, requesting a code three and indicating that the man had been subjected to a CEW. At 15:36:53, Constable Labbe was again heard on the air, indicating a code three.

f) Arrival of police reinforcements and control of Mr. Knipstrom

Backup arrived at approximately 3:36 p.m. Among those first to arrive were Constables John Kardos, Joe Bellia and Tara Mason, Corporal Bruce Abbott and Sergeant Suki Manj. They observed Constables Mufford and Labbe standing next to Mr. Knipstrom, who was kneeling on the ground. Mr. Knipstrom had some blood on his head and was screaming. Constable Labbe had her CEW drawn.

According to Constable Kardos' statements, several officers were yelling at Mr. Knipstrom to lie down on the ground. Mr. Knipstrom continued to yell and scream incoherently. He stood up and walked in the direction of Constable Kardos. Constable Kardos instructed him to stop. Mr. Knipstrom held his hands near his chest, partially clenched. Constable Kardos took out his CEW, pointed it at Mr. Knipstrom and told him to stop. He did not respond to the commands, or change his demeanour in any way, and continued to walk towards Constable Kardos. He deployed his CEW in probe mode

at the centre of Mr. Knipstrom's chest. He appeared to be unaffected. He recycled the CEW, and again it appeared to have no effect. Constable Kardos thought that maybe the CEW was not operating properly and decided to holster it. He again yelled at Mr. Knipstrom to stop, along with other members, to no avail.

The statements of the other members who were present substantially confirm the account of Constable Kardos. After he deployed his CEW, Corporal Abbott was able to grab Mr. Knipstrom by the chest and bring him to the ground. He was able to do so without any apparent further injury to Mr. Knipstrom. Corporal Abbott's arm felt the effects of the CEW, as his arm had come into contact with the wires. It took several minutes and numerous members to get the handcuffs on Mr. Knipstrom once he was on the ground. As instructed by Sergeant Manj, Constable Bellia informed Mr. Knipstrom that he was under arrest pursuant to the *Mental Health Act* of British Columbia.¹⁴

At 15:38:15, Corporal Baier advised dispatch that they had enough members on site. He also asked for confirmation of EHS code 3. RCMP dispatch confirmed EHS was on the way and relayed a question from EHS as to the status of the breathing of the subject. Corporal Baier confirmed that Mr. Knipstrom was breathing. Numerous requests or inquiries were made by members about EHS between 3:35 and 3:47 p.m.

As a result of the struggle with Mr. Knipstrom, Constable Mufford sustained the following injuries:

- Sprained medial collateral ligament (MCL) on the right knee;
- Sprained thumb on the left hand;
- Sprained right shoulder;
- Cut on the left wrist;
- Four-centimetre bruise on the right forearm.

No other members suffered any injury as a result of the incident.

g) Medical responders

The ambulance service (EHS) was busy that day and would take some time to arrive, so members of the Chilliwack Fire Department were dispatched to the scene. Captain Jim Clarke and firemen Andy Brown and Jeff Cookson arrived at approximately 3:40 p.m., roughly four and a half minutes into the video recording of the arrest. At the time, Mr. Knipstrom was being held down, on his stomach, near the entrance door. One member was holding his head, a member was at either arm, and one member was holding his legs. The video confirms that no members were placing any weight on Mr. Knipstrom's chest or back. He was handcuffed and was bleeding from his head. He

¹⁴ Subsection 28(1) provides that “[a] police officer or constable may apprehend and immediately take a person to a physician for examination if satisfied from personal observations, or information received, that the person (a) is acting in a manner likely to endanger that person's own safety or the safety of others, and (b) is apparently a person with a mental disorder.”

was conscious and yelling, but was nonverbal for the most part. When anyone attempted to touch him he would move, make a lot of noise and yell incoherently.

The firefighters reported in their statements that Mr. Knipstrom appeared to have an adequate airway, and that his breathing was full and heavy, consistent with having been in a fight. He would not accept an oxygen mask from them, and continued to squirm and scream. They tried to calm him down. Captain Clarke indicated that at one point, Mr. Knipstrom yelled: “It’s a bomb!” Mr. Knipstrom’s father showed up at the scene, identified him, and tried to calm him down. One of the firefighters spoke to Mr. Knipstrom’s father to find out about any allergies that Mr. Knipstrom might have, and any medications he was on. They recall that the RCMP members told them that Mr. Knipstrom was struck by the CEW twice and hit with a baton. Shortly thereafter, members of EHS arrived, and Captain Clarke relayed the information to the paramedics. Mr. Knipstrom was loaded onto a stretcher in the prone position and taken away by EHS. Constable Cynthia Kershaw went in the ambulance with the paramedics, as well as firefighter Andy Brown.

h) EHS actions and transport to the hospital

At approximately 3:52 p.m., paramedics Andrea Seymour and Rick Simon arrived on scene. An RCMP officer told Mr. Simon that Mr. Knipstrom had been pepper-sprayed, struck by the CEW two or three times, and hit with a baton. Mr. Knipstrom was yelling, screaming, kicking and thrashing around, and was very agitated. Mr. Simon stated that he detected a strong, regular radial pulse, and determined that Mr. Knipstrom’s airway was good given his yelling. The video recording clearly depicts an effort by the paramedics and several RCMP members to turn him onto his back. Mr. Knipstrom strongly fought them in this effort. Ms. Seymour noted in her statement that Mr. Knipstrom was extremely strong, and that she did not know where he got his strength from. Mr. Simon indicated in his statement that he thought they were going to cause him more injury by fighting with him and trying to get him over on his back. They decided that it was best to simply get him to the hospital. Consequently, they put the cot up beside Mr. Knipstrom, lifted him up, placed him in a prone position on the stretcher (the same position he was in while on the ground) and moved him into the ambulance.

Mr. Simon stated that he attempted to put a pulse oximeter on Mr. Knipstrom’s finger, but his fists were clenched and he could not open his fingers. He asked Mr. Knipstrom if he was having a hard time breathing. Mr. Knipstrom indicated “yes.” He directed his partner to notify the hospital, and they left *code 3*.¹⁵ While en route, Ms. Seymour called the Chilliwack General Hospital and advised that they were en route with a patient who had been “Tasered” by police. Hospital staff stated that they were very busy and that that was all the information they needed at that time.

¹⁵ Code 3 indicates that it is an emergency—lights and sirens.

i) Attendance at the hospital and cardiac arrest

According to Chilliwack General Hospital records, Mr. Knipstrom was admitted at approximately 4:15 p.m. The admission summary indicates that he had been pepper-sprayed, "Tasered" three times, and struck by a police baton to the head. He had multiple lacerations to the head with loss of blood at the scene. The summary also indicates that he was involved in an altercation with police.

As he was very agitated and loud, hospital staff had him put in a treatment room to minimize the disturbance to others. He was maintained in the same prone position he was in since his arrest, as he was difficult to control. Constable Kershaw indicated that when they transferred Mr. Knipstrom onto a hospital bed, they were going to change his position. However, he continued to scream and be uncooperative, and the paramedics suggested that they wait since the doctor would be there soon and could give Mr. Knipstrom a sedative. Constables Kershaw and Skelton waited with Mr. Knipstrom and the paramedics. Corporal Finnen arrived a short time later.

While in the treatment room, Constable Kershaw noticed that Mr. Knipstrom was not breathing but he did have a pulse. Hospital records indicate that he went into cardiac arrest at approximately 4:25 p.m. Mr. Simon alerted hospital staff and the cardiac arrest protocol was started by the emergency room doctor. Dr. Hamilton indicated that when he arrived, EHS personnel had begun CPR. Care for Mr. Knipstrom was then handed over to the hospital staff. Mr. Knipstrom's heartbeat and respiration were restored after approximately 28 minutes.

In the days that followed, Mr. Knipstrom's condition continued to deteriorate to the point of renal failure and a decision was made to transfer him to the Surrey Memorial Hospital for dialysis on November 21, 2007.

Upon transfer, attending physician Dr. Richard Feige noted that the prognosis for Mr. Knipstrom was poor. He observed that his patient had a number of problems related to the prolonged cardiac arrest. Dr. Feige also indicated that the cardiac arrest occurred long after the infliction of the CEW and the two were probably not related. Other physicians called in to consult concurred on the low chances of recovery. Mr. Knipstrom's condition continued to decline and he passed away on November 24th at 00:26.

j) The autopsy of Mr. Knipstrom

Mr. Knipstrom's autopsy was performed on November 27, 2007, by Dr. D. Straathof at the Royal Columbian Hospital. In attendance were the following RCMP investigators: Sergeant Matt Toews (primary investigator), Corporal Darren Kakuno (exhibits coordinator), Corporal Mike Vander Schaaf (Forensic Identification), and Corporal Gregg Gillis (use of force expert).

Dr. Straathof's report, dated July 11, 2008, was received by RCMP investigators on September 3, 2008. It indicates that "[b]ased on the available information, including clinical history and findings of the post mortem examination, including toxicologic analysis, death is attributed to anoxic encephalopathy [degeneration of brain function, caused by a lack of oxygen following a prolonged cardiac arrest] and rhabdomyolysis [the breakdown of muscle tissue] resulting from acute MDMA¹⁶ intoxication with physical restraint. The precise role or contribution of physical restraint in contributing to death remains undetermined."

Post mortem examination confirmed damage to the brain, which was attributable to lack of oxygen during the prolonged cardiac arrest. There were healing blunt force injuries of the head, including four scalp lacerations, but no skull fractures or traumatic brain injuries were present. Examination of the body revealed no remaining clear physical evidence of CEW deployment. Examination of two puncture marks on the upper back revealed only nonspecific inflammation. The report found that "[g]iven the prolonged time interval between Taser deployment and cardiac arrest, Taser shock is not considered to have been contributory to the cardiac arrest."

Shortly after admission to the hospital, a urine toxicology screen revealed use of opiates, amphetamines, cocaine, and cannabis. Toxicologic analysis was also performed on a blood sample that was taken a few hours later. The analysis revealed the presence of significant levels of MDMA; the measured concentration was very high and within the range of fatal concentrations reported in the medical literature. It also revealed the presence of MDA.¹⁷ MDMA and MDA are substances classed as "amphetamines", a group of drugs with stimulant properties that may also cause hallucinations or other neurologic/psychological effects. Cocaine, benzoylecgonine, or ethanol were not detected in that sample, which indicates that Mr. Knipstrom was not intoxicated with cocaine or ethanol at the time of his cardiac arrest. However, the toxicology report indicated that the samples indicated a remote use of cocaine and cannabis.

Analysis – Compliance with policies, procedures, guidelines and statutory requirements

In responding to calls from the public, RCMP members are subject to the duty provisions of the *RCMP Act*, and in particular paragraph 18(a), which states:

"It is the duty of members who are peace officers, subject to the orders of the Commissioner, (a) to perform all duties that are assigned to peace officers in relation to the preservation of the peace, the prevention of crime and of offences against the laws of Canada and the laws in force in any province in which they may be

¹⁶ The analysis revealed the presence of significant levels of methylenedioxymethamphetamine (also known as "Ecstasy").

¹⁷ Methylenedioxyamphetamine (MDA, a metabolite of MDMA).

employed, and the apprehension of criminals and offenders and others who may be lawfully taken into custody [...].”

In executing their duties, police officers are authorized by the *Criminal Code* to use as much force as necessary.¹⁸ However, the officer must be acting on reasonable grounds. Police officers are also justified in using as much force as is reasonably necessary to prevent the commission of an offence for which a person may be arrested without warrant, or that would be likely to cause immediate and serious injury to the person or property of anyone; or to prevent anything being done that he or she believes, on reasonable grounds, would be the commission of such an offence.¹⁹

In determining whether the amount of force used by the officer was necessary, one must look at the circumstances as they existed at the time the force was used. The courts have been clear that the officer cannot be expected to measure the force used with exactitude.²⁰

Police intervention and use of force

At the time that Constables Mufford and Labbe came into contact with Mr. Knipstrom, they were investigating a complaint of a man causing a disturbance and refusing to leave the Eze Rent-it Centre. As they walked into the store, their attention was called to the stairwell. Mr. Walsh had a worried look on his face. Upon asking what was happening, Mr. Walsh indicated a wish to speak to an officer in private, away from Mr. Knipstrom. Constable Labbe attempted to do so by following Mr. Walsh away from the stairs. It was apparent to the members that Mr. Knipstrom was the subject of the complaint. Constables Labbe and Mufford began their investigation by attempting to speak to Mr. Walsh and Mr. Knipstrom separately.

It is clear that Constables Mufford and Labbe were acting in the course of their duty when they started to interact with Mr. Knipstrom. They were investigating a disturbance but needed to gather more information in order to assess the situation and adopt a proper course of action.

Rather than answer a question posed by Constable Mufford, Mr. Knipstrom abruptly got up and walked past Constable Mufford, knocking into his shoulder. Based on all of the information available to Constable Mufford at that point of time, he had reasonable grounds to *suspect* that Mr. Knipstrom was causing a disturbance, contrary to section 175 of the *Criminal Code*, and had a duty to pursue the matter further. Police officers have the power to detain individuals to further an investigation where “there are reasonable grounds to suspect in all the circumstances that the individual is connected to a particular crime and that such a detention is necessary.”²¹ To that end,

¹⁸ See section 25 of the *Criminal Code*, reproduced at **Appendix I**.

¹⁹ See section 27 of the *Criminal Code*, reproduced at **Appendix J**.

²⁰ See, for example, *R. v. Bottrell*, [1981] B.C.J. No. 855 (B.C.C.A.) at para. 16; and *R. v. Nasogaluak*, [2007] A.J. No. 1217 (Alta. C.A.) at para. 22.

²¹ *R. v. Mann*, [2004] 3 S.C.R. 59, para. 45.

Constable Mufford directed Mr. Knipstrom to stop. In my view, this was a justifiable use of police powers in these circumstances. Furthermore, as the situation evolved and Mr. Knipstrom resisted and physically attacked Constable Mufford, he had made himself arrestable by committing an assault on a police officer.²² The situation escalated so quickly that Constable Mufford did not have the opportunity to tell Mr. Knipstrom that he was under arrest.

FINDING: The members entered into their interactions with Mr. Knipstrom lawfully and were duty-bound to do so.

The RCMP has adopted an Incident Management/Intervention Model (IM/IM)²³ that allows for training and supervision of members to ensure compliance with the principles set out in the *Criminal Code* with respect to the use of force. Under the IM/IM, use of force is scalable starting with a verbal request for compliance and increasing use of force to compel compliance up to the use of deadly force. There were seven principles underlying the model that was in place at the time of the incident:

- 1) The primary objective of any intervention is public safety.
- 2) Police officer safety is essential to public safety.
- 3) The intervention model must always be applied in the context of a careful assessment of risk.
- 4) Risk assessment must take into account: the likelihood and extent of life loss, injury and damage to property.
- 5) Risk assessment is a continuous process and risk management must evolve as situations change.
- 6) The best strategy is to utilize the least amount of intervention to manage the risk.
- 7) The best intervention causes the least amount of harm or damage.

It is incumbent upon the member to perform a risk assessment, first determining which of the five behaviour classifications (cooperative, non-cooperative, resistant, combative and potential to cause grievous bodily harm or death²⁴) the subject's actions fall into. Consideration must also be given to the situational factors specific to each incident. These include weather conditions, subject size in relation to the member, presence of weapons, number of subjects and of police, as well as a host of other incident-specific considerations.

Situational Factors

The statements of Constables Mufford and Labbe indicate that they were aware of the following situational factors, which are the starting point of the IM/IM analysis: There were a number of items in the rental store that could have been used as weapons, and a number of persons in the store. Mr. Knipstrom almost immediately became violent. Mr. Knipstrom would not comply with Constable Mufford's commands and continued to

²² Section 270 of the *Criminal Code*. See **Appendix I** for the full text.

²³ See **Appendix J** for a graphical depiction of the IM/IM.

²⁴ For an explanation of the categories of resistance, see **Appendix K**.

attack and stand up after being ordered to stop and to sit down or stay down. While Mr. Knipstrom was shorter than Constable Mufford, he had a stocky build, exhibited an unusual amount of strength and endurance, and appeared to be impervious to pain. The force options used by the members had little to no effect on him.

There were also several situational factors that the members were not aware of. Mr. Knipstrom had been involved in a minor motor vehicle accident just prior to attending the Eze Rent-it Centre. He had a history of illegal drug abuse and, based on the pathologist's findings, Mr. Knipstrom was under the influence of a potentially lethal amount of illegal drugs as he entered the Eze Rent-it Centre. Family accounts confirm that his behaviour changed dramatically when he was under the influence of drugs. He often became "paranoid" and "delusional".

The members were also unaware, not knowing Mr. Knipstrom's identity, that he had been confronted by the police earlier that year and was the subject of multiple CEW deployments. At that time, he was apprehended and taken to the hospital. Hospital records indicate that he was diagnosed with drug-induced acute psychosis and mania. This incident may explain Mr. Knipstrom's apparently unprompted statement "don't Taser me" when he was first confronted by the members at the Eze Rent-it Centre.

Application of Force

The IM/IM sets out various response or intervention options specific to the member's determination of subject behaviour in conjunction with the assessment of the situational factors. Intervention options include officer presence, verbal intervention, empty hand control, intermediate devices, impact weapons, lethal force and tactical repositioning. As diagrammed, in recognition of the dynamic nature of these incidents, the IM/IM is not a linear structure such that one response necessarily leads to another. Rather, the IM/IM is intended to train RCMP members with respect to the need to constantly assess the risk and potential for harm and to respond at an appropriate level.

Verbal interventions and tactical repositioning occur regardless of the level of risk to assist the member in maintaining control of the situation, de-escalating any confrontation and ensuring maximal safety for all concerned. This is consistent with the underlying principles of the IM/IM, which stress the safety of the public and the member, and define the best strategy as the least amount of intervention to manage a risk. Accordingly, the best intervention causes the least amount of harm.

Throughout the management of an incident, a member should be alert to threat cues such as body tension, tone of voice, body position and facial expression to ready them to use an appropriate response option. These threat cues may indicate the potential for a suspect to display more or less resistant behaviours described under the categories of resistance that would justify the use of different response options.

Constable Labbe first observed that Mr. Knipstrom's eyes were extremely wide, and that he stared intently at them as they arrived. She had the impression that he was afraid of

something. Constable Mufford observed that Mr. Knipstrom had “an uncomfortable, worried look on his face.” At one point, Constable Labbe thought that his facial muscles were twitching. Similar observations had been made by the store owner and employees.

Both Mr. McCrea and Mr. Walsh confirm Constable Mufford’s statement that Mr. Knipstrom quickly adopted an aggressive stance. He had his fists clenched. Constable Mufford stated that at that point, he had reasonable and probable grounds to believe that Mr. Knipstrom was causing a disturbance, that he was concerned about Mr. Knipstrom’s mental health and considering an arrest under the *Mental Health Act*, and that he was concerned for the safety of the people in the store. As Mr. Knipstrom had not complied with his commands to stop and to sit on the ground, and looked as though he was getting ready to fight, Constable Mufford approached him and tried to grab his wrist. Mr. Knipstrom moved behind the counter. When Mr. Knipstrom continued to ignore his commands, Constable Mufford stated that he approached him again and tried to grab him, but Mr. Knipstrom pushed him “with unexpected strength” and lunged at him. That is confirmed by Mr. McCrea and Mr. Walsh.

From the early stages of their interaction, Mr. Knipstrom was uncooperative by refusing to comply with the commands issued by Constable Mufford. Mr. Knipstrom adopted an unprovoked combative stance, and Constable Mufford perceived that Mr. Knipstrom was getting ready to fight him. When Constable Mufford responded by resorting to what is known as soft empty hand techniques and attempted to grab a hold of Mr. Knipstrom’s arm, Mr. Knipstrom pushed him back and then lunged at him. Throughout the altercation, it is apparent that Mr. Knipstrom repeatedly ignored commands to stop and quickly moved from non-cooperative to combative behaviours.

a) *Use of OC Spray & Baton*

When Mr. Knipstrom lunged at him, Constable Mufford attempted to push him back, but he did not move. Constable Mufford punched Mr. Knipstrom in the back, as Mr. Knipstrom was throwing “haymakers” at his head. Constable Mufford tried unsuccessfully to take Mr. Knipstrom to the ground, as Mr. Knipstrom continued yelling, punching and grabbing. At that point, Constable Mufford deployed his OC canister in Mr. Knipstrom’s face, but it had no deterrent effect. Constable Labbe subsequently delivered a concentrated stream of OC spray to the side of Mr. Knipstrom’s face, but it also had no effect. Constable Mufford subsequently pulled out and extended his baton and used it to block Mr. Knipstrom’s punches. Constable Mufford stated that some strikes inadvertently hit Mr. Knipstrom on the head or face area, but were aimed at his arms and shoulders. I find that this explanation is reasonable, given the position of Mr. Knipstrom’s head at Constable Mufford’s chest. However, they too had no deterrent effect.

Throughout this series of events, Mr. McCrea and Mr. Walsh confirm that the members were on the defensive and that Mr. Knipstrom continued his pursuit no matter what action was taken. Given the level of combativeness exhibited by Mr. Knipstrom, I find

that it was not unreasonable for the members to use OC spray and a baton in the manner that they did, and that it was in compliance with RCMP use of force policy.

FINDING: It was not unreasonable for the members to use OC spray and a baton in the manner that they did, and it was in compliance with RCMP use of force policy.

b) *Use of the CEW*²⁵

The CEW is currently classified by the RCMP as an intermediate device. At the time of this incident, weapons in this category could be used against subjects who exhibited resistant behaviour or more threatening behaviour, such as being combative. As I noted above, Mr. Knipstrom became combative upon being told by Constable Mufford to stop and to sit on the ground. In addition, other force options were utilized prior to the CEW, which appeared to have no effect. As such, I find that it was reasonable for the members to use the CEW at that stage.

FINDING: It was reasonable for the members to use the CEW when other use of force options (empty hand techniques, OC spray, baton) appeared to have no effect on Mr. Knipstrom.

After using OC spray and a baton to defend himself against Mr. Knipstrom's punches and lunges, and having minimal effect, Constable Mufford chose to deploy his CEW. He pulled Mr. Knipstrom down and towards him so that he was reaching over him and shot the probes into Mr. Knipstrom's back. He stated that they had no effect, possibly because the probes did not penetrate his thick jacket. I find that use to have been reasonable in the circumstances.

FINDING: Constable Mufford's deployment of the CEW was reasonable in the circumstances.

Constable Labbe stated that she believed that the CEW was the best tool available for controlling Mr. Knipstrom. She first deployed her CEW after Constable Mufford's deployment had no effect and Mr. Knipstrom had hit her in the upper chest. She indicated in her evidence at the Coroner's Inquest that Mr. Knipstrom was on the ground when she first deployed the CEW. However, she stated that because of his exhibited strength and resistance to pain techniques, she did not think that they would be able to control him enough to put him in handcuffs at that point. Consequently, she thought that the muscle incapacitation that could be achieved by the use of the CEW was the best option. While one would normally expect an officer to attempt to handcuff a subject immediately while they are on the ground, I find that explanation to be reasonable given Mr. Knipstrom's behaviours.

²⁵ All CEWs used during the incident were Taser® models X-26.

Constable Labbe deployed the CEW in probe mode and believed that it had some effect, as the intensity of Mr. Knipstrom's struggle seemed to lessen. She stated that he started to roll around, attempted to remove the probes, and tried to get to his feet. Constable Mufford stated that he did not see the CEW being deployed, but he heard it. Constable Labbe warned Mr. Knipstrom to stay on the ground and that if he did not, she would Taser him. He continued to try to remove the probes, and she cycled the CEW a second time. She indicates that she was surprised to see that it had no effect, and believed that it is likely because one of the probes had broken contact. Therefore, she changed cartridges. As she did, Mr. Knipstrom started towards the exit, with his back to her. She fired the probes from the new cartridge, but turned off the CEW, as backup officers entered the store. She stated that she did not hear the electrical sounds of the CEW at that point.

FINDING: Constable Labbe's decision to deploy her CEW following Constable Mufford's deployment was reasonable in the circumstances.

When Constable Kardos and other officers arrived, Constables Mufford and Labbe were telling Mr. Knipstrom to lie down on the ground. Mr. Knipstrom continued to yell and scream incoherently. He stood up and walked in the direction of Constable Kardos. Constable Kardos instructed him to stop. Mr. Knipstrom held his hands near his chest, partially clenched. Constable Kardos took out his CEW, pointed it at Mr. Knipstrom and told him to stop. He did not respond to the commands, or change his demeanour in any way, and continued to walk towards Constable Kardos. The member deployed his CEW in probe mode at the centre of Mr. Knipstrom's chest. He appeared to be unaffected. Constable Kardos recycled the CEW, and again it appeared to have no effect. Constable Kardos thought that maybe the CEW was not operating properly and decided to holster it. Constable Mufford again stated that he "heard" a CEW being deployed.

FINDING: Constable Kardos' deployments of the CEW were reasonable in the circumstances

According to these accounts, Mr. Knipstrom was potentially subjected to the CEW for a total of six cycles (one by Constable Mufford, three by Constable Labbe, and two by Constable Kardos). All three members indicate that the CEW appeared to have little to no effect on Mr. Knipstrom. Statements of several witnesses, including civilian witnesses, indicated that they *heard* the CEW being deployed. This supports the members' belief that the CEWs were not functioning properly, either because of the interference caused by Mr. Knipstrom's coat, or some problem with the CEW itself.

Corporal Gregg Gillis, a Regional Use of Force Coordinator for the RCMP, gave a detailed explanation to the Braidwood Inquiry of the noise sometimes heard when a CEW is deployed.²⁶ In summary, he explained that when a probe gets hung up in a piece of clothing, for example, depending on how the person is standing and the

²⁶ See www.braidwoodinquiry.ca/hearings_transcripts/BraidwoodHearingsApr23-09.pdf, pp.19-21.

movement of the clothing, there is an air gap that interferes with the ability of the electrical energy to complete the circuit and to cause neuromuscular disruption. The effects may be intermittent as the clothing moves. RCMP members are taught that a noise that is often described as a clacking sound indicates such an effect, i.e. the opening and closing of the circuit, or arcing (i.e. the electricity jumping across the air gap). The clacking sound indicates that the device is either not effective, or the effects are limited. The officer can assess the effects on the person both based on the sound emitted by the device (or lack thereof) and through visual observations of the person.

Based on the foregoing, I find that it was reasonable for the members to conclude that Mr. Knipstrom was not receiving the full effects of the CEW deployments, if any at all from some deployments. I also find that it was reasonable for Constable Labbe to recycle her CEW, and to attempt to use a second cartridge when the recycling did not appear to fix whatever was causing the CEW to have a limited effect.

FINDING: It was reasonable for the members to conclude that Mr. Knipstrom was not receiving the full effects of the CEW deployments, if any from some deployments.

FINDING: Constable Labbe's decision to recycle her CEW, and to attempt to use a second cartridge when the recycling appeared to have little to no effect, was reasonable in the circumstances.

Another issue arises with respect to a discrepancy between the number of times that Constables Mufford and Labbe state that they deployed their CEWs and the number of times indicated in the download reports. (Constable Kardos' statement of his deployments and the download report are consistent.) Following the death of Mr. Knipstrom, data from the CEW was downloaded on November 24, 2007.²⁷ The download reports indicated the following CEW activations for Constables Mufford and Labbe:

Constable Mufford:

- Seven-second activation ending at 2007-11-19 at 15:32:35.²⁸
- Five-second activation ending at 2007-11-19 at 15:32:41.
- Five-second activation ending at 2007-11-19 at 15:32:49.

Constable Labbe:

- Five-second activation ending at 2007-11-19 at 15:33:39.
- Five-second activation ending at 2007-11-19 at 15:33:48.
- Five-second activation ending at 2007-11-19 at 15:33:57.
- Two-second activation ending at 2007-11-19 at 15:35:15.
- Five-second activation ending at 2007-11-19 at 15:35:27.

²⁷ See report of Staff Sergeant Steve Wade, dated February 27, 2008.

²⁸ The time indicated in the download report indicates the end of a firing cycle, not the beginning.

I note that nothing in the download data indicated that any of the units were used simultaneously.

It is impossible to determine the reason for the discrepancies with any certainty. Constable Mufford's call for backup at 15:35:35 indicates that Mr. Knipstrom had been "Tasered twice". That supports his statement that he had deployed his CEW once and heard Constable Labbe subsequently deploy her CEW. While the time of the RCMP call records appears to be later than that of the clocks of the CEWs, this is likely attributable to the two systems not being synchronized. The RCMP's use of force analysis suggests that the additional deployments may have been the result of a sympathetic nerve response. For example, Constable Mufford continued to hold the CEW in his hand while striking at Mr. Knipstrom. The report states that "his finger would have stayed on the trigger and sympathetic nerve response would allow him to engage the trigger until he dropped the CEW. Constable Mufford would have also been suffering a high heart rate which would impair his ability to maintain cognitive thinking and would impair the use of his fine motor skills." A similar response could also account for the two additional activations of Constable Labbe's CEW. As the CEW did not appear to be affecting Mr. Knipstrom, likely due to interference with the probes, it is likely that the members would not notice any such unintended activations, if that were the case.

Once the members decided to deploy their CEWs, it was incumbent on them to do so the least number of times necessary to control Mr. Knipstrom. In these unique circumstances, given the exhibited strength and endurance of Mr. Knipstrom and the fact that his jacket appeared to be interfering with the effects of the CEW, I find that the number of deployments was reasonable. I note that while the RCMP policy that was in effect at the time of the incident discouraged repeated cycling of the CEW "unless situational factors dictate otherwise,"²⁹ I find that the members reasonably concluded that the situational factors dictated otherwise in this case.

I note that the testing on the CEWs that were used during this incident revealed that one of the weapons, that used by Constable Labbe, was found to be operating above tolerance for the "Main Phase Net Charge" Operating Parameter. The Main Phase Net Charge is the net amount of charge that flows into the subject during the Main Phase. However, the report does not indicate what causal effect that would have. At the Coroner's Inquest, the RCMP's Primary Investigator stated his understanding that the impact from the irregularity would have been negligible, but that he is not able to confirm that scientifically.

²⁹ RCMP Operational Manual 17.7, dated August 8, 2007, section 3.1.3 states: "Multiple deployment or continuous cycling of the CEW may be hazardous to a subject. Unless situational factors dictate otherwise (see IM/IM), do not cycle the CEW repeatedly, nor more than 15-20 seconds at a time against a subject."

Conclusion re Use of Force Options

In the context of using force, RCMP officers are taught that they must satisfy themselves that the subject possessed the Ability, Intent and Means to carry out their threat or actions. In other words:

- A. Does the suspect have, or reasonably appear to have the physical ability (capability) and mobility to cause injury or death to you or others?
- I. Does the suspect's words and/or actions lead you to believe they had the intent to cause injury or death to your or others?
- M. Does the suspect have the means, medium or mechanism (weapon) to deliver the known or perceived threat?

Based on the findings I have made above, the members reasonably satisfied themselves that Mr. Knipstrom had the physical ability to cause injury or death to them and others, that he had the intent to do so (at least to the members), and that he had the means to do so.

As the record of communications shows, these events happened within a six-minute time frame between 3:32 and 3:38 p.m. It is important to recognize that this was a very dynamic event that required decisive action. It must also be remembered that the level of MDMA and MDA found in Mr. Knipstrom's blood indicates that he suffered from a significant degree of intoxication.

Considering all available information and taking into consideration the behaviour displayed by Mr. Knipstrom, I find that Constables Mufford and Labbe had a reasonable fear of grievous bodily harm to them or others that led them to exercise their use of force options in a manner consistent with the policies of the RCMP and the legal statutes.

FINDING: Constables Mufford, Labbe and Kardos exercised their use of force options in a manner consistent with the law and RCMP policy.
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Comment re Perceptions of Civilian Witnesses

Eye witness statements from Mr. Walsh and Mr. McCrea confirmed repeatedly that Constable Mufford was on the defensive from the start of the altercation and that Mr. Knipstrom was the aggressor. Asked whether they felt officers used too much force to deal with Mr. Knipstrom, Mr. Walsh stated:

"No, not at all. No, not at all. You know, when you're told repeatedly to get on the ground before any one has touched you, at all, you're told no less than, three (3), four (4), five (5) times, before anyone has put a hand

on you, to sit down, or get on the ground, or on your knees, and then you charge that officer, and that officer is pepper spraying you, and tells you again to get on the ground, and you don't. And you've backed up - that officer is backed up fifteen (15) to eighteen (18) feet.

In my world, when you get that eighteen (18) or fifteen (15) feet and then he's done that - you - you have to defend yourself, and there were two (2) civilians there, myself and my manager. You got to do what you got to. And ah, ah, he was trying to control the gentleman. He was trying to gain control. He was not trying to beat the gentleman. So, I um, I don't personally have any problem with the force that he used on - on the individual. It was more than justified [*sic* throughout].”

In response to the same question, Mr. McCrea stated:

“No. No, I think the police did what they had to do to do it and when he first came in, when the police first came in [Mr. Knipstrom's] actions were not called for as far as I'm concerned he was putting his hands in front of his face as if he was gonna get beat on and I mean at that point in time officers didn't even have weapons out they were just asking him to calm down. And then he got progressively violent from there, like excessively violent.”

These statements must be deemed objective and factual, as they were made by direct witnesses to the events who had no other interest in the matter. They should be viewed as reasonable renditions of the events that took place. They describe Mr. Knipstrom's behaviour prior to police intervention as abnormal, paranoid and jumpy. They both concur as to Constable Mufford's calm attitude when he first encountered Mr. Knipstrom and then to his progressive use of force to defend himself as Mr. Knipstrom was attacking him.

I acknowledge that among other witnesses to the events, there were several store employees who heard or saw part of the altercation from the shop area. Several of them expressed a view that police use of force may have been exaggerated and that Mr. Knipstrom could have perhaps been restrained by some other method. I note that sitting on Mr. Knipstrom was an alternative method suggested by two such persons. I also note that no such suggestions were made by these witnesses during their testimony at the Coroner's Inquest. In fact, one clarified that Mr. Knipstrom was, in fact, attacking the officer and the officer was defending himself.

In addition, there was a customer who was sitting in his car in front of the store when the incident unfolded. While he was limited in what he could see due to his being in his vehicle outside the store, he expressed a concern that the police response may have triggered the altercation given that there was nothing going on in the store when he was in there. The investigation revealed that these witnesses were not well positioned to see or hear the majority of the altercation or how it started. That combined with the

frailty of human powers of observation, particularly when their perceptions would be affected by potentially unrealistic expectations about what should happen without knowing all that was actually taking place, leads me to find that their perceptions of the events that unfolded cannot be relied on.

Actions of Constable Labbe

Questions were raised by several witnesses during the course of the investigation about the level of action taken by Constable Labbe while Constable Mufford was physically engaged with Mr. Knipstrom. Both Mr. Walsh and Mr. McCrea made comments about what they perceived as a lack of support from Constable Labbe due to her failure to physically engage with Mr. Knipstrom during the altercation when Constable Mufford seemed to be getting overpowered by him. As discussed in detail above, it has been established that Constable Labbe deployed her OC spray and her CEW at Mr. Knipstrom during the altercation. There is, however, no evidence that she physically engaged Mr. Knipstrom at any point during the struggle.

The RCMP looked at the issue of the perceived inaction on the part of Constable Labbe and determined that no Code of Conduct investigation was warranted. I note that the RCMP investigators did not put the issue to either Constable Labbe or Constable Mufford in their follow-up questions. At a minimum, it would have been preferable to deal with this issue with a response from Constable Labbe with respect to the allegation. However, that being said, there is no evidence that the outcome would have been any different had Constable Labbe physically engaged with Mr. Knipstrom. While it later became clear that the CEW was not performing as expected for various reasons and was not having the desired effect, I do not find that it was unreasonable for Constable Labbe to act on her belief that the CEW was the best tool for controlling Mr. Knipstrom, as opposed to physically engaging him.

Restraint Following Arrest

RCMP policy provided direction for the members in terms of their restraint of Mr. Knipstrom. RCMP policy at the time recommended that if “excited delirium”³⁰ (ED) is suspected in a person subjected to CEW deployment, the subject should be removed from the prone position as soon as possible, when safe to do so.³¹ The members observed that Mr. Knipstrom was displaying symptoms that fell under ED, including bizarre and violent behaviour, aggression, non-responsiveness to police presence or

³⁰ “Excited Delirium” was defined as “a medical emergency which may be brought on by stimulant use, psychiatric illness or a combination of both. Subjects may exhibit the following symptoms or behaviour: removal of clothing; bizarre and violent behavior; running in heavy street traffic; hyperactivity; aggression; smashing objects, particularly windows and glass; non-responsive to police presence or verbal intervention; extreme paranoia; incoherent shouting, unintelligible speech, animal sounds; flight behavior; lid lift (eyes opening so wide the whites of the eyes are completely visible); unusual strength; impervious to pain; ability to resist numerous police officers over an extended period of time; overheating (hyperthermia); or profuse sweating or no sweating at all.” RCMP Operational Manual 17.7, dated August 8, 2007, section 2.7.1.

³¹ RCMP Operational Manual 17.7, dated August 8, 2007, sections 3.2.4 and 3.2.5.

verbal intervention, unintelligible speech or animal sounds, unusual strength and impervious to pain. Following his arrest, Mr. Knipstrom was held in the prone position, i.e. face down on his stomach, until medical personnel arrived. He was ultimately maintained in that position until he went into cardiac arrest.

Attempts were made by EHS personnel and the members on scene to remove Mr. Knipstrom from the prone position but his strong resistance and agitation led them to leave him that way to avoid further injuries. EHS personnel indicated that they thought they would cause Mr. Knipstrom more injury by fighting with him trying to get him over on his back. Ms. Seymour noted that “there was no way we could move him.” To the extent that the decision to leave him in the prone position upon leaving the scene of the altercation was that of EHS and medical personnel, the Commission has no jurisdiction to comment. However, to the extent that the subject members were involved in the decision to maintain Mr. Knipstrom in the prone position after his arrest, I find that it was reasonable for them to do so, as they reasonably believed that it would have caused more harm to Mr. Knipstrom to do otherwise.

FINDING: To the extent that the subject members were involved in the decision to maintain Mr. Knipstrom in the prone position after his arrest, it was reasonable for them to do so in the circumstances.

Obtaining Medical Treatment

RCMP policy also provided direction for the members in terms of obtaining medical treatment for Mr. Knipstrom. While not requiring that medical attention be sought in the case of every CEW deployment, RCMP policy at the time required that where ED is suspected in a person subjected to CEW deployment, medical attention should be provided as soon as possible. Furthermore, policy dictated that observations about symptoms associated with ED be relayed to health care personnel as soon as possible.³² As I stated in my report “RCMP Use of the Conducted Energy Weapon (CEW)”³³, given the apparently disproportionate number of people with substance or alcohol abuse issues who come into contact with the police and who have an increased statistical likelihood of becoming an in-custody death statistic, RCMP CEW deployment policy should require that a member must seek medical attention for an individual who has been subjected to a CEW deployment in all circumstances.

Mr. Knipstrom was clearly injured, as he had blood on his head and face. In addition, the members observed that Mr. Knipstrom was displaying symptoms that fell under ED. As such, the members had a duty to obtain medical attention for him as soon as possible. A review of the actions by the members subsequent to the deployment of the CEW confirms that medical attention for Mr. Knipstrom was sought during the altercation, and repeatedly afterwards. At least five requests or inquiries were made by members present at the scene about EHS between 3:35 and 3:47 p.m. on the day of the incident. The medical responders confirm that the members communicated that Mr.

³² RCMP Operational Manual 17.7, dated August 8, 2007, sections 3.2.4 and 3.2.5.

³³ Dated June 12, 2008. Available at www.cpc-cpp.gc.ca/pr/inv/cew-ai/cew_fin_rp-eng.aspx.

Knipstrom was subjected to multiple CEW deployments and OC spray, and had been hit in the head with the baton. Mr. Knipstrom also continued to exhibit his ED symptoms when he was transferred into the care of the medical responders.

FINDING: The members appropriately sought and obtained medical treatment for Mr. Knipstrom.

Conclusion

In conclusion, I find that the actions of the subject members related to the care to be provided to a person injured and/or subjected to a CEW discharge while being taken into custody in relation to Mr. Knipstrom were conducted according to RCMP policy that was in effect at the time of the incident.

In view of all the facts, law and policy reviewed above, I conclude that the RCMP members involved in the events of November 19, 2007, from the moment of initial contact until transfer to the care of emergency health personnel, complied with all appropriate policies, procedures, guidelines and statutory requirements for the arrest and treatment of persons taken into custody.

FINDING: The RCMP members involved in the events involving Mr. Knipstrom on November 19, 2007, from the moment of initial contact until transfer to the care of emergency health personnel, complied with all appropriate policies, procedures, guidelines and statutory requirements for the arrest and treatment of persons taken into custody.

Adequacy of RCMP Policies, Procedures and Guidelines

There were no particular concerns with RCMP policy that arose in relation to the arrest and treatment of Mr. Knipstrom on November 19, 2007. That being said, I have made various recommendations with respect to the RCMP's policy on the use of the CEW, as indicated in the CPC Report on the RCMP's Use of the Conducted Energy Weapon 2001-2007³⁴ (released on June 12, 2008). I also note that the RCMP has since made some changes to its policy, although, as I have noted in my reports, more changes are necessary.

³⁴ Available on the Commission's website at www.cpc-cpp.gc.ca/prr/inv/cew-ai/cew_fin_rp-eng.aspx.

SECOND ISSUE: THE INVESTIGATION – Whether the RCMP members involved in the criminal investigation of Mr. Knipstrom’s death 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.

Analysis – Adequacy of the Investigation

When evaluating the adequacy of a criminal investigation, it is important to consider the steps taken during the investigation. RCMP policy requires that members “will, subject to available resources, priorities and exercise of appropriate discretion, conduct a *Criminal Code* investigation.”³⁵ RCMP members must follow all leads, and avail themselves of additional resources where required. Obviously, there are limits to the extent of the investigation and this depends on the nature of the offence. The proper investigation of any crime requires, in part, that a member:

- a) Pursue all leads provided promptly and effectively.
- b) Interview all possible sources and suspects promptly and effectively.
- c) Request all relevant forensic tests/reports to check for physical evidence and consult with other experts with specialized knowledge.
- d) Follow related RCMP policy and reference other related police technical texts as required.
- e) Maintain good case management of the file, ensuring that properly written notes support the actions taken during the investigation as well as support any subsequent prosecution.

The main objective of a criminal investigation is to gather enough information to be able to form reasonable grounds to believe that certain persons committed an offence.

Initial Steps of the Investigation

Immediately after the ambulance left with Mr. Knipstrom, Constable Bellia locked down the store area, instructing the employees to stay in the shop area away from the scene. Three RCMP members were assigned to maintain scene security throughout the onsite investigation. As Constable Abrahamson’s notes indicate, access to the scene was restricted to forensic, investigation and supervisory personnel only. Their identities and time of arrival and departure were noted. I am satisfied from the evidence that the scene was properly secured following the incident.

FINDING: The scene was properly secured.

The Chilliwack General Investigation Section took charge of the initial investigation steps, which included securing the scene, identifying immediate witnesses, taking their

³⁵ RCMP Operational Manual, *Criminal Code* Offences, Chapter IV.I.C.I.

statements and seizing evidence. At the request of Sergeant Manj, the Upper Fraser Valley Regional District Forensic Identification Section was contacted and Corporal Mike Vander Schaaf attended the scene at 4:05 p.m. Corporal Vander Schaaf began his investigation by gathering evidence, and taking photographs. The scene was videotaped by Corporal Dean Kraus of the Forensic Identification Section.

Staff Sergeant Gerry Falk attended the scene at approximately 3:45 p.m. At that time, the members were holding Mr. Knipstrom on the ground. He returned to the detachment at 4:00 p.m. At approximately 4:30 p.m., he was advised that Mr. Knipstrom was not breathing and he told Sergeant Dixon to call the Integrated Homicide Investigation Team³⁶ (IHIT) and get them to the scene in case Mr. Knipstrom did not survive. That was done in accordance with RCMP policy that requires that an “independent” investigation be conducted immediately when someone being arrested or in RCMP custody/care is seriously injured or dies.

At approximately 4:41 p.m., Sergeant Dixon requested that dispatch call out IHIT. However, it was subsequently determined that it would not be appropriate to use the local IHIT due to concerns about impartiality, and so the “E” Division Major Crime Unit was assigned to take over the investigation at approximately 5:55 p.m. An integrated team of investigators from the “E” Division Major Crime Unit, the Surrey IHIT, the Abbotsford Police Department, and the Vancouver Island Integrated Major Crime Unit was assembled.³⁷ The Forensic Identification Section was authorized to continue with their examination of the scene. At that point, only photographs had been taken.

The integrated investigative team arrived in Chilliwack at approximately 9:00 p.m. After a debriefing at the detachment, the team attended the scene. At approximately 12:50 a.m., Corporal Vander Schaaf debriefed the investigative team. Scene control was turned back over to the store owner at approximately 1:20 a.m. on November 20, 2007.

FINDING: The appropriate personnel were dispatched to the scene at the appropriate times.

FINDING: An “independent” investigation team was assembled in a timely manner, in accordance with RCMP policy.

Major Case Management

The Major Case Management (MCM) model 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.”³⁸ MCM is managed by the Major Case Management Team (MCMT) illustrated by the

³⁶ IHIT is responsible for investigating homicides, police involved shootings and in-custody deaths. IHIT works out of two locations—the City of Surrey, and the City of Chilliwack.

³⁷ For a list of the members of the integrated investigation team, see **Appendix B**.

³⁸ See **Appendix L** for the complete MCM policy.

“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.

The command triangle roles were assigned to members of the “E” Division Major Crime Unit. Staff Sergeant Randy Hundt assumed the role of Team Commander and assigned Sergeant Matthew Toews as Primary Investigator and Corporal Karina Desrosiers as File Coordinator. Corporal Jennifer McDonald later took over the role of File Coordinator. They were all trained and qualified members with experience in serious crime investigation.

All members of the investigation team completed an impartiality questionnaire developed by the RCMP to insure the highest possible level of objectivity by the members involved in such a case.³⁹ This procedure calls for full disclosure of any relationship past or present investigators may have or have had with members involved in the incident under scrutiny. All questionnaires are reviewed by the Team Commander in order to decide if an investigator should be excluded from the team on the ground that there may be a perception of conflict of interest on his part.

Although some members had had contacts in the past with members of the Chilliwack Detachment during training or investigations, none were so significant as to present a risk of conflict of interest and no member of the investigation team was acquainted with Constables Mufford, Labbe or Kardos.

My review of the investigation revealed that it was managed in accordance with the MCM principles. This investigative method ensures an evidence-based approach, enhancing objectivity and efficiency of the command structure.

FINDING: The investigation was managed in accordance with the Major Case Management principles.
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Witnesses

Statements were taken from the civilian witnesses on scene immediately following the incident. A number of those statements were started prior to Mr. Knipstrom going into cardiac arrest. Between November 19th and 22nd, the investigators conducted over 60 interviews with police and civilian witnesses, and collected physical evidence. The neighbourhood was canvassed in an effort to locate additional witnesses and video surveillance evidence that could shed more light on the events leading up to the altercation. There is no indication that the investigators failed to locate or interview the relevant witnesses in a timely manner.

³⁹ See **Appendix M** for a sample questionnaire.

FINDING: All of the relevant witnesses were interviewed.

Member Statements

As part of their duties, police officers are required to document their involvement in events which occur as a result of their employment and to provide that documentation to their employer. Such documentation must also be disclosed by operation of law to defence counsel or as directed by the courts with respect to judicial processes.

As I noted in the Ian Bush matter:⁴⁰

“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. 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. 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.”

Immediately following the incident, Constable MacIntosh was instructed by Sergeant Manj to return to the detachment with Constables Mufford and Labbe to take their statements. He reported that there was no discussion of the incident during that time, just some discussion of their well-being. He took photographs of and seized the

⁴⁰ Commission File No. PC-2006-1532, November 27, 2007.

clothing of Constable Mufford and obtained a taped statement from Constable Labbe. Constable Mufford provided his statement in the form of a written Duty Report that same day, which notes a time of 20:16; he also provided a revised report on December 21, 2007. There is no indication of whether or not Constable MacIntosh requested a taped statement at that time (which would have allowed for questions) or why Constable Mufford instead chose to provide his statement in written form. After their initial reports, both Constables Mufford and Labbe opted to provide only written statements through their legal counsel, as they were entitled to do. The record indicates that investigators attempted to set up face-to-face interviews with Constables Mufford and Labbe, which were denied. However, the investigators did put additional questions to the members, to which they provided written responses.

While it would have been preferable to have the benefit of a taped interview/statement from Constable Mufford, and a further taped statement from both members to address any follow-up questions (which would inevitably have resulted in more fuller information and clarification from both), I find that the investigators made reasonable efforts to obtain same and that the members were within their rights to deny those requests.

Written and audio statements were obtained from the remaining members who attended the scene during the incident, no matter how minor their involvement.

FINDING: The investigators acted reasonably in their efforts to interview and take statements from the involved members.

Propriety of Involvement of the Staff Relations Representative

Incidents of this nature continue to bring into question the propriety of the involvement of the Staff Relations Representative (SRR). Duty to account statements related to serious incidents are at times taken following a meeting between the SRR and the member involved. That practice can sometimes call into issue the credibility of the statements that are then given.

Corporal Baier, who was at the scene of the incident after Mr. Knipstrom had been taken to the ground and was being restrained, met with Constables Mufford and Labbe in his role as SRR. He notes the following in his statements about what occurred on the day of the incident:

“[...] in my capacity as Staff Sub, Staff Relations Representative for the Chilliwack area, ah, I spoke ah, to Constable MUFFORD and Constable LABBE. No conversation occurred regarding the incident. The entire conversation dealt with their well-being. Um, who was at home waiting for them that night? How would they get home? [...] Superintendent BRINE ah, indicated that ah, he was uncomfortable with the fact that I may be a potential witness and I was in the room talking to some members that were directly involved in the use of force. Spoke briefly about the role of the Staff Relations Representative and also

spoke briefly about the members duty to account, and then went back into the room and advised the members that ah, reviewed the duty to account. What the expectations of them were.

Superintendent Brine's notes confirm that at approximately 5:25 p.m. he had a discussion with Corporal Baier to clarify that he was not discussing the incident with the members. Corporal Baier indicated that his rationale for meeting with the involved members was his concern for their emotional well-being. He also indicated that he did not discuss any details of the incident with the involved members on the night of the incident.

Investigative basics are that witnesses should be separated immediately to remove the potential opportunity for them to tailor their evidence or to concoct a version of events. Meetings such as the meeting with Corporal Baier concern me because of the potential for inappropriate influence or interfering with an investigation. I note that Constable Labbe's statement was taken prior to her meeting with the SRR. However, the first report made by Constable Mufford notes a time that follows the meeting with the SRR. I am concerned that the meeting could have influenced Constable Mufford's statement, and about the fact that Constables Labbe and Mufford were in the same room prior to Constable Mufford completing his statement. It is a further concern that Corporal Baier was a witness to some of the events that took place, albeit the events following Mr. Knipstrom's initial restraint.

SRR attendance and discussion with the members involved prior to the members completing statements with respect to serious incidents could result in filtered information being provided to the investigator. The further danger is the potential for the appearance of interference, or at worst actual interference, with an ongoing investigation. To paraphrase an old maxim, an impartial investigation must not only be done, it must be seen to be done. This is particularly true when the police are investigating the police. The investigator is at liberty to conduct the interview of the involved member without the SRR potentially having first discussed the facts of the situation with the member. I find that an SRR should not have been allowed to meet alone with the members prior to the completion of the duty to account statements.

RCMP guidelines do contemplate the duty to account statement. The RCMP "E" Division Internal Investigations Guidelines⁴¹ state:

"All members are accountable to the RCMP for their actions during the course of their duties. Included in this accountability is an obligation to provide relevant information when requested.

This duty to account should not be confused with providing a voluntary statement to an investigator. The duty to account could simply encompass the completion of standard paperwork such as form 1624 or answering basic questions

⁴¹ "E" Division Professional Standards Unit Internal Investigation Guidebook (Revised November 2007), p. 48.

pertaining to an incident that could be expected from any supervisor or fellow member in other investigations. The request for a voluntary statement made to a member subject of a Part IV investigation should be separate and distinct from an investigator's request for information to satisfy the duty to account or the RCMP's "right to know". The voluntary statement may encompass more detailed questioning by the investigator pertaining to the alleged incident."

However, this explanation of some of the rights and obligations of implicated members is aimed at investigators, not at the implicated members. The requirements of the duty to account statement must be clear to all RCMP members. That is not currently the case.

If there is a need to explain a member's obligation to complete the statement, that explanation would more appropriately be given in the presence of the investigator. However, the issue of the duty to account statement has arisen previously and I have recommended the need to address the propriety of the involvement of the SRR in that context. In my decision in the Ian Bush matter,⁴² my recommendation and the response of November 2, 2007 from the RCMP Commissioner were as follows:

"Recommendation

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

Commissioner Elliott responded:

"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."

To date, it has not been confirmed with the Commission that this recommendation has been implemented.

FINDING: An SRR should not have been allowed to meet alone with Constable Mufford prior to him completing his duty to account statement, or with either Constable Mufford or Constable Labbe prior to the arrival of the investigation team.

RECOMMENDATIONS

1. If the protocol of SRR attendance is to continue, the RCMP should formalize the attendance of the SRR to provide clear policy and guidance to ensure that the SRR knows the bounds of his or her involvement and the required protocols with respect to such attendance.

2. I reiterate my recommendation in the Ian Bush decision (November 2007)

⁴² Commission File No.: PC-2006-1532, November 27, 2007.

and St. Arnaud decision (March 2009) that “[t]he RCMP develop a policy that dictates the requirement, timeliness and use of the duty to account that members are obliged to provide.”

Appropriateness of assigned interviewers

As noted above, the investigation started immediately following the incident by officers at the scene, which was approximately two hours before investigators from the Major Crime Unit were assigned to the matter. This raises the question of the role of on-scene RCMP members in major cases involving the investigation of police conduct. In the Ian Bush decision, I recommended that the RCMP develop policy to provide direction to on-scene RCMP members in such cases, including the need to ensure real and perceived impartiality. The Commissioner agreed with that recommendation. However, I note that my Final Report in that matter was released subsequent to the incident involving Mr. Knipstrom.

This matter was further complicated in that it was not determined that the investigation would be conducted by a special investigation team until after Mr. Knipstrom went into cardiac arrest. However, at a minimum, steps should have been taken to avoid any real or perceived lack of impartiality from the beginning.

a) Rank of Interviewer

I have recently commented on the inappropriateness of a member involved in an incident being interviewed by a member who is of the same or lower rank.⁴³ It risks the potential for intimidation of the investigator by the higher ranking subject member. The possibility also exists that the investigator could potentially be supervised at a later date by the subject member, thereby creating the potential for a junior ranking investigator affording the higher ranking subject member preferential treatment in favour of future considerations. This potential conflict of interest must be taken into consideration. However, where a criminal investigation is managed under the MCM model, it is sufficient for the Team Commander to be of a higher rank than that of the subject member. I note that once the MCMT was formed, the Team Commander was of an appropriate higher rank.

However, prior to the formation of the MCMT, many of the subject members were interviewed. Unfortunately, a number of those interviews were conducted by another member of the same or lower rank. For example, Constable Labbe was interviewed by Constable MacIntosh. Constable MacIntosh was also assigned to interview Sergeant Preto. While this type of interviewing technique did not have any negative impact on the outcome, the potential did exist for a conflict of interest (either real or perceived). Where the MCM model has not been employed, interviews should be conducted by a member who is at least one rank higher than that of the subject member.

⁴³ See the Commission's report on Police Investigating Police, available at www.cpc-cpp.gc.ca/prr/rep/rev/chair-pre/pipR/pip-pep-finR-0908-eng.aspx.

FINDING: It is inappropriate for subject members to be interviewed by members of the same or lower rank in cases where the MCM model has not been employed.

RECOMMENDATION: All interviews of members involved in serious incidents should be conducted by members of a higher rank in cases where the MCM model has not been employed.

b) Number of Interviewers

I commented in the Police Investigating Police report that assigning a single investigator to a member investigation is a particular concern. Interviewing anyone involved (particularly the subject member) is best conducted by a two-member team. Prior to the formation of the integrated investigative team, Constable Labbe was interviewed by a single member, who, as noted above, was of the same rank as her. Ideally, two officers will conduct such interviews. I note that two members did generally conduct the witness interviews once the integrated investigative team was in place.

RECOMMENDATION: All witness interviews in serious incidents should be conducted by a two-member team.

c) Connection of Interviewer to the Incident

I note that Constable Kardos was instructed to interview the two main civilian witnesses immediately following the incident; however, given that he was involved in the application of force against Mr. Knipstrom, I find that it was inappropriate for Constable Kardos to conduct those interviews. While Mr. Knipstrom had not gone into medical distress at the time of the interviews, the incident was sufficiently serious and there were a sufficient number of other members available that it would have been more appropriate for another member who was not involved in the incident to have conducted those interviews.

RCMP policy specifies that a member shall not investigate a complaint where that member may be in a conflict of interest situation.⁴⁴ Section 37 of the *RCMP Act* also requires that members avoid actual, apparent, or perceived conflict of interest. While the term “conflict of interest” is not defined, it should be clear that any member involved in the incident or who knows the subject members would be in a conflict of interest to take part in the investigation. It was a conflict of interest for Constable Kardos to interview any of the witnesses to the incident.

FINDING: It was inappropriate for Constable Kardos to be assigned to interview the two main civilian witnesses, as he was involved in the incident and was in a conflict of interest situation.

⁴⁴ RCMP Administrative Manual, Commissioner’s Standing Orders, Section 9.

d) Summary

Ideally, no interviews would have been conducted before the formation and arrival of the MCMT. However, given that the decision to call in the integrated team was not made until after Mr. Knipstrom went into cardiac arrest, the interviewers should have been persons who had no involvement in the incident, and who were ideally of a higher rank than that of the subject members. In addition, interviews of anyone involved (particularly the subject members) are best conducted by a two-member team.

CEW Testing

A CEW Download Report, dated November 24, 2007, was prepared by Staff Sergeant Steven Wade of the Langley RCMP Detachment, based on data downloaded from the three CEWs used in the incident. The details of that report are referred to in the use of force analysis set out above.

I note that a decision was not made to send the CEWs for independent testing to determine their functionality until nearly a year following the incident. Such testing looks at operating parameters such as the voltage, current and pulse duration. At the time of the incident, RCMP policy provided that CEWs were to be tested when:

1. someone is seriously injured or dies when a member resorts to lethal force because a CEW was ineffective or malfunctioned;
2. a member is seriously injured or dies as a direct or indirect result of a CEW malfunction; or
3. any incident in which it is in the public interest or the member's interest to determine the working state of a CEW.⁴⁵

The first and second situations clearly do not apply in the circumstances, as lethal force was not used and no member was seriously injured. The third situation arguably applied, but involves the exercise of discretion. In my view, it would have been preferable to have immediately sent the CEWs for independent testing. However, the RCMP's policy at the time was inadequate and did not provide much guidance to investigators. An example of the policy's inadequacy is the lack of definition of "malfunction", and the fact that it would be difficult for a member to determine whether an injury or death occurred as a result of a malfunction absent testing. In addition, does "indirect result" of a malfunction mean anytime a CEW is deployed in those situations? Finally, there is no guidance as to what type of situations would generally fall under the public's interest.

As it happened, policy changes were in the works as of November 2008, and the investigators were instructed to have the CEWs pulled and tested. Several months later, the new policy came into effect, which provides that all CEWs be sent for independent testing when an incident involves injury requiring medical treatment or

⁴⁵ RCMP Operational Manual, dated August 8, 2007, section 9.1.

death proximal to the use of a CEW. Testing is now an automatic requirement for in-custody deaths involving the use of a CEW.

FINDING: The RCMP policy regarding the testing of CEWs that was in place at the time of the incident was inadequate. However, I am satisfied that the change in RCMP policy has clarified when the testing should be done where a CEW has been involved in an in-custody death situation.

Investigative Theory and Examination of Mr. Knipstrom's Background

While trying to understand what had led to the aggressive behaviour displayed by Mr. Knipstrom, investigators examined his past encounters with police and interviewed his friends and relatives. This is not uncommon in an investigation that strives to explain an apparently unprovoked attack by a person on a police officer preceded by a bizarre behaviour. Investigators were able to profile his mental health as well as his drug and alcohol consumption. I note that this must not be done with the objective of laying responsibility of the consequences of the altercation on Mr. Knipstrom, nor should it appear to be. In my view, the investigators remained within the appropriate limits for collecting and using such information to help explain Mr. Knipstrom's behaviour that day.

As indicated above, a number of members involved in the incident expressed an opinion that Mr. Knipstrom was displaying symptoms consistent with ED. As a result, the investigators looked at the role ED may have played in the incident from very early on. (I note that the RCMP has since removed any references to ED from their policies.) The RCMP communicated their theory that ED may have played a large role in the incident to the coroner's office, provided information on new or specialized examinations that were available to determine a possible ED-related death, and provided the names of several American individuals experienced in the field.

The investigative file indicates that Sergeant Toews appeared to recognize that confirming whether Mr. Knipstrom was experiencing ED would add to the existing evidence but that "[c]ategorizing the behaviour exhibited by [Mr. Knipstrom], would not have an impact upon whether or not the action taken by the responding members was appropriate." I find that the investigators did not place an inappropriate amount of focus on a diagnosis of ED as a way to explain Mr. Knipstrom's death.

FINDING: The extent to which the investigators looked into Mr. Knipstrom's background and used that information was reasonable and appropriate in the circumstances.

FINDING: The extent to which the investigators explored the role of excited delirium in the death of Mr. Knipstrom was not unreasonable in the circumstances.

Communications with the Coroner Prior to Mr. Knipstrom's Death

It is in the public interest that sudden or unexplained deaths are investigated, and in the case of an in-custody death, a coroner's inquest is mandatory in the Province of British Columbia.⁴⁶ The coroner is responsible for determining the identity of the deceased and ascertaining the facts surrounding a death, i.e. how, when, where and by what means the deceased died. It is a fact-finding, not fault-finding, process. Police officers are sometimes required to assist, by making reports or carrying out enquiries. Police officers also have a duty to investigate any suspicion that a criminal offence may be linked to or caused the death.

Police officers are required to report the facts and circumstances surrounding the death of any person who dies while in their custody, or as a result, directly or indirectly, of an act of a police officer performed in the course of his or her duty.⁴⁷ Consequently, the RCMP had a duty to report the facts and circumstances of the incident with Mr. Knipstrom to the coroner upon his death. In this case, the RCMP chose to report the incident to the coroner prior to Mr. Knipstrom's death.

On November 20, 2007, after learning that Mr. Knipstrom's condition had taken a turn for the worse, lead investigator Sergeant Toews contacted the coroner's office to advise them that Mr. Knipstrom may not survive the night. He was advised by the coroner's office that it was not necessary to provide notice that a subject may expire. Sergeant Toews went on to discuss the ED implication in the case and inquire about the possibility of conserving the subject's brain for examination of ED indicators. Coroner Dekkers responded that he would look into the science behind the request and determine the best course of action at that point. On November 23rd, Sergeant Toews spoke to Coroner Doug Richmond and discussed the issue of possible post mortem examinations if Mr. Knipstrom expired, including possible brain examination by an American ED specialist. He arranged to send Mr. Richmond background material on this issue for him to review and consider.

Although input from the police is very important to the coroner's work, there is always a danger that such communications may be perceived as an undue attempt to influence the coroner in its findings. However, in my view, Sergeant Toews' actions did not interfere with the independence of the coroner's office in terms of determining what examinations to conduct and were not unreasonable in the circumstances.

FINDING: The RCMP's communications with the coroner's office prior to Mr. Knipstrom's death were not unreasonable or inappropriate in the circumstances.

⁴⁶ Subsection 18(2) of the *Coroners Act* of British Columbia.

⁴⁷ Subsection 3(2), *supra*.

Independent Officer Review

The circumstances related to the death of Mr. Knipstrom were also reviewed as part of an Independent Officer Review (IOR). An IOR is an internal administrative review. I note that in my report on the Police Investigating Police, I recommended that administrative reviews be undertaken in all cases of serious injury, sexual assault, or death. The mandate of the reviewer is to conduct a fact-finding inquiry to ensure that:

- a thorough, professional and unbiased investigation is conducted;
- training, officer safety skills, approved procedures and tactics and policy are appropriate and were followed;
- appropriate information has been provided to agencies such as Crown counsel and/or the Coroner's Service; and
- the member(s) conduct is in accordance with the *RCMP Act* and the *RCMP regulations*.

An initial review determined that the investigation was conducted in a thorough, professional and unbiased manner. However, a final review was to be completed following the Coroner's Inquest, and I understand that that is underway.

Review by an Outside Agency

In previous cases involving an in-custody death, an outside police agency has been asked to conduct an external independent review of the death and to comment on whether a thorough, professional and unbiased investigation had been conducted by the RCMP.⁴⁸ That was not done in this case, and there is no indication in the record of the reasons why an outside review was not performed. I make no findings or recommendations of whether the RCMP should do so, as I have recently stated my position that such investigations be conducted by an outside agency in the first instance.⁴⁹

No Review by Crown Counsel

In British Columbia, the police require the approval of Crown counsel before laying charges. One of the roles of Crown counsel is to *approve* and conduct, on behalf of the Crown, all prosecutions of offences in the Province.⁵⁰ In determining whether a charge is to be approved for prosecution, the substantial likelihood of conviction standard is used. A substantial likelihood of conviction exists where the prosecutor is satisfied that "there is a strong, solid case of substance to present to the court."⁵¹

⁴⁸ For example, in the death of Mr. Kevin St. Arnaud. See the Commission's report found at www.cpc-cpp.gc.ca/pr/rep/rev/chair-pre/stArnaut-finR-0809-eng.aspx.

⁴⁹ See the Commission's August 11, 2009, news release on the Police Investigating Police report, found at www.cpc-cpp.gc.ca/nrm/nr/2009/20090811-eng.aspx.

⁵⁰ See section 4 of the *Crown Counsel Act* of British Columbia.

⁵¹ See www.ag.gov.bc.ca/prosecution-service/crim-court-proc/adult.htm.

I note that there had been a practice in the past for the RCMP to sometimes forward a Report to Crown Counsel without making recommendations with respect to charges, with the idea that Crown counsel could make an impartial determination. However, I understand that that practice is no longer accepted by Crown counsels in British Columbia and that they will not deal with reports that do not make a recommendation with respect to whether or not to lay charges.

Depending on what information is revealed by the investigation, the RCMP may submit a Report to Crown Counsel. RCMP investigation guidelines provide that “[i]f there is evidence to support a prosecution, consult Crown counsel.”⁵² The investigators in this case chose not to submit a Report to Crown Counsel. However, I find that there was no evidence to support a prosecution and that it was reasonable not to send it to Crown counsel given the high standard for the approval of charges.

FINDING: There was no evidence to support a prosecution and it was reasonable for the RCMP not to submit a Report to Crown Counsel for review.

Timeliness of Investigation

Another area of concern regarding the investigation is the amount of time it took to complete the investigation. In my Police Investigating Police report, I set out a baseline definition of what constitutes a “timely” response by the investigative team. The key features of appropriate timeliness of member investigations include the following:

1. Member investigation undertaken and completed in six months (or less).
2. Investigations, if possible, should not exceed one year.⁵³
3. Immediate dispatch of necessary personnel where timely response required.

The key aspects of the investigation were completed within six months of the incident. The physical evidence gathering part of the investigation was completed within a 24-hour period. Expert reports were submitted within the generally accepted time frame for those types of analysis. By the end of April 2008, the only outstanding expert report was the pathologist’s report, which was not within the RCMP’s control and was received on September 3, 2008. The Knipstrom family was briefed on the investigation on October 14, 2008, and told that the investigation ruled out any criminal behaviour on the part of the subject members. While some “housekeeping” was performed with respect to the investigation file after that date, the investigation was, for all intents and purposes, concluded. I am satisfied that there was no unreasonable delay in the investigation, and that it was completed in a timely manner.

⁵² RCMP Operational Manual II.1 F.2.

⁵³ This is particularly important given that when an investigation of a member takes more than one year to complete (regardless if a criminal charge is ultimately laid), section 43(8) of the *RCMP Act* then prohibits any Code of Conduct action against the offending member.

However, I note that there was a delay in briefing the three members who were the primary subjects of the investigation—Constables Mufford, Labbe and Kardos. Their briefing was held on December 10, 2008, nearly two months after the briefing of the Knipstrom family. There is no explanation given in the record for the delay, although there was some indication that at least one member (Constable Mufford) had been told by the Team Commander, Staff Sergeant Hundt, some months earlier that he was cleared of any wrongdoing. It is not clear whether the other members received a similar communication. I would like to emphasize the importance of notifying not only the family but the subject members of the results of the investigation as early as possible to allow them to deal with the outcome (good or bad) and to move forward. This is particularly critical when an investigation questions the propriety of a member's conduct that has either directly or indirectly led to serious injury or death.

I also note that the Final Report, while drafted several months prior, was not finalized until March 11, 2009. I understand that where a conclusion has already been reached that there has been no criminal wrongdoing, and where no report is being submitted to Crown counsel, there may be a tendency to give the Final Report a lower priority. However, it is important that the Final Report be completed in a timely manner to, at a minimum, assure the public that the matter has been treated as a priority and that the investigation team was diligent in their efforts. Delays in the delivery of the final investigation report, which officially signifies the conclusion of the investigation, can undermine the credibility of the investigation and the report.

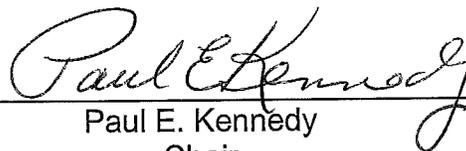
<p>FINDING: There was no unreasonable delay in the RCMP's investigation of Mr. Knipstrom's death and the investigation was completed in a timely manner.</p>

CONCLUSION

It is difficult for both the police and the public to critically examine violent encounters between the police and a member of the public. Regardless of the investigation's findings, this case (and others like it) illustrates the growing problem that drug-induced behaviour presents to frontline police officers in this country. Although Constables Mufford and Labbe had limited service as RCMP members at the time of the incident, in my view their levels of experience and training did not contribute to the events that led to Mr. Knipstrom's death. In any event, given the level of drugs in his system at the time, we will never know whether Mr. Knipstrom would have lived had he not had such an encounter with the police that day.

Pursuant to subsection 45.43(3) of the *RCMP Act*, I respectfully submit my Public Interest Investigation Report and, accordingly, the Commission's mandate in this matter is ended.

NOV 25 2009

A handwritten signature in cursive script that reads "Paul E. Kennedy". The signature is written in black ink and is positioned above a horizontal line.

Paul E. Kennedy
Chair

APPENDIX A – Condensed Timeline of Events Related to the Arrest

November 19, 2007

Time	Event
<i>The Incident – November 19, 2007</i>	
Approx. 14:45	The hit and run occurs on Yale Road at Airport Road in Chilliwack, B.C.
Approx. 15:00	Mr. Knipstrom arrives at the Eze Rent-it Centre to return a wood chipper.
Time unknown	Mr. and Mrs. A report the hit and run to the Chilliwack RCMP Detachment.
Time unknown	Ms. B speaks to Russell Walsh about the hit and run driver in his store. The conversation is apparently overheard by Mr. Knipstrom.
15:02	Mr. Knipstrom pays for his rental (damage deposit is returned on his father's credit card).
15:03	Mr. Knipstrom calls to his father to report on bringing back the wood chipper.
15:08	Mr. Knipstrom calls his father to ask him to pick him up at the rental centre.
	Mr. Knipstrom tries to go upstairs into the office space. Mr. Walsh physically prevents him from doing so. Mr. Walsh instructs his employee, Mr. McCrea, to call the police.
15:17	Mr. McCrea calls the RCMP to report a disturbance.
	Mr. Walsh remains on stairs to prevent Mr. Knipstrom from moving up.
15:26	Ms. B reports hit and run to the RCMP.
15:30	The RCMP calls Mr. McCrea back to see if police presence is still needed. Mr. McCrea confirms that assistance is needed. RCMP dispatch makes request for members to attend.
15:32	Constables Mufford and Labbe attend the Eze Rent-it Centre.
	Constable Mufford attempts to engage Mr. Knipstrom in a conversation. A struggle ensues. Constable Mufford deploys his CEW. Struggle continues. Constable Labbe deploys her CEW.
15:34	Constable Mufford requests backup.
15:35	Constable Labbe changes cartridges and deploys her CEW.
15:35	Constable Labbe is heard on the air saying "... floor right now."
15:35	Constable Mufford asks for EHS with an indication that the subject has been "Tasered" twice and requests backup again.
15:36	Dispatch calls EHS – Code 3, indicates use of CEW.
	Constable Labbe indicates Code 3.
	Backup officers arrive.
	Constable Kardos deploys his CEW.
	Constable Abbott takes Mr. Knipstrom to the ground. Other officers assist in restraining and arresting Mr. Knipstrom.
15:38	Corporal Baier advises dispatch that there are enough members on

Time	Event
	scene, and confirms that they called EHS with a Code 3.
	Various inquiries are made by members to dispatch and dispatch to EHS confirming EHS en route.
Approx. 15:40	First medical responders—fire department—arrive at the scene.
15:52	Paramedics arrive at the scene.
16:05	Forensic Identification Section attends scene to begin examination.
16:15	Mr. Knipstrom is admitted to the hospital.
16:25	Mr. Knipstrom goes into cardiac arrest.
16:41	Request is made for dispatch to call in IHIT.
16:54	Breathing and heartbeat are restored to Mr. Knipstrom, but he remains in critical condition.
17:55	Decision is made to have “E” Division Major Crime Unit take over investigation to avoid issues of bias and partiality.
Approx. 21:00	Independent investigation team arrives in Chilliwack to take over the investigation.
	Forensic Identification Section briefs investigative team.
01:20	Scene control is turned back over to the store owner.

APPENDIX B – RCMP Members and Related Persons Involved¹

RCMP Members Present During the Altercation with Mr. Knipstrom on November 19, 2007

Person	Detachment	Position	Role
Constable Chad Mufford	Chilliwack	General Duty	First member on scene (with Constable Labbe). Used physical force against Mr. Knipstrom, including soft and hard hand techniques, OC spray, ASP baton and CEW.
Constable Annie Labbe	Chilliwack	General Duty	First member on scene (with Constable Mufford). Used OC spray and CEW.
Constable John Kardos	Chilliwack		Responded to call for backup. Used CEW on Mr. Knipstrom.
Constable Bruce Abbott	Chilliwack	NCO i/c Traffic Section	Responded to call for backup. Took Mr. Knipstrom to the ground.
Constable Joe Bellia	Chilliwack	Serious Crime Unit	Responded to call for backup. Assisted with the arrest of Mr. Knipstrom. Under instructions from Sergeant Manj, he placed Mr. Knipstrom under arrest pursuant to the <i>Mental Health Act</i> .
Corporal Wayne Baier	Chilliwack	NCO i/c Team 2	Responded to call for backup. Assisted with the arrest of Mr. Knipstrom. Held his legs so that he could not kick.
Corporal Ron Elliott	Chilliwack	Serious Crime Unit	Responded to call for backup. Was present during the arrest.
Constable Martin Godard	Chilliwack	General Duty	Attended the scene after Mr. Knipstrom was taken to the ground, and videotaped the arrest.
Constable Cynthia Kershaw	Chilliwack	General Duty	Responded to call for backup. Assisted in restraining Mr. Knipstrom during the arrest. Accompanied Mr. Knipstrom in the ambulance while being transported to the hospital. Was waiting with Mr. Knipstrom when he went into cardiac arrest.

¹ Positions and ranks noted as at the time of the events.

Sergeant Suki Manj	Chilliwack	Serious Crime Unit	Responded to call for backup. Assisted in restraining Mr. Knipstrom during the arrest.
Constable Tara Mason	Chilliwack	General Investigation Section Investigator	Responded to call for backup. Was present during the arrest.
Sergeant Edward Preto	Pacific Region Training Centre, Chilliwack	Training Coordinator	Responded to call for backup. Assisted with the arrest of Mr. Knipstrom, including the application of handcuffs.
Constable Pam Skelton	Chilliwack	General Duty	Met Constable Kershaw and Mr. Knipstrom at the hospital. Was waiting with Mr. Knipstrom when he went into cardiac arrest.

Other RCMP Members and non-RCMP persons who attended after the arrest of Mr. Knipstrom

Person	Detachment	Position	Role
Constable Adam MacIntosh	Chilliwack	General Investigation Section Investigator	Attended the scene after Mr. Knipstrom was restrained. Interviewed several members involved in the incident and collected exhibits from them.
Corporal David Finnen	Chilliwack	Detach/District Patrol NCO	Directed Constables Mufford and Labbe to respond to call. Attended the scene after Mr. Knipstrom was restrained. Attended the hospital and was present when Mr. Knipstrom went into cardiac arrest.
Constable Tracey Abrahamson	Chilliwack	General Duty	Provided scene security and security at the hospital.
Sergeant Rob Dixon	Chilliwack	Area Field Officer	Attended scene after Mr. Knipstrom was restrained.

RCMP Members from the Investigation Team

Person	Detachment	Position	Role
Staff Sergeant Randy Hundt	Vancouver	NCO, "E" Division, Major Crime Unit	Team Commander
Sergeant Matthew Toews	Vancouver	"E" Division, Major Crime Unit	Primary Investigator
Corporal Karina Desrosiers	Vancouver	"E" Division, Major Crime Unit	File Coordinator
Corporal Jen McDonald	Surrey	"E" Division, Major Crime Unit	File Coordinator
Corporal Darren Kakuno	Vancouver	"E" Division, Major Crime Unit	Exhibits Coordinator
Constable Darla McCandie	Vancouver	"E" Division, Major Crime Unit	Investigator
Detective Tony Demers	Abbotsford Police	General Investigation Section	Investigator
Detective/Constable J. Hughes	Vancouver Island	Integrated Major Crime Unit	Investigator
Constable Kathy Rochlitz	Vancouver Island	Integrated Major Crime Unit	Investigator
Sergeant Keith Lindner	Vancouver Island	Integrated Major Crime Unit	Investigator
Detective/Constable Craig Harper	Vancouver Island	Integrated Major Crime Unit	Investigator
Inspector Brendan Fitzpatrick	Surrey	"E" Division, Major Crime Unit	Investigator
Detective Kalvi Nahal	Abbotsford Police	General Investigation Section	Investigator
Constable Michelle Tansey	Surrey	IHIT	Investigator
Corporal Elija Rain	Surrey	IHIT	Investigator
Corporal Lorna Dicks	Vancouver	"E" Division, Major Crime Unit	Investigator

Person	Detachment	Position	Role
Constable Shelley Wiltse	Surrey	IHIT	Investigator
Corporal Mike Bloxham	Vancouver	“E” Division, Major Crime Unit	Investigator
Corporal Rick Kim	Vancouver	“E” Division, Major Crime Unit	Investigator
Corporal M. Rail	Chilliwack	SWD Major Crime Unit	Investigator

RCMP Members and Other Persons – Experts Used in the Investigation

Person	Detachment	Position	Role
Corporal Mike Vander Schaaf	Chilliwack	Lower Mainland Forensic Identification Section	Scene examination
Sergeant Jim Hignell	Vancouver	Regional Forensic Identification Support Services	Blood splatter expert
Kerry Solinsky	Kelowna	Public & Police Safety Instructor	Use of force expert
Inspector George Beattie	North Vancouver	Administration Officer	Independent Reviewing Officer
Nancy Eng		RCMP Forensic Laboratory	Search Technologist

APPENDIX C – Chair's Complaint

Subject: In-custody serious injury in Chilliwack, B.C., November 19, 2007, involving the use of a conducted energy weapon

File No. 2007-2427

November 20, 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 present at, or engaged in, the arrest of a male individual in Chilliwack, B.C. on November 19, 2007, and the adequacy of the subsequent criminal investigation.

I am initiating this complaint with the full appreciation that: the RCMP has deployed the "E" Division Major Crimes Unit (MCU) to investigate the incident; an RCMP Independent Officer Review to assess the conduct of involved members, related policies, procedures and training will be undertaken as a matter of course; and that no decision has been taken in respect of the laying of criminal charges. It is not my intention to prejudice any of the above RCMP investigations. However, I will be closely monitoring RCMP progress as it relates to the investigations underway so that I can ensure, at their completion, a timely response to this complaint.

It is of note that the CPC Independent Observer was engaged the evening of November 19, 2007 to assess the impartiality of the RCMP members assigned to investigate this incident and will, as circumstances dictate, continue to monitor the investigative team to ensure that the required impartiality is maintained.

Given the ongoing expressions of public concern as they relate to: the degree and type of force required by police officers when effecting an arrest and, as in this case, the specific concerns raised in respect of the use of a conducted energy weapon, including related policy procedures and guidelines for deployment; and the propriety of the police investigating the police, I am satisfied that there are reasonable grounds to investigate the conduct of all members involved in this incident and the adequacy of the investigation conducted by the team tasked with the subsequent investigation. Accordingly, pursuant to subsection 45.37(1) of the *RCMP Act*, I am today initiating a complaint into this incident, specifically:

- 1) Whether the RCMP officers involved in the events of November 19, 2007, from the moment of initial contact until transfer to the care of emergency health personnel, complied with all appropriate policies, procedures, guidelines and statutory requirements for the arrest and treatment of persons taken into custody, and whether such policies, procedures and guidelines are adequate.
- 2) Whether the RCMP officers involved in the criminal investigation of the members involved in the events of November 19, 2007 complied with the 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.

APPENDIX D – Notice of Public Interest Investigation

January 30, 2009

File No.: PC-2007-2427

Commissioner William J. S. Elliott
Attention: Manager, Public Complaints Unit
Royal Canadian Mounted Police
Coventry Square Building
295 Coventry Square
Ottawa, ON K1K 4M7

Dear Commissioner Elliott:

**Re: Chair-Initiated Complaint and Public Interest Investigation
(Robert Thurston Knipstrom)**

As you know, on November 20, 2007, I initiated a complaint (a copy of which is attached for your ease of reference) under subsection 45.37(1) of the *RCMP Act* into the circumstances relating to the death of Mr. Knipstrom. At this point, please be advised that I consider it advisable in the public interest to investigate this complaint pursuant to subsection 45.43(1) of the *RCMP Act*. As a courtesy, I have also notified the Commanding Officer of “E” Division of the public interest investigation.

To expedite the Commission’s investigation into this complaint, please instruct your officials to prepare a package of all relevant materials that would include, but not be limited to: copies of the relevant operational file(s); all statements taken from civilian witnesses and members in connection with these events; reports to Crown counsel, all video or audio recordings of the incident; all CEW and use of force reports; all investigative reports; Coroner’s reports; autopsy documents; all notebook entries and continuation reports for the members involved; all applicable national, divisional and detachment policies; and all other materials that your officials think would assist in our investigation.

I would appreciate it if you would advise the members involved, as required by subsection 45.37(3) of the *RCMP Act*, and provide us with confirmation for our records that the members have been notified of this complaint.

Yours truly,

Paul E. Kennedy

Attach.

APPENDIX E – Summary of Findings and Recommendations

FINDING: Constables Mufford, Labbe and Kardos had current RCMP certified training in the use of force options available to members in the performance of their duties.

FINDING: The members entered into their interactions with Mr. Knipstrom lawfully and were duty-bound to do so.

FINDING: : It was not unreasonable for the members to use OC spray and a baton in the manner that they did, and it was in compliance with RCMP use of force policy.

FINDING: It was reasonable for the members to use the CEW when other use of force options (empty hand techniques, OC spray, baton) appeared to have no effect on Mr. Knipstrom.

FINDING: Constable Mufford's deployment of the CEW was reasonable in the circumstances.

FINDING: Constable Labbe's decision to deploy her CEW following Constable Mufford's deployment was reasonable in the circumstances.

FINDING: Constable Kardos' deployments of the CEW were reasonable in the circumstances

FINDING: It was reasonable for the members to conclude that Mr. Knipstrom was not receiving the full effects of the CEW deployments, if any from some deployments.

FINDING: Constable Labbe's decision to recycle her CEW, and to attempt to use a second cartridge when the recycling appeared to have little to no effect, was reasonable in the circumstances.

FINDING: Constables Mufford, Labbe and Kardos exercised their use of force options in a manner consistent with the law and RCMP policy.

FINDING: To the extent that the subject members were involved in the decision to maintain Mr. Knipstrom in the prone position after his arrest, it was reasonable for them to do so in the circumstances.

FINDING: The members appropriately sought and obtained medical treatment for Mr. Knipstrom.

FINDING: The RCMP members involved in the events involving Mr. Knipstrom on November 19, 2007, from the moment of initial contact until transfer to the care of emergency health personnel, complied with all appropriate policies, procedures, guidelines and statutory requirements for the arrest and treatment of persons taken into custody.

FINDING: The scene was properly secured.

FINDING: The appropriate personnel were dispatched to the scene at the appropriate times.

FINDING: An “independent” investigation team was assembled in a timely manner, in accordance with RCMP policy.

FINDING: The investigation was managed in accordance with the Major Case Management principles.

FINDING: All of the relevant witnesses were interviewed.

FINDING: The investigators acted reasonably in their efforts to interview and take statements from the involved members.

FINDING: An SRR should not have been allowed to meet alone with Constable Mufford prior to him completing his duty to account statement, or with either Constable Mufford or Constable Labbe prior to the arrival of the investigation team.

RECOMMENDATION: If the protocol of SRR attendance is to continue, the RCMP should formalize the attendance of the SRR to provide clear policy and guidance to ensure that the SRR knows the bounds of his or her involvement and the required protocols with respect to such attendance.

RECOMMENDATION: I reiterate my recommendation in the Ian Bush decision (November 2007) and St. Arnaud decision (March 2009) that “[t]he RCMP develop a policy that dictates the requirement, timeliness and use of the duty to account that members are obliged to provide.”

FINDING: It is inappropriate for subject members to be interviewed by members of the same or lower rank in cases where the MCM model has not been employed.

RECOMMENDATION: All interviews of members involved in serious incidents should be conducted by members of a higher rank in cases where the MCM model has not been employed.

RECOMMENDATION: All witness interviews in serious incidents should be conducted by a two-member team.

FINDING: It was inappropriate for Constable Kardos to be assigned to interview the two main civilian witnesses, as he was involved in the incident and was in a conflict of interest situation.

FINDING: The RCMP policy regarding the testing of CEWs that was in place at the time of the incident was inadequate. However, I am satisfied that the change in RCMP policy has clarified when the testing should be done where a CEW has been involved in an in-custody death situation.

FINDING: The extent to which the investigators looked into Mr. Knipstrom's background and used that information was reasonable and appropriate in the circumstances.

FINDING: The extent to which the investigators explored the role of excited delirium in the death of Mr. Knipstrom was not unreasonable in the circumstances.

FINDING: The RCMP's communications with the coroner's office prior to Mr. Knipstrom's death were not unreasonable or inappropriate in the circumstances.

FINDING: There was no evidence to support a prosecution and it was reasonable not to submit a Report to Crown Counsel for review.

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

APPENDIX F – BCCLA Complaint

bc civil liberties association
L'Association des Libertés Civiles en Colombie Britannique



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November 27, 2007

Paul Kennedy, Chair
Commission for Public Complaints Against the RCMP
PO Box 3423, Station 'D'
Ottawa, Ontario
K1P6L4

Dear Mr. Kennedy:

RE: RCMP Complaint into the in-custody death of a man at the Chilliwack

I am writing on behalf of the B.C. Civil Liberties Association (BCCLA) to initiate a complaint under the *Royal Canadian Mounted Police Act* against the members of the relevant member(s) of the Chilliwack RCMP detachment involved in the handling of 36-year-old Robert Knipstrom, who died on November 24, 2007 while in the custody of the RCMP.

Based on media reports, it is my understanding that the police were called to the store at about 3:30 pm at a business in the 45800 block of Airport Road in Chilliwack. He was arrested Monday at a Chilliwack equipment rental store after a prolonged struggle with RCMP. The attending officers reportedly tried pepper spray, a Taser and batons after being unable to control the man with physical force, but the officers were unable to subdue Mr. Knipstrom quickly with any of these methods. He was finally subdued after the officers called for backup, but not before the man suffered serious injuries. He was listed in extremely critical condition, eventually passing away early Saturday in Surrey Memorial Hospital.

The BCCLA is concerned that the RCMP members failed to meet appropriate professional standards in discharging their duty of care towards him. A transparent and independent investigation is warranted in this case in the public interest.

If the RCMP is found to have acted within the guidelines of existing policy and conduct standard we ask that you undertake a review to assess whether such policies are adequate.

BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION
Suite 550 – 1188 West Georgia Street, Vancouver, BC, Canada V6E 4A2
t: 604.687.2919 f: 604.687.3045 i: www.bccla.org e: info@bccla.org

To: Paul Kennedy, Chair, Commission for Public Complaints Against RCMP
From: Murray Mollard
Date: November 27, 2007
Page: 2

To maintain and enhance the public's confidence in the RCMP, we request that your office rather than the RCMP conduct this investigation

I look forward to your response.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Murray Mollard', with a stylized flourish at the end.

Murray Mollard
Executive Director

APPENDIX G – Independent Observer Program

The CPC Independent Observer Program assesses the impartiality but not the adequacy of RCMP investigations in these cases using the following criteria:²

1. **Line Management:** Assess whether there are any actual or perceived conflicts of interests in terms of the members of the investigative team and those who are the subject of the investigations. Determine the appropriateness of the management structure and reporting relationships.
2. **Appropriate Level of Response:** Assess whether the RCMP investigative team response to the incident is appropriate and proportionate to the gravity of the incident. Has the RCMP assigned the appropriately qualified investigators to the investigative team? Are the team leader(s) and the lead investigator(s) Major Case Management accredited?
3. **Timeliness of the Response:** Assess whether members of the RCMP investigative team responded in a timely fashion to the incident.
4. **Conduct:** Assess whether the conduct of members of the RCMP investigative team is consistent with section 37 of the *RCMP Act*.

The Independent Observer completed an assessment as to the impartiality of the integrated investigative team and identified no issues with respect to the impartiality of the investigation. More specifically, with respect to the criteria enumerated above, his observations were:

1. Line Management

The Observer found that the Team Commander and an RCMP “E” Division Inspector had previously met the member in charge of the Chilliwack General Investigation Section who was one of the members who responded to the call for assistance, but who was not involved in any physical confrontation with the male. Neither had a close relationship with that member. With the exception of some loose connections with the member in charge and one other member, there were no connections of concern. The Major Crime Unit addressed who would participate on the team to avoid any connections with the members involved in the incident.

2. Appropriate Level of Response

The Investigation Team Commander was accredited (in Major Case Management). The investigators were from the “E” Division Major Crime Unit, the E Division Major

² All information in this section is located on the CPC website: [Independent Observer Program](#).

Crime – Criminal Investigation Unit (a Major Crime assist unit), the Surrey IHIT and two members from the Abbotsford Police Department. The Vancouver Island Integrated Major Crime Unit was involved to investigate the potential charges against Mr. Knipstrom; however, their involvement ceased upon his death.

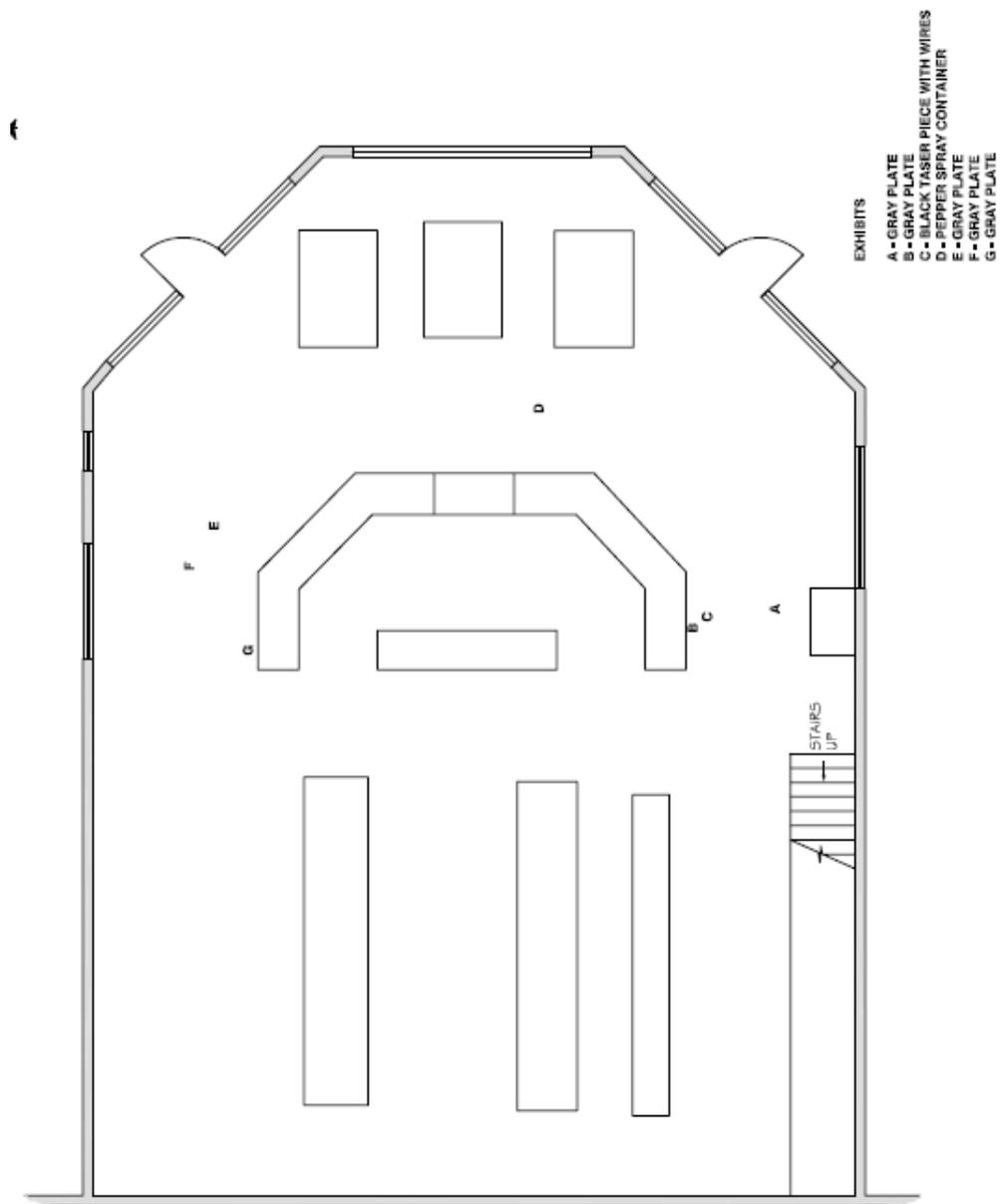
3. Timeliness of Response

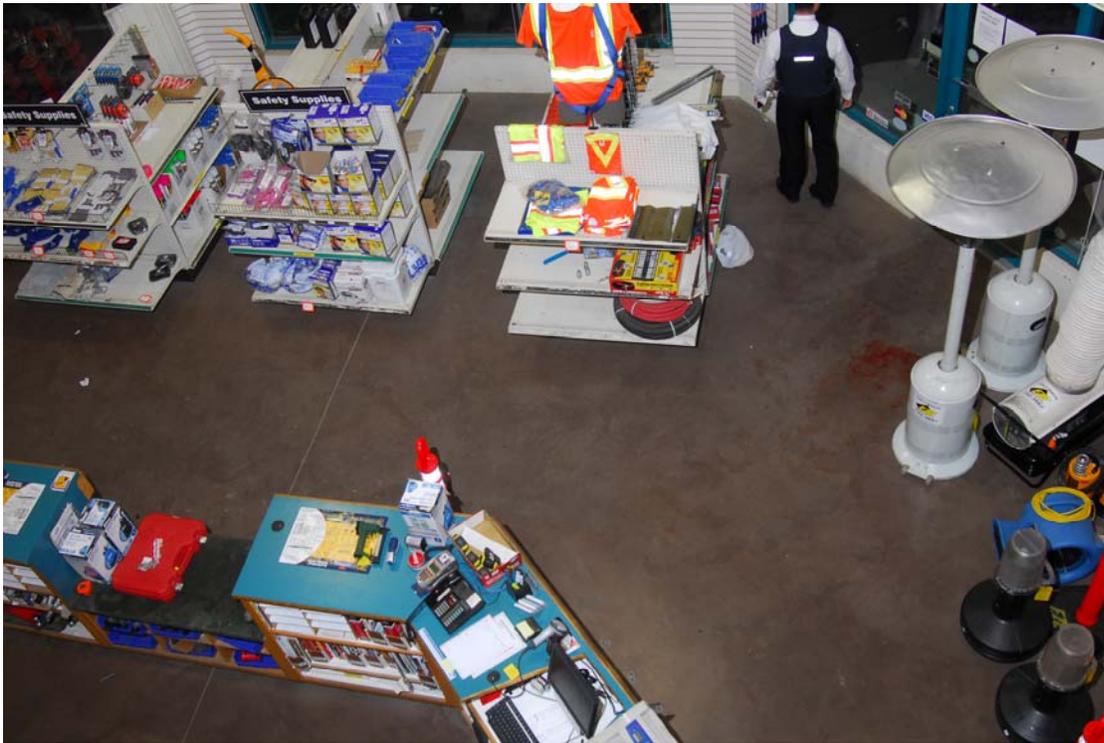
The altercation concluded at approximately 3:38 p.m. on November 19, 2007. The integrated MCU was notified at approximately 5:50 p.m. Members of the investigation team arrived in Chilliwack at approximately 9 p.m.

4. Conduct

The Independent Observer noted no obvious signs of bias or partiality on the part of the investigators.

APPENDIX H – Scene Diagram and Photographs





APPENDIX I – Canada *Criminal Code* Provisions

25. (1) Every one who is required or authorized by law to do anything in the administration or enforcement of the law

- (a) as a private person,
- (b) as a peace officer or public officer,
- (c) in aid of a peace officer or public officer, or
- (d) by virtue of his office,

is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.

27. Every one is justified in using as much force as is reasonably necessary

- (a) to prevent the commission of an offence
 - (i) for which, if it were committed, the person who committed it might be arrested without warrant, and
 - (ii) that would be likely to cause immediate and serious injury to the person or property of anyone; or

(b) to prevent anything being done that, on reasonable grounds, he believes would, if it were done, be an offence mentioned in paragraph (a).

270. (1) Every one commits an offence who

(a) assaults a public officer or peace officer engaged in the execution of his duty or a person acting in aid of such an officer;

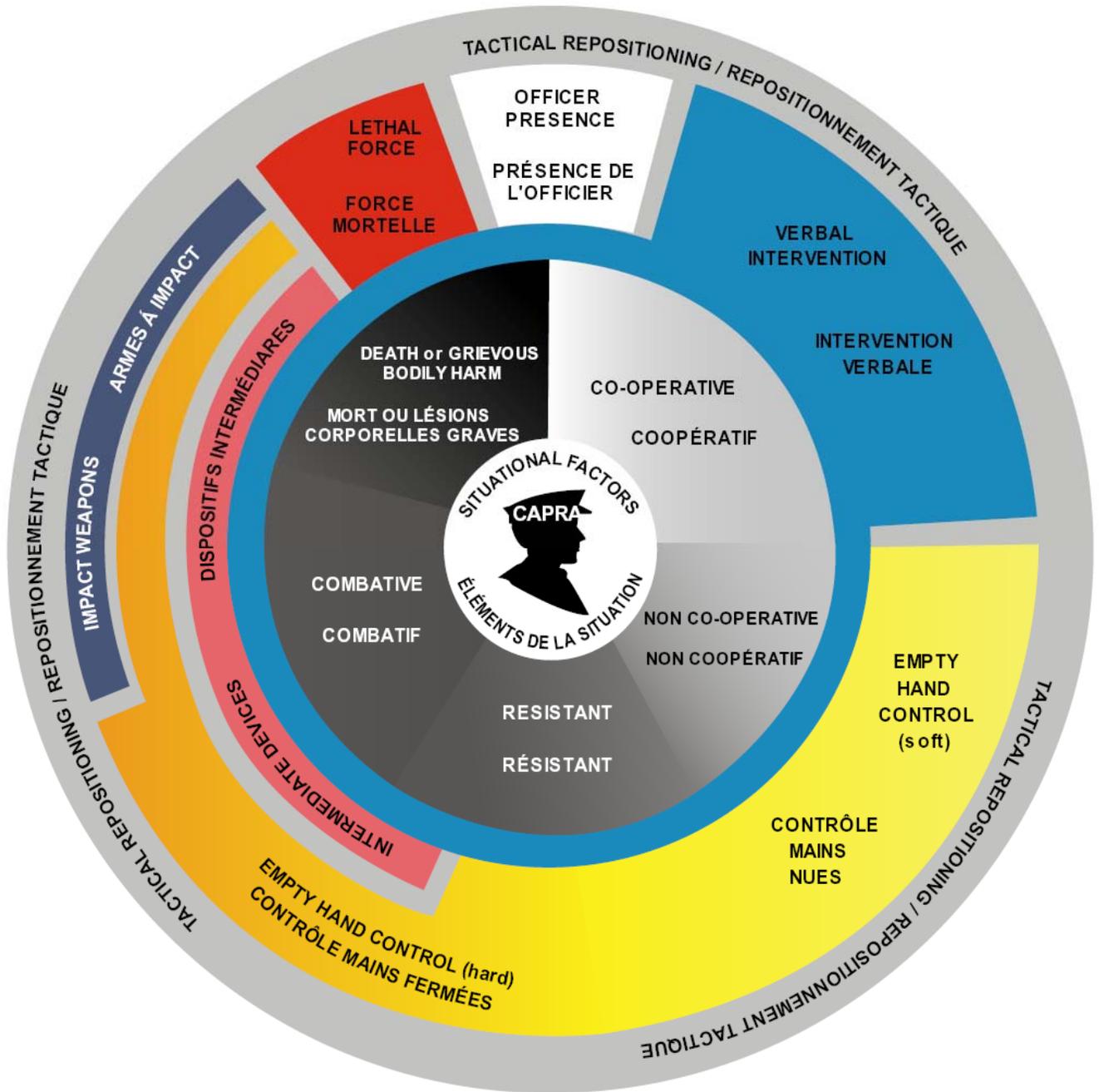
(b) assaults a person with intent to resist or prevent the lawful arrest or detention of himself or another person; or

(c) assaults a person

(i) who is engaged in the lawful execution of a process against lands or goods or in making a lawful distress or seizure, or

(ii) with intent to rescue anything taken under lawful process, distress or seizure.

APPENDIX J – Incident Management/Intervention Model



APPENDIX K – Categories of Resistance of Individuals³

In the inner portion of the Incident Management/Intervention Model, potential levels of resistance of suspects are noted. The following defines the expected behaviours of individuals displaying each of the levels of resistance included.

1. Cooperative:

There is no resistance. The person responds positively to verbal requests, commands or activation of a police vehicle's emergency equipment. The person willingly complies.

2. Non-Cooperative:

There is little or no physical resistance. The person does not comply to the officer's request. This can be done through verbal defiance with little or no physical response or failing to pull their vehicle over and stop when an officer activates the police vehicle's emergency equipment. This may include: refusal to leave the scene, failure to follow directions, taunting officers, and advising others to disregard officer's lawful requests.

3. Resistant:

The person demonstrates resistance to control by the police officer through behaviours such as pulling away, pushing away or running away. This can include a situation where a police officer activates a police vehicle's emergency equipment and the suspect fails to stop and attempts to evade apprehension by driving evasively.

4. Combative:

The person attempts or threatens to apply force to anyone, e.g. punching, kicking, clenching fists with intent to hurt or resists, threats of an assault. In the case of a person operating a vehicle, they attempt to collide with the police vehicle, another vehicle or a pedestrian.

5. Person who shows the potential to cause grievous bodily harm or death:

The person acts in a way which would lead the police officer to believe could result in grievous bodily harm or death to the public or the police:

- knife attack
- baseball bat
- use of firearm
- In the case of a person operating a vehicle, they collide with the police vehicle, another vehicle or a pedestrian.

³ Source: http://www.rcmp-learning.org/online_courses/imim/cbt_incidentman3_e.htm.

APPENDIX L – RCMP Policy: Major Case Management

1. General

1. 1. Major cases are cases/investigations that are serious in nature and because of their complexity, risk, and resources require the application of the principles of Major Case Management (MCM).

1. 2. Major case management is a methodology for managing major cases that provides accountability, clear goals and objectives, planning, allocation of resources and control over the direction, speed and flow of the investigation.

1. 3. Major case management is not a computer software operating system (electronic data processing system) however MCM may use an RCMP approved data base management system, such as PROS, SUPERText, or E & R.

1. 4. Major case management is used to conduct significant investigations regardless of business lines (Contract or Federal). Major RCMP cases will be conducted in accordance with the principles of MCM. The methodology of MCM encompasses nine essential elements:

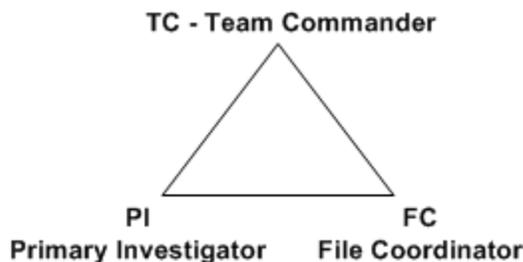
1. 4. 1. the command triangle,
1. 4. 2. management,
1. 4. 3. crime-solving strategies,
1. 4. 4. leadership and team-building,
1. 4. 5. legal implications,
1. 4. 6. ethics,
1. 4. 7. accountability,
1. 4. 8. communication, and
1. 4. 9. partnerships.

NOTE: Guiding principles, additional duties, qualifications and accountability frameworks for all aspects of MCM are outlined in the *Major Case Management Manual*.

2. Team Roles/Functions

2. 1. Major Case Management Team

2. 1. 1. Major case management is managed by the Major Case Management Team (MCMT). The MCMT is illustrated by the command triangle. The key roles in this model are the Team Commander, Primary Investigator and the File Coordinator. Although each role has clear accountability paths they maintain a collaborative relationship while maintaining independence in their respective roles.



2. 2. Team Commander

2. 2. 1. The Team Commander (TC) is an accredited individual who has ultimate authority, responsibility/ accountability for the MCMT, its resources (human and physical) and its mandate. Accreditation includes successful completion of the Canadian Police College sponsored Major Case Management course.

2. 2. 2. Divisions must maintain pools of accredited TCs with current CVs outlining their experience and training in major cases focusing on leadership/managerial accomplishments.

2. 2. 3. The TC will ensure qualified File Coordinators (FC) and Primary Investigators (PI) are selected. Although the TC assumes overall control, responsibility and accountability for the direction, speed and flow of the case, he/she may perform other roles subject to the risk and nature of the investigation.

2. 3. Primary Investigator

2. 3. 1. The Primary Investigator (PI) controls the direction, speed and flow of the overall investigative process.

2. 3. 2. A key role of the PI is to macro-manage, not perform, all aspects related to the investigation and the PI must be prepared to restrict personal participation to the extent necessary to command the overall operation.

2. 3. 3. The PI is accountable to the TC and must work in collaboration with the File Coordinator (FC).

2. 3. 4. The PI will be an experienced investigator with proven ability to coordinate, organize and control a complex, multi-faceted investigation.

2. 4. File Coordinator

2. 4. 1. The FC is responsible for the control, supervision, organization and disclosure of the file documentation. See sec. 8.1.

2. 4. 2. The FC must identify human and physical resources required to fulfill the role of file coordination. The FC is accountable to the team commander and must work in collaboration with the PI.

2. 4. 3. The FC will be a capable, competent investigator with familiarity in the use of both electronically and manually coordinated, organized and controlled data.

2. 5. Major Case Investigative Team

2. 5. 1. The Major Case Investigative Team (MCIT) is formed with the exclusive purpose of investigating a major case.

2. 5. 2. The MCIT is comprised of investigators (who may be seconded from their primary duties), support staff, and other employees attached to but not part of the major case management team. The MCIT may be comprised of multi-agency personnel.

2. 6. Exhibit Custodian

2. 6. 1. The Exhibit Custodian will be selected by and report directly to the Primary Investigator.

2. 6. 2. The Exhibit Custodian must coordinate and track the movement of each piece of evidence as prescribed by law.

2. 7. Interviewer

2. 7. 1. The PI will select the interviewer or interview team based on the investigative and evidentiary requirements of the case and the individual to be interviewed. The interviewer or interview team reports directly to the PI.

2. 7. 2. An interviewer must have the necessary knowledge, skill and ability to perform the required interviewing functions.

3. Division Responsibility

3. 1. The Cr. Ops. Officer is responsible to ensure that all of the principles of MCM are used in the conduct of major cases in their divisions.

4. Front-End Loading

4. 1. The initial phase of a major case investigation (usually the first 72 hours) is critical.

4. 2. Limiting human or material resources in the early stages of a major case investigation may jeopardize the case so every consideration must be given to the front-end loading, i.e. committing the maximum of available resources to a major case investigation.

5. MCM Software

5. 1. Using a data base management system is critical to major case management.

5. 2. A data base management system ensures the basic objectives of major case investigations (documentation and preservation) are met. A system enhances managerial accountability, proper delegation of responsibilities, efficient/effective use of resources, auditable/consistent standards, efficient disclosure and current procedure in the seizure and preservation of evidence.

5. 3. Once an investigation is identified as a major case, an RCMP approved data base management system will be adopted where applicable and available. See sec. 1.3.

6. Critical Incident

6. 1. A critical incident is an event or series of events that by its scope and nature requires a specialized and coordinated response. Critical incidents include, but are not limited to civil unrest, disasters, hostage/barricaded persons, terrorist attacks.

6. 2. During a critical incident, the incident commander has overall responsibility for the critical incident.

6. 3. The MCMT team must be involved as soon as possible and consulted during the decision making processes. The Incident Commander and the MCMT must work together while the incident is ongoing, including sharing all information and intelligence.

6. 4. An Incident Commander should be trained in both incident command and MCM.

6. 5. The CO or Cr. Ops. Officer will determine when a critical incident is concluded and the MCM TC will then assume responsibility. A documented "hand over" of command must be prepared.

7. Media

7. 1. Media Liaison will report directly to the TC and liaise directly with the TC on media enquiries, problems involving media personnel or procedures and developing an evolving media strategy. See OM Part 27.

7. 2. All media releases must be approved by the MCMT prior to release.

7. 3. The Media Liaison will ensure a Briefing Note (BN) is submitted to National HQ prior to issuing any significant media release.

8. Disclosure

8. 1. Organization of the file must be implemented early to ensure a thorough and efficient disclosure process. The disclosure process is a critical task and Crown Counsel should be consulted during its preparation.

8. 2. The management of disclosure is the responsibility of the FC. Crown Counsel has the responsibility to ensure proper disclosure to both the Court and Defence Counsel.

8. 3. The FC must ensure the appropriate number of resources are assigned to disclosure. When appropriate, the FC will appoint dedicated disclosure officers or disclosure teams. A disclosure officer or disclosure team will report directly to the File Coordinator.

9. Decision Making Process

9. 1. Increasingly, lines of authority are being compelled to account for the management process of the investigation of major cases, in both court and/or other judicial hearings.

9. 2. The decision-making processes within MCM must be preserved. Individual managers, supervisors and investigators must make complete notes documenting their participation, rationale, time, direction and decisions.

10. Intelligence Processing/Analysis

10. 1. MCMT should ensure that early consideration is given to intelligence processing and analysis during the course of a major case investigation, in accordance with the Ops. Model.

10. 2. MCMT should consider early assignment of the required resources, in support of the intelligence process.

11. Reporting

11. 1. Regular reporting is a critical component of MCM.

11. 2. The development and monitoring of a reporting system is a division responsibility. Divisions must establish an acceptable reporting structure and frequency schedule.

11. 3. The MCMT must submit timely, regular and comprehensive Briefing Notes (BN) to National HQ in significant/high profile or high-risk incidents.

11. 4. In a JFO, the participating agencies must be included in the reporting structure.

12. Independent Review

12. 1. For quality control purposes divisions must submit major cases to an independent review if an investigation is prolonged, difficult or stalled.

12. 2. An independent review should be conducted by an experienced and accredited major case investigator, not involved in the investigation. The results of the review will be documented and reported to the Cr. Ops. Officer.

12. 3. An independent review will examine:

12. 3. 1. implementation of the MCM principles;

12. 3. 2. viability of investigative strategy/original operational plan;

12. 3. 3. availability of alternative investigative avenues;

12. 3. 4. thoroughness of elimination strategy;

- 12. 3. 5. compliance with reporting requirements; and,
- 12. 3. 6. observations and concerns of Critical Incident team members.
- 12. 4. An MCMT will cooperate with and assist in the independent review process.

13. Critical Debriefs

- 13. 1. All Major Cases should be critically debriefed at the conclusion of the case.

NOTE: If a critical debriefing is conducted while the investigation is ongoing, disclosure must be considered.

- 13. 2. The resulting analysis of "best practices" and "lessons learned" should be preserved and made available.

14. Canada Labour Code

- 14. 1. The TC, PI and the FC must be familiar with and comply with their duties as prescribed by Part II of the *Canada Labour Code* (CLC).

- 14. 2. The TC must successfully complete the Occupational Health and Safety Course "Managing Safely" available on the Human Resources Sector website or on CD.

- 14. 3. Work-related injuries must be reported immediately. Form 3414 will be completed by the individual and submitted to the respective supervisor. The supervisor will complete the form and forward it according to the distribution list. Depending on the severity of the injuries this report must be submitted to Human Resources Development Canada within regulated time limits. Refer to *Canada Occupational Health and Safety Regulations*, Part XV.

APPENDIX M – Impartiality Questionnaire

You have been assigned to a high profile sensitive investigation and as such it is imperative that the investigators be viewed as impartial and unbiased. This questionnaire was developed jointly with the RCMP and the Commission for Public Complaints Against the RCMP. The purpose of this questionnaire is to insure that any associations, whether they be professional or social, are disclosed at the onset of the investigation to the Team Commander. The mere acknowledgment of a professional or social association would not preclude a member from participating in the investigative team. If an association exists it is imperative that the member articulate and expound on the nature of the relationship so that an assessment can be made by the Team Commander. It should be noted that investigative team members are not considered “persons involved in this investigation” in the context of this document. In the event that you require clarification on issues contained in this form, please direct them to the Investigative Standards and Practices member on scene or the Team Commander.

Member’s Name:

Regimental Number:

Present Posting:

1) Have you ever worked with or been stationed at the same detachment with any persons involved in this investigation?

Yes___ **No**___

If so please explain.

2) Do you or have you had a social relationship with persons involved in this investigation?

Yes___ **No**___

If so please explain.

3) Did you attend training at Depot (troopmate) during the same period of time with anyone involved in this investigation?

Yes___ **No**___

If so please explain.

4) Have you ever been stationed or worked at the detachment in which this investigation is taking place?

Yes___ **No**___

If so please explain.

5) Are there any issues that would affect the perception of impartiality as it relates to your participation in this investigation?

Yes___ **No**___

If so please explain.

6) Please provide a synopsis of your investigative experience (point form).

Signature of Member _____ Date_____

7) Team Commander Section

Date and Time Impartiality Questionnaire Reviewed: _____

Comments and Recommendations:

Team Commander Signature: _____