

RELEASE DATE: (May 12, 2017)



Manitoba

THE PROVINCIAL COURT OF MANITOBA

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

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

CRAIG VINCENT McDOUGALL

**Report on Inquest and Recommendations of
Associate Chief Judge Anne Krahn
Issued this 9th day of May, 2017**

APPEARANCES:

David Gray, Inquest Counsel

Kim Carswell, Counsel to the Winnipeg Police Service

Corey Shefman, Counsel for Brian McDougall and the McDougall Family

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THE FATALITY INQUIRIES ACT, C.C.S.M. c. F52
REPORT BY PROVINCIAL JUDGE ON AN INQUEST
INTO THE DEATH OF: CRAIG VINCENT McDOUGALL

INTRODUCTION

On August 2, 2008, at 5:10 a.m., a call was made to the Winnipeg Police Service reporting that someone had been stabbed at 788 Simcoe. Earlier calls had been made to the Winnipeg Police between 4:34 and 4:36 a.m. reporting that family members had been trying to break into the residence. When the caller reported a stabbing, the priority of the call was upgraded and officers were immediately dispatched to the scene.

Patrol Sargent (P/Sgt) Curtis Beyak, Constable (Cst.) Tricia Zelinsky (now Zurawsky) and Cst. Jason Leishman arrived in front of 788 Simcoe at 5:18 a.m. They approached the house and P/Sgt. Beyak knocked on the door. A small child, approximately five years old, and an adult male appeared in the door. P/Sgt. Beyak greeted them when he heard Cst. Zelinsky call out that a male had a knife. Craig Vincent McDougall was outside a four foot high fence between the house at 788 Simcoe and the neighboring residence. He was holding a cell phone to his ear and in the other hand he was carrying a large knife. He continued around the fence and walked along the front sidewalk and fence. All three officers were telling him to drop the knife. He did not drop the knife. Cst. Leishman used his Taser to try to stop Craig McDougall. Craig McDougall did not respond to the Taser and had by this time entered the fenced front yard. He continued towards the front door and began to raise the knife. At this time he was shot by P/Sgt. Beyak with his police revolver. Craig McDougall died shortly after from his gunshot injuries. All counsel at the Inquest agreed that these were the essential circumstances of death.

This Inquest dealt with the troubling issue of a young Indigenous man who was shot by a Winnipeg Police officer. It highlighted the distrust that

exists between the Indigenous community and the Winnipeg Police Service. The Inquest heard from an expert witness as to what changes could be made to begin to address this fact. It is my sincere hope that steps towards reconciliation can take place.

The Inquest heard from expert witnesses on the police use of force. They offered opinions that the use of force was justified in this case.

More than eight years went by after the date of Craig McDougall's death before the Inquest began to hear evidence. The issue of delay and the jurisdiction of the Inquest Judge to make recommendations which arise out of the Inquest are other issues that are examined in this report.

This report contains my essential findings and recommendations after having reviewed the evidence and submissions provided by Inquest counsel and counsel for the parties. It contains a list of witnesses who testified and a series of Exhibits that were admitted into evidence. I had the benefit of having the evidence presented by counsel who were well prepared and thorough, for which I am grateful.

Pursuant to the provisions of subsection 33(3) of *The Fatality Inquiries Act*, I am ordering that all Exhibits be returned to the Exhibit Officer, Provincial Court of Manitoba, to be released only upon application with notice to any party with a privacy interest.

Dated at the City of Winnipeg, in Manitoba, this 9th day of May, 2017.

“Original signed by”

Associate Chief Judge Anne Krahn

Copies to: Dr. John Younes, A/Chief Medical Examiner
Chief Judge Margaret Wiebe, Provincial Court of Manitoba
The Honourable Heather Stefanson, Minister Responsible for *The Fatality Inquiries Act*
The Honourable Julie Frederickson, Deputy Minister of Justice & Attorney General
Michael Mahon, Assistant Deputy Attorney General
David Gray, Inquest Counsel
Kim Carswell, Counsel to the Winnipeg Police Service
Corey Shefman, Counsel for Brian McDougall and the McDougall Family

INQUEST MANDATORY

[1] Since Craig McDougall was shot and killed by a police officer, the Inquest into his death is mandatory.

[2] This Inquest is required by the provisions of section 19(3)(b) of *The Fatality Inquiries Act, C.C.S.M. c. F52. (FIA)*

[3] On July 31, 2013 Dr. A Thambirajah Balachandra, then Chief Medical Examiner (“CME”), directed an Inquest be held:

- a) to fulfill the mandatory requirement in section 19(3)(b) *FIA*;
- b) to determine the circumstances relating to Craig McDougall’s death; and,
- c) to determine what, if anything, can be done to prevent similar deaths from occurring in the future.

FACTUAL CIRCUMSTANCES OF CRAIG MCDUGALL’S DEATH

The Hours Before the Shooting

[4] I heard testimony from Heather Wood, Heather McPherson, Olivia McDougall and Jessica McDougall. Destiny Wood was unable to travel to Winnipeg due to a week of bad weather and so her sworn video statement was filed as evidence. Trevor Monias’ sworn video statement was filed as evidence. I believe that all of these witnesses did their best to explain what transpired that evening. I also concluded that the consumption of alcohol affected the ability of witnesses to recall some details of the evening. For those who testified, the passage of time had obviously affected their ability to recall all of the details of what they once knew. As a result, some of their sworn, videotaped statements made on the day of the shooting are the most reliable evidence where details have been lost over time. Natural inconsistencies also resulted from individual differences in perception and experience. However, in the essential details there was little variation and I gathered the following from their statements and testimony.

[5] Craig McDougall lived at 788 Simcoe with his father, Brian McDougall, his sister Jessica McDougall and her three young children. On the evening of August 1, 2008, Craig and Jessica decided to go out for the evening with their cousins, Heather Wood and Olivia McDougall. Heather’s

younger sister Destiny Wood came over to babysit. Destiny's friend Heather McPherson joined her at the house while she was babysitting.

[6] Craig, Jessica, Olivia and Heather went to a number of bars and drank beer throughout the evening. Everyone agrees that the evening was uneventful and the group enjoyed an evening visiting together.

[7] Sometime after midnight, Craig and Jessica McDougall returned home. They brought some alcohol with them. At this point, Destiny Wood and Heather McPherson had some alcohol to drink as well. A short time later, Heather Wood and Olivia McDougall also returned to the house and continued to have some drinks and visit with the people at the house. Craig McDougall spent some time alone with Natasha McPherson in his bedroom.

[8] Jessica McDougall went to sleep in her bedroom with her children and a friend.

[9] Meanwhile, their father Brian McDougall went out for the evening as well. He went to the Ming Court where he met up with his brother John McDougall and Brian McDougall's girlfriend, Nancy Mason. At closing time, Brian McDougall stopped at the vendor and picked up a case of 24 Budweiser beer. He returned after 2:30 a.m. to find his children and other "young people" at the house.

[10] Sometime between 2:30 and 3:00 in the morning, Trevor Monias, a friend and relative by marriage who lived a few houses down the back lane, joined the younger group who had moved into the backyard.

[11] A physical fight broke out in the backyard between Destiny Wood and Olivia McDougall. No one can recall what provoked the fight. During this fight, Destiny Wood was bitten on her cheek by Olivia McDougall. Heather Wood tried to protect her sister and was bitten on the fingers. Trevor Monias ran to the house to tell the people inside that there was a fight outside. Craig McDougall tried to intervene to break up the fight. Trevor Monias says in his statement that Craig became angry at this point. Trevor Monias heard Craig McDougall say he was going to kill himself.

[12] John and Brian McDougall ran outside. Brian McDougall tried to get everyone to quiet down. He asked them to leave. Craig appeared upset that he had been asked to leave. John McDougall held Craig's arms down in order to try to calm him down. When he let go, Craig struck him in the

face. Olivia McDougall and Trevor Monias left down the back lane. Both went to their own homes.

[13] Jan Hess, a neighbor who lived next door at 796 Simcoe, was woken by the sounds of a commotion that night around 3:30 a.m. He saw two females who appeared to be consoling each other. One was complaining about being bitten. I am satisfied based on all of the evidence that was Heather Wood trying to console her sister Destiny Wood.

[14] Jan Hess' spouse Maria Maria observed an altercation in the backyard at 3:30 a.m. She looked out at that time and saw someone holding their finger and saying, "you hurt my finger." She saw a male with no shirt on. She saw him throw something against the house and then he left. She remembers seeing three or four people there.

[15] Jan Hess saw a young male without a shirt on who was very upset. I have concluded that male was Craig McDougall as Trevor Monias and Destiny Wood also described Craig McDougall without a shirt on during a later confrontation on Notre Dame Avenue. Jan Hess said this male seemed very upset about the way he was treated by his family. Jan Hess also saw an older male trying to get people to be quiet and calm the situation. I am satisfied this person was Brian McDougall. Jan Hess saw the younger male (Craig McDougall) leave for a while and then come back. He appeared to pry a piece of wood off the fence and he heard a sound as if a window was being broken. This observation is consistent with Brian McDougall's complaint to the police that people were trying to break in to his house. Jan Hess saw the young male run away down the back lane.

[16] John and Brian McDougall went back inside. Brian McDougall locked the back and front door. At 4:34:03 a.m. Brian McDougall called 911. He reported "somebody trying to break in my place" through the back door. He was asked questions by the dispatcher and he explained that there are about four people in the back lane. He was asked if he knew them and he said they were his cousins. He said they had been inside but they were trying to "break everything here" and that he did not want them inside. He was asked for their names and provided the names Craig McDougall and Trevor Monias. The dispatcher responded that police would be sent. The call was changed from a break and enter to "family trouble" on the police incident report.

[17] I concluded that after Brian McDougall called the police, he went upstairs to his bedroom. Craig McDougall, Trevor Monias and the other young women then left 788 Simcoe.

[18] Natasha McPherson, Heather and Destiny Wood left the residence. Craig McDougall caught up with them a short distance away at Notre Dame Avenue and began to assault Destiny and Heather Wood. He wanted Natasha McPherson to stay with him. Natasha said in her statement she did not want to stay with him because Craig was drunk. She said in her testimony that Craig was pulling on her but she did not want to go with him.

[19] A couple in a truck stopped and gave the three young women a ride to a nearby 7-11. At the 7-11, Heather Wood phoned the police at 911. Her calls to 911 were recorded and were filed with the court. She sounded intoxicated and was crying in the phone call. At times she is incoherent. She reported that her fingers were “almost” bitten off. She reported that her sister was also bitten. She reported that “some guy” beat us up.

[20] When the dispatcher had trouble getting Heather Wood to explain what happened, a calmer female voice was put on the phone. This voice explained that she was Heather Wood’s cousin. I have concluded that this person was Natasha McPherson. She too reported that they were beaten up at Notre Dame and Simcoe. She reported that they did not know the guy but he came out of nowhere, he was wearing no shirt and jeans. She said “he was kicking us all over”. Natasha McPherson testified at the Inquest that the person who assaulted them was Craig McDougall.

[21] Police officers arrived at the 7-11 and took them home. A photo of the injuries sustained by Destiny and Heather Wood was filed. The injuries are consistent with the fight between Olivia McDougall, Destiny and Heather Wood described above.

[22] Craig McDougall’s blood alcohol level at time of his death was 196 mg/100 ml of blood – more than twice the legal limit. This confirms the observations of most witnesses that he was intoxicated.

[23] After Trevor Monias left, he could hear yelling on Notre Dame Avenue. He headed in that direction. He saw a truck pick up the “girls”. He could see Craig McDougall standing alone in a parking lot. He was not wearing a shirt and appeared angry. He decided not to approach him and went home.

[24] Let me add a comment on the relevance of the evidence of what transpired in the hours before the shooting. Mr. Shefman objected to the admission of the above evidence. He suggested it amounted to victim-blaming, it “pathologized” the victim and that it was not relevant to what happened at the time of the shooting. Ms Carswell as counsel for the Winnipeg Police Service and Mr. Gray as Inquest counsel did not share this objection, arguing it was appropriate narrative and offered some insight into Craig McDougall’s state of mind. I found that the above evidence was relevant to the narrative and Craig McDougall’s state of mind. I admitted the evidence.

The Shooting

[25] The police call or “Incident History” (a record of notations made by Telecommunications operators who record significant incoming and outgoing radio and phone information regarding an incident) shows that at 5:09:08 a.m. there was a call to 911. I will refer to this as the call history throughout this report. The caller said he was calling from 788 Simcoe. He said, “I got stabbed in the leg.” He said he was calling from his cell phone and gives the number as 688-1064. He was asked to stay on the line but then hung up. The 911 dispatcher tried to make contact again but there was no answer to calls made to the cell phone or inside the residence at 788 Simcoe.

[26] I note, parenthetically, that the autopsy report of Craig McDougall describes a “stab wound of the anterior right thigh, vertical with length of 0.5 cm and very superficial penetration” and two very superficial puncture wounds near the stab wound. There is no evidence of Craig McDougall being involved in an altercation with a knife with anyone else. It is possible he inflicted these superficial wounds on himself.

[27] An examination of the cell phone seized later from Craig McDougall did not show this call to 911. However Cst. Jason English’s report explained that Telus Emergency advised that since airtime is not charged for emergency calls, these calls are not recorded on the call log on the phone. Telus Emergency confirmed that there had been a call to 911 placed at 5:09:08 a.m. for 55 seconds from the phone found in possession of Craig McDougall.

[28] I am satisfied that the caller was Craig McDougall because the cell phone was in his possession minutes later. This same phone was used to

call Shanelle Parisian who testified that Craig McDougall called her before and up until he was shot. This call is recorded in the phone's call log.

[29] When Craig McDougall reported that he had been stabbed the priority of the call was upgraded.

[30] Shanelle Parisien testified that Craig McDougall told her that he had stabbed his father. I do not know why Craig McDougall was making these discrepant reports. I have concluded that both his call to 911 and his call to Shanelle Parisien show that he wanted the police to attend the residence.

[31] As a result of the 911 call, P/Sgt Curtis Beyak was dispatched at 5:13:59 a.m. Cst. Tricia Zelinsky and Cst. Jason Leishman were just finishing a call downtown and were dispatched at 5:14:29 a.m. P/Sgt Beyak arrived first and waited for a few moments on Simcoe until he saw the other police car with Cst. Leishman and Cst. Zelinsky arrive behind him. The marked police cars were parked in front of the next door neighbour's residence and all three police officers were in marked police uniforms.

[32] In August of 2008, P/Sgt. Beyak had been a member of the Winnipeg Police Service for 12 years; Cst. Zelinsky had been a police officer for almost two years; Cst. Leishman had been a police officer for three months.

[33] P/Sgt. Beyak entered the yard at 788 Simcoe and headed to the door. He stood off to the side of the door and knocked. He kept his firearm at the low ready. Low ready means that the firearm was unholstered, held in front of the officer and pointed downwards toward the ground. After a few seconds he saw a five year old come to the door. He could see an adult male somewhere behind the child. I am satisfied that the male was Craig McDougall's uncle, John McDougall. P/Sgt. Beyak said "Hi" to the child and was about to make further inquiries when he heard Cst. Zelinsky behind him say, "he's got a knife".

[34] Cst. Zelinsky had entered the yard and gone to stand at the front corner of the house and was looking towards the back of the house. As she passed the front window of the house she noticed it was covered with a blanket and she could not see inside. She could not see any light coming from inside the house. She testified that she was thinking she would go through an opening between the fence and the house where the fence was leaning away from the house, in order to check the back yard.

[35] When Cst. Zelinsky looked between 788 Simcoe and the neighbouring house she could see a person towards the back of the house. She saw that it was a male who was on a cell phone as the screen on the phone was illuminated. She saw that he was not wearing a shirt and had jeans on. She called out to him asking “who are you, what are you doing.” Her first thought was that this must be the caller to 911. She saw that he was walking confidently and with purpose towards the front street – Simcoe.

[36] Once he was even with her she saw that he was holding a large knife in his other hand. She immediately let the others know, “he has a knife.” She testified the blade of the knife was running up along his forearm so that the blade tip was pointing at his elbow crease. She continued to yell loud verbal commands to drop the knife. The male was Craig McDougall. She said he had a stone-cold stare and just looked right through her. She never heard him say anything or acknowledge her in any way.

[37] Once she saw the knife, she thought ‘he must be the stabber, he is going to run’. She thought that once he got to the front street, he would have opportunities to run in either direction down Simcoe and away from them. With this in her mind, she began to move from the corner of the house towards the front gate. She heard P/Sgt. Beyak yell ‘who has the taser’ and ‘tase him, tase him’. She knew that Cst. Leishman was carrying the Taser. When she saw Craig McDougall turn to come into the yard, she began to back up. She was aware that she was now in a cross-fire situation and the three officers were corralled into the front yard.

[38] Cst. Leishman was the only officer on scene who testified he heard Craig McDougall speak. He testified that when Craig McDougall was beside the fence on the side of the yard, closest to him he heard him say in a low voice, “I am trying to get in the house.” He then heard Cst. Zelinsky yell at him to “drop that in your hand right now”. Cst. Leishman looked at his other hand and saw the knife. Cst. Leishman testified that he saw Craig McDougall turn to him, raise his middle finger and say “fuck you.” At this time, Cst. Leishman testified all three police officers were yelling at Craig McDougall to drop the knife.

[39] Mr. Shefman asked me to find that Cst. Leishman’s evidence was not accurate as to the words he testified he heard Craig McDougall speak. Mr. Shefman pointed out that no one else heard Craig McDougall say

anything. The words are not entirely inconsistent with what Craig McDougall had been heard to say within the previous hours. Specifically, Jan Hess' testimony and written statement that Craig McDougall was upset that he could not go back into the house. However, given that they were not heard by anyone else, including Shanelle Parisian who Craig McDougall was on the phone with, I am unable to conclude with certainty that these words were said. Ultimately, they are not critical to my findings of fact.

[40] Cst. Leishman was the only officer on scene who had a Taser. Cst. Zelinsky said that when two people are in a car, the junior officer carries the Taser. Cst. Leishman had been holding his firearm at the low ready and holding his flashlight. He too was inside the fence, in the middle of the yard, closest to the front sidewalk. He put his firearm and flashlight away and pulled out his Taser. He heard the Taser cycling and discharged the Taser. Craig McDougall was now half way to the front door. He saw Craig McDougall raise the knife and turn his torso towards the police officers. The Taser had no effect and Craig McDougall continued to move towards the door.

[41] P/Sgt. Beyak had noticed seconds before that the young child had come out of the door and was standing on the front step. Cst. Zelinsky said she saw the child begin to open the door. Cst. Leishman testified he never saw a child on the step or in the door but I find that his attention would have been focused on his Taser and Craig McDougall. I find that the child was in the doorway. P/Sgt. Beyak yelled to the child to get back inside.

[42] Craig McDougall continued to advance after the discharge of the Taser. P/Sgt. Beyak and Cst. Zelinsky both testified they saw Craig McDougall raise the knife. Cst. Leishman testified that Craig McDougall was holding the knife in such a way that it was easy for him to raise the knife and stab or slash to the side. P/Sgt. Beyak said he discharged his firearm to prevent Craig McDougall from getting into the house with the knife - to stop the threat that Craig McDougall posed to the occupants of the house and the officers. He testified this was the only option left after the Taser did not work.

[43] Cst. Zelinsky testified that when she saw that the Taser did not stop Craig McDougall, she thought to herself that she did not have a clear shot because P/Sgt. Beyak was partially in her line of fire. She had also

temporarily lost solid footing as she was stepping back. She heard two gunshots. She testified, “everything happened so fast.”

[44] Cst. Zelinsky testified she immediately radioed that shots had been fired. The call history recorded “shots fired” at 5:19:44 a.m. It is clear that the entire incident took less than one and a half minutes. If one deducts the time required to approach the residence and get in position before knocking on the door, the interaction with Craig McDougall likely lasted around one minute.

[45] Cst. Zelinsky testified that she saw Cst. Leishman approach Craig McDougall and “clear the knife.” She saw him pick up the knife and throw it toward the gate. Cst. Leishman testified he walked over to Craig McDougall, put his foot on the knife and kicked it away behind himself.

[46] At 5:20:05 a.m. P/Sgt. Beyak is recorded as reporting “family members on scene, shots fired.” At 5:20:08 a.m. P/Sgt. Beyak is reported putting a rush on the ambulance. Many additional police units were immediately dispatched to 788 Simcoe. At 5:22:02 a.m. the call history records per P/Sgt. Beyak, “male was armed w’knife, shots fired.”

[47] The three officers testified that after the shooting they could hear a commotion at the front door of the residence. The three officers rushed to the door and tried to keep the occupants of the residence inside the residence until backup arrived. Once backup arrived, the three people who were pushing on the inside of the door, Brian and John McDougall and Nancy Mason were taken down to the ground in the front yard and handcuffed. P/Sgt. Beyak testified that Acting P/Sgt. Kroeker was one of the first officers on scene and he told him that the inside of the residence had not yet been secured. P/Sgt. Beyak testified he was not involved in handcuffing anyone. As soon as backup police officers arrived he removed himself from the scene and waited on the sidewalk.

John McDougall’s Evidence

[48] John McDougall is Craig McDougall’s uncle. John McDougall did not appear in answer to a subpoena to testify at the Inquest. When I suggested I could issue a warrant for his arrest, Mr. Shefman asked me not to do that arguing it would further victimize a witness. All counsel agreed that his statements should be filed. John McDougall made three statements. His first statement was made to the police on August 2, 2008 at 1:57:35 p.m. His second statement (not under oath) was given to Bob

Norton on August 5, 2008 at 4:35 p.m. Mr. Norton was a private investigator hired by the Island Lake Chiefs to conduct an investigation independent of the police by speaking to the civilian witnesses to the incident. John McDougall's third statement was a sworn video statement taken by Inquest Counsel on August 10, 2016 at 11:02 a.m. These three statements are not entirely consistent.

[49] In his first statement to the police on August 2, 2008 John McDougall said he went to the Ming Court in the late evening on August 1st. He met up with his brother Brian McDougall and some cousins. They all had beer to drink. They left around closing time. He recalled getting to his brother Brian's house on Simcoe around 2:30 a.m. When he arrived at Simcoe, his brother Brian and Nancy Mason were there. John McDougall's friend Gertie Knott was also present. His nieces Olivia, Jessica and nephew Craig McDougall were there. He said that all the "young people" went outside into the backyard while he remained inside visiting with Brian McDougall, Nancy Mason and Gertie Knott.

[50] Suddenly they heard a commotion outside in the backyard. John and Brian McDougall went out to investigate. He saw that Olivia was fighting with another woman. He heard arguing and swearing in the backyard. He said he was holding Craig's arms down over the fence in order to calm him. When he let Craig go, Craig hit him in the face. He heard Brian McDougall chastise his son for hitting him and heard him say, "If you can't handle your drinks don't bother drinking."

[51] He and Brian went back inside. Brian went upstairs to bed with Nancy. He lay down on the living room couch. His nephew, Jessica's five year old son was playing on the computer.

[52] There are a number of discrepancies between John McDougall's statements. Let me illustrate a few:

- i.) In his first statement to the police he said that he lay down on the couch after Brian and Nancy had gone to bed. The next thing he knew, he heard the sound of someone coming down the stairs. It was Nancy Mason. It was at this point he got up to look outside to investigate flashing blue police lights.

In his second statement to the private investigator and in his third statement given in 2016, he says he looked out and saw the blue lights of the police car. And it is only after he heard the “bangs” [gunshots] that Nancy Mason and Brian McDougall came running downstairs.

- ii.) In his first statement to the police he said after he saw the flashing police lights, he opened the interior door to see two police officers at the door. Nancy tried to open the door. The two police officers would not let them out. He saw Craig walking up to the front door of the house. Craig was halfway to the door when Craig turned to face six police officers who were outside the fence. Craig took four or five steps towards the police and John heard three bangs.

Later in that same statement he says (at page 60) that when he looked out the front door he saw two police officers by the front door, Craig walking inside the fence and six police officers behind the fence.

In his second statement to the private investigator, Bob Norton, he says there were six police officers outside the fence. And when he looked out, the police cars were pulling up and Craig was walking up to the house. He saw two officers with their guns pointing at Craig, a female officer and a male officer. He does not mention the two officers at the door until after he heard the gunshots.

- iii.) He is consistent in all of the statements that he heard the female officer say, “he’s got a weapon, put that knife down.” He then heard three bangs.

In his first statement to police, he believed that those bangs were the sounds of a Taser.

In his second statement to the private investigator, he now believes they were gunshots.

By his third statement to inquest counsel in 2016, he says he never heard a Taser being discharged.

- iv.) In his first two statements, John McDougall recalled drinking some beer after they returned to the residence. In his third statement, he said he did not have anything to drink when he returned to the residence.
- v.) In his first two statements, he said Craig McDougall hit him in the face after he let him go in the backyard. In his third statement, he says Craig hitting him was only an accident.
- vi.) In his first two statements he said that he did not see Craig McDougall with a cell phone. He could not see his right arm or right side. In his third statement, he says that Craig was carrying a cell phone because he saw the screen of the cell phone was lit up. He could see that Craig was not carrying a knife. He offered the opinion that Craig would not carry two things at once and would have put the other thing in his pocket.
- vii.) In his third statement, he described how he had pinned up the blanket covering the front window. He saw Craig coming towards the house, walking along the front sidewalk. He seemed to suggest that he then saw a police car pull up and then the police shot him from outside the fence, standing on the front sidewalk.

The scene was secured immediately after the shooting. Pictures were taken of the inside and outside of the house. The photograph of the front window clearly shows that the blanket covering the front window was not pinned up.

[53] I believe John McDougall was doing his best to describe what he could recall. I also accept, as he says a number of times, this all happened very fast and that his perceptions have been clouded by the trauma of what he saw. I find that his recall of some of the details does not accord with the other evidence and is therefore not accurate. I also find that the consumption of alcohol and the passage of time have impacted the reliability of some of his memories. For example, he believed that the female officer shot Craig. All three officers' equipment belts were seized immediately after the shooting. Only P/Sgt. Beyak's police revolver was

missing four rounds. The evidence is clear that P/Sgt. Beyak shot Craig McDougall.

[54] I do not accept his statement of the number of police officers he saw and that five or six were outside the fence as accurate. His statements are internally inconsistent on this point. In the third statement he first explained that he looked out the door and saw two police officers inside the fence. At the end of the statement, he said all of the police officers were outside the fence.

[55] Another area where his memory is inaccurate is about whether Craig got medical attention. In his third statement he said that the ambulance did not arrive until after he was being taken away in a police car. The log of the fire and paramedic service was filed. It is a computer generated report of comments and information put in by a dispatcher/communication center and includes information from attending paramedics. The narrative describes that three people were prone on the front lawn in handcuffs. The report also indicates that the ambulance time of arrival was 5:25:13 a.m. This same report notes that John McDougall was with N502 (the number assigned to a police car) at 5:40:52 a.m. I accept the log of the fire and paramedic service as an accurate record of the times and events recorded in it as it is maintained in the ordinary course of business.

[56] In his first statement, John McDougall said he was knocked out when he was taken to the ground and his eye struck a piece of cement in the front yard. This may also explain some confusion in the details of his memory. I am satisfied that John McDougall suffered an injury to his eye from being taken to the ground by police officers. A photograph of his eye was filed and shows that it is swollen completely shut.

Nancy Mason's Evidence

[57] Nancy Mason was Brian McDougall's girlfriend in August 2008. Nancy Mason could not be found to serve her a subpoena for court although she did attend for the August 2016 dates set for this inquest. She provided four statements. One videotaped, sworn statement to the police on August 2, 2008. A second statement to private investigator Bob Norton made on August 5, 2008. A third videotaped statement to Inquest Counsel on August 5, 2016 and a fourth sworn, videotaped statement to Inquest

Counsel on August 10, 2016. There were significant inconsistencies in the statements provided by Ms. Mason.

[58] Her first statement to the police on August 2, 2008 and her second statement to the private investigator on August 5, 2008 statements were largely consistent with one another. In those statements she said she met up with Brian McDougall at the Ming Court. They returned to 788 Simcoe at around 2:30 a.m. after picking up a case of beer. Jessica, Craig, Heather and Destiny Wood and Gertie Knott were there. She could not recall any arguments or altercations in the first statement. In her second statement to the private investigator, it appears she must have received information from elsewhere, because she says we went downstairs to kick everyone out and “I guess he [referring to Brian McDougall] called 911.” Something she did not say in the first statement to the police.

[59] Nancy Mason said they were in the bedroom for 20 minutes to half an hour when they heard three shots. She looked out the second story front window and saw lights. She and Brian went running down the stairs. The police would not let them out and were holding the front door shut. She, Brian and John McDougall did get out of the house and were taken down to the ground and handcuffed. She kept asking if Craig was okay. They were trying to find out what happened to Craig. In her second statement to the private investigator she says that she did not see a knife or a cell phone in the yard.

[60] Nancy Mason spoke to Cst. Ferris immediately after the shooting. The summary of that conversation in his notes was filed. She told Cst. Ferris she had been sleeping with Brian in her bedroom when they heard gunshots. The two of them went running down the stairs and she saw Craig lying outside on the sidewalk. The police were pushing on the door as she and Brian were trying to push on the door to get out. She was handcuffed as soon as she got out the door. This summary is largely consistent with her first statement to the police and the second statement to the private investigator.

[61] The two statements to Inquest Counsel made in 2016 added some significant additional and different information. Nancy Mason said in those statements she had sent Craig for cigarettes and he was coming home. She looked out the window and saw him in front of the neighbouring house at 790 Simcoe returning home. She was in the bedroom talking to John and Brian McDougall. I will note here that neither John nor Brian

McDougall said in any of their statements that they were ever in the bedroom together talking to Nancy Mason.

[62] She saw Craig on the cell phone. She knew he was talking to his girlfriend because 'that is who he always talked to'. She did not see him with a knife and he did not carry knives. She said as he turned into the yard, police cars pulled up. He was already at the front door trying to get in. She heard the police say a number of times, "drop your weapon." Craig turned to the police, who were all outside the fence and the female officer shot him. She said the police did not use the Taser. When asked why she did not give this information to the police in the first place, she said "I did not feel like talking to them. Because of what they did to him [referring to Craig McDougall]." This explanation does not help explain why she would not have provided this information to the private investigator, Bob Norton, who I am satisfied, would have made it clear to her that he was conducting a private investigation on behalf of the Island Lake Chiefs, independent from the Winnipeg Police Service.

[63] Ms Mason said that she talked about the incident afterwards with both John and Brian McDougall. This would be a natural reaction. I find that information that she would have received after the shooting from others has now filled in her recall of what happened.

[64] I find her third and fourth statements are not accurate because they are inconsistent with the physical evidence. For example, her belief that a Taser was not discharged is inconsistent with the physical evidence. Cst. David Matthews was the identification officer who collected evidence at 788 Simcoe. An identification report describing the items seized at 788 Simcoe was filed. He explained that when a Taser is discharged, it projects small plastic green darts and releases tiny confetti like paper called AFIDS. These were found on the front sidewalk and beside the front step at 788 Simcoe. These are in the same area as where Craig McDougall received medical intervention. I conclude from this physical evidence that Craig McDougall was tasered very close to where he fell after being shot. This physical evidence is consistent with the three officers' accounts of what happened. A Taser probe was found lodged in Craig McDougall's abdomen as described in the Fire and Paramedic report and the autopsy report. Ms Mason is therefore not accurate in her assessment that the police did not discharge a Taser.

[65] Nancy Mason described in her third and fourth statements that Craig McDougall was at the front door and the police were outside the fence when he was shot. The autopsy report confirmed that the bullet entrance wounds were to Craig McDougall's front chest. There was a bullet ricochet found in a tree on the boulevard in front of neighbouring 784 Simcoe. The angle of that bullet is consistent with the evidence of P/Sgt. Beyak that he fired from near the front of the residence, angling away from the front door and not with the evidence of Ms Mason. I conclude from her description of where the officers were when Craig McDougall was shot, a bullet would more likely have entered the residence at 788 Simcoe near the front door rather than a tree on the boulevard in front of the neighbour's house.

[66] Cst. Matthews found spent bullet casings in the front yard of 788 Simcoe, very close to the front of the house underneath the front window. One spent bullet casing was found on the outside of the front window sill. The location of these spent casings is consistent with P/Sgt. Beyak's evidence about where he was when he discharged his firearm. P/Sgt. Beyak testified that he had been beside the front door but as Craig McDougall entered the yard, Beyak backed up into the yard.

[67] Another example of where her evidence was inaccurate was that she recalled running to Craig and getting his blood on her t-shirt. She said the police later took her t-shirt and gave her a blue police issued shirt. In the videotaped statement of August 2, 2008 she is wearing a white sleeveless t-shirt and not a blue, police issued shirt. The "Prisoner Log sheet" that was filled in when she was taken to the police station reveals that no items of clothing were seized from her. Cst. Ferris' notes indicated she was wearing a tank top – his description of her clothes was consistent with her appearance on the videotaped statement given to the police on August 2, 2008.

[68] Nancy Mason said that the police would not let them put their shoes on and it was cold and winter outside. The shooting occurred in the summer. Cst. Ferris does however confirm that she was barefoot. It makes sense that she would be barefoot given that she was either sleeping or getting ready for bed at the time of the shooting. Cst. Ferris explained that she would not have been able to return for her shoes to protect the integrity of the crime scene.

[69] These are just some examples of why I find that her third and fourth statements do not provide an accurate and reliable account of what transpired immediately before and at the time of the shooting. I have concluded that her first and second statements provide an accurate account of what she observed and experienced on August 2, 2008.

Brian McDougall's Evidence

[70] Brian McDougall provided four witness statements:

- i.) a sworn videotaped statement made to police on August 2, 2008;
- ii.) a statement to private investigator Bob Norton on August 5, 2008;
- iii.) a videotaped statement to Inquest Counsel on August 5, 2016;
- iv.) and a sworn, videotaped statement to Inquest Counsel on August 10, 2016.

I am satisfied that Brian McDougall made his best efforts to give a truthful account of what he knew and could recall. A review of the statements and his testimony reveals that his memory of the details of what occurred has significantly eroded over time. I attribute this to the passage of time and perhaps failing health.

[71] Brian McDougall said he was upstairs in his bedroom with Nancy Mason. He was woken by Nancy Mason who told him she heard gunshots. He went running downstairs and tried to get out the door. He, Nancy Mason and John McDougall were all pushing on the door to get outside. He could see his son lying on the ground on the sidewalk. He was yelling to find out what was wrong with his son. Police officers were holding the door shut. Eventually they got out and he was immediately taken down to the ground on the front lawn. He said a police officer's knee was on the back of his neck and he was handcuffed on the front lawn. He kept yelling to see if his son was okay. After a while, he was taken handcuffed to the police car. He was waiting in the police car for a while. He kept trying to see what was going on with his son but could not see anything because of all of the police officers in the way and the distance he was away from the scene. He was taken to the police station and kept in a locked room until he gave his statement at 1:00 P.M.

[72] In Brian McDougall's statement to the private investigator, Mr. Norton, he says that he noticed the day after the shooting that a large black handled knife was missing from his kitchen.

[73] Craig McDougall died at 6:32 a.m. as noted in the Fire and Paramedic report. Brian McDougall does not recall being told that his son had died until after he gave his statement to the police. Sgt. Robert Bell testified, reading from Cst. Tighe's notes, that Brian McDougall was told his son had died at 11:53 a.m. Brian McDougall gave his first statement to the police at 12:48 P.M. He is weeping at the start of the statement which could be consistent with having been told a short time before that his son had died.

[74] Brian McDougall's evidence is essentially consistent with that of the three police officers on scene.

What the Neighbours Heard

[75] Brianna Moose lived next door at 790 Simcoe Street. Her sworn video statement was filed. On August 2, 2008 she could not sleep. She heard male and female voices. She looked at the clock, it was 5:19 a.m. She heard a male voice say drop the knife twice, four seconds later she heard four gunshots and then a lady screamed. Then she heard sirens. She ran upstairs. She and her sisters looked out the window which faces the front street. She saw police starting to tape off the area, an ambulance and two men "getting arrested... 'Cause they're getting handcuffed and put into a police car." She saw a child being put in a police car. She saw a body being put into the ambulance.

[76] I accept her evidence as corroborating the testimony of the three police officers on the orders they made to Craig McDougall to drop the knife. It corroborates P/Sgt. Beyak and Cst. Zelinsky's evidence that a child was in the main floor of the residence. It also is consistent with the evidence of Brian and John McDougall regarding their being handcuffed and put in police cars.

[77] I have already referred to the evidence of Jan Hess. After seeing parts of the commotion at 3:30 a.m. he went back to bed and fell asleep. He heard the gunshots some time later but did not hear anything prior to the gunshots and could not see what was happening after the gunshots.

[78] I have already described what Jan Hess' spouse, Maria Maria observed at 3:30 a.m. She went back to bed and was woken by three bangs. She was told by her husband that he thought those were gunshots. She did not see what happened surrounding the sound of the gunshots.

[79] Brittney Ramsey lived at 771 Simcoe. This residence is across the street and four and a half lots away from 778 Simcoe. She testified she was awake and on the computer when she heard gunshots. She looked out her living room window to see flashing lights. She saw a man and a woman holding onto the door at 778 Simcoe. She noticed that the door was broken or off kilter. She had not noticed that before. She saw a female officer pointing her gun and saying step away from the door in a very loud voice. She left the window to answer a phone call and then returned to the window. She could see that more police cars had arrived.

[80] Joanne Miller lived at 784 Simcoe. This residence is next door to 788 Simcoe. She had been woken up around 4:00 a.m. by what sounded like a party next door. She heard banging on a door at that time. She woke with a toothache around 5:30 a.m. Her bedroom window was open. Her bedroom is on the second floor right beside 788 Simcoe. She heard a male voice, say "what the fuck". Then she heard a male voice say, "drop the fucking knife." She testified she could not be sure if those two things were said by the same voice. She heard a female voice, in a calmer tone, say "drop the knife" twice. She heard a little crack and then two sounds which she believed were gunshots. At this point, she looked outside to see if she should call the police and saw a police cruiser was there already. She called to her dad to come upstairs. Her dad was in the basement. She said she could not quite see but she saw a man handcuffed and saw someone working on a man who was bleeding. Shortly after the gunshots, she heard, 'the guy still has a knife' and 'kick it away.' She said this was not entirely clear in her memory as there was a lot of other noise but that is what she recalls hearing. She heard the paramedics say 'keep breathing, you're doing good.' She testified she heard a woman screaming and heard someone say secure the child. She saw a number of people in handcuffs in the front yard.

[81] I found Ms Miller to be a very credible, reliable witness. I accept her evidence as accurate and truthful. I find it corroborates the evidence of the three police witnesses on scene.

[82] Interestingly, this witness said she was reluctant to go to the police station to give a witness statement because of what happened to her father a few years before. She said there had been a previous shooting in the neighborhood. Her father was asked to provide a witness statement on that incident. She said he spent most of the day locked up in a “cell” before he could go home again. In this case, Ms Miller recalled that she only had to wait an hour to an hour and a half to have her witness statement taken.

[83] It is concerning to me that members of the public are reluctant to provide important information because of wait times and the facilities they are held in prior to giving their statements. I heard testimony from the police witnesses that at the time there was no differentiation between the rooms that criminal suspects are kept in and those that witnesses are kept in. Cst. Ferris agreed that the rooms are cold, concrete and smelly. He agreed that it is not the best way to treat witnesses. He said ideally there would be a nice lounge for people to wait in prior to giving their statements.

[84] I heard testimony that the new police station does have a separate area for witnesses waiting to provide information. It is separate from those areas used by persons who are under arrest or detained. It does contain a lounge and soft, comfortable chairs. This is an improvement.

[85] **I recommend that the Winnipeg Police Service study and consider setting service standards which would set recommended guidelines for how long witnesses must wait in the police station before their statements are taken.**

Was Craig McDougall holding a knife?

[86] I accept from the evidence of Nancy Mason, John McDougall and Brian McDougall that they did not see Craig McDougall with a knife and did not see a knife in the yard after the shooting. This raised significant concern by the family and the community that Craig McDougall was not carrying a knife.

[87] Private investigator Bob Norton testified that he was engaged on August 3, 2008 by Island Lake Chiefs to conduct an investigation into what happened on August 2, 2008. Mr. Norton was a retired RCMP officer. He retired in the eighties. Mr. Norton said he made it clear to the Island Lake Chiefs that he would not be able to interview the police witnesses or the paramedics. Mr. Norton testified that no one was telling the Island Lake

Chiefs what happened, so they were interested in getting the facts as best they could.

[88] He worked on the investigation over the next few days as he interviewed the people who were present in the residence. He confirmed that the witnesses he interviewed did not see a knife.

[89] Mr. Norton had a note in his file that he spoke very briefly with Billyjo DeLaRonde who was then the Grand Chief of the Assembly of Manitoba Chiefs. His note indicated on the Thursday following the shooting he had a brief conversation with Chief DeLaRonde in a parking lot. Mr. DeLaRonde told him that he had had a brief conversation with then Chief of the Winnipeg Police Service, Keith McCaskill who had advised him that the person who was shot was threatening officers with a knife but at that point police had not yet recovered a knife.

[90] Mr. Billyjo DeLaRonde was called to testify about his knowledge of what he had been told. He did not recall the conversation in the same way as Mr. Norton. Mr. DeLaRonde testified at the time he was the Chief of the Pine Creek First Nation and Interim Grand Chief of the Assembly of Manitoba Chiefs. A protocol or agreement existed between the Chief of the Winnipeg Police Service and the Assembly of Manitoba Chiefs that if there was a serious incident between Aboriginal people and the police, the two organizations would advise each other and share information. Chief DeLaRonde recalled being phoned by Chief McCaskill in the early morning hours and told there had been a shooting in the central part of the city. Chief DeLaRonde remembered being told there was a confrontation with an Aboriginal person who was told to drop whatever he had in his hand. The confrontation escalated and he was shot. Chief McCaskill also advised him that some people were saying he had a cell phone in his hand. Chief McCaskill told him he believed his police officers that the person had a knife but that the investigation was ongoing. A few days later he saw Chief McCaskill outside of a hotel and was told that a knife had been recovered but a cell phone was not recovered.

[91] When Chief DeLaRonde testified the photo book which had been filed as Exhibit 4 was open on the witness stand. He testified that when he saw the photo of John McDougall with his eye swollen shut he recalled speaking to that male at the house at 788 Simcoe in the days that followed the shooting. He had been invited to come to the house at 788 Simcoe to speak to the family members who were grieving in his role as Grand Chief.

He believed that the male he spoke to at the house was either the father or grandfather of Craig McDougall. He recalled that the male at the house told him that the deceased person had caused the “mouse” [referring to a black eye] on his eye. This male told him that there had been some kind of fight, the police were called and the deceased person grabbed a knife as he was going out. Chief DeLaRonde did not have any notes of the conversations and was trying to recall what he had been told more than eight years earlier.

[92] Former Chief of Police Keith McCaskill also testified at the Inquest. He testified he had recorded some notes at the time and days that followed the shooting. He said he was called at 5:45 a.m. and told that a person had been shot by a police officer. He was advised the suspect had a knife. He did recall speaking to Grand Chief DeLaRonde. Chief McCaskill testified he may have said there was a knife, he may not have. At that point he would only have provided very limited details.

[93] It is clear to me that the concern in the community about whether Craig McDougall was carrying a knife or a cell phone arose from the fact that not all of the witnesses saw a knife.

[94] When the knife was moved away from Craig McDougall it landed under the fence gate of the yard. Photo 13 of Exhibit 4 shows the knife that was seized at the scene by the identification officers. Even in this picture the knife is partially obscured by vegetation and the fence gate itself. It is evident to me that the knife was not easy to see and explains why John McDougall, Brian McDougall and Nancy Mason did not see the knife.

[95] The knife seized at 788 Simcoe was filed as evidence before the Inquest. The knife was sent for forensic testing. The forensic report was filed. The forensic report indicates that two swabs were taken from the knife. One from the blade and one from the handle. No human DNA was found on the swab from the knife blade. The swab from the knife handle revealed human DNA of mixed origin, consistent with having come from at least three individuals. Craig McDougall could not be excluded as being a possible contributor to this mixed profile.

[96] The evidence is abundantly clear that Craig McDougall was carrying a knife. I am satisfied of this because of the significant corroboration offered by the numerous witnesses who heard police order him to drop the knife and the physical seizure of the knife from the scene. While I accept

that John McDougall did not see the knife and was in a position to see it, it was dark and his focus may well have been on the officers he saw near the door of the residence. The photos taken of the residence show that there was no light bulb in the fixture above the front door. The obscured nature of the location of the knife after the shooting and the fact that the three witnesses were immediately taken to the ground and handcuffed would have prevented them from seeing the knife on the ground. The fact that Brian McDougall told the private investigator that he noticed the next day that a knife which he described and matches the knife seized at the scene, was missing from the kitchen at 788 Simcoe also supports my conclusion that Craig McDougall was carrying a knife. I have no hesitation in concluding that there is significant, consistent and credible evidence that Craig McDougall was carrying a knife when he approached the police and was shot.

[97] Both Mr. Shefman as counsel for the McDougall family and Mr. Gray as Inquest Counsel asked me to make a recommendation that police officers should be issued body worn cameras. Both counsel suggested that the controversy over whether Craig McDougall was carrying a knife would have been avoided if there was clear, videotaped evidence of this fact. Ms Carswell as counsel for the Winnipeg Police Service argued that body worn cameras would not have changed the outcome and would not have prevented this death, therefore I do not have jurisdiction to make such a recommendation.

[98] Mr. Tessler in his testimony recognized that there has been a significant debate in North America about police and body worn cameras. He agreed that anything that can give investigators information is helpful. However, he testified that evidence from body worn cameras is not a “magic bullet” in and of itself. He noted there are a number of frailties with body worn cameras including: they are subject to movement, mechanics and only capture one perspective. There would be many more logistical questions about the police body cameras including the storing of all of the videos created by such cameras, the carrying of the cameras as an additional piece of equipment and privacy concerns to name a few.

[99] And yet, video images are frequently presented in criminal cases and turn out to be the best evidence available. Video images have the potential to address issues of accountability and transparency.

[100] **I recommend that the Province of Manitoba and its policing agencies should study and consider the feasibility and use of body cameras for police officers engaged in their duties.**

The Cell Phone and the Conversation on the Phone

[101] Shanelle Parisien testified that she was on the phone with Craig McDougall up until he was shot. She testified that she had been in a boyfriend/girlfriend relationship with Craig McDougall for over a year and a half. There had been problems in the relationship mostly surrounding Craig's use of alcohol.

[102] Ms Parisien testified that three or four days before Craig died they had an argument. She and Craig had been living with her mother in Peguis First Nation. Craig left Peguis and went to Winnipeg.

[103] She testified that Craig was very close to her mother and would call her mother "Mom". The cell phone that was seized from Craig McDougall confirms that "Mom" is on his contact list.

[104] Ms Parisien said Craig's own mother had passed away a short time before. Craig was often sad or depressed after his mother passed away and he began to use alcohol more.

[105] Ms Parisien testified that Craig called her at 5:00 in the morning. She had been sleeping. She was not happy to hear from him at that hour and asked him what he wanted. He told her he was sorry for hurting her and everything he had done to her. He reassured her that none of it was her fault. He told her the police were looking for him because he had stabbed his father. He told her that he stabbed his father because his father was trying to call the police for no reason. He told her more than once that he wanted to go home to see his mother.

[106] Craig told her he would be watching over her. She thought he might be talking about hurting himself in some way.

[107] Ms Parisien testified that he sounded intoxicated.

[108] Ms Parisien said she could hear officers in the background. She could hear a female officer say "drop the knife." She heard a male officer say "drop the damn knife." She could hear people yelling in the background. He said goodbye and then she heard four gun shots. She

heard someone say “man down” and that an ambulance was needed. The line stayed open for a while and she could hear his family yelling for him. She could hear sirens and could hear someone talking to him. She heard a male voice say “let’s go talk inside.” She did not hear Craig say anything to the police. She was crying and very upset and her Mom made her hang up the phone.

[109] An analysis of the cell phone recovered from Craig McDougall revealed that the last number dialled out was to “Mom” at 5:13 a.m. The call lasted 41 seconds. The call was to 654-4210 a number registered to Fisher River, Manitoba. This is consistent with the evidence of Ms Parisien that Craig McDougall called her. There are four incoming calls noted on the phones logs. The first three lasted for only a few seconds. The last incoming call came in 5:17 a.m. and lasted 17 minutes.

[110] I find based on the testimony of Ms Parisien and the phone records that Craig McDougall called Ms Parisien at 5:13 a.m. She then phoned him back and they had a lengthier conversation which lasted until he was shot.

[111] I find based on the evidence of Shanelle Parisien and Trevor Monias that Craig McDougall spoke about suicide in the early hours of August 2, 2008. I cannot be certain if his intention was to commit suicide by having the police shoot him or if, in his intoxicated condition, he was determined to get inside his home and did not think or react rationally to the police officers who were present. As Brian McDougall explained in his first statement, Craig did not behave rationally when he was drinking. Either way, the outcome of that evening was tragic for all involved.

THE INVESTIGATION OF THE POLICE WITNESSES

[112] There was a marked difference between the way the police witnesses were treated immediately after and in the hours following the shooting and the way that the family members were treated.

[113] The three involved officers were placed in unlocked boardrooms or offices. There was a police officer assigned to stay outside the room to ensure the well-being of the officers and to monitor who spoke to them. All were able to leave the police station by 10:30 a.m. and knew by that time that Craig McDougall had passed away. All three were offered the services of a wellness officer, legal counsel and psychologist before giving their statements. The three police officers were able to prepare their own

statements, seek the input of counsel as to what should be elaborated on or clarified and then provide their typed witness statements to the investigators a few days later. They did not give their statements on video or under oath. They were never asked additional questions by investigators about their statements.

[114] The lead investigator (now retired) Sgt. Robert Scott Bell testified that it was unfair to ask officers on the day of the shooting to give their statements. In his view, the police officers would not be psychologically ready to give their statements. While he recognized that emotionally it would have the same impact on the family members, he testified it was more traumatic for the officer who had to make a lethal force decision. In my view, this testimony demonstrated how his empathy was with the involved officers and not the family members of Craig McDougall who had just lost a loved one.

[115] All police officers who testified said that it was the policy of the Winnipeg Police Service that officers involved in a critical incident or a police shooting were not to make any notes and only provide a statement after they had an opportunity to speak to the wellness officer, legal counsel or a psychologist. I was told that this is not a written policy. It was taught in the police academy and every police officer who testified and was asked about it was confident on the dictates of that procedure.

[116] These added procedural protections for police witnesses were the subject of critical comment in the *Report of the Taman Inquiry* at pages 83 and 84. The *Taman Inquiry* recommended that special procedural protections for police officers should be eliminated. Today, in Manitoba the *Police Services Act (PSA)* has been implemented to address concerns raised in the *Taman Inquiry* and the *Aboriginal Justice Inquiry* about police investigating police.

[117] Cst. Zelinsky testified that she believed that the procedure followed in 2008 was still being followed today. Detective Sergeant David Bevan testified that he believed that the current practice is that the Homicide Unit of the Winnipeg Police Service investigates and the Independent Investigation Unit (IIU) closely monitors the investigation. These understandings are not accurate.

[118] Mr. Zane Tessler, the Civilian Director of the Independent Investigation Unit (IIU) described the provisions of the *PSA* and the

involvement of the IIU if this same incident were to occur today. Any shooting involving a police officer would not be investigated by the police force itself but by the IIU. Pursuant to the legislation, the Civilian Director of the IIU makes a determination of which officer was directly involved in the incident; this person is designated the 'subject officer'. Any other officers who witnessed the incident are designated 'witness officers'. Mr. Tessler testified that these terms are nationally consistent with the language used in other provinces. In this incident, P/Sgt. Beyak would have been the subject officer and Cst. Leishman and Cst. Zelinsky the witness officers.

[119] The regulations to the *PSA* require all officers to complete their notes and hand them to the Chief of the police service before they complete their shift. The witness officers' notes are disclosable to the IIU. The witness officers must cooperate with the IIU investigation. If the IIU serves notice on the Chief, the notes of the witness officers must be handed over within 24 hours. The witness officers must also participate in an interview within 24 hours of a request by an IIU investigator. The witness officers have a continuing duty to cooperate.

[120] The subject officer's notes are privileged. They are not compellable by the IIU. The subject officer can consent to turn them over voluntarily. Mr. Tessler described that the subject officer is treated like any other criminal suspect who is in jeopardy of criminal charges being laid so they have the same rights and privileges as any other criminal suspect.

[121] Inquest Counsel asked me to consider a recommendation which would require this portion of the regulations to be amended to require that the subject officer's notes be compellable but with some use immunity attached. He drew an analogy to the regulation of lawyers. Because lawyers self-regulate, if there is a concern about the misappropriation of funds, for example, the Law Society can send a letter to the "suspect" lawyer requiring a response to those allegations within 14 days. Mr. Gray argued that police officers have a special set of powers in our society and therefore different responsibilities should accrue when the use of those powers is being questioned.

[122] I admit to some concern that the current *PSA* may not strike the right balance between recognizing the rights of a criminal suspect and transparency and effectiveness of an investigation into the potential misuse of a police officer's use of force. I agree with Inquest Counsel that police

officers carry special powers. With those powers should come special responsibilities.

[123] In *Wood v. Schaeffer*, [2013] 3 SCR 1053, 2013 SCC 71 (CanLii) Justice Moldaver said:

[1] Police officers are entrusted by the communities they serve with significant legal authority, including in some circumstances, the power to use deadly force against their fellow citizens. The indispensable foundation for such authority is the community's steadfast trust in the police. Each and every day, thousands of officers across this country work diligently to earn that trust, often putting their own lives on the line.

[2] But that trust can be tested – sometimes severely – when a member of the community is killed or seriously injured at the hands of a police officer.

[124] The Supreme Court of Canada in *Wood v. Schaeffer* considered provisions in Ontario's similar *Police Services Act*. At issue in that case was whether police officers were entitled to consult counsel prior to preparing their notes. The Supreme Court held that consulting with counsel was antithetical to the purpose of the *Act* which was to create a transparent, accountable record when an officer is involved in the use of lethal or serious force. The Supreme Court found that officers should prepare their notes before their shift ended without discussing the issues with counsel. The consultation with counsel could lead to the appearance that the officer has emphasized his personal self-interest in protecting himself and his colleagues from potential liability rather than just setting out the facts.

[125] Since this shooting occurred in 2008, the law has been clarified by the Supreme Court in *Wood v. Schaeffer* in 2013. Manitoba's *Police Services Act* has changed the landscape as to how a similar incident would be investigated. Recommendations I might have made regarding the Winnipeg police investigation are no longer necessary because of these changes.

[126] I will not make the recommendation suggested by Inquest Counsel because the facts before me do not directly raise the issue. The *PSA* was not in effect at the time of this shooting. While P/Sgt. Beyak's notes were

not made before he completed his tour of duty as would be required under the current regulations, they were made in the days that followed and turned over to investigators. Under the current legislative scheme, P/Sgt. Beyak's notes would not necessarily be given to the investigators unless he consented to it. P/Sgt. Beyak testified that if the investigators had asked him to answer questions about what happened, he would have answered those questions. In my view, more information needs to be considered before making a recommendation of changes to the current *PSA* regulations and in a case where the facts more squarely raise the issue.

[127] Since there were misunderstandings about the role of the IIU today and the duties of involved officers by Cst. Zelinsky and D/Sgt. Bevan, Mr. Shefman asked me to make a recommendation to address this. Mr. Tessler the Civilian Director of the IIU did express his surprise that any police officer would not understand the IIU's role since they had engaged in extensive consultation and communication regarding the unit.

[128] I accept that the independence and accountability that the IIU is meant to foster is aided by a full understanding and cooperation with its investigations. The effectiveness of their investigations will in some measure help to address the potential for a loss of public confidence in a police service which can occur when a member of the community is killed by a police officer.

[129] **I recommend that the Winnipeg Police Service continue to communicate to its membership both at the Recruit Training stage and once officers graduate, the jurisdiction and authority of the Independent Investigation Unit as defined in the *Police Services Act* and its regulations.**

[130] The *PSA* regulations allow for a civilian monitor to be appointed to be part of an investigation. The *Paul Duck Inquest* (February 23, 2016) was an inquest into the shooting of an Indigenous man in the community of God's Lake Narrows by an RCMP officer. The lead investigator, an RCMP officer, was brought in from Saskatchewan. An Elder and the Chief of the community were allowed to be present during briefings in the investigation as "independent observers." The lead investigator testified during the *Duck Inquest* that he had not worked with an independent observer before but he found it beneficial to the investigation.

[131] It is my view that every consideration must be made to ensure that an investigation is accountable to the community, in particular the Indigenous community when one of their own is killed. This could begin to build and restore trust and confidence between the police service and the Indigenous community.

[132] **I recommend that when the Independent Investigation Unit is conducting an investigation into the death of an Indigenous person at the hands of a police officer, consideration should be given to whether there is an appropriate member of the Indigenous community who could be appointed as the civilian monitor.**

DID SYSTEMIC RACISM PLAY A ROLE IN THE DEATH OF CRAIG MCDUGALL?

The Treatment of Witnesses Following the Shooting

[133] I have already described how Brian McDougall, John McDougall and Nancy Mason were taken to the ground in the front yard of 788 Simcoe immediately after the shooting. All three were handcuffed and forcibly held down for some period of time.

[134] Jonathan Rudin was qualified as an expert witness in the interaction between Aboriginal people and the criminal justice system, including police services. Mr. Rudin is the program director of Aboriginal Legal Services in Toronto. He is also a lecturer and instructor at York University, Osgoode Hall Law School Professional Development and Ryerson University. He has conducted research and written extensively on the topic of Indigenous people and the criminal justice system. His evidence has been accepted by other courts as an expert in this field. He prepared a report for this Inquest titled, “Did Systemic Racism Play a Role in the Death of Craig McDougall?”

[135] Mr. Rudin testified that many Aboriginal people harbour distrust of police. He explained that this must be understood in its historical context. The history of colonialism where police have frequently been used as agents of the state to enforce state goals – for example the Riel Rebellion was suppressed by police officers. Residential schools policies were enforced by police officers being directed to help apprehend the children. Child welfare agencies who use the police to remove children from families. Land rights disputes have involved police officers being used by

governments to enforce the government's claims that no Indigenous rights were at stake.

[136] Mr. Rudin testified the result of this history is that:

...many Aboriginal people harbour distrust of police, that the police are seen as not people who are there to help but people who are there to take people away.... those memories go back generations. And so it takes a while to address those concerns because they're deep-rooted and they ...have significant foundation. ...

Again, I mean, we have to be careful. I don't want to generalize about every ... Indigenous person...But I think the situation starts, sort of the baseline situation is one of distrust and then that baseline situation will move up and down – up or down depending on the nature of the interactions.

[137] Mr. Rudin explained that from a police perspective, it may be perceived by police officers that Aboriginal people are uncooperative. He explained:

I was in Timmins a number of years ago doing a workshop and after I finished the workshop a police officer came to see me and he said, I don't understand why when I go into a community I'm trying to help and no one wants to talk to me. I'm not here to do any damage, I don't have any negative feelings about Aboriginal people, I don't... didn't know any Aboriginal people before I got here. I just want to keep people safe and people aren't responding to me. And my response to him was that he was not the first police officer they has seen and what he had to understand is that the reaction people had was not necessarily a personal reaction to him but rather to both the historical and the lived experiences of the individuals in the communities that he was policing.

[138] This evidence highlights the importance of understanding that historical context and how it continues to impact relationships today.

[139] Mr. Rudin in his written report explained that direct discrimination is usually easy to identify. "It consists of racist comments and explicit racist attitudes held by police officers towards Aboriginal people."

[140] Mr. Rudin explained that systemic racism is more difficult to identify because it is built into the operations of the system. He explained that one way in which this manifests itself is built into the nature of police work.

...police officers must exercise their discretion multiple times a shift. The way this discretion is exercised often reflects stereotypes or assumptions about specific individuals and communities. These stereotypes and assumptions arise not necessarily because the officer holds racist beliefs, but that his or her perceptions are shaped by their experiences working in particular communities...

Police interactions with members of the Aboriginal community are often reactive – responding to calls, making arrests – and as a result they can develop a one-sided perspective on the community they are policing because increasingly they see only one side of that community. In that context it is not surprising that attitudes can develop that see Aboriginal people in one dimensional ways as well....

If all you see of a community is its negative side, its criminality and its victimization, then it is not surprising that attitudes may develop that view these communities as somehow 'less than' other communities.

[141] Mr. Rudin recognized and I recognize that systemic racism is not limited to police officers. The Supreme Court of Canada in *Williams*, [1998] 1 SCR 1128, *Gladue*, [1999] 1 SCR 688 and *Ipeelee*, [2012] 1 SCR 433, as well as many reports and commissions that have considered the issue have recognized that systemic racism exists in all actors in the criminal justice system. However, as explained by Mr. Rudin, judges and counsel have the benefit of time which allows for an opportunity to gather more information and to consider the impact of implicit biases and perhaps come to a different view. But for police officers who have to make decisions quickly and who deal with Indigenous people on a daily basis, the impact of systemic racism is greater.

[142] Mr. Rudin identified the treatment of Brian McDougall, John McDougall and Nancy Mason as an example of systemic racism. Specifically, he offered the opinion that leaving them on the ground in front

of the residence, handcuffed for up to “40 minutes” was an example of systemic racism.

[143] Mr. Rudin testified:

However charitably, I think, you view the situation, at some point fairly early on in the post shooting period it was clear that those three individuals had nothing to do with the shooting, obviously, had done nothing wrong, were not a threat or a danger to anyone, and yet they were just left on the ground handcuffed....it's as though everyone sort of thought this is normal. The scene becomes – ...there is someone who's shot and there are three aboriginal people handcuffed and that makes sense in a narrative in which the police officers work and no one stopped...to ask why are these people handcuffed?

[144] In the immediate aftermath of the shooting, I am satisfied that P/Sgt. Beyak, Cst. Leishman and Cst. Zelinsky saw people from inside the house attempting to come out of the house. At that point, they did not yet know whether there were more victims or another assailant in the house. The information from the 911 caller was that there had been a stabbing at the residence. They had now seen Craig McDougall approach with a knife. They did not know what or who was inside the house. I also accept their evidence that they were trying to control the scene until backup arrived. They wanted the residents to stay inside the house to protect the officers, to prevent Craig McDougall from being interfered with and to avoid contamination of the scene. These were reasonable and justifiable actions.

Nancy Mason's Handcuffing

[145] There is a significant difference in the evidence about the length of time that Nancy Mason was left handcuffed and the length of time Brian and John McDougall were handcuffed. This difference was not appreciated by Mr. Rudin. Mr. Rudin's impression was that all three witnesses had been left handcuffed for up to 40 minutes. This was not the case for Nancy Mason.

[146] Mr. Rudin was somewhat critical of Cst. Zelinsky. He referred to Cst. Zelinsky's written statement where she noted that Nancy Mason cried out to her as Cst. Zelinsky approached Craig McDougall. Cst. Zelinsky told Nancy Mason Craig McDougall was breathing at which point Ms Mason

said she was sorry for pushing on the door. Mr. Rudin testified at this point if Cst. Zelinsky had said:

I know, that's really too bad, and then she had taken off the cuffs and said, I'm sorry for what happened to you, no one, no one in the police force during that whole time said we over reacted, we did something wrong. There were no steps taken to acknowledge that anything was done. So that – you know, those feed into those feelings. [of distrust between Indigenous people and the police.]

[147] Mr. Rudin did not have the benefit of hearing Cst. Zelinsky's evidence. Cst. Zelinsky testified that she assisted in putting Nancy Mason down on the front yard and handcuffing her after she came out of the front door of the residence. I have already found that since the residence had not yet been cleared and they needed to control the scene, this was a reasonable and justifiable action.

[148] Cst. Zelinsky testified that after Nancy Mason was handcuffed, other officers took control of her. She told Acting Patrol Sergeant (A/P/Sgt) Kroeker who was the first supervisor on the scene that the residence had not yet been cleared and asked him what he needed her to do. He told her to go help secure the back of the residence. She went to the back of the residence and found there were sufficient officers there that she was not required. She then returned to the front of the residence and went to Craig McDougall thinking she might be able to provide some first aid.

[149] Cst. Zelinsky said she went down on her knees to check on him. She saw he was breathing on his own. She could see Ms Mason six to eight feet away and she was asking about Craig. Cst. Zelinsky told Ms. Mason he was breathing on his own. Cst. Zelinsky testified she felt a connection and empathy for Nancy Mason. At that point Ms Mason told her she was sorry. Cst. Zelinsky testified that she understood it to be for pushing on the door.

[150] Since Cst. Zelinsky was directly involved in the shooting, she was required to remove herself as other officers arrived on scene. She explained in her written statement and in her testimony that she removed herself from the scene right after she spoke to Nancy Mason. I find it was not incumbent on Cst. Zelinsky to deal with Ms Mason but on the officers who took control of Ms Mason.

[151] Cst. Ren Ferris and his partner Cst. Lagasse were dispatched to the scene at 5:21 a.m. They arrived at the back of the house at 5:23 a.m. Cst. Ferris said they secured the back of the house which took five to six minutes. At that point he was approached by officers who turned a female over to him and explained that she was a witness from inside the house. She was turned over to him near the front street in handcuffs at approximately 5:30 a.m. He described the scene at the front as chaotic. The paramedics were working on someone and there were many police officers there.

[152] As soon as Nancy Mason was turned over to him, Cst. Ferris removed her handcuffs. He testified that the minute he knew she was a witness he removed her handcuffs as there was no reason to keep a witness handcuffed. He testified that if a person is handcuffed, they would feel detained and she was not 'detained', she was a witness.

[153] Cst. Ferris explained that he took her to his police car and placed her in the back of the car. The car was parked at the back of the residence. They had a conversation for the next half hour about her involvement in the incident. Cst. Ferris testified at this time he knew there had been a shooting but he did not know it was a police-involved shooting. He recorded a summary of their conversation in his notes.

[154] Once he had transported her to the police station, he completed a "Prisoner Log Sheet." Cst. Ferris testified that his personal practice in completing the prisoner log sheet was to make it clear that Nancy Mason was a witness by writing beside her name, "****Witness****". A box on the form contains the words, "Date and time of Arrest". Cst. Ferris stroked out the words, "of arrest" to again denote her status as a witness. These changes made by Cst. Ferris helped to impress on me that he understood clearly the difference between a witness and an arrested or detained person.

[155] **I recommend that the Winnipeg Police Service change the "Prisoner Log Sheet" so that the form itself is clear as to a person's status as a witness as opposed to a suspect who is detained or an arrested person.**

[156] Cst. Ferris provided Nancy Mason with water and slippers as she was not wearing shoes. He explained that he had not allowed her the

opportunity to return to the house for shoes to maintain the integrity of the crime scene.

[157] Cst. Ferris admitted that the facilities for witnesses were not ideal. Witnesses and suspects are placed in the same rooms. He agreed the rooms were cold, concrete and smelly.

[158] I am satisfied that Cst. Leishman and Cst. Zelinsky were justified in taking Nancy Mason to the ground and handcuffing her when she was trying to push her way out of the house. Mr. Rudin also acknowledged that this was appropriate. Nancy Mason was doing what was entirely natural and predictable in the circumstances – she could see Craig McDougall lying on the ground and wanted to go check on him. The police officers on the other hand had very little information about what was going on in the house and needed to control the occupants at least until the house had been checked. I find that Nancy Mason was held handcuffed for justifiable reasons and for a short, reasonable period of time – less than ten minutes. Her treatment is not an example of systemic racism.

Brian McDougall's Handcuffing

[159] Nancy Mason's treatment was different from the way in which Craig McDougall's uncle, John and his father, Brian McDougall were treated.

[160] P/Sgt. Sami Haddad testified that he was nearby when he heard the gunshots. He immediately went to 788 Simcoe. He arrived at 5:19 a.m. He described the scene as chaos. He testified he saw officers "fighting" in the sense of grappling and pulling with civilians at the door. He could not recall what people were yelling. He said he came to assist his fellow officers and took a male to the ground. He said he was on top of him to handcuff and secure him. At that point he did not know if the person he handcuffed was a suspect. He said he handcuffed him to help secure the scene.

[161] The male he handcuffed was saying, "that's my son." He testified it soon became clear that this was an officer-involved shooting. Brian McDougall was the man P/Sgt. Haddad handcuffed.

[162] He was asked what his authority was to keep him handcuffed. He offered, I "know he was intoxicated." P/Sgt. Haddad did not note how long he kept Brian McDougall on the ground or when he placed him in the cruiser car. The call history shows that he and his partner began to

transport Brian McDougall to the Public Safety Building at 5:57 am. Brian McDougall's handcuffs were not removed until he was put in a locked room at the police station.

[163] Frequently in P/Sgt. Haddad's testimony he would answer "I have no clue" and that he did not make a note of it at the time.

[164] P/Sgt. Haddad was unable to identify any behavior, other than Brian McDougall was intoxicated to justify keeping him in handcuffs for the extended length of time he was kept handcuffed. He weakly suggested that intoxicated people are unpredictable and that "may be one of the reasons" he was left handcuffed. He testified there could be "various reasons" he was left handcuffed. But other than to say he was restrained until everything was completely safe he could not articulate which one of the various reasons actually applied to Brian McDougall. I am satisfied that Brian McDougall offered no physical resistance or aggression other than initially pushing to come out of his residence to get to his son who was laying on the ground. I note that even in the early parts of the evening before the shooting he was not violent or aggressive with anyone. He was a peacemaker who was trying to ensure that the arguments he witnessed did not escalate.

[165] While P/Sgt. Haddad suggested that Mr. McDougall was free to leave because he was a witness, he also agreed that he was 'detained' and would have had no way of knowing that he was free to leave since he was kept in handcuffs and later in a locked room. He was not told he was free to leave. He also agreed that Mr. McDougall was detained during that entire period.

[166] He agreed in cross-examination that Brian McDougall kept repeating, "that's my son," and his behavior was consistent with that of a grieving father.

[167] P/Sgt. Haddad suggested that it would have been up to the supervisor to tell Brian McDougall that he could leave. P/Sgt. Pelland was the supervisor at the scene. He arrived at the scene three to four minutes after he was assigned to the incident at 5:21 a.m. He testified by the time he got there all the people were outside of the house and being dealt with by other officers. He testified by 5:25 a.m. all witnesses were already in the police cruisers. He was not accurate in that recall. The paramedic report

details that the ambulance arrived at 5:25 a.m. and three persons were prone on the front yard.

[168] P/Sgt. Pelland testified that all officers would know that you cannot force a witness to accompany you against their will. He also testified that a witness to an offence would not be handcuffed while being taken to the police station. He testified that he instructed all officers to take witnesses to the police station but would not have told the officers to ensure that they conveyed to the witness that they had a choice. He also testified that no one told him they were having any difficulties with the witnesses.

[169] It is easy to understand why Brian McDougall felt that the way he was treated and questioned, “made me feel that everything was my fault.” (page 72, August 5, 2016 statement). He, of course, had done nothing wrong. This was known early on when the house had been cleared and P/Sgt. Beyak told P/Sgt. Pelland that he had shot Craig McDougall when he approached with a knife. I can find no justifiable reason or legal authority for keeping Brian McDougall handcuffed as he was for 15 to 20 minutes on the front yard of 788 Simcoe and then being left handcuffed in the police car until he was taken to the police station.

John McDougall’s Handcuffing

[170] John McDougall consistently said in his statements that he was left handcuffed on the ground for approximately 20 minutes. After considering all of the evidence, including the lack of any specific note by police officers as to when he was taken to the police cruiser, I am satisfied that John McDougall’s estimate of how long he was kept handcuffed on the ground is accurate.

[171] Cst. Robert Armstrong testified that he arrived on scene with his partner at 5:25 a.m. He testified that on the way to the scene he already knew that this was not a stabbing but an officer-involved shooting. He said paramedics were treating a male on the ground. He said there were numerous other people on the ground. He testified that he understood there had been some kind of altercation before he got there.

[172] He said that he was tasked by P/Sgt. Pelland who was in charge at the scene to transport John McDougall. John McDougall was turned over to him in handcuffs. He did not make any inquiries as to why John McDougall was in handcuffs. He said John McDougall was agitated, intoxicated and uncooperative. He was unable to provide any specific

behaviour that supported the conclusions that John McDougall was agitated and uncooperative. What he did offer was that he was swearing and yelling “Craig”. He agreed in cross-examination that this reaction was not out of the ordinary given the situation – a family member had just been shot and was laying on the walkway obviously injured.

[173] Cst. Armstrong testified that John McDougall was left in handcuffs until he “calmed down.” Once he was at the office and placed in a locked room, the handcuffs were removed. The call history has a comment at 5:40:52 a.m. that N502 which was Cst. Armstrong and his partner’s police car “has John Joseph McDougall.” Since John McDougall was taken to the ground shortly after the shooting at 5:19 a.m., this entry provides corroboration of the accuracy of John McDougall’s recollection that he was on the ground for 20 minutes.

[174] Cst. Armstrong testified that he knew John McDougall was a witness. He said he would have let him leave if he had asked. He said they would have asked John McDougall if he would accompany them to the Public Safety Building. For his part, John McDougall in his first statement to the police said he was told, “You are not arrested. We’re just going to put you in the car first.”

[175] Jonathan Rudin qualified as an expert witness in the relationship between Aboriginal people and the criminal justice system offered the opinion that the extended handcuffing and restraint of Brian and John McDougall is an example of systemic racism. P/Sgt. Beyak told the supervisors on scene almost immediately that he had discharged his firearm. The police had cleared the residence and knew there were no other assailants in the residence. It should have been clear to the police officers there that John and Brian McDougall had done nothing wrong, that their family member had just been shot and yet they were left in handcuffs.

[176] I agree with the following testimony of Mr. Rudin:

But really when you think about it, it’s, it’s showing some basic humanity to people. And when, when you – to handcuff someone and to leave them on the ground is to make a statement about how you think of those people, particularly if they’re – and, and we know that that’s a serious thing to do. If you are charged with a criminal offence and you’re dangerous, we understand why you’re handcuffed. But in – the inference

is if you're handcuffed it means you've done something and you're dangerous. To treat someone like that when they haven't done anything is in some ways to, to make a statement about how you feel about those people. And that, quite naturally, will cause concern and distrust.

[177] I find that there was reason to restrain and handcuff John McDougall immediately after the shooting. But I do not find that after he was taken to the ground that he was aggressive or uncooperative with the police. While I appreciate his video statement to the police was several hours later, he is very calm and forthcoming in that statement. He was not aggressive or violent at any earlier point in the evening. The neighbours who saw people handcuffed on the ground or being taken to police cars do not describe any aggressive or uncooperative behavior. I accept John McDougall's statements that he had had hip surgeries and was physically compromised. John McDougall's eye was completely swollen shut so his ability to see was also limited.

[178] The police witnesses on the other hand were not restrained, were not kept in locked rooms, were not required to provide statements that morning and were offered the assistance and support of a wellness officer, a police psychiatrist and the benefit of legal counsel.

[179] I am sensitive to the fact that P/Sgt. Haddad and other witnesses described the post-shooting period as chaotic. I can appreciate that it was an upsetting and stressful time. And yet, the officers who dealt with Nancy Mason knew quickly that there was no need to keep a witness handcuffed. I heard a lot of evidence of the training police officers undergo so that they can continue to make reasoned, proportionate decisions even under stress. In this case, the extended handcuffing of John and Brian McDougall fell short of what one would expect from professional police officers. I agree with Mr. Rudin, no one stopped to say, "why are these people handcuffed."

[180] **I recommend that the rights of a witness should be clearly explained to the witness throughout their interaction with the police, including that they are free to go or stay, that there will be no consequences to them if they choose to leave and they have no legal obligation to give a statement.**

[181] **I recommend that the Winnipeg Police Service ensure that when witnesses have observed a traumatic event that they have**

access to a victim services worker or provide the witness with a list of agencies who can provide support.

[182] I recommend that the Winnipeg Police Service emphasize in their training programs that an officer's notes should contain sufficient detail to explain when a person is handcuffed, why they were handcuffed and for how long the handcuffs were used.

[183] Mr. Rudin testified that there are two prominent responses to address systemic racism – training and community policing.

[184] Mr. Rudin readily acknowledged that he has not reviewed the training offered by the Winnipeg Police Service in detail. I heard evidence that in 2015 the Winnipeg Police Service began Implicit Bias Training for all of its officers and civilian employees. This will be mandatory training for all of its employees. The premise of this training program is that it encourages people to examine their own pre-conceptions and stereotypes. Bringing awareness to a person's biases and stereotypes allows one to develop skills and modify behavior. These training programs need to be realistic and 'fit' the assessments that police officers are required to make on a daily basis. Mr. Rudin testified that this type of training needs to occur on a regular basis, much like use of force training, so that it becomes ingrained. These programs need to be evaluated and assessed to see if they are fulfilling their purpose.

[185] This training is in addition to the Aboriginal Awareness training that has been offered for years by the Winnipeg Police Service. I noted that Cst. Leishman's training record shows that he received this training in 2007.

[186] I recommend that the Winnipeg Police Service explore the feasibility and consider delivery of Implicit Bias Training for its members at regular intervals.

[187] I recommend that the Winnipeg Police Service engage in continuous evaluation and improvement of its Implicit Bias and Aboriginal Awareness programs to ensure that they are meeting goals of ensuring officers work more effectively when they interact with Indigenous people.

[188] **I recommend that the Winnipeg Police Service consider and explore external evaluations of these training programs, including input from Indigenous organizations.**

[189] Mr. Rudin testified that the community policing model is also a consistent recommendation in many inquiries.

[190] I heard evidence that this is already part of the mandate of the Winnipeg Police Service. Some examples of the community policing models the Winnipeg Police Service is involved in include police officers placed in schools to connect with young people and develop community engagement, 21 Block (where numerous social and Indigenous agencies work together particularly in the Point Douglas area) and initiatives where the police are partners in restorative justice and pre-charge diversion.

[191] **I recommend that the Winnipeg Police Service continue to work with Indigenous organizations to develop community policing programs.**

[192] The recommendations I have made are meant to begin to address the distrust that exists between the police service and the Indigenous community. Mr. Shefman, as counsel for the McDougall family, asked me to recommend that the Winnipeg Police Service apologize for the treatment received by Brian and John McDougall. I will later deal with delay, but on that issue, I was asked to recommend that the Chief Medical Examiner and Manitoba Prosecutions apologize for the delays in the progress of this inquest. While I believe in the value of apologies as a tool for reconciliation, I also believe that the apologies must come sincerely from the organizations involved and not as a result of a direction from the Court. As a result, I will not make any recommendations directing apologies. This is not to diminish my hope that honest steps towards reconciliation and improvements in communication are made.

Did Systemic Racism play a role in the moments leading to the shooting of Craig McDougall?

[193] Mr. Rudin testified that the evidence of systemic racism in the treatment of Brian and John McDougall and Nancy Mason lead to concerns about the 100 seconds that lead up to the shooting. He testified that if one looks only at the 90 to 100 seconds between the three police officers arriving and the shooting, there is nothing he can point to that is suggestive of direct or systemic racism.

[194] However, he said,

...my concern is that I think what happens afterward suggests there was systemic discrimination. And so the question becomes if the officers who are involved at the shooting during the 100 seconds are also the officers who are exhibiting, one could suggest, systemic - examples of systemic discrimination, how - we know that it's there with those officers then how do we know, I don't know that we can know for sure, whether or not it played a role in their interactions during the hundred seconds.

[195] He put it this way in his written report:

There is no evidence that the conduct of the police post-shooting involved any racial epithets or anything of the kind directed at the occupants of the house, who were Aboriginal people. This suggests that the treatment of the occupants was not motivated by any particular racial animus. Systemic discrimination however does explain this treatment. It appears that it somehow seemed natural to the officers to handcuff the three occupants of the house although a principled rationale for this is difficult to discern. It is easy to see how those individuals might conclude that they were treated the way they were because they were Aboriginal people. It appears, certainly on the surface, to be the only possible explanation for the treatment. Did this view of Aboriginal people, as ones who were entitled to less respect and consideration, particularly given the loss that they had just experienced, have an impact on the decisions of the three officers in the seconds leading up to the shooting? Given the circumstances of the case it would be impossible to say yes. Given what transpired after the shooting, it would also be impossible to say no. (Pages 35-36)

[196] I do not accept his opinion that systemic discrimination might have played a role in the minute and a half leading to the shooting.

[197] As I have already noted above with regard to Cst. Zelinsky and her involvement with Nancy Mason, it is unfair to rely on his assessment of Cst. Zelinsky's statement to conclude that she had an opportunity to remove Ms Mason's handcuffs. Cst. Leishman and Cst. Zelinsky were involved in

taking Ms Mason to the ground and handcuffing her. She was immediately turned over to other officers and the handcuffs were quickly removed. What happened to Nancy Mason is not an example of systemic racism or discrimination. It would be inappropriate and unfair in my view to taint the actions of Cst. Leishman and Cst. Zelinsky with the actions of other police officers in their dealings with John and Brian McDougall. As agreed by Mr. Rudin there is no specific evidence that racism of any type played a role in the shooting.

[198] I also do not impute any of the actions of other officers who dealt with John and Brian McDougall to P/Sgt. Beyak. P/Sgt. Beyak testified that he was not involved in handcuffing any witnesses. I accept this evidence. I heard from the officers who were involved in handcuffing the witnesses. As soon as backup arrived, P/Sgt. Beyak removed himself to the sidewalk on the front street. He was not involved in giving any direction regarding the witnesses.

[199] I have concluded it would be unfair and inappropriate to rely on decisions made by officers who arrived immediately after the shooting to the decisions made by the three officers leading up to the shooting. I find that there is no evidence of racism direct or systemic in the moments leading to the shooting of Craig McDougall.

WHY THE TASER WAS INEFFECTIVE

[200] In 2008 in Winnipeg, the police were using the X26E Taser (a conducted electricity weapon (CEW)). After a Taser is discharged, the weapon's software allows for the capture of data related to the discharge which can be downloaded from the weapon. In this case, when the Taser's data was downloaded, it revealed data corruption so that information regarding its discharge was not captured. This issue was explored in this Inquest by hearing from expert witnesses.

[201] Michael Allen Brave's qualifications as an expert were admitted. Mr. Brave is employed as National/International Litigation counsel with TASER International, Inc. in Scottsdale, Arizona. Mr. Brave has extensive experience in consulting and development of law enforcement policies. He was qualified as an expert witness in police use of force, the mechanism of the Taser and associated software, use and safety of the Taser, the operation of the Taser and the effects on a subject who is hit by a Taser.

[202] A Taser is a weapon which can be pointed at a subject and when discharged will shoot two electrical probes at the subject. Ideally, these probes will enter or touch the body over a 12 inch spread. The top probe will ideally enter below the diaphragm and the bottom probe will touch the body in the area of the legs. If both probes are near enough to the body, they will complete an electrical circuit. An electrical charge will flow through the motor muscles of the subject, incapacitating the subject so that they are not physically able to continue.

[203] Mr. Brave offered testimony on the data corruption. He testified that data corruption does not necessarily mean that the Taser malfunctioned. The saving of data related to the discharge of the Taser and the actual functioning of the Taser are two different systems. He offered the opinion that in his view it was highly probable that the Taser was functioning on August 2, 2008 – that is, it was capable of discharging an electrical current through the probes.

[204] The Taser used by Cst. Leishman was filed as evidence at the Inquest. Mr. Brave was able to demonstrate with this Taser that it could still emit an electrical charge. Mr. Brave held the Taser to his metal watch band and pulled the trigger. An electrical current and loud electrical clicking or buzzing noise could be heard as a circuit was completed from one probe, along the watch band to the second probe. He explained that it was not surprising that the battery would still be operational eight years later if the Taser has not been used during that time. The discharge of the Taser is what would deplete the battery power.

[205] The autopsy and paramedic reports show that one probe was lodged in Craig McDougall's abdomen. The paramedic report notes that a second probe was seen entangled in the bottom pant leg of his jeans. Mr. Brave explained that baggy clothes can inhibit or prevent the proper functioning of the Taser. If a probe gets caught in baggie clothes and stays more than two centimeters away from the body, the electrical current is not completed and therefore does not have the incapacitating result that is intended for the proper functioning of the device.

[206] A video of Craig McDougall at a liquor store at around 8:00 p.m. on the evening of August 1, 2008 was filed. I have reviewed this video and concluded that the jeans Craig McDougall was wearing that evening were baggy. Cst. Leishman and P/Sgt. Beyak testified that they heard the loud clicking noise when the Taser was discharged supporting the conclusion

that the weapon was capable of discharging electricity. I have concluded that while the Taser was functioning on this evening, it did not stop the forward movement of Craig McDougall because the bottom probe got caught in his jeans and therefore the electrical current was not completed.

[207] The Taser used in this incident could hold only one cartridge at a time. This means that it was capable of discharging one set of electrical probes. Officers carrying the Taser carried a second cartridge. Mr. Brave testified it would have taken 30 seconds or more to reload the Taser. Cst. Colin Anderson who is today an instructor with the Winnipeg Police Service on the use of the Taser, testified it would take 20 to 30 seconds for an officer to re-load a second cartridge. He testified that officers under stress experience much longer reaction times.

[208] I am satisfied that based on the distances involved on August 2, 2008, Cst. Leishman did not have enough time to re-load his Taser and try to discharge it a second time at Craig McDougall. The front yard of 788 Simcoe was small. The inside of the fenced yard measured 14.5 feet deep and 18.8 feet wide. A four foot high picket fence surrounded the yard. The cement walk leading to the front door of the house was 18 feet from the public sidewalk to the raised front door landing. Craig McDougall was continuing to advance and appeared intent on getting into the house with a knife, a place where a small child and an adult male had been seen only moments before.

[209] Mr. Brave explained that in most circumstances it is not recommended to use a Taser when confronted with a sharp-edged weapon. He said the most appropriate weapon to respond to a threat from an edged weapon is a firearm. He explained this is because the officer is under stress and the Taser is not a precision aimed weapon. He testified if there is lethal coverage with a firearm which can be used if the Taser is not effective, it would make sense to use the Taser. Mr. Brave testified that the Taser cannot be used as a substitute for deadly force.

[210] The X26E Taser was replaced by an updated model the X2 in late 2008. This model of Taser is capable of discharging twice before the cartridge must be replaced. It is not possible to know if this model had been in use on August 2, 2008 if it would have made a difference in the tragic outcome to Craig McDougall. However, given the short distances involved, it is likely even a second discharge of a Taser would not have been a reasonable option. I am satisfied there has been continuous

improvement in the weapons and tools made available to the officers of the Winnipeg Police Service allowing them to do their jobs in a safer, more effective manner.

[211] There are further improvements in the X2 model Taser. The X26E Taser used by Cst. Leishman had a red laser dot for only the top probe. P/Sgt. Beyak testified that he saw this red laser dot on Craig McDougall's chest prior to the discharge. The current model of Taser has a red laser dot that is emitted for both the top probe and the bottom probe. This added feature should allow greater accuracy for the officer aiming the Taser so that it discharges in an effective manner. A discharge distance of seven to fifteen feet is ideal because the weapon's probes will then spread at least 12 inches. The incapacitation of the motor muscles will only occur in the area between the two probes. The greater the spread of the probes, the greater the area of muscles that will be incapacitated.

[212] Cst. Colin Anderson has been an instructor on the use of the Taser with the Winnipeg Police Service since 2014. He testified that currently each member of the Winnipeg Police Service carries a Taser. This too is an improvement that should improve safety for both civilians and police officers.

[213] Mr. Brave further testified that the X2 model of Taser is capable of arcing electricity across the top of the cartridge. This arc is a visual display of an electrical current arcing over top of the weapon while making a loud electrical clicking sound. The benefit of this feature is that studies in the United Kingdom and Australia have shown that this has a significant intimidation factor and, in 86% of cases, merely turning the Taser on and arcing the electrical current will garner compliance from a subject and not necessitate the actual discharge of the weapon. The avoidance of any use of force is a tremendous benefit. It avoids the risk of injury to civilians and police officers.

[214] Mr. Shefman asked me to consider recommendations which would require an officer to discharge the Taser twice and at an earlier point in time, where possible. I am not prepared to make those recommendations. In my view, the use of force policy used by the Winnipeg Police Service already requires that officers' use of force be reasonable to the circumstances and proportionate to the severity of the threat they may face. The policy requires them to justify their use of force. I agree with Counsel for the Winnipeg Police Service that broad principles and guidance is all

that can reasonably be set because there is no way to anticipate the myriad of circumstances that might confront an officer and require a use of force in the course of their duties.

[215] Dr. Howard Williams was qualified as an expert witness in the use of force, the application of Tasers, the use of Tasers and subsequent use of lethal force. Dr. Williams completed his PhD in Criminal Justice in 2013. He has been a lecturer at the Texas State University in San Marcos, Texas since 2002. He was the Chief of Police in San Marcos Police Department from 2003 to 2014. Dr. Williams has completed a number of research studies and written extensively on the use of Tasers.

[216] Dr. Williams was asked to provide his opinions on why the Taser might have been ineffective in this case in stopping the forward movement of Craig McDougall. He was also asked to provide an opinion on whether the failure of the Taser was a unique or uncommon occurrence. Finally, he was asked to provide his opinion on whether the use of force was justified in this case.

[217] Dr. Williams suggested that there are a few reasons why the Taser might not have been effective. One possibility was that the weapon could have been defective. However, he indicated he had not examined this Taser and so could not offer an opinion as to whether that was the case. (I have already referred to the evidence of Mr. Brave who did examine the Taser used in this case and concluded it was a functioning weapon.) A second possibility was a broken wire or a “miss” in the Taser hitting the target. However, he concluded, based on the evidence he reviewed that this was not likely given the evidence provided by the officers who heard a loud crackling from the Taser when it was discharged.

[218] Dr. Williams suggested the most likely reason the Taser was ineffective was that one probe got caught in Mr. McDougall’s jeans and therefore an incomplete circuit resulted. He explained that the Taser can arc if it is within 3 to 4 centimeters of the skin. One would normally expect to see small electrical burn marks on the skin from the electrical current arcing into the skin. The autopsy does not contain any indication of such burn marks having been observed. Dr. Williams explained that in his studies he would often see such type of injuries documented in an autopsy report.

[219] Dr. Williams further testified that in his experience it is not that uncommon for a Taser to be ineffective. He explained that two studies have reported their research into the effectiveness of Tasers. One study found that 15% of the applications of Tasers were ineffective. A second study found in 32% of the incidents studied, the Taser was ineffective. Dr. Williams explained that the sample size for each study was small and each used different research methods so that the range is actually not as wide as it might appear.

[220] Dr. Williams has been building a database since 1985 which records the number of incidents where a fatality has resulted after the ineffective use of a Taser. At the time of his testimony (on December 5, 2016), he had gathered data for 864 fatalities that resulted from gunshot wounds after the ineffective use of a Taser.

[221] Dr. Williams testified that Tasers can garner compliance just by turning the weapon on. He called it the “red dot” effect. The suspect gives up for fear of the weapon being used when they see the red laser dot emitted by the weapon meant to assist aiming of the device. I note this is similar to the evidence of Mr. Brave who reported significant compliance when the electrical current arcs over the top of the Taser. The Taser can be an effective psychological tool. He also offered that no weapon is fail proof but Tasers do offer the advantage of reducing injuries to officers and suspects.

[222] Dr. Williams opined that it is reasonable to believe that the application of force was justified in this case. He testified that officers are taught that once a suspect is within 21 feet this is a deadly distance. He explained that an action is always faster than a reaction which means that an aggressor will get a few steps in before an officer can react. He testified that an edged weapon is a very serious weapon because the blade can cause significant damage extremely quickly. Dr. Williams’ opinion was that it was reasonable to believe that the officers’ lives were in jeopardy and the use of force was justified.

[223] I found the testimony of Dr. Williams was consistent with the testimony and opinions of Mr. Brave. I accept their evidence. I find it is well-supported by the evidence I heard at this Inquest. I concluded that while the Taser was not properly downloading data on August 2, 2008, it was capable of discharging an electrical current. If an electrical current had been completed, it might have stopped Craig McDougall from his advance.

I accept that one electrical probe from the Taser got caught in his jeans and resulted in an incomplete electrical circuit so that the discharge of the Taser was ineffective.

WAS THE USE OF FORCE REASONABLE?

[224] Cst. Daniel Atwell is a use of force instructor for the Winnipeg Police Service. He testified, in August 2008, police officers received four hours of training on tactical communication. Tactical communication time has now been tripled. The purpose of tactical communication is to use verbal direction to get voluntary compliance. If the officer has time, tactical communication would let the suspect know the jeopardy they are in. He provided an example of tactical communication: rather than just the command “put your weapon down”, the officer would say “I will shoot if you don’t put the weapon down and you come closer.”

[225] Cst. Atwell noted that tactical communication cannot be 100% effective. He explained that the emphasis is still on “drop the weapon”. They try to have this ingrained in the officer’s mind as stress can impact the officer’s mind and a suspect’s mind. He said the subject may not know the jeopardy they are in so if the officer can inform the suspect of the jeopardy that is preferable.

[226] The three officers in this Inquest did not testify to using tactical communication. It is not possible to know if the addition of an instruction that the officers would shoot if he did not drop the knife would have made a difference in the tragic outcome to Craig McDougall given his determination in approaching the police even in the face of repeated demands to drop the knife.

[227] **I recommend that the Winnipeg Police Service evaluate whether sufficient time is dedicated to tactical communication and whether it is feasible to increase the time dedicated to this subject.**

[228] Sgt. Rob Bell (not related to the lead investigator Sgt. Robert Scott Bell) was qualified as an expert witness in tactical considerations in the use of force. Sgt. Bell has been a member of the RCMP for over 20 years. He testified that the Winnipeg Police Service use of force policy is generally consistent with the National Use of Force framework. The policy tries to balance the amount of resistance faced by a police officer with the amount of force used in response by the officer.

[229] Sgt. Bell offered the opinion that the use of the Taser was an appropriate intervention. He testified that the only other option for the officers was disengagement but this would have been an inappropriate response given their duty to protect the people inside the house. He offered the opinion that there was no other appropriate response. He concluded that lethal force was appropriate once Craig McDougall entered the fenced yard. Sgt. Bell testified that the officers showed remarkable composure and sound decision-making in attempting to use the Taser at all. He concluded that the use of force was appropriate.

[230] He testified that based on the evidence he reviewed, the three officers would not have had time to engage or use de-escalation techniques. De-escalation techniques can consist of allowing the person to speak and vent their concerns. Officers are encouraged to listen to the concerns. He testified that de-escalation requires time and 60 seconds is not enough time. Cst. Zelinsky testified she was familiar with de-escalation techniques but there was no time to use any of those techniques.

[231] I conclude that the use of lethal force by P/Sgt. Beyak was the only reasonable option left to him when the Taser was ineffective. The placement of the three uniformed officers, their loud and persistent commands to drop the knife were the first level of force utilized. When Craig McDougall continued to advance, it was appropriate to use the Taser. I am satisfied that their duty to protect the occupants of the house and to maintain their own safety left P/Sgt. Beyak with no other option than to discharge his firearm. Dr. Williams testified, police officers do not “get in the business to hurt people.” In the same vein, Cst. Zelinsky testified this did not turn out the way they wanted it to – of that I am sure.

JURISDICTION TO MAKE RECOMMENDATIONS

[232] Section 33 of the *Fatality Inquiries Act (FIA)* says that the Inquest Report must set out when, where and by what means the deceased person died, the cause of death and the material circumstances of the death. The Inquest judge “may recommend changes in the programs, policies or practices of the government and the relevant public agencies or institutions or in the laws of the province where the presiding provincial judge is of the opinion that such changes would serve to reduce the likelihood of deaths in circumstances similar to those that resulted in the death that is the subject of the inquest.”

[233] Ms Carswell argued that the strict wording of the section required that all recommendations must be linked to the circumstances of the death of Mr. McDougall and have the effect of reducing the likelihood of death in similar circumstances. She argued that most of the recommendations advocated by Mr. Shefman and Mr. Gray fall outside of the scope of my jurisdiction as set out in section 33.

[234] Mr. Shefman argued that since the Inquest Judge has the duty to report on the material circumstances of a death, it followed that the Inquest Judge must have the authority to make recommendations related to those material circumstances. Those “material circumstances” can go beyond the immediate cause of death and include the circumstances immediately surrounding the death. He relied on my earlier ruling that the scope of the Inquest could include an expert witness being called on systemic racism (2016 MBPC 28).

[235] Mr. Gray submitted that the recommendations he was proposing applied to the broader context implicated in this death. His submission on proposed recommendations go to the issues of transparency of the investigation when similar deaths are investigated, addressing public confidence in the police service and addressing relations between the police force and the Aboriginal community.

[236] In *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27 the Supreme Court of Canada rejected an interpretive approach which would look only at the words of a statute. Rather they adopted an approach described in Driedger’s *Construction of Statutes* which endorses a broader approach (at paragraphs 20 and 21).

[237] It was described this way by the Manitoba Court of Appeal:

The “golden rule” of statutory interpretation is that referred to as “Driedger’s Modern Principle” (see Ruth Sullivan, *Sullivan on the Construction of Statutes*, 5th ed. (Markham: LexisNexis Canada Inc., 2008) at 1 et seq.), namely, that “the words of an Act are to be read in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.” *The Manitoba Government Employees Union and The Honourable Edward Hughes* 2012 MBCA 16 at para. 36.

[238] I agree that the plain meaning or a strict interpretation of the section does result in the interpretation advocated by Ms Carswell – that is all recommendations must have the effect of reducing future deaths in similar circumstances. However, this results in disharmony with the other purposes of the *Act* and ignores the “entire context” of the *Act*.

[239] The Manitoba *Fatality Inquiries Act* does not set out the purposes of the Inquest. I note that in some provinces with coroners systems, the legislation is much clearer as to the purpose of the Inquest, see for example *Canadian Association of Elizabeth Fry Societies v Office of the Chief Coroner* 2016 SKQB 109 (CanLii) at para. 22 (to inform the public, bring dangerous practices to light, facilitate the making of recommendations to avoid preventable deaths), *Coroners Act* RSO 1990 C. 37 (s. 31(3) to make recommendations to avoid deaths in similar circumstances and any other matter arising from the inquest.) Mr. Shefman argues that the absence of a delineated purpose in the *Act* means the discretion granted to an Inquest Judge in Manitoba is “broad and discretionary.”

[240] The Manitoba government, following the conclusion of this Inquest has tabled amendments to the *Fatality Inquiries Act*. These amendments include the addition of sections which would clarify the purpose of the Inquest.

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

26.2(3) The presiding provincial judge may make such orders and directions as he or she considers appropriate for the fair and expeditious determination of the issues at the inquest.

[241] There is also a proposed amendment to the section regarding recommendations:

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

[242] Since these amendments were presented after this Inquest was concluded, I have not had the benefit of submissions as to what impact these proposed amendments could or should have on this report. However, these amendments are consistent with my view as to how the provisions of the *Fatality Inquiries Act* should be interpreted.

The Object and Purpose of the Act

[243] Since the *Act* in force at the time of this Inquest did not specifically enunciate the purpose of the Inquest, it is necessary to turn to case law to identify the purpose and object of the Inquest.

[244] In *Hudson Bay Mining and Smelting Co. v. Cummings*, 2006 MBCA 98, 208 Man. R. (2d) 75, Justice Steele, after reviewing the history and differences between medical examiner systems and coroner systems, noted that a common theme in all legislation is that the Inquest must be in the public interest.

[245] The process of an Inquest has evolved to become one with a larger focus on reducing the likelihood of deaths and advancing the public interest – particularly the value of human life.

[246] Further, Justice Steele explained,

The provisions of Manitoba's *FIA* also indicate that the goal of the inquest is to get to the full truth surrounding the death of the deceased in the public interest by receiving relevant evidence which is not inadmissible, but without assigning blame(s.33(2)(b).) (emphasis added) (at para. 43).

[247] Justice Freedman in *Hudson Bay Mining and Smelting Co. v. Cummings*, P.C.J. (2004) 190 Man. R. (2d) 231 (at para. 32):

The inquest judge is mandated to investigate the cause of death and to make a report which may recommend changes in programs, policies and practices. He or she may recommend changes in the law. The Judge's mandate is broad indeed.

[248] And finally, the Supreme Court of Canada in *Faber v. The Queen*, [1976] 2 SCR 9, after reviewing 100 years of evolution of the Inquest,

concluded that the coroner's Inquest has come to have a social context. The Court described the following functions of an Inquest:

- (a) identification of the exact circumstances surrounding a death serves to check public imagination, and prevents it from becoming irresponsible;
- (b) examination of the specific circumstances of a death and regular analysis of a number of cases enables the community to be aware of the factors which put human life at risk in given circumstances;
- (c) the care taken by the authorities to inquire into the circumstances, every time a death is not clearly natural or accidental, reassures the public and makes it aware that the government is acting to ensure that the guarantees relating to human life are duly respected.

[249] While the Court in *Faber* was dealing with a *Coroners Act* in Quebec, these same purposes can be derived from the provisions of Manitoba's *Fatality Inquiries Act*, including the provisions which require the determination of how the death occurred and that recommendations may be made.

The Scheme of the Act

[250] In *Hudson Bay Mining and Smelting Co. Ltd. v. The Honourable Judge R. G. Cummings*, 2004 MBCA 182, the Manitoba Court of Appeal dealt with an application that the Crown produce a copy of all interview notes and recordings it had conducted of witnesses. Justice Freedman held that judges of statutory courts have

...powers intrinsic to all judges when they carry out their functions, and specifically, all powers which are necessarily incidental to the carrying out of their functions. These are powers ancillary to the jurisdiction set out in the statute; they are powers found by necessary implication in the legislation. (at para. 23).

He also went on to find that “Subject to any express statutory provision, the judges of the Provincial Court have the power to control their own procedures.” (at para. 25).

[251] Justice Freedman concluded that the power to order disclosure, in the absence of express statutory provision, was necessarily incidental to the judges duty and would be critical to giving the judge the appropriate tools necessary to “make truly meaningful recommendations under the *Fatality Inquiries Act*” (at para. 34).

[252] I have concluded that the power to make recommendations which arise directly out of the material circumstances of death are necessarily incidental to the duty of the Inquest Judge. The Inquest Judge’s duty to inquire into all of the material circumstances arising from the death so as to enhance the public interest in transparency and accountability requires such authority.

[253] In this Inquest I am confronted with an eight year delay in the hearing of the Inquest. A strict interpretation of the *Fatality Inquiries Act* would mean that it would be inappropriate for me to make recommendations regarding this delay because the delay is not causally related to the cause of death. This would not allow me to fulfill one of the purposes of the Inquest which is to assure the community that the government is acting to ensure that the guarantees relating to human life are duly respected.

[254] A review of other recommendations made by Inquest Judges reveals that judges have gone beyond recommendations that not only prevent deaths in similar circumstances but made recommendations to make the Inquest process more meaningful and efficient. For example, in the *Tyler Joseph St. Paul Inquest* (December 7, 2016), in the *Sheldon McKay and David Durval Tavares Inquest* (June 5, 2016) and in the *Robert Wood Inquest* (May 29, 2014), the judges recommended that the *Fatality Inquiries Act* be amended to reduce the need for the number of mandatory inquests and provide the Inquest Judge with discretion as to whether the Inquest continued to serve a meaningful purpose. The new proposed amendments to the *Fatality Inquiries Act* provide greater discretion to the Chief Medical Examiner and the Inquest Judge as to when an inquest proceeds. These amendments appear to be a recognition that the recommendations made by Inquest Judges were appropriate and well-founded.

[255] The issue of the jurisdiction of an Inquest Judge to make recommendations was also raised in the *Craig Kucher Inquest* (April 13, 2016). Judge Dvorak found that the mental health treatment received by Mr. Kucher was not causally related to his death. And yet he made recommendations regarding the information that should be provided to a care provider when a patient is discharged from a mental health facility. In doing so, he held that the jurisdiction of the Inquest Judge to make recommendations is not limited only to the circumstances that have a direct causal connection to the death.

[256] Judge Dvorak held that:

An inquest judge is entitled to consider circumstances leading to the death that, though not causally connected to the death, disclose a foreseeable issue that might lead to death under similar circumstances.” (at paragraph 23).

[257] Inquests consume a significant amount of resources – judicial, counsel’s, a variety of government departments, police service resources and the deceased family’s to name a few. Just as in this Inquest, often a great deal of expert testimony is presented to the Court. This makes Inquest Judges well-placed to have a large picture view of the material circumstances surrounding the death. In my view it would be a waste of these resources to so narrowly construe the jurisdiction of the Inquest Judge so that recommendations which address process issues surrounding the Inquest into the death are prohibited.

[258] I conclude that a contextual, purposive approach to the interpretation of the provisions that say a judge may make recommendations as part of her/his report at the conclusion of the Inquest must include not only those recommendations which can be directly linked to the cause of death but also those which naturally and incidentally arise out of the circumstances of death. In this case, that includes the treatment of the deceased’s family members in the immediate time period following the shooting and the delay issues.

[259] I recognize that there is a need for an Inquest Judge to carefully monitor the scope of the Inquest and the recommendations that arise from the circumstances of death so that it does not become a roving inquiry into matters of general public concern. But at the same time, there must be sufficient jurisdiction to meaningfully deal with all of the circumstances

surrounding the death to “check public imagination” to ensure that government policies are developed that respect human life. This is a context specific inquiry into those matters which are implicated in the death before the Court. The recommendations I have made in this report are meant to prevent deaths in similar circumstances and address the issues which arose naturally out of the material circumstances of death.

DELAY

[260] Mr. McDougall was killed on August 2, 2008. It took eight years and four and a half months for the Inquest into his death to be completed.

[261] In preparing for the hearing of evidence at the Inquest, I asked counsel to provide me with information to explain the reasons for this lengthy delay.

[262] The timeline between the shooting of Craig McDougall and the hearing of the Inquest is as follows:

August 2, 2008 - Craig McDougall is shot by P/Sgt. Beyak.

August 4, 2008 – The autopsy takes place and the cause of death was determined to be multiple gunshot wounds.

September 2, 2008 - The Autopsy report is completed and provided to Winnipeg Police Service.

September 15, 2008 - The Winnipeg Police Service investigation by the homicide unit is completed and turned over to the Winnipeg Police Service Executive for review and completion of an incident synopsis before distribution to an external reviewing agency.

January 2009 - The last of the forensic reports are received by the Winnipeg Police Service.

August 25, 2010 - Sgt. Robert Scott Bell completed his executive summary.

October 15, 2010 - Superintendent Corrine Scott completed an incident synopsis.

November 16, 2010 - The Winnipeg Police Executive sends the investigation file to the Ontario Provincial Police to complete an independent review.

February 23, 2012 - Detective Inspector Paul Beesley of the Ontario Provincial Police completed the review.

March 1, 2012 - The Winnipeg Police Executive receives the completed review.¹

March 26, 2012 - A/Superintendent Danny Smyth prepared a memo in response to recommendations made by Detective Inspector Paul Beesley. The memo is forwarded to Division 40 Inspector Rick Guyader.

April 10, 2012 - The investigation file together with Detective Inspector Paul Beesley's report and A/Superintendent Danny Smyth's memo was forwarded to Manitoba Justice, Senior Counsel Mike Mahon.

May 2012 - Manitoba Prosecution Service refers matter to outside legal counsel.

July 2012 - Outside legal counsel provides opinion to Manitoba Prosecution Service that there were not reasonable and probable grounds for *Criminal Code* charges.

October 2012 - Mr. McDougall's father, Brian McDougall, is advised of the outside counsel's opinion.

November 2012 - The Office of the Chief Medical Examiner is informed by Prosecutions that no charges will be laid.

July 31, 2013 - Dr. Balachandra sends a letter to the Chief Judge directing that an Inquest be held. The letter notes that the Office of

¹ There is a slight discrepancy in the evidence. Jacqueline St. Hill's information in Exhibit 8 says the OPP review was sent to the Winnipeg Police Service in January 2012. I am unable to resolve this discrepancy because this information was provided to me by a written summary contained in Exhibit 8. I did not hear any other testimony on this.

the Chief Medical Examiner reviewed the file in October 2008 and concluded that the Inquest was mandatory. But the policy of the office is that an Inquest is only called after the police investigation is finished and any criminal charges that might be laid have been concluded. The letter says the Inquest was called after “several external reviews” and review by Prosecutions, Manitoba Justice.

September 11, 2013 - I was assigned to be the Inquest Judge.

September 2013 - Approximately six weeks after the Inquest was called, Ms. Deanne Sahulka was appointed Inquest Counsel.

September 30, 2013 - Ms. Sahulka advised me by letter that she had been assigned as Inquest Counsel. She indicated in that letter that she would be in touch once she had complete disclosure.

May 20, 2014 - I received a disclosure package from Ms. Sahulka.

July 24, 2014 - I requested a meeting with Ms. Sahulka.

August 12, 2014 - I had a meeting with Ms. Sahulka. We discussed whether she had any information of who might be interested in requesting standing. At that time she indicated she expected the Winnipeg Police Service would seek standing and she did not know if the McDougall family would seek standing. We discussed setting a standing hearing once she had provided notice to interested parties.

October 1, 2014 - I sent an email to Ms. Sahulka requesting an update.

November 3, 2014 - I received an emailed response that Ms. Sahulka had contact with counsel who would be seeking standing on behalf of the McDougall family.

January 20, 2015 - A standing hearing was held. Kim Carswell was granted standing as counsel for the Winnipeg Police Service. N. Boudreau appeared with Brian McDougall. The McDougall family was granted standing (thereafter Corey Shefman appeared as counsel for the McDougall family).

March 24, 2015 - A case management meeting was held between counsel and me. We discussed a potential witness list and which experts might be called. Mr. Shefman appeared for Brian McDougall and advised a private investigator had been retained and the private investigator had prepared a report. Ms Carswell requested all of the supportive information of this investigative report. A further case management meeting was set for April 28, 2015.

April 28, 2015 - A case management meeting was held. Mr. Shefman raised an issue that he believed that counsel from Manitoba Prosecutions was in a conflict of interest. Mr. Shefman advised that he had changed his position on the private investigator's report and would not be disclosing it. Ms. Sahulka indicated she would seek further direction from her department regarding the potential conflict of interest.

May 28, 2015 - Mr. Shefman filed a motion raising a perceived conflict of interest and that the scope of the Inquest should include an inquiry into the relationship between Aboriginal people and the police.

June 9, 2015 - Another case management meeting was held. Mr. Jim Koch appeared on behalf of Civil Legal Services indicating that he would be arguing on behalf of Manitoba Prosecutions that Manitoba Prosecutions was not in a conflict.

August 7, 2015 - The conflict motion was argued.

September 15, 2015 - I sent a letter to counsel advising of my decision that Manitoba Justice Crown Attorneys were not in a conflict of interest. I indicated written reasons would follow. I invited counsel to speak to the trial coordinator to set Inquest dates and arrange another case management conference.

October 6, 2015 - I released my written decision on the conflict motion.

December 8, 2015 - A further case management meeting was held. At that time Mr. Gray appeared and indicated he would now be acting as Inquest Counsel. Outstanding issues of disclosure were discussed. It was agreed that the motion to determine whether the

Inquest would hear from a witness on structural racism would be heard on March 14 & 15, 2016. Dates for the Inquest were set for August 8-26, 2016.

February 3, 2016 - A case management meeting took place. Outstanding issues of disclosure for the upcoming motion were discussed.

March 14, 2016 - The motion on whether the scope of the Inquest would include a witness on structural racism was argued.

March 17, 2016 - I rendered my decision that the scope of the Inquest could include a witness to testify whether structural or systemic racism played a role in the death of Craig McDougall.

May 24, 2016 - A case management conference was held. Ms Carswell raised an issue with the proposed expert witness. Mr. Shefman advised that he would now call Mr. Jonathan Rudin as the expert witness on systemic or structural racism.

August 8, 2016 – Mr. Gray as Inquest Counsel explained that some of the witnesses he had met with had provided information, some of which was “diametrically opposed” to earlier information provided by the witnesses. This necessitated, in all three counsels’ view, that further recorded witness statements should be taken and the Inquest should be adjourned to allow time for that to be completed. Inquest Counsel was concerned that a further independent investigation might be required. The Inquest was adjourned to August 15, 2016 in order to determine whether any of the August dates for the Inquest could be salvaged.

August 15, 2016 - The Inquest was adjourned. New dates were scheduled starting November 7, 2016 on intermittent dates, concluding on December 16, 2016.

November 7, 2016 – The Inquest began.

December 16, 2016 - Final submissions were made on the Inquest.

[263] More than eight years is an extraordinarily long time to wait for an Inquest into the death of a loved one and a member of one’s community. It is a long time for the involved police officers to wait to testify.

[264] The Supreme Court of Canada in July of 2016 released its decision regarding delays in criminal courts in *R. v. Jordan*, [2016] 1 SCR 631. The Supreme Court described some of the deleterious impacts that unreasonable delays can have on a system of justice:

As the months following a criminal charge become years, everyone suffers. Accused persons remain in a state of uncertainty, often in pre-trial detention. Victims and their families who, in many cases, have suffered tragic losses cannot move forward with their lives. And the public, whose interest is served by promptly bringing those charged with criminal offences to trial, is justifiably frustrated by watching years pass before a trial occurs. (at para. 2).

[265] Those comments are equally applicable to an Inquest under the *Fatality Inquiries Act*. The impacts of the inordinate delay in this Inquest meant that significant deterioration in Brian McDougall's health prevented him from testifying fully and attending the Inquest as he had hoped. Key witnesses, not surprisingly, remembered things differently eight years later which added additional delay to the hearing of the Inquest.

[266] There was a great deal of concern raised in the public that Craig McDougall was only carrying a cell phone and did not have a knife. A lengthy delay only helps to heighten concerns that there has been a "cover-up" or that there was no justifiable reason for the shooting.

[267] Mr. Shefman called for apologies from the Winnipeg Police Service and Manitoba Prosecutions for the treatment suffered by Brian McDougall and his family immediately after the shooting. Jonathan Rudin testified that when mistakes are made, it is important to acknowledge them, as early and as quickly as possible. Delays in admitting mistakes only work to harden opinions and exacerbate the distrust that exists between the police, Indigenous people and the court system.

[268] The delays lead to certain evidence being lost. Bob Norton, a private investigator hired by the Island Lake Chiefs, testified that he conducted his interviews of the family members who were present within days of the shooting. He provided a report to the Island Lake Chiefs regarding his limited investigation within days. He testified that he held on to the audiotapes of the interviews he conducted for years. Finally, he was moving residences, despite his efforts to find out what was happening with

this matter, he could not find out if an Inquest had been scheduled. He decided that no one was interested in the taped interviews he took and he destroyed the tapes. Fortunately, he retained transcripts of those statements which were filed at this Inquest. This is another consequence of the lengthy delay in this Inquest.

[269] There are portions of the eight year delay that I must comment on as they are directly linked to some of the recommendations that I have made in this report. The evidence discloses that the witness interviews were completed by September 15, 2008. I accept that it was fair to wait for the DNA results to be completed before finalizing an executive summary. The DNA results were completed in January 2009. It then took Sgt. Robert Bell 18 months to complete an executive summary. He testified that the executive summary was 20 pages long. He also explained that he was an active and senior homicide investigator at the time. He prioritized active homicide investigations above the shooting death of Craig McDougall. He explained that there was a great deal of material to review. But at this point, it must be remembered that while Sgt. Bell had concluded this was a justified police shooting, it needed to be reviewed by an external police agency and a legal opinion needed to be sought in order to determine if others agreed with Sgt. Bell's opinion.

[270] If criminal charges had been laid, an 18 month delay in preparing a summary of the investigation would have jeopardized such a prosecution for unreasonable delay.

[271] On the point of what is a reasonable period of time to complete an executive summary, I bear in mind the testimony of Mr. Zane Tessler. Mr. Tessler is currently, the Civilian Director of Manitoba's Independent Investigation Unit. He testified his mission is to ensure that investigations are completed professionally, thoroughly, with integrity and with reasonable dispatch. He testified that the focus of his eight investigators and two managers is to resolve the investigation in as timely a manner as possible, when circumstances are fresh and known. He testified that when he receives an investigative report, his goal is to complete his report in a matter of weeks, not months. Of the more than 10 investigations completed to date, the range in terms of time to completion is between several weeks to over one year. It is clear to me that these investigations have been completed and a decision made on whether criminal charges were justified, much faster than occurred in this case. I find 18 months to

complete an executive summary is an unreasonable period of time and cannot be justified by any reasonable explanation.

[272] The matter was then referred to the Ontario Provincial Police for review. I do not have evidence that the Ontario Provincial Police were required to conduct any further or other independent investigation, other than to review what had already been gathered. This review took 15 months to complete. Again, I find that this is an unreasonable period of time. No explanation or justification has been offered for this length of time to complete a review. I believe Sgt. Bell's opinion that criminal charges were not warranted resulted in this matter being given a very low priority at this review stage.

[273] The timeline discloses that Mr. Brian McDougall was told in October of 2012 that criminal charges would not be laid for the shooting of his son. It is easy to understand his concern about a four year delay before learning about this decision.

[274] The next period of lengthy delay with an unsatisfactory explanation is the nine month period between when the Chief Medical Examiner was informed that criminal charges would not be laid (November 2012) to when the inquest was called (July 31, 2013). A handwritten note on the file from the Chief Medical Examiner's Office (forwarded to me as the Inquest judge) says: "Call Inquest". The handwritten date under what appears to be then Chief Medical Examiner, Dr. Balachandra's signature, is November 8, 2012. Despite that note, the letter calling the Inquest was not sent for nine months. The explanation provided is that the delay can be "attributed to a case back log and the administrative delays that result from a large volume of work that, by necessity, must be assigned to a senior member of our staff." (Exhibit 46)

[275] This was a mandatory Inquest. The only decision to be made by the Chief Medical Examiner's Office was when to call the Inquest. The letter directing the Inquest explains that the policy of the office was to wait for reviews and investigations to be completed relating to potential criminal charges before an Inquest is called. Now that the review was complete, the Inquest was statutorily mandated, I fail to understand why it would take nine months, even in a busy office, to write the letter calling for the Inquest.

[276] The next period of time with unsatisfactory explanations for lengthy delay is the period from when the first Inquest Counsel was assigned to the

standing hearing – September 2013 to January 2015. The explanation provided was as follows:

The file was significant in terms of information and required considerable time to review, including the ordering and reviewing of transcripts and doing research regarding evidence called/decisions made in similar inquests. Judge Krahn and myself met twice to discuss the file in general. The Inquest Coordinator at that time, Betty Owen was attempting to contact the family of the deceased and I believe was attempting to have the RCMP assist. I spoke to Ms. Owen after the second meeting between myself and Judge Krahn in August 2014 and she confirmed with me that as of that time there had been no contact with the family. At that point, I was considering proceeding to a standing hearing notwithstanding a lack of contact with the family of the deceased. Prior to that decision being made I received an email from Keith Lenton in October of 2014 advising that he was representing the family. At that point the standing hearing was set for January 2015, based on counsel and court availability.

[277] In final submissions Mr. Shefman took issue with this explanation:

When the file finally left the CME's desk and an inquest was called, we're told that it took over a year for Deann Sahulka, then the inquest counsel, to contact Brian McDougall. No explanation is provided for why the contact information two years earlier in October 2012 was no longer good.

Perhaps more concerning, however is that in 2013 and 2014 when we're told that Ms. Sahulka was attempting to locate Mr. McDougall, Brian McDougall was in fact employed full time at the Wasagamack post office. As a former Band councillor and a prominent member of the community in Wasagamack, itself a small community, a simple call to the Wasagamack Band Office would have led the Crown directly to Mr. McDougall. I understand from speaking with Brian [McDougall] that calls were regularly routed for him through the Band Council office.

[278] I agree with Mr. Shefman that the explanation from the assigned Inquest Counsel is unsatisfactory and demonstrates that this Inquest was

given a low priority. I was not provided with specific information why there was delay in contacting Mr. McDougall or any other member of his family to determine if they were interested in pursuing standing at this Inquest. It appears that those efforts were only made after I met with Inquest Counsel in August 2014 – over one year after the Inquest had been called. This is unacceptable.

[279] I also accept responsibility as the Inquest Judge for not taking a more proactive role in moving the Inquest forward. While I asked for updates, I accepted the pace set by Inquest Counsel. In *Jordan* the Supreme Court of Canada commented that Courts and judges have an important role in changing courtroom culture and managing processes so as to minimize delay (at paras. 114 and 139).

[280] Inquest Counsel and Manitoba Prosecutions also have an important role to make sure that Inquests are proceeding in a timely fashion. Mr. Shefman asked me to recommend the re-instatement of an Inquest Coordinator.

[281] Ms Carswell questioned my jurisdiction to make any recommendations to address the untoward delay in the completion of this Inquest as not falling within the authority granted by section 33 of the *Fatality Inquiries Act*. She did however agree that I could make comments regarding the overall effectiveness of the Inquest process in Manitoba. Ms Carswell advocated for a wider ranging review to address whether Inquests are working effectively and efficiently. She advocated for a holistic evaluation of the Inquest process and how effectively it is meeting its mandate in moving forward in a timely and complete way and getting results quickly. She drew my attention to the fact that numerous Inquest Judges have commented on delays in the Inquest process which have resulted in no recommendations being made because the institutions and organizations involved have themselves conducted internal reviews and made changes to address issues raised by the death.

[282] I accept the recommendation suggested by Mr. Gray that timelines should be set in order to ensure that the Inquest Judge is pushing counsel towards the setting and completion of the Inquest. Mr. Gray suggested that in the case of mandatory Inquests, the Inquest should be called within 60 days. He further suggested that the Chief Judge of the Provincial Court appoint a judge within 30 days of the Inquest being called. Thereafter the Inquest Judge should convene a hearing within 90 days to determine the

appropriateness of the timing of the Inquest. The judge should continue to monitor the timing of the Inquest at hearings held not less than every six months.

[283] I note that the *Fatality Inquiries Act* already contains one timeline. Section 33.1(1) requires an Inquest Judge to complete the Inquest report within six months of the completion of the Inquest.

[284] The setting of reasonable timelines requires a broader consideration of more information than I was privy to in this Inquest. So I do not make specific recommendations as to what those timelines should be but do offer the comment that the timelines suggested by Inquest Counsel seem reasonable.

[285] **I recommend that the Province of Manitoba consider amendments to the *Fatality Inquiries Act* to set legislative timelines to ensure that Inquests are held within a reasonable time period.**

[286] **I recommend that the *Fatality Inquiries Act* be amended to require the Chief Medical Examiner to notify the Chief Judge within 60 days of a determination that a mandatory inquest will be held. The Chief Judge will then appoint an Inquest Judge who can monitor the hearing and the timely proceeding of the Inquest.**

[287] **I recommend that Justice Manitoba undertake a review to determine whether an inquest coordinator would help inquests proceed in a more timely manner.**

[288] Mr. Shefman asked me to recommend a comprehensive review of the Chief Medical Examiner's Office by the Auditor General, including its practices, procedures, workflow, and management, in order to ensure that the failures which led to the nine month delay in calling the Inquest are not repeated. I will assume that I have authority to make such a recommendation but I decline to make that recommendation. I do not have evidence that this is a pattern for the Chief Medical Examiner's Office. It may be an unfortunate one time aberration. I am hopeful that highlighting the unreasonable delay in this Inquest Report will ensure that a similar error is not repeated in the future.

CONCLUSION

[289] There is no controversy that Craig Vincent McDougall was shot by a member of the Winnipeg Police Service on August 2, 2008 at 5:19 a.m. outside the front door of 788 Simcoe, in Winnipeg, Manitoba. Those gunshot wounds killed him. I have concluded that the officer who shot him had no other reasonable options left to him when Craig McDougall approached him and the residents of 788 Simcoe, including a young child, brandishing a knife in a threatening manner. Officers tried to use a Taser, a non-lethal use of force, but this turned out to be ineffective. Police officers are required to place themselves in dangerous situations in order to protect and serve our communities. These officers responded to a 911 call of a stabbing with the intention to help not to cause injury.

[290] Craig McDougall was an Indigenous man. As noted by the Supreme Court of Canada in *Wood v. Schaeffer*, when a member of the community is killed by the police, the trust we place in our police officers is severely tested. This is heightened in the Indigenous community where the history of this community has already created a baseline of distrust as explained in this Inquest by Jonathan Rudin. The need for all of us to continue to engage with Indigenous people in this country is imperative in order to begin to regain that trust. I have found that there were missteps in the immediate aftermath of the shooting when Craig McDougall's uncle and father were left handcuffed and detained without lawful authority.

[291] The tragic loss for the McDougall family of their son, brother, nephew has left permanent scars on this family. It is my sincere hope that some of the recommendations made in this report will be steps towards reconciliation with the community and address important issues of transparency and accountability.

Dated at the City of Winnipeg, in Manitoba, this 9th day of May, 2017.

“Original signed by”

Associate Chief Judge Anne Krahn

RECOMMENDATIONS

- 1. I recommend that the Winnipeg Police Service study and consider setting service standards which would set recommended guidelines for how long witnesses must wait in the police station before their statements are taken.**
- 2. I recommend that the Province of Manitoba and its policing agencies should study and consider the feasibility and use of body cameras for police officers engaged in their duties.**
- 3. I recommend that the Winnipeg Police Service continue to communicate to its membership both at the Recruit Training stage and once officers graduate, the jurisdiction and authority of the Independent Investigation Unit as defined in the *Police Services Act* and its regulations.**
- 4. I recommend that when the Independent Investigation Unit is conducting an investigation into the death of an Indigenous person at the hands of a police officer, consideration should be given to whether there is an appropriate member of the Indigenous community who could be appointed as the civilian monitor.**
- 5. I recommend that the Winnipeg Police Service change the “Prisoner Log Sheet” so that the form itself is clear as to a person’s status as a witness as opposed to a suspect who is detained or an arrested person.**
- 6. I recommend that the rights of a witness should be clearly explained to the witness throughout their interaction with the police, including that they are free to go or stay, that there will be no consequences to them if they choose to leave and they have no obligation to give a statement.**
- 7. I recommend that the Winnipeg Police Service ensure that when witnesses have observed a traumatic event that they have access to a victim services worker or provide the witness with a list of agencies who can provide support.**
- 8. I recommend that the Winnipeg Police Service emphasize in their training programs that an officer’s notes should contain**

sufficient detail to explain when a person is handcuffed, why they were handcuffed and for how long the handcuffs were used.

9. I recommend that the Winnipeg Police Service explore the feasibility and consider delivery of Implicit Bias Training for its members at regular intervals.
10. I recommend that the Winnipeg Police Service engage in continuous evaluation and improvement of its Implicit Bias and Aboriginal Awareness programs to ensure that they are meeting goals of ensuring officers work more effectively when they interact with Indigenous people.
11. I recommend that the Winnipeg Police Service consider and explore external evaluations of these training programs, including input from Indigenous organizations.
12. I recommend that the Winnipeg Police Service continue to work with Indigenous organizations to develop community policing programs.
13. I recommend that the Winnipeg Police Service evaluate whether sufficient time is dedicated to tactical communication and whether it is feasible to increase the time dedicated to this subject.
14. I recommend that the Province of Manitoba consider amendments to the *Fatality Inquiries Act* to set legislative timelines to ensure that Inquests are held within a reasonable time period.
15. I recommend that the *Fatality Inquiries Act* be amended to require the Chief Medical Examiner to notify the Chief Judge within 60 days of a determination that a mandatory inquest will be held. The Chief Judge will then appoint an Inquest Judge who can monitor the hearing and the timely proceeding of the Inquest.
16. I recommend that Justice Manitoba undertake a review to determine whether an inquest coordinator would help inquests proceed in a more timely manner.

LIST OF WITNESSES WHO TESTIFIED

- 1.) **Brian McDougall**
- 2.) **Cst. David Matthews**
- 3.) **P/Sgt. Jim Pelland**
- 4.) **Sgt. Robert Scott Bell (retired from Winnipeg Police Service)**
- 5.) **Former Chief Keith McCaskill**
- 6.) **P/Sgt. Sami Haddad**
- 7.) **D/Sgt. David Brian Bevan**
- 8.) **Cst. Nathalie Lagasse**
- 9.) **Robert John Norton**
- 10.) **Cst. Ren Ferris**
- 11.) **Cst. Robert Armstrong**
- 12.) **P/Sgt. Curtis Beyak**
- 13.) **BillyJo DeLaRonde**
- 14.) **Cst. Jason Leishman**
- 15.) **Cst. Trisha Zelinsky (now Zurawsky)**
- 16.) **Shanelle Parisien**
- 17.) **Jan Hess**
- 18.) **Maria Maria**
- 19.) **Brittney Ramsey**
- 20.) **Joanne Miller**
- 21.) **Olivia McDougall**
- 22.) **Cst. Daniel Atwell**
- 23.) **Cst. Colin Anderson**
- 24.) **Michael Allen Brave**
- 25.) **Natasha McPherson**
- 26.) **Heather Wood**
- 27.) **Lynette Jessica McDougall**
- 28.) **Dr. Howard Williams**
- 29.) **Jonathan Rudin**
- 30.) **Zane Tessler**
- 31.) **P/Sgt. Julio Berzenji**
- 32.) **Sgt. Rob Bell (RCMP)**

EXHIBIT LIST:

Exhibit No.	Exhibit Description
1	Transcript of the submission K. Carswell made in the Matthew Dumas Inquest
2	Letter calling the Inquest July 31, 2016 (2 pages)
3	Autopsy Report (10 pages)
4	Photobook C08-161296
5	Forensic Alcohol Report (2 pages)
6	RCMP Report of Firearm (2 pages)
7	DNA Report (3 pages)
8	Taser Report (2 pages)
9	Paramedic Logs (8 pages)
10	Ident. Report of Constable Carette (10 pages)
11	Exhibit List (22 pages)
12	Report of Constable Matthews (10 pages)
13	Forensic Identification Report for Destiny Wood (2 pages)
14	Forensic Identification Report for Heather Wood (3 pages)
15	Phone Report (6 pages)
16	Prisoner Log sheets (16 pages)
17	Identification Report from Constable Lucas (3 pages)
18	CD of photos of Mr. McDougall from MLCC on Burrows
19	CD of 911 and Radio Transmissions of WPS
20	Large printed photo of the front yard of incident
21	Kitchen knife
22	Taser
23	LG Cell Phone
24	Wires and Probes found at Scene
25	Photo of police cruiser parked on street
26	WPS Event History
27	CD of August 2 nd Interview with Brian McDougall
27A	August 2 nd Transcript of Interview with Brian McDougall
28	CD of August 5 th Interview with Brian McDougall
28A	August 5 th Transcript of Interview with Brian McDougall
29	CD of August 10 th Interview with Brian McDougall
29A	August 10 th Transcript of Interview with Brian McDougall
29B	14 Photos of House
30	Transcript of Statement provided by Brian McDougall
31	Statement of Sergeant Beyak
32	Statement of Constable Leishman
33	Statement of Constable Zelinsky
34	Statement of Jan Hess
35	Disc of John McDougall Interview from August 2 nd , 2008

Exhibit No.	Exhibit Description
35A	Transcript of John McDougall Interview from August 2 nd , 2008
36	Disc of John McDougall Interview from August 10 th , 2016
36A	Transcript of John McDougall Interview from August 10 th , 2016
36B	Photographs shown to John McDougall during interview August 10 th , 2016
37	Transcript of Statement of John McDougall from August 5 th , 2008
38	Disc of Nancy Mason Interview from August 2 nd , 2008
38A	Transcript of Nancy Mason Interview from August 2 nd , 2008
39	Disc of Nancy Mason Interview from August 5 th , 2016
39A	Transcript of Statement of Nancy Mason from August 5 th , 2016
40	Disc of Nancy Mason Interview from August 10 th , 2016
40A	Transcript of Nancy Mason Interview from August 10 th , 2016
40B	Photos initialed by Nancy Mason
41	Transcript of Statement of Nancy Mason from August 5 th , 2008
42	Disc of Trevor Monias Interview from August 2 nd , 2008
42A	Transcript of Trevor Monias Interview from August 2 nd , 2008
43	Disc of Brianna Moose Interview from August 2 nd , 2008
43A	Transcript of Brianna Moose Interview from August 2 nd , 2008
44	Constable Ferris' notes
45	Officer Training Records
46	Timeline leading to Inquest
47	CV of Michael Allen Brave
48	Basic TASER CEW Electricity booklet
49	Taser training video
50	Disc of Natasha McPherson Interview
50A	Transcript of Natasha McPherson Interview from August 2, 2008
51	Coloured photos of Destiny Wood's injuries
52	Colour photos of Heather Wood's injuries
53	Disc of Lynette McDougall's Interview
53A	Transcript of Lynette McDougall's Interview from August 2, 2008
54	Disc of Destiny Wood's Interview
54A	Transcript of Destiny Wood's Interview from August 2, 2008
55	CV of Dr. Howard Williams
56	Dr. Williams' Report dated July 24, 2016
56A	Fatal Shootings Report
57	Curriculum Vitae of Jonathan Rudin
58	Report by Jonathan Rudin dated July 27, 2016
59	Origin of Company Policy
60	Independent Investigation Unit Report
61	Curriculum Vitae of Robert Bell
62	Use of Force Report