



CANADA  
Province of Alberta

# Report to the Minister of Justice and Solicitor General Public Fatality Inquiry

Fatality Inquiries Act

WHEREAS a Public Inquiry was held at the \_\_\_\_\_ Provincial Court House

in the \_\_\_\_\_ City \_\_\_\_\_ of \_\_\_\_\_ Calgary \_\_\_\_\_, in the Province of Alberta,  
(City, Town or Village) (Name of City, Town, Village)

on the 25<sup>th</sup>, 26<sup>th</sup>, 27<sup>th</sup> & 28<sup>th</sup> days of \_\_\_\_\_ June \_\_\_\_\_, 2012 \_\_\_\_\_, (and by adjournment  
year

on the 23<sup>rd</sup> day of \_\_\_\_\_ September \_\_\_\_\_, 2013 \_\_\_\_\_),  
year

before \_\_\_\_\_ The Honourable Marlene L. Graham \_\_\_\_\_, a Provincial Court Judge,

into the death of \_\_\_\_\_ Corey Jason Lewis \_\_\_\_\_ 39 \_\_\_\_\_  
(Name in Full) (Age)

of \_\_\_\_\_ Okotoks, Alberta \_\_\_\_\_ and the following findings were made:  
(Residence)

**Date and Time of Death:** \_\_\_\_\_ July 18, 2010 at 3:19 AM \_\_\_\_\_

**Place:** \_\_\_\_\_ Foothills Medical Centre, Calgary, Alberta \_\_\_\_\_

## Medical Cause of Death:

("cause of death" means the medical cause of death according to the International Statistical Classification of Diseases, Injuries and Causes of Death as last revised by the International Conference assembled for that purpose and published by the World Health Organization – The Fatality Inquiries Act, Section 1(d)).

Multiple Gunshot Wounds

## Manner of Death:

("manner of death" means the mode or method of death whether natural, homicidal, suicidal, accidental, unclassifiable or undeterminable – The Fatality Inquiries Act, Section 1(h)).

Homicidal

**Circumstances under which Death occurred:**

See Sections:

1. Description and Scope of Inquiry, pages 3 - 4
2. Personal Circumstances and Medical History of Mr. Lewis, pages 4 - 7
3. Events of July 17, 2010 Prior to ERT Involvement, pages 7 - 8
4. ERT Involvement & Shooting, pages 9 - 12
5. Medical Intervention and Date & Time of Death, pages 12 - 14
6. Autopsy and Cause of Death, page 14
7. ASIRT Investigation, Final Report and Conclusion, pages 14 - 18
8. Other Relevant Information, pages 19 - 20
9. Firearms Issue, pages 20 - 22
10. Submissions by Counsel and Interested Parties, pages 22 - 24
11. Other Findings and Conclusions, pages 24 - 27

**Recommendations for the prevention of similar deaths:**

See Section:

12. Recommendations, page 27-28

DATED August 28, 2015,

at Calgary, Alberta.

*Original signed by*

---

Marlene L. Graham  
A Judge of the Provincial Court of Alberta

## 1. Description and Scope of Inquiry

- [1] On July 18, 2010, at approximately, 2:00 a.m., Corey Jason Lewis (“Mr. Lewis”) was fatally shot by an RCMP Emergency Response officer following a standoff at his residence in Okotoks, Alberta. He had unexpectedly rushed out of his residence in the dark. When a light was shone on him, he was seen to be in a shooting position on one knee, pointing what was perceived to be a rifle. He was shot when he turned and appeared to take aim at other officers. The rifle was later determined to be a dark coloured umbrella taped to his hands.
- [2] This Public Fatality Inquiry was mandatory under the *Fatality Inquiries Act* (“the *Act*”), as the deceased died “... as a result of the use of force by a peace officer while on duty” (section 10(2)(i)) of the *Act*. Thus, the main focus of the Inquiry was the issue of whether the use of force by the officer was justified and lawful in the circumstances.
- [3] Ms. Christine Nugent was appointed Inquiry Counsel, who, with the assistance of co-counsel, Mr. Casey Smith, collected and presented the evidence including witnesses, along with a summary of the evidence at the conclusion of the Inquiry. The RCMP was determined to be an interested party under section 49(2) of the *Act* and was represented by legal counsel, Mr. Barry Benkendorf, of the Department of Justice. Mrs. Naydene Lewis, Mr. Lewis’ widow, represented herself and was present each day of the Inquiry. Mr. Lewis’ mother, Mrs. Joyce Lewis, and his stepson, N.L., were present June 28, 2012 and represented themselves.
- [4] Upon the application of Mrs. Naydene Lewis, which was not opposed by Ms. Nugent nor Mr. Benkendorf, I granted an Order pursuant to section 4 of the *Act*, prohibiting the publication of the names of Mr. Lewis’ daughter and of his 2 stepsons.
- [5] Under the *Act*, the purpose of a Fatality Inquiry is to determine the identity of the deceased; the date, time and place of death; the circumstances under which the death occurred; the cause of death and the manner of death. While the Inquiry Judge may not make any findings of legal responsibility nor any conclusions of law, the Judge’s report may contain recommendations as to the prevention of similar deaths.
- [6] By consent of counsel, 2 exhibit Binders (Exhibits 1 & 2) containing numerous records and documents, along with 10 other exhibits (primarily diagrams) were admitted into evidence under section 40 of the *Act*. Twelve witnesses were called to testify at the Inquiry including 9 RCMP members (2 General Duty Officers from Okotoks and 7 members from both the Calgary and Red Deer Emergency Response Teams “ERT”), all of whom are noted below:
1. Cst. Roland Gordon Rutten, Okotoks RCMP – attended residence on initial complaint.
  2. Cst. Melanie Skidmore, Okotoks RCMP – took the initial citizen complaint and attended residence.
  3. Cst. Marco Lou, Calgary RCMP and Calgary ERT – Sniper Observer.
  4. Inspector Frank Gregory Shields, Calgary RCMP, Incident Commander of the Calgary ERT – Incident Commander of the combined Calgary & Red Deer ERT’s.
  5. Cpl. Guy Richard Johnson, Red Deer RCMP, full-time Red Deer ERT – Team Leader (on the ground).

6. Cpl. Keith Hunter Blake, Calgary RCMP, full-time Calgary ERT – Second in Command – assumed Team Leader role.
7. Cpl.(now Sgt.) Robert Daniel Vatamaniuck, Calgary RCMP, Calgary ERT – Negotiator and Tactical Operator.
8. Cst. Shane Patrick Mills, Sylvan Lake RCMP, Red Deer ERT.
9. Cst. Jason Krivoshein, Banff RCMP, Calgary ERT – Tactical Operator in role of Breacher.
10. Det. David Keagan, CPS – assigned to Alberta Serious Inquiry Response Team (“ASIRT”) as the Primary Investigator.
11. St. Sgt. Donald Wallace, CPS – Use of Force Officer and Use of Force Expert.
12. Daniel Alphonse Joseph Magotiaux, Chief Firearms Officer for the Province of Alberta and the Northwest Territories.

## 2. Personal Circumstances and Medical History of Mr. Lewis

- [7] At the time of his death, Mr. Lewis was a 39 year old Caucasian male living at 21 Alcock Street, Okotoks, Alberta with his wife, Naydene Lewis (“Mrs. Lewis”), his 6 year old daughter “J.L.”, and his 17 year old stepson “N.L.”. Older stepsons, “C.P.” and “M.L.” lived in Calgary. Mr. and Mrs. Lewis had been living together for 8 years and were married for 7 of those years.
- [8] Mr. Lewis was employed as a dispatcher for Bison Transport, where he worked long shifts of 12 hours, 4 days per week. According to Mrs. Lewis, it was a stressful job with a poor work environment. She reported that Mr. Lewis got up for work at 4:00 a.m. and returned home at 7:00 p.m., when he would typically eat dinner and go to bed due to fatigue. She said he didn’t socialize much then or at any time. On his days off, after he had rested, she would get him out to do activities with the family, such as riding motorcycles.
- [9] She said Mr. Lewis had few friends and did not have a close association with members of his family of origin. His hobbies were his guns and shooting, and his favorite TV show was CSI (Crime Scene Investigation). She said he disliked the police.
- [10] Mr. Lewis didn’t have a criminal record and according to the ASIRT investigation, his only involvement with police had been in relation to traffic accidents. However, other records and evidence show he was the subject of a domestic violence investigation in 2007, involving abuse allegations including an assault on his stepson “C.P.”, where an Emergency Protection Order (“EPO”) was issued on May 22, 2007 by Provincial Court Judge N.A. Flatters. At the time, Mr. Lewis was removed from the home by Okotoks RCMP. No charges were laid against Mr. Lewis and the EPO was suspended by Justice B.L. Rawlins at a subsequent court hearing on June 4, 2007 at the request of Mrs. Lewis, on the basis that Mr. Lewis had agreed to counselling, was on a new regime of medication and the parties wished to reconcile. Justice B.L. Rawlins did not vacate the EPO, but suspended it with leave to apply to enforce it with or without notice. No further steps were taken in this regard.

- [11] The fact of the EPO pointed to an ongoing problem experienced by Mr. Lewis in functioning effectively both as a husband and as a father, particularly with respect to his stepsons. He lacked parenting skills and was jealous of Mrs. Lewis' ex-husband. According to Mrs. Lewis, his general way of coping was to resort to using angry verbal abuse, and on some occasions, he reacted by using physical force towards his stepsons. As will be further outlined below, it was an issue he had with stepson "N.L." that initiated the events which ultimately led to Mr. Lewis' death.
- [12] By all reports, including his self reports to mental health professionals and a review of his medical records dated between September 9, 2004 and April 26, 2010, Mr. Lewis had a long history of suffering from depression, anxiety and mood swings starting in his teens and continuing throughout his adult life.
- [13] He was raised in a devout Jehovah's Witness family. At approximately age 19 years, he decided to leave the church which resulted in him being shunned by family and friends, in accordance with their religious beliefs. Ultimately, he became depressed and suicidal, which led to a drug overdose and hospitalization. Afterward, he was prescribed medication and took counselling over the next 3 - 4 years, which he felt did not benefit him much.
- [14] The medical records indicate that Mr. Lewis attended the Calgary Mental Health Crisis and Emergency Service at the South Calgary Health Centre on May 9, 2005 advising that his mood had been low for 6 months. He said he was feeling "overwhelmed" with his stepsons which was causing friction between his wife and himself, all of which was exacerbated by his chronic pain and chronic problems with anger. At this point, while he admitted to a long history of counselling and psychiatric involvement, with the most recent being 3 - 5 years prior, when he was prescribed low dose Risperidone and took counselling at the Foothills Medical Centre, he knew he needed help again. As a result, he was referred to psychiatrist, Dr. Mitchell Spivak, on May 16, 2005, who prescribed Risperidone again, and referred him to a psychotherapy program at the South Calgary Health Centre.
- [15] At the conclusion of several months of therapy with therapist Patricia Carruthers, the prognosis was that Mr. Lewis might experience further depressive episodes. It was also noted that while Mr. Lewis worked diligently in therapy, he lacked even the most basic knowledge about child development, parent/child relationships and the reconstituted family. Furthermore, he was observed to vacillate between anger that his wife refused to parent him and a desire to assume a participatory, adult role within the family.
- [16] Approximately 2 years later, on May 23, 2007, Mr. Lewis again attended the Calgary Mental Health Crisis and Emergency Service, wanting a change in his antidepressant medication from Effexor to Paxil. He advised that he had been increasingly depressed over the past several months and was now very stressed, for in his words, he had "lost my wife, my daughter, and my job, all with the past 24 hours". He then tearfully related that on the previous evening, he had been removed from the home by the RCMP after an altercation with his eldest stepson, then 17 years old, and a Restraining Order (the EPO referred in para. 10) had been obtained by his wife.
- [17] At the time, he admitted to experiencing suicidal ideation over the past 24 hours including the methods he might use to commit suicide. He did admit that suicide would become a serious option for him if his wife refused to reconcile with him, and if she refused to allow him to see his daughter.

- [18] Psychiatrist Dr. Stephen Amadala then saw him June 2, 2007, after Mr. Lewis and his wife had reconciled and he was back at home. Mr. Lewis was no longer suicidal, but Dr. Amadala confirmed the diagnosis of recurrent major depressive disorder and anxiety disorder, confirmed continued use of the medications of Effexor and Risperidone, directed that he continue with parenting courses at the Sheriff King Home and follow up with his family physician.
- [19] Then, some 2 years later, on July 17, 2009, during an attendance with Dr. Smiley, the family physician, Mr. Lewis was referred to Psychiatrist Dr. Paul Cameron for an assessment. Dr. Cameron provided a letter report to Dr. Smiley dated October 24, 2009, which outlined Mr. Lewis' mental health history and current behaviours and presentation. Dr. Cameron noted Mr. Lewis' self report of his tendency to quickly become angry and frustrated, which feelings could last for a few days. Mr. Lewis described how he would "lock himself down" for a couple of days over a weekend, where he would isolate himself and stay in the darkness sleeping excessively until his wife would get him out, when he would usually come out of his depressed state. Mr. Lewis also advised that without Risperidone, he would have had several panic attacks per week.
- [20] Dr. Cameron's opinion was that Mr. Lewis did not suffer from Bipolar Disorder. He questioned the existence of Unipolar Depressive Disorder and felt the "mood swings" were not typical mood swings but rather related to anxiety, anger and unresolved conflict regarding "identity versus role confusion". He advised that Mr. Lewis agreed to continued assessment and no changes were made to his Risperidone, Effexor and Lithium medications.
- [21] Thereafter, based on the medical records provided, there were no further medical letters or reports from Dr. Cameron nor any other health professional other than a notation on March 8, 2010 on Dr. Smiley's file where it appears Mr. Lewis advised that Dr. Cameron wanted Mr. Lewis to have counselling for family issues.
- [22] It appears that such counselling did not take place, but that Mr. Lewis was still being prescribed Risperidone and Effexor for his mental health at the time of the shooting.
- [23] The medical records also indicate that Mr. Lewis had multiple physical conditions and complaints including thoracic outlet syndrome resulting in chronic pain; sleep apnea; glaucoma; hypertension; hypoglycemia; ulcers; IBS and kidney stones. He was in regular attendance with his family physician, Dr. Smiley, for all of his concerns and was referred to specialists for assessment and treatment. It appears from the notes that Dr. Smiley always took his complaints seriously and took appropriate steps to address the issues.
- [24] There was no evidence that Mr. Lewis used alcohol or non-prescribed drugs nor that he had consumed such substances on the date of the shooting.
- [25] In the ASIRT interview of Mr. Lewis' parents, Joyce and Warren Lewis, who had seen their son 2 weeks prior to his death when he helped them with their yard work, they indicated their belief that Mr. Lewis' behaviour leading up to the shooting was not his normal behaviour and they attributed the behaviour to his deteriorating mental state.
- [26] Further, they indicated their belief that he had been diagnosed with Bipolar Disorder after he sought mental health assistance subsequent to the EPO incident at the matrimonial home, which had resulted in him staying with them until the parties reconciled. They were aware of other episodes of depression experienced by Mr. Lewis, which, in their observation, were usually related to domestic stress or breakups.

- [27] It appears that Mr. Lewis thought he might have Bipolar Disorder as he told the therapists that his brother and sister were Bipolar and that his father was recently so diagnosed. There was no confirmation of these allegations and none of the records indicate Mr. Lewis was ever diagnosed with this condition himself. As stated in para. 20, Dr. Cameron's opinion was to the contrary.
- [28] It is notable that a couple of months prior to his death, Mr. Lewis exhibited disturbing conduct relative to his willingness to use his firearms inappropriately. Mrs. Lewis advises that there was an attempted car prowling of her vehicle parked on the street. She and some neighbours pursued the culprit. Mr. Lewis joined in the chase carrying one of his firearms. Several neighbours were alarmed about this and conveyed their concern to Mrs. Lewis, who assumed the incident was reported to police by the neighbours. Apparently, there was no known report made to the police, and as such, Mr. Lewis' conduct did not come to the attention of the police at that time.

### 3. Events of July 17, 2010 prior to ERT involvement

- [29] The evidence discloses that Mr. Lewis arrived home from work in a bad mood on July 17, 2010 around 7:00 p.m. The cause of his mood appeared to be the fact his stepson N.L. had attended a car show at the church with his natural father and had sent some car related pictures to Mr. Lewis. As Mr. Lewis did not support the religious views of Mrs. Lewis and N.L., opposed the idea of the car show at the church, and was jealous of N.L.'s father, he berated and ridiculed N.L., causing Mrs. Lewis to tell Mr. Lewis to apologize to N.L. which was not heeded by Mr. Lewis.
- [30] The children, N.L. and J.L., then left the residence at 21 Alcock Street to go to a park behind the residence. Meanwhile, Mrs. Lewis advised Mr. Lewis that he needed help for his behavior, and that if he didn't seek the help, she would leave him. He replied that she could leave, but that she could not take their daughter, J.L. She informed him that J.L. did not want to be with him either, because of his behaviour.
- [31] Then Mr. Lewis also went to the park where he continued to harass and swear at N.L. in the presence of other children and parents in the park. N.L. tried to calm him down and admonished him about his bad language. Mr. Lewis responded by slapping N.L. in the face.
- [32] A female neighbour, in the park with her own children, confronted Mr. Lewis after observing Mr. Lewis' behavior. He became aggressive with her, replying "What the fuck's it got to do with you?" She returned to her residence and called the Okotoks RCMP at 7:30 p.m. to report the assault on N.L.
- [33] Meanwhile, N.L. and J.L. returned to their residence. When N.L. reported to Mrs. Lewis what had happened at the park, she explained that Mr. Lewis thought she was going to leave him and take J.L. away from him. They then locked the doors of the residence, and Mrs. Lewis told N.L. to pack a bag, as they were going to leave the residence to get away from Mr. Lewis.
- [34] Mr. Lewis returned to the residence and gained entry through a window screen and began screaming at the children and Mrs. Lewis. Mrs. Lewis then got her purse and took her daughter J.L. into the yard in an effort to calm her. Mr. Lewis followed her, knocked her down and was trying to take J.L. from her, while stating he was taking the child, who was meanwhile screaming "no daddy."

- [35] N.L., hearing his sister screaming, came out of the residence and charged at Mr. Lewis who was knocked off balance and lost his hold of J.L. Mr. Lewis then struck N.L. in the face, causing the stepson's nose to bleed.
- [36] At this time, an RCMP vehicle happened to drive by the residence, but did not stop. Seeing this, Mr. Lewis accused Mrs. Lewis of calling the police and proclaimed "Just great, now J.L. can see her dad get arrested."
- [37] Mr. Lewis then went into the residence, attempting to lock the door behind him. N.L. forced his way in behind him and observed Mr. Lewis to lock himself in the master bedroom.
- [38] Shortly thereafter, Mrs. Lewis took the 2 children and drove to the end of the street, where she encountered the RCMP vehicle and spoke with Cst. McDiarmid. She reported the assault on N.L. and that Mr. Lewis was in the master bedroom with 5 guns and ammunition. She was advised to take her son to the Care Centre for medical attention, which she did.
- [39] Cst. Skidmore, who took the citizen complaint from the parent who had been in the park, attempted to make contact with Mr. Lewis by making 5 telephone calls to both the home and cell phone numbers and leaving a message on the cell phone. None of the calls were answered nor returned by Mr. Lewis.
- [40] A total of 7 general duty Okotoks RCMP members then attended the location of the residence.
- [41] The RCMP obtained from Mrs. Lewis a key to the residence along with her written consent to enter the residence. Further information concerning Mr. Lewis' mental health issues, prescribed antidepressants, hatred of the police and previous suicide attempt was believed to have been conveyed by Mrs. Lewis to the police at that time.
- [42] Subsequently, between 9:00 and 10:00 p.m., 4 Okotoks RCMP members, led by Cst. Rutten, made a stealth entry into the residence for the purpose of not only arresting Mr. Lewis for assaulting his stepson but to ensure the safety of both the public and Mr. Lewis by separating him from the firearms.
- [43] Once inside the residence, Cst. Rutten saw Mr. Lewis sitting at the end of the bed in the master bedroom holding a pump action shotgun with the barrel over his left shoulder. Mr. Lewis racked the action on the shotgun and began to turn his body while bringing down the gun. Cst. Rutten said "Get out, he's got a gun." The members quickly retreated while Mr. Lewis yelled "Get the fuck out of my house."
- [44] After the aborted entry into the residence, the situation involving Mr. Lewis was then characterized as "armed and barricaded", a situation with which the general duty RCMP officers in Okotoks were not equipped to handle. Thus, the RCMP ERT, a highly trained tactical team comprising both full-time and part-time members from Calgary and Red Deer, was called in.
- [45] While awaiting the arrival of the ERT, nearby residences were evacuated and 5 local RCMP members maintained a secure perimeter in front and behind the residence.



#### 4. ERT Involvement and Shooting

##### a) Initial Call and Mustering of ERT

- [46] The ERT is a group of highly trained RCMP members capable of employing specialized weapons, equipment and tactics to resolve extremely high-risk situations. Members, both part-time and full-time, engage in continuous training to maintain their tactical skills and their ability to function effectively in physically and psychologically stressful situations.
- [47] Inspector Shields, Incident Commander of the Calgary ERT, received a call from the Operational Communication Centre on July 17, 2010 at 9:57 p.m., requesting that he contact Sgt. Shardlow of the Okotoks RCMP detachment regarding an armed and barricaded male.
- [48] Inspector Shields called Sgt. Shardlow and was given information about Mr. Lewis and the circumstances as known at the time. His first duty was to assess the call to determine whether the level of risk justified calling in the ERT team.
- [49] In summary, the information received was that Mr. Lewis had no previous criminal record but had been the subject of a previous, lapsed EPO. Inspector Shields was informed that Mr. Lewis had issues with his 17 year old stepson and had assaulted him earlier in the evening, that contact by phone was attempted and that members had entered the residence and backed out due to Mr. Lewis racking a shotgun. He also learned there were 5 registered firearms in the house, all of the long barrel type. Furthermore, he was advised that Mr. Lewis had mental health issues, had been prescribed antidepressants, was possibly psychotic, was not under the influence of alcohol, and had attempted suicide by medication in the past.
- [50] Inspector Shields assessed this armed and barricaded call as a volatile, high risk situation with risk to Mr. Lewis' safety, public safety and officer safety, all of which justified calling in the ERT team. Accordingly, he then called Cpl. Blake, the ERT team leader, to inform him of the decision and then called the Operational Communication Centre at 10:10 p.m. on July 17, 2010 to initiate the "all call" for the ERT.
- [51] It was Cpl. Blake's duty to call for additional resources if sufficient Calgary ERT members were not available. Due to some members being on summer vacation, this was the case, so Red Deer ERT was called to assist.
- [52] Ultimately, some 20 members of Calgary ERT and Red Deer ERT including full-time and part-time members, negotiators, specialized communication equipment, and a scribe, mustered at the Okotoks RCMP Detachment by 11:56 p.m. on July 17, 2010. Inspector Shields arrived at 11:45 p.m. and assumed overall direction and control of the incident.

##### b) Strategy and Roles of ERT

- [53] A briefing was conducted between 12:24 and 12:35 a.m. on July 18, 2010 where the overall response was to "contain and negotiate". An immediate action plan, a deliberate action plan (if necessary), and a negotiation plan including a surrender plan were outlined. Taken into account was the information that members in the alley and at the scene believed they had heard guns being "racked" or "loaded" in the residence. Reference was had to a map of the area and a floor plan of the residence at 21 Alcock Street reflecting a bi-level home with front door and master bedroom window looking out on the front yard facing Alcock Street. The occupants of the 3 residences on either side of the Lewis residence as well as those across the street were evacuated.

- [54] The purpose of the immediate action plan was to address an unexpected event. In this case, that event ended up being the coming out of the residence by Mr. Lewis, unexpectedly. The plan was to have 3 members “stacked” or lined up together on either side of the residence on the property of each adjacent neighbor (the white and black teams). The white team was positioned on the adjoining property to the west at #19 Alcock Street behind an alcove with 2 other members, Cpl. Vatamaniuck and Cst. Krivoshein, maintaining visual contact with the front door and master bedroom window of the Lewis residence. They were to act as cover or cut off if Mr. Lewis attempted to re-enter the residence. The other members of the white team were to go around the large trees at #19, to confront and arrest Mr. Lewis in his front yard.
- [55] The purpose of the negotiation plan was to establish communication with Mr. Lewis and have the negotiators try to build a rapport with him in order to achieve a surrender. As the ERT was aware of a pre-existing shoulder injury to Mr. Lewis, he was to be directed to come out of the front door with his arms outstretched and palms up, rather than arms over his head. Assuming that Mr. Lewis came out into the front yard with no weapons, with hands at his side, the white team would go to the sidewalk to meet him and give commands, and Cst. Krivoshein and Cpl. Vatamaniuck would go to the front door to cut off Mr. Lewis if he attempted to re-enter the residence.

**c) Steps Taken by ERT**

- [56] At 12:53 a.m., July 18, 2010, the ERT arrived at the scene with Inspector Shields installed in the command post in a schoolyard some 2 or 3 blocks from the residence. Present with him were a detachment liaison member, negotiators and the scribe.
- [57] At 12:54 a.m., Inspector Shields gave formal compromise authority which is a formalized statement given on every call that should an exigent or urgent circumstance arise, where there is an imminent threat of grievous bodily harm or death, the ERT is authorized to utilize the level of force necessary to stop the threat.
- [58] At 12:55 a.m., the Emergency Measures Service (EMS), in an ambulance, was positioned by the command post.
- [59] At 12:57 a.m., the landline telephone into the residence was locked down, meaning firstly, that only an ERT member could call into the residence and secondly, if Mr. Lewis were to pick up the phone and try to dial out, the phone would be diverted to the negotiator, such that he could speak only with the negotiator.
- [60] At 1:00 a.m., Cpl. Lou arrived and took his position as sniper behind the base of a tree across the street from the front of the residence.
- [61] Also at 1:00 a.m. until 1:07 a.m., the Incident Commander’s scribe notes state “negotiators on line with psychologist” and that the “subject diagnosed with psychosis”. There is no other information as to the identity of the psychologist or what if any advice was received or utilized. While Inspector Shields recalled directing the negotiators to follow up on Mr. Lewis’ medical history, he had no recollection of what resulted from that.
- [62] At 1:19 a.m., when all members of the ERT were in place, the first of several telephone calls was made to Mr. Lewis. The phone could be heard ringing in the house. At no time did Mr. Lewis answer any of the calls.

- [63] At 1:30 a.m., the use of a MegaVox or portable loudspeaker system was discussed and adopted. At 1:40 a.m. Cpl. Johnson placed the MegaVox in the front yard of the residence, positioned away from the ERT members, on the right side of the front yard, as one faced the front of the residence.
- [64] Over a period of approximately 20 minutes, Cpl. Vatamaniuck used the MegaVox to deliver a message to Mr. Lewis. Initially, Cpl. Vatamaniuck advised Mr. Lewis that the RCMP were present, introduced himself by name, and assured Mr. Lewis that the purpose was to ensure that everybody, including Mr. Lewis and his family, would be safe. The message conveyed to him included advice that his family was safe, that they were very concerned as were the police, in wanting everyone to be safe, assuring him that he was not alone in having family problems and that the police were there to help him work through those problems. He was implored numerous times to pick up the phone and was told that if he was wanting to fight or thinking about hurting himself or others to just stay in the house and pick up the phone. Although questions were put to Mr. Lewis and opportunities given for him to respond, there was no response from Mr. Lewis, whatsoever.
- [65] At this point, Cpl. Vatamaniuck asked Mr. Lewis to turn on the outside porch light to acknowledge that he could hear the Corporal, knew that they were the police, that he was inside, was safe and not injured. There had been no lights on in the residence at any time.
- [66] At 1:44 a.m., the outside porch light above the front door came on. Positive reinforcement was conveyed to Mr. Lewis. Communication continued, encouraging Mr. Lewis to surrender and about how to do so safely. Mr. Lewis gave no response.
- [67] At 1:49 a.m., the porch light was turned off. Communication continued requesting that Mr. Lewis turn the light back on, advising him of the concerns about him hurting himself or others and, once again, reassuring him that he was not alone in going through family problems. As no response was forthcoming, Cst. Mills was then authorized to prepare the distraction device which was to be placed under the master bedroom window to elicit a response and to emphasize the need to talk.
- [68] The turning off of the porch light was viewed by all members of the ERT as a negative sign indicating that Mr. Lewis was not prepared to cooperate with the negotiators.

**d) The Shooting**

- [69] Within 3 or 4 minutes of turning off the porch light, at 1:53 a.m., the front door opens and Mr. Lewis unexpectedly rushes out in a hunched over position with elbows bent, appearing to be carrying something, although his hands could not be seen. It is completely dark, except for street lights. Cpl. Vatamaniuck was heard to say “Cory. He’s out.”
- [70] Cst. Krivoshein, part of the two man cut-off team along with Cpl. Vatamaniuck, start advancing towards the residence by pushing through the branches of trees from their location to the west at #19 Alcock Street, in a path parallel to and close to the front of the residence. They regain sight of Mr. Lewis who has quickly moved on a 45° angle towards the east side of the front yard, with his head moving back and forth, appearing to scan and be looking for a target, while dropping onto one knee towards the location of the MegaVox.

- [71] At the same time, the other 3 members of the white team begin moving down the sidewalk of #19 Alcock Street, around the large trees that blocked their view towards the main sidewalk, to then head left into the west side of the front yard of the property to confront Mr. Lewis. Those members did not know whether Mr. Lewis had a weapon, as they could not see him.
- [72] Cst. Krivoshein then used the flashlight atop his M16 carbine rifle to flash white light on Mr. Lewis, whom he sees beginning to turn his body while holding what appears to be a firearm, pointed ahead with his right arm bent back and his left arm extended. Mr. Lewis has turned 90° and is now seen pointing the firearm directly at where the white team is about to come up.
- [73] Seeing Mr. Lewis in a recognizable shooting platform with what he believed to be a firearm, Cst. Krivoshein determined that Mr. Lewis was going to shoot the ERT members and that he was in a lethal force confrontation. He was within 10 meters of Mr. Lewis and had no time to verbally instruct him to drop his weapon, He then took his weapon off safe and began to fire. He stated that he fired 2 engagements of rounds until Mr. Lewis fell to the ground.
- [74] Concurrently, Cpl. Vatamaniuck, who was located 10 - 15 meters behind Cst. Krivoshein, also believed he saw Mr. Lewis holding a rifle with a scope while he was scanning for a target. He came to the same decision that he must stop the threat posed by Mr. Lewis by shooting him, as he felt it would only take a split second for Mr. Lewis to swing the gun around and start shooting at RCMP members. In the time it took for Cpl. Vatamaniuck to drop his microphone to pick up his SWAT gun, Cst. Krivoshein had already fired approximately 4 times.
- [75] The white team together with Cst. Krivoshein and Cpl. Vatamaniuck converged on Mr. Lewis, who was bleeding and gasping for air. He was handcuffed and rolled on his side, which exposed an umbrella beneath him. Cpl. Vatamaniuck wanted to secure the rifle and looked for it until he realized that it was the umbrella that Mr. Lewis had been holding. This was a shocking revelation for the officers. The umbrella was dark coloured, some 3 feet in length with a silver tip.
- [76] Shots were fired at 1:53 a.m., with the time from when Mr. Lewis came out of the residence until he collapsed after being shot, estimated at approximately 7 seconds.

## 5. Medical Intervention and Date & Time of Death

- [77] Once Mr. Lewis was pulled up for the purpose of removing the umbrella from underneath him, silver duct tape was observed taped across his face and under his nose completely covering his chin and mouth. It was later determined that Mr. Lewis had shaved his goatee and beard, likely to enable the duct tape to better stick to his face. His fingers and the thumb of each hand were also duct taped in a manner described as him having “duct tape mittens”. Cst. Mills pulled off the duct tape from Mr. Lewis’ face as he was then gasping for breath. Mr. Lewis unsuccessfully tried to form words and was reassured by Cst. Mills who immediately called the EMRT Paramedic, Cst. Troy Heystek, to come up which he did. In the meantime, Cst. Mills, who was trained in ballistic first-aid, did all he could to stop the external bleeding and to force the wounds shut. When Cst. Heystek took over, Cst. Mills began cutting off Mr. Lewis’ clothing.
- [78] Under Mr. Lewis’ body was found a bloodstained document with typed text on one side and the words “Take my life” hand written in blue ink on the reverse side. Cst. Mills stated that this document had initially been taped across the face of Mr. Lewis. The

typed text is directed towards the RCMP in unambiguous terms registering anger at the actions of the RCMP, Mrs. Lewis and stepsons “N.L.” and “M.L.”. The beginning of it reads as follows:

“I am gone but know this

RCMP entering a residence with guns drawn is an ACT OF WAR!!!!!!

Good thing for you I promised my no good wife I would never point guns at people

(never said I wouldn't sit with them in the dark)

Maybe you can use this as a learning lesson

I have now crossed the point of no return...”

- [79] EMS, which had been staged at the command post, was called to come forward at 1:53 a.m. after shots were fired. The ambulance was rolling by 1:58 a.m. and Mr. Lewis was in the ambulance by 2:02 a.m. and en route to hospital in Calgary. Some of the ERT members were frustrated that EMS did not come forward immediately. While there appeared to have been an initial hesitation by EMS to proceed due to fears for safety, the EMS delay was brief, and Cst. Heystek attended to Mr. Lewis during this period.
- [80] Cst. Mills directed Cst. Heystek to ride in the ambulance and assist EMS paramedics which were not ballistically trained in Alberta. His intention was to ensure that Mr. Lewis had the best chance possible to survive his bullet wounds.
- [81] Also riding in the ambulance was Cst. Rutten, who observed both the EMS paramedic and Cst. Heystek working on Mr. Lewis, who was thrashing about while attempts were made to place an oxygen mask over his mouth and nose. Mr. Lewis kept pulling the mask off saying he couldn't breathe. Cst. Rutten kept putting it back on while reassuring Mr. Lewis that it was oxygen, intended only to help him.
- [82] Mr. Lewis was taken to Foothills Medical Centre Emergency Department in Calgary, Alberta, arriving at 2:35 a.m. on July 18, 2010. The Trauma Resuscitation Record indicates Mr. Lewis was not breathing, was pulseless, pale in colour and unresponsive when he arrived at the hospital. While he had had a pulse at the scene, it was lost en route to the hospital. Mr. Lewis was then intubated and CPR (Cardiopulmonary Resuscitation) was immediately initiated.
- [83] At 2:45 a.m., Mr. Lewis was taken to the operating room for a trauma laparotomy (surgical incision into the abdomen to examine abdominal organs). Blood was evacuated from the abdominal cavity and all four quadrants were packed. The majority of the bleeding in a significant amount was coming from the liver. Mr. Lewis was found to have injuries as well to the duodenum, distal small bowel, pancreas and SMA (Superior Mesenteric Artery supplying the intestine).
- [84] According to the Operative Report, despite achieving adequate vascular control, a pulse for Mr. Lewis was not regained after 35 minutes of aggressive resuscitation, which had begun upon his arrival. CPR was stopped and care was withdrawn at 3:19 a.m. on July 18, 2010, which was the time death occurred, according to the Calgary Health Region Notice of Death and Release of Body.

[85] I therefore find that despite therapeutic interventions, Mr. Lewis died from his injuries at 3:19 a.m. on July 18, 2010.

## 6. Autopsy and Cause of Death

[86] Dr. Mike Belenky, then Assistant Chief Medical Examiner of the Office of the Chief Medical Examiner, in Calgary, Alberta, performed the autopsy examination on the body of Mr. Lewis at the Calgary Medical Examiner's facility on July 19, 2010. Dr. Belenky signed the Certificate of Medical Examiner certifying that the medical cause of death was multiple gunshot wounds.

[87] The autopsy revealed three gunshot wounds, all of which entered Mr. Lewis' right side. Gunshot wound 1 was to the right neck causing injury to the large extensor muscles of the neck, with the bullet coming to rest in the soft tissues of the lower left neck. Wound 2 involved a grazing gunshot wound of the right arm which fractured the right elbow joint. Wound 3 was a gunshot wound of the right flank, passing through the liver and both the small and large bowel with the bullet coming to rest in the soft tissue of the left flank. It was stated in the Autopsy Report Form that significant bleeding and multiple organ injuries resulted in Mr. Lewis' death.

[88] The external examination of Mr. Lewis revealed, aside from the gunshot wounds, the body of a well-developed, well-nourished adult male, which appeared compatible with Mr. Lewis' reported age of 39 years. That, together with the internal examination and x-rays taken, showed that there was no significant natural disease processes evident that might have contributed to the death of Mr. Lewis. A post-mortem toxicological analysis was performed for the presence for any drugs or alcohol in Mr. Lewis' system. The Toxicology Report completed by Chief Toxicologist, Graham Jones, was negative for both.

[89] In the final analysis, it was Dr. Belenky's opinion, that the medical cause of death was multiple gunshot wounds and that the manner of death was homicide, which I adopt as my findings in this matter.

## 7. ASIRT Investigation, Final Report and Conclusion

[90] The Alberta Serious Incident Response Team ("ASIRT") is an investigative body with a mandate under the *Police Act* to investigate serious or sensitive matters involving police agencies in the Province of Alberta. It performs the function of an internal affairs unit, separate from and independent of the police agencies within the province.

[91] Detective David Keagan, then the lone municipal member in the Calgary office of ASIRT (South), was assigned as the primary investigator in the ASIRT investigation into the shooting of Mr. Lewis, by the Director of Law Enforcement on July 18, 2010, pursuant to section 46.1 of the *Police Act*. Detective Keagan's role was to direct the investigation, evaluate the hard evidence collected and provide a Final Report to the then Executive Director of ASIRT, Clifton Purvis, who was ultimately responsible to the Solicitor General of Alberta.

[92] The purpose of the ASIRT investigation was to determine if the actions of the police officer involved, Cst. Jason Krivoshein, constituted a criminal offence under the *Criminal Code of Canada* and/or an offence under a provincial statute. ASIRT manages its investigations under the Major Crimes model utilized by both the RCMP and the Calgary Police Service.

- [93] At approximately 4:00 a.m. on July 18, 2010, the ASIRT Team was called out to Okotoks. Being midsummer, its staffing was down so the assistance of the RCMP was requested for the services of both a General Member and the Crime Scene Unit.
- [94] Once in Okotoks, ASIRT took over as the investigative agency, ensuring the scene was secured and performing a scene search including the Lewis residence, the location of Mr. Lewis' body before he was moved, seizing the rounds found where his body was located and noting the trajectory of the rounds further down the street.
- [95] In the residence in the master bedroom were found the 5 long-barrel firearms owned by Mr. Lewis. They were registered, unloaded and secured properly.
- [96] Two documents made by Mr. Lewis were found, respectively, on his person and taped to the stairway in the residence, both of which suggested his clear intention to die. A forensic audit of the computer seized from the residence found the documents on the computer with the time and date stamp indicating they were typed that evening by Mr. Lewis. The note found on his person was detailed in para. 78 above. The document found in the residence was entitled "Last Will" and there was a signature under the typed name of "Cory J. Lewis, Feb. 5<sup>th</sup>71 to Saturday July 17, 2010". The body of the document reads as follows [redacted]:
- "Not that it matters  
I was not listened to in life . . why bother in death
- I leave absolutely everything to my beloved daughter [J.L.] born  
[xxxx]
- Maybe someday someone can tell her that I truly love her but on  
this my final day my cards were played. Your mother decided her  
ex-husband was worth more than me.
- I wish my remains to be burnt and thrown in the first available  
dumpster - no service don't bother
- My firearms are the only thing I can not leave you my chickadee . .  
please have Michael Elliot of Strathmore come take them == he  
can be found at Bison Transport"
- [97] Aside from the above mentioned assistance of the RCMP at the scene, the rest of the investigation, including all interviews of witnesses, was conducted by ASIRT members. Other steps taken included conducting interviews with the caller of the original complaint to the RCMP, the members of the Lewis family and other civilian witnesses; checking into the background of Mr. Lewis for indications of criminality or any other relevant issues; and checking into the background of all officers involved including the subject officer, Cst. Krivoshein, and obtaining their statements.
- [98] All officers were afforded the opportunity to speak with a counsellor or religious person to address the trauma of the incident they had experienced.
- [99] In the case of Cst. Krivoshein, he was advised of his *Charter* rights and afforded an opportunity to obtain legal counsel. As he was still at the Okotoks Detachment when ASIRT arrived, photographs were taken of what he was wearing, his weapon was seized and an inventory of what he had with him was compiled.

- [100] In reviewing Cst. Krivoshein's background, it was verified that his credentials were up to standard. He had completed his RCMP cadet training at Depot in Regina, SK. on January 9, 2006 and had been a member of the RCMP for 4 years at the time of the incident. He had been accepted for ERT Training in Ottawa, ON. which he completed on May 16, 2008, becoming a fully trained tactical operator. At the time of the incident, he was a general duty constable stationed in Banff, AB. and was a full-time member of the Calgary ERT, having participated in some 100 ERT calls, including armed and barricaded cases. He was current with his annual training on the M16 carbine, completed April 20, 2010. It was determined that that he had no previous dealings with Mr. Lewis. No concerns arose about Cst. Krivoshein which required any additional investigation.
- [101] Mr. Lewis' previous interactions with law enforcement were found to be limited to a few traffic accidents and his removal from the family residence by the Okotoks RCMP in relation to the EPO.
- [102] Other aspects of the investigation included liaising with the Medical Examiner's Office to secure any evidence from Mr. Lewis' body, testing Cst. Krivoshein's weapon to determine if it was functional and capable of firing rounds, as well as conducting searches of computers found in the residence in relation to actions of Mr. Lewis that evening. There was no evidence to indicate Mr. Lewis had taken any steps to contact anyone for help by any method during the period of some 6 hours while he was in the residence refusing to respond to the entreaties of the police.
- [103] It was determined that 6 rounds were fired by Cst. Krivoshein from his weapon, the M16 carbine rifle, 3 of which struck Mr. Lewis. Of the other 3, 2 were believed to have struck a house at 1 Knowles Place, hitting the step and window frame. The sixth round was never accounted for despite the investigation.
- [104] ASIRT enlisted Staff Sergeant Shawn Wallace, of the Calgary Police Service, to conduct a Use of Force Review of options used in the incident in order to determine whether or not the use of force by Cst. Krivoshein was reasonable and consistent with both:
1. The *Criminal Code of Canada* and
  2. RCMP Training and Policy
- [105] The *Criminal Code of Canada* provides the underlying authority for the use of force by both citizens and police officers. With regard to the use of force by police, section 25(1) CC states:
- 25. (1)** Every one who is required or authorized by law to do anything in the administration or enforcement of the law
- (a) as a private person,
  - (b) as a peace officer or public officer,
  - (c) in aid of a peace officer or public officer, or
  - (d) by virtue of his office,
- is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.
- [106] Quoting from page 000007 of his Review Report, Staff Sergeant Wallace commented about the legal meaning of the above section in these terms:



“The reasonableness standard as stated in this section forms the “linchpin” around which the use of force will either be found to be lawful or excessive (unlawful) in the case in question. As previously mentioned, this standard is measured through the lens of the police officer and what he objectively and subjectively believed at the time force was used. Facts that come to light after the event of which the officer had no knowledge are of no relevance in determining whether or not the officer’s force was reasonable. For example if an officer was confronted by a subject brandishing a firearm and in fear of grievous bodily harm or death, shot the subject, it would not make the use of force unlawful if it was later determined that the firearm was a replica and not in fact a real weapon, since this could not have been known by the officer.

“Reasonableness” is typically described by what a similarly trained officer would have done in the circumstances and this standard, which consists of both objective and subjective aspects, is used to assist with measuring the reasonableness of the officer’s conduct.

Police officers have no duty under law to retreat from a situation where deadly force may be required.”

[107] Staff Sergeant Wallace noted that officers, who are in the position of Cst. Krivoshein, are required to make split second decisions requiring them to perceive, analyze and react, where their reaction is always going to be slower than the action of their subject, by approximately half a second. Their actions in a given situation are based on their previous scenario based training, during which they are constantly challenged to articulate why they would use a particular level of force with reference to the contextual factors facing them.

[108] It was significant to Staff Sergeant Wallace’s conclusion that Cpl. Vatamaniuck also had made the decision to fire, such that both Cpl. Vatamaniuck and Cst. Krivoshein arrived at the same conclusion based on independent assessments of the situation facing them with Mr. Lewis.

[109] Before arriving at his expert opinion, Staff Sergeant Wallace made this significant point on the role of the ERT at page 0028 of his Report:

“ERT is always looking for a peaceful tactical resolution to every call. There are a number of risk assessments conducted through the chain of command before activation is conducted. But just because ERT is called out, there is not an expectation that an increased level of force will be applied. The opposite is true. WRT is equipped to successfully contain an event for extended periods and utilize negotiated settlements to resolve. If there becomes an escalated threat level that puts the public, police officers, or the subject at risk then ERT is also equipped to tactically resolve the call with lethal or less than lethal means”

[110] After reviewing the complete and entire investigative file, including all witness statements and duty reports, the opinion of Staff Sergeant Wallace, as contained in his Use of Force Review dated April 26, 2011, was that the force applied to Mr. Lewis was necessary to prevent the perceived imminent assault and shooting of an RCMP officer(s), and further, that the application of lethal force was in compliance with the RCMP Policy in place at the

time, including that under the Tactical Operations Manual and that on an Armed and Barricaded Person.

- [111] Then upon the completion of the ASIRT Investigation, Detective Keagan filed a Report dated December 15, 2010, wherein he stated his conclusions at page 40:

“The investigator has no reasonable alternative to explain the actions of Mr. Lewis other than that he wanted the police members at the scene to take his life.”

- [112] And at page 42:

“Lewis placed himself in an antagonistic and confrontational encounter with armed police officers, on two separate occasions. Lewis made a concerted effort to put himself in harm’s way that could only result in an outcome that caused him death or grievous bodily harm. The investigator believes, after reviewing all of the interviews and evidence that Lewis decided to put himself in a situation what would cause the ERT members on scene to have to use their firearms, although it is evident, he did not wish to harm them.”

- [113] On the basis of the ASIRT Investigation Final Report and the Review of Use of Force Report, Clifton Purvis, ASIRT Executive Director, made these determinations as contained in his letter to RCMP “K” Division upon the conclusion of the investigation:

“I have determined that the subject officer, Cst. Jason Krivoshein was lawfully placed and was in the execution of his duty when he engaged Corey Jason Lewis and ultimately shot and killed him.

I have determined that Cst. Krivoshein had reasonable grounds to believe that his life and the lives other police members on scene were endangered. Further, the force he used to respond to this threat was reasonable and lawful in all of the circumstances.

I do not have suspicion that Cst. Krivoshein, the subject officer in this officer-involved shooting, committed a criminal offence.”

- [114] It is to be noted that Mr. Purvis had also obtained an opinion from an out of jurisdiction Crown prosecutor from the Edmonton Crown’s office, indicating that no charges against Cst. Krivoshein were warranted.

- [115] Prior to the public announcement that no charges would be laid in the matter, representatives of ASIRT met with Mrs. Naydene Lewis and Mr. Warren Lewis to advise them of the findings and conclusions of the investigation and to answer their questions.

- [116] The ASIRT investigation was then closed with the recommendation that no charges be brought against Cst. Krivoshein and no charges were laid.

## 8. Other Relevant Evidence

### a) Mental Health Aspect

- [117] When asked about the importance of a mental health issue in an incident and whether anything is done differently when responding to such cases, Inspector Shields stated that the mental health aspect may elevate the risk for all involved, but that nothing would necessarily be done differently, because a person with a mental health issue is at least as dangerous as someone who is not.
- [118] When asked about whether the RCMP had access to mental health professionals to assist in volatile situations, Inspector Shields advised that a psychologist could be approached to give an opinion as to the state of mind of the individual involved.
- [119] When asked if this service was utilized in this incident, he replied that he had asked his negotiators to do some follow up on Mr. Lewis' medical background, but neither his notes nor his memory assisted him as to whether this had happened. However, in the Incident Commander scribe notes, I have noted there is the reference to "negotiators on line with psychologist". (see para. 61)
- [120] When questioned about whether a "joint mental health response", apparently a response used in other similar incidents, had been considered for use in the incident, he said he was unfamiliar with the term

### b) Armoured Vehicle

- [121] Inspector Shields advised that in July 2010 the RCMP in Alberta had no armoured vehicles. While Calgary City Police possessed one, he did not make a call to utilize it. He was not convinced its use would have changed the situation, although it would have allowed the ERT to come up close to the residence and be secure if Mr. Lewis had drawn fire. At the same time, he mentioned witnessing instances where the presence of an armoured vehicle had actually agitated a subject. However, Cpl. Lou, the sniper, thought the use of an armoured vehicle would have provided a higher level of safety overall and would have removed a number of obstacles to his ability to observe what was happening outside the front of the residence.

### c) Sock Rounds

- [122] Sock rounds refer to less lethal ammunition, namely lead shot encased in nylon, fired out of a shotgun. They are used for crowd control over a short range and have the blunt force to knock over a person. The evidence was that they wouldn't have been effective for use by Cpl. Lou, the sniper, due to the distance between him and the front of the residence. Furthermore, if one believed a person was pointing a firearm, the evidence was clear that one would respond with a firearm, not a sock round.

### d) Night Vision

- [123] Night vision refers to an optical device worn over the eyes that will draw in available light to enhance vision in the dark. All of the ERT members said it was available to them, but to a man, they all said it would not have been effective during the incident, due to ambient light coming from street lights and thus, it was not used.

**e) Use of Third Party Intermediaries**

[124] When questioned about the use of family or close friends to convince a subject to surrender, Inspector Shields advised that, occasionally, under strict conditions, including voluntary participation and use of a script, this approach is used. He indicated its use is more common in a protracted situation, whereas this incident took place very quickly and unexpectedly. It was also noted that speaking with family members has appeared to constitute a final goodbye causing a suicidal person in an armed and barricaded situation to be ready to die. It does seem clear that this method was not considered appropriate for this incident. Nevertheless, Mrs. Lewis was consulted about Mr. Lewis and his background for use by the ERT in its tactical plan.

**f) Training in the Use of Force**

[125] It was clear from the evidence of all the ERT members that they are highly trained in the use of force and that their training teaches that there is but one option when confronted with a person holding a firearm at their shoulder ready to shoot them or someone else, and that is to shoot that person before he shoots. The response must be immediate and the threat of or the level of violence must be met with the same level of weapon or greater. At the time of the incident, the primary weapon for the RCMP was the 223 M16 Carbine, which was used in this case.

**9. Firearms Issue**

[126] At the time of his death, Mr. Lewis was in legal possession of 5 long gun firearms which he kept in the master bedroom of the residence.

[127] At the conclusion of the evidence on the Fatality Inquiry, I requested information on how someone with Mr. Lewis' history of mental health problems and alleged violence resulting in an EPO would be granted a firearms licence.

[128] In response, Mr. Beckendorf obtained information and records from the CFIS (Canadian Firearms Information System) consisting of Mr. Lewis' application and screening telephone call logs, and at my request, arranged for the Chief Firearms Officer for the Province of Alberta and Northwest Territories to give testimony at the Inquiry.

[129] Mr. Beckendorf also obtained copies of public documents from the courts, which notably were not considered on Mr. Lewis' firearms application, including the Application and Affidavit of Mrs. Lewis in support of the EPO, the Transcript of the Hearing for the EPO, the EPO and the Court of Queen's Bench Order reviewing the EPO.

[130] On August 8, 2009, Mr. Lewis made application for a licence to possess both non-restricted and restricted firearms by submitting a form (Application for a Possession and Acquisition Licence under the *Firearms Act*) signed by himself and by Mrs. Lewis as the current "conjugal partner" and as the "photo guarantor". The names and signatures of 2 references, being people people known for at least 3 years, were included.

[131] On the form, Mr. Lewis checked the "yes" box for the following questions:

16(b) During the past five (5) years, have you been subject to a peace bond, protection order or an order under section 810 of the *Criminal Code*?

16(d) During the past five (5) years, have you threatened or attempted suicide, or have you suffered from or been diagnosed or treated by a medical practitioner for: depression; alcohol, drug or substance abuse; behavioral problems; or emotional problems?

16(e) During the past five (5) years, do you know if you have been reported to the police or social services for violence, threatened or attempted violence, or other conflict in your home or elsewhere?

- [132] The application was referred for enhanced screening as the application included restricted weapons. The call logs show 1 telephone call was made to Mr. Lewis lasting 2 minutes, where the very brief typed comments as follows: “No Issue. Restricted Course was offered at same time as NR. For target shooting. Confirmed all personal history details”.
- [133] A telephone call was placed to each of the 2 references where one call lasted 3 minutes and the comments were: “No issues. Friends for over 7 years”; and the other lasted 4 minutes and the comments were: “No issue. Know applic. for 6 years”.
- [134] It appears that the very brief and vague written explanations provided by Mr. Lewis on the application which minimized his mental health issues and the EPO were accepted without any further investigation.
- [135] No attempts were made to contact Mrs. Lewis to obtain any background information regarding Mr. Lewis’ mental health history or the EPO or to canvass possible concerns, nor was a medical opinion sought, nor were copies of any of the EPO court documents obtained for review and confirmation ie. the supporting Affidavit of Mrs. Lewis, the transcript from the EPO Hearing, the EPO and the QB Review Order.
- [136] Regarding the lack of a medical opinion in assessing Mr. Lewis’ eligibility in 2009, Mr. Daniel Magotiaux, the current Chief Firearms Officer for Alberta, explained that notwithstanding that the standard operating procedure in 2009 was to obtain a medical opinion where mental health issues were raised, that it was within the discretion of the reviewing officer whether to obtain it. Mr. Magotiaux advised that the policy changed in 2010 to make the standard operating procedure mandatory.
- [137] In any event, upon final review of the application by the then Chief Firearms Officer for Alberta, the Firearms Licence was issued to Mr. Lewis on November 20, 2009 for both categories of firearms, non-restricted and restricted, without conditions. Mr. Lewis subsequently acquired 5 long guns.
- [138] Upon my review of the EPO hearing transcript, there is an allegation that Mr. Lewis offered his stepson money to shoot his stepmother, amongst other concerning allegations including violence towards the said boy.
- [139] Also, upon my review of the EPO Review Order, it is indicated that the EPO was never vacated nor terminated, rather it was “suspended” on conditions with leave to apply to enforce it with or without notice to Mr. Lewis. It is granted that there is no evidence that the EPO was acted upon thereafter, but it appears to have still been in place.
- [140] When questioned about the advisability of obtaining copies of court orders and related court documents where it is revealed on an application that an applicant was subject to court order(s), Mr. Magotiaux confirmed that the practice is not to do so as it would

interfere with the privacy rights of the applicants, despite his acknowledgment that such documents are in the public domain.

- [141] Furthermore, in his opinion there was no need to have reviewed the subject EPO for it had been withdrawn more than a year before the licence application was made, which appears to be factually incorrect, and because Mrs. Lewis had not contacted the Office of the Chief Firearms Officer to advise of any concerns, which he interpreted to mean that there were no concerns.
- [142] Accordingly, it was Mr. Magotiaux's opinion that had he been the reviewing firearms officer, he also would have granted the licence on Mr. Lewis' application.
- [143] Mr. Magotiaux did agree that public safety is the test for licence eligibility under s. 5(1) of the *Firearms Act* and that s. 55 authorizes a request for further information as well as an investigation of the applicant including interviews of persons who may provide information as to whether the applicant is eligible to hold a licence. However, these provisions were not utilized in relation to Mr. Lewis' application.

## 10. Submissions by Counsel and Interested Persons

### a) Ms. Christine Nugent, Inquiry Counsel

- [144] Ms. Nugent summarized the evidence of the RCMP officers and suggested that 2 recommendations could be made in the Fatality Inquiry Report, neither of which were endorsed by the Minister of Justice and Attorney General of Alberta nor the Government of Alberta. They were:
- a. For the RCMP to continue with its process to consider the use of an armored vehicle and the potential funding for that vehicle.
  - b. Whether or not a consideration could be made for what was identified as Canadian Tactical and Operational Medical Solutions (CTOMS), or ballistic training, for EMS in the province.
- [145] Subsequent to the submissions of counsel, I was advised as follows:
- a. In relation to the armored vehicle recommendation, the RCMP is now in possession of an armored vehicle, training of the operators is complete and the vehicle is available for operational use by the ERT.
  - b. In relation to the ballistic training recommendation, Alberta Health Services (AHS) which has been governing and funding EMS as of April 1, 2010, advises that there is no training that would allow its staff to provide earlier intervention as in the situation involving Mr. Lewis, but that there is an integrated tactical team in Calgary which participates in regular training for high risk events, alongside the Calgary City Police. As well, EMS - Calgary Zone, AHS advises that care has been improved through uniform medical control protocols, more skills training and enhanced equipment and resources, which may be utilized in cases of ballistic trauma.
- [146] Ms. Nugent also advised that she had spoken to Mrs. Joyce Lewis who confirmed her desire to make a recommendation that the family should be contacted by police authorities to potentially assist with the negotiation involving a barricaded individual,

which was also the subject of a question she had posed earlier to the use of force expert, Staff Sergeant Wallace.

**b) Mr. Barry Benkendorf, Counsel for the RCMP**

- [147] Mr. Benkendorf emphasized the fact that a Fatality Inquiry Report is precluded from containing any findings of legal responsibility or any conclusions of law, and that while the Report may include recommendations to prevent similar deaths, caution must be exercised in making such recommendations based on a limited amount of information because of their potential impact on the agencies involved.
- [148] Mr. Benkendorf went on to state, as a further reason why no recommendations should be made in the Report, the fact that the shooting of Mr. Lewis was a “. . . tragic and unique case and it would be difficult to transport into future cases.”
- [149] He also submitted that the evidence about Mr. Lewis’ behaviour and the findings of the ASIRT Report lead to the clear conclusion that Mr. Lewis committed “suicide by cop” by causing the RCMP to use lethal force against him. Furthermore, he submitted that the use of that force was reasonable and that the use of force expert had no suggestions for alternatives which would have prevented the lethal use of force in this case.

**c) Mrs. Naydene Lewis and “N.L.”**

- [150] Mrs. Naydene Lewis was present each day of the Inquiry, listening to the evidence and asking questions of witnesses from time to time. In making her submissions, she expressed that she was “. . . thankful for those in the public service who protected my family and I, and it’s been very much appreciated.” She also said “. . . our lives have changed tremendously and I don’t cast blame on the RCMP for doing their job. Yes, I wish they could have done it differently . . .”
- [151] She indicated that although the Fatality Inquiry was “heart wrenching” and tiring, she appreciated the opportunity to hear answers to many questions and concerns she had had for nearly 2 years while awaiting the proceeding.
- [152] Unfortunately, due to this passage of time, she said she’d had too much time to think and many of her thoughts were misinformed or misguided. She also said that she and her family were unable to have closure on the death of Mr. Lewis during the wait.
- [153] Rather than making specific recommendations, Mrs. Lewis commented on her experiences and observations. She was very clear in her opinion that the process took too long to get to the inquiry stage and she wondered why the witness statements from the subject officer, Cst. Krivoshein, in the ASIRT investigation, took 4 months to obtain.
- [154] It was her view that a gap exists in the system of death reviews for those such as Mr. Lewis’, as there is no venue for family, friends and others to give their perspective on what happened, unless their comments pertain specifically to the purposes of the ASIRT investigation or the Fatality Inquiry.
- [155] Based on her statements, I understand that Mrs. Lewis believes that if Mr. Lewis had been allowed to calm down, perhaps with the aid of some communication with family, the events may not have escalated as they did. She regrets having given consent to the Okotoks RCMP to enter the residence as that action precipitated the calling of the ERT. Her hope was that a different method of dealing with a barricaded person suffering from mental illness might be the result of this Inquiry.

- [156] Among the many impacts the shooting had on the lives of the children and herself, Mrs. Lewis described the fear held by her young daughter, J.L., about something happening to Mrs. Lewis, such that her daughter never wants to leave her mother's side. J.L.'s first year of school was marred by inquisitive kids asking questions about the shooting. As a result, Mrs. Lewis removed J.L. from school and stopped working, so that she could home school J.L., which Mrs. Lewis found to be very difficult.
- [157] Her son, N.L., said he was so overwhelmed by grief after the shooting that he was unable to focus on his studies and did not graduate from high school. This young man also spoke in court about how he was always being asked questions about the shooting and just wanted to "forget about it." He told about being worried for his family with people in vehicles stopping in front of their home, and of how his sister asked him to be her dad, because she didn't have a dad anymore. He was clearly very upset.
- [158] Mrs. Lewis also pointed out that she and her children were not able to avail themselves of the Alberta government's programs and services for victims of crime as they did not qualify. As a result, she said she was forced to pay thousands of dollars personally to get specialized counselling for her family.
- [159] She very poignantly stated how she and her family were the "... secondary people ... " left "... to pick up the pieces" after "... the police have done their job ... " and her husband "... did what he did ... "
- [160] Without a doubt, the hardships and emotional toll on the surviving members of Mr. Lewis' family were enormous.

## 11. Other Findings and Conclusions

- [161] It appears that the convergence of a number of factors and events triggered Mr. Lewis' angry and emotional reaction on the night in question, which ultimately led to his death. They included:
- a) Mr. Lewis' long standing mental health issues including the diagnoses of reoccurring major depressive disorder and anxiety disorder. While he had received counselling and was treated with medication, his chronic conditions were not under good control. It was not clear whether he was adequately medicated or taking his medications at the time of his death.
  - b) Mr. Lewis was coping poorly with the pressures of work, as well as the challenges and stress related to his marriage and his blended family, and was prone to outbursts of anger and other aggressive behaviours.
  - c) Mr. Lewis harbored anger at his stepsons, Mrs. Lewis and her ex-husband. He was concerned that Mrs. Lewis would take away his beloved daughter in the face of family breakdown. This appears to have factored heavily in his thinking before his death.
  - d) On the evening prior to his death, Mr. Lewis reacted very aggressively over a minor matter involving his stepson leading to an argument with Mrs. Lewis followed by physical assaults on the stepson and physical aggression towards Mrs. Lewis.



- e) Barricading himself in the residence with his guns, handling and racking them, was consistent with his pattern of isolating himself in his bedroom with his treasured guns in an effort to calm or console himself.
- f) His pre-existing stated dislike of the police coupled with the mistaken belief that Mrs. Lewis had called the police when she hadn't, likely led him to seek solace in his guns, to make the threats to the local RCMP when they entered the residence and for his later refusal to cooperate with all attempts by the ERT to have him come out of the residence and surrender peacefully. Evidence of his thinking is found in these words: "RCMP entering a residence with guns drawn is an act of war" as contained in of his typed document. (See paragraph 78).
- g) Mr. Lewis' thought process is also reflected in the words that he has "now crossed the point of no return". (See paragraph 78). These along with his other typed statements and his behaviour indicate that his intention was to die that night at the hands of the police.

[162] The local Okotoks RCMP did its best to respond to the complaint about Mr. Lewis it had received. When Mr. Lewis failed to answer the telephone calls to him and yelled to the Okotoks officers to get out of his house, while racking his shotgun, it was prudent and in accordance with RCMP policy that the ERT, a highly trained, elite group of officers, was called in to take over the situation.

[163] This armed and barricaded situation involving Mr. Lewis was volatile and of a high risk nature due to the physical violence perpetrated by Mr. Lewis in a public place, his mental health issues including a previous suicide attempt, the presence of the guns and ammunition, and the danger to the public safety in the residential setting.

[164] With what was known to the ERT at the time and having regard to the physical environment in which they were operating, it appears the plans developed by the ERT command were reasonable. The emphasis was on the negotiated surrender plan with a deliberate plan and an immediate action plan to be followed if circumstances so dictated.

[165] The ERT afforded Mr. Lewis every opportunity to surrender safely with many attempts made to communicate with him, all of which were delivered in a non-threatening manner.

[166] The brief turning on of the porch light by Mr. Lewis then turning it off, contrary to instructions by the ERT, so as to leave the front door of the residence in darkness, was a clear indication of Mr. Lewis' intention not to cooperate. His unexpected exit from the residence triggered the implementation of the immediate action plan.

[167] The use of force expert opinion of Staff Sergeant Wallace that Cst. Krivoshein had no other viable choice but to fire on Mr. Lewis under all of the circumstances concluding that the lethal force was reasonable and lawful, is a well supported opinion based on all of the findings of that inquiry.

[168] It also appears that the utilization of other possible responses and methods, including those outlined in paragraphs 121 to 124, would not have been feasible in this case.

[169] Furthermore, the result of the ASIRT Investigative Report that the homicide in this case was legally justified and non-culpable, is also well supported on all of the findings, including that Mr. Lewis wanted the RCMP members at the scene to take his life.

- [170] It is not clear to what extent, if any, that a mental health professional was consulted to assist in the attempted negotiation with Mr. Lewis.
- [171] In my opinion, it should have been possible to consult with Mr. Lewis' own doctor and/or therapists to help develop a more individualized approach that may have been more effective in the attempts to communicate with Mr. Lewis. I say this because Mr. Lewis had longstanding mental health issues which were well known to Calgary Mental Health Crisis and Emergency Services and his own local doctors.
- [172] Although Mr. Benkendorf characterized this case as one of "suicide by cop" or "police assisted suicide", and witnesses were asked about their opinion on this point, it was not urged by either counsel nor anyone else that I should find Mr. Lewis' death to be one of suicide. I understand suicide to be the action of killing oneself intentionally. I must assume that there is no legal basis for the term "suicide by cop" at this time for the purposes of the *Fatality Inquiries Act* or any other legislation, for that matter.
- [173] On the issue of Mr. Lewis' guns, I find it disturbing that he was ever granted a licence for both restrictive and non-restrictive firearms which led to his acquisition of 5 long guns in view of his history of mental health issues, a suicide attempt and a relatively recent EPO.
- [174] I do find that Mr. Lewis' possession of the 5 long barreled guns was an integral part of the event leading to his death. Despite the fact he didn't actually use a gun but rather a facsimile to incite the RCMP to shoot him, it was the fact he holed up in the bedroom of his residence handling and racking his guns, acting and speaking in a threatening manner to the Okotoks RCMP who had entered his residence, which only happened because they knew he possessed 5 guns, that led to the "armed and barricaded" characterization which led to the calling in of the ERT which resulted in a standoff that ultimately led to the death of Mr. Lewis.
- [175] I find that the screening process used to grant the gun licences to Mr. Lewis lacked diligence and common sense and gives me no sense of assurance that public safety, which is the purpose of the *Firearms Act*, was being sufficiently emphasized throughout the process.
- [176] I come to this conclusion for while the original application for the licence took 2 - 3 months to process, no investigation of Mr. Lewis' mental health history nor the EPO was done beyond cursory calls to Mr. Lewis and his 2 references.
- [177] No contact was made with Mrs. Lewis and the Chief Firearms Officer's evidence was that as the office didn't hear from her, she must not have had any concerns as she was noted to have signed Mr. Lewis' application as the "conjugal partner" and "guarantor" of his photo.
- [178] To assume that a conjugal partner has no concerns based on a bare signature that only signifies status and not consent, is not realistic. Furthermore, placing total reliance on applicant selected references and conjugal partners to verify legal situations and mental health status and history, is also not realistic, when one considers the potential biases and other pressures brought to bear in such relationships with an individual applicant.
- [179] I acknowledge that the Chief Firearms Officer testified that a medical opinion would be obtained today on an application such as Mr. Lewis', as the obtaining of a professional medical opinion as to the suitability for licencing is now mandatory by policy as of 2014 where there is a mental health concern. While obtaining a medical opinion was the prescribed operating procedure at the time of the Lewis application, according to the

Chief Firearms Officer, doing so was nevertheless discretionary and was not obtained in the Lewis case.

- [180] What is surprising to me is that the Chief Firearms Officer went on to say that despite the fact a medical opinion would be obtained today, the likelihood would be that the licence for restricted firearms would under the same circumstances be granted today, because the EPO had expired and Mrs. Lewis had signed the application and hadn't complained.
- [181] The Chief Firearms Officer is mistaken when he says the EPO had expired. The Review Order of the EPO provided for a suspension with right to enforce not an expiry of the Order. Because the policy is not to obtain copies of EPO's or other court orders, the Firearms Officers are relying on the advice of lay person applicants to tell them the status of these important orders. The mistake of the Chief Firearms Officer can be attributed to this unsatisfactory policy.
- [182] Equally surprising to me, is the fact the Chief Firearms Officer suggests that based on Mrs. Lewis having signed Mr. Lewis' gun licence application as the 'conjugal partner', that this signifies her consent to the application when the application form does not provide for any declaration about consent or knowledge and belief about the interests of safety of the applicant or other person. Such a declaration is not required by conjugal partners on the application form.
- [183] The process described to me places an undue responsibility on the conjugal partner to take active steps to register safety concerns, even assuming that he or she has had notice of the advice found in small print on the application form, in these words, "If you have any safety concerns about his application, please call 1-800-731-4000".

## 12. Recommendations

- [184] Having regard to the evidence presented on this Fatality Inquiry and my assessments and conclusions, I make three recommendations. They do not include the two recommendations suggested by Inquiry Counsel and the single recommendation of Mrs. Joyce Lewis which are outlined and addressed at paragraphs 124, 144, 145 and 146 of this Report. As the recommendation regarding an armored vehicle has already been implemented and the other two recommendations have been discussed, I do not make them the subject of formal recommendations.

### Recommendation No. 1

- [185] That the Chief Firearms Officer develop and implement mandatory standard operating procedures for firearms officers to assist in the better evaluation of eligibility of applicants for firearm licences focused on meeting the test of public safety as set out in s. 5 of the *Firearms Act*, including but not limited to:
- a. A telephone interview with the current conjugal partner.
  - b. A review of public documents in court actions for types of orders mentioned in application including all documents in support of an order, a copy of the order and a transcript of hearings held.
  - c. Independent verification of any explanations provided by applicants in relation to their admissions on the licence application form for firearms in relation to previous criminal convictions, restraining or protection orders, peace bonds, a history of

depression, behavioural or emotional issues, alcohol or substance abuse or allegations of violence.

- d. File notes to be made that set out the decision making process when licences are granted or not granted in cases where there are previous criminal convictions, restraining or protection orders, peace bonds, a history of depression, behavioural or emotional issues, alcohol or substance abuse or allegations of violence.

**Recommendation No. 2**

- [186] That police agencies including the RCMP ERT consult with mental health professionals, particularly those who are treating a person, when dealing with a situation such as an armed and barricaded person with mental health issues, to obtain comprehensive information about the person to assist in developing the most effective approach to achieving a surrender.

**Recommendation No. 3**

- [187] That police agencies including the RCMP ERT, for use in the ongoing training of their members, ensure that they keep current on evidence based approaches and techniques of crisis intervention to allow them to better recognize and respond to mentally and/or emotionally disturbed persons, in situations including armed and barricaded persons.