



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

Fatality Inquiries Act

WHEREAS a Public Inquiry was held at the Calgary Courts Centre
in the City of Calgary, in the Province of Alberta,
(City, Town or Village) (Name of City, Town, Village)
on the 27-29 day of January, 2021, (and by adjournment
year
on the 13-14 day of April, 2021),
year
before Margaret M. Keelaghan, a Provincial Court Judge,
into the death of Jason Gary Roy born Nov. 3, 1988 33
(Name in Full) (Age)
of Calgary and the following findings were made:
(Residence)

Date and Time of Death: February 28, 2014 at 22:15

Place: SB Deerfoot Trail (300 m South of McKenzie Lake Blvd.) Calgary, AB

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)).

Homicide

Circumstances under which Death occurred:

Please see below.

Recommendations for the prevention of similar deaths:

Please see below.

DATED December 3, 2021,

at Calgary, Alberta.

Original Signed

Margaret M. Keelaghan
A Judge of the Provincial Court of Alberta

This public fatality examined the circumstances surrounding the death of Jason Gary ROY on February 28, 2014 during an incident that took place on southbound Deerfoot Trail south of MacKenzie Lake Blvd. Fourteen witnesses were called and four exhibits were entered into evidence in this proceeding.

There has been a considerable passage of time between the date of the incident and the date of the inquiry. In my view this process is nonetheless worthwhile as it has been helpful to view the incident and the actions of the officers through the lens of the policy and training at the time of the incident as well as the revised training and policy currently in place. Many of these revisions came about as a result of the recommendations of the Wittman report.

Parties Participating in/addressing the Inquiry

- 1) Melissa Burkett and Jana Wiens, Alberta Justice and Solicitor General, Inquiry Counsel
- 2) Andrea L. Froese and Tyler McDonough, Bennett Jones LLP, Counsel, Calgary Police Service; Robert Fenton, Calgary Police Service.

List of Witnesses

- 1) Allan Brown – ASIRT Investigator
- 2) Det. Tom Saigeon (CPS Primary Investigator)
- 3) Cst. Tom Wilkinson (Subject Officer, TAC)
- 4) Cst. Wade Going (Subject Officer, TAC)
- 5) Cst. Ray Braun (Witness Officer, TAC)
- 6) Sgt. Andy Jorgenson (Witness Officer, TAC)
- 7) Cst. Rob Tipett (Witness Officer, K9)
- 8) Cst. Ben Phillips (Witness Officer)
- 9) Cst. Aron Johnston (Witness Officer, K9)
- 10) Ashley Silver (civilian witness, passenger in vehicle)
- 11) Sgt. Dery (TAC training; use of force principles, including firearms training, specialty munitions for TAC))
- 12) Cst. Hammer (Code 600 and vehicle-based tactics training)
- 13) Sgt. Colin Morgan (auto theft team)
- 14) Sgt Fraser (general firearms training principles)

List of Exhibits

- 1) Binder #1 (Background Documentation, Medical Examiner's Records and Relevant ASIRT Records)
- 2) Binder #2 (Relevant CPS Records-DVD containing some audio visual recordings, relevant AHS records, additional ASIRT records)
- 3) Wittmann Report
- 4) Diagram prepared by Len Minello

Introduction

The inquiry involves an examination of the 2014 death of Gary Jason Roy by multiple gunshot wounds during a critical incident in which the deceased was operating a motor vehicle dangerously, putting the public at considerable risk.

The emerging context of the inquiry as it progressed was the impact on public safety and police resources of a surge in the number of vehicle thefts involving dangerous driving, often in the context of offenders using highly addictive and destructive drugs such as methamphetamine. The inquiry also examined the impact of the subsequent Wittmann report on police use of force. The Honourable Justice Wittmann, QC was commissioned to address and make recommendations regarding the proliferation of use of force incidents in Calgary in which lethal force was used. Justice Wittmann made a number of recommendations that are relevant to this inquiry in relation to policy considerations and training relating to vehicle-based tactics. The inquiry also examined policy and training in relation to the utilization of firearms as a use of force option. It will be noted that another prevailing theme from the inquiry's evidence in regard to both policy and training is the significance of **critical thinking** as a crucial component of training and culture within the police force.

The inquiry heard evidence as to the unfolding of the event itself by the officers involved, as well as from the civilian who was the passenger in the vehicle and who was injured in the event. The Court was also provided with civilian witness statements gathered by police and some forensic analysis of the incident. Additionally, the Court heard from a number of senior members of the police service in relation to the Use of Force policy and training in place at the time of the incident as well as current policies and training, some of which was implemented as a result of recommendations contained in the Wittmann report.

Issues considered

The Fatality Review Board recommended an inquiry to prevent deaths of a similar nature and to clarify the circumstances of this case. The inquiry's scope included, in addition to an examination of the incident itself, evidence regarding the Calgary Police Service (CPS) Use of Force policy and training, including firearms training and vehicle-based tactics as they were at the time of the incident and as at the time of the inquiry.

Circumstances of Incident

On the night of February 28, 2014, an off-duty police officer contacted police and indicated that he believed he had heard shots fired in the area of the 1400 block Copperfield Blvd. SE. The police responded to the complaint and the attending officers reported that they observed a Ford F-350 take a U-turn on 130 Ave. SE and was fleeing eastbound. They were advised not to pursue the vehicle but to keep it in sight until HAWCS (Helicopter Air Watch for Community Safety) could attend. The units kept the vehicle in sight as it drove erratically around the Copperfield area.

It was reported by another unit that the F350 appeared to be driving in tandem with a Ram truck on McIver Blvd. The two vehicles were traveling at excessive speeds until ultimately the Ram pulled over. It was later learned that the driver of the Dodge Ram was following the F350 as it had committed a hit and run on his vehicle. The HAWCS helicopter attended the area and observed the vehicle drive to Deerfoot Tr. and go northbound, driving at speeds from 40 kilometers per hour to 120. The vehicle suddenly exited Deerfoot Tr. at Blackfoot Tr. by driving over the median and grassy area adjacent to the ramp, onto the ramp and then onto westbound Blackfoot Tr. At approximately Alyth Road the vehicle was observed by HAWCS to come to a complete stop, then back up and ram into the front of a Ford Explorer which was stopped behind it. It was later speculated that the suspect believed the Explorer to be a police vehicle (which it was not. A civilian suffered minor injuries as a result of the collision).

The F350 continued on Blackfoot Tr., running a number of red lights. The vehicle then took Southland Dr. and then went southbound on Deerfoot Tr. HAWCS had to disengage to refuel at this time and the subject vehicle was kept in sight by a member of the canine unit and by two tactical units.

While traveling southbound on Deerfoot Tr., a marked police unit reported that the F350 had tried to sideswipe their vehicle, apparently intentionally, as it passed them. Two members of the Tactical unit traveling in an unmarked F350 followed the subject vehicle past Barlow Trail and 130 Ave. Two other K9 vehicles were following as well, keeping eyes on the vehicle but not engaging. The vehicle continued to speed up and slow down before coming to a complete stop near the McKenzie Towne Blvd. off ramp. The suspect vehicle turned hard left and crossed three lanes of traffic across southbound Deerfoot Tr. where it tried to jump the concrete barrier, failed and ended up facing northbound in the southbound left lane. The tactical team F350 driven by Constable Wilkinson caught up and, concerned that the suspect vehicle would begin to drive northbound in the southbound lanes of Deerfoot Tr., engaged the vehicle, essentially pushing it, nose-to-nose, across the southbound lanes of Deerfoot Tr. to the west side. A number of other vehicles arrived on the scene and pinned the vehicle. Before the vehicle could be effectively pinned, a number of shots were fired resulting in the death of Jason Gary Roy who was operating the vehicle and injuries to Ashley Silver, the passenger in the vehicle.

This was a dynamic and chaotic situation and the accounts of what occurred in the moments when the vehicle was engaged by the Tactical vehicle and the shooting immediately thereafter vary somewhat. The details of precisely what occurred in the engagement with the Tactical vehicle and how the two vehicles ended up facing in the same direction are impossible to determine with certainty. It is clear, however, that the Tactical unit, also an F350 driven by Cst. Wilkinson with Cst. Going as the passenger, attempted to ram the vehicle head on but impacted at an angle on the driver's side.

The vehicles were described by witnesses as pushing nose-to-nose across the lanes of Deerfoot, coming to rest on the west side, both facing west, with the police vehicle ahead and to the left of the suspect vehicle.

Cst. Going testified that suspect vehicle sideswiped their vehicle, knocking off the side view mirror and he was unable to determine the position of the suspect vehicle. In the moments before other units arrived to assist and concerned about the high probability that the vehicle would escape, Cst. Going exited from the passenger side of the Tactical vehicle and, from his position standing on the running board, fired 15 shots from his service handgun at the driver of the vehicle.

Cst. Wilkinson testified that he rammed the suspect vehicle on front driver's side, but was not successful in disabling the vehicle. The suspect vehicle immediately began to back-up across Deerfoot Tr. Cst. Wilkinson attempted to maneuver nose-to-nose with the vehicle with the intention of pushing him all the way across Deerfoot Tr. The vehicles were not lined up nose-to-nose and suspect vehicle was able to push the Tactical vehicle around so that they ended up facing the same direction, both facing east. The suspect vehicle had moved forward and sideswiped the passenger side of the tactical vehicle, knocking driver's side rear view mirror off. Cst. Wilkinson put the vehicle in park and got out of the driver's side and as he did so, he heard a number of shots fired. He walked to the back end of the tactical vehicle where he was able to have a clear view of the suspect in the driver's seat of the vehicle. He stated that it was obvious that he had been shot, but he was still moving and revving the engine. He took out his service revolver and shot two to four times.

A number of other police vehicles were arriving and boxed in the vehicle. A number of the officers who arrived on scene described the noise from the revving engine.

After Cst. Wilkinson shot Mr. Roy, the driver of the suspect vehicle, the passenger, Ms. Silver, continued to move around in the vehicle and could be heard screaming at the officers. A number of police witnesses described her holding an object in her hand pointing it at the police and screaming that she was going to kill them. Cst. Wilkinson had Ms. Silver directly in his sight and saw the object in her hand, which he believed to be a gun. He fired at Ms. Silver, striking her in the jaw area and disabling her. The object in her hand was later discovered to be a pair of sunglasses, which she, in her own statements and testimony, intended the police to believe to be a gun so that they would shoot her.

Mr. Roy was declared deceased at the scene and Ms. Silver was transported to hospital with serious injuries.

Fifteen (15) rounds were fired from the service pistol of Cst. Going and four rounds (plus an expended round) were fired from Cst. Wilkinson's service pistol.

The vehicle used in this incident was stolen.

Both Mr. Roy and Ms. Silver had ingested methamphetamine before the incident. Ms. Silver's statement taken after the incident indicated that Mr. Roy, her boyfriend, had been taking meth for several days, his last ingestion being a few hours before the incident. He had not slept in days.

They had both been involved in similar incidents, with charges outstanding. This was unknown to the officers at the time, but this information is relevant, in that it speaks to the accuracy of their read of the situation, that the vehicle was being used as a weapon and the driver at that time was a danger to the officers and to the public.

Ashley Silver testified with respect to the lead-up to the incident, including their ingestion of methamphetamine and the deceased's driving pattern. In my view, much of her evidence regarding the detail as to what transpired is unreliable given her state of intoxication, the traumatic injuries that she suffered and the passage of time. Regardless of her criminal history with the deceased and her own culpability for actions taken during the incident, she was traumatized both physically and mentally by the incident and she will suffer the effects for the rest of her life. She has undergone extensive drug treatment and it is my hope that she will continue on her path of sobriety and to make a meaningful life for herself.

ASIRT Investigation

An ASIRT investigation was conducted and no criminal charges were laid against the subject officers. Witnesses testified that the initial investigation immediately after the incident occurred in collaboration with the homicide unit and then split off. The two subject officers did not give statements nor surrender their notes in relation to the incident, on the advice of their lawyers.

The Tactical Unit

The officers directly involved in this incident, Constables Going and Wilkinson and a number of officers that attended the scene to assist with boxing in the vehicle were members of the Tactical Unit. The inquiry heard a significant amount of evidence regarding the Tactical Unit in relation to their training and resources.

The Tactical unit is not a patrol unit, rather it was described as a specialized support unit that, in addition to dealing with specialized situations such as bomb calls, hostage-taking incidents and

firearms calls, provide support for search warrant execution, particularly high-risk entries and arrests and high risk vehicle intervention.

There are three teams of ten members each. The unit has an array of special equipment; of relevance here, a squad of Ford F350's to counter offences involving large, usually stolen vehicles such as breach of buildings using large trucks and dangerous driving and taunting behavior toward the police. The unit has now transitioned from the use of Suburbans to F-350's to counter the type of serious incident that occurred in the incident examined at this inquiry, as well as other serious crimes committed using these very large vehicles.

Each Tactical Team member must complete the Basic Tactical Operations Course (BTOC) and at six months in length, is one of the longest and most intensive programs in North America. The training includes tactical firearms training, tactical vehicle intervention in and around vehicles, including techniques such as ramming, pinning, and precision immobilization techniques. It is scenario-based and focusses on critical thinking. Training in the Tactical Unit is ongoing: in their day to day activities, 25% of their time is spent on training, including firearms practice and vehicle-based tactics.

The Wittmann Report

In May, 2017, then-Chief of Police Roger Chaffin directed an independent review of the CPS in response to an increase lethal force incidents in the years preceding. The Honourable Neil Wittmann, QC was commissioned to examine police use of lethal force, focusing on police-involved shootings but also on the use of force generally. Justice Wittmann examined CPS policies, procedures, practices, training, both initial and on-going, equipment, and the current command, control and supervision models of personnel relating to use of force, lethal and otherwise. The comprehensive report, released in April, 2018 makes 65 recommendations in a variety of areas of provincial oversight, officer recruitment, officer education and training, use of force, responding to use of force, mental health, substance abuse and police interactions, and police culture. Justice Wittmann concluded that the CPS' goal should be to **“at best eliminate or at least reduce the situations that cause officers to use lethal force.”**

The recommendations provided in the report can best be summarized in Justice Wittmann's words:

[Implementation of the recommendations] requires focus on training, critical thinking skills, strategic planning and appropriate tools and equipment...It also requires the development and application of consistent, current and comprehensive guidelines and procedures for policing.

Although the Service' ongoing response to the report, quite appropriately, approaches the recommendations as interconnected and not to be viewed in isolation, there are distinct sections and recommendations that are of particular interest to this inquiry. Of particular interest were sections of the report relating to vehicle flight intervention tactics, responding to auto thefts and incident management by the CPS.

I note that my colleague Judge Lamoureux presided over a fatality inquiry which heard evidence in relation to a police shooting involving an individual with significant mental health issues. Her report, dated December 18, 2019, addressed the Wittmann report recommendations with respect to the newly developed use of force policy as they relate to police interactions with mentally ill individuals. This inquiry did not deal with this issue, but, as indicated, dealt with use of force issues as they relate to vehicle-based incidents.

Use of Force Policy and Training

This inquiry heard evidence with respect to the policies and training in place at the time of this incident, which took place prior to the Wittmann report, as well as the policies and training in place at the time of the inquiry. The inquiry heard evidence with respect to the progress of the work to address Justice Wittmann's recommendations, particularly in relation to vehicle-based tactics and firearms. The inquiry heard evidence from Sgt. Dery in relation to Use of Force principles generally as well as specifically in relation to Tactical Unit training; Cst. Hammer on Vehicle-based tactics and training; Sgt. Morgan of the Auto Theft Unit and Sgt. Fraser with respect to firearms training.

The Use of Force policy in place in 2014 required officers to be familiar with the reasonable force provisions of the *Criminal Code* (ss. 25 – 27) and contains guidelines (s. 3) requiring the officer to “assess” and continually evaluate the incident and the use of force necessary to safely control the situation, in accordance with current training standards. Reasons for use of force must be articulable. It describes a number of physical control techniques, intermediate weapons and use of firearms. Only in exigent circumstances will an officer discharge a firearm at a vehicle or from a moving vehicle.

The current Use of Force policy came into effect in 2017 and contains a new statement of principle of the CPS commitment to the sanctity and preservation of life, human rights and the dignity of every individual. An expanded and updated definition section including definitions of “exigent circumstances,” “forced entry” and “unintentional discharge” have been added. This new use of force document has been revised to provide significantly more guidance by adding a full section addressing the general prohibition against shooting at or from moving vehicles. The section includes a mission statement regarding management of high-risk vehicle encounters, prohibitions against discharging firearms at moving or potentially moving vehicles or shooting from moving vehicles except in imminent exigent circumstances such as danger to the life of the officer or others and there was no reasonable means of evasion or escape. It is specified that recovery of stolen vehicles or apprehension of offenders are secondary to the safety of the officer, the public and the offender. The section does, however, allow for flexibility in unforeseen situations but calls for sound judgment and the ability to articulate the unique and imminent reasons for the use of deadly force in reporting the incident.

The Use of Force Committee, comprised of civilian and sworn members is mandated to regularly evaluate the use of force policies and practices within the CPS. It also reviews research on trends in the community and in other police services, education and training. Sgt. Dery told the inquiry that the Use of Force policy is under review at this time, having been mandated for review in 2019. He testified that it may be that the delay in publishing the review is a result of a new de-escalation section that has not yet been rolled out. The current CoVid-19 pandemic may well have resulted in some delay in this process as well.

Training

Use of Force Training: The inquiry heard evidence from virtually all of the officers involved in the incident in relation to use of force training. Initial training of new recruits is a six-month training period with use of force training throughout. Use of force policy is a major component, however, the inquiry heard that critical thinking is becoming a more substantial component. The training and policy guidelines as to use of force require the force to be necessary, reasonable and proportionate. The decision to use lethal force must only be used in situations of potential grievous bodily harm or death.

The most substantial evidence with respect to training came from Sgt. Jean-Francois Dery. This officer has had 14 years of experience in the Tactical Unit, including 5 years as a sergeant. Sgt. Dery is now the training sergeant for the Tactical Unit and as such well equipped to give evidence on the use of force policy as well as training of new recruits but more specifically Tactical Unit training, which I note is more intensive and focused than front line officer training because of the specialized service provided by this unit.

He testified as to available use of force options from communication, de-escalation, disengagement through to restraints and techniques in relation to arrests; to weapons available including tasers, pepper spray, ARWENS and then to deadly force weapons, mainly firearms. It was noted that vehicle intervention tactics can be a use of force as well.

Officers are required to complete annual training on use of force, including use of force options, Code 600 (referred to below) and firearms training, including regular certifications. As noted above, the Tactical Unit is mandated to spend 25% of its on-duty time in training.

He noted that the Tactical Unit, during its lengthy training process, has a continual focus on critical thinking. This is a theme that arose continually in the evidence of the majority of the officers as well as policy and training witnesses. The ability to evaluate a situation and use decision-making skills and to later be able to articulate the reasons for the action taken is central to the training in this unit and, as noted, critical thinking has now evolved increasingly as a component in front line officer training as well.

Firearms Training: Sgt. Kelly Fraser provided evidence to the inquiry regarding firearms training. He began with the CPS in 2000 and in 2009 became a member of the firearms training team, where he was a firearms instructor for 8 years and returned to the unit in 2018 as sergeant. As well, he is a member of the Use of Force Committee.

In terms of firearms training, the inquiry was advised that new recruits, as part of their initial training, receive 14 days of firearms training which progresses from basics and mechanics of shooting to tactics and more advanced proficiencies such as shooting from different positions and scenario-based training. Part of the firearms as well as general training of recruits relates to use of force policy, including legal concepts on use of force, being reasonable, necessary and proportionate. In terms of lethal force, the members are trained to shoot to stop the threat. Members are trained to shoot at the centre mass. Members are trained to shoot as many rounds as are required to stop the threat, subject to safety issues such as crossfire. The firearms used by CPS are not high caliber, as military weapons are. "They are designed to stop a threat", according to Sgt. Fraser.

Shooting at a moving vehicle to stop the vehicle is rare, as modern vehicles are designed very much to absorb kinetic energy in an accident therefore shooting at a vehicle (ie delivering kinetic energy) with the purpose of stopping it is particularly ineffective. There is also a high degree of probability that a bullet will ricochet in an unpredictable manner causing danger to the police and the public.

Sgt. Fraser briefly testified about shooting into a vehicle through the windshield. The bullet will continue in a straight line, and not lose much energy, but the windshield may affect the view of the officer. Objects such as the steering wheel or the dashboard may deflect the shot and cause it to lose energy.

Finally, it was noted that officers are trained not to fire warning shots. This is, in fact, part of the Use of Force policy. There is no safe direction to fire that would not endanger the public or other officers as the range of the round is 1800 to 2000 yards.

Code 600 and Vehicle Intervention Training (Code 700): Vehicular incidents can be some of the highest risk situations in policing. Sgt. Christopher Hammer provided evidence in this area. Sgt. Hammer has been a member of the CPS for over 14 years and is currently a member of the Tactical Unit and is trained as an instructor in vehicle interventions and was part of the consultation with respect to the newly developed Code 700.

Vehicle intervention training for new recruits and front-line officers was suspended in 2008 as a result of a number of serious incidents involving death or bodily harm to officers or members of the public.

Code 600 is the policy governing police pursuits in relation to vehicles and has recently been significantly revised to provide guidance as to pursuable offences and pursuit procedures. Training is conducted in relation to Code 600 in basic recruit training as part of the Emergency Vehicle Operations Course (EVOC) which is lecture and scenario-based training including driving and communicating in vehicle pursuit scenarios.

I pause here to note that the evidence was consistent that the Roy incident was not a pursuit and was never called as a pursuit.

The new Code 600 has been in place since November, 2019. It is apparent from the policy and the evidence heard at the inquiry that a Code 600 vehicle pursuit will never happen spontaneously without supervisory direction and without exigent circumstances.

Code 700 is an entirely new policy, introduced in 2020, which deals with events involving a motor vehicle where preventative measures or a vehicle-based tactic or tactics may need to be used. These tactics must be authorized by the Real Time Operation Centre Incident Command Team to ensure public and officer safety. Code 700 is distinct from Code 600 which only involves pursuits.

Code 700 would be applicable to vehicle “events” such as one examined by this inquiry, where there was no pursuit but the event abruptly became dangerous to the public as a result of the suspect’s action in attempting to cross the median and then potentially going north on southbound Deerfoot Tr.

I note at this point that the evidence I heard in relation to the chain of command structure in relation to this critical incident, mostly from Sgt. Andy Jorgenson, appeared to work well and effectively.

Wittmann Report Recommendations and CPS Responses

A number of recommendations made by Justice Wittmann are relevant to this inquiry.

Critical Decision Making - Police Culture: Recommendation 46 - Justice Wittmann, in the context of examining police culture, including risk aversion, indicated that

*...efforts to ingrain critical decision-making and the value of concepts such as time and distance in use of force decision-making need to benefit from deliberate repetitions in policy, programs and operations before it becomes cultural.
... it relates to the issue of use of force, the [ethics] code, as well as existing policy, both appeared to base the requirement for use of force on the provisions of the Criminal Code. Strict adherence to the Criminal Code may result in the use of force that can be described as “lawful but awful”. Instead, officers should be mandated to assess the extent to which*

the proposed force response is reasonable, necessary and proportionate to achieve the desired outcome, not whether the use of force is “justified” in any particular situation.

Justice Wittmann, therefore, recommends that the CPS recruit and in-service training and education on use of force **begin** with critical decision making and threat assessment, not whether use of force is “justified” under the *Criminal Code*. As noted above, the concept of critical decision-making was a common theme throughout this inquiry, from the evidence of the officers involved in the incident, to the officers involved in training and policy-making.

The response of the CPS has been to recognize that necessity, reasonableness and proportionality form the parameters of police use of force and to recognize the need to incorporate critical decision-making and threat assessment in training and education to assist in the lawfulness and dependability of police use of force. The response of CPS to this recommendation has included incorporation of de-escalation training into recruit and in-service training, including reviews of threat assessment.

Critical Decision Making – Training: Recommendations 17 and 29 – These recommendations are related and address the need for the implementation of more scenario-based training to allow officers to practice critical thinking in dynamic situations. This has been implemented at the recruit level training and continues to be a focus for Tactical Unit training. Recommendation 29 recommends scenario-based training for new recruit training as well as in-service training that is consistent with the CPS De-escalation Policy and statement of principles. These involve training officers to conduct continual threat assessments, including primary decision making to engage or not to engage. Vehicle-based training is an example of a use of force that, at its best, can stop a vehicle before it begins a flight, which endangers the public in a significant way. Sgt. Colin Morgan offers an important articulation of this principle in his evidence:

*You have to assess every situation, every situation is different... There are certain people that you know by watching them sit in the driver seat that if you bring police cars in and try to contain the front of that vehicle, they're going to take off as soon as they see a sign of a marked vehicle. You never know until it happens if that's what's going to happen with this person...[M]eth and fentanyl are prevalent in the city right now and have been for a number of years. These guys are out there driving around for four or five days without sleeping. I don't know how anybody can make a sound decision when they're doing that. [When] you decide to use these tactics, you have to take all that stuff into consideration, that you don't want anybody to get hurt including the offender. You want it to end without anything happening, quite honestly. **Just a quick containment and hopefully a quick arrest.** But each situation has to be assessed on its own merit.*

This sentiment, in my view, encapsulates the practical goal of every one of these type of potentially lethal situations.

Critical Decision Making – Policy: Recommendation 18 recommends the review of Use of Force policies and Code 600 to inject critical decision-making into appropriate sections. The response of CPS is as follows: “The Code 600 policy now requires officers involved in pursuits to make risk-effective decisions based on the nature of the offence, the information available and roadway conditions at the time of the incident, available resources and other ongoing priority calls.”

Vehicle-based Tactics: Recommendation 24 – vehicle flight intervention training and tactics -

- a) **Train frontline members in Vehicle Intervention Training** in line with Code 600 policy. This has been accomplished with the revision of the Code 600 policy as outline above and with the service-wide rollout of Code 700 or Vehicle-based Tactics training. This has been highly successful and I gather from the evidence of the officers that I heard, has met with high approval from the members from patrol to specialized units to management.

High risk vehicle events: Code 700 basic training has been rolled out to all members (Tactical Unit was already subject to this training, both basic and advanced) with recertification required every two years.

- b) **Address vehicle flight intervention tactics – code 600** has been revamped as noted above and training is ongoing.

Auto Thefts: Recommendation 26 – Auto Theft Unit - The inquiry heard evidence from Sgt. Morgan, who has been with the Service for over 22 years and is in charge of the Auto Theft Unit. The precursors to this unit were the District Operations Team (DOT) 10s which investigated and managed a wider variety of files in addition to auto thefts. An integrated unit has also been formed to deal with organized crime relating to auto theft under the Alberta Law Enforcement Response Team (ALERT). Sgt. Morgan has been with the Auto Theft Unit since its inception in 2017. The unit is a part of the CPS offender management section with a mandate to investigate auto thefts, focusing on prolific offenders. A related mandate of the Auto Theft Unit is education of the public in relation to theft prevention. The unit utilizes covert surveillance to effect safe arrests of offenders. All members of the team are trained in advanced mobile surveillance. The current team is trained in both basic and advanced vehicle-based tactics, which was not the case in 2014 as a number of junior officers had not received vehicle based training as a result of its suspension in 2008. This unit, like the Tactical Unit is not a patrol unit but is exclusively focused on investigation of auto thefts.

Recommendation 25 Spike belts: there was a significant amount of evidence about the use of spike belts or as they are technically referred to, remote controlled (deployable and retractable) spike systems (tire deflators). It is clear that a spike belt would not have been of use in this incident, but, in my view, spike belts ought to be one item in the police arsenal for use in appropriate situations where their use would not endanger officers or the public. The evidence indicated that spike belts are generally ineffective if the driver is able to avoid the spike belt by swerving or if they are very motivated to escape. The spike belt may be useful for covert units as suggested by Sgt. Morgan, but highly unlikely to be of assistance in situations like the one faced by the officers during this incident as the driver was erratic and clearly, by the time of the attempt at boxing him in, highly motivated to use any means to effect an escape.

Methamphetamine and Vehicle Theft

As a last word of concern, I must note that, as a front-line judge sitting daily in criminal courts, I see destructive results of methamphetamine-related driving offences on an almost daily basis. I cannot help but make the observation that the proliferation of the use of this drug, as well as opioids, continue to contribute in a very significant way to crime and risk to the public in the city of Calgary. In my view, while this is clearly a public safety issue, it is also a critical public health issue with underlying social and economic issues that are obviously beyond the scope of this inquiry. Addressing this issue requires the co-ordination of police, community, health and other public resources or it will continue to result in destruction of families, proliferation of crime and death. It is my hope that the various levels of government move to address this serious societal problem in a meaningful way.

Inquiry Recommendations

- Critical thinking training must continue to be at the forefront of all officer training, whether new recruit or on-going training;
- Use of Force policy should continue to address evolving crime trends and newly available technology for the assistance it may provide in addressing these trends;
- Use of Force policy review should be prioritized for completion on an annual basis.

Conclusion

I would like to conclude my report with the comment that, although significant changes are on-going within the CPS in terms of Use of Force policy and training, including vehicle based tactical training and a revamped code 600, in my view, none of these very positive changes would have altered the outcome of what occurred in relation to the death of Mr. Roy in February, 2014. The weaponization of a very powerful vehicle and his concerted effort to evade arrest put the public and the officers involved at considerable risk of serious bodily harm or death and lethal force was the only option to stop him. It is my hope, however, that the changes that have been implemented and my recommendation to continue this work, will go some ways to avoiding these types of incidents before they get to a critical stage.