



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

*Fatality Inquiries Act*

WHEREAS a Public Inquiry was held at the \_\_\_\_\_ the Law Courts Building  
in the \_\_\_\_\_ City \_\_\_\_\_ of \_\_\_\_\_ Edmonton \_\_\_\_\_, in the Province of Alberta,  
(City, Town or Village) (Name of City, Town, Village)  
on the \_\_\_\_\_ eighth \_\_\_\_\_ day of \_\_\_\_\_ June \_\_\_\_\_, \_\_\_\_\_ 2015 \_\_\_\_\_, (and by adjournment  
year  
on the \_\_\_\_\_ ninth \_\_\_\_\_ day of \_\_\_\_\_ June \_\_\_\_\_, \_\_\_\_\_ 2015 \_\_\_\_\_),  
year  
before \_\_\_\_\_ the Honourable S.M. Bilodeau \_\_\_\_\_, a Provincial Court Judge,  
into the death of \_\_\_\_\_ Kinling Robin FIRE \_\_\_\_\_ 39 \_\_\_\_\_  
(Name in Full) (Age)  
of \_\_\_\_\_ 10411 - 153 Street, Edmonton, Alberta \_\_\_\_\_ and the following findings were made:  
(Residence)

**Date and Time of Death:** \_\_\_\_\_ 03:58 hrs on March 31, 2011 \_\_\_\_\_

**Place:** \_\_\_\_\_ University of Alberta Hospital in Edmonton, 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)).

Gunshot Wounds of Chest

## **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:**

***I. Introduction***

This is a report to the Minister of Justice and Solicitor General in relation to an inquiry conducted pursuant to the provisions of the *Fatalities Inquiries Act* R.S.A. 2000, F-9 into the death of Kinling Robin FIRE on March 31, 2011. The deceased was shot by an on-duty member of the Edmonton Police Service and succumbed to his injuries later that day.

The evidence at the Inquiry was presented by Inquiry Counsel, Jennifer Stengel and Andrew Pearcey. The Edmonton Police Service was granted standing to appear at the Inquiry and they were represented by Martine Sallaberry. The next of kin were represented by Wanda Bearboy, the deceased's sister. She conducted her own examination of the witnesses and did so capably and helpfully.

***II. Findings of Fact***

The Inquiry heard evidence from nine witnesses:

1. Dr. Graham Jones, Chief Toxicologist, Office of the Medical Examiner;
2. Cst. Brendan Power, Edmonton Police Service #3272
3. Cst. Brent Fox, Edmonton Police Service #3296
4. Insp. Alan Murphy, Edmonton Police Service #1972
5. Insp. Chris Butler, Calgary Police Service #2965
6. Cst. Lisa Dack, Edmonton Police Service #3291
7. S/Sgt. Shauna Grimes, Edmonton Police Service #1857
8. Mr. Christopher Conway
9. Mr. David Tembo

The incident began in the late evening of March 30, 2011 when the Edmonton Police Service ("EPS") received a report from the deceased's former girlfriend indicating that Mr. FIRE was suicidal and had just consumed a bottle containing approximately 30 sleeping pills. The medication was prescribed: Zopiclone 7.5 mg. Shortly afterwards, at approximately 11:20 p.m. on March 30, 2011 EPS received a civilian complaint of a suspected impaired driver at 149 Street and 111 Avenue in Edmonton. The civilian reported a marked driving pattern including instances where the vehicle in question, a blue PT Cruiser, was swerving and hitting the cement median cutting off other motorists. The PT Cruiser ended up at a grocery store on 155 Street and Stony Plain Road.

Constables POWER and FOX were partnered that shift. They were dispatched in response to the suicidal male call and deduced that the impaired driver call was one in the same person. They waited near the deceased's residence which was at 155 Street and 100 Avenue. Mr. FIRE's vehicle was a blue PT Cruiser and the officers saw it arrive at 12:23. It entered the grocery store parking lot at a higher than normal speed then proceeded through the lot to a back alley. POWER and FOX followed in their police cruiser #A14 while their supervisor, (then) Sgt. MURPHY, was en route to support them in his police vehicle, #A22. The alley was rutted with snow, frozen and melting, and so driving through it was not a smooth task. A14 got behind FIRE and activated the emergency overhead lights. Mr. FIRE stopped the PT Cruiser and POWER exited the police vehicle. He saw the reverse lights come on and the PT Cruiser came backwards so quickly that POWER thought it was going to collide with the police car. It did not, stopping inches away from the front of A14. The PT Cruiser then rocked back and forth, moved forward, entered an apartment parking lot and stopped. POWER thought that the driver of the vehicle must be confused. Both he and FOX exited the police car. POWER went to the passenger side of the PT Cruiser and, before he could get to it, the vehicle drove forward about 8 to 10 feet, then backwards, then forward

again. It did this three or four times. Now POWER thought that the driver might be trying to hit them with the car. Even though the driving conditions were “atrocious”, this was not a situation where the driver was rocking the vehicle out of a rut; the forward and backward seemed very deliberate to POWER. The PT Cruiser eventually came to a halt in the southwest corner of the apartment parking lot. POWER and FOX reported the driving pattern to MURPHY and MURPHY instructed them to box or barricade the vehicle in the lot so that it could not leave.

POWER approached the driver door of the PT Cruiser where Mr. FIRE was seated. He was staring ahead and did not acknowledge the Constable even when POWER yelled at him to exit the vehicle. POWER tried to open the driver’s door but it was locked. When he did so, Mr. FIRE turned to his left and glared at the uniformed police officer. Concerned with the possibility of the driver fleeing or continuing to drive while impaired, POWER took his police baton and used the end of it to break the driver’s side window of the PT Cruiser. He then reached into the vehicle, unlocked it, and opened the driver’s side door.

POWER testified that Mr. FIRE was enraged, angry, with a clenched jaw. Mr. FIRE grabbed an item which POWER described as a metal bar which was 18 – 20 inches in length. At that moment POWER did not know if it was a bar, a baton or the barrel of a firearm. POWER backed away and drew his firearm.

Mr. FIRE exited the PT Cruiser and was holding the metal bar in his right hand with his left fist clenched. As he was walking forward towards Cst. POWER, the officer was backing away. There was about 10 – 12 feet between the two men. POWER did not notice any indicia of impairment being manifested by Mr. FIRE at this time.

Cst. POWER repeatedly told Mr. FIRE to drop his weapon, to stop moving, to drop it. Mr. FIRE did not respond. At this point in time, Cst. FOX intervened by using his police cruiser to deliberately bump into Mr. FIRE at low speed to impede his movement towards Cst. POWER. FOX bumped him once, then another time, then when that did not achieve the desired interruption, FOX bumped him using the cruiser with sufficient force to knock him to the ground. This impact did not cause injury to Mr. FIRE. Cst. FOX moved the police car closer towards Mr. FIRE so that it would more difficult for him to get to his feet.

Cst. POWER told Mr. FIRE to stay down but he did not. He got back to his feet, still wielding the metal bar. Mr. FIRE moved more quickly towards POWER and the Constable testified that there was no doubt in his mind that Mr. FIRE intended to attack him with that bar. Cst. POWER heard Mr. FIRE say, “Shoot me, shoot me”.

As Mr. FIRE approached, POWER had his police baton in his left hand. When Mr. FIRE was about 6 feet away from him, POWER discarded the baton and while still telling Mr. FIRE to stop he shot Mr. FIRE twice in the chest as he had been trained to do. At the time of the shots, Mr. FIRE was holding the metal bar at shoulder height. Mr. FIRE fell to his knees and dropped the bar.

Sgt. MURPHY had exited his vehicle and was moving toward POWER. He saw the deceased approaching the Constable. MURPHY testified that he was surprised and concerned that POWER had not yet shot given Mr. FIRE’s proximity to him. When the gun went off, MURPHY remarked to himself with relief that he had fired.

FOX and MURPHY grabbed Mr. FIRE, Cst. POWER joined in, and they began trying to handcuff him. POWER was able to get Mr. FIRE’s left arm handcuffed behind him but there was some struggle in relation to his right hand with FOX and MURPHY. Mr. FIRE was not actively obstructing or resisting the arrest; instead it was more instinctive in that he was

grabbing his own chest where he had been shot. He said words to the effect of “give me air.” Ultimately they did get him handcuffed and Cst. POWER began administering basic first aid with a field bandage he had on his person while Sgt. MURPHY called for ambulance assistance.

Shortly thereafter, Cst. DACK arrived. She had, herself, been a paramedic for 13 years prior to joining the Edmonton Police Service so she was able to provide more extensive medical care to Mr. FIRE. POWER and MURPHY left the scene.

Cst. POWER justified his use of lethal force by noting these concerns. He believed that if he was hit in the head with the metal bar he could suffer permanent head injury and he believed that Mr. FIRE intended to strike him in the head because of how he was brandishing the bar as he approached. POWER was also concerned about losing control of his police firearm if he was assaulted. He noted that he was walking backwards with no escape route on terrain that was icy, snowy and very uneven. The lighting was not very good though there was ambient light from streetlights a block away or so and the rear floodlight that was over the exterior apartment building door. POWER believed he was dealing with a suicidal person who had just consumed an overdose of sleeping pills. Accordingly, he was impaired and not thinking straight, and he would not respond appropriately to physical force. The dulling effect of impairment or intoxication on pain receptors led POWER to believe, consistent with his training, that a baton strike or pepper spray deployment would be ineffective.

POWER, FOX and MURPHY did not have a Taser or similar device with them. POWER and FOX were not trained for conductive energy weapons such as the TASER, in any event.

Since this homicide involved an on-duty police officer, the Alberta Serious Incident Response Team (ASIRT) conducted a full investigation.

Inspector BUTLER is a member of the Calgary Police Service. He was one of several people who reviewed the evidence of the investigation. ASIRT requested that Insp. BUTLER review the evidence in regard to the use of force employed by POWER using his firearm, and FOX using the police vehicle. Insp. BUTLER is an expert with thorough training and experience in relation to use of force by police officers. His qualifications in this regard are above reproach and his testimony was professionally offered such that it can be relied upon confidently.

The “National Use of Force Framework” has been accepted by the Canadian Association of Chiefs of Police. It describes the various situations and responses which face officers in their interactions with the public. The stated goal of police/public interaction is voluntary compliance so as to minimize the necessity for using force. The police officer will be continuously assessing the situation and will adjust his or her response to ensure officer and public safety. The “situation” includes “impact factors” such as the physical manifestation of the subject and attitude, time and distance, environmental factors, and previous knowledge of the subject. The subject’s behavior at the time of the interaction is obviously the most critical factor. Where there is an imminent threat of grievous bodily harm or death, the expected officer response is primarily lethal force.

The “impact factors” in this incident included the intoxication or impairment caused by Mr. FIRE’s ingestion of the Zopiclone. Cst. POWER was aware of this and also Mr. FIRE’s suicidal ideation. Insp. BUTLER noted that it was abnormal behavior for the subject to stare straight ahead while a uniformed police officer was at the window demanding attention (“conspicuous ignorance”).

In assessing the reasonableness of Cst. POWER’s use of force from a police perspective, Insp. BUTLER considered the following subjective information known to the officer at the time

of his interaction with Mr. FIRE:

- There was a 911 call regarding a large number of sleeping pills having been consumed by a suicidal male;
- There was extremely dangerous driving which demonstrates that the subject is incapable of or uncaring about appreciating the dangerousness he is posing;
- The subject does not stop when signalled by police;
- The subject does not engage or respond to commands from a uniformed police officer;
- The subject was apparently intent on entering a nearby apartment building which, in his suicidal state, would have posed a potential risk to everyone else;
- There is a high degree of non-compliance exhibited by coming at a uniformed police officer with a weapon;
- The officer has his firearm pointed at him, moving backward, but the subject continues to aggress forward towards him saying “shoot me”.

Insp. BUTLER testified that an individual coming forward can overtake a person who is retreating by a factor of two. Therefore, at the six to eight foot distance that was separating POWER and FIRE, the subject was one second away from being able to hit the officer with the metal bar. The Inspector testified that if Cst. POWER had waited any longer to shoot it would have been too late. He went so far as to say that POWER should not have allowed Mr. FIRE to get so close to him. This is consistent with the opinion voiced by Inspector MURPHY in his testimony.

As part of his investigation, Insp. BUTLER consulted with the Regional Director of Trauma, a Dr. KIRKPATRICK, for an assessment as to the dangerousness of the metal bar. The medical advice was the weapon had many times the weight required to inflict a fatal injury.

In regards to the firing of two shots, Insp. BUTLER stated very clearly that this was not in the least surprising to him. The handgun utilized by Edmonton Police has very poor stopping power. It may require even six shots to stop an aggressor. Furthermore, given the usual cadence of a police officer discharging a gun it was likely that both shots were discharged in half of one second.

Insp. BUTLER testified that police training is explicit about aiming for the largest target when using a firearm. Usually that will be the centre mass, or torso, of a person. The notion depicted in television and movies that someone can accurately hit a hand or disarm with a shot is not at all in accordance with reality. Only a trained sniper *may* take such a shot in a rare circumstance. It is extremely unrealistic to expect an accurate shot aimed at the leg or hand when the subject is moving, the officer is probably in motion, and stress is high. The consequence of attempting such a shot would be to jeopardize the officer's own life. In the same vein, firing “warning shots” is forbidden since they are not effective and the Police Service is accountable for where that bullet ends up.

The Inspector also testified as to the use or efficacy of conductive energy devices (CED) such as the Taser. These are considered intermediate weapons that are less than lethal. In a potentially lethal situation, a CED would only be an acceptable option where there was “lethal overwatch”, that is to say, cover from a second officer with the capability of supporting with lethal force. Here, with Cst. FOX in the vehicle and MURPHY out of the area at the moment, Insp. BUTLER opined that a Taser would not have been opportune or advisable. Apart from the absence of that overwatch, the thickness of winter clothing makes the Taser more unreliable. The Inspector also discussed pepper spray in his testimony. That would not have been an effective weapon. The subject's drugged condition would have made him extremely unresponsive to pain. Since pepper or OC spray are effective because of the pain they inflict

on the subject, it would have been “an extremely poor choice” for POWER to have resorted to spray.

I accept Insp. BUTLER’s assessment of the use of force.

The ASIRT investigation was conducted by Staff Sergeant Shauna GRIMES. S/Sgt. GRIMES is a member of the Edmonton Police Service who was seconded or assigned to ASIRT as one of their investigators. Her credentials with the EPS are most impressive and she has distinguished herself as a respected member of that Service. As an EPS member it was unusual for her to be assigned the investigation of a matter involving another EPS officer. However limited investigatory resources at ASIRT made her assignment to the case the most efficient and effective of the options. The assignment was not made casually or ignorant of the conflict issue. An executive meeting was held at ASIRT on the very issue of the conflict or perception of conflict that might be seen in her assignment to the case. A principled decision was made to have S/Sgt. GRIMES do the file but with a subsequent review by an investigator in the ASIRT South office “to ensure that the investigation, to date, is thorough and complete”. That did transpire with RCMP S/Sgt. (Ret.) SIMMELL conducting a comprehensive reassessment of the evidence and findings. It is notable that Mr. SIMMELL did not simply sign off on the initial report, but rather he made eight recommendations for potential follow-up. He also added in his report:

I will begin by complimenting the members on a very comprehensive investigation that was undertaken. A large volume of investigative material was amassed during this period and as the investigation continues to develop. Major Case Management principles were applied and ... investigative areas were covered off well, both in an oversight and investigative capacity...

The ASIRT investigation recommended no criminal charges against any of the police officers involved. The report then went to the Alberta Crown Prosecution Service where it was reviewed by Crown Prosecutors. They agreed with the recommendation.

It is significant in considering the existence or perception of conflict of interest that ASIRT acceded to the request of the deceased’s family to appoint an independent investigative overseer from The Federation of Saskatchewan Indian Nations’ Special Investigations Unit. That investigator was provided the completed file for his review. Though the conclusions of his review were not communicated to anyone (through no fault of the overseer’s), the fact that ASIRT willingly cooperated with this process alleviates any suggestion that the investigation might have been biased. The decision to assign S/Sgt. GRIMES was practical and justified; the safeguards put in place as a result of that assignment were professional, appropriate and effective. On reviewing S/Sgt. GRIMES’ report as well as the report from Mr. SIMMELL there is nothing whatsoever to substantiate any concern on this point.

The inquiry heard from two civilian witnesses who observed the incident from various distances and perspectives. Their evidence harkens the vast library of scholarly and juridical works which remark on the frailty of eyewitness testimony. Both of these witnesses were well-meaning and honest. Yet there were aspects of their recollection which cannot have been accurate given the ascertainable provable facts. For instance, one of the witnesses testified that a police car pulled into the lot after the driver of the PT Cruiser exited his vehicle. He said that he saw two police officers get out of that car with guns drawn and that the driver was tackled by one of them. When the driver pushed the police officer off, a second police car entered the lot and collided with the driver immediately knocking him down. The witness said that before the driver could get up from under the police car, the driver of that second police car got out with his gun drawn and shot him. This cannot be correct unless Insp. MURPHY is not only wrong but outright deceitful in his testimony. There is, of course,

nothing at all to support such a proposition; to the contrary, his evidence was completely reliable. The Court recalled Insp. MURPHY and he confirmed that his car, which was the second one at the scene, did not enter the parking lot, did not collide with Mr. FIRE, and that he, himself, did not shoot Mr. FIRE. There is forensic evidence which shows Mr. FIRE's handprint on the hood of Police Vehicle A14. This refutes the contention that a second vehicle, not FOX's, collided with Mr. FIRE. To reiterate, this civilian witness was testifying to the best of his recollection, but he was hampered in his ability to view the incident by distance and lighting. His version of events is unreliable where it deviates from the officers' account.

The other civilian witness also testified as to different events or different sequence. For instance, while the officers describe a physical interaction with Mr. FIRE after he was shot as they tried to handcuff him, the witness testified as to a confrontation between three police officers and the subject immediately after he was hit with the police car but before he was shot. This witness also describes Mr. FIRE as being in a non-aggressive pose at the time of the two shots. This witness knew Mr. FIRE as an acquaintance. His evidence had internal inconsistencies (such as initially referring to three police cars being on the scene during the incident, then switching to two) and he, himself, described some concern that he had reconciling his recollection of the positioning of the vehicles and the people involved. This witness was nearer to the scene though there were obstructions and the same nighttime lighting. The witness was given the scenario as described by Cst. POWER and he agreed that the incident might have happened that way. Though he did his best to accurately recall the events of that highly stressful and shocking incident, his testimony is unreliable where it deviates from the officers' versions.

### ***III. Conclusion***

The manner of Kinling Fire's death was the justifiable use of lethal force by a police officer against an armed assailant. Mr. FIRE was suicidal and had acted on that ideation by ingesting an overdose of sleeping pills. In his drug induced state of impairment he operated a motor vehicle in a manner which necessitated police intervention. One of the members involved in apprehending him was Cst. POWER. When Mr. FIRE emerged from his vehicle he was armed with a 46 cm long metal bar. He brandished it towards Cst. POWER. Cst. FOX attempted to disable Mr. FIRE by way of graduated collisions with his police vehicle. On the last collision, Cst. FOX deliberately knocked him off his feet however he rose still brandishing the weapon, still moving toward Cst. POWER – a uniformed police officer who was pointing his service sidearm at him while shouting commands to drop the weapon and halt. After giving Mr. FIRE more opportunity to desist than was advisable from a personal safety perspective, Cst. POWER fatally shot Mr. FIRE. The use of lethal force was consistent with accepted Canadian police standards. Furthermore, even though it was not directly implicated in the death of the deceased, it is my conclusion that the use of the police vehicle as a weapon of opportunity was proportionate and consistent with accepted police standards.

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

The police officers were not trained in the use of Taser/CED weapons. Furthermore, no such weapon was available to them as an option. It is impossible to know how the situation with Mr. FIRE would have transpired if the "lethal overwatch" tactic had been employed. With training and suitable equipment, it is possible that one officer may have been able to incapacitate the subject while the other stood ready with his service handgun. The Taser may not have been effective because of winter clothing or other impediments, but similar confrontations will no doubt occur in situations where these will not be an issue. It is

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preferable that police officers have non-lethal options when assessing their use of force decisions. Therefore, I recommend that the Edmonton Police Service consider wider deployment of CED (Taser) or other intermediate weapons along with thorough training in the use of these weapons in accordance with the National Use of Force Framework.

DATED June 19, 2015,

at Edmonton, Alberta.

*Original signed by*

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The Honourable S.M. Bilodeau  
A Judge of the Provincial Court of Alberta