



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

Fatality Inquiries Act

WHEREAS a Public Inquiry was held at the Provincial Court of Alberta

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

on the 4<sup>th</sup> day of February, 2013, (and by adjournment  
year)

on the 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, & 8<sup>th</sup> day of February, 2013),  
year

before Honourable Judge Peter Barley, a Provincial Court Judge,

into the death of Jean Steven Boucher 63 yrs  
(Name in Full) (Age)

of 109 Montane Road, #217 Canmore, AB and the following findings were made:  
(Residence)

**Date and Time of Death:** January 10<sup>th</sup>, 2011 at 17:27 hours

**Place:** Canmore General Hospital, Canmore, 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 to the abdomen and back.

### 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. (Refer to Addendum 'A' for continuation of Manner of Death).

**Circumstances under which Death occurred:**

**Summary**

(1) The deceased, Jean Steven Boucher, was being stopped by the RCMP because he was suspected of having committed at least one robbery. Despite being faced by two RCMP officers, he pointed an authentic looking replica handgun at one officer. Both officers fired their handguns at Mr. Boucher, striking him three times. He was taken to hospital, but was immediately pronounced dead.

**Circumstance**

(2) Robberies occurred in Canmore on January 8<sup>TH</sup>, 9<sup>TH</sup> and 10<sup>TH</sup>, 2011. The deceased was being apprehended by the police for these offences at the time that he was shot.

(3) On January 8<sup>th</sup>, 2011, a lone male robbed a staff member at a tanning salon in Canmore. The staff member and a customer described the culprit as pointing a handgun at the employee, but both thought that the handgun looked fake. Neither witness could pick the accused from a photo line-up, but gave a description that matched the deceased. A police artist prepared a sketch of the culprit using the descriptions given by the two witnesses.

(4) On January 9<sup>th</sup>, 2011, a man came into a liquor store in Canmore and used a handgun to rob an employee. The robber's face was partially covered, but she recognized him as being the same man sketched by the police from the previous day, since that sketch had been distributed. She thought that the handgun was real.

(5) On January 10<sup>th</sup>, 2011, a man entered a nail salon in Canmore and pointed a gun at the owner and a customer, and announced a 'stick-up'. One witness described the gun as being black with a red part at the end of the barrel. The robber had his face partially covered, but the owner recognized him because she had shared accommodation with him earlier. She gave the police the first name of Steve, a possible address for him and a description of the car he was driving.

(6) The police were immediately made aware of the January 10<sup>th</sup>, 2011 robbery, and that the suspect was driving an older model grey car. From the sketch from the first robbery, they were aware that he had a prominent bulbous nose.

(7) A number of RCMP officers were driving around Canmore in marked police units, with emergency lights flashing. They did this to try to discourage the robber from fleeing. One of the officers, Constable Sachdev noticed an older grey car pass by. The driver and lone occupant had a bulbous nose. He did not look at the officer, despite it being clear that the emergency lights were on. The officer turned his vehicle and followed the grey car. He noticed that the driver reached over to his passenger seat.

(8) Both the police cruiser and the grey car were being driven within the speed limit. The grey car stopped for a red traffic light, with the police car immediately behind. When the light changed, the grey car drove forward. Constable Sachdev followed immediately behind and activated his siren. The car did not stop but signaled a right turn into a

parking lot. At this time, it was blocked by another marked police car being driven by RCMP Corporal Blandford.

(9) The following events happened very quickly. However, they were witnessed by a number of civilians who were either in nearby buildings or in vehicles at that location. In addition, another RCMP officer was within 15 meters of the traffic stop.

(10) It is clear that the deceased, who was alone in the grey car, must have been aware that there was a marked police car behind him and one in front of him. It was obvious that Constable Sachdev, in uniform, was out of his vehicle, and that Corporal Blandford was either out of his vehicle or exiting. Despite this, the deceased opened his car door and got out, ignoring Constable Sachdev's instructions to stay in his vehicle.

(11) Mr. Boucher looked at Corporal Blandford who was in front of him within a very short distance, and who already was pointing his firearm at him, and then turned and pointed an item in his hand at Constable Sachdev, who had moved beyond the door of the police car, towards the deceased. Both officers recognized the item as a handgun. Since it was pointed directly at Constable Sachdev, who was less than a car length away from the deceased, both officers thought that Constable Sachdev's life was in danger. Accordingly, Corporal Blandford fired three shots from his police service firearm at the deceased. Constable Sachdev fired eight shots from his police service firearm at the deceased. Both stopped when he went down to the ground.

(12) All shots were fired within two to three seconds. The deceased was quickly taken to the nearest hospital, where he was pronounced dead at 5:27 p.m. that same day.

(13) An autopsy determined that Mr. Boucher was struck by three bullets. One struck the abdomen and exited through the lower left back. One hit the upper left back passed through the right lung and exited through the right armpit. One struck the right thigh and did not exit.

(14) The medical examiner, Dr. Andrews testified that either the wound to the abdomen or the wound to the back could have been fatal and death might have been instantaneous. No other factors contributed to the death.

(15) Dr. Andrews could not determine the sequence of the wounds. The shots were fired from at least two feet away, but nothing showed how much further away.

(16) The deceased had minor scrapes on his face and bruises from being handcuffed. No other signs of injury were noted. The deceased had a blood alcohol level of 120 milligrams of alcohol per 100 milliliters of blood, but Dr. Andrews could not say what effect that would have had on the behaviour of the deceased.

(17) An examination of the police service firearms showed that Constable Sachdev had fired eight shots and Corporal Blandford had fired three. John Marshall, qualified as an expert in the forensic analysis of firearms and ammunition, testified that the bullet that struck the abdomen of Mr. Boucher came from Constable Sachdev's service handgun. It could not be determined which handgun fired the bullets that caused the other two gunshot wounds to the deceased.

(18) There were three bullet holes in the driver's door of Mr. Boucher's car and one in the hood. There was one bullet hole in the grill of Corporal Blandford's police car and one in the driver's door of Constable Sachdev's police car.

(19) The item being held by Mr. Boucher at the time he was shot was determined to be a replica of a Smith and Wesson 45 calibre handgun. A real Smith and Wesson 45 calibre handgun is a prohibited firearm. The replica being held by Mr. Boucher was not a firearm, as it could not cause death or bodily harm. It could project plastic projectiles similar to B.B.'s or like a paint ball gun. These replicas can be purchased legally, but are sold in a transparent form, so they do not look like a real handgun. The replica held by Mr. Boucher was painted black so it resembled an authentic handgun.

(20) It is clear that both Constable Sachdev and Corporal Blandford believed that the item held by the deceased was a real handgun and that Constable Sachdev's life was in danger. Another police officer near the scene who had taught a firearm course was so convinced that Mr. Boucher had a real handgun that he instinctively reached for his own handgun which he was not carrying. Other witnesses described the deceased as having a gun while one witness actually believed that it had been fired, which was obviously not the case. These witnesses described the item being held by Mr. Boucher as being pointed at Constable Sachdev.

(21) Constable Sachdev had been a RCMP officer for two and one half years at the time of the incident. He had received training in the use of force. He knew that he was to use the minimum amount of force necessary to prevent harm to himself and others. This was to start with the expectation that police presence alone might stop dangerous actions by an offender. The alternatives were to escalate through verbal control, physical force – starting with soft control to hard, from unarmed contact to the use of spray, or baton, or firearm. The least amount of force that would be effective was to be used. Lethal force was only to be used when there was no other way to deal with a risk of grievous bodily harm or death.

(22) However, once this risk was present and the use of the handgun was the only realistic means of neutralizing the threat, he was trained to fire at the centre mass until threat was no longer there.

(23) Corporal Blandford had been a sworn police officer for 22 years by the time of the incident, and an auxiliary officer for five years before that. He taught basic firearms procedure to younger officers on an annual basis.

(24) He confirmed that officers were taught to use the minimum of force necessary to neutralize a threat. However, lethal force was allowed when he or any other person was at risk of death or grievous bodily harm and no lesser method of containing the risk was available. If the gun was used then the shots should be directed at the centre mass because this was the best opportunity to hit the target. The shots were to continue until the threat was neutralized.

(25) In the present case, it was obvious that the mere presence of the police officers or the commands of Constable Sachdev to remain in his car were not enough to prevent

Mr. Boucher from exiting his car and pointing what seemed to be a firearm at Constable Sachdev. There was no way for either officer to know that it was just a replica. They reasonably believed that Constable Sachdev was in immediate peril of death or grievous bodily harm.

(26) The training co-coordinator for the RCMP in Alberta described the various levels of training that their members receive to prepare them to react properly to events that could lead to death or serious bodily harm. He advised that both Constable Sachdev and Corporal Blandford had received instruction in the Incident Management Intervention Model or IMIM, which set out the level of force that a police officer could use in certain circumstances.

(27) Of relevance to the present case, it provides that “1.3 – lethal force is used only when preventing death or the threat of death, or grievous bodily harm to peace officers and the public and when no lesser means is appropriate. See Sec. 25(4) of the *Criminal Code*”.

Sec. 25 of the *Criminal Code* provides:

**Protection of Persons Administering and Enforcing the Law**

**PROTECTION OF PERSONS ACTING UNDER AUTHORITY** / *Idem* /  
When not protected / When protected / Power in case of escape from  
penitentiary.

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.

(2) Where a person is required or authorized by law to execute a process or to carry out a sentence, that person or any person who assists him is, if that person acts in good faith, justified in executing the process or in carrying out the sentence notwithstanding that the process or sentence is defective or that it was issued or imposed without jurisdiction or in excess of jurisdiction.

(3) Subject to subsections (4) and (5), a person is not justified for the purposes of subsection (1) in using force that is intended or is likely to cause death or grievous bodily harm unless the person believes on reasonable grounds that it is necessary for the self-preservation of the person or the preservation of any one under that person's protection from death or grievous bodily harm.

(4) A peace officer, and every person lawfully assisting the peace officer, is justified in using force that is intended or is likely to cause death or grievous bodily harm to a person to be arrested, if

- (a) the peace officer is proceeding lawfully to arrest, with or without warrant, the person to be arrested;
- (b) the offence for which the person is to be arrested is one for which that person may be arrested without warrant;
- (c) the person to be arrested takes flight to avoid arrest;
- (d) the peace officer or other person using the force believes on reasonable grounds that the force is necessary for the purpose of protecting the peace officer, the person lawfully assisting the peace officer or any other person from imminent or future death or grievous bodily harm; and
- (e) the flight cannot be prevented by reasonable means in a less violent manner

(28) We see then that the policy taught to the officers is in accordance with the *Criminal Code of Canada*.

(29) The training co-coordinator expressed no concerns with the actions of the two officers. Even in hindsight he thought there was nothing else to be done.

(30) Inspector Chris Butler of the Calgary Police Service was qualified as an expert in the areas of police use of force, officer safety and use of firearms.

(31) He agreed that lethal force was allowed when there was an imminent risk of grievous bodily harm or death. He pointed out that there was both an objective and subjective element in deciding if lethal force was justified. The facts apparent to the officer must be considered.

(32) An example of this arose in the present case. Neither officer was at risk from Mr. Boucher, since his handgun was a replica. However, neither officer was aware of that and there was no reasonable means of determining that was available to them.

(33) Inspector Butler pointed out that a threat to cause death or grievous bodily harm would require that the person perceived as a threat have the ability to cause death or serious bodily harm, the intent to do so and the means. A person a considerable distance away with a knife may have the intent to kill but not the means.

(34) In the present case he thought that the officers were entitled to honestly believe and did in fact believe that the deceased had the means to kill Constable Sachdev, and by pointing it at them was demonstrating an intent to do just that. He did not try to flee but presented an immediate perceived threat to one officer. An attempt to control the situation verbally by telling him to stay in his car failed.

(35) No lesser use of force was practical. A baton is useless at a distance, and neither a taser or pepper spray is certain of immediate effect.

(36) Accordingly, he saw no alternative to the lethal use of force employed by both officers. This is a completely logical opinion and one that I agree with.

(37) In summary, the training available to these two officers with respect to the lethal use of force is in accordance with the *Criminal Code of Canada* and with common sense. The officers followed their training to the letter. Once Mr. Boucher got out of his vehicle and pointed a replica handgun at Constable Sachdev, knowing that he was facing two police officers, his death was inevitable. It was tragic but nothing that the RCMP could have done in training or either officer could have done at the time could have prevented Mr. Boucher's death.

(38) The only police error was a very minor one, that in no way contributed to this tragedy. Constable Sachdev did not have a disc in his police vehicle video camera. He had attempted to insert one but he removed it when the camera reported an error. If it had been working, the camera could have shown exactly what happened. However, there were sufficient witnesses that I believe that I have a very clear picture of what occurred.

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

(39) There is nothing that I can recommend to prevent a similar event occurring. Both the police training and the actions of Constable Sachdev and Corporal Blandford were proper in accordance with their training, common sense and the *Criminal Code of Canada*.

DATED \_\_\_\_\_,

at \_\_\_\_\_, Calgary, Alberta.

\_\_\_\_\_  
Peter Barley  
A Judge of the Provincial Court of Alberta

## ADDENDUM 'A'

### Manner of Death

(1) Homicide is defined in Black's Law Dictionary (9<sup>th</sup> Ed 2009) as being, "The killing of one person by another". Glanville Williams, *Textbook of Criminal Law*, 3<sup>rd</sup> ed. by Dennis J. Baker, (London, UK: Sweet & Maxwell / Thomson Reuters, 2012) states:

"The legal term for killing a man, whether lawfully or unlawfully is 'homicide'. There is no crime of 'homicide'".

(2) Lest anyone thinks that the use of the word 'homicide' in this report suggests wrong doing on the part of the police officers involved, I would point out that the *Criminal Code of Canada*, R.S.C. 1985 cc 46 provides:

#### **Homicide**

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HOMICIDE / Kinds of homicide / Non culpable homicide / Culpable homicide / Idem / Exception.

222. (1) A person commits homicide when, directly or indirectly, by any means, he causes the death of a human being.

(2) Homicide is culpable or not culpable.

(3) Homicide that is not culpable is not an offence.

(3) Black's Law Dictionary goes on to describe victim, precipitated homicide, also known as suicide-by-cop as being, 'A killing provoked by the victim who consciously intended to die at the hands of another person'. Black's Law Dictionary describes 'suicide' and 'suicide-by-cop' as follows:

**Suicide**, n. (17c) 1. The act of taking one's own life. – Also termed self-killing; self-destruction; self-slaughter; self-murder; felony-de-se; death by one's own hand. [Cases: Suicide 1.]

**Suicide-by-cop.** Slang. A form of suicide in which the suicidal person intentionally engages in life-threatening behavior to induce a police officer to shoot the person. Frequently, the decedent attacks the officer or otherwise threatens the officer's life, but occasionally a third person's life is at risk. A suicide-by-cop is distinguished from other police shootings by three elements. The person must: (1) evince an intent to die; (2) consciously understand the finality of the act; and (3) confront a law enforcement official with behavior so extreme that it compels that officer to act with deadly force. – Also termed police-assisted suicide, victim-precipitated homicide.



(4) In the present case, the state of mind of the deceased is unknown. He clearly confronted a law enforcement official with behaviour so extreme that it compelled that officer to act with deadly force. However, the first two criteria are less certain.

(5) Accordingly, I label this incident as a homicide. To be absolutely clear, by doing so I imply no fault on the part of the police officers involved.