



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

Fatality Inquiries Act

WHEREAS a Public Inquiry was held at the Law Courts, 1A Sir Winston Churchill Square
in the City of Edmonton, in the Province of Alberta,
(City, Town or Village) (Name of City, Town, Village)
on the 20 - 28 day of March, 2007, (and by adjournment
year
on the _____ day of _____, _____),
year
before E.A. Johnson, a Provincial Court Judge,
into the death of Daniel Lippa 29
(Name in Full) (Age)
of #101, 14816 - 26 St., Edmonton, Alberta and the following findings were made:
(Residence)

Date and Time of Death: March 11, 2005 at 22:23 hours

Place: Royal Alexandra Hospital

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)).

Gun shot wound to the chest area.

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 and Summary

In the evening of March 11, 2005, EPS officers were dispatched to an apartment complex in Edmonton in response to a 911 call relating to a domestic disturbance. The officers spoke with the complainant and began to check the area on foot.

As they conducted their tour of the grounds of the complex, they encountered Daniel Lippa. During the encounter, two of the officers discharged their firearms and Mr. Lippa was shot.

Paramedics were called. They arrived and took Mr. Lippa to the Royal Alexandra hospital. He was pronounced dead at 22:23 hours.

II. Mandate of the Inquiry

Prior to addressing the particulars of the circumstances, I must address the extent of the mandate of this Inquiry. The *Fatality Inquiries Act* (the “*Act*”) calls upon the judge conducting the Inquiry to make a report to the Minister containing findings as to: the identity of the deceased; the date, time and place of death; the circumstances under which the death occurred; the cause of death; the manner of death (s. 53(1)). The judge may make recommendations as to the prevention of similar deaths (s. 53(2)). The findings of the judge may not include any findings of legal responsibility or any conclusion of law (s. 53(3)).

Counsel for Mr. Lippa senior argues that, in view of the manner in which the investigation was conducted and some contradictions in the evidence, I should not try to reconcile the contradictions, and should make only limited findings - effectively that Mr. Lippa was shot outside his residence in Edmonton by Constable Sparreboom who was on duty as a member of the Edmonton Police Service (“EPS”).

I am of the view that to do as suggested would be to fail to comply with the statutory mandate of this inquiry.

The dominant purpose of a fatality inquiry has been described this way:

[Fatality inquiries are] to assist and reassure the public by exposing the circumstances of a death. An inquiry dulls speculation, makes us aware of the circumstances which put human life at risk, and reassures all of us that public authorities are taking appropriate measures to protect human life. The inquiry also has an important role in ensuring that the justice system operates properly because it will investigate and review the work of the medical examiner and scrutinize the role that other parts of the justice system may have played.

Mercer v. Alberta (Attorney General), [1997] A.J. No. 424, cited in *Silverberg v. Landerkin* 1998 ABQB 1105.

To limit my findings in the manner suggested would be inconsistent with this purpose. I am obliged to make findings. Findings of fact can only be made from the evidence. The nature of the fact-finding process involves addressing contradictions in the evidence.

III. March 11, 2005 - Circumstances

A. The Physical Location

Daniel Lippa, and his estranged wife, Leanne Lippa, lived in separate apartments in separate buildings in the same complex in Edmonton. The layout of the apartment complex and the relative locations of certain suites is important in understanding what occurred on the evening of March 11, 2005.

The complex includes two three-storey rectangular buildings. Ms. Lippa lived at 14808 - 26 Street (referred to in this Report as the “08 building”). Mr. Lippa lived in the building across a courtyard to the west at 14816 - 26 Street (referred to in this Report as the “16 building”).

Between the two buildings, running the length of them, is a common area courtyard with some small trees and a play area for children. Patios of ground floor suites and balconies of upper floor suites in both buildings face into the courtyard area.

To the north of the buildings and courtyard are a two-story parkade (to the west) and a grade level parking lot (to the east).

Mr. Lippa’s apartment was on the ground floor at the northeast corner of the 16 building. His patio faces the courtyard. The patio is bounded on two sides by low concrete retaining walls and opens at the end onto the common area.

A sidewalk runs between the north walls of the two apartment buildings and the parkade/parking lot area. That sidewalk runs parallel to the patio of Mr. Lippa’s suite. The sidewalk is several feet higher than the patio - to get from the patio to the sidewalk it is necessary to go up a small incline.

Leanne Lippa’s suite was located on the third floor on the south side of the 08 building.

B. Background: Daniel and Leanne Lippa

Leanne and Daniel Lippa were married in September 1998. Leanne had a child, Julian, born in 1997. Daniel viewed Julian as his son.

Daniel and Leanne had separated several weeks before March 11, 2005. Leanne said that Daniel was very upset with the separation and wanted to reconcile, that he called her frequently to try to make her change her mind and that he cried and became angry when she refused to reconcile.

C. March 11, 2005 - Calls From Daniel Lippa to Leanne Lippa

Leanne Lippa had returned from a business trip on the afternoon of March 11, 2005. Shortly after she reached home, Daniel called. She asked him to call back later and took a nap. Daniel called a second time. He was upset about their separation, and asked for a second chance. He was swearing and threatened to kill himself and to kill her. She thought he had been drinking. He asked her what he had to do to prove his love, and spoke of spilling his blood and cutting off his finger. At one point he screamed into the phone. She described him as sounding desperate and very upset. He told her that he was going to come over to her apartment and hung up the phone.

Alarmed, Leanne took Julian, left her apartment and ran down the stairs to the main floor - to Tina Thomsen’s apartment which was also at the south end of the building. Leanne did not know Ms. Thomsen - she chose that apartment at random.

Ms. Thomsen let Leanne and Julian into her suite and placed a 911 call. She described Ms. Lippa as being very upset and frightened. Ms. Lippa spoke to the 911 operator.

D. March 11, 2005 - Calls from Daniel Lipa to Harley Marriott

Mr. Marriott was a close friend of Daniel's. He had driven Daniel home from work earlier on March 11. They had stopped to purchase some alcohol. He described Daniel as being in a good mood.

Later in the evening, at approximately 8:15 pm, Daniel placed a call to Mr. Marriott's telephone number and left a message. In the message, Daniel was crying and said that he and Leanne had just had a big fight. Part of the message, as Mr. Marriott testified, included the sentiment "what's the matter, maybe he should just go and kill himself".

Mr. Marriott's telephone showed that another call was received from Mr. Lipa's telephone number at about 9:06 pm. Mr. Marriott also missed the call. There was no message.

E. March 11, 2005 - Officers Dispatched to Scene

As a result of the 911 call from Tina Thomson's apartment, two EPS patrol cars were dispatched to the 08 building. The officers involved were Constable Sparreboom his partner Constable Douziech (who was known, at the time, as Constable Deeks), together with their civilian "ride along" Kristine Andruchow; Constable Trachuk, her partner Constable Holowaychuk together with their civilian "ride along" Daniel Chagnon.

Constables Holowaychuk and Trachuk were the first to arrive at approximately 9:00 pm. Constables Sparreboom and Douziech, arrived shortly thereafter. Constables Sparreboom and Douziech waited in the hall while Constables Trachuk and Holowaychuk spoke with Ms. Lipa. The information they received was that Mr. Lipa was upset, may have been drinking, had made threats and may have a knife.

Ms. Lipa told the officers that she had left her suite open; the officers decided to go upstairs to check her suite. They found it locked and returned to Ms. Thomson's suite to obtain the key. Returning with the key, the four officers "cleared" the apartment (Constables Trachuk, Holowaychuk and Douziech had their firearms drawn; Constable Sparreboom drew his Taser). The apartment was empty.

The officers then determined to try to locate Mr. Lipa so that they could speak to him. They knew he lived in the building opposite but did not know where.

Constable Douziech went back to her police vehicle which was parked in the surface parking lot north of the 08 building to see whether she could find a telephone number for Mr. Lipa. Constables Holowaychuk and Trachuk went back to Ms. Thomson's suite to ask where Mr. Lipa's suite was. They learned that he lived in suite 101 in the 16 building and radioed that information to Constable Sparreboom who had gone ahead with Ms. Andruchow.

The three constables (apart from Douziech) and their civilian "ride-alongs" left the 08 building through the south door, and walked west toward the south side of the 16 building. At the southwest corner of the 16 building, they turned north. When they reached the northwest corner, they turned east along the sidewalk toward the courtyard area - the sidewalk which runs parallel and just above Mr. Lipa's patio area. Constable Sparreboom and Ms. Andruchow were ahead of the other two constables and Mr. Chagnon.

F. Encounter with Daniel Lipa

The encounter with Mr. Lipa, which led to the shooting, happened unexpectedly and very quickly. It takes far longer to describe than it did to happen.

Each of the Constables and the civilian “ride-alongs” witnessed and/or participated in the encounter from a slightly different vantage point. Their descriptions are generally consistent. Ms. Pashko, another eyewitness, saw some of the events from her apartment window, above where Mr. Lippa and the officers were. Her account differs in some significant respects from the accounts of the officers and civilians who accompanied them.

I will address all of the accounts, in order to make the findings of fact necessary to satisfy my mandate.

1. Accounts from the Officers and Civilian “Ride-alongs”.

Constable Douziech was approaching the north end of the 16 building - returning from the parking lot and walking in a southwesterly direction heading across the courtyard. She could see the patio area of Mr. Lippa's suite ahead of her.

Constable Sparreboom, with Constables Holowaychuk and Trachuk and the two ride-alongs behind him were approaching from the other direction, walking east along the sidewalk beside the north side of the 16 building. Mr. Lippa's suite and patio area was ahead of them to their right.

Constable Douziech saw Mr. Lippa come out of his suite onto the patio, walking in her direction toward the courtyard. She heard him yelling something, and heard the words “I’m Danny”. At the same time she saw Constable Sparreboom and Ms. Andruchow after they rounded the northwest corner of building 16 and were walking east along the sidewalk approaching the area beside Mr. Lippa's suite. As Mr. Lippa stepped off the patio onto the grassy area, Constable Douziech saw a knife in his right hand. She yelled “drop the knife”, and said he yelled back “fuck you, I’m not dropping the knife, you’re going to fucking kill me” or words to that effect. Constable Douziech stopped and drew her firearm. Mr. Lippa took a couple more steps toward her, coming (by her estimate) to within 10 feet of her, then turned to his left, to turn his attention to Constable Sparreboom who was on the sidewalk north and west of Mr. Lippa's position. Mr. Lippa walked up the incline in a northeasterly direction toward Constable Sparreboom. He was moving quickly and holding the knife at about waist height. Constable Douziech saw Constable Sparreboom take a step backwards. The concrete parkade was behind him.

Constable Douziech said she felt that Constable Sparreboom's life was in danger. She discharged her firearm. She fired two rounds. Those bullets were not recovered from the scene and remain unaccounted for.

Constable Sparreboom described having come around the corner and seeing Constable Douziech ahead of him, across the courtyard coming from the parking lot. He heard Constable Douziech saying something about a guy being there, and saw Mr. Lippa standing ahead of him and to Constable Sparreboom's right - Mr. Lippa standing to the right of the patio retaining wall, initially facing northeast. Mr. Lippa said he was “Daniel”. Constable Sparreboom identified himself as “city police”. When he saw that Mr. Lippa had a knife in his right hand, Constable Sparreboom drew his gun. Mr. Lippa began walking toward him. Constable Sparreboom took a step back and recognized that behind him was a concrete parkade structure. He yelled “drop the knife” a number of times. Mr. Lippa said “shoot me, shoot me or I’ll fucking kill you”, or words to that effect, and continued to advance, walking briskly up the slope toward Constable Sparreboom. Constable Sparreboom said that as Mr. Lippa advanced, he raised the knife.

Mr. Lippa was within approximately six feet of Constable Sparreboom when the constable discharged his firearm. He said he fired to stop the threat. Mr. Lippa advanced a step or two after the shooting before he collapsed, falling backward.

Constable Sparreboom fired five rounds. Subsequent analysis indicated that two of the bullets hit Mr. Lippa. One of those shots was fatal. The wounds are described later in this report. Another bullet was found in a shed across the common area, south from where the shooting took place. The two remaining bullets are unaccounted for.

Ms. Andruchow was with Constable Sparreboom as he circled the building. Just after they passed the north door of the building and were walking east, she heard someone (who she later determined was Constable Douziech) say “are you Danny”. She saw Constable Douziech and Constable Sparreboom with their guns drawn. Ms. Andruchow moved further to the east, along the parkade toward its northeast corner, to get out of the way.

Constable Holowaychuk was slightly behind Constable Sparreboom as they rounded the 16 building. Constable Holowaychuk came around the northwest corner and saw Constable Sparreboom engaged with someone, and heard Constables Sparreboom and Douziech (although he did not initially see Constable Douziech) saying things like “drop the knife” and “stay where you are”, and Mr. Lippa responding with words like “go ahead and shoot me, I’m not going to drop the knife”. Constable Holowaychuk went to Sparreboom’s position and drew his gun.

Constable Trachuk was four or five feet behind Constable Holowaychuk, when she became aware that Constable Sparreboom, ahead of her, was engaged with someone. She heard words like “drop the knife” spoken repeatedly. She drew her gun and moved forward, taking a position about four feet west of Constable Holowaychuk.

Daniel Chagnon was with Constables Holowaychuk and Trachuk. He heard someone say words like “he has a knife” and “put down the knife”. He saw Mr. Lippa coming around the concrete barrier and advancing up the incline at a quick walking pace. He did not see a knife in Mr. Lippa’s hand (he was viewing Mr. Lippa’s left side). He said Mr. Lippa did not respond to directions and continued to advance. He heard shots; Mr. Lippa did not respond immediately but ultimately he fell backward. Mr. Chagnon saw something fall from the area of Mr. Lippa’s right hand when he fell.

2. Cyndi Pashko’s Account

Ms. Pashko lived in the suite located one floor above Mr. Lippa’s suite. Her bedroom window looks down on the area where the shooting took place.

On the evening on March 11, 2005 she returned home at about 9:00 pm after doing her laundry. She parked in the parkade, went in to her building and up one flight of stairs. She did not observe anything out of the ordinary.

When she got into her apartment she went into her bedroom and looked out the window. She saw a man walking below her - walking from the west going east - on a north/south diagonal walking down the incline. She said he looked like he was walking down to the apartment below. He was followed by a male police officer who was, in turn, followed by a female officer. The police yelled “stop”, the man turned to face them. She heard shots. She said the female officer “turned white” and she saw the man fall backwards on to his back. She said the male officer fired his gun - she did not see the female officer fire her gun. She said she heard the police officer tell Mr. Lippa to “stay down”. She did not see a knife.

After witnessing the shooting she ran and got her camera and telephone, took several pictures and called 911. She said the pictures show the scene as it appeared when she returned to the window with her camera.

3. Cyndi Pashko's Pictures

Ms. Pashko's photographs provide a rare opportunity to view the immediate aftermath of the event. The pictures were taken from her bedroom window in quick succession. They show the sidewalk area and the grass on either side. They are of varying quality - it was very dark.

Two of the pictures are relatively clear and provide important information as to the positioning of the persons involved. The pictures to which I will refer were identified as #1 and #3 respectively.

The first (#1) was taken as soon as Ms. Pashko returned to the window with her camera. It shows Mr. Lippa lying on his back, to the right (south) side of the sidewalk. He had fallen backward away from the sidewalk. His feet are at a distance of approximately two feet from the sidewalk - the rest of his body further away.

A uniformed figure appears standing on the other (north) side of the sidewalk about a foot from the sidewalk. That figure was identified by the officers as Constable Sparreboom. To the east of Mr. Lippa's body in the photograph is another figure who was identified by the officers as Constable Douziech. She is standing on the same side of the sidewalk where Mr. Lippa is lying. A third figure stands further north and east from Constable Douziech's position, beside the concrete parkade under a light. That figure was identified as Kristine Andruchow. No one else appears in the picture.

The other picture (#3) taken shortly after the #1 picture, shows four apparently uniformed figures around Mr. Lippa's body. One person is kneeling down on the east side of Mr. Lippa. That figure was identified by the officers as Constable Sparreboom. Mr. Lippa appears to be on his stomach, handcuffed. A second and third figure who appear to be male and female (and were identified by the police witnesses as Constable Holowaychuk and Trachuk) stand to the left (north) of Mr. Lippa. Constable Holowaychuk is closest, is in shirt sleeves and is holding a gun.

To the right (south and east) of Constable Sparreboom's location is another figure identified by the officers as Constable Douziech. Kristine Andruchow remains at the back of the picture under the illumination by the parkade.

4. Other Civilian Witnesses

Statements were sought from other people living in the complex.

Sherry Dowhaniuk lived in the third floor apartment above Mr. Lippa's. She was at home, when she heard a popping sound. She went to her window where she saw a man standing and fall to the ground. She heard words like "stop" and "put your hands up".

Darlene Smith was sitting on her couch in the living room of her granddaughter's suite at # 203 in the 16 building. The window was open. She heard the words "drop the knife" twice and then some swearing. She heard different voices and a lot of noise. She thought she heard four shots. She did not look out the window.

Barry Anderson was in an apartment above the area where the shooting took place. He was in the bedroom playing video games when he heard the words "drop the knife". He determined that they came from outside. He could not tell whether the speaker was male or female. Right after, he heard shots and he dropped to the floor. When he looked out he saw several police officers with their guns drawn. He described the person on the ground with bullet holes in his back.

Other residents in the complex were canvassed. Of those who were at home that evening, some did not see or hear anything. Others heard noises, gunshots or both.

5. Findings of Fact from the Various Accounts

The officers and ride-alongs describe a confrontation in which Mr. Lippa approached the officers, leaving the area of his patio, initially approaching Constable Douziech, then turning to approach Constable Sparreboom. Ms. Pashko's description is of officers following Mr. Lippa, and Mr. Lippa turning around, whereupon he was shot. The discrepancy is significant.

However, after considering all of the evidence, I conclude that Mr. Lippa was approaching the officers when the shooting took place. The descriptions of the officers and the civilian "ride-alongs" are consistent in this respect. Each of those witnesses did not tell exactly the same story, because each of the witnesses did not see exactly the same thing. They were standing in different places. They had different roles. But their accounts are consistent. None of the accounts suggests that Mr. Lippa was walking away from the officers at the time (or just before) he was shot.

In coming to this conclusion, I have taken into account the evidence given at the Inquiry as well as the various statements made at or shortly after the time. The individuals involved were separated and gave their statements separately.

I have concluded that Mr. Lippa was holding a knife. Not all of the witnesses said they saw a knife - not all witnesses were in a position to see Mr. Lippa's right hand. Officers Douziech and Sparreboom saw the knife. Daniel Chagnon saw something fall from the right hand when Mr. Lippa fell. A knife resembling the one seen by the two constables was found at the scene close to where Mr. Lippa fell.

The officers yelled at Mr. Lippa to drop the knife. He did not and continued to advance.

Ms. Pashko's account suggests that Mr. Lippa was walking away from the officers down to his apartment instead of up toward the officers. I have concluded that Ms. Pashko is an honest but mistaken witness. She came upon the scene unexpectedly, and had a very brief time to form an impression before she went to get her camera and call the police. What she saw after she got her camera is recorded in the pictures she took. Those pictures are consistent with the accounts of the other witnesses. The relative placement of each of the officers and the position of Mr. Lippa in the pictures is consistent with what the officers and their civilians described.

Moreover, Ms. Pashko's descriptions of the roles played by the various figures in her pictures illustrate that she was mistaken in certain respects. For example, although Ms. Pashko identified Constable Sparreboom as the shooter in picture #1, she identified Constable Holowaychuk (who was holding a gun) as the shooter in picture #3. Ms. Pashko said that after the shooting the shooter said "where's the knife" and the person who was kneeling over Mr. Lippa's body shook his head. However, the officers identified the kneeling figure as Constable Sparreboom. I note these discrepancies not to be critical, but to illustrate that an impression, formed quickly under extreme and unexpected conditions may be honest but mistaken.

G. March 11, 2005 - Immediate Aftermath of Shooting

After Mr. Lippa fell, Constable Sparreboom observed him briefly, and determined that other officers had their firearms drawn and pointed. He radioed for an ambulance, holstered his firearm and approached Mr. Lippa who was lying on his back. He rolled Mr. Lippa over, handcuffed him and put him in the recovery position (on his side). The pictures show Mr. Lippa on his stomach.

After the ambulance arrived and Mr. Lippa was taken to the hospital, the site was secured. Constables Holowaychuk and Trachuk saw a knife close to Mr. Lippa's body. A folding pocket

knife was found at the scene and subsequently entered into evidence. Constable Douziech testified that was similar to the knife she saw in Mr. Lippa's hand.

Constables Holowaychuk and Trachuk remained at the scene afterwards and began assisting in the investigation by attending at doors of the complex to take witness statements. When it was discovered that they had been involved in the incident they were sent away separately.

H. March 11, 2005 - Emergency Response

An ambulance was dispatched to the site. The call was received at 9:19 pm, the ambulance was on its way within about three minutes and arrived at the scene at 9:32 pm.

The paramedics, Darcy Ressler and his partner Rob Main, found Mr. Lippa still handcuffed and fully clothed. They described him as "suffering from traumatic cardiac arrest", having "no spontaneous respirations and no heart beat". They left the scene at 9:34 and transported Mr. Lippa to the Royal Alexandra Hospital. He was pronounced dead at the hospital at 10:23 hrs.

I. Post Mortem Evidence

An autopsy was conducted on March 14, 2005 by Dr. Bernard Bannach, Assistant Chief Medical Officer. It revealed two gunshot wounds which Dr. Bannach identified as #1 and #2 (the numbering is only for identification and does not signify anything respecting sequencing or severity).

The #1 bullet entered the body on the front left arm/shoulder area, went through the chest wall, entering the chest cavity between the fifth and sixth ribs, perforating the upper lobe of the left lung, lacerating the back aspect of the left atrium of the heart as well as the lower lobe of the right lung, and then striking the right eighth rib. The bullet was deflected internally upward under the skin surface and was recovered from the skin of the right chest wall, under the armpit. Generally, bullet #1 travelled from left to right, front to back and downwards.

Dr. Bannach characterized the wound created by bullet #1 as fatal.

The #2 bullet entered the body at the upper left back and exited the body in the mid-left back area; travelling under the skin from left to right and downwards. It did not enter any body cavities or involve any major organs or blood vessels. This wound would not have caused death (except possibly secondarily, through infection if left untreated).

Dr. Bannach was unable to say which wound occurred first. He indicated that the wounds were not consistent with the deceased and the shooter standing upright face to face; nor were they consistent with the deceased standing upright with his back turned to the shooter. He is not able to say what position the deceased's body was in when he was shot.

A toxicology examination conducted postmortem revealed a blood alcohol level of .05. Dr. Bannach indicated that that reading would not necessarily reflect the blood alcohol level at the time of the shooting as the deceased would have experienced blood loss following the shooting and resuscitation procedures would have involved administration of large volumes of fluid which would dilute the blood. He gave as his opinion that the blood alcohol level just prior to the shooting would have been higher, but he was unable to say by how much.

J. Post March 11, 2005: Investigation, Calgary Police Service Review and Operational Review

A homicide investigation was undertaken by the EPS. Detective Robertson was the officer in

charge of the investigation. Following the investigation, he recommended that no charges be laid in connection with the incident.

The EPS asked the Calgary Police Service to conduct an independent review of the investigation to identify and possible deficiencies and give an opinion. The review was completed and did not differ in substance with the findings of the EPS investigation. It identified two minor shortcomings: the son of Ms. Lippa should have been interviewed, and no officers involved in the shooting should be involved in making door-to-door inquiries.

Additionally, Inspector Daniel Jones of EPS conducted an operational review to look at what happened and determine whether there were any equipment or training issues, and any breach of EPS policy in connection with the incident.

He determined that the equipment which was used performed in the way it was supposed to perform. The officers used the equipment in the manner in which they were supposed to use it. He determined that the officers approached and responded to the subject in accordance with their training.

He found three technical breaches:

1. Constable Sparreboom had been carrying someone else's gun, and not his own. He said that guns may get switched at the range or when they are being repaired or cleaned. As the gun functioned in the way it was supposed to, Inspector Jones characterized this breach as moot in connection with the incident.
2. The second breach occurred when inaccurate information was released to media personnel at the scene to say that more than one weapon was involved. There was another item in the area which had initially been identified as a weapon but was subsequently determined to be unrelated to the incident. (It was a plastic knife-like object found across the sidewalk some distance from where Mr. Lippa's body was lying.)

The inaccurate information was corrected a short time later, but had already been reported in the media.

EPS policy has since been (and was, at the time, in the process of being) clarified. All media releases respecting a homicide are to be done through media relations after being vetted by homicide.

3. The third breach did not relate to the incident but to the operational review itself. The policy in existence at the time called for an operational review to be done by someone holding the rank of superintendent or higher; it does not contemplate an inspector. Inspector Jones said that when the policy was put in place there were no inspectors.

Inspector Jones did not have any recommendations for change following his review.

K. EPS Training and the Use of Force Model

Sergeant Raymond Hogan, officer in charge of the Officer Safety Unit with EPS gave evidence about training and police response. This evidence included discussion of training and tactics relating to the officers' encounter with Mr. Lippa.

1. AACP Use of Force Model

Sergeant Hogan discussed the use of force training program and the Alberta Association of Chiefs of Police (“AACP”) Use of Force Model. The model is a graphic which provides a reference or framework for a police officer to perform actions in response to subject behaviour and actions in response to situations in which he finds him or herself. Sergeant Hogan described the model and its operation.

An officer must conduct a risk assessment in a given situation. That assessment will be affected by many considerations, including confidence and competence of officer, ability and number of subjects, distance, time available to react, prior knowledge of subject and situation, environment (including lighting, bystanders, footing, availability of cover, perceived level of threat).

Officer response will depend on the officer’s risk assessment. The response options also sit on a continuum, from officer presence (which is effective in controlling the majority of situations in which the EPS members find themselves), through communication, physical control techniques (e.g. stuns, strikes), intermediate weapons (such as pepper spray, baton, Taser) and lethal force (e.g. firearm or weapon of opportunity).

2. Police Response

Sergeant Hogan was asked a number of questions respecting the appropriate response to certain hypothetical circumstances, based on the circumstances in this case.

Response when approached with edged weapon. Sergeant Hogan was asked about the appropriate response in circumstances where a moving subject approaches a police officer with an edged weapon from some 20 feet.

Sergeant Hogan indicated that drawing a firearm is an appropriate response. An edged weapon is a lethal threat. He said that studies show individuals can cover such a distance relatively quickly. Time is required for an officer to take his or her firearm out of the holster and point it. An officer must be prepared to react if the individual comes closer.

Sergeant Hogan indicated that close combat with someone armed with a knife is a “worse case scenario” - in which it is a virtual certainty that someone will get cut. Vital arteries (under arm, throat) can be implicated in such a transaction. It is a situation to be avoided if at all possible.

Use of Taser to respond to approach with an edged weapon. Sergeant Hogan indicated that a Taser is generally not appropriate in a lethal threat encounter involving an approach with a knife. He said that the first response to such a lethal threat is a firearm. Time is of the essence when dealing with a moving subject. An officer employing a Taser has only one chance to make contact with the subject. If the Taser is deployed and the darts do not hit the subject, the subject is therefore able to continue to advance and the officer becomes vulnerable.

A Taser may be appropriate where an officer is covered by another officer who has lethal force.

Shooting a weapon out of the hand/shooting in the leg or elsewhere. Sergeant Hogan indicated that officers are not trained to shoot weapons out of people’s hands, nor are officers trained to shoot people in the leg or arm as a means to stop a moving, advancing threat. This is for several reasons. A person can move quickly; it is difficult to hit a moving arm or leg. If the officer shoots and misses, the advance may continue and the danger increase. Secondly, although a sharpshooter (shooting from a distance and not emotionally or physically involved) may be capable of extreme accuracy, people in life-and-death stress situations can experience a variety of reactions brought on by stress. Some of those reactions could have an impact on their

perceptual abilities, and impede their accuracy.

Officers are trained to shoot in such a way so as to stop the advance. They are taught to shoot for centre mass.

Tactical Retreat. Sergeant Hogan was also asked about tactical retreat. He said that, in a situation where an attacker is advancing, if creating a distance can help the situation - for officer safety or defusing a situation - then it may be appropriate. A tactical retreat would be appropriate if it allowed the officer to gain an advantage, for example, to access his firearm in order to meet the threat.

However, it is also necessary to look at whether a retreat would give the opponent an advantage, in which case it would not be advisable.

Sergeant Hogan said that in a dynamic situation where a subject is not contained, tactical retreat is not necessarily an option. An attacker can move more quickly forward than an officer can move backwards. An attacker who is not contained can counter an officer's moves. Moving backward can be dangerous - there is a risk of tripping. Officers are trained not to turn and run - it exposes their backs and means they are not able to see what the subject is doing. Retreat can also give rise to predator/prey response in the subject.

L. Summary of Circumstances

On the evening of March 11, 2005, Mr. Lippa had an argument with his estranged wife, Leanne. He made some threats over the telephone. She left her apartment, went to a neighbour's apartment and called 911. Police were dispatched.

Officers arrived at the scene. After speaking to Ms. Lippa, they began to circle the grounds of the apartment complex where both Mr. and Ms. Lippa resided, hoping to locate Mr. Lippa.

They came upon him unexpectedly as he was coming out of his apartment onto his patio. Initially, he advanced toward one of the Constables (Constable Douziech). He quickly turned his attention to another officer (Constable Sparreboom) and advanced toward him, up a small incline.

Mr. Lippa had a knife. Both constables drew their firearms when they saw the knife. They yelled at Mr. Lippa to drop the knife.

Two other constables (Holowaychuk and Trachuk) who were slightly behind Constable Sparreboom saw Constable Sparreboom engaged, with his firearm drawn and heard the instructions to "drop the knife". They drew their firearms and came close to Constable Sparreboom's position.

Mr. Lippa continued to advance despite the instructions to stop.

Constables Douziech and Sparreboom discharged their firearms. Mr. Lippa advanced a step or two then fell to the ground. Seven shots were fired. Two shots hit Mr. Lippa. One of them was fatal.

Mr. Lippa was clearly distraught that evening. He had consumed alcohol, but it would be speculative to say how much. It would also be speculative to address what his intentions might have been in approaching the police officers.

M. Recommendations

The *Act* (s. 52(3)) provides that I may make recommendation as to the prevention of similar deaths.

Counsel for Mr. Lippa senior raises several matters on which I could make recommendations.

Ride-along program. Counsel argues that the EPS ride-along program should be evaluated in view of the circumstances of this case because Constable Sparreboom said the safety of the ride-along was a factor in his mind when he pulled the trigger.

Constable Sparreboom's evidence respecting the ride-along was given in the context of the need to stop the threat. He said that the threat was not only against him but also against others (such as the ride-along and Constable Douziech). I do not interpret his evidence to say that he would have done anything differently had the ride-along not been present.

Inspector Jones' evidence was that the ride-along program was under review at the time of, or has been under review since this incident. The review was not triggered or requested because of these events. There is no evidence as to the status of that review.

The policy, as it was in March 2005 or as it is currently, was not in evidence before me.

Nothing in the evidence suggests that the ride-along policy contributed to the death of Mr. Lippa, or that any changes I might suggest to that policy (whatever it is) could prevent similar deaths.

Use of Force Training. Counsel argues that I should make recommendations that training in the use of force should emphasize that there are a number of options a police officer could use in response to a situation, and that the option ultimately selected should depend on the specific circumstances and whether or not there are other options available.

It is not clear how the proposal would prevent similar deaths. I understand from the evidence of Sergeant Hogan that the current use of force training requires an officer to have regard to the totality of the circumstances and to be constantly assessing the circumstances as they may change. The training is circumstance-specific. To the extent that that is what counsel is suggesting, it is already the case.

Recommendations for the prevention of similar deaths:

I have no recommendations to make.

DATED February 7, 2008,

at Edmonton, Alberta.

Original signed by
E.A. Johnson
A Judge of the Provincial Court of Alberta