



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

Fatality Inquiries Act

WHEREAS a Public Inquiry was held at the Provincial Court of Alberta
in the City of Calgary, in the Province of Alberta,
(City, Town or Village) (Name of City, Town, Village)
on the 17th day of November, 2014, (and by adjournment
year
on the 18th and 19th day of November, 2014),
year
before the Honourable Judge Gordon Wong, a Provincial Court Judge,
into the death of Peter Dominik Spiewak 31
(Name in Full) (Age)
of 210 Citadel Peak Circle NW, Calgary, Alberta and the following findings were made:
(Residence)

Date and Time of Death: October 20, 2011 at 22:39 hours

Place: 210 Citadel Peak Circle NW, Calgary, Alberta

Medical Cause of Death:

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

Multiple gunshot wounds.

Manner of Death:

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

Homicidal

Circumstances under which Death occurred:

See Appendix A.

Recommendations for the prevention of similar deaths:

See Appendix A.

DATED April 28, 2015,

at Calgary, Alberta.

Original signed by

the Honourable Judge Gordon Wong
A Judge of the Provincial Court of Alberta

Appendix A

Circumstance under which Death occurred:

Summary

1. Police attended at the residence of Peter Spiewak in response to a 911 call complaint of a disturbance. When police arrived at the door to the home Peter Spiewak exited with an axe in hand and advanced towards Constable Thomas. Constable Thomas fired one shot from his firearm that missed Mr. Spiewak. Constable Edwards fired five shots from his firearm that caused Mr. Spiewak's death.

Circumstances

2. Peter Spiewak lived at 210 Citadel Peak Circle NW, Calgary, Alberta with his parents, Elizabeth and Richard, and brother, Thomas. On the night of Peter's death his sister Evelina was visiting. For clarity and convenience all Spiewak family members will be referred to in this report by their first name.
3. Peter had been suffering from a mental health illness for four years prior to his death. While there was no formal psychiatric diagnosis, his family doctor had initially assessed Peter as suffering from severe depression and later with a combination of depression and schizophrenia. He was prescribed medication but had not been taking them for two to three years prior to his death. Peter was not seeing any medical professionals regarding his mental health issues and refused any suggestions to do so.
4. The symptoms Peter exhibited were getting worse. This included verbal aggression but no indication that he was becoming physically aggressive or violent. His condition had deteriorated enough to cause his mother Elizabeth to call a mental health help line for assistance in getting Peter to a doctor again.
5. On October 20, 2011 a friend of the family, Melissa Gladue, went to the Spiewak residence to receive medicinal treatment from Elizabeth. This involved her disrobing to some extent. Peter was watching television in the living room, where this medical treatment was to take place. He refused to leave the room. A shoving match took place between Peter and Evelina that resulted in her being pushed to the ground. A struggle then ensued where Richard and Thomas were trying to hold Peter down.

6. Evelina called 911 at the request of Elizabeth. A transcript of this 911 call was presented as an exhibit at the Fatality Inquiry. The 911 call was made very close in time to the start of the incident at the home and continued through until the shooting of Peter occurred. What is described in the 911 call is reliable evidence of what happened leading up to the shooting as the conversation took place contemporaneously with the events described.
7. Peter was physically and verbally aggressive at the time the 911 call was made and continued to be verbally aggressive through the duration of the call. He made a threat to the effect of, "I'm gonna get a knife if the cops come." Elizabeth took this seriously. She took all the kitchen knives and hid them from Peter. Family members noticed that an axe had gone missing. When the police arrived at the front door to the house Peter went quickly to the door, axe in hand. Elizabeth tried to stop him but was unsuccessful.
8. Constables Thomas and Edwards attended the Spiewak residence in response to the 911 call. They had been advised of a physical confrontation between family members at the residence and that Peter had threatened to get a knife if the police came. They were also aware of mental health concerns regarding Peter and his brother Thomas.
9. On arrival, Constable Edwards approached the front door of the Spiewak residence. The residence had an attached front garage with the sidewalk to the front door on the left of the garage as you face the house. There are three steps leading to a concrete landing at the door. Constable Edwards positioned himself to the right of the door, where a door-height narrow window panel was located. Constable Thomas was on the sidewalk leading to the front door, about eight feet away from the front door when Constable Edwards rang the doorbell.
10. Peter opened the front door and advanced towards Constable Thomas. The axe was raised with the head of the axe raised above shoulder height. He did not appear to notice Constable Edwards who was located to his left at arm's length. Peter appeared to focus on Constable Thomas who was directly in front of him. One of the police officers told Peter to drop the axe to no avail. Constable Thomas back-pedalled away from Peter, drew his firearm and fired one shot as Peter continued to advance towards him. This shot missed Peter. The bullet lodged in the bottom wood framing of the front door. While back-peddalling Constable Thomas fell, hitting his head. He suffered a concussion as a result of this fall.
11. Constable Edwards also drew his firearm. Constable Edwards saw Constable Thomas fall. He characterized Peter's demeanor as aggressive based on the look of his eyes and the brandishing of the axe. Peter was advancing quickly towards

Constable Thomas. Constable Edwards stepped out from the corner of the doorway behind Peter and fired five shots from his firearm. All five shots wounded Peter, three entered the back, one entered the right hip and one other entered the right arm at the elbow. These gunshot wounds caused Peter's death.

12. The shooting started immediately after the demand to drop the axe. All of the shots were fired in a time span of 1.8 seconds. Peter was shot while he was on the steps of the front landing. Blood drops found on the lowest step of the landing corroborate this.
13. The precise distance between Constable Thomas and Peter at the time Constable Thomas fired his shot is unclear. Due to the concussion, he blacked out and did not remember discharging his firearm. It was only after the shooting, when he checked the ammunition in his firearm that he realized he had fired a shot.
14. When Constable Edwards fired his shots, his focus was on Peter. He believed Constable Thomas had fallen on the sidewalk in front of Peter and was at risk of being struck by the axe by Peter. That was his reason for shooting Peter. He continued shooting until he saw Peter slump to the ground.
15. Constable Thomas remembers coming to on the ground near a flower bed that was located even with the front of the garage. His glasses had fallen off due to the fall and were located in the flower bed by police officers who arrived after the shooting. This location was approximately the length of the garage away from where Peter was located when he was shot. However, the distance between Constable Thomas and Peter when Constable Edwards fired his firearm could have been shorter than this and cannot be determined with any certainty.
16. The events outside of the house that are described above are based upon the evidence provided by Constables Thomas and Edwards. On the evidence before me, there were no other persons outside of the house at the time of the shooting.
17. Melissa Gladue was inside the garage at the time of the shooting. Richard was upstairs. Evelina was inside the house, walking from the garage to the front foyer when the shots were fired. All three could not see what happened outside of the house.
18. There are suggestions from Spiewak family members that Thomas had exited the front door moments before Peter. Thomas provided a statement to police indicating that he was located between Constable Edwards and Peter on the landing just before any shots were fired. Both Constables contradict this. Unfortunately Thomas would not attend the Fatality Inquiry although he was subpoenaed to testify. As a result, little weight can be given to his statement to

the police and the suggestion that he was outside of the house at the time of the shooting.

19. Elizabeth testified at the Fatality Inquiry that she heard shots, went outside, and saw police officers continue to shoot Peter while he was lying on the ground in front of the steps. Elizabeth had provided a statement to police on October 21, 2011. In that statement she said that she did not witness the actual shooting. This initial statement is consistent with the evidence given by Evelina who placed her mother inside of the house when all the shots were fired. There are other contradictions between her testimony at the Fatality Inquiry and her statement to police.
20. Over three years have passed since Peter's death and the time of the Fatality Inquiry. Memory can be affected by this passage of time. These events were traumatic and happened quickly; this can also affect one's recollection and perception of events. For these reasons, I cannot accept the description of the shooting offered by Elizabeth.
21. Constable Thomas remembers drawing his firearm because he thought he was going to be killed by Peter Spiewak. While he does not remember discharging his firearm, there can be no doubt that he did so based on that same belief.
22. Constable Edwards discharged his firearm because he believed Peter Spiewak was going to attack Constable Thomas with the axe. He was trained to meet lethal force with lethal force. Once he discharged his firearm, he continued to shoot until Peter slumped to the ground, until Peter no longer presented a danger to others.
23. Calgary Police Service officers are taught that in order to justifiably use lethal force against a person, the officer would need to be satisfied that the person has:
 - a. Ability – the physical capacity to cause grievous bodily harm;
 - b. Intent – the officer must be able to identify that the person through actions, threats, gestures, etc. has made his intent to cause grievous bodily harm evident; and
 - c. Means – the person must be able to use the weapon in order to cause grievous bodily harm or death.
24. This training is in accordance with section 25 of the *Criminal Code*. It reads:

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.

(5) A peace officer is justified in using force that is intended or is likely to cause death or grievous bodily harm against an inmate who is escaping from a penitentiary within the meaning of subsection 2(1) of the *Corrections and Conditional Release Act*, if

(a) the peace officer believes on reasonable grounds that any of the inmates of the penitentiary poses a threat of death or grievous bodily harm to the peace officer or any other person; and

(b) the escape cannot be prevented by reasonable means in a less violent manner.

25. The discharge of firearm by Constables Thomas and Edwards complied with their training and are justified by section 25 of the *Criminal Code*. Peter had in his possession an axe, a weapon that could cause grievous bodily harm. On an objective basis, Peter's actions that night demonstrated an intent to cause grievous bodily harm. These actions include his earlier threat to get a knife if police arrived, arming himself with an axe, his aggressive appearance, and advancing quickly on a police officer with that axe. Constables Thomas and Edwards were entitled to draw that conclusion. Peter had the means to cause grievous bodily harm to Constable Thomas even if the distance between them was the length of the garage at the time he was shot. Constable Thomas had fallen and suffered a blackout. He was particularly vulnerable. Peter was moving quickly towards him. It would not have taken long for him to reach Constable Thomas.
26. Constable Edwards had no choice but to discharge his firearm at Peter given the circumstances. Use of lesser forms of force, such as the baton, OC spray or the Taser was not a viable option.
27. A suggestion was made by Counsel representing the Spiewak family that Constable Edwards did not need to shoot Peter five times, that he was already on one knee when at least one further shot was fired. I do not find that the actions of Constable Edwards were excessive. Constable Edwards was faced with a person who represented a lethal threat to Constable Thomas. He fired all of his shots in 1.8 seconds. He stopped when Peter Spiewak exhibited signs that he was no longer a threat. This all happened quickly. The circumstances and the threat Peter presented would not have allowed Constable Edwards to take one shot, wait to see the effects, and then shoot again. This would not have been realistic.
28. This report requires me to determine the manner of death and I am left with the options of choosing as a manner of death natural, homicidal, suicidal, accidental, unclassifiable or undeterminable. The manner of death in this Fatality Inquiry is "homicidal" based on the definition of homicide found in *Black's Law Dictionary* 9th ed., 2009 of "The killing of one person by another."

29. The use of the term, homicide, may suggest to some that this Fatality Inquiry found wrong-doing on the part of the police officers involved. That would not be correct. Section 222 of the *Criminal Code* provides that homicide is either culpable or not culpable and that homicide that is not culpable is not an offence. The death of Peter Spiewak was a non-culpable homicide. I find no fault on the part of Constables Thomas and Edwards.

Recommendations for the prevention of similar deaths:

30. There is nothing that I can recommend to prevent a similar death from occurring.

31. Counsel for the Spiewak family urged the Inquiry to make a recommendation that police officers should all be equipped with body cameras to capture video of significant events. It was suggested that this might prevent similar deaths in that police officers might act differently if they knew they were being recorded.

32. I do not make this recommendation for the following reasons. The suggestion that police officers may act differently if they knew they were being recorded is speculative. This recommendation also suggests that police officers in this matter acted improperly. I find that not to be the case. Finally, if knowing that they were being recorded might cause a police officer to pause before taking action in urgent circumstances, this may have disastrous consequences. Situations where lethal force is necessary, such as in this situation involving Peter Spiewak occur quickly. Hesitating in responding to lethal threats might lead to the unnecessary death of those threatened.