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**COMMISSION FOR PUBLIC COMPLAINTS AGAINST THE RCMP**

**REPORT FOLLOWING A PUBLIC INTEREST INVESTIGATION INTO THE  
RCMP MEMBER-INVOLVED SHOOTING DEATH OF JOHN A. SIMON**

***RCMP Act***  
**Subsections 45.37(1) and 45.43(1)**

File No.: PC-2010-0861

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## INTRODUCTION

Police officers undertake an enormous responsibility in responding to incidents involving individuals threatening suicide. They often play a pivotal role in safely resolving situations and ensuring that individuals obtain the medical or psychiatric help they require. While undoubtedly certain crisis situations require prompt and efficient police interventions, many require patience, understanding and restraint prior to a safe resolution.

The incident which occurred on December 2, 2008, and which culminated in the death of Mr. John Simon, was a preventable tragedy.

By all accounts, John Andrew Simon, a Mi'kmaq fisherman, was a dedicated family man and great outdoorsman. However, he struggled with certain issues, including alcohol dependency and health problems.

On the evening of December 2, 2008 at Wagmatcook, Nova Scotia, Mr. Simon, after having pointed a rifle, was shot three times and fatally wounded by a member of the Baddeck, Nova Scotia, RCMP Detachment.<sup>1</sup> At the time of the incident, Mr. Simon was in his own home. His blood alcohol level was elevated, he had taken prescription pain medication, and he was reportedly not taking the insulin prescribed to him to control his diabetes. He also threatened suicide and had access to firearms. Mr. Simon's family members were concerned about his well-being and rightfully contacted the police in order to seek assistance. The RCMP responded to this urgent request.

The circumstances of the shooting were investigated by the Integrated Critical Incident Team (ICIT) led by the Halifax Regional Police but also comprised of members of the RCMP. The ICIT report, delivered December 9, 2009, one year and one week after the shooting took place, found that no criminal charges were appropriate with respect to any of the persons involved in the incident. The RCMP did not take any disciplinary action against any of the members involved.

In recognition of ongoing public concerns expressed about the level of force used in this incident, the RCMP involvement in the homicide investigation, and the lack of discipline proceedings, the Commission for Public Complaints Against the RCMP (the Commission) exercised its authority on behalf of the public, to examine the facts that gave rise to the public's concerns. The purpose of this report is to provide an objective and thorough assessment of the facts and offer recommendations to prevent a reoccurrence of a similar tragedy.

Finally, it is important to note that there is no evidence to believe that the intention of any of the RCMP members who responded that night was anything other than to manage the incident and bring it to a peaceful conclusion.

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<sup>1</sup> The community of Wagmatcook is within the boundaries of the Baddeck Detachment.

Regrettably, this did not occur. With this in mind, and in an effort to move forward and heal the wounds caused by this incident, the Commission's review aims to address the prevention of such outcomes, as well as to recommend remedial action to be taken in response to the incident.

## **CHAIR-INITIATED COMPLAINT AND PUBLIC INTEREST INVESTIGATION**

On March 16, 2010, as Chair of the Commission I initiated a complaint (**Appendix A**) into the conduct of the RCMP members involved in the response to and subsequent shooting death of Mr. Simon pursuant to subsection 45.37(1) of the *RCMP Act*. The purpose was to assess whether the members involved in the events of December 2, 2008, from the moment of the initial call to the RCMP for assistance, through to the subsequent death of Mr. Simon, complied with all appropriate training, policies, procedures, guidelines and statutory requirements relating to responding to persons believed to be suicidal, barricaded within a premises, or otherwise potentially of a high-risk nature; and whether such policies procedures and guidelines are adequate.

In addition, the complaint queried whether the RCMP members involved in the investigation of this incident conducted an investigation that was adequate and free of actual or perceived conflict of interest, whether they responded appropriately and proportionately to the gravity of the incident, whether they responded in a timely fashion, and whether their conduct adhered to the standards set out in section 37 of the *RCMP Act*.

This report will examine the events and the actions of the RCMP members which culminated in the shooting death of Mr. Simon as well as the subsequent investigation conducted by the ICIT. It will also examine the conduct of members of the RCMP in the context of the failure of the RCMP to initiate an internal investigation into the conduct of the members involved. A summary of my findings and recommendations can be found at **Appendix B**.

## **COMMISSION'S REVIEW OF THE FACTS SURROUNDING THE EVENTS**

It is important to note that the Commission is an agency of the federal government, distinct and independent from the RCMP. When conducting a public interest investigation, the Commission does not act as an advocate either for the complainant or for RCMP members. As Chair of the Commission, my role is to make findings after an objective examination of the information available to me and, where judged appropriate, to make recommendations that focus on steps that the RCMP can take to improve or correct conduct by RCMP members. In addition, one of the primary objectives of the Commission is to ensure the impartiality and integrity of investigations involving RCMP members.

The Commission does not make findings of criminal or civil liability. Rather, the Commission makes its findings and recommendations on a balance of probabilities, a lower standard than the criminal standard of beyond a reasonable doubt. Although some terms used in this report may concurrently be used in the criminal context, such language is not intended to include any of the requirements of the criminal law with respect to guilt, innocence or the standard of proof.

My findings, as detailed below, are based on a careful examination of the following investigation documents: the ICIT Report and supporting documentation, including statements, notes, reports, photos, and videos; the Use of Force Report; relevant documentary materials as disclosed by "H" Division, including memoranda, e-mails and notes of RCMP members whose involvement was other than as provided in the ICIT materials, i.e. division review or management involvement; submissions to the Commission made by the Wagmatcook Band; a report of the private investigator hired by the Wagmatcook Band; a memorandum of agreement pertaining to the creation of the ICIT; and relevant RCMP operational and administrative policies, as well as applicable legislation. I have also relied in large part on the independent investigation conducted by the Commission's own investigator, which included a site visit and a number of interviews.

I wish to acknowledge that the RCMP's "H" Division provided complete cooperation to the Commission throughout the public interest investigation process. In addition, the RCMP provided the Commission with access to all materials contained in the original investigative file and all materials identified during the public interest investigation.

While I acknowledge that they are not required to do so, it is unfortunate that the RCMP members who responded to the 9-1-1 call informing the police of a barricaded and potentially suicidal person at the Simon residence declined to be interviewed during the course of the Commission's investigation. The Commission, therefore, will rely on the statements provided to the ICIT investigators.

A synopsis of the key RCMP personnel involved in the incident and their roles is found at **Appendix C** to this report. In addition, a condensed timeline of events and a visual timeline are attached at **Appendix D**.

## RCMP POLICY AND LEGAL FRAMEWORK

The authority for a police officer to use force in carrying out his or her duties is settled and is not in issue in this matter. In executing his or her duties, a police officer is authorized by section 25 of the *Criminal Code* to use as much force as necessary. However, the officer must be acting on reasonable grounds. In determining whether the amount of force used by the officer was necessary, one must look at the circumstances as they existed at the time the force was used.

The Supreme Court of Canada recently concluded:

While police officers may have to resort to force in order to complete an arrest or to prevent an offender from escaping their custody, the allowable degree of force is constrained by the principles of proportionality, necessity and reasonableness. Under s. 25(1) of the *Criminal Code*, the use of force to effect a lawful arrest is justified if the police officer believes on reasonable and probable grounds that it is necessary and if only as much force as necessary is used. Further, under s. 25(3), force intended or likely to cause death or grievous bodily harm is prohibited unless the officer has an objectively reasonable belief that the amount of force used is necessary for self-protection or for the protection of another person.<sup>2</sup>

It is also settled that police officers in the course of their duties must exercise discretion. That discretion, however, is tempered by the statutory and policy frameworks put in place to provide guidance to the police and a means and standard of review for the actions of a police officer.

Police often interact with the public in highly dynamic and quickly evolving situations. Accordingly, “[p]olice actions should not be judged against a standard of perfection. It must be remembered that the police engage in dangerous and demanding work and often have to react quickly to emergencies. Their actions should be judged in light of these exigent circumstances.”<sup>3</sup>

A number of RCMP policies are applicable in the circumstances of this complaint. These include those set out in the RCMP Operational Manual, and the Incident Management/Intervention Model (IM/IM) used by the RCMP.<sup>4</sup> The IM/IM is a guide which teaches that police officers should constantly assess and reassess the level of risk presented to determine the appropriate intervention strategy and tactics when faced with various levels of resistance. The intent is to assist RCMP members in choosing the appropriate intervention option based on the behaviours displayed by the subject and on the totality of the situation. The relevant topics discussed in the IM/IM include the risk assessment process, the decision to enter a building and the levels of resistance displayed by an individual, and the amount of force commensurate with that resistance. The

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<sup>2</sup> *R. v. Nasogaluak*, 2010 SCC 6, [2010] 1 S.C.R. 206.

<sup>3</sup> *Ibid.*

<sup>4</sup> Further detail concerning the IM/IM is found at **Appendix E** to this report.



IM/IM and the CAPRA (Clients/ Acquire and Analyse/ Partnerships/ Response/ Assess) model make up the framework used by RCMP members to continuously assess risk during an incident and respond with the appropriate level of intervention and force.

CAPRA is a problem-solving methodology through which RCMP members are trained to find alternative means of approaching a situation and prevent “[...] the problem from occurring or from escalating by addressing contributing factors to the broad problem rather than specific incidents or manifestations of the issue.”<sup>5</sup>

The goals of CAPRA and the IM/IM are to assist police officers to carry out their duties and functions in the manner which will provide the most safety for police as well as the public they serve, while recognizing that police work is inherently subject to danger and risk.

Please see **Appendix E** for a more thorough discussion of the IM/IM and the CAPRA model.

In addition, RCMP policy deals with arrest, including the authority to enter a dwelling house to effect an arrest. The policy correctly points out that during the normal course of events, prior judicial authorization is required in the form of a warrant (generally called a *Feeney* warrant) to enter a residence for the purpose of arresting an individual. The exceptions to that requirement are set out in the *Criminal Code* and are further discussed below.

Following an RCMP member-involved shooting incident, RCMP policy requires that certain reports be submitted and provides policy guidance for each level of authority, from the member who is involved to the Criminal Operations (CROPS) Officer for the relevant division.

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<sup>5</sup> <http://www.rcmp-grc.gc.ca/ccaps-spcca/capra-eng.htm>

**FIRST ISSUE: Whether Constable Frenette and the other RCMP members involved in the events of December 2, 2008, from the moment of the initial call to the RCMP for assistance, through to the subsequent death of Mr. Simon, complied with all appropriate policies, procedures, guidelines and statutory requirements relating to persons believed to be suicidal, barricaded within a premises, or otherwise potentially of a high risk nature; and whether such policies, procedures and guidelines are adequate.**

#### **A. Events prior to the shooting**

On December 2, 2008 at approximately 8:45 p.m., the RCMP received a 9-1-1 call from Mary Katerie Isadore, Mr. Simon's aunt and a next-door neighbour of Mr. Simon and his common-law wife of 24 years, Ms. Patricia MacKay. At the time of making the call, Ms. Isadore was not at home, but had been visiting at the nearby home of her sister, Mr. Simon's mother.

Ms. Isadore stated that John Simon was intoxicated and suicidal, and said that he and Ms. MacKay, who was also intoxicated, were arguing over a firearm at their residence located at 15 Katie Lane. It was later determined that Ms. MacKay had not been drinking.

At 8:49 p.m., Constable Jason Bernard of the nearby Baddeck RCMP Detachment was dispatched to the scene to investigate. He spoke with Ms. Isadore as well as Ms. MacKay by telephone and subsequently spoke with Mr. Simon by telephone.

Ms. MacKay informed him that she had taken a shotgun from Mr. Simon and that she had the keys to the gun cabinet in the residence. It was later found that Mr. Simon had a second set of keys. It was subsequently learned that Ms. MacKay's daughter, Ms. Charlene Isadore, had gone to the house to speak with Mr. Simon and had attempted to take another rifle from the residence without success.

When Constable Bernard spoke by telephone with Mr. Simon, the latter indicated that he was fine, but Constable Bernard told him that because a complaint had been made, he (Constable Bernard) would have to see Mr. Simon to satisfy himself as to Mr. Simon's welfare.

Fearing that there may be an altercation if he attempted to deal with Mr. Simon alone, and as per RCMP policy, Constable Bernard called for backup. By approximately 9 p.m., Constable Jeremy Frenette, another RCMP member of the Baddeck Detachment, was called out to assist.

Prior to the arrival of Constable Frenette, Constable Bernard went to the Simon residence and spoke through an open ground floor window with Mr. Simon. Mr. Simon again said he was fine and would not commit suicide.

Constable Bernard formed the opinion that Mr. Simon was intoxicated, and saw a rifle lying on a bed in the room Mr. Simon was in at the time. Constable Bernard then called Staff Sergeant Archie Thompson, the then Non-Commissioned Officer (NCO) in charge of the Baddeck RCMP Detachment.

Staff Sergeant Thompson instructed Constable Bernard to leave the scene and drive to his (Staff Sergeant Thompson's) residence to pick him up. Constable Bernard complied. Concurrently, Constable Frenette was making his way to Wagmatcook in another police vehicle.

At approximately 9:30 p.m., Staff Sergeant Thompson, Constable Bernard and Constable Frenette met near the Red Barn, a business located a few kilometres east of Wagmatcook where a discussion ensued. Constable Bernard said he did not hear the conversation because he stayed in his police vehicle while Staff Sergeant Thompson spoke with Constable Frenette.

Staff Sergeant Thompson determined that they would drive to Katie Lane, block the roadway and attempt to evacuate any people in the surrounding houses and set up a perimeter around the Simon residence. It is unclear how much specific direction was provided to the constables by Staff Sergeant Thompson in terms of how he wanted them to carry out these instructions.

Constable Bernard felt there was no plan or direction provided, while Constable Frenette felt he received general direction to go and "see [...] what's goin' on." Staff Sergeant Thompson said he had a "quick chat of what we were facing" and about the potential for weapons at the scene. Staff Sergeant Thompson's stated intent in meeting at the Red Barn was to ensure that the three of them were aware of the circumstances giving rise to the call for assistance.

Staff Sergeant Thompson and constables Bernard and Frenette then drove to Wagmatcook to the intersection of the Trans-Canada Highway and Katie Lane where they set up the marked police vehicles to block access into the area. Constable Bernard began to canvass door to door to request people to leave the immediate area of the Simon residence, while Constable Frenette made his way to the area of the Simon residence to surveil the home.

A group of members of Mr. Simon's family as well as people from the community soon gathered at a nearby gas station located on the Trans-Canada Highway near Katie Lane.<sup>6</sup> A number of other on-duty RCMP members from neighbouring detachments were informed via police radio of the developing situation and began to converge on the Wagmatcook area as support for the Baddeck members. Aside from Constable Bernard's initial telephone conversation with Ms. Isadore and Ms. MacKay, it does not appear that at any time did the RCMP members approach Mr. Simon's family members to attempt to determine Mr. Simon's state of mind, his intentions, or his level of sobriety.

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<sup>6</sup> An aerial view of the area surrounding Mr. Simon's residence may be found at **Appendix F**.

Following the notification of immediate neighbours, Constable Bernard telephoned Mr. Simon and spoke with him in Mi'kmaq for a length of time. Mr. Simon told Constable Bernard that he was fine, but said that he would shoot himself if he saw police in the area.

Constable Frenette made his way to the area of the Simon residence alone. Notwithstanding Constable Frenette's initial concern that Mr. Simon might shoot him if he (Simon) knew Constable Frenette was outside the residence, Constable Frenette opted to move closer to the house to observe Mr. Simon's actions inside.

At 9:45 p.m., Constable Frenette informed Staff Sergeant Thompson by radio that he (Frenette) was behind Walter Isadore's house, next door to the Simon residence. As Constable Frenette crept closer to the Simon house, the volume of his voice could be heard over the police radio to become lower as the incident progressed, until he was finally speaking in a whisper. Constable Frenette was the only member deployed to observe the house at that time because Constable Bernard was attempting to make telephone contact with Mr. Simon. Other assisting members had not yet arrived on scene.

At 9:48 p.m., the police radio dispatcher asked Constable Frenette for his location. His response was indecipherable. At 9:56 p.m., Constable Frenette said in an almost normal voice, "I can hear him [Mr. Simon] talking inside. Is he talking to us?" Staff Sergeant Thompson replied, "Negative."

At 10 p.m., Staff Sergeant Thompson requested that the Emergency Response Team (ERT) be called out. The ERT deployment will be discussed below.

At 10:04 p.m., after Constable Bernard spoke with Mr. Simon by telephone, Staff Sergeant Thompson sent Constable Bernard toward the Simon residence to observe along with Constable Frenette in case Mr. Simon opted to leave with a firearm. The intent was to control the situation and establish a visual perimeter, but no specific direction was given to the constables with respect to keeping an appropriate distance between themselves and the Simon residence.

According to Constable Bernard's statement, when he arrived at the house he observed Constable Frenette kneeling at the side of the house with his pistol drawn. Given the circumstances, his proximity to the house, and the fact that he was alone, I do not believe that it was unreasonable for Constable Frenette to draw his service pistol.

Upon his arrival, Constable Frenette informed Constable Bernard to stay at the east side of the house while he went closer to the deck to observe. Staff Sergeant Thompson was not aware of this conversation because it took place

verbally between the two members, but he would have been aware of the radio traffic from Constable Frenette as discussed here.

At 10:12 p.m., Staff Sergeant Thompson asked if Constable Bernard was with Constable Frenette. Constable Frenette indicated that Constable Bernard was with him, but said he was near an open window and his radio volume was “way down.” Staff Sergeant Thompson acknowledged this and said to them, “Sit tight. ERT is on their way.” Constable Frenette appears to have acknowledged the transmission, but later stated that he had not heard it.

Constable Frenette also said in his statement to ICIT investigators that he had obtained permission via the police radio from Staff Sergeant Thompson to leave his assigned post to go closer to the Simon house to get a better view. No such transmission was recorded. As noted, however, there is no doubt that Staff Sergeant Thompson knew over time that Constable Frenette was not posted near his police vehicle, which was parked blocking one of the entrances to Katie Lane.

### ***Analysis***

There are a number of issues which arose at the outset of this incident. The first of these is Constable Bernard’s decision to attend the Simon residence without waiting for Constable Frenette, his backup, to arrive. While at the time of this incident the RCMP was in the process of formalizing and approving its national policy regarding backup, it had already issued a bulletin to its members directing that effective December 19, 2007, occurrences involving display of a weapon or a subject posing a threat to self or others requires a multiple member response. The bulletin, attached as **Appendix G**, further states: “The new policy does not preclude a member from taking action prior to the arrival of assistance based on his/her risk assessment and the Incident Management Intervention Model (IM/IM) – for example imminent risk of grievous bodily harm or death present during a domestic dispute.”

Based upon a thorough review of the information before me, it would appear that Constable Bernard attended the Simon residence without first conducting a proper risk assessment and without having the benefit of backup present. It is acknowledged that Constable Bernard had prior dealings with Mr. Simon and this may have contributed to his decision to approach the home of an intoxicated individual threatening harm to himself and with access to firearms.

Indeed, upon peering into the window of the room where Mr. Simon was located, Constable Bernard saw a rifle on the bed. In his statement, Constable Bernard states, “[...] holy geez there was a... Right there in front of me was a firearm so it was pointing towards the window and I looked at it [...] and I looked on the bed and I looked at him [...]” He quickly surmised that Mr. Simon was “not in the right

state of mind.” He noted a rifle on the bed and properly decided to seek further assistance and departed the scene.

Staff Sergeant Thompson, when contacted by Constable Bernard, directed the latter to leave the scene to pick him up at his home. There is no explanation of why Staff Sergeant Thompson made such a request, which resulted in Constable Bernard entirely removing himself from the area of a high risk situation. According to Staff Sergeant Thompson’s statement, Constable Bernard had informed him that “he had a strange feelin’ that [...] things weren’t right here [...].”

Once Staff Sergeant Thompson became engaged in the incident, it was his responsibility, as the senior member,<sup>7</sup> to devise an operational plan and control the scene. The information before the Commission indicates that the plan formulated by Staff Sergeant Thompson was extremely limited considering the circumstances. Communication among the members providing scene security was crucial, particularly when the members had turned down the volume on their radios. In such a circumstance, it became even more important that each member knew his own role and the roles of the other members. To achieve that end and to be able to adequately supervise the actions of the members involved, it would have been more reasonable for Staff Sergeant Thompson to devise a more thorough operational plan. That is, one which clearly articulated the respective roles of the members involved and who would be managing the situation. The plan should have been clearly communicated to each member at the scene, and there is no indication that this occurred.

Accordingly, I find that Staff Sergeant Thompson failed to ensure that an adequate operational plan was in place and communicated to the members at the scene. I am concerned that the lack of an adequate operational plan, or at least the lack of communication of such a plan to the members, may have contributed to unnecessary risks to police officer safety.

Finally, it is apparent from a review of the information that Staff Sergeant Thompson permitted constables Frenette and Bernard to position themselves and remain too close to the Simon residence. In so doing, Staff Sergeant Thompson failed to adequately assess the risks posed to police and public safety, contrary to the IM/IM. Staff Sergeant Thompson had properly requested that an Emergency Response Team respond (discussed below) to the situation of what had been reported as an intoxicated individual who had threatened suicide and had ready access to firearms. He had been informed by one of his constables that “things weren’t right.” Under the circumstances, the intent to control and observe the scene was prudent and appropriate. However, allowing the members to remain positioned in such close proximity to the residence

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<sup>7</sup> Staff Sergeant Thompson then had over 25 years of experience and Constable Bernard, 15 years. Constable Frenette then had only about two years of service.

placed them at an unacceptable risk. As will be discussed below, this was recognized by Corporal Mark MacPherson.

**FINDING: Constable Bernard placed himself at unnecessary risk by failing to wait for the backup that had been called out, prior to attending the Simon residence.**

**FINDING: Staff Sergeant Thompson failed to ensure that an adequate operational plan had been put in place and understood by the responding members prior to their deployment.**

**FINDING: Staff Sergeant Thompson permitted RCMP members to place Mr. Simon and themselves in unnecessary jeopardy by allowing them to position themselves and remain too close to the Simon residence.**

## **B. Entry into the Simon residence**

Constable Frenette had told Staff Sergeant Thompson by radio that he and Constable Bernard were together; however, at that time, they were actually on opposite sides of the house. While Constable Bernard took cover farther back from the house, Constable Frenette stepped onto the deck, a ground-level structure which covers most of the south side of the Simon house, to better observe. Constable Bernard observed the house from the side. Additionally, just prior to entering the Simon residence, Constable Frenette did not know exactly where Constable Bernard was located.

The audio tapes of the radio transmissions clearly indicate that prior to deciding to enter the house, Constable Frenette was speaking at barely above a whisper while close to the residence. At 10:26 p.m. he told the other members that Mr. Simon was sitting on the toilet with no weapons and asked, "Do you want me to go in?" Staff Sergeant Thompson appeared not to have heard Constable Frenette's transmission and some seconds later he asked Constable Frenette, "What are you seeing in there?"

Constable Frenette responded that Mr. Simon was sitting on the toilet with no weapons in sight. Constable Frenette then said that he saw an open window and said, "Now's the time." After some 35 seconds, Staff Sergeant Thompson's response was, "How big is this guy." In his statement to ICIT investigators, Staff Sergeant Thompson indicated that because he did not know Mr. Simon, he wanted to get an idea of his size. He also specified that he did not instruct Constable Frenette to enter the residence.

This exchange was noted by Corporal Mark MacPherson of the neighbouring RCMP detachment at Inverness, who had arrived on the scene to assist. While sitting in the police vehicle with Staff Sergeant Thompson, Corporal MacPherson remarked on three occasions over the course of the exchanges between Staff

Sergeant Thompson and Constable Frenette that Constable Frenette was too close to the house. He remarked that Staff Sergeant Thompson should order him to pull back because the proximity of Constable Frenette could lead to a situation in which someone could be shot.

Staff Sergeant Thompson knew or should have known that Constable Frenette was immediately outside the house and that Mr. Simon was inside, in possession of at least one firearm and potentially suicidal. Constable Frenette even whispered into the radio at one point that he was “[...] getting pretty close.”

The obvious question is whether it is reasonable to conclude that Staff Sergeant Thompson knew or should have known that Constable Frenette would unilaterally enter the Simon residence to confront Mr. Simon. The available information, i.e. the radio logs and statements of the involved members, indicates that Staff Sergeant Thompson did not know that Constable Frenette was planning to enter the residence without instructions to do so. Nonetheless, given Constable Frenette’s comments that Mr. Simon was currently indisposed and vulnerable to arrest, and given Constable Frenette’s lack of experience, it would have been prudent for Staff Sergeant Thompson to specifically order him to back away from the house and not to enter, or at the very least to enquire as to his whereabouts more specifically.

It must be recalled that the events unfolded quickly in a very fluid environment. Corporal MacPherson described in his statement to ICIT investigators that Staff Sergeant Thompson told Constable Frenette over the police radio that there was an open window around the back of the Simon house. The radio audio log confirms that in less than a minute after the exchanges described above, an unidentified RCMP member said to Constable Frenette that both doors were locked and a window at the back was open. In light of Corporal MacPherson’s statement, it is reasonable to conclude that the unidentified member was Staff Sergeant Thompson. In any event, shortly thereafter, Constable Frenette entered the house through the front window.

### ***Analysis***

As a rationale for entering the house, Constable Frenette indicated in his statement to the ICIT investigators that he had dealt with Mr. Simon on previous occasions. He said that Mr. Simon had the potential to be violent and that Mr. Simon would at times attempt to intimidate the police with his physical size, but would then calm down and cooperate. Constable Frenette said that as he was listening to Mr. Simon on the phone while observing from close outside the residence, he could hear Mr. Simon laughing about the police being outside, which increased Constable Frenette’s comfort level in approaching the house. Constable Frenette said he wanted to talk to Mr. Simon, believing that the situation could be handled peacefully by reasoning with him. Constable Frenette told the ICIT investigators that after reporting that Mr. Simon was indisposed, he



opted to unilaterally enter the house, believing there would be no better opportunity to resolve the matter.

This is particularly troubling given that Mr. Simon did not pose an imminent threat to anyone. While there is no question that this was a critical incident, there is little indication that Mr. Simon was about to kill or grievously injure either himself or anyone else. The situation did not call for immediate police entry into the home. Moreover, it was certainly not Constable Frenette's responsibility to confront Mr. Simon in order to resolve the situation. ERT had been called in to do so.

Also notable is the fact that Constable Frenette acted without seeking specific permission from or even informing Staff Sergeant Thompson or the other members present that he was about to enter the house. In taking these actions, Constable Frenette put every person involved—Mr. Simon, himself, the other police officers and civilians—in harm's way.

Since the other members present did not know what his intentions were, they could not know that Constable Frenette was entering the home. Constable Frenette acted unilaterally and went ahead without having any backup from the other members or any escape plan should the confrontation go awry (as it did). He knew that Mr. Simon was a very large man with access to firearms. He also knew that Mr. Simon was intoxicated and likely not thinking rationally.

Contrary to the principles of the IM/IM, Constable Frenette failed to adequately assess the risk inherent in his actions. In so doing, he failed to properly consider the unacceptable risks his decision to enter the home would pose to police and public safety. While police officers have broad discretion in terms of their decision making, I find that in this case, Constable Frenette's decision to enter Mr. Simon's home was neither reasonable nor justified based on the circumstances. Finally, notwithstanding Constable Frenette's statement that he believed he would be able to resolve the matter peacefully, I find that this rationale does not overcome the risk associated with his actions.

Moreover, up to the point at which Constable Frenette radioed that Mr. Simon was indisposed and on the toilet, and made statements such as, "Now's the time," I accept that Staff Sergeant Thompson could not reasonably have expected that Constable Frenette would unilaterally enter the house. I also recognize that this situation was evolving very quickly. Upon hearing that transmission, however, it is reasonable to expect that Staff Sergeant Thompson would have anticipated the actions of Constable Frenette and therefore should have taken steps to provide him with direction, or at the very least confirm his intentions when it became clear he had the potential to act unilaterally.

Finally, it is evident that the primary issues in this case were judgment related rather than functions of policy; however, in light of the critical role policy plays in

the shaping of police behaviour, I am pleased to note “H” Division’s recent initiative with respect to developing a policy for armed and barricaded individuals.

**FINDING: Staff Sergeant Thompson failed to order Constable Frenette to pull back from the residence when he knew or ought to have known that Constable Frenette was contemplating an entry to the house to apprehend Mr. Simon.**

**FINDING: Constable Frenette acted in an inappropriate manner by deciding to enter the Simon house with no clear instructions, notice to other members, backup, means of escape or operational plan.**

**RECOMMENDATION: That Constable Frenette undergo full remedial training in the IM/IM as well as the CAPRA model.**

**RECOMMENDATION: That Staff Sergeant Thompson be provided training in operational supervision of junior members and in critical incident planning and management.**

### **C. Grounds for entry**

As previously outlined, the RCMP’s Operations Manual provides members with guidance concerning arrest, including the authority to enter a dwelling house to effect an arrest. The policy correctly points out that during the normal course of events, prior judicial authorization is required in the form of a warrant to enter a residence for the purpose of arresting and individual.

The common law has long upheld the principle that “a person’s home is his/her castle,” to which the law ascribes the highest possible privacy interest.<sup>8</sup> For this reason, the courts have set up safeguards to ensure that when the police attend the home of an individual to effect an arrest, that individual’s privacy rights are protected. Like the public generally, the police have an implied licence to approach someone’s door and knock for the purposes of communicating with the occupant(s). This implied licence ends at the door of the residence.<sup>9</sup> An officer should never use this implied licence to open a door and step into a residence without permission, even for the limited purpose of communicating with the occupant.

There are basically three scenarios where the police are authorized to enter a dwelling. The most obvious case is where the police obtain informed consent from someone who has the authority to provide that consent, such as the homeowner. Secondly, the police may enter a dwelling if they have an entry warrant or a search warrant. Finally, in very limited exigent circumstances, a

<sup>8</sup> *R. v. Kokesch*, [1990] 3 S.C.R. 3.

<sup>9</sup> *R. v. Evans*, [1996] 1 S.C.R. 8.

police officer may enter a dwelling. Exigent circumstances exist in situations where, for example, there is a need to prevent imminent bodily harm or death, or the destruction of evidence. Such a situation may arise when the police are responding to a disconnected 9-1-1 call.<sup>10</sup> Exigent circumstances may also exist when a hot pursuit exists in response to the commission of an offence<sup>11</sup> or when the safety of police officers in the course of their duties is involved.<sup>12</sup> Additionally, a police officer may enter a dwelling to search and seize firearms when, for reasons of safety, it is impractical to obtain a warrant.<sup>13</sup>

On its face, the circumstances of the Simon shooting would tend to make one reflect on whether exigent circumstances were present: whether bodily harm or death to any person were imminent. At the time of entry, Mr. Simon was not carrying the rifle nor was there any evidence that he had pointed it at anyone throughout the incident. He was not threatening immediate harm to himself or to anyone else.

That situation, however, could have changed in an instant. Mr. Simon was aware of the presence of police officers outside his home and refused to cooperate with police. It was known that Mr. Simon was intoxicated and had threatened suicide if he saw police in the area of his home. As a result, I accept that the members at the scene chose to treat the events as being exigent in nature. The facts as presented did not lend themselves to a *laissez-faire* attitude by the police, and the members could not simply leave and come back another day to deal with Mr. Simon. After Constable Bernard spoke with Mr. Simon again by telephone and relayed the information to Staff Sergeant Thompson, Staff Sergeant Thompson rightly took the position that the incident had to be managed and that ERT should be called out.

The questions of whether legal grounds existed to enter the home versus whether or not the unilateral decision by Constable Frenette to enter was appropriate are different. The ICIT review of the situation (based on advice from Nova Scotia Justice) concluded that the likelihood of conviction of any criminal charge against Constable Frenette, or any other member present that night, was not sufficiently high and no charge was laid.<sup>14</sup>

It is important to note that the decision of whether or not to initiate criminal or civil proceedings against any of the persons involved in the shooting of Mr. Simon is

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<sup>10</sup> *R. v. Godoy*, [1991] 1 S.C.R. 311.

<sup>11</sup> *R. v. Feeney*, [1997] 2 S.C.R. 13.

<sup>12</sup> *R. v. Feeney*, [1997] 2 S.C.R. 13 at para. 52.

<sup>13</sup> Subsection 117.04(c) *Criminal Code*.

<sup>14</sup> In this matter, the Nova Scotia Crown counsel, on behalf of the Nova Scotia Minister of Justice, reviewed the evidence and determined that the likelihood of conviction of criminal charges against any of the police officers present at the Simon home that evening had not been met. As a result, the Crown counsel did not recommend laying charges against anyone with respect to the incident.

outside the scope of my mandate and accordingly will not be reviewed in this report.

#### **D. The shooting**

As he entered the Simon residence through the window with his service pistol drawn, Constable Frenette said he tripped on the curtains and fell or rolled over the couch into the living room. At that point, Mr. Simon heard the commotion and exited the bathroom.

According to Constable Frenette's statement, he identified himself by saying "Jeremy, RCMP." Mr. Simon then turned toward the back bedroom, the same room in which Constable Bernard said he had seen a rifle on the bed when he first approached the residence, and picked up the rifle. He turned toward Constable Frenette, who reportedly shouted, "John... No, John" at Mr. Simon. Constable Frenette ordered Mr. Simon to "*Get to the ground*". Mr. Simon did not comply.

At this point, Constable Frenette was committed to act. Given that Mr. Simon had entered the bedroom, picked up the rifle and turned back to the main living area, Constable Frenette had no opportunity to attempt to physically take the rifle from Mr. Simon or to exit the room safely.

Mr. Simon began to raise the rifle and point it at Constable Frenette, at which point Constable Frenette discharged his pistol and shot Mr. Simon for the first time. Mr. Simon continued to raise the rifle and Constable Frenette shot him again. When Mr. Simon still continued to raise the rifle, Constable Frenette shot him a third and final time. Mr. Simon then fell to his knees and onto his chest in the vicinity of the doorway to the back bedroom.

Constable Frenette fired the shots at approximately 10:27 p.m., which is the time that shouting can be heard on the police radio. In the ICIT Report this appears to be attributed to Constable Frenette shouting, "No, no, no [...]." In his statement, Constable Bernard said that to summon assistance he shouted, "Shots fired" into his microphone immediately after he heard the shots.

Witnesses outside said they heard the shots come in quick succession. One witness said in her first statement that the succession of shots was slow, and in a subsequent statement said that they came in rapid succession. I cannot rely entirely on the recollections of witnesses, potentially influenced by the stressful and emotional environment, with respect to the speed with which the shots were fired. However, all are agreed, supported by the forensic analysis, that three shots were fired and that all three struck Mr. Simon.

The autopsy report shows that one bullet struck Mr. Simon in the left hand between the thumb and forefinger, then lodged itself in his left forearm. Prior to striking Mr. Simon, the bullet struck the forestock of the rifle. Analysis indicates

that the trajectory of the bullet and the location of the damage to the rifle and to Mr. Simon's hand and arm are consistent with the rifle being held parallel or close to parallel with the floor. Further, the location of the damage is consistent with the rifle being pointed at Constable Frenette. Accordingly, there is no question that Mr. Simon raised the rifle and that it was pointed at Constable Frenette when the shots were fired.

The other two shots fired by Constable Frenette struck Mr. Simon in the chest. It cannot be determined which of the succession of shots struck Mr. Simon in the hand and arm versus in the chest.

At 10:28 p.m., within seconds of the shots being fired, Constable Frenette called over the police radio, "Everybody in now, all the members. Come on." Upon hearing the shots, Constable Bernard rushed to the front door of the house and, the door being locked, kicked it open. Concurrently, the other members who had been securing the scene<sup>15</sup> converged on the house. Constable Bernard observed Mr. Simon lying face down in the doorway to the back bedroom and Constable Frenette on top of him with his gun still drawn. He noted a rifle lying partially under Mr. Simon and a live rifle shell on the floor. Constable Bernard assisted Constable Frenette in placing handcuffs on Mr. Simon. Constable Frenette checked the rifle for ammunition and found that it was not loaded. He then put the empty rifle on the bed in the back bedroom while the members tended to Mr. Simon.

When he came into the room, Corporal MacPherson directed that the handcuffs be removed and, along with constables Bernard and Frenette, dragged Mr. Simon out into a more open area of the living room to begin providing first aid. At 10:29 p.m., Corporal MacPherson can be heard asking the Operational Communications Centre (OCC) to call Emergency Medical Services (EMS) to dispatch an ambulance. He began to perform first aid. At 10:30 p.m., Staff Sergeant Thompson reiterated the need for EMS.

### ***Analysis***

I have reviewed and accept the findings of the Use of Force Report prepared by the subject matter experts from the Halifax Regional Police (HRP) and RCMP. A synopsis of the report, which was provided to Superintendent Burns of the ICIT on July 27, 2009 and to RCMP CROPS very shortly thereafter, may be found at **Appendix H** to this report.

As previously discussed, section 25 of the *Criminal Code*, as supported by RCMP policy, authorizes a police officer to use lethal force in situations where the member objectively and reasonably believes that such force is necessary for his own protection or for that of another person. In light of the fact that Mr. Simon was pointing a rifle at Constable Frenette, it is without question that the member

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<sup>15</sup> S/Sgt. Thompson, Cpl. MacPherson and Cst. C. Bezaire.

did have a reasonably held belief that his life was in jeopardy and that the use of force was reasonable.

**FINDING: Constable Frenette had sufficient grounds to believe his life was in jeopardy and that the decision to resort to the use of lethal force by discharging his service pistol at Mr. Simon was appropriate in the circumstances.**

### **E. Comments regarding the deployment of the Emergency Response Team (ERT)**

At 10 p.m., Staff Sergeant Thompson contacted the OCC and requested that the ERT, including a negotiator, be called. Within a short period of time, Staff Sergeant Thompson was contacted on his cell phone by Sergeant Bruce MacDonald, the ERT commander. The two discussed the situation and Sergeant MacDonald agreed that the ERT should be deployed.

Sergeant MacDonald then contacted the “H” Division Support Services Officer, Superintendent David Roper (since retired), who agreed with the call-out and approved it, as required by RCMP policy. Sergeant MacDonald requested a police negotiator as well as a police service dog in the event those services were needed. Prior to Sergeant MacDonald being able to muster the ERT and depart Halifax for Wagmatcook, Mr. Simon had been shot. Consequently, the ERT call-out was cancelled.

### ***Analysis***

I note that travel time from Halifax to Wagmatcook for the RCMP ERT, as estimated by Sergeant MacDonald, is approximately three and a half to four hours. Another ERT is maintained by the Cape Breton Regional Police (CBRP) in Sydney, NS, approximately one hour away. Mr. Simon had been shot well before even the closer ERT could assemble and arrive at Wagmatcook, but it should be noted that the CBRP ERT was never contacted.

An arrangement was entered between the RCMP and the Cape Breton Regional Police for ERT coverage during the 2010 Olympics because RCMP ERT members were deployed elsewhere. This arrangement was not continued post-Olympics. The RCMP may wish to consider entering into a similar arrangement in order to provide a more timely ERT response to all areas of the province. While muster and travel time for the ERT would have no negative impact in certain circumstances, in some cases this type of delay could be detrimental both to public and police officer safety. The RCMP is recognized for working cooperatively and in an integrated fashion with other police forces in Canada and around the world. Hence, while there may be resource implications involved, this

type of arrangement could be workable and beneficial to the RCMP and those whom it serves in the province of Nova Scotia.

**RECOMMENDATION: The RCMP may wish to consider entering into a bilateral agreement with non-RCMP ERTs to ensure adequate and timely coverage in the event of an incident requiring the ERT.**

**SECOND ISSUE: Whether the RCMP members involved in the investigation of this incident conducted an investigation that was adequate, and free of actual or perceived conflict of interest, whether they responded in a timely fashion, and whether their conduct adhered to the standards set out in section 37 of the *RCMP Act*.**

#### **A. Attendance of RCMP Major Crime Unit**

Subsequent to the shooting and through EMS, a call was made to Ms. Elizabeth GooGoo, a medical first responder in Wagmatcook. EMS had initiated a process whereby a local resident, trained in first aid, is summoned to the scene of a serious medical emergency to provide first aid pending the arrival of the ambulance which could be some distance away. Ms. GooGoo arrived at the scene shortly before the ambulance and provided materials from her first aid kit to the RCMP members. In this case, first aid consisted of attempting to stem the bleeding from the wounds to Mr. Simon's chest.

The ambulance arrived at 10:43 p.m., at which time Ms. GooGoo assisted the ambulance attendants when they took over from Corporal MacPherson, who prior to the arrival of EMS and with the other members present, had been administering first aid.

Mr. Simon was then transferred by ambulance to the local hospital in Baddeck, approximately 12 kilometres away, where he passed away at 12:40 a.m.

As first aid was being provided, Staff Sergeant Thompson coordinated with "H" Division the cancellation of the ERT, the call-out of the RCMP North East Nova Major Crime Unit (MCU), and the initiation of the ICIT. He also directed Corporal MacPherson to take control of the shooting scene, including the protection of the scene, arranging for the preservation of evidence, removing the involved members as soon as practicable, and creating a scene management log. These matters will be discussed in more detail below.

Corporal MacPherson sought to remove Constable Frenette from the immediate area of Mr. Simon, and therefore asked him to tape off the area. Corporal MacPherson also started a scene log to track the entrance or exit of anyone who came into the scene.

The members of the MCU arrived on scene in the early hours of December 3<sup>rd</sup> to take over the investigation. Although the MCU arrived and began to take investigative steps, the process of calling out the ICIT had also been commenced. MCU members in the North East Nova area (which includes Cape Breton) could be on scene, and in fact were, several hours before the ICIT members who were dispatched from Halifax.

The MCU investigation, although brief, was conducted using Major Case Management (MCM) techniques. Major Case Management<sup>16</sup> is “[...] a methodology for managing major cases that provides accountability, clear goals and objectives, planning, allocation of resources and control over the direction, speed and flow of the investigation.” Major case management techniques have been adopted as a “best practice” by virtually all police forces in Canada and in many other parts of the world.<sup>17</sup>

The scene was already being protected by uniformed members from other detachments, and MCU members began to take statements from the involved members rather than to defer to ICIT investigators from an outside agency. The Commission was not able to ask the MCU team leader for his rationale in taking these statements because he declined to be interviewed by the Commission.<sup>18</sup> This notwithstanding, I have no evidence to suggest that bias or subjectivity played a role in how the MCU investigation was carried out. My review of the statements taken suggests they were carried out professionally based on the information then available.

**FINDING: There is no evidence of bias or subjectivity in the conduct of the RCMP MCU investigation.**

## **B. Family access to Mr. Simon’s body**

An issue was raised with the Commission concerning the inability of the family to see Mr. Simon prior to his death and view the body after Mr. Simon expired. Mi’kmaq custom is for the family to pray over the person about to pass away and to see the body before burial.

According to Staff Sergeant Thompson’s statement, he arrived at the hospital after midnight to find one or two RCMP members present along with

<sup>16</sup> CPC Report *Police Investigating Police*, April 2010 <http://www.cpc-cpp.gc.ca/prt/rep/rev/chair-pre/pipR/appk-eng.aspx>

<sup>17</sup> For additional background information on major case management, please see the report cited *ibid.*

<sup>18</sup> I note that in September 2010, partly in response to recommendations made by the Commission in previous decisions, the RCMP amended its Operational Manual to include a policy on the Responsibility to Report when members are involved in incidents involving serious injury or death. The policy attempts to reconcile the legal rights of all Canadians (including police officers) with the need for police officers to account to their superiors with respect to the actions they have taken.



approximately 30 to 40 members of the community. He also noted that the community members were praying with a priest, and he was of the view that the situation was under control. Although he did not specifically state it, his concern appears to have been to retain control of Mr. Simon at the hospital prior and subsequent to his death in order that any evidence which may have been obtainable from his person would not be tainted.

At 1:28 a.m., Constable Catherine Bezaire contacted Corporal Firth of the MCU to ask whether the family could be allowed to say prayers over the body of Mr. Simon. At 2 a.m., she received a call from Sergeant Ken Taker of the MCU stating that direct access to the body could not be allowed (to protect evidence), but that the family and the priest could gather to say prayers in the hallway outside the room where Mr. Simon's body lay. This was done at 2 a.m. The door to the room containing Mr. Simon's remains was open.

At 8:05 a.m., family members were allowed to see Mr. Simon's remains, which were contained in a body bag, but only allowed to see his face and not to touch it. The family reported to the Commission that the zipper of the bag was pulled up tight to his chin, appearing to pinch his flesh. In addition, there was a strong odour of feces. This was an unfortunate situation which will be marked indelibly on those persons who saw it. Consequently, the Commission would encourage the RCMP to do its utmost in giving effect to familial requests in such circumstances, while at the same time ensuring that vital evidence is not contaminated in any way.

Superintendent Burns said that his team played no part in the showing. Sergeant Taker gave permission for this viewing but did not consent to an interview with the Commission; therefore, this situation could not be put to him. I surmise, however, that this state of events was necessary because the autopsy had not yet been conducted, and making the body more presentable could have disturbed or affected evidence.

Mr. Simon's body was removed from Baddeck at 8:40 a.m. on December 3, 2008 and taken to Halifax, where an autopsy was performed that same day.

<p><b>FINDING: It was reasonable in the circumstances for the RCMP to restrict access to Mr. Simon's body.</b></p>
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It is incumbent upon me to make a further comment with respect to the overall handling of the incident. The audio tapes of the radio transmissions and telephone calls made by the dispatcher that night demonstrate clearly to me her professionalism and dedication to duty. The OCC dispatcher is the person who provides the link between the operational units "on the ground" and those not present at the scene. On this night, the OCC dispatcher did an outstanding job of making sure that those who needed to be informed were informed. She did

not pass on extraneous information or speculate, but rather she provided factual and succinct information both to those not at the scene and to those who were.

In my view, she is to be commended for her efforts.

### **C. Integrated Critical Incident Team (ICIT)**

#### *MOA Between RCMP “H” Division and Halifax Regional Police*

At the time of this incident, the Province of Nova Scotia did not have in place a separate, stand-alone agency to investigate serious incidents involving police officers in that province. Accordingly, in 2007 a memorandum of agreement (MOA) was signed between the RCMP “H” Division and the Halifax Regional Police (HRP). The intent of the MOA is to ensure that in a critical incident involving a police officer, a police agency does not investigate its own member and to ensure that the lead for such investigation is managed by an outside police agency. The MOA continues to be in force; however, as of mid-2010 it was being reviewed for possible amendments. I note that on October 28, 2010, the Nova Scotia Minister of Justice proposed provincial legislation to create an independent and civilian-led Serious Incident Response Team.<sup>19</sup>

The preamble to the current MOA sets out the parties’ mutual agreement as follows:

WHEREAS HRP and the RCMP agree it is important to maintain public confidence in the investigation of incidents involving police action causing death or bodily harm;

AND WHEREAS an open, transparent and thorough investigation is paramount to maintaining public confidence;

AND WHEREAS a[n] integrated investigation with an independent police agency only adds further credibility to the unbiased nature of such an investigation;

AND WHEREAS an open, transparent and thorough investigation to the fullest extent possible is in the best interest of the Officers involved.

The MOA established a protocol for each agency through which the lead for investigating an incident involving one of its members would fall to the other signing party known, for the purposes of that investigation, as the “Host Agency.” The protocol does not require each signatory to conduct *in toto* the investigative function, but does require each to take the lead on critical incidents involving the other.

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<sup>19</sup> Press releases, Government of Nova Scotia. See <http://gov.ns.ca/news/details.asp?id=20101028004>.

A critical incident is defined as “[...] the death, imminent death, or bodily harm allegedly caused to an individual as a result of a shooting or other action on the part of a police officer.” An independent agency is defined as “[...] the Agency without officers involved in the Critical Incident.”

The role of the ICIT is to conduct a thorough and unbiased investigation using Major Case Management techniques, and make a determination as to whether or not criminal charges are warranted in any particular matter. In addition, the Officer in Charge of the ICIT is required to make any recommendations he or she sees as appropriate with respect to policy, training, operational issues, etc.

Further, the Officer in Charge of the ICIT is required to identify to the other agency any disciplinary or performance issues which come to his or her attention “arising from the facts of the investigation.”

The full MOA as it existed at the time of the shooting is appended at **Appendix I**. The Commission understands that the MOA is under review and will be amended. In light of the pending creation of an independent investigative body in Nova Scotia, however, it may be the case that this MOA will no longer be relevant.

#### **D. ICIT investigation and report**

Concurrent with the arrival of the MCU members to take control of the investigation, the MOA between “H” Division and the Halifax Regional Police (HRP) was invoked by “H” Division. Superintendent Michael Burns (now retired) of the HRP was designated as the ICIT Officer in Charge. He had been the ICIT Officer in Charge with respect to two previous ICIT call-outs. Superintendent Burns was contacted at home shortly after midnight on December 3<sup>rd</sup> and subsequently spoke with Superintendent David Roper at “H” Division for his initial briefing. Shortly after 1 a.m. on that day, HRP was notified and a call-out was begun to organize the ICIT and begin making arrangements to travel to Wagmatcook.

In an interview with the Commission, Superintendent Burns commented on the fact that the ICIT involved both HRP and RCMP members. He stated that although HRP could have provided sufficient resources to conduct the entire investigation into the Simon shooting, to do so would not have been appropriate given that it would have depleted HRP resources to the point that in the event a serious incident occurred in Halifax, HRP would have had insufficient resources to respond. In his view, and as contemplated by the MOA, integrating HRP and RCMP members was the appropriate process.

At 6 a.m., HRP members assembled in Halifax for a briefing from Superintendent Burns, then travelled to the Baddeck RCMP Detachment. By 11 a.m., ICIT investigators arrived in Baddeck. Superintendent Burns assigned

roles and the Major Case Management (MCM) structure for the investigation was formed. ICIT investigators began to take over control of the investigation from MCU members. Tasks were assigned to investigators as per the MCM protocol.

RCMP members used the RCMP electronic reporting process while HRP members used their own, with the primary file being the HRP file. The two electronic systems, while identical, are not compatible. Any material which came to the ICIT (audio statements, written statements, reports, etc.) was provided to each of the agencies for input into their respective reporting processes. The RCMP provided forensic identification services and maintained the physical exhibits seized from the scene of the shooting.

Superintendent Burns said he did not at any time during the investigation see anything that would have caused him to be concerned about the RCMP displaying bias or attempting to influence the investigation. He said that none of his HRP members ever raised any concerns with him in that regard. Similarly, he said that he received no interference or undue questioning from HRP management. On several occasions prior to delivery of the report, RCMP management was briefed and he was asked when the final report was expected, but he did not perceive any attempt to influence or interfere with the investigation by "H" Division.

He said that part of the reason he was pleased to have RCMP members of the ICIT taking statements from other RCMP members was that his goal was to obtain as much information as possible. He was concerned that RCMP members and potentially members of the Wagmatcook community might feel less comfortable if police officers from Halifax took the statements. He was further concerned that Halifax officers would be perceived as being from the "big city" and cause interviewees not to be forthcoming with their information.

The investigation was virtually completed in March 2009. Superintendent Burns said that from then until the final report was completed he was awaiting various testing results and a final reply from the Public Prosecution Service with respect to the legal issues involved. That reply arrived on October 29, 2009. He said that in the meantime, he had given the RCMP the documentation in the possession of the ICIT, and that all of the file data was available to the RCMP in the RCMP electronic data base. However, he did not share advance drafts of the ICIT investigative report with the RCMP.

Notably, Superintendent Burns said that no post-incident meeting was held to identify lessons learned or deficiencies. These meetings can be extremely beneficial in identifying lessons learned for the handling of future similar events. The RCMP should have followed up and scheduled such a meeting. It was to the RCMP's benefit to do so.

In my opinion, the ultimate outcome of the ICIT Report was not determined prior to the conclusion of the investigation, nor did I detect any bias or preference in the way the ICIT investigators carried out their functions. The investigation was conducted thoroughly and professionally. A copy of the ICIT Report is appended at **Appendix J**.

Furthermore, there is no evidence to suggest that any member of the RCMP had improper input into the decisions regarding criminal charges against Constable Frenette. Throughout the investigation carried out by this Commission, those interviewed adamantly denied having any input or discussion pertaining to the criminal charges. The sole exception to this statement, of course, was Superintendent Burns, who as the head of the ICIT had ongoing discussions with the Crown. Superintendent Burns, upon advice from the Nova Scotia Department of Justice, determined that criminal charges would not be initiated.

**FINDING: The RCMP members involved in the investigation of this incident acted appropriately, professionally, without bias and in accordance with section 37 of the *RCMP Act*.**

**FINDING: In accordance with good police management practices, the RCMP should have scheduled a post-critical incident meeting to identify lessons learned.**

**RECOMMENDATION: That following any critical incident in which another agency investigates the actions of a member of the RCMP, a post-incident debriefing take place involving both the outside agency and the RCMP to identify lessons learned or deficiencies.**

## **E. Recommendations of the ICIT Report**

The ICIT Report set out five comprehensive findings and recommendations arising from the RCMP response to and handling of this incident, which have been reproduced here for ease of reference. Immediately following each is my analysis thereof, as well as any associated findings and/or recommendations. I would note that the ICIT Report appears to me to be focussed primarily on the actions of Constable Frenette. It does not fully assess the conduct of either Staff Sergeant Thompson or Constable Bernard during the incident.

1. It is the opinion of the Review Team that Cst. FRENETTE was not clear on his role and responsibilities which was a precipitating factor in the outcome of this incident. Presently the RCMP Operational Manual only contains a definition of a "barricaded person" under the Immediate Action Rapid Deployment (IARD) policy. The RCMP Operational Manual does not contain clearly defined policy with respect to the detailed operational procedures required in a critical incident. The Review Team recommends a managerial review of the RCMP policy and or guidelines related to

I agree that Constable Frenette was not clear on his role and responsibilities, but I do not agree that this lack of clarity is *per se* a precipitating factor. To my mind, Constable Frenette's apparent belief that he could peacefully resolve the situation alone, coupled with his unilateral action to enter the house were the primary precipitating factors. Although I am of the view that the primary issues in this case were a result of the failure to exercise sound judgment rather than policy related, I agree that the RCMP should undertake a review of its policy with respect to barricaded persons.

**RECOMMENDATION: That the RCMP undertake a review of its policy with respect to barricaded persons.**

2. It is the opinion of the Review Team that initial responding officers and particularly Cst FRENETTE, were not given concise directions and/or a plan on the procedures to successfully resolve a critical incident. The Review Team recommends that all District Commanders in "H" Division receive the Incident Commanders Course to ensure proper procedures are followed. In the absence of the attendance of a District Commander to a critical incident, the Review Team recommends a guide/checklist be developed and installed in all the police vehicles' mobile workstations. This checklist will ensure all operational procedures for a critical incident are followed and completed.

In my view, this recommendation is reasonable and can only serve to help prevent the recurrence of such tragedies.

**RECOMMENDATION: That a guide/checklist be developed and installed in all the police vehicles' mobile workstations to ensure that all operational procedures for a critical incident are followed and completed.**

3. It is the recommendation of the Review Team that a review of the training curriculum provided to members of the RCMP on the response process to critical incidents such as barricaded persons be conducted. This training review should address Containment Principles for responding officers and include the general rules and guidelines for containment and the role and responsibilities of containment officers as well as instruction in the identification and management of Emotionally Disturbed Persons.

As with the previous recommendation, I find this recommendation to be reasonable and integral to the prevention of incidents such as this one.

**RECOMMENDATION: That a review of the RCMP training curriculum regarding the response process to critical incidents such as barricaded persons be conducted, ensuring that issues of containment and the management of emotionally disturbed persons are adequately addressed.**

4. That Cst FRENETTE attend a refresher session on the RCMP Incident Management Intervention Model, including a session on risk assessment. It is further recommended that Cst FRENETTE attend a recertification of his Immediate Action Rapid Deployment users course.

This recommendation does not adequately address the lack of judgment and improper conduct demonstrated by Constable Frenette. Rather than a refresher on the IM/IM, I reiterate my earlier recommendations that Constable Frenette undergo full remedial training in the IM/IM as well as the CAPRA model, and that Staff Sergeant Thompson undergo training in operational supervision of junior members and in operational planning.

5. It is the recommendation of the Review Team that the "Use of Force" Subject matter experts" who are assigned to assist the Integrated Critical Investigative Team investigations receive advanced training in the bio-mechanics of lethal force encounters. This training should encompass the crucial dynamics that impact the understanding of "use of force" encounters. I would recommend that this should be a requirement for members who are tasked to review these incidents from a "use of force" perspective and provide opinions on the involved officers actions.

This recommendation is reasonable and will serve to enhance the analysis conducted by use of force experts.

**RECOMMENDATION: That use of force experts receive training in the biomechanics of lethal force encounters.**

Following the release of the ICIT Report and the Independent Officer Review, "H" Division assessed the findings and recommendations of each and took proactive steps to address the issues identified. A synopsis of the issues identified and the actions taken may be found at **Appendix K**.

## **F. RCMP disciplinary issues**

At the outset, I would emphasize that the Commission's mandate with respect to discipline is limited to assessing the reasonableness of the conduct of the members. The Commission does not impose disciplinary sanctions on any member or assess the reasonableness of disciplinary sanctions levied, as this is at its core an employer/employee matter.

That having been said, considering the profound public concerns raised in the context of this matter about the application of the RCMP disciplinary process, the actions/decisions taken by members of the RCMP in the discharge of their duties in assessing conduct in light of the RCMP's Code of Conduct following the shooting of Mr. Simon are worthy of examination in this report.

The disciplinary process set out in Part IV of the *RCMP Act* applies to regular (those with peace officer status) and civilian members of the RCMP. The RCMP disciplinary process and the time restrictions on its initiation have been described by the RCMP External Review Committee<sup>20</sup> on its Web site,<sup>21</sup> and may be found at **Appendix L**. Of note is the one-year limitation period for initiating disciplinary proceedings. In this instance, because the identities of the members involved as well as the facts and circumstances of the incident were known at the time, any disciplinary proceedings relating to the shooting of Mr. Simon would have had to be initiated prior to December 2, 2009.

While the *RCMP Act* requires the officer or member in command to investigate or cause an investigation to be undertaken upon the belief that a violation of the RCMP's Code of Conduct has occurred, as will be discussed below it was open to a number of individual members to report their investigational findings to the appropriate line officer to ensure that the conduct of the members was properly considered in light of the Code of Conduct.

#### *The Integrated Critical Incident Team (ICIT)*

The MOA governing the ICIT requires the Officer in Charge of the ICIT investigation to refer to the Commanding Officer of "H" Division "any matters relating to the RCMP Act [...] discipline or related issues arising from the facts of the investigation [...]. No such referral was made.

The Officer in Charge of the ICIT, Superintendent Burns, stated that he had concerns about the performance of individuals involved in the shooting, but that he was not looking at the investigation through the lens of discipline. He felt that given the access the RCMP had to the file, if there were disciplinary concerns a complaint would be made and the disciplinary matter would have been stayed until the criminal investigation was completed. Superintendent Burns said he did not want to alert the RCMP to the issues he did identify in the report, such as training, scene management, and effective command and control, too early because he did not want to be seen to be prematurely reaching a conclusion on anything before the entire investigation was completed, including receipt of advice from the Crown with respect to criminal charges.

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<sup>20</sup> The RCMP External Review Committee (ERC) is an independent and arm's length labour relations tribunal established by Part II of the *Royal Canadian Mounted Police Act*.

<sup>21</sup> ERC Web site – <http://www.erc-cee.gc.ca/reports-rapports/other-autres/president-eng.aspx>



Superintendent Burns assumed that the Commanding Officer of “H” Division would be briefed internally on the contents of the file as it was being compiled, for informational purposes. It does not appear that “H” Division management asked Superintendent Burns whether the ICIT investigation disclosed any potential disciplinary breaches even though a number of meetings and briefings took place prior to the release of the ICIT report on December 9, 2009, and within the one-year time limit.

#### *“H” Division Criminal Operations (CROPS)*

Superintendent Burns also assumed that someone in the “H” Division CROPS Unit would be reviewing the file for the RCMP. The Commission was informed that the Use of Force Report was provided to CROPS by the end of June 2009. When interviewed by the Commission, members of the CROPS Unit reported to remain aware of file investigative details, but rather monitored in general terms. The shooting was being investigated as a Baddeck Detachment file. Regardless, Chief Superintendent Blair McKnight, the “H” Division Criminal Operations Officer, told the Commission that disciplinary offences had been considered throughout the one-year period but said that no Code of Conduct investigation was launched because the grounds were not considered to be sufficient to initiate such an investigation.

Notwithstanding the foregoing, the Commission was made aware that a Code of Conduct investigation was recommended by the CROPS Unit early in 2009, within weeks of the shooting. The recommendation to begin a Code of Conduct investigation to run parallel to the criminal investigation was made to the Support Services and CROPS officers. However, no documentation was sent to either Staff Sergeant Thompson as the Detachment Commander or to the District Policing Officer, at the time Superintendent Ted Upshaw (now retired), recommending that one or both of them consider a Code of Conduct investigation.

#### *The District Policing Officer*

Pursuant to the *RCMP Act*, the member who has the responsibility to consider initiating a Code of Conduct investigation in relation to his or her subordinate is the Detachment Commander.<sup>22</sup> In this case, given that Staff Sergeant Thompson likely would have been in a conflict of interest given his role in the Simon shooting, the decision to initiate a Code of Conduct investigation would proceed through the chain of command and therefore come within the purview of the District Policing Officer, Superintendent Upshaw.

Superintendent Upshaw was contacted the night of the shooting and knew the identities of the members involved. He knew Mr. Simon had been shot by Constable Frenette, but he may not have been aware of the specifics of the

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<sup>22</sup> *Royal Canadian Mounted Police Act*, s. 40(1)

potential contravention(s) of the RCMP's Code of Conduct. Within a few days, however, he knew (at least generally) of the nature of the entry to the Simon house.

Superintendent Upshaw told the Commission that he did not feel he had enough information to initiate a Code of Conduct investigation against Constable Frenette and therefore he did not do so. Superintendent Upshaw told the Commission that he did not receive many formal briefings and did not recall having a conversation with anyone about launching a Code of Conduct investigation. Equally, he does not recall being asked about it by senior management of "H" Division, and did not ask "H" Division for any analysis of the Code of Conduct or performance issues to assist him in his decision making process. He said that much of the discussion with respect to the investigation was between "H" Division and ICIT and did not involve him.

Despite the foregoing, Superintendent Upshaw said the Code of Conduct was not a priority in that his focus was on the criminal aspects of the investigation. He also noted that in his mind he believed that the issues in this matter related more to performance than conduct, although he never considered proceedings under Part V of the *RCMP Act* (performance) against any of the members involved.

I note that in a briefing note to the Commissioner dated March 18, 2010 prepared by Staff Sergeant Hearn and approved by both Chief Superintendent McKnight and then Assistant Commissioner Steve Graham, at the time the Commanding Officer (CO) of "H" Division, the comment was made that Superintendent Upshaw informed the CO early in 2009 that "[...] as a result of his assessment of this incident and in consultation with the members it was determined there were insufficient grounds to initiate a Code of Conduct investigation at that time." Superintendent Upshaw has no recollection or notes of any such conversation, nor has the Commission been provided with the source of this comment. In any event, this briefing note was prepared outside of the limitation period to initiate disciplinary measures.

The briefing note also noted that on November 11, 2009, Staff Sergeant Steve Scott (then in charge of Internal Services) met with Staff Sergeant Thompson. It was determined at that time that there were insufficient grounds to initiate a Code of Conduct investigation into the Simon shooting.

Superintendent Upshaw retired in August 2009. His replacement, Superintendent Kieran MacQuarrie, reviewed the Simon matter. Superintendent MacQuarrie ordered that an internal investigation should be commenced against all three members on January 29, 2010. After discussing the matter with the RCMP's Professional Standards Unit at the national headquarters, however, he came to the conclusion that because senior management of "H" Division had known the identities of the members involved

and the nature of the actions they took within days of the shooting, he was time-barred from proceeding with disciplinary measures. As a result, he determined that the appropriate course of action was to not proceed with the Code of Conduct investigation and cancelled the investigation on February 12, 2010. Consequently, none of the RCMP members involved was the subject of a Code of Conduct investigation into their actions on the night of the shooting.

#### *“H” Division Internal Services*

The documentation reviewed by the Commission demonstrates that Internal Services of “H” Division was not directly involved in the matter until close to or after the release of the ICIT report. The matter was not referred to “H” Division Internal Services until Superintendent MacQuarrie raised the question of a Code of Conduct investigation. A memo analyzing the available information was provided by Staff Sergeant Scott, in charge of Internal Services, to the CROPS officer on January 20, 2010. In it, he recommended that an internal investigation be undertaken with respect to the actions of Staff Sergeant Thompson, Constable Bernard and Constable Frenette. Staff Sergeant Scott had recommended the converse on December 16, 2009, but altered his opinion after reading the Use of Force Report. Staff Sergeant Scott believed that although a year had elapsed since the shooting, the nature of the members’ conduct was unknown until the ICIT report was completed.

#### *Independent Officer Review*

In accordance with the RCMP’s member-involved shooting policy and for MCM quality control purposes, Superintendent A. Hale, the CROPS officer for the neighbouring “L” Division (Prince Edward Island), was asked to conduct an Independent Officer Review of the Simon shooting in March 2009. A preparatory meeting, including Superintendent Hale, was held on April 1, 2009, at which time Superintendent Burns offered to provide background information. Superintendent Burns did provide some material to Superintendent Hale in July 2009, but he opted to postpone his review pending completion of the ICIT report to ensure that he had all of the relevant materials. Subsequently, the Independent Officer Review was halted until Superintendent Hale was tasked with it again on December 17, 2009. Superintendent Hale completed his review and the report was provided to the Commanding Officer of “H” Division on February 26, 2010.

Superintendent Hale opted to postpone his review until the completion of the ICIT report. Superintendent Hale’s review contains a number of criticisms of the manner in which members conducted themselves on the night of the shooting. However, because Superintendent Hale did not commence his review until after the one-year limitation period for the initiation of disciplinary proceedings had

expired, none of this information made its way to “H” Division prior to the expiration of that limitation period.<sup>23</sup>

### ***Analysis***

As previously noted, it is not within the Commission’s remit to impose discipline on members of the RCMP. That is an internal RCMP matter. Moreover, the issue that I must consider is not whether the correct decision was made in not initiating Code of Conduct proceedings. Rather, I must determine whether the question was adequately considered and decided on, and accordingly, whether the decision not to initiate Code of Conduct proceedings was reasonable in the circumstances. It is at its core, therefore, a matter of assessing member conduct.

The main difficulty in assessing the reasonableness of the decision not to initiate disciplinary proceedings is that the Commission was not provided with any analysis of the events from the point of view of launching such proceedings and, therefore, no evidence that the matter was properly considered within the one-year limitation period.

The Senior Deputy Commissioner of the RCMP recently issued a new directive (attached as **Appendix N**) to all commanding officers regarding the requirement to inform headquarters of all serious incidents from a potential Part IV perspective. While this directive is a positive development in that it clearly addresses the requirement of divisions to notify the Professional Integrity Officer of all Code of Conduct investigations, and to articulate the decision on whether to proceed or not with a Code of Conduct investigation, it does not appear to address the initial process issues with Part IV decision making at the divisional level.

As a result, I recommend that in every serious or high profile incident involving a member of the RCMP, the division’s Internal Services (or equivalent unit) should also be advised. Internal Services should then set a reasonable diary date, at which time Internal Services would contact the operational commander involved to confirm whether or not grounds exist to undertake a Code of Conduct investigation. While the decision to undertake a Code of Conduct investigation rests with the officer or member in command of the subject member, the consultative process should be documented and an analysis prepared to demonstrate that the question had been considered and to ensure that the rationale for the decision to proceed or not to proceed is preserved. This would assist in ensuring transparency and accountability of the process as line officers discharge their responsibilities.

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<sup>23</sup> More detailed information with respect to the information available prior to the expiry of the one-year limitation period may be found in **Appendix M**.

Finally, although I recognize that informal conversations do take place, when information imparted during such a discussion is to be used and relied upon in a document such as a briefing note to the Commissioner, it is important that steps be taken to document and formalize the information prior to reporting it.<sup>24</sup> It is the lack of proper documentation in this case which has made it difficult for the Commission to assess the conduct of RCMP managers discharging their duties in this regard.

**RECOMMENDATION: That the RCMP consider adopting into RCMP policy a formalized process involving division Internal Services to ensure timely notifications and to ensure the proper documentation of decisions during the consultative process of Part IV in order to preserve the decision-making rationale involved.**

### **G. Training**

It is evident that the primary failures on the night of the shooting of Mr. Simon were not directly related to deficiencies in training. Rather, I see the primary RCMP issues with respect to the death of Mr. Simon to be a failure to apply sound judgment by a junior member and the failure to provide sufficient direction, planning and supervision by the staff sergeant in charge. Nonetheless, in my view, a discussion of the state of RCMP training as it existed on the night in question, as well as steps taken by the RCMP subsequent to the shooting of Mr. Simon, is useful.

The Commission was informed that “H” Division receives a regular report on members who are delinquent in training with respect to a variety of necessary courses (such as firearms, baton and first aid). In the event of a delinquency, the CROPS Unit advises the relevant detachment commander to remind them to have members under their control update their training as necessary. Training for the involved members, which included firearms training and training based on the IM/IM and the CAPRA problem-solving method, was up to date at the time of the shooting.

As noted above, the ICIT report called for further training for all of the involved members.<sup>25</sup> Subsequent to the shooting, Staff Sergeant Thompson passed the Incident Commander’s course which, by all accounts, is a challenging course. Constable Bernard has been recommended for the Police Supervisor’s course and is scheduled to take it in February 2011. Constable Frenette remains off duty and therefore has not taken any further training.

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<sup>24</sup> It would appear that the directive issued by the Senior Deputy Commissioner described above is designed to accomplish this.

<sup>25</sup> A synopsis of the relevant recommendations by the ICIT as well as Superintendent Hale may be found at **Appendix K**.

Subsequent to the ICIT Report and the Independent Officer Review, “H” Division took a number of steps to enhance its training regimen. For instance, “H” Division training for front-line members on responding to critical incidents has been developed. It is anticipated that increased training for RCMP members in responding to complaints of barricaded persons will have the effect of providing better oversight and supervision for responding members, which in turn will provide better and improved service to the public.

**FINDING: No training deficiencies contributing to this incident were identified.**

## H. Communications plans

As per Article 8 of the MOA, the ICIT Report was delivered to the commanding officer (CO) of “H” Division. It is the responsibility of the CO to take whatever actions he or she deems appropriate in releasing the results of such an investigation.

Criticism was levelled at “H” Division because prior to the release of the (vetted) report to the family, the Band and the public, the RCMP media relations unit had been in touch with the HRP to prepare media and communications responses for division officers. Although the report did not find that criminal charges were warranted against the involved member or other members present, it did contain comments and recommendations regarding areas in which the RCMP could improve service.

It is common practice that RCMP communications professionals would be involved to assist with coordinating the release of the report and providing suggested responses to potential questions posed to “H” Division members. The foregoing notwithstanding, there did exist issues with the content of the communications responses, particularly with respect to the fact that disciplinary action was not commenced prior to the one-year limitation period. Media responses that said that the ICIT had cleared the RCMP of any wrongdoing were a mischaracterization of the report.

This mischaracterization is captured in a media response prepared for the briefing with the family and the Band, which reads:

Q: If we don't trust you why would we trust the results of the investigation?

A: The investigation was conducted by an outside, independent agency.

Q: So if he wasn't murdered than [sic] what happened? Let's hear your story...

A: Mr. Simon died as a result of a confrontation with police. Halifax Regional Police conducted an independent investigation that determined the officer acted appropriately in his duties.

The foregoing minimizes the fact that RCMP members played an integral part in the ICIT investigation and wrongly states that the HRP found that Constable Frenette acted appropriately in his duties, as opposed to stating that Constable Frenette was not charged criminally. These are two separate and distinct concepts.

In addition, I note issues with respect to the content of media responses prepared for senior RCMP officers for the purposes of their briefing the Band and family members. For example, the media response stating that Constable Frenette entered the house says it was to peaceably resolve the situation. Not mentioned is the fact that the decision to enter the house was fraught with problems, nor does the response comment on the less than proper exercise of judgment demonstrated by Constable Frenette. While responses prepared for print or television media may be truncated, I would expect that data accumulated in preparation for a frank meeting with those closest to the event would be more candid.

Additionally, Superintendent Burns felt that the invocation of the federal *Privacy Act* by the RCMP was inappropriate. He said that everyone in Wagmatcook knew it was Constable Frenette who had shot Mr. Simon, yet when the meeting between the RCMP and the Band took place to present the report findings, neither Constable Frenette nor any other responding member's name was used. He said that because everyone knew it was Constable Frenette who shot Mr. Simon and knew the names of the other responding members involved, this lack of transparency and the overriding concern for privacy by the RCMP only served to inflame the situation and make relations between the RCMP and the Band more tense.

Canadians rightly have an expectation that the RCMP should be transparent and candid in the manner in which it communicates with the public. Further, the overall context should be taken into account before invoking mechanisms such as privacy laws to prohibit, as in this instance, the disclosure of names already well-known to a community. In such cases, arguably the public interest is better served by acknowledging that which is already known.

**FINDING: The contents of the media responses prepared with respect to this incident were not sufficiently fulsome and could have misled the public into believing that the investigation was carried out solely by the HRP.**

**RECOMMENDATION: That press releases be reviewed by the operational commander before being released to ensure accuracy and to avoid any possible mischaracterization.**

In light of the totality of the handling of this incident by the RCMP, from the initial response through to the internal disciplinary matters through to the media responses, I feel that it is incumbent on the RCMP to take positive steps to heal the wounds caused by this incident and to help restore the Band's confidence and trust in the RCMP. Consequently, it would be prudent for the RCMP to offer an apology to the Simon family and the members of the Band for the manner in which this tragic manner was handled. An apology would also be consistent with the RCMP's dedication to enhancing positive relations with the community it serves.

**RECOMMENDATION: That the RCMP offer an apology to the Simon family and the Wagmatcook Band in respect of this incident.**

## **CONCLUSION**

Members of the RCMP undertake an enormous responsibility in responding to incidents involving individuals threatening suicide. They often play a pivotal role in safely resolving situations and ensuring that individuals obtain the medical or psychiatric help they require. While undoubtedly certain crisis situations require prompt and efficient police interventions, many require patience, understanding and restraint prior to a safe resolution. The events surrounding the response to the 9-1-1 call on December 2, 2008 in Wagmatcook was one such situation.

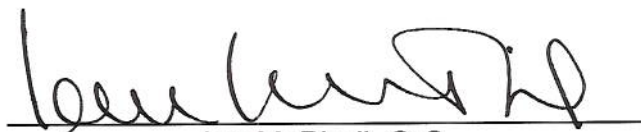
In addition, the manner in which serious incidents are investigated, communications are addressed, and RCMP managers discharge their duties vis-à-vis the application of the Code of Conduct also must meet certain standards to ensure public confidence and transparency. The Commission's investigation of this incident highlights that beyond those members who actually responded to the 9-1-1 call, many other RCMP members contributed to the situation which aroused such public concern. In particular, and as I have noted in this report, the actions or lack thereof of the members responsible for making decisions relating to discipline, and also of those responsible for conveying information to family members and the public, negatively impacted public perceptions and in turn public confidence in the RCMP. No matter how benign the initial intention, it is the visible effect of a given course of conduct that has the greatest public impact, and consequently, the greatest impact on the public's confidence in the police.

While this report has made a number of difficult findings, I hope that the recommendations contained herein will assist the RCMP in preventing the reoccurrence of events such as the shooting of Mr. Simon which have been tragic for all parties involved. Further, as public confidence is the cornerstone of



effective policing, I hope that this report will contribute to the enhancement of public confidence in the RCMP and to the community healing, so critical in this case.

Pursuant to subsection 45.43(3) of the *RCMP Act*, I respectfully submit my Public Interest Investigation Report.

A handwritten signature in black ink, appearing to read 'Ian McPhail', written over a horizontal line.

Ian McPhail, Q.C.  
Interim Chair

DEC 15 2010

# APPENDICES

## **APPENDIX A**

### **Chair-initiated Public Complaint and Public Interest Investigation**

## Chair-initiated Public Complaint and Public Interest Investigation

File No.: 2010-0861

**Subject: Shooting Death of Mr. John Andrew Simon, Wagmatcook, Victoria County, Nova Scotia, December 2, 2008**

**March 16, 2010**

As Chair of the Commission for Public Complaints Against the RCMP, I am initiating a complaint into the conduct of those unidentified RCMP members involved in the response to and subsequent shooting death of Mr. John Simon in Wagmatcook, Nova Scotia on or about December 2, 2008.

The facts as presently known indicate that on or about December 2, 2008, RCMP members attended Mr. Simon's residence in response to an emergency call. At some point, a member of the RCMP entered Mr. Simon's residence and fatally shot him. I am initiating this complaint with the full appreciation that the RCMP engaged the Halifax Regional Police to undertake an independent investigation into this matter and that the report was completed in December 2009.

Given the ongoing expressions of public concern as they relate to the degree and type of force used by police officers when dealing with individuals and the manner in which members of the RCMP responded to this situation, I am satisfied that there are reasonable grounds to investigate the circumstances surrounding the shooting death of Mr. Simon. Accordingly, pursuant to subsection 45.37(1) of the *RCMP Act*, I am today initiating a complaint into the conduct of all RCMP members or other persons appointed or employed under the authority of the *RCMP Act* involved in this incident, as well as into matters of general practice applicable to situations involving persons believed to be suicidal or otherwise of a high-risk nature, specifically:

1. whether the RCMP members or other persons appointed or employed under the authority of the *RCMP Act* involved in the events of December 2, 2008, from the moment of the initial call to the RCMP for assistance, through to the subsequent death of John Andrew Simon, complied with all appropriate training, policies, procedures, guidelines and statutory requirements relating to responding to persons believed to be suicidal, barricaded within a premises, or otherwise potentially of a high-risk nature;
2. whether the RCMP national, divisional and detachment-level policies, procedures and guidelines relating to the manner in which the RCMP responds to persons believed to be suicidal, barricaded within a premises, or otherwise potentially of a high-risk nature, are adequate; and

3. whether the RCMP members involved in the investigation of this incident conducted an investigation that was adequate, and free of actual or perceived conflict of interest, whether they responded appropriately and proportionately to the gravity of the incident, whether they responded in a timely fashion and whether their conduct adhered to the standards set out in section 37 of the *RCMP Act*.

Furthermore, I am instituting a public interest investigation into this complaint, pursuant to subsection 45.43(1) of the *RCMP Act*.

## **APPENDIX B**

### **Summary of Findings and Recommendations**

The findings and recommendations contained in this report are provided below:

**FINDING: Constable Bernard placed himself at unnecessary risk by failing to wait for the backup that had been called out, prior to attending the Simon residence.**

**FINDING: Staff Sergeant Thompson failed to ensure that an adequate operational plan had been put in place and understood by the responding members prior to their deployment.**

**FINDING: Staff Sergeant Thompson permitted RCMP members to place Mr. Simon and themselves in unnecessary jeopardy by allowing them to position themselves and remain too close to the Simon residence.**

**FINDING: Staff Sergeant Thompson failed to order Constable Frenette to pull back from the residence when he knew or ought to have known that Constable Frenette was contemplating an entry to the house to apprehend Mr. Simon.**

**FINDING: Constable Frenette acted in an inappropriate manner by deciding to enter the Simon house with no clear instructions, notice to other members, backup, means of escape or operational plan.**

**FINDING: Constable Frenette had sufficient grounds to believe his life was in jeopardy and that the decision to resort to the use of lethal force by discharging his service pistol at Mr. Simon was appropriate in the circumstances.**

**FINDING: There is no evidence of bias or subjectivity in the conduct of the RCMP MCU investigation.**

**FINDING: It was reasonable in the circumstances for the RCMP to restrict access to Mr. Simon's body.**

**FINDING: The RCMP members involved in the investigation of this incident acted appropriately, professionally, without bias and in accordance with section 37 of the *RCMP Act*.**

**FINDING: In accordance with good police management practices, the RCMP should have scheduled a post-critical incident meeting to identify lessons learned.**

**FINDING:** No training deficiencies contributing to this incident were identified.

**FINDING:** The contents of the media responses prepared with respect to this incident were not sufficiently fulsome and could have misled the public into believing that the investigation was carried out solely by the HRP.

**RECOMMENDATION:** That following any critical incident in which another agency investigates the actions of a member of the RCMP, a post-incident debriefing take place involving both the outside agency and the RCMP to identify lessons learned or deficiencies.

**RECOMMENDATION:** That the RCMP undertake a review of its policy with respect to barricaded persons.

**RECOMMENDATION:** That a guide/checklist be developed and installed in all the police vehicles' mobile workstations to ensure that all operational procedures for a critical incident are followed and completed.

**RECOMMENDATION:** That a review of the RCMP training curriculum regarding the response process to critical incidents such as barricaded persons be conducted, ensuring that issues of containment and the management of emotionally disturbed persons are adequately addressed.

**RECOMMENDATION:** That use of force experts receive training in the biomechanics of lethal force encounters.

**RECOMMENDATION:** That the RCMP consider adopting into RCMP policy a formalized process involving division Internal services to ensure timely notifications and to ensure the proper documentation of decisions during the consultative process of Part IV in order to preserve the decision-making rationale involved.

**RECOMMENDATION:** That Constable Frenette undergo full remedial training in the IM/IM as well as the CAPRA model.

**RECOMMENDATION:** That Staff Sergeant Thompson be provided training in operational supervision of junior members and in critical incident planning and management.

**RECOMMENDATION:** The RCMP may wish to consider entering into a bilateral agreement with non-RCMP ERTs to ensure adequate and timely coverage in the event of an incident requiring the ERT.



**RECOMMENDATION:** That press releases be reviewed by the operational commander before being released to ensure accuracy and to avoid any possible mischaracterization.

**RECOMMENDATION:** That the RCMP offer an apology to the Simon family and the Wagmatcook Band in respect of this incident.

# **APPENDIX C**

## **Key Participants and their Roles**

## **Key Participants and their Roles**

The following provides an overview of the key participants involved in the incident and their roles with respect to the incident. Numerous other police responders were also involved, however only those whose names have been included in the report are set out here. Unless indicated otherwise, persons named were *in situ* at the time of the incident and continue to occupy those positions.

### **Initial Responders**

Bernard, Cst. Jason – Member of the Baddeck RCMP Detachment. Dispatched to Simon residence as a result of a 9-1-1 call of an intoxicated male with firearms who was threatening suicide. Cst. Bernard has since been transferred from Baddeck.

Frenette, Cst. Jeremy – Member of the Baddeck RCMP Detachment who was off duty but called out to support Cst. Bernard. Shot Mr. Simon. Cst. Frenette has since been transferred from Baddeck.

Thompson, S/Sgt. Archie – Commander of the Baddeck RCMP Detachment. In charge of the incident. S/Sgt. Thompson has since been transferred from Baddeck.

### **Supporting RCMP Members and Post-Shooting Investigators**

Bezaire, Cst. Catherine – Assigned to North East Nova Major Case Unit and one of a number of members from MCU and neighbouring detachments who assisted in the incident and the subsequent investigation of the shooting. Cst. Bezaire was also involved with the *post mortem* viewing of Mr. Simon's body.

Burns, Supt. Michael – Halifax Regional Police member. In charge of ICIT investigation.

Firth, Cpl. Fraser – RCMP member of North East Nova Major Crime Unit. Along with a number of other RCMP members, assisted the ICIT with the homicide investigation.

Graham, A/ Commr. – Commanding Officer of "H" Division.  
Steve

Hale, Supt. Al – Criminal Operations Officer in “L” Division (Prince Edward Island). Conducted Independent Officer Review of the Simon shooting at the request of the CO, “H” Division.

MacDonald, Sgt. Bruce – “H” Division Emergency Response Team commander.

MacPherson, Cpl. Mark – Member of RCMP Inverness Detachment who came to Wagmatcook to support the responding members with the barricaded person situation. Took the lead in providing first aid to Mr. Simon and controlled the scene after the shooting, pending arrival of the Major Crime Unit and ICIT.

MacQuarrie, Supt. Kieran – District Policing Officer for North East Nova (including the areas of Cape Breton policed by the RCMP). Took over the position in August 2009. Initiated then withdrew Code of Conduct investigation for responding members because of time limitation.

McKnight, C/Supt. Blair – Criminal Operations Officer for “H” Division.

Roper, Supt. David – Support Services Officer for “H” Division (at that time).

Scott, S/Sgt. Stephen – RCMP member in charge of “H” Division Internal Services. Involved in deliberations of whether or not a Code of Conduct investigation should be initiated.

Taker, Sgt. Ken – RCMP leader of North East Nova Major Crime Unit. Following the shooting, Sgt. Taker took control of the investigation pending arrival of the ICIT and worked with the ICIT as part of the command structure during the ICIT investigation.

Upshaw, Supt. Ted – District Policing Officer for North East Nova at the time of the incident. Retired in August 2009.

### **Non-Police Involvement**

The following are the key non-police persons involved in the incident:

GooGoo, Elizabeth – Wagmatcook medical first responder who arrived shortly after Mr. Simon was shot.

- Isadore, Charlene – Ms. MacKay's daughter and *de facto* daughter of Mr. Simon. Attempted to remove rifle from Mr. Simon prior to the 9-1-1 call.
- Isadore, Mary Katerie – Made call to 9-1-1 to report that Mr. Simon was intoxicated, had firearms and was threatening suicide. Mr. Simon's aunt and next-door neighbour.
- Isadore, Walter – Mr. Simon's next-door neighbour. Married to Katerie Isadore.
- MacKay, Patricia – Mr. Simon's common-law wife of 24 years. Removed a shotgun from the residence prior to the 9-1-1 call.
- Simon, John A. – Deceased as a result of gunshot wounds.

## **APPENDIX D**

### **Simon Shooting Chronology of Events on December 2, 2008 and Timeline**

## **Simon Shooting Chronology of Events on December 2, 2008 and Timeline**

- 20:45 Call to 9-1-1 from Mary Katerie Isadore
- 20:49 Call dispatched by 9-1-1 to Cst. Bernard
- 20:55 Bernard asks OCC to call Cst. Frenette
- 20:56 Bernard advises OCC he has contacted complainant and is going to call Mr. Simon (by phone). Says complainant told him Simon was drinking and now he says he wasn't serious about suicide. Says Simon is known to be uncooperative with police.
- 20:56 Phone call from OCC to Frenette. Frenette is told there is a fight over a gun at Simon's residence. No mention of alcohol. OCC tells Cst. Frenette that Cst. Bernard is on the phone with Simon.
- 21:09 OCC asks Bernard if he is en route to the Simon residence. He confirms that he is.
- 21:14 Bernard advises Dispatch he is on scene and needs more backup. Says he looked through Simon's window and saw a firearm on the bed. Says Simon is intoxicated and talking on the phone. Doesn't want to put his life in danger and doesn't know if the gun is loaded. Says he is going to contact his supervisor (S/Sgt. Thompson).  
Frenette asks who they're dealing with and asks for the address. Bernard says it is John Simon, 22 Katie Lane.
- 21:17 Cst. Frenette comes on the air and says he is 5–10 minutes away from scene. He says his understanding is that the subject is John Bernard. Cst. Bernard corrected him and said it is John Simon. Agree to meet at the Red Barn.
- 21:24 Cpl. MacPherson calls to say he is heading down from Inverness in case members need help. Frenette says gentleman is quite large and has a firearm.
- 21:34 Cst. Bernard with S/Sgt. Thompson says they will block one side (of Katie Lane) and asks Cst. Frenette to block vehicle traffic on the other side.
- 21:38 Thompson advises Frenette they (presumably he and Bernard) are trying to contact the residents of the surrounding houses.
- 21:45 OCC asks Frenette if he is at scene. He confirms.

21:45 Frenette advises Thompson and Bernard that he is at the back of Walter's house (Isadore).

21:47 Thompson asks Frenette to limit conversations on the channel because Bernard is on the line (speaking to Simon)

21:55 S/Sgt. Thompson asks Cst. Frenette where he is. Says he is just behind Mr. Simon's vehicle and he has both exits covered.

21:56 Cst. Frenette says he can hear Mr. Simon talking inside and asks if he is talking to "us" (RCMP). S/Sgt. Thompson replies "Negative."

21:58 Cst. Frenette asks Cst. Bernard if Simon is alone. Cst. Bernard says he is. Cst. Frenette says he can hear Mr. Simon but can't understand what he is saying.

21:59 Cpl. MacPherson says both Inverness cars are at scene. S/Sgt. Thompson tells them to park near the gas station.

22:00 S/Sgt. Thompson asks OCC to call his cell.

22:00 OCC calls S/Sgt. Thompson on cell. He asks dispatcher to call ERT and a negotiator. Dispatcher says she will call and ask ERT to call S/Sgt. Thompson on his cell.

22:02 OCC calls Sgt. MacDonald, ERT, and asks him to call S/Sgt. Thompson on his cell.

22:04 S/Sgt. Thompson advises Cst. Frenette he is going to send Cst. Bernard down to the house so Cst. Frenette is not alone.

22:05 Cst. Frenette says he is on the east side (of the Simon house).

22:12 S/Sgt. Thompson asks if Cst. Bernard is with Cst. Frenette. Cst. Frenette says "10-4" and says he is near the window and his volume is way down. S/Sgt. Thompson advises him to "Sit tight. ERT is on their way." Cst. Frenette appears to acknowledge, but response is inaudible.

22:24:40 Cst. Frenette whispers into the radio "He's sitting on the toilet with no weapons. Want me to go in?"

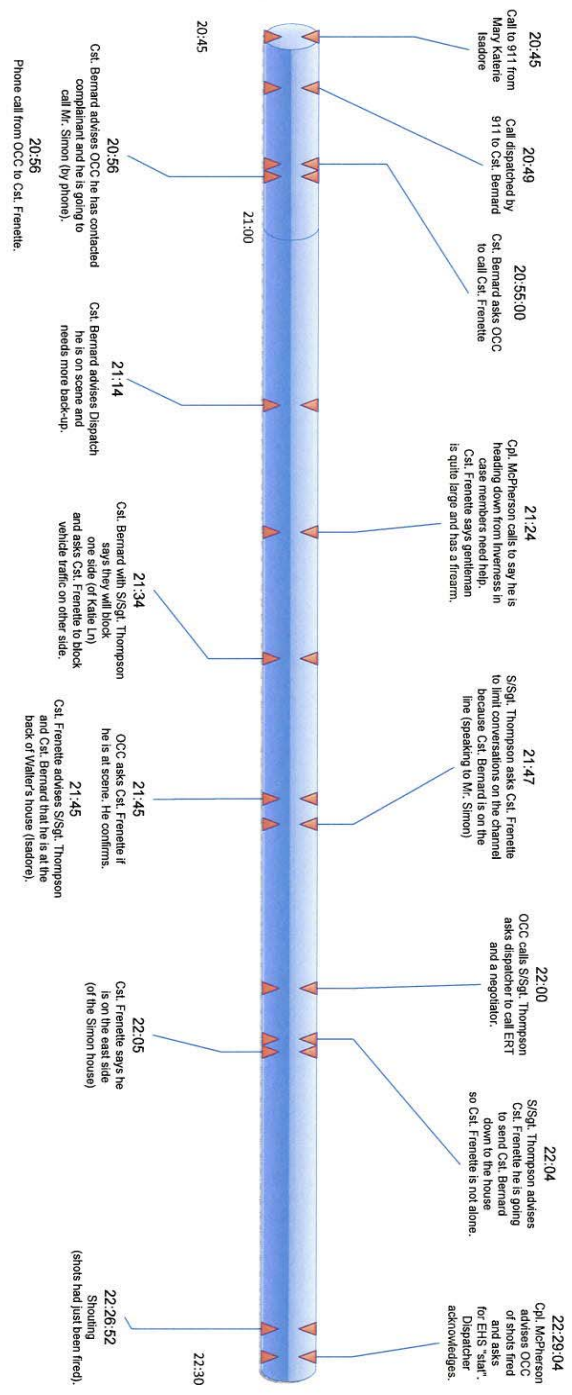
22:24:53 S/Sgt. Thompson asks Cst. Frenette what he's seeing. Cst. Frenette replies that Mr. Simon is "on the toilet smoking a cigarette. No weapons in sight. He has an open window to go in. Now's the time."

22:25:29 S/Sgt. Thompson asks "How big is this guy?"



22:25:47 Response is inaudible  
22:26 Cst. Frenette says something inaudible and says "I'm getting pretty close."  
22:27:52 Shouting (shots had just been fired).  
22:28:08 A member (possibly Cst. Bernard) says shots fired and EHS is required. Another voice (Cst. Frenette) says "Everybody in now, come on. All the members."  
22:29:04 Cpl. MacPherson advises OCC of shots fired and asks for EHS "stat." Dispatcher acknowledges.  
22:29:23 Dispatcher calls EHS to scene  
22:30 S/Sgt. Thompson advises OCC that EHS is required. Dispatcher advises she is on the line and they are being dispatched to the scene.  
22:32:38 OCC advises the members at scene that EHS is on the way and asks for an update on Mr. Simon's condition.

Timeline – December 2, 2008



## **APPENDIX E**

### **RCMP Incident Management/Intervention Model (IM/IM) and CAPRA**

## **RCMP Incident Management/Intervention Model (IM/IM) and CAPRA**

### ***INCIDENT MANAGEMENT INTERVENTION MODEL (IMIM)***

The ***RCMP Incident Management Intervention Model*** known as ***IM/IM*** was developed as a training and visual aid to assist officers in their understanding of operational policy, assist peace officers in making street decisions, provide a standard for evaluation of incidents and explain the actions of peace officers to the triers of the facts. The Model is sanctioned nationally by the RCMP and taught to cadets at the RCMP Training Academy and field members on a regular basis through their Operational Skills Maintenance (OSM) training. The IM/IM is not in itself policy or law, and should not be considered as a justification model on its own.

The role of the police in an intervention is to ensure that the public is safe and therefore police safety is essential to public safety. If harm comes to the police officer(s), they will not be able to help others.

In order to choose the appropriate level of intervention, the officer(s) will have to assess the level of risk to the public and themselves and the potential for preventing or reducing it. This assessment should include the likelihood that someone or something might be hurt or damaged, and how or whether the police officer should intervene given the seriousness of harm or damage that might appear imminent. These are often split-second difficult decisions made under stressful, rapidly evolving conditions. With that said, a peace officer is expected to explain the intervention strategies he/she chooses to manage an incident. The explanation must take into account the totality of the situation, including the officer's perceptions, assessment of situational factors present and subject behaviour, all of which form the risk assessment. Their intervention will be measured against what a reasonable, trained, prudent peace officer would do faced with a similar set of circumstances.

As previously stated, the following underlying principles must be adhered to when undertaking any police intervention:

1. The primary objective of any intervention is public safety.
2. Police officer safety is essential to public safety.
3. The intervention model must always be applied in the context of a careful assessment of risk.
4. Risk assessment must take into account: the likelihood and extent of life loss, injury and damage to property.
5. Risk assessment is a continuous process and risk management must evolve as situations change.
6. The best strategy is to utilize the least amount of intervention to manage the risk.

7. The best intervention causes the least amount of harm or damage.

The IM/IM is the framework by which RCMP officers assess and manage risk through justifiable and reasonable intervention. It is not a “use of force continuum.” It does not suggest a linear path of use of force. Rather, it helps officers choose the appropriate intervention option, based on the subject’s behaviour and the totality of the situation. It promotes continuous risk assessment and centers on the RCMP problem-solving model known as CAPRA (Clients/Acquire and Analyze/Partnerships/Response/Assess). The IM/IM also helps identify the subject’s behaviour and the best option to control the situation effectively.

The circular concept of the model infers that any level of intervention is available to the officer, at any time, in order to manage the suspect’s corresponding level of resistance/situational factors/risk as assessed and perceived by the officer(s). The IM/IM defines the various levels of resistance offered by an offender and a corresponding level of control available to a police officer.

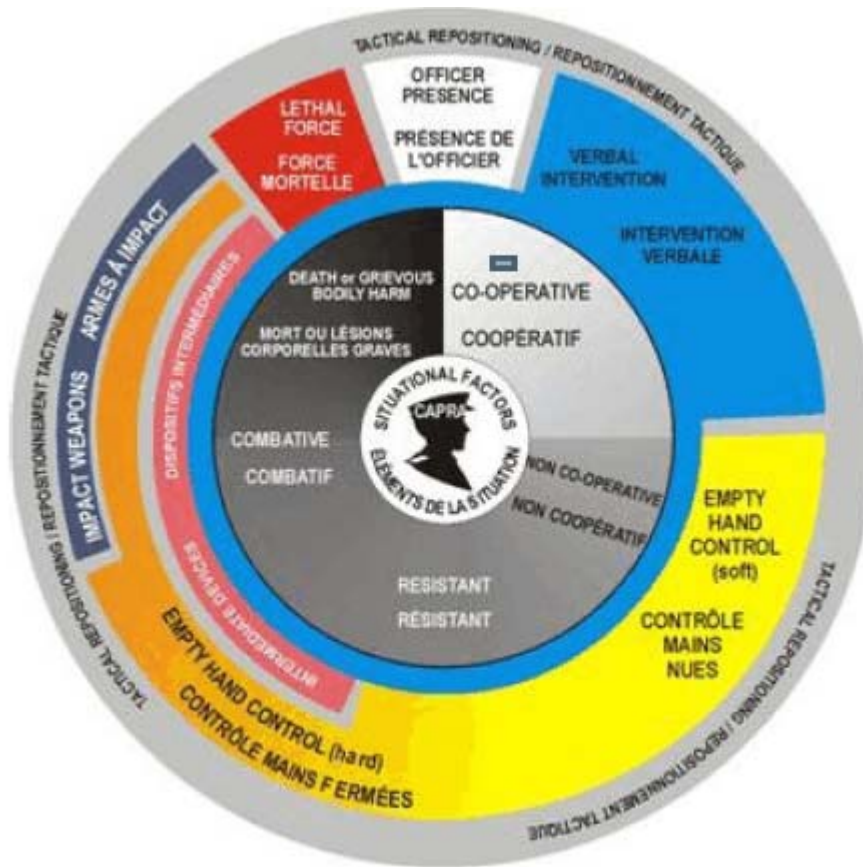
The levels of resistance include the following:

- Cooperative behaviour
- Non cooperative behaviour
- Passive resistance
- Active resistance
- Combative behaviour
- Grievous bodily harm or death

The levels of intervention available to an officer include the following:

- Officer presence
- Verbal intervention
- Empty hand control – soft to hard
- Intermediate devices
- Impact weapons
- Lethal force
- Tactical repositioning

## The Incident Management/Intervention Model



The assessment process begins in the center of the graphic with the situation confronting the officer. From there, the assessment process moves outward and addresses the subject's behaviour and the officer's perceptions and tactical considerations. Based on the officer's assessment of the conditions represented by these inner circles, the officer selects from the intervention options contained within the model's outer circle. After the officer chooses a response option the officer must continue to assess, plan and act to determine if his or her actions are appropriate and/or effective or if a new strategy should be selected. The whole process should be seen as dynamic and constantly evolving until the situation is brought under control.

The key element in this assessment process is the level of threat that is **perceived** by the involved officer. The officer's perception of the level of threat is driven by various factors that influence their decision making process. This includes situational factors such as environmental conditions, number of subjects, perceived ability of the subject(s), previous knowledge of the subject, time/distance concerns and threat cues.

Other situational factors include how the officer/offender relationship began or in other words what type of situation or crisis brought them into contact. Additional situational factors include the officer's perceived abilities to respond which would involve factors such as their personal skill and ability, fitness, age, sex, size, or tools available to them.

Another key situational factor influencing the officer's response would include the type of resistance offered by the subject(s)—the potential for a serious or fatal injury to the officer, was the assault sudden in nature, weapons present or used, the officer's physical position, the suspect's ability to rapidly escalate resistance, perceived abilities of the suspect or special knowledge (armed and dangerous), the number of suspects and finally officer injuries and/or physical exhaustion.

All of these various factors to a lesser or greater extent influence the officers threat assessment and ultimately influence the type of intervention a police officer may use to control a situation. The greater the perceived level of resistance will invoke a reciprocal escalation in intervention options. In summary, the ***Incident Management/Intervention Model*** is a guide utilized to assist officers in making operational decisions by providing general levels of intervention to be used in handling general levels of resistance present during confrontations. It also assists officers and incident investigators by describing all the elements of a force encounter, using descriptors that are defined and standardized.

The police are unique in our society in that they have authority to apply force, when justified, to gain control of a situation the public cannot or will not control. As a result of this, it is not unreasonable for the police to be accountable for the level of force applied, whether perceived justified or excessive. In order for the police officer's account of the events to be understood by "the trier of fact," at whatever level that may be, all involved must understand the philosophy, principles and descriptors incorporated in the RCMP's ***Incident Management/Intervention Model***. (*The IM/IM was amended April 30, 2009.*)

**APPENDIX F**  
**Aerial Photo of Scene**





## **APPENDIX G**

### **RCMP Back-up Bulletin (Issued December 20, 2007)**

Bulletin No.

**OM-479**

Issued

**(R. 2007-12-21)  
2007-12-20**

Retain in Front of Chap.

[16.9](#)

Subject – Backup  
Policy

1. The Senior Executive Committee approved a national back-up policy for inclusion in the Operational Manual.
2. Effective 2007-12-19, the following types of occurrences identified in the policy require a multiple member response:
  2. 1. calls of violence, or where violence is anticipated;
  2. 2. domestic disputes;
  2. 3. an occurrence involving the use, display or threatened use of a weapon;
  2. 4. an occurrence involving a subject posing a threat to self or others;
  2. 5. areas where communications are known to be deficient;
  2. 6. any occurrence or situation where the member believes a multiple member response is required based on his/her risk assessment.
3. RCMP members are always required to balance the requirements of policy with the reality of an incident in progress and the need for immediate response.
4. The new policy does not preclude a member from taking action prior to arrival of assistance based on his/her risk assessment and the Incident Management Intervention Model (IMIM) – for example, imminent risk of grievous bodily harm or death present during a domestic dispute.

**ORIGINATED BY:**

Community, Contract and Aboriginal Policing Services

**APPENDIX H**  
**Synopsis of Use of Force Report**

The following is extracted from the Use of Force Report:

***Use of Force Review Team Recommendations***

*1. It is the opinion of the Review Team that Cst. FRENETTE was not clear on his role and responsibilities which was a precipitating factor in the outcome of this incident. Presently the RCMP Operational Manual only contains a definition of a “barricaded person” under the Immediate Action Rapid Deployment (IARD) policy. The RCMP Operational Manual does not contain clearly defined policy with respect to the detailed operational procedures required in a critical incident. The Review Team recommends RCMP policy and or guidelines on “barricaded persons” be implemented to be used by all ranks of the RCMP.*

*2. It is the opinion of the Review Team that initial responding officers and particularly Cst FRENETTE, were not given concise directions and/or a plan on the procedures to successfully resolve a critical incident. The Review Team recommends that all District Commanders in “H” Division receive the Incident Commanders Course to ensure proper procedures are followed. In the absence of the attendance of a District Commander to a critical incident, the Review Team recommends a guide/checklist be developed and installed in all the police vehicles’ mobile workstations. This checklist will ensure all operational procedures for a critical incident are followed and completed.*

*3. It is the recommendation of the review team that training be provided to members of the RCMP on the response process to critical incidents such as barricaded persons. This training should address Containment Principals for responding officers which would include the general rules and guidelines for containment and the role and responsibilities of containment officers.*

*4. That Cst FRENETTE attend a refresher session on the RCMP Incident Management Intervention Model, including a session on risk assessment. This information is usually covered during the Operational Skills Maintenance session. It is further recommended that Cst FRENETTE attend a recertification of his Immediate Action Rapid Deployment users course.*

*5. It is the recommendation of the Review Team that the “Use of Force Experts” who are assigned to assist the Integrated Critical Investigative Team in member involved shootings complete the Force Science Institute Certification Course. This program has been developed by Dr. William Lewinski – a renowned behavioral scientist who specializes in law enforcement issues. Dr. Lewinski is conducting the leading research in the bio-mechanics of lethal force encounters and has provided expert testimony in numerous officer involved lethal force encounters. This course is conducted by a team of experts on a wide variety of crucial dynamics that impact the understanding of “use of force” encounters. Officers who are certified in Force Science Analysis will be able to apply their*

*grasp of human dynamics to interpret how and why a force confrontation evolved as it did. One of the members of the Review Team - Sgt Lindsay Hernden - has successfully completed this certification. It is his opinion that the course should be a requirement for members who are tasked to review these incidents and provide opinions on the involved officers [sic] actions.*

**Salient points as extracted from the Use of Force Report:**

*The intent of this report is to determine if the actions of Cst. Jeremy Frenette were warranted, reasonable and prudent with respect to the circumstances surrounding the fatal shooting of John Simon.*

*Conclusions reached in this report were determined by an analysis of the following material:*

- 1. Reports and statements provided by the involved officers*
- 1. [sic] Witness statements*
- 2. Officers notes*
- 3. Forensic Identification Section - scene photographs, scene video, re-enactment video, aerial photographs and autopsy photographs*
- 4. Forensic Identification Report, Forensic Laboratory Report - Firearms Section, Toxicology Report, Medical Examiners Report*
- 5. John Simon - Medical Records*
- 6. Cell phone records*
- 7. Digital wave file - radio transmissions*
- 8. Judicial Authorizations - Search Warrants / Information to Obtain*
- 9. RCMP Policy & Procedures*
- 10. Cst. Frenette - Training records*

*After reviewing the previously mentioned material the writers then assessed the actions of Cst Frenette to determine if they were consistent with the legal levels of force available to law enforcement officers as described in the Criminal Code of Canada, RCMP Operational Manual RCMP Incident Management Intervention Model, and the general principles and standards taught to police officers during officer safety and firearms training.*

*After a thorough review of the incident the writers are in agreement that Cst Frenettes' decision to use lethal force was justified, warranted and reasonable following his confrontation with John Simon inside the residence. Simon threatened Cst. Frenette with a rifle - he possessed the requisite ability, intent and means to cause death or grievous bodily harm to this officer. Cst. Frenettes decision to use lethal force was necessary to defend his life against the imminent threat posed by John Simon.*

*However, it is the opinion of the writers that Cst Frenettes actions preceding the fatal confrontation with John Simon were not in accordance with the members*

*training and provisions set out in the RCMP Operational Manual specifically the underlying principles of the RCMP Incident Management Intervention Model (IMIM):*

- 1. The primary objective of any intervention is public safety.*
- 2. Police Officer safety is essential to public safety.*
- 3. The intervention model must always be applied in the context of a careful assessment of risk.*
- 4. Risk assessment must take into account: the likelihood and extent of life loss, injury and damage to property.*
- 5. Risk assessment is a continuous process and risk management must evolve as situations change.*
- 6. The best strategy is to utilize the least amount of intervention to manage the risk.*
- 7. The best intervention causes the least amount of harm or damage.*

*\*\*\*This policy was in place at the time of the incident and reflects the training given to the involved officer. This policy was amended on April 30th / 2009.*

*It is the opinion of the Review Team that Cst. Frenette failed to understand the dynamics of / and dangers inherent to an armed and barricaded person situation. Cst. Frenette's actions in and around the home were of his own accord, endangered his life unnecessarily and had the potential for and indeed contributed to the eventual confrontation with the armed and suicidal John Simon.*

*Cst. Frenette's actions were in direct contravention of training with respect to barricaded persons provided during his Immediate Action Rapid Deployment (IARD) Users Course on 2007-05-28. During this course Cst. Frenette received instruction on the IMIM and the response to barricaded persons. Cst. Frenette was instructed on Concepts and Protocols and the appropriate response to barricaded persons as illustrated in the following excerpts (boxes) from the Course Training Standard.<sup>26</sup>*

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<sup>26</sup> RCMP Tactical Training Section – “Concept and protocols of Immediate 5 Action Rapid Deployment” – Sgt. Richard Groulx, 2005-10-07.

## Barricaded Suspect



- This normally is a criminal suspect with known or unknown violent potential that has barricaded him/herself (alone or with other suspects/ persons) in a structure and refuses to surrender to Law Enforcement.
- These situations normally provide ample time for detailed planning and negotiations.
- Note: These person(s) are normally armed and there is the potential for a transition to an active shooter and/or a hostage situation.

Contemporary Tactics Using Negotiations and E.R.T. Have Successfully Resolved Over 95 % of Barricaded Suspect Incidents Without Shots Being Fired.

## Active Threat Compared to Barricaded Suspect

- |  |  |
|--|--|
| <ul style="list-style-type: none"><li>• <b>Active Threat</b></li><li>• Suspect is immediately causing death or serious bodily injury.</li><li>• The situation is actively evolving along with suspect actions.</li><li>• Delayed response will result in injury or death to innocents.</li></ul> | <ul style="list-style-type: none"><li>• <b>Barricaded Suspect</b></li><li>• Suspect in a position of advantage in a room or building.</li><li>• Suspect is armed and has displayed violence.</li><li>• May or may not be holding hostages.</li><li>• There is no indication that the suspect is immediately causing death or other serious injury.</li></ul> |
|--|--|

## Police Response to a Barricaded Suspect Event

- Evaluate the situation.
- Secure the Perimeter.
- Gather information.
- Assist with victim evacuation.
- Be prepared to transition to Active Threat.
- Transition to Emergency Services Unit when they arrive to the scene.

In short **4C's** – Contain, Control, Communicate, and Call E.R.T.

## Decision to Enter the Residence

*It is the opinion of the Review Team that Cst Frenette's decision to enter the residence was based on the following factors:*

*Cst Frenette was a very junior member with only two years experience and no previous experience dealing with a barricaded person. Cst Frenette was unclear of his mission and / or role at the scene. Cst Frenette was looking for a resolution of the incident versus containment of the scene and a traditional police response.*

*Cst Frenette's decision to enter the residence was imprudent and endangered his safety, other members and the public. An appropriate risk assessment must take into account the likelihood and extent of life loss, injury and damage to property. Cst Frenette failed to recognize the serious danger involved in this barricaded person incident and the detailed planning that is required to resolve these incidents successfully. Cst Frenette acted on his own without clear direction. Cst Frenette failed to employ a proper risk assessment in that he did not weigh the benefits of entering the residence versus the potential for a deadly confrontation with John Simon.*



*A significant factor that misled Cst Frenette in his approach involved his previous dealings with John Simon. In those previous encounters Simon would be non-cooperative through intimidation, but in the end he would comply with police. Cst. Frenette believed that this situation would / could be resolved in a similar manner.*

*It is the opinion of the Review Team that Cst Frenette was influenced by a well-known phenomenon of "Presumed Compliance". This is a mind set of complacency and optimism that you assume a suspect will comply by the mere fact that you are an authority figure. Cst. Frenette assumed that he could enter the residence, confront John Simon and the incident would be resolved peacefully.*

*"Presumed Compliance appears to be a simple concept; literally meaning, you assume a 'suspect' will comply. But don't be fooled, 'Presumed Compliance' is quite complex and must not be summed up as simply a 'false sense of security'. Its origins are deeply rooted in attitude, psyche, archetype and more. 'Presumed Compliance' dulls your edge; it diminishes the danger - in your mind. It affects how you think, feel and behave. Therefore, it will affect your tactics and, you may not even know you suffer from it "Presumed Compliance" [sic] leads to overconfidence and a false sense of security. This permits us to take stupid risks in the form of a 'supermen' persona or by not training seriously. The debilitating combination of apathy and denial now present, ensures you will not seriously prepare, which means that should something happen, you will go into denial before you even get the opportunity to react. That is how the brain is wired. The combination of the aforementioned by-products of Presumed Compliance actually does more (as if that weren't enough) - it actually dulls intuition and instincts. Put all that together and you have an accident waiting to happen."<sup>27</sup>*

### **Event Recollection**

After a thorough review of the statements taken from the officers involved in this incident and in particular the statement provided by Cst. Frenette it was noted by the Review Team that there were several inconsistencies with his recollection of the events. There were three primary areas of interest to the Review Team - they included the following:

- Cst. Frenette's recollection that he requested and received permission by radio to leave his containment position to move closer to the Simon residence - no such request was made by Cst. Frenette nor was permission granted by S/Sgt. Thompson according to the radio logs.

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<sup>27</sup> Blauer, Tony, "The theory of presumed compliance". [PoliceOne.com](http://www.policeone.com/close-quarters-combat/articles/76386-The-theory-of-presumed-compliance/). 2002. December 6, 2010 <<http://www.policeone.com/close-quarters-combat/articles/76386-The-theory-of-presumed-compliance/>>.

- Cst. Frenette was unable to recollect clearly the condition of John Simons [*sic*] firearm following the shooting. The weapon was found unloaded with a rifle cartridge in close proximity. Cst. Frenette does not recollect if he cleared the weapon or not.
- Cst. Frenette indicated in his statement that he did not hear S/Sgt. Thompson inform the members over the radio that ERT (Emergency Response Team) was on the way. During the same radio transmission Cst. Frenette had responded clearly to S/Sgt. Thompson twice before being told ERT was enroute where upon an inaudible response from him was recorded.

## **APPENDIX I**

### **Memorandum of Agreement Integrated Critical Incident Team**

**Memorandum of Agreement  
Integrated Critical Incident Team**

THIS AGREEMENT made in duplicate dated the \_\_\_\_ day of July, 2007;

**BETWEEN:**

HALIFAX REGIONAL POLICE (hereinafter referred to as "H.R.P.")

**AND:**

THE ROYAL CANADIAN MOUNTED POLICE, "H" Division (hereinafter referred to  
as the R.C.M.P.)

**WHEREAS** HRP and the RCMP agree it is important to maintain public confidence in the investigation of incidents involving police action causing death or bodily harm;

**AND WHEREAS** an open, transparent and thorough investigation is paramount to maintaining public confidence;

**AND WHEREAS** a integrated investigation with an independent police agency only adds further credibility to the unbiased nature of such an investigation;

**AND WHEREAS** an open, transparent and thorough investigation to the fullest extent possible is in the best interest of the Officers involved;

**NOW THEREFORE** the parties to this Agreement, in consideration of the mutual covenants contained herein, agree as follows:

**Purpose Of Agreement**

This agreement between the RCMP and HRP is intended to establish guidelines for an integrated investigation of critical incidents involving police action resulting in death or bodily harm.

**Article 1: Definitions**

- I. Critical Incident means the death, imminent death, or bodily harm allegedly caused to an individual as a result of a shooting or other action on the part of a police officer.
- II. Other incidents may include, but are not limited to: serious Criminal Code offence by a peace officer; hazardous pursuit resulting in death or serious injury; flagrant misconduct by a peace officer.
- III. Integrated Critical Investigation Team (I.C.I.T.) means a team comprised of members of the RCMP and HRP.
- IV. Host Agency means the Agency of the Officer involved in the Critical Incident.
- V. Independent Agency means the Agency without officers involved in the Critical Incident.

**Article 2: Activation of I.C.I.T**

An investigation by the I.C.I.T will be undertaken upon a request by the Commanding Officer "H" Division (or designate) or the Chief Of Police HRP (or designate) in the jurisdiction where the incident occurred.

**Article 3: Role of I.C.I.T.**

The primary role of the I.C.I.T. is to investigate critical incidents or any other incident designated by the Chief of Police or the Commanding Officer "H" Division. Such investigations will be conducted in accordance with the Major Case Management Model. In addition, the I.C.I.T will be responsible for the following;

- I. Conduct a thorough investigation into all aspects of the incident under investigation.
- II. Prepare a final report on the incident including recommendations regarding changes in policy, training, operational procedures, or related issues.
- III. Determine from the information and evidence whether there has been any violation of Federal, Provincial or Municipal Statute.

- IV. Request the Public Prosecutions Service to appoint a Crown Attorney to provide pre charge advice as required.
- V. Any other duties assigned by the OIC.

**Article 4: Composition of I.C.I.T.**

The I.C.I.T. It will be comprised of investigators in the following roles (Appendix A attached);

The ***Officer in Charge of Investigation*** will be a Senior Ranking Officer of the independent agency and will be responsible for the following;

- I. Will report to the the Chief of Police (or designate) or the Commanding Officer "H" Division (or designate) of the host agency regarding the conduct and status of the investigation.
- II. With the team leader, appoint members to the I.C.I.T.
- III. Oversee the investigative activities of the I.C.I.T
- IV. Make decisions regarding follow-up activity or procedure as required.
- V. Review and make appropriate revisions to the final report submitted by the investigation management team
- VI. Be the final sign off on all correspondence relating to the status of the investigation.
- VII. Present the final report to the host agency.

The ***Team Leader*** is a member of the host agency is responsible to coordinate the investigative activities as per the Major Case Management Model and in addition will be responsible for the following;

- I. Will consult with the OIC regarding appointment of members to the I.C.I.T
- II. Facilitate requests regarding personnel, equipment, support services and specialized services.
- III. Consult with and apprise OIC of the status of the investigation.
- IV. Monitor Resources, including financial, required by the team and acquiring same as necessary.
- V. Monitor the overall performance of the investigational team.
- VI. Conduct regular briefings on the progress of the investigation.

***The Primary Investigator*** will be member of the independent agency and will be responsible for duties as per the Major Case Management Model.

***Two File Managers*** will be appointed. One from each agency will assume these duties as per the Major Case Management Model.

***Investigators*** the remaining investigative team will be drawn from the both agencies as required.

**Article 5: Financing**

- I. Office supplies and clerical support will be the responsibility of the agency in whose jurisdiction that the incident occurred, with clerical support to be supplied full time while the investigation is ongoing.
- II. If secure office space is not available the affected agency has the authority to rent office space, such as a motel room, if they see fit.
- III. Vehicles and operational equipment are to be supplied by individual departments for their respective members.
- IV. If specialized services are required, (for example: Identification or Police Service Dog Sections), they are to come from the department where the incident occurred.
- V. Each of the participating Agencies shall be responsible for the salaries of their own members. All additional expenses including overtime, allowances and travel expenses will be the responsibility of the host agency.
- VI. Travel cost will be the responsibility of the host agency.

**Article 6: Logistics**

Each agency shall make the following available as circumstances dictate:

- I. Office space;
- II. A vehicle is to be provided to the member of the reviewing agency by their respective departments for their specific use for the duration of the investigation.
- III. Technical and specialized support services.

**Article 7: Operation of Vehicles**

- I. For the purpose of this agreement, it is understood that the RCMP and the HRP will supply for the use of the I.C.I.T., owned, rented or leased vehicles which will be suitably insured.
- II. Police motor vehicles being operated by members of the other department shall not be involved in duties other than those pertaining specifically to the I.C.I.T.
- III. Whereby any vehicle assigned to the I.C.I.T. is operated by a member of a department other than the department which owns, rents or leases the vehicle:
  - (a) Damage to vehicles provided by RCMP or HRP which results from the negligence of the operator while acting within the scope of his/her duties of employment shall be paid for by the agency which employs the operator.
  - (b) Third party claims for bodily injury or property damage arising out of accidents caused by the negligent operation of an RCMP or HRP vehicle, shall be defended and responded to by the owner of the vehicle, including any deductible or self insurance retention limits.
- IV. Where damages or third party liability in the circumstances described in paragraph III above result not from negligence of the operator but from the negligence of the owner due to a fault, defect or improper maintenance of the motor vehicle or other causes unrelated to the operator, the owner of



the said motor vehicle shall bear responsibility for all resultant damages, claims or third party liability.

**Article 8: Reports**

- I. Appropriate security is to be afforded all correspondence resulting from the investigation.
- II. Reports on incidents will be provided to the Chief of Police or the Commanding Officer "H" Division
- III. The results of the investigation are not to be released without the authority of the Chief of Police or the Commanding Officer "H" Division of the host agency.

**Article 9: Prosecutions:**

It is the responsibility of the I.C.I.T. to lay any criminal charges resulting from their investigation.

**Article 10: Discipline and Complaints:**

- I. It is the responsibility of the Officer in Charge of the Investigation to refer any matters relating to the RCMP Act, or Nova Scotia Police Act, discipline or related issues arising from the facts of the investigation, to the Commanding Officer (RCMP) or the Chief of Police (HRP) for any action they may deem necessary.
- II. Complaints from the general public on any activity involving members of the I.C.I.T. which cannot be resolved informally will be reported to: in the case of an RCMP member, the Commanding Officer "H" Division (RCMP) or in the case of an HRP member, the Chief of Police (HRP) in keeping with respective policies.

**Article 11: Liability**

Each party shall be responsible for and hold the other party free and harmless with respect to injury to or death of its own personnel, or for injury to or damage to property of others respectively caused by or arising out of the negligence of the RCMP or HRP.

**Article 12: Media Relations**

A Media Relations person will be appointed by host agency. The OIC will approve all media releases regarding the conduct and status of the investigation.

**Article 13: Terms of Agreement**

This agreement comes into effect on the date of signing and remains in effect unless terminated by either party on thirty (30) days notice. This Agreement may be amended from time to time with the mutual written consent of the parties hereto.



Signed: June Abney 070717  
Chief of Police Date  
Halifax Regional Police

Signed: [Signature] 2007.12.11  
Commanding Officer Date  
Royal Canadian Mounted Police  
"H" Division

## **APPENDIX J**

### **Officer in Charge Concluding Report (ICIT Report)**



**Officer in Charge Concluding Report**

**RCMP Member Involved Shooting  
Wagmatcook , NS**

File # 2008-1473604 (RCMP PROS) / File # 2008- 179252 (HRP Versadex)

Submitted by:

Superintendent Michael K. Burns  
Halifax Regional Police

**Sudden Death - John Simon  
RCMP Member Involved Shooting  
Wagmatcook First Nations Community**

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**Executive Summary of the Incident**

On December 2, 2008 at approximately 2227 hours - RCMP member Cst. Jeremy FRENETTE fatally wounded John SIMON - a resident of the Wagmatcook First Nations Community in Cape Breton, Nova Scotia. The following is a short summary of the events leading to the shooting death of SIMON - a more detailed synopsis will follow:

On December 2, 2008 at 2045 hours Baddeck RCMP responded to a domestic dispute at the residence of John SIMON and Patsy MacKAY located at 15 Katie's Lane in the Wagmatcook First Nations Community. The complainant - Catherine ISADORE - indicated that both SIMON and MacKAY were intoxicated, that SIMON was potentially suicidal and that he was fighting with MacKAY over a firearm. Cst. Jason BERNARD - the first responding officer - contacted the complainant by phone who then re-directed Cst. BERNARD to speak with MacKAY who had previously left the residence. After speaking to MacKAY, Cst. BERNARD then contacted John SIMON on the phone and discussed the matter. BERNARD told SIMON that he would have to attend his residence to conduct a well being check. Given the nature of the call Cst. BERNARD requested a backup unit to be called out. This member was Cst. Jeremy FRENETTE.

Cst. BERNARD attended the SIMON residence, he confirmed that SIMON was present, he confirmed the presence of a firearm, and that SIMON was intoxicated and uncooperative with the police presence. Cst. BERNARD departed the scene to pick - up S/Sgt. Archie THOMPSON who was also responding to the incident. Both of these officers met Cst. FRENETTE at a location near 15 Katie's Lane. Following a brief meeting the officers attended the scene and blocked the access roads leading into the cul-de-sac. S/Sgt. THOMPSON had Cst. BERNARD re-contact SIMON by phone to determine his state of mind and level of cooperation while THOMPSON initiated an evacuation, established containment and called out additional police resources which included the 'H' Division Emergency Response Team (ERT).

Cst. FRENETTE acting alone and on his own initiative moved closer to the residence in an attempt to gather intelligence that would lead to a peaceful resolution. The officer eventually moved close to the home, up onto a deck and looked inside the door and windows - one of which was open. Cst. FRENETTE was eventually joined near the residence by Cst. BERNARD who had been instructed to provide backup to Cst. FRENETTE. S/Sgt. THOMPSON contacted Cst. FRENETTE by radio, confirmed that Cst. BERNARD was with him and instructed the members to "sit tight - ERT was on the way". After a brief discussion with Cst. BERNARD - Cst. FRENETTE moved back onto the deck to the open window where he observed John SIMON go to the bathroom and sit on the toilet. Cst. FRENETTE radioed his observations to S/Sgt. THOMPSON and sought permission to enter the residence. Having not received authorization, Cst. FRENETTE then requested permission a second time. During this time period S/Sgt. THOMPSON was in conversation with Cpl. Mark MacPHERSON discussing options. Cst. FRENETTE in the absence of authorization decided to act alone on this opportunity to catch John SIMON unaware as he exited the washroom. Cst. FRENETTE challenged SIMON from the

window, SIMON failed to comply and turned to retrieve a firearm from the bedroom. Cst. FRENETTE entered into the residence through the open window and was subsequently confronted by SIMON wielding a rifle. Cst. FRENETTE fired 3 rounds at SIMON fatally wounding him - SIMON died in hospital approximately 2 hours later.

***The facts made available by the subsequent investigation are insufficient to reasonably establish any charge that would make this incident a culpable homicide, including either criminal negligence or manslaughter.***

However, a review of the operational manner in which the RCMP responded to this incident has given rise to the following recommendations:

1. It is the opinion of the Review Team that Cst. FRENETTE was not clear on his role and responsibilities which was a precipitating factor in the outcome of this incident. Presently the RCMP Operational Manual only contains a definition of a "barricaded person" under the Immediate Action Rapid Deployment (IARD) policy. The RCMP Operational Manual does not contain clearly defined policy with respect to the detailed operational procedures required in a critical incident. The Review Team recommends a managerial review of the RCMP policy and or guidelines related to "barricaded persons" be conducted in order to address this issue and to assess the sufficiency of and the adherence to current RCMP policy and training related to the management of barricaded person incidents.
2. It is the opinion of the Review Team that initial responding officers and particularly Cst FRENETTE, were not given concise directions and/or a plan on the procedures to successfully resolve a critical incident. The Review Team recommends that all District Commanders in "H" Division receive the Incident Commanders Course to ensure proper procedures are followed. In the absence of the attendance of a District Commander to a critical incident, the Review Team recommends a guide/checklist be developed and installed in all the police vehicles' mobile workstations. This checklist will ensure all operational procedures for a critical incident are followed and completed.
3. It is the recommendation of the Review Team that a review of the training curriculum provided to members of the RCMP on the response process to critical incidents such as barricaded persons be conducted. This training review should address Containment Principles for responding officers and include the general rules and guidelines for containment and the role and responsibilities of containment officers as well as instruction in the identification and management of Emotionally Disturbed Persons.
4. That Cst FRENETTE attend a refresher session on the RCMP Incident Management Intervention Model, including a session on risk assessment. It is further recommended that Cst FRENETTE attend a recertification of his Immediate Action Rapid Deployment users course.
5. It is the recommendation of the Review Team that the "Use of Force" subject matter experts who are assigned to assist with Integrated Critical Investigative Team investigations receive advanced training in the bio-mechanics of lethal force encounters. This training should encompass the crucial dynamics that impact the understanding of "use of force" encounters. I would recommend that this should be a requirement for members who are tasked to review these incidents from a "use of force" perspective and provide opinions on the involved officers actions.

### **ICIT Overview**

The Integrated Critical Incident Team (ICIT) was assembled on December 3, 2008 at the Royal Canadian Mounted Police, Baddeck Detachment office following the fatal shooting of John SIMON on the Wagmatcook First Nations Community. The team was comprised of members of the Halifax Regional and Royal Canadian Mounted Police with the former taking the lead investigative role. The Officer in Charge of the investigation was Superintendent Michael K. BURNS of the Halifax Regional Police.

Where possible, two person investigative units comprised of a member of each respective agency were assigned to complete investigative tasks. Prior to the formal convening of the ICIT, several investigative actions were initiated by RCMP preliminary investigators; these actions were critical in the preservation and/or collection of evidence and included: the securing of the incident scene at 15 Katie's Lane, Wagmatcook First Nations Community; NS, the securing of the body of John SIMON, the seizure of clothing worn by John SIMON, the seizure of all clothing, footwear and equipment worn by Cst. Jeremy FRENETTE and the initial interview of Cst. Jason BERNARD.

Upon the formal assembly of ICIT, a review of the preliminary investigative actions was conducted and newly identified investigative tasks were assigned to field investigators. The majority of the ICIT field investigation occurred from December 3rd to December 5th, 2008 however; a return trip to the area to finalize the investigative tasks occurred on December 18th, 2008.

The ICIT are responsible for:

1. Conducting a thorough investigation into all aspects of the incident under investigation;
2. Preparing a final report including recommendations regarding changes in policy, training, operational procedures, or related issues;
3. Determining from the information and evidence whether there has been any violation of the Criminal Code or other Federal, Provincial or Municipal Statutes;
4. Requesting the Public Prosecutions Service to appoint a Crown Attorney to provide pre-charge advice as required;
5. Any other duties assigned by the Officer in Charge (OIC).

### **Detailed Account of the Incident**

On December 2, 2008 at 2045 hours the Baddeck RCMP were contacted to respond to a domestic dispute at the residence of John SIMON and Patsy MacKAY in the Wagmatcook First Nations Community. The complainant - Catherine ISADORE (SIMON's sister-in-law) indicated in the initial complaint that SIMON and MacKAY were intoxicated, that SIMON was potentially suicidal and that he was fighting with MacKAY over a firearm.

Cst. Jason BERNARD was dispatched to this call at 2049 hours. Initially he contacted the complainant (ISADORE), who in turn directed him to speak with Patsy MacKAY who had left the SIMON residence following the altercation. MacKAY stated that she and SIMON had been arguing earlier in the day and that he ordered her out of the house. According to MacKAY, this was not an unusual state of affairs in their relationship particularly when SIMON was drinking or abusing pharmaceutical drugs. MacKAY related to BERNARD that at 2015 hours she had received a phone call from SIMON where he stated he had a shotgun pointed to his chest and that he was tired of living.

MacKAY returned to the residence and after a struggle with SIMON, she removed a shotgun from the home. MacKAY then left the residence. It should be noted that a similar incident had occurred later at approx. 2030 hours involving Charlene ISADORE (MacKAY's daughter). SIMON had called her and again stated that he intended to shoot himself. ISADORE also attended SIMON's home to retrieve a weapon. She subsequently became involved in a struggle with SIMON over a rifle through an open window but was unable to retrieve the gun. MacKAY informed Cst. BERNARD that there were other firearms in the house and that SIMON threatened to kill himself if the police showed up at his home.

At approx. 2055 hours Cst. BERNARD contacted SIMON on the phone to ascertain what was taking place. SIMON stated that he was all right. Cst. BERNARD believed that it was necessary to confirm SIMON's well being given the suicide complaint and to follow up on public safety concerns given the preceding incidents involving firearms. Prior to attending the residence Cst. BERNARD requested back-up and Cst. FRENETTE was called out. Cst. BERNARD responded alone to the residence and made contact with SIMON. Cst. BERNARD was refused entry into the home by SIMON who had stated that he was fine and requested Cst. BERNARD to depart. Cst. BERNARD conversed with SIMON through a bedroom window on the north / west corner of the residence - referred to as the computer room. He observed that SIMON appeared to be intoxicated and he observed a long gun lying on a bed in close proximity to him. Cst. BERNARD did not acknowledge the presence of the firearm at that time. As a result of these observations Cst. BERNARD left the area to request additional officer assistance and to meet with Cst. FRENETTE who had already been contacted by RCMP telecoms and was in the process of making his way to the call.

Cst. BERNARD called S/Sgt. Archie THOMPSON, District Commander for Victoria County. Cst. BERNARD informed him of the situation at hand and he then attended his residence to pick him up. Both members then traveled to a pre-determined rally point (Red Barn) to meet with Cst. FRENETTE. Following a brief meeting at the Red Barn where the situation they were facing was discussed to some extent, Cst. FRENETTE, Cst. BERNARD and S/Sgt. THOMPSON re-deployed to Katie's Lane. While en route the officers stopped on the highway and were approached by Charlene ISADORE (stepdaughter of SIMON).



ISADORE informed the officers that SIMON still had a gun and was potentially suicidal. Cst. FRENETTE proceeded to the Ultramar station to gas his vehicle and began to observe the SIMON residence from that vantage point. Cst. FRENETTE then joined Cst. BERNARD and S/Sgt. THOMPSON on Katie's Lane. Cst. BERNARD blocked the eastern end of Katie's Lane with his vehicle and Cst. FRENETTE used his vehicle to block the western side.

At this point (2132 hours) S/Sgt. THOMPSON instructed Cst. BERNARD to contact SIMON to determine his state of mind. Cst. BERNARD spoke with SIMON in both English and Mi'kmaq - SIMON stated that he would shoot himself if police came to his home. This information was relayed to S/Sgt. THOMPSON who then began efforts to notify and evacuate residents in the immediate area. Cst. BERNARD makes a second call to SIMON (2139 hours) with the same result.

Cst. FRENETTE on his own initiative left his containment position and traveled alone to the area of 15 Katie's Lane following the western tree line. He took up a position behind the home of Catherine ISADORE located immediately west of the SIMON residence. At 2145 hours Cst. FRENETTE radioed his location to S/Sgt. THOMPSON. From this location Cst. FRENETTE could hear conversation from within the SIMON residence and felt more than one person may have been inside the home. Cst. FRENETTE moved to the rear of a car parked in the driveway of 15 Katie's Lane at approximately 2155 hours. It was at this time that S/Sgt. THOMPSON advised Cst. FRENETTE of a van that had breached the perimeter containment and proceeded to the ISADORE residence. S/Sgt. THOMPSON asked where Cst. FRENETTE was and if he was at the residence. Cst. FRENETTE states that he is near the home and that he has both exits covered. A short time later he left this observation point and moved to a location behind a tree near the car - Cst. FRENETTE was not comfortable with the cover/concealment the tree provided and as a result returned to his position behind the car. The car was backed into the driveway with the rear of the car parallel to the back of the residence.

Cpl. Mark MacPHERSON and Cst. Laura SEPTON arrived on scene at 2159 hours. Cst. SEPTON was instructed to position her vehicle immediately behind Cst. FRENETTE's police vehicle. Cpl. MacPHERSON joined S/Sgt. THOMPSON in Cst. BERNARD's vehicle. Shortly thereafter, S/Sgt. THOMPSON requests ERT and a negotiator.

A short time later Cst. FRENETTE moved from his position of cover behind the vehicle to the southwest corner of the residence. He then moved up onto the back deck of the home in order to look directly into the kitchen window. At this point he moved down the deck in order to look through the door. Cst. FRENETTE then proceeded further down the deck to an open window located on the southeast corner of the residence, he peered into the window and listened to SIMON on the phone. Cst. FRENETTE believed that he might have been compromised at this point. At 2204 hours S/Sgt. THOMPSON radios Cst. FRENETTE to inform him that Cst. BERNARD would be joining him at the residence. In response Cst. FRENETTE double backed off the deck and moved to a new position on the east wall of the SIMON residence and awaited the arrival of Cst. BERNARD.

Cst. BERNARD made his way to the residence following the tree line on the east side of Katie's Lane. While en route he stopped at the home of Maxine York and Gibert ISADORE

which is located immediately northeast of the SIMON residence. Cst. BERNARD advises them of the situation but they do not choose to evacuate. Cst. FRENETTE observes Cst. BERNARD's arrival and waves him over to his position on the east wall of the home. Cst. FRENETTE instructs Cst. BERNARD to remain on the east wall - he then returned to his previous position on the deck. Cst. BERNARD at this point was unsure where Cst. FRENETTE had gone, he remained in this location for approx. 10 minutes. He was uncomfortable in this position given the proximity to the home and subsequently moved into the tree line adjacent to the east side of the residence. It was at approximately this time (2212 hours) that S/Sgt. THOMPSON asked (radioed) if Cst. BERNARD was with Cst. FRENETTE. Cst. FRENETTE acknowledged that he was. S/Sgt. THOMPSON then informed members via radio that ERT was en route - an inaudible response was recorded from Cst. FRENETTE in response to this information.

Upon returning to the deck Cst. FRENETTE once again proceeded to look into the kitchen window and the door but still did not see anyone inside. Cst. FRENETTE then moved back to the open livingroom window, reached in and opened the curtain slightly to increase his viewing area within. John SIMON could be heard talking, presumably on the telephone.

Moments after Cst. FRENETTE's arrival at this window, he observed John SIMON without a weapon and he transmits this information on the radio. Cst. FRENETTE feels at this point that he may be able to catch SIMON off guard and unaware thereby bringing about a peaceful resolution to the matter. Cst. FRENETTE asks, "Do you want me to go in?" presumably to S/Sgt. THOMPSON. S/Sgt. THOMPSON in turns asks Cst. FRENETTE, "What are you seeing there?" Cst. FRENETTE describes seeing SIMON on the toilet having a cigarette - states he has an open window and that "now is the time" to act. He **does not** receive permission. Cst. FRENETTE then opened the window wider using his shoulder - he believed that he may have been compromised at this time because he heard SIMON state, "What do you want?" Cst. FRENETTE backed off into a crouched position by the window and waited.

It should be noted that during this exchange on the radio between Cst. FRENETTE and S/Sgt. THOMPSON, Cst. BERNARD became fully aware that Cst. FRENETTE was on the porch at the window. He was not sure why Cst. FRENETTE was there or what his intentions were. Cst. BERNARD decided at that point to attempt to contact SIMON on the phone as a diversionary tactic. Cst. BERNARD moved back into the woods out of sight of Cst. FRENETTE and called SIMON's phone number at 2224 hours. The phone rang but was not answered.

While Cst. FRENETTE awaited direction, S/Sgt. THOMPSON was discussing with Cpl. MacPHERSON the risks involved with Cst. FRENETTE's requests to engage John SIMON. In the meantime, Cst. FRENETTE observed SIMON stand up from the toilet. Cst. FRENETTE believed that the opportunity to successfully and peacefully resolve the situation was about to be lost. In the absence of clear direction to attempt or not attempt to make the arrest, Cst. FRENETTE decided to challenge SIMON from outside the window. FRENETTE identified himself by name (Jeremy) and as an RCMP officer, he then ordered SIMON to "get to the ground" on several occasions. John SIMON stood frozen staring at Cst. FRENETTE in what Cst. FRENETTE described as a "baked" state. SIMON made no verbal response at this time. Moments later SIMON ignored the police challenge, turned

and moved quickly towards the bedroom. Upon observing this action, Cst. FRENETTE fully committed to the interior of the residence by jumping through the open window. He landed on the sofa below the window and rolled onto the floor. Cst. FRENETTE then ran towards the kitchen area and looked into the bedroom John SIMON had entered.

Cst. FRENETTE observed John SIMON within the bedroom bending over to pick up a rifle. With the rifle pointed downward, John SIMON turned to face Cst. FRENETTE and started towards him. Cst. FRENETTE yelled "No John, John No" as John SIMON began to raise the rifle in his direction. Cst. FRENETTE responded to the immediate threat of death or grievous bodily harm by firing one round at him. John SIMON dropped the rifle slightly, looked at Cst. FRENETTE and began to raise the rifle again. Cst. FRENETTE responded with a second shot, SIMON began to fall but continued to raise the rifle towards Cst. FRENETTE who fired a third and final shot which dropped SIMON to his knees then onto the floor on top of his rifle. Cst. FRENETTE then moved in on SIMON placing his knees and weight on his back.

Hearing the commotion and police commands, Cst. BERNARD ran from his location, jumped onto the back deck and moved to the rear door when he heard two shots fired. Cst. BERNARD breached the rear door after finding it locked. Once inside he located Cst. FRENETTE on top of SIMON at which point Cst. FRENETTE directed him to handcuff SIMON.

Having heard the yelling over the radio S/Sgt. THOMPSON felt that an officer was in need of assistance. He and Cpl. MacPHERSON traveled by vehicle quickly from their outer perimeter post to 15 Katie's Lane followed shortly thereafter by Cst. SEPTON. With their service pistols drawn, Cpl. MacPHERSON and S/Sgt. THOMPSON went inside via the open door located on the west side of the residence. Cpl. MacPHERSON assessed the situation, directed the handcuffs to be removed from SIMON and began providing emergency first aid.

John SIMON was later transported by ambulance to the Victoria County Memorial Hospital where he succumbed to his wounds and was pronounced dead at 0040hours on December 3, 2008.

### **Investigative Activity**

The following is meant only to provide a summary of the significant investigative tasks conducted. Detailed written, audio, and video documentation related to the investigation is included and provided in digital format.

### **CIVILIAN WITNESSES**

#### **Patricia Ann MacKAY**

Common-law partner of John SIMON for 24 years. She noted John had been using prescription drugs and consuming liquor quite heavily since he returned home from Pubnico (approximately 3 weeks prior to the incident). On Dec 2, 2008 John SIMON was drinking; he told her he was tired of being sick and hadn't taken his insulin in 2 days. At 2015 hours she received a call from John stating that he had a shotgun pointed at his chest. She returned home and saw the gun on the bed and tried to get it from him; a struggle ensued and she eventually got it from him. She took the gun with her in the van and took it to her daughter's place. At 2144 hours, she received a call from John stating that he loved her and she asked him if he wanted her to come home. He said he didn't want her to see the bloody mess, he was blaming her for calling the police. She heard 3 gun shots while parked at the Ultramar gas bar awaiting the end of the incident; she then drove with her daughter Charlene ISADORE to her house where she learned that John had been shot.

#### **Charlene ISADORE**

Daughter of Patricia MacKAY and step-daughter of John SIMON. On December 2, 2008 she received phone calls from John SIMON; these calls began at around 2030 hours and ended at approximately 2121 hours. During these calls John SIMON advised her that he had a gun to his chest and wanted to die. He said that life was hard, he was tired/sick of living and wanted to die. She drove to John SIMON's residence where she proceeded to an open window (computer room). She observed John SIMON playing poker on the computer. She requested John let her in, saw a gun with a clip in it laying on the bed and then grabbed the barrel of the gun and attempted to pull it out of the window. John SIMON stood from his chair, grabbed the other end of the gun and pulled it from her. She left his residence and located 2 police units parked on the highway; she approached them and told them John SIMON had a gun and he wanted to shoot himself. She heard 3 gun shots while parked at the Ultramar gas bar awaiting the end of the incident; she drove with her mother, Patricia MacKAY to her mother's house where she learned that John had been shot.

#### **Daniel D'EON**

Daniel D'EON is the skipper (mentor) of the Wycogomah First Nations fishing vessel "Susan Bernard" which fishes out of West Pubnico, NS. He worked with John SIMON aboard this vessel and knew SIMON to be punctual and a good worker. D'EON also knew John SIMON to be diabetic, to have had a drinking problem and to have used marijuana in the past. He was aware that John's diabetes was worsening during the four-month

period leading up to the shooting incident; John's medication went from pill form to insulin shots during that time. On December 2nd, 2008, at approximately 2145 hours John SIMON called him at home. John said that he wasn't doing good, that he had a gun, that it was loaded, that the Mounties were outside, that he was down, really down. D'EON talked about the good things in John's life and thought he was bringing him around. He hung up around 2220 hours.

A.J. SIMON

He received a call from Curtis SIMON (John SIMON's nephew) at approximately 2027 hours on December 2, 2008. Curtis was in Pubnico and asked A.J. to go check on John. He was with Oliver FRANCIS driving around at the time of the call. They drove up to the residence and into the driveway of John SIMON. John was observed standing in the computer room. He did not get out of the car or speak with John SIMON. He kept Curtis SIMON on the phone the entire time he was checking on John SIMON.

Walter ISADORE

He resides with his wife, Katherine ISADORE, and their children at 22 Katie's Lane, Wagmatcook First Nations Community, NS. Their home is located immediately west of John SIMON's residence. On December 2, 2008 at approximately 1530 hours he arrived home; John SIMON wanted to talk to him; he went over and noted John to be drunk and to be involved in an argument with Patsy MacKAY. He left a short time later and drove to Sydney, NS with his children; he called his wife from Sydney and learned from her that John SIMON wanted to kill himself. He was very worried so he took the children in the van and headed back to his house right away. When he arrived at Katie's Lane, he noted police cars at this location. He left and then later returned to Katie's Lane; the police wouldn't allow him to pass. He called his wife and she walked to his location. He and his wife heard 3 gun shots while parked at the Ultramar gas bar awaiting the end of the incident; they drove to John SIMON's house where they learned that John had been shot.

Katherine ISADORE (aka Mary KATERRE)

She resides with her husband, Walter ISADORE, and their children at 22 Katie's Lane, Wagmatcook First Nations Community, NS and their home is located immediately west of John SIMON's residence. She is the sister of Susie BERNARD; Susie is John SIMON's mother. On December 2, 2008 she came home a little after 1600 hours. She received a phone call from Patsy MacKAY who advised that John SIMON was intoxicated. She was at Susie's when Patsy MacKAY called Susie between 2030 and 2100 hours. She learned from Susie that Patsy wanted her to call '911'; she called '911' and reported that John SIMON and Patsy MacKAY were fighting and that John was drunk, had a gun and was suicidal. She returned to her residence at 22 Katie's Lane as her daughter was home. When she walked home, she could see the computer room and kitchen light on at John SIMON's house. She saw Charlene going to the John SIMON's house in her van. She spoke with John SIMON by phone at around 2137 hours following Charlene's departure from his residence; John was in a self pity mood. She told him that she was coming over; John told her if she came over he would likely shoot her. In the past when things

happened at John's house she goes over and things get resolved; this time was different. She saw the police arrive then leave; she went over to John's to try and talk to him when the police left but he wouldn't answer the door.

Walter called her and she walked over to the Ultramar gas bar where she joined him in their vehicle. She and her husband heard 3 gun shots while parked at the Ultramar gas bar awaiting the end of the incident; they drove to John SIMON's house where they learned that John had been shot.

Curtis SIMON

On December 2, 2008 at approximately 2000 hours he received a call on his cellular phone from Patsy MacKAY; Patsy was crying and upset. She told him that John had been drinking. He spoke to her for around 3 minutes and as soon as he finished, he called his friend "A.J." (Alwyn) SIMON. He asked A.J. to go to John's house and see what was going on. He stayed on the phone with A.J. while he drove to that location (estimates 3-6 minutes); when A.J. arrived he could see John SIMON in the house but not Patsy. As a result of A.J.'s observations he told A.J. not to go in as it might cause problems.

Brenda WHITTY

She works at the Nova Scotia Liquor Commission (NSLC) in Baddeck, NS. On December 2, 2008 between 1700 and 1730 hours, she had contact with John SIMON at the NSLC. John SIMON was noted by her to be intoxicated, unsteady on his feet and to have red eyes. She refused to serve John SIMON and told him that no one else could buy liquor for him.

Roger PECK

He last saw John SIMON driving past his residence several times during the morning of December 2, 2008. That night S/Sgt. Archie THOMPSON attended his home and advised him to evacuate his residence due to the ongoing incident. He left and went over to the Ultramar gas bar. Approximately 40-45 minutes later he heard three "loud" rounds being discharged, followed by a "smaller" round going off. He believed that the gunfire was likely John SIMON firing rounds into the sky.

Mary GOOGOO

On December 2, 2008 at approximately 2230 hours her pager activated requesting she attend 22 Katie's Lane as a Fire Department first responder. Information provided was that a 40 year old male had been involved in a shooting. She attended the location and noted numerous police vehicles and people to be at John SIMON's residence. She went inside the residence and observed John SIMON laying on the floor by the bedroom doorway; a dark haired RCMP officer had his hand over John SIMON's chest. She assisted the RCMP with first aid until Emergency Health Services (EHS) arrived.

## **POLICE WITNESSES**

### **Cst. Jeremy FRENETTE**

A member of the Royal Canadian Mounted Police who, at the time of the incident, worked out of the Baddeck Detachment. He was off duty on December 2, 2008 when contacted by RCMP telecoms requesting he come in to work to assist Cst BERNARD. He met with S/Sgt. THOMPSON and Cst. BERNARD at the 'Red Barn' prior to attending Katie's Lane. He met with Charlene ISADORE prior to the shooting incident. He used his car to block off the west end of the Katie's Lane loop. He moved towards 15 Katie's Lane to gain a better vantage point and to ensure no persons entered/exited from this location. He made observations of John SIMON through an open window located on the south side of the home. These observations were attempted to be communicated to other involved RCMP members; he felt an opportunity to successfully and peacefully resolve the situation was present and fleeting when he entered into 15 Katie's Lane. John SIMON pointed a firearm at him and he responded by shooting John SIMON 3 times.

### **Cst. Jason BERNARD**

A member of the Royal Canadian Mounted Police working out of the Baddeck Detachment. Cst. BERNARD was the initial officer to respond to 15 Katie's Lane, Wagmatcook First Nations Community, NS. His initial observations caused him to leave until addition backup arrived to assist. He contacted and later picked up S/Sgt. THOMPSON at his residence. He and S/Sgt. THOMPSON met with Cst. FRENETTE at the 'Red Barn' prior to re-attending Katie's Lane. He made several phone calls to John SIMON between the time he, S/Sgt. THOMPSON and Cst.FRENETTE arrived at Katie's Lane and when he was deployed by S/Sgt.THOMPSON to join Cst. FRENETTE near 15 Katie's Lane prior to the shooting incident. During these phone conversations he spoke with John SIMON in Mi' kmaq and relayed the details of the conversation to S/Sgt.THOMPSON. He entered 15 Katie's Lane by kicking open the back door after hearing commotion within, shouting of police commands and gunfire. Once inside he made observations of Cst.FRENETTE and John SIMON.

### **S/Sgt. Archie THOMPSON**

A member of the Royal Canadian Mounted Police working out of the Baddeck Detachment. He was contacted and later picked up at his residence on December 2, 2008 by Cst.Jason BERNARD. He was advised of the circumstances which prompted Cst.BERNARD to contact him. He later briefed Cst.FRENETTE at the 'Red Barn' prior to attending Katie's Lane. He requested the assistance of Sgt. Bruce MacDONALD (ERT) and deployed other members attending Katie's Lane: Cst. Laura SEPTON and Cpl. Mark MacPHERSON upon their arrival. He received briefs from Cst. BERNARD relating to phone conversations Cst.BERNARD was having in Mi' kmaq with John SIMON. He later directed Cst. BERNARD to join Cst.FRENETTE at his location near 15 Katie's Lane. He consulted with Cpl MacPHERSON during the unfolding of events and later attended/entered into 15 Katie's Lane after shots were fired.

Cpl. Mark MacPHERSON

A member of the Royal Canadian Mounted Police working out of the Inverness Detachment. He responded to Katie's Lane to assist in an ongoing call at this location. He joined S/Sgt. THOMPSON in his vehicle and had discussions with him over the unfolding events. He entered into 15 Katie's Lane after the shooting and made observations of John SIMON, Cst. FRENETTE and Cst. BERNARD. He provided care to John SIMON until the ambulance arrived.

Cst. Laura SEPTON

A member of the Royal Canadian Mounted Police working out of the Inverness Detachment. She responded to the Wagmatcook area at the request of her supervisor, Cpl. Mark MacPHERSON. She positioned her vehicle beside that previously operated by Cst. FRENETTE at the west end of the Katie's Lane loop. She proceeded to the residence at 15 Katie's Lane after 3 loud noises were heard which she believed to have been gunfire. She kept several people from entering the home immediately after the shooting occurred. She entered 15 Katie's Lane at the request of S/Sgt. Archie THOMPSON to check on the status of John SIMON.

**FORENSIC IDENTIFICATION SERVICES**

The scene at 15 Katie's Lane, Wagmatcook First Nations Community, NS was processed by RCMP Forensic Identification Section members Cpl. Jim LEADBETTER and Cst. John LANDRY. During the processing of the scene, identification officers took scene measurements, photographs, and videos and also searched for, located and identified exhibits to be seized. They made observations of the scene which were reduced to notes, diagrams and electronic reports. Their activities are best read in their entirety; however, their findings are supportive of other evidence collected during the ICIT investigation.

**FORENSIC LABORATORY**

Several exhibits seized during the course of the investigation were sent to Forensic Laboratory Services with the request for various types of analysis. These exhibits were as follows:

- 3 Luger 9mm "Winchester" bullet casings
- 3 fired 9mm bullets
- 1 .303 "Remington" cartridge
- 1 "Smith & Wesson" pistol
- 3 9mm cartridge magazines
- 2 "Lee Enfield" .303 rifle's (one with damage to wooden front grip)
- 3 wood fragments
- 1 "Cooley" .22 rifle
- 1 orange and gray sleeveless shirt (cut and stained)
- 1 vial of vitreous fluid
- 2 vials of blood



The laboratory reports relating to the analysis of these exhibits indicate the following:

-The 3 "Luger" 9mm bullet casings and 3 fired bullets were determined to have been fired/ejected from the "Smith & Wesson" pistol used by and seized from Cst. Jeremy FRENETTE.

- Cst. FRENETTE's "Smith & Wesson" pistol was tested and was found to operate in a semi-automatic fashion as designed. As part of the analysis the pistol was dropped and struck with a mallet, these actions did not cause the weapon to discharge. An average of 6.1kg of pressure on the trigger was required to discharge the firearm.

- 3 cartridge magazines were seized from Cst. Jeremy FRENETTE; 2 had 15 Luger 9mm ("Winchester" and "Remington" brand) cartridges in it and 1 had 13 Luger 9mm ("Winchester" and "Remington" brand) cartridges in it.

- One of the recovered bullets was noted to have wood fragments in the hollow point of same; the analysis of these wood fragments indicates the presence of a varnish on the surface of the wood.

- The rifles seized from John SIMON's residence were operational and are firearms within the meaning of Section 2 of the Criminal Code.

- Wood fragments seized from the residence of John SIMON were analyzed and determined to have originated from the damaged stock of the Lee Enfield rifle Mr. SIMON had been in possession of.

***- The damage to the wooden stock of the Lee Enfield rifle Mr. SIMON had been in possession of was determined to be consistent with having been caused by a perforating impact from a bullet traveling from the right side (bolt hand side) to the left side of the rifle and from the muzzle end toward the butt end of the rifle.***

- The live .303 Remington cartridge which was located on the floor nearby the Lee Enfield rifle John SIMON had in his possession, was determined to have previously been in this rifle. This determination was made by the analysis of markings made on the cartridge during the extraction process.

- Concentrations of alcohol in the blood and vitreous humor of John SIMON at the time of his death were determined to be 173 mg% and 193mg% respectively; Diazepam (trade name "Valium") and Midazolam were also found to be present.

#### **POST MORTEM EXAMINATION**

The post mortem examination of John SIMON was conducted in Halifax, NS on December 3, 2008. In attendance for the procedure were: Dr. Marnie WOOD (Forensic Pathologist), Cst. Catherine BEZAIRE, Darryl BARR (Forensic Laboratory Firearms Section), Cst. Darlene MCEACHERN (Forensic Identification Services), Cst. Martin MCKENNA (Forensic Identification Services), Danny MOMBOURQUETTE (Medical Examiner Service Technician) and Joseph LEE (resident pathologist).

During the examination the following observations were made by Dr. WOOD:

- A wound on the left hand and a large bruise on the left arm (underside of forearm); the wound on the left hand was determined to be the entry point for the bullet.
- A small round red mark on the left shoulder blade area.
- A bleeding wound on the back left rib area.
- X-rays of John SIMON revealed a second bullet in his pelvic area near the spine; this bullet had caused the wound in John SIMON's chest (to the right of the left nipple)
- A hole in the bowel and stomach.
- Damage to the spleen and liver; one bullet had hit the liver and another had hit the spleen.
- The bullet which caused the wound to John SIMON's chest (under the left nipple) exited via his back
- Vitreous fluid, pooled blood and 2 bullets were key exhibits seized during the procedure.

**CAUSE OF DEATH:** Gun shot wounds to the thorax

**MANNER:** Homicide

#### **MEDICAL RECORDS**

Medical records obtained from the Victoria County Memorial Hospital relating to the treatment received by Mr. John SIMON on December 2nd and December 3rd, 2008 were obtained. These records document the injuries sustained and treatment provided to Mr. SIMON.

The records show that Mr. SIMON's treatment began at 2242 hours on December 2, 2008; this initial treatment was provided by Emergency Medical Technicians (EMT) operating an Emergency Health Services Nova Scotia (EHSNS) ambulance. Mr. SIMON was transported from his residence to the Victoria County Memorial Hospital by EMT's arriving at 2308 hours. Medical treatment continued at this location while staff here awaited the arrival of EHSNS Lifeflight. At 0040 hours on December 3, 2008 Mr. SIMON went into cardiac arrest and death was declared by medical personnel. Mr. SIMON was documented as being alert, talkative and restless at the time of his arrival at the Victoria County Memorial Hospital. A review of the medical treatment provided to Mr. SIMON is beyond the scope of the ICIT's investigation.

## PHONE RECORDS

Records which document cellular phone usage by involved members of the Royal Canadian Mounted Police and John SIMON on December 2, 2008 were obtained during the course of the ICIT investigation. The following is a summary of key call data:

### Assigned Numbers

(902) 295-8367	Cst. Jason BERNARD
(902) 295-0909	S/Sgt. Archie THOMPSON
(902) 295-8988	John SIMON
(902) 762-0422	Daniel D'EON
(902) 295-0106	Patsy MacKAY
(902) 537-2080	Curtis SIMON
(902) 295-1223	Curtis SIMON
(902) 295-1523	Charlene ISADORE
(902) 295-7209	Katherine ISADORE (aka Mary KATERRE)

- 10 calls were exchanged between John SIMON and Patsy MacKAY between 1932 and 2159 hours; of these, 5 calls were made from John to Patsy and the other 5 from Patsy to John. The call durations ranged from 21 seconds to 3 minutes and 4 seconds.
- 8 calls were exchanged between John SIMON and Charlene ISADORE between 1955 and 2111 hours; of these, 7 calls were made from John to Charlene and the other 1 from Charlene to John. The call durations ranged from 28 seconds to 6 minutes and 24 seconds.
- 5 calls were exchanged between John SIMON and Curtis SIMON between 1628 and 2134 hours; of these, 4 calls were made from John to Curtis and the other 1 from Curtis to John. The call durations ranged from 30 seconds to 2 minutes and 52 seconds.
- 3 calls were exchanged between John SIMON and Cst. Jason BERNARD; in all cases Cst. BERNARD called John. The first call occurred at 2132 hours and lasted 57 seconds, the second at 2139 hours for 7 minutes and 31 seconds and the third at 2224 hours and lasted 35 seconds.
- John SIMON made 1 phone call to Katherine ISADORE at 2137 hours; the call lasted for 3 minutes and 17 seconds.
- John SIMON received 1 phone call from Daniel D'EON at 2152 hours; their conversation lasted for 28 minutes and 43 seconds.
- S/Sgt. Archie THOMPSON called Curtis SIMON at 2147 hours; the call lasted for 1 minute and 41 seconds.
- Cst. Jason BERNARD called Curtis SIMON at 2128 hours; the call lasted for 55 seconds.

### **TECHNICAL SERVICES**

A desktop computer and cellular phone used by John SIMON were submitted to RCMP Technical Services for analysis. On March 11, 2009 Cst. Greg BEMBRIDGE was consulted and advised that nothing outstanding was noted by him in his analysis. The cellular phone had incoming/outgoing call lists and contact names and numbers on it. Nothing deemed by Cst. BEMBRIDGE to be relevant to the investigation was found on the computer.

### **RADIO WORKSHOP**

Radio signal strength tests were conducted by RCMP Radio Workshop member David PENNEY March 9, 2009 using a device that measures radio signal strength from the different TMR (trunked mobile radio) for that location. A portable and mobile radio, regularly used by the RCMP on the TMR system, were also used in the testing process.

The radio signals in and around Katie's Lane were exceptionally good with the lowest RSSI (radio signal strength indicator) measured at "61" (-70dbm). This was observed from all 3 TMR sites that a radio could affiliate to in this area. There were no problems transmitting or receiving with either radio used in the testing process.

### **OTHER DOCUMENTATION**

Other documentation includes but is not limited to: officer notes, reports, statements, audio and video not captured in this report, warrants, aerial photographs, area maps, a list of area residents, canvass forms, scene continuity reports, a list of equipment and dress carried/worn by Cst. FRENETTE, an inventory of his vehicle, photographs of an RCMP dressed as Cst. FRENETTE was on December 2, 2008, Cst. FRENETTE's training records, unit and radio identification numbers and relating member assigned, exhibit logs and background of John SIMON and can be found in the Electronic Master file.

### **DISCUSSION and INVESTIGATIVE FINDINGS**

On December 2, 2008, at 2045 hours a 911 emergency call was made by Catherine ISADORE, reporting a domestic fight between John SIMON, the deceased, and Patsy MacKAY, his common law wife. Ms. ISADORE indicated, "I have an intoxicated neighbor. He is intoxicated and trying to commit suicide and fighting with his girlfriend" (911 recording). Ms. ISADORE advised that Mr. SIMON was at 15 Katie's Lane, Wagmatcook First Nations Community, NS. Ms. ISADORE was not at that address. She advised that, "John wants to commit suicide and they're fighting over a gun".

Dispatch relayed the information to Cst. Jason BERNARD. He asked that Cst. Jeremy FRENETTE be alerted. Cst. FRENETTE was called by dispatch at 2056 hours. Dispatch

told Cst. FRENETTE that there was a complaint of a fight between John SIMON and Patsy MacKAY and that they were fighting over a gun.

At 2059 hours the dispatcher advised that she had conducted queries and that John SIMON was entered as "Victor, Mike and Sierra". The designation "Victor" indicates violence, "Mike" mental health issues and "Sierra" means suicidal. As such if Cst. FRENETTE heard this dispatch at 2059 hours he would have been aware that SIMON was potentially suicidal, violent and suffering from mental health issues.

Cst. BERNARD called the complainant, Catherine ISADORE, who directed him to Patsy MacKAY. Patsy MacKAY advised Cst. BERNARD that she spoke to John SIMON again and that he claimed he was not serious about committing suicide. Cst. BERNARD decided that he needed to check out the situation in any event. Cst. BERNARD attended 15 Katie's Lane in order to determine whether or not John SIMON was okay. After doing so, he called dispatch stating:

**"Yeah, 10-4. We'll need more backup. I kind of, I got there, I looked through the window and I seen a firearm sitting on the bed there. So I kind of told him, didn't want to make any other movement where he could have grabbed his gun sitting right there on the bed. He was talking on the telephone at the time, so I'm probably going to need more, more manpower here. Try to get in the house and for some reason, like I said, I don't want to put myself, my life in danger there, where there's a, I don't know if the gun is loaded, but there is, I seen it visually there, sitting on the bed. And he's there intoxicated." (2114 hours)**

Cst. BERNARD contacted his supervisor, S/Sgt. THOMPSON, and on his instruction leaves to pick him up. There is conversation amongst the dispatcher, Cst. FRENETTE and Cst. BERNARD. At that point, Cst. FRENETTE had some information incorrect about the call:

**Cst. FRENETTE: "I'm not sure of everything that's going on. I heard, I believe it's Jonathan BERNARD, 15 Katie's Lane and firearm involved so he should be involved."**

**Cst. BERNARD corrects Cst. FRENETTE, stating: "No. FRENETTE, it's John SIMON, 15 Katie's Lane. Aaron Brown dealt with him before, he's violent, known to resist. Anyway, I went there and knocked on the door and no answer. He's sitting in the bedroom talking on the telephone with somebody. He's intoxicated and there's a firearm sitting right on the bed so I didn't want to say too much. I told him if everything's okay with him, I kind of (inaudible), just try to gather more manpower. I'm going to pick up Archie."**

**Cst. FRENETTE: "10-4. I'm coming down Hunter's Mountain now. I'll probably be there. I'll meet you." (2117 hours)**

It can be inferred that at this point in time, Cst. FRENETTE knew that the person of interest was John SIMON, that he resided at 15 Katie's Lane, that he was violent and known to resist. Cst. BERNARD told Cst. FRENETTE that SIMON was intoxicated, that there was a firearm sitting on the bed and that more manpower was required.

Cpl. Mark MacPHERSON of the Inverness Detachment radioed in to find out what was

happening. A response came from Cst. FRENETTE:

**Cpl. MacPHERSON:** "Yeah, it's Cpl. MacPHERSON here. I just switched to your channel. I'm just south of Waycobagh, but I'm just going to be monitoring your channel there in case you guys need help there."

**Cst. FRENETTE:** "10-4. Mark I appreciate it. We're not quite sure there what's going on but, the gentleman, he is a quite large gentleman, I guess he has a firearm on the bed there and he is intoxicated, so I'm not sure what his thoughts are. Could be a Sierra or could be just a Victor".

**Cpl. MacPHERSON:** "Okay, 10-4. Ahm, do you want me to send one of our cars up to, right up there with you guys?"

**Cst. FRENETTE:** "Would be three members attending, so if we could have a car in the area it would be nice. I know Laura's going to be nearby as well."

**Cpl. MacPHERSON:** "Okay, I'll 17 your location and "I'll have her close by as well".

**Cst. FRENETTE:** "10-4, thank you".

**Cpl. MacPHERSON:** "10-4. Who am I speaking with, just so, just so I know."

**Cst. FRENETTE:** "Cst. FRENETTE, there, Jeremy in Baddeck." (2124 hours)

As such, at 2124 hours, Cst. FRENETTE knew he was attending a call involving a large, armed gentleman who was intoxicated, and could be suicidal and/or violent. This is in contradiction to Cst. FRENETTE's own statement in which he says that he did not know until after the fact that Mr. SIMON was suicidal (p.5). It is clear from the recording at 21 :24 that Cst. FRENETTE knew John SIMON was suicidal, given his reference to "Sierra".

Previously at the gas station across the street from Katie's Lane, Cst. BERNARD, Cst. FRENETTE and S/Sgt. THOMPSON were approached by Ms. Charlene ISADORE, the stepdaughter of John SIMON. Charlene ISADORE tells them that John SIMON had telephoned her, that he knew the police would be back, and that he wanted to give her his gun so that he would not have it when the police arrived. She went to 15 Katie's Lane in order to get any weapons present, but by the time she got there, Mr. SIMON had changed his mind about surrendering them. They struggled over the rifle. Ms. ISADORE was of the opinion that it was loaded, became scared and left the scene. In her statement to the police, Charlene ISADORE goes even further:

**"He said he was sick. He told me ahh...he wanted to die and life was hard ..., And he told me not to call the cops because if I call the cops ... he was gonna shoot the cops."** (p. 3)

Ms. ISADORE did not relay this threat to the police when she spoke to them before the shooting.

Katie's Lane, which is in the shape of a semi-circle was to be blocked at both ends. A perimeter was established and attempts were made to evacuate the neighbours. The ERT team was called to attend and was on its way with a negotiator. Throughout, Cst. BERNARD attempted to contact Mr. SIMON on the telephone and speak with him in Mi'kmaq. By his own accord, Cst. FRENETTE leaves his position at the entrance to Katie's Lane to get a better view of what's happening at 15 Katie's Lane. Cst. FRENETTE goes

on the property, on to the back deck and looks in the window. He reports back to S/Sgt. THOMPSON as to what he sees. Cst. FRENETTE, after hearing voices inside the house, asked Cst. BERNARD if anyone else was inside. Cst. BERNARD confirmed that John SIMON was alone in the house.

After the decision is made to call in the ERT team, S/Sgt. THOMPSON sends Cst. BERNARD back to 15 Katie's Lane to join Cst. FRENETTE. Cst. BERNARD reports seeing Cst. FRENETTE on the back deck. He is not of the opinion that the cover is sufficient on the back deck so he leaves and pulls back further into the yard. Cst. FRENETTE continues to look in the window from the back deck.

In a radio transmission at 2224 hours, Cst. FRENETTE is asked what he is seeing; he replies:

**"He's sitting on the toilet having a cigarette, no weapons in sight. I gotta open the window to go in. Now is the time."**

Then Cst. FRENETTE states:

**"He's on the toilet with no weapon. Do you want me to go in?"**

He receives no audible response. A response of sorts finally comes from S/Sgt. THOMPSON at 22:25 hours:

**"How big is this guy, Jeremy?"**

Then, at 2227 hours, the words, "no, no, no" can be heard. At 2227 hours SIMON is shot by Cst. FRENETTE.

In his statement to police, Cst. FRENETTE details what happened prior to, during and after his entry into the SIMON home. Cst. FRENETTE claims to have heard John SIMON on the phone acknowledging the police presence (FRENETTE Statement, p.3). Cst. FRENETTE, watching through the window, sees that SIMON has gone to the washroom. The rifle is still on the bed in the other room. Cst. FRENETTE comes to the conclusion that now is the time to end the matter when SIMON does not have access to his weapon and his pants are "around his ankles". He advised S/Sgt. THOMPSON that as SIMON was indisposed, he was not going to get a better chance to go in. Receiving no direction, he concludes it is "now or never" (p. 6). He lifted the window up, and pushed the curtains aside. At that point John SIMON rose from the toilet and walked towards Cst. FRENETTE. Cst. FRENETTE said through the window:

**"John, it's Jeremy, RCMP." (p.7 and 91).**

(although elsewhere in his statement he states only that he said

**"John, its Jeremy, get on the ground and so on." (p.62).**

Cst. FRENETTE states that John SIMON looked at him and he could tell from his eyes that he was "plastered" (p. 7) and in his opinion, "did not even recognize me" (p.7). It should be noted that Cst. FRENETTE was in uniform wearing a goretex jacket and a fleece. Cst. FRENETTE indicates that, "I told him to get on the ground, I told him, get on the ground John. He didn't listen."

SIMON turned and ran toward the bedroom. Believing he was committed, Cst. FRENETTE jumped through the window. He tripped over the drapes and sofa and landed on his knees. He saw SIMON pick up his rifle and turn toward him. Cst. FRENETTE told him to stop, but SIMON didn't respond.

Cst. FRENETTE indicated at page 81 that:

**"I felt he was gonna shoot me. I felt that if I did not shoot him, he was gonna kill me."**

On page 82:

**"He was getting ready to fire...he was aiming."**

After Cst. FRENETTE shot him the first time, SIMON raised the gun towards him again. Cst. FRENETTE shot him a second time. SIMON raised the gun a third time and Cst. FRENETTE shot him a third time which brought him to the ground.

Upon hearing the shots, Cst. BERNARD ran to the residence and kicked in the door. He found Cst. FRENETTE on top of John SIMON. Cst. FRENETTE asked him to handcuff SIMON. Cpl. MacPHERSON and S/Sgt. THOMPSON arrived and Cpl. MacPHERSON administered first aid. John SIMON stated:

**"He shot me, he shot me."**

John SIMON was transported to the hospital where he later died.

John SIMON died of multiple gunshot wounds. There were 2 bullet wounds to his chest, a bullet wound to his arm and an exit wound in his back. A bullet was removed from his arm and one from his chest. The third bullet, presumably from the back exit wound, was found with his clothes at the Baddeck Detachment.

John SIMON's weapon was a bolt action rifle. Forensic photos and the Forensic Laboratory Report of Darryl Barr, Firearms Section, show that the rifle had damage to the fore end of the wooden stock. One of the bullets shot from Cst. FRENETTE's gun and removed from the body of John SIMON, had the hollow point tip plugged with wood. The surface of the wood that was in contact with the bullet had been finished with a stain (p. 3 Forensic Lab Report). Mr. Barr concludes that the damage to the stock of the SIMON rifle was consistent with it having been caused by a perforating impact from a bullet traveling from the right side (bolt handle side) to the left side of the rifle and from the muzzle toward the butt end of the rifle. The wood fragments that were found at the scene were once part of the left side of the damaged area of the stock of the rifle.

Charlene ISADORE told the police prior to the shooting that John SIMON's rifle was loaded. A cartridge found at 15 Katie's Lane had been worked through the action of the rifle. However, at the time that the rifle was pointed at Cst. FRENETTE it was not loaded. Cst. FRENETTE cleared the rifle to see if a bullet was chambered and found the chamber to be empty.



The Forensic Laboratory results lead to the inference that the gun was being pointed at Cst. FRENETTE at the time he shot John SIMON.

**Pursuant to section 222(1) of the Criminal Code** a person commits a homicide when directly or indirectly, by any means, he causes the death of a human being. Homicide is culpable or not culpable. Homicide that is not culpable is not an offence. Upon a review of the documentation provided, I am of the opinion that the killing of John SIMON was not a culpable homicide. Cst. FRENETTE has a compelling self-defense argument.

A thorough analysis requires an examination of whether Cst. FRENETTE was legally in the residence of John SIMON when he shot him and the operation and interplay of the sections of the **Criminal Code** concerning defense of property and self-defense.

#### **Warrantless Entry of 15 Katie's Lane**

In the totality of the circumstances, the warrantless entry was justifiable pursuant to the common law police duty to protect life and safety.

Police conduct which interferes with an individual's liberty or freedom will be authorized by the common law if two criteria are satisfied:

1. The police are acting in the course of their duty when they effected the interference.
2. The police conduct did not involve an unjustifiable use of powers in the circumstances.

Cst. FRENETTE was acting in the course of his duties when he entered 15 Katie's Lane. The common law duties of police include preservation of the peace, the prevention of crime and the protection of life and property. Cst. FRENETTE's initial entry on the property, objectively, was to conduct surveillance, confirm the presence of a firearm, determine SIMON's health and sobriety and ensure no one else was in the residence. This was all necessary intelligence.

Officer safety was a significant issue. The fact that the police had to wait for an opportune moment to enter and end the dangerous situation does not make the situation any less of an ongoing emergency. While conducting ongoing surveillance, Cst. FRENETTE observed SIMON to be incapacitated and unarmed. He believed it was "now or never", received no contrary order and announced himself. It was not until SIMON turned to grab his gun that Cst. FRENETTE felt committed to enter to avoid SIMON shooting out of the residence. Entry was done to conclude the situation peacefully when Cst. FRENETTE believed an opportunity presented itself. Cst. FRENETTE acted to protect John SIMON from himself and anyone in the vicinity from John SIMON if he went for his weapon. Confronted with a dangerous move by an individual whom Cst. FRENETTE reasonably believed to be violent,

suicidal and intoxicated, FRENETTE would have a compelling argument that he acted appropriately by entering the residence, or at the very least that his conduct in so doing did not amount to an unjustifiable use of police powers.

If Cst. FRENETTE was justified in entering Katie's Lane, his subsequent actions in the shooting of John SIMON once John SIMON pointed the rifle at him would be found to be self defense under sections 34 and/or 37 of the Criminal Code of Canada. After identifying himself, Cst. FRENETTE jumped through the window when he saw John SIMON run to the bedroom where the gun was located. On the radio transmissions we hear "no, no, no..." According to the prior information of Ms. ISADORE, the weapon was loaded. That information was later found to be incorrect. The forensic evidence confirms that the weapon was pointed at Cst. FRENETTE.

There are many complex issues surrounding the propriety of Cst. FRENETTE's entry. It could be argued that the circumstances were not of the sort usually found to be "exigent" i.e. the period of time over which the matter unfolded, the fact that there was not an immediate entry per se, and whether indeed a warrant was "impracticable". I also reviewed the Involuntary Psychiatric Treatment Act, S.N.S., 2005, c.42 (successor to the Hospitals Act, R.S.N.S. 1989, c. 208). I have reviewed section 25 of the Criminal Code.

Ultimately, I have concluded based on the objective circumstances and the subjective evidence of Cst. FRENETTE from radio and dispatch recordings and his statement, that the common law duty of police to preserve life would be sufficient to justify his entry. Although he does not specifically say what his grounds were in his statement, he does state:

**"So my motivation, I guess was to see if I could gather the most information possible just to to see if I could ahh... find a point that I could talk to him or just to ahh ... see if I could end it peacefully, right, just to see if I could ..."** (p. 4, see also pages 30, 37 and 67).

What if Cst. FRENETTE were found not to have been justified in entering the residence? What if arguments regarding police common law duties to protect life and prevent crime, the Involuntary Psychiatric Treatment Act powers to apprehend a mentally ill individual and section 529 of the Criminal Code and the doctrine of exigent circumstances were all advanced on Cst. FRENETTE's behalf and all failed to provide him with justification for entering the residence? In such a circumstance, Cst. FRENETTE would be in the home illegally and sections 40 and 41 of the Criminal Code of Canada (defense of property) would come into play to determine first whether John SIMON was justified in obtaining his weapon to dispatch Cst. FRENETTE from his property.

Sections 40 and 41 of the Criminal Code state:

Section 40: Everyone who is in peaceable possession of a dwelling-house, and every one lawfully assisting him or acting under his authority, is justified in using as much force as is necessary to prevent any person from forcibly breaking into or forcibly entering the dwelling-house without lawful authority.

Section 41(1): Everyone who is in peaceable possession of a dwelling-house or real property, and everyone lawfully assisting him or acting under his authority, is justified in using force to prevent any person from trespassing on the dwelling-house of real property, or to remove a trespasser there from, if he uses no more force that is necessary.

In *R. v. Weare* [1983] N.S.J. No. 361 the N.S. Court of Appeal found that a landowner was justified in pointing a loaded weapon at a trespasser. In the circumstances of the SIMON shooting, it would be questionable that John SIMON would be found to be justified in pointing a loaded rifle at Cst. FRENETTE. As previously discussed, whether or not Cst. FRENETTE had lawful authority to enter the home would have to be determined. If he was found to be without lawful authority, John SIMON would have to be found in "peaceable possession" of the dwelling. The toxicology report confirms that John SIMON was intoxicated. Witnesses were concerned he was suicidal. John SIMON was in the home with a rifle that was not safely stored and possibly, at some point according to Ms. ISADORE, loaded. That would be a hurdle to establishing peaceable possession, particularly when the intoxicated John SIMON points his rifle at Cst. FRENETTE. Furthermore, John SIMON gave no notice for Cst. FRENETTE to leave. Defense of property has been found to be a "positive" defense; it cannot be used to "negate" Cst. FRENETTE's self defense argument. According to *R v. Neito* [2007] M.J. No. 238 (Man.C.A.) even if SIMON had the right to defend his property, that does not negate Cst. FRENETTE's right to defend himself.

The determination a trier of fact would have to make is not whether Cst. FRENETTE was actually unlawfully assaulted but rather whether he believed he was being unlawfully assaulted when SIMON pointed the rifle at him. Cst. FRENETTE clearly believed he had the jurisdiction to enter the SIMON dwelling. It is worth noting that entry had previously been contemplated by his colleague Cst. BERNARD.

In his statement, Cst. FRENETTE stated that he believed SIMON was aiming at him and was going to shoot him. This would be sufficient for a trier of fact to conclude that Cst. FRENETTE believed he was unlawfully assaulted by John SIMON when SIMON pointed the rifle at him and that FRENETTE was justified in defending himself as he did. Cst. FRENETTE, on an objective and subjective basis, would be found to have a reasonable apprehension of death or grievous bodily harm.

Retreat, a consideration under section 34(2) of the Criminal Code of Canada was not an option in Cst. FRENETTE's opinion. Once he alerted John SIMON to his presence and SIMON went for his rifle, Cst. FRENETTE stated that he felt committed to enter the residence. He was fearful SIMON would shoot him in the back if he fled or shoot someone

else. One of the main reasons for police being present was to prevent just such a situation in which SIMON might discharge his weapon out of his residence. Cst. FRENETTE's concerns are corroborated in the comments of Cst. BERNARD who would not stay on the deck with Cst. FRENETTE initially as he did not believe the cover to be sufficient. In any event, while a consideration under section 34(2), retreat is not a requirement to self-defense pursuant to section 37.

Even if Cst. FRENETTE's decisions culminating in his entry of the premises were misguided, once in the home, it is highly unlikely, given that self-defense is available even to the initial aggressor, that the defense would be rejected. Given that SIMON was armed with a powerful rifle, it cannot be said that Cst. FRENETTE used more force than necessary.

If Cst. FRENETTE were found to be in the SIMON residence illegally, section 34(1) would no longer be available to him, but Sections 34(2), 35 and 37 would. Those sections are available to an initial aggressor (which Cst. FRENETTE would be considered if found to be trespassing) and would provide Cst. FRENETTE with a defense for fatally wounding John SIMON.

Also taken into account was an argument that this would be considered a culpable homicide on the basis of criminal negligence as opposed to manslaughter. While Cst. FRENETTE's decision to enter may be considered questionable, in my opinion his conduct would not amount to wanton and reckless disregard. An honest and reasonably held belief in the existence of a certain set of facts is a relevant consideration in assessing the reasonableness of Cst. FRENETTE's conduct. He believed he had an opportunity to end a dangerous situation. This does not mean he was indifferent to the outcome or wantonly reckless.

***The facts of the investigation are not able to reasonably establish any charge that would make this incident a culpable homicide, including either criminal negligence or manslaughter.***

#### **Operational Review**

The ICIT mandates the Officer in Charge of the investigative team to include in the final recommendations issues including changes in policy, training, operational procedures, and other related issues. The following section reviews the operational management of the scene at 15 Katie's Lane and makes recommendations as a result of the observations made.

***The remainder of this section will involve an analysis of the incident from a Use of Force perspective and a discussion of the precipitating factors related to the incident.***

### **Critical Analysis of the Use of Force Encounter**

#### ***Issue #1:***

The following elements comprise the risk assessment process an officer undertakes when formulating their intervention response to a given situation : the situational factors, subject behavior, perception and tactical considerations. A critical examination of these factors must be conducted when assessing the officers actions in order to ascertain whether or not the police response to the situation at hand was both reasonable and necessary given the totality of the circumstances. This risk assessment and response process will now be applied to the Cst. FRENETTE shooting. It should be noted that this review will apply specifically to the shooting incident itself - from the time of Cst. FRENETTE's first communication with John SIMON to the lethal force intervention. The ICIT investigators have identified concerns regarding the events preceding the encounter between Cst. FRENETTE and John SIMON - those concerns will be addressed later in the document under **Precipitating Factors**.

#### ***Findings of the Review Team:***

In reviewing this incident it is apparent that the conditions necessary to justify an officer's decision to exercise their authority and to intervene with force if necessary have been met. In this incident Cst. FRENETTE and other law enforcement personnel had the legal authority to intervene in this matter and to arrest John SIMON. Their authority to act flows from the *Common Law - preserve the peace & protect life, Criminal Code of Canada - weapons offences*, as well as *Nova Scotia Provincial Legislation -Involuntary Psychiatric Treatment Act*.

Specifically, John SIMON had threatened to take his own life with a firearm. Firearms were observed and/or believed to be in the residence in an unsafe manner. John SIMON refused to cooperate with police and his actions represented a danger not only to himself but to the public at large and law enforcement officers at the scene. Cst. FRENETTE's actions were consistent with the criteria required to intervene and use force if necessary in that he was attempting to stop dangerous and/or unlawful behavior and his use of lethal force was necessary to protect his life while attempting to make a lawful arrest.

With respect to the principle of AIM (Ability - Intent - Means) used to assess the necessity and reasonableness of a police intervention, the conditions have been clearly met. Cst. FRENETTE's attempt to arrest John SIMON found him facing an individual under the influence of drugs and alcohol. SIMON was in possession of a deadly weapon or *means* to cause death or grievous bodily harm. Due to the proximity of the threat John SIMON had the *ability* to effectively use the firearm against Cst. FRENETTE. Physical evidence collected (police bullet through the rifle stock) indicated that John SIMON showed the requisite *intent* to use the weapon when he pointed the firearm towards the officer.

#### ***Issue #2:***

In assessing the officers choice of intervention - the following need to be addressed:

- Was there a preclusion opportunity - no lower level of force applicable

- Target Identification - did the officer identify the proper threat
- Target Isolation - what do you hit if you miss - public safety consideration.

*Findings of the Review Team:*

In regards to a preclusion opportunity, it is the opinion of the Review Team that once Cst. FRENETTE had committed into the residence, an opportunity for preclusion or the use of a lower level of force did not present itself nor would it have been reasonable given the subjects resistive behavior. The rapidity with which the engagement took place once he entered the home through the window and in conjunction with the potentially deadly subject behavior left Cst. FRENETTE with no reasonable option other than the use of a lethal force intervention. After entering into the home, Cst. FRENETTE observed John SIMON move quickly into the bedroom to retrieve the firearm. Cst. FRENETTE did not feel he had the time or opportunity to prevent John SIMON from using the firearm against him. Once SIMON had the firearm in hand Cst. FRENETTE felt that he could not safely disengage from him through either of the available doors or back through the window:

***" At that poi nt I was committed and ahhh...the doors were too far away. I would of run to the doors or the window, he possibly could have shot me in the back."***

Cst. FRENETTE found himself now facing John SIMON who was levelling the firearm towards him. Cst. FRENETTE felt that his life was in danger:

***" I felt he was gonna shoot me. I, I felt that if I did not shoot him, he was gonna kill me."***

No other application of force, intermediate weapon system or other intervention technique would have been advisable given these circumstances. In the face of this situation, Cst. FRENETTE's decision to use his firearm to stop John SIMON was both reasonable and necessary to potentially save his own life.

**Target Identification:** There were no concerns regarding target identification given the facts of the case.

**Target Isolation:** In any environment the use of a firearm is fraught with risk given the potential harm that could come to an innocent bystander in the event of a ricochet or missed shot by a police officer. In this regard an officer must balance their immediate need to protect themselves or another person against the public safety issues inherent in the use of a firearm. Cst. FRENETTE's immediate need to use his firearm outweighed the minor risk to public safety. In this case the incident occurred within a residence in a rural environment with no one in close proximity.

**Issue #3:**

**Assessing the reasonableness of the force used:**

In assessing reasonableness of the intervention used by the officers, the following should be considered:

- Did the officer give the subject a chance to comply without force?
- Did the officer consider or try de-escalation?
- Did the suspect limit the officer's ability to de-escalate?
- With compliance by the subject, did the use of force stop?

*Findings of the Review Team:*

In this incident John SIMON had been provided with a series of opportunities to comply without force having to be used. SIMON refused to cooperate with Cst. BERNARD's attempts to de-escalate the situation while at his residence and on several occasions on the telephone. During the confrontation with Cst. FRENETTE, John SIMON had been given the opportunity to comply with lawful commands but he failed to do so - he ignored Cst. FRENETTE's authority and pleas to comply. SIMON's decision to pick up the firearm and direct it towards Cst. FRENETTE eliminated any further de-escalation opportunities such as a safe opportunity to disengage. During the shooting - Cst. FRENETTE reassessed after each shot was fired and the application of force ended once John SIMON no longer presented a lethal threat.

*Issue #4:*

In assessing the justification for an officer's use of force, the following three elements of effective force must be considered and answered in the affirmative:

- Was the application of force reasonable?
- Was it necessary?
- Was it non-aggressive?

*Findings of the Review Team:*

With regards to reasonable force, a peace officer or a citizen is entitled to use force to effect an arrest with or without warrant. Section 25 of the *Criminal Code* authorizes anyone to use force who is required or authorized by law to administer or enforce the law. A person authorized to use force to effect an arrest is justified in using as much force as necessary for that purpose. When determining whether the force used was necessary, the courts will consider all the circumstances including: the nature and degree of the force used, the gravity of the offence for which the arrest was made, the conduct of the person being arrested and the possibility of effecting the arrest by other alternative means other than the use of force. A person is not entitled to use excessive force in effecting an arrest.

When considering whether or not an intervention technique was justifiable, one of the key factors is to determine if an objectively reasonable person would believe that the level of force used was both necessary and reasonable. In coming to a decision one must consider the totality of the circumstances involved and then place themselves in the subject officer's position. In other words, if faced with the same set of conditions would another person (officer) respond in a similar fashion as the subject officer.

In this situation Cst. FRENETTE believed that he could safely arrest John SIMON and bring about a peaceful end to the critical incident. Once he committed to the interior of the residence and confronted an uncooperative John SIMON, his options became limited. The situation rapidly deteriorated when John SIMON accessed the firearm and failing to heed commands to stop, pointed the firearm at the police officer. Cst. FRENETTE at this point was reasonably in fear for his life. SIMON possessed the ability, intent and means to kill or grievously harm the officer. Cst. FRENETTE had no choice at that time but to defend himself. The use of lethal force was defensive in nature, necessary, reasonable and warranted given the situation.

*Issue #5:*

**Excessive Force:**

Force would be considered excessive if it met the following conditions:

- The force used was grossly disproportionate to the need for action.
- Was inspired by malice or over aggression.
- Would otherwise shock the consciousness of the court.

*Findings of the Review Team:*

Regarding the concept of "grossly" disproportionate to the need for action: If a police officer's life is placed in jeopardy due to the illicit actions of a subject then the use of lethal force to stop that threat is warranted where no lower level of force is prudent or reasonable given the situation. One must evaluate whether or not the use-of-force option chosen by the officer was reasonable and necessary giving due regard to the constellation of factors that will influence their assessment process. This choice of intervention technique will be largely based on the resistance offered by the subject.

In this case the Review Team is of the opinion that SIMON's action's left Cst. FRENETTE with only one option to stop him once he refused to comply with his directions within the household, that being the use of lethal force. A police officer resorting to lethal force to prevent a subject who possessed the ability, intent and means to end his life would not in the Review Team's opinion be considered grossly disproportionate to the need for action.

Regarding malice or over aggression: There is no indication that Cst. FRENETTE's actions were inspired by malice or over aggression. On the contrary, Cst. FRENETTE's actions were largely based on his belief that SIMON would cooperate with him given their previous dealings that were resolved without violence. Cst. FRENETTE was confronted with a life threatening situation; he met lethal force with lethal force in the immediate defense of his life.

Regarding shocking the conscience of the court: It is the Review Team's position that the actions of Cst. FRENETTE would not shock the sensibilities of an informed court given the totality of the circumstances, the potentially lethal actions of the suspect, the serious nature



of the situation and the level of danger faced by the officer during the encounter.

**Precipitating Factors**

As stated previously in this report, it is the writer's opinion that Cst. FRENETTE was legally justified and warranted in the use of deadly force. However, it is the opinion of the Review Team that the actions of some of the responding officers and in particular Cst. FRENETTE were in contravention of established RCMP policy and general principles and standards taught. It is not the intent of the Review Team to "armchair quarterback" the actions of the involved officers but to instead highlight those areas that were not in accordance with RCMP Operational Policy and the members training.

After reviewing this matter in depth the Review Team has identified several areas of concern. These events have been identified as follows and will be examined in depth:

1. Initial Response to Call
2. "Red Barn Meeting"
3. Arrival at the Scene
4. Cst. FRENETTE's Risk Assessment
5. Cst. FRENETTE's Decision to Enter the Residence
6. Officer Imposed Jeopardy
7. Recognition of the indicators of EDP
8. Event Recollection

**1. Initial Response to Call - Containment and Continuity Issues**

Cst. BERNARD received the initial complaint from a third party Catherine ISADORE who advised that John SIMON was suicidal, intoxicated and fighting over a gun with his common-law wife Patsy MacKAY. Cst. BERNARD spoke to Patsy MacKAY via phone and established that she had departed SIMON's residence. MacKAY had removed one firearm however there were more firearms in the residence. Cst. BERNARD then called SIMON and had a brief discussion with him and informed him that he would be attending his residence.

**Statement of Cst. BERNARD:**

*Cst. BERNARD: ...so I spoke my language to him cause he spoke Mi'Kmaq, so he comes on and explained ahhh...(UNINTELLIGIBLE)...you know I'm suicidal, he, he wanted to harm himself and...(UNINTELLIGIBLE)...and altogether and I said but still I gotta come see ya anyway, just to make sure.*

Recognizing the potential for danger, Cst. BERNARD requested telecoms call out Cst. FRENETTE for backup, however BERNARD proceeded to the residence alone without Cst. FRENETTE.

It is the opinion of the Review Team there were no exigent circumstances that justified BERNARD's immediate and individual response to the complaint. Cst. BERNARD was

correct in attending the scene as soon as practical; however, it would have been advisable for Cst. BERNARD to have waited for the arrival of Cst. FRENETTE prior to making contact with John SIMON. This opinion is supported by the Backup Policy contained within the RCMP Operational Manual.

According to the RCMP Operational Manual 16.9:

1.1 To maximize public and police safety, resources must be in place to provide readily available backup and, where appropriate, multiple member responses.

1.5 The following occurrences require a multiple member response:

- calls of violence, or where violence is anticipated
- a domestic dispute
- an occurrence involving the use, display or threatened use of a weapon
- an occurrence involving a subject who poses a threat to himself/herself or others;
- areas where communications are known to be deficient; or
- any occurrence or situation where members believe based on their risk assessment, that they require a multiple member response
- The multiple member response strategy does not preclude members from taking action before the arrival of assistance based on her/his risk assessment and the Incident Management Intervention Model (IMIM), i.e. imminent risk of grievous bodily harm or death presented during a domestic dispute.

Once at the residence, Cst. BERNARD knocked on the door, however SIMON did not answer. Cst. BERNARD proceeded to the north side of the residence where he observed SIMON in a small computer room. Cst. BERNARD spoke to SIMON through the window at which time he observed a firearm laying on the bed in close proximity to SIMON. At this point Cst. BERNARD does not acknowledge presence of the rifle and Cst. BERNARD decided to depart the scene to get more assistance. Cst. BERNARD attended S/Sgt. THOMPSON residence.

**Statement of Cst. BERNARD:**

***Cst. BERNARD: ...and holy geez there was a... Right there in front of me was a firearm so it was pointing towards the window and I looked at it...(UNINTELLIGIBLE)... and I looked on the bed and I looked at him, he was like... He was talkin' on the telephone and I said...cause I knocked on the window, John, you alright? Are you okay? He said yeah, I'm alright, just leave. Ahhh...okay John ... mmm...cause...and I said that... At that point, I said I'm going back and get more members cause he, he's not in the right state of mind...***

It is the opinion of the Review Team that Cst. BERNARD's decision to de-escalate was appropriate given the potential for lethality. However when Cst. BERNARD tactically repositions himself, he decided to leave the scene completely. This decision had the potential for an adverse outcome through loss of continuity of an armed suspect, possible loss of evidence, and the potential of an armed suspect roaming the community.

The Review Team believes that it would have been advisable for Cst. BERNARD to have tactically repositioning himself to a location that provided him a cover (time and distance) and a vantage point of the residence to maintain police presence at the scene until his backup arrived.

## **2. Red Barn Meeting - Planning Issues**

After Cst. BERNARD departed the residence he picked up S/Sgt. THOMPSON and they met Cst. FRENETTE at the Red Barn. It appears S/Sgt. THOMPSON exited his vehicle and proceeded to speak briefly with Cst. FRENETTE about the situation. It would appear that little or no specific directions were given to Cst's. FRENETTE or BERNARD on the anticipated police response to this armed and barricaded person situation. These situations are highly volatile and require a planned and coordinated police response. Responding officers need to be given clear direction including specified roles and responsibilities.

### **Statement of Cst. BERNARD:**

**Cst. SNOOK:** *"Okay, so you don't know of any plan while at the Red Barn?"*

**Cst. BERNARD:** *"No, there's no plan there."*

### **Statement of S/Sgt. THOMPSON:**

**S/Sgt. THOMPSON:** *"Ahh...when I signed on ahh...he...he picked me up, we traveled over to ahh...sort of the intersection to the Middle River; there's a red barn there. Ah, Cst. FRENETTE happened to be waiting there so we kind of got out of our vehicles, just had a quick chat of what we were facing, ahh...weapons involved at the scene and so on and ahh...and then we departed for ahh...Katie's Lane."*

### **Statement of Cst. FRENETTE:**

**Cpl. FIRTH:** *"Okay, ahhh...tell me ahhh...who, who arrived after ahhh...any conversations and then who arrives next and tell me everything about ahhh...your recollection. Take your time and try to think it through ahhh..."*

**Cst. FRENETTE:** *"I just waited there and ahhh...like I said two (2) minutes later ahhh...four (4) echo one (1) pulled up to the side of the one (1) 'O' four (4) there and Staff comes out and brief's me a little bit ahhh...just basically where we're goin'. We said we're just gonna go and see what's goin' on. Like I'm not gonna go right to the house, we're just goin' there so ahhh... so that's basically what we, we ahhh...we talked and ahhh...and ahhh...the players were Jonathan, John ahhh...SIMON and ahhh...John Andrew SIMON and ahhh...and ahhh...I didn't know at the time ahhh...who else was involved."*

Based on the statements of the involved officers in terms of "command and control", it is the Reviews Team's opinion that planning was inadequate and/or was not communicated to the extent required for a clear understanding of roles and responsibilities.

## **3. Arrival at Scene - Barricaded Person Response Issues**

The management and successful resolution of a barricaded person call requires a coordinated police response that focuses initially on public safety concerns and then a peaceful resolution to the matter.

A typical police response would adhere to the following procedures upon arrival:

- isolate the threat
- contain the threat
- evacuate the area
- call ERT / negotiate a peaceful resolution

It is the opinion of the Review Team that the execution of these basic principles was not achieved and as a result both police and public safety were jeopardized. The initial police positions blocking the road - while necessary - did not isolate SIMON from having potential contact with his neighbours and police would not have been in a position to prevent SIMON (containment) from exiting his residence had he chosen to. S/Sgt. THOMPSON recognized the potential danger to the surrounding residences and that the occupants required evacuation however this task was never completed. The two residences adjacent to the SIMON home remained occupied as the situation evolved. While S/Sgt. THOMPSON appropriately contacted and called out ERT, there are questions as to how well this information was communicated and received by the attending members given radio transmission and receiving.

It is the opinion of the Review Team that a lack of understanding / experience in dealing with barricaded persons and a lack of overall control of the scene were underlying factors that contributed to the outcome of this situation.

#### **4. Cst. FRENETTE's Risk Assessment**

After a thorough review of this incident the Review Team has identified several areas of concern relating to the actions and decision making of Cst. FRENETTE which will be identified and explored in further detail. The areas of concern are as follows:

- Leaving his assigned perimeter containment position without authorization -
- His movements around and near the crisis point
- His misunderstanding of the dynamics and risks associated to an armed and barricaded person situation

#### ***Assigned Perimeter Position:***

It was evident to the Review Team that Cst. FRENETTE had left his assigned containment position at the west entrance to Katie's Lane without the express authorization of the supervising officer - S/Sgt. THOMPSON. In his statement Cst. FRENETTE indicated that he asked for and received permission to leave his perimeter point to venture closer to the SIMON residence in an effort to gain information. Cst. FRENETTE indicated he had asked for permission via the radio - no transmission of this kind was recorded - and Cst. FRENETTE was not equipped with a cell phone. Furthermore, S/Sgt. THOMPSON indicated that he was not aware that Cst. FRENETTE had left his position nor did he initially approve Cst. FRENETTE's movement from his containment post.

Radio Transmission 2155 hours- S/Sgt. THOMPSON to Cst.FRENETTE:

**Cst. FRENETTE: "I'm just behind his vehicle"**

**S/Sgt. THOMPSON: "So are you right down at the residence or where are you?"**

**Cst. FRENETTE: " 10-4 I got both exits covered"**

**Movements around the Crisis Point:**

The Review Team investigation revealed that upon leaving his assigned containment position, Cst. FRENETTE made his way to the area of the SIMON home. Once in the vicinity he placed himself in several locations near or at the residence including a position just outside an open deck window. It is the opinion of the Review Team that Cst. FRENETTE who was alone and acting on his own accord, made significant tactical errors (moving from a position of cover and closing the reactionary gap) by leaving his position behind the car and moving on to the deck of the residence. Cst. FRENETTE was aware SIMON was in possession of a high-powered rifle that could easily penetrate the walls of the residence. He was aware that SIMON was suicidal and alarmed by the police presence.

The IMIM states police safety is essential to public safety, and the primary objective of any intervention is public safety. When Cst. FRENETTE moved on to the deck it placed himself, other members and the public in danger. The risk of compromise or potential for a confrontation with John SIMON outweighed any tactical or intelligence gathering advantage this position provided. Furthermore, due to the open window and Cst. FRENETTE's close proximity to the residence he was compelled to turn down his radio which contributed to communication difficulties between him and S/Sgt. THOMPSON.

**Cst. FRENETTE: "The first time I went but Jason wasn't there yet, when I went to the deck and I was beside the window there. I couldn't see him but I knew he was right, right there and I could hear his voice so I knew he was right beside me..."**

**Dynamics of an Armed and Barricaded Person Situation:**

It is the opinion of the Review Team that Cst. FRENETTE failed to understand the dynamics and dangers inherent to an armed and barricaded person situation. Cst. FRENETTE's actions in and around the home were of his own accord, endangered his life unnecessarily and had the potential for and indeed contributed to the eventual confrontation with the armed and suicidal John SIMON. Cst. FRENETTE's actions were in direct contravention of training with respect to barricaded persons provided during his Immediate Action Rapid Deployment (IARD) Users Course on 2007-05-28. During this course Cst. FRENETTE received instruction on the IMIM and the response to barricaded persons. Cst. FRENETTE was instructed on Concepts and Protocols and the appropriate response to barricaded persons as documented in the Course Training Standard.

**5. Cst. FRENETTE's decision to Enter the Residence**

It is the opinion of the Review Team that Cst. FRENETTE's decision to enter the residence was based on the following factors:

- Cst. FRENETTE was a very junior member with only 2 years experience.
- Cst. FRENETTE had no previous experience dealing with a barricaded person.

- Cst. FRENETTE was unclear of his mission and/or role at the scene.
- Cst. FRENETTE was looking for a resolution of the incident versus containment of the scene and a traditional police response.

Cst. FRENETTE's decision to enter the residence was imprudent and endangered his safety, other members and the public. An appropriate risk assessment must take into account the likelihood and extent of life loss, injury and damage to property. Cst. FRENETTE failed to recognize the serious danger involved in this barricaded person incident and the detailed planning that is required to resolve these incidents successfully. Cst. FRENETTE acted on his own without clear direction. Cst. FRENETTE failed to employ a proper risk assessment in that he did not adequately weigh the benefits of entering the residence versus the potential for a deadly confrontation with John SIMON.

A significant factor that misled Cst. FRENETTE in his approach involved his previous dealings with John SIMON. In those previous encounters SIMON would be non-cooperative through intimidation, but in the end he would comply with police. Cst. FRENETTE believed that this situation would / could be resolved in a similar manner.

It is the opinion of the Review Team that Cst. FRENETTE was influenced by a phenomenon known as "**Presumed Compliance**". This is a mind set of complacency and optimism where you assume a suspect will comply by the mere fact that you are an authority figure. Cst. FRENETTE assumed that he could enter the residence, confront John SIMON and the incident would be resolved peacefully.

*"Presumed Compliance appears to be a simple concept; literally meaning, you assume a 'suspect' will comply. But don't be fooled. Presumed Compliance is quite complex and must not be summed up as simply a 'false sense of security'. Its origins are deeply rooted in attitude, psyche, archetype and more. 'Presumed Compliance' dulls your edge; it diminishes the danger - in your mind. It affects how you think, feel and behave. Therefore, it will affect your tactics and you may not even know you suffer from it. Presumed Compliance leads to overconfidence and a false sense of security. This permits us to take stupid risks in the form of a 'superman' persona or by not training seriously. The debilitating combination of apathy and denial now present, ensures you will not seriously prepare, which means that should something happen, you will go into denial before you even get the opportunity to react. That is how the brain is wired. The combination of the aforementioned byproducts of Presumed Compliance actually does more (as if that weren't enough). It actually dulls intuition and instincts. Put all that together and you have an accident waiting to happen."*

**Cst. FRENETTE:** "...one of the reasons ahhh...I was there and I, I was comfortable a, approaching and I wanted to see the most details is I knew John ahhh... I've had

*relations with him in the past. I've dealt with him in the past, the good, the bad and even when, when he was bad...He's a violent man, he was a big man, he was six (6) four (4), three hundred (300) and fifty (50) pounds or somethin' but ahhh...he could be violent. Like he always seemed to calm down and shrug it off and laugh afterwards, right..."*

*Cst. FRENETTE: "I thought okay, this is gonna be a snap right, ahhh...all I have... All we have to do is, is ahhh...catch him off guard and whatever and it's a synch, we're goin' home, right, but ahhh..."*

#### **6. Officer Imposed Jeopardy**

It is the opinion of the Review Team that Cst. FRENETTE's decision to enter the residence in an attempt to arrest John SIMON was done in good faith, with the best of intentions and a sincere desire to resolve the situation peacefully. But, in making the attempt he faced the ultimate law enforcement paradox: Cst. FRENETTE's sincere goal was to save the life of John SIMON but his very actions created the proximity and jeopardy issue that demanded that he use deadly force in self-defense. Experts have termed this phenomenon as **Officer Imposed** or **Officer Created Jeopardy**. The term is defined as follows:

*"When an officer fails to conduct a careful risk assessment, or ignores the obvious risk and needlessly places him/herself into a critical situation, whereby escalation is imminent and ultimately leads to a more injurious outcome than (elevated intervention option than) necessary."*

*Cst. FRENETTE: "I just went in...I went in there with full intent to save a life, but not taking a life."*

#### **7. Recognition of the Indicators of EDP**

In this incident there were several police and civilian witnesses that had direct contact with John Simon where he expressed a desire to die or to take his own life. This list includes his common-law spouse Patsy MacKay and his step-daughter Charlene Isadore - both of these individuals engaged in physical confrontations over a firearm with the deceased that he implied he would use to take his life. Daniel Deon (John Simons employer) had a conversation with Simon during the stand - off where he stated that he had a gun and was "tired of living". Curtis Simon (John Simon's nephew) had a conversation with him during the incident where Simon responded to the question - what's going on - with a provocative statement "you'll find out in half an hour." Also, Cst. Jason Bernard who had conversations with Simon where he indicated he would take his own life if the police came to his home. In addition, witnesses reported that John Simon was intoxicated on the date of the incident and that he frequently abused alcohol and prescription drugs. It was determined through toxicology testing that the deceased had a high blood alcohol content and a high therapeutic level of Valium in his system.

In the review conducted by the "Use of Force" subject matter experts there is a discussion on the topic of victim precipitated homicide. The term victim precipitated homicide refers to those incidents in which the victim is a direct, positive precipitator of the incident. Victim

precipitated homicide, that is essentially an act of suicide, refers to those incidents in which an individual, determined on self-destruction, engages in a *calculated* life threatening criminal incident in order to *force* a police officer or another individual to kill him or herself.

In cases of suspected victim precipitated homicide several identifying characteristics stand out which include:

- statements to commit suicide or the desire to die
- engaging in behavior or actions that may or are likely to provoke a lethal response by a police officer
- alcohol consumption and/or substance abuse
- mental illness

To varying degrees all of the above mentioned were present and known to the police on scene at Katie's Lane.

It is apparent that Cst. FRENETTE failed to recognize that Mr. SIMON was exhibiting behavior consistent with that of an EDP or possibly a scenario of victim precipitated homicide. Consequently, Cst. FRENETTE failed to suitably assess and weigh the potential for erratic and volatile behavior on the part of Mr. SIMON in his risk assessment and decision to confront Mr. SIMON and eventually enter into the residence.

#### **8. Event Recollection**

After a thorough review of the statements taken from the officers involved in this incident and in particular the statement provided by Cst. FRENETTE, it was noted by the Review Team that there were several inconsistencies with his recollection of the events. There were 3 primary areas of interest to the Review Team:

1. Cst. FRENETTE's recollection that he requested and received permission by radio to leave his containment position to move closer to the SIMON residence - no such request was made by Cst. FRENETTE nor was permission granted by S/Sgt. THOMPSON according to the radio logs.
2. Cst. FRENETTE was unable to recollect clearly the condition of John SIMON's firearm following the shooting. The weapon was found unloaded with a rifle cartridge in close proximity. Cst. FRENETTE does not recollect if he cleared the weapon or not.
3. Cst. FRENETTE indicated in his statement that he did not hear S/Sgt. THOMPSON inform the members over the radio that ERT was on the way. During the same radio transmission, Cst. FRENETTE had responded clearly to S/Sgt. THOMPSON twice before being told ERT was en route whereupon an inaudible response from him was recorded.



Radio Transmission - S/Sgt. THOMPSON to Cst. FRENETTE:

2212 hours

S/Sgt. THOMPSON: "FRENETTE, Echo 1"

Cst. FRENETTE : "Go"

S/Sgt. THOMPSON: "Jason with you there?"

Cst. FRENETTE: "10-4 I'm right by his window so my volume is way down."

S/Sgt. THOMPSON: " Yeah, 10-4 . Just sit tight, ERT is on their way there."

Cst. FRENETTE : (inaudible response)

Cst. FRENETTE's Statement:

*Cst. FRENETTE: "I found out after the fact ahhh...I hadn't... I didn't hear any radio reception or radio ahhh...transmissions or anything. I found out that ERT was on the way. I, I had no idea. I found out afterwards."*

*Cpl. FIRTH: "But you had no... You... You...didn't know that ERT was coming?"*

*Cst. FRENETTE: "No, not at all."*

While these event recollection disparities may be disconcerting for persons with an interest in this matter, it is important to note that Cst. FRENETTE's flawed recollection of this incident is not unusual. What is important to note is that the previously mentioned memory and perceptual distortions are a completely "normal" response to a life-threatening crisis. However, these phenomena may serve to explain Cst. FRENETTE's recollection and response to this life threatening crisis.

### **Recommendations**

The operational review conducted in relation to this incident has resulted in the following recommendations being put forward:

1. It is the opinion of the Review Team that Cst. FRENETTE was not clear on his role and responsibilities which was a precipitating factor in the outcome of this incident. Presently the RCMP Operational Manual only contains a definition of a "barricaded person" under the Immediate Action Rapid Deployment (IARD) policy. The RCMP Operational Manual does not contain clearly defined policy with respect to the detailed operational procedures required in a critical incident. The Review Team recommends a managerial review of both the incident and the RCMP policy and or guidelines related to "barricaded persons" be conducted in order to address this issue and to assess the sufficiency of and the adherence to current RCMP policy and training related to the management of barricaded person incidents.
2. It is the opinion of the Review Team that initial responding officers and particularly Cst FRENETTE, were not given concise directions and/or a plan on the procedures to successfully resolve a critical incident. The Review Team recommends that all District Commanders in "H" Division receive the Incident Commanders Course to ensure proper procedures are followed. In the absence of the attendance of a District Commander to a critical incident, the Review Team recommends a guide/checklist be developed and installed in all the police vehicles' mobile workstations. This checklist will ensure all operational procedures for a critical incident are followed and completed.
3. It is the recommendation of the Review Team that a review of the training curriculum provided to members of the RCMP on the response process to critical incidents such as barricaded persons be conducted. This training review should address Containment Principles for responding officers and include the general rules and guidelines for containment and the role and responsibilities of containment officers as well as instruction in the identification and management of Emotionally Disturbed Persons.
4. That Cst FRENETTE attend a refresher session on the RCMP Incident Management Intervention Model, including a session on risk assessment. It is further recommended that Cst FRENETTE attend a recertification of his Immediate Action Rapid Deployment users course.
5. It is the recommendation of the Review Team that the "Use of Force" subject matter experts" who are assigned to assist the Integrated Critical Investigative Team investigations receive advanced training in the bio-mechanics of lethal force encounters. This training should encompass the crucial dynamics that impact the understanding of "use of force" encounters. I would recommend that this should be a requirement for members who are tasked to review these incidents from a "use of force" perspective and provide opinions on the involved officers actions.

## **APPENDIX K**

### **Synopsis of Actions Taken by “H” Division**

Subsequent to the release of the ICIT report and the Independent Officer Review, "H" Division took a number of proactive steps to address the findings and recommendations of each. The following table highlights the recommendations and the actions taken by "H" Division:

ICIT Report

Recommendation				
Conduct a managerial review of policy re barricaded persons.	District Commanders should receive the Incident Commander's Course and a guide should be developed for front-line member responders.	Review training on response process re barricaded persons.	Cst. Frenette should attend a refresher course on IM/IM.	Use of Force Subject Matter Experts should receive training in biomechanics of lethal force.
Relevant Actions By "H" Division				
<ul style="list-style-type: none"> <li>– CO ordered Independent Officer Review.</li> <li>– Division policy has been drafted concerning armed and barricaded persons.</li> </ul>	<ul style="list-style-type: none"> <li>– Three senior S/Sgts have attended the IC Course in 2010.</li> <li>– Checklist has been devised and is available.</li> </ul>	<ul style="list-style-type: none"> <li>– Division training for front-line members on responding to critical incidents has been developed</li> <li>– Provincial Crisis Intervention Team has been trained.</li> </ul>	Because Cst. Frenette has been transferred to another division and is off duty, it is believed this training has not yet occurred.	Under consideration.

## Independent Officer Review Report

Recommendation			
Division policy should be drafted to deal with incidents involving armed and barricaded persons.	It should be pointed out to Cst. Frenette that he placed himself in Officer-Induced Jeopardy.	Review training on response process re ERT call-out for barricaded persons.	Front-line members should receive additional training re critical incidents.
Division training for front-line members on responding to critical incidents has been developed.	Information was forwarded to his new division to address this. No recommendation from "H" Division as to what form this should take, i.e. counselling, remedial training.	Division policy was amended to update the ERT call-out procedure.	This is under review by "H" Division, but action has been taken to upgrade the critical incident training modules for front-line members.

**APPENDIX L**  
**RCMP Disciplinary Process and Time Limits**

*All members must follow the RCMP Code of Conduct (found in ss. 38–58.7 of the RCMP Regulations, 1988). Part IV of the Act describes disciplinary processes and sanctions for members of the RCMP, and it sets out the accountability mechanisms for members who are found to be in violation of the Code of Conduct. Violations of the Code may be addressed informally, but in more serious cases will be addressed through formal measures. Where formal discipline is initiated, the matter is referred to an adjudication board (the "Board"), comprised of three officers of the RCMP. A hearing is held and the Board determines if the member has violated the Code of Conduct. If so, another hearing is held to determine the appropriate sanction to be imposed. To come to this determination, the Board will consider all relevant circumstances, as well as both the aggravating and mitigating factors.*

*Under Part IV of the Act, the officer who initiated the disciplinary hearing or the member may appeal the Board's decision to the Commissioner. Only the member who has allegedly violated the Code of Conduct has the right to appeal the sanction ordered. Appeal submissions are made in writing. Unless the member requests otherwise, the Commissioner refers all disciplinary appeals to the Committee for its findings and recommendations.*

*The limitation period for initiating disciplinary proceedings against members of the RCMP is contained in section 43(8) of the Act: "No hearing may be initiated by an appropriate officer under this section in respect of an alleged contravention of the Code of Conduct by a member after the expiration of one year from the time the contravention and the identity of that member became known to the appropriate officer." In most cases, the Appropriate Officer (the "AO") is the Commanding Officer of the Division.*

*When the AO presents a certificate stating the time an alleged contravention of the Code of Conduct by a member and the identity of that member became known to the AO (s. 43(9) of the Act), it constitutes proof of the date the AO became aware of the allegations, and therefore proof of the starting point of the one-year time limit. However, where evidence to the contrary is presented by the member, the burden shifts to the AO to prove on a balance of probabilities that the information relied upon to prepare the certificate was factually correct.*

*Section 43(8) has been subject to interpretation both before the Committee and the Commissioner of the RCMP, and before the Federal Court. The test under section 43(8) is not always easy to apply or to understand and has been subject to much interpretation.*

*Thériault v. the RCMP, [2006] FCA 61, is a recent Federal Court of Appeal decision that has provided guidance on some issues pertaining to section 43(8). The Federal Court of Appeal stated that the AO acquires the knowledge referred to in section 43(8) of the Act when he or she is in possession of reliable and persuasive information about the alleged contravention and the identity of the member. The degree of knowledge required for the time period to begin to run does not need to be confirmed through an investigation, and it is not necessary to have all the evidence required to exercise the right of action. The Court of Appeal also concluded that an Officer's knowledge of the points set out in section 43(8) of the Act follows him when he assumes the position of Appropriate Officer, even if it is only on an acting basis.*

*In Thériault v. the RCMP, the Court noted that section 43(8) is attempting to balance the need for fairness to members subject to discipline, and the need to maintain the integrity of the RCMP as an institution.*

SOURCE: ERC Website – <http://www.erc-cee.gc.ca/reports-rapports/other-autres/president-eng.aspx>



## **APPENDIX M**

### **Details of Discipline Related Information Available to the Appropriate Officer**

It will be useful to canvass what information was available to the Appropriate Officer in the year following the shooting of Mr. Simon. As noted in the body of the report, reports were filed by each agency (RCMP and HRP) in its own electronic system; therefore, each agency had in its possession a complete copy of all available investigative data. Indications from the RCMP, however, are that they opted not to review this data pending completion of the ICIT Report.

### **Cst. Frenette**

Management of "H" Division knew within a very short period of time that Cst. Frenette was the member who shot Mr. Simon and knew that Cst. Frenette had entered the residence without direction, without notifying the other members on scene and without arranging for backup or an escape plan. In spite of this knowledge, management of "H" Division opted to await the results of the ICIT investigation into the criminal aspects of the incident rather than to initiate a Code of Conduct proceeding.

### **Cst. Bernard**

The Appropriate Officer knew or should have known within days of the incident that Cst. Bernard attended alone at a complaint of a suicidal, intoxicated man with firearms in his possession. He had requested backup, but at the time he went to the Simon residence, the backup (Cst. Frenette) had not yet arrived. Cst. Bernard did contact Mr. Simon by telephone before he went to the home, but policy indicates he should have awaited Cst. Frenette.

After speaking with Mr. Simon by telephone, confirming that he did have at least one weapon and that he was intoxicated, Cst. Bernard then left the scene (as directed by S/Sgt. Thompson) and drove to pick up S/Sgt. Thompson. This left the community vulnerable to Mr. Simon had he opted to leave the residence and begin shooting.

After returning to the scene and speaking again with Mr. Simon by telephone, he was directed by S/Sgt. Thompson to move closer to the house to better observe the residence. As he and Cst. Frenette took up positions around the house, Cst. Bernard accepted direction from Cst. Frenette, a member with only two years' experience versus Cst. Bernard's 15 years, to remain where he was while Cst. Frenette went around to the other side of the house and up on to the deck of the Simon home. That was the last conversation between Cst. Bernard and Cst. Frenette until after the shooting.

## S/Sgt. Thompson

Management of the RCMP knew or should have known shortly after the shooting that, notwithstanding the fact that the situation unfolding was fluid, little direction or operational planning was provided to Cst. Bernard and Cst. Frenette by S/Sgt. Thompson and that he exerted little control on their movements in the area of the Simon house. Even though he was warned that a shooting could result, he continued to allow the constables to remain in close proximity to the residence when he had no indication of Mr. Simon's intentions or state of mind.

He did tell the members near the house to "Sit tight. ERT is on their way," but did not take action to ensure that the members were in a safe place and that members of the public were also safe.

The following passage is excerpted from the memorandum of S/Sgt. S. J. Scott to the Criminal Operations Officer of "H" Division on January 20, 2010. Although it was written after the expiration of the one-year period, it contains information that could have been known to the RCMP had management of "H" Division wished to consider whether or not disciplinary action was warranted in the circumstances of the shooting:

### *1) Constable Jason Bernard*

*Constable Jason Bernard was aware that the ERT team had been called. He was with Staff Sergeant Archie Thompson when these calls were being made. When he left the area where Staff Thompson was staged, he was aware that these resources were on their way. Staff Thompson had sent Cst. Bernard down to be with Cst. Frenette. Cst. Bernard knew that their only response at this time was to keep an eye on the house.*

*When Cst. Bernard went to the area outside Mr. Simon's residence, he was present with Cst. Frenette when Staff Thompson called Cst. Frenette on the radio and advised him "to sit tight, ERT is on their way there".*

*At this time or shortly thereafter, Cst. Frenette told Cst. Bernard that he was going onto the deck and directed Cst. Bernard to stay there. Cst. Bernard (from what I have read) did not voice the direction which he supposedly received from Staff Thompson.*

*Cst. Bernard was a fifteen year member. It would appear that Cst. Frenette had about two year's service at the time of this incident. I am left with this question; when does a two year member tell a fifteen year member how things are going to unfold? Cst. Bernard failed to inform Cst. Frenette what was transpiring and to direct Cst. Frenette away from the house.*

*In this respect, Cst. Bernard being the senior member and being in a supervisory position by virtue of his service and the circumstances presented by the event, abdicated those responsibilities to a two year member. Circumstances may have been different had Cst. Bernard recognized his responsibilities and exercised a level of control (direction) during this event.*

*[...]*

## *2) Staff Sergeant Archie Thompson*

*There are a few issue[s] which arise with Staff Thompson. These issues deal with communication and the initiation of an operational plan which should have been clearly communicated to Cst. Frenette and Cst. Bernard.*

*My main concern is the direction which he gave to Cst. Frenette and Cst. Bernard early in this incident when the members were staged outside the community. What direction was given to Cst. Frenette prior to his departure in order to block off the western access to Mr. Simon's residence. What direction was Cst. Frenette given as to approaching the Simon household after clearing other residences in the community near the Simon house. From my review of the noted documentation, I could not find anything which would resemble an active operational plan.*

*This view is reflected in the Use of Force Investigation. From page 23 [...] of this report (and continuing on page 24/1844), the following was written:*

***After Cst Bernard departed the residence he picked up Staff Sgt Thompson and they met Cst Frenette at the Red Barn. It appears S/Sgt. Thompson exits his vehicle and proceeded to briefly speak with Cst. Frenette about the situation. It would appear that little or no specific directions were given to Cst's. Frenette or Bernard on the anticipated police response to this armed and barricaded person situation. These situations are highly volatile and require a planned and a coordinated police response. Responding officers need to be given clear direction including specified roles and responsibilities. It is the reviews teams opinion based on the statements of the involved officers that planning was inadequate and/or was not communicated to the extent required for a clear understanding of roles and responsibilities.***

*[...]*

### *3) Constable Jeremy Frenette*

*In my earlier correspondence, I had advised the District Policing Officer for Northeast Nova that a Code of Conduct should not be considered against Cst. Frenette. At the time that I made that statement, I was not in possession of the Use of Force Investigation. I have now been provided same and tender my new recommendation based on that report.*

*Cst. Frenette's [sic] decision to enter the Simon residence was contrary to the instructions provided by Staff Sergeant Thompson (at 22:12 hours) and was also contrary to what he would have been instructed on various courses which he has received from the Force. His actions on December 2<sup>nd</sup>, 2008 would have been contrary to instruction received during the Immediate Action Rapid Deployment which he under-took in May of 2007.*

*At approximately, 22:23 hours, Cst. Frenette [sic] had confronted Mr. Simon. Cst. Frenette was a very junior member who did not heed instruction from two levels on the night in question. This negligent performance has placed himself and our organization in a liability position resulting from the death of Mr. Simon.*

## **APPENDIX N**

### **Directive from the Senior Deputy Commissioner regarding Code of Conduct Investigation**

Office of the Senior Deputy Commissioner  
Bureau du sous-commissaire supérieur  
RCMP-GRC

2010-10-15



**DIRECTIVE FROM THE SENIOR DEPUTY COMMISSIONER:**

**Code of Conduct Investigations**

In order to reinforce the obligations specified within Section 40 *RCMP Act*, its Regulations, and AM XII.4, as well as to enhance the ability of the Professional Integrity Officer (PIO) to better advise the Commissioner and Senior Executive of the RCMP regarding notable Code of Conduct (CofC) investigations an amended process is required. AM XII.4 will be amended to include mandatory notification of the Professional Integrity Officer and a better articulation of decisions of whether a Code of Conduct investigation is warranted. Until the AMXII.4 has been amended, AM XII 4, paragraph 2 General, sub paragraph 2.5 shall read as follows:

**AM XII.4. 2. 5. Each division must notify the Professional Integrity Officer, National Headquarters (with CC to: OIC Professional Standards Unit, Professional Standards and External Review Directorate, National Headquarters), of all Code of Conduct investigations by submitting a briefing note as outlined in App. XII-4-1 whenever:**

- 2. 5. 1. a serious injury of an individual involves an RCMP Member or where it appears an RCMP Member may have contravened, or had been charged under, a provision of the Criminal Code or other enactment and the matter is of a serious or sensitive nature\*, or**
- 2. 5. 2. the incident may attract media attention, or**
- 2. 5. 3. the incident may raise questions in Parliament.**

**\* To review what is considered to be serious injury, serious or sensitive in nature refer to AM XII.4 (Investigations) and OM 54.1 (RCMP External Investigation or Review Policy).**

The Professional Integrity Officer's role is to inform and advise the Commissioner's office and the Senior Executive with respect to notable issues in employee behavior, as well as to assist Divisions as required, in articulating whether or not a Code of Conduct investigation will be initiated. It will not be the role of the Professional Integrity Officer to decide if a Code of Conduct investigation is warranted; rather, the Professional Integrity Officer will ensure, on behalf of the Commissioner, there is a timely and concise written record of the rationale for the decision.

NOTE: The threshold for instituting a Code of Conduct investigation is unchanged requiring only the "appearance" of a contravention; it is the investigation of a CofC that determines if there has in fact been a contravention. Once there is an appearance of a contravention there is no discretion as to whether to initiate an investigation. The appearance of a contravention is satisfied if all of the three following conditions exist;

- 1) knowledge of an alleged contravention;
- 2) identity of the member is known or can easily be determined; and
- 3) the allegation is credible and persuasive.

**Should you have any questions or concerns with respect to this directive, please contact the Professional Integrity Officer at: (613)990-9188 or (613)993-5396. [Joseph.hincke@rcmp-grc.gc.ca](mailto:Joseph.hincke@rcmp-grc.gc.ca)**