



OFFICE OF THE
POLICE COMPLAINT COMMISSIONER

British Columbia, Canada

POLICE COMPLAINT COMMISSIONER'S
REASONS FOR DECISION REGARDING A REQUEST FOR A
PUBLIC HEARING INTO:

FATAL POLICE SHOOTING OF KEYVAN TABESH, JULY 14TH, 2003

BACKGROUND:

On July 14th, 2003, at approximately 1:51 am, a tragic incident occurred when Port Moody Police officer Constable JB fatally shot Keyvan Tabesh and wounded AA.

An investigation into the shootings was conducted by the Major Crime Section of the Port Moody Police Department, with the assistance of Forensic Identification officers, a Firearms expert, Use of Force expert and video support from the Vancouver Police Department. Chief Constable Paul Shrive, recognizing that this matter required complete transparency and objective accountability in order to preserve public confidence in the Port Moody Police Department, on his own accord requested a senior officer with the Vancouver Police Department's Internal Investigation Section conduct the external *Police Act* investigation.

The following is a brief chronological summary of the process relating to Part 9 of the *Police Act*:

July 14 th , 2003	Shooting occurs
August 12, 2003	Form One Record of Complaint and attached letter received from Mrs Forough Jabalameli, the mother of Keyvan Tabesh.
August 19, 2003	Letter from Chief Shrive, identifying the complaint as "Public Trust". Chief Shrive also requests a suspension of the <i>Police Act</i> investigation pending the conclusion of the criminal proceedings.

August 21, 2003	Letter from Mr. Don Morrison, counsel for the Tabesh family, requesting an external investigation.
September 2, 2003	Letter from Mr. Morrison, clarifying the allegations contained in the Form One – The actions of the police officer caused physical harm to Keyvan Tabesh and emotional harm to the family.
September 9, 2003	Notice of Complaint – Potential disciplinary default identified is Improper Use and Care of Firearms
September 19, 2003	Letter from Chief Shrive to Chief Graham (VPD) formally requesting an external investigation into the shooting death of Keyvan Tabesh.
September 25, 2003	Letter from the assigned investigator, Sgt Giardini, requesting suspension of <i>Police Act</i> investigation pending the conclusion of the criminal investigation and Crown Counsel review.
September 26, 2003	Confirmation of Characterization – Public Trust
September 26, 2003	Suspension of Proceedings, pending Crown Counsel's review of the investigation and charge approval.
December 23, 2003	Port Moody Major Crime Investigation File sent to Regional Crown Counsel
June 1, 2004	Crown's decision – No charges. <i>Police Act</i> investigation recommenced
November 25, 2004	Request for Extension: - Coroner's Inquest scheduled for January 18 th to 21 st , 2005 - 3 rd witness located in Ontario
December 1, 2004	Notice of Extension granted to February 28 th , 2005
March 8, 2005	Discipline Authority's Decision – Allegations of misconduct Not Substantiated
April 1, 2005	Mr. Morrison requests additional disclosure. Edited copies provided
May 16, 2005	Request for Public Hearing received from Mr. Morrison

It should also be noted that the Coroner's Inquest into this matter was originally scheduled to be heard in January of 2005, however due to unavoidable circumstances, it was delayed to August of 2005. Sgt Giardini had requested an extension of the time limit in which to complete his investigation in order that he could attend and evaluate testimony presented at the Coroner's Inquest. When it was adjourned for a further eight months, it was determined that such a delay of the *Police Act* investigation would not be appropriate. As a result, the Final Investigation Report of Sgt Giardini and the subsequent decision of Chief Shrive were based on

the evidence available at the time, without the benefit of hearing sworn testimony of several of the witnesses at the Coroner's Inquest. A member of my staff attended the entire Coroner's Inquest proceedings in September and I have the benefit of basing my decision on both the findings of fact determined by Sgt Giardini, as well as the evidence that was heard at the Coroner's Inquest.

In my role as Police Complaint Commissioner it is my task to review all such investigations and decisions by the Discipline Authority to determine whether or not I agree with the Discipline Authority's decision. If I do not agree with either the decision or, in the event a disciplinary default has been found, with the proposed penalty, I may consider whether it is in the public interest to call a Public Hearing into the matter. If I exercise my discretion to do so, it then falls to a retired judge or Justice to preside over the Public Hearing in the capacity of Adjudicator and hear evidence under oath and which is subjected to cross-examination. The Adjudicator then is at liberty to substitute his or her opinion for that of the Discipline Authority.

Whether or not the complainant requests that I order a Public Hearing, each file is reviewed by our office to determine whether we should order a Public Hearing in the public interest. However, in this case, the complainant, Mrs Forough Jabalameli, through her counsel Don Morrison, requested that I order a Public Hearing. In light of that formal request pursuant to the legislation provided, it is now incumbent on me to provide Reasons for my Decision as to whether I should call a Public Hearing.

POLICE ACT CONSIDERATIONS:

Section 60(5) of the Police Act sets out the relevant factors that I must take into consideration in deciding whether a public hearing is necessary in the public interest:

- 60(5) In deciding whether a public hearing is necessary in the public interest, the police complaint commissioner must consider all relevant factors including, without limitation, the following factors:
- 60(5)(a) the seriousness of the complaint;
 - 60(5)(b) the seriousness of the harm alleged to have been suffered by the complainant;
 - 60(5)(c) whether there is a reasonable prospect that a public hearing would assist in ascertaining the truth;
 - 60(5)(d) whether an arguable case can be made that
 - 60(5)(d)(i) there was a flaw in the investigation,
 - 60(5)(d)(ii) the disciplinary or corrective measures proposed are inappropriate or inadequate, or
 - 60(5)(d)(iii) the discipline authority's interpretation of the Code of Professional Conduct was incorrect;

60(5)(e) whether a public hearing is necessary to preserve or restore public confidence in the complaint process or in the police.

It is with these factors in mind that I have reviewed the file. At this point, it may be instructive to provide some of the circumstances to provide a factual framework for my considerations.

BRIEF OVERVIEW OF RELEVANT CIRCUMSTANCES:

On the evening of July 13th, 2003, Keyvan Tabesh was at home with his family and girlfriend, SH. According to his mother, Forough Jabalameli, Keyvan was not "agitated" and SH stated that she and Keyvan were in his bedroom, "talking, laughing, joking". At approximately 11:30 pm, they were joined by another friend, PM, who also indicated that Keyvan appeared to be happy and they had made plans to workout together the following day. According to PM, they did not have anything alcoholic to drink that night, as they were Muslims and did not drink alcohol.¹

Shortly before midnight, Keyvan drove both PM and SH home in his brother's black Honda Prelude, even though his driver's license was currently suspended. The Honda was registered to Mrs Jabalameli. PM was dropped off at his residence first, and SH was dropped off by the Dairy Queen on St. Johns Street in Port Moody. Ms. SH lived in the complex just behind the parking lot of the Dairy Queen with her family. SH was not aware of where Keyvan was going next, although she did overhear an earlier telephone conversation between Keyvan and his friend AA in which Tim Horton's was mentioned.

Shortly after 1:00 am, after dropping off SH, Keyvan Tabesh continued east on St. Johns Street and turned left onto Moray Street.² He then made a U-turn in front of Side Pockets Billiards and pulled up behind a red Dodge Shadow that was occupied by DF and her cousin, CF. DF describes the incident as follows:

*And um, so we were just stopped there. And we weren't parked or anything we were just stopped and talking to some friends. And this, uhmm, Prelude, black Prelude, came around the corner... And um, came in and he was going pretty fast and he pulled in and he like hopped the curb a bit and came down and I thought he was going to go park. So I didn't really think anything of it, right. And he pulled a U-turn and came up behind us. And he yelled at us to start moving 'cause we were blocking his way. And um, he could have like gone around us. It wasn't like he was, we were totally blocking his way. But and so we started to move and he **rammed into the back of me. And pushed my car up the hill a bit.***

¹ Nevertheless, the Toxicology Report indicated that Keyvan Tabesh had a blood alcohol concentration of 107 mg% - mild to moderate physical intoxication. SH also testified at the Coroner's Inquest that she doesn't drink so Keyvan Tabesh would not drink in front of her. They were together the entire night, since 5:00 pm. In cross-examination when asked if he could have had drinks in secret, she responded, "No, I didn't smell anything on his breath".

² SH testified that he dropped her off and continued north on Moray towards St. Johns Street. DF, CF, FR and AS all testified the Prelude turned left off St. John's onto Moray Street; some described it as "flying" off St. John's going up over the curb.

...

*So, um I didn't hear what he was saying after that. But I saw him, I looked in my mirror and I heard him yelling something. And I looked in my mirror, in my side mirror and he was coming up behind us **and he had a big knife in his hand**. At first I thought it was a bat or something, like a short little like bat cause it had a wooden handle and then I realized it was... it was a knife... a big knife. **It looked like kind of a machete or something**. And um, he came out of his car and I'm watching him walk up and he's yelling, you know, "You... I told you to fucking move" and that's what he was yelling at us. And we're like, we panicked right. And um, **he smashed my back window**. I think he smashed my back window first, I'm not even sure because I just sort of dove into my cousin because my window was open and **he's swinging at my car with a machete**.³ [emphasis added]*

DF then accelerated quickly away from the scene, driving to a nearby PetroCan gas station and ran inside the convenience store to call the police. The clerk in the store refused to call 911 for them. They were standing outside the door to the store when CF used DF's cell phone to call Douglas F. At this point, they saw Cst Conlon pull into the station and run to his car to report the assault.

CF was a passenger in the Dodge Shadow and her statement corroborates DF's description of the event. CF could smell the rubber from the Prelude's tires, see smoke, and could hear the tires spinning. She did not see a machete. As they were entering the convenience store at the PetroCan, she saw the Prelude going west on St. Johns Street. DF and CF both testified that they had consumed no alcohol or drugs that evening.

Seven eye-witnesses to the incident confirm the statements provided by CF and DF. In addition, one witness, when asked what he thought the male's mood was at the time of the incident, responded:

*Just rage... rage. And unexplained too. No idea. Like, we didn't provoke him. Nothing. No one said anything to him. Not one of us said one word to the guy. Just came out on a terror. Just rampage. Anger. ... No one said anything. Like I was... I was just thinking about just saying you can go around. And then when he came out with a machete, we all took... me and Jake took a step back.*⁴

In addition, the witness testified that the male attempted to strike the driver's window with the machete, but the window was down and DF had already dove over to the passenger side.⁵

As well, most of these witnesses were able to provide a detailed description of the vehicle, including license plate number and the burnt out headlight. The general description of the driver was non-white, olive skinned male, dark hair buzzed close, wearing a white or light-coloured shirt. There were no other occupants in the black Prelude at the time.

At 1:10:55 hours, the Port Moody Emergency Dispatcher received a 911 call reporting:

³ Statement of DF; Final Investigation Report, pp 14-16

⁴ Statement of AS; Final Investigation Report, p. 24

⁵ Testimony of AS, Coroner's Inquest, August 30, 2005

... there's some guy at the uh, Side Pocket Billiards and, he pulled in the parking lot, and he pulled up behind my friend's car, got out and uh, smashed the windows with something. I don't know, I didn't see. He was like threatening them and stuff and they drove off and uh... I got his license plate.⁶

While this call was coming in, Cst Conlon radioed in at 1:14 to advise that he had received a report from a citizen regarding the same event. Cst Conlon had entered the PetroCan parking area and DF and CF immediately went to him to report what had happened. Police were able to establish the license plate number, description of the vehicle and the direction it was last seen heading.

Det/Cst JB had been called out earlier that evening to assist with the investigation of a robbery at the Hilltop Market on Clarke Road. Det/Cst JB was carrying a portable hand-held Port Moody Police radio that could monitor and broadcast transmissions on the police frequency, enabling him to hear the dispatcher as well as other members on duty. Det/Cst JB was at Hilltop Market conducting interviews when he heard the radio transmissions regarding the incident at Side Pocket Billiards and at 1:17:48 hours radioed dispatch to report the following:

Yeah, as soon as that was dispatched I went out onto Clarke Road and uh, I was out there, the vehicle hasn't passed me and a marked ...one of our marked PC's just went by. So they didn't come up the Clarke Road hill.⁷

Following the incident at Side Pocket Billiards, Keyvan Tabesh called his friend AA and made arrangements to meet him and three other friends, PS, SA and HR, at a Tim Horton's on North Road in Burnaby. Once there, according to statements provided by these witnesses, Keyvan Tabesh was very emotional, angry and cried at times. AA, PS, and HR all believed that he had been drinking alcohol. He told them about the incident at Side Pocket Billiards and how he had nearly hit a girl. Keyvan Tabesh was so angry, he punched the windshield of the Prelude with his right hand, breaking the windshield. His friends convinced him to go inside Tim Horton's, sit down, and have something to drink to help calm him down.

After approximately 15 minutes, Keyvan Tabesh wanted to leave, although according to his friends he still very upset and angry.⁸

After leaving the Tim Horton's, Keyvan Tabesh drove AA to his residence and then HR to his residence. SA stated in his interview on August 14th, 2003 with Sgt Wynes:

... And then ah and then he [Keyvan Tabesh] said, okay I want to drop you and HR off at home and then we can go somewhere. And then I... I ask him... I ask him like two or three times, "where are you guys going to go?" And like he didn't answer. And then we were going ... he... he was ah dropping us off. On the way... he ... we were listening to this song and then on the way he got like really pissed off and then he punched a ... the window and the window broke and stuff.⁹

⁶ It is believed that this call was placed by FR, a witness at Side Pockets

⁷ Transcript of Port Moody Police Telephone & Radio Transmissions, lines 309-313

⁸ PS testified that the police had "put words in his mouth" and that Keyvan Tabesh was sad rather than angry.

⁹ This is the second time that Keyvan Tabesh allegedly hits and breaks the windshield of the Prelude within a 20 minute period (or less).

The Prelude driven by Keyvan Tabesh, with AA in the front passenger seat and PS in the rear, continued east on St. Johns Street approaching the PetroCan station. DF and her friends were still at the PetroCan, including her father, Douglas F, and Cst Conlon. DF's vehicle was visible from St. Johns Street, but the police vehicle was parked behind Douglas F's truck and could not be seen from the road.

As the Prelude drove into the PetroCan parking area, JN, a witness from the earlier event, recognized the car and the driver as the same involved in the earlier incident. He immediately ran over to where Cst Conlon was taking statements from other witnesses and advised him the suspect car had returned.

Douglas F, after being advised by someone in the group that the black Prelude and driver that had just entered the station was the one who had earlier attacked his daughter, approached the Prelude, staring at the driver. The driver yelled at him, "What do you want?" Douglas F was about to reply when the driver of the Prelude noticed Cst Conlon and quickly left the area. It is the opinion of Douglas F that the way in which the Prelude entered the gas station lot indicated he was not there to get gas. He believes that the driver of the Prelude had returned with his friends to look for more trouble. Douglas F stated in his interview:

... there was something wrong with him... like he had flipped a switch. ... Now whether or not it was drug related or ... anger related I don't know but he'd flipped... definitely flipped a switch because I know when... he said to me... he says, "what!" If I'd ah said what I was gonna say he'd ah walked out that car.¹⁰

Keyvan Tabesh then fled the PetroCan station, heading down an adjacent street (Electronic Avenue) that is a dead end street. Cst Conlon activated his police vehicle emergency lights and followed Tabesh onto Electronic Avenue. At 1:49:59, Cst Conlon radioed dispatch requesting police cover. Cst Conlon positioned his vehicle sideways to block Tabesh's exit from Electronic Avenue. Keyvan Tabesh turned the Prelude around, accelerated towards Cst Conlon and swerved around the rear end of the police vehicle, onto the dirt shoulder. According to the testimony of an eye-witness, he thought the Prelude was going to ram the police car. "It was like a game of chicken".¹¹

Cst Conlon had attempted to stop Keyvan Tabesh by utilizing "High level Officer Presence (uniformed officer, marked police vehicle with emergency lights operating) and Keyvan Tabesh's refusal to stop is categorized as "High Level Active Resistance", initiating a police pursuit and demonstrating a disregard for the safety of anyone that may come into his path.

The Prelude continued west on St. Johns Street at a high speed and according to the radio transmission of Cst West, who was conducting surveillance near the Barnett Hotel, at 1:51:00 reported, "...he's flyin'". Cst Conlon, rather than backing up Electronic Avenue, turned onto Spring Road which runs parallel to St. Johns. By the time he turned onto St. Johns, he could see taillights, but was unsure if it was the Prelude.

¹⁰ Statement of Douglas F, July 14, 2003; Final Investigation Report, pp 26-27. Douglas F was scheduled to testify at the Coroner's Inquest, but due to work commitments out of town, was unable to attend and therefore was never cross-examined on this opinion

¹¹ Testimony of AS at the Coroner's Inquest, August 30, 2005

AA testified that Keyvan Tabesh was going 160 – 170 km/h down St. Johns and AA was scared. AA begged Tabesh to slow down, that he was a father and he didn't want to die. Keyvan Tabesh said, "We're all going to die, we're all going to die." AA stated Keyvan Tabesh's was laughing as he said this.¹²

Tabesh drove west on St Johns Street, which at a southbound curve becomes Clarke Road, and made an immediate left-hand turn onto St George Street, a dead-end cul de sac.

Det/Cst JB was just leaving the Hilltop Market to return to the Port Moody Police Department when he heard the broadcast of a high-speed police pursuit involving a black Honda Prelude heading in his direction. Prior to this, Cst JB was conducting interviews in his vehicle. The police radio was turned down very low, almost off. Cst JB had "caught bits and pieces" of some of the transmissions, but otherwise was busy concentrating on the interviews. He was unaware of *why* the black Honda was being pursued, only knew that if Cst Conlon had initiated the pursuit, he assumed, based on Cst Conlon's experience, that it was for a good reason.¹³

Det/Cst JB was driving a department issued gold-coloured Mazda Protégé that had no police markings nor emergency lights. It should also be noted that at the time, Det/Cst JB was in plain clothes, wearing black pants and a black knit pullover sweater. His police identification was in his left rear pants pocket and he carried his .40 calibre service pistol in a holster on his right hip, attached to his belt. Cst JB also had a blue police jacket with him, but this was in the back seat.

According to both the statement provided by Det/Cst JB and his later testimony at the Inquest, for safety reasons he thought it best to turn off of Clarke Road onto a side street, in order to avoid a collision. Det/Cst JB positioned his car facing out onto Clarke Road so that he could report any sighting of the Prelude. Cst JB testified that he anticipated his involvement would be to *monitor* and *report* the location of the Prelude, if it came by on Clarke Road. He did not anticipate any further involvement.

He was parked on St. George only a few seconds when the black Prelude made a left-hand turn from Clarke Road onto St. George and drove past Det/Cst JB. Cst JB testified that he believed that as the Prelude drove by him at the entrance of the cul de sac, he made eye-contact with the occupants of the Prelude. As they drove by, Cst JB had his police radio in his hand, near his face. Cst JB was firm in his belief that he had been recognized as a police officer, based on his past experience conducting surveillance for drug operations. He believes that he had been "burnt".

¹² Testimony of AA at the Coroner's Inquest, August 30, 2005

¹³ Cst Conlon testified that it is not uncommon that an assisting officer not know all the details immediately. Usually as the situation unfolds, more details would be provided. When asked by counsel why didn't he radio dispatch to get more details, he explained that if officers did that, all they would succeed in doing is block the radio channels. Also note that Cst Conlon had requested Code 4 clearance – radio priority. Coroner's Inquest, August 31, 2005. Sgt Fawcett (Use of Force Expert) also testified that it is not uncommon for an officer to not be apprised of all the details, such as why the Prelude was the subject of a police pursuit. Coroner's Inquest, September 1st, 2005.

The following is an excerpt from the statement provided by Det/Cst JB on August 8th, 2003, that describes what occurred next and, perhaps more importantly, what his perceptions were at the time:

... As the Honda passed me, I was able to see that there were two males in the front seats as well as at least one male in the rear seat. Saint Georges Street at that location turns into a dead end about one hundred meters from that intersection. As I saw no marked units following the car, I radioed my sightings of the vehicle as well as the location.

*I turned PD94 around and drove slowly to the end of the street and **expected to see the occupants of the Honda running for the bush area that was around the end of the road. I also expected to see marked police units behind me on the street but none arrived.***

*The Honda Prelude had turned around in the cul-de-sac and was stopped facing in my direction with it's light on. **Still anticipating the immediate arrival of marked police units, I drove slowly up to the front of the Honda and stopped within inches of it's front bumper.** My headlights remained on the entire time.*

At that point I could see the occupants of the Honda and held up my portable radio and showed them through the windshield that I had and was using my police radio. I then broadcast that I had the Honda boxed in and gave my location.¹⁴

It appears that Det/Cst JB was mistaken with respect to broadcasting this message twice. According to the radio transcripts, the only broadcast regarding his sighting the car was made at approximately 1:51:00, when Det/Cst JB broadcast the following:

He's on St. George and I'm with it, and there's three guys in it. Three guys ... he's pulling into St. George... the dead end on St George.¹⁵

In my view, it is likely that based on the wording, Det/Cst JB radioed this message when he first saw the Prelude turning onto St George, passing by him. Nevertheless, Cst JB later testified that he is certain that he broadcast the message that he had the Prelude boxed in. It is possible that his message was "blocked", or cancelled out with other people talking (ie, overtalking) on the same channel.

Det/Cst JB's statement continued:

*I immediately heard a radio transmission by Constable Ryan West that was to the effect of **"Be careful. They have weapons."** [The actual transmission by Cst West was, "Jim, be careful, they're armed."] *At that point, I immediately reversed and backed PD94 up a couple of vehicle lengths* [Forensics determined the distance between the vehicles to be approximately 8 metres.¹⁶] *to give them an escape route. I expected them to either drive away or to flee on foot towards the bush.**

¹⁴ Statement of Det/Cst JB, dated August 8th, 2003

¹⁵ Transcript of the Port Moody Police Telephone & Radio Transmissions, lines 676-678

¹⁶ Final Investigation Report, p. 55

At the Inquest, Cst JB was cross-examined on exactly *when* he heard Cst West's caution. Counsel suggested that Cst JB heard the message *prior* to driving towards the Prelude, but Cst JB is adamant that he was bumper to bumper with the Prelude when he received the message.

Cst JB also testified that when he followed the Prelude into the cul-de-sac, his primary objective was containment and to stop a possible continuation of a high speed chase that would further endanger the public and the police. It was not his intention to attempt a "Code 5" takedown by himself.

Det/Cst JB's statement continued:

*The occupants of the black Honda got out of the car and were standing for a few seconds beside the driver's side door of that vehicle. [Keyvan Tabesh and AA. PS remained in the car] I got out of PD94 and stood in the pocket that was created by my open driver's door and removed my service pistol from its holster. **I was still holding my portable radio in my left hand where it would be seen by the males and I held my pistol in my right hand so that it was visible. I yelled "Police! Don't anyone move!"**¹⁷ At the same instant, at least **two of the males started to run at me at full speed.** In the illumination of the headlights of the two vehicles **I saw a large wooden handled metal weapon in the right hand of the male** who was on my left as they ran towards me side by side. They were **running fast and I could not see the hands of the other male.***

Cst JB testified that he did not know what Keyvan Tabesh was holding in his right hand. He stated that he thought it could have been a shotgun, bat, or some such weapon.

*The totality of the circumstances of the situation that presented itself to me was extremely dangerous and **I realized that they would kill me.** The weapon that I had seen came up as they were in the area between the two vehicles. They were both shoulder to shoulder and **running very fast** towards the driver's side of PD94. It was my observation that **they were acting together with a common purpose** and they said nothing to indicate anything to the contrary.¹⁸*

*I fired my service pistol at the male with the weapon to stop him as lethal force was required to save my life. I recall that with the first shot the second male began to go to my right to surround me and I shot once in his direction and as low to the hood of PD94 as possible as the back drop there consisted of residences at a higher level. I directed the balance of my shots at **the male who was carrying the weapon as he was still running towards me at full speed and when he was within two meters of me, the weapon was fully raised above his head. He was then shot and fell right beside me.***

The second male was down by the right front fender of PD94 and no further shots were fired. I knew there was at least one more or third male somewhere on the scene but he never approached me.

Before I could radio the events, I heard Constable Ryan West broadcast that he heard shots fired. [time of Cst West's broadcast was 1:51:48 – only 48 seconds at the most had passed since Cst JB broadcast that the car was pulling into St. George.] I then radioed that I had

¹⁷ Jesse B, a resident on St George Street, stated that he heard something like, "Freeze Police" in a loud voice before the shots were fired. Statement, dated September 9, 2003; Final Investigation Report, pp 74-75.

¹⁸ AA's testimony also confirms that AA did not yell out anything to Keyvan Tabesh. Even though he states he was trying to stop Keyvan Tabesh, he did not call out. Coroner's Inquest, August 30, 2005

two down and needed two ambulances "code 3". Moments later at least two marked Port Moody Police Units arrived and the third male was arrested by uniformed officers.

I checked on the male who was down by the passenger side front fender of PD94 and searched him for weapons and told him not to move as an ambulance was on its way. He told me he was shot in the groin area.¹⁹

I was aware that the man with the weapon had been fatally shot because of the close range and remained with him until other officers and paramedics arrived. I was able to see the wooden handled machete beside him. [emphasis added]

AA and PS both provided statements to the Port Moody Major Crime investigators. It should be noted that neither AA or PS had responded to Sgt Giardini's repeated requests for an interview. Sgt Giardini attempted to contact them by phone with no success and on November 26th, 2004, sent a registered letter to both requesting an interview. Sgt Giardini never received a response from AA or PS, and as a result, did not have the opportunity to clarify or pursue certain information. What follows is an analysis of the taped interviews that they provided to the Port Moody Major Crime investigators and later testimony at the Coroner's Inquest.

AA's statement provided to Cst Kaila and Cst Strehlau on July 14th, 2003, is similar to Det/Cst JB's in general, however differs in the following areas:

- AA believed the driver of the Mazda Protégé was a resident in the cul de sac, returning home. He states that they did not know it was a police car. "I didn't know he was like a cop". Mr. AA later testified to the same effect.
- AA stated that the Mazda Protégé pulled up nose-to-nose with their car. This made Keyvan Tabesh angry and he stepped on the gas and pushed the Mazda Protégé forward. Neither Det/Cst JB nor PS make reference to the vehicles actually making contact, however Mr. S. later testified that the Mazda rocked back and forth, and hit the Prelude.²⁰ The forensic examination of the scene determined that the Prelude's passenger side rear tire was up over the curb and resting on grass. There were no other tire marks on the grass that would indicate the vehicle backed up, was pushed back or rolled back to its final stopped position.
- AA asserted that he was running after Keyvan Tabesh, trying to stop him from attacking the other driver and was running after him to stop him.
- AA did not hear Det/Cst JB yell, "Police! Don't anyone move!" He did not remember but he *guessed* that the driver of the Mazda Protégé yelled "Stop" right before he shot. In a follow-up interview on July 23rd, 2003, AA stated the driver didn't say stop or anything. However, AA later testified that he heard, "Stop, then bang, bang, bang."²¹

¹⁹ AA testified that he asked Cst JB why he had shot him. Cst JB told him, "Sorry sir, you were so close to me". Det/Cst JB denied that he said this and believes he just told him that the ambulance was on its way. Coroner's Inquest, August 30 & 31, 2005

²⁰ Testimony of PS, August 30, 2005.

²¹ Coroner's Inquest, August 30, 2005

- AA stated that had he known the driver of the Mazda Protégé was a police officer, with a gun and warned them, he would have just laid down on the ground with his hands outstretched.
- AA believed there were only three shots fired; the first two directed at Keyvan Tabesh, the third to him.

AA corroborates Det/Cst JB's account in that:

- Both he and Keyvan Tabesh exited the Honda Prelude and were running towards the driver's side of the Mazda Protégé.
- Keyvan Tabesh had a large wooden-handled machete in his right hand as he ran towards Det/Cst JB.
- Keyvan Tabesh was within two to three metres of Det/Cst JB when he fell to the ground.
- Just prior to getting shot, AA was just trying to "make one step to the side".

PS, who was sitting in the back seat of the Prelude, provided a statement to Sgt MacDonald and Cst Kaila on July 14th, 2003.

- PS remained in the back seat of the Prelude throughout the incident, until he was removed by Det/Cst JB. It is clear from the evidence heard at the Coroner's Inquest that Det/Cst JB was not the officer who removed Mr. PS from the car.
- PS believed the person who shot Keyvan Tabesh and AA was the same person that came up to their car earlier at the gas station [Douglas F]. PS further believed that he was an undercover police officer. Later in the interview, he recanted and stated that nobody thought the male at the gas station was a police officer. PS testified that he did not see a marked police car at the PetroCan, but did see an undercover police car – a black Ford. When the lighter coloured Mazda pulled up to them in the cul-de-sac, it was the same male from the PetroCan, just a different car. It remained unclear whether PS thought this male from the PetroCan was a police officer and the driver of the Mazda.
- PS stated that the vehicles were approximately three to four feet away from each other. He later clarified that the police car backed up approximately 5 metres. PS testified the Mazda backed up a bit, and came forward again, "back and forth", eventually hitting the Prelude's bumper.
- PS stated that the "undercover officer" fired the shots while inside his car. The officer did not get out of his car until after the shots were fired.
- PS believes that Keyvan Tabesh retrieved the machete from underneath the driver's seat. [AA had stated it was beside the gear shift]

- PS did not hear the officer say anything. He later stated that the car's stereo was turned off by Keyvan Tabesh before he got out of the car, but then stated that he turned it off himself after Keyvan and AA were shot. PS was questioned by counsel on this point at the Coroner's Inquest. After reading back portions of his statement, PS stated he didn't remember, only that the stereo was on when they turned onto the cul de sac.
- PS heard three shots fired.

PS corroborates Det/Cst JB's account with the following details:

- Keyvan Tabesh was near the driver's side door of the Mazda Protégé when he was shot and fell down.
- PS believed AA was shot first, then Keyvan Tabesh. He later changes this to AA getting shot after Keyvan.
- PS stated both AA and Keyvan Tabesh exited the Prelude and ran towards the driver's side of the Mazda Protégé. As they were running, they "crossed", that is, AA wasn't following the same line as Tabesh.
- Keyvan Tabesh had a machete in his right hand.
- When asked what he thought Keyvan Tabesh and AA were going to do when they got out of the car, he responded, "I think they were going to fight with the guy. ... They were going to fight... I know".²²

Det/Cst JB radioed dispatch at 01:52:22 that there are two down and he needs two ambulances there "code three".

At approximately 1:54 am, Cst Morwood-Clark and Cst Birch were the first to arrive, followed within seconds by Cst Conlon and Cst West (on foot through the bush). Cst West took custody of PS and placed him the back of one of the police cars. Det/Cst JB went to check on the condition of AA and to check him for weapons. He assured him that ambulances were on the way. Det/Cst JB then went to where Keyvan Tabesh was laying and remained with him until the paramedics arrived. Det/Cst JB stated that he "was aware the man with the weapon had been fatally shot because of the close range."

Cst West also checked on Keyvan Tabesh's condition, by feeling the carotid artery for a pulse. Cst West could not detect a pulse and CPR was not attempted at this time. At approximately 1:59 am, the ambulance arrived at the scene. Rachel Niblock was the paramedic attending Keyvan Tabesh. Upon arrival, she noted there was no radial or carotid pulses and he was not breathing. The Glasgow Coma score was 1-1-1 (3 out of a possible 15). This is the lowest score possible and indicates full cardiac arrest. The paramedics attempted to revive him, but while en route to the Royal Columbian Hospital and in communication with Dr.Thordarson, they were

²² Statement of PS, July 14, 2003, p 41.

advised to discontinue their efforts. Dr. Thordarson pronounced Keyvan Tabesh deceased upon arrival at the hospital. Time of death was officially recorded as 02:05. Cst West accompanied Keyvan Tabesh in the ambulance to the hospital and maintained continuity until he was placed in a crypt at 3:16 am.

Cst Sheridan had attended AA and accompanied him in the ambulance to the Royal Columbian Hospital. While en route, AA told him "He [Keyvan Tabesh] had a knife in his hand and was running towards your person". Later at the hospital, AA stated "I was going to stop him from hurting someone, he's mental, really mental."

A/Sgt Bewcyk seized Det/Cst JB's firearm, magazine and holster and maintained continuity until they were turned over to the Exhibit Officer²³. Given Det/Cst JB's emotional and mental state at the time, it was decided it would not be appropriate to interview Det/Cst JB until he had received trauma counselling and obtained legal advice. A/Sgt Bewcyk transported Det/Cst JB back to the Port Moody Police station. On August 8th, 2003, Det/Cst JB provided a 4-page statement and on August 21st, 2003, provided a follow-up statement in response to questions by the Major Crime investigator, Sgt Wynes.

FILE REVIEW:

As indicated at the outset, based on the accepted description of the events as set out above, I must consider the following factors to determine whether it would be appropriate to recommend a Public Hearing into this matter.

1. *Seriousness of the Complaint & Seriousness of the Harm Alleged to Have Been Suffered by the Complainant*

Mr. Tabesh died as a direct result of an interaction with a police officer. There is no more serious complaint than those that deal with the issue of lethal force and such cases deserve a very careful and thorough review by our office. This factor is not, in and by itself, a determinative reason for arranging a Public Hearing, although it should be given considerable weight in favour of doing so.

2. *Would a Public Hearing Assist in Ascertaining the Truth*

I am of the opinion that a Public Hearing would not reveal anything further than what has already been disclosed by the original Port Moody Police investigation, the *Police Act* investigation conducted by Sgt Giardini, and evidence given under oath at the Coroner's Inquest.

3. *Whether There was a Flaw in the Investigation*

²³ Cst Jagger of the Vancouver Police Department Forensic Identification Section was the assigned Exhibit Officer.

In my opinion, this is the factor that should bear the most consideration and scrutiny. If it can be established that the investigation conducted was as thorough and comprehensive as can reasonably be expected, and showed no signs of partiality or bias, then it should naturally follow that the subsequent findings of fact, upon which the Discipline Authority based his decision, are both reasonable and reliable.

Investigation by the Port Moody Major Crimes Section:

The following is a summary of the investigative steps undertaken by the Port Moody Police. This is not a complete list, however it outlines what I deem to be the most relevant to my review:

- Within approximately three minutes after the report of shots being fired, other members of the Port Moody Police Department arrived and contained the scene:
 - PS was taken into custody;
 - A/Sgt Bewcyk seized Det/Cst JB's firearm, magazine and holster, and transported Det/Cst JB to the Port Moody Police Station;
 - Cst West accompanied Keyvan Tabesh in the ambulance to the hospital;
 - Cst Sheridan accompanied AA in the ambulance to the hospital;
 - Sgt Wynes, Office in Charge of the Port Moody Major Crimes Section, was called out at approximately 2:15 am; and
 - Officers conducted a neighbourhood canvas²⁴ and licence plate numbers of cars in the area were noted.
- Statements were obtained from all the officers directly involved, and detailed duty reports from those officers on the periphery of the event. A statement was not taken from Det/Cst JB at the time. Once he had received trauma counselling and obtained legal advice, Det/Cst JB provided a written statement on August 8, 2003, and a follow-up statement on August 21st, 2003.
- Interviews and statements were obtained from civilian witnesses, including taped interviews of AA on July 14th and 23rd, 2003; and of PS on July 14th, 2003;
- Cst Christensen, of the Vancouver Police Department Forensic Identification Section, arrived on scene within approximately ten minutes of the shots being fired. Upon arrival, Cst Christensen called out Cst Jagger and Cst Deighton to assist. The scene was secured, photographs taken, distance and measurements recorded, and exhibits were located, photographed and seized. Later the scene was also video-taped and aerial photographs of the area taken.

Cst Christiansen noted the following upon arrival at the scene:

- The Mazda Protégé police vehicle's engine was running with the headlights on. The driver's side door was closed but ajar, with the window rolled down. The car's stereo was on at a low volume.

²⁴ Of 11 residents interviewed, 5 believed they heard shouting or voice *prior* to the shots; 5 believed they heard shouts or moaning *after* the shots; and 1 witness heard only shots.

- The Honda Prelude was parked with the passenger side rear tire up over the curb and resting on grass. There were no other tire marks on the grass that would indicate the vehicle backed up or was pushed. The vehicle was running, with the headlights on, though the driver's side front headlight was burnt out. Both the driver's window and the passenger door were open. No sounds were heard from stereo.
- The Honda Prelude and the Mazda Protégé were facing each other, approximately 8 metres apart.

Further examination of the scene discovered:

- A wooden handled machete approximately 50 cm in length in total was located against the curb approximately 1.5 metres from the driver's door of the Mazda Protégé. (Exhibit 1)²⁵
- Between the machete and the Mazda Protégé, was a pool of blood on the pavement.
- Four shell casings were located on the ground at the rear passenger side of the Mazda Protégé and one shell casing was located on the ground near the front passenger panel.
- There was a bullet strike to the passenger side hood of the Mazda Protégé and bullet fragment recovered.
- Blood spatter was located on the driver's door of the Mazda Protégé and no blood spatter located on the rear door panel, indicating the driver's door was open at the time the blood was deposited.

Both vehicles were transported to the Port Moody Police station for further forensic examination.

- Det/Cst JB's service firearm that had been seized earlier was turned over to the VPD Forensic Identification Unit for further examination. Mr. Rob Caunt, a Lab Analyst with the VPD Forensic Identification Unit, conducted tests to determine the trajectory of the shots fired by Det/Cst JB. In summary, Mr. Caunt concluded, amongst other findings:
 - The bullet trajectory reconstruction showed the bullet strike to the Mazda Protégé's hood was consistent with the shooter being in the region of the driver's side door and most likely no more than 1.3 metres from the driver's side of the vehicle.

²⁵ No fingerprints of value were found on the machete.

- The lack of detectable gunshot residues on Keyvan Tabesh's clothing indicates that he was shot from a distance greater than 1.75 metres.

The findings of Mr. Caunt corroborated the statement provided by Det/Cst JB.

- On July 15th, 2003, Dr. Sharon Boone, a Forensic Pathologist, conducted the autopsy on the deceased. Dr. Boone determined that Keyvan Tabesh died as a result of a gunshot wound to the chest. Further, Keyvan Tabesh suffered gunshot wounds to the left hand and arm, and his upper right arm had been grazed by a bullet.

With respect to the gunshot wound to the chest, Dr. Boone concluded:

Gunshot entrance wound, left chest, 1 cm round defect, with circumferential marginal abrasion up to 0.2 cm, and no evidence of muzzle fouling. The entrance wound is approximately 50 cm from the top of the head, and 10 cm left of midline. The track extends through the soft tissue of the anterior chest wall, through the left anterior 5th parasternal intercostals space, with no associated rib fracture, through the anterior pericardium (there is significant bilateral lung contusion medially), with an extensive defect within the right and left anteroinferior ventricle, and including the distal one-half of the left anterior descending coronary artery, through the diaphragm approximately 2 cm from the abdominal aorta, approximately 3 cm above the renal arteries, to a copper jacketed mushroomed bullet recovered within the 11th thoracic vertebra. The direction of the track is left to right, front to back and downward.

In addition, Dr. Boone noted abrasions on Keyvan Tabesh's back right shoulder and back of head, consistent with falling.

- A Use of Force Report was prepared by Sgt Brad Fawcett, a use of force expert with the Vancouver Police Department. Sgt Fawcett reviewed all associated police reports, duty reports, witness statements, transcripts, and the statements provided by Det/Cst JB with regards to the July 14th shooting of Keyvan Tabesh. Based on his assessment of the evidence, Sgt Fawcett then considered those findings using the National Use of Force framework and reviewed relevant sections of the *Criminal Code, Police Act Firearms Regulation* and Port Moody Police Department policies regarding Use of Force and Firearms.

In summary, Sgt Fawcett's conclusions were as follows:

The actions of Detective JB, as reported, appear to be consistent with the provisions of the foregoing Use of Force and Firearms Policies. [Police Act – Police Firearm Regulation, Port Moody Police Department "Use of Force" Policy].

The following are excerpts from Sgt Fawcett's report that, in my opinion, are extremely relevant to the *Police Act* review of Det/Cst JB's actions and bear repeating:

Detective JB appropriately escalated to the use of a firearm when faced with what he reasonably believed to be multiple armed suspects.

In these circumstances, it would have been inappropriate for Detective JB to fire a warning shot.

It was entirely appropriate for Detective JB to draw his sidearm given that the suspects were believed to be armed and had already demonstrated their willingness and ability to resist (i.e., they had already demonstrated high-level Active Resistance in terms of initiating a police pursuit, which is inherently dangerous). It would have been inappropriate for Detective JB to attempt physical control or to employ Intermediate Weapons on multiple and/or armed suspects. It was tactically sound for Detective JB to exit his vehicle. Being outside the vehicle increased the tactical options available to him in terms of positioning; officers are discouraged from remaining squarely in the driver's seat of their vehicles in such situations because they provide a stable target for the suspect and create awkward shooting positions for themselves. In addition, the doorway of the vehicle offers more concealment from a threat than remaining in the driver's seat. In such circumstances, it is hoped that the implied use of deadly force will coerce compliance from the suspects without the officer having to resort to the application of physical force. To not have had his sidearm in hand would have left Detective JB in an indefensible position against three suspects whom he could reasonably believe to be armed based on the nature of the call and the broadcast information: "Be careful. They have weapons."

...

Detective JB recalled that the suspects started to run "full speed" towards him at the same moment he was issuing verbal commands to them. In these circumstances, it would have been physically impossible for Detective JB to disengage from the threat by retreating.

...

Detective JB explained his belief that both suspects were acting in concert to assault him. ... Officers have been instructed that a multiple assailant encounter (more than one assailant) equates to a deadly force assault on them. In this case, the behaviour demonstrated by the suspects would be classified as Deadly Force Actions, specifically multiple assailants with access to weapons.

...

Detective JB reported firing a shot at the armed subject. He noted that the second suspect moved to his right in what he perceived to be an attempt to surround him. Detective JB responded by firing one shot in his direction. He returned his attention the first suspect and found that he was still running "full speed" towards him with the weapon raised above his head and was now within 2 metres of him. Detective JB fired at the armed suspect and reported that the suspect fell "right beside" him. The force used by Detective JB is categorized as Lethal Force (i.e. force that is likely or intended to cause death or grievous bodily harm).

... Force Options Theory advocates that officers are not required to incrementally escalate through all categories of force options before they determine the appropriate use of force response. There are many circumstances, such as the incident in question, where it is reasonable and appropriate to escalate from Officer Presence to Lethal Force without attempting the force options categories in between.

The actions of Detective JB in connection with this incident represent a reasonable escalation and de-escalation of force based upon the actions of the subjects. He precluded lower force options, specifically high level Officer Presence in conjunction with Tactical Communications, by virtue of the fact that they had been both attempted and failed. [Cst Conlon's earlier attempt to stop the Prelude on Electronic Avenue] ... Detective JB's actions were consistent with his common law duties, various Criminal Code

(Canada) provisions, the Police Act (BC) Police Firearm Regulation, and Department policy and training.

Sgt Fawcett also testified at the Coroner's Inquest and, in addition to his report, stated:

- With respect to taking up an observation position, even though he was in an unmarked police vehicle and plainclothes, Sgt Fawcett thought that it was a "good decision". As a police officer, he has a duty to provide good intelligence and Sgt Fawcett would have been disappointed if Det/Cst JB had done nothing to assist.
 - With respect to Det/Cst JB's decision to back up his vehicle 8 metres once he became aware the suspects may be armed, Sgt Fawcett couldn't criticize him for the decision. Another option available to him was to exit the vehicle immediately and use it as cover, but whether one was a better option, he could not say. When questioned if perhaps Det/Cst JB could have continued to back his vehicle away further and block the roadway, Sgt Fawcett responded that a car backing up could not outdistance a bullet. Further by blocking the Prelude's exit from the cul de sac, he would also be blocking the entrance of the police vehicles that he was expecting at any moment.
 - Coroner's Counsel asked Sgt Fawcett if, in his expert opinion, there was anything Det/Cst JB could have done differently or if there was anything that would possibly have assisted him? Sgt Fawcett's reply was simply "the compliance of Keyvan Tabesh, or else divine intervention."
- The Port Moody investigation also explored the background of Keyvan Tabesh. It became apparent through the investigation and at the Coroner's Inquest that Keyvan Tabesh had been diagnosed as suffering from a "Major depressive disorder, with psychotic features and alcohol abuse". At the time of the shooting, he was under a psychiatrist's care and prescribed medication to control his condition. There is some evidence, although not conclusive, that Keyvan Tabesh had discontinued taking his medication just prior to the incident. I do not propose to delve into the evidence and repeat the extensive testimony heard at the Coroner's Inquest regarding Keyvan Tabesh's mental stability. For the purposes of the *Police Act* review of Det/Cst JB's actions, what is fundamental is Det/Cst JB's perception of the situation and the risk he was facing. As Sgt Fawcett states in his report, "It should be noted, however, that the deceased's perception of the incident does not determine the reasonableness of Detective JB's use of force."

Det/Cst JB has stated that he fully anticipated that when the Prelude pulled into the cul-de-sac, the occupants would dump the vehicle and flee on foot into the surrounding bushes. He further testified that he has never before in his career experienced the occupants of a car to exit the vehicle and charge at him. When the

reasonableness of this assumption was put to Sgt Fawcett by counsel, he agreed and stated that he would have expected the same thing.

Further, although AA and PS have stated that Det/Cst JB provoked them by bumping their car and laughing at them, I have concerns about accepting that assertion at face value. As Det/Cst JB testified when questioned on this point, this was not a laughing matter and it defies logic that an officer would take such a situation lightly. Perhaps Mr. AA and Mr. PS saw Det/Cst JB talking on his radio and interpreted his actions as taunting, but I hesitate to accept that the officer would intentionally provoke an already volatile dangerous situation. On balance, I prefer the officer's evidence on this issue.

As a result, I am of the opinion that Keyvan Tabesh's erratic and unexpected aggression could not reasonably be anticipated by the officer at the time. The medical evidence that is now available assists us when trying to explain Mr. Tabesh's behaviour, but that is only in hindsight. This information was not available or known to the officer at the crucial time and, as such, other than providing insight into his actions, is not highly relevant to my review of the Respondent's actions to that observed behaviour.

Review of PMPD Investigation by Inspector Bob Cooper (VPD):

At the very early stages of Sgt Wynes' investigation, he had consulted with Insp. Bob Cooper, an experienced investigator with the Vancouver Police Department Homicide Unit, to review the investigative steps they had taken thus far and the direction their investigation was taking, in order to ensure that "no stone was left unturned". At the Coroner's Inquest, Insp. Cooper described the Port Moody investigation plan was "right on course."

Insp. Cooper was also requested to review the entire Port Moody investigation file prior to be being submitted to Crown Counsel to ensure all investigative leads had been properly followed. Insp. Cooper testified at the Coroner's Inquest that: "The entire investigation was outstanding. It was a very good job." When directly questioned by Coroner's Counsel if there was any indication of "stalling or blocking the investigation, or kyboshing", Insp. Cooper replied there was nothing on the file that would indicate that suggestion. Insp. Cooper provided the Port Moody Police Department with a letter indicating their investigation into this matter was "outstanding" and a copy of this letter was entered as an exhibit at the Inquest.

Crown Counsel Charge Approval Review:

When reviewing a matter for charge approval, Crown Counsel considers two questions: first, is there a substantial likelihood of conviction? Secondly, if so, whether it is in the public interest to proceed with charges. The Crown also has the authority to request further investigation by the police if they feel the report is lacking or flawed. To my knowledge, the Crown did not request any additional information. After reviewing the

Major Crime investigation Report to Crown Counsel submitted by the Port Moody Police, on June 1st, 2004, Crown Counsel determined that no charges should be brought against the officer. They too, presumably, were satisfied with the thoroughness of the investigation.

Police Act Review/Investigation by Sgt Giardini (VPD):

It should be noted that the Port Moody Police investigation was a *criminal* investigation, and both the subsequent review by Insp Cooper and the charging decision by Crown were based on the criminal standard which is proof beyond a reasonable doubt. The *Police Act* review and investigation conducted by Sgt Giardini, and the decision of the Discipline Authority is based on a different standard of proof. The *Police Act* follows the civil standard, which is one based on a balance of probabilities, based on "clear and cogent evidence".

Sgt Giardini had complete access to the Port Moody investigation file and received a complete copy of the 540 page final report, as well as 6 compact disks containing attachments. In addition, Sgt Giardini met with the Tabesh family and conducted interviews in addition to those already contained on the investigation file. Sgt Giardini was able to locate and interview Mr. PM, who was with Keyvan Tabesh and SH just prior to the incident at Side Pocket Billiards. Unfortunately, Sgt Giardini's attempts to interview Mr. AA and Mr. PS were unsuccessful.

Following a lengthy *Police Act* investigation, Sgt Giardini concluded:

174. *That Detective JB appears to have complied with the regulations as set out in the BC Police Act and the provisions of the Port Moody Police Department Policy and Procedure Manual, specifically the sections which address the Use of Force and Firearms policies.*
175. *That as a result of the review and investigation into the allegations made in the Form 1 Letter of Complaint, I cannot find any violations of the BC Police Act which would constituted a disciplinary default by Detective JB or any member of the Port Moody Police Department.*

Our office has carefully reviewed Sgt Giardini's 97-page Final Investigation Report, and attachments. Sgt Giardini's conclusions persuades me that nothing further would be gained by ordering a re-investigation into this matter.

In my opinion, the original investigation conducted by the Port Moody Police, with the assistance of members of the Vancouver Police Forensic Identification Section, Firearms expert Mr. Caunt and Sgt Fawcett's opinion regarding use of force, was professionally conducted and sufficiently comprehensive. The subsequent independent reviews conducted by Insp. Cooper and the extensive review by Sgt Giardini both conclude that the investigation was thorough and "left no stone unturned". Therefore, it cannot be successfully argued that the investigation was flawed.

5. *Was the Discipline Authority's Decision Appropriate?*

Chief Constable Paul Shrive, as Discipline Authority for the Port Moody Police Department, based his decision on the following information:

- the evidence gathered by the Port Moody Major Crime investigation, including the Use of Force Report by Sgt Fawcett and the Firearms Report by Rob Caunt; and
- the findings of fact by Sgt Giardini, based on his *Police Act* review/investigation.

If one accepts the evidence and findings of the above as a complete and accurate accounting of the events and their unfolding - which after my review I do accept as the most reasonable and credible version of the facts – then the decision by Chief Shrive was appropriate and correct. There is no credible evidence to support the allegation that Det/Cst JB resorted to lethal force when he had other less lethal options available in these unique circumstances.

For those reasons, I agree with Chief Shrive's decision as Discipline Authority that the *Police Act* complaint against Det/Cst JB is not substantiated.

6. *Is a Public Hearing necessary to Preserve or Restore the Public Confidence?*

As stated earlier, I do not believe that any further evidence would come to light through a Public Hearing, nor would the findings of fact likely be different from what has already been established by the Port Moody Police Major Crime investigation, the review conducted by Sgt Giardini and the witnesses' evidence heard under oath at the Coroner's Inquest. As such, I do not believe that an Adjudicator would be assisted by a further proceeding to find the truth of what occurred. Nor do I believe that a review of the same evidence would persuade the adjudicator to set aside the Discipline Authority's decision.

The only question left is whether a Public Hearing would be required in order to restore the public's confidence in the police. The public needs to be assured that investigations into police involved deaths are both transparent and accountable. This assurance may also be as effectively achieved through our office providing to the public clear and sound reasons for *not* arranging a Public Hearing.

When considering all the factors as listed above, as well as taking in all the practical considerations, I do not believe a Public Hearing would be of any significant benefit to the public's trust and confidence in the police. In my view the Coroner's Inquest in this particular matter has provided the opportunity for the family to hear sworn evidence concerning the questions they had about this tragic event. The jury recommendations have addressed the relevant service, policy and training issues that arise from this incident, but do not identify any concerns about the conduct of the particular officers involved in the incident.

It must also be said that Port Moody Chief Shrive, as the DA, is to be commended for taking the initiative to request an external agency to conduct the *Police Act* investigation into this matter. Similarly, the Vancouver Police Department is also to be commended for cooperating with the requesting police agency in providing assistance with both the criminal investigation into the shooting as well as the Police Act investigation into the issue of the public trust complaint of abuse of authority respecting Det/Cst JB's shooting of Mr. Tabesh. The involvement of independent, external agencies in serious matters such as this are extremely significant factors in maintaining public confidence in the police complaint process and in the police.

For all of the above reasons, I am of the view that a Public Hearing is not required and would not be in the public interest in this matter.

DECISION:

Accordingly, for the reasons stated above, I hereby confirm the Discipline Authority's decision in this matter.

Dirk Ryneveld, QC
Police Complaint Commissioner
November 28, 2005
Victoria, BC

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