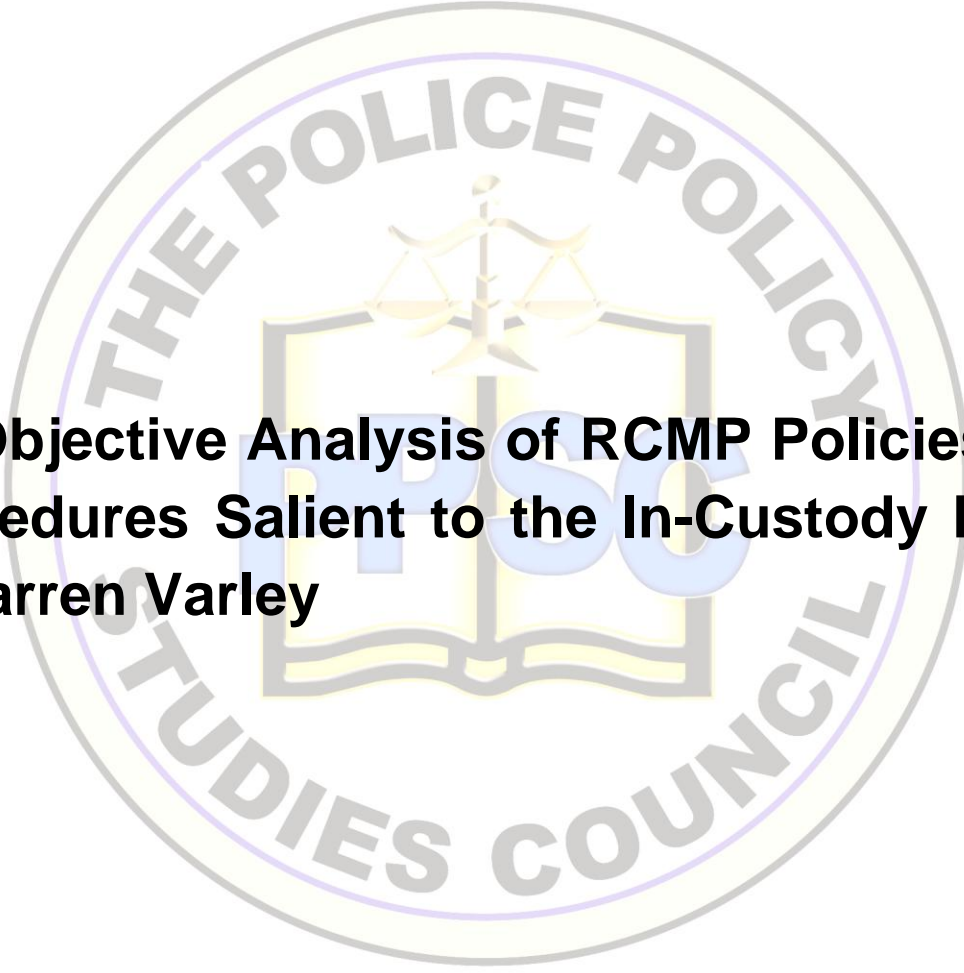


The Varley Inquiry



An Objective Analysis of RCMP Policies and Procedures Salient to the In-Custody Death of Darren Varley

April 1, 2010

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The Police Policy Studies Council
Interdisciplinary Research, Training and Consultation

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Preface

Pursuant to the Alberta Fatality Inquiries Act, we were tasked with evaluating materials sent to us with respect to the death of Darren Varley. Fatality Inquiries do not make findings of legal liability, or try to assign blame, but they often do result in recommendations as to how such deaths might be prevented in the future. Accordingly, at the direction of the Honorable Judge Redman, Alberta Justice retained us to objectively review the facts surrounding the incident, and to provide an analysis of the incident in light of then-existing RCMP policy, and provide if possible a recommendation as to how such incident might be prevented in the future.

Caveat

This project was undertaken without the benefit of direct communication with RCMP and without the benefit of onsite evaluation of the premises referenced. The limitations encountered were generally a manifestation of the time constraint given for report completion, as well as the nature and substance of the documentation that was provided for evaluation.

Commitment to Quality Policing

Founded in 2001, The Police Policy Studies Council is an interdisciplinary, research-based organization providing objective analysis and effective solutions that address the challenges facing law enforcement agencies throughout the United States, and several Commonwealth nations. Noted for ground-breaking deadly force research, PPSC brings forward its considerable knowledge base to facilitate proactive risk analysis and post-incident process analysis.

PPSC conducts research and analysis to improve contemporary police practice and policy. The mission of PPSC is to improve the development, operation, use, and protection of society's essential public safety assets, and in doing so, enhance the safety and security of citizens in transit, within their workplaces, and within their communities. PPSC research addresses the safety of law enforcement officers and citizens, with focus applicable to enhancing an occupational milieu in which there is a diminished frequency and severity of coercive force that needs to be applied.

Questions or comments about this monograph should be sent to the Project Manager, Thomas J. Aveni (tom@theppsc.org.org). Information about PPSC research, policy guidance and training is available online (<http://www.theppsc.org>), as is a vast array of freely offered information.



Thomas J. Aveni, MSFP
Executive Director
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Executive Summary

Introduction

We recognize that different officers will approach similar situations in different ways and that there is no single test to determine the correctness of an officer's decision to use force – even in cases in which deadly force is used. As sociologist Albert J. Reiss Jr. has pointed out¹, “To understand how one might avert or preclude the use of deadly force in situations in which it might be a likely alternative, we need to understand how the police organizations regulate and restrict the use of deadly force and alternatives to its use.” Our work in this project reflects our focus and interpretation of the documentation that we were provided, of pertinent research materials that we've digested, and of our collective experience within diverse fields of policing.

Method

We reviewed the relevant literature on officer-involved shootings, as well as literature pertinent to the judicious use of less-than-lethal force. We scrutinized the materials provided to by Alberta Justice salient to the Varley incident and collected and reviewed policy and procedural models with which to conduct qualitative analysis of RCMP policies and customs.

Findings

1. Jail Guards at Pincher Creek:
 - a. The selection, training, and duty criteria for jail guards were extremely deficient.
 - b. As a result of the extreme jail guard deficiencies noted, their degree of reliability and utility is extremely limited.
2. Use of Force Considerations & Procedures:
 - a. Constable Ferguson's empty-hand control tactics may have been questionable at times but may also have been objectively reasonable, given the totality of circumstances.
 - b. Constable Ferguson should've requested competent assistance in escorting Darren Varley into the detachment facility.
 - c. Insufficient RCMP resources were expended on force-on-force training.
 - d. Inadequate consideration was given to constables working alone in rural assignments.
3. Deadly Force Law & Policy Directives:
 - a. RCMP policies appear to within applicable Canadian legal parameters. RCMP use-of-force policies and procedures appear to be compatible with all accepted professional standards that we have reviewed.
 - b. While not privy to all legal proceedings and materials pertinent to the prosecution of Constable Ferguson, we view the evidence that we have seen as adequate grounds for his acquittal on manslaughter charges

¹ Reiss, Albert J. Jr., “Controlling Police Use of Deadly Force,” *Annals of the American Academy of Political and Social Science*, Vol. 452, No. 1, 1980, pp. 122–134.

4. Deadly Force Analysis
 - a. Close-quarters deadly force engagements involve chaos and improvisation – they seldom bare any resemblance to police training.
 - b. Handgun retention scenarios are, by definition, deadly force incidents.
 - c. Within the context of a handgun retention struggle, target selection is often a moot issue. You take what you're afforded – for the fleeting moment that it might be afforded.
 - d. The most generally accepted practice within the law enforcement profession regarding when to cease shooting is when the LEO perceives the cessation of deadly threat to him/her self.
 - e. "Post lethal wound activity is common," necessitating multiple shots to de-animate a lethal threat, and yet it may be difficult to discern what the LEO had encountered in a post-mortem setting.
5. Securing Firearms In Cell Blocks & Booking Areas:
 - a. A sterile cell block & booking area environment was not facilitated or mandated at the Pincher Creek detachment.
 - b. The presence of Constable Ferguson's duty sidearm contributed greatly to the eventual string of events that occurred that morning.
6. Handling Assaultive Prisoners:
 - a. Constable Ferguson may have been escorting Varley in accordance with existing detachment customs; but under virtually no circumstances should a constable elect to escort and/or process a prisoner without backup assistance when that prisoner has already assaulted and made threats of additional violence against the constable.
 - b. Violent arrestees should not be un-handcuffed until they are escorted into a holding cell, and then only in the presence of two or more LEOs.
7. Holsters & Handgun Retention:
 - a. The Safariland SSIII holster is among the best holsters of its kind, but it is not as loss-resistant as many LEOs believe it to be.
 - b. A knowledgeable and/or determined assailant can compromise an SSIII holster fairly quickly, especially in close quarters and if the LEO is inattentive to proper positioning and control of the subject.
8. Anger Management & Supervisory Considerations:
 - a. We were unable to determine what, if any, "anger management" policies existed at the time of the Varley incident.
 - b. We do believe Constable Ferguson's collective behaviors prior to the incident in question should have triggered mandatory counseling and fitness-for-duty evaluation.
 - c. From the documentation that we were provided, we believe Sgt. Mills hesitation to intercede in constable Ferguson's corrosive behavioral patterns became increasingly problematic.
9. Workplace Violence Procedures
 - a. We were unable to determine what, if any, workplace violence procedures existed at the time that Constable Ferguson's behavior become confrontational
10. Psychological Fitness For Duty

- a. We were unable to determine what, if any, FFD procedures existed at the time that Constable Ferguson's behavior exhibited cause for concern.
- b. We were unable to determine what, if any, FFD counseling and evaluation resources were available to the Pincher Creek detachment at the time in question.
- c. We do believe that Constable Ferguson's behavioral patterns rose to a level whereby an FFD evaluation should've been mandated.

Recommendations

Jail Guards at Pincher Creek:

1. Jail guards must meet generally accepted professional criteria for selection, training, and assignment.
2. Training for jail guards should reflect the substance of the duties they'd be expected to fulfill.
3. The selection and training of jail guards should engender organizational confidence in their abilities to provide competent assistance to constables in situations where detainees are non-compliant and/or combative.

Use of Force Considerations & Procedures:

1. The role and employment considerations for each control device issued to constables must be stressed in scenario-based training. Areas that should be stressed in future RCMP training:
 - a. Each control device and tactic has inherent strengths and weaknesses.
 - b. Each control device and tactic has optimal spatial parameters for employment.
 - c. The efficiency of many control techniques and control devices is usually correlated with the competency level and/or physical wherewithal of the LEO employing them.
 - d. Consideration should be given to OIS situations that involve inebriated subjects.
 - i. Intoxication can add a greater degree of difficulty to a scenario, given the possibility that the subject might be de-sensitized to the pain of pain compliance techniques.
 - ii. In OIS scenarios, gunshot wounds may be less effectual against intoxicated subjects – necessitating the application multiple gunshot wounds.
 - e. When a device or tactic fails in an actual confrontation, constables must be able to discern what the most reasonable and viable alternative is to fall back upon.
 - f. Specific training consideration must be given to situational awareness and relative body positioning when working in close proximity to subject/arrestee.
 - g. Externally worn ballistic vests should be secured, preferably to the duty belt, so that they will be less likely dislodged by an assailant in a close quarters struggle.

Deadly Force - Law & Policy:

1. We see no reason to believe that RCMP use of force policies (See Appendix "C") aren't compatible with existing Canadian statutes, and therefore, recommend no changes to existing policies.
2. Though we were not provided with any formal documentation of RCMP deadly force policy, we found that the implied policy within the, "RCMP Incident Management/Intervention Model" met all of our model policy standards.

Deadly Force Analysis:

1. From the limited documentation that we were provided, we believe some RCMP training doctrine is either outdated or inadequate, especially as it pertains to:
 - a. Handgun retention.
 - b. Basic disarm techniques, in the event that possession of the duty handgun is momentarily lost.
 - c. Close quarters pistol engagement techniques and variables.
 - d. Situationally flexible, multiple shot doctrine.
 - e. Awareness of post-lethal wound activity as a potential incident variable.
2. We highly recommend that RCMP training cadre attend advanced level training that might better assist them in evaluating existing and future training doctrine. Recommended, advanced level training could include:
 - a. Force Science Institute's (40 hour) "Certification" program.
 - b. The Police Policy Studies Council's "Deadly Force Management™" and/or "Use of Force Management™" programs, or other programs that offer equivalent content.

Securing Firearms In Cell Blocks & Booking Areas:

1. Handgun lock-boxes should be provided and their use mandated, except under extenuating circumstances.
2. Handguns should be secured before the arrestee is:
 - a. Removed from the police cruiser and/or
 - b. Prior to handcuffs being removed
3. So-called "sterile areas" should be prisoner processing and detention cell areas.

Handling Assaultive Prisoners

1. Incidents requiring the mandatory coordination of two constables and/or jail guards in apprehending, escorting and processing a subject should include:
 - a. Scenarios in which an assault has already been committed against an LEO.
 - b. Scenarios in which the arrestee/detainee has already threatened an LEO with physical harm.
 - c. Scenarios in which the arrestee/detainee has already damaged organization property in an apparent fit of rage.
 - d. Scenarios in which the arresting LEO knows that the subject has a recent history of reckless and/or violent behavior when confronted with the likelihood of arrest and incarceration.
2. Until a subject has been handcuffed and searched for weapons, a "contact & cover" approach should be utilized by arresting LEOs.
3. Handcuffs should not be removed from a combative subject unless:
 - a. He/she has displayed rational behavior for an extended period of time.
 - b. An assisting constable/jailer is present to facilitate control of the subject, should the need arise.
 - c. Or, when the degree of danger presented by the subject is unusually high, handcuffs should not be removed until the subject has been escorted by two constables/jailers into the holding cell.
4. Sally Port, processing and detention areas should all be monitored by CCTV, with video footage archived for up to one year.

Holsters & Handgun Retention:

1. Constables must receive adequate familiarization with their issued retention holsters, to include;
 - a. Proper break-in of the holster.
 - b. Proper care of the holster.
 - c. Efficient handgun presentation from the holster, given its specific design characteristics.
 - d. Familiarization with disarm techniques that might be successfully employed against that specific holster design.
2. Constables must receive basic familiarization in handgun retention techniques.
3. Constables should receive basic instruction in disarm techniques in the event that their handgun has been taken from them.

Anger Management & Supervisory Considerations

1. In the materials we were provided, we see ample evidence that RCMP has provided adequate resources that may afford the interdiction of workplace violence problems before they become acute or chronic.
2. The “first line of defense” in such cases isn’t merely an immediate supervisor – it’s the police culture that either stands ready to intercede, or stands silent.
 - a. Constables should be afforded “awareness training” pertinent to the recognition of gradual yet significant emotional changes that they might find in themselves, and in co-workers.
 - b. An occupational milieu should be created whereby voluntary intervention is encouraged and seldom penalized.
3. The immediate supervisor’s responsibilities should include, but not be limited to:
 - a. Monitoring all work environments to assess the potential for violence or threat of violence;
 - b. Identifying existing security measures and take additional reasonable measures that could be implemented to improve workplace security; and,
 - c. In instances where an employee’s observed behavior is creating disruption in the workplace, but attempts to diffuse the situation fail, the commanding officer shall follow existing organizational procedures, including those allowing an employee to be placed off-duty on paid administrative leave.
 - d. Intervention should not be delayed where it is deemed necessary.

Psychological Fitness For Duty, & FFD Evaluations

1. Our review of documentation provided to us suggests that the psychological resources available to “K” Division are now substantial.
2. Our residual concern lies within a paucity of documentation indicating at what threshold employees might be mandated to submit to FFD evaluations.
 - a. We’d wish to see codifications or directives of what actions immediate supervisors are compelled to take at whatever thresholds of behavior that RCMP believes to be actionable in this realm.
 - b. We’d wish to see duty-status distinctions made for constables awaiting compulsory FFDEs, or awaiting their administrative outcome.

Abbreviations

BOLF – Be On Lookout For

CALEA - Commission on Accreditation for Law Enforcement Agencies

CCTV – Closed Circuit Television

DWI – Driving While Intoxicated

EMT – Emergency Medical Technician

EPO - Emergency Protective Orders

FFD – Fitness for Duty

FFDE – Fitness for Duty Examinations

IACP – International Association of Chiefs of Police

LAPD – Los Angeles Police Department

LEO – Law Enforcement Officer

LEOKA – Law Enforcement Officers Killed & Assaulted

MOS – Members of Service

MVA – Motor Vehicle Accident

NMI – Neuro-Muscular Incapacitation

OC – Oleoresin Capsicum

OIC – Officer-In-Charge

OIS – Officer-Involved Shooting

PIRS - The Police Information Retrieval System

POPAT - Police Officers Physical Abilities Test

PPSC – Police Policy Studies Council

PTSD - Post-Traumatic Stress Disorder

RCMP – Royal Canadian Mounted Police

Section One

- Study Approach
- Materials Provided For This Study
- Organization of This Monograph



Study Approach

Starting in late February 2010, an interdisciplinary team from PPSC received materials from Justice Alberta pertinent to the Varley Inquiry. The materials that we were provided are listed below, in the “Materials Provided” section. Our first priority became reconstruction and then deconstruction of events that transpired on October 3rd, 1999, in Pincher Creek, Alberta. The deconstruction process was facilitated to afford a better understanding of the situational and behavioral variables that, collectively, drove this event to its tragic conclusion. After identifying critical, relevant, incident variables, we focused upon generally accepted best-practice models for qualitative comparison and possible remedies where problems were identified. In the final analysis, our professional experience and subject matter expertise served as the lens through which all related variables and remedies were examined.

Written Materials Provided For This Study

- **RCMP Investigation Report**, by Sgt. P.J. Kuzma, Primary Investigator, Dated 1999-10-22.
- **“Admission of Fact,”** Judicial Centre of Lethbridge, Her Majesty, the Queen, Against Michael Esty Ferguson.

1999 RCMP Policy:

- Operational Manual Detachment Policy – Prisoners And Mentally Disturbed Persons (16 pages)
- Operational Manual “K” Division – Prisoners And Mentally Disturbed Persons (7 pages)
- Operational Manual, National Policy – Prisoners And Mentally Disturbed Persons (12 pages)
- Commissioner’s Standing Orders (Heath Assessment – 6 pages)
- “K” Division Investigation Guide (26 pages)
- Operational Manual – Firearms (20 pages)

Current RCMP Policy:

- 17.1 Incident Management Intervention Model (3 pages)
- 17.5 Less Lethal Use of Force (2 pages)
- 17.6 Restraining Devices (3 pages)
- 17.7 Conducted Energy Weapon (7 pages)
- 17.8 Subject Behavior/Officer Response Reporting (3 pages)
- 19.1 CPIC Checks And Cell Block Security (2 pages)
- 19.2 Assessing Responsiveness/Medical Assistance (5 pages)
- 19.3 Guarding Prisoners/Personal Effects (5 pages)
- 19.4 Prisoner Escort (5 pages)
- 19.5 In-Custody Death (2 pages)
- 19.6 Legal Counsel (2 pages)
- 19.7 Mentally Ill Persons/Prisoners (1 page)
- 19.8 Fingerprinting and Photographing Prisoners (4 pages)
- 19.9 Release of Prisoners (2 pages)
- 19.10 Conditional Release Violation (1 page)
- 4.6 Firearms In Cell Blocks (1 page)
- 4.8 Reporting Discharge of Firearms (3 pages)

RCMP Training Materials

- Basic Firearms Instructor's Course (53 pages)
- Memorandum from SSgt G.L. Prouse to NCO In Charge, Dated 2000-04-19
- E-Mail From George Prouse to Herbert Hahn, Dated April 17, 2000 (1 page)
- The Royal Canadian Mounted Police Incident Management/Intervention Model (9 pages)
- Training of Cst. Ferguson During Annual Qualification in 1998 and 1999 (36 pages)
- Firearms POWPM 96-06-10/96-06-14 "Depot Division," Prepared by Cpl. B.W. Onofreychuk (42 pages)
- Cadet Training Program, Module IV, Session 2A (31 pages)
- Firearms Training Manual, Appendix 2-1, RCMP Duty Pistol Qualification Course – Smith & Wesson Models 5946 and 3953 (1 page)
- Owner's Manual, Safariland User's Guide, Model 070-0705 SSIII Holster (2 pages)
- Current IMIM (20 pages)

Miscellaneous Written Materials

- Occupational Fitness (2 pages)
- Psychological Services (4 pages)
- Designated Psychologists (7 pages)

Organization of This Monograph

The monograph is organized into four sections, followed by appendices containing supporting materials. To establish a factual foundation for the incident, Section Two examines the incident, following a chronological sequence of events. The event narrative is followed by an overview of specific areas of concern to be addressed in detail later.

Section Three addresses issues that are directly relevant to the incident, on the day that it occurred. The problematic qualifications and capabilities of detachment "jail guards" are elucidated, as are use of force variables, laws and policies, followed by deadly force variables and analysis. Following deadly force analysis is an examination of cell block procedures, including the issues such as handgun security, handling assaultive prisoners and issues pertinent to handgun holsters and retention.

Section Four was structured to focus primarily upon so-called "Fitness for Duty" issues, to include perspectives pertinent to "Anger Management." Several occupational safety issues are addressed with primary focus upon supervisory responsibilities for intervention. Considerations are specified for determining when MOS should be compelled to undergo mandatory Fitness for Duty Examinations.

The appendices begin with an examination of RCMP policies that are directly or indirectly salient to the Varley Inquiry, in Appendix "A." This examination was also constrained by the nature and number of policies that we were provided, but should prove insightful, nonetheless. Appendix "B" provides guidance relevant to Fitness for Duty, and Fitness for Duty Evaluations. Appendix "C" contains the graphical representation of RCMP's force continuum, referred to as the "RCMP Incident Management/Intervention Model." Appendix "D" contains an extensive body of scholarly and practical references that influenced many of the conclusions rendered in this report. Appendix "E" contains brief biographical sketches of the authors of this report.

Section Two

- Incident Background
- Specific Areas of Concern



Incident Background

On October 2nd, 1999, Darren Varley, a 26 year-old truck driver, from Pincher Creek, Alberta, had just finished his work day and then went to a local pub. After several hours of drinking, Varley had become intoxicated. Alayna Dyck was working as a bar maid at the King Edward Hotel bar that evening from 9:00 PM until closing. She reported that Darren Varley purchased and consumed several beverages consisting of rum and coke from her during her shift.

At the same time, RCMP Constable Michael Ferguson had just finished taking two "ride-along" individuals for an extensive ride in his police car, familiarizing them with the area. He dropped them off just an hour before the pub's closed at 3 AM.

Constable Ferguson received a call from the RCMP dispatcher based in Red Deer about an intoxicated complainant, Darren Varley, reporting a missing person. The missing person was Varley's fiancé, Chandelle Bachard. Varley phoned from the local hospital where he was checking on his friend, Rod Tuckey, who had been just beaten up in a fight in which both men had been involved in with two other men. The fight had occurred at the pub parking lot as a result of Varley forcefully pushing down Cherry Parker, another man's wife.

A Pincher Creek Hospital security officer, Earl Langille, contacted RCMP Red Deer Telecoms at 0337 hours and spoke with Radio Operator Veronica Clark. Langille requested a member attend the hospital to investigate the circumstances of a reported missing person and vehicular accident, as was relayed to him by Varley. After that, Varley spoke with dispatcher Clark and gave her a report of what he incorrectly believed to be a missing woman. Between 0338-0342 hours Clark dispatched the complaint to Constable Ferguson via police radio. Ferguson, assigned to work a 10-hour shift until 0400 hours, was inside the Pincher Creek RCMP Detachment when the complaint was received.

Between 0342-0344 hours, dispatcher Clark advised Constable Ferguson that she thought Varley sounded intoxicated and that details of the complaint were very limited. Clark offered to put out a BOLF on the suspect blue van. Constable Ferguson advised Clark that he would attend the hospital and try to obtain further information. Between 0347- 0349 hours, and prior to Constable Ferguson's departure from Pincher Creek Detachment, Clark phoned back and stated she had just run Darren Varley on PIRS and determined that Varley had been involved in a fatal MVA in 1996 where a friend of his died. Clark suggested that Varley could be "psyched out."

Constable Ferguson arrived at the hospital lobby and parked his marked RCMP vehicle in front of the main entrance to the hospital. Present in the lobby was Darren Varley, his sister, Alaine Varley, Sarah Weatherill, Pat Bitango, and the hospital Security Guard Earl Langille. Darren Varley approached Ferguson and insisted he stop every van to find his fiancé. Ferguson asked Varley if he was drunk. He stated he was, but added that his intoxication had nothing to do with his complaint. Varley alleged that Chandelle Bachard had been kidnapped, unaware of the fact that she had followed another bar patron, Andrew Pettigrew, to his home that night. She thereafter reportedly slept on Pettigrew's sofa.

Ferguson continued to investigate by attempting to get a description of the van believed to be involved in the earlier incident reported by Varley. At this point, Darren Varley was said to have again approached Ferguson and "got in his face" asking why he was not out looking for his fiancé and the van. Langille described Varley as worked up, irate, assertive, obnoxious and

demanding. Ferguson directed his attention toward Varley and stated he did not like drunks. Langille noted the time was 0358 hours when Ferguson and Varley were standing a couple of feet apart directly in front of the counter. Ferguson reached out and grabbed Varley. Varley grabbed Ferguson's patrol jacket and pulled it over his head. Ferguson punched Varley once in the face which caused Varley to bleed from the mouth. Varley may have thrown one punch at Ferguson. Langille was surprised at the sudden outbreak as Varley was not violent, and attempted to get away from Ferguson. Witnesses Bitango and Sarah Weatherill reported that Varley was backing away from Ferguson with arms open. Weatherill stated Ferguson continued to punch Varley when he was down, but Langille stated that he did not see this. Bitango stated Ferguson punched Varley twice in the face and once in the stomach and confirmed that Varley was backing away.

Constable Ferguson advised Varley that he was being placed under arrest for being drunk in a public place and causing a disturbance, after which Ferguson would transport Varley to the local RCMP detachment. After being placed in the police car, Constable Ferguson returned to the hospital to investigate the missing person report.

Within minutes, Darren Varley had kicked out the rear police car window and attempted to slide out of the vehicle. Shortly after this event, Constable Ferguson returned to his vehicle and departed the hospital with Varley en-route direct to Pincher Creek Detachment. The distance between the hospital and the detachment was approximately a one to two-minute drive.

Varley made a number threats to Ferguson while en-route to the detachment. Ferguson parked the Police vehicle inside the secure bay at the detachment prior to unloading Varley. The secure bay leads directly into the booking area of the detachment through a normal sized walk-through doorway that can be locked. Piel Schiebout was the guard on duty and was present when Varley was brought in. There were two other prisoners in separate cells who were booked in earlier that evening for alcohol related offences. The "drunk tank" was the only cell that was not occupied.

While at the detachment facility, booking Varley into the last jail cell, Constable Ferguson stated that Varley pulled his bullet proof vest over his head and gained momentary control of his holster. An altercation ensued, at which time Ferguson regained enough control of the gun to fire two shots in relatively rapid succession. One round grazed the side of Varley's abdomen and the other shot pierced his skull just behind his ear. Unfortunately, Piel Schiebout had already left the cell area before the scuffle began, and wasn't able to provide visual corroboration of events that transpired thereafter.

Immediately after the shooting, Varley lay mortally wounded on the cell floor while Constable Ferguson called for an ambulance. Dr. Peter Rottger, who along with an EMT was the first on scene after medical assistance was sought, stated that he found Varley lying the floor, "breathing sporadically," and that Ferguson appeared to be visibly shaken at that time.

Varley was airlifted to a Calgary Hospital where he was pronounced dead.

In the days after Ferguson killed Varley, RCMP Staff Sgt. George Prouse of the complaints and internal investigations section was dispatched to launch an internal investigation into the circumstances surrounding the death of Darren Varley. However, months prior to the shooting, an internal review into Constable Ferguson's actions found a litany of allegations of altercations and harassment. Some of Ferguson's colleagues at the Pincher Creek RCMP

detachment were fearful the Constable was going to "explode." SSgt. Prouse had previously been assigned to investigate the allegations against Ferguson before the Varley incident.

In March 1999, Prouse filed a report after looking into allegations of harassment stemming from four verbal altercations between Ferguson and fellow Pincher Creek Constable, Nathalie Poitras. Poitras told Prouse she felt "unsafe and intimidated" after the conflicts with Ferguson, the most serious of which occurred in September 1998.

Poitras also claimed that Ferguson became angry after discovering an official memo outlining her complaints against him, and on one occasion, blockaded her car in the parking lot using his police car. Ferguson reportedly told her, "You're lucky you're a woman or I'd deck you," according to a statement that she gave to Poitras.

Prouse's investigation led him to a series of additional complaints against Ferguson. A referee (who also happened to be the school's vice principal) at a local basketball game where Ferguson was coaching one of the teams, said the Constable had "body-checked" him and pulled an aggressive handshake maneuver after he'd made a controversial call. The referee hadn't made a formal complaint about the incident.

Other matters Prouse found included several incidents in which Ferguson lost his temper with support staff at the RCMP detachment and a situation during a firearms training course in Lethbridge in the early 1990s. In his report, Prouse suggested it came to the point that staff were "uncomfortable in the presence of Ferguson because he might explode at any time."

Ferguson conceded to Prouse he'd lost his temper on several occasions but said he hadn't resorted to physical violence. He said he was seeking help. Prouse eventually concluded that the original harassment complaints didn't stand up under the definition in the RCMP Code of Conduct. However, a review of the report by top RCMP brass in Alberta concluded Ferguson's lack of control over his temper warranted anger management training.

Prouse had also been dispatched for an internal examination into whether Ferguson had used "excessive force" when he arrested Varley at the hospital and later, at the jail cell, where he shot Varley. He suggested there were "other options" Ferguson could have turned to after a punching match broke out between the Constable and Varley during the arrest.

Prouse's report also noted that Ferguson wasn't wearing a baton on his belt, and that his pepper spray was tucked away in his cargo pants instead of in its proper holster when he booked Varley into the Pincher Creek jail cell. Also, Prouse noted that, at the time, the Pincher Creek Detachment didn't have a lockbox for Constables to deposit their firearms into for safekeeping when entering cells with prisoners.

Another incident allegedly involving Constable Ferguson came to light the days after the shooting death of Darren Varley. A young man approached the Pincher Creek detachment to relate allegations he'd been assaulted by Ferguson in June, 1999. The youth told RCMP that Constable Ferguson had arrested him for public intoxication and then struck him in the jail cell. The complaint, which hadn't been brought forward before Varley's death, wasn't addressed during the criminal proceedings against Ferguson.

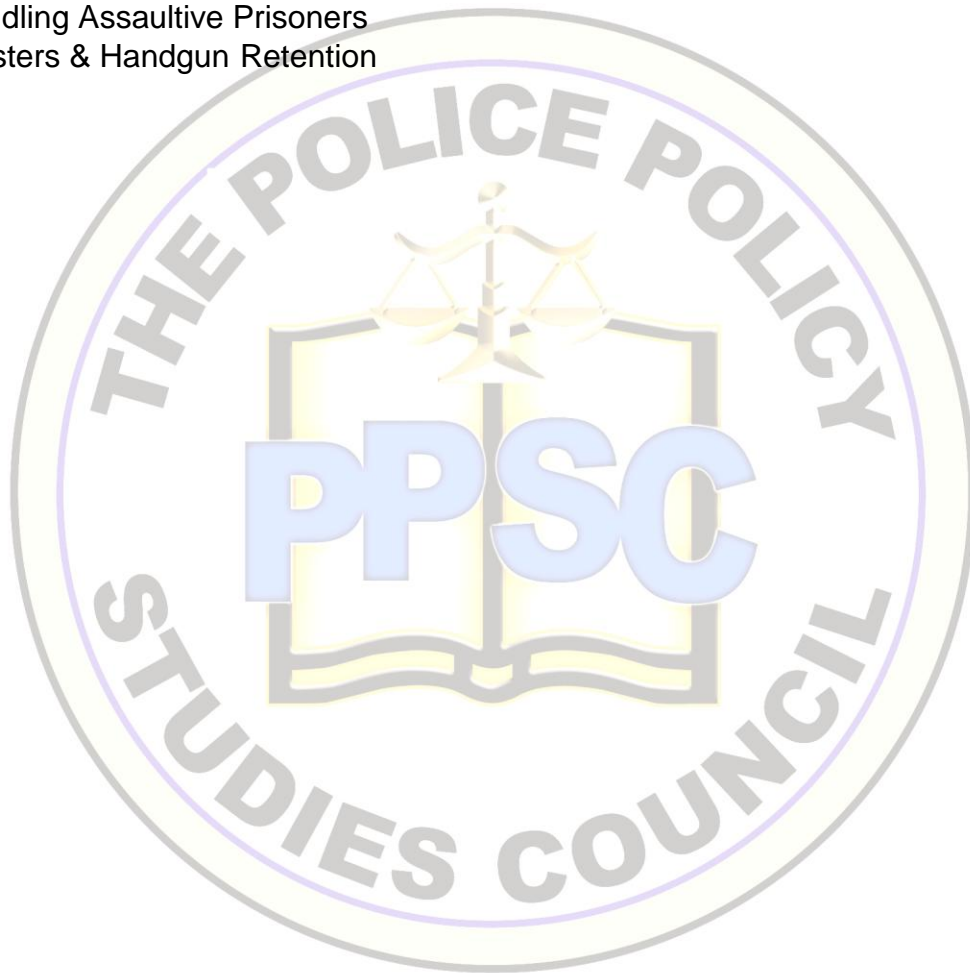
Specific Areas of Concern

1. Policy Governing Actions/Inactions of the Guard: Guards are hired by the Corps of Commissionaires who are sub-contracted by the RCMP to provide guarding services at the jail.
 - a. At issue is the fact that RCMP members and the guards share a common belief or perception that the guards' role is limited to ensuring the prisoners are in good condition and receive nourishment as required.
 - b. Members always place the prisoners in the cell and the guards monitor the cells.
 - c. Many guards are elderly and lack the training and physical wherewithal to provide any real support in terms of restraint or security of prisoners.
 - d. Given the guard traits described, there should be substantial concern about expecting qualified assistance from a guard if MOS need assistance with an unruly and/or assaultive prisoner.
2. Use of Handcuffs: Constable Ferguson had Varley in handcuffs and un-cuffed him prior to placing him into the cell.
 - a. Is there a better way to handle this transition of placing a prisoner into cells?
3. Holster Design: did the design of Constable Ferguson's holster leave him susceptible to having his sidearm being too easily removed and did better alternatives exist?
4. Securing Handguns: During prisoner processing, given a lone member at a rural detachment, what is the best way to deal with transitioning a prisoner from a police vehicle, and into cells?
 - a. Should lock boxes always be provided for this purpose?
 - b. Under any circumstances, should MOS be permitted to bring their weapons into the cell area?
 - c. How much discretionary latitude should MOS be allowed with regard to securing weapons before processing an arrestee?
5. Use of Force: Was the degree and duration of force used by Constable Ferguson objectively reasonable, given what we know?
 - a. Could Constable Ferguson have de-escalated irrational and/or confrontational behavior exhibited by Varley at the hospital?
 - b. If we were to believe that Ferguson's version of what precipitated aggression is true, did he act reasonably thereafter?
 - c. At what point (at the hospital) was physical control of Varley established to the degree that it diminished the need for further application of so-called "hard empty-hand control" techniques?
 - d. Procedurally, should Constable Ferguson have made advisements to his telecommunications center about the aggressive/assaultive behavior exhibited by Varley, along with a request for back-up assistance to accommodate safe escort and incarceration at the detachment?

6. Use of Deadly Force: Constable Ferguson claimed he had training that dictated a single shot to center mass followed by a shot to the head.
 - a. One RCMP witness indicated his training was two shots center mass, assess, and then shoot at an adversary's head, if necessary.
 - b. Is it accepted and/or commonplace practice for police agencies to instruct LEOs to continue firing at center mass until the threat is over?
7. Anger Management: There has been significant evidence called on the fact that Constable Ferguson was alleged to have been involved in other incidents where he "lost control" of his temper.
 - a. There was at least one investigation prior to the Varley matter that led to formal discipline, but the discipline was only meted out after the shooting incident. After the shooting, there were two parallel investigations in this regard.
 - b. At what threshold should counseling have been deemed mandatory?
 - c. At what threshold should Constable Ferguson have been relieved of duty, pending counseling and/or a Fitness for Duty Examination?
8. Timely Disposition of Disciplinary Matters: Is, or was there a significant delay between an investigation and imposition of sanctions related to accusations of misconduct against Constable Ferguson?
 - a. Could RCMP better identify significant yet under-reported behavioral problems exhibited by MOS prior to such problems escalating into incidents involving manifest or alleged abuses?
 - b. Could the outcome have been different had these events been reported and Ferguson had been directed to seek psychological assessment and counseling prior to the Varley incident?

Section Three

- Jail Guards at Pincher Creek
- Use of Force Parameters & Procedures
- Deadly Force: Law & Policy
- Deadly Force Analysis
- Securing Firearms In Cell Blocks & Booking Areas
- Handling Assaultive Prisoners
- Holsters & Handgun Retention



Jail Guard Recommendations

There is a common tendency of complacency and/or relaxed standards in rural policing venues. Away from the hectic and often contentious nature of policing in metropolitan areas, rural police assignments often conform to the relaxed atmosphere of the small communities being policed. Additionally, given a relatively low frequency of serious crime, rural police assignments tend to reflect minimal staffing resources. It is, for this reason, that all available human resources meet contemporary fitness for duty standards, and be held responsible for duties that might arise under exigent, yet foreseeable circumstances.

Given the fact that a rural jailer might be called upon to assist an arresting constable in the processing of a violent offender, it is imperative that jailers in such settings be capable of rendering competent and professional assistance. Additionally, jail guards might have to enter a cell unassisted under exigent circumstances. If, for instance, when no constables are immediately available to render assistance, a prisoner is attempting to inflict harm upon his/her self, or is experiencing an unanticipated medical emergency, there is an implied expectation of duty that jail guards be capable of rendering what could potentially be life-saving assistance. Such expectations suggest that universal minimum standards be applied to the selection and training of jailers. Such standards aren't exorbitant, and are generally easily structured and administered.

We sought a Canadian model of what we view to reflect contemporary, court-defensible standards in the selection, training and duty expectations of jail guards. The model that we deemed most practical and viable to apply was that of the Vancouver Police Department. We believe Vancouver Police Department has structured and published² exemplary and achievable selection, testing and duty standards for its cadre of jail guards. These standards represent generally accepted values and duty expectations commensurate with the tasks associated with this vocation. They are as follows:

Qualifications

To qualify as an applicant as a Vancouver Jail Guard, you must meet the following requirements:

- Minimum 19 years of age
- Canadian Citizen or Permanent Resident
- Grade 12 or High School equivalency (G.E.D.)
- Physically fit – able to pass the Police Officer Physical Abilities Test (POPAT)
- Excellent character
- Proficient in the English language

The following are considered assets, but not pre-requisites to applying:

- Previous experience as a prison guard or Peace Constable
- Second language fluency

² <http://vancouver.ca/police/recruiting/jail-guards/index.html>

Selection Process

1. Written exam
2. Modified POPAT under 4:30 (no hand strength test required)
3. Intake interview (including a review of disclosure forms)
4. Discretionary Sergeant's interview
5. Medical exam (visual acuity requirements are flexible)
6. Background investigation
7. Polygraph test

Training

Training is approximately one month in duration. Training includes, but is not limited to:

- Legal studies
- Use of force
- Policy and procedures
- File management systems
- On the job 'jail' training

Work Duties

- Involves booking, searching, guarding, escorting and attending to the welfare of inmates in the cell area.
- Also monitors, controls and restricts the movement of persons within the unit.
- Appraises behavioral situations that may be potentially dangerous; restrains aggressive or violent inmates; responds to emergencies and maintains non-complex records.
- Works independently within clearly defined methods and procedures; however, unusual matters or problems are referred to a superior who reviews work performance in terms of continued alertness, attitude, and adherence to established practices and procedures.

Use of Force Considerations

LEOs are granted a wide degree of discretionary latitude in employing both deadly and non-deadly force. The established operational parameters for using force, of all variations, are codified in statutory law, and given greater application specificity in organizational policies. We will address these two instruments separately and with specific focus upon the issues most relevant to the Varley incident.

Governing Statutory Law

The authors of this report do not represent themselves as experts in the interpretation of law, and more specifically, we do not represent ourselves as experts in the science or customs indigenous to Canadian jurisprudence. However, a review of applicable Canadian law was beneficial to our overall analysis with respect to the prevailing legal parameters which constrain and direct Canadian LEOs in the use of force. As we discuss immediately after addressing

Canadian criminal law, the formulation and operationalization of organization policies tend to have greater influence upon LEO practices than does the influence of salient criminal law.

In reviewing the prevailing legal standards of Canadian criminal law, we find that the majority of police shootings fall within the purview of the following (Part 1) statutes and subsections:

Canadian Criminal Code: Part 1				
Section	Subsection	Paragraph	Subparagraph	
25	(1)	(a) (b) (c) (d)		Everyone who is required or authorized by law to do anything in the administration or enforcement of the law; <ul style="list-style-type: none"> • as a private person, • as a peace officer or public officer, • in aid of a peace officer or public officer, or • by virtue of his office, is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.
25	(3)			Subject to subsection (4), a person is not justified for the purposes of subsection (1) in using force that is intended or is likely to cause death or grievous bodily harm unless he believes on reasonable grounds that it is necessary for the purpose of preserving himself or anyone under his protection from death or grievous bodily harm.
27		(a) (b)	(i) (ii)	Everyone is justified in using as much force as is reasonably necessary; <ul style="list-style-type: none"> • to prevent the commission of an offence for which, if it were committed, the person who committed it might be arrested without warrant, and that would be likely to cause immediate and serious injury to the person or property of any one; or • to prevent anything being done that, on reasonable grounds, he believes would, if it were done, be an offence mentioned in paragraph (a). [R.S., c.C-34, s.28.]
34	(2)	(a) (b)		Everyone who is unlawfully assaulted and who causes death or grievous bodily harm in repelling the assault is justified if: <ul style="list-style-type: none"> • he causes it under reasonable apprehension of death or grievous bodily harm from the violence with which the assault was originally made or with which the assailant pursues his purposes; and • he believes, on reasonable grounds, that he cannot otherwise preserve himself from death or grievous bodily harm. [R.S. c.C-34, s.34.]

Use of Force: Relevant Analysis

RCMP policy pertaining to the use of force affords its constables a reasonable degree of situational latitude in determining what level of force is most applicable. Historically, as is pertinent to the Varley incident, the degree to which LEOs elect to use force is generally dictated by the following considerations;

- (1) Subject behavior and the level of danger that is perceived to be manifest.
- (2) The number of types of force alternatives (e.g., baton, Taser, etc.) immediately available to the LEO.
- (3) The proximity of the threat to the LEO, and the amount of time to react to the threat perceived.
- (4) Whether the LEO is facing one threat, multiple threats, or might be expecting to face multiple threats.
- (5) Whether the LEO has immediate backup, might be expecting imminent backup, or might recognize the unavailability of any backup assistance.
- (6) Whether the LEO is at a significant size disadvantage, or whether the LEO is injured or fatigued from prior events.

Another relevant issue that is often considered within the “totality of circumstances” is to what degree certain force options might not be perceived to be viable in given situations. For instance, many experienced LEOs have encountered situations in which they’ve achieved less than adequate results in controlling intoxicated individuals with OC spray and/or baton strikes. Subsequently, what individual LEOs perceive to be “reasonable and necessary” under given circumstances isn’t merely based upon prior organizational training, but also upon prior practical experience. This is but one reason why so-called “empty-hand control” (soft and hard) remains the most frequent level of force that we see employed in situations similar to the Varley incident.

The Taser is changing the empty-hand control paradigm, but it requires adequate time and distance to employ effectively. Taser “drive stuns” can be used in close quarters, but are marginally effective and are increasingly being shunned as a Taser delivery means because they fail to deliver neuromuscular incapacitation (NMI).

OC defensive sprays and batons can be problematic in close-quarters confrontations, and especially in situations where an LEO is already in a “grappling match” or trading empty-hand blows with a subject. We view the situational variables noted in the hospital setting to be quite common; whereby a heated verbal exchange quickly erupts into a physical struggle within one or two arms lengths.

The initial physical confrontation between Varley and Constable Ferguson raises more questions than what we’ve had answered by the materials provided to us. We are left with conflicting accounts of what transpired at the hospital. Witnesses, Pat Bitango and Sarah Weatherill, offered accounts that suggested that Constable Ferguson acted unreasonably, with alleged excessive force after Varley was seemingly under control. As friends of Varley’s, their statements may have reflected some degree of bias, as was suggested by a contrary statement offered by Pincher Creek Hospital security officer, Earl Langille. Langille stated that he didn’t see Constable Ferguson strike Varley when he was down, and he did corroborate assertions that Varley had been confrontational toward Constable Ferguson.

If, in fact, Varley did grab Constable Ferguson's patrol jacket in the hospital, pulling it over his head, we have behavior consistent with what later transpired in the holding cell. Witness statements, indicating that Varley was later backing away from Ferguson, with "open arms," are judged within the context of the preceding assault by Varley against Ferguson. Accordingly, we view Varley's subsequent attempts to disengage from Ferguson as attempts to further resist arrest.

Once custody was established, we view Varley's behavior within the police cruiser as being predictive of further confrontation to come. Constable Ferguson stated that Varley had threatened him repeatedly while en-route to the detachment facility, and earlier attempts to kick out the rear passenger window seem consistent with that mindset. Our primary concern at this juncture is why Constable Ferguson didn't request to have competent assistance dispatched to assist with the escort and incarceration of Varley.

Use of Deadly Force: Relevant Analysis

The situational and behavioral variables embedded in the Varley incident, in our opinion, are amenable to the use of deadly force in a handgun retention struggle, as will be discussed later, and in more detail. It is important to note that statutory and policy focused parameters salient to deadly force have less influence on LEO behaviors than some would desire. According to the deadly force researcher, James Fyfe, such discretionary controls have several weaknesses.³ As Fyfe noted, "First, even the most restrictive state laws permit police to use their weapons in an extremely broad range of situations" (p.169). Also, the law is too vague regarding appropriate and acceptable behavior by police. Skolnick and Fyfe⁴ argued that "criminal law remains so broad and presents so many enforcement problems that it cannot serve meaningfully as the parameters for any professional's discretion" (pp. 197- 98). Waegel's analysis⁵ of 459 police shootings in Philadelphia from 1970 to 1978 showed that, despite a major change in the Pennsylvania statute governing use of deadly force in 1973 (prohibiting shots to apprehend nonviolent felony suspects), 20% of the shootings violated legal standards.

Governing RCMP Policy Guidelines

A careful review of current RCMP policies pertinent to the use of force, and more specifically, the use of deadly force, reveals what we believe to be relative compatibility with recognized professional standards (**See Appendix "A"**).

A considerable degree of reflection seems to have been focused upon critical incident variables embedded within the Varley incident. Some of the more thought-provoking ones are:

- Could the shooting have been avoided if Ferguson's handgun had been secured before entering the cell area?
- Is deadly force necessary under similar circumstances, or would other alternatives be preferable?
- Was the second shot fired by Ferguson necessary?
- When are so-called "head-shots" deemed acceptable?

³ Fyfe, J.J., (1988), Police Use of Deadly Force: Research and reform. *Justice Quarterly* 5:165-205.

⁴ Skolnick, J. H., and J. J. Fyfe. (1993). *Above the Law: Police and the Excessive Use of Force*. New York: Free Press.

⁵ Waegel, W. B. (1984). The Use of Lethal Force by Police: The Effect of Statutory Change. *Crime & Delinquency* 30 (1): 121-40.

- Is there any independent, objective way of knowing when multiple shots are unnecessary, given a momentary lull in their being fired?

Question: Could the shooting have been avoided if Ferguson's handgun had been secured before entering the cell area? The short answer is, of course, "yes". A more comprehensive response should likely include, "but, what if?"

In a scenario in which a constable has no hope of any immediate backup, and where he knows he is dealing with an intoxicated, irrational and possibly assaultive individual, should we compel him/her to disarm? Or, should it be an elective decision, based upon the totality of circumstances? It is the "totality" perspective that complicates alternatives and tends to discourage "one size fits all" policy directives.

If, for instance, the only constable on duty had been of a much smaller physical stature, faced with an arrestee of a much larger size, do we compel that constable to disarm for safety, or might it be more detrimental to that constable to disarm? There are seldom hard and fast "yes" or "no" answers to such questions, as many would wish for. The bottom-line, and particularly within the context of a rural assignment where immediate backup assistance is unavailable, is that discretionary latitude might enhance occupational safety.

Might external variables influence a constable's reluctance to secure his/her handgun, away from the area in which a prisoner might be processed? For instance, if a constable were to experience hostility from friends or family of the arrestee during the process of an arrest, might that influence the constable's sense of apprehension if securing a weapon means that several minutes might be needed to retrieve that weapon in an emergency? If a constable has no expectation of competent and immediately available armed assistance, this consideration might be irrelevant. But, under the austere circumstances in which constables perform their late-night duties in Pincher Creek, ready access to firearms seems very relevant.

Some of the specific issues we identified in this case, pertinent to whether prisoner processing, particularly involving a lone member at a rural detachment, should engender better practices with regard to transitioning a prisoner from a police vehicle, and into cells. We asked ourselves these pertinent questions:

- Should lock boxes always be provided for this purpose?
- Under any circumstances, should constables be permitted to bring their weapons into the cell area?
- How much discretionary latitude should constables be allowed with regard to securing weapons before processing an arrestee?

Handling Assaultive Offenders

Individual agencies and detachments may have to consider a range of variables before determining prisoner processing protocols. In general, the prisoner processing or "booking area" is a sterile environment. This means that no handguns are allowed in the booking room at any time. The most common procedures for transitioning an arrestee are as follows:

- Constable drives into the sally port and closes the door.
- Constable keeps the prisoner in the police vehicle, as he/she exits it, walks over to the lockbox and secures his/her weapon.

- The key for the lockbox is then placed in the constable's pocket.
- The constable will then take the prisoner out of the police cruiser and enter the booking room via a key fob.
- The arrestee is then placed on a bench in the booking room.
- Depending on the demeanor of the arrestee, the constable may remove the handcuffs and then have the arrestee sit on the booking bench.
- If the demeanor of the arrestee is uncertain, the constable may remove one handcuff and secure the other portion to the steel bar which is attached to wall or booking bench.
- The constable has the discretion to contact the dispatch center and have them also monitor the booking process via CCTV. They have been instructed to contact additional units if an emergency arises in the processing or cell area in the event that the constable is unable to summon help via portable radio or phone.
- In the event of an emergency in the booking room, i.e. violent subject, back-up units have access to the sally port and booking room via a key card which is kept in a lockbox outside of the sally port door. Mutual aid arrangements with all surrounding towns make them aware of what the key code is to get to the hidden key card.

Some other issues that we address are as follows:

- Communication with the dispatch center is vital. If an arrestee becomes violent while in the police cruiser, notification to dispatch is made to give them an update. It isn't uncommon to have arrestee's kick out the back windows of our police cruisers as well.
- The constable's request via mutual aid (if no constable is immediately available) would elicit another LEO to meet the constable when he/she arrives at the detachment station.
- Once the additional officer arrives, a two-officer extraction out of the police vehicle will take place.
- Constables/Officers carrying two forms of less lethal, i.e. OC Spray and a Taser X-26 may opt to use that which they deem to be most appropriate.
- If the arrestee is extremely combative, the constable may elect to transport the prisoner directly to a regional rather than local detention facility.
- If transport of a violent arrestee is being made to a regional detention facility, a request can be made, via mutual aid, to have a second officer follow the constable to that facility.

Analysis

The authors of this report have worked for law enforcement agencies ranging from 6 members in size (Chesterfield Police Department, NH), to 10,000 members in size (Los Angeles Police Department, CA). Our collective experience is that most agencies, large and small, have adopted a sterile booking and cell block environment. We have, however, worked with other smaller agencies that lacked "secured" booking areas. In such cases, we've noted that common processing protocols involve officers not securing their weapon until they are about to initiate the fingerprinting stage of processing of the arrestee. It should be noted that the smaller agencies that do this are not CALEA accredited. We have sensed discomfort processing prisoners in tight quarters, and in close proximity of the arrestee, while having handguns in a booking area. Occupational safety may or may not be heightened by having the officer secure his/her handgun, but the potential for a deadly force incident is elevated when handguns are allowed in these areas.

In our opinion, handgun lockboxes should be a mandatory feature of the prisoner processing milieu. Should handguns be retained, under unusual and extenuating circumstances? The

majority of arrests made do not involve violent arrestees and the use of physical force. However, we have experienced situations in which the arrestee's realization of impending confinement, incarceration, fines, or both, crystallizes in the processing or cell block area. If physical conflict becomes reality, not having a firearm in the booking area/secure cell area diminishes the potential for a deadly force situation. Having said that, determinations on whether or not it should be mandatory to place the handgun into a lockbox should be left up to the individual agency/detachment. Some considerations would be:

- Geographical area of the booking/cell block area
- Availability/Utilization of a back up unit (i.e. mutual aid or another duty officer)
- The security of the booking/cell block area
- Demeanor of arrestee
- The nature of the crime that the person has been arrested for
- Who searched the prisoner - the arresting constable – or an assisting constable?
- Is the custodial constable certain that the arrestee has been thoroughly checked for hidden weapons?
- Less Lethal Force Options

Relevant Deadly Force Perspectives

Within the context of the Varley incident, open questions persist pertinent to whether deadly force is necessary under similar circumstances, or whether other alternatives are preferable. The study undertaken by PPSC, in providing post-incident analysis and recommendations, was not tasked with providing analysis of Constable Ferguson's decision-making on that morning. However, we were asked to provide analysis of training and policy related implications derived from this incident. Since the purpose of this analysis is NOT to justify or otherwise explain what Constable Ferguson did, we should reflect upon similar situational variables for the benefit of posterity.

While, with the benefit of hindsight, it's easy to suggest that other issued force alternatives would have been preferred to deadly force, situational imperatives dictate what a constable must resort to for the preservation of his/her own life. When a subject initiates an attempt to snatch a handgun from a constable's holster, there is little wherewithal to do anything more than circumvent that attempt. This is precisely why, for several generations of policing, law enforcement officers (LEOs) have been taught that any attempt to disarm them of their handguns automatically becomes a deadly force scenario. Indeed, what LEOs are taught is that the moment a subject grabs your handgun – he is armed with YOUR handgun as much as, if not more than, you are. The efficacy and influence of so-called "retention holsters" has little bearing here, as will be explained hereafter.

If the constable's handgun has been removed, partially or completely, from the holster while the subject is still attempting to gain control of that handgun, it is by definition an "immediate threat" of death or serious bodily injury to the constable. Accordingly, deadly force is justifiable at that juncture.

Situational "Micro Variables" Considered

In the Varley incident, shot placement was questioned, as was the interval between the first and second gunshots. Some of the questions raised are perplexing. For at least two decades,

the police firearms training community has stressed two prevailing engagement principles in deadly force encounters. They are:

- “Fire until your foe falls.”
- “Aim for the center mass of the target available.”

As most LEOs became aware of, to a compelling degree, after the highly publicized 1986 FBI shootout in Miami, Florida, subjects who sustain non-survivable wounds can (and do) continue to kill LEOs. The term “post-lethal wound activity” became an integral part of the law enforcement lexicon after that April (11th) firefight claimed the lives of Special Agents Jerry L. Dove and Benjamin P. Grogan. The two robbery suspects, William Russell Matix and Michael Lee Platt were also killed. In addition, five FBI agents were wounded in the incident.

Toxicology tests showed that the abilities of Platt and Matix to fight through multiple traumatic gunshot wounds and continue to engage agents with gunfire wasn’t achieved through any chemical means. Both Platt and Matix were drug-free at the time of their deaths. Perhaps more importantly, the autopsy of Michael Platt indicated that his right lung was collapsed and his chest cavity contained 1.3 liters of blood, suggesting damage to the main blood vessels of the right lung.⁶ This was the primary injury responsible for Platt’s death. This non-survivable wound, inflicting near the outset of the gunfight by Agent Jerry Dove, didn’t inhibit Platt from fighting for up to three minutes thereafter, killing Agents Dove and Grogan in the process.

Accordingly, consideration given to whether a constable might have to engage a life-threatening subject with multiple rounds shouldn’t be an issue for debate. Determined combatants frequently display either indifference or an unawareness of gunshot wounds they’ve sustained. This possibility becomes ever more likely in scenarios where the officer is confronting an intoxicated subject. While there is ample research to suggest that alcohol intoxication increases aggression in both men and women⁷, there is also evidence that intoxicated subjects are intoxicated 3.4 times more likely than those who were sober to be shot by police.⁸ In addition, there is ample historical evidence to suggest that alcohol has been used to desensitize people to substantial degrees of pain, particularly when opiates weren’t readily available to facilitate battlefield limb amputations.

In summary, in strenuous, close-quarters struggle in which a subject is attempting to disarm an LEO of his/her firearm, several variables should not only be viewed within the realm of possibility, but also within the realm of reason:

- Multiple shots may need to be fired by the LEO for self-preservation.
- Multiple shots, when fired, may be in rapid succession, or with moments of delay between them, as the chaos and uncertainty of the situation might dictate.
- Shot placement, when and where the LEOs primary focus is retention of the firearm, is likely to be driven by fleeting moments of opportunity – not merely target preference.
- Determined suspects, even when sustaining lethal wounds, may not instantaneously abandon their focus of disarming the LEO.

⁶ Anderson, W. French, M.D.: Forensic Analysis of the April 11, 1986, FBI Firefight. W. French Anderson, M.D., 1996

⁷ Hoaken, P.S., Pihl, R.O. (1999), “The Effects of Alcohol Intoxication on Aggressive Responses In Men and Women,” Alcohol & Alcoholism, Vol. 35, No. 5, pp. 471-477.

⁸ McElvain, J.P., and Kposowa, A.J. (2008), Police Officer Characteristics and the Likelihood of Using Deadly Force. Criminal Justice and Behavior 35:505-521

- Determined and intoxicated subjects may display an insensitivity to pain or an unawareness of their wounds.
- Given the chaotic and time-compressed nature of a handgun retention scenario, an LEO may not comprehend where his/her muzzle is pointed at the moment he/she has caused it to discharge.
- Consequently, an LEO might not be able to reliably perceive where gunshots will impact when he/she discharges a handgun in a vigorous struggle. Within this context, it shouldn't matter where the LEO's rounds impact, from head to toe of his/her assailant, as long as the lethal threat persists.
- A LEO's most reliable indicator of when it is most appropriate to discontinue application of deadly force is when he/she perceives the struggle for possession of the firearm to have ended.
- Within the context of a strenuous and/or violent fight for survival, the degree of "awareness" necessary to discern when to cease fire might be easier to describe than it would be to apply situationally.

Holsters & Handgun Retention

As recently as the 1990s, the number of law enforcement constables killed with their own handguns in the United States represented at least 18% of all felonious deaths of constables each year. With the widespread adoption and issue of "retention holsters" in the U.S., recent numbers suggest a dramatic decline - to roughly 9% of all constables being feloniously killed with their own handguns. These "statistics" have been hammered into law enforcement Constable's heads, for many years, to raise their awareness of such danger. While the adoption of retention holsters seems to have paid dividends within this realm, the frequency of constables being slain with their own handguns remains substantial.

The SSIII holster, the creation of a former FBI agent, Bill Rogers, remains the standard by which all other retention holsters are judged by, nearly thirty years after Rogers designed it. It remains among the most technologically advanced police holster in service, even to this day. The Safariland 070 SS III duty holster features a top snap thumb break, a middle finger release tab, and a patented molded ejection port or cylinder detent and a "decoy" side strap which cumulatively provide what is often described as the highest level of practical weapon retention available. The word "practical" is an essential descriptor in that no holster can be completely "disarm-proof" and still afford a constable efficient handgun access when it is situationally imperative.

While documented examples of successful "street" disarms of constables carrying handguns in the SSIII holster are lacking, the process can easily be demonstrated in so-called "force-on-force" training scenarios, and has been. An "offender" knowledgeable about the features of the holster, and in close quarters to the constable, can easily and fairly quickly disarm a constable equipped with an SSIII holster if the constable is caught off-guard. The most common disarm technique used against retention holsters, the so-called "karate chop," can be used against the SSIII with some degree of variation.

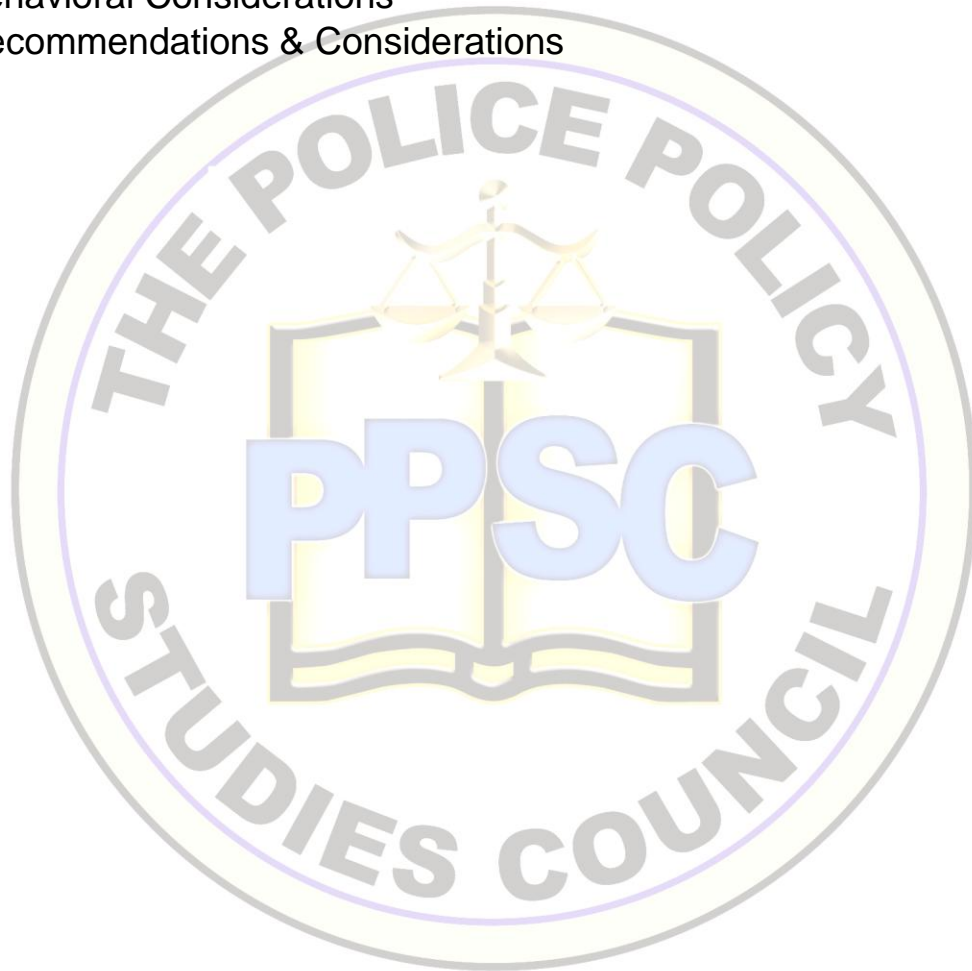
If the constable has time to react to the disarm attempt, and a close quarters struggle ensues for possession of the handgun, the SSIII can also be compromised by a combination of random yet predictable occurrences. As an offender attempts to grab the holstered handgun with either one or two hands, and the constable responds to the threat by grasping the holstered handgun with his/her strong hand, the two retention snaps are easily compromised by the hands

grasping at the weapon. Subsequent pushing and pulling by the offender then tends to release the third retention feature, the molded ejection port “detent.”

None of this analysis of the SSIII holster is intended to suggest that the holster is defective or untrustworthy. It is an excellent piece of equipment that has undoubtedly saved lives. But, it is not disarm-proof, nor should it be. Agencies issuing retention holsters should assure that their MOS have been adequately trained in their methodology, and in their limitations. Accordingly, instruction in basic handgun retention techniques (e.g., the Jim Lindell system) is a prudent training consideration.

Section Four

- Anger Management & Supervisory Considerations
- Workplace Violence Procedures
- Psychological Fitness For Duty
- Fitness For Duty Examinations
- Behavioral Considerations
- Recommendations & Considerations



Anger Management & Supervisory Considerations

The materials provided to us indicates that Constable Mike Ferguson had a history of incidents, both reported and not reported to RCMP management, which best characterized as “anger management” issues. This includes, but doesn’t substantively rely upon, an unsubstantiated allegation that Mike Ferguson assaulted a prisoner alone in holding cells in the weeks prior to the Varley shooting. The investigation into this incident uncovered evidence of several other incidents, where Constable Ferguson is described as being “out of control.” Was there a culture of members not reporting such incidents, did Constable Ferguson receive counseling for anger management (he was ordered to do so by RCMP management), and should he have been processing prisoners alone under such circumstances?

The observations made in this report are based only upon what information that has been provided to us with respect to this case. Due to the information being incomplete, I can only work with the information I have at hand and can only speculate on what I don’t have.

Ferguson’s Personnel Records

Mr. Ferguson joined the RCMP in 1980. On October 3rd, 1999, Mr. Ferguson was involved in an officer involved shooting which resulted in the death of Darren Varley. As part of this inquiry, Mr. Ferguson’s Disciplinary Records were submitted to us for review. The records provided to us consist of seven pages of information. The documentation that we were provided suggests that the first incident of suspected employee misconduct occurred on November 11th, 1997. We can only assume that Mr. Ferguson did not have any disciplinary records prior to this date. If that is the case, it calls to question what catalyst caused the behavioral pattern of Mr. Ferguson starting on November 11th, 1997. We were provided insufficient information to identify precursor correlates to Ferguson’s behavior problems.

On May 19th, 1998, Constable Poitras formally reports 3 allegations of misconduct against Constable Ferguson to Sgt. Mills who is the OIC of the PC detachment. Cst. Poitras advised her supervisor that she did not feel safe with Constable Ferguson.

Upon hearing of the third allegation of misconduct, Sgt. Mills should have felt compelled to take additional corrective actions. The first two incidences may have been occurring with personality conflicts. If they had been made in a timely manner, counseling/mediation could have been looked into. Concern should have been further elevated when the third allegation was made that Cst. Ferguson’s failed to act when requested to do so, and when Constable Poitras reported that Constable Ferguson stated he was “very angry at her.” Cst. Poitras stated that she was fearful at that point that Ferguson was going to physically harm her.

In our review of the materials that we were provided, we remain unsure as to the threshold that RCMP triggers compulsory intervention in similar circumstances. We are left with questions as to why it took three incidents of alleged misconduct before Cst. Poitras reported this misconduct. What is the environment for reporting personnel complaints? Where was Sgt. Mills during these incidents? Supervisor and span of control issues will be addressed later.

Workplace Violence Procedures

Given the contentious and often corrosive nature of policing, infrequent yet problematic incidents involving workplace violence should be anticipated. Larger law enforcement agencies

have had ample experience in this realm and for that reason we sought guidance from one of the larger U.S. police agencies for the purpose of enhancing the value of this report. Having active contacts within Los Angeles Police Department, we turned to internal affairs personnel for input, without divulging the nature or substance of the work we were completing. In response to specific inquiries we forwarded to our LAPD contacts, we were forwarded an issued and salient LAPD policy, which is as follows:

Workplace Violence Procedures

Employee's Responsibility. Any form of violence or threat of violence, whether actual or reasonably perceived, involving a Department employee and occurring in the workplace, must be reported without delay to a supervisor, commanding officer, or the Commanding Officer.

Personnel Group. Such behavior must be reported whether committed by an organization employee, a City employee, or any person contracted by the agency.

Note: When an officer obtains an EPO for workplace violence involving a City employee as the protected person, the officer shall notify the Threat Management Unit (TMU), Detective Support and Vice Division (DSVD).

Supervisor's Responsibility. All supervisors shall be familiar with workplace violence issues and shall be aware of potential warning signs of workplace violence. An individual may display early warning signs of potential violence such as a pattern of behavior or language which, if not addressed, could result in a violent act and/or emotional distress for others in the workplace. These warning signs include:

Changes in an individual's regular behavior patterns, especially a deterioration of general behavior and/or work performance:

- Withdrawal from others at work;
- Increased irritability or expressed feelings of victimization;
- Belligerent or defiant behavior;
- Harassing, abusive or threatening language;
- Indirect threats, paranoid language or actions;
- Fascination with weapons or with acts of violence; and,
- Preoccupation with a particular city employee.

Supervisors that observe, perceive, or become aware of potential workplace violence incidents, shall attempt to diffuse the situation, then immediately notify their commanding officer. If no other administrative report is required, supervisors shall document workplace violence incidents on an Employee's Report, Form 15.07.00, and forward it to their commanding officer.

Note: Supervisors that may have questions as to what constitutes a potential workplace violence incident, as outlined in Department Manual Section 1/210.37, should contact Behavioral Science Services (BSS).

Commanding Officer's Responsibility. Commanding officers shall create an atmosphere that encourages employees to report immediately incidents of workplace violence to a

supervisor and shall:

- Monitor all work environments to assess the potential for violence or threat of violence;
- Identify existing security measures and take additional reasonable measures that could be implemented to improve workplace security; and,
- In instances where an employee's observed behavior is creating disruption in the workplace, but attempts to diffuse the situation fail, the commanding officer shall follow existing department procedures, including those allowing an employee to be placed off-duty on paid administrative leave. As soon as practicable, after the occurrence of an incident creating potential danger, the commanding officer shall contact the Officer in Charge, TMU, DSVD, to inform of the action taken and to obtain additional advice as necessary.

Commanding officers that are made aware of a potential workplace violence incident, as defined in Manual Section 1/210.37, shall ensure that attempts are made to defuse the situation and cause the notification of the Threat Management Unit (TMU), Detective Support and Vice Division (DSVD), as soon as possible.

On June 25th, 1998, Sgt. Mills gives Ferguson a Form 1004 with Ferguson agreeing to seek counseling for anger management. The documentation provided also indicates that Ferguson later revealed to Sgt. Mills that he did not get counseling, but was speaking with a friend.

We are left without documentation regarding what the RCMP policy was as it pertains to employee counseling. We are also left to question whether, "agreeing to seek counseling for anger management," was a discretionary option, afforded to Sgt. Mills, and at what (if any) threshold anger management counseling would be made compulsory. Are there specific policies in place which delineates voluntary vs. involuntary counseling? Did this agreement on Form 1004 advise that the counseling needed to be completed by a license psychologist or give parameters on what type of counselor he was supposed to go see. Further, was there a completion date of this examination? What is the policy in regards to disobeying a supervisor with reference to not seeking counseling?

On September 17th, 1998: Constable Poitras alleged that Constable Ferguson became angry at her over a memo regarding the previous three allegations. He called her a liar, blocked her vehicle while she was trying to leave and said "You're lucky you're a woman or I would deck you." At that juncture, were there any established policies regarding retaliation? If so, should Sgt. Mills have acted on that additional confrontation?

Psychological Fitness-For-Duty

Retrospectively evident within the context of this report, constables with identified or suspected behavioral problems often present complex issues for administrators. When a problematic constable has been identified, the organization must exercise due diligence in order to guard against potential liability for the constable's actions, as well as to protect the constable, other officers, and the public from potential harm. Additionally, the organization generally has individual concern for the constable to the degree that it strives to salvage his/her career, if at all possible.

When behavioral problems become manifest in constables to the degree that is affecting the workplace, it often can raise difficult questions. Can the constable perform his/her duties safely under routine conditions? Can he/she handle critical incidents that entail high levels of stress? Would a supervisor, in addressing a troubled constable, have the discretionary latitude to order a constable to take a Fitness for Duty Exam (FFDE). Or, at an early juncture, should the constable be referred for counseling?

Behavioral Considerations

Most commonly, a substantive adverse alteration in a constable's occupational demeanor or performance may indicate the need for an FFD. Identifiable changes might include recognized patterns of conflict with coworkers, including supervisors. Indicative behaviors will often include excessive use of sick leave, insubordination, on-duty inebriation or hang-overs, patterns of poor judgment, inappropriate sexual behavior, strange and/or threatening behavior, and unusually high rates of occupational errors in judgment. A noted unwillingness or reluctance to respond to certain types of calls for service, or engage in high-risk duty situations may coincide with constables having experienced recent or past traumatic events. Under such circumstances, they might also express symptoms of post-traumatic stress disorder (PTSD). On occasions, a constable may confide in another coworker that he/she is experiencing personal problems that is degrading work performance, and possibly even recognizes the need for counseling. Noting these behavioral workplace patterns doesn't necessarily indicate that the officer has a psychological problem, but may suggest ample justification for implementing a FFD exam as a diagnostic tool. For example, employees may recognize that they are having family or alcohol problems that are making them more irritable, depressed, or anxious, leading to more conflicts or errors at work.

The most common referrals leading to FFD exams are generated from observed workplace behaviors. They may also originate from information obtained about a person from outside sources as well. A.V. Stone⁹ found that excessive force issues accounted for 19% of police FFD referrals. Allen, Hibner, & Miller¹⁰ noted that about 29% of FFD cases resulted from "workplace violence" incidents. Workplace violence, in addition to endangering coworkers, might also become a precursor to violence against citizens. A pattern of citizen complaints, or perhaps just one especially egregious complaint, might trigger a compulsory FFD exam. The primary justifications for conducting FFDE's are for prediction and prevention of future violence.

On occasion, and with relevance to Constable Ferguson, reports of problematic behaviors can originate from outside of the workplace. Perhaps the most frequent variety of this off-duty variation lies within the constable's familial relationships. When problems rise to the level where they have come to the attention of the organization, a number of privacy issues surface, as will issues pertinent to life-work boundaries. Privacy aside, the organization often must concern itself with the degree to which public scrutiny of the constable's behavior doesn't erode the community's confidence in, or its image of, the organization.

⁹ Stone, A.V. (1995). Law enforcement psychological fitness for duty: Clinical issues. In M. Kurke & E. Scrivner (Eds.), *Police Psychology into the 21st Century*. Hillsdale, New Jersey: Lawrence Erlbaum Associates.

¹⁰ Allen, M.G., Hibler, N.S., & Miller, R. (2000). Fitness for duty evaluations of law enforcement officers in accordance with federal occupational health procedures.

Most commonly, the underlying causal factors of workplace dysfunctions aren't readily apparent to an administrator. For this reason, it would be considered a prudent practice to seek the counsel with the organization's psychologists. In doing so, an administrator might better determine whether there is sufficient cause to compel a constable to submit to a FFD exam. This preliminary review process is most advantageous when the psychologist has had the opportunity to review the constable's recent work history and compare it with past job performance. Poor morale or low motivation can often contribute to poor job performance, as an inadequate level of occupational skill. A thorough review of the constable's personnel files may assist in differentiating between problems rooted in psychological problems, and those that are not. As is often the case, many individuals aren't suitable for a career of law enforcement service.

If, after an investigation has been completed, or after an admission by the constable has been made, indicating that there is a behavioral problem, the administrator is compelled to determine the most appropriate course of action. Does the nature and extent of the problem justify discipline (e.g. "conduct unbecoming"), and the administration of a compulsory FFD exam? When clearly egregious behavior has been noted, a compulsory FFD exam must be administered before the constable may return to a duty status. Examples of notably egregious behavior would generally include homicidal or suicidal threats, excessive or situationally inappropriate use of alcohol (e.g., arrest for off-duty DWI), excessive use of force, domestic abuse, or any use of illegal drugs.

Other behavioral concerns that might warrant a compulsory FFD exam, might include those that are self-reported symptoms of depression, anxiety, insomnia, loss of appetite, increased irritability, recurring nightmares, or loss of initiative. If these problems are noted with sufficient persistence and/or intensity, they may suggest adequate justification for an FFD exam. Since a preventative approach is preferred, an FFD exam may be deemed prudent even if work-related performance problems aren't clearly evident.

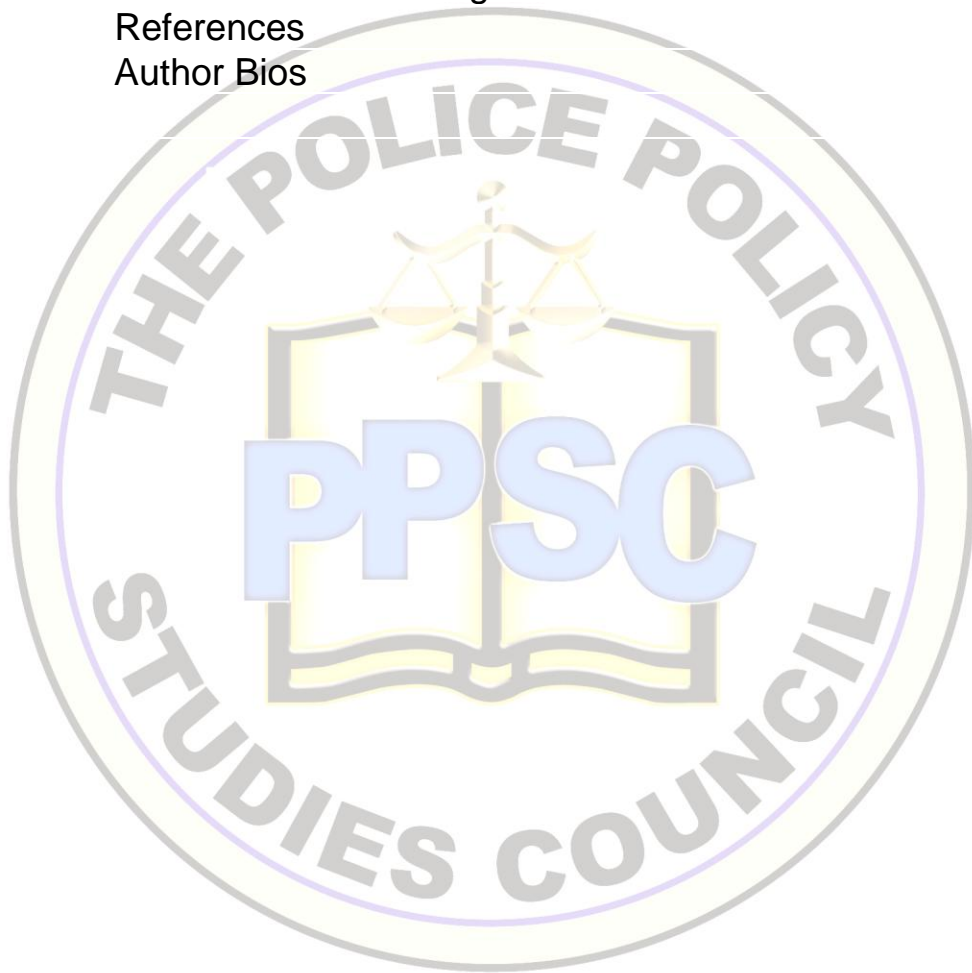
Analysis & Best Practices

The IACP Police Psychological Service Section (1998a) guidelines provide a general consensus that seems to have developed around the standard of practice. A fair and comprehensive examination should generally have the following elements: 1) a review of available collateral information; 2) psychological testing; and 3) an in-depth interview. In addition, examiners should have specialized knowledge of public safety assessment techniques.

In our view of the pertinent materials submitted to us, RCMP has already adopted and implemented guidelines that are compatible with those established by IACP (**See Appendix "B"**).

APPENDICES

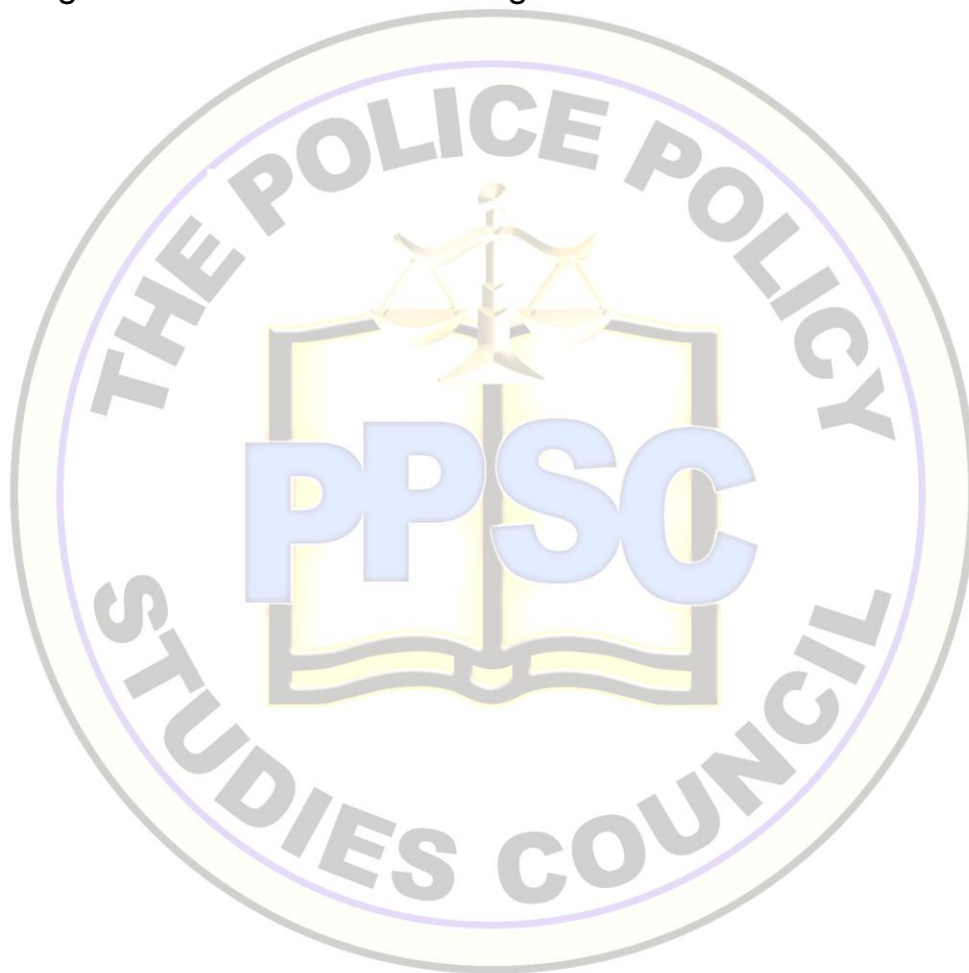
<u>Appendix</u>	<u>Topic</u>
A	Policy Comparisons - RCMP/IACP/CALEA
B	Psychological Fitness For Duty
C	RCMP Incident Management/Intervention Model
D	References
E	Author Bios



Appendix “A”

Policy Comparisons - RCMP/IACP/CALEA/PPSC

- Use of Force/Deadly Force
- Prisoners And Mentally Disturbed Persons
- Holding Cell – Prisoner Processing Procedures



USE OF FORCE POLICIES			
1 of 1			
INPUT SOURCE	REFERENCE NARRATIVE And/Or PPSC Analysis	CITATION (If Applicable)	RCMP OMPATIBILITY? (If Applicable)
CALEA	Directive states that personnel will use only the force necessary to accomplish lawful objectives.	1.3.1.	
IACP	<p>Use of Non-deadly Force</p> <ol style="list-style-type: none"> 1. Where deadly force is not authorized, officers may use only that level of force that is objectively reasonable to bring an incident under control. 2. Officers are authorized to use department approved, non-deadly force techniques and issued equipment to: <ul style="list-style-type: none"> • Protect the officer or others from physical harm: • Restrain or subdue a resistant individual; and/or • Bring an unlawful situation safely and effectively under control. 	C. 1. C. 2. C. 2. (a) (b) (c)	
PPSC	“Officers are authorized to use that amount of force against a person or persons that an officer reasonably believes to be necessary to overcome the subject’s perceived level of passive, active or aggressive resistance to an arrest. An officer may elect to use a level of controlling force that his/her perception of salient situational and behavioral variables would lead an objectively reasonable officer to believe was essential to effect an arrest without subjecting the arresting officer to unnecessary risk of injury.”	UFM-1	
RCMP	Incident Management/Intervention Model	See Appendix “D”	Yes CALEA/IACP/PPSC

DEADLY FORCE POLICIES			
1 of 1			
INPUT SOURCE	REFERENCE NARRATIVE And/Or PPSC Analysis	CITATION (If Applicable)	RCMP OMPATIBILITY? (If Applicable)
CALEA	A written directive states that an officer may use deadly force only when the officer reasonably believes that the action is in defense of human life, including the officer's own life, or in defense of any person in imminent danger of serious physical injury. Definitions of conditional terms, such as those for reasonable belief, serious physical injury, or similarly used terms that are used to qualify the directive, shall be included.	1.3.2.	
IACP	<p>Use of Deadly Force</p> <p>Law enforcement officers are authorized to use deadly force to:</p> <ul style="list-style-type: none"> • Protect the officer or others from what is reasonably believed to be a threat of death or serious bodily harm; and/or • To prevent the escape of a fleeing violent felon who the officer has probable cause to believe will pose a significant threat of death or serious physical injury to the officer or others. • Where practicable prior to discharge of the firearm, officers shall identify themselves as law enforcement officers and state their intent to shoot. 	<p>A. 1.</p> <p style="margin-left: 40px;">a.</p> <p style="margin-left: 40px;">b.</p> <p style="margin-left: 40px;">c.</p>	
PPSC	“Officers are authorized to use deadly force against a person or persons that an officer reasonably believes to be employing or initiating a level of force capable of inflicting death or serious bodily injury to him/her self, or endangered third parties. An officer may elect to use deadly force when his/her perception of salient situational and behavioral variables would lead an objectively reasonable officer to believe that its use was essential for the preservation of his/her life, or the lives of others.”	DFM-1	
RCMP	Incident Management/Intervention Model	See Appendix “D”	Yes CALEA/IACP/PPSC

PRISONERS AND MENTALLY DISTURBED PERSONS OPERATIONAL MANUAL CHAPTER III PINCHER CREEK			
Page 1 of 15			
INPUT SOURCE	REFERENCE NARRATIVE And/Or PPSC Analysis	CITATION (If Applicable)	RCMP COMPATIBILITY? (If Applicable)
RCMP	Guards are not to give any inmate food, mail, parcels or articles of medication unless permitted by a direct order of an RCMP member.	C.2	NO
CALEA	<p><i>If detainees are allowed to receive mail or packages while incarcerated, a written directive regulates procedures, to include:</i></p> <ul style="list-style-type: none"> • <i>accepting and inspecting items;</i> • <i>listing items which are not authorized;</i> • <i>recording received items in the detainees' property record; and</i> • <i>distribution to the detainee</i> <p>CALEA Commentary: Holding facilities are generally not prepared to deal with the problems and hazards.</p>	72.8.4	
PPSC	Unable to locate a written directive regulating this procedure, other than it having to be on the direct order of a RCMP Member.		
RCMP	Notices in both official languages informing prisoners of their right to counsel will be posted in conspicuous places in the cell area.	C.6 E.8a	MOSTLY
CALEA	<p><i>A written directive sets forth procedures regarding a detainee's rights that include, at a minimum:</i></p> <ul style="list-style-type: none"> • <i>timely court appearance;</i> • <i>opportunity to make bail;</i> • <i>confidential access to attorneys;</i> • <i>access to a telephone;</i> • <i>alerting the detainee to monitored or recorded telephone conversations; and</i> • <i>three meals are provided to all detainees during each 24-hour period.</i> 	72.7.1	
PPSC	It is unknown whether a detainee's rights in Canada include a "timely" court appearance or whether the detainee must be notified that his calls are being monitored. However, there was no mention in this policy regarding a directive stating that there will be three meals provided to all detainees on each 24 hour period.		

HOLDING CELL - PRISONER PROCESSING PROCEDURES			
Page 2 of 15			
INPUT SOURCE	REFERENCE NARRATIVE And/Or PPSC Analysis	CITATION (If Applicable)	RCMP COMPATIBILITY? (If Applicable)
RCMP	Smoking in the guardroom is prohibited. Inmates are not to retain any smoking material or matches. These items are to be listed on C-13-2 and will be returned to the inmate upon his or her release.	C.7	MOSTLY
CALEA	<p><i>The facility has an automatic fire alarm and heat and smoke detection system, fire equipment approved in writing by state or local fire officials, and a written directive prescribing fire prevention practices and procedures, to include:</i></p> <ul style="list-style-type: none"> • <i>weekly documented visual inspection and a semiannual documented testing of fire equipment; and</i> • <i>daily visual inspection; and documented testing of the automatic fire detection devices and alarm systems as required by local fire code.</i> <p>CALEA Commentary: Reasonable provisions for testing and or self-testing of the technology employed should be established to ensure the integrity and reliability of the system. The agency should plan and execute all reasonable procedures for the prevention and prompt control of fire.</p> <p>(See standard 72.1.1).</p>	72.3.1 a. b.	
IACP	Smoking is not permitted in the cellblock by employee or inmate.	D.8	
PPSC	<i>No smoking is within CALEA Policy (related to the prevention of fire). However, there is no mention in this policy as it pertains to any weekly or daily visual inspection of the fire equipment.</i>		
RCMP	Prisoners who are unconscious or are of questionable consciousness or having obvious injury shall receive medical attention prior to being placed in cells.	C.8	YES

HOLDING CELL - PRISONER PROCESSING PROCEDURES			
Page 3 of 15			
INPUT SOURCE	REFERENCE NARRATIVE And/Or PPSC Analysis	CITATION (If Applicable)	RCMP COMPATIBILITY? (If Applicable)
CALEA	<p><i>A written directive requires that detainee "receiving screening" information be obtained and recorded when detainees are admitted to the facility and before transfer to another facility. Receiving screening must include an inquiry into:</i></p> <ul style="list-style-type: none"> • <i>current health of the detainee;</i> • <i>medications taken by detainee;</i> • <i>behavior, including state of consciousness and mental status; and</i> • <i>trauma markings, bruises, lesions, jaundice, ease of movement, etc.</i> <p>CALEA Commentary: The purpose of the screening is to determine whether medical attention is required. Female detainee screening should take into account the needs of women. Receiving screening may be performed by allied health personnel or by trained correctional employees at the time of booking.</p> <p>The information obtained may be recorded on a separate form designed for this purpose or recorded with other information obtained during the booking process (See standard 72.5.2). In addition, a record should be kept of all treatment and medication administered to a detainee, including circumstances or events necessitating such treatment.</p>	72.6.3	
IACP	<p>The holding facility is not intended for or equipped to handle arrestees who require immediate or sustained medical attention. Therefore:</p> <ul style="list-style-type: none"> • No prisoner shall be booked into the holding facility or otherwise held for interrogation or other purposes who has injuries or illnesses that require hospitalization or attention of a health care professional. This includes obvious cases of injury or illness as well as situations in which arrestees: <ul style="list-style-type: none"> ○ suffer from extreme alcohol intoxication or possible drug overdose; ○ exhibit symptoms of severe mental disorder, ○ have talked about committing suicide or shown signs of being a suicide risk. 	B.4. A,B,C a.	

HOLDING CELL - PRISONER PROCESSING PROCEDURES			
Page 4 of 15			
INPUT SOURCE	REFERENCE NARRATIVE And/Or PPSC Analysis	CITATION (If Applicable)	RCMP COMPATIBILITY? (If Applicable)
IACP Cont.	<p>If the severity of medical conditions is unclear or if a prisoner requests medical attention, he shall be transported as soon as possible to this agency's designated emergency care provider.</p> <p>If available, the arresting officer shall be responsible for transporting the prisoner to and security of the prisoner while at a designated medical care facility.</p> <p>Subsequent detention of such prisoners is permitted only with approval of a physician or qualified medical care professional. Transporting officers shall communicate any and all information relating to arrestee injuries or illnesses not requiring immediate medical attention to the booking officer or other appropriate holding cell personnel.</p> <p>The nature of injuries of arrestees shall be noted on the booking form and arresting officers shall fully describe the circumstances surrounding those injuries on their arrest report.</p>		
PPSC	<i>Yes, If the form C-13-2 is a thorough check of their current medical status.</i>		
RCMP	<ul style="list-style-type: none"> • If there is any indication of a prisoner being suicidal or violent, "S" Suicidal, or "V" Violent, will be indicated on Form C-13-2 in red. • A second guard or matron is to be called to specifically monitor the suicidal prisoner. 	C.9 A	SOMEWHAT
CALEA	<p>A written directive prescribes methods for handling, detaining, and segregating persons under the influence of alcohol or other drugs or who are violent or self-destructive.</p> <p>Commentary: The holding facility is not normally equipped to provide treatment to persons under the influence of drugs or alcohol. Such persons should be detained in other facilities, when available. When these facilities are not available, special consideration should be given to ensuring that the potential for detainees to injure themselves or others is minimized. Such detainees should remain under close observation by facility staff.</p>	72.5.4	

HOLDING CELL - PRISONER PROCESSING PROCEDURES			
Page 5 of 15			
INPUT SOURCE	REFERENCE NARRATIVE And/Or PPSC Analysis	CITATION (If Applicable)	RCMP COMPATIBILITY? (If Applicable)
RCMP	When it becomes necessary to incarcerate a "Young Offender", he or she will be placed in a cell by themselves and will NOT be intermingled with "Adult Offenders."	D.5.	SOMEWHAT
CALEA	<p>If males, females, and/or juveniles are required to be detained at the same time, their holding areas are separated from each other by sight and sound.</p> <p>CALEA Commentary: The intent of this standard is to ensure the segregation of three detainee types. Juveniles should not be processed in the presence of adult violators and should be held in areas away from adult detainees. Females should be separated from areas where males are detained. Sound, for the purpose of this standard, is defined as normal/loud conversation and does not include deliberate yelling or screaming. Yelling and screaming should be controlled by persons supervising detainees. Agencies may comply with this standard by developing written procedural alternatives to avoid detaining males/females/juveniles in the same area. Compliance may be OBSERVED.</p>	72.5.3	
IACP	Holding cells shall be used for holding juveniles and females only in accordance with established agency policy	E.2	
PPSC	This policy only covers the "Young Offender" not being placed in a cell with an "Adult Offender" My interpretation of this is that they should also be kept away from adult cells. There was also no mention of female detainees.		

HOLDING CELL - PRISONER PROCESSING PROCEDURES			
Page 6 of 15			
INPUT SOURCE	REFERENCE NARRATIVE And/Or PPSC Analysis	CITATION (If Applicable)	RCMP COMPATIBILITY? (If Applicable)
RCMP	Proper disposition has been made of the warrants and property of prisoners arriving and departing during preceding shifts.	E.1.2	SOMEWHAT
CALEA	<p><i>A written directive establishes procedures for maintaining control of the detainee's property, to include:</i></p> <ul style="list-style-type: none"> • <i>an inventory search of the detainee at the time of booking and prior to entry to the holding facility;</i> • <i>an itemized inventory of property taken from the detainee;</i> • <i>secure storage of property taken; and</i> • <i>return of property upon release.</i> <p>CALEA Commentary: The written directive should precisely identify the types and scope of searches to be conducted by agency personnel. The directive should be consistent with current legal standards concerning the conduct of strip searches and body cavity searches (see standard 1.2.8). The written directive should also specify which items may be retained by the detainee and which may not. It is important to record carefully all property pending its return at the time of release. Unauthorized items and confiscated contraband should be shown on the inventory along with the detainee's signature, and a copy placed in the detainee's file. Property should be compared with the inventory list and, if everything is in order, the detainee should sign a receipt for property returned. Property retained for evidentiary or other purposes should be noted on the receipt. If the detainee is released to a transporting employee for transfer to another facility, the property should be given to the transporting employee, who should sign the receipt. The facility should maintain a copy of the receipt for its files. If possible, this process should be witnessed. If the detainee refuses to sign the inventory, it should be so noted.</p>	72.5.1 a. b. c. d.	
PPSC	It is unknown how specific these property lists are. However, we did not see a directive pertaining to discovery of contraband, signatures of defendants, etc.		

HOLDING CELL - PRISONER PROCESSING PROCEDURES			
Page 7 of 15			
INPUT SOURCE	REFERENCE NARRATIVE And/Or PPSC Analysis	CITATION (If Applicable)	RCMP COMPATIBILITY? (If Applicable)
RCMP	Regular members shall inspect the guardroom periodically during their shift and on each occasion shall sign the prisoner activity book, and note the time.	E.1.4	YES
CALEA	<p>72.8.1 A written directive requires 24-hour monitoring of detainees by agency staff, including a face to face count of the detainee population at least once every shift, and establishes procedures to ensure that the detainee is visually observed by agency staff at least every thirty minutes.</p> <p>CALEA Commentary: Twenty four-hour monitoring is essential for maintaining security and ensuring the safety and welfare of detainees. Monitoring, as used in this standard, assumes agency staff is present in the same building that houses the holding facility and not at a remote location. One intent of this standard is to prohibit delegating supervision to a trustee. In addition to a count of the detainee population at least once every shift, other counts may be necessary prior to and following certain activities, such as night lockup, recreation, and meals. Care should be taken during physical checks that the detainee does not anticipate the appearance of agency staff. Detainees who are security risks should be under closer surveillance and require more frequent observation. This classification includes not only detainees who are violent but also those who are suicidal or mentally ill or demonstrate unusual or bizarre behavior. Commission Interpretation (March 22, 1996)-term "Visually Observed": Agencies are encouraged, but not required, to introduce direct physical checks whenever possible, but detainees may be observed through audio/visual means.</p>	72.8.1	
PPSC	Various aspects to this CALEA Standard is covered in various sections of this policy.		

HOLDING CELL - PRISONER PROCESSING PROCEDURES			
Page 8 of 15			
INPUT SOURCE	REFERENCE NARRATIVE And/Or PPSC Analysis	CITATION (If Applicable)	RCMP COMPATIBILITY? (If Applicable)
RCMP	Plastic property bags are to be utilized for all prisoner effects and shall be place in the locker for safe keeping.	E.1.5	YES
CALEA	<i>See Page 6 of Appendix for CALEA Reference</i>	72.5.1	
RCMP	All eating utensils are to be removed immediately after use. Care is to be taken that the same number of eating utensils are taken out as were handed to the inmate(s). Check to make sure no tines are missing from the forks.	E.1.6	SOMEWHAT
CALEA	<p><i>72.4.7 A written directive governs control of tools and culinary equipment.</i></p> <p>CALEA Commentary: A strict accounting should be made of all tools and utensils coming in and going out of the facility, as well as strict visual supervision of their use while inside the facility. A system to control tools and culinary equipment brought into the facility should apply to agency personnel and outside maintenance persons alike.</p>	72.4.7	
IACP	Any tools, culinary items or similar items brought into the cell block shall be recorded in and out through the booking officer or the officer-in-charge.	D.7	
PPSC	<i>Is there a written system as to how these items are controlled?</i>		
RCMP	The cell block and guardroom office are to be left neat and clean and blankets neatly folded when inmates are removed from cells. Check for any damage and record details of checks in the Prisoner Activity book.	E.1.8	YES

HOLDING CELL - PRISONER PROCESSING PROCEDURES			
Page 9 of 15			
INPUT SOURCE	REFERENCE NARRATIVE And/Or PPSC Analysis	CITATION (If Applicable)	RCMP COMPATIBILITY? (If Applicable)
CALEA	<p><i>A written directive requires a security check, including searching for weapons and contraband, prior to and immediately after each use of a cell.</i></p> <p>CALEA Commentary: The written directive should indicate who is responsible for making this security check and require that any conditions observed be reported immediately to supervisory personnel either verbally or in writing.</p>	72.4.5	
IACP	<p>Prior to placing a prisoner in a cell, a search of the cell shall be conducted for weapons or contraband. Prior to release, a similar search shall be conducted that will also include inspection for property damage.</p> <p>Problems uncovered in these searches shall be brought to the attention of the officer-in-charge prior to cell assignment or release of a prisoner.</p>	D.4	
RCMP	Entire Section pertaining to Medical Treatment of an inmate.	E.3	SOMEWHAT
CALEA	<p><i>A written directive, approved by a licensed physician, identifies the policies and procedures to be followed when a detainee is in need of medical assistance.</i></p> <p>CALEA Commentary: Arrangements for detainee emergency health care should be made with a local medical facility. If possible, a licensed health care professional should be identified as the emergency health care contact person. At least one on-duty person should be certified in first aid. The intent of this standard is to ensure that staff recognize, take immediate action on, and report all detainee medical emergencies.</p>	72.6.1	

HOLDING CELL - PRISONER PROCESSING PROCEDURES			
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INPUT SOURCE	REFERENCE NARRATIVE And/Or PPSC Analysis	CITATION (If Applicable)	RCMP COMPATIBILITY? (If Applicable)
IACP	<p>The holding facility is not intended for or equipped to handle arrestees who require immediate or sustained medical attention. Therefore:</p> <ul style="list-style-type: none"> • No prisoner shall be booked into the holding facility or otherwise held for interrogation or other purposes that have injuries or illnesses that require hospitalization or attention of a health care professional. This includes obvious cases of injury or illness as well as situations in which arrestees: <ul style="list-style-type: none"> ○ suffer from extreme alcohol intoxication or possible drug overdose; ○ exhibit symptoms of severe mental disorder, or ○ have talked about committing suicide or shown signs of being a suicide risk. • If the severity of medical conditions is unclear or if a prisoner requests medical attention, he shall be transported as soon as possible to this agency's designated emergency care provider. <ul style="list-style-type: none"> ○ If available, the arresting officer shall be responsible for transporting the prisoner to and security of the prisoner while at a designated medical care facility. ○ Subsequent detention of such prisoners is permitted only with approval of a physician or qualified medical care professional. ○ Transporting officers shall communicate any and all information relating to arrestee injuries or illnesses not requiring immediate medical attention to the booking officer or other appropriate holding cell personnel. • The nature of injuries of arrestees shall be noted on the booking form and arresting officers shall fully describe the circumstances surrounding those injuries on their arrest report. 	<p>4.</p> <p>a.</p> <p>b.</p> <p>c.</p>	
PPSC	<p><i>Has the policy been addressed by a licensed physician? There is no mention as to whether the guard or RCMP Member is trained in First Aid. Is there any training in reference to recognizing symptoms of Subdural Hematoma?</i></p>		

HOLDING CELL - PRISONER PROCESSING PROCEDURES			
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INPUT SOURCE	REFERENCE NARRATIVE And/Or PPSC Analysis	CITATION (If Applicable)	RCMP COMPATIBILITY? (If Applicable)
PPSC CONT.	<i>What is the written directive pertaining to emergency services coming into holding area to transport detainee?</i>		
RCMP	Section on Visiting Detainees	E.6	SOMEWHAT
CALEA	<p><i>A written directive governs procedures for visiting detainees.</i></p> <p>Commentary: Holding facilities are generally not equipped to handle visitors. Visits should be discouraged until detainees arrive at the appropriate correctional institution where visitations can be appropriately managed. Holding facility security is paramount. All contact with a detainee should be closely monitored and controlled to avoid transfer of weapons or contraband. In exceptional situations, where a detainee should meet with a visitor, such as an attorney, the detainee should be removed from the holding facility and brought to another location for the meeting. The detainee should be carefully searched before leaving and re-entering the holding facility. Each visitor should be required to register his or her name, address, and relationship to detainee upon entry.</p> <p>Generally, all visitors, and their belongings, coming into direct contact with detainees should be searched.</p>	72.8.5	
IACP	<p>All prisoners being held pending release decisions shall be given reasonable visitation privileges.</p> <p>Visiting relatives shall be granted access to prisoners (no more than two at a time) during designated hours for a reasonable length of time.</p> <p>Attorneys shall be permitted access to their clients at a reasonable hour.</p>	E7.A,B	

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INPUT SOURCE	REFERENCE NARRATIVE And/Or PPSC Analysis	CITATION (If Applicable)	RCMP COMPATIBILITY? (If Applicable)
IACP CONT.	All persons seeking access to the cell block shall be required to show proper identification and their visit shall be properly recorded in the visitation log. All persons seeking access to the cell block are subject to search. Containers may not be carried into the cell block unless they are inspected.		
PPSC	<i>The primary issue not addressed is whether a visitor will be searched. The ability to smuggle contraband, weapons, or implements of escape is very high.</i>		
RCMP	<p>Release Procedures:</p> <p>General The shift supervisor or senior member on shift is responsible to ensure that prisoners are released when required.</p> <p>Guard/Matron Ensure that the prisoner has left the cell in a clean condition. All blankets should be folded neatly. Inspect the cell to ensure the prisoner has not left any material behind or has damaged the cell in anyway. If damage is noted, the NCO I/C is to be notified.</p> <p>Member Ensure that any documents requiring service are given to the accused. Photograph and fingerprint the prisoner if required.</p> <ul style="list-style-type: none"> • Have the prisoner sign form C-13-2 for the return of his effects. If the prisoner refuses, indicate "Refused to sign" and have member and the guard witness the fact on Form C-13-2. • Indicate the date and time of release on the C 13-Tally the total hours served and the amount of meals had by the prisoner and include on the bottom of Form C-13-2. • If there are not other prisoners, sign the guards/matrons Employment Record. 	E.7A thru E.7C	MOSTLY

HOLDING CELL - PRISONER PROCESSING PROCEDURES			
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INPUT SOURCE	REFERENCE NARRATIVE And/Or PPSC Analysis	CITATION (If Applicable)	RCMP COMPATIBILITY? (If Applicable)
CALEA	<i>A written directive requires positive identification be made before a detainee is released.</i>	72.5.7	
IACP	<p>Prisoners charged with a crime shall be released from custody only:</p> <ul style="list-style-type: none"> • when directed by proper legal authority. • when prisoners have been positively identified by I.D. bracelet, photograph and thumb print, and • when at least two officers have reviewed and authorized the release. <p>Prisoners shall be requested to sign the receipt for their personal property after items have been compared against the original inventory log and found to be complete.</p> <p>Any discrepancies shall be reported immediately to the holding facility supervisor or the officer-in-charge.</p> <p>Refusal of the prisoner to sign shall be noted by the releasing officer.</p> <p>Items held as contraband or evidence shall be noted separately on the inventory report.</p> <p>Authorities taking custody of released prisoners shall be provided with all relevant information on the prisoner, to include information on pending charges, illness or injury, suicide attempts or potentials, drug use, use of prescription drugs, records of medical treatment or diagnosis and potential, for violence or escape.</p> <p>Prisoner property shall be released to and signed for by the accepting authority after it has been audited.</p>	G.1-3	
PPSC	There is no mention of confirming the identity of the detainee or what method is used for items that were held as contraband.		

HOLDING CELL - PRISONER PROCESSING PROCEDURES			
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INPUT SOURCE	REFERENCE NARRATIVE And/OR PPSC Analysis	CITATION (If Applicable)	RCMP COMPATIBILITY? (If Applicable)
RCMP	Guards and matrons are not to enter a cell without the presence of a member unless it is an "EMERGENCY".	E.11 A. 1	YES
CALEA	<p>A written directive governs conditions under which an employee enters an occupied cell.</p> <p>CALEA Commentary: To ensure that detainees held in cells do not have an opportunity to take keys from an employee and escape, it is preferable that employees not enter a cell alone, unless they are being monitored by visual or audio surveillance device and/or <i>have a distress alarm in their possession.</i></p>	72.4.2	
RCMP	<p>In the event of a fire:</p> <ul style="list-style-type: none"> • If you are alone in the building, call the Fire Department at 627-3700 and/or • If a member is not immediately available, you are to remove the prisoners from the detachment and secure them in a police vehicle outside or move them to a safe area outside the detachment. • Should a prisoner start to run away from you, order him to stop. If you have more than one prisoner, do not chase the prisoner but make note of direction of travel and advise a member on his/her arrival of the circumstance. <p>Member Do NOT FIGHT the fire if you are in danger.</p> <ul style="list-style-type: none"> • Leave the building and ensure that all persons are out of the building. • Once you leave the building, do not re-enter it. • Contact the Fire Department at 627-3700. • Advise NCO I/C of the fire. <p>Assist the guard/matron in removing any prisoners from the cell block. They are to be secured in a police car outside and away from the detachment.</p>	E.11.B.3	SOMEWHAT

HOLDING CELL - PRISONER PROCESSING PROCEDURES			
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INPUT SOURCE	REFERENCE NARRATIVE And/Or PPSC Analysis	CITATION (If Applicable)	RCMP COMPATIBILITY? (If Applicable)
CALEA	<p>A written directive requires that personnel receive initial training on the operations of the holding facility, to include fire suppression and equipment provided for use by the agency, and retraining at least once every three years.</p> <p>CALEA Commentary: Types and levels of training should vary with the nature of assignments and responsibilities. Employees who work in direct, continuing contact with detainees require special training, including use of physical restraint, to ensure safety and security of staff and detainees. Employees who do not work in direct contact with detainees should receive an orientation on the operation of the holding facility and their role, if any. Fire suppression may include smoke and fire detectors, fire extinguishers, fire hoses to one and one-half inches, and air packs.</p>	72.1.1	
IACP	<p>Fire The holding facility shall be equipped with smoke detection devices approved by local or state fire officials. The type and location of fire suppression equipment shall be approved by local or state fire officials.</p> <p>All fire detection and suppression equipment and fire alarm devices shall be tested and/or certified on at least a monthly basis.</p> <p>Evacuation Plan: An evacuation plan shall be approved by the agency chief executive to meet fire emergencies as well as flood, tornado, earthquake or other natural disasters.</p> <p>All personnel assigned to the holding facility shall be trained in emergency evacuation procedures, equipment and emergency first aid.</p>	B.1 B.2	
PPSC	Is there a detailed plan on various evacuations? Is there any training for personnel on equipment inspections and First Aid?		

Appendix B

Psychological Fitness for Duty

- IACP Psychological Fitness-for-Duty Evaluation Guidelines
- Sample Fitness-for- Duty Report



Psychological Fitness-for-Duty Evaluation Guidelines

**Ratified by the IACP Police Psychological Services Section
Los Angeles, California, 2004**

Purpose

The IACP Psychological Services Section developed these guidelines for use by public safety agencies and mental health examiners. These guidelines are not intended to establish a rigid standard of practice for psychological fitness-for-duty evaluations (FFDEs). Instead, they are intended to reflect the commonly accepted practices of the section members and the agencies they serve. Each of the guidelines may not apply in a specific case or in all situations. The decision as to what is or is not done in a particular instance is ultimately the responsibility of each agency and professional examiner.

Definition

A psychological FFDE is a formal, specialized examination of an incumbent employee that results from (1) objective evidence that the employee may be unable to safely or effectively perform a defined job and (2) a reasonable basis for believing that the cause may be attributable to psychological factors. The central purpose of an FFDE is to determine whether the employee is able to safely and effectively perform his or her essential job functions.

Threshold Considerations

1. Referring an employee for an FFDE is indicated whenever there is an objective and reasonable basis for believing that the employee may be unable to safely or effectively perform his or her duties due to psychological factors. An objective basis is one that is not merely speculative but derives from direct observation, credible third-party report, or other reliable evidence.
2. FFDEs necessarily intrude on the personal privacy of the examinee and, therefore, should be conducted after the employer has determined that other options are inappropriate or inadequate in light of the facts of a particular case. The FFDE is not to be used as a substitute for disciplinary action.
3. If an employer is uncertain whether its observations and concerns warrant an FFDE, it may be useful to discuss them with the employer's examiner or legal counsel prior to mandating the examination.

Examiner Qualifications

4. In light of the nature of these evaluations and the potential consequences to the agency, the examinee, and the public, it is important for examiners to perform FFDEs with maximum attention to the relevant legal, ethical, and practice standards, with particular concern for statutory and case law applicable to the employing agency's jurisdiction. Consequently, these evaluations should be conducted only by a qualified mental health professional. At a minimum, the examiner should be a licensed psychologist or

psychiatrist with education, training, and experience in the diagnostic evaluation of mental and emotional disorder:

- a. possess training and experience in the evaluation of law enforcement personnel;
 - b. be familiar with the police psychology literature and the essential job functions of the employee being evaluated;
 - c. be familiar with relevant state and federal statutes and case law, as well as other legal requirements related to employment and personnel practices
 - d. (e.g., disability, privacy, third-party liability); and satisfy any other minimum requirements imposed by local jurisdiction or law.
5. When an FFDE is known to be in the context of litigation, arbitration, or another adjudicative process, the examiner should have particular training and experience in forensic psychological or psychiatric assessment. In such cases, the examiner should be prepared by training and experience to qualify as an expert in any related adjudicative proceeding.

Identifying the Client

6. The client in an FFDE is the employer, not the employee being evaluated, and this fact should be communicated to all involved parties at the outset of the evaluation. Nevertheless, the examiner owes an ethical duty to both parties to be fair and impartial and to honor their respective legal rights and interests. Other legal duties also may be owed to the examinee as a result of statutory or case law unique to the employer's or the examiner's jurisdiction.
7. Examiners should decline to accept an FFDE referral when personal, professional, legal, financial, or other interests or relationships could reasonably be expected to (a) impair their objectivity, competence, or effectiveness in performing their functions or (b) expose the person or agency with whom the professional relationship exists to harm or exploitation (e.g., conducting an FFDE on an employee who had previously been a confidential counseling or therapy client, evaluating an employee with whom there has been a business or significant social relationship). Similarly, an FFDE examiner should be mindful of potential conflicts of interest related to recommendations or the provision of services following the evaluation (e.g., referring an examinee to oneself for subsequent treatment). If such conflicts are unavoidable or deemed to be of minimal impact, the examiner should nevertheless disclose the potential conflict to all affected parties.

Referral Process

8. It is desirable that employers have FFDE policies and procedures that define such matters as circumstances that would give rise to an FFDE referral, mechanisms of referral and examiner selection, any applicable report restrictions, sharing results with the examinee, and other related matters.
9. The employer's referral to the examiner should include, at a minimum, a description of the objective evidence giving rise to concerns about the employee's fitness for duty and any particular questions that the employer needs the examiner to address. In most circumstances, this referral should be documented in writing.
10. In the course of conducting the FFDE, it is usually necessary for the examiner to receive background and collateral information regarding the employee's past and recent performance, conduct, and functioning. The information might include, but is not limited to, performance evaluations, previous remediation efforts, commendations, testimonials,

internal affairs investigations, formal citizen or public complaints, use-of-force incidents, reports related to officer-involved shootings, civil claims, disciplinary actions, incident reports of any triggering events, medical records, or other supporting or relevant documentation related to the employee's psychological fitness for duty. In some cases, examiners may ask the examinee to provide medical/psychological treatment records and other data for the examiner to consider.

11. When some portion of the information requested by an examiner is unavailable or is withheld, the examiner must judge the extent to which the absence of such information may limit the reliability or validity of his or her findings and conclusions before deciding to proceed. If the examiner proceeds with the examination, the subsequent report should include a discussion of any such limitations judged to exist.

Informed Consent & Authorization

12. An FFDE requires the informed consent of the examinee to participate in the examination. At a minimum, informed consent should include a description of the nature and scope of the evaluation; the limits of confidentiality, including any information that may be disclosed to the employer without the examinee's authorization; the potential outcomes and probable uses of the examination; and other provisions consistent with legal and ethical standards for mental health evaluations conducted at the request of third parties.
13. In addition to obtaining informed consent, the examiner should obtain written authorization from the employee to release the examiner's findings and opinions to the employer. If such authorization is denied, or if it is withdrawn once the examination commences, the examiner should be aware of any legal restrictions in the information that may be disclosed to the employer without valid authorization. With valid written authorization, an examiner is free to disclose unrestricted information to the employer.

Evaluation Process

14. Depending on the referral question and the examiner's clinical judgment, an FFDE typically relies on multiple methods and data sources in order to optimize the reliability and validity of findings. The range of methods and data sources frequently includes:
 - a. a review of the requested background information (e.g., personnel records, medical records, incident reports or memos);
 - b. psychological testing using assessment instruments (e.g., personality, psychopathology, cognitive, specialized) appropriate to the referral question(s);
 - c. a comprehensive, face-to-face clinical interview;
 - d. collateral interviews with relevant third parties if deemed necessary by the examiner; and
 - e. referral to, and consultation with, a specialist if deemed necessary by the examiner.
15. Prior to conducting collateral interviews of third parties, care should be taken to obtain informed consent from the employer, the examinee, or from the third party, as appropriate. This should include, at a minimum, explanation of the purpose of the interview, how the information will be used, and any limits to confidentiality.

Report and Recommendations

16. Customarily, the examiner will provide a written report to the client agency that contains a description of the rationale for the FFDE, the methods employed, and whenever possible, a clearly articulated opinion that the examinee is presently fit or unfit for unrestricted duty. The content of the report should be guided by consideration of the terms of informed consent, the employee's authorization, the pertinence of the content to the examinee's psychological fitness, the employing agency's written policies and procedures, the applicable terms of any labor agreement, and relevant law.
17. When an examinee is found unfit for unrestricted duty, the report should contain, whenever possible, the following minimum information unless prohibited by law, agency policy, labor agreement, the terms of the employee's disclosure authorization, or other considerations:
 - a. a description of the employee's functional impairments or job relevant limitations;
 - and b. an estimate of the likelihood of, and time frame for, a return to unrestricted duty, and the basis for that estimate.
18. It is recognized that some examiners may be asked to provide opinions regarding necessary work restrictions, accommodations, interventions, or causation. Nevertheless, the determination as to whether or not a recommended restriction or accommodation is reasonable for the specific case and agency is a determination to be made by the employer, not the examiner.

Sample Fitness-for- Duty Report

Evaluation Report

The following is a sample a typical FFDE report format. Many acceptable forms of the FFDE report exist, and each variation should be developed to meet the needs of each individual organization, within its own pertinent policy and procedural guidelines:

Fitness-for-Duty Evaluation

Name: Dudley Q. Webb

1 Main Street

Edmonton, Alberta T5A 0A1

Date of evaluation: 01/01/04

Place of evaluation:

FFDE provider

540 Province Street

Edmonton, Alberta T5A 0A9

Race/Sex: White/Male

Marital status: Single

Age/date of birth: 29/01-01-75

SSN: 111-11-1111

Evaluator: Nell Fenwick, PhD Clinical
Psychologist

Employer:

RCMP

1 Elm Street

Edmonton, Alberta T5A 0B8

Referral source: Inspector Fenwick,
Internal Affairs

Reason for Evaluation

Dudley Q. Webb, a 29 year old single white male, RCMP Constable, was referred by Inspector Fenwick of the Internal Affairs Unit for a fitness-for-duty evaluation (FFDE), secondary to a series of complaints involving a number of documented sexual and violent incidents. The evaluation was conducted for fitness-for-duty purposes, which predominantly involved the health, safety, and welfare of the constable, his department, fellow employees, and the Webb in general, but the report is not considered a general clinical examination.

Background Information and Observations

Constable Webb appeared for the evaluation in a timely manner. Prior to the beginning of the evaluation it was explained to Constable Webb that, from the perspective of the police psychologist, the evaluation was voluntary (irrespective of the order from the Constable's employer) and that he had a right to discontinue the evaluation or discontinue permission to distribute the evaluation any time prior to its actual distribution. This offer extended to any period of time prior to the actual distribution of the fitness-for-duty report. It was explained that the evaluation was not confidential and that it was conducted primarily for purposes of determining whether Constable Webb represented any form of threat to the health, safety, and welfare of himself, his co-workers, supervisors, or the Webb in general. It was explained that such threats could involve a number of issues, including but not limited to his inability to function properly in the role of police constable, any form of insubordination, inappropriate or bizarre conduct, irrational acts, or uninviting behavior in action or words. It was explained that the results of the evaluation would be transmitted to him through his departmental supervisors, or by whatever means allowed for by the personnel and/or civil service codes of his department.

It was explained that the FFDE provider considers the evaluation to be a form of consultation only (not treatment or a clinical service) to be taken into account by his employer with other facts, information, and regulations to determine appropriate subsequent actions. All communications are, therefore, to be directed by Constable Webb to his employer only and not to the FFDE provider. The ultimate actions taken by his department are not within the control of the FFDE provider, and it was explained that any concerns the Constable may have had in that regard should be directed to his supervisor and/or police chief. It is the responsibility of the constable's employer to inform the Constable of other rights that the Constable may have and to take such rights into account before taking any action. The Constable understood and agreed to all conditions of the evaluation before it took place. The Constable was given the instructions for Constables Undergoing Fitness-for-Duty Evaluations form, which explained the rules governing the evaluation in writing.

Constable Webb was dressed in civilian clothing and demonstrated good hygiene and grooming. At times he appeared to be moderately anxious: He acknowledged that he felt the referral for fitness for duty was inappropriate because it was based "solely on the opinions" of certain supervisors, yet he also indicated he was "not certain" why he had been referred for evaluation. He denied any difficulty in regard to psychological problems or in his relationships with others, particularly women. He took a generally defensive position with the examiner, denying common weaknesses or problems. Reliability is considered to be below average. No obvious disturbances of motor activity were noted. Eye contact was deemed poor. Memory appeared to be in the low-average range, although at times, Constable Webb reported minor memory difficulties in reporting problems that he had experienced in the past. His mood appeared to be mildly downcast. Insight appeared to be below average. Intellectual functioning and physical health appeared to be in the average range.

Fitness-for-Duty Examination Intake Report and Interview

When asked in writing why he had been sent by his agency for an evaluation, Constable Webb wrote, "I'm not exactly sure. I only was told that I had received too many complaints from women on various issues."

When asked to elaborate, he responded that he had once used loud, vulgar language with a woman motorist at a traffic stop. She accused him of being rude. At another time, he was

accused of punching a car at a football game. More recent, however, he reported that he had been accused of "sexual battery," although he indicated that the female who filed the report was unreliable. He admitted that he had been sexually active with this woman in the past. However, he had reportedly separated from her. Recently, the woman invited him to her home to use alcohol and watch pornographic movies. After he left, she called the police and reported that he had committed a sexual battery upon her (see departmental memo of date).

When Constable Webb was asked why he thought he had been referred for the evaluation, he indicated in writing that, "I think my being here is solely on the prejudiced opinions of my supervisors and not on the facts. I don't feel that there is a problem or a need for me to be here." He admitted that he didn't "understand women very well," and that he seemed to interact with them in ways that resulted in his problematic experiences.

When asked if he had any other complaints, he said that he could not remember any. When prompted about an incident involving two teen-aged girls, he admitted that he had "connected" with two girls who "enjoyed" his companionship but that their mother complained to his supervisor that the girls were uncomfortable in his presence.

In regard to other incidents of misconduct, he indicated that he had been called to a location when a suspect reportedly became verbally hostile. "I took action, handcuffed him, and made him sit down." The storeowner (apparently based on videotapes of the event) filed a complaint that he had choked and kicked the helpless suspect, resulting in Constable Webb receiving a fifteen-day suspension.

Constable Webb indicated that he has never been sued, nor has he sued anyone. He denied a history of bad temper, domestic violence, or the commission of a felony. He indicated that he did not hold grudges and he does not have bad credit.

Constable Webb has been with the RCMP since 1998. Before that, he was a corrections Constable at a county jail, where he had been named in a civil rights lawsuit for beating a handicapped prisoner. Constable Webb indicated that he has never resigned from a LE position under pressure of discharge, and has never had a sexual relationship with anyone that he has worked with or met through his law enforcement work. He indicated a fair relationship with his supervisors and an excellent relationship with his fellow Constables.

The Constable denied any history of illicit drugs or use of any kind. He indicated that he consumed alcohol at the rate of about one ounce of pure alcohol (one drink) per week. This is usually in the form of wine, beer, or mixed drinks. He admitted an earlier period (mid-1990s) of heavier alcohol use.

Available Documentation

The RCMP forwarded documentation prior to the evaluation. This included, but was not limited to, the following:

- An organizational memo from Sgt. Alvin York to Maj. Amos Dundee, dated 10/19/02, which Constable Webb punched the passenger side of a female suspect's car. Eventually, Constable Webb twisted the female suspect's arm behind her back and placed her in handcuffs.
- Interdepartmental correspondence to Constable Webb from Col. Wayne Gretsky, dated 02/02/02, indicated that Constable Webb had been suspended for two days due to his

untruthfulness in an investigation. This stemmed from a complaint from a Mrs. Nobody concerning the nature of his unwanted relationship with her teenage daughters.

- Interdepartmental correspondence, dated 08/27/00, from Col. Wayne Gretski that Constable Webb reportedly restrained a female associate in her apartment while he removed articles of her clothing.
- Interdepartmental correspondence from Col. Wayne Gretski and Major Amos Dundee indicated that Constable Webb was recorded on a security camera choking and kicking a suspect for no understandable reason.

Psychological Testing

The Personality Assessment Inventory (PAI), Shipley Institute of Living Scale, the Minnesota Multiphasic Personality Inventory-Second Edition (MMPI-II), and the Millon Clinical Multiaxial Inventory-Third Edition (MCMI-III) were all administered as part of this evaluation. The results were reviewed and are consistent with the recommendations offered here.

Discussion

It is clear that Constable Webb appeared to take a defensive position by denying common human frailty on testing. He appeared to become involved with various forms of social conflict and difficulty, especially related to sexual interpersonal behavior and aggressive conduct. The instances of violations of departmental rules and the absence of what appears to be realistic acceptance or regret appeared to bode poorly for the possibility of future behavior change.

Recommendations

The FFDE provider acts in the consulting role only. This report may be subject to change, as further information becomes available. The recommendations that are offered are based upon an understanding of the needs of the law enforcement agency as they are made known to the evaluator as well as specific claims made in regard to Constable Webb. Certain information, as indicated previously, was obtained from Constable Webb directly.

The FFDE provider does not provide clinical services for constables nor does he determine the ultimate outcome of these recommendations. These recommendations are meant to be part of an overall review of Constable Webb's behavior and to be used by the department to provide additional information that may be useful in the operation of the agency, the protection of the constable, his co-workers, and the general public. This report is not a replacement for a criminal or internal affairs investigation, or other such inquiry. This report is not meant to be used in isolation of other important sources of information.

The following recommendations are offered as consultation to the RCMP in regard to Constable Dudley Webb. Given the information from all sources, the following recommendations are offered:

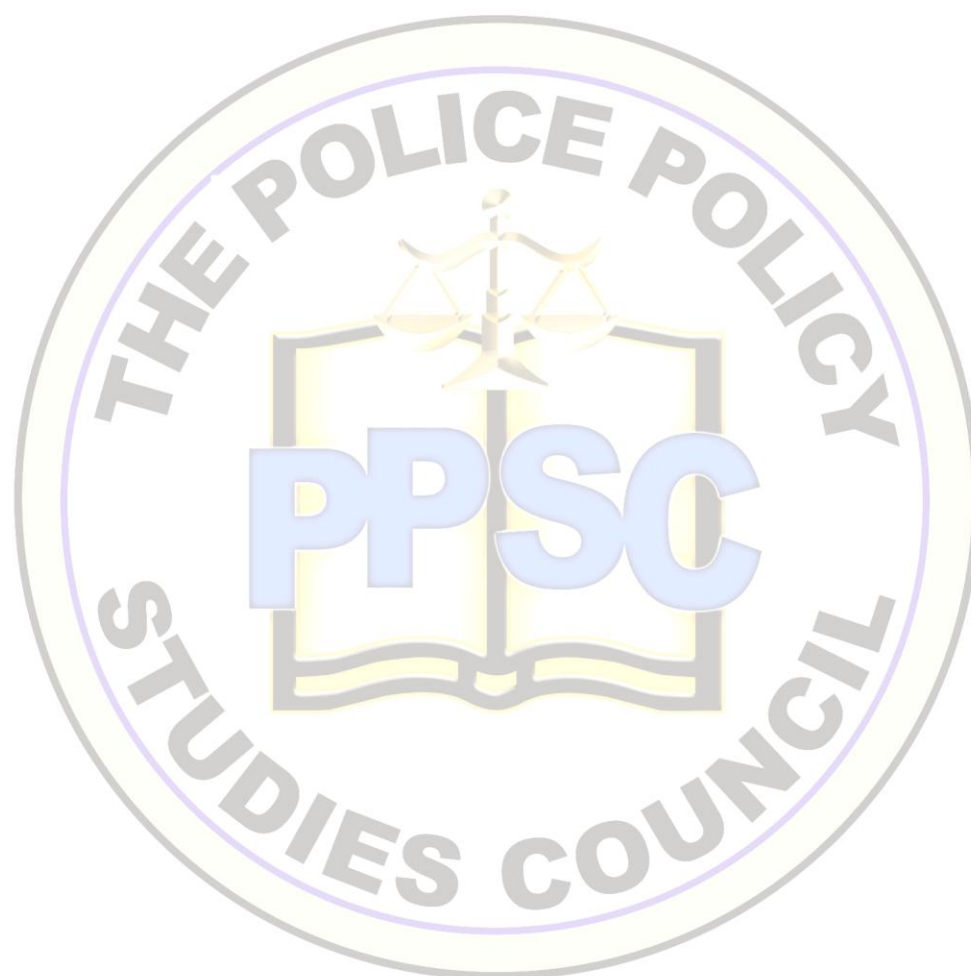
1. Constable Webb evidenced limited participation in the fitness-for-duty evaluation. Although there is evidence that he attempted to minimize his personal difficulties in both interview and psychological testing formats, he revealed sufficient information that, with additional external documentation, he appears to suffer from a significant behavioral difficulty.

2. It is recommended that Constable Webb be considered unfit for unrestricted duty. Given that he is operating as a minimally supervised, armed police agent, and given that many of the difficulties demonstrated through historical reports, psychological testing, and interview seem to touch directly upon his work, he does not appear to be currently fit for unrestricted duty. Of course, the department and the Constable himself will have to make individual decisions about the details of such treatment, but it is recommended that a basic attempt at a treatment intervention precede any consideration of return to duty.
3. Upon completion of therapy, his therapists may release Constable Webb for a second FFDE when they believe he has made maximum medical or psychological improvement. This information should be conveyed to Constable Webb's agency, and Constable Webb should then be asked to submit to a post treatment fitness-for-duty evaluation, at which time an independent judgment concerning evidence of recovery may be examined.

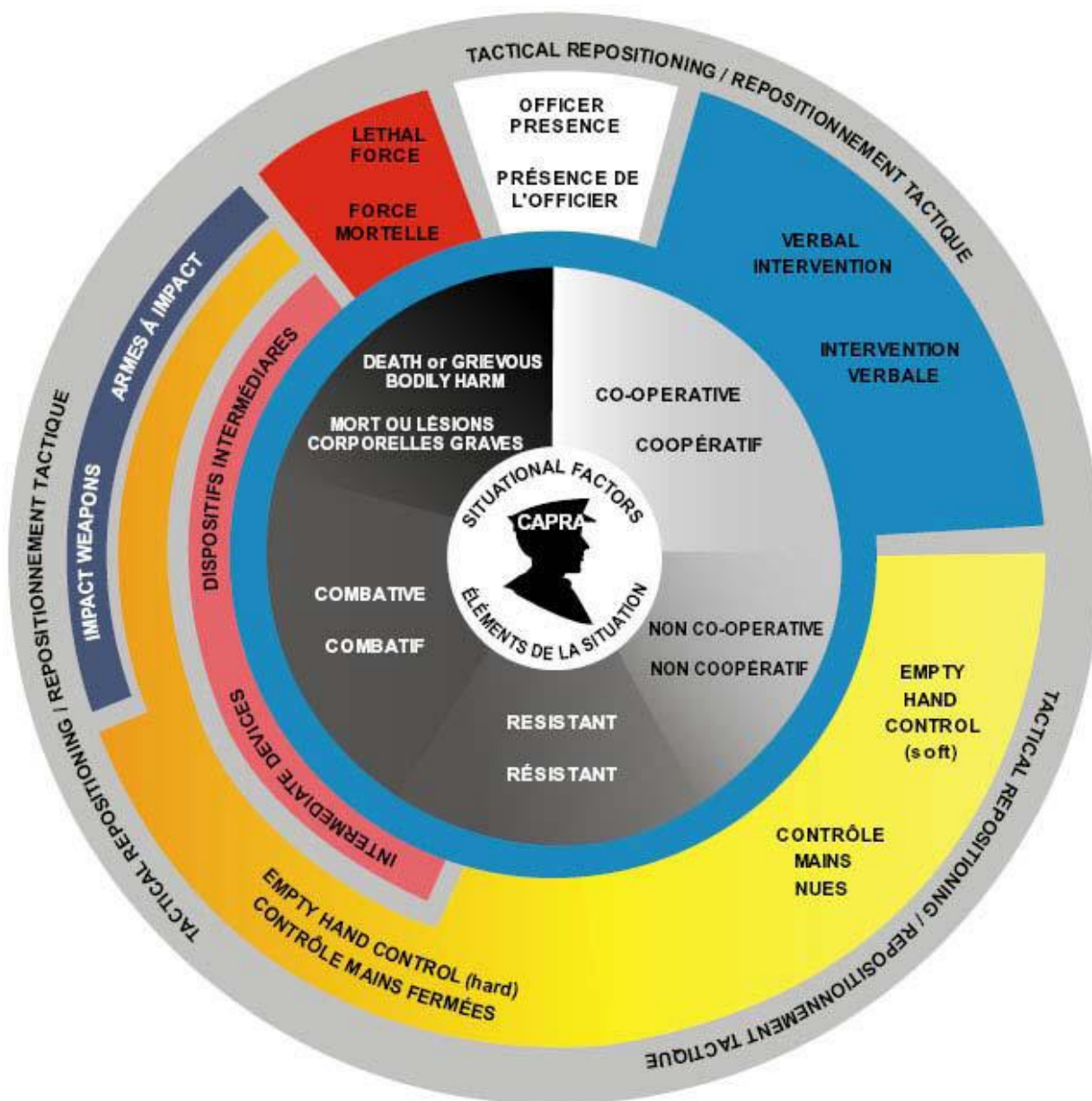
Nell Fenwick, PhD
Police Psychologist
FFDE Provider

Appendix “C”

RCMP Incident Management/Intervention Model



RCMP Incident Management/Intervention Model



Appendix “D”

- References



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Appendix “E”

Author Bios

- Thomas J. Aveni, MSFP
- Duane Chickering



PPSC Staff Profile

Thomas J. Aveni, MSFP Executive Director



Tom Aveni has been a career law enforcement officer, having served on the local and state levels in three states (NJ, UT, NH), since 1978. He has served as a police trainer since 1983. From 1990 to 2001 Tom served as a police "Training Coordinator" with the once prestigious Smith & Wesson Academy. There he was instrumental in training over 12,000 police and military personnel from across the United States and 23 other countries.

Mr. Aveni achieved his undergraduate degrees in Criminal Justice while minoring in psychology. At the graduate level Tom migrated toward Clinical Psychology when he began looking more closely at the perceptual and cognitive issues salient to police applications of deadly force. He received his Master's Degree in Forensic Psychology from American International College, Springfield, MA.

Since 1995, Mr. Aveni's police training focus became oriented toward researching so-called "questionable" police shootings. These shootings routinely involve suspects who were unarmed and non-assaultive when shot by police. Previous studies had suggested that 25-43% of police shootings are of unarmed suspects. In this pursuit, Tom also examined the influence of behavioral and contextual cues that heavily influence an officer's inclination to use deadly force.

Tom Aveni's acclaimed and ground-breaking empirical research within this realm ("**A Critical Analysis of Police Shootings Under Ambiguous Circumstances.**") has just been published and can be freely accessed as a PDF file. From this study, Tom published his "Death by Defiance™" thesis, which, along with his "Furtive Movement Index™," offers the first structured, court-admissible justification for so-called "furtive movement" shootings. These developments are of substantial importance given the fact that over half of all "questionable" police applications of deadly force involve furtive movement as a precipitating event in an officer's decision to shoot a suspect.



Mr. Aveni has been credited with being the first deadly force researcher to elucidate the strong correlation between so-called "contagious fire" incidents and adverse light conditions. Tom's research into "questionable" police shootings has also contributed to the creation and advancement of the first (1995) and most comprehensive low light instructor training program ever offered. By 1998, Tom's low light instructor training was being taught internationally.

Today, Mr. Aveni lectures nationally, presenting "**Deadly Force Management,™**" "**Use of Force Management,™**" which are advanced seminars focused specifically upon the judicious police use of force and "**Surviving the Nightshift,™**" a seminar focusing directly upon a diverse range of occupational safety issues pertinent to working at night.

Tom has also been a frequent contributor to several law enforcement publications, such as Law & Order Magazine, Police & Security News, The Trainer, and others. He is the author of a series of authoritative "Surviving the Nightshift™" articles focused upon enhancing the occupational safety of shift-working officers.

In 2001, Mr. Aveni co-founded the Police Policy Studies Council, a multi-disciplinary organization that brings together the diverse talents of clinicians, physicians and police practitioners in an ongoing effort to elucidate complex criminal justice issues. Tom currently serves as the Executive Director of PPSC.

With more than twenty years of law enforcement service, Tom still serves as a sworn police officer on the municipal level in New Hampshire. He can be reached at:

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PPSC Staff Profile

Lt. Duane Chickering **Police Quality Control Specialist**

Duane Chickering has over 18 years experience in the law enforcement profession. He has worked in a patrol capacity ranging from small towns to one of the busiest cities in the United States.

Some of the various positions that Lt. Chickering has held include; Uniformed Patrol, Bicycle Patrol, Training Officer, Undercover Narcotics Officer, Internal Affairs, SWAT, Police Detective, Patrol Sergeant and Patrol Lieutenant.

Lt. Chickering also has extensive experience in criminal investigations, which has included misdemeanor thefts, felony violent crimes, narcotics operations and homicide investigations involving civilian victims. He has also served in an ancillary investigative capacity in LAPD Police Officers Killed in the Line of Duty.

While earning his Associates Degree in Criminal Justice, Lt. Chickering completed a three week program at Oxford University, in England, studying the British Criminal Justice System.

Lt. Chickering's assignments, by agency, have included;

- Patrol, Police Lieutenant, Chesterfield Police Department (NH)
- Patrol, Field Training Officer, Chesterfield Police Department (NH)
- Patrol Division, Police Officer, Chesterfield Police Department (NH)
- Detective Division, Detective I, West Los Angeles Area, Los Angeles Police Department
- Patrol Division, Sergeant I, Pacific Area, Los Angeles Police Department
- Patrol Division, Training Officer, Wilshire Area, Los Angeles Police Department
- Patrol Division, Police Officer II, Wilshire Area, Los Angeles Police Department
- Patrol Division, Police Officer II, Special Problems Unit, Wilshire Area, Los Angeles Police Department
- Narcotics Division, Police Officer II, Wilshire Field Enforcement Section, Los Angeles Police Department
- Internal Affairs, Police Officer II, Internal Affairs Division, Los Angeles Police Department
- Patrol Division, Police Officer I, Southeast Area, Los Angeles Police Department
- Patrol Division, Police Officer I, Foothill Area, Los Angeles Police Department

- Patrol Division, Police Officer, SWAT, Keene Police Department (NH)
- Patrol Division, Police Officer, Bicycle Patrol, Keene Police Department (NH)
- Patrol Division, Police Officer, Keene Police Department (NH)
- Patrol Division, Marine Patrol Officer, New Hampshire Department of Safety