



Royal Canadian  
Mounted Police

Gendarmerie royale  
du Canada

Security Classification/Designation  
Classification/désignation sécuritaire

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Mr. Jason Gratl  
BC Civil Liberties Association  
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Your File - Votre référence

Our File - Notre référence  
2006-20188

Date

April 21<sup>st</sup>, 2009

Dear Mr. Gratl:

This letter is in reference to the Public Complaint which you lodged with the Commission for Public Complaints Against the RCMP in September 2006 regarding the death of Mr. Donald Lewis.

### **Summary of the Incident:**

Mr. Lewis was an American citizen who, in the past, had numerous encounters with Canadian Immigration and police, specifically in the Whistler area. Mr. Lewis had been deported from Canada several times.

On August 13<sup>th</sup>, 2006, Marie Newman of McLease Lake made a suspicious person complaint concerning a male who was camped on a runaway lane up from her property. She had seen a motorcycle going up and down the hill. Cst. Brewer was dispatched to the complaint.

At 7:53 pm, Cst. Brewer attended to the area of the complaint. Upon arrival, he observed a motorcycle with expired plates. The registered owner of the bike was a female from the Whistler area. Cst. Brewer proceeded up the runaway lane until he located a camp where he found a male, now known as Donald Lewis, sleeping in a tent. Cst. Brewer woke Mr. Lewis and asked Mr. Lewis to exit the tent where a short discussion about his circumstances and the motorcycle ensued. From Mr. Lewis' answers and demeanor, Cst. Brewer had decided that Mr. Lewis was going to have to be detained until the investigation was complete. Cst. Brewer believed that he would have to arrest Mr. Lewis. About this time, Mr. Lewis turned and fled from Cst. Brewer on foot. Cst. Brewer pursued and a violent struggle followed. Cst. Brewer shot Mr. Lewis once and then took him into custody. At 8:20 pm, Cst. Brewer called for assistance. Additional police members arrived and CPR was performed. Emergency Health Service (EHS) personnel arrived and assessed Mr. Lewis and determined he was deceased.

Canada

The North District Major Crime Unit based out of Prince George assumed conduct of the investigation.

The investigation was subsequently forwarded to the Attorney General's office, where the Director of Legal Services, Geoffrey Gaul, reviewed the matter and recommended no charges with respect to the police shooting death of Donald Lewis. In summary, Mr. Gaul wrote, "Based upon the available evidence, there is no conduct on the part of Cst. Brewer that calls for, or warrants, proceeding with any charge in relation to the shooting death of Mr. Lewis."

### **Nature of the Complaint:**

The Commission for Public Complaints Against the RCMP (CPC) received your public complaint on September 5th, 2006 with respect to the in-custody death of Donald Lewis, on August 13<sup>th</sup>, 2006 near McLease Lake, British Columbia. You alleged the following:

"I am writing on behalf of the BCCLA to initiate a complaint under the Royal Mounted Police Act against the member of the RCMP Williams Lake Detachment who shot Donald Lewis on August 13<sup>th</sup>, 2006 during a response to a report of illegal camping. The BCCLA is concerned that the RCMP member used excessive force in responding to this call. A transparent and independent investigation is warranted in this case in the public interest. To maintain and enhance the public's confidence in the RCMP, we request that your office rather than the RCMP conduct this investigation."

### **Findings of the Investigation:**

This letter outlines the investigation into your allegation:

**That the member of the RCMP Williams Lake Detachment who shot Donald Lewis on August 13<sup>th</sup>, 2006, during a response to a report of illegal camping ... used excessive force in responding to this call. A transparent and independent investigation is warranted in this case in the public interest.**

### **Training History of Cst Brewer (specific to this complaint.)**

On August 22<sup>nd</sup>, 2004, Cst. Brewer obtained his St. John Ambulance "Safety Oriented First Aid - Standard Level Enhanced" and "Cardio Pulmonary Resuscitation (CPR)."

On February 28<sup>th</sup>, 2005, after successfully completing all aspects of training at the RCMP's Depot Division, Cst. Brewer was engaged with the RCMP and designated a Peace Officer.

Subsequent to graduation from Depot Division, Cst. Brewer was posted to Williams Lake Detachment. Cst. Brewer was well reported on and had no adverse comments on his performance assessment. At the time of this incident, August 13<sup>th</sup>, 2006, Cst. Brewer was

up to date on his AFQ (Annual Firearms Qualification), OC spray (Pepper Spray), Carotid Control and Extendable Baton Training.

Cst. Brewer *did not* have the training to use a Conducted Energy Weapon (Taser) at the time of this incident.

With respect to the events of Sunday, August 13<sup>th</sup>, 2006, Cst. Brewer started his shift at Williams Lake RCMP Detachment at 4:00 pm and was scheduled to work until 2:30 am the following day. Cst. Brewer responded to this call at 7:13 pm. At that time Cst. Hacker, Cst. Ivany (both General Duty members) and Cst. Black (traffic member) were on shift. Two other police officers started their shift at 8:00 pm.

The complainant, who made the suspicious person report to the police, stated she had seen a male, now known to be Mr. Lewis, near the runaway lane and her property for several days. The complainant observed Mr. Lewis going up and down the runaway lane and could hear a power saw and speculated that someone may have been cutting firewood.

At approximately 8:15 pm the complainant heard one gun shot, a voice and later police cars arriving.

In relation to this incident, Cst. Brewer provided a written statement and also a video/digital statement to North District Major Crime investigators on August 15<sup>th</sup> and 16<sup>th</sup>, 2006, respectively. Cst. Brewer advised in part the following:

He was 34 years old, at the time of the incident, 5'10" (177 cm) and approximately 180lbs (81 kg).

On August 13<sup>th</sup>, 2006 at approximately 5:45 pm, a complaint of a suspicious person in the McLease Lake area on Beaver Lake Road was received. Cst. Brewer reviewed the details of the complaint and contacted the complainant, Ms. Newman. Ms. Newman advised she had a suspicious male camped on her property without her permission and requested police attendance. (Radio transmissions confirmed Cst. Brewer departed at 7:13 pm and advised of his arrival on scene at 7:53 pm.)

Cst. Brewer observed a motorcycle parked with an expired licence plate. Telecoms (our Ops Command Centre (OCC)) informed him the plate was registered to a female from Whistler, B.C. and confirmed that the registration was expired. Cst. Brewer concluded that the motorcycle was suspicious and most likely part of the investigation. He asked the OCC for a ten minute timer. (Radio transmission later confirmed this was 7:56 pm.)

Cst. Brewer located the camp site and noted several stumps from cut trees, freshly stacked wood and a tent. Cst. Brewer found a male sleeping in the tent, woke him and a discussion ensued. Mr. Lewis dressed and exited the tent. Cst. Brewer estimated Mr. Lewis to be 40 years old, 5'8" and 160lbs.

When asked for his name, Mr. Lewis provided the name of Don Lee. Cst. Brewer in due course, questioned Mr. Lewis about the motorcycle. Mr. Lewis acknowledged that he owned the motor bike for awhile, indicating he had purchased the bike from someone who owned a motorcycle shop in Williams Lake. Mr. Lewis appeared very nervous, stammered and Cst. Brewer believed he was being misled about the ownership of the motorcycle. Cst. Brewer was going to detain and arrest him until his investigation was complete. Cst. Brewer confronted Mr. Lewis about the ownership of the bike. Cst. Brewer told Mr. Lewis a couple of times to stay seated when Mr. Lewis stood up. Mr. Lewis did not comply with Cst. Brewer's instructions and ran away. Cst. Brewer chased after him, yelling loudly and clearly to "stop, police."

Cst. Brewer grabbed onto Mr. Lewis's shoulder and was backhanded by Mr. Lewis. A violent struggle then occurred between Cst. Brewer and Mr. Lewis. The two continued to wrestle, and they eventually fell to the ground with a lot of pushing, scratching and mauling. Cst. Brewer yelled at Mr. Lewis to stop but he did not. Cst. Brewer attempted to utilize his defensive baton, however Mr. Lewis grabbed onto Cst. Brewer's arm. Eventually Cst. Brewer was able to deploy two baton strikes to Mr. Lewis before Mr. Lewis kicked Cst. Brewer in the arm, causing Cst. Brewer to lose grasp of the baton. The baton flew 6 feet away and Mr. Lewis began to run in the direction of the baton. Cst. Brewer again grabbed Mr. Lewis and the fight continued on the ground. Mr. Lewis threatened to kill Cst. Brewer twice. Cst. Brewer then discharged his OC spray towards Mr. Lewis' facial area, emptying the cannister which Cst. Brewer believed had been approximately 1/4 to 1/3 full. Mr. Lewis gouged at Cst. Brewer's eye causing him significant pain. As they continued to struggle, Mr. Lewis grabbed onto the handle of Cst. Brewer's pistol, undoing the top safety snap securing Cst. Brewer's gun in his duty belt. At the same time Mr. Lewis threatening to shoot and kill Cst. Brewer. Cst. Brewer stated he was becoming very tired at this point. Cst. Brewer drew his pistol while still lying on top of Mr. Lewis. Cst. Brewer knew no one was coming to help, stood up and repositioned. Cst. Brewer pointed his gun at Mr. Lewis, telling him to get down on the ground. Mr. Lewis charged at Cst. Brewer. Cst. Brewer did not want to shoot an unarmed man, but Cst. Brewer believed Mr. Lewis was going to kill him if he could. The struggle continued, with Mr. Lewis trying to gain control of Cst. Brewer's arm with the pistol in his hand. Cst. Brewer could see his right hand wavering and shaking, and he could feel his strength was almost gone. Cst. Brewer fired one shot into Mr. Lewis' body.

They continued to struggle with no apparent change in Mr. Lewis's strength even after he had been shot. Eventually Cst. Brewer was able to handcuff Mr. Lewis.

Cst. Brewer did call "10-33" on the radio (meaning police officer in need of immediate assistance) and requested an ambulance. Cst. Brewer believed that this transmission did not go through as there was no acknowledgment of his call. (Radio transmissions show this to be shortly after 8:11pm.)

Cst. Brewer tried to lead Mr. Lewis up the steep hill, but the bush was thick, the ground uneven, and they fell down. Cst Brewer was unsuccessful in putting Mr. Lewis in a

fireman's carry and worried from an officer safety perspective, about leaving Mr. Lewis unattended yet knew he needed to go get help. To assist in locating Mr. Lewis upon his return Cst. Brewer handcuffed him to a tree. It seemed to Cst. Brewer that Mr. Lewis was losing energy fast.

When Cst. Brewer arrived at his vehicle he again called "10-33" (on the car radio) and requested an ambulance "priority one" advising the OCC that a prisoner had been shot and was secured to a tree. Cst. Brewer gave directions to his location, informed the OCC he had to return to his prisoner, and that he did not have radio communication outside his police vehicle. (Later confirmed the time was 8:20 pm.) When Cst. Brewer returned Mr. Lewis appeared unconscious.

Cst. Brewer once again had to leave Mr. Lewis to assist the responding units to find the correct location. Shortly after the arrival of backup members, Csts. Brewer, Black and Hacker attended to Mr. Lewis, performing CPR. (Radio transmission confirm their arrival at approximately 8:40 pm) The ambulance (EHS) arrived (8:54 pm), examined Mr. Lewis and determined he was deceased.

Cst Brewer told other members that he had used every tool on his belt and had feared for his life.

At 8:11 pm the other police officers who were working at the time, were advised that the OCC had tried, unsuccessfully, to raise Cst. Brewer on the radio. Members then headed towards Cst. Brewer's location and could hear the police radio toning with no voice communication due to the poor radio reception. Additional members, together with Police Dog Services and EHS attended the location of Cst. Brewer.

Cst. Hacker, who was also the Acting Watch Commander, responded to the scene and ensured Detachment management was advised. Forensic Identification Section, General Investigation Section and North District Major Crime Section were called to investigate.

It was evident to the attending members that Cst. Brewer had been involved in a violent struggle. He was injured in the eye area, his hand was swollen, and his uniform was ripped. The medical staff who later examined Cst. Brewer detailed his injuries as having a broken hand and bruising and scrapes to his forearms, scalp and legs. His left eye had several abrasions and was bruised.

RCMP policy states in part the following with respect to In-Custody Deaths:

*If a prisoner or person being arrested or in RCMP custody/care, is seriously injured or dies, an independent investigation will be conducted immediately. The investigation into the death of Donald Lewis was assigned to North District Major Crime, based out of Prince George.*

*The supervisor will, if a person dies in RCMP custody, or in a RCMP detention facility, secure the scene, ensure an NCO/delegate attends the scene, immediately inform the next level chain of command, and he/she will inform the Criminal Operations*

*Officer/delegate. Cst. Hacker ensured this was done and C/Supt. Barry Clark, the North District Commander, was informed.*

With respect to investigation of the scene:

On August 14<sup>th</sup>, a Forensic Identification specialist attended and commenced his scene examination. The scene was thoroughly searched by investigators. On August 15<sup>th</sup>, 2006, Search and Rescue conducted a hands and knees search of the area to assist in locating any additional exhibits. The scene examination was completed on the evening of August 16<sup>th</sup>, 2006.

On August 14<sup>th</sup>, in attempting to identify the deceased, the investigators surfaced a possible name - Donald Lewis. The investigators and Forensic Identification Services confirmed the deceased's identity as Mr. Donald Lewis.

Neighborhood enquiries did not reveal any significant findings with respect to Mr. Lewis. He had been seen around the area since the beginning of August 2006, suggesting he was from 150 Mile House or Lac La Hache.

Dr. McNaughton, the pathologist conducting the autopsy, advised the cause of death was a gunshot wound which caused Mr. Lewis to bleed to death internally. Subsequent toxicology results informed that Mr. Lewis had no drugs or alcohol in his system.

During the course of the investigation, several exhibits were seized and examined forensically. The follow up results are of particular note, as it corroborates Cst. Brewer's version that Mr. Lewis attempted to pull the pistol from it's holster.

Donald Lewis' DNA was located on Cst. Brewer's pistol magazine.

DNA profiles of up to three persons were developed from Cst. Brewer's service pistol and both Cst. Brewer and Donald Lewis were possible contributors.

A mixed DNA profile (of two persons) was developed on the exterior and front snap of Cst. Brewer's duty belt's holster, and both Cst. Brewer and Donald Lewis were possible contributors. Another DNA profile of mixed origin was developed on the top snap and surrounding area on the holster, and neither Cst. Brewer nor Donald Lewis could be excluded.

A DNA profile of mixed origin (of at least three persons) was developed from the butt end of Cst. Brewer's baton, and neither Cst. Brewer nor Donald Lewis could be excluded

Cpl. Nieman, an RCMP Use of Force Expert, reviewed the investigation and provided the following opinion on the use of force by Cst. Brewer:

Cst. Brewer was responding to the behavior of Donald Lewis as these events transpired, and he responded appropriately. It was clear that Cst. Brewer was involved in a violent

encounter and as a result of the verbal and physical actions of Lewis could not reasonably be expected to come to any other conclusion other than he was in a situation where there was a very real threat of death or grievous bodily harm to himself. He delayed his final response to this threat as long as he possibly could and in fact showed considerable restraint, consequently putting himself at risk until he was finally forced to respond with lethal force. His statement clearly indicates he did not want to take this course of action but felt he had no other recourse and his efforts to assist Lewis after he fired the shot shows concern for Lewis' well being. Cst. Brewer told Cst. Adams that he had been in a lot of fights, but this one was different and that he, Cst. Brewer, thought he was going to die. Cst. Brewer stated that the deceased had gotten the snaps for his gun undone, and that the deceased was trying to kill him. Cst. Brewer advised that he felt if he had not killed the deceased, that he himself would be dead at the present time.

In the absence of additional and substantiated information, it was clear based on the risk assessment of Cst. Brewer, that this incident escalated into a situation where he felt there was a threat of death or grievous bodily harm to himself. As a result he was authorized by the *Criminal Code* to use lethal force to protect himself. He used the only intervention option available to him at that time, and as a result, his actions are aligned with the principles of the RCMP Incident Management Intervention Model (IMIM), RCMP Use of Force policy and the Use of Force authority granted to police officers under the *Criminal Code of Canada*.

In early April, 2007, the investigation was subsequently forwarded to the Attorney General's office, and the Director of Legal Services - Geoffrey Gaul, reviewed the matter and recommended no charges with respect to the police shooting death of Donald Lewis. Mr. Gaul provided the following analysis July 20<sup>th</sup>, 2007:

"In my opinion, based upon the available evidence, there is no conduct on the part of Cst. Brewer that calls for or warrants proceeding with any charge in relation to the shooting death of Mr. Lewis. There is only one witness to the events that preceded the shooting and that is Cst. Brewer himself. Generally Cst. Brewer's evidence is either "stand alone" (ie. the only evidence we have) or corroborated by some other evidence and is not contradicted in any material way. There is nothing to suggest that Cst. Brewer has fabricated his story nor is there any reason to believe that his evidence would not be accepted or at the very least lead to a reasonable doubt were he to testify at a trial."

"In my view Cst. Brewer was justified in defending himself in the manner in which he did. Moreover, the escalating use of force resulting in Cst. Brewer eventually discharging his firearm was not excessive in the circumstances. In light of these conclusions, the Crown will not be charging Cst. Brewer in relation to the shooting death of Mr. Lewis."

A Coroner's Inquest in this matter took place between June 2<sup>nd</sup> and 9<sup>th</sup>, 2008. Pursuant to Section 38 of the *Coroner's Act*, the following recommendations were forwarded to the Chief Coroner of the Province of British Columbia for distribution to the appropriate agency, the RCMP - Deputy Commissioner Gary Bass:

When responding to an area of questionable radio reception, all police vehicles should be equipped with radio repeaters. Availability of hand held communication is critical in rural areas. If possible in emergency situations, OCC should monitor radio traffic to direct officers responding to a call.

- Amend policies to allow for a second RCMP officer to attend when responding to reports from an area where back-up is not immediately available.
- When checking the registered owner of a vehicle, cross checks should be completed to identify any possible persons of “interest” to the RCMP.
- All RCMP officers should be trained in the use of, and be issued, conductive energy weapons (Tasers).
- To ensure an accurate record of all events, all officers should carry and use an audio recorder when entering into an active investigation.

Since this incident occurred there have been changes in RCMP Policy with respect to backup as well as the investigation of Use of Force incidents wherein there is a loss of life or grievous bodily harm.

Effective December 19<sup>th</sup>, 2007, the following types of occurrences identified in the RCMP policy require a multiple member response:

Calls of violence, or where violence is anticipated;

Domestic disputes;

An occurrence involving the use, display or threatened use of a weapon;

An occurrence involving a subject posing a threat to self or others;

**Areas where communications are known to be deficient;**

Any occurrence or situation where the member believes a multiple member response is required based on his/her risk assessment.

RCMP members are always required to balance the requirements of policy with the reality of an incident in progress and the need for immediate response.

The new policy does not preclude a member from taking action prior to arrival of assistance based on his/her risk assessment and the IMIM - for example, imminent risk of grievous bodily harm or death present during a domestic dispute. Indeed, there are many occasions that will require immediate action prior to there being back up.

On April 1<sup>st</sup>, 2007, the RCMP in “E” Division and the Commission for Public Complaints (CPC) commenced the Independent Observer Pilot Project in “E” Division. This liaison provided the CPC with immediate and ongoing access to any RCMP investigations into member involved “Use of Force” incidents wherein there is loss of life or grievous bodily harm. The early monitoring of these investigations by the CPC is a proactive approach to ensure the process of impartiality and transparency to high profile RCMP investigations.

## **Conclusion:**

The investigation into your complaint that the member of the RCMP Williams Lake Detachment who shot Donald LEWIS on August 13<sup>th</sup>, 2006, during a response to a report of illegal camping ... used excessive force in responding to this call is **NOT SUPPORTED**.

There was a thorough and complete investigation conducted by our North District Major Crimes Section. They utilized the principles of Major Case Management. While there were no independent witnesses, Cst. Brewer’s version of what transpired is consistent with the examination of the scene, the evidence found at the autopsy and the injuries to Cst. Brewer.

Cst. Brewer was engaged in the proper and legal execution of his duties, during which a violent confrontation occurred between Mr. Lewis and Cst. Brewer. While the initial complaint was of a suspicious person trespassing on private property, as the investigation progressed other potential offences surfaced. During Cst. Brewer’s investigation, Donald Lewis obstructed Cst. Brewer by providing false information. It was when Cst. Brewer challenged Mr. Lewis on the inconsistencies of the information, that Mr. Lewis became agitated and attempted to flee Cst. Brewer. Cst. Brewer pursued Mr. Lewis and Mr. Lewis violently resisted arrest, threatened to kill Cst. Brewer and demonstrated the ability, means and intent to cause death or grievous bodily harm to Cst. Brewer. Cst. Brewer faced a life threatening situation and his only option at the time was to use his pistol in order to preserve his life. Cst. Brewer did not know of Donald Lewis prior to this incident.

Mr. Lewis had a history of violence against police in Canada and the United States. He came to the attention of police in these various situations because of his own actions.

The entire investigation was reviewed by the Department of the Attorney General of British Columbia, and they found Cst. Brewer’s actions were justified as stated earlier in my letter.

I agree with the findings of the Attorney General’s office, that Cst. Brewer was justified in the amount of force used when he shot and killed Mr. Lewis based on a reasonable fear of death or grievous bodily harm at the hands of Mr. Lewis.

There are no victors in situations where the police are put into a position of having to use deadly force against individuals. The families of the person killed are most certainly affected, as well as

the police and the public. When such incidents occur, it is vitally important that police fully account for their actions and a thorough and impartial investigation is conducted. In this case, the investigation was conducted by competent investigators in an impartial manner following established major case management principles. I am confident that the investigation will withstand the closest public scrutiny.

Please be advised that, pursuant to Section 45.4 of the *RCMP Act*, I am notifying you that the investigation into your complaint has now been concluded. If you are not satisfied with the manner in which your complaint has been addressed by the RCMP, you may request a review by the Commission for Public Complaints Against the RCMP by corresponding with them at the following address:

Commission for Public Complaints Against the RCMP  
Bag Service 1722, Station B  
Ottawa, ON  
K1P 0B3

Tel: 1-800-267-6637  
Fax: 1-613-952-8045

Yours truly,



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