



**Office of the Attorney General
Cabinet du procureur général**

**Public Prosecutions Services
Services des poursuites publiques**

**Review of the report from the Bureau des Enquêtes indépendantes du Québec (BEI) of its investigation
following the death of Rodney Levi and Legal Opinion**

January 26, 2021

Fredericton, NB

On December 18, 2020, Public Prosecution Services of New Brunswick (PPS) received from the Bureau des Enquêtes indépendantes du Québec (BEI) the result of their investigation following the death of Mr. Rodney Levi (d.o.b. 1971-10-15) which happened at [REDACTED] Route 425 (Boom Road), near Sunny Corner, in New Brunswick. Mr. Levi was shot and died following a Royal Canadian Mounted Police (RCMP) intervention that took place at the aforementioned address on June 12, 2020, in the early evening. Since RCMP members were involved in the incident, an independent investigative agency was retained to investigate the event, namely the BEI. PPS must now determine, according to its policies and the law, if criminal charges are warranted against the peace officers involved in this shooting.

The evidence gathered by the BEI consists mainly of statements taken from the actual witnesses to the event, a short video taken by one of the witnesses that shows part of the actual event, statements from other material witnesses as well as expert reports, like the final post mortem report, a toxicology report as well as others. The file also contains the investigative notes of the BEI investigators.

The statements obtained from the actual witnesses to the event are basically all in agreement as to what happened and the 38 second video seized by the BEI confirms the witnesses' versions of this event. This writer intends to briefly summarize what exactly happened and then, look in the details of each witness's version.

In this document, I will refer to the two officers involved as officer "A" and officer "B". As for the witnesses, I will refer to them as "Witness 1", "Witness 2", "Witness 3", etc.

On June 12, 2020, late afternoon, the victim Rodney Levi asked an acquaintance, Witness 1, to give him a ride on his side-by-side. Mr. Levi asked Witness 1 to "drive him somewhere". Witness 1 agreed and they ended up at the residence of Witness 2, [REDACTED] Route 425 (Boom Road), near Sunny Corner, in New Brunswick. This address is only a few kilometers away from Mr. Levi's place of residence in Metepenagiag.

Both Mr. Levi and Witness 1 arrived at Witness 2's residence around 5:00 p.m. Mr. Levi wanted to discuss with Witness 2 but, according to all witnesses at the residence, Mr. Levi's behaviour was strange and he looked like he might have been under the influence of something. Nobody saw him drink any alcohol but nevertheless, his behaviour did not seem normal. They describe his behaviour as being erratic and edgy. He kept going in and out of Witness 2's residence and kept saying he was depressive. At this point, Witness 2 and Witness 3 asked both Mr. Levi and Witness 1 if they wanted to stay for dinner since they were having a BBQ outside. The two of them agreed.

While the meal was being prepared, Mr. Levi kept going in and out of the house and at one point, Witness 5, who lives at [REDACTED] Route 425 with Witness 2 and his family, saw that Mr. Levi had taken two big knives from a "knife block" in the kitchen. Witness 5 yelled, "knife, knife, he's got a knife". Mr. Levi had the knives in his hand but put them in the front pocket of his sweater, a red hoodie he was wearing that day.

People present tried to convince Mr. Levi to let go of the knives, but he kept refusing, even saying that they were his, though it was clearly not the case. Mr. Levi was not threatening anybody directly with the knives but since he was refusing to give them back, that his behavior was strange and erratic and that he looked like he was under the influence, Witness 2 asked Witness 3 to get into the house, lock the door and call 911. Unbeknownst to Witness 2, Witness 4, who was also present, had arrived at the same conclusion and also called 911, not knowing that Witness 3 had already done so.

The first RCMP officer, Officer A, arrived on scene around 19:16. When he showed up, Mr. Levi was on the back patio attached to the residence. The evidence shows that Officer A approached Mr. Levi calmly and engaged in a conversation with him, trying to convince him to relinquish the knives. Mr. Levi was refusing but was also saying he wanted an ambulance since he was not feeling well. Officer A agreed, also noting that Mr. Levi's behavior was not normal. At this point, Officer A believed that Mr. Levi would need to be apprehended under the *Mental Health Act* and the ambulance was called.

While waiting for the ambulance, Officer A was still trying to convince Mr. Levi to drop the knives. That is when a second RCMP officer, officer B, also arrived on scene. Both officers were with Mr. Levi on the house's back patio. Civilian witnesses were also present on the patio.

At this point Mr. Levi had the kitchen knives in the front pocket of his hoodie and the officers were calmly trying to convince him to give them back. He kept refusing and at one point, took them out of the pocket and started to waive them around. Both officers were at a distance of between four to six feet away from Mr. Levi, on the patio where, I repeat, civilians were also present.

The officers kept asking Mr. Levi to give back the knives, without success. That's when Officer B took his taser gun out of his holster and repeated his command to Mr. Levi to drop the knives which, at this point, Mr. Levi was holding in each of his hands. Mr. Levi refused and Officer B shot him with his taser. This taser shot did not seem to have much effect on Mr. Levi and that's when he said, according to witnesses, something like, "You'll have to put a bullet in me". Officer B shot Mr. Levi a second time with his taser and this time, it had some effect. Mr. Levi started jumping around but did not let go of the knives. A third taser shot was administered by officer B. Again, it had its effect and Mr. Levi dropped one of the knives. However, he immediately picked it up and was holding both knives by their handles, one in each hand, parallel to the ground and pointing them towards Officer A who was standing a mere four to six feet away. That's when, according to witnesses, Mr. Levi lunged toward Officer A who then, using his firearm, shot Mr. Levi twice. The victim fell to the floor and even though first aid measures was performed, when the first paramedic arrived on scene he could find no pulse on Mr. Levi. The victim was rushed to the hospital where he was pronounced dead soon after.

Each statement by each witness was carefully reviewed by this writer and I intend to summarize them all, as best as possible, starting with the one given by Witness 1.

1. Statement of Witness 1

Witness 1, 21 years old at the time of the incident, was an acquaintance of Mr. Levi. One June 12, 2020 around 5:00 p.m. he was home when Mr. Levi showed up and asked to go on a drive with Witness 1 on his side-by-side ATV. Witness 1 accepted and they went for a drive, ending up at [REDACTED] Route 425, Witnesses 2 and 3's residence. Witness 1 says that Mr. Levi was not carrying anything with him and that he did not notice anything particular at that point. Upon arrival at said address, Mr. Levi went into the house and asked Witness 1 to wait for him. Witness 1 noticed that other people were present outside, but most were unknown to him. They nevertheless asked him to join them, which he did. After roughly 20 minutes, Mr. Levi got out of the residence, went to Witness 1 and started to tell him that he was depressed and wanted to leave. That's when Witness 2, also noting that Mr. Levi did not look well, asked both Mr. Levi and Witness 1 if they wanted to join them for dinner. Both accepted. During the dinner preparations, Witness 1 noticed that Mr. Levi went into the house for what Witness 1 thought was to use the bathroom. However, a few minutes later he heard who he thought was Witness 4 yell, "knife, he has knives", meaning Mr. Levi had knives. When Mr. Levi got out of the house, Witness 1 states that "he was changed". Witness 1 believes that Mr. Levi had taken the knives from the Witnesses 2 and 3's residence since he did not have any of those when he drove him there. Mr. Levi was standing on the patio, with the knives and was saying he was depressed. Witness 1 says that he tried to convince Mr. Levi to drop the knives, telling him that the Witnesses 2 and 3 had been really nice to them, invited them to dinner and that this was not something he should be doing. Witness 1 was not successful. At one point he noticed that Witness 4 had called 911 and he tried once more to convince Mr. Levi to give back the knives but to no avail.

Witness 1 then states that he saw "the first officer", i.e. Officer A, arrived on scene and the officer asked Mr. Levi something like, "Hey Rodney, what's going on?" At this point, the situation was relatively calm and the officer was trying to convince Mr. Levi to let go of the knives. Mr. Levi was on the patio and also present were Witnesses 1, 2 and 5. Officer A went up on the patio also. A second RCMP officer arrived (officer B) and at this point, both officers were asking Mr. Levi to take his hands out of his hoodie jacket's pocket, where clearly the knives were hidden.

The second officer (officer B) also went on the patio and kept talking to Mr. Levi, asking him to take his hands out of his hoodie's pocket. Mr. Levi did and had cigarettes in his hands. The officers told Mr. Levi that if he kept being uncooperative, they would have no choice but to apprehend him. That's when, according to Witness 1, Mr. Levi put his hands back in his pocket, where the knives were, and the situation became more tense. Officer B took out his taser gun since Mr. Levi had put his hands back in his hoodie's pocket.

Witness 1 says that he did not see when Mr. Levi ended up taking the knives out of his hoodie's pocket but he clearly saw Officer B used his taser gun on Mr. Levi. According to Witness 1, the first taser shot did not seem to work. The second shot did and that's when Mr. Levi would have dropped one of the knives but managed to pick it up back immediately. Witness 1 states that Mr. Levi was at this point holding both knives, one in each hand, at hip level and blades forward. That's when he would have been hit by a third taser shot. Witness 1 states that after this third taser shot, Mr. Levi looked "shocked" and made a step towards Officer A who was only a few feet away. That's when Officer A shot Mr. Levi twice with his firearm and Mr. Levi went down. While all of this was happening, Witness 1 was on the patio, a mere five to six feet away from the scene.

2. Statement of Witness 2

Witness 2, Witness 3, Witness 4 and Witness 5 all live all live at [REDACTED] Route 425, near Sunny Corner). Witness 2 works in the building next door to the residence.

Witness 2 states that he knew Rodney Levi since Mr. Levi was an occasional attendee at Witness' 2 place of worship. Witness 2 also states that it was not unusual for Mr. Levi to drop by his residence, unannounced, so he could discuss his personal problems. He mentions that the last time he had seen Rodney Levi before June 12, 2020 was during the last Christmas holiday season. He says that during that visit, Mr. Levi was completely "paranoid", under the influence of drugs and kept saying that some people were out to get him.

Like mentioned above, Witness 2 states that the next time he saw Mr. Levi was on June 12, 2020. Around 5:00 p.m. that afternoon, Mr. Levi arrived unannounced, as it was his practice, at the Witness 2's residence. He was accompanied by a young man he did not know but who introduced himself as (Witness 1).

Upon their arrival, Mr. Levi indicated that he wanted to speak with him. Witness 2 proposed to go for a walk, but Mr. Levi refused and said that he wanted to stay on the patio. Mr. Levi was agitated, and Witness 2 strongly suspected that he was under the influence of drugs. He was not acting normally. Mr. Levi kept going in and out of the house which made Witness 2 uncomfortable considering his state of mind. According to Witness 2, Mr. Levi was showing signs of what he describes as paranoia.

The presence of Mr. Levi was making Witness 2 uncomfortable since it was now around 5:00 p.m. and his family (minus his daughter) was all there. He offered to Mr. Levi to talk to him, to pray together and hoping that he would leave soon. He states that he did not trust Mr. Levi that afternoon, because of his out-of-ordinary behavior and he was worried about his family.

However, Mr. Levi did not show any signs of wanting to leave and that's when Witness 2 decided to invite him for dinner, as well as Witness 1. He states that he wanted the dinner to be held outside, as he was not trusting Mr. Levi to be inside his house.

During the meal preparation, Mr. Levi kept going in the house and each time, Witness 2 had to go into the house and bring Mr. Levi back outside on the patio. It's during that time frame that Witness 4 and his friend Witness 5 came home from work. At this point, Witness 2 describes Mr. Levi as unstable, nervous and constantly moving around on the patio, but not threatening.

Not long after Witnesses 4 and 5 arrival, Witness 2 states that Mr. Levi managed one more time to get inside the house and that's when he heard either Witness 4 or 5 yell, "knife, knife, he's got a knife" and while he

states that he did not see Mr. Levi grab the knives, Witness 2 assumed that they were kitchen knives that were kept in a “block” in the kitchen, near the microwave oven. He describes these knives as being “a butcher knife” and a long “slicing knife” with an about 10-inch blade on each.

That’s when he tried to calm the situation down and calmly asked Mr. Levi to give the knives back. He was worried that Mr. Levi was going to injure himself or one of his family members. At this point, he describes Mr. Levi as being “confused” but not looking for a fight. Witness 2’s wife, Witness 3, was also asking Mr. Levi for the knives, saying that she needed them to prepare the meal. She asked him to drop them or, if he insisted in keeping them, to leave with them. Witness 1 joined them and asked Mr. Levi to let go of the knives and that they should leave.

While not expressly threatening anyone with the knives, Witness 2 states that Mr. Levi was holding both knives in his hands and was swinging them around erratically. Everybody on the patio was keeping their distance from Mr. Levi, not knowing what he was going to do. He kept asking Mr. Levi to put the knives down and at one point, he did comply. However, Mr. Levi put his feet on the knives and kept saying he wanted the knives, that he needed them. He was adamant about keeping them with him. Mr. Levi then picked the knives up again and kept them in his hands. That’s when Witness 2 told his wife to go back inside the house and to call the police, discretely. While Witness 3 went into the house, Witness 2 and Witness 5 stayed on the patio with Mr. Levi. That’s when Witness 2 noticed that Witness 4 had gone to the garage to also call the “911” service.

Witness 2 states that it took about 10 minutes for the first officer, Officer A, who was known to him, to show up at the residence. Upon arrival, he states he saw the officer call for back up almost immediately. The officer also called for an ambulance. Witness 2 mentions that at this point, Officer A was calm and talking softly to Mr. Levi, asking him to let go of the knives. Mr. Levi was answering back that he needed an ambulance and, according to Witness 2, mentioned that at least three times. Officer A then called again for an ambulance.

Officer A went on the patio where Witnesses 2, 1 and 5 were also present. According to Witness 2, the officer was about six feet away from Mr. Levi. He states he heard the officer ask Mr. Levi if he wanted to injure himself and Mr. Levi answered in the affirmative, that he had a suicide plan and that he might use the knives. The officer then told Mr. Levi that he would have to intervene under the *Mental Health Act*. Mr. Levi seemed to understand what that meant and kept asking for an ambulance.

It’s at this point that the second officer, Officer B showed up. Officer A moved a bit on the patio and was now standing with his back to the house, roughly six feet away from Mr. Levi, on the same level, while Officer B took positioned himself on the other level (there are three steps between the levels), also at a distance of about six feet from Mr. Levi. Officer B would have then addressed Mr. Levi by his name saying something like, “Hey Rodney, nice to see you back, it’s been a while” and that it would be really helpful if he would be able to give the knives back and put his hands on his head. At this point, according to Witness 2, Mr. Levi had his hands in his hoodie’s pocket, where the knives were.

Officer B kept asking Mr. Levi to put his hands on his head and that he would retrieve the knives. However, Mr. Levi was saying “relax” but kept his hands in his pocket. Witness 2 states that he invited Mr. Levi to pray while waiting for the ambulance and that he should give the knives back. Mr. Levi refused, saying he needed the knives and kept asking for an ambulance. That’s when Officer B told Mr. Levi that if he was cooperative, he would be able to sit in the air-conditioned police cruiser while waiting for the ambulance but that he needed the knives first.

According to Witness 2, that’s when Mr. Levi put his hands back in his pocket, and took the knives out, one in each hand. He states that this is when Officer B took out his taser gun but kept it pointed to the ground. Officer A took out his firearm, which he kept also pointed to the ground. Witness 2 states that the situation was now looking dangerous and he moved a bit on the patio to get out of the way.

Officer B then yelled at Mr. Levi to drop the knives but he refused. According to Witness 2, that’s when Officer A asked his partner, at least twice, something like, “Am I really going to have to do this?” Officer B kept asking Mr. Levi to show his hands but Mr. Levi became more and more agitated and was refusing to comply.

At one point, Mr. Levi made a move, Officer B yelled at him not to do that and to show his hands again. Mr. Levi refused and that's when Officer B shot him with his taser gun. Witness 2 states that it did not seem to have any effect on Mr. Levi who then started laughing and said, according to Witness 2, "You're gonna have to put a bullet in me". Officer B shot Mr. Levi a second time with the taser gun and this time it had an effect. Mr. Levi dropped one of the knives while grimacing but picked it up immediately. He was, at this point, holding a knife in each hand and that's when Officer B shot him a third time with the taser gun. Mr. Levi reacted again by grimacing and, according to Witness 2, looked like he had "stepped on a hornet's nest". He was waving the knives around, kept swearing and looked really angry. Witness 2 thought at that moment that he might even injure himself with the knives but that's when he saw Mr. Levi "lunge" towards Officer A with a knife in each hand, pointing towards the officer who still had his back to the house with nowhere to go. That's when he saw Officer A shoot at Mr. Levi twice in the chest area. Witness 2 states that at this point, Mr. Levi was at a distance of plus or minus five feet from Officer A

Upon being shot, Mr. Levi immediately fell on the floor. Witness 2 heard the officers calling on their radio "shots fired, shots fired" and requesting, again, an ambulance that showed up later. He states the officers immediately attended to Mr. Levi, trying to help him by putting pressure on the wounds and performing first aid measures. He states that he helped the officers in those maneuvers. The ambulance finally arrived, Mr. Levi was put in it and it drove away.

3. Statement of Witness 3

Witness 3 is the wife of Witness 2 and lives at the same address as her husband. She states that on June 12, 2020, around 5:00 p.m., she was sitting on her balcony when Rodney Levi showed up, without any notice. She states that in her opinion, Mr. Levi was intoxicated even though when asked about it, he denied it. Mr. Levi mentioned that he wanted to speak to her husband, Witness 2, who works for an institution which is next door to the residence. This was not the first time Mr. Levi showed up at their place looking for her husband and this time, he was accompanied by a young man she did not know but who introduced himself as Witness 1.

Upon Mr. Levi's arrival, her husband asked him to go for a walk, but Mr. Levi refused, preferring to stay at the house, stating that he was tired and hungry. That's when her husband invited both gentlemen for dinner.

While she was preparing dinner, she states that she was uneasy about Mr. Levi's presence since, in her opinion, he was clearly under the influence of something. She did not want him in the house and kept telling him that he should get outside, using the COVID-19 situation as an excuse. However, Mr. Levi kept coming in and out of the house and she did not want to be left alone with him. During the meal, she states that Mr. Levi kept saying that he was depressive and that he wanted to move to Alberta.

At one point, Mr. Levi went back into the house and Witness 4 and his friend, Witness 5, followed him because they did not trust him. That is when Witness 5 came back outside, yelling that Mr. Levi had a knife. Mr. Levi also came outside, on the patio, followed by Witness 4. She states that she could see the knives poking out of Mr. Levi's hoodie pocket and she recognized them as hers when he took them out. She states that at this point herself, her husband and the children calmly and gently asked Mr. Levi for the knives but he flatly refused, telling them to leave him alone. She describes Mr. Levi's behavior at this point as "aggressive" even though he was not threatening anyone in particular.

Since Mr. Levi was not giving the knives back, her husband, Witness 2, told her to get in the house and call "911", which she immediately did. She estimates that maybe five minutes elapsed between the time she saw the knives in Mr. Levi's possession and her calling "911". She remained inside, anxious as to what was going on, when one of Witness 4's friends, Witness 6, showed up and she asked him to stay with her.

She states that at one point, she saw Mr. Levi take the knives and put them on the patio floor but he kept a foot on them. She also states that she saw the first officer, Officer A, an officer she knew, arriving on scene but that she did not see the knives out at that point. She also states that she saw the second officer arriving

and that both of them took their place on the patio, one on each level and that there was about three to four feet between them and Mr. Levi. She states that at this point, Mr. Levi had his hands in his hoodie's central front pocket, where the knives were. She was able to see all that because she was looking through the kitchen window with Witness 6 and Witness 4, who had come to join them. However, because the window was shut, she could not hear clearly what was being said on the patio.

She, however, states that at one point, the voices became louder and she believes the officers were telling Mr. Levi to drop his weapons and to show his hands. It's at this moment that she saw Officer B shoot at Mr. Levi with his taser gun, a shot that according to her did not seem to be successful. She saw Officer B shoot with his taser a second time and states that Mr. Levi nearly fell. She saw the officer shoot with his taser a third time, Mr. Levi nearly falling again but grabbing the second knife that she assumes he had let go of seconds before. She saw Mr. Levi going towards Officer A but at this point, she looked elsewhere for a moment and heard three sounds she describes as "pop, pop, pop" but she is not sure. When she looked back, she saw Mr. Levi fall on the floor. She then went out on the patio and saw that the officers were providing first aid measures to Mr. Levi. She states that she heard Officer B tell Officer A that he did what he had to do. The ambulance then arrived and the emergency personnel left with him.

4. Statement of Witness 4

Witness 4 is a close relative of Witness 2 and his wife, Witness 3, and lives with them on Boom Road. On June 12, 2020, he was at work and came back to his residence around 5:00 p.m. Upon arrival, he noticed the presence of Witness 1 whom he did not know. They introduced themselves to each other and went into the house where he saw his father' Witness 2 discussing with Rodney Levi in the living room. He knew who Mr. Levi was since Mr. Levi would show up at church from time to time.

At one point, everybody got out of the house and Mr. Levi was saying that him and Witness 1 should leave. However, he changed his mind saying he needed to speak to Witness 2. Witness 2 suggested a walk but Mr. Levi refused, saying he was hungry and thirsty. That's when Witness 2 invited both Mr. Levi and Witness 1 for dinner, which they accepted.

While Witness 3 was working on the supper, himself, Witness 5 and Witness 1 went to the store to get some beer, which they drank in the garage upon their return. Everybody then went on the patio to eat.

He states that he was wary of Mr. Levi who looked like he was under the influence of something. He mentions that after dinner, he saw Mr. Levi go into the house and decided to follow him, not trusting what he could do. That's when he saw that Mr. Levi had two knives that he took out of the front pocket of a red hoodie that he was wearing. At this point, Witness 5 who was with him, also saw the knives and yelled "knife, knife".

Everybody, including Mr. Levi, got out of the house and people were asking Mr. Levi to let go of the knives. He was refusing to do so and became, according to Witness 4, more aggressive, angry, perturbed, non-cooperating and "depressive". That's when Witness 2 told Mr. Levi to keep the knives but to leave. Mr. Levi refused.

That's when he heard Witness 2 tell Witness 3 to get inside the house, to lock the door and call 911. Witness 5 also told him (Witness 4) to go in the garage and call the police, which he did. According to Witness 4, Mr. Levi looked depressed and as someone who "wanted to die". Mr. Levi was nervous, chain smoking and kept asking for an ambulance.

While waiting for the police to show up, one of his friends, Witness 6, arrived on the premises. Witness 4 told Witness 6 to go inside the house and go see Witness 3. Witness 6 agreed and went to the kitchen to meet with Witness 3. Witness 4 states that the first police officer to show up at the residence, Officer A, arrived about ten minutes after the initial 911 call. He states that Officer A greeted Mr. Levi with words like, "Hey Rodney,

what's going on man? How're you doing today?" Witness 4 states that Mr. Levi did not seem surprised by the arrival of the officer. At this moment, Mr. Levi had two knives in his hands. That's when he (Witness 4) went inside to join Witness 3 and Witness 6 in the kitchen where they were watching what was going on on the patio.

He states that the second officer, Officer B arrived maybe five minutes after Officer A. He could not hear what was being said since the kitchen window was closed but both officers, Mr. Levi, Witness 2, Witness 5 and Witness 1 were all on the patio. At one point, the tone of voices went up and he could hear the officers asking Mr. Levi to drop the knives. He could see Mr. Levi holding both knives in his hands and waving them in an uncoordinated fashion.

He states that at this point, he saw Officer B shoot Mr. Levi with his taser gun. He saw Officer B shoot a second taser shot. Mr. Levi dropped one knife, stumbled, bent over and picked up the knife again almost immediately. He saw the third taser shot making contact with Mr. Levi who then, according to Witness 4's statement, "charged" towards Officer A. He heard two gun shots and estimates that at this time, Mr. Levi was maybe two to three feet away from Officer A.

5. Statement of Witness 5

Witness 5 is a young man who lives with Witnesses 2, 3 and 4's family. On June 12, 2020, he came back from work around 5:00 p.m. He states that maybe ten minutes after, Rodney Levi (who he knew) and Witness 1 (who he did not know) showed up at the residence on Boom Road. Witness 5 believes, based on his own experiences, that Mr. Levi was then under the influence of drugs.

Witness 5 states, like the other witnesses, that at one point Witness 2 invited both Mr. Levi and Witness 1 to stay for dinner. While they were eating, he noticed that Mr. Levi kept walking and was going in and out of the house. When Mr. Levi went in the house again, he decided to follow him since "he did not trust him". Once inside, he noticed that Mr. Levi had two kitchen knives that he suspects he took from the kitchen. He saw Mr. Levi get out of the house, with the knives in his hands and saw him put them in the front pocket of a red hoodie he was wearing. He heard Mr. Levi say the knives were his and that he was the one who brought them, which was not true.

Witness 1 would then have tried to calm Mr. Levi down. That's when Witness 5 told Witness 4 to call the police.

When the first officer arrived, Mr. Levi was on the patio, by the bannister. The officer, Officer A, was calm and asked Mr. Levi what was going on. He was, according to Witness 5's statement, trying to de-escalate the situation. Mr. Levi kept saying that he was depressive and was having a bad day. Everything was looking calm and that's when Mr. Levi asked several times for an ambulance. Witness 5 states that the officer agreed and called for an ambulance on the radio.

A second officer, officer B, arrived and both officers were talking to Mr. Levi. Witness 5 states that Officer A told Mr. Levi that he would need to apprehend him under the *Mental Health Act* for his own safety and offered to him to go sit in the police cruiser while waiting for the ambulance, but this to no avail. He states that at one point, he saw Officer B take his taser gun out and shoot at Mr. Levi but with no effect, even seeing Mr. Levi removing the taser plugs from his hoodie. He says he heard Mr. Levi say, "You're gonna have to put a bullet in me". He saw Mr. Levi being shot a second time with the taser gun while the officers were yelling at him to drop the knives which at this point Mr. Levi was holding in his hands. He states that Mr. Levi was very agitated and upon being shot a second time with the taser gun, dropped one knife that he picked back up immediately. Mr. Levi was then shot by Officer B with the taser a third time, at which point Witness 5 says that Mr. Levi "lunged" toward Officer A who was then only a few feet away on the patio, with his back towards the house. He says Officer A then shot Mr. Levi twice with his firearm and that Mr. Levi immediately fell on the floor. He also states that before shooting at Mr. Levi, Officer A did ask his colleague, "Do I have to do this", looking like

he really did not want to have to do that. When all of this was happening, Witness 5 states that he was only a few feet away from the scene.

6. Statement of Witness 6

Witness 6 is a friend of Witness 4 and Witness 5. On June 12, 2020, he showed up at Witnesses 2, 3, 4 and 5's residence while the situation was going on and the 911 service had already been called. Upon arrival, his friend Witness 4 told him to get in the house and go keep company to Witness 3. Witness 3 had taken refuge in the kitchen. That's what Witness 6 did, and, in his statement, he basically describes the same thing that the other witnesses are saying: He saw Mr. Levi with the knives out, he saw the officers trying to convince him to drop the knives, he saw the three taser shots, he heard the two gun shots and he saw Mr. Levi fall to the floor. What is interesting in Witness 6's testimony though is the fact that he filmed a good part of the event with his cell phone. I will get back to this evidence, that I have named "the Witness 6 video", down below.

7. Report of Officer A

In his report of the events, Officer A states that on June 12, 2020, around 19:10, he received a call from his dispatch about a man who would be armed with knives, taken from a residence. The suspect was Rodney Levi and the complainant Witness 3. He did not know Mr. Levi personally but was aware that Mr. Levi had had dealings with the police before. While in route to Witnesses 2, 3, 4 and 5's residence, he decided he might need back up and called for same. Officer B then told him that he would meet him at Witnesses 2, 3, 4 and 5's residence.

Because knives were involved, Officer A evaluated the risk as "high" and he was worried for the civilians present. He was familiar with the location and knew Witnesses 2, 3, 4 and 5 from previous dealings. Once he arrived, a few minutes later, he saw four people on the back patio, including a man wearing a red hoodie shirt, who was leaning on the bannister on the upper level of the patio. On the lower level, three steps down, he recognized Witnesses 2 and 5. He also noticed the presence of a third person, unknown to him, on the upper level (Witness 1). The fourth man was Rodney Levi, who he assumed was the subject of the complaint. Considering the situation, he decided to intervene even if his back up had not still arrived.

Officer A states that he believes the man wearing the red hoodie saw him arrive. He describes him as calm looking and smoking a cigarette. Officer A got out of his police cruiser, walked to the patio and climbed on the second step (out of three steps) going to the upper level while keeping a safe distance. He noticed Witness 2 tell Witness 3 to stay inside.

Witness 2 told Officer A that Rodney Levi, the one wearing the red hoodie, "was having a tough day". Officer A decided to engage Mr. Levi verbally by asking him what was going on. Levi answered that he was having a bad day and couldn't live like this anymore. He could see that Mr. Levi had something in his hoodie's front pocket but could not identify what it was. That's when he asked Mr. Levi where he would have taken the knives. Mr. Levi answered back that he found them by the side of the road and that he needed an ambulance. Officer A told Mr. Levi that one was on its way and would arrive shortly. Notwithstanding that, Officer A called again for an ambulance in front of Mr. Levi and told dispatch that it would probably end in a *Mental Health Act* apprehension. He then asked Mr. Levi if he wanted to hurt himself and Mr. Levi said that he was thinking about it. Officer A then told Mr. Levi that because of his answer, he would have to apprehend him and to give him the knives he knew he had. Mr. Levi did not comply. That's when Officer B arrived on scene and Mr. Levi repeated his request for an ambulance. Officer B confirmed that one was on the way. At this moment, Officer A saw Mr. Levi put one hand in his hoodie's pocket. He ordered him to take his hand out of his pocket but Mr. Levi did not comply. Officer B took his taser gun out and kept it on his side, pointed towards the ground. Mr. Levi then took his hand out of his pocket, holding a pack of cigarettes and lit one up.

Officer B then asked Mr. Levi to put his hands on his head so he would be able to retrieve the knives himself. Mr. Levi looked as if he was going to obey and Officer A took a step towards Mr. Levi. That is when Mr. Levi swiftly put his hands back in his hoodie's front pocket and pulled out two large knives. Officer A took out his firearm and told Witness 2 and Witness 5 to move and take cover. At this point, Officer B kept yelling at Mr. Levi to drop the knives but Mr. Levi was ignoring the commands.

Officer B then took his taser gun and shot at Mr. Levi with said gun, without much effect. That is when Mr. Levi yelled, "You're gonna have to put a bullet in me". Officer B took a second shot at Mr. Levi with his taser gun, this time more successfully but Mr. Levi was able to swipe the probes away. Officer B shot a third time with the taser gun and this time, Mr. Levi crunched up and dropped one of the knives. However, Mr. Levi again was able to get rid of the taser probes and picked up the knife almost immediately. He was at this point holding one knife in each hand, by their handles, and pointed them directly at Officer A, and looking very angry. Officer B yelled at his colleague by using Officer A's first name and Officer A states that's when he said to his colleague B "Do I have to?" wondering if there was any other option but to shoot Mr. Levi.

That is when Mr. Levi went toward Officer A aggressively and at this exact moment, Officer A realized that Mr. Levi was a "threat of death or grievous bodily harm" not only to him but also towards everybody else present on the patio. When Mr. Levi took a step towards Officer A, he was maybe three to five feet away and he felt he had no other option but to discharge his firearm. Mr. Levi was hit twice with bullets he fired, in the chest area or, like he describes it, "the body mass". Mr. Levi immediately fell to the ground, dropping the knives.

That is when Officer B yelled, "shots fired, shots fired" and it was clear Mr. Levi was no longer a threat. Both officers immediately started first aid measures and continued until emergency ambulance personnel arrived and Mr. Levi was put in an ambulance.

8. Statement of Officer B

Officer B's statement basically repeats what Officer A states in his report. Upon his arrival at Witnesses 2, 3, 4 and 5's residence, he confirms that he and Officer A tried many times to convince Mr. Levi to drop his knives but without success. He confirms that at one point, Mr. Levi took the knives out of his hoodie's pocket and was refusing to let them go. Officer B was then on the patio, with Officer A and three civilians. That is when he took his taser gun out for the second time. According to Officer B, Mr. Levi had at this point a strange look and took the knives out in what he described as a threatening way. That is when the officer decided to shoot Mr. Levi with his taser gun, trying to subdue him, for a total of three times, without the desired effect. After the third taser shot, Mr. Levi got rid of the taser probes that had make contact with him and was "enraged". Officer B yelled at his partner using his first name and what he saw was Mr. Levi lunging towards his colleague Officer A, who was only a few feet away from Mr. Levi, the blades of the knives in Officer A's direction. Officer A then used his firearm and shot the suspect twice and Mr. Levi immediately fell on the patio's floor. Officer B then yelled, "shots fired, shots fired" on his radio and proceeded to give first aid treatment to Mr. Levi. Officer A helped him, as well as Witness 2, until the ambulance personnel arrived on scene. Mr. Levi was then put in an ambulance and driven to the hospital where his death was pronounced, shortly after arrival.

9. The Witness 6 video

The video captured by witness 6 lasts only 37 seconds but confirms what the witnesses have stated in their statements. When it starts, you can see Officer B on the patio's upper level, aiming with his taser gun at Mr. Levi. At 00:03, Officer B is aiming at Mr. Levi who, in the estimation of this writer, stands maybe six feet away. Mr. Levi at this point has both knives in his hands, the knives pointing towards the ground. At 00:14, we can see the Officer B shooting his taser at Mr. Levi, who reacts with a lot of stepping around and flailing. At 00:19, you can see Mr. Levi being tasered a third time by the taser held by Officer B. Mr. Levi drops one of his knives to the ground but picks it up immediately. He now holds both knives, one in each hand, parallel to the ground

and aimed directly in Officer A's direction. Officer A does not appear on the screen. At 00:22, you can see Mr. Levi moving in the direction of where Officer A is standing, knives out and at 00:23, you can hear two shots being fired. At 00:26, you can see Mr. Levi on the floor, lying on his left side. The video ends with Officer B walking towards Mr. Levi.

10. Statement of Witness 7

Witness 7 is a close relative of Mr. Rodney Levi. While she was not an actual witness to the event of June 12, her statement is, in the opinion of this writer, quite important when comes the time to ascertain Rodney Levi's state of mind and intent on June 12.

According to Witness 7, Rodney Levi was living with her and her wife between June 9 and June 12, 2020. She states that she saw and talked with Mr. Levi on the 9th, 10th and 12th of June. She describes him during this period as being severely depressed. He kept talking about suicide and more specifically about "suicide by RCMP" and was wondering if he would go to Heaven. Witness 7 noted that Rodney was not talking about "suicide by cops" but specifically about "suicide by RCMP". She states that this is all he was talking about. Her exact words are "that's all he talked about, suicide by RCMP". She tried to talk him out of it, going as far as to tell him that Heaven's gates would be closed to him if he did anything like that. She told him point blank that she was not okay with his ideas of suicide by RCMP and told him so. But she also states that this was all Mr. Levi was talking about. According to her, Mr. Levi left her place in the afternoon of June 12. She never saw him after that.

11. The autopsy and toxicology reports

Not surprisingly, the autopsy report confirms that Mr. Levi died from gun shot wounds to the chest, with perforation of the right lung, a laceration of the heart's right ventricle and of the dome of the liver. As for the toxicology report, it confirmed the presence of chemical substances in Mr. Levi's body, notably traces of amphetamine and methamphetamine.

12. Summary of the evidence

It is this writer's conclusion, based on the evidence on hand, that on June 12, 2020, Rodney Levi was severely depressed. He had been talking about suicide with Witness 7 for days and more specifically about "suicide by RCMP".

As for the version of events as to what happened at the residence, it is basically unanimous:

- a) four civilian witnesses (Witnesses 2, 3, 4 and 5) all say that when they saw Mr. Levi first, he looked like he was under the influence of something;
- b) the civilian witnesses are all saying that Mr. Levi took knives from Witnesses 2 and 3's kitchen, was waiving them around, was refusing to let them go and that the situation was dangerous;
- c) the civilian witnesses are all saying that when the police showed up, the officers were calm and were trying to defuse the situation;
- d) the witnesses are all in agreement that the situation got worse when Mr. Levi kept refusing to surrender the knives and was waiving them around;

- e) the witnesses all agree that Officer B shot at Mr. Levi three times with his taser gun;
- f) the witnesses all agree that the first taser shot did not have any effect on Mr. Levi, with some witnesses saying that at this moment, Mr. Levi would have said something like “you’ll have to put a bullet in me” or words to that effect;
- g) the versions are different as to when Mr. Levi would have dropped a knife. Some say after the second taser shot, some say after the third. However, all witnesses are in agreement that after Mr. Levi dropped one of the knives, he picked it up back almost immediately;
- h) all witnesses are in agreement that after the last taser shot, Mr. Levi went in Officer A’s direction, with the knives pointing directly at him. Some describe his move as a “step”, other as “lunging” with one witness describing the move as a “charge”;
- i) all witnesses are in agreement that it is at this point that Officer A discharged his firearm while being only a few feet away from Mr. Levi and that the officer had his back to the house.

To summarize, on the fateful day, Mr. Levi went to Witnesses 2, 3, 4 and 5’s residence where he grabbed two large knives and refused to let them go. The RCMP, at the request of the residence’s inhabitants, was called and the officers who responded to the call tried to persuade him to put the knives down, but he refused. He was wielding the knives in a threatening manner. Officer B felt he had no choice but to use his taser gun against Mr. Levi, for a total of three times. The taser had no effect and at one point Mr. Levi said, “You’re gonna have to put a bullet in me”. According to several witnesses, Mr. Levi at one point went toward Officer A who seemed like he was agonizing at the idea of having to use his firearm against Mr. Levi. Officer A was heard by witnesses saying something like, “Do I really have to do this?” This writer concludes that when Mr. Levi lunged toward Officer A with both knives pointing in his direction, standing a mere four to six feet away, that Officer A had no other option but to use lethal force, to protect himself and the other people present.

13. Legal analysis

The question to be answered is whether or not the conduct of both officers on June 12, 2020 denotes a criminal act.

In order to recommend criminal charges against someone, PPS is bound by the law as well as its charging policy. This Policy can be found as Policy 11 of the Public Prosecution Operational Manual. This policy states:

“2.1 The Evidential Test

The Crown Prosecutor must be satisfied that there is evidence to provide a reasonable prospect of conviction against each alleged offender on each charge. Whether the evidence establishes a reasonable prospect of conviction is an objective determination the Crown Prosecutor makes by considering whether an impartial trier of fact properly directed in accordance with the law, is more likely than not to convict the accused on the offence charged based on the evidence available. In applying the evidential test, the Crown Prosecutor shall consider all material evidence. The Crown Prosecutor must consider and determine whether the evidence can be used and is reliable. The Crown Prosecutor must also consider what the defence case may consist of and how it is likely to affect the prosecution case.

The Crown Prosecutor must draw on his or her experience to evaluate how strong the case is likely to be when presented in Court.” (emphasis added).

As such, a prosecutor needs to decide “whether an impartial trier of fact properly directed in accordance with the law, is more likely than not to convict the accused charged based on the evidence available.”

It is clear in my opinion that Mr. Levi was the victim of homicide at the hands of Officer A. Section 222 of the Criminal Code defines homicide as follows:

222 (1) *A person commits homicide when, directly or indirectly, by any means, he causes the death of a human being.*

Kinds of homicide

(2) *Homicide is culpable or not culpable.*

Non culpable homicide

(3) *Homicide that is not culpable is not an offence.*

Culpable homicide

(4) *Culpable homicide is murder or manslaughter or infanticide.*

Idem

(5) *A person commits culpable homicide when he causes the death of a human being,*

(a) by means of an unlawful act;

(b) by criminal negligence;

(c) by causing that human being, by threats or fear of violence or by deception, to do anything that causes his death; or

(d) by wilfully frightening that human being, in the case of a child or sick person.

Exception

(6) *Notwithstanding anything in this section, a person does not commit homicide within the meaning of this Act by reason only that he causes the death of a human being by procuring, by false evidence, the conviction and death of that human being by sentence of the law.*

R.S., c. C-34, s. 205

But, as quoted above, not all homicides are culpable homicides. In the matter at hand, section 34 of the Criminal Code, re “Defence of person” and section 25, re “Protection of persons acting under authority” are applicable. Those sections read as follows:

“Defence — use or threat of force

34 (1) *A person is not guilty of an offence if*

(a) they believe on reasonable grounds that force is being used against them or another person or that a threat of force is being made against them or another person;

(b) the act that constitutes the offence is committed for the purpose of defending or protecting themselves or the other person from that use or threat of force; and

(c) the act committed is reasonable in the circumstances.

Factors

(2) *In determining whether the act committed is reasonable in the circumstances, the court shall consider the relevant circumstances of the person, the other parties and the act, including, but not limited to, the following factors:*

(a) the nature of the force or threat;

(b) the extent to which the use of force was imminent and whether there were other means available to respond to the potential use of force;

(c) *the person's role in the incident;*

(d) whether any party to the incident used or threatened to use a weapon;

(e) *the size, age, gender and physical capabilities of the parties to the incident;*

(f) *the nature, duration and history of any relationship between the parties to the incident, including any prior use or threat of force and the nature of that force or threat;*

(f.1) *any history of interaction or communication between the parties to the incident;*

(g) the nature and proportionality of the person's response to the use or threat of force; and

(h) *whether the act committed was in response to a use or threat of force that the person knew was lawful. (Emphasis added).*

No defence

(3) *Subsection (1) does not apply if the force is used or threatened by another person for the purpose of doing something that they are required or authorized by law to do in the administration or enforcement of the law, unless the person who commits the act that constitutes the offence believes on reasonable grounds that the other person is acting unlawfully.*

R.S., 1985, c. C-46, s. 341992, c. 1, s. 60(F)2012, c. 9, s. 2

Protection of persons acting under authority

25 (1) *Every one who is required or authorized by law to do anything in the administration or enforcement of the law*

(a) *as a private person,*

(b) *as a peace officer or public officer,*

(c) *in aid of a peace officer or public officer, or*

(d) *by virtue of his office,*

is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose. (...)

When not protected

(3) *Subject to subsections (4) and (5), a person is not justified for the purposes of subsection (1) in using force that is intended or is likely to cause death or grievous bodily harm unless the person believes on reasonable grounds that it is necessary for the self-preservation of the person or the preservation of any one under that person's protection from death or grievous bodily harm.* (Emphasis added).

It is this writer's opinion that on the tragic evening of June 12, 2020, Officer A did believe, on reasonable grounds, that force or a threat of force was being used against him by Mr. Levi and that he shot at Mr. Levi for "the purpose of defending or protecting" himself and others and that his actions were reasonable under the circumstances, circumstances which I would qualify as dire.

It is also this writer's opinion that, as per subsection 25(1) of the Criminal Code, that Officer A was justified in "doing what is required or authorized to do and in using as much force as is necessary for that purpose".

One should also keep in mind what the Supreme Court of Canada stated in *R. v. Nasogaluak*, 2010 SCC 6, [2010] 1 SCR 206, where the Court declared the following, in paragraphs 33 to 35:

"[33] The legal constraints on a police officer's use of force are deeply rooted in our common law tradition and are enshrined in the Criminal Code. This case engages s. 25 of the Code, the relevant portions of which are reproduced below:

25. (1) Every one who is required or authorized by law to do anything in the administration or enforcement of the law

(. . .

(b) as a peace officer or public officer,

. . .

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.

. . .

(3) Subject to subsections (4) and (5), a person is not justified for the purposes of subsection (1) in using force that is intended or is likely to cause death or grievous bodily harm unless the person believes on reasonable grounds that it is necessary for the self-preservation of the person or the preservation of any one under that person's protection from death or grievous bodily harm. (Emphasis added).

*[34] Section 25(1) essentially provides that a police officer is justified in using force to effect a lawful arrest, provided that he or she acted on reasonable and probable grounds and used only as much force as was necessary in the circumstances. That is not the end of the matter. Section 25(3) also prohibits a police officer from using a greater degree of force, i.e. that which is intended or likely to cause death or grievous bodily harm, unless he or she believes that it is necessary to protect him- or herself, or another person under his or her protection, from death or grievous bodily harm. (Emphasis added). The officer's belief must be objectively reasonable. This means that the use of force under s. 25(3) is to be judged on a subjective-objective basis (*Chartier v. Greaves*, [2001] O.J. No. 634 (QL) (S.C.J.), at para. 59). (...)*

*[35] Police actions should not be judged against a standard of perfection. It must be remembered that the police engage in dangerous and demanding work and often have to react quickly to emergencies. Their actions should be judged in light of these exigent circumstances. (Emphasis added). As Anderson J.A. explained in *R. v. Bottrell* (1981), 1981 CanLII 339 (BC CA), 60 C.C.C. (2d) 211 (B.C.C.A.):*

In determining whether the amount of force used by the officer was necessary the jury must have regard to the circumstances as they existed at the time the force was used. They should have been directed that the appellant could not be expected to measure the force used with exactitude. [p. 218] (Emphasis added).

In this writer's opinion, the conduct of Officer A on the evening of June 12, 2020 met those conditions. He was acting lawfully and was on scene to protect Witnesses 2, 3, 4 and 5's family and acquaintances. Mr. Levi seemed to be aware and to understand that the officer was going to apprehend him under the provincial *Mental Health Act*. Officer A was facing an individual who was acting erratically, who seemed to be under the influence of drugs and who had indicated before, though unbeknownst to Officer A, that he wanted to commit "suicide by RCMP". Mr. Levi was wielding two large knives in a threatening manner and was refusing to let them go and had been doing so for several minutes. Mr. Levi was heard saying words to the effect "You will have to

put a bullet in me.” This writer is of the opinion that when Mr. Levi went towards Officer A with both his knives pointing in his direction, that Officer A, who was only standing a few feet away, had no other option but to discharge his firearm at Mr. Levi, causing his death. I find that Officer A acted at this moment in self defence, as per section 34 of the Code and that, on top of it, he had the benefit of the protection enunciated in section 25 of the Criminal Code. And as the Supreme Court of Canada has stated, *“Police actions should not be judged against a standard of perfection. It must be remembered that the police engage in dangerous and demanding work and often have to react quickly to emergencies. Their actions should be judged in light of these exigent circumstances.”* It is this writer’s conclusion that the situation was an emergency, that the officer had to react quickly in order to protect himself and others and that sadly, he did not have any other option but to discharge his firearm in order to do his mandated duty.

Since I have arrived at this determination, I am of the opinion that a trier of facts, properly instructed in the law, would be more likely to acquit Officer A of homicide than to convict him and as such, I do not recommend the laying of any kind of homicide charges against Officer A, whether for murder or manslaughter or even assault. The same reasoning applies toward Officer B whether the charges to be considered were of homicide or assault. This event was a tragedy but I found no criminal conduct on the part of Officers A and B on the night of June 12, 2020.

Me Pierre Roussel, Q.C.

Assistant Deputy Attorney General

Director of Public Prosecutions of New Brunswick