



# MISSING AND MISSED

**Report of The Independent Civilian Review  
into Missing Person Investigations**

The Honourable Gloria J. Epstein  
Independent Reviewer

VOLUME I

Executive Summary  
and Recommendations

VOLUME II

Investigations

VOLUME III

Relationships: The Police  
and Communities

VOLUME IV

Recommendations, Conclusion,  
and Appendices



| The Independent Civilian Review into

# Missing Person Investigations

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## LETTER OF TRANSMITTAL

April 9, 2021

Chair Jim Hart  
Toronto Police Services Board  
40 College Street  
Toronto, Ontario  
M5G 2J3

Dear Chairman Hart,

Having been appointed by the Toronto Police Services Board to conduct the Review described in the Board's Terms of Reference, I submit to the Board the Review's Report.

Thank you for the opportunity to be of service on this important and challenging matter.

Yours very truly,



The Honourable Gloria J. Epstein, Q.C.  
Reviewer

HGJE:sv

Encl.



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## Report of the Independent Civilian Review into Missing Person Investigations

The Honourable Gloria J. Epstein

*Independent Reviewer*

Volume I – Executive Summary and Recommendations

**Volume II – Investigations**

Volume III – Relationships: The Police and Communities

Volume IV – Recommendations, Conclusion, and Appendices

The Independent Civilian Review into Missing Person Investigations respectfully acknowledges that our work took place in Toronto on the traditional territory of many nations including the Mississaugas of the Credit, the Anishnabeg, the Chippewa, the Haudenosaunee and the Wendat peoples. We also acknowledge that Toronto is covered by Treaty 13 signed with the Mississaugas of the Credit, and the Williams Treaties signed with multiple Mississaugas and Chippewa bands. Toronto is now home to many diverse First Nations, Inuit and Métis peoples, to whom we are grateful for the opportunity to meet, to work and to feel safe together.

Statement for cover design:

This is a thoughtful moment in time, silhouetted against a spectrum of colours that layer, blend, and contrast to create beauty. Inclusive, interjective beauty. The duality of looking both forward and backwards carries that weighted emotion where sadness gives way to hope. The design incorporates the 2018 Progress Pride Flag design of Daniel Quasar. His rendition combines the Transgender Pride Flag created by Monica Helms and the original Pride Flag created by artist Gilbert Baker. Designs have undergone revisions since its debut in 1978.

~ Sarah Currie

Interior portraits by Hope Flynn

## DEDICATION

I dedicate this Report to the victims identified in the Terms of Reference and to their families and other loved ones. Neither your pain nor your loss is in vain. They will serve as the catalyst for real and lasting improvements to how the Toronto Police Service investigates reports of missing persons. They will also help to identify a way forward to improved relationships between the Service and the marginalized and vulnerable communities it serves and protects – relationships built on trust and on mutual respect.

SKANDARAJ NAVARATNAM

ABDULBASIR FAIZI

MAJEED KAYHAN

SOROUSH MAHMUDI

KIRUSHNA KUMAR KANAGARATNAM

DEAN LISOWICK

SELIM ESEN

ANDREW KINSMAN

ALLOURA WELLS

TESS RICHEY





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# Acknowledgements

There are many individuals, organizations, and groups I wish to thank for their participation in this Review and in the preparation of this Report. Without their involvement, I simply could not have dealt adequately with the issues in my mandate set out in the extensive Terms of Reference.

I start with the loved ones of the 10 people who lost their lives – the 10 people to whom this Report is dedicated. I had the privilege of meeting with many of their friends and family members. I acknowledge the courage they demonstrated in sharing their experiences and their feelings, often under difficult circumstances

I met with hundreds of individuals, including, but certainly not limited to, community members, past and current members of the Toronto Police Service and the Toronto Police Services Board, members of other police services, members of stakeholder groups, and a number of experts in areas relevant to the Review's important work. I learned from every person I met and want to thank each of them for their time and for sharing their knowledge, experience, and insight with me.

I am grateful to those who attended the Review's roundtable, an event that brought together knowledgeable representatives with experience in the wide spectrum of issues relevant to the Review. During the roundtable, the participants presented and discussed their views – often differing views. These discussions were informative and helpful, and they were sometimes emotional. I thank the participants for their time and their insights.

The Review's robust outreach would not have been possible without the public consultation team – Jane Farrow (Dept. of Words & Deeds) and Gillian Kerr. I thank them for their hard work and impeccable organizational skills.

I was ably assisted by the members of my Community Advisory Group, a diverse group of individuals who have been with me throughout the Review. Led by Ron Rosenes and Haran Vijayanathan, they, together with Christa Big Canoe, Monica Forrester, Justice Brian Lennox, Michele Lent, and Angela Robertson, provided me with access to the marginal and vulnerable communities at the centre of my investigation. They also gave me sound advice enriched by their wisdom and their own lived experiences. Debbie Oakley, the Review's administrator, supported the Community Advisory Group and me in personal ways and in ways vitally important to the Review's work.

I was fortunate to get Professor Kent Roach of the Faculty of Law at the University of Toronto to be the Review's research director. He assisted by arranging the legal research prepared for this Review, drafting parts of the

Report, and constructively engaging in many discussions about the complex issues relevant to the Review's mandate. I thank him for his good counsel and his friendship. I also want to thank Mark Pritchard, a former Ontario Provincial Police regional commander for the Northwest Region, who drew on his vast experience based on a long and distinguished career as a police officer to provide me with an invaluable independent perspective on policing issues relevant to the Terms of Reference.

The work of this Review, leading to the production of this Report, has been a team effort. From beginning to end, every member of the Cooper, Sandler law firm played a key role. Without the support of Megan Schwartzenuber, Amanda Ross, Nazampal Jaswal, Alefia Ghadiyali, and Chelsea Sandler, I could not have produced this Report. Their assistance has been marked by dedication and distinction, and I am profoundly grateful.

I am also grateful to our three editors, Rosemary Shipton, Mary McDougall Maude, and Dan Liebman. I benefited and learned from their skill. I thank them for their patience.

Finally, I turn to Mark Sandler, counsel to the Review. He has been the Review's backbone. He assumed the responsibility for organizing the multiple tasks that had to be done to fulfill my mandate. He prepared detailed interviews that had to be conducted and drafted many parts of the Report. His intellect, sound judgment, patience, incredible work ethic, and, perhaps most important of all to me, wonderful sense of humour deserve special mention. His contribution can be found on every page of this Report.

Ultimately, however, the findings, conclusions, and recommendations set out in this Report are mine alone.

*Gloria J. Epstein*  
April 2021

# Chapter 1

## OVERVIEW AND INTRODUCTION

Bruce McArthur killed eight people. All were gay or bisexual. All but two were men of colour. All were valued.

Skandaraj Navaratnam was McArthur's first known murder victim. He was reported missing in 2010. After that, five other victims were reported missing between 2010 and 2017. In early 2018, the police apprehended McArthur. His arrest followed a seven-year reign of terror. The police could have done better. This Report is the account of what went wrong and an examination of how things can be done differently.

Tess Richey went missing in 2017. Police failed to discover her body. Her mother did, a short distance from where her youngest daughter was last seen. The police could have done better. This, too, is the account of what went wrong and an examination of how things can be done differently.

Alloura Wells, a member of Toronto's trans community, also went missing in 2017. Although her bodily remains had been in the morgue for months, those remains were not quickly linked to her disappearance.

Kenneth Peddle and Dovi Henry represent others reported missing and actively searched for by family. Their families learned, only later, that their loved ones' bodies lay, unidentified, in the morgue. Arthur Louttit went missing for some time before his body was discovered not far from where he was last seen. This, too, is the account of what went wrong in these cases and an examination of how things can be done differently.

These and other events require us all to re-examine how missing person investigations are done in Toronto. Make no mistake – some changes have already taken place for the better. These initiatives are acknowledged in this Report. But the time was right for a larger, independent examination of how these investigations are carried out and what they tell us about the relationship between Toronto police and our diverse communities.

The time was right for several reasons. First, much has been publicly said about what police did and did not do. Some of it is untrue, and these untruths cause me great concern. The public is entitled to know the truth; indeed, it must know the truth. So are the loved ones and friends of those who went missing.

In some instances, providing an accurate account of what happened exposes serious investigative flaws or a lack of attention that made these cases

more difficult to solve. In other instances, an accurate account corrects a narrative that is unfair to investigators.

The Toronto police are also entitled to know what they did well and what they did poorly. Some excellent work was done by some dedicated officers. That account must also be provided, through an objective, independent assessment.

As well, the Toronto Police Services Board (the Board) is entitled to know what should change and why.

Second, the role of police in our society and their relationship with marginalized and vulnerable communities is now at the forefront of our public discourse. This discourse is long overdue. An examination of missing person investigations contributes to a larger conversation, one that is about the role of police in serving our diverse communities and whether the police should be performing roles currently given to them.

To be clear, we are past the time for conversation only. The public is entitled to insist on transformative change with measurable, sustainable outcomes, timelines for completion, and accountability.

This Review identified serious flaws in how missing person cases – and not just the ones identified in the Terms of Reference – have been handled in Toronto. My recommendations propose ways to address those flaws. I provide a model that both draws on recent changes for the better and advocates a new approach to missing person cases generally. This new approach takes some of these investigations, or certain components of them, away from police and encourages much greater use of civilians and social agencies where warranted. Recommendations only for more training or greater diversity in policing ranks have limited value. Training and diversity are important but do not, without much more, represent an adequate response to the issues this Review has identified.

The Review was largely prompted by concerns that the McArthur-related investigations were infected by bias. Some community members feel the Toronto police remained uninterested in the disappearances of McArthur's victims until Andrew Kinsman, who was not a person of colour, was reported missing. Many Toronto police officers rejected this view. They observed that a number of dedicated officers worked tirelessly to solve these cases. That is true. But the full narrative must take into consideration systemic bias, discrimination, and differential treatment.

The disappearances of McArthur's murder victims were often given less attention or priority than these cases deserved. These victims were marginalized and vulnerable in a variety of ways. The goal, of course, is to ensure no one is treated in a less adequate way because of their marginalization

and vulnerabilities, whether based on sexual orientation, gender identity or expression, colour, ethnic origin, immigration status, being underhoused or homeless, socio-economic status, or mental health – or on a combination of these demographics.

Some officers had misconceptions or stereotypical ideas about the LGBTQ2S+ communities.<sup>1</sup> At times, their perceptions impeded their work. Investigators missed opportunities to use community expertise or resources – as well as expertise or lived experiences within the Toronto Police Service (the Service) itself – to learn more about those communities and what leads might be available. Investigators failed to appreciate – and attempt to address – barriers that prevented some witnesses from coming forward. These barriers included how police are perceived and often mistrusted by marginalized and vulnerable communities – a perception and mistrust prompted by a long history that includes criminalization of certain members of the LGBTQ2S+ communities.

The police also failed to keep the public informed about what they were doing. This lack of communication reinforced the broadly held impression that “the police did nothing.” It heightened existing mistrust, and it ultimately diminished, rather than protected, the integrity of existing and future investigations. None of these issues – all existing at a systemic level – depends on any intent to discriminate.

To the credit of Andrew Kinsman’s friends and loved ones, they mobilized in a highly public way to ensure the police gave Mr. Kinsman’s disappearance the attention it deserved. Proper missing person investigations, however, should not depend on whose voices are the loudest in sounding the alarm. This observation represents yet another systemic issue identified in this Report.

Although overt bias does not explain why the McArthur-related investigations between 2010 and 2017 were flawed, my extensive engagement with community members and organizations confirmed that many people deeply mistrust the Toronto police. This long-standing mistrust may not be directly related to missing person cases but is often rooted in systemic or overt bias or discrimination. Of course, it is also rooted in the legacy of how the police have interacted with marginalized and vulnerable communities.

Mistrust remains despite a range of well-intentioned initiatives undertaken by the Toronto police to build positive relationships. Not surprisingly, it was only compounded by the perception that the police were indifferent to the plights of those who went missing and by the lack of

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<sup>1</sup> I discuss the term LGBTQ2S+ at the end of this chapter, in the section on the use of respectful language.

transparency about what the police were doing. These issues must be addressed immediately, regardless of whether they relate directly to missing person investigations.

I am grateful to the many individuals who and organizations that shared their insights, lived experiences, and suggestions for change. The Board and the Service have an opportunity to learn a great deal from the tragedies described in this Report and to build a transformative service for the future.

The Toronto Police Service can do better. And it can do better in a new and improved environment in which its role is redefined. In my view, the Board and the Service must start the process with a commitment to do better. That commitment must be rooted in concrete, transparent, and strategic plans with defined deliverables and timelines, in full partnership with communities and accompanied by accountability measures described in this Report.

It is my hope that this Report contributes to the changes that are needed.

## **The Events Leading to This Review**

My introductory comments identify the specific cases that prompted this Review.

Toronto's affected communities, most particularly the LGBTQ2S+, questioned why it took so long to end McArthur's crime spree and solve the disappearances of Ms. Richey and Ms. Wells. And it asked whether lives could have been saved.

All these missing person cases fuelled deep concerns about how the Service handled the investigations – specifically, whether they were tainted by overt or systemic bias against members of Toronto's LGBTQ2S+ or vulnerable and marginalized communities. These expressed concerns were not confined to the specific cases but were also systemic:

- Are such cases handled differently by the police when they involve members of the LGBTQ2S+ or marginalized and vulnerable communities?
- Are existing policies, procedures, or practices adequate to ensure effective, discrimination-free, and timely investigations?
- Does the Service adequately communicate with affected communities about safety concerns? Or does it communicate in ways that advance its investigations?
- Should the role of the Service in missing person cases be fundamentally changed?

- Does the Service give proper attention to missing person cases or cases involving unidentified bodily remains?
- How can the Service build healthy and respectful relationships with LGBTQ2S+ or marginalized and vulnerable communities in Toronto?

The Board acknowledged to the public that the relationship between the Service and the LGBTQ2S+ communities had been damaged in the wake of these events and needed to be repaired. The Board also recognized that there are “intersections of minorities within the LGBTQ2S+ communities, including South Asian, Middle Eastern, 2-spirited, other racialized individuals, as well as those who are either homeless or work in the sex trade, that are particularly vulnerable and require an improved approach to policing relationships.”

The Board has the responsibility under the *Police Services Act* to provide adequate and effective police services in the City of Toronto and the power to establish policies for effective management of the Service.

In March 2018, pursuant to the Board’s powers and responsibilities, and as a result of the voiced concerns set out above, the Board established a diverse Working Group to advise it on a framework for an independent external review into how the Service conducts missing person investigations. The chief of police publicly endorsed the creation of an independent review. Based on the Working Group’s recommendations, the Board commissioned this Independent Review into the Board’s policies as well as the Service’s procedures and practices relating to missing person investigations, particularly those involving individuals from the LGBTQ2S+, immigrant, Indigenous, South Asian, Middle Eastern, Black, homeless, and other marginalized and vulnerable communities.

The Working Group and its facilitator, now Justice Breese Davies of the Ontario Superior Court, created a draft of the Review’s Terms of Reference. Terms of reference guide the nature and scope of a review. The Working Group also recommended that I serve as the Reviewer.

The Board then asked me to accept this appointment. At the time, I was a judge of the Court of Appeal for Ontario. On August 31, 2018, I chose to retire from the court to devote my full attention to this critically important Review. I asked Mark Sandler to serve as my lead counsel. Mr. Sandler has served as counsel to many systemic reviews and public inquiries. Together, we provided feedback to the Working Group on the Terms of Reference. This response resulted in some agreed-upon refinements to the Terms of Reference, which the Board then approved.

During the Review, the Terms of Reference were amended to significantly expand its scope once McArthur's murder case ended. The current Terms of Reference appear as Appendix A to this Report.

## **The Review's Terms of Reference**

The Review's Terms of Reference are detailed. Broadly speaking, they required me to evaluate how missing person investigations, particularly those involving LGBTQ2S+ or marginalized and vulnerable communities, have been conducted and are now being conducted. This work required that I examine, among other things, the Board's policies and practices, as well as the Service's procedures, practices, and actions, to determine whether they adequately promote effective, efficient, and discrimination-free missing person investigations and, especially in the context of such investigations, positive relationships between the Service and the LGBTQ2S+ communities.

It also required me to specifically review the missing person investigations relating to Skandaraj Navaratnam, Abdulbasir Faizi, Majeed Kayhan, Selim Esen, Soroush Mahmudi, and Andrew Kinsman, including Project Houston and Project Prism, and any other opportunities to identify McArthur as a person of interest or suspect, as well as the missing person investigations relating to Tess Richey and Alloura Wells. Dean Lisowick and Kirushna Kumar Kanagaratnam were victims of McArthur though not reported as missing. The Terms of Reference also direct me to examine what prevented these two men from being reported missing.

The Terms of Reference provide me with 12 areas to focus on in examining these specific cases, four of which are illustrative and figure prominently in this Report:

- whether culturally competent expertise is available to or relied upon by the Service for missing person investigations, including but not limited to expertise around gender identity, gender expression, race, ethnic origin, and intersectionality;
- whether there is adequate information-sharing within the Service and between the Service and other police services to ensure that similarities and links between missing person investigations can be identified quickly and effectively;
- how and when the Service decides to advise or caution the public, or specific communities, about public safety concerns that arise from missing person investigations, including but not limited to information about suspected links or connections between missing person cases; and



- whether effective policies, procedures, and practices are in place to ensure adequate investigative consideration of serial killers, especially based on missing person reports where there is no overt evidence of foul play.

On the topic of developing and maintaining relationships with LGBTQ2S+ communities, especially as they have an impact on missing person investigations, the Terms of Reference identify nine topics for consideration. The following three are illustrative and, again, figure prominently in this Report:

- the roles, responsibilities, and efficacy of the officer assigned to liaise with the LGBTQ2S+ communities;
- the scope and efficacy of consultations and communications with members and organizations within the LGBTQ2S+ communities about missing person investigations; and
- the extent to which the police call upon organizations within the LGBTQ2S+ communities (or other relevant communities) to assist at any stage with missing person investigations.

The Terms of Reference also direct me to review the training of members of the Service on relevant topics; to consider prior relevant reports and the extent to which their recommendations have been implemented; and to consider, in my discretion, best practices in other jurisdictions in relation to missing person investigations, bias-free<sup>2</sup> policing, and positive working relationships with marginalized communities.

Ultimately, the Review focuses on making recommendations. The Terms of Reference provide that I am to make recommendations, in my discretion, that accord with the Review's mandate, including recommendations on Board policies and the Service's procedures and practices relevant to that mandate.

Finally, I am to propose a timeline for implementation of each recommendation. Of importance, the Terms of Reference specify that my recommendations are to address how to ensure LGBTQ2S+ participation in monitoring and implementing any recommendations that are adopted, and to address a framework for measuring, monitoring, and publicly reporting on

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<sup>2</sup> I generally use the term "discrimination-free" rather than "bias-free" policing (used in the Terms of Reference) since biases may not always be eliminated, but discrimination or differential treatment rooted in bias or prejudice must be.

whether my recommendations have been adopted and, if they have not been, why not. Consideration should be given to a model for independent oversight of compliance and continuing community consultation.

## **Limitations on the Review**

### ***No Interference with Ongoing Criminal Proceedings***

The Terms of Reference provide that I will conduct this Review “without prejudicing any ongoing criminal investigation or criminal proceedings, including but not limited to the criminal prosecution of Kalen Schlatter, and will make a report to the Board without expressing any conclusion or making any recommendation regarding the civil or criminal responsibility of any person or organization.”

When the Review began, Schlatter was charged with the first-degree murder of Tess Richey. He pled not guilty, and his trial took place during the Review. He was convicted, although his conviction is currently under appeal. As a result, his criminal proceedings are ongoing.

I have been careful not to prejudice those criminal proceedings. I deferred certain interviews until the criminal trial was over, and, of course, make no findings respecting Schlatter’s criminal responsibility for Ms. Richey’s death. This limitation did not prevent me from examining the part of the Tess Richey investigation that is relevant to my mandate; namely, how the Service conducted its early investigation into her disappearance.

The original Terms of Reference also directed that I was not to prejudice the ongoing criminal proceedings involving McArthur. It also specifically prevented me from examining facts relating to the McArthur investigation after September 1, 2017. This limitation, though understandable at the time, would have prevented me from a robust examination of the McArthur-related investigations relating to issues that fell squarely within my mandate.

Of course, the Review respected the limitations, both by deferring certain interviews and by developing a document protocol with the Ministry of the Attorney General and the Service. This protocol, which was strictly adhered to, enabled the Review to obtain relevant documents and materials relating to the McArthur investigations and prosecution, while keeping them secure and restricting those who could access them.

In February 2019, McArthur pled guilty to eight counts of first-degree murder. He was sentenced to life imprisonment with no eligibility for parole for 25 years. No appeal was taken from the verdict or sentence. As a result, the criminal proceedings against him were over. I immediately requested that the Board amend the Terms of Reference to permit me to fully examine and

evaluate the McArthur-related investigations. On March 26, 2019, the Board amended the Terms of Reference as requested. This revision represented a significant, but necessary, expansion of the Review's work to fulfill its mandate.

### ***No Findings of Misconduct or Civil or Criminal Responsibility***

This is a “systemic review.” A systemic review is designed to identify and address larger issues of systemic importance; that is, issues involving an institution's systems, policies, or practices, rather than issues confined to an isolated or individual error or fault. A systemic review is not designed to find individual misconduct or civil or criminal responsibility. Indeed, I am prohibited from doing so both by existing law and by the Terms of Reference.

These limitations are appropriate. Findings of misconduct may be made, in law, only if certain procedural protections are available to those affected. These protections may include formal notice of the allegations made; the right to confront one's accuser; the ability to challenge incriminating evidence, such as through cross-examination of witnesses; and the ability to call relevant evidence and respond to allegations.

Some felt that a public inquiry, rather than a systemic review, should have been called to address the issues. The commissioner at a public inquiry may make findings of misconduct, though he or she is also prohibited from making findings of civil or criminal responsibility. A commissioner also has powers to compel witnesses to testify and to compel the production of documents. The Working Group, composed of a highly diverse body of dedicated community members and leaders, concluded that a systemic review was preferable. It is not for me to express an opinion on the relative merits of systemic reviews and public inquiries. Each has its advantages and disadvantages. But I do make three observations.

First, I found it unnecessary to make findings of individual misconduct to successfully fulfill my mandate. Simply put, I was able to craft recommendations to promote effective, discrimination-free, and timely missing person investigations; to increase transparency and accountability; and to create a framework for implementation, none of which are dependent on findings of misconduct. I am not prohibited from identifying – as I have done – serious deficiencies in how the Toronto police were conducting such investigations and in its relationship with LGBTQ2S+ or marginalized and vulnerable communities.

Second, the Board and the Service co-operated fully with the Review in producing any documents requested. We were able to interview everyone we

needed to interview, including many police officers. Only one officer, now a former officer, who had attended an initial interview, declined my repeated requests for a subsequent interview. Although I regret my inability to complete the interview process in this isolated instance, I am satisfied that I did not need the power to compel witnesses to attend or compel documents to be produced to fulfill my mandate.

Third, many people spoke candidly with the Review about their lived experiences and perspectives, knowing I could preserve their confidentiality, if they wished me to. These individuals included community members who did not want their sexual orientation or their specific interactions with the Service to be publicly known, as well as police officers who would have been reluctant to fully share, in a public setting, their criticisms of how policing was done at the relevant time. They welcomed the flexibility that comes with a systemic review.

To foster candid conversations, the Review also obtained undertakings from the chief of police and from the Office of the Independent Police Review Director that neither would seek access to our interviews to advance either a public or an internal complaint (a chief's complaint) through the Professional Standards Unit of the Service. This undertaking did not impede public or internal complaints to proceed. It merely ensured that officers could speak freely without fear their words would be used against them.<sup>3</sup> Later in this chapter, I return to how I dealt with confidentiality and anonymity.

### ***Ongoing Discipline Proceedings***

Three officers are facing discipline proceedings under the *Police Services Act*. These are not criminal or civil proceedings. Two of these officers face discipline charges in relation to the search for Ms. Richey. The third officer faces discipline charges in relation to his 2016 investigation of McArthur's choking of a man. (McArthur was released without any charges going forward. See Chapter 7.) No hearing has yet been conducted in relation to any of the charged officers.

The Terms of Reference do not specifically refer to these ongoing disciplinary proceedings, but the Review recognized the importance of not interfering with them. The Review deferred one interview until it became obvious that these proceedings would not be completed during the Review. With the consent of all three officers, we also gained access to their interviews with the Professional Standards Unit. Ultimately, I was able to examine the

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<sup>3</sup> Officers, other than retired officers, were also ordered to attend the Review's interviews, not because they would otherwise have chosen not to meet with us, but to provide additional legal protection for them since the interviews could be regarded as compelled, in law, rather than voluntary.

circumstances around these charges, including the actions of the three charged officers, without deciding whether the conduct of any or all of them amounted to professional misconduct.

## **How the Review Was Conducted**

On September 1, 2018, we formally began our work, which involved multiple components.

### ***The Community Advisory Group***

The Terms of Reference contemplated that I would establish an advisory group representing affected communities, to ensure the community perspective was adequately considered throughout the Review. At the outset, I created the Community Advisory Group (CAG), made up of community leaders who worked to ensure that diverse voices within Toronto's communities were heard. It included a community advisor, Ron Rosenes, who led the group's meetings; a coordinator, Haran Vijayanathan, who was heavily involved in facilitating the Review's community outreach; and five other outstanding individuals. They met regularly, provided me with advice and guidance, and were directly involved in the design and implementation of the Review's public outreach and engagement plan. A list of CAG members, along with brief biographical sketches, appears as Appendix B to this Report.

### ***Collection and Examination of Documents***

The Review's legal team examined well over 80,000 pages of documents obtained from the Service and the Board. These documents included existing policies and procedures, as well as officers' notes, reports, emails, videotapes, audiotapes, and other materials pertaining to the specific investigations identified in the Terms of Reference. The Review also obtained documents from a variety of other sources, including the Ontario Ministry of the Solicitor General; police services across Canada and internationally; and community organizations and members, as well as publicly accessible reports and electronic and print media stories.

### ***Public Outreach and Engagement Plan***

In April 2019, the Review announced a robust public outreach and engagement plan that provided all members of the public, groups, and organizations with a number of ways to contribute to the Review's work.

*Meetings with Stakeholders and Affected Community Members*

In mid-May 2019, my team and I began to meet with stakeholder groups. These meetings were designed to allow anyone to share perspectives, experiences, and recommendations. Virtually all these meetings took place in community spaces. Some of these groups approached the Review, while the CAG or the Review's legal team identified and reached out to others. I also met one-on-one with community members confidentially when it was important to do so to guarantee a safe and supportive environment. I personally met with hundreds of individuals – some more than once. No request to meet, at any time or any location, was turned down.

*Online Survey*

About 1,000 community members participated in an anonymous online survey open from mid-November 2019 to the end of May 2020. The Review widely publicized the survey, and the response was gratifying. Data obtained from the survey are summarized in Chapter 10.

*Written Submissions or Anonymous Comments*

The Review invited all members of the public to make written submissions or, if preferred, to submit anonymous electronic comments through a portal on the Review's website. The Review also invited a wide range of organizations to provide written submissions. Some of the submissions that informed my recommendations are referred to in Chapters 14 and 15.

*Policy Roundtable*

On August 18 and 19, 2020, 33 community leaders and policing experts from around the globe participated, by invitation, in a policy roundtable to provide their perspectives and recommendations on systemic issues identified by the Review. Mr. Sandler and Jane Farrow, our public consultation lead, spearheaded the policy roundtable's plenary sessions, while members of the CAG facilitated its small group sessions. Participants are listed in Appendix C to this Report.

*Town Hall Meeting*

On October 14, 2020, the Review held a public town hall meeting. Mr. Sandler described our work to date and outlined the key data from the recently completed survey. Most important, this was yet another opportunity for people to express their views – in this instance, in a public setting. The video of the town hall meeting can be viewed on the Review's website. It is also summarized in Chapter 10.

In summary, the Review's robust outreach and engagement plan was rewarded by an overwhelming response. As indicated, about 1,000 people filled out the survey alone. Hundreds of people, including representatives of many organizations, spoke with me. These contributions greatly informed my work.

### ***Interviews***

The Review conducted many interviews. (During the pandemic, these interviews were usually conducted remotely.) We spoke with family members, friends, and other loved ones of McArthur's murder victims, Tess Richey, and Alloura Wells; with others who have reported people missing; with Toronto police officers of all ranks, past and present, including three deputy chiefs, former chief of police Mark Saunders, and the acting chief of police; with civilian employees; with experts or specialists in community policing, missing person investigations, case management software, human rights, record management, missing person databases, and police-community initiatives; with community leaders and service providers; with students and young people; with employees of the Ministry of the Solicitor General<sup>4</sup> and the Office of the Chief Coroner and Ontario Forensic Pathology Service, as well as the chief coroner and the chief forensic pathologist; with two chairs and the executive director of the Board; with advocates for diverse communities; with representatives of law organizations and legal clinics; and with individuals associated with several past inquiries and reviews.

The communities represented, whether through service providers, executive directors, or community members themselves, included LGBTQ2S+; BDSM<sup>5</sup>; South Asian, Black, and other racialized communities; Indigenous; trans men and women; the homeless and underhoused; a men's group; sex workers; those dealing with mental health and wellness; immigrants and refugees; HIV/AIDS networks and organizations; and intersections of these communities.

### ***Research Program***

Professor Kent Roach served as the Review's research director. Under his leadership, the Review commissioned four papers from leading academics on issues relevant to my mandate. The papers are on the Review's website and referred to in this Report. The Review also collected relevant literature from around the world.

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<sup>4</sup> Before April 2019, the Ministry of Community Safety and Correctional Services.

<sup>5</sup> Bondage and discipline; domination and submission; sadism and masochism.

## **Confidentiality and Anonymization**

I have already explained that the Review was able to conduct interviews and meetings in confidence because of the flexibility associated with a systemic review. I heard from many community members through in-person interviews or meetings, a policy roundtable, a survey, a town hall meeting, and written submissions. The survey was anonymous. Participants had no obligation to disclose their identities or provide information that might lead to their identification.

We advised community members we heard from that their identities would not be disclosed in this Report or comments attributed to them unless they gave their permission. Similarly, unless they gave their permission, community members involved in relevant events – even if we did not interview or meet with them – are not identified. Sometimes, their involvement in relevant events may already be known publicly. Even so, we always made a point of not identifying them, unless their identity was so obvious that anonymity could not be preserved. We are dealing with tragic events that have affected people profoundly and sometimes traumatized them. It was important to me to “do no harm” and to ensure that interviews were conducted in a safe and supportive environment.

The Review interviewed many police officers. They were always permitted to be accompanied by legal counsel, if they chose that option. Officers were advised that they could correct or add to their statements at any time and were provided with documents to help refresh their memories.

Unlike our practice for community members, the Review did not undertake that officers’ names would not be disclosed in this Report or that comments would never be attributed to specific officers. However, I do not disclose an officer’s identity unless it is relevant to the narrative or my findings. More important, I have tried not to attribute comments to specific officers when these comments were highly sensitive or might expose an officer to an uncomfortable or poisoned work environment. This approach encouraged candour, while remaining true to the need for transparency.

## **Two Challenges Faced by the Review**

### ***COVID-19***

Of course, during the Review, COVID-19 intruded into the lives of us all. The Review’s work continued nonetheless. Almost all interviews during this period were conducted by videoconference or teleconference. A few were conducted



in person, at the request of those interviewed, but with appropriate social distancing and other protections. In some instances, relevant documents were provided in advance, given the more cumbersome exercise of attempting to share materials remotely.

The policy roundtable worked particularly well remotely. Participants and facilitators could be instantly moved electronically from plenary to small group sessions. Mr. Sandler and I could move seamlessly from breakout group to breakout group to hear the views expressed.

### ***Correcting Public Perceptions***

Much has been written or said publicly about the facts surrounding the investigations into McArthur's murder victims and the victims themselves. This information has come from media stories and interviews, opinion pieces, podcasts, television shows, a book, community meetings, and police press conferences, statements, and presentations. The volume of disseminated information is not surprising. The events that prompted this public discourse have disturbed or traumatized members of the public, spurred the call for answers, and ultimately prompted this Review. I believe this Report provides many of those answers.

But, as I previously indicated, the Review has been challenged by the considerable amount of inaccurate information that has been publicly circulated. This inaccurate information is rarely the product of malevolence and may be explained by imperfect recollections, albeit well intentioned. It may also be explained by unfortunate speculation. Although members of the media showed perseverance and dedication to learn the full narrative, they did not have the benefit of the full record, much of which was inaccessible to them. One of my responsibilities is to correct the public record on relevant points – whatever the source of inaccurate information. For some, my findings differ from their expectations or perspectives. This may hold true whether those individuals are police officers, journalists, loved ones of McArthur's victims, affected community members, or the public at large.

I have found serious deficiencies in how the Service has conducted missing person cases generally and how it conducted many of the investigations in issue in this Review. I have also found that a number of officers performed their work, hard work, in a dedicated way. The point here is that all the findings I make in this Report are, of necessity, evidence-based, not based on conjecture or speculation. I was driven by the facts, not by any preconceived notions one way or the other. Only an evidence-based approach can justify the key recommendations I make for change.

## How the Report Is Organized

Chapter 2, Honouring the Lives Lost, profiles the lives of a number of the missing—now deceased—individuals at the heart of my work. The chapter is intended to convey that every one of these lives has value and meaning, and that we must keep their lives at the forefront of our thoughts as we address the issues identified in this Report.

Chapter 3, Civilian Governance and Oversight: Roles of the Board and the Service, describes the appropriate interplay among the Board, the chief of police, the Service, and the Ministry of the Solicitor General. It evaluates these roles in the context of the need for robust civilian oversight of policing. I also make findings on the sharing of information between the Service and the Board, particularly as it affected the McArthur-related investigations and policy issues.

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*Chapters 4 through 7 focus on the McArthur-related investigations.*

Chapter 4, Major Case Management and the Use of Technology, explains provincial adequacy standards around how major cases are to be managed, the mandated case management software (PowerCase), and the interplay with record management systems. This framework then permits me to evaluate whether the Service complied with provincial adequacy standards or best practices, particularly as they relate to the McArthur investigations.

Chapter 5, Three Men Go Missing, describes and evaluates the original investigations by the Service into the disappearances of Skandaraj Navaratnam and Majeed Kayhan, and the interplay between the Peel police and the Toronto police respecting Abdulbasir Faizi's disappearance. It also discusses McArthur's first relevant encounter with the justice system in 2002 and 2003 and its relevance to this Review.

Chapter 6, the Project Houston Investigation, describes and evaluates the investigation of that name, particularly as it relates to the three men missing from Toronto's Gay Village.

Chapter 7, the Project Prism Investigation, examines and evaluates the investigation into Soroush Mahmudi's disappearance in 2015, the investigation into McArthur's choking of another man in 2016, the investigations into Selim Esen's and Andrew Kinsman's disappearances, and Project Prism and its conclusion.

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Chapter 8, *Tess Richey Goes Missing*, examines and evaluates the investigation by Toronto police into Ms. Richey's disappearance.

Chapter 9, *The Alloura Wells Investigations and Related Cases*<sup>6</sup>, examines and evaluates the investigation into the disappearance of Ms. Wells and into the identification of her bodily remains. This examination facilitates a larger discussion in Chapters 12, 13, and 14 about how unidentified bodily remains are dealt with and how the Service interacts with the trans community.

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*Chapters 10 and 11 provide important building blocks for my recommendations.*

Chapter 10, *Toronto's Communities Speak*, describes what I learned from the Review's community outreach and engagement initiatives. This chapter includes the perspectives, lived experiences, and recommendations of community members derived from stakeholder meetings, one-on-one dialogue, the Review's survey, the policy roundtable, and the town hall meeting.

Chapter 11, *Other Reports Examined: Key Findings and Relevant Recommendations*, describes the findings and recommendations from a number of reports relevant to the Review's mandate.

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Chapter 12, *Examining Events Through the Human Rights Lens*, provides a framework for evaluating claims of overt or systemic bias, discrimination, and differential treatment. This framework includes a discussion on the ongoing legacy of the relationship between the Service and LGBTQ2S+, racialized, and marginalized and vulnerable. It permits me to evaluate whether specific missing person investigations were infected by overt or systemic bias and, more generally, systemic bias within the Service.

Chapter 13, *Models of Missing Person and Unidentified Remains Investigations*, examines and evaluates how the Service has conducted missing person and unidentified remains investigations before and after the specific investigations analyzed in this Report. In particular, I evaluate the Service's relatively new Missing Persons Unit. Finally, I describe how missing person cases are dealt with in other jurisdictions in Canada and

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<sup>6</sup> This chapter also examines and evaluates the investigations into Kenneth Peddle's disappearance, and how his unidentified remains were dealt with.

internationally. The practices in Toronto and other jurisdictions have informed my recommendations on a mid-term and long-term model for missing person investigations.

Chapter 14, *Building Better Relations Between the Service and Toronto’s Diverse Communities*, examines and evaluates how the Service interacts with LGBTQ2S+ or marginalized and vulnerable communities, and the initiatives of the Board and Service to build a respectful relationship with those communities. I also describe policing initiatives in other jurisdictions in Canada and internationally to identify best practices. Case studies of two missing men, Arthur Louttit and Dovi Henry, precede and follow this chapter.

Chapter 15, *Recommendations*, sets out my recommendations for change on a wide range of topics and includes commentary on why I have made these recommendations. In this chapter, I also set out a plan for implementing these recommendations in a transparent, accountable way, in partnership with Toronto’s communities.

Chapter 16, *Conclusion*, contains my final thoughts.

## **The Use of Respectful Language**

Chapter 12 explains, in some detail, what bias, prejudice, and discrimination mean and how I approached the task of determining their role in the Service’s missing person investigations and more generally.

When discussing issues of bias, prejudice, and discrimination, it is important to use clear, well-defined terminology. It is equally important to use language that is respectful of the diverse communities that are central to this Review. Inappropriate or insensitive language can perpetuate stereotypes or create unwarranted assumptions. Culturally competent language can build bridges and begin to contribute to a discrimination-free environment. Its use is not about “political correctness” but about creating the best opportunity for a respectful and inclusive dialogue with those affected by the issues under examination.

The terms used in this Report are derived from a variety of sources. These include the Ontario *Human Rights Code*, section 15 of the *Canadian Charter of Rights and Freedoms* and related jurisprudence, the invaluable policies and guidelines developed by the Ontario Human Rights Commission, and the Office of the Independent Police Review Director’s December 2018 Report, *Broken Trust: Indigenous People and the Thunder Bay Police Service*. As well, when quoting or paraphrasing what members of our diverse communities said to me, I have generally chosen to use their preferred terms. A glossary of some important terms appears in Chapter 12.

Throughout this Report, I make frequent reference to the term, “LGBTQ2S+.” The acronym refers to lesbian, gay, bisexual, transgender, intersex, queer (or, sometimes, questioning), and two-spirited people. The “+” is meant to include those communities not otherwise specified in the acronym. I know other acronyms are used to attempt to capture diversity in sexual orientation and gender identity and expression. I have chosen to use LGBTQ2S+ for consistency and because it conforms to the Terms of Reference.<sup>7</sup>

As well, I often use LGBTQ2S+ as part of the phrase “LGBTQ2S+ communities.” I refer to “communities” rather than “community” in recognition that there is no monolithic LGBTQ2S+ community but instead a wide diversity of sexual orientations, gender identities and expressions, lived experiences, and perspectives among those who self-describe as being under the LGBTQ2S+ umbrella. The term “communities” also recognizes “intersectionality”; namely, that people describe themselves in multiple ways, and not only as, for example, gay or bisexual. This distinction is important because, as an example, a Caucasian gay man may well have a different perspective from a Black trans woman and may be marginalized and vulnerable in different ways and at different levels. The importance of taking intersectionality into account is a theme fully developed in later chapters.

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<sup>7</sup> Variations on this acronym are occasionally used depending on context and the preference of a particular group or individual.



## Chapter 2

### HONOURING THE LIVES LOST

This Review was prompted by the tragic deaths of 10 people: Skandaraj Navaratnam, Abdulbasir Faizi, Majeed Kayhan, Soroush Mahmudi, Kirushna Kumar Kanagaratnam, Dean Lisowick, Selim Esen, Andrew Kinsman, Alloura Wells, and Tess Richey. Each of their lives had value. Each was loved by family and friends. Their deaths represented the loss of a brother, a son, a father, a sister, a daughter, a partner, a friend.

Bruce McArthur, a gardener who ran his own business and sometimes employed other labourers, murdered eight of the 10 people named in the Review's Terms of Reference. The remaining two were not McArthur's victims, but they disappeared in the same time frame and from the same neighbourhood as the others. Each person had a unique life, a unique story, though they also had much in common. Most of McArthur's victims were at the intersection of multiple marginalized identities, making them particularly vulnerable to a serial predator. All 10 people were connected, in a variety of ways, to the Gay Village around Church and Wellesley streets in the heart of downtown Toronto (the Village). And all suffered terrible deaths.

In an attempt to acknowledge the loss of these victims as individuals, I have written a brief tribute to each of them to memorialize in a small way their tragically foreshortened lives. First, however, I want to acknowledge many others who are not mentioned specifically in the Terms of Reference but who are survivors of the events described in this Review. The loved ones left behind. The other men McArthur brutalized. The members of the vibrant communities in the Village.

I also want to thank the many family members, loved ones, friends, and members of the Village who agreed to meet with me. I know it was painful for them to share their experiences and their memories. I also realize they made this sacrifice to ensure I appreciated the true nature of the suffering and loss at the heart of this Review. Those who met with me have helped me understand the terror of a loved one gone missing and the devastation of learning that their worst fears have come true. I have heard of the lasting impact of these events – the difficulties in trusting people and in forging new relationships, to name but two. Simply put, their lives will never be the same again.

## **In Memoriam**

### ***Skandaraj Navaratnam***

Skandaraj (Skanda) Navaratnam, the second oldest of four children, immigrated to Canada as a refugee from Sri Lanka during that country's long civil war, which lasted from 1983 to 2009. According to his family members, Mr. Navaratnam moved to Canada to better support his aging parents, who remained in Sri Lanka. He succeeded in this goal and sent money home whenever he could. Mr. Navaratnam was private about his sexual orientation, although he did tell his brother he was gay. His brother reassured him that the family accepted him for who he was.

In Toronto, Mr. Navaratnam had a wide social circle. Friends described him as a "live wire," a light in the lives of many people. He was known for his good looks, outgoing personality, and easy smile. He had a wonderful sense of humour and was a talented storyteller. I heard that Mr. Navaratnam was a great dancer and that he "loved to dance with wild abandon," especially to retro music. He was also a fine singer and would often break out into Bollywood tunes. He was unbeatable at Scrabble. This man of diverse interests was also fascinated by nature and loved gardening.

Mr. Navaratnam was highly educated, spoke perfect English, and enjoyed discussing politics. He was also spiritual. He frequented one particular outdoor spot where he would meditate. He found jobs as a casual labourer, including being employed for some time helping McArthur in his landscaping business.

In the summer of 2010, Mr. Navaratnam adopted a dog. For weeks, the pup was all he could talk about. That September, two of Mr. Navaratnam's friends grew concerned they had not seen him for several days, and they reported him missing to the police. At the time, Mr. Navaratnam was working as a caregiver to an elderly man.

Mr. Navaratnam was last seen on September 6, 2010, at Zipperz, a nightclub in the Village. Those who knew him found it troubling that he did not tell anyone where he was going. They were particularly alarmed that he had left his beloved dog behind, alone and uncared for. His many friends searched for him vigorously. When his family heard he was missing, they thought he had gone into hiding because of his precarious immigration status. Nearly a decade went by with no word about him.

Mr. Navaratnam's remains were found on a property adjoining a ravine on Mallory Crescent in Toronto. McArthur had a long-term contract with the owners, who allowed him to keep his equipment in their large garage. The police determined that McArthur killed Mr. Navaratnam on September 6,



2010. He was 40 years old.

Back home in Sri Lanka, family members decided, because of her serious heart condition, not to tell Mr. Navaratnam's mother of her son's death.

### ***Abdulbasir Faizi***

Abdulbasir (Abdul) Faizi was born and raised in Afghanistan. He moved to Canada for a better life and, in 1999, married and went on to have two daughters. Once settled, Mr. Faizi got a job as an assistant machine operator at a printing company. He was a hard worker and eventually earned enough to go into business with a friend and to buy two homes as investments.

Mr. Faizi kept his sexual orientation a secret from those closest to him – something that caused him considerable emotional distress. Although he lived in Peel Region, he regularly visited “hot spots” in the Village. One person who noticed Mr. Faizi at some of the weekly barbecues at the Black Eagle bar described him as a friendly person who smiled a lot.

On December 29, 2010, Mr. Faizi called his wife to let her know he would be home later than expected. At that point, he was working overtime to pay for his children's Christmas presents. He explained he was out with a co-worker. Mr. Faizi never returned home. He was last seen leaving Steamworks Baths that same evening. When Ms. Faizi called her husband at midnight, he did not answer his cell phone. The next day, his cousin reported him missing.

In 2018, Mr. Faizi's remains were found on the Mallory Crescent property. The police determined that McArthur killed Mr. Faizi on or around December 29, 2010. He was 42 years old.

### ***Majeed Kayhan***

Majeed Kayhan, the son of a Muslim cleric, came from a traditional family in Afghanistan. The household was quite conservative. While still in his home country, Mr. Kayhan married and had two children. In 1989, the Kayhans moved to Canada, lured by the hope they would be safe here. The family settled in the Toronto area, where Mr. Kayhan worked as a rug salesman. In 2002, Mr. and Ms. Kayhan divorced.

As a gay Muslim, Mr. Kayhan constantly felt misunderstood. A friend told me they would discuss the challenges Mr. Kayhan faced in dealing with both racism and systemic cultural homophobia, which together prevented him from living a fully “out” life. Those pressures forced Mr. Kayhan to live partly in the closet – a situation he found difficult.

After the marriage breakup, Mr. Kayhan moved to the Village, where he could openly embrace his sexual orientation. All the while, he remained

devoted to his children. His almost daily contact with his son provided both of them with much happiness. It was important to him that his children knew he was still their father. Mr. Kayhan also kept two pet birds that brought him joy. He faithfully cared for them and always arranged for someone to look after them when he was away.

Mr. Kayhan became a familiar presence in the Village. Those in his circle described how they would see him chatting with friends on Church Street, always with a wide grin. He was a talented singer: as he worked, he sang tunes from movies in both Farsi and English. Sometimes he dressed in traditional Afghani garb and walked along Church Street, celebrating his cultural identity. He was also a soccer fanatic. As one friend told me: “If the soccer game was on TV, you didn’t talk.”

In October 2012, Mr. Kayhan simply vanished, leaving his cherished birds unattended. His son reported him missing on October 25. He had last been seen about two weeks earlier.

Mr. Kayhan’s remains were discovered in a ravine near the Mallory Crescent property. The police determined that McArthur killed him on or about October 18, 2012. Mr. Kayhan was 58 years old.

### ***Soroush Mahmudi***

Soroush Mahmudi came to Canada as a refugee from Iran in 1985, when he was 20 years old. He was one of four children.

In 2003, Mr. Mahmudi married Fareena Marzook, who had a son from a previous relationship. They settled in Barrie, Ontario, where he got a job first in an automotive factory and then as a taxi driver. Later, after the family moved to Toronto, Mr. Mahmudi worked in construction and landscaping. At one point he was a professional painter.

Mr. Mahmudi was a family man: he took care of his wife and stepson and established a loving relationship with the boy. By all accounts, the marriage was a good, indeed an affectionate, one. Ms. Marzook told me she enjoyed “getting all dolled up” for her husband’s return from work. He liked to take her to the salon to get her hair and makeup done. Mr. Mahmudi also remained close with his parents, calling them several times a week.

Cooking was one of Mr. Mahmudi’s favourite pastimes. He usually prepared the family dinner as soon as he got home from work and constantly experimented with different kinds of food. Movies were another favourite leisure activity. Mr. Mahmudi and Ms. Marzook liked to watch movies together in English, and, because his English was better than hers, he translated for her. Friends described him as an “easygoing” jokester. He enjoyed camping and also playing soccer and pool.

On August 15, 2015, Mr. Mahmudi made breakfast for his stepson and left the house. He was never seen again. His disappearance was reported a week later, on August 22.

The police determined that McArthur killed Mr. Mahmudi on or around August 15, 2015. He was 50 years old. His remains were found on the Mallory Crescent property.

### ***Kirushna Kumar Kanagaratnam***

Kirushna Kumar Kanagaratnam was born and raised in Sri Lanka. He was one of a family of six children. In 2010, Mr. Kanagaratnam fled Sri Lanka in the aftermath of the civil war – a war that took the life of one of his brothers. For a full three months, he, along with almost five hundred other Sri Lankan asylum seekers, risked their lives in their escape on the MV *Sun Sea*, a derelict old cargo ship.

During the intolerable journey, Mr. Kanagaratnam found ways to pass the time and soothe the suffering of others. He sang with a makeshift band and played cards. One fellow passenger described him as being helpful and trusting. Another recounted how Mr. Kanagaratnam shared his ration of water, despite being allotted only seven or eight litres for the 37-day voyage. At the time, Mr. Kanagaratnam was 32 years old. Friends described him as a happy and talkative man, outgoing, and a willing participant in karaoke.

Mr. Kanagaratnam arrived on the shores of British Columbia in 2010. His application for refugee status was denied, but he remained in Canada as an illegal immigrant and eventually made his way to Toronto to connect with distant relatives. They also said he was generous, taking time off work as a handyman when asked to help move furniture or shovel snow. In particular, Mr. Kanagaratnam was devoted to his parents. He regularly sent money he earned to his impoverished family at home, despite his own meagre resources. He called his mother two or three times a week and last spoke with his family in August 2015. The calls suddenly stopped, and Mr. Kanagaratnam's family became worried when they were unable to reach him.

Sadly, Mr. Kanagaratnam was never reported missing. His family and friends assumed that, owing to his immigration status, he had gone into hiding. Understandably, they feared that if they reported him as missing, he would be deported back to Sri Lanka.

McArthur killed Mr. Kanagaratnam in January 2016, when he was 37 years old. His remains were discovered on the Mallory Crescent property in 2018.

***Dean Lisowick***

Dean Lisowick was born in Winnipeg in 1973 and moved with his family to Toronto as a child. By the time he was eight, Mr. Lisowick had been placed into foster care with a family on Lake Simcoe. For a brief time, he enjoyed a relatively stable childhood, exploring local creeks with his foster brothers.

Mr. Lisowick kept in touch with his birth parents. He had inherited his mother's artistic talent, and on one occasion reached out to her by sending her a painting he had done. Mr. Lisowick's mother passed away in 2011, never having given up hope that, some day, she would be reunited with her son.

As a young adult, Mr. Lisowick moved to Toronto and began spending time in the Village. He was unable to resist the temptation of drugs. At that point in his life, Mr. Lisowick became involved in a relationship that produced a child, but, sadly, his drug addiction led to his separating from his partner. According to a friend, Mr. Lisowick would periodically talk about the possibility of one day reconnecting with his daughter.

Mr. Lisowick described himself as bisexual. He became a familiar face in the Village, where he was a sex worker. Although he was essentially a loner, a man who had difficulty trusting people, he did have another side – a sweet, gentle, caring, and generous side. I heard that “if he saw someone being harassed, he was always the first to come to the rescue.” If he saw a friend who was hungry, he would say, “Here's five bucks.” Recognized as a “good guy,” he became known affectionately as “Laser.”

For a while, Mr. Lisowick worked at Sneakers, a popular bar in the Village. Its closure hit him hard, and he resorted to panhandling and other ways to survive. Although he was homeless at the time of his death, a cousin who kept in touch with him said he was in the midst of “making plans, setting goals, and doing things needed to accomplish them.”

Mr. Lisowick was recorded as leaving the Scott Mission shelter on April 26, 2016. There is no evidence he was ever seen again.

Tragically, there is no evidence he was ever reported missing. Mr. Lisowick's disappearance became apparent only when his remains were found and identified on the Mallory Crescent property. The police have determined that McArthur killed Mr. Lisowick sometime between April 2016 and July 2017. He was about 43 years old.

***Selim Esen***

Selim Esen, the youngest of three boys, was born and raised in Turkey. His parents easily accepted his sexual orientation, even though they well knew the challenges he would face living there as an openly gay man.

After completing school and 18 months of compulsory military service,

Mr. Esen worked in the textile industry, earning money to support his family while he studied sociology and philosophy. He graduated from Hacettepe University in Ankara and then moved to Australia, where he worked as a barista.

In the summer of 2012, Mr. Esen landed a dream job. Australian friends bought a new café in a popular tourist area in Istanbul and hired Mr. Esen to be the manager. All the employees but one were gay. By all accounts, this period was a happy one for Mr. Esen.

In 2013, Mr. Esen and his partner, who was from Syria, moved to Canada and married. Unfortunately, adjusting to a new country and a new culture took its toll. After several separations, the couple broke up permanently.

Mr. Esen's friends described him as an intelligent and inquisitive man who was always asking "Why?" According to his brother, Mr. Esen loved nature and maintained his interest in textile design and philosophy. Most of all, he was passionate about new experiences, learning new things, travelling to new places, and meeting new people. His friends told me he had a calm nature and a kind heart. He had a strong sense of social justice and was never judgmental. His generosity prompted him to support others. He helped his sister-in-law find a job when her husband passed away, and he gave financial support to family and friends. They also described him as a romantic: sometimes he walked the streets of Toronto at night, not aimlessly but purposefully, hoping to cross paths with "the one."

At the time of his disappearance, Mr. Esen had just completed a peer training program at St. Stephen's Community House. This achievement positioned him to begin providing peer support, a role that would have been a natural fit given his warm and welcoming personality. According to a friend, in the spring of 2017, when Mr. Esen received his certificate from St. Stephen's, he was at a high point. He had just applied for a position at a local Second Cup coffee shop.

Mr. Esen never showed up for his employment interview. He was reported missing on April 30, 2017, 15 days after he was last seen. His remains were discovered on the Mallory Crescent property. The police have determined that McArthur killed Mr. Esen on or around April 16, 2017. He was 43 years old.

### ***Andrew Kinsman***

Andrew Kinsman was born and raised in Ontario. After graduating from Pickering High School, he went on to earn a BA in humanities from McMaster

University. As an adult, Mr. Kinsman dedicated much of his time to agencies that assisted marginalized people. He became a staff member with the Toronto HIV/AIDS Legal Network as an events and outreach coordinator. He was also a contract employee and a long-time volunteer at the Toronto People with AIDS Foundation.

Friends considered Mr. Kinsman an important part of the fabric of the Village – a wise but passionate social justice advocate. As part of his advocacy efforts, he educated people with HIV on where and how to access help. A friend told me that, through his example, particularly his generosity, Mr. Kinsman made those around him “want to connect, to offer, to give, to share and to make meaning together.”

Mr. Kinsman was described as “irresistibly charming” and “uncommonly decent,” regularly welcoming people with a wide smile. He had a “razor wit” and laughed easily. He also had a serious side. His wide studies motivated him to debate the issues of the day fervently. Combining his advocacy and love for cooking, he baked every week for the People with AIDS Essentials Market. He frequently left treats at the doors of friends and neighbours.

On June 26, 2017, Mr. Kinsman was last seen near his home in the Village. When he went missing, friends quickly noticed something was amiss. He had recently made plans with a friend to take his driving test. More alarming, his cherished, elderly cat was found in his apartment, alone and without food or water. It was completely incomprehensible for him to just disappear.

The police determined that McArthur killed Mr. Kinsman on the day he went missing. He was 49 years old. His remains were found on the Mallory Crescent property.

### ***Alloura Wells***

Alloura Wells was born and raised in Toronto, the third of four children. Her mother managed a Tim Hortons, and her father was a labourer. Ms. Wells was enrolled in a special program at a school for the arts, where she completed Grade 11.

Ms. Wells came out to her family as transgender when she was 18. When she told her father she would be transitioning, he wisely told her: “Do what you need to do. Just be a good person.” She found her way to the Village, where she was quickly embraced as a vibrant, bubbly person and “a great soul.” Her gregarious nature led her to be highly active on social media.

In addition to her artistic gifts, Ms. Wells was a talented singer and had a knack for fashion. Her ability to hit any note and reach four octaves sparked

her dream of becoming a professional singer, and she went on to make four demo tapes. She set goals for herself in other areas of interest, particularly those related to her Indigenous background. She participated in drum groups and researched Indigenous history, medicines, and teachings.

Despite her many talents, Ms. Wells faced many challenges because she was transgender. She found it difficult to apply for jobs when her physical appearance didn't match the gender on her government-issued identification. She often met with inappropriate questions and outright hostility. Ms. Wells had the emotional support of her father, her sister, and a network of friends, but she needed an income. She turned to sex work.

In 2012, Ms. Wells signed up for the Ontario Works income support program and rented an apartment near her sister. Her mother's death a short time later was devastating for the entire family. Her father and brother lost their housing. After Ms. Wells herself was evicted from her apartment, she lived in a tent in the Rosedale Valley ravine. She and her father kept in regular contact, and even though he had very little money, Mr. Wells did what he could to support his daughter.

In July 2017, Ms. Wells's friends noticed that she had stopped updating her Facebook page. Monica Forrester, an outreach worker at Maggie's Sex Workers Action Project, and other friends tried in vain to locate her. They received information that she was in jail. It took months for this misinformation to be corrected. On November 4, 2017, Mr. Wells reported his daughter's disappearance to the police.

On November 30, the coroner determined that an unidentified body that had been found in the Rosedale Valley ravine three months earlier was, in fact, Alloura Wells. Her cause of death remains an open investigation. Ms. Wells was 27 years old.

### ***Tess Richey***

Tess Richey, the youngest of five sisters, was born in North Bay, Ontario. The Richey women were very close. As the youngest, Ms. Richey was cherished—and, in return, she put a high priority on connecting with and supporting her family. She never missed a family function.

After she finished high school, Ms. Richey moved to Toronto for greater opportunity. She took on part-time jobs as she furthered her studies. At all times she remained loyal to her family. At one point, she returned to North Bay to help her ailing aunt and, after her aunt passed away, she stayed with her mother for a year.

Friends described Ms. Richey as engaging and funny, kind and generous, a person of integrity. Her community benefited from her generosity

and passion for social justice. She combined her dedication to fitness and to social issues by running in the Terry Fox Run every year and in another run for a not-for-profit organization committed to educating youth about HIV and AIDS.

Ms. Richey was also an advocate for women's rights. She attended George Brown College to earn a certificate in Assaulted Women's and Children's Counselling and Advocacy. After her family reported she was missing, they found a number of buttons in her apartment promoting an awareness of violence against women. She regularly donated her hair to the Angel Hair Foundation.

In addition to her advocacy work, Ms. Richey loved animals and kept two dogs. She was also an animal rights activist: she protested against circuses and supported the organization People for the Ethical Treatment of Animals. She was interested in gardening, amateur photography, and especially travel. She graduated from the Flight Services program at Seneca College, hoping to become a flight attendant and to travel the world.

Tragically, this plan was not to be. On November 24, 2017, Ms. Richey went with a friend to Crews & Tangos, a drag bar in the Village. She didn't return home. She was reported missing the next day. Four days later, Ms. Richey's mother found her daughter's body in a stairwell close to where she was last seen. She was 22 years old.

## **Unique Lives with Common Threads**

My mandate on this Review focuses on one aspect of the state's response to these tragedies – the police response. However, an examination of the police response cannot be carried out in isolation. It is important to pay attention to the broader forces that left the victims vulnerable to exploitation and violence in the first place.

Skandaraj Navaratnam, Abdulbasir Faizi, Majeed Kayhan, Soroush Mahmudi, Kirushna Kumar Kanagaratnam, Dean Lisowick, Selim Esen, Andrew Kinsman, Alloura Wells, and Tess Richey – each person was unique, yet they all had something in common. Virtually all the people who went missing from the Village between 2010 and 2017 were marginalized for one reason or another, and often for multiple reasons: race, religion, sexual orientation, gender identity, poverty, immigration status, addiction, homelessness.

Marginalization is the social process by which individuals and groups find themselves on the fringes of society. It blocks people from rights, opportunities, and resources that others take for granted. Marginalization can



be compounded by intersectionality, where co-existing identities make one person's life significantly more difficult than another's. In this Report, I use the terms "intersectionality" and "intersectional marginalization" to describe those broader forces that made the victims at the heart of this Review particularly vulnerable to harm.

The 10 people I have memorialized in this chapter shared another common feature: they all (except for Tess Richey, a visitor) found refuge in the Village as a place of acceptance. Against the background of this rich diversity, the Village has been described as offering the connectedness of a small town in a large city. Each June, Toronto plays host to Pride month with numerous celebrations that culminate in one of the largest Pride festivals in the world. This world-renowned celebration turns the streets in the Village into parades and its parking lots into parties. The festival culminates on its last day with the famous Pride parade. In essence, the Village gives people a place where they can be their true selves. McArthur shattered any sense of safety by targeting victims in his own community, preying on their vulnerability in the very places they felt most shielded from harm.

I ask readers, as you go through this Report and consider my findings and recommendations, to keep in mind the people whose lives, and deaths, lie at the heart of this Review. Remember too the deeply affected marginalized and vulnerable communities they left behind. Putting McArthur behind bars has not brought matters to an end: many questions must be answered and many issues must be addressed. The focus of these questions, these issues, centres on "why so long?" Why did it take so long for the Toronto Police Service to recognize there was a serial killer in the Village? Why is it taking so long to identify and implement ways to heal the schism of distrust that has permeated the relationship between the Police Service and these communities? The Terms of Reference require me to examine both of these important issues.



## Chapter 3

# CIVILIAN GOVERNANCE AND OVERSIGHT: ROLES OF THE BOARD AND THE SERVICE

My mandate includes an examination of the bylaws, policies, and practices of the Toronto Police Services Board (the Board), as well the procedures and practices of the Toronto Police Service (the Service) particularly as they relate to missing person investigations.

The Board, the Service, and the chief of police have critical roles to play in ensuring that the Service conducts fair, efficient, and discrimination-free missing person investigations and that appropriate oversight and accountability exists for how such investigations are conducted. All three also have critical roles to play in promoting positive relationships between the Service and the communities it serves. It follows that it is essential to understand the roles to be played by each and the relationship between them. Such an understanding informs my findings and recommendations.

That understanding is largely derived from the provisions of the *Police Services Act* (the Act),<sup>1</sup> as amended, and related jurisprudence, reports, and commentary. I outline the relevant provisions of the Act below. I also consider the language contained in the new *Community Safety and Policing Act, 2019* (CSPA, 2019),<sup>2</sup> although not yet proclaimed in force. When enacted, it will replace the current Act and will reinforce the importance of the Board's role in the governance of the police and the need for the Board to be responsive to diverse communities. I have also drawn heavily on the earlier *Independent Civilian Review into Matters Relating to the G20 Summit* (the G20 Review) conducted by the Hon. John W. Morden, former associate chief justice of the Court of Appeal for Ontario.<sup>3</sup> Judge Morden's June 2012 Report, also commissioned by the Board, sets out the legal relationship between the Board, the Service, and its chief in terms that remain relevant today.

Judge Morden identified certain misconceptions about the Board's role. These misconceptions led him to make recommendations to clarify the Board's

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<sup>1</sup> RSO 1990, c P.15, as amended.

<sup>2</sup> SO 2019, c 1, Schedule 1, not yet proclaimed.

<sup>3</sup> John W. Morden, *Independent Civilian Review into Matters Relating to the G20 Summit: Report*, Canadian Electronic Library, Documents Collection (Toronto: Toronto Police Services Board, June 2012) (hereafter Morden Report).

role to ensure that the Board is able to fulfill the purpose for which it was intended; namely, to provide effective civilian governance and oversight of the Service. I am indebted to Judge Morden for his careful articulation of the legislative regime that governs the Board, the Service, and its chief and of how civilian oversight in policing should ideally function, consistent with that legislative regime.

I agree generally with Judge Morden’s views on how the Board’s civilian oversight should function. I have, however, refined and added to his analysis, particularly in relation to his discussion of “critical points” that trigger the obligation of the chief of police to disclose operational matters to the Board.

Despite Judge Morden’s guidance in 2012, the Board has often not functioned or been able to function in the way it should. For the purposes of this Review, these shortcomings have manifested themselves, in part, in the Board’s lack of awareness of critical issues relevant to its oversight role. In the context of this Review, the Board and its chairs were unaware of:

- Project Houston,<sup>4</sup> both while it was taking place and, more importantly, when it had, in effect, been “wound down,” despite its clear implications for the Service’s objectives and priorities, and despite the potential impact of unsolved missing person investigations involving the LGBTQ2S+ communities on the Service’s relationship with those communities and on the Service’s reputation;
- much of Project Prism,<sup>5</sup> despite its implications for the relationship between the Service and the LGBTQ2S+ communities and on the Service’s reputation;
- systemic flaws in how missing person investigations were being conducted;
- non-compliance with provincial adequacy standards relating to major case management and the use or, more accurately, the underuse of PowerCase, the provincially mandated case management tool for major cases; and
- relevant internal audits or other internal documents showing that the Service was not compliant with provincial adequacy standards and raising the potential impact of non-compliance on the Service’s reputation and investigative effectiveness.

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<sup>4</sup> Project Houston, fully examined in Chapter 6, investigated an alleged cannibalism ring that potentially explained the disappearances of one or more of the three men reported missing from Toronto’s Gay Village (the Village). Ultimately, the alleged ring proved to be irrelevant to the men’s disappearances.

<sup>5</sup> Project Prism, fully examined in Chapter 7, investigated the disappearances of two additional men reported missing from the Village and ultimately uncovered Bruce McArthur’s multiple homicides.

I have witnessed a commitment to changing how the Board functions, especially in the interviews conducted with the Board’s executive director, who brings to his position the added benefits flowing from his having been counsel to Judge Morden. However, there remains a need for a renewed understanding – on the part of both the Service and the Board – of the Board’s governance and oversight responsibilities and of the requirement that the Service overcome a legacy of withholding relevant information from the Board. Such an understanding must be accompanied by a commitment on the part of both the Board and the Service to conduct themselves in accordance with the Board’s important governance obligations.

This renewed understanding must involve addressing the longstanding misconception, despite Judge Morden’s clear direction, that the distinction between operational and non-operational matters prevents the Service from sharing information with the Board relevant to its mandate or immunizes the Service from appropriate but circumscribed Board scrutiny of operational matters. The statutory (and appropriate) prohibition against the Board’s directing the chief of police on day-to-day operational matters continues to be misinterpreted, much to the detriment of civilian governance and oversight. I acknowledge the need for the Board to avoid political interference with the police. However, my examination of the issues relevant to the Review’s mandate supports my view that a more informed and active Board, albeit with important safeguards, would be better positioned to improve not only police practices but also relationships with marginalized communities – relationships that are essential to better policing.

## **The Role of the Toronto Police Services Board**

Under s. 27(1) of the Act, every municipality in Ontario that maintains a police force must have a police services board.<sup>6</sup> Such boards, including the Toronto Police Services Board, have a critical function as civilian oversight bodies. Indeed, according to s. 31(1) of the Act, such boards “are responsible for the provision of adequate and effective police services in the municipality.” This core responsibility largely defines the Board’s mandate and its authority to establish this Review.

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<sup>6</sup> New legislation, not yet proclaimed, substitutes the term “police service board” for “police services board.” I continue to use the current term to avoid confusion. Similarly, some of the legislation cited still refers to “police forces” rather than the current term, “police services.”

As stated in the Morden Report, Ontario policing legislation has evolved. This evolution has significantly impacted the interpretation of the roles and responsibilities of boards, police services, and their chiefs of police. When the Act was introduced in the Legislature in 1989 and 1990, the solicitor general indicated that it was designed (1) to provide boards, police officers, and chiefs of police with a “clear direction and a more precise definition of their roles and responsibilities”; (2) “to strengthen the role of the police services board,” and (3) to bring about “an enhanced level of interaction between the police and the community and to make our police services more reflective of the community they serve.”<sup>7</sup> Subsequent amendments further affected how those roles and responsibilities are understood. For example, the 1997 amendments first introduced the phrase “adequate and effective police services,” reinforcing the responsibility of Ontario boards to address both the quantity and quality of police services provided in their municipalities.<sup>8</sup>

The Ontario Civilian Commission on Police Services, in its 1992 *Report of an Inquiry into Administration of Internal Investigations*,<sup>9</sup> articulated the Board’s responsibility to the community under the Act:

Those who are responsible for the quality of policing must be accountable to the public. Our whole system is predicated on accountability. The Chief is accountable to the Police Services Board and through the Board to the community.

The Police Services Board is responsible for providing civilian monitoring of the force and setting policies for its operation. Because of this obligation to monitor and because police investigate allegations against their own members, expectations for scrutiny by the Police Services Board, as representatives of the community, are high. It is imperative that Police Services Boards understand their role and are held accountable to the public. Their function is a crucial one; Boards exist to ensure that the policing services provided meet community standards.<sup>10</sup>

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<sup>7</sup> Morden Report, 51.

<sup>8</sup> Morden Report, 52. Note that s. 4(2) of the Act provides that adequate and effective police services must include, as a minimum, the following: crime prevention, law enforcement, assistance to victims of crime, public order maintenance, and emergency response. See also CSPA, 2019, s. 11.

<sup>9</sup> Ontario Civilian Commission on Police Services, *Report of an Inquiry into Administration of Internal Investigations by the Metropolitan Toronto Police Force* ([Toronto: the Commission], 1992) (hereafter *Civilian Police Commission, Report*). The Commission examined, among other things, the propriety of an agreement with an officer engaged in serious misconduct to withdraw a criminal charge, to undertake to lay no other charges, and a promise to destroy evidence and to keep the terms secret if the officer resigned. The Commission addressed what was known to the Board and what should have been known to it.

<sup>10</sup> Civilian Police Commission, *Report*, 5.

The balance of s. 31(1) of the Act elaborates on what a board's responsibilities entail:

- 31(1) A board ... shall,
- (a) appoint the members of the municipal police force;
  - (b) *generally determine, after consultation with the chief of police, objectives and priorities with respect to police services in the municipality;*
  - (c) *establish policies for the effective management of the police force;*
  - (d) recruit and appoint the chief of police and any deputy chief of police, and annually determine their remuneration and working conditions, taking their submissions into account;
  - (e) *direct the chief of police and monitor his or her performance;*
  - (f) establish policies respecting the disclosure by chiefs of police of personal information about individuals;
  - (g) receive regular reports from the chief of police on disclosures and decisions made under section 49 (secondary activities);
  - (h) establish guidelines with respect to the indemnification of members of the police force for legal costs under section 50;
  - (i) establish guidelines for dealing with complaints under Part V, subject to subsection (1.1);
  - (j) review the chief of police's administration of the complaints system under Part V and receive regular reports from the chief of police on his or her administration of the complaints system. [Emphasis added.]

As stated in s. 31(1)(c), a board shall establish policies for the effective management of the police force. Under s. 31(6), a board may also use bylaws to accomplish the same purpose.

I have examined the Board's relevant policies in formulating the recommendations in this Report. In so doing, I have been careful to avoid confusing the *policies* the Board creates to manage the police force, and the *procedures* or *processes* the chief creates to implement the Board's policies.<sup>11</sup>

### ***The Community Safety and Policing Act, 2019***

In my view, a board's role as set out in the CSPA, 2019, is fundamentally the same as that described in the current Act, despite some differences in how that

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<sup>11</sup> Sometimes, the term "policies" is used by others, including those the Review interviewed, to refer to procedures and processes created by the Service or chief of police.

role is articulated, and despite added specificity and responsibilities in the CSPA, 2019.

Under ss. 10(1) and 37(1) of the CSPA, 2019, a board shall, among other things, “provide adequate and effective policing in the area for which it has policing responsibility in accordance with the needs of the population in the area and having regard for the diversity of the population in the area”; monitor the chief of police’s performance and review that performance at least annually in accordance with any regulations; and monitor the chief’s handling of discipline within the police service.

Under s. 38(1) of the CSPA, 2019, a board shall also establish policies respecting, among other things, the administration of the police service; the provision of adequate and effective policing; the handling of discipline within the police service; and any other prescribed matters. Under s. 39, a board is also required to establish a strategic plan:

39 (1) The police service board shall, in accordance with the regulations, if any, prepare and adopt a strategic plan for the provision of policing, which shall address at least the following matters:<sup>12</sup>

1. How the police service board will ensure the provision of adequate and effective policing in accordance with the needs of the population of the area.
2. The objectives, priorities and core functions of the police service.
3. Quantitative and qualitative performance objectives and indicators of outcomes relating to,
  - i. the provision of community-based crime prevention initiatives, community patrol and criminal investigation services,
  - ii. community satisfaction with the policing provided,
  - iii. emergency calls for service,
  - iv. violent crime and clearance rates for violent crime,
  - v. property crime and clearance rates for property crime,
  - vi. youth crime and clearance rates for youth crime,
  - vii. police assistance to victims of crime and re-victimization rates,
  - viii. interactions with persons described in paragraphs 4 and 5 of this subsection,
  - ix. road safety, and
  - x. any other prescribed matters.
4. Interactions with,
  - i. youths,
  - ii. members of racialized groups, and

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<sup>12</sup> These matters track many of the items identified as components of a “business plan” under the current Ontario Regulation 3/99, s. 30. Items 3(viii), 4, and 5 above represent additional matters that must be addressed in a strategic plan.



- iii. members of First Nation, Inuit and Métis communities.
5. Interactions with persons who appear to have a mental health condition.
6. Information technology.
7. Resource planning.
8. Police facilities.
9. Any other prescribed matters.

Both the Act and the CSPA, 2019, require a police services board to establish policies to advance adequate and effective policing, to address objectives and priorities of the service, and to monitor the performance of a chief of police. Both also permit a police services board to “direct” the chief of police, with similar limitations on the scope of that direction. I address the scope of such direction below.

I outline above the specific matters that the CSPA, 2019, requires a board to include in its strategic plan. These specific matters do not include missing person investigations although I later recommend, based on the systemic issues identified during this Review, that the Board’s future strategic plan specifically address missing person investigations and related performance objectives and indicators of outcomes. Of course, the Board may choose to do so, regardless of whether the legislation requires it.

I said that the CSPA, 2019, does not fundamentally change the *role* of police services boards. However, it does impose important, additional obligations on boards. These obligations are relevant to my mandate. The CSPA, 2019, requires that all board members take training approved by the minister of community safety and correctional services (the minister)<sup>13</sup> on the board’s role and its members’ responsibilities, on human rights and systemic racism, and on recognition of and respect for “the diverse, multiracial and multicultural character of Ontario society, and the rights and cultures of First Nation, Inuit and Métis Peoples.”<sup>14</sup>

This focus on diversity is also reflected in at least four other requirements. First, a municipality must prepare and adopt a diversity plan to ensure that the members of its municipal boards, including the police services board, who are appointed by the municipality, are representative of the municipality’s population.<sup>15</sup> Second, both the minister and municipal councils must take additional steps as set out in the CSPA, 2019, to promote diversity

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<sup>13</sup>In this Report, the terms “solicitor general” and “minister of community safety and correctional services” and the related ministries are used interchangeably. Both were in use at various times.

<sup>14</sup> CSPA, 2019, s. 35(1).

<sup>15</sup> CSPA, 2019, s. 28(1).

in their appointments to police services boards, especially in relation to members of demographic groups that have been historically underrepresented on such boards, including racialized groups and First Nation, Inuit, and Métis communities.<sup>16</sup> Third, in developing its mandatory strategic plan, a board must consult with the chief of police and “groups representing diverse communities in the board’s area of policing responsibility” and consider the needs of such communities, including those of racialized groups and of First Nation, Inuit, and Métis communities.<sup>17</sup> And, fourth, a board is required to prepare and adopt a diversity plan to ensure that the members of the service itself reflect the diversity of the area for which the board has policing responsibility.<sup>18</sup>

In its emphasis on diversity, the CSPA, 2019, both recognizes the challenges of providing effective and fair police services to diverse communities and reinforces and modernizes the traditional idea Robert Peel first articulated in 1829 that a police service should reflect the public. I refer to these statutory provisions again when addressing human rights issues and systemic bias and discrimination in later chapters. They represent a welcome addition to the current legislation, particularly given that police services, including the Service and its Board, must respond to and address, on a priority basis, concerns about overpolicing and underservicing of our diverse, marginalized and vulnerable communities and issues around systemic bias, discrimination, and differential treatment.

## **The Role of the Ministry of Community Safety and Correctional Services**

A complete understanding of the roles played by a board and the chief of police also compels consideration of the roles assumed by the Ministry of Community Safety and Correctional Services (the ministry), the minister, and the Ontario government in promoting adequate and effective policing in the province.<sup>19</sup> The provision of such policing in Ontario is a joint responsibility of the province and the board. The province serves as an important backstop should any police service fail to abide by minimal provincial adequacy standards.

Paragraph 135(1) 1.1 of the Act empowers the Lieutenant Governor in Council (that is, the Ontario Cabinet) to make regulations establishing and governing standards concerning the adequacy and effectiveness of police

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<sup>16</sup> CSPA, 2019, s. 29(1).

<sup>17</sup> CSPA, 2019, ss. 39(3) and 39(4).

<sup>18</sup> CSPA, 2019, s. 37(1)(e).

<sup>19</sup> In July 2019, the Ontario government resurrected use of the designations “solicitor general” and “Ministry of the Solicitor General.”

services, including prescribing methods for monitoring and evaluating the adequacy and effectiveness of police services against such standards. One key regulation made under that power is Ontario Regulation 3/99. Called “Adequacy and Effectiveness of Police Services,” it is designed to promote province-wide standards for police services. Thus, although boards and chiefs of police continue to have discretion in the creation of policies, procedures, or processes, Ontario Regulation 3/99 requires every board to establish policies with respect to a range of identified matters. These generally correspond to requirements imposed under the Regulation on chiefs of police to establish procedures or processes about these matters.

The Regulation also requires every board and chief of police to implement a process ensuring the delivery of adequate and effective police services and compliance with the Act and its regulations. Every board is required to evaluate the adequacy and effectiveness of the services provided by its police force by comparing those services with the requirements of this Regulation.<sup>20</sup> Of course, the Regulation must be read in conjunction with requirements for board policies already set out in the Act. The same will hold true for any regulations created under the CSPA, 2019.

Ontario Regulation 3/99 requires a board to have policies on investigations into missing persons, on joint force operations, on internal task forces, and on undertaking and managing general criminal investigations.<sup>21</sup> Similarly, the Regulation requires the chief of police to establish procedures and processes in respect of those matters.<sup>22</sup> Regulations do not represent the only way in which the government may promote province-wide policing standards. Subsection 3(2) of the Act imposes statutory requirements on the solicitor general, including the requirement that the solicitor general shall:

- monitor police services to ensure that adequate and effective police services are provided at the municipal and provincial levels,
- develop and promote programs to enhance professional police practices, standards, and training,
- conduct a system of inspections and review of police services across Ontario,
- assist in the coordination of police services,
- provide information and advice respecting the management and operation of police services,

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<sup>20</sup> Ontario Regulation 3/99, ss. 35 and 37.

<sup>21</sup> Other relevant policies are identified, and addressed, in subsequent chapters.

<sup>22</sup> Ontario Regulation 3/99, ss. 12(1)(l), 13(1)(a) and (b), s. 29.

- issue directives and guidelines on policy matters, and
- develop and promote programs for community-oriented police services.

In 2000, in accordance with this mandate, the Ministry of the Solicitor General, Policing Services Division, created the *Policing Standards Manual*. It is designed to assist boards, chiefs of police, police associations, and municipalities with their understanding and implementation of the Act and its regulations, including Ontario Regulation 3/99. The manual sets out sample policies on what must be the subject of a policy and guidelines on what must be the subject of procedures. As these sample policies and guidelines are advisory only, boards, chiefs of police, police associations, and municipalities “may consider comparable equivalents when addressing compliance with the Act and its regulations.”<sup>23</sup>

The sample policy on missing person investigations provides that the chief of police will develop and maintain procedures that:

- set out the steps to be followed for undertaking investigations into reports of missing persons, including situations involving children, teenagers, and elderly and vulnerable adults,
- ensure investigative follow-up on outstanding cases, and
- where circumstances indicate a strong possibility of foul play, require officers to comply with the procedures set out in the Ministry’s designated *Ontario Major Case Management Manual* (the *MCM Manual*).

The guidelines provide that every police service’s procedures on investigations into missing persons should contain at least 18 specified items. Some of these items are elaborated on in Chapters 4 and 13.

Undoubtedly, changes will be made to Ontario Regulation 3/99 and the related *Policing Standards Manual* to correspond not only to the CSPA, 2019, or other legislative changes, but also to changes already made or to be made to related documents, such as the ministry’s *MCM Manual*.

To state an obvious but important point, Ontario Regulation 3/99 and the *Policing Standards Manual* certainly do not prevent a board or chief of police from developing policies, procedures, and processes on matters not mandated by legislation<sup>24</sup> or policies, procedures, and processes on mandated matters that exceed the standards articulated in the sample draft policies or

<sup>23</sup> *Policing Standards Manual*, Preamble, 1/1.

<sup>24</sup> A board’s discretion to determine whether a policy on a subject matter is required was confirmed in *Odhavji Estate v Woodhouse*, [2003] 3 SCR 263 at paras 65–66. However, fulfilment of the board’s role and responsibilities may obligate the board to create a policy on subject matters not provided for in the Act or regulations.

guidelines. It is also true that, strictly speaking, a board and chief of police are not obliged to accept the guidance the manual provides on the content of policies, procedures, and processes. Simply put, they might choose to include less content than that set out in the manual. However, in my view, insofar as the manual addresses policies, procedures, and processes relevant to my mandate, its content represents bare minimum requirements, consistent with the roles and responsibilities of a board and chief of police and the overriding requirement to provide adequate and effective policing in the municipality.

I also observe that this manual does not represent the only guidance or direction the ministry provides, relevant to my mandate. Ontario Regulation 3/99 and the *Policing Standards Manual* must also be read together with the subsequently enacted Ontario Regulation 354/04, entitled “Major Case Management.” Ontario Regulation 354/04 requires every board to establish policies with respect to major cases in accordance with the *MCM Manual*. It also requires every police chief to develop and maintain procedures on and processes for undertaking and managing investigations into major cases<sup>25</sup> in accordance with the manual. Subsection 1(2) of the same Regulation also requires every police service involved in major cases to use the software approved by the ministry. In Chapter 4, I examine in detail the provisions of Ontario Regulation 354/04 and the *MCM Manual*. They provide direction on how missing person investigations are to be conducted. Indeed, in subsequent chapters, I explain how the Toronto police were not in compliance with these provisions when conducting the Bruce McArthur–related investigations.

I interpret Ontario Regulation 354/04 as preserving the discretion of the board and the chief respecting the content of their policies, procedures, and processes respecting major cases with at least two limitations – such policies, procedures, and processes *must* conform to the *MCM Manual*, and police services must use the ministry’s approved software when conducting investigations into major cases, as defined by the Regulation.

The *MCM Manual* represents an important tool in providing direction to the police services province-wide on matters relevant to my mandate. There are other tools. For example, under its inspection and review powers, the ministry may audit and report on a service’s compliance with the Act and regulations. Later in this Report, I discuss the ministry’s recent major case management audit of the Service.

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<sup>25</sup> Subsection 1(1) of Ontario Regulation 354/04 relates this requirement to the pre-existing requirement in Ontario Regulation 3/99 for every chief to develop and maintain procedures on and processes for undertaking and managing general criminal investigations.

In Chapters 4 and 13, I examine the Board’s and the Service’s existing policies, procedures, and processes on matters relevant to my mandate. I measure them against Ontario Regulation 3/99, Ontario Regulation 354/04, the *Policing Standards Manual*, and the *MCM Manual*, as well as other documents that promote provincial adequacy standards, such as ministry audits. I also evaluate them in the light of recommended changes to existing practices, developed as a result of the lessons I believe can be learned from the missing person investigations that prompted this Review, our community outreach and engagement, and from other jurisdictions in Canada and internationally.

***The Role of the Inspector General of Policing and the Ministry under the CSPA, 2019***

The ministry’s role in promoting province-wide policing standards is expanded under the CSPA, 2019. Part VII of the CSPA, 2019, creates a new agency, the Office of the Inspector General of Policing. Since the Ontario government recently named its first inspector general,<sup>26</sup> we can reasonably expect that Part VII of the CSPA, 2019, will be proclaimed in whole or in part. I note, with interest, that under the 2019 Act, the inspector general and his deputies, like police service board members, shall receive training about “the diverse, multiracial and multicultural character of Ontario society, and the rights and cultures of First Nation, Inuit and Metis Peoples.”

Under Part VII, the inspector general’s duties include

- monitoring and conducting inspections of police services boards, chiefs of police, and police services to ensure compliance with the CSPA, 2019, and its Regulations;
- consulting with and advising such boards, chiefs, and services regarding such compliance;
- monitoring and conducting inspections of board members to ensure they do not commit misconduct;
- conducting analyses regarding compliance with the CSPA, 2019, and its regulations; and
- dealing with complaints against board members and, more important to my work, complaints respecting the adequacy and effectiveness of police services being provided; the failure of a board, chief of police, or police service to comply with the CSPA, 2019, or its regulations (other than failures amounting to misconduct), including a systemic failure; and the

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<sup>26</sup> The inspector general is a Cabinet appointment, though pursuant to s. 102(9) of the CSPA, 2019, the minister shall not direct the inspector general with respect to the performance of his or her functions under the legislation.

policies of a board or the Minister or the procedures established by a chief of police.<sup>27</sup>

With certain exceptions, the inspector general is to forward to the board and the minister complaints about board policies or procedures established by a chief of police. The board must report back to the inspector general and the minister about steps taken to respond to the complaint. The minister is also to consider whether changes are required to training or to requirements under the CSPA, 2019, or its Regulations.<sup>28</sup>

The CSPA, 2019, confers significant inspection powers on the inspector general and his or her inspectors.<sup>29</sup> The minister may also request an inspection.<sup>30</sup> The CSPA, 2019, provides for publication of inspection reports.<sup>31</sup> Finally, I note that the inspector general may issue directions to a board, chief of police, or service to remedy or prevent non-compliance with the CSPA, 2019, or its regulations, and has a range of remedies available if these directions are not complied with, including suspending or removing board members or a chief of police, or, as a last resort, dissolving the service or the board.<sup>32</sup>

In this Report, I find that, in a number of important ways, the Service failed to comply with existing provincial adequacy standards in relation to major case management and the use of mandated case management software. I have concentrated on the new inspector general's responsibilities since my recommendations take into consideration the inspector general's anticipated role in developing a strategy to ensure future compliance. The inspector general has many new powers and responsibilities under the CSPA, 2019. Once the Act is proclaimed into force, it will be up to the inspector general to decide his or her priorities. In my view, the general findings contained in this Report suggest that ensuring compliance with minimal provincial adequacy standards should be given top priority. The inspector general should try to take a preventative approach that, among other things, engages both police services and boards, thus attempting to break down any silos that may exist between these entities.

Subsection 3(1) of the CSPA, 2019, sets out the minister's general duties. Some of these duties are similar to the minister's current

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<sup>27</sup> CSPA, 2019, s. 102(4); ss. 106 and 107. The minister may also make a complaint under ss. 106 or 107.

<sup>28</sup> CSPA, 2019, s. 107(6–9).

<sup>29</sup> CSPA, 2019, ss. 111, 113–17.

<sup>30</sup> CSPA, 2019, s. 111(11).

<sup>31</sup> CSPA, 2019, s. 123(3).

<sup>32</sup> CSPA, 2019, ss. 125(1) and 126.

responsibilities. I refer to coordinating policing, operating the Ontario Police College, and developing and maintaining standards of training and education provincially. I will return to the important issues surrounding training and education later in this Report. At this juncture, suffice it to say that the lessons learned during this Review should inform the content of the Ontario Police College’s curriculum, the training and education of board members, and provincial adequacy standards for the training and education of police officers by municipal services. The focus of CSPA, 2019, on human rights, diversity, and systemic racism should also underlie new provincial adequacy standards for training and educating police officers on issues such as racism, discrimination, differential treatment, diversity, and intersectionality, concepts explored in detail in Chapters 12 and 14.

Several of the minister’s newly articulated duties are of importance here. First, the CSPA, 2019, states that the minister is to conduct research and analysis:

- on policing, the administration of police services, and related matters, including “the effectiveness, efficiency, sustainability and legitimacy of different methods of providing policing,” and compliance with the *Charter* and the *Human Rights Code* “(and that the Minister is to consult with and advise boards, chiefs of police and police services on these topics)”; and
- “to inform policy and program development, system planning, and the evaluation of service delivery and outcomes in respect of policing, public complaints and related matters.”<sup>33</sup>

As Professor Laura Huey’s research paper shows, there is a dearth of evidence-based research and analysis concerning best practices around missing person investigations, particularly on risk assessment.<sup>34</sup> There is, therefore, a compelling case for the minister to contribute to research in this area, in partnership with others including academic institutions. In my view, the CSPA, 2019, supports the creation of a “centre for policing excellence” to proactively examine policing best practices in a variety of areas. In Chapter 15, I outline the contours of a proposed centre for policing excellence.

Second, under the CSPA, 2019, the minister has a duty to “develop programs for community-responsive policing” and consult with boards, chiefs of police, and police services regarding the preparation, adoption, and

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<sup>33</sup> CSPA, 2019, ss. 3(1)(d)(e) and (g). See also s. 3(1)(b).

<sup>34</sup> Laura Huey, “An Absence of Evidence: Mapping the Evidence / Gaps, Themes and Other Issues with Canadian Research on Missing Persons,” <https://www.missingpersonsreview.ca/researchprogram>. This research paper was one of those commissioned by the Review.



implementation of community safety and well-being plans.<sup>35</sup> In my view, this provision and others contained in the current Act and in the CSPA, 2019, underscore the importance of the province addressing the issues identified during this Review, to ensure that the best possible practices in policing, including community-responsive policing, are applied province-wide. In general, the province should set minimal standards, and local boards should aim to tailor and enhance these standards for their own communities.

## **The Relationship Between the Roles of the Board and the Chief of Police**

Subsections 31(3) and (4) of the existing Act impose important restrictions on the board's role. They also inform the relationship between the board and its chief of police. These subsections state:

31(3) The board may give orders and directions to the chief of police, but not to other members of the police force, and no individual member of the board shall give orders or directions to any member of the police force.

31(4) The board shall not direct the chief of police with respect to specific operational decisions or with respect to the day-to-day operation of the police force.

A board's responsibilities must be read and interpreted in conjunction with the statutory duties of a chief of police. Section 41 provides as follows:

41(1) The duties of a chief of police include,

- (a) in the case of a municipal police force, administering the police force and *overseeing its operation in accordance with the objectives, priorities and policies established by the board under subsection 31 (1)*;
- (b) ensuring that members of the police force carry out their duties in accordance with this Act and the regulations and in a manner that reflects the needs of the community, and that discipline is maintained in the police force;
- (c) ensuring that the police force provides community-oriented police services;
- (d) administering the complaints system in accordance with Part V.

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<sup>35</sup> CSPA, 2019, ss. 3(1)(f) and (i). See also s. 3(1)(j) respecting the monitoring and evaluation of programs and their outcomes relating to policing or community safety and well-being plans, funded in whole or in part by the ministry.

41(2) *The chief of police reports to the board and shall obey its lawful orders and directions.* [Emphasis added.]

To perform their respective functions effectively, a board and the chief of police cannot operate in silos. Paragraphs 31(1)(b) and 41(1)(a) are illustrative. A board shall generally determine, after consultation with the chief of police, the service's objectives and priorities, and the chief is to administer the police force and oversee its operations in accordance with the objectives, priorities, and policies the board establishes. It follows that the chief, and not merely the board, has an important role to play in developing the service's objectives, priorities, and related procedures. As Judge Morden observed:

It is sometimes said, in simple and general terms, that policies are for the Board and operations are for the chief of police and that the two must always be kept separate. Apart from being impossible to apply in its own terms, this statement does not represent what the statute provides.<sup>36</sup>

I have already referred to the chief of police's role in working with the board to develop the service's objectives and priorities, and to create its policies. The corollary of this principle is that the board has an important role to play in operational matters, as long as it does not violate the prohibition contained in s. 31(4) of the Act.

What does this mean in practice? First, the board is prohibited from *directing* the chief of police about *specific* operational decisions or the *day-to-day operation* of the police service. The Code of Conduct governing board members, set out in Ontario Regulation 421/97, reinforces this prohibition. Section 2 of the Code of Conduct states that board members shall not *interfere* with the police service's operational decisions and responsibilities or with the day-to-day operation of the police force, including the recruitment and promotion of police officers. As Judge Morden observed, the prohibition contained in s. 31(4) "gives expression to a very important common law principle relating to police independence from political, and other interference with its law enforcement responsibilities."<sup>37</sup>

Second, the prohibition in s. 31(4) does not prevent the board from expressing its opinion or making suggestions to the chief on any matter relating to policing in Toronto, including operations. However, in my view, a board must proceed cautiously in expressing an opinion or making suggestions to the chief concerning a specific, ongoing criminal investigation. I say that for

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<sup>36</sup> Morden Report, 54.

<sup>37</sup> Morden Report, 56.

several reasons. First, decisions on who should be investigated, arrested, and/or charged have been described as the law enforcement function at “the core of police independence.”<sup>38</sup> The distinction between providing direction and discretionary opinions or suggestions can be fraught with danger.

One of the observations Judge Sidney Linden made in the *Ipperwash Report* is the difficulty of maintaining a distinction between government directions and advice in practice.<sup>39</sup> At the Ipperwash Inquiry, Judge Linden regarded such a distinction to be “neither sound nor sustainable.” Of course, Judge Linden was considering this distinction in the context of allegations that the Ontario government pressured the OPP to remove Indigenous occupiers from a park. Although he found that the government did not direct the OPP, its comments put unwarranted pressure on the OPP in relation to an active operational matter.

In my view, the answer is not to foreclose the Toronto Police Services Board from making non-binding recommendations or suggestions, or expressing opinions about ongoing operational matters, especially since, historically, criticisms of the Board have had more to do with inadequate oversight, rather than improper interference with the Service. So, the answer is to ensure the Board is always mindful of the prohibition against directing day-to-day operations. When the Board believes it appropriate to make recommendations or provide suggestions or advice on an ongoing operational matter, it should always be able to articulate how the recommendations, suggestions, or advice relate to policy, the Service’s objectives or priorities, or the Board’s mandate. If the chief is of the view that the Board’s intervention transcends the prohibition against directing day-to-day operations, the Board should memorialize its position in writing.

A board’s ability to ask questions, make recommendations, or provide advice or suggestions is important to ensure that it is fully informed about ongoing and completed operational matters relevant to its mandate. I say that for several reasons. Policy and operations are not watertight compartments. Operational matters can reveal the need for new and revised policies, particularly if policing is, as it should be, evidence-based and subject to continuous improvement. The objectives and priorities the board sets, after consultation with the chief of police, directly impact operations. Only a robust appreciation of contemplated or completed operations, so long as that

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<sup>38</sup> Ontario, Report of the Ipperwash Inquiry, Volume 2: Policy Analysis (4 vols., Toronto: Ministry of the Attorney General, 2007), 310ff (Commissioner Sidney B. Linden) (hereafter *Ipperwash Report*); see also: *R v Campbell*, [1999] 1 SCR 565.

<sup>39</sup> *Ipperwash Report*, 308, 334.

appreciation has relevance to the adequacy or effectiveness of policing, enables the board to develop appropriate objectives and priorities.

Similarly, although the board's policies cannot violate the prohibition in s. 31(4) (for example, by providing that the board shall direct the chief of police on when specific arrests for certain crimes will take place), they can set out a context or framework within which police operations take place. A policy on building partnerships with Indigenous communities, for instance, will be relevant to the types of human resources deployed by the police (such as an Indigenous incident commander or liaison officer, active involvement of Elders, etc.) in advance of or during an impasse to resolve a matter.

The board can develop policies that affect operations without impermissibly directing the chief of police with respect to specific operational decisions or day-to-day operations. Indeed, policies that have no potential effect or impact on operations may justifiably be regarded as worthless. And sometimes policy issues may crystalize in the light of ongoing operations. As well, non-interference with core law enforcement activities does not mean that police should not be called upon to explain and justify their actions. It does not mean that a board cannot scrutinize such activities, when relevant to larger issues within the board's mandate. As stated by Judge Linden: "Tipping the balance too far in favour of police independence ... can result in the police effectively becoming a law unto themselves."

Tipping that balance too far can undermine accountability. This Review is a perfect example of the appropriate role of the Board – by commissioning this independent Review, the Board is effectively scrutinizing police operations, with a view to implementing systemic changes. Finally, the police may need a board's intervention during an ongoing criminal investigation to address issues, such as availability of resources or the need to engage marginalized communities. These issues may affect the continuing investigation or similar investigations, or the relationship between the police and those communities generally, and ultimately a service's reputation.

In summary, when relevant to its statutory duty, a board has a duty to obtain operational information, in relation to contemplated, ongoing, and past operations.

### ***Accessing the Needed Information***

*The .... Board appears to have boxed itself into a Catch-22 situation. The Chief did not tell the Board more because it did not ask. The Board did not ask because it assumed the Chief would not tell.*

*In order for the ... Board to know whether its policies have been followed in the Junger matter, and whether the Chief had exercised good judgment, it should have required answers from the Chief.*

~ Civilian Police Commission, *Report*, 34.

It is imperative that a board have access to information relevant to its mandate. Information pertaining to contemplated, ongoing, or completed operations is generally known to the chief of police, rather than the board. Accordingly, it is necessary that the chief of police provide all relevant information to the board. The board must have such information and in a timely fashion to fulfill its statutory obligations. As Judge Morden stated:

The relationship between the board and the chief imposes duties on each of them: on the board to ask questions about past and future situations and events related to policing in the municipality; and on the chief to inform the board on situations and events that the board should know about. Most of the time, the chief has the information and the board does not. *The board cannot ask questions about the information of which it is unaware.*

Accordingly, the burden is on the chief to take the initiative in ensuring that the board is properly informed about matters – past, present or future – that fall under the purview of the board’s responsibilities.<sup>40</sup> [Emphasis added.]

When Judge Morden issued his report in 2012, he concluded that, despite the clear wording of the Act, Toronto Police Services Board members continued to incorrectly define their responsibilities in terms of a complete separation between policy and operations. This meant that the Board, at times, incorrectly limited its oversight role to “view it as improper to engage in a discussion that involves the Board asking questions about, commenting on, or making recommendations concerning operational matters.”<sup>41</sup>

To address this problem, Judge Morden outlined three elements of a consultation protocol he proposed the Board use in its interactions with the chief of police. He identified those elements as (1) exchange of information,

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<sup>40</sup> Morden Report, 59.

<sup>41</sup> Morden Report, 84.

(2) identifying the critical points, and (3) collaboration on defining an operation but not its execution.

### *Exchange of Information*

I have discussed this element earlier. The chief must be prepared to share operational information with the board: “a police board cannot be satisfied that it is properly analyzing a policy issue and developing an appropriate policy if it does not see any material that shows what the situation ‘on the ground’ actually is.”<sup>42</sup> Inherent in an information exchange, however, is that it is reciprocal. The board and the chief of police must discuss an issue that may result in a new policy. After all, operational decisions are affected by the policies framing those decisions. Judge Morden explained how the absence of an exchange that involves all relevant information erodes the foundation of civilian oversight:

Refusing to create and maintain a reciprocal exchange of information could lead to a situation where a police board does not engage in certain discussions or ask certain questions for fear that it will be told it is treading on operational matters. This “[t]imidity” is what has caused police boards to be seen to be “‘lame duck’ institutions.” This is dangerous. We must avoid an approach to civilian oversight where the objective becomes separating the policy decision from the operational implementation of that decision, as this can open up “‘escape hatches’ though which policy maker (i.e., the police board) and policy implementers (i.e., the police service) can avoid responsibility.”<sup>43</sup>

Sometimes, operational information must be given to and discussed by the board confidentially, for example, where it is provided in relation to a contemplated or ongoing operation or where the information, if public, might reveal sensitive information (such as some investigative techniques, the disclosure of which could undermine ongoing or future operations). Judge Morden outlined the powers available to board members to receive information confidentially, and their related duty to keep that information confidential.<sup>44</sup>

### *Identifying the Critical Points*

Not every operational detail need be provided to the board for it to ensure adequate and effective policing in Toronto. Judge Morden referred to the threshold or “critical points” for disclosure. He regarded a “critical point” as a

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<sup>42</sup> Morden Report, 85–86.

<sup>43</sup> Morden Report, 87 (citations omitted).

<sup>44</sup> Morden Report, 88–89.

policing operation, event, or organizationally significant issue requiring command level approval (i.e., by the chief of police or deputy chief of police) or command level advance planning.

In Judge Morden’s view, where a “critical point” exists, the chief “should provide the Board with an operational briefing that outlines the broad contours of the operation / event / issue, highlights the existing Board policies that may apply, if any, and generally ensures that the Board is informed of what is going to take place. If the Board has knowledge of a “critical point,” it can discharge its important governance role by analyzing the policy framework that may apply and determine whether a vacuum in that policy framework must be filled.”<sup>45</sup> Judge Morden recommended that the Board, in consultation with the Service, draft a policy that defines a “critical point” in policing and that identifies criteria to be applied in determining when a “critical point” is reached.<sup>46</sup>

The Board never created such a policy. It should have. Judge Morden’s proposed definition of a “critical point” provides *one* useful litmus test for when operational information should be provided to the Board. However, Judge Morden did not set his definition of a “critical point” in stone. He suggested that the definition should be reviewed by the Board on a continual basis.<sup>47</sup>

In my recommendations, I provide additional guidance to the chief and the Board on the circumstances under which a “critical point” is reached. For example, some major operations have such a potential impact on the Service’s objectives, priorities, or reputation to compel disclosure to the Board in circumstances where senior command may not have formally approved the operations or been involved in their advance planning. After all, there are no clear criteria in the Service as to what operations must be approved by senior command.

As well, given the focus of CSPA, 2019, on human rights, systemic racism, and the adequacy and effectiveness of policing marginalized and vulnerable communities, the definition of “critical point” should, in part, be tied to operations likely to have an impact on the Service’s relationship with those very communities. One example of such an operation was Toronto’s Marie Curtis Park Project.<sup>48</sup> The project is elaborated on in Chapter 14. The Service’s approach to the Marie Curtis Park issue further undermined, to a considerable extent, its relationship with the LGBTQ2S+ communities. The

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<sup>45</sup> Morden Report, 89–90.

<sup>46</sup> Morden Report, Recommendation 5, p 9.2.

<sup>47</sup> Morden Report, 8.

<sup>48</sup> Also known as Project Marie.

Board could have played a meaningful role in raising with the chief whether this project aligned with the Service’s objectives and priorities and, equally important, whether the Service was working with the LGBTQ2S+ communities, community leaders, and consultative committees to resolve the issues in a way that did not involve charges.

Of course, the use of “critical points” to assess whether operational information should be provided to the Board in advance of or during an operation does not address the need to share such information after an operation or event has occurred. As I have already said, such operations, events, or issues may affect the Service’s ongoing objectives and priorities on the development or refinement of policies and, ultimately, on accountability for decisions made. I can do no better than to reproduce Judge Morden’s comments:

After the police have acted and the operation is over, the police board is able to consult *with* the chief of police and ask questions about why a certain operational decision or activity was or was not taken. In applying this principle of retrospective accountability after an operation is over, a police board could seek *reports* from the chief of police, initiate *reviews* into particular policing matters that arise from a specific operation that has taken place, and engage in a process with the chief of police to identify *priorities and objectives* for future operations of a similar nature.<sup>49</sup>

Judge Morden accurately identified typical issues or questions that a board might wish to raise with a chief of police in a consultation after a specific operation or activity has taken place. The following questions arising from my Review are illustrative:

- Why was Project Houston unsuccessful in solving the disappearances of the missing men?
- Why was it wound down when it was?
- Was solving these disappearances treated as a priority before, during, or after the project was wound down?
- Were there any deficiencies in the project’s operational plan or in its implementation?
- Did the project have the resources it required to conduct its investigation in an effective and timely way? Were disproportionate resources devoted to the international investigation of alleged cannibalism?

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<sup>49</sup> Morden Report, 97.



- Did the project fully utilize existing technology? If not, why not? What steps, if any, should be taken to promote optimal use of technology in the future?
- Did the Service work effectively with other police services? If not, why not? What steps should be taken to rectify any deficiencies in this regard?
- Did the project appropriately engage and communicate with affected communities? If not, why not? What steps should be taken to rectify any deficiencies in this regard?
- Were the investigations into the disappearances of Mr. Skandaraj Navaratnam and Mr. Majeed Kayhan before Project Houston effective? If not, why not?
- Were those investigations and Project Houston conducted in compliance with existing policies, procedures, and processes? If not, why not?
- Were those investigations and Project Houston conducted in compliance with existing provincial adequacy standards, for example, in compliance with the *Major Case Management Manual*? If not, why not?
- Did the Service give appropriate priority to missing person investigations generally?
- How has the relationship between the Service and the communities it serves been affected by how specific missing person investigations were conducted? How can any impairment in that relationship be rectified?
- Did bias, systemic or otherwise, impact the missing person investigations being scrutinized? If so, how should this be addressed?
- Is there a need to create or modify existing policies, procedures, or processes to address deficiencies identified in missing person investigations and Project Houston?
- Why did Project Houston fail to identify McArthur as the perpetrator (once his name was known)? What, if any, systemic issues need to be addressed as a result of this failure? What, if any, lessons have been learned?<sup>50</sup>

Had Project Houston been discussed with the Board, and these questions raised with the chief of police, the Board could have addressed the adequacy and effectiveness of the Service in a variety of ways, for example, through revised policies, new objectives or priorities, or directions or advice on systemic issues.

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<sup>50</sup> Of course, the types of questions that might be asked would be different if critical points are reached at the outset or during an operation.

Both Judge Morden’s review and this Review represent instances in which the Board initiated independent reviews into policing matters arising from specific operations. They fall squarely within the Board’s mandate since findings concerning specific operations have systemic implications relevant to the Board. These two reviews make crystal clear that the old dichotomy between policy and operations is no longer a definitive guide for either the Service or the Board. In short, to properly fulfill its oversight responsibilities, the Board must be informed about certain operational matters and take a policy-oriented interest in them.

*Collaboration on Defining an Operation but Not Its Execution*

As the final element of a consultation protocol, Judge Morden drew a distinction between defining what an operation is going to be, as opposed to how it is going to be executed: “The Board should always be able to collaborate in defining the “what” but not the “how” of an operation.”<sup>51</sup> He observed that the initial determination of what the Service’s objectives and priorities will be for a particular operation, event, or organizationally significant issue is the Board’s to make, after consultation with the chief. The consultative process also enables the Board to recommend aspects of the operational plans to the Service, without directing the chief on specific operational decisions. Finally, the collaboration enables the Board to ensure that the operations are supported by an adequate policy framework. However, the chief and the Service retain the autonomy to develop and execute the specific operational plans. The chief may also choose to reject recommendations made by the Board, though remaining accountable for the operational decisions made.<sup>52</sup>

In large measure, this third element Judge Morden identified reinforces and helps to explain the prohibition contained in s. 31(4) of the Act. In my view, however, the distinction between “what” and “how” may be difficult to apply in practice and should not act as a substitute for careful consideration of whether the Board’s input adheres to its appropriate oversight role and its limitations.

***The Impact of the Community Safety and Policing Act, 2019***

In my opinion, the analysis of the relationship between the roles of the board and the chief of police and the service should not be affected by the proclamation of the CSPA, 2019. Subsection 40(4) of the CSPA, 2019, states:

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<sup>51</sup> Morden Report, 92.

<sup>52</sup> Morden Report, 92–95.

The police service board shall not direct the chief of police with respect to specific investigations, the conduct of specific operations, the discipline of specific police officers, the day-to-day administration of the police service, or other prescribed matters.”<sup>53</sup>

This provision is similar to the current prohibition against the board’s providing directions respecting “specific operational decisions” and “the day-to-day operations of the police force.” However, the Ontario Association of Policing Boards expressed concern about this language. Mr. Ryan Teschner, on behalf of the association, said this when the legislation was introduced:

As currently worded, these sections use the terminology of “specific investigations” and “the conduct of specific operations.” Again, the unintended consequences of this wording could prevent boards from engaging in core aspects of their governance and oversight roles. Two examples illustrate this. Carding practices could be immune from policy review if it fits within the definition of “specific investigations” or “the conduct of specific operations.” Similarly, for missing persons investigations generally, a board may wish to have a general policy that applies to this type of investigation. The current wording of these sections may prohibit this.

Although a board should have no intention of creating a policy or direction that applies to a specific, ongoing matter – that is, a missing person investigation involving person X – the current wording of these provisions may well prohibit these broader and important policies and directions from being developed and issued.

Therefore, we recommend changing the wording in both subsection 38(5) and subsection 40(4) to read “a specific investigation” and “the conduct of a specific operation.”<sup>54</sup>

In my view, subsection 40(4) should be read in conjunction with the larger purposes of the CSPA, 2019, that encourage more active policy making and performance and outcome monitoring by the board. Indeed, it would be contrary to these larger purposes if subsection 40(4) were interpreted to increase the ambit of areas where a board could not create policies or direct the

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<sup>53</sup> Subsection 40(7) of the CSPA, 2019, adds content to s. 40(4) by providing that the board should not direct the chief of police to do anything contrary to his or her duties under the Act or with respect to collecting information for the purposes of a criminal investigation or prosecution.

<sup>54</sup> Ontario, Legislative Assembly, Standing Committee on Justice Policy, “Comprehensive Ontario Police Services Act, 2019” in *Official Report of Debates (Hansard)*, JP-2 (7 March 2019) at JP-28, 1600. Accessed online at [https://www.ola.org/sites/default/files/node-files/hansard/document/pdf/2019/2019-03/07-MAR-2019\\_JP002.pdf](https://www.ola.org/sites/default/files/node-files/hansard/document/pdf/2019/2019-03/07-MAR-2019_JP002.pdf)

chief of police. In addition, consistent with the Morden Report, nothing in the CSPA, 2019, diminishes the need for a board to be informed on operational matters that rise to a level of critical points, regardless of whether they result in the board's providing any direction to the chief of police or the service.

I also believe that the new focus in the CSPA, 2019, on diversity, human rights, systemic racism, and traditionally marginalized and vulnerable communities discussed earlier also underlines the Board's important role in monitoring the Service's work in these areas, including its investigative performance and outcomes in relation to those same communities. This is especially the case in the communities central to this Review where a legacy of mistrust exists between their members and the police.

Subsection 40(9) of the CSPA, 2019, requires the board to publish on the internet any direction it provides to the chief of police. This requirement is consistent with heightened accountability and transparency for the conduct of both the board and the chief and may serve as a further protection against misuse of the board's power to direct. It is also consistent with what Professor Kent Roach described as a democratic policing model – a model Judge Linden adopted in the *Ipperwash Report*. The democratic policing model recognizes that the respective roles of the board and the chief will vary over time and in different contexts, but that, when the board exercises its democratic powers of direction, it should do so in a transparent manner and be held accountable.

I also observe that subsection 40(8) of the CSPA, 2019, provides that a chief of police may decline to provide information under a direction from the board, if the regulations so authorize. Concern has been expressed that this gives a chief of police a potential veto over providing information to the board relevant to its mandate. In my view, it is unnecessary to create such a regulation given the statutory prohibitions that already exist against a board's inappropriate intervention and the confidentiality that binds board members. If such a regulation is created, the scope for denying the board information about operations should be restricted, as it is in Victoria, Australia, to information whose disclosure would prejudice an investigation or prosecution or endanger the life or safety of a person.<sup>55</sup> Subsection 40(8) of the CSPA, 2019, presumes, by implication, that the general rule will be a free flow of information between the board and the chief of police, consistent with Judge Morden's views and my own.

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<sup>55</sup> *Victoria Police Act 2013* (Vic), Act 81 of 2013, s. 11(3).

## Summary

I cannot overemphasize the importance of effective civilian oversight of the police. It promotes public respect for the police through a model that involves both governance and accountability. It can also serve as a means to ensure that special attention is given to the oversight of policing as it affects communities with a troubled relationship with the police, including racialized, LGBTQ2S+, Indigenous, homeless or underhoused, and others identified in this Report.

The board is an essential feature of responsive and democratically accountable policing. However, a board cannot fulfill its statutory oversight responsibilities if it is not informed about critical points in policing or is overly deferential to its chief or its police service. Equally, a board oversteps its statutory responsibilities if it attempts to usurp its chief's role or to interfere with the service's protected core of independence around specific investigations. To paraphrase Judge Linden in the *Ipperwash Report*, requiring the police to explain and justify their activities and modify existing policies and procedures to ensure adequate and effective policing is not inconsistent with protecting the core of police independence.<sup>56</sup> Simply put, robust oversight makes a police service more effective rather than less.

It follows that such oversight should not be seen as an imposition on the chief of police or the service. As contemplated by the existing Act and the CSPA, 2019, the chief and the board should “work together as partners.”<sup>57</sup> In successful partnerships, both partners benefit. The chief of police benefits by ensuring that the board is informed or given a “heads up” about issues and operations that affect the board's policies and the service's relationships and reputation. It should be in the police chief's interest to inform what is essentially his or her employer of critical challenges facing the service so that the board can help address those challenges.

Where a culture of sharing information with the board exists, it can have a “ripple effect” throughout the service. It promotes greater sharing of information between the chief and senior officers. After all, the chief cannot inform the board about a critical point if he or she is unaware of it. The chief should not be blindsided by critical events and operations in a large organization. The best antidote to silos and walls both between the chief and the board and within the service is a free flow of information. Because the flow

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<sup>56</sup> Ipperwash Report, 322.

<sup>57</sup> “Police Encounters with People in Crisis,” An Independent Review Conducted by the Hon. Frank Iacobucci for Chief of Police William Blair, Toronto Police Service, June 2014, p 67, para 44, online: [www.torontopolice.on.ca/publications/files/reports/police\\_encounters\\_with\\_people\\_in\\_crisis\\_2014.pdf](http://www.torontopolice.on.ca/publications/files/reports/police_encounters_with_people_in_crisis_2014.pdf)

of information between the chief and the board is two-way, the chief will also benefit from information the board receives from the community and other levels of government.

The board in turn benefits from the information, expertise, and professional judgment of the chief of police. The board is then better able to discharge its responsibilities to ensure adequate and effective policing and, when appropriate, advocate for the police service with other levels of government. The board will have hired the chief of police and will want that person to succeed. There should be mutual trust, respect, and a commitment to better policing shared by the board and the chief. The board and the chief should never distrust each other or develop an adversarial relationship. All this is to say, a proper and broad understanding of “critical points” can facilitate a better flow of information both within the police service and between the board and the chief.

In the Civilian Police Commission *Report*, the Commission said the following in the context of the accountability of the Service and the Board in relation to addressing serious misconduct by a member of the Service:

The law is clear that the Board cannot usurp or replace the management role of the Chief of Police. However, the Board clearly has overall responsibility for the operation of the force. The Chief reports to the Board and must obey its lawful orders and it is the view of this inquiry panel that *a Police Services Board cannot fulfill its responsibilities for monitoring the policies it sets and the performance of the Chief unless it insists on having the necessary information. And there must be an obligation on the Chief to report fully.*

The hands-off stance taken by the Metropolitan Toronto Police Services Board in the matter of the resignation of Constable Gordon Junger represents a misunderstanding of its role and a failure to assume its rightful responsibilities.”<sup>58</sup> [Emphasis added.]

An understanding of the appropriate roles and responsibilities of the board, the chief of police, and the police service enables me to evaluate whether those roles and responsibilities were fulfilled in relation to this Review’s subject matter, and, if not, what improvements can be made. That is the task to which I now turn.

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<sup>58</sup> Civilian Police Commission, *Report*, 33–34.

## Findings

During the Review, we interviewed many former and current Toronto officers. Our interviews also included two former Board chairs, the Board’s executive director, former chief Mark Saunders, four current or former deputy chiefs, including Acting Chief James Ramer. In this section, I focus on the relationship between the Board and the Service and its chief of police, using the McArthur-related investigations as illustrative. The evidence revealed that, during the McArthur-related investigations, the Board members, including its chairs, were unaware of major operations described in this Report that potentially impacted on the Service’s reputation, its relationship with the LGBTQ2S+, racialized, and marginalized and vulnerable communities generally, on the Service’s objectives and priorities, and on policy initiatives and advice or direction that might be given to the chief of police.

Project Houston mobilized considerable resources – human and financial. It was investigating an alleged international cannibalism ring, said potentially to be related to the disappearances of Mr. Skandaraj Navaratnam, Mr. Abdulbasir Faizi, and Mr. Majeed Kayhan, all connected to the LGBTQ2S+ communities and last seen in the Village. Investigators interacted with several Ontario police services and with law enforcement agencies around the world. Deputy Chief Saunders signed off on Project Houston’s operational plan. James Brunton, the prime focus of the project, was ultimately arrested on child pornography charges completely unrelated to the disappearances of the three missing men. After Brunton’s arrest, Project Houston’s operations were wound down. A number of officers returned to other duties. The small remaining team was unable to complete all remaining tasks before the project ended. Despite the significant resources dedicated to it, the project cast no light on the disappearances.

The Board and its chair were never advised that Project Houston was taking place or had taken place. I find this disturbing. It is beyond doubt that Project Houston was precisely the type of operation that passed the “critical point” Judge Morden described, especially once it wound down its operations. It brought about several arrests on charges unrelated to the three missing men. Its lack of success in solving the disappearances, coupled with its use of a significant amount of scarce resources, invited the types of questions I set out earlier in this chapter. A discussion between the chief or his designate and the Board could have and should have prompted an internal review of the project by the Service. An internal review could have introduced any number of changes or improvements, such as an enhanced communication strategy to

build trust with the LGBTQ2S+ communities, as well as changes to the Service's approach to missing person investigations generally, and to its existing processes.

Furthermore, Project Houston was appropriately designated as a major case. But it was not compliant, in important ways, with provincial adequacy standards relating to major case management and its mandated case management tool, PowerCase. As discussed in Chapter 4, the Service's Audit and Quality Assurance Unit identified this as an issue within the Service during the early stages of Project Houston and expressed concern about the impact of non-compliance on the Service's investigative effectiveness, legal exposure, and reputation. The situation was described as "high risk." Board members were unaware of these concerns. They should have been. Frankly, it is difficult, one might say impossible, to even characterize systemic issues around major case management and the Service's use of technology as "operational matters" as that term is meant in the legislation.

Similarly, Board members were not briefed on Project Prism. Project Prism was the Service's 2017 investigation initially prompted by the disappearances of Andrew Kinsman and Selim Esen. The Board chair heard from a member of the LGBTQ community that there was an issue around missing men from the Village. He asked Chief Saunders about it. The Board chair was told only that it was being addressed. The nature of this project easily met the "critical point" threshold Judge Morden described.

The Service's failure to share operational matters that potentially impact on the Service's reputation, its relationship with diverse communities, and on potential policies of the Board or appropriate advice or direction to the chief represents a serious systemic issue. The evidence supports my view that this failure can be explained as follows:

1. During the period I examined, there continued to be a misunderstanding about information that must be shared with the Board and a reticence on the part of chiefs of police to share operational information with the Board. My recommendations on what constitutes "critical points" provide clarity on this requirement.
2. Given this misunderstanding, there is also a reluctance on the part of the chief to share information with the Board. That reticence is grounded in both a cultural problem and a perceived practical problem. First, the cultural problem. The evidence supports a finding that the Service hasn't fully embraced the opportunities, indeed the benefits, afforded through Board oversight. Chief Saunders advised the Review that he was reluctant to share operational information with the Board due, in part, to concern



about having to track, for prosecution purposes, who received what information and when.

With respect, I do not accept this rationale for non-disclosure of information that the Board must have in order to fulfill its civilian oversight responsibilities. First, as Judge Morden observed, disclosure of “critical points” need not extend to all or even most of the details of an operation. Second, implicit in the Service’s reticence to share operational information is a concern over whether Board members will maintain confidentiality. The withholding of such information on the basis of confidentiality is completely unwarranted. As Judge Morden also noted, Board members have a statutory duty to preserve confidentiality. Violations can lead to removal, discipline, and even prosecution. It should be presumed, in the absence of evidence to the contrary, that Board members will respect their statutory obligations in this regard.

The evidence also showed that sometimes the amount of information shared by a chief of police informally with the chair of the Board depended on their personal relationship at the time. It is important that the appropriate and indeed necessary sharing of information not depend on personal relationships. The chair can serve, of course, as the conduit of information to the Board, as long as all Board members are ultimately made aware of critical information.

I am firmly of the view that the Board’s oversight can and should bring about improvements to the Service, improvements that can be embraced by its members and senior leadership in a collaborative way.

The Service’s proper sharing of information with the Board presumes that the chief will be adequately briefed by his or her senior staff about the operations and systemic issues within the Service. As reflected in Chapter 6, there was a disconnect between the evidence available to Project Houston and what was conveyed to senior officers. Misinformation about the status of operations, even where inadvertent, interferes with senior command’s ability to fulfill their responsibilities.

It is obvious that the information sharing that is the foundation of the Board’s oversight responsibilities, as described in the 2012 Morden Report and the 1992 Civilian Commission on Police Services *Report* has not always taken place. It goes without saying that the Board cannot fulfill its statutorily imposed obligations relating to civilian oversight – designed to protect the Service’s reputation with the public and the public’s confidence in the Service – without sufficient information about what is happening within the Service.

This situation must change. And priority must be given to such change. In Chapter 15, I outline my recommendations respecting civilian oversight.

## Chapter 4

# MAJOR CASE MANAGEMENT AND THE USE OF TECHNOLOGY

In 1995, Paul Bernardo was convicted of many serious crimes, including first-degree murder, kidnapping, and aggravated sexual assault. Deep concerns were raised as to how Bernardo's crimes went unsolved for years. The Hon. Mr. Justice Archie Campbell was asked to examine and report on the roles played by several police forces, the Centre of Forensic Sciences, the Office of the Chief Coroner, and the Ontario government during the Bernardo-related investigations.

Justice Campbell's 1996 Report (Campbell Report) identified a series of systemic failures within law enforcement and justice systems in Ontario, including a lack of co-operation, coordination, and communication between police forces and other participants in the justice system.

<sup>1</sup> These failures contributed to a serial predator's ability to "fall between the cracks." Justice Campbell recommended that the province create a major case management system for all the major and interjurisdictional serial predator investigations. The system should be based on co-operation rather than rivalry, specialized training, early recognition of linked offences, coordination of interdisciplinary and forensic resources, and mechanisms to ensure unified management, accountability, and coordination among police services and law enforcement agencies.

Justice Campbell concluded that such a system was required in order to ensure five key goals:

- unified direction by someone in charge of and accountable for related investigations;
- supervision of timelines and systemic follow-up of crucial investigative steps;
- consistent and organized classification and elimination of suspects;
- systematic use of relevant information from other police services; and

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<sup>1</sup> Ontario, *Bernardo Investigation Review: Report of Mr. Justice Archie Campbell* [Toronto: Ministry of the Solicitor General and Correctional Services, 1996] (Campbell Report). See also Chapter 11.

- provincial oversight and intervention when a serial predator investigation is not pursued vigorously or is given low priority.

Like Bernardo's crimes, those committed by Bruce McArthur also attracted a high level of scrutiny. I have highlighted these five goals of major case management because none of them were achieved during a large part of the Toronto Police Service's (the Service's) McArthur-related investigations.

Central to Justice Campbell's recommendations was the creation of a province-wide automated case management software, mandated by regulation, for use in the investigation of serious crimes. The Campbell Report continues to be cited in Ontario and in other jurisdictions as a model for effective investigations and as a cautionary note against "siloed" approaches to investigations that affect multiple jurisdictions or multiple divisions within a large urban police force. In 2012, *Forsaken: The Report of the Missing Women Commission of Inquiry* (Oppal Report) found that police services in British Columbia were severely hampered in identifying and apprehending serial killer Robert Pickton in part because of the absence of a province-wide major case management system and also because of the failure of police services to co-operate and coordinate their work.<sup>2</sup>

In October 2004, Ontario Regulation 354/04, entitled "Major Case Management," was enacted in direct response to Justice Campbell's recommendations. At the same time, the Ontario government introduced the *Major Case Management Manual* (the manual). Both the regulation and the related manual have since been amended.

In order to identify some of the serious deficiencies in parts of the McArthur-related investigations, it is essential to understand both Ontario's provincial adequacy standards for major case management and PowerCase, the provincially mandated case management software. In the remainder of this chapter, I examine the Service's records management and case management systems as well as its use of technology to advance investigations in the context of these (and other) provincial adequacy standards. Ultimately, I show how existing systems and technology were not used effectively during the McArthur-related investigations.

The evidence reveals that the Service was often not in compliance with existing provincial adequacy standards and that it failed to use existing technology and analytical support to full effect. These failures undermined,

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<sup>2</sup> British Columbia, Missing Women Commission of Inquiry, *Forsaken: The Report of the Missing Women Commission of Inquiry* [4 vols and *Executive Summary*, electronic resource, British Columbia, 2012] (Commissioner Wally T. Oppal) (Oppal Report). See also Chapter 11.

sometimes in critical ways, the quality of the McArthur-related investigations. Sadly, it appears that, at times, the Service failed to fully learn the lessons Justice Campbell identified, failed to consider how Toronto's missing person investigations should be modified in the aftermath of the Oppal Report, and failed to address adequately the deficiencies the Service's own internal audit identified.

In short, in this chapter I cover the following points:

- I describe relevant provincial adequacy standards relating to major case management and to PowerCase, the related case management software. Those standards also describe the role of the serial predator criminal investigations coordinator (the serial predator coordinator) in the Ministry of Community Safety and Correctional Services (the ministry).
- I describe the Violent Crime Linkage Analysis System (ViCLAS), a national RCMP computer storage system, and the Ontario Provincial Police (OPP) ViCLAS Unit.
- I describe the evolution of the Service's records management and case management systems, and its existing technological and analytic support for investigations within the Service.

These descriptions enable me to evaluate here and in subsequent chapters the Service's compliance with provincial adequacy standards in relation to both major case management and PowerCase. I also evaluate the Service's use of external and internal technological and analytic supports, particularly during the McArthur-related investigations.

This chapter is necessarily highly technical at times and may make difficult reading for the uninitiated. However, these detailed descriptions are important in understanding what went wrong and why.

## **Major Case Management: Provincial Adequacy Standards**

### *Ontario Regulation 354/04*

Ontario Regulation 354/04 requires every police services board to establish policies that accord with the manual with respect to major cases. It also requires every police chief to develop and maintain procedures and processes that again accord with the manual for undertaking and managing investigations

into major cases. In addition, the regulation requires every Ontario police service involved in major cases to use the software approved by the ministry.<sup>3</sup>

Under the regulation, major cases include (but are not limited to) homicides, non-familial abductions, missing person occurrences where circumstances indicate a strong possibility of foul play,<sup>4</sup> occurrences involving found human remains that are suspected to be homicide, and any other types of cases designated by the manual.

The inclusion of other cases designated by the manual cannot be overlooked because it has since modified the definition of major cases. Most importantly, the 2017 manual expanded the definition to include missing person occurrences “where police have yet to ascertain whether foul play is involved when the individual remains outstanding and unaccounted for 30 days after being reported missing.” Although this change was formally made to the manual only in 2017, all Ontario police chiefs adopted it as of November 14, 2013.

Ontario Regulation 354/04 preserves the discretion of a police services board and the chief of police respecting the content of their policies, procedures, and processes, though with at least two limitations: such policies, procedures, and processes must conform to the manual; and police services must use the ministry’s approved software when conducting investigations into major cases.

### *The Manual*

There have been three versions of the *Major Case Management Manual*: the original, dated October 1, 2004; the second, dated March 2, 2012; and the most recent, dated December 1, 2017. I refer, as is necessary, to each version because the chronology of McArthur-related missing person investigations spans the period 2010 to 2018.

### *Major Case Management Definitions*

The manual divides its list of major cases into two groups: threshold offences and non-threshold offences. There are some important differences in the way they must be investigated. For example, a threshold offence must be investigated by a “primary investigator,” an officer with specialized training.

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<sup>3</sup> The earliest iteration of Ontario Regulation 354/04 specified that PowerCase software be used for managing investigations. As of 2016, the regulation requires the use of “software approved by the Minister of Community Safety and Correctional Services.” Although this change provides greater flexibility, the minister has demonstrated a long-term commitment to PowerCase.

<sup>4</sup> “Foul play” is not defined in the regulation or in provincial adequacy standards. In my view, the strong possibility of foul play involves the strong possibility of being victimized by crime involving a missing person’s death, abduction, or serious bodily harm.

A non-threshold offence may be assigned to someone who is not a primary investigator, although that officer must have the knowledge, skills, and abilities to undertake the investigation. The distinction between threshold and non-threshold offences is also relevant to how the investigation must be structured and the types of data that must be entered into the approved software.

The 2004 manual provided that the following major case occurrences were deemed to be threshold offences:

- homicides and attempted homicides;
- non-familial abductions and attempted such abductions;
- sexual assaults, related sexual crimes, and attempts where certain factors (unnecessary to outline here) are believed to exist;
- missing person occurrences, where the circumstances indicate a strong possibility of foul play;
- occurrences, suspected to be homicides, involving found human remains; and
- any major case that is linked to another major case within the same or another jurisdiction.

The 2012 manual made some changes to the types of sexual assaults and non-familial abductions that are deemed to be threshold, as opposed to non-threshold, offences. These changes are irrelevant to this Report. It also provided that certain offences (including child pornography-related offences) were deemed to be major cases for the purposes of using the ministry-approved software. In these cases, the software may be used at the discretion of the police service. The less-demanding non-threshold data entry standard would apply to them.

On November 14, 2013, an All Chiefs' Memorandum was issued regarding the major case designations contained in the regulation and in the 2012 manual. It read as follows:

Approval has been granted by the MCM Steering Committee to enter tombstone data [certain core or basic data] into PowerCase concerning missing persons' cases where persons remain outstanding and unaccounted for 30 days after the individual is reported missing. Offences deemed as major cases for the purposes of using the ministry-approved software are set out in the MCM Manual, under section 5, Definitions. The following item has been added to the list of major cases:

- Missing persons, where police have yet to ascertain whether foul play is involved when the individual remains outstanding and unaccounted for 30 days after being reported missing.

Missing persons' cases that precede this directive may be entered into PowerCase at the discretion of the Major Case Manager. This directive will be incorporated into the MCM Manual at the next scheduled review in 2015.

The effect of this memorandum was twofold:

- missing person cases, where police have yet to ascertain whether foul play is involved when the individual remains outstanding and unaccounted for 30 days after being reported missing, became major cases; and
- only tombstone information for such cases had to be entered into the PowerCase software; in other words, the same type of information that had to be entered for non-threshold major cases.

Although the memorandum stated that these changes would be incorporated into the manual in 2015, no new changes were made to the manual until 2017. For the purposes of this Report, I need to refer to only three changes in the 2017 manual. First, the manual incorporates the expanded definition of missing person occurrences that qualified as major cases (as captured in the earlier All Chiefs' Memorandum), categorizing them as non-threshold major cases. Second, unlike the All Chiefs' Memorandum, the 2017 manual provides that in these non-threshold missing person cases (the "outstanding for 30 days" cases), the same data entry procedures as for threshold cases must be followed. In other words, both threshold missing person cases (involving a strong possibility of foul play) and non-threshold missing person cases share the same data entry procedures. Other procedures applicable to threshold major cases (such as the investigation's command structure) continue to have no application to the non-threshold missing person cases. Third, the 2017 manual provides that all major cases that are serial or predatory in nature are designated as threshold offences.

In summary, missing person occurrences where the circumstances indicate a strong possibility of foul play, occurrences suspected to be homicides involving found human remains, and any major case that is linked to another major case within the same or another jurisdiction have been designated as threshold offences in all three versions of the manual – and, therefore, throughout the period of the McArthur-related investigations as well



as the Tess Richey and Alloura Wells missing person investigations. As of November 2013, missing person occurrences, “where police have yet to ascertain whether foul play is involved when the individual remains outstanding and unaccounted for 30 days after being reported missing,” became non-threshold major cases. These occurrences did not qualify as major cases under the earlier manuals. This change becomes relevant in Chapters 6 and 7 when I examine how missing person investigations were conducted after Project Houston ended in 2014 and before Project Prism commenced in 2017. Finally, near the end of 2017, when the 2017 manual was introduced, any major cases that were serial or predatory in nature became threshold offences. As well, non-threshold missing person cases shared the same data entry requirements as threshold missing person or other threshold major cases.

The manual contains other definitions relevant to this Review which I reproduce below. Unless otherwise indicated, these definitions have remained the same in all versions of the manual.

***Case Conference:*** Consultation with appropriate representation from all involved agencies and any other experts who may assist in the investigation. This includes obtaining inter-disciplinary input at the earliest opportunity to assist in developing investigative strategies, establishing priorities, and determining the sequence of any necessary investigative procedures.

***Case Review:*** An examination of the administrative management and/or operational aspects of the investigation including a peer evaluation. This can take place anytime during the investigation.

***Investigative Consultant Team:*** The group that is formed to “case conference.” The formation of this Team is mandatory in a multi-jurisdiction investigation, and discretionary in a single jurisdiction investigation. An Investigative Consultant Team may include, but is not limited to, forensic experts, medical experts, Centre of Forensic Sciences experts, Office of the Chief Coroner, forensic psychiatry, Office of the local Crown Attorney, forensic pathology, an alternate Multi-jurisdictional Major Case Manager, and other experienced investigators. The Investigative Consultant Team shall include members of the Command Triangle.

[As of the 2012 manual] ***Linked Cases:*** Two or more defined major cases where there is a reasonable suspicion that the same person(s) is responsible for the commission of the offences.<sup>5</sup>

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<sup>5</sup>“Linked” cases were referred to in the 2004 manual, but not defined.

***Multi-jurisdictional Major Case Identification Systems:*** This is a process for early detection of similarities and linkages in crimes to prompt multi-jurisdictional police investigations. The analysis and recognition of linked crimes provide additional information that leads to the prevention and early apprehension of serial offenders.

The manual states that early recognition of serial crimes may be achieved through several “mechanisms.” I need refer only to the following ones:

- **Violent Crime Linkage Analysis System (ViCLAS):** An automated case linkage system designed to capture, collate, and compare crimes of violence through the analysis of victimology, offender / suspect description, modus operandi, forensic and behavioural data.
- **Centre of Forensic Sciences:** The mandate of the Centre of Forensic Sciences is to provide scientific laboratory services in support of the administration of justice and public safety. The laboratories conduct scientific investigations in cases involving injury or death in unusual circumstances and in crimes against persons or property.
- **Office of the Chief Coroner:**<sup>6</sup> The Chief Coroner’s office is the central repository of all death reports that have been investigated by all Coroners throughout the Province of Ontario. Through this data bank, investigators can draw on province-wide comparisons involving unidentified human remains and other death investigations.
- **Canadian Police Information Centre (CPIC):** National repository of data on charged, wanted, missing persons, stolen vehicles, property and other crime-related data.
- **Major case management software:** The Minister-approved case management software.
- **Serial predator criminal investigations coordinator (SPCIC):** The Serial Predator Coordinator is responsible for the review, development and coordination of multi-jurisdictional and single jurisdiction investigations of linked major cases.

The 2012 manual adds one relevant mechanism to this list:

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<sup>6</sup> The 2012 manual added a reference to the Ontario Forensic Pathology Service here and elsewhere in the manual. This addition reflected the reconfiguration of the Offices of the Chief Coroner and the Chief Forensic Pathologist in the aftermath of the Inquiry into Pediatric Forensic Pathology in Ontario (2008).

- Police Information Portal (PIP): Accessed through CPIC and managed by the RCMP, PIP is a searchable index of all police agency records management systems across the country and is an important means of gathering information during serial predator investigations, organized crime investigations, and investigations where the subject moves from one jurisdiction to another.

The 2017 manual adds another relevant mechanism:

- Major case management bulletins: On receipt of a bulletin from the serial predator coordinator, the recipient shall make sure that the bulletin is sent to all relevant officers within the police service.

#### *The Command Triangle's Functions and Responsibilities*

The 2004 manual stipulated that a command triangle must be formed for every major case within a single jurisdiction. The triangle must consist of the functions and responsibilities of a major case manager, primary investigator, and file coordinator. In a smaller or less complex investigation, one person might be responsible for more than one function. The 2012 and 2017 manuals require command triangles only in threshold major cases.

In every linked multi-jurisdictional major case investigation, the command triangle is to consist of a multi-jurisdictional major case manager as well as the command triangles for each police service involved. The multi-jurisdictional major case manager may blend the existing triangles.

#### The Major Case Manager

Since 2004, the major case manager has been responsible for the effective governance of the investigation and required to perform certain functions and responsibilities. The ones that follow are relevant to this Review:

- assume overall responsibility and accountability for the investigation;
- determine strategies regarding the direction, speed, and flow of the investigation;
- on notification of any potential linkage between major cases identified through any investigative technique or process, ensure the linkage is investigated as soon as possible;
- if there is a reasonable likelihood that the same person(s) has committed the crime(s) within a single jurisdiction or multi-jurisdiction, notify the serial predator coordinator within seven days;

- identify, acquire, and deploy necessary investigative and support resources;
- in consultation with officers performing primary investigation and file coordination functions, develop investigative strategies and make sure the strategies have been implemented;
- ensure that all necessary investigative functions are conducted;
- ensure compliance with the manual for threshold major cases and, where applicable, non-threshold major cases;
- facilitate a case conference at the earliest possible stage of the investigation and involve different disciplines, where applicable;
- make sure that a detailed chronology of the investigation is maintained; and
- ensure that all involved criteria offences are reported to ViCLAS in accordance with Ontario Regulation 550/96.

The 2012 manual made some minor changes to these functions and responsibilities, but they need not be reproduced here. The manual also added that the major case manager is responsible for assigning a victim liaison and a media liaison to the investigation. No further changes were made in the 2017 manual in these functions and responsibilities.

In multi-jurisdictional major case investigations, each major case manager shall also, among other things, meet daily, or as required, with the multi-jurisdictional major case manager to obtain information for briefing each investigative team.

#### The Primary Investigator

The 2004 manual required that, in every major case, a primary investigator be selected and assigned by the major case manager to perform certain functions and responsibilities. They include:

- report directly to the major case manager;
- report as soon as possible any potential linkage to the major case manager;
- identify the human and material resources required to conduct investigations of this type and advise the major case manager accordingly;
- audit and review all information relevant to the investigation and ensure that the information is communicated to the investigative team;

- assign duties, authorities, and responsibilities to personnel within the investigative team commensurate with their skills, experience, and training;
- in consultation with the major case manager, control the direction, speed, and flow of the investigation;
- provide clear, concise instructions on job duties to all personnel;
- ensure the completion of all assignments in a timely fashion [the 2012 version reads: “ensure actions are generated and completed in a timely fashion”]; and
- in consultation with the file coordinator, make sure that a detailed chronology of the investigation is prepared and maintained [the 2012 version also includes “maintain meeting / briefing notes” with this responsibility].

The 2012 manual stipulated that, as additional duties, the primary investigator was responsible for ensuring, in consultation with the command triangle, that each tip or message was prioritized for action and investigated. It also required the primary investigator to be trained in the ministry-approved case management software, although this obligation was removed in 2017. The 2017 manual required the primary investigator to maintain thorough and complete investigative notes.

#### The File Coordinator

The 2004 manual stipulated that, in every major case, the major case manager must select and assign a file coordinator to perform certain functions and responsibilities. They include:

- report to the major case manager;
- scrutinize all documents received during the investigation to ensure their quality and completeness;
- report any potential linkage to the major case manager;
- ensure all documents are appropriately organized and indexed [the 2012 manual replaced this item with “ensure all investigative information is researched, indexed, and cross-referenced by a person who has successfully completed the Ontario MCM software course or an equivalent, as defined by the Ontario Police College”];
- implement standards and controls for the file coordination system;
- in consultation with the primary investigator, create and maintain the detailed chronology of the investigation;

- in conjunction with the primary investigator, ensure that each tip or message is quickly and thoroughly investigated or prioritized for action [the 2012 manual transferred this responsibility to the primary investigator];
- ensure that all information is entered and maintained on the ministry-approved major case management software; and
- maintain minutes of the investigative consultant team meetings in the records of the investigation.

The 2012 manual made several significant changes. The file coordinator was now required to “maintain meeting / briefing minutes through consultation with the primary investigator” and to “select and assign data entry personnel whose duties may include reporting to and following the directions of the file coordinator; inputting data arising out of the investigation; and ensuring the information submitted for data entry is complete and is consistent.” The 2017 manual added a requirement that the file coordinator must have received training on the ministry-approved case management software.

Each version of the manual has required that all three positions be filled by individuals who have the requisite knowledge, skills, and abilities to perform their work. In addition, they must have successfully completed the Ontario major case management course or an equivalent.<sup>7</sup>

#### Other Functions and Responsibilities

The manual describes other functions and responsibilities. It also identifies the person within the command triangle whose duty it is to select or assign them.

To provide an illustration relevant to my Review, the 2012 manual required that in every threshold major case, an interviewer or interviewers be selected and assigned by the primary investigator to perform functions and duties as required, including the following:

- report directly to the primary investigator;
- conduct interviews of witnesses, suspect(s), etc., as assigned;
- provide the file coordinator with all documentation concerning the interviews conducted;

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<sup>7</sup> The 2017 manual tied the phrase “or equivalent” to “as defined by the Ontario Police College.” It added that the major case manager shall have the resources to manage investigations through the ministry-approved software.

- where practicable, before any interview, debrief any member of the investigative team who may be able to provide information relevant to the interview;
- where practicable, review all documentation relevant to the interview in preparation for the interview;
- provide a detailed summary of all interviews, ensuring that all investigative information is captured (names, personal identifiers, vehicles, locations, events – including dates, times, and objects); and,
- in consultation with the primary investigator and the file coordinator, develop appropriate interviewing strategies that will maximize the value of information and evidence obtained from interviews.

#### Multi-jurisdictional Major Case Manager and Investigations

In addition to the functions and responsibilities of a major case manager in a single jurisdiction investigation, the manual requires that a multi-jurisdictional major case manager perform additional duties and responsibilities in investigations of that kind. These duties and responsibilities include consultation with the command triangles of the linked investigations in developing an operational plan to be approved by the joint management team, in ensuring that adequate resources are available to conduct the investigation and that duplication of effort and counterproductive interference are eliminated. The multi-jurisdictional major case manager is also to prepare, where necessary, a request for provincial funding in consultation with the serial predator coordinator. The manual also sets out the added qualifications needed to become a multi-jurisdictional major case manager.

Under the 2004 manual, two criteria needed to be met for a case to be designated a multi-jurisdictional investigation: first, two or more police services must establish a *possible* connection between two or more major case investigations; and, second, there must be a *reasonable likelihood* that the same person(s) committed the crimes. Under the 2012 manual, the first criteria substituted the phrase “establish a link” for “establish a possible connection.” The 2017 manual then went on to use language more closely connected to the definition of “linked cases.” It reads: “For a case to be a multi-jurisdictional investigation, two or more police services working on independent major case investigations must establish *a link* between two or more defined major cases *where there is a reasonable suspicion* that the same person(s) is responsible for the commission of the offences.” As I explain above, under the 2012 manual, linked cases are defined as two or more major cases where there is a

“reasonable suspicion” that the same person(s) is responsible for the commission [of the] offences.”

Once a case qualifies as a multi-jurisdictional investigation, the major case managers must notify the ministry’s serial predator coordinator within seven days. A joint management team (the JMT) must be formed, made up of senior representatives of each involved service and of other disciplines as appropriate. The JMT’s functions and duties, including the appointment of a multi-jurisdictional major case manager, are set out in the manual. The JMT must also consider whether the linked investigations should be integrated. If so, it may result in a decision by the multi-jurisdictional major case manager to blend the command triangles.

The manual also sets out the composition, functions, and duties of the investigative consultant team (the ICT). The ICT, a multidisciplinary team, acts as an advisor to the multi-jurisdictional major case manager. If required or requested by the JMT, the ICT may also review the investigation.

#### Policies and Procedures on Components of Major Case Management

The balance of the manual sets out detailed policies and procedures on specific components of major case investigations. It may be confusing to describe them as “policies,” given the use of this term generally in policing legislation and regulations to describe police services board documents, so I prefer to describe them as “standards.” Indeed, they are also described as such in the manual. Nothing turns on this language. After all, it is mandatory that board policies and a service’s procedures conform to these standards.

The specific standards addressed in the manual relate to the following topics:

- victims
- media relations
- information management
- suspect identification
- data entry
- interviewing
- canvassing
- crime scene examination
- accessing expert resources – Office of the Chief Coroner<sup>8</sup>
- post-mortem examinations

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<sup>8</sup> The 2012 and 2017 manuals do not confine this section to the Office of the Chief Coroner.



- behaviour sciences services
- document management
- in-custody informants

At this point, I intend to refer only to the standards for data entry.

#### Data Entry

The manual sets out the data entry requirements for the approved software for both threshold and non-threshold major cases. It states that “the maintenance of these standards will ensure the integrity of the case management investigative data and the triggering database.”

The standards for data entry include the following points:

- All data shall be entered in the software within 30 days of receipt of the information. Where an investigation has been reclassified as a major case, then all data shall be entered within 90 days of the reclassification. [In 2012, the 90-day requirement was changed to “as soon as resources allow.”]
- It is recommended that all data being entered into the software (except an “action”) emanate from a document.<sup>9</sup>

Normally, there is an important distinction between the data that must be entered into the PowerCase software for threshold major cases and for non-threshold major cases. At the risk of oversimplification, for threshold major cases, virtually all investigative information must be entered into the software. The file coordinator must ensure that the information is filed in the appropriate location. The 2012 manual added that such investigative information must not only be entered but also indexed, researched, and cross-referenced into the ministry-approved software.

For non-threshold major cases, at a minimum, tombstone (core or basic) information must be entered, indexed, researched, and cross-referenced into the software. In 2004, tombstone information included the following:<sup>10</sup>

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<sup>9</sup> Special provisions exist for how to treat data pertaining to confidential informants, agents, and undercover officers. “Actions,” or tasks, are explained below.

<sup>10</sup> Elsewhere, tombstone information is said to include the following relevant information: full name(s), alias(es), date of birth, all associated telephone number(s) and address(es), unique identifier (e.g., driver’s licence), and vehicle(s).

- a summary of the offence providing the date and time, location, and circumstances;
- the name and personal identifiers of the victim;
- the name and personal identifiers of the accused or suspect [in 2012, a person of interest was added];
- any other significant information that may, in the opinion of the case manager, assist in the early detection of serial predator behaviour;<sup>11</sup> and,
- where there is evidence of serial predatory behaviour, full functionality (that is, the data entry standards for threshold major cases) shall be implemented.

The 2017 manual made changes to the standards governing data entry. It provides, as I indicate above, that in missing person cases, where the police have yet to ascertain whether foul play is involved, and where the individual remains outstanding and unaccounted for 30 days after being reported missing, the data entry procedures for threshold cases must be followed.

#### Document Management

All documents collected are to be managed in accordance with the filing system set out in the manual: numbered files organized by categories and accompanied by a brief description of each file's contents. Some of the file categories and content descriptions have remained identical throughout the history of the manual, as these examples show:

- *MCMS 2 Original Occurrences*: This file shall contain a copy of the original Occurrence Report, any supplementary report(s), and computer-aided dispatch (CAD) printouts.
- *MCMS 3 Related Occurrences*: This file shall contain a copy or copies of all occurrences on file as they relate to the accused or any other person or place relevant to the investigation.
- *MCMS 7 Operational Plans*: This file shall contain operational plans related to the investigation or project.

Some of the categories, content descriptions, and file organization have changed from version to version of the manual. For example, the 2004 manual had separate files for officer statements and “will says” (what the officer is expected to testify to) and for daily memobook entries. The 2012 manual

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<sup>11</sup> The 2017 manual's wording is slightly different, although not material to this Review.

created a single file for all officer statements and will says, daily memobook entries, police reports (other than forensic reports), and investigative notes.

I need not reproduce most of the file categories or their descriptions. However, the following categories are relevant to this Review:

- *MCMS 4 Meetings / Briefings Summaries*: This file shall contain the minutes and decisions made at all investigative team, investigative consultant team, joint management team, and case conferencing meetings and briefings regarding the direction, speed, and flow of the investigation. The minutes shall be filed chronologically.<sup>12</sup>
- *MCMS 5 Detailed Investigative Chronology*:<sup>13</sup> This file shall contain the detailed investigative chronology and any other chronologies (timelines) created.
- *MCMS 9 Statements (Civilian)*:<sup>14</sup> This file shall contain civilian statements filed alphabetically and, where there are multiple statements from the same subject, filed chronologically. This file shall include witness background information.
- *MCMS 27 Tip Forms / Register*:<sup>15</sup> This file shall contain tip forms generated during the investigation and the tip register, which shall be used to numerically track all tips.
- *MCMS 31 Action Forms / Register*:<sup>16</sup> This file shall contain copies of all actions assigned, as well as the action register that provides for the tracking of actions assigned by the primary investigator.
- *MCMS 41 ViCLAS Reports*: This file shall contain ViCLAS submissions and reports.
- *MCMS 46 Telephone / E-Communication Information*:<sup>17</sup> This file shall contain phone toll, text messages, tower dumps, and subscriber information. (This does not include emails.)<sup>18</sup>

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<sup>12</sup> This language is slightly different from the original language contained in the 2004 manual.

<sup>13</sup> The 2012 manual added a reference to any other chronologies (timelines) created. The name of this category also changed slightly.

<sup>14</sup> The 2012 manual specified what background information includes – e.g., credit checks as well as CPIC and Ministry of Transportation data.

<sup>15</sup> In the 2012 manual, this category combined two separate categories that existed in the 2004 manual.

<sup>16</sup> In the 2012 manual, this category combined two separate categories that existed in the 2004 manual.

<sup>17</sup> In the 2004 manual, there was a category entitled Telephone Toll Information. It did not contain text messages or tower dumps. The current category was created in the 2012 manual. MCMS 54 Email was also added in the 2012 manual to capture emails generated during the investigation.

<sup>18</sup> It was unclear to the Review where emails (other than emails generated during the investigation itself) are to be filed. It was obvious from our inquiries that there is no consistent approach to how emails are filed.

- *MCMS 53 Internet-Based Information:*<sup>19</sup> This file shall contain the results of the search of any device's electronic memory for Voice Over Internet Protocols information (Skype, MSN, Yahoo, Facebook, VOX, etc.).

#### Interviewing

The interviewing standards are also important. They include the following points.

- Appropriate personnel shall be assigned to conduct interviews on the basis of their qualifications and experience.
- The interviewer shall fully prepare and plan for any interview to be conducted. Interviews shall be recorded in one of the methods set out, including audiotape or videotape.
- Where an electronically recorded statement is not transcribed, a detailed summary of the relevant information from the interview shall be recorded for data entry purposes.
- The victim of a sexual assault shall be asked if he or she would prefer to be interviewed by a qualified officer of a particular gender, if available.<sup>20</sup>

All the above provincial adequacy standards figure prominently in my evaluation of the specific investigations I examined during this Review.

### **The Violent Crime Linkage Analysis System (ViCLAS)**

ViCLAS is an investigative tool specifically designed to assist police agencies in identifying offenders committing violent crimes that may be serial in nature. It functions as an automated case linkage system for major case crimes and permits the analysis and linkage of such cases based on physical, sexual, and verbal behaviours. It was intended to address concerns that, because police agencies across Canada are not on the same reporting system, offenders could offend in different jurisdictions and potentially not be identified. In 2020, ViCLAS contained about 644,000 cases from across the country. About 247,000 of those cases were from Ontario.

Provinces in Canada maintain provincial ViCLAS centres. In Ontario, the ViCLAS centre is located at OPP headquarters and is managed by the OPP in concert with other police agencies. Ontario's ViCLAS centre is staffed by uniformed and civilian members of the OPP, together with four officers

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<sup>19</sup> This category was created in the 2012 manual.

<sup>20</sup> The 2012 manual makes inconsequential changes to earlier language.

seconded from other services. As I write, two of the seconded officers are from Toronto. (For convenience, Ontario’s provincial centre is also referred to as the OPP ViCLAS Unit.) The unit processes ViCLAS submissions or booklets (described below), performs quality control functions, and analyzes collected data relevant not only to all OPP detachments but also to the province’s police agencies.

Ontario Regulation 550/96 is entitled “Violent Crime Linkage Analysis System Reports.” It imposes obligations on an officer in charge of an investigation involving a “criteria offence” (see below). Within 30 days of the investigation’s start, the officer in charge must complete and submit one or more ViCLAS crime analysis reports (also referred to as “booklets” or “submissions”) to the provincial ViCLAS centre. The officer in charge must also update these reports within 30 days of a material change or of acquiring information that is significant to the investigation. These reports are to be done in accordance with ViCLAS established standards.<sup>21</sup>

The ViCLAS booklets contain answers to 156 questions to which a response is mandatory. ViCLAS analysts<sup>22</sup> review this data and research similar cases in the ViCLAS database to identify potential similarities between or among cases. This analysis and research may indicate that, potentially, a serial offender is involved. A potential linkage report will be shared with the affected police agencies.

The following constitute criteria offences:

- homicides or attempted homicides, solved or unsolved;
- sexual assaults, solved or unsolved, that are not familial or domestic;
- familial or domestic sexual assaults, if the victim is under 16 years of age at the time of the assault or the assault includes unique or significant physical, sexual, or verbal behaviour;
- missing persons, where the circumstances indicate a strong possibility of foul play and the person remains missing;
- unidentified bodies, where the manner of death is known, or suspected, to be homicide;
- non-parental abduction or attempted non-parental abduction;
- luring of a child or attempted luring of a child, solved or unsolved; and
- a type of investigation that is added to the submission criteria of ViCLAS and is designated as such by the ministry.

<sup>21</sup> Ontario Regulation 550/96, as amended, ss. 1, 2(1), 2(2), and 2(4).

<sup>22</sup> ViCLAS analysts are trained at the Canadian Police College in the behavioural attributes of violent crime; offender typologies; and verbal, physical, and sexual behaviours that can link cases.

I point out that although the definition of “major cases” contained in the manual has been expanded to include missing person cases, where an individual remains outstanding and unaccounted for 30 days after being reported missing – even without a strong possibility of foul play – the corresponding change has not been made to the ViCLAS criteria. However, I was advised that Ontario investigators are encouraged to submit non-criteria cases if they have reason to believe that a known or unknown person may have been responsible for multiple violent crimes or may potentially offend or reoffend. I was also told that consideration is currently being given to an expansion of the ViCLAS criteria in relation to missing person cases to correspond to the major case management criteria.

When the OPP ViCLAS Unit is informed of missing person or unidentified remains investigations, the unit automatically notifies the Ontario Centre for Missing Persons and Unidentified Remains (OCMPUR) of the file. This notice ensures consistency in information collected by the OPP ViCLAS Unit and the OCMPUR and allows the units to collaborate on cases. I explain the role of the OCMPUR in Chapter 13.

ViCLAS categorizes all investigations as priority 1, 2, or 3 cases. Priority 1 represents the most pressing cases. These cases are analyzed within 24 hours of their being submitted to ViCLAS. All missing person cases that are submitted are given priority 1 status.

Every investigator who receives a potential linkage report from the provincial ViCLAS centre is required to conduct a follow-up investigation promptly. Within 60 days of receiving the report, the investigator is required to submit a potential linkage response form to the provincial ViCLAS centre, reporting the results of the follow-up investigation. Every chief of police must also submit an annual report to the minister setting out the number of ViCLAS crime analysis reports the police service submitted in the previous year.<sup>23</sup>

As I later explain, in a number of instances, the Service’s officers in charge failed to submit ViCLAS booklets as or when required. This issue is of particular relevance when I examine the Service’s McArthur-related investigations.

## **The Service’s Criminal Investigation Management Plan**

In addition to the provincial adequacy standards set out in the manual, the

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<sup>23</sup> Ontario Regulation 550/96, as amended, ss. 2.1 and 3.

Service has its own Criminal Investigation Management Plan.<sup>24</sup> The plan addresses the manner in which the Service deals with criminal investigations. It is intended to ensure that all occurrences are investigated thoroughly and that all levels of supervision and management are kept informed of investigations. For example, the plan sets out the appropriate “flow” of a criminal investigation and identifies the types of occurrences that require a supervisor to be notified.

With respect to major case management, the plan requires major cases to be investigated and managed in accordance with the manual.

## **The Service’s Programs and Technology**

It is impossible to evaluate how the Service conducts missing person cases without a robust understanding of its software programs and existing technology. I have divided this discussion into four sections:

- records management systems
- Homicide’s electronic filing system: the “P Drive”
- PowerCase and its use
- Technological Crime Unit and its analytic and technological tools

### ***Records Management Systems***

Records management systems (RMS) are electronic information storage systems. They provide for the storage, retrieval, retention, editing, archiving, and viewing of information, records, documents, or files pertaining to law enforcement operations. Records management systems are used to integrate incident-based information into a cohesive database or databases available to all Toronto police officers. They allow these officers to access information about ongoing and historical investigations, arrests, and civilian interactions with police.

The Service’s records management systems are maintained by its Records Management Services. This unit operates “24/7.” Its civilian members correct and update information in the databases, move certain “concluded” information, and are responsible for ensuring that priority information is added to the appropriate RMS as soon as possible. My Review team and I met with most of the unit’s members, and they demonstrated what they do. I was

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<sup>24</sup> The Criminal Investigation Management Plan is mandated by s. 11 of Ontario Regulation 3/99, Adequacy and Effectiveness of Police Services, under the *Police Services Act*. The first version of the plan was released in June 2006, and it was revised in March 2013.

impressed with their dedication and insights on how best to support front-line officers.

The Service has used a confusing array of records management systems over the last few decades. In my view, the use of multiple systems has contributed to a loss of efficiency in investigative work.

*Historical Records Management Systems: COPS and eCOPS*

*Centralized Occurrence Processing System*

Between 1991 and 2003, the Service used the Centralized Occurrence Processing System (COPS) as its primary occurrence-based database. COPS contained Occurrence Report information, including names, addresses, dates of birth, licence plates, telephone numbers, and offence details. The Service's Records Management staff were responsible for entering information into and maintaining the COPS database. The staff entered tombstone data from hard copy Occurrence reports. Officers could also call Records Management staff to provide information to be inputted into COPS. Front-line officers were generally unable to input information themselves into COPS.

*Enterprise Case and Occurrence Processing System*

In 1996, the Service began a project to improve on and replace COPS. Its successor, the Enterprise Case and Occurrence Processing System (eCOPS), was developed slowly in-house. From September 2003 to November 2013, it was used as the Service's primary occurrence-based database. This database enabled officers to enter all Occurrence reports directly into the system from their desktop and mobile workstations. As a "one-time" data entry process, it largely eliminated the need for officers to phone in database entries and for Records Management staff to enter information from hard copy reports. It also meant that occurrences entered by front-line officers into eCOPS could immediately be viewed by all Toronto officers.

As part of the eCOPS initiative, the Service developed a "Unified Search" query tool. Unified Search featured one-stop search capability for several databases. For example, an officer could conduct a single electronic search for information about a particular individual using Unified Search and obtain results from all the linked databases. These databases included eCOPS and its predecessor COPS as well as the Criminal Information Processing System (CIPS), the Repository for Integrated Criminalistic Imaging (RICI), the Master Name Index (MANIX), Field Information Reports (FIR), the Canadian Police Information Centre (CPIC), and the Ministry of Transportation database (MTO):



- CIPS was a database the Service developed in-house to record information about arrests, prisoner management, and *Highway Traffic Act* charges. It was used from 1996 to 2013 and functioned as the Service’s primary arrest database. McArthur’s 2001 first arrest occurrence, including a synopsis of his violent assault with a pipe on an unsuspecting community member, was stored on CIPS. In September 2017, a Project Prism officer located this occurrence. There is no evidence that this occurrence was known to the officer who interviewed McArthur in 2013 or to the officer who investigated a choking occurrence involving McArthur as the attacker in 2016. This occurrence should have been known to both officers (see Chapters 5 to 7).
- RIC1 stores digital images of arrest photographs (commonly known as “mugshots”) and fingerprints.
- MANIX operated as part of COPS and contained street contact information (“carding” information). It was used from 1996 to 2007. In February 2008, the FIR application, which was created by the Service, replaced MANIX and provided officers with the ability to enter street contact information directly into the application, rather than entering it second hand from hard-copy contact cards. The use of “carding” has since been curtailed through legislation.
- CPIC is a national repository for policing agencies to enter law enforcement and public safety operational information (as I note above). It contains data on charged, wanted, and missing persons; stolen vehicles and property; and other crime-related data.
- The MTO database contains driver’s licence and registration information.

*Current Records Management Systems: Versadex*

The Service regarded eCOPS as leading-edge technology when it was first introduced. However, the delay from its initial development in 1996 to its ultimate use in 2003 created difficulties for the Service. By the time it was functional, other superior and more cost-effective off-the-shelf records management system products were available. The issues around eCOPS prompted the Toronto Police Services Board (the Board) to request that the auditor general review the implementation of eCOPS.

The auditor general’s 2005 report identified significant defects in how the eCOPS project was managed, including its failure to address previous audit recommendations. Of relevance here, the auditor general also criticized the lack of communication between eCOPS, used solely by the Service, and the records management systems used by other Ontario police services. In

response to the Campbell Report, the Service and other police agencies had proposed a province-wide records management system solution. However, the Service then decided that the response to the proposal did not satisfy its own business requirements. As a result, Toronto went it alone and built eCOPS. The absence of a province-wide records management system for police services continues to complicate coordinated policing in the province.

Once the Service concluded that eCOPS was no longer adequate to support its operations, it pursued a commercial off-the-shelf system rather than attempting to enhance the in-house eCOPS database. In 2008, the Board approved a capital project for a new records management system. In a March 2011 report to the Board, the chief of police advised that the proposed new system would integrate the functionality available through numerous “silo applications” beyond eCOPS, including CIPS, FIR, RICI, Unified Search, and the Property and Evidence Management System (PEMS).

The procurement process for the replacement program ran from July 2009 to May 2010 and was evaluated by a team of policing and administration staff. Many of the Service’s members conducted hands-on product evaluations as part of the process. At its May 2010 meeting, the Board approved the selection of Versaterm Inc. as the vendor for the supply and delivery of both software and maintenance and professional services in relation to the new records management system. The program developed by Versaterm Inc., Versadex, was said to meet the highest number of the Service’s business and technical requirements, provide a user interface well received by officers and the administration, and, given its ease of use, involve the lowest training effort. Ultimately, the Board approved the acquisition and implementation of Versadex. For reasons I need not elaborate on here, the Service replaced eCOPS with Versadex only in November 2013. This delay meant that the transition to Versadex took place while Project Houston was in progress (see Chapter 6).

An upgraded version of Versadex remains in use today, though the Unified Search tool has been replaced by “Legacy Search.” It incorporates queries for the Service’s historical records management services, including CIPS, COPS, and eCOPS. The need for Legacy Search reflects that some of the historical content of the Service’s records management services was not loaded into Versadex when it replaced eCOPS.<sup>25</sup> As of April 2019, every police vehicle equipped with a mobile data terminal has access to the web

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<sup>25</sup> For example, Mr. Kayhan’s missing person occurrence was not moved from eCOPS to Versadex until September 2017.

version of Versadex. Officers can therefore perform searches on Versadex, send CPIC messages, and resolve follow-ups while in their police vehicles.

Despite improvements over the previous records management services, some officers continue to express frustration over Versadex:

- Some officers find it difficult to use. Despite the process leading to its acquisition, a number of officers complain it is not as user-friendly as eCOPS. They say it is time-consuming to enter data and that the system requires a great deal of navigation to work properly.
- Not all the data were moved into Versadex when it was implemented, as I indicate above. These gaps make proper searches more complex.
- At times, officers fail to enter new case information into Versadex. For example, before 2018, when the new Missing Persons Unit was formed, the Service discovered a large gap between the number of missing person calls for service and the much lower number of missing person Occurrence reports recorded in Versadex. The Service's own analysis revealed that some officers who attended a missing person call chose not to create a missing person Occurrence Report, hoping that the missing person would be found before the officer had to complete a report in Versadex. The extent to which this issue was attributable to perceived difficulties in working with Versadex is unclear. In Chapter 13, I describe and evaluate what the Service has done to address this serious issue.
- Most officers still make notes in their hard-copy memobooks and then type the relevant information into Versadex. This duplication is time-consuming and inefficient. Some officers suggested to the Review that they should be equipped with tablets, to allow them to enter information directly into the tablet as the first step in uploading it automatically into Versadex.

### ***Homicide's Electronic Filing System: The P Drive***

In addition to Versadex – the records management system used by all Toronto officers – specialty units such as the Homicide Unit use a P Drive for specific investigations or projects. Because Project Houston and Project Prism both employed a P Drive for electronic file storage and organization, I pause here to describe its role in investigations. First, it functions as a digital filing system for documents relating to a specific investigation, and its contents are accessible only to designated officers. Second, it is organized around principles of major case management, with files that correspond to the file categories I set out above. Third, it supposedly serves as the entry point or source for data

to be uploaded into PowerCase, the mandatory case management system for designated major cases. I say “supposedly” because the Review learned that much of the data that is supposed to be uploaded into PowerCase never makes its way there.

Documents created in Versadex are copied into the P Drive and moved through its file structure. Documents can also be created directly in the P Drive. When officers complete a task, they save their work product, such as a supplementary report, in the file coordinator’s file in the P Drive. The file coordinator should review the document; rename it, if necessary, to ensure consistency and accuracy; and move the document into the primary investigator’s file. The primary investigator should also review each document to ensure that tasks are properly completed and to determine if follow-up is required. If it is required, the primary investigator should send the original officer a follow-up “action” that sets out the work to be done. Once the primary investigator is satisfied with the work done and the status of the document, he or she should move the document into the major case manager’s file for review and approval. After approving each document, the major case manager is supposed to move the document into the PowerCase data entry file. Again, I say “supposed to” because many documents are never entered into PowerCase.

Assuming the document is placed into the PowerCase data entry file, a civilian indexer assigned to the investigation, who is a member of the Service’s PowerCase Unit, should review the document, temporarily residing in the PowerCase data entry file, enter it into PowerCase, and index it. The indexer should then move the document into the file coordinator’s major case management file, and the file coordinator should file the document in the appropriate major case management file.

If the investigation leads to criminal charges, the organization of the information collected during a major investigation into files also facilitates disclosure to the prosecution and the defence. The disclosable materials can easily be reformatted into a disclosure package, saved as a large PDF file, and moved into a disclosure staging area file.

In practice, the P Drive is also used as a storage site for investigators’ work in progress. The Project Prism P Drive, for example, contained a “documents in progress” file that allowed officers to store documents while they were still working on them. On completion, the documents would be moved into the file coordinator’s file to initiate the process already outlined.

In a February 2013 audit report,<sup>26</sup> the Service’s Audit and Quality Assurance Unit described the P Drive as follows:

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<sup>26</sup> I discuss the unit’s February 2013 MCM Audit Report in greater detail later in this chapter.

During the audit, the network P-drive of several units and divisions were examined. This drive is designed for the exclusive use of capturing and retaining disclosure material. Files and photographs unrelated to disclosure items were located in some of the drives. This was brought to the attention of the immediate supervisor of the officers involved as well as eDisclosure Project staff who through Detective Services will be issuing a Routine Order instructing officers to use the P-drive for disclosure purposes only and to delete any non-disclosure items immediately. This has been addressed as an issue not requiring Command approval, therefore no recommendation has been made.

Despite the audit findings, it became clear during the Review team's analysis and interviews that both Project Houston and Project Prism included non-disclosable items in the P Drive, including confidential files marked "Do not disclose" and active working files.

The Homicide Unit appears to conduct its investigations largely out of the P Drive. Its officers copy documents created in Versadex and place them in the P Drive, do their work in the P Drive, and then, often well after the fact, move only limited documents into PowerCase. Project Houston and Project Prism adopted the same approach, although, as I outline in Chapter 7, Project Prism uploaded far more documents into PowerCase than Project Houston did. Simply stated, the P Drive, rather than PowerCase, is, in effect, being used to manage major cases – despite the fact that it is not designed to be used as a case management tool.

The Service's approach is very different from that taken by a number of other Ontario services, including at least four large services. These other services use PowerCase efficiently to manage their major cases. Although the Service has dedicated PowerCase indexers to handle data entry, it does not use PowerCase effectively, often treating it as a "data dump" rather than a case management tool. Moreover, the Service's way of using PowerCase does not comply with the provincial adequacy standards that govern its use. Some senior officers, including former police chief Mark Saunders and Detective Sergeant Hank Idsinga,<sup>27</sup> expressed dissatisfaction with PowerCase, complaining that it is ill suited for Toronto's needs. Others strongly disagree. For example, Acting Chief James Ramer believes that PowerCase was underused during Project Houston and that indexers were siloed from the investigative team. In his view, the Service never resourced PowerCase, a

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<sup>27</sup> Detective Sergeant Idsinga has since been promoted to the rank of inspector.

labour-intensive product when first introduced, the way it should have been, and a lot of senior detectives never became accustomed to its use. Acting Chief Ramer indicated that, although numerous changes have been introduced to make PowerCase more user friendly, the old attitudes persist. He would like to see it used as intended.

I address the expressed dissatisfaction with PowerCase below once I have described how PowerCase is designed to work. As I will explain, regardless of the competing views on the effectiveness of PowerCase for the Service, the status quo is completely unacceptable.

### ***PowerCase and Its Use***

As the names suggest, case management systems differ fundamentally from records management systems. The latter essentially store information for officers to access as needed, while the former are digital tools that assist in organizing and managing a specific investigation. They facilitate the organization of all investigative information into an accessible electronic format, track the flow of collected information throughout an investigation, monitor tasks and workflow of assigned officers, perform automated case analysis to identify links within and between cases, and, if a criminal case materializes, facilitate the creation of a disclosure brief to be provided to the prosecution and the defence. If we think of a records management systems as an electronic filing cabinet of information, we can view a case management tool as the program to sort and make sense of that information for a specific investigation. Case management tools are supposed to allow the command triangle of a major investigation to answer such questions as: What did we know? When did we know it? What did we do with it?

Case management software is particularly important in complex interjurisdictional and/or potentially linked cases, including serial killer investigations. When used properly, it reduces human error, facilitates investigative supervision, lowers expenses by limiting the “people power” otherwise needed to perform or monitor some tasks, and automatically looks for and identifies links between potentially connected cases. The existence of case management software represents a recognition that no officer, however capable, can possibly assimilate all the information collected in a complex investigation, easily keep track of all the tasks or assignments, and know whether or how they have been completed.

With this context in place, I turn now to PowerCase. In 1996, the Ontario government contracted Xanalys, the company that designed PowerCase, as its major case management software provider. The

government's contractual commitment to use PowerCase extends to at least 2027.<sup>28</sup>

In major case management threshold offence investigations, also known as full functionality PowerCase cases, all the relevant information is, with limited exceptions, supposed to be entered into PowerCase. For example, if an investigator interviews a witness, the audio or video recording of that interview should be entered into PowerCase as well as the investigator's notes and summary of the interview. As I explain in Chapter 6, although Project Houston easily met the criteria for a major case management threshold offence investigation and was regarded as such internally, a great deal of relevant information was not uploaded into PowerCase.

This observation is not of mere theoretical interest. McArthur's interview with police in November 2013, for example, was never entered into PowerCase. No one followed up on what he said, although his interview revealed, for the first time, a potentially meaningful connection with all three men whose disappearances were being investigated. I later provide other troubling examples of critical information never being uploaded into PowerCase. The effectiveness of any case management system depends on whether such information is entered into it. Even if the Service, the Homicide Unit, or senior officers regarded PowerCase as unhelpful during Project Houston, the fact remains that no adequate case management tools were in place to catch the deficiencies this Review has identified. Simply put, it is no answer to say that Versadex, the P Drive, or oral or written directions to investigators adequately substituted for a comprehensive case management tool.

Documents can be moved directly into PowerCase from Versadex. For example, reports produced at a crime scene by front-line officers and recorded in Versadex can then be "pushed" into PowerCase. Most investigative material can be formatted for entry into PowerCase. Items such as Word documents, Excel spreadsheets, telephone records, and emails may be converted into searchable PDF documents for entry or can be manually typed into the program as plain text documents.

Massive amounts of data can be entered into PowerCase if the user knows how to do so. For example, the Peel Regional Police Service regularly uploads tens of thousands of toll records at a time. Toll records contain thousands of rows of data from cellphone towers, including telephone numbers, dates and times of calls, and duration of calls. Civilian members

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<sup>28</sup> The RCMP recently adopted PowerCase as its electronic major case management software. This will give PowerCase added prominence in use nationally.

format the toll records for entry into PowerCase, and a designated toll data PowerCase entry member uploads the toll data into PowerCase.<sup>29</sup> The York Regional Police have also adopted Peel's approach to toll data uploads.

Some material is not easily uploaded into PowerCase. For example, the full contents of a forensic extraction from a cellphone or a computer's hard drive are not uploaded. This is because much of the content extracted from a cellphone or computer is irrelevant for investigative purposes: a computer hard drive may contain tens of thousands of programming files that are essential to the computer's functioning but that have no evidentiary value. Instead, computer and cellphone data extractions can be entered into PowerCase by way of a log prepared by a given police service's electronic discovery software. The log (capturing, for example, internet search history, saved files, and emails) can be uploaded as a searchable PDF into PowerCase and indexed.

As well, most officers still prepare handwritten notes contained in their memobooks. These notes cannot easily be translated into a usable or a searchable form in PowerCase. Despite major case management guidelines to the contrary, memobook notes are usually entered into PowerCase only at the end of an investigation and only to facilitate disclosure in criminal prosecutions.

#### *The Use of "Objects" and "Triggering"*

Once a document is saved in an appropriate format, the indexer should upload the document into PowerCase, review it, and identify "objects" contained in it. Objects include names of persons, addresses, vehicles, and telephone numbers.<sup>30</sup> In 2011, "e-communication" objects were added to PowerCase, such as social media usernames, email addresses, webpages, and IP addresses. The 2012 manual added e-communication objects. A person may be categorized as an object in several different ways – as a suspect, person of interest, associate of a person of interest, witness, relative, or by the catch-all word, "other." PowerCase also automatically identifies what it believes to be objects within uploaded documents and flags them for the indexer's confirmation.

Investigators can use objects in a variety of ways. One way is through an automatic mechanism called "triggering." I was told that PowerCase is

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<sup>29</sup> Members who upload toll data into PowerCase are granted a special profile within the program. This is because toll data entry into PowerCase is extremely time consuming for the program. The program sometimes needs to run overnight to process the amount of data being entered. The toll data profile allows the user's profile to stay connected to PowerCase for an extended period to avoid the program "timing out" and disrupting the upload. This allows the user to leave for the evening while the program continues to work.

<sup>30</sup> Each version of the manual identifies the types of entities that constitute an object.



currently the world's only law enforcement software that performs proactive triggering. However, Ontario police services do not use PowerCase's internal triggering system. Instead, Ontario developed its own triggering software system that works alongside PowerCase: Ontario's major case management triggering software relies on data from PowerCase to form the basis of triggers. When a trigger is identified by Ontario's system, the trigger is sent to PowerCase. PowerCase then sends notifications of the trigger to the PowerCase accounts of the relevant users.

Within the Service, the value of PowerCase's triggering mechanism is somewhat controversial. To explain why, I briefly describe how triggering works.

As already stated, all Ontario police services are required to upload relevant information pertaining to certain designated investigations into PowerCase. These designated investigations include missing person cases involving a strong possibility of foul play or an individual who remains outstanding and unaccounted for 30 days after being reported missing. Ontario's triggering system automatically generates a trigger when it locates an exact match or "Soundex" (that is, sounds like) match between objects referred to in different investigations in Ontario, whether the investigations all relate to the same police service or multiple services. These trigger notifications are sent to PowerCase and then to the PowerCase account of a designated officer, such as the primary investigator or the file coordinator, and are visible when that officer logs in – preferably daily.<sup>31</sup> If a notification within PowerCase is not reviewed and acknowledged within one week, PowerCase sends an email to a designated Service bureau administrator to notify the administrator of the outstanding notification.

Triggering is designed to allow investigators to identify potential links between cases. For example, an address may have come up in an investigation the OPP conducted several years ago. That address may, in turn, be associated with a person of interest in a current investigation. This connection may ultimately not prove to be relevant to the current investigation, but the trigger notification enables a current investigator to explore its relevance.

The triggering system generates over five hundred triggers daily across Ontario. Most of the triggers are "false positives" – the connection or link between cases is ultimately irrelevant. Many of the false positives are caused by the "Soundex" match function. For example, an officer entering the name

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<sup>31</sup> Every PowerCase user has a personalized PowerCase account. The user must log in to the PowerCase account to use the program. Trigger notifications are sent to the relevant user's account and are visible when the user logs in.

“John Smith” into PowerCase may receive a trigger match for “John Smyth.” Other potential false positives are linked to common addresses. A particular hospital, for example, may appear in many different investigations but is unlikely to be relevant to a current investigator. However, this issue has largely been rectified. Ontario Major Case Management maintains a list of common locations that will not raise triggers, including hospitals and shopping centres. Officers in individual investigations can also manually turn off triggers for an object that is unlikely to be helpful or relevant to an investigation.

There is some controversy around the usefulness of triggering. A senior investigator involved in the McArthur-related investigations told the Review that PowerCase triggering is unhelpful and that he never received a meaningful trigger during his years with the Service. Experts in PowerCase are familiar with this complaint. A survey of users across Ontario revealed that only 6 percent of triggers were of investigative value or worthy of follow up.<sup>32</sup> It is also time-consuming to review numerous trigger notifications to determine if they contain relevant leads. However, I conclude – as did several experts I consulted – that some dissatisfaction about triggering and about PowerCase generally is based on officers’ unfamiliarity with how, properly used, PowerCase can significantly improve the efficacy and results of their investigations.

Triggering is only one component of PowerCase’s tool kit and may, in fact, be less important than other features I describe below. Moreover, the senior officer who complained that triggers were unhelpful failed to appreciate that Project Houston became aware of Mr. Faizi’s disappearance, and its potential connection to Mr. Navaratnam’s disappearance, simply because the Peel police had entered Mr. Faizi’s case into PowerCase (see Chapter 6).

Another issue exists that potentially limits the utility of triggering and of objects generally. Civilian indexers are not trained investigators – there is no reason to expect them to be. Furthermore, the Review learned that the Service’s indexers are typically provided with relatively little information about an investigation.<sup>33</sup> It is, therefore, hardly surprising that they may often be unaware of a person’s relevance to the investigation. As I state earlier, a person may be categorized in many different ways. If indexers do not know how a person fits into the investigation, they may not designate the person into a specific category but as an “other.” About 600,000 of the 1.5 million people identified as objects within PowerCase are so categorized.

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<sup>32</sup> PowerCase has deactivated the use of telephone numbers as triggers owing to the virtually unmanageable number of false positives that they generate.

<sup>33</sup> A number of services integrate their indexers fully as part of the investigative team.

An investigator who receives a trigger notification for a person categorized as an “other” may place little or no value on the trigger or not even pursue the lead. I address this issue in my recommendations. But I share the views of one officer, highly proficient in PowerCase, who believes that some officers incorrectly regard triggers to be a “solve button” and, as a result, become frustrated by the number of ultimately irrelevant triggers. Instead, officers should view triggers as a source of potentially relevant information that, at first blush, may not be apparent, or, expressed another way, as a “safety net for connections that may otherwise have not been apparent.”

#### *Object and Free-Text Searches*

Triggers identify matches between different cases, not within a single case. As well, triggers match objects only. Objects are limited to fixed categories rather than key words, such as “landscaper” or “gay man.” This gap is where other PowerCase tools comes into play. To look for repeated references to the same name, address, word, or phrase, investigators can perform object searches within their own PowerCase file as well as “free-text” searches within either their own PowerCase file or within PowerCase at large. A free-text search functions as a simple word search and find. PowerCase’s search functions would easily permit investigators to answer the following types of questions, without attempting to do so manually by poring over hundreds or thousands of pages:

- Did three separate witnesses attend the same address at different points in time?
- Is a particular telephone number associated with that address?
- Did the address come up in a text message or email between a suspect and a potential witness?

Again, this is no mere theoretical observation. As I describe in Chapter 6, during Project Houston, certain email addresses and usernames, as well as certain locations within the Village, came up repeatedly. At least one investigator as well as the project’s analyst manually discovered some of these connections. But investigators missed other critically important connections or failed to discover them in a timely way. In at least one instance, an investigator “rediscovered” a connection that had already been uncovered earlier in the investigation. These shortcomings represented failures to upload relevant information into PowerCase and to use it effectively – or at all.

As I describe in Chapter 6, the police interviewed McArthur in the course of Project Houston. However, nothing about the interview was uploaded into PowerCase – not even McArthur’s name. As a result, when McArthur was identified as a person of interest years later during Project Prism, his previous interview was not immediately discovered. It was simply fortuitous that the officer who had been involved in the earlier project remembered that McArthur had been interviewed. In addition, McArthur was a landscaper. A few witnesses had referred to someone who was a landscaper and to landscaping done by Mr. Navaratnam, one of McArthur’s victims. Although “landscaper” would not qualify as an object, an investigator could have conducted a free-text search in PowerCase – assuming relevant information was uploaded into the system – for references to a landscaper or landscaping immediately before or after McArthur was interviewed.

Object and free-text searches should be one of the first steps for investigators using PowerCase, with trigger notifications acting as a backup or safety net.<sup>34</sup>

#### *Link Explorer*

Link Explorer is another powerful tool in PowerCase which enables analysis of information for links and patterns and the presentation of that information in a variety of formats.<sup>35</sup> For example, a telephone record uploaded into PowerCase can generate a graphic, indicating when the phone number was used to contact another phone number. Other telephone numbers can be added to show multiple phone numbers calling a given number and how these calls are sequenced. This tool allows investigators to see connections quickly between different pieces of data, connections that may otherwise go unnoticed.

Link Explorer was available in 2012 during Project Houston. If properly used, Link Explorer could have shown the investigators that McArthur was the only person with potentially meaningful links to all three missing men. I am not suggesting that Link Explorer can replace a trained, well-informed analyst. Rather, it is an important tool that complements the work of an investigator or analyst in ensuring that meaningful connections are identified. Unfortunately, it was not used during Project Houston. As I explain in Chapter 6, the project’s analyst attempted manually to chart some of the important connections in the investigation but was not provided with up-to-date information as the

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<sup>34</sup> To be clear, the P Drive has some search capacity, but it is inferior in certain ways to PowerCase’s search capacity.

<sup>35</sup> For example, a “web” format can show a person of interest at the centre, with lines drawn in spider-web fashion from the centre to connecting addresses, usernames, or persons.

investigation progressed.<sup>36</sup> Robust use of PowerCase’s analytical tools would likely have revealed the connections that investigators did not make in a timely way or at all.

### *Action Tracking*

When properly used, PowerCase also assists in the organization and tracking of documents and assignments or tasks performed. It records when each document was entered into the program and where the document came from. This tracking is of obvious importance in complex investigations, but, even more important, PowerCase also tracks “actions.” The manual defines actions as activities or assignments that an officer must perform, and it requires that all actions be recorded in PowerCase. Those actions still outstanding are documented through on-screen forms that contain instructions to an officer. Since 2012, the manual has also required that the command triangle categorize actions to be performed as high, medium, or low priority based on the following factors:

- risk to public safety;
- potential for loss of evidence;
- availability of the source or subject of the information;
- number of references to the same information;
- specificity of the information;
- whether the source of the information is known or anonymous;
- seriousness of the offence; and
- reliability of the source, if known.

Members of a major case command triangle have a “dashboard” within their PowerCase accounts that lists all outstanding actions. This allows the command triangle to quickly see any actions that have not yet been allocated or completed. At this time, PowerCase does not issue notifications to command triangle members about overdue actions – the command triangle is responsible for checking their PowerCase accounts on a regular basis to ensure actions are completed. PowerCase is currently examining how to better manage actions.

In Chapters 6 and 7, I provide examples of critical actions that were not recorded in PowerCase and not completed or followed-up on in a timely way. One of the actions to be performed during Project Houston related to the subscriber for an email address, *silverfoxx51@hotmail.com* that was linked to

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<sup>36</sup> The analyst did not even have access to PowerCase or the P Drive.

two of the missing men. An officer was assigned to obtain the subscriber information. The assignment was not properly recorded in PowerCase or in the P Drive, however, and it fell between the cracks. It took many months for the project to identify the username's owner – Bruce McArthur.

Similarly, in 2017, an officer was assigned to obtain several surveillance videos, including one obtained from the building across the street from Andrew Kinsman's residence. A different officer viewed several other videotapes but was unable to review all three videotapes during his shift. When Project Prism began shortly after, an action to view the videotape from the same building was created in PowerCase, but the action was not assigned to any officer. It, too, fell between the cracks. The videotape was viewed almost two months after the action to obtain it was assigned. It showed the critical evidence of Mr. Kinsman's departure in McArthur's red van.

## **The Service's Non-compliance with Provincial Adequacy Standards**

In this chapter, I have outlined the relevant provincial adequacy standards respecting major case management and its case management software, PowerCase. I have also briefly explained how PowerCase works, together with examples of how it was not used as a case management system during the McArthur-related investigations. These examples are but a few of the many ways in which these investigations did not comply with provincial adequacy standards respecting PowerCase and major case management more generally. Some of the other ways are as follows:

- The Service repeatedly failed to recognize when the criteria had been met to categorize a missing person investigation as a major case. This meant, among other things, that no data were uploaded into PowerCase for several major missing person cases.
- The Service failed to recognize when the criteria for potentially linked cases had been met. As a result, it did not notify the serial predator coordinator of these cases, which might have been addressed through multi-jurisdictional major case management. The serial predator coordinator learned about the McArthur-related investigations only when the media reported on McArthur's arrest for murder.
- Officers in charge of major cases, or members of the command triangle, were not always trained, as required, in major case management or, where applicable, in PowerCase.

- A fraction of the data collected during Project Houston was uploaded into PowerCase. This mandatory software was not used as a case management system but, rather, treated as a bureaucratic obligation and largely as a data dump.
- Data were uploaded well after the fact and outside the periods set under provincial adequacy standards.
- During Project Houston, critical connections between pieces of evidence were overlooked – in part, because available search and linkage tools were not used. This failure was compounded by the underuse of the project’s assigned analyst.
- Some important actions fell between the cracks, partly because of inadequate monitoring and supervision and partly because the action tracking tool in PowerCase was unused. In Project Houston, the tracking of vital assignments depended largely on human memory and handwritten notes. This approach did not comply with the requirements for major case management.
- The civilian indexer assigned to Project Houston, through no fault of her own, knew little about the investigation, was largely disconnected from it, and was provided with limited data to upload and inadequate direction on the data’s significance. Moreover, these deficiencies became more pronounced in the later stages of Project Houston, ultimately to the point where the indexer was no longer assigned to the project.
- During Project Houston, no detailed chronology of investigation was maintained,<sup>37</sup> as required by the manual. Nor was a victim liaison assigned, as was also required.
- A larger percentage of the data collected during Project Prism was uploaded into PowerCase. Although Project Prism was more efficient and effective than Project Houston, it also did not use PowerCase as a case management system.
- Almost all the McArthur-related investigations did not comply with provincial adequacy standards respecting ViCLAS notifications.

I elaborate on all these issues in Chapters 5, 6, and 7. They are not confined to the McArthur-related investigations but are systemic issues that

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<sup>37</sup> Project Houston did have a daily log, although it was not entered into PowerCase; nor did the log constitute a detailed chronology as contemplated by the manual. Different officers contributed to it on different days, but the amount of detail they included was inconsistent. One rationale for a detailed chronology involves the need for a document that is ready to be imported quickly into an urgent court application.

relate, more broadly, to how the Service identifies, case manages, and ultimately investigates major cases – particularly major missing person cases.

The Service’s failure to comply with provincial adequacy standards relating to major case management and PowerCase is not a new issue. In February 2013, the Audit and Quality Assurance Unit issued an internal report on the Service’s compliance with the manual (the MCM Audit Report). The report concluded that the Service had not complied with requirements in the manual in 50 percent of the major cases randomly selected for audit review: 25 percent of the cases had been assigned to an investigator who had not successfully completed the major case management course, and 14 of the 20 assigned investigators did not have any training in PowerCase. The audit team concluded that this non-compliance represented a “significant risk” to the Service on several levels: it exposed the Service to potential civil liability; it could result in a public finding of non-compliance once the ministry conducts its anticipated major case management compliance inspection; finally, “the Service’s reputation could suffer irreparable damage in the public eye, especially if the improperly investigated major case involved a child or vulnerable individual.”

I observe that although the audit examined only 20 major case investigations, nine of the 10 non-compliant investigations were conducted within police divisions rather than by specialty units. Moreover, there is no indication that the audit team examined any major missing person investigations or any such investigations that should have been treated as major cases but were not.

The MCM Audit Report recommended that the deputy chiefs of police responsible for divisional policing and specialized operations ensure that all cases defined as major cases are investigated according to the Ontario *Major Case Management Manual*. The response from the Service, however, can only be described as disheartening – the report was not taken seriously. The Board, moreover, was not even made aware of the issue, despite its systemic implications and potential impact on the Service’s reputation.

In 2014, Detective Sergeant Stacy Gallant,<sup>38</sup> who headed the Service’s Homicide Cold Case Section, drafted a proposal requesting additional resources to ensure that the Service complied with the manual. He recommended that five divisional Criminal Investigations Bureau (CIB) clerks be trained to use PowerCase and that they be assigned to major case investigations for PowerCase indexing:

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<sup>38</sup> Detective Sergeant Gallant is now retired.



All investigative information is required to be entered into PowerCase, it must then be researched, indexed and cross-referenced. The major case management unit staff has been completing all of these functions, for the entire Service. Transferring some of the responsibility to the divisional level, to perform functions for investigations that require only tombstone data entry, would have many beneficial effects.

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Due to the volume of cases, and workload within the MCM office, there are currently approximately 2500 updates outstanding. Most relate to tombstone cases, primarily updates to or changes to supplementary reports, or changes to the occurrence information, excluding arrests (which are currently up to date).

Provincial legislation states that “All investigative information *shall* be entered in the Ministry approved software within *30 days* of receipt of the information.” A contingent of divisional PowerCase indexers would greatly assist with the Service’s compliancy rate and could be called upon, when the need arises, to respond to major incidents.

Implementing divisional PowerCase indexers, would allow the highly experienced MCM indexers the time required to become more involved in threshold incidents (homicides and major sexual assaults) as well as longer-term, and major case projects. Ensuring that timely and accurate investigative material is loaded into PowerCase will assist investigators. [Emphasis in original.]

This proposal was never acted on.

In 2016, the Major Case Management Unit issued an internal report entitled “PowerCase – Current Status and Proposed Enhancements” (2016 MCM Report). The 2016 MCM Report stated that compliance with the manual and with PowerCase requirements continued to pose challenges. The report was critical of the practice of relying solely on Versadex for case management:

Relying solely on Versadex to manage a major case can present issues when managing a chronology, preparation of search warrants, review and storage of video (statements, seized, surveillance) and the storage of electronic records that contain large volumes of information. Although it is possible to manage an investigation within the limits of Versadex[,] the system does not support compliancy with the document management requirements as set out in the MCM Manual.

...

To achieve efficient major case management[,] the use of a combination of the Versadex process and the electronic file system should

be used. Versadex provides for the ease of sharing of information across the service. The electronic file system ensures that the investigator remains compliant with legislation. The combination of the systems is necessary as the Versadex RMS system is not capable of allowing investigators to use the MCM document management system (folder system). The consistent application of the processes will ensure effective document management and compliancy with the MCM manual including PowerCase.

I acknowledge that Project Houston and Project Prism also used the P Drive for case management. However, as I say above, this approach remains non-compliant with provincial adequacy standards. More significantly, the use of the P Drive did not prevent important steps from being overlooked – omissions that PowerCase is designed to catch. Moreover, as I demonstrate in Chapter 5, the McArthur-related investigations that preceded Project Houston did not employ the P Drive or any meaningful case management system.

The systemic issues around the Service's use of PowerCase arose again in 2017. On July 26 of that year, Detective Constable Stacey Dewsnap, a PowerCase coordinator with the Service's Major Case Management Unit, emailed Inspector Bryan Bott to alert him to relevant changes to provincial adequacy standards for missing person investigations. Specifically, Detective Constable Dewsnap advised that tombstone data must be entered into PowerCase when individuals remain unaccounted for 30 days after their being reported missing. Andrew Kinsman's disappearance was entered into PowerCase only because the Major Case Management Unit read about his disappearance in the media. Selim Esen's disappearance was entered into PowerCase because the unit developed a tracking program that identified his case as outstanding for over 30 days.

Most recently, the ministry conducted a province-wide inspection of major case management practices, including those at the Service, which was completed in 2019. In important areas relevant to this Review, this inspection was not comprehensive. It focused on major case investigations of homicides or attempted homicides, sexual offences, and criminal harassment where the harasser is not known to the victim. It did not address missing person investigations, though these cases raise different considerations. For example, the Review learned that hundreds of the Service's missing person cases that had been entered into PowerCase continued to show as "open," though they should have been appropriately updated or concluded. I raise the scope of the ministry's inspection not as a criticism, but simply as recognition that it does not address a number of the issues I identify during this Review.

The ministry's inspection report made several relevant recommendations. It also requested that the Board and the Service provide a coordinated response (the Service's improvement plan) within 90 days. The improvement plan was publicly released at the June 3, 2020, Board meeting.

Six of the inspection report's recommendations are relevant to this Review:

- Number 4: The chief of police should ensure that investigative information for threshold major cases is entered onto PowerCase in accordance with the data entry standards set out in the manual (Ont. Reg. 354/04).
- Number 5: The chief of police should ensure that the serial predator coordinator is notified within seven days, in accordance with the manual, if there is a reasonable likelihood that the same person(s) has committed the crime(s) within a single jurisdiction or a multi-jurisdiction (Ont. Reg. 354/04).
- Number 6: The chief of police should review procedures for undertaking and managing investigations into major cases to provide further clarity and direction on procedures and processes to support the flow of investigative information to the Service's Major Case Management Unit for entry onto PowerCase.
- Number 7: The chief of police should consider linking procedures and processes for undertaking and managing investigations prescribed as major cases with Service procedures and processes for the use of PowerCase.
- Number 8: The chief of police should consider revising Service procedures for undertaking and managing major cases. This revision would include the requirement to notify the serial predator coordinator within seven days, in accordance with the manual, if there is a reasonable likelihood that the same person(s) has committed the crime(s) within a single jurisdiction or a multi-jurisdiction.
- Number 9: The chief of police should consider revising Service procedures for undertaking major cases to require that those officers in the command triangle be clearly identified.

The Service's improvement plan places heavy emphasis on training. It states that training is being developed to target "major case managers and divisional detective sergeants in the field to include reinstalling data entry standards." The plan indicates that the training will include direction

respecting notifications to the serial predator coordinator and on the flow of investigative information to PowerCase. As for the identification of the command triangle's members, the plan contemplates that the Service will liaise with the Ontario Police College to ensure consistency in training. In relation to recommendation 7, the plan reflects that the Service's new chief information officer has undertaken a review of the interoperability of systems and software used by the Service. Finally, in response to several recommendations not reproduced above, the Board has undertaken a comprehensive review of its own policies to ensure that they have been updated and address all provincial adequacy standards. I comment on the ministry's recommendations and the response to them in the Summary and Findings section below.

## **The Technological Crime Unit and Technological Tools Available to the Service**

### *The Technological Crime Unit*

The Service's Technological Crime Unit (the Tech Crime Unit) is a unit within the Technical Investigation Group of Intelligence Services. Rather than conducting its own investigations, the unit provides support for other investigative units. The unit conducts forensic analysis of electronic devices such as computers and cell phones and provides the extracted and analyzed information to investigators in a readable format. The Tech Crime officers also provide advice on the contents of search warrant applications involving electronic devices, give expert testimony, and assist with search warrant executions and other technical aspects of investigations, including data recovery. These officers typically have backgrounds in technology and receive specialized training to perform their roles.

At the time of writing, Detective Sergeant John Menard leads the Tech Crime Unit. He listed the technology-related forensic tools available to the Service to assist in its investigations. Here, I refer only to those tools relevant to my evaluation of the McArthur-related investigations and my recommendations.

The Tech Crime Unit uses a case management program entitled E-Tracker to organize and manage its own work – a program that should not be confused with PowerCase, the case management software for an entire investigation. E-Tracker logs the date the unit was given an electronic device, what work was done on it, when and by whom, and what the unit found as a result. E-Tracker also records the unit's legal authorization to access the contents of the device.

During Project Houston, the unit used several forensic tools to examine computers. At the time, one of these tools was a new program, XIRAF. This program translates a hard drive's content into a readable format for manual examination. Instead of lines of illegible data, the content is viewed as a series of files filled with searchable text. In June 2013, XIRAF was installed on several Project Houston computers, and, three months later, in September, using this program, Detective Constable Josh McKenzie, one of the project's investigators, found McArthur's telephone number (the project had already acquired the related email address) in Mr. Navaratnam's computer files using XIRAF.

During Project Houston, the Tech Crime Unit also used a similar program, Internet Evidence Finder (IEF). The Service ultimately phased out XIRAF in favour of IEF. AXIOM is the current iteration of IEF. All these programs function in a similar way to XIRAF. They allow officers manually to read, search, and analyze the content of a computer hard drive.

In addition to XIRAF and IEF, the Tech Crime Unit used forensic software applications entitled Encase by Guidance Software (Encase) and Forensic Toolkit (FTK) by Access Data. These tools were employed during Project Houston and are still in use today. Encase and FTK "image" the target media, authenticate the evidentiary forensic image, and analyze the evidence obtained. The software enables an investigator to view all files on the media, including deleted folders and file fragments.

As I explain in Chapter 6, during the initial investigation into Mr. Navaratnam's disappearance in 2010 and 2011, the Service failed to forensically examine Mr. Navaratnam's laptop computer. It contained valuable evidence that ultimately implicated McArthur. In early 2013, when a Tech Crimes officer examined the computer during Project Houston, he failed to locate this valuable evidence because his assignment was too narrowly defined. In February 2013, an investigator identified a link between *silverfoxx51* and two of the missing men. However, she was unable through an "open source" search<sup>39</sup> to ascertain that this username was one that McArthur used. It was only in September 2013 that another investigator employed XIRAF to connect McArthur to the *silverfoxx51* email address. The technology to make this connection was available to the Tech Crimes Unit in February 2013. Moreover, it was only in 2017, during Project Prism, that a forensic examination of Mr. Navaratnam's computer uncovered sexualized messages

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<sup>39</sup> "Open-source" searches or information gathering involves the collection of information via the internet using sources such as search engines, chats, social networking sites, media platforms, and blogs.

between McArthur and Mr. Navaratnam that put the lie to an earlier statement McArthur made to the police in November 2013.

### *The Coordinated Cyber Centre*

Since 2014, the Coordinated Cyber Centre (C3) has been another support unit of the Intelligence Services. It supports investigations of certain criteria offences (such as homicides, cyber-bullying) that have an online component, and it may also agree to support investigations in non-criteria matters, depending on available resources and other priorities. The unit uses tools, including open-source searches, scrapes, and interceptions, along with active engagement with persons online. C3 members also support investigations involving social media platforms and website analytics.

Internet investigations conducted by the Toronto police have, since 2014, been governed by the Service's "Internet Facilitated Investigations" Procedure 04-45. The procedure requires officers to have completed the computer- and technology-facilitated investigations course, or an equivalent, before they engage in internet investigations and/or open-source information gathering. C3 may provide support where the online component of an investigation is beyond an investigator's capacity. In May 2017, for example, the officer in charge of the investigation into the disappearance of Selim Esen obtained the assistance of C3.

## **Summary and Findings**

In Chapters 5, 6, and 7, I describe and evaluate the McArthur-related investigations conducted by the Toronto police between 2010 and 2018. A significant component of that evaluation involves how each investigation was organized and case managed; how and what information was collected, recorded, indexed, cross-referenced, and used; and the extent to which investigators availed themselves of existing external and internal technological and analytic tools and resources to advance their investigations.

The evaluation required a clear understanding of the provincial adequacy standards and the Service's own procedures that govern or guide such investigations. It also required a basic understanding of the Service's records management and case management systems; PowerCase, the provincially mandated case management system for major cases; and the other technological and analytical tools and resources, both external and internal, that existed during the relevant periods. Accordingly, this chapter provides the

necessary backdrop to my evaluation of the McArthur-related investigations, and to the larger systemic questions those investigations raise.

My Review team and I met with Sean Ramitt at Xanalys; members of the ministry's Major Case Management Unit, including the provincial software coordinator and the serial predator coordinator at the material time; and many officers and civilian employees of the Service, including members of the Major Case Management Unit. The Review also heard from officers of all ranks, including senior command, who have been involved in a variety of ways in major case investigations. The Review's policing consultant, former OPP chief superintendent Mark Pritchard, was seconded, during part of his lengthy policing career, with the ministry's Major Case Management Unit and was well versed in these topics as well. The input of all these individuals informed my findings and recommendations.

The evidence is indisputable that the McArthur-related investigations did not comply in many ways with provincial adequacy standards respecting major case management. I list the key lapses above, though they are best elaborated on in Chapters 5, 6, and 7. Here I will address the larger systemic issues around the Service's use of PowerCase.

As I have repeatedly pointed out, PowerCase is the provincially mandated case management software for major cases. It is used effectively by other large services in Ontario to case manage major investigations. Some of Toronto's senior officers have expressed dissatisfaction with PowerCase – and their dislike is manifested in the failure, in a number of major case investigations, to use PowerCase as a case management tool. In some respects, their dissatisfaction has become a self-fulfilling prophecy: their misuse and underuse of PowerCase has made it ineffective. If but a fraction of data is uploaded into PowerCase, and much of that data is uploaded well after it was collected, it is hardly surprising that PowerCase's search and linkage tools, such as free-text searches and Link Explorer, are not used or of limited assistance. If assigned indexers are largely disconnected from investigations and are provided with inadequate information about data to be uploaded, it is equally unsurprising that object searches have limited utility. If officers have not received adequate training on PowerCase or do not act in accordance with the training they receive, it is difficult to blame PowerCase for the investigative deficiencies that result. If actions are not properly recorded in PowerCase, it is impossible to attribute investigative omissions to the software.

In addition, I heard other complaints from Toronto police officers. Some senior officers suggested that PowerCase may work for other police services but not in Toronto, given the number and complexity of the Service's major

cases. Some officers regard the P Drive as the preferable case management tool, and some cite weaknesses or limitations in PowerCase to support their concerns.

I do not accept that the Service is so different from other services that it cannot work effectively with PowerCase. Comparable police services in Ontario and elsewhere have demonstrated otherwise. In some instances, the position that PowerCase doesn't work for Toronto was advanced by officers whose understanding of PowerCase was, itself, deficient. With respect, this position also speaks to a certain hubris or lack of introspection that the Review observed in relation to some members of the Service.

I recognize that the Homicide Unit and others use the P Drive for some of the case management functions PowerCase performs. I also acknowledge that certain investigations can sometimes be, and often are, effectively conducted without PowerCase. However, the status quo I have described is completely unacceptable for at least five reasons.

First, several of the McArthur-related missing person investigations were seriously flawed. Those flaws were explained, in part, by the absence of adequate case management. Project Houston is illustrative. The P Drive did not serve as an effective substitute for PowerCase: leads went unnoticed; several critical assignments were missed; key analysis was not pursued, particularly after one of the investigators left the project; supervision was, at times, poor; technological tools were underused. In the course of conducting this Review, I had little indication that the Service was aware of these flaws or had adequately addressed them.

Second, the Service is undeniably pouring substantial human and financial resources into uploading data, however imperfectly, into PowerCase. However, this expenditure makes no sense if PowerCase is not being used appropriately, as often happens. Moreover, Toronto investigators may create a document in Versadex, the document may be entered into P Drive, and then it must be uploaded into PowerCase. Other large services have demonstrated that there is no need whatsoever for documents to exist in three different systems. The Service's approach reflects a lack of commitment to PowerCase.

Third, PowerCase, properly understood, can provide significant assistance that is not otherwise available to investigators in complex cases. Versadex is not a case management system, and the P Drive does not offer the same assistance in facilitating the speed, flow, direction, and effectiveness of a major investigation. The number and complexity of Toronto's major case investigations reinforces, rather than detracts from, the need for a robust case management system – one, moreover, that can assist in linking major cases within the Service's jurisdiction.



Fourth, the Service is not entitled to disregard provincial adequacy standards simply because it chooses to do so. This point is applicable not only to PowerCase but also to major case management standards generally. Officers in charge are not entitled to ignore ViCLAS submission requirements or to fail to notify the ministry's serial predator coordinator of an investigation that meets the criteria for a multi-jurisdictional investigation. If the Service wishes to revisit existing provincial adequacy standards or their applicability to Toronto, it has a powerful voice to raise its concerns through the ministry.

Fifth, as noted in the Service's internal major case management audit, non-compliance with provincial adequacy standards exposes the Service to potential liability and the risk of reputational loss.

To be clear, this criticism is not directed at the entire Toronto Police Service. Quite a few officers, including Acting Chief James Ramer, express support for the Service's adhering to provincial adequacy standards around major case management and using PowerCase as it was designed to be used.

PowerCase is certainly not perfect and has its limitations. Uploading all relevant data into PowerCase is time consuming and a drain on the Service's resources. Some types of data are particularly difficult to upload. Trigger notifications include too many false positives, at times diverting officers from more pressing work. As well, officers who receive trigger notifications cannot easily access additional information about cases potentially connected to their own and may have to contact officers in other police services to obtain what they need. This follow-up, too, can be time-consuming. Training on PowerCase involves some complexity, meaning that officers must not only be trained well on its use but also have access to refresher courses.

The answer is not to discard PowerCase (or any substituted case management software the ministry approves), but to make needed changes to improve its effectiveness. For example, I understand that PowerCase's designer is working on making the software entirely web-based, enabling it to be accessed from any computer and automating pre-determined action lists for particular types of investigations, such as missing person investigations. Such lists would not bind investigators but serve as checklists for their consideration. In Chapter 15, I make additional recommendations directly related to major case management and PowerCase, particularly as they relate to missing person investigations.

The issues I raise about the Service's non-compliance with provincial adequacy standards respecting major case management and PowerCase are hardly new ones. It is frankly disheartening to realize that these issues were identified by Service members some time ago but not acted on. Most recently,

the ministry's inspection report addressed several of these issues. Still, I must sound a cautionary note about the ministry's recommendations and the plan developed in response to them. Both focus on the need to take steps, such as training, to ensure that investigative information for threshold major cases is uploaded into PowerCase in accordance with data entry standards. However, if PowerCase is not used, as it was designed, to case manage threshold major cases, the rationale for uploading the data into PowerCase is completely undermined. Simply put, the Service, in the initial and ongoing training and education of officers of all ranks, must address not only the data entry requirements for PowerCase but also why it is important that it be used consistently and properly.

The ministry's recommendations 6, 7, and 8, reproduced above, invite the Service to re-examine its procedures for undertaking and managing major cases, and, more particularly, to support the flow of investigative information to the Service's Major Case Management Unit for entry into PowerCase. In my view, these recommendations provide the Service with an impetus to address, albeit belatedly, at least two key problems with the status quo. The first problem is the siloed environment in which the Major Case Management Unit's indexers currently operate. I have already expressed concern over the frequent disconnect between the investigation and both its file coordinator and its indexers. A senior ministry representative characterized the issue this way:

One of the responsibilities of the file coordinator within the manual is to make sure that the information that is being entered into PowerCase is indexed, researched and cross-referenced properly. That is the part that is getting missed out. That file coordinator's responsibility to ensure the data entry standard is being met. The data is going in and the investigators are completing their investigation, but the link between the two, which is one of the primary functions of the file coordinator, is being missed. Part of this is the manual's fault and part of the issue is that investigators don't put value on file coordination. They view the file coordinator role in relation to disclosure, not as an integral part of the investigation.

This disconnect undermines the purpose and value of PowerCase.

The second problem relates to the number of steps and the resources engaged in transferring data from Versadex to a P Drive to PowerCase. My team has reviewed two internal memoranda Service members prepared that suggest potential solutions. The Service's chief information officer is currently reviewing the "interoperability of systems" and the software being used by the Service. That review should include, through expert assistance, consideration

as to whether data must be loaded onto three separate systems in major cases, and, in any event, whether data can be uploaded in ways that reduce the time expended for this uploading to take place. It should also include whether some of the current functions can be performed automatically.

The ministry's inspection report and the Service's improvement plan identify the need to ensure that the serial predator coordinator receive notifications in accordance with the applicable regulation and the manual. Again, training on this issue will be ineffectual unless it comes with a robust understanding of why the serial predator coordinator is to be notified; when the criteria have been met; and, most importantly, the Service's commitment to multi-jurisdictional investigations in appropriate cases.

The issues I identify in this chapter are not confined to missing person investigations. However, these issues did figure prominently in my evaluation of the Service's missing person investigations, particularly those related to McArthur's victims. I now turn to a detailed examination and evaluation of the McArthur-related investigations. The shortcomings in these investigations, viewed against the backdrop of the issues explored in this chapter, inform my ultimate recommendations.



## Chapter 5

### THREE MEN GO MISSING

In this chapter, I describe and evaluate the initial investigations by Toronto police into the disappearances of Skandaraj Navaratnam and Majeed Kayhan as well as the interplay between the Peel police and the Toronto police respecting Abdulbasir Faizi's disappearance. I also discuss Bruce McArthur's first relevant encounter with the justice system in the period 2001 to 2003 and its significance to this Review.

#### **McArthur's Assault Convictions Before the 2010–17 Murders**

On October 31, 2001, Mark Henderson, who lived in Toronto's Gay Village (the Village), was preparing Halloween celebrations when McArthur showed up at the front door of his building. McArthur was not an expected visitor, but Mr. Henderson let him in, assuming he was there to see someone else. Without any warning or provocation, McArthur attacked Mr. Henderson with a metal pipe he was carrying, knocking him unconscious. McArthur then left and later turned himself in to Toronto police.

<sup>1</sup> He claimed he had "blacked out" and had no recollection of these events. Purportedly, he was suggesting that his conduct was explained by a history of seizures caused by epilepsy and/or drug consumption.

As a result of McArthur's attack, Mr. Henderson suffered significant physical injuries. The emotional impact on him was profound and continues to this day. He is but one of McArthur's survivors. He has shown courage and resolve in the face of great adversity.

On January 29, 2003, McArthur pled guilty to two charges: assault with a weapon and assault causing bodily harm. He continued to maintain he had no recollection of the events, although he accepted responsibility for his actions and waived any possible defences to them. McArthur claimed he was carrying a metal pipe to defend himself against dangerous street people he had

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<sup>1</sup> In 2016, McArthur also turned himself in after he choked another gay man who survived the attack. Both times, McArthur seems to have contacted the police for strategic advantage in anticipation of a criminal complaint.

been exposed to, and not in anticipation of attacking Mr. Henderson. The prosecutor accepted that McArthur was not a predator targeting people in the Village and ultimately joined the defence in recommending that McArthur be sentenced to a conditional sentence of two years less one day.<sup>2</sup> Once served, the conditional sentence would be followed by a three-year probation period that prohibited him from entering a defined geographic area of the city, an area that included the Village.<sup>3</sup> On April 11, 2003, the trial judge accepted the joint submission on sentence, ending the court proceedings against McArthur. In 2014, McArthur was granted a record suspension (formerly known as a pardon). Nonetheless, these convictions and the circumstances surrounding them remained accessible to the Toronto Police Service (the Service) on its records management system / databases.

It is not within my mandate to evaluate how the justice system dealt with McArthur back in 2003. However, I have reviewed the file relating to his guilty plea, sentencing, and probation, including relevant psychological reports about him and his own personal statements. The file shows, among other things, that McArthur successfully portrayed himself as a low-risk offender without a psychiatric or psychological disorder. In the absence of any credible explanation offered for his violent attack on Mr. Henderson or of any medical evidence supporting his purported blackout or lack of recollection, I question the readiness of the justice system to evaluate him as a low-risk offender. I do not mean this view to be a reflection on the presiding judge, who was presented with an agreed statement of facts and a joint submission as to sentence.

However, the more significant point for this Review is that absolutely no attention was paid to McArthur's 2001 violent behaviour when, in 2013, he was interviewed during Project Houston, an investigation into allegations of an active cannibalism ring (see Chapter 6). Project Houston examined whether the ring explained the disappearances of three men last seen in the Village. I will later explain how McArthur's 2001 behaviour, and the circumstances surrounding it, should have prompted further questioning and heightened scrutiny of McArthur as a person of interest not only when police interviewed him but following the interview. McArthur's previous violent behaviour drew investigative attention only in late 2017, after he had already been identified as a person of interest or as a suspect during Project Prism, an investigation

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<sup>2</sup> The first third of the conditional sentence involved strict house arrest. The next third involved evening house arrest. The remaining component involved few restrictions.

<sup>3</sup> Both the house arrest and the probation terms specifically prohibited McArthur from being within 10 metres of Mr. Henderson's apartment building. This address is in close proximity to Mr. Kayhan's residence.

prompted by Andrew Kinsman's and Selim Esen's disappearances (see Chapter 7).

McArthur's unprovoked metal pipe attack in 2001 represents his first known criminal and violent conduct directed toward a member of Toronto's LGBTQ2S+ communities – or indeed, against anyone. Tragically, much more violence was to come.

On December 2, 2005, the Toronto police stopped McArthur while he was driving. He did not have a valid insurance card with him. This infraction, along with his telephone number, was recorded in the Service's electronic database. Although the incident itself was minor, it became significant eventually in enabling the Toronto police to connect McArthur to his email address, *silverfoxx51@hotmail.com*.

### **Skandaraj (Skanda) Navaratnam: McArthur's First Known Murder Victim**

Mr. Navaratnam was last seen alive on September 6, 2010, leaving Zipperz nightclub in the Village. McArthur killed him that night.

A popular man, Mr. Navaratnam had many friends. He usually called his friend Mr. AA several times a day. Mr. AA last saw Mr. Navaratnam on the afternoon of September 5, 2010. On September 16, after not having heard from Mr. Navaratnam in all that time, Mr. AA became concerned and called Toronto's 51 Division to report his friend's disappearance. The police went to Mr. AA's home.

Mr. AA provided the police with information about Mr. Navaratnam. He told them that Mr. Navaratnam worked at Ryerson University and was scheduled to work that day. He observed that Mr. Navaratnam had issues with drugs and alcohol and struggled with depression. He provided an address where Mr. Navaratnam was staying and informed them that Mr. Navaratnam's roommate, Mr. BB, last saw him at Zipperz on September 6, 2010.

Finally, Mr. AA speculated that Mr. Navaratnam might be visiting Hamilton, Ontario, or even Mr. AA's cabin in Bancroft, Ontario. In the police Occurrence Report, Mr. AA purportedly said he did not suspect foul play but expressed concern that Mr. Navaratnam was not in contact with him. The police went to the address where Mr. Navaratnam had been staying, but no one was home.

It was not until 2013 that the police formally interviewed Mr. AA and Mr. BB about Mr. Navaratnam's disappearance.<sup>4</sup> Sergeant Douglas Bourque, who was ultimately assigned as officer in charge<sup>5</sup> of Mr. Navaratnam's investigation, told the Review it would have been "best practice" for police to formally interview Mr. AA and Mr. BB back in 2010. To illustrate the importance of a timely, comprehensive, formal interview, in early 2013, during Project Houston, Mr. AA told Toronto police he had last seen Mr. Navaratnam at the Black Eagle bar in Toronto. Although he shared that information with the media on September 20, 2010, the Toronto police did not appear to be aware of this sighting. They did not interview anyone at the Black Eagle during the 2010 police investigation. We also know, based on subsequent interviews conducted by either the police or the Review, that all or virtually all of McArthur's murder victims frequented the Black Eagle at various times, as did McArthur himself.

A number of officers were involved in aspects of the initial investigation into Mr. Navaratnam's disappearance. The Review found it difficult, however, to determine who was directing or overseeing the investigation from the start. Most of the police documents from the original investigation identify Detective Debbie Harris<sup>6</sup> as the officer in charge, but, in response to the Review, she said that Mr. Navaratnam's case was assigned to Detective Barry Radford. Detective Radford in turn replied he has no recollection whether he did any work on the original investigation following the report of Mr. Navaratnam's disappearance. Sergeant Bourque believes he was assigned to the case several days after Mr. Navaratnam was reported missing.

These imprecise recollections over the officer in charge reflect at least two systemic issues. First, the officers' memobook notes for 2010–11 were largely unavailable either at the Service or in the Toronto archives. They should have been preserved and uploaded into Project Houston's case management database when the project began in 2012. Second, missing person investigations at the time were typically passed from officer to officer, except for those rare circumstances in which such investigations were designated as "major cases," when major case management protocols applied. Mr. Navaratnam's case was no exception. It followed the typical approach to missing person cases – meaning that these investigations were often not followed up on or appropriately and adequately supervised. It also meant that

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<sup>4</sup> I am distinguishing between cursory exchange with someone, and a comprehensive, organized "formal" interview.

<sup>5</sup> "Officer in charge" in this chapter is used synonymously with lead investigator.

<sup>6</sup> Detective Harris was later promoted to the rank of detective sergeant. She is now retired. Rather than referring to her throughout as retired Detective Sergeant Harris, I use the rank most relevant to the period being discussed, as I do with all police officers.



those affected by the disappearances had great difficulty finding out about the current status of the cases. In Chapters 13 and 15, I return to these systemic issues.

By the time Sergeant Bourque became involved, he believed Detective Harris had already completed a judicial production order to obtain Mr. Navaratnam's cellphone records. If this recollection is accurate, it likely places the beginning of his involvement in late September or early October 2010. Sergeant Bourque does not recall why he received the assignment, though it might relate to weekend or evening shifts moving cases around among officers. Unlike a number of other police services, Toronto had no dedicated Missing Persons Unit at the time. Indeed, it was only after the McArthur-related and other high-profile missing person cases that the Service moved ahead with a Missing Persons Unit.

On September 17, 2010, Mr. AA told the police he would check his cabin to see if Mr. Navaratnam was there. The police went to Mr. Navaratnam's last known address again. A neighbour told them Mr. Navaratnam no longer lived there and that its owner, Mr. CC, was in Europe until October 9, 2010. Approximately 10 days later, one of Mr. Navaratnam's friends called the police to say that Mr. CC might have contact information for Mr. Navaratnam's family in the United States and in Sri Lanka.

The Toronto police did not interview Mr. CC until March 14, 2013. During this interview, which took place as part of Project Houston, Mr. CC said that Mr. Navaratnam had lived with him for four years and that they were in an intimate relationship for two of those years. Most significantly, given McArthur's gardening and landscaping business, he stated that Mr. Navaratnam did odd jobs and was good at landscaping. In November 2013, when McArthur was interviewed during Project Houston, he told police he knew Mr. Navaratnam through one of his landscaping employees.

The police never contacted Mr. Navaratnam's family during the 2010 investigation. They made no efforts to do so until late in 2012 during Project Houston.

On September 20, 2010, the media reported on Mr. Navaratnam's disappearance. The headline in the *Daily Xtra* read: "Toronto gay man missing since Sept. 6." In the article, Mr. AA was quoted as expressing fears for Mr. Navaratnam. He mentioned that his friend had a new puppy – his pride and joy – which he took everywhere. After Mr. Navaratnam's disappearance, however, the dog had been left alone in the apartment, without anyone to care for it. This neglect was completely out of character for Mr. Navaratnam.

Mr. AA returned to the police station on September 21 and advised the police that Mr. Navaratnam was not at his cabin. He created a Facebook page and missing person posters to raise awareness about Mr. Navaratnam's disappearance. The police sent out a Service-wide bulletin<sup>7</sup> about Mr. Navaratnam's disappearance and checked local hospitals for him. They also issued a media release.<sup>8</sup>

In addition, Mr. AA gave the police Mr. DD's address as a possible alternative residence for Mr. Navaratnam. The same day, the police went to Mr. DD's home. Mr. DD advised them that, for about nine months, Mr. Navaratnam had been staying there two or three times per week, but he had not seen him since September 5. The police noted that Mr. Navaratnam's belongings were still there. Mr. DD also told the police that Mr. Navaratnam was seeing a therapist at the University of Toronto for post-traumatic stress disorder.

On September 22, the police contacted Immigration Canada to learn whether Mr. Navaratnam was a permanent resident. Koodo (Mr. Navaratnam's cellphone provider) advised that his cellphone last pinged off a tower on September 6. The phone had been used extensively before that date. Mr. Navaratnam's cellphone was registered to a friend named Mr. EE. Mr. EE told the police that he and Mr. Navaratnam had obtained new phones in August 2010. He also said that Mr. Navaratnam had been in a relationship with a man named Richard who lived in Maine. The police checked local prisons and detention centres to see if Mr. Navaratnam was in custody, and US immigration services to discover if he had crossed the border. They did not uncover any leads.

On September 23, the police checked the morgue in case Mr. Navaratnam's body might be there. They also sent a request to Koodo for Mr. Navaratnam's cellphone records. On September 27, Koodo told the police that Mr. Navaratnam's cellphone records would not be released without a judicial production order.

Mr. FF called Sergeant Bourque on September 23, after seeing a missing person poster for Mr. Navaratnam. Mr. FF had seen Mr. Navaratnam at Zipperz on September 6, where they talked about the puppy. Mr. FF remembered that Mr. Navaratnam had left the bar with two men who approached him. He informed Sergeant Bourque that, if necessary, he was prepared to come in to give a statement.

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<sup>7</sup> A Service-wide bulletin is a notification to all members of the Service to alert them about a case.

<sup>8</sup> The press release initially misspelled Mr. Navaratnam's name as "Mavaratnam," but the error was corrected the same day.

Sergeant Bourque told the Review that leaving the puppy behind was a “red flag” that heightened the risk that something untoward may have happened to Mr. Navaratnam. Unfortunately, the urgency given to the investigation did not change because of this critical information. During this investigation, no risk assessment was done in connection with Mr. Navaratnam’s disappearance. I find this problematic.

Mr. FF was another person who had potentially useful information but was never formally interviewed until 2012 during Project Houston. In 2013, the police finally obtained a sketch by a police artist of the two men with whom Mr. FF said he saw Mr. Navaratnam leave the bar. Although the sketch ultimately did not prove to be a productive lead, this interview and sketch should have been done in 2010.

On September 24, 2010, the police obtained Mr. Navaratnam’s laptop from Mr. DD. Three days later, the police submitted a request to have the laptop examined by the Service’s Technological Crime Forensics Laboratory in the Intelligence Division. Despite the obvious importance of the missing man’s laptop as a potential source of relevant information, this analysis was not done until 2012 and, when it was finally done, it was flawed (see Chapter 6). It overlooked critically important information available through the laptop. Indeed, it was only in 2017 that police learned from the laptop that Mr. Navaratnam and McArthur had exchanged sexualized emails. This correspondence demonstrated that McArthur had been dishonest about the nature of his relationship with Mr. Navaratnam when he was questioned by the police in November 2013.

Sergeant Bourque acknowledged to the Review that the forensic analysis of Mr. Navaratnam’s computer was not given the same priority as it would have been in a homicide investigation. Indeed, it was given no attention at all.

On September 24, the police went to Zipperz to see if any surveillance video was available from the night of Mr. Navaratnam’s disappearance. The bar was not equipped with surveillance video, but an employee at the bar told police he saw Mr. Navaratnam leave the bar the night he disappeared. The police did not formally interview the Zipperz employee until February 2013.

On September 25, Mr. EE sent a fax to Sergeant Bourque saying that Mr. GG had told him Mr. Navaratnam had been at The Cellar bathhouse on September 6 with an unidentified male. He included the contact information for Mr. GG. In the following days, the police attempted to contact Mr. GG and went to The Cellar to ask for surveillance footage. An employee said the footage would be checked.

On September 26, the police did a walk-through of Riverdale Park with Mr. Navaratnam's friends because the park was said to be a meeting or pick-up place for gay men. On the same day, Mr. Navaratnam's ex-partner, Mr. HH, contacted the police to tell them that Mr. Navaratnam may have left the country with a friend who owned a float plane. The police did not formally interview Mr. HH until 2012.

On September 27, the police put a "flag" on Mr. Navaratnam with Canada Border Services.<sup>9</sup> Again, the police checked the morgue and the addresses associated with Mr. Navaratnam. They did not discover anything new. The police also contacted TD Bank to do a "grid search" (a search to check on bank account usage).

That same day, September 27, the police issued another media release about the disappearance of Mr. Navaratnam, requesting the public's assistance and indicating their concern for his safety. The police records indicate that Detective Radford consulted Detective Peter Code<sup>10</sup> of the Homicide Unit about Mr. Navaratnam's disappearance, though Detective Radford does not recall doing so.

Detective Harris told the Review that the Homicide Unit was notified of Mr. Navaratnam's disappearance in 2010 and that she believed Detective Radford had provided this notification. According to Detective Harris, Homicide would be notified about a missing person investigation after normal "boots on the ground" investigative steps had been exhausted. Based on all available evidence, it became obvious to me that this notification did not represent an invariable or even a standard practice. Nor were existing procedures clear as to how and when Homicide should get involved, other than in obvious situations. In any event, the Homicide Unit did not take carriage of Mr. Navaratnam's case at that time. Nor did it appear to oversee the investigation.

On September 28, the police obtained several of Mr. Navaratnam's personal belongings for DNA testing, including a razor and a toothbrush. They also obtained DNA samples from Mr. EE and Mr. DD. However, Mr. Navaratnam's DNA was not submitted to the Office of the Chief Coroner for Ontario or to the RCMP's national missing person database. (I explain the roles of the Office of the Chief Coroner and the national database in Chapter 13.) Detective Harris described this lapse as an oversight.

On September 29 and October 1, in response to a Crime Stoppers tip, the police again checked the Riverdale Farm and Park area. On October 1, they

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<sup>9</sup> A "flag" is a notification to Border Services to alert the police if Mr. Navaratnam crossed the border.

<sup>10</sup> Detective Code has since been promoted to the rank of staff superintendent.

used a cadaver dog for their search. The police also contacted Durham Regional Police to see if a helicopter could be used to search the park for Mr. Navaratnam, but they were advised that the helicopter could not detect human remains.

On October 5, the Toronto police obtained a judicial production order for Mr. Navaratnam's phone records. On the same day, the police submitted the production order to Telus (Koodo's parent company).

On October 17, the police made a further request for video footage from The Cellar, as well as from a bank close to Zipperz. The Cellar advised police on October 19 that its footage went back only 12 days, so none remained for the night of Mr. Navaratnam's disappearance. The video would have been unavailable by the time police learned on September 25 that Mr. Navaratnam had been at The Cellar. Sergeant Bourque did eventually view surveillance footage of the alleyway next to Zipperz.

On October 21, the police contacted hospitals and jails, again with negative results.

On October 22, Telus indicated it would be able to respond to the production order for Mr. Navaratnam's cellphone by November 4 or 5. The police also contacted the University of Toronto to try to locate Mr. Navaratnam's psychiatrist. On October 27, the police spoke to someone at the medical clinic and learned that Mr. Navaratnam had not been there since 2009. On October 28, the Ministry of Health advised there was no recent activity on his health card.

At this point, the investigation came to a standstill – one that lasted for many months. On May 13, 2011, one of Mr. Navaratnam's friends called the police to let them know he had received a "spam" communication from Mr. Navaratnam's email account. The police replied to the address, advising Mr. Navaratnam of the missing person investigation, but received no response. The spam email did not represent a communication from Mr. Navaratnam.

Detective Harris told the Review that this incident was the last step the police took on Mr. Navaratnam's case until Project Houston began in late 2012. She acknowledged that in the original investigation, some things were left "undone." At the end of 2010, she indicated that she still considered Mr. Navaratnam a missing person with no evidence of foul play, despite the unusual red flags associated with his case (including his sudden lack of cellphone usage and the puppy he left behind). Sergeant Bourque, in contrast, told the Review he identified these "curious" and "suspicious" factors or "red flags" early in the investigation.

It is difficult to reconcile Detective Harris's view that there was no evidence of foul play at the end of 2010 with the October 5 application that same year for a judicial production order for Mr. Navaratnam's cellphone records.<sup>11</sup> The supporting affidavit for the application asserted that the police had reasonable grounds to believe Mr. Navaratnam had been "forcibly abducted" by an unknown person. The same affidavit named Detective Harris as the lead investigator.

Detective Sergeant Hank Idsinga,<sup>12</sup> who became the major case manager in late 2012 for Project Houston, agreed with Detective Harris, based on his later review of the evidence, that, back in 2010, the police did not have evidence of a crime. He noted that, based on the law existing at that time, the police could not obtain a judicial production order for a missing person's records without reasonable grounds to believe that a crime had been committed. In his view, this restriction may have coloured how the affidavit was crafted. As discussed in my findings below, I disagree with that assessment.

Sergeant Bourque felt he had no further leads to pursue. The case went cold.

## **Abdulbasir (Basir) Faizi**

Mr. Faizi lived with his family in Peel Region. He was last seen on December 29, 2010, leaving Steamworks bathhouse in the Village in Toronto. He spoke to his wife shortly after, to tell her he was going to meet a friend. He bought food at a restaurant at the corner of Church and Wellesley streets at 8:29 p.m. He was never seen again.

On December 30, Mr. Faizi's cousin reported him missing to 21 Division of the Peel Regional Police. The same day, Peel officers went to Mr. Faizi's home to speak with his wife. The Peel police immediately began completing items on their Missing Person Task Assignment Sheet. This sheet set out 75 general and case-specific tasks to be completed in Mr. Faizi's investigation, along with the name of the officer who completed each task, the date it was assigned, and the date it was completed. No such case management tool was used in the original investigation by Toronto police into Mr. Navaratnam's disappearance.

On December 31, Mr. Faizi's brother and cousin told police they had tried, without success, to access his bank-card and cellphone information. On

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<sup>11</sup> A submission to the Centre of Forensic Sciences in January 2013 stated that Mr. Navaratnam's disappearance was deemed suspicious at the time of his original Missing Person Report.

<sup>12</sup> Detective Sergeant Idsinga has since been promoted to the rank of inspector.

January 1, 2011, the police received information suggesting that, unbeknownst to Mrs. Faizi, Mr. Faizi had been unhappy in his marriage and was communicating with another woman. On January 2, his niece went to the police station and told the police she had accessed her uncle's email account. Mr. Faizi was corresponding with gay men and leading what was described as a "double life."

At the time of Mr. Faizi's disappearance, Peel's 21 Division had a missing person coordinator, Constable Marie-Catherine Marsot.<sup>13</sup> She was also the domestic violence coordinator at 21 Division. At her request, she was permitted to take over the missing person portfolio at the division. She was deeply committed to the work and brought a fresh perspective to it. In some instances, this interest resulted in reopening older missing person cases, and, in a few instances, they ended in homicide charges. On January 4, Constable Marsot took charge of the investigation into Mr. Faizi's disappearance.

During the week of January 3 to 8, the Peel police proceeded with their investigation of Mr. Faizi's disappearance. They went to his workplace. They attempted to identify a lawyer he used. They contacted Rogers to obtain information concerning the last known location of Mr. Faizi's phone. Rogers told them the phone was untraceable and was likely turned off. It had last been used on December 29, 2010, at 8:28 p.m. when Mr. Faizi called his wife: it had "pinged" off a cellphone tower near Mr. Faizi's workplace. The police also contacted Mr. Faizi's bank and health centre.

The Peel police identified and investigated a man in Edmonton whose name and contact information were in Mr. Faizi's email contacts. The individual proved to be unrelated to Mr. Faizi's disappearance. Mr. Faizi's last emails also indicated he was hoping to meet up with an unknown person. Police emailed the recipient's account and initiated efforts to obtain the IP address of the account. (This email account later proved to be unrelated to Mr. Faizi's disappearance.) The police also contacted hospitals.

On January 4, Toronto police found Mr. Faizi's car in front of 26 Moore Avenue in Toronto.<sup>14</sup> Toronto police told the Peel police about the discovery. Mr. Faizi typically did not park his car in this area while in Toronto. When the Peel police contacted the restaurant where Mr. Faizi last bought food to ask for surveillance footage, they were told the surveillance camera did not work.

On January 5, the Peel police issued a press release alerting the public of Mr. Faizi's disappearance. They received a call from one of Mr. Faizi's

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<sup>13</sup> Constable Marsot has since retired from the police service.

<sup>14</sup> This location was not far from the address where McArthur disposed of his victims' bodies and also not far from another address where he landscaped.

friends, who said Mr. Faizi was not in a financial position to leave his family. On January 6, the *Brampton Guardian* ran an article about Mr. Faizi's disappearance. Among other things, it noted that the police were particularly concerned because Mr. Faizi's disappearance was out of character.

On January 6, the Peel police contacted the Toronto police asking for assistance. As a result, they were able to use cadaver dogs belonging to the Toronto police to search the area surrounding Mr. Faizi's abandoned car. When the Peel police called Mr. Faizi's family about the car, they said they did not know anyone in the area where the car was found. The Peel police also sent Mr. Faizi's missing person press release and photograph to the Salaam Queer Muslim Community Centre and distributed his missing person information across the Peel Police Service. Mr. Faizi's car was towed to the Peel police station, and the Peel police completed their forensic examination of it.

On January 7, with the family's consent, the Peel police obtained and searched Mr. Faizi's computer. That same day, they sent it to their Tech Crimes Unit. Constable Marsot began to draft an application for a judicial production order for Mr. Faizi's cellphone records, but never completed it. She told the Review that obtaining a production order would have been helpful, but police were unable to get one without proof of a criminal offence. Legislation has since been proclaimed to make it easier for police to obtain production orders in missing person cases.

During the week of January 9 to 15, 2011, the police updated the photograph in Mr. Faizi's press release. They located one of Mr. Faizi's friends, who last saw him on December 29, 2010, at Steamworks bathhouse. The friend, Mr. Il, told police that Mr. Faizi frequented the Black Eagle bar in Toronto. The Peel police canvassed the area near the location where Mr. Faizi's car was found and went to Steamworks to check for surveillance footage. They were told that the footage was no longer available – it was kept for only seven days. They also flagged Mr. Faizi at the Canada–US border, canvassed residences in the area of his disappearance, and contacted Toronto shelters – all with no success. Mr. Faizi's workplace advised it had no video surveillance. The Peel police sent an emergency request to Facebook for all Mr. Faizi's private messages, subscriber content, photos, and IP logs. Facebook denied the request on the grounds that a missing person case was not considered an emergency. Forensic testing concluded that no blood was present in Mr. Faizi's vehicle. The Peel police submitted Mr. Faizi's case to the OPP Missing Person and Unidentified Bodies Unit (see Chapter 13) – a step never taken by the Toronto police during their investigation of Mr.



Navaratnam's disappearance. The Peel police also notified the missing person coordinator at their Homicide Bureau.

On January 17, Mr. II called Constable William Ramsay, one of Peel's assigned officers, saying he had seen posters identifying other South Asian men missing from the Church and Wellesley streets area in Toronto.<sup>15</sup> This information alerted Peel police to the possibility that similar disappearances existed. Constable Ramsay called the owner of the Black Eagle bar and asked about the missing men. During that conversation, he learned that the Black Eagle had eight cameras in the bar and maintained surveillance footage for six months. There is no explanation as to why the surveillance footage was never obtained.

After receiving this information, Constable Ramsay reviewed the Canadian Police Information Centre database (CPIC)<sup>16</sup> and identified Mr. Navaratnam as another missing person. Constable Ramsay told Constable Marsot about both Mr. Navaratnam and a *Toronto Sun* article that discussed his disappearance.

That same day, Constable Marsot sent a CPIC message to the Toronto police requesting a copy of Mr. Navaratnam's Occurrence Report. When she read the report, she was struck by the similarities between the two men: they disappeared from the same area, they were both gay and from the Muslim community, and they resembled each other physically in terms such as facial hair. She suspected a connection between the cases.

Constable Marsot also spoke with a Peel police crime analyst about the two cases. She was interested in finding information about any other missing men from the area. She did some computer research, and her memobook notes reflect how she learned that homosexuality appeared to be "taboo" within the Toronto Muslim community.

Constable Marsot phoned Toronto's 51 Division and left a message for Sergeant Bourque, the officer in charge of Mr. Navaratnam's investigation. Her call was not returned. She phoned a second time, and on January 19, an officer (not Sergeant Bourque) responded, saying the Toronto police would "look into it." She did not hear anything further.

In the meantime, Peel's Tech Crime Unit made a cloned image of Mr. Faizi's computer.

On January 21, Constable Marsot again attempted to contact the Toronto police. This time she emailed Sergeant Bourque to advise him she believed

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<sup>15</sup> It is unclear what men other than Mr. Navaratnam were identified at that time.

<sup>16</sup> CPIC is a central police database, maintained by the RCMP, that is accessible to all Canadian law enforcement agencies.

Mr. Faizi's and Mr. Navaratnam's cases were possibly connected. She notified her supervisor about her investigation. The supervisor was supportive of her efforts and encouraged her to pursue potential connections to other cases. Constable Marsot received no response from the Toronto police. That same day, the Peel police added Mr. Faizi's Occurrence Report to PowerCase – a province-wide case management tool accessible to all Ontario police services. As I describe in detail in Chapter 4, PowerCase automatically generates certain “triggers.” These triggers may result in a notification to one police service of a potential link between its investigation and another police service's investigation. Notably, PowerCase's use as a case management tool is mandatory for certain designated major cases.

The Peel police included a reference to Mr. Navaratnam in Mr. Faizi's PowerCase file. On January 17, Constable Ramsay had created a PowerCase report detailing the conversation with Mr. II that led to his identifying Mr. Navaratnam as another missing person.

The Toronto police did not upload Mr. Navaratnam's case to PowerCase until December 4, 2012, in the early days of Project Houston. Once that was done, PowerCase generated a notification on December 19, 2012, to the Toronto police about Mr. Faizi's disappearance. The potential link between the two disappearances had gone completely unnoticed by Toronto investigators for almost two years after Constable Marsot tried to engage them in discussions of what turned out to be an important link.

Constable Marsot was frustrated and angry with the Toronto Police Service's lack of response. She believes that these cases could have been solved much earlier if the Service had co-operated with Peel. This view is shared by the Toronto officer who contacted Constable Marsot in December 2012 (during Project Houston) once she discovered the potential link between the cases.

In an interview with the Review, Constable Marsot stated that missing person investigations are generally not a priority in policing. Working on missing person cases was considered a low-status role. Moreover, there was no specialized training for conducting such investigations, and officers were left to learn on their own.

Sergeant Bourque told the Review he vaguely remembers receiving the email from Constable Marsot. However, he does not specifically recall hearing about Mr. Faizi's case in early 2011 and its possible connection to Mr. Navaratnam's disappearance. By the time he did, he was no longer working on the case.

During the week of January 23 to 29, Peel investigators returned to the Moore Avenue address to canvass the owners of all the vehicles parked on the

street. They hoped to identify an address where Mr. Faizi may have gone, after leaving his car. None of the vehicle owners were identified as being connected to Mr. Faizi.

The following week, January 30 to February 5, the Peel police interviewed Mr. Faizi's wife. She told the police she did not think her husband was alive. The Peel police continued to canvass addresses in the area of Mr. Faizi's disappearance.

During the weeks of February 6 to 19, the Peel police canvassed gay establishments in Toronto's Gay Village and interviewed Mr. Faizi's family members. Constable Marsot arranged for an undercover team of officers to conduct surveillance at the Black Eagle and at Woody's (another bar Mr. Faizi was known to visit). An employee at the Black Eagle, as well as an employee at Spa Excess, told the Peel officers that in January 2011, Mr. Faizi had been seen at both establishments on several occasions. We now know that this information was not accurate because McArthur murdered Mr. Faizi on or around December 29, 2010.

On February 28, 2011, Constable Marsot attended an LGBTQ2S+ community meeting in Toronto to talk about Mr. Faizi's disappearance. Her memobook notes about the meeting indicate that the community members were surprised to learn about Peel's active interest in the disappearance from the Village.

In March 2011, the Peel officers investigating Mr. Faizi's disappearance met with the Peel Police Diversity Relations Unit. The investigators were advised of contacts in the gay community in Peel and they followed up, but with no results. In June 2011, the police contacted Mr. Faizi's family again. No new information was available.

Mr. Faizi's wife told the police that in the months before Mr. Faizi went missing, he had talked about moving to Ottawa. His telephone and bank accounts had not been used since his disappearance. The Peel investigators forwarded information about Mr. Faizi's case to the Montreal police, because Montreal was known to have a large LGBTQ2S+ community presence. In October 2011, the Peel police checked records in the provincial health system, the Ministry of Transportation, and government assistance offices. These efforts turned up nothing.

As indicated earlier, on December 19, 2012, the Toronto police received a PowerCase trigger. The trigger identified a potential link between Mr. Navaratnam's case and Mr. Faizi's case: the Peel police had identified Mr. Navaratnam in the PowerCase system as a person associated with the investigation of Mr. Faizi's disappearance. Detective Constable Cathy Loria,

a member of Toronto's Project Houston team, followed up with Constable Marsot. I pick up this part of the narrative in Chapter 6.

## **Majeed Kayhan**

Mr. Kayhan was last seen by his family at a wedding on October 14, 2012. McArthur killed him on or about October 18, 2012.

Mr. Kayhan and his son talked by phone every few days, and the younger man became concerned when, suddenly, he was unable to reach him. On October 23, he went to his father's apartment at 31 Alexander Street in Toronto to look for him. A neighbour told him he had last seen Mr. Kayhan on October 18 around 10:30 a.m. On October 25, the son reported his father's disappearance to Toronto's 42 Division. Toronto police contacted all downtown hospitals to check for Mr. Kayhan, with negative results. The officers noted in the Occurrence Report that at this point, foul play was not suspected.

The case was referred to 51 Division because Mr. Kayhan lived in the Village, which was within its jurisdiction. Detective Saleem Husain, who was assigned to the case, called Mr. Kayhan's son to ask some questions. Detective Husain did not think the case "seemed very concerning." Although this abrupt stoppage in communication with his son was out of character for Mr. Kayhan, and there were no apparent medical issues. At the time, Detective Husain was not aware that Mr. Kayhan had a connection to the LGBTQ2S+ communities. He was not aware of Mr. Navaratnam's disappearance, nor of Mr. Faizi's, and did not realize that Mr. Kayhan was the third man to go missing from the Village. This lack of information reflects a fundamental breakdown in how missing person cases were being tracked as well as a host of systemic issues that I address in this Report.

During the following week, the police contacted the Office of the Chief Coroner as well as Social Services, because Mr. Kayhan received disability payments. Social Services told Detective Husain that Mr. Kayhan's payments were deposited directly into his bank account at the CIBC. When Detective Constable Guy Kama contacted the CIBC, he learned that Mr. Kayhan's bank card had last been used on October 11, 2012.

Surprisingly, the police did not go to Mr. Kayhan's home until October 30. Mr. Kayhan's much-loved birds were dead. This neglect concerned Detective Husain: he told the Review that few people willingly let their pets die through lack of food and water. On November 1, he arranged for the distribution of a media release about Mr. Kayhan's disappearance. The police spoke to Mr. Kayhan's family members and advised them there had been no

*majeed kayhan*

further activity on Mr. Kayhan's bank cards. They again checked local hospitals, with no results.

Between November 1 and November 13, nothing was done on Mr. Kayhan's investigation. Detective Husain explained he was on days off during much of that period. Mr. Kayhan's case was given to the next scheduled shift at 51 Division for any necessary follow-up, but no new leads came in, and no additional steps were taken.

On November 13, the police again interviewed Mr. Kayhan's son. He gave the police contact information for some of Mr. Kayhan's friends and told them that Mr. Kayhan was depressed about his failing marriage. He also said he thought his father might be part of the gay community. This discussion was the first time the police learned that Mr. Kayhan had a potential link to this community, apart from where he lived. The police returned to Mr. Kayhan's apartment. They found medication bottles and contact information for Mr. Kayhan's doctor. The apartment security guard told police he had seen Mr. Kayhan with members of the gay community.

While the police were at the apartment, Mr. Kayhan's neighbour, Mr. JJ, told them he had coffee with Mr. Kayhan almost every morning and that he watched his apartment and looked after his birds when Mr. Kayhan went away. He did not, however, hear from Mr. Kayhan before he disappeared. It was not until January 2013 that the Toronto police formally interviewed Mr. JJ. During that interview, he gave the police some additional information, including that Mr. Kayhan went to the Black Eagle every day and that he had a friend who was a florist or a landscaper.<sup>17</sup> Detective Husain told the Review, given how close Mr. JJ was with Mr. Kayhan, it would have been "best practice" to interview him as soon as possible after Mr. Kayhan was reported missing.

On November 25, 2012, the police checked local hospitals again, with no results. In December 2012, the police received a call from a community member who told them that Mr. Kayhan spent time at the Point Tent and Trailer Resort (the Point). The police attempted to contact the Point, but the business was closed for the season. On January 8, 2013, Detective Husain tasked a fellow officer with checking Mr. Kayhan's home again. That direction was his final involvement with the case.

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<sup>17</sup> The police learned from McArthur in November 2013 that he had employed Mr. Kayhan. In 2018, a witness recognized Mr. Kayhan from a photograph as someone who worked for McArthur at the location where the bodies of his victims were ultimately found.

## Summary and Findings

### *McArthur's Assault Conviction: Before the 2010–17 Murders*

As I state earlier, it is not within my mandate to evaluate how the justice system dealt with McArthur's criminal conduct from 2001 to 2003. In 2001, McArthur committed extremely serious crimes with lasting consequences for the survivor. Strategically, he turned himself in and successfully portrayed himself as ignorant of what he had done – despite the absence of any supporting medical evidence. The prosecution concluded that McArthur was not engaged in predatory behaviour – although the available evidence should not have inspired confidence in that conclusion. A psychiatrist concluded that McArthur was at low risk of reoffending – although she gave no explanation why he struck a potentially fatal blow to an unsuspecting person. McArthur was obviously persuasive. He also disarmed others as to his true evil. We cannot unfairly employ hindsight in evaluating what happened in 2003. In my view, however, it appears that the justice system may have inadequately scrutinized McArthur's 2001 crimes.

McArthur's survivor felt his views were discounted or ignored. When McArthur entered a guilty plea, the prosecutor told the judge a victim impact statement would be forthcoming. No such statement was ever filed, nor was any explanation offered for this failure. In my view, too much attention was given to the victim's supposed "lifestyle" when the uncontested facts showed an unprovoked attack on him. McArthur's explanation, apparently accepted at face value, that he was armed with a lead pipe to ward off violent offenders in the Village was, as it turns out, deeply ironic.

There is one particularly troubling aspect of these 2003 convictions. They played no part in either the Project Houston investigation from 2012 to 2014 or in the investigation into McArthur's attempted choking of another survivor in 2016.

In November 2013, McArthur was interviewed during Project Houston. This interview was not preceded by any meaningful examination of his history, including his previous criminal conduct. A Legacy Search would have revealed McArthur's previous convictions (see Chapter 4), but the officer did not perform one. There is no evidence in his notes or elsewhere that he did so. The interviewing officer believed, had he discovered this history, he would have discounted it as dated and unhelpful. I disagree with the proposition that this history was irrelevant to McArthur's credibility. By the end of the interview with McArthur, Project Houston had information that he had a significant connection to all three missing men. This connection should have

raised a big red flag for investigators – prompting, at the very least, focused scrutiny on him. The fact that in 2001, he had attacked a gay man in the Village without provocation and, for this reason, had been banned from the Village for three years was important. In 2017, during Project Prism, the lead investigator discovered the 2003 convictions and the underlying facts from an electronic search of the Service’s records. He recognized their significance.

In 2016, McArthur was accused of choking another gay man, but the police decided not to charge him. The investigator accepted that McArthur believed, in good faith, that the victim wanted to be choked. The 2016 investigation was flawed – and I explain why in Chapter 7 of this Report.

What is significant is that, in 2016, the investigator was also unaware of the 2003 convictions. He said an electronic search of police records did not disclose the previous convictions for which McArthur had been granted a record suspension in 2014. In any event, he believed that the record suspension precluded the police from subsequently relying on the underlying crime. It was obvious during this Review that officers had varying views on the use that can be made for investigative purposes of crimes for which a record suspension has been granted. It was also obvious that the failure in 2016 to discover McArthur’s past crimes, but the discovery in 2017 of those same crimes through a database search, raises yet another systemic issue that I address in my Report.

### ***Skandaraj (Skanda) Navaratnam***

On September 6, 2010, Mr. Navaratnam was last seen alive in the Village. He was reported missing on September 16. He left behind his new puppy, a source of pride and joy. Although he was active on social media, his participation ended abruptly. So did his cellphone use. He appeared to have taken no belongings with him, nor had he told anyone about plans to depart. When he was reported missing, he had already been gone without a trace for 10 days. His disappearance deserved to be given high priority. It wasn’t. The case moved from investigator to investigator. Some leads were not pursued in a timely way or at all. It wasn’t until several years later, during Project Houston, that a number of witnesses were properly interviewed. A risk assessment was never made. Investigators took little or no meaningful measures to engage community organizations or leaders in the search. There is no evidence that investigators had any true understanding of the people they should speak to within the affected communities. They did not enlist potentially valuable human resources within the Service, such as the LGBTQ2S+ liaison officer or officers with close contacts with the Village, to ensure that the right people

were spoken with and that existing barriers to providing information to the police were reduced.

One investigator found Mr. Navaratnam's disappearance suspicious, recognizing the existing red flags. Another investigator saw no evidence whatsoever of foul play. The investigation simply "petered out" because, it was said, there were no leads to pursue. But that assessment was inaccurate. For example, Mr. Navaratnam's computer was seized by the police, yet it was not analyzed until 2012. Even then, its significance was not appreciated. The computer showed Mr. Navaratnam's access to dating websites and included sexualized messages between him and *silverfoxtoronto* – McArthur's electronic username. These messages were not discovered until late 2017. As well, although investigators did some social media work, they never carried out a comprehensive search of all the potential social media sources. Nor did they contact the OPP's Missing Person and Unidentified Bodies Unit. Most alarmingly, there is no evidence of a comprehensive investigative plan for the investigation.

In fairness, the police did conduct considerable investigative work in 2010 and 2011. As well, Mr. Navaratnam's friends speculated – sometimes rather hopefully – that Mr. Navaratnam had merely left for parts unknown. But, as I indicate above, the 2010–11 investigation was seriously flawed. It was deserving of the attention ultimately given to Mr. Kinsman's disappearance. In Chapter 12, I discuss the reasons for the differential treatment.

Provincial adequacy standards require that certain cases be treated as major cases. Those same standards require threshold major cases to be investigated through a structured major case management model that promotes thorough, well-organized investigations with safeguards to ensure that tasks are assigned and completed. Such cases generally attract greater resources and must be managed through PowerCase, the provincially mandated case management software. Ontario police services can access entries on PowerCase, and this access in turn can trigger notifications of potential links between cases (see Chapter 4).

In 2010 and 2012, threshold major cases included missing person cases involving a strong possibility of foul play and non-familial abductions. As I describe in Chapter 4, threshold major cases must be investigated, structured, and managed in ways dictated by the provincial adequacy standards for major case management.

There is no consistency in how Toronto investigators determine whether a missing person case involves a strong possibility of foul play. I find it troubling that some investigators interpret this provision so narrowly as to



virtually exclude any missing person cases unless there is indisputable evidence of foul play. No body, no crime. This interpretation does a disservice to those missing, such as Mr. Navaratnam, and to their families and friends. Mr. Navaratnam deserved better.

During the 2010–11 investigation, the police obtained court orders to get certain records. At the time, such court orders could be obtained only when an officer asserted, under oath, that there were reasonable grounds to believe a crime had been committed. In the context of a missing person investigation, this requirement meant that the police could get a court order only after asserting, under oath, that the missing person had been the victim of foul play.<sup>18</sup> In this instance, an officer stated he had reasonable grounds to believe Mr. Navaratnam had been forcibly abducted. “Reasonable grounds to believe” is the same, in law, as “reasonable and probable grounds.” As I have already stated, a forcible abduction investigation was also a designated threshold major case under provincial adequacy standards.

This sworn evidence in 2010 was inconsistent with the view that there was not even the strong possibility that Mr. Navaratnam was the victim of foul play. Strong “possibility” falls short of reasonable and probable grounds to believe. Simply put, the assessment that Mr. Navaratnam’s disappearance was undeserving of major case status was inconsistent with the existing evidence.

A senior officer suggested to the Review that Mr. Navaratnam’s disappearance did not rise to the level of a major case – instead, the applications for court orders in 2010 reflected a “stretch” to obtain these orders, given the inadequacies then existing in the law. I do not agree. The application was not a “stretch.” In my view, a cumulative evaluation of the list of red flags supports the conclusion that Mr. Navaratnam’s disappearance qualified as a major case. The ostensible abandonment by Mr. Navaratnam of his prized puppy headed the list. But at a minimum, those red flags demanded that the investigation into his disappearance be given greater priority and urgency than it was.

Further, Ontario Regulation 550/96, “Violent Crime Linkage Analysis System Reports,” required that the officer in charge of a missing person investigation, where the circumstances indicate a strong possibility of foul play, submit a ViCLAS Crime Analysis Report (see Chapter 4). No such report was ever submitted in connection with the 2010–11 investigation into Mr. Navaratnam’s disappearance, despite the circumstances – and despite the investigation’s own representations to the Court.

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<sup>18</sup> Subsequent legislation has given greater latitude to police to obtain court records without such reasonable grounds.

Mr. Navaratnam was marginalized and vulnerable in a variety of ways and for a variety of reasons that intersect. But his disappearance was noticed—and reported. The Service failed him in its initial investigation. Unfortunately, it also failed those who loved him both in how his disappearance was originally investigated and in how little support the police gave them during this time frame.

The response by Toronto police to the efforts by Peel police to interest them in the potential connection between Mr. Navaratnam's disappearance and Mr. Faizi's disappearance is particularly disturbing. I turn to that issue now.

### ***Abdulbasir (Basir) Faizi***

Mr. Faizi was last seen in the Village on December 29, 2010. He was reported missing the following day. The Peel police investigated his disappearance because he lived in Peel Region. Constable Marsot led the Peel investigation. Although my mandate does not involve an evaluation of Peel's work, I can say that Constable Marsot was a dedicated investigator whose commitment to this case impressed me. Peel's investigation of Mr. Faizi's disappearance was superior to the one the Toronto police conducted in 2010 and 2011 in relation to Mr. Navaratnam. For example, Peel reached out in a variety of ways to the gay communities and, more specifically, to the Salaam Queer Muslim Community Centre, attempting to enlist its assistance in the search.

In January 2011, Constable Marsot learned through Constable Ramsay that Mr. Navaratnam had also gone missing from the Village. This information was purely fortuitous: the Toronto police had taken no steps to ensure that other regional services were even aware of his disappearance. The importance of enabling such links to be made is precisely why several tools or supports exist, such as PowerCase, ViCLAS, and the OPP Missing Person and Unidentified Bodies Unit. Justice Archie Campbell identified this exact problem in his report in the aftermath of the Paul Bernardo debacle – the way the siloing of information between police services prevents the identification of a serial predator.

Constable Marsot quickly obtained Mr. Navaratnam's Occurrence Report from the Toronto police. She was immediately struck by the similarities between the two men and the circumstances of their disappearance. They were both gay men of colour with shared physical characteristics who unexpectedly disappeared and were last seen in the Village. She suspected the cases were connected. She reached out to the Toronto police on three occasions. One message went unanswered. An officer responded to her second message by saying the Toronto police would look into it, but there is no evidence anyone did. Finally, she emailed Toronto's officer in charge to advise him that the

cases were possibly connected, and this third overture also elicited no response.

To this day, Constable Marsot regrets she did not press the Toronto police further to respond or ensure that her supervisors compelled Toronto to pay attention. In my view, the failure here lies with the Toronto police. Constable Marsot gave the Toronto police the full opportunity to pursue this important investigative lead – and they failed to do so. As a result, the Toronto police did not notice the potential connection between the two cases. This lead became apparent to Toronto police only on December 19, 2012, just under two years later. Indeed, the connection was made initially only because the Peel police had placed the Faizi case on PowerCase. The Toronto police did not place Mr. Navaratnam’s case on PowerCase until late 2012.

The failure of the Toronto police to identify the potential connection between these cases – one handed to them on a platter – represents a failure of epic proportions. It speaks to the low priority given to Mr. Navaratnam’s case. It speaks to systemic deficiencies in how missing person cases were dealt with. It shows an attitude inconsistent with the lessons learned from the Bernardo tragedy when police services failed to work together to solve his crimes. The fact that two different police services – in isolation – were investigating the sudden disappearances of men of similar description and sexual orientation living in or last seen in the Village represents a systemic issue. Not surprisingly, it reinforces community perceptions, whether accurate or not, that the Toronto police were largely indifferent to the disappearance of gay men of colour. In Chapter 12, I explore in more detail the questions of bias and discrimination raised during this Review.

### ***Majeed Kayhan***

Mr. Kayhan was last seen by his family on October 14, 2012. His son initially reported him missing to Toronto’s 41 Division, but the case was referred to 51 Division because Mr. Kayhan lived and was last seen in the Village. Police did not learn he had connections with the LGBTQ2S+ community until a month after he disappeared.

Although some steps were taken to investigate Mr. Kayhan’s case, it was given no priority and was not treated as a major case. The investigator did not think his disappearance was concerning until he learned that Mr. Kayhan left his pet birds to die, uncared for. On previous occasions when Mr. Kayhan travelled, he had arranged for someone to take care of the birds. Despite this red flag and others, Mr. Kayhan’s disappearance was not treated with any sense of urgency. The investigator candidly acknowledged that nothing was done to

advance the investigation for two weeks in November while he was on days off. His involvement in the investigation ended in early January 2013. The investigation essentially ground to a halt ostensibly due to the absence of any leads. Again, no ViCLAS Crime Analysis Report was ever submitted in connection with this investigation.

Most troubling, the investigator was unaware that, in the same time frame, two other racialized gay men had also disappeared without explanation from the Village. This breakdown is particularly worrisome because all three men lived in or were last seen in the Village – 51 Division’s jurisdiction – and because two of these three investigations were being conducted by 51 Division investigators. Together, all three cases represent a profound systemic failure. Toronto had no Missing Persons Unit at the time and no analyst examining incoming missing person cases across the entire Service in real time. I acknowledge that, to its credit, the Service has since created the Missing Persons Unit. I describe and evaluate that unit in Chapter 13.

The circumstances surrounding Mr. Kayhan’s disappearance invited deep concern. He simply vanished. There was no evidence he had made any plans to leave his home, nor had he exhibited any suicidal inclinations. The fate of his uncared for yet treasured birds was a red flag that should have alerted anyone performing a risk assessment. But again, no such assessment was even done. No serious effort was made to engage the affected communities in the search for him. His case was given low priority when it should have attracted heightened resources and attention. In my view, it qualified as a major case.

Even if one disagrees with that view based on what was known to the investigators, the similar disappearances of Mr. Navaratnam and Mr. Faizi should have provoked a priority response by police. That did not happen until an informant tip almost one year later prompted the creation of Project Houston. The sad reality is that these cases would likely have attracted no attention until 2017 – if ever – had police not received a Swiss informant’s tip that prompted reconsideration (see Chapter 6).

The officer assigned to investigate Mr. Kayhan’s disappearance did not give less attention to this case because Mr. Kayhan was a person of colour. Nor did he do so because of Mr. Kayhan’s sexual orientation. I say that not merely because the investigator is himself a member of the racialized community – a factor that provides no assurance of bias-free attitudes or conduct – but because of his particular sensitivity to issues around bias. Still, his investigation was deeply flawed. Those flaws relate largely to systemic issues – the lack of priority given to missing person cases, the siloing of critically important information, the failure to accurately assess risk initially or on an ongoing

basis, the related failure to recognize when a missing person occurrence became a major case, and the absence of true oversight and supervision.

The flaws in the investigation into Mr. Navaratnam's disappearance equally exposed a range of systemic issues. The investigative oversights are explained, in part, by these systemic issues. For example, because Mr. Navaratnam's disappearance was not treated as a major case, despite the evidence of a strong possibility of foul play and reasonable grounds to believe he had been abducted, basic investigative tasks were never performed. The failure to forensically examine Mr. Navaratnam's computer may be explained, we were told, by an underresourced and backlogged Technological Crime Forensics Laboratory in the Intelligence Division. But it is also explained by the low priority given to this investigation because it was not treated as a major case.

What I am struck by, when comparing all three investigations, is the randomness of what was done in each investigation. There was no consistency among the investigations about steps taken to investigate similar disappearances, and no consistency as to how quickly such steps were taken. The Toronto police didn't even have a checklist of conventional steps to be taken in investigating such disappearances.

However, when these investigations were being conducted, the Service did at least have in place less specific procedures for conducting missing person investigations. Procedure 04-05 defined levels of search for missing person cases based on urgency as well as certain investigative requirements depending on the applicable level of search. At all levels, officers were required to complete a Search Urgency Chart – a task never done for either of the Toronto investigations. As the urgency of an investigation increases, additional investigative steps are required along with heightened supervision. I elaborate on Procedure 04-05 in Chapter 13 as part of a larger assessment of how the Service dealt with missing person cases generally. Suffice it to say there is no evidence that anyone considered or even monitored whether these two investigations complied with the Service's own procedures. Nor is there evidence that anyone considered whether or when these investigations should be elevated to major cases or, to use the terminology contained in Procedure 04-05, level 2 or 3 searches. There is no point to having procedures if they are not followed.

The question arises whether the missing person procedures that existed at the time – or that exist even now – are adequate. Sergeant Bourque acknowledged that low priority was generally given to missing adult cases and contrasted it with how sexual assault cases involving children as alleged

victims were dealt with. He said the procedures required that officers specifically justify any investigative delays in dealing with sexual assaults involving children, but not investigative delays in dealing with adult missing persons. He felt it important to incorporate accountability for delays in missing person procedures.

The investigations described in this chapter represented lost opportunities to bring McArthur to justice and end his killing spree. However, soon after Mr. Kayhan disappeared, an informant's tip led to renewed attention for these cases. I now turn to an examination of the investigation that followed.

## Chapter 6

### THE PROJECT HOUSTON INVESTIGATION

In this chapter, I describe how a tip from the Swiss police led the Toronto Police Service (the Service) to establish Project Houston. Its purpose was to investigate allegations that a cannibalism ring was targeting people around the globe and that one of its members, James Brunton (alias John Jacobs), may have killed and eaten Skandaraj (Skanda) Navaratnam and two other men missing from Toronto's Gay Village (the Village). Ultimately, the police discounted Brunton's involvement in the disappearances of the three men and, in July 2014, shut down Project Houston. The disappearances of the men remained unsolved until 2018, when Bruce McArthur was charged not only with their murders but also with the murders of five other men. McArthur committed these additional murders during the three intervening years.

There are two reasons for chronicling Project Houston in considerable detail in this chapter. First, the public is entitled to know precisely what the police did or did not do to investigate the disappearances of the three men. Information currently available to the public is both incomplete and, in some respects, inaccurate. Second, Project Houston resulted in the arrest and prosecution of Brunton and others for child pornography and other crimes. However, notwithstanding the significant resources invested in the project, the disappearances of the three missing men were not solved. The project was flawed in many ways, impeding the ability of the Service to investigate the disappearances properly and to end McArthur's killing spree at an earlier stage. These flaws are also indicative of systemic issues I have been able to identify, thereby enabling me to make recommendations designed to lead to better practices for future investigations. By chronicling the story of Project Houston, I am able to clarify what went right in the investigation and, even more important, what went wrong.

#### **The Swiss Informant and the Cannibal Theory**

On the early morning of November 9, 2012, the Service's International Assistance Unit emailed Detective Debbie Harris, a 51 Division investigator, passing on information received from the Swiss police through Interpol. The translated email read, in part, as follows:

The Cantonal Police of Berne received the information that in the Cannibals forum (zambianmeat.com) possible criminal acts (consumption of human flesh) have been communicated.

The statements came from a certain Jacobs John with the email chef-mate50@yahoo.com. He is supposed to be living near Toronto / Canada, alone in a remote or isolated farm. He keeps animal farms and goes hunting and is used to slaughter and evisceration. He admitted to have eaten human flesh, could have been in the period between 2009 and 2011.

Concerning John Jacobs, he is probably a homosexual. According to his statement he could be dating men of his age between 18 and 35.

In Internet he is cautious and very skilled in technical areas like all kind of Skype features.

He registered himself on the 21.12.2008 at the Cannibalism forum and has posted diverse contributions and taken part in several meetings and discussions. His first comments and contributions in the forum he deleted again. Currently he seems to be in the forum every day.

Requests:

According to our investigations it seems that a certain Skanda Navaratnam, approx. 40 years old, has been missing in Toronto since September 2010. Shortly before he disappeared, he was allegedly seen in the nightclub Zipperz (gay club). Afterwards he was seen twice accompanied by an unknown not identified person. Then there are no more traces of him.

Please be informed that this information was obtained from a reliable source and are [*sic*] credible. For reasons of security, copies of the written information and more details will only be transmitted to the investigating authority and will not follow with this report. For more information and requests please don't hesitate to contact the responsible investigator and case officer at the Cantonal Police of Berne: Mr. Roland Keller.

The same day, Detective Harris talked to Detective Keller of the Cantonal Police of Berne. He spoke limited English but was able to tell her he believed he had information about a cannibal who had eaten a missing person from Toronto. At first, Detective Harris thought it was a joke. It wasn't.

Detective Harris recognized Mr. Navaratnam's name from her involvement in the original missing person investigation into his disappearance. She had last worked on Mr. Navaratnam's case in September or October 2010.

After receiving this call from the Swiss police, Detective Harris reopened Mr. Navaratnam's case.<sup>1</sup> Because of the language barrier, she

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<sup>1</sup> Theoretically the case remained open, but it had been inactive.



arranged for a German-speaking officer to join her the following Monday morning for a second call with Detective Keller. Over the weekend, she reviewed the file and called Mr. Navaratnam's friends and his brother to find out if he was still missing. In the intervening two years, no officer had maintained contact with his loved ones. At the time, the Service often did a poor job in monitoring and following up on unsolved missing person cases.

On November 12, 2012, the police called the coroner's office and the Ministry of Health to see if they had any updates on Mr. Navaratnam. They did not. That same day, Detective Harris and her German-speaking colleague spoke with Detective Keller again.

Detective Keller disclosed that the informant had provided reliable information, leading to an arrest. He also sent Detective Harris emails exchanged between the informant and the alleged cannibal. The alleged cannibal used the alias "John Jacobs" and was active on a cannibalism website called *zambianmeat.com*. According to the informant, Jacobs lived on a farm north of Toronto. He had eaten human flesh in the past. The informant had also mentioned the name "Skanda." Detective Harris<sup>2</sup> told the Review she did not know then whether Jacobs had used the name Skanda or the informant had come across the name on his own.

The Service created Project Houston in response to the informant's tip and commenced its work in early December 2012. In my view, it was important for the investigators to know whether Jacobs had named Skanda as a victim, or had described his victim in a way that clearly pointed to Mr. Navaratnam, or neither. As I explain later, for some time a disconnect persisted within the investigation as to what Jacobs (aka James Brunton) actually said on this critical point.

## The Lead-up to Project Houston

On November 13, 2012, Detective Harris obtained a judicial production order for Jacobs's email account to identify his real name. She classified the request as "urgent." In her view, the case involved a risk to public safety. The request for the production order stated that Detective Harris had reasonable grounds to believe that Mr. Navaratnam had been murdered by an unknown person.<sup>3</sup> The production order led to a second production order on December 5. This one

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<sup>2</sup> Detective Harris was later promoted to the rank of detective sergeant. She is now retired. Rather than referring to her throughout as retired Detective Sergeant Harris, I refer to the rank most relevant to the period being discussed.

<sup>3</sup> As reflected in Chapter 5, "reasonable grounds to believe" is synonymous with "reasonable and probable grounds to believe."

yielded the name James Brunton, a resident of Peterborough, Ontario. He was the subscriber for the IP address and the owner of the Jacobs account.

Brunton had no previous contact with the police. However, the emails Detective Harris reviewed in his account indicated that, on several occasions, he had ostensibly arranged to meet gay men in Toronto or at Pearson International Airport in order to kill and eat them. She read hundreds of emails about cannibalism, kidnapping, and murder. The investigation ultimately determined that all this content was fantasy. Initially, of course, it had to be taken very seriously.

On November 28, 2012, Detective Harris called Detective Sheila Ogg, a Toronto Homicide detective she had partnered with at 51 Division. Detective Harris filled Detective Ogg in on what she had learned. If the informant's tip was accurate (as she then understood the tip's content to be), Mr. Navaratnam was a homicide victim rather than a missing person.

At that point, both detectives felt it was appropriate to bring the matter to the Homicide Unit's attention.<sup>4</sup> (The unit had been notified of Mr. Navaratnam's disappearance in September 2010 but had not become involved.) This time, the Homicide Unit might lead the investigation.

On November 29, Detective Harris and Detective Ogg discussed the steps that had already been completed during the earlier investigation and the steps that still needed to be taken. Detective Ogg assigned an officer to look into other outstanding missing person cases involving men between the ages of 30 and 45. She wanted to know if other gay men had gone missing. She also recommended that the informant's computer be forensically examined, that the informant be interviewed, and that various witnesses from Mr. Navaratnam's initial investigation be interviewed (or re-interviewed), including an individual who saw Mr. Navaratnam leave Zipperz with two unknown men.

On December 3, Detective Ogg met with Inspector Bryan Bott,<sup>5</sup> a Homicide team commander, and Staff Inspector Greg McLane, head of the Homicide Unit.<sup>6</sup> Inspector Bott's role included his facilitating resources for designated major cases and communicating up and down the chain of command respecting such cases. The three officers discussed the needs of the anticipated investigation, including making a request under the Mutual Legal Assistance Treaty (MLAT) to allow Toronto police to obtain more information from the Swiss authorities.

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<sup>4</sup> The Homicide Unit is separate and a part from the local police divisions scattered across Toronto. The Homicide Unit is a specialty unit located at the Service's headquarters in downtown Toronto. Each division has its own criminal investigative detectives.

<sup>5</sup> Inspector Bott has since been promoted to the rank of superintendent.

<sup>6</sup> Staff Inspector McLane has since retired.

Later that afternoon, Detective Ogg followed up with Detective Harris. Detective Harris advised her that Mr. Navaratnam's computer hard drive and the alleged cannibal's email account would be searched first.

On December 4, the police, for the first time, uploaded Mr. Navaratnam's original missing person occurrence (or case) into PowerCase.<sup>7</sup> This posting ultimately resulted in the Abdulbasir Faizi occurrence coming to the attention of Project Houston through a PowerCase notification.

On December 5, Detective Ogg met with Detective Harris, Inspector Bott, Staff Inspector McLane, Detective Sergeant Mike Richmond (another Homicide officer), and a Crown attorney. They discussed what they ostensibly knew about the informant and the alleged cannibal. The informant had been an informant for two years. He had turned over the password for his "zambianmeat.com" account to police. He had experienced suicidal thoughts and, although currently hospitalized, he was to be released the next day.

Detective Ogg told the Review that reliability is always an issue with informants, and their mental health is an important consideration in assessing that reliability. Ultimately, the Toronto police were satisfied (at least during this time frame) that there were reasons why they could act on the informant's tip – the informant had proven reliable and had also offered access to his computer and to his cannibal forum password.

There were some differences in how the officers described the investigation that followed to the Review:

- Detective Sergeant Hank Idsinga<sup>8</sup> said the investigation was treated as a homicide case. The Homicide Unit would lead an investigation if there was "definitive" evidence of homicide.
- Inspector Bott stated that the investigation remained a 51 Division case, with some help from Homicide. The nature of the investigation was beyond the scope of a divisional office, so Homicide was there to oversee and manage it.
- Detective Sergeant Richmond said the case was being handled as a homicide investigation. Homicide took over, but, because of space shortages at the unit, Project Houston would be run out of 51 Division.
- Detective Harris described the case as still technically a 51 Division investigation at this stage because the police did not have "affirmative" evidence of a homicide.

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<sup>7</sup> PowerCase is the provincially mandated case management software used for major cases. I examine how it functions in Chapter 4.

<sup>8</sup> Detective Sergeant Idsinga has since been promoted to the rank of inspector.

I respectfully disagree with Detective Harris's characterization: regardless of how the investigation was ultimately organized, who conducted it, and at what location, the investigation had received affirmative evidence of a homicide – regardless of whether such evidence ultimately proved to be reliable. Indeed, Detective Harris's own application for judicial production orders relied on her belief, on reasonable grounds, that Mr. Navaratnam had been murdered.

As I explain later, there remains uncertainty – indeed, confusion – within the Service as to when evidence of a homicide, or “definitive” or “affirmative” evidence of a homicide, exists. The police do not need to find a body or obtain a confession to have “definitive” or “affirmative” evidence of murder. The contrary view undervalues the role of circumstantial evidence. As I say in Chapter 5, the “no body, no crime” approach that some officers take leads to their failing to appreciate when a missing person case involves a “strong possibility of foul play.” In cases where the police have not discovered a body, officers also have inconsistent understandings as to when the Homicide Unit should be notified of an investigation, and when the Homicide Unit should assume carriage of an investigation. The Service's procedures are not helpful on these points. I address these issues in my recommendations (see Chapter 15).

Despite these differences, all the officers involved agreed that the investigation would be treated as a “major case.” Under provincial adequacy standards, both homicide and missing person investigations involving a strong possibility of foul play must be designated as “threshold major cases.” As I outline in Chapter 4, such investigations must be case managed in very specific ways set out in the adequacy standards and reflected in the Service's own procedures.

Project Houston was also designated as a “project.” Not every homicide investigation becomes a project. Nor does every project involve a homicide. A project may be created when a major case is deemed to be complex, requiring, for instance, many warrants and many officers. It will likely attract greater resources in terms of officers and funds, which can otherwise be difficult to access. Yet, there is no precision as to when an investigation becomes a project and no procedures that set out when a case should be converted to a project and what that means.

Provincial adequacy standards require that a threshold major case be led by a command triangle. Detective Sergeant Idsinga was assigned to serve as the major case manager. He was a seasoned investigator who was good at project work. Detective Harris, given her involvement in the initial

investigation into Mr. Navaratnam's disappearance, was assigned to serve as the primary investigator. Detective Ogg was identified as the file coordinator, though her court obligations meant she would be unavailable for several months at a time. Detective Constable Catarina (Cathy) Loria was selected to serve as a second file coordinator (see Table 6.1).

**Table 6.1: Project Houston's Original Team**<sup>9</sup>

Major case manager: Detective Sergeant Hank Idsinga (Homicide)
Lead investigator: Detective Debbie Harris (51 Division)
File coordinators: Detective Sheila Ogg (Homicide) and Detective Constable Catarina Loria (42 Division)
PowerCase: Donna (Laurie) Florence (Homicide)
Affiant: Detective Constable Lindsay Gravelijn (31 Division) (An affiant prepares applications for judicial authorizations, including search warrants and production orders.)
<i>Investigators</i>
Detective Constable David Lavallee (Traffic Services): assigned to prepare a full background on Brunton
Detective Constable Josh McKenzie (51 Division): assigned to further investigate Mr. Navaratnam's disappearance, including locating previous witnesses
Police Constable Patrick Platte (12 Division), who speaks German: assigned to contact the Swiss and German authorities
Detective Charles Coffey (Technological Crimes Unit): assigned to analyze Brunton's and Mr. Navaratnam's computers.

*Source:* Compiled by the Independent Review.

<sup>9</sup> There were several staffing changes to the Project Houston team before the investigative work began. This list identifies the officers who actually worked on the project from the outset. Their work extended beyond their initially assigned tasks reflected in Table 6.1. The list also includes Donna Florence, a civilian member who served as a PowerCase indexer for part of the project's duration.

Project Houston was resourced with a few computers and a dedicated phone line. An internal computer hard drive, called the “P Drive,” was set up to store everything relevant to the investigation. Access to the P Drive was limited to the project’s members. In Chapter 4, I describe in some detail the role of the P Drive in the Service’s major case investigations.

Although Project Houston was ostensibly being conducted under the major case management (MCM) model, in many significant ways the project did not comply with its mandated standards. For example, contrary to provincial adequacy standards,<sup>10</sup> a great deal of information collected during the project was never uploaded into PowerCase, the mandated case management software.<sup>11</sup> In other words, PowerCase was not used to its full potential and often amounted to little more than a “data dump.” A number of assignments or actions to be performed were not recorded in PowerCase – or, indeed, anywhere, contrary to provincial adequacy standards described in Chapter 4.

Before serving as the file coordinator, Detective Constable Loria received no MCM training, something that was also necessary under provincial adequacy standards.<sup>12</sup> Although she was one of the project’s most dedicated and creative officer, she was obliged to “learn on the fly.”

The problem was compounded by the fact that Detective Ogg, who had been trained in MCM, was absent for long periods. To her credit, she did read the daily log while she was away, but she was no longer in control of the flow of information or documents. Given that, in her words, “there was so much happening in that room,” one had to be there to do the job, Detective Constable Loria effectively took over the file coordinator role during Detective Ogg’s absences. Obviously, it would have been preferable for Detective Constable

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<sup>10</sup> See the data entry provisions in the Ontario *Major Case Management Manual (MCM Manual)*.

<sup>11</sup> The document log for Project Houston lists the documents that were entered into PowerCase during the investigation:

- 49 officer’s reports;
- 40 civilian statements;
- approximately 200 “other documents” (including the Project Houston operational plan, emails, chat logs, occurrence reports, media releases, reports to justices, cellphone subscriber information).

The above represents a fraction of the documents created or collected during Project Houston. For example, approximately 85 civilian witnesses were interviewed. Moreover, in some instances, these witnesses were interviewed more than once, but not all interviews even in relation to the same witness were entered into PowerCase.

<sup>12</sup> Crime Management Plan 2006. Such training was also required under the 2012 manual.

Loria to have had training in MCM before she assumed this role.<sup>13</sup> That said, the project was fortunate to have her.

Detective Constable Loria understood from Detective Sergeant Idsinga that all information relevant to the investigation would filter through her and she would organize it into MCM computer folders. But the information collected was, at times, incomplete, poorly summarized, and not organized in accordance with MCM requirements. Supervision of investigative activities was, at best, inconsistent and, especially during the latter stages of the project, after Detective Constable Loria and others departed, virtually non-existent. These shortcomings represented systemic failings associated with inadequate case management.

### **Project Houston's Early Work**

The project's name derived from the popular (mis)quote from the *Apollo 13* mission, "Houston, we have a problem." The initial project briefing took place at the Homicide Unit on December 6, 2012.

The Service wanted to keep Project Houston confidential. By email dated December 6, Detective Sergeant Richmond warned other Service members at 51 Division to protect its secrecy:

As many of you may have already heard, this missing person investigation is escalating significantly, with significant involvement from the Homicide Squad and other units. It has been assigned a project name of Project Houston. Many of you may already know some of the details of this investigation which are quite disturbing.

It is extremely important that details of this case be kept confidential. If the media were to become aware of it, this would have a devastating effect on the integrity of the investigation. Please keep details of it to yourselves. Staff Sergeants: Please address this issue on your platoons.

Unfortunately, the secrecy associated with Project Houston, while intended to preserve the investigation's integrity, was so pronounced that it kept important information from others within the Service and undermined the flow of any meaningful information from community members to the project. The level of secrecy – some of which was unwarranted – later fuelled the

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<sup>13</sup> In fairness to both officers, the Service was not using PowerCase as it was intended to be used in any event. In other words, PowerCase training did not guarantee its proper use.

perception of many community members that, during this time frame, the Service had done nothing to investigate the disappearances of the missing men. The secrecy also spilled over to the project's failure to fully share what it was doing with the Peel police.

Project Houston was originally created to investigate Brunton and potential links to Mr. Navaratnam's disappearance. After it began, the Service identified the sudden disappearances of Mr. Faizi and Majeed Kayhan as being similar to and therefore potentially connected to Mr. Navaratnam's disappearance.

There is some discrepancy among the officers' accounts as to how Project Houston expanded to include Mr. Faizi and Mr. Kayhan. Detective Harris told the Review that Brunton's emails detailed his plans to kidnap, murder, and cannibalize gay men. This content made her concerned that more people might be missing from the Church and Wellesley streets area. She raised the issue with Detective Constable Saleem Husain, who had investigated Mr. Kayhan's disappearance, and they discussed the similarities between Mr. Kayhan and Mr. Navaratnam. Detective Harris told Detective Sergeant Idsinga that they really needed to look into Mr. Kayhan's case, as they were very similar. As a result, Detective Sergeant Idsinga directed officers to look for other such cases. Mr. Faizi's case was later identified.

Detective Harris's personal recollection of the chronology does not accord with Project Houston's daily logs and other available evidence, although, in fairness to her limited ability to recall what happened, many of her memobook notes are no longer available. However, the Review was able to reconstruct a more accurate chronology based on the totality of the available evidence.

According to the daily logs, on December 19, 2012, Project Houston officers first learned of Mr. Faizi's disappearance through a PowerCase trigger, after the Toronto police entered Mr. Navaratnam's case into PowerCase on December 4. Peel police had entered Mr. Faizi's Occurrence Report into PowerCase back on January 21, 2011 – and that entry identified a possible connection to Mr. Navaratnam. As I describe in Chapter 5, in 2011 Constable Marie-Catherine Marsot, a Peel officer, had unsuccessfully tried to interest the Toronto police in the connection between the cases.

In contrast, Detective Constable Loria was very interested, and she contacted Constable Marsot. Not surprisingly, Constable Marsot wondered what had taken the Toronto police so long to call. Later in December 2012, the Toronto police picked up a copy of Mr. Faizi's investigative file and a hard drive that contained a partial extraction of his computer's contents.

Mr. Kayhan's case and its similarities to those of Mr. Navaratnam and



Mr. Faizi do not appear to have been discovered until January 3, 2013. Detective Constable Loria also identified this potential link and brought it to Detective Sergeant Idsinga's attention – as he later confirmed. The discovery of this potential link is addressed in greater detail below.

## **Mr. Navaratnam's Computer Examined**

Detective Constable Charles Coffey, who had a background in information technology before he joined the Service, was the primary computer forensic investigator on Project Houston.<sup>14</sup> A recent addition to the Technological Crime Unit (Tech Crimes Unit), he had recently moved there from 51 Division. At the time, he was undergoing training to become a certified computer forensic investigator. Ultimately, his Project Houston commitments interfered with this training, and he was not certified.

Initially, because of commitments to his training and to other cases at the Tech Crimes Unit, Detective Constable Coffey worked on Project Houston only part time. He was a “forensic investigator,” not a “technical investigator.” This distinction meant he was analyzing data extracted from electronic devices rather than extracting the data himself. He reported primarily to Detective Harris. Most of his Project Houston work focused on examining the contents of Brunton's devices. However, one of his early assignments was to search Mr. Navaratnam's laptop computer for potential links to Brunton or the alleged cannibal ring – a task he approached by attempting to locate specific keywords associated with Brunton or cannibalism in Mr. Navaratnam's emails, chat, and internet history. Mr. Navaratnam's laptop had never been examined at all during the initial investigation into his disappearance.

On December 6, 2012, the day of Project Houston's initial briefing, Detective Constable Coffey completed his search of Mr. Navaratnam's computer by using Internet Evidence Explorer, a program I describe in Chapter 4. The keyword search came back negative.

There was, however, a wealth of information in Mr. Navaratnam's laptop that could have tied him to McArthur and, in addition, identified dating websites that Mr. Navaratnam visited or in which he participated. This observation does not involve unwarranted hindsight, nor is it dependent on the police first knowing that McArthur might be involved in the disappearances. Rather, the evidence reveals that potentially valuable information contained in

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<sup>14</sup> Another officer from the Tech Crimes Unit, Detective Constable Ravi Manoharan, also worked on Project Houston from time to time. Detective Constable Manoharan was heavily involved in the covert entries into Brunton's home and the cloning of Brunton's computers.

Mr. Navaratnam's laptop was not uploaded into PowerCase or otherwise summarized or recorded. This lapse resulted in the information being overlooked when, later, it became relevant.

For example, in late 2017, after McArthur became a person of interest during Project Prism (see Chapter 7), Detective Constable Coffey learned that Mr. Navaratnam's internet history showed he and *silverfoxtoronto*, one of McArthur's dating usernames, had exchanged sexualized messages through the dating website *www.daddyhunt.com*. Even after the police learned in 2013 that McArthur identified himself as *silverfoxtoronto* and *silverfoxx51*, and that he denied any sexual relationship with Mr. Navaratnam, the police were unaware of the valuable information available through Mr. Navaratnam's laptop as the usernames and dating websites referred to in his computer were never uploaded into PowerCase as "objects."<sup>15</sup> As I explain in this chapter, through poor use of existing technology and case management tools, the police lost important opportunities to discover McArthur's crimes. This comment is in no way intended to be a criticism of Detective Constable Coffey – he did what he was assigned to do.

## **Focus on James Brunton and the Cannibal Killer Theory**

From the outset, Project Houston largely focused on Brunton and, for the remainder of 2012, conducted extensive surveillance on him. With the assistance of the US Department of Homeland Security, the Toronto investigators tracked his border crossings. They obtained his banking information and cellphone history and acquired a tracking warrant for his car. They researched his family members and went to hotels he had visited in Toronto. Three times they planned and executed a judicially approved covert entry into his Peterborough home to clone his computers and hard drives.

By the end of December 2012, Project Houston had acquired approximately 2.2 terabytes of data from Brunton's electronic devices. A forensic examination of this data disclosed nude photographs and videos of young men, including photographs that appeared to have been taken surreptitiously in a locker room.

On December 12, 2012, at Detective Harris's request, Detective Bill McGarry from the Service's Sex Crime Unit completed a review of Brunton's email contents. Detective McGarry had been told that the emails potentially linked Brunton to cannibalism and murder. Detective Harris wanted to know

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<sup>15</sup> As I explain in Chapter 4, PowerCase recognizes 10 specific categories of objects, including persons, telephone numbers, and e-communications such as email addresses and IP addresses. Objects are more easily searched within PowerCase and can trigger notifications of potential linkages.

if the location of Brunton's reported farm could be identified from the photographs attached to the emails.

Detective McGarry was unable to identify a farm location, but he did find evidence of child pornography. Brunton had been discussing cannibalism with a young person who sent him several nude photographs of himself and offered to meet him. During these conversations, the young person told Brunton that the talk of cannibalism was mere fantasy.

## **Contact with the OPP ViCLAS Unit**

In Chapter 4, I describe how the Violent Crime Linkage Analysis System (ViCLAS) supports the identification of crime patterns and serial or predatory behaviour. According to provincial adequacy standards, police investigators across Ontario are required to submit ViCLAS Crime Analysis Reports (also referred to as "booklets" or "submissions") to the Ontario Provincial Police (OPP) ViCLAS Unit when certain criteria have been met. Of relevance to this Review, these booklets, which contain detailed responses to standardized questions, must be submitted in relation to missing person occurrences where the circumstances indicate a strong possibility of foul play and the person remains missing.

In Chapter 5, I point out that the Toronto police did not submit ViCLAS booklets – though they should have – in relation to the initial investigations into the disappearances of Mr. Navaratnam and Mr. Kayhan. Once Toronto investigators believed, on reasonable grounds, that Brunton, or a person unknown, had killed Mr. Navaratnam and perhaps others as well in connection with a cannibalism ring, a ViCLAS booklet or booklets should have been submitted to the OPP. The strong possibility that one or more of the missing men had met with foul play undoubtedly existed. But no ViCLAS booklets were submitted in relation to these disappearances until years later.

Project Houston investigators were certainly aware of ViCLAS. Indeed, on December 6, 2012, the ViCLAS Unit received a query from Project Houston to check for any instances of cannibalism-related activity in the OPP database. As well, in June 2013, Project Houston did submit ViCLAS booklets in relation to the victims of Brunton's child pornography activities.

There was no valid excuse for the Service's failure to submit ViCLAS booklets in relation to the missing men. In fact, they had an added impetus for doing so. David Moore, a civilian analyst with the OPP ViCLAS Unit, told the Review that the issue of the missing men first came to his attention in late 2012 or early 2013. He had read media reports about several deceased men being

found in Lake Ontario. No signs of foul play were reported, and there was no known cause of death. All the men were approximately the same age, in the 19–25 age span. The combination of all these factors struck Mr. Moore as odd.

Mr. Moore contacted the Service's ViCLAS coordinator to ask for Occurrence reports for the men. Over the next few months, the Service sent him more than 60 reports of bodies found in Lake Ontario. Mr. Moore was interested in looking for similarities among the men. Did any of them know one another, for example, or were they from the same area of town? Many of the bodies had no connection to Toronto and appeared to have been washed up onto the Toronto shore, carried by Lake Ontario's currents from Hamilton, Oakville, and even New York State.

As part of his research into those bodies, Mr. Moore read in the media about the disappearances of Mr. Navaratnam, Mr. Faizi, and, in 2013, Mr. Kayhan. All three were gay, of somewhat similar physical appearance, and had last been seen in the Village. Mr. Moore contacted the Toronto police and the Peel police to ask for the Occurrence reports. He reviewed them and told both the Toronto and the Peel police forces that the cases might be connected. He specifically asked them to submit ViCLAS booklets for the missing men.

Both services declined, on the grounds that there was no evidence of foul play in any of these cases. Mr. Moore understandably turned his attention back to the men whose bodies had been found in the lake. In summary, the police chose not to submit booklets even after the OPP ViCLAS Unit requested they do so and during the Service's own Project Houston murder investigation relating to these same missing men. As I explain in Chapter 7, the Toronto police submitted ViCLAS booklets in relation to McArthur's victims only after McArthur was arrested and the OPP ViCLAS Unit again requested them.

## **Clarifying the Informant's Tip**

As I mention above, there was initial uncertainty as to what Brunton had told the informant, in particular whether he even mentioned "Skanda" or someone meeting Mr. Navaratnam's description as a victim.

On December 6, 2012, the date of Project Houston's first team briefing, Detective Sergeant Idsinga recorded in his memobook that the alleged cannibal told the "CI [the confidential informant] that he had sex with male 'Skanda' two years ago and engages in cannibalism. CI believes that Brunton killed Skanda." This note accords with Detective Sergeant Idsinga's recollection that Detective Harris had conveyed her understanding that the alleged cannibal had identified Skanda as his victim.

However, on December 12, Police Constable Patrick Platte spoke with

Detective Keller, who clarified that Brunton had never mentioned the name Skanda or Mr. Navaratnam to the informant. Rather, Brunton described his victim as active in the Toronto gay community, 18 to 35 years old, with a slim or athletic build. He claimed the crime had been committed between 2009 and 2011. Any purported connection between Jacobs and Mr. Navaratnam was merely the informant's speculation based on his having read in the media about Mr. Navaratnam's disappearance.

Police Constable Platte emailed this information to Detective Harris. It was also captured in Project Houston's briefing notes for December 12, 2012:

CI told handler about "Zambian Meats" website being a cannibalism website and that he had spoken with a "Chef Master" who told him that he had partially ate [*sic*] a person. The Chef Master did not provide a name for the person he ate but indicated that the person lived in Toronto, was homosexual, 18–35 years old, slim and athletic. This person was partially eaten between 2008 and 2011.

Although Detective Keller cleared up the confusion over what Brunton had told the informant, some Project Houston documents, including its operational plan and some reports forwarded up the chain of command, continued to state that the cannibal had confessed to kidnapping and murdering one of the three missing men. The operational plan stated that the cannibal's confession included information about the victim being a "homosexual, East Indian male" from the Church and Wellesley streets area of Toronto.

Detective Sergeant Idsinga told the Review that it remained "ambiguous" whether Brunton had named Skanda as his victim until April 2013, when the Toronto police interviewed the informant in Switzerland. With respect, there was no basis for any ambiguity or confusion on this fundamental point. Simply put, there was no basis for the claim that the alleged cannibal confessed to victimizing an East Indian male from the Church and Wellesley streets area. Nor could Mr. Navaratnam be described as being between 18 and 35 years old, slim, and athletic.

Clearly, there was a serious breakdown in communication among the project team members. Inspector Bott believed he became aware of this clarification in December 2012 – a timing that is consistent with the briefing notes and Police Constable Platte's disclosure of the December 12 call. However, some of the other officers involved in Project Houston, besides Detective Sergeant Idsinga, told the Review that they too had been unaware of this clarification until the interview with the informant in April 2013.

Decisions made about how this investigation should be conducted, what

direction it should take, what resources should be allocated to it, and the role of other police services in it should have been based on an accurate understanding of the tip that prompted the investigation in the first place. I revisit the significance of this confusion in the Summary and Findings at the end of this chapter.

There was also some early internal skepticism in Project Houston about Brunton's role in Mr. Navaratnam's disappearance, primarily from Detective Constable Loria. Although officially assigned to be file coordinator, she quickly took on other tasks as well. Within the first weeks of Project Houston, she was tasked with going through approximately 10 binders of emails extracted from Brunton's computer. In her view, the emails demonstrated that Brunton had a sexual interest in young white men. She felt it significant that Mr. Navaratnam, an older brown man, did not fit this profile.

Detective Constable Loria approached Detective Harris and Detective Sergeant Idsinga to voice her concerns. She told them she did not think the project was on the right track. Detective Harris suggested that perhaps Brunton liked to have sexual encounters with young white men, but preferred "brown meat" when it came to cannibalism. Detective Constable Loria agreed to keep an open mind about the cannibal theory. Detective Sergeant Idsinga did not recall this conversation. However, I observe that Detective Constable Loria was not critical of Detective Sergeant Idsinga: he gave her scope to investigate other potential leads.

## **Involvement of the Peterborough Police Service**

On December 13, 2012, Detective Sergeant Idsinga and Detective Harris visited the Peterborough Police Service. They showed Peterborough Detective Debbie Gillis a nude "locker room" photo taken from Brunton's computer. Detective Gillis believed the photo may have been of a Peterborough hockey player. She also recognized a photo of Brunton as someone active in local hockey. She was assigned to be the liaison for the covert entries planned for Brunton's home.

## **Reinvestigation of Mr. Navaratnam's Disappearance**

The Project Houston officers reinvestigated Mr. Navaratnam's disappearance in a variety of ways. They canvassed other police services for outstanding missing person reports. They looked for additional witnesses relating to Mr. Navaratnam, went to Zipperz nightclub and The Cellar bathhouse, and began to set up interviews with Mr. Navaratnam's friends. Some of these people had

been identified during the initial 2010 investigation but not interviewed. For example, on December 12, 2012, the police contacted Mr. BB who, in 2010, had reported Mr. Navaratnam's disappearance but had never been formally interviewed.

Mr. FF is another example. On December 14, 2012, Detective Constable Josh McKenzie and Police Constable Platte interviewed Mr. FF – one of the last people to see Mr. Navaratnam alive. He had called the police on September 23, 2010, to tell them that on September 6, he had seen Mr. Navaratnam leave Zipperz with two men, but he had not been formally interviewed. During his December 14, 2012, interview, he described the two men, but it was only in June 2013 that he was asked to provide a composite sketch of them. The officers also contacted Mr. Navaratnam's ex-partner Mr. HH for an interview. He, too, had not been interviewed during the 2010 investigation.

On December 17, 2012, the project obtained a judicial production order for Mr. Navaratnam's Yahoo email account. Detective Constable Lindsay Riddell (now Gravelijn) sent the production order to Yahoo Canada the same day. Yahoo told her, however, that the email account was a US account, so Yahoo was unable to assist. Two months later, in February 2013, the Project Houston officers sought the assistance of American authorities to preserve Mr. Navaratnam's email account.<sup>16</sup>

On December 18, Detective Constable McKenzie and Police Constable Platte interviewed Mr. GG, who saw Mr. Navaratnam at the Black Eagle bar the day before his disappearance. Mr. GG gave the police the names of several other friends who had never been interviewed.

On December 27, Detective Ogg spoke with the Berne police. They told her they required an MLAT request before the Project Houston officers could interview the informant. Police Constable Platte began translating the document from German to English, while Detective Ogg discussed the required legalities with a Crown attorney.

On December 28, Detective Constable Loria discovered that both Mr. Navaratnam and Mr. Faizi were members of the gay dating website *www.silverdaddies.com*. This discovery provided the first potential link between the two men. On January 9, 2013, Detective Harris told the Project Houston affiant that Brunton was also a member of this website.

Although the project team did not know it at the time, McArthur was also a member of this website.

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<sup>16</sup> Although the project's files reflect an understanding that a judicial production order was sought during the original investigation to obtain Mr. Navaratnam's email contents, there is no indication it was ever done.

## Expansion to Include Mr. Kayhan's Disappearance

On January 3, 2013, Detective Constable Loria told Detective Sergeant Idsinga that, given the many similarities between Mr. Navaratnam and Mr. Faizi, she worried about the prospect of a serial killer in the community. In response, Detective Sergeant Idsinga told her not to jump to conclusions and instructed her, rather, to see if she could find another possible victim. Detective Constable McKenzie mentioned Mr. Kayhan to her. Detective Constable Loria thought the three cases might be related. The men were similar in appearance in some respects as were the circumstances surrounding their disappearance. Both Mr. Navaratnam and Mr. Kayhan, for example, had ostensibly abandoned their pets. When she brought these parallels to Detective Sergeant Idsinga's attention, he encouraged her to "go with it."

The Project Houston officers sought a judicial production order for Mr. Kayhan's OHIP records – something that had not been done before. They spoke with Mr. Kayhan's son, who told them he had hired a private investigator to attempt to locate his father. When the son later gave the investigators a copy of the report, they saw that the private investigator was attempting to identify a friend of Mr. Kayhan who was a "florist / gardener." McArthur was a gardener / landscaper.

Project Houston contacted the Peel police to ask for a DNA sample for Mr. Faizi. They obtained production orders for his OHIP records and banking records as well as his telephone and email information. The Peel police had not obtained this information during their original investigation. As I indicate in Chapter 5, Peel police were not convinced they could obtain such records, based on the legislation then in existence, without proof of a crime. In any event, the various production orders yielded nothing of note.

Throughout January 2013, Project Houston continued to focus on Brunton. In the meantime, Detective Constable McKenzie completed the MLAT request relating to the Swiss informant for Detective Harris to review.

By January 11, the police had reviewed approximately 1,200 videos and photos obtained from Brunton's computer. Three days later, they discovered a chat from 2007 during which Brunton indicated he had access to a cabin near Bancroft. The police questioned whether it might be the same cabin that Mr. Navaratnam sometimes visited. They also noted that Mr. Navaratnam and Brunton were both members of the *www.silverdaddies.com* and the *www.daddyhunt.com* sites. In late January 2013, the police learned through surveillance that Brunton had another computer (a personal laptop) he carried with him. They continued to review the material extracted from his home



computer. A search of Brunton's email and chat history yielded information about people associated with him. The police expanded their investigation to include them.

At the same time, Detective Constable Loria went to Mr. Kayhan's apartment, took photos, and seized a variety of documents and personal belongings. She was frustrated at the lack of progress in the investigation involving Brunton. As the file coordinator, she saw no indication that the Brunton angle was leading anywhere. Instead of focusing on Brunton, she concentrated on the missing men. Again, Detective Sergeant Idsinga, to his credit, granted her permission to take this approach.

The police submitted the items seized in 2010 from Mr. Navaratnam's apartment to the Centre of Forensic Sciences for DNA testing. They contacted the RMCP National Centre for Missing Persons and Unidentified Remains (see Chapter 13), which offered to place Mr. Navaratnam's information on its open-source public website.

On January 10, Detective Constable David Lavallee asked Detective Sergeant Stacy Gallant, who oversaw the Service's Major Case Management Unit, for permission to install a software program, IEF Report Viewer, on a number of computers. The program was designed to review and analyze extracted electronic data. By June 2013, this program plus another forensic search program, XIRAF, were installed. I describe both programs in Chapter 4.

On January 16, the Project Houston officers located an image in Brunton's computer files that resembled Mr. Kayhan. Mr. Kayhan's son could not ascertain whether the photo was indeed of his father.

On the same day, Detective Harris forwarded a "deputies briefing" that contained an investigative overview of Project Houston. It identified the original occurrences for the missing person cases of Mr. Navaratnam, Mr. Faizi, Mr. Kayhan, and another man, Mr. Jiwani.<sup>17</sup> The investigative overview indicated that the informant's identification of Mr. Navaratnam as Brunton's potential victim was based on the informant's own research and a description Brunton provided.<sup>18</sup> It also indicated that 27 judicial authorizations had been obtained to that point. These authorizations attempted to establish a link between Brunton and any of the potential victims. No direct links were found.

Despite the absence of any demonstrable links between the missing men and Brunton, the project continued to focus largely on Brunton. In late January 2013, the Project Houston team expanded to include two more officers. That

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<sup>17</sup> Mr. Jiwani was ultimately found to have no link to the other disappearances or to McArthur.

<sup>18</sup> This document, unlike some others, accurately reflected that Brunton had not named Mr. Navaratnam. His description was different, in some respects, from Mr. Navaratnam's in age and physical characteristics.

month, the team met with several Peterborough officers to discuss the investigation. Detective Gillis reviewed the videos and photos seized from Brunton's computers.

## **An Operational Plan and the Role of Other Police Services**

On January 29, 2013, Detective Sergeant Idsinga emailed Detective Sergeant Kenneth Reimer,<sup>19</sup> the head of the Service's Intelligence Division (copying Detective Harris, Inspector Bott, and a Peterborough police officer), to report that he had submitted an Operational Plan for Project Houston. He indicated that the team might apply for Criminal Intelligence Service Ontario (CISO) funding to support the project. He also inquired as to whether the Operational Plan would be uploaded to the Automated Criminal Intelligence Information System (ACIIS)<sup>20</sup> automatically and whether a lead analyst had been assigned to the project.

An analyst in this context referred to an intelligence analyst with access to ACIIS and other intelligence databases. Detective Sergeant Idsinga told the Review that filing an Operational Plan and requesting an analyst were prerequisites to obtaining CISO funding. Detective Sergeant Reimer assigned Jonathan Retchford, a senior intelligence analyst at the Service's Intelligence Services Unit, to assist with Project Houston. I describe Mr. Retchford's involvement in Project Houston below.

On January 30, Detective Sergeant Idsinga spoke with Detective Sergeant Randy Cowan,<sup>21</sup> the Homicide Major Case Manager of the Peel police about the investigation into Mr. Faizi's disappearance. The purpose of his call, after he provided an overview of Project Houston, was to request that one investigator be assigned to assist with the project. Acting Inspector Cowan said he would discuss this request with his supervisors.

On the same date, Detective Sergeant Idsinga emailed Inspector Bott to tell him that, given the potential link between Mr. Faizi's case and the Project Houston investigation, he felt it prudent to bring a Peel investigator on board to represent Peel's interests. He explained he had spoken with Detective Sergeant Cowan and made an informal request. Detective Sergeant Idsinga proposed that they treat Peel's involvement in the same way they handled Peterborough's: having an investigator come to 51 Division to review the

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<sup>19</sup> Detective Sergeant Reimer was subsequently promoted to the rank of staff sergeant. He is now retired.

<sup>20</sup> ACIIS is Canada's only national criminal intelligence database. Managed by the Criminal Intelligence Service Canada (CISC), it contains criminal information and intelligence on organized and serious crime in or affecting Canada, including data on criminals or suspected criminals and businesses or organizations if they are involved in organized crime or serious crime that may affect more than one jurisdiction.

<sup>21</sup> Detective Sergeant Cowan is now retired.

material collected to date, so the other force could then decide whether it wanted to be involved.

Detective Sergeant Idsinga prepared an Operational Plan and funding request for Project Houston dated January 30, 2013.<sup>22</sup> The funding proposal indicated that Toronto would be the lead agency in the investigation and, overseen by a joint management team, would work in partnership with CISO, the Peterborough Police Service, and the Peel Regional Police. The funding proposal requested an equal splitting of costs among all the agencies. Project Houston was described as follows:

Project “Houston” involves sexual assaults, the making / importing / exporting of child pornography, and the trafficking of human victims for the purposes of cannibalistic rituals by members of criminal organizations who reside in and frequent the area of Ontario. It is anticipated that as the investigation unfolds that other jurisdictions will be impacted.

According to the funding request, oversight for Project Houston would be provided by members of a joint management team: Detective Sergeant Idsinga for the Toronto police; Detective Sergeant Larry Charmley of the Peterborough police; and the director of CISO.<sup>23</sup>

However, the funding request was never submitted. Project Houston never became a multi-jurisdictional major case with a joint management team. Acting Inspector Cowan declined to assign an investigator from Peel to the project – a decision I explain below. Instead, the project was funded internally. Toronto’s decision not to apply for CISO funding was tied to its decision not to structure the project as a multi-jurisdictional major case with a joint management team.

Inspector Bott told the Review that the CISO application did not move forward because Staff Inspector McLane felt it should not proceed unless a link was established between Brunton and the missing men. Until that time, the project would be funded internally. If a link were established, the project would submit the CISO application and transition the investigation into a multi-jurisdictional major case. But no link was ever established.

Instead, the Review was told that Project Houston operated as an “informal” multi-jurisdictional team investigation. Detective Constable Dave

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<sup>22</sup> This date may have been in error: Detective Sergeant Idsinga’s January 29, 2012, email indicated that the Operational Plan had already been submitted.

<sup>23</sup> Of interest, although it was proposed that Mr. Faizi’s disappearance form part of the investigation, an officer from the Peel Regional Police had not been named as a member of the proposed joint management team.

Rughoo, for example, told the Review that he acted as an international liaison for the informal multi-jurisdictional team: he dealt with police and security agencies in the United States, Germany, Australia, and New Zealand as the investigation into the alleged international cannibal ring continued. This international portion of the investigation, he explained, was separate from the investigation into the disappearances of Mr. Navaratnam, Mr. Kayhan, and Mr. Faizi. Detective Constable Gravelijn, the designated affiant for Project Houston, similarly described an informal investigative arrangement with the Peel and Peterborough police.

Deputy Chief James Ramer, now the Service's acting chief, told the Review that most of the investigations he oversaw were funded by CISO and operated as multi-jurisdictional joint-force operations. It was common for the Service to work with the Peel police in that way. In this case, it never got off the ground. It was obvious from the email exchanges I reviewed that at least one senior officer was "not excited" about involving other jurisdictions and about Detective Sergeant Idsinga's CISO proposal, while Deputy Chief Ramer, in contrast, seemed very positive. One officer indicated that he was probably going to hear about speaking out of turn in supporting the proposal.

However, as I explain in my findings below, provincial adequacy standards required that this investigation be run as a multi-jurisdictional major case or that, at a minimum, a discussion about that issue take place with the province's serial predator crime investigations coordinator (the serial predator coordinator) and with command-level officers or their designees in Peterborough and Peel. Although I accept that Detective Sergeant Idsinga and others were prepared to involve other services informally in the investigation, the particular approach that was adopted was counterproductive and defeated the underlying rationale for the provincial adequacy standards.

The Toronto police were convinced that reasonable grounds existed for believing that an international cannibal ring existed with tentacles around the world and that Brunton was possibly at the centre of the ring. They believed Brunton lived in Peterborough and, apparently, was committing criminal offences unrelated to why Project Houston was created. They also believed those offences were being committed outside Toronto.

The Toronto police also sought judicial authorizations on the basis that Brunton abducted and ate Mr. Navaratnam. They were also investigating whether the disappearances of Mr. Faizi and Mr. Kayhan were related. Peel was conducting a separate investigation of Mr. Faizi's disappearance. Acting Inspector Cowan declined to assign an officer to Project Houston in large part because he questioned the whole cannibalism theory and Toronto's focus on it.

These circumstances represented precisely the kind of situation contemplated by the provincial adequacy standards respecting a multi-jurisdictional major investigation. Ontario's serial predator coordinator was, however, kept in the dark about the entire investigation. Decisions as to the involvement of other police services were not made at the command level. If Brunton was not involved in Mr. Navaratnam's disappearance, there was nothing connecting this investigation to Toronto. The "informal" arrangement reduced or eliminated altogether any meaningful provincial oversight of what the Toronto police were doing. It is telling that even after Project Prism identified McArthur as a suspect or person of interest in multiple disappearances, the serial predator coordinator was not informed of the investigation. He learned about it by reading of McArthur's arrest in the media.

A senior officer from another Ontario police service who had direct knowledge of the project told the Review:

If they had followed the multijurisdictional protocol, it probably would have worked a lot better ... if they had, that would have triggered a Major Case Management supervisor assigned, it probably would have been left with [Idsinga] at the time, you would have had the resources and funding put in place ... And all it would be ... [Idsinga] would come and report on the case and say[,] "Here's where we are, here's where we're going, here's the funds I need, is everyone in agreement?" And it would be managed like a board of directors ... So that's the right way to do it. It's a bit difficult. The bureaucracy's difficult but it would have been a joint management team, a JMT, and run as a multijurisdictional project ... That way when you get something like this, the European angle and the cannibalism, you have some competent people sitting across from you giving you a chat like, "Really, is that where you want to go with this? Have you spoken to those two other managers?" Do that first. Then talk to me about Sweden [*sic*].

Acting Chief Ramer candidly acknowledged to the Review that, in his view, the serial predator coordinator should have been notified about Project Houston while it was taking place. He also observed that the Service has not always complied with this requirement.

### **Project Houston Discovers *silverfoxx51* and *newyorkboy21* in Mr. Faizi's Notepad**

On January 31, 2013, Detective Constable Loria found a reference to *silverfoxx51* in Mr. Faizi's notepad. Although she did not know it at the time,

this was a reference to McArthur's email address and/or his username on the dating website *www.silverdaddies.com*. She ran the name through Twitter and online search engines but could not identify its owner. That same day, she also found the name *newyorkboy21*<sup>24</sup> in Mr. Faizi's notes, but, again, she was unable to identify its owner. Although tools were available to make those identifications, they were not used in this case at the time.

## Further Investigation into Brunton

In February 2013, Project Houston continued to review the electronic data recovered from Brunton's computers. The officers investigated Brunton's known associates and worked with the Swiss police to attempt to arrange an interview with the informant. They discussed posing as a fellow cannibal online or befriending Brunton at a hockey tournament, given his involvement in the Peterborough minor league hockey community.

On February 4, Detective Sergeant Idsinga submitted an Organized Crime and Intelligence Investigations Tracking Template form to the Canadian Integrated Response to Organized Crime. It listed the primary base of operation for the investigation as Peterborough, with Toronto as the secondary area, and described the scope of the investigation as "international," with co-conspirators suspected in Vancouver, Sault Ste. Marie, the United States, the United Kingdom, Germany, the Netherlands, and Switzerland. Detective Sergeant Idsinga told the Review that submitting this form was a required preliminary step before making an application for CISO funding. As I indicate above, the CISO application was ultimately abandoned.

On February 5, Project Houston received information from the FBI about a potential kidnapping plot. A resident of Peel Region, John Orfanogiannis, was intercepted communicating about a plot to kidnap and murder a woman with ties to one of Brunton's contacts. Ultimately, the investigation was turned over to Peel, with some continuing involvement by a Project Houston officer.

On February 6, Detective Constable McKenzie obtained guest lists for a number of hotels in the Church Street area of Toronto for the periods coinciding with the disappearances of the three missing men. He was looking for evidence that Brunton had stayed in the Church Street area of Toronto. None was found.

On the same day, Detective Constable Loria spoke to Detective Sergeant

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<sup>24</sup> Both *newyorkboy21* and *newyorkboy21@yahoo.com* are aliases. The real username and email address discovered by Project Houston have been omitted in this Report to protect the privacy of the owner.

Idsinga about compiling a spreadsheet with the usernames and websites the missing men had contacted before their disappearances.

On February 7, Detective Constable Doug McCaw joined the Project Houston team. He was tasked with trying to find Brunton's cabin in the Bancroft area. Although Bancroft is within the OPP's jurisdiction, the OPP was not approached to assist in this search.

On February 9, Project Houston officers located Mr. AA's cabin in Gilmour, Ontario. The officers had previously been told that Mr. Navaratnam occasionally spent time at the cabin.

On February 11, Project Houston officers interviewed an employee from Zipperz who had seen Mr. Navaratnam leaving the bar on September 6, 2010. He had not been formally interviewed at the time Mr. Navaratnam disappeared. In 2013, he could not remember anything unusual.

On February 12, the undercover officer attended another hockey game in Peterborough to observe Brunton. Other officers went again to Mr. AA's cabin in Gilmour. Project Houston officers continued to review Mr. Navaratnam's phone records as well as Brunton's electronic communications.

On February 13, Detective Sergeant Cowan emailed Detective Sergeant Idsinga to advise that, although Peel would not be assigning an investigator to Project Houston, it was willing to support the investigation. Detective Sergeant Cowan wrote:

Inspector Koekkoek and I addressed the issue of assigning an investigator from Peel to this project with our administration. It was decided that it would not be possible at this time. We would however be willing to support you with whatever you may need otherwise. This would include expedited occurrences, address checks, interviews in our jurisdiction, following up on the seized computer from our missing person or any other detail deemed appropriate. I will remain your contact for this matter should you need anything. In regards to CISO, I think you can consider us assisting and we would be willing to confirm that involvement as it relates to our missing party. If things progress we would readdress the issue should an official Joint Task Force be created and a Joint Management Team implemented.

In explaining this decision to the Review, Detective Sergeant Cowan said the Toronto police were extremely secretive about the Project Houston investigation. At an earlier stage, Toronto officers asked Peel whether it had any missing person cases that fit a certain age group and a certain ethnicity. The Toronto police would not tell Peel the reason for the request. Detective Sergeant Cowan thought the Toronto police were investigating a potential

serial killer and were trying to keep the information “locked down.” The Peel police gave the Toronto police Mr. Faizi’s evidence file for copying.

Later, Detective Sergeant Idsinga approached Detective Sergeant Cowan for assistance in Project Houston. Detective Sergeant Cowan was briefed on the Project Houston investigation but was not impressed. In his view, the investigation lacked direction. The focus on Brunton and the cannibalism theory appeared to be an instance of “tunnel vision” premised on an exotic theory rather than sound investigatory basics. Peel decided to offer co-operation but not resources. The Peel police would continue to investigate Mr. Faizi’s missing person case on their own.

For the remainder of February 2013, Project Houston obtained a judicial authorization to record, by Skype, the undercover officer’s conversations with Brunton; a tracking warrant for his car; and judicial production orders for two additional email addresses associated with him. The amount of work and ingenuity that went into this element of the investigation is to be commended: the Project Houston affiant, Detective Constable Gravelijn, told the Review that she understood the Skype recording order to be the first of its kind for the Service.

In late February 2013, US and UK investigators came to Toronto to meet with Project Houston investigators. The United Kingdom’s Serious Organized Crime Agency was to determine the appropriate course of action relating to several email addresses associated with Brunton’s contacts there, and the FBI to disseminate information on persons of interest in the United States to its field officers. Undercover officers were to coordinate globally in efforts to infiltrate cannibal fetish websites.

### **Mr. Navaratnam Linked to *silverfoxx51* and *newyorkboy21***

On February 22, 2013, Detective Constable Loria received from Detective Constable Coffey a hard copy and, later, an electronic version of the deleted email contacts from Mr. Navaratnam’s computer. She noticed a common email address contact between Mr. Navaratnam and Mr. Faizi: *newyorkboy21@yahoo.com*, the address she had previously seen in Mr. Faizi’s notebook. On February 25, Detective Constable Rughoo sent a subpoena to the FBI to obtain subscriber information for this email address.

On February 26, Detective Constable Loria identified another common email address between Mr. Navaratnam’s deleted computer files and Mr. Faizi’s notebook: *silverfoxx51@hotmail.com*. The next day, Detective Sergeant Idsinga assigned Detective Constable Rughoo to pursue subscriber information for this address.



Detective Constable Rughoo sent a request to the American Department of Homeland Security to serve a subpoena on Hotmail to identify the account's owner. Despite this request, Project Houston did not receive any subscriber information for the account. Detective Constable Rughoo told the Review that at some point after making this request, an agent from Homeland Security told him that an MLAT request was required because Microsoft, which operates Hotmail, is an American company. Detective Constable Rughoo could not make an MLAT request – this task was the responsibility of the lead investigator. Detective Constable Rughoo advised Detective Constable Loria of the needed MLAT request because she was making a list of the outstanding tasks in advance of her upcoming maternity leave.

On April 24, Detective Constable Loria emailed Detective Harris, asking her to add the *silverfoxx51@hotmail.com* email address to an MLAT request. The following day, Detective Harris contacted a Crown attorney to discuss an MLAT request to the United States for several email addresses, but *silverfoxx51@hotmail.com* was not included on the list.

*Silverfoxx51@hotmail.com* was McArthur's email address. However, the Project Houston officers did not discover the connection until September 15, 2013 – approximately seven months following the February 26 identification.

To understand what went wrong, I must briefly address the assignment, or “actioning,” component of Project Houston. Detective Sergeant Idsinga told the Review that assignments, or actions, should be tracked in an action log in the P Drive as well as in PowerCase. In addition, he also relied on the Project Houston daily logs and team briefings to stay on top of assignments. During Project Houston, however, items were often assigned orally and not recorded or tracked in a formalized format. The Review substantiated this flawed method when it examined the contents of the P Drive and PowerCase file. Very few assignments were recorded as either assigned or completed. It is apparent that, contrary to the 2012 *Major Case Management Manual*, the Project Houston team was relying largely on memory and a manual system (such as officer memobook notes) to keep track of assignments. Such reliance is precisely what provincial adequacy standards respecting the use of PowerCase are designed to avoid. Otherwise, things are missed, sometimes of critical importance. That is exactly what happened here.

An oversight of particular consequence was the fact that no assignments involving *silverfoxx51@hotmail.com* were recorded in either PowerCase or the P Drive action log. As a result, no steps were taken to identify the owner of this email address for many months – even though both Detective Constable

Loria and Detective Sergeant Idsinga appreciated the need to identify the owner. This significant omission simply went unnoticed.

Project Houston also asked US authorities to serve a subpoena on *Yahoo.com* for Mr. Navaratnam's email address – to allow the team to determine the last login to Mr. Navaratnam's account and to preserve Mr. Navaratnam's emails if extraction from Mr. Navaratnam's hard drive was unsuccessful. Yahoo replied to the subpoena on April 17, 2013, with a list of the last logins to Mr. Navaratnam's email account. The final login was on November 3, 2012. With the assistance of Interpol, Project Houston was able to determine that this login took place from Aruba. Mr. Navaratnam's email account had been accessed several times internationally since his disappearance, including from the Netherlands, Vietnam, and Turkey. Project Houston analyzed the logins but was unable to explain them.

On February 27, 2013, Detective Constable Loria reviewed the list of Brunton's usernames against the list of Mr. Navaratnam's deleted usernames. There were no matches.

## **Investigation of Orfanogiannis and Brunton**

At the end of February 2013, Project Houston began a parallel file for the suspected kidnapping plot involving Orfanogiannis. On February 28, Project Houston officers received a call from the FBI. The undercover agent there was concerned about Orfanogiannis's intentions: he was becoming more resolute in his kidnapping plans and talked about buying a van to facilitate them.

The investigation into Orfanogiannis became a "side project" for Detective Constable Rughoo. He worked co-operatively with the FBI and the UK authorities because Project Houston was a hub of information about Brunton and the cannibal ring. Once Orfanogiannis was arrested, Detective Constable Rughoo's involvement with the FBI tapered off.

In the meantime, Detective Harris and Detective Lori Haggett interviewed Mr. HH, Mr. Navaratnam's ex-partner. He had last spoken with Mr. Navaratnam on September 4, 2010. During the initial investigation, he had not been interviewed, and he was now able to provide the police with significant background about Mr. Navaratnam's friends and other ex-partners.

The undercover operation also continued in Peterborough. In March 2013, the Project Houston officers tracked and surveilled Brunton. They placed a tracking device on his vehicle and reviewed his online activity. In early March, an undercover officer met Brunton at a Peterborough restaurant for dinner and arranged a second meeting in mid-March, also in Peterborough.

At the same time, Detective Constable Coffey located a contact by the

name of “Mr. KK” on Mr. Navaratnam’s computer. Detective Constable Coffey found a similar name when he searched Brunton’s computer in connection with the website *www.justhookup.com*. He could not determine whether Brunton had contacted Mr. KK or even checked his profile, but he started a working file for background information on Mr. KK. Detective Constable Coffey also learned that both Mr. Navaratnam and Brunton used the *www.silverdaddies.com* website, although this information had already been discovered earlier in the investigation.

On March 4, Detective Constable Rughoo contacted the German Federal Criminal Police Office (BKA). He spoke with Officer Patrick Schuh, the BKA’s police liaison officer responsible for Canada and the United States. Officer Schuh agreed to act as Project Houston’s point of contact and began to pursue subscriber information for Brunton’s German email contacts.

On March 5, officers sent out grid alerts<sup>25</sup> to the Canadian Bankers Association and Interpol for the missing men: in the event they were still alive, these listings might allow the officers to track them. The officers also interviewed others connected to the three missing men. None of these people had been interviewed in the Service’s initial investigations.

- Mr. II: Mr. II had been involved in intimate relationships with both Mr. Faizi and Mr. Navaratnam. He told the police an attendant at The Cellar bathhouse had said that people from the Middle East appeared to be targeted (in reference to Mr. Navaratnam, Mr. Faizi, and a man in his twenties from western Ontario who had gone missing in 2009). Detective Constable Loria went to The Cellar to try to find out more about this third man.
- A professor at the University of Toronto who taught Mr. Navaratnam in 2005 and 2006: the professor and his wife last had contact with Mr. Navaratnam in 2008. The professor’s wife told the officers that Mr. Navaratnam had a friend in Rosedale with a big house who hired him to do yard work. It is not clear who this friend was, but 53 Mallory Crescent – the property where McArthur worked as a gardener / landscaper, employed others (including some of his murder victims), and ultimately hid the bodies of his murder victims – is near Rosedale.
- Mr. BB and Mr. AA: Mr. BB and Mr. AA had originally reported Mr. Navaratnam’s disappearance. Mr. BB told police he found it odd that the

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<sup>25</sup> A “grid alert” is a request for an alert should any of the missing men come to the attention of these services. A grid alert for a bank, for example, would give rise to the bank’s notifying the police if one of the missing men used a debit card at a bank location.

police had not interviewed either him or Mr. AA when they first reported Mr. Navaratnam missing. Their memories would have been fresh back then. Mr. BB told the police that Mr. Navaratnam liked dating older men, or “silver daddies.” Mr. Navaratnam was very private about his personal life, and Mr. BB had never met any of his other partners. Mr. Navaratnam was street smart and would not have left the bar with a person he didn’t know.

- Mr. LL: Mr. LL met Mr. Kayhan at the Black Eagle bar sometime in 2012. He told the officers he had a few beers and cigarettes with Mr. Kayhan, they exchanged phone numbers, but neither of them contacted the other again. However, the police had found Mr. LL’s business card in Mr. Kayhan’s apartment and recognized his voice from a voicemail message on Mr. Kayhan’s answering machine. There is no suggestion that Mr. LL had anything to do with Mr. Kayhan’s disappearance. However, the interview illustrates the importance of pre-interview preparation to allow investigators to assess the credibility of a witness’s account. It also illustrates the reticence of community members, at times, to share information with the police;
- Mr. CC: Mr. CC met Mr. Navaratnam in 2000. The two men lived together for approximately four years. Mr. CC told the officers that Mr. Navaratnam did odd jobs and was good at landscaping. He also described him as very private about his life. After Mr. Navaratnam moved out of his home, Mr. CC did not have much contact with him. Mr. CC told the police that, in the past, Mr. Navaratnam had twice gone missing for a few days but was very smart and would not put himself into a dangerous situation. In his view, Mr. Navaratnam had simply left to start a new life.
- The owner of the Black Eagle bar: during the interview, the officers identified employees who had worked at the bar at the time Mr. Navaratnam disappeared. The owner said that Mr. Navaratnam, Mr. Faizi, and Mr. Kayhan were regular customers.
- Mr. MM: Mr. MM had been sexually intimate with Mr. Navaratnam and Mr. Faizi. He knew them both from the Black Eagle bar. Mr. Navaratnam told Mr. MM he was a landscaper.
- Mr. KK: Mr. KK met Mr. Navaratnam on *www.squirt.org* and had one sexual encounter with him in the summer of 2009. Mr. KK told the officers that in July 2010, he bought a trailer in Peterborough and went there every summer weekend. As indicated earlier, the Project Houston officers had found a reference to “KK” in Brunton’s computer search history. Despite this potential link between Brunton and Mr. Navaratnam,

the officers never asked Mr. KK if he knew Brunton. One of the interviewers told the Review he may have been aware of the reference to “Mr. KK” in Brunton’s computer but could not recall one way or the other. He was not able to provide an explanation as to why he and the other interviewing officer did not ask Mr. KK about Brunton if they were aware of that fact. This lapse reflects a common theme throughout this Report – the failure to use case management tools effectively to understand and benefit from information that had been collected.

- Mr. NN, a friend of Mr. Navaratnam: Mr. NN told police about Mr. Navaratnam’s life, including his trips to a cabin up north.

The officers did not turn up any leads from these interviews. On March 11, 2013, the Project Houston team obtained 12 judicial production orders for the telephone and tower records of the last people to speak to Mr. Navaratnam before his disappearance.

On March 19, Project Houston followed up with the FBI, which reported that it was in the process of winding down the second tier of its cannibal investigation. Once the operation concluded and the agents assessed the intelligence gathered, the FBI would change its focus to investigating the persons of interest forwarded to them by the Project Houston.

Detective Constable Loria continued to search through Mr. Navaratnam’s online activity and identified multiple dating websites he had used between 2000 and 2010, including *www.silverdaddies.com*, *www.squirt.org*, and *www.daddyhunt.com* (*www.silverdaddies.com* and *www.daddyhunt.com* had already been identified earlier in the investigation). She also emailed the Montreal police to see if they had any active or cold missing person cases similar to the three missing men. Because of the yearlong gap between the first two disappearances and the third, Detective Constable Loria was concerned that a perpetrator might be moving around.

On March 26, Detective Constable Loria emailed Detective Constable Coffey to remind him to download the hard-drive extraction that the Peel police provided from Mr. Faizi’s computer. She had asked about the hard drive back in February. Detective Constable Coffey emailed Detective Constable Loria on March 28 to say he had the imaged copy of the hard drive from Peel. He had not been able to do much investigating on the case but had run some keywords and had not found anything.

In April 2013, Project Houston continued to track Brunton and engage with him online through the undercover officer. Detective Constable Rughoo consulted with officers from the United States, Australia, and New Zealand

about attempts to identify the owners of usernames associated with cannibalism messages. Detective Constable Rughoo lined up a special agent with the FBI Denver Field Office in Colorado as a point of contact with respect to one individual, Mr. OO. Mr. OO and Brunton had exchanged emails that were classified as child pornography.

On April 2, the Peel police told Detective Constable Loria that a DNA sample from Mr. Faizi's daughter, along with the hair and fibre collected from Mr. Faizi's car, had been submitted to the Centre of Forensic Sciences for comparisons.

## **Plans to Wind Down Project Houston**

On April 2, 2013, because the Project Houston team was thought to be nearing the end of its investigation, Detective Harris requested a meeting with the Crown attorney. The discussion took place the next day and focused on the potential charges to be laid against Brunton.

That same day, Detective Constable Rughoo spoke with the FBI, which had received the results of the search warrants executed on Orfanogiannis's email accounts. Orfanogiannis was heavily involved in child pornography. The FBI identified several persons of interest in their investigation, including one in Toronto.

Throughout April, the Project Houston officers consulted with authorities from the United States, Australia, and New Zealand about Brunton's potential contacts. They also continued to interview people who had known the missing men. On April 4, they interviewed Mr. PP. He told them he did not recognize photos of any of the missing men. That turned out to be a lie. Although the officers did not know it at the time of the interview, Mr. PP was the owner of the *newyorkboy21* email address found in Mr. Navaratnam's computer and on Mr. Faizi's notepad. He had also spoken to Mr. Faizi on the phone shortly before his disappearance.

On April 5, Detective Constable Loria went to the Tech Unit to meet with Detective Constable Coffey about Mr. Faizi's computer files. She learned that no files had been extracted for her. She left a message for Detective Constable Coffey asking him to extract any information regarding Mr. Faizi's email contacts, websites, anything to do with suicide, or any places to which he may have considered running away. On April 9, Detective Constable Coffey gave her photos from Mr. Faizi's computer on DVDs, and on April 10, the extracted data from Mr. Faizi's computer. She reviewed the data and identified *www.bearforest.com* as the last website Mr. Faizi visited on the morning of his disappearance. She found that in the previous days, he was also active on

various sites, including *www.silverdaddies.com*.

On April 10, Detective Constable Gravelijn emailed Detective Harris the contents of a document to be submitted to the court. It set out details of the investigation to date, including an accurate summary of what the confidential informant had told the police and the child pornography–related photos in Brunton’s possession.<sup>26</sup> Of significance, the document also reflected that the investigation had located two email addresses that were in the contact books of Mr. Navaratnam and Mr. Faizi: *newyorkboy21@yahoo.com* and *silverfoxx51@hotmail.com*. The document did not contain any evidence linking Brunton to any of the missing men. This document was, however, yet another indication that the project recognized the potential significance of *silverfoxx51@hotmail.com*.

On April 11, undercover officers went with Brunton to the Black Eagle and to other bars and strip clubs. Brunton indicated he had never been to the Black Eagle before. The undercover officers noted that Brunton did not appear to like the dancers who had beards. Each of the three missing men had a beard.

On April 16, Detective Constable Loria continued reviewing the files extracted from Mr. Faizi’s computer. She found several Google map images, including an area about two kilometres from where Mr. Faizi’s car had been found. Detective Constable Loria checked to see if any of Mr. Faizi’s contacts were associated with addresses in this area, and she ran a Unified Search for any incidents involving gay men in the area.<sup>27</sup> Her searches came back negative.

Detective Constable Rughoo continued to review the Yahoo Instant Messenger chats extracted from Brunton’s computer. On the same day, Mr. Retchford completed his Telephone Toll Analysis report for Project Houston. The report analyzed data from the cellphones used by Mr. Navaratnam and Mr. Faizi. No direct or indirect connections were found between the two phones.

## **Project Houston’s Analyst**

When Mr. Retchford joined Project Houston as a civilian analyst in February 2013, his point of contact was with Detective Constable Loria. He was not assigned full time to the project, nor did he work out of the project room at 51 Division with the investigators. He stayed at Intelligence Services and worked

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<sup>26</sup> Contrary to at least one media account, photographs of Mr. Faizi or Mr. Navaratnam were not found on Brunton’s computer.

<sup>27</sup> The Unified Search tool was a one-stop search feature that allowed officers to access several databases. These databases included eCOPS and its predecessor COPS as well as CIPS, RIC1, MANIX, CPIC, and MTO. For greater detail, see Chapter 4.

on the project in conjunction with his other assignments.

All the information Mr. Retchford received about Project Houston came from Detective Constable Loria. She gave him a number of documents from the investigative file, including telephone records, banking records, information from Brunton's computer and chats, and summaries of information relating to the three missing men. He never had access to Project Houston's P Drive.

Mr. Retchford recalls his initial focus being on the cellphone records of Mr. Navaratnam and Mr. Faizi. Detective Constable Loria wanted to know if there was any connection between the two phones or any similarities between their contacts. As I indicate above, his Telephone Toll Analysis report identified no connection between the phones.

After that task was completed, Detective Constable Loria asked Mr. Retchford to see if he could find any other connections between the missing men. He was not asked to review any information relating to Brunton: rather, he focused exclusively on the missing men and whether they might be connected to one another. In Mr. Retchford's view, this limitation made sense: the Brunton / cannibalism angle seemed far-fetched to him.

In April 2013, Mr. Retchford created several analytical charts to set out the known connections that linked the three missing men. All three were known to have attended the Steamworks bathhouse, The Cellar bathhouse, and the Black Eagle bar in Toronto. Mr. MM and Mr. II had relationships with both Mr. Faizi and Mr. Navaratnam. Mr. QQ was Mr. Kayhan's neighbour and had also had a sexual encounter with Mr. Faizi. Finally, Mr. Faizi and Mr. Navaratnam had two email contacts in common: *silverfoxx51@hotmail.com* and *newyorkboy21@yahoo.com*. Both men had used *www.silverdaddies.com* and *www.daddyhunt.com*. Significantly, the chart demonstrated no known connection to Brunton. No one interviewed by the police or otherwise referred to during the investigation had a meaningful connection to all three missing men.

When Mr. Retchford created the analytical linkage charts in April 2013, *silverfoxx51* had not yet been identified as McArthur. Nor had McArthur been connected to Mr. Kayhan.

Mr. Retchford recalls that even after his April 2013 analysis, the investigation seemed to focus heavily on Brunton. Detective Constable Loria went on maternity leave. Mr. Retchford's involvement decreased and no further information was shared with him. In September 2013, he was not told that *silverfoxx51* had been identified as McArthur's username. When, in November 2013, McArthur acknowledged a sexual relationship with Mr. Kayhan, Mr. Retchford was not told. He learned about McArthur's connection



to *silverfoxx51* in 2018 through media reports of McArthur's arrest.

As I explain below, when Project Houston interviewed McArthur in November 2013, no one paid any attention to his meaningful connection to all three missing men. The underuse of the project's own analyst – a systemic flaw I identify in my later findings – represented yet another lost opportunity to connect the dots that were there for investigators to see.

On April 17, 2013, Detective Constable McKenzie and Detective Constable Lavallee interviewed Mr. QQ, who was referenced in Mr. Retchford's analytical chart. He was Mr. Kayhan's neighbour and had also been involved in a sexual encounter with Mr. Faizi. He recognized Mr. Navaratnam from a missing person poster but had never met him.

## **Interview with the Informant in Switzerland**

On April 18, Detective Harris and Police Constable Platte went to Switzerland to interview the confidential informant. The interview transcript shows that the Toronto police said they were investigating allegations of murder, conspiracy to commit murder, kidnapping, and possession of child pornography.

During the interview, the confidential informant told the police that since February 2012, he had been a member of the website "Zambian Meat," a cannibal forum where cannibal fantasies were exchanged. The confidential informant met "John Jacobs" (whose real identity was now known to be Brunton) on the website. Jacobs lived near Toronto and used the username "*chefmate*" on the *zambianmeat.com* website. The confidential informant said that Jacobs did not talk about previous victims but had "experience." He did not say much – just that he lived on a farm and had slaughtered animals. Jacobs did not directly say he had murdered a human being.

The informant and Jacobs discussed how Jacobs would kill the informant by putting a bullet in his head. In April 2012, the informant asked Jacobs if he had experience with human meat. Jacobs said yes, but the informant did not know if this reply represented Jacobs's own experience or something he had read. Jacobs did not talk about how many people he may have murdered, where or how he killed previous victims, or how he met his victims.

When asked what Jacobs said about the person the informant believed to be Mr. Navaratnam, the informant said that Jacobs never mentioned a particular person. The informant concluded that Jacobs was a homosexual, was looking for younger victims, and liked "muscle meat" best.

The informant was also asked why he thought Jacobs's victim was from

the Toronto gay scene. The informant only presumed that if Jacobs were gay, he would need a trick to “lure his victim into a trap.” The informant was also uncertain that the offence being discussed would have taken place between 2009 and 2011.

The informant had come to his own conclusion that Mr. Navaratnam was one of Jacobs’s victims. As he said:

I started to search on Google. I searched for “Toronto man missing.” I found Skanda pretty fast. Then I researched if he is homosexual and how he disappeared, etc. He could be gone or he could be a victim of a crime. He could be a victim which would fit into the profile. There are others but he would fit the profile. His age is a bit high. I think that Skanda could be a victim of a crime due to the fact that he bought a dog shortly before he disappeared. The dog was by himself at his home. If he had committed suicide he would not have bought a dog beforehand. An accident would be possible as well. For example[,] if he would have gone on a day trip he would have left the dog at home. And they did not find a corpse.

This rationale supported the possibility that Mr. Navaratnam had been the victim of foul play, but it provided no support for Brunton’s involvement.

On April 26, Detective Sergeant Idsinga reviewed the transcript of the confidential informant’s interview. He recorded in his notes that it disclosed “no specific link from Brunton to any of our victims.”

By April or May 2013, Detective Sergeant Idsinga was “pretty satisfied” that Brunton was “full of crap” and was merely expressing cannibal fantasies. The Project Houston officers had also found a chat in Brunton’s internet history from 2009 where Brunton arranged to pick up a willing male victim to be killed and eaten. Brunton did not follow through with the plan: he brushed the man off, and later posed online as his own wife to explain his absence.

On April 22, 2013, Inspector Bott emailed Staff Inspector McLane to provide an update about Project Houston:

Investigators traveled to Switzerland to speak to the witness. I am told that nothing earth shattering came from the interview that will allow us to make the link between our target and the missing males. The witness was adamant and indicated that he has been involved in the lifestyle for 10 years and he has only ever called the police twice, and indicated that our target is the “Real Deal.”

There will be another live UC [undercover] play this week after the successful meet in Toronto.

The online UC plays continue.

Investigators are focused [on] having the target commit to an overt act related to his fetish.

Investigative team would like to be in a position to make an arrest by the end of May. The reason for arrest and subsequent charges will depend on the success of the UC plays.

Inspector Bott told the Review that after the trip to Switzerland, Project Houston's focus shifted to getting Brunton off the street while also seeing if the team could substantiate any of the informant's information. Inspector Bott was concerned about the missing men but felt the team did not have any additional leads to investigate. As he put it:

We had no information that there was any criminality involved in any of the missing persons, which left us in a void. We sort of had really no direction. There was nothing to suggest there was criminality except that they all were active in the community and were no longer active in their banking, with family, with friends and had potentially just disappeared.

As I later explain, I disagree with this view.

The Project Houston officers continued to work with the FBI and Australian authorities to attempt to locate a missing Australian youth they believed might be part of the cannibal ring. They also continued to review Brunton's extracted chat messages.

### **Owner of *newyorkboy21@yahoo.com* Identified**

On April 22, Detective Constable Rughoo obtained and reviewed the results of the subpoena he had submitted on February 25, 2013, for *newyorkboy21@yahoo.com*. The email address was associated with Mr. PP. As I indicate above, according to Mr. Faizi's telephone records, Mr. Faizi had also called Mr. PP on December 10, 2010, a few weeks before he disappeared. Mr. PP had lied to police by saying he did not know either Mr. Navaratnam or Mr. Faizi. The police also noted that Mr. PP's previous address was close to where Mr. Faizi's car had been found.

Interest in Mr. PP increased. Detective Sergeant Idsinga assigned Detective Constable Loria to do a complete background workup on Mr. PP. On April 24, Detective Harris applied for visual and photographic surveillance of Mr. PP, identifying him as a possible "person of interest" in the murders of the two missing men from 2010. The next day, she submitted an official request for a "lifestyle" report on Mr. PP. These reports are prepared by having a

plainclothes team of five or six officers follow a person of interest, taking photographs, examining patterns of behaviour, and generating a report about the person's lifestyle.

I observe that Project Houston officers never requested or completed a similar background workup on McArthur before or after his November 11, 2013, interview. Detective Harris was unable to explain why one was not done.

### **Investigation of Email Addresses, but Not *silverfoxx51@hotmail.com***

On April 24, 2013, Detective Constable Loria emailed Detective Harris to advise her that Mr. Faizi had last sent an email to *XX@yahoo.com*.<sup>28</sup> As I state earlier, Detective Constable Loria also noted that *silverfoxx51@hotmail.com* was a connection between Mr. Faizi and Mr. Navaratnam. She asked Detective Harris to include the *silverfoxx51@hotmail.com* address in an MLAT request.

The next day, on April 25, Detective Harris contacted the Crown Law Office<sup>29</sup> regarding an MLAT request to the United States for several email addresses, including *XX@yahoo.com* and *newyorkboy21@yahoo.com*. The *silverfoxx51@hotmail.com* address was not included in this list. On April 26, Detective Harris emailed Microsoft to request that it preserve several email addresses in anticipation of an MLAT request. The requested emails included *silverfoxx51@hotmail.com*. Detective Harris also emailed Yahoo to request that it preserve *XX@yahoo.com* and *newyorkboy21@yahoo.com*.

There is no evidence in the Project Houston file, however, that an MLAT request pertaining to *silverfoxx51@hotmail.com* was ever made. If it was, there is no evidence that it resulted in obtaining the desired information. There is no record in the file that anybody noticed the omission. Some of Detective Harris's notes are no longer available, though they should have been retained in the file as required by provincial adequacy standards. In any event, these are precisely the types of tasks or actions that should be documented, listed on PowerCase, and followed up on in a timely way if not completed. The connection between *silverfoxx51@hotmail.com* and McArthur was not discovered until September 2013, about five months later. And that connection was established without resort to an MLAT request.

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<sup>28</sup> *XX@yahoo.com* is an alias. The actual email address has been omitted from this Report.

<sup>29</sup> The Crown Law Office—Criminal at the Ontario Ministry of the Attorney General.

## Arrest of Orfanogiannis

On April 25, Detective Constable Rughoo went to Orfanogiannis's home with members of the Peel Regional Police Special Victims Unit. The Peel police arrested Orfanogiannis on child pornography and conspiracy to commit sexual assault charges.

## Planned Arrest of Brunton

Through April 2013, the Project Houston team continued to monitor Brunton online. On April 28, Brunton responded to a message from the undercover officer, arranging to meet at Pearson International Airport. The undercover officer posed as a willing cannibalism victim for Brunton. The Project Houston team also continued to work with the FBI and with Australian and New Zealand police, attempting to set up an interview with one of Brunton's associates.

On April 30, Detective Sergeant Idsinga emailed Inspector Bott and Staff Inspector McLane to provide an update on Project Houston:

As you are aware, the online undercover operation is progressing well, and we are now anticipating an arrest date of May 11th, 2013 of Brunton.

There are numerous charges that are going to be laid against Brunton, regardless of the outcome of the undercover operation. Should the operation succeed, these charges will be laid on May 11th. Should the operation not succeed, it is proposed that charges be laid and warrants executed on May 13th.

The email outlined the charges to be laid against Brunton (including various child pornography offences)<sup>30</sup> pertaining to two young victims, one in Colorado and one in California. Detective Sergeant Idsinga anticipated that, with the FBI's assistance, the project's investigators would interview these victims in the United States. The costs for the trips are outlined in the same email. (The Peterborough Police Service agreed to pay one-third of these costs.) Detective Constable Rughoo ultimately went to Colorado, and Detective Constable Lavalley to California.

On May 1, 2013, Detective Harris distributed an email to the effect that

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<sup>30</sup> I note that several charges were under customs and immigration legislation. These seemingly fall within the jurisdiction of Canada Border Services, though the project's files do not reflect any involvement by the Canada Border Services Agency.

on May 11, Project Houston would be “taken down” and Brunton arrested.

On May 7, a Department of Homeland Security investigator in the United States told Detective Constable Rughoo they had made an arrest in Boston with regard to a cannibal ring focused on sexually assaulting and eating children. Homeland Security had identified several networks and would disseminate the information. Brunton had been in contact with persons of interest who were connected to Boston.

On May 8, Detective Sergeant Richmond emailed the 51 Division Detective Office and the members of Project Houston to advise that Project Houston would soon be concluding. A press conference was tentatively scheduled for May 13, presumably to follow Brunton’s arrest, and a telephone tip line would be set up to receive information from the public.

On the same date, Superintendent Jason Tanouye<sup>31</sup> emailed Detective Harris to advise that the investigative fund at 51 Division had been exhausted. Eighty percent of the fund had been spent on Project Houston. Superintendent Tanouye stated that no further investigation expenditures would come from this account.

On May 9, the Project Houston team obtained search warrants for Brunton’s home and vehicles. They also got a warrant for a “limiter” device<sup>32</sup> for Brunton’s car. Toronto officers met with the Peterborough police to discuss Brunton’s anticipated takedown. The undercover officer had lunch with Brunton in Peterborough. Officers continued to monitor Brunton and installed the limiter device onto his car.

The supporting documents for the warrants reflected that Detective Constable Coffey had identified two email addresses in common between Mr. Navaratnam and Mr. Faizi: *newyorkboy21@yahoo.com* and *silverfoxx51@hotmail.com*. The documents also reflected that the *newyorkboy21@yahoo.com* email address belonged to Mr. PP, who had earlier told police he did not know either Mr. Navaratnam or Mr. Faizi. A judicial production order was still being sought for Mr. PP’s phone records to identify any further possible links between Mr. PP and the missing parties.

In other words, Project Houston was ostensibly winding down without having identified the owner of *silverfoxx51@hotmail.com* and without solving the disappearances of the three missing men.

By May 11, an undercover officer had been conversing online with Brunton for two months – a different officer from those who had met with

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<sup>31</sup> Superintendent Tanouye has since retired.

<sup>32</sup> A limiter device allows the police to remotely slow down a vehicle. This device was to be installed to provide some measure of control because it was anticipated that the undercover officer would be in Brunton’s vehicle.

Brunton earlier. This undercover officer had offered himself up as a willing victim to be killed and eaten. He and Brunton planned to meet at Pearson International Airport that day. Twenty-one officers from Toronto and Peterborough were mobilized to support the operation. Inspector Bott and Detective Sergeant Idsinga were to direct it. The Peterborough police were to arrest Brunton if he returned to his Peterborough home after going to the airport. He would then be turned over to 51 Division officers for transport to Toronto. The Toronto officers would execute the search warrant for Brunton's home. Detective Sergeant Idsinga told the Review that the plan to take down Brunton was unprecedented. The logistics of the operation were massive.

However, Brunton did not show up. Project Houston surveilled Brunton drive in the direction of the airport, but then, not far from Peterborough, he pulled over, did some shopping, and went home. He later emailed the undercover officer to say he had suffered a heart attack and was in the hospital.

Project Houston decided to proceed on the child pornography and other charges described earlier against Brunton. On May 13, he was arrested, and search warrants were executed on his house and car. After his arrest, Brunton acknowledged he might have met Mr. Navaratnam 15 years earlier.

Project Houston never found any evidence linking Brunton to Mr. Navaratnam, Mr. Faizi, or Mr. Kayhan.

### **After Brunton's Arrest**

Throughout mid to late May 2013, members of Project Houston contacted individuals in Germany who had chatted with Brunton online. They extracted and reviewed the contents of Brunton's cellphone. They found many photos of young men changing in a hockey locker room. They cross-referenced the usernames Brunton had contacted online with information provided by US and UK agencies.

The officers continued to take some investigative steps in Toronto. They went to Remington's Men of Steel strip club and were told that Mr. Navaratnam had been there shortly before he went missing. They interviewed employees of Remington's and Zipperz as well as patrons of the Black Eagle. Nothing came of the interviews.

The Project Houston team got smaller. Detective Ogg left the team within days of Brunton's arrest. By that point, Detective Constable Loria had been acting as the primary file coordinator for many months.

On May 21, Detective Constable Loria contacted Peel Detective Sergeant Cowan. He approved the release of a media bulletin about all three

missing men and agreed to have a Peel officer contact Mr. Faizi's family to inform them of the multiple missing person cases that might be related. Detective Constable Loria told him that Project Houston remained ongoing, though its length depended on how much information the team would now receive from the public. If it appeared that the case involved a serial killer, the team would be moved from 51 Division to the Homicide Unit.

Around May 24, Detective Constable Loria left the Project Houston team to begin her maternity leave. The investigation no longer had a file coordinator.

On May 31, Detective Constable McKenzie attended training for XIRAF – a new software for accessing evidence from computers. On June 6, Staff Inspector McLane emailed the Homicide Unit to confirm the installation of XIRAF on several computers at Homicide. He explained that XIRAF allowed the focus of computer investigation to shift back to the primary police investigator, rather than a forensic technology team, to use the investigator's knowledge more efficiently. The XIRAF program allowed the investigator to search the computer through keywords. By using the program, the investigator could read emails, view photo and chat logs, and create reports. XIRAF could also aggregate extracted searches from multiple devices to allow investigators to search content across those devices. Staff Inspector McLane said that Project Houston was being used as a test case for the XIRAF program.

## **Project Houston No Longer a Homicide Investigation**

On June 5, Police Constable Platte emailed Detective Harris an update, outlining the status of the investigations into the missing men. The update noted that interviews were ongoing. Detective Harris forwarded the update to Detective Sergeant Richmond. She advised him that she would receive any tips that came in through the tip line.

Detective Sergeant Idsinga told the Review that as of June 6, 2013, the Project Houston officers had determined that Brunton was not linked to the missing men. Although they were still concerned about the missing men, the police no longer classified the investigation into their disappearances as a homicide investigation. As a result, Detective Sergeant Idsinga would no longer be involved. Carriage of the investigation was transferred back to 51 Division, and the Homicide officers would return to their unit.

Inspector Bott's involvement with Project Houston ended when Detective Sergeant Idsinga left the investigation. He exchanged occasional emails with Detective Harris about the project, but his focus shifted to the Homicide Unit's other ongoing work. Inspector Bott thought there was no



evidence to suggest that the missing men were the victims of a homicide or that foul play was involved. Other than the fact that they had been missing for a long time, there was no evidence the missing men were even dead. He said the Homicide officers would have remained at 51 Division as part of the project team if there had been evidence of foul play. Without this evidence, the cases reverted to missing person investigations. On June 6, after consultation with the Peel officers, the Service issued the media release about the disappearance of the three men. Detective Sergeant Idsinga's notes described it as the project's final media release.

The media release said that investigators "researched the missing persons databases for missing persons who were similar to Skandaraj "Skanda" Navaratnam, specifically individuals with similar ethnicity, similar lifestyle<sup>33</sup> and associated to the area of Church Street and Wellesley Street." Mr. Faizi and Mr. Kayhan "fit the same profile" and "there are a number of similarities between the three men." Constable Tony Valla of Corporate Communications spoke to the media. He said that while the disappearances were "highly unusual," each was still considered a missing person case and would remain so unless evidence was found to suggest something more sinister. The police handed out missing person flyers in the Church and Wellesley streets area.

On June 8, *Xtra* published an article about the missing men, quoting Detective Harris:

Toronto Police Service investigators say the three missing-persons cases are connected through "similar ethnicities." Detective Deb Harris, who is leading the investigation, says the three men were not all openly gay. "They frequented the Church and Wellesley area and lived similar lifestyles."

...

Harris says the three missing men have probably never met, but she can't say for sure. "There is nothing that links the three men to each other."

...

Harris says police have done an extensive background search on Navaratnam, including accessing "numerous judicial authorizations" to try to determine his whereabouts, such as immigration, but have discovered no leads from that.

"The key connection for us is that all three disappeared from the Church and Wellesley area, they have family and friends who are concerned about them, and everything that we've done from the onset, there is nothing that tells us where these three people are," she says.

She says it's unusual for missing-persons cases to be outstanding for

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<sup>33</sup> In Chapter 8, I comment on the "lifestyle" characterization.

this long. “We have also been looking at missing-person cases across Canada.”

...

Some media outlets have been reporting that police are investigating a connection to the recent arrest of a man in Peterborough who is facing dozens of charges in child porn. But Harris says that is not accurate.

“I can certainly tell you that I have found no links between [Peterborough’s] Alex Brunton<sup>34</sup> and these three missing males,” she says. “Peterborough police are not working with us in regards to this missing-persons case.”

On June 7, Mr. RR called the Service’s tip line. He indicated that he had known Mr. Kayhan for about eight or nine years. He last spoke to him by telephone on the Saturday of the 2012 Pride Parade. Mr. RR added that Mr. Kayhan frequented the Black Eagle bar as well as Zipperz and bathhouses. Mr. RR described Mr. Kayhan as someone who bonded quickly with anyone who spoke Farsi, and he preferred slightly older men. The content of Mr. RR’s tip, and his subsequent interview with the Service, are significant, given his contact with the media after McArthur’s arrest in 2018.

On June 12, Detective Constable McKenzie and Police Constable Platte interviewed Mr. RR. The interview was recorded. Mr. RR provided the following additional information to the police. He had dated Mr. Kayhan for a while. Mr. Kayhan was depressed and spoke often of suicide: he had to hide his sexuality from his family and felt isolated from his community. When Mr. RR first met him, Mr. Kayhan had a loving relationship with a partner (Mr. SS, who had since died), but he could not tell his family about it.

The police asked Mr. RR if Mr. Kayhan ever talked about a friend who was a florist. (Although the project’s records do not disclose why this question was asked, and the questioner could not recall, it appears it may have been prompted by information the police received in January 2013 that the Faizi family’s private investigator was looking for Mr. Kayhan’s friend who was a florist / gardener.) According to Mr. RR, the few friends Mr. Kayhan had included Mr. RR; Mr. SS; a friend who had given Mr. Kayhan an air conditioner and with whom Mr. Kayhan sometimes went camping; and someone named Bruce. The police showed Mr. RR a photo of Brunton. Mr. RR indicated that Brunton might be the friend who had given Mr. Kayhan the air conditioner, but that he believed the man’s name was Paul.

Mr. RR did not know Bruce’s last name. He said Bruce was on the internet. When Mr. Kayhan went missing, Mr. RR tried to find Bruce online.

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<sup>34</sup> Brunton is referred to both as James Brunton and Alex Brunton. His full name is James Alex Brunton.

Mr. RR believed that Bruce might know the identity of the person with whom Mr. Kayhan went camping.

This interview marks the first time the name “Bruce” came up in the Project Houston investigation, yet the officers appear not to have made any efforts to identify who he was. Similarly, they had an opportunity months earlier to identify McArthur as *silverfoxtoronto* and *silverfoxx51*.

Detective Constable McKenzie told the Review that Mr. RR was going to try to reach out to Bruce to tell him to contact the police, but Bruce never did. In effect, the police placed the onus on Mr. RR to get Bruce to contact them. There is no evidence that the police followed up on this lead.

Well after McArthur was charged, Mr. RR participated in the CBC Podcast “Uncover: The Village.” In the first episode, Mr. RR told the CBC that McArthur and Mr. Kayhan were in a sexual relationship. The last time Mr. RR saw Mr. Kayhan, he also saw McArthur. Mr. RR and Mr. Kayhan were on a date at Mr. Kayhan’s apartment, and McArthur showed up. McArthur was upset that Mr. RR was there, and he left.

Mr. RR did not tell the police about this incident when he was interviewed on June 12, 2013. Following McArthur’s eventual arrest in 2018, the police interviewed Mr. RR again. He told the police he had participated in a threesome with Mr. Kayhan and McArthur. He also told the police he had called the tip line to provide McArthur’s name.

Mr. RR told the Review that on January 28, 2016, he had messaged McArthur on the Scruff dating app to say hello. McArthur did not respond. Mr. RR believed he called the tip line sometime after he sent the message to McArthur. He may have talked to an officer or he may have left a voicemail. He could not recall.

The Review has not found any evidence of this tip. However, not all the tips from Project Houston have been located. No log or register was kept of the tips received in the P Drive or in PowerCase.<sup>35</sup> The *Major Case Management Manual (MCM Manual)* requires that a register of such tips be kept in a specific file for that purpose.

Mr. RR also told the CBC that when he mentioned the name “Bruce” to the police during the June 12, 2013, interview, the police appeared to be familiar with the name and asked if “Bruce” worked in landscaping or as a gardener, or if he worked outside or mowed lawns. This recollection was

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<sup>35</sup> The Review examined the folder, Tip Reports and Register, contained in the P Drive, but it contained no tips. Another file, Tips for Inquiry, contained a few.

inaccurate, although the inaccuracy was understandable. The police had asked him whether Mr. Kayhan had a friend who was a florist, but he had not connected this friend to the name “Bruce” at that point.

Mr. RR made various inconsistent statements. I am satisfied that he never intended to mislead the police but conflated what he told the police at times with what he subsequently heard or what he knew that he did not share with police. Clarifying this point is important only because one narrative in the public discourse is that the police were specifically warned about McArthur, yet did nothing about it. Although I identify serious flaws in how the police squandered opportunities to focus on McArthur, the evidence does not support a finding that the police ignored specific warnings about him.

Throughout June 2013, the Project Houston investigators continued to interview friends and acquaintances of the missing men. They also continued to investigate and interview Brunton’s contacts and reviewed the material from his computers. They kept on this tack even though, by then, the police did not think Brunton was connected to the disappearances of the three men.

## **Project Houston Reduced to Three Investigators**

On June 10, 2013, in an email Detective Sergeant Richmond sent to Detective Harris and various other officers, he indicated that, because Detective Harris was still completing Project Houston, her Criminal Investigations Branch (CIB) platoon at 51 Division would be without a detective for some time. Then, on June 28, he stated, again in an email, that Detective Harris would simultaneously cover CIB while completing her work on Project Houston.

On June 18, Detective Harris emailed Inspector Gary Meissner and Detective Sergeant Richmond to say that Project Houston was being downsized to a smaller room at 51 Division. On June 24, in an email to Inspector Bott, she indicated that only three officers remained on Project Houston: Detective Constable McKenzie, Police Constable Platte, and herself.

Project Houston no longer had a major case manager or a file coordinator. As I explain more fully below, it was not being run in any meaningful way according to MCM procedures.

In July 2013, the remaining officers obtained a judicial production order for Brunton’s credit card account. They also followed up on Crime Stoppers tips and sent the composite sketches of the two men who had been seen leaving the bar with Mr. Navaratnam for facial recognition analysis.

By July 31, Police Constable Platte and Detective Constable McKenzie finished their review of the approximately three hundred CDs and DVDs seized from Brunton’s home. They found more child pornography and videos

taken in a hockey locker room of naked young men. Detective Constable McKenzie found one photo of a man whose skin tone resembled Mr. Navaratnam's. He found another photo of a man with a beard who looked "similar" to Mr. Kayhan.

Through August 2013, they continued reviewing Brunton's computer files and interviewed friends and acquaintances of the missing men. The police identified one of the men in Mr. FF's composite sketch as Mr. TT.

## **Investigation of Luka Magnotta**

In late August 2013, the Project Houston officers began looking into Luka Magnotta, already a notorious killer, to determine if he was involved in the missing men's disappearances or was connected to Brunton.<sup>36</sup>

On September 12, Detective Harris emailed Detective Sergeant Richmond to provide a working copy of a draft warrant for the investigation into Magnotta. The draft of the supporting affidavit for this warrant included reference to an associate of Brunton named "Nathan," who went to Brunton's farm with him. Magnotta sometimes used the alias Nathan. The draft also noted that Detective Constable Coffey had identified one of Magnotta's online usernames: *canadianluka*. This username appeared on various gay dating sites and was linked to posts seeking Middle Eastern men. The appendix to the draft affidavit outlined several circumstantial links between Brunton and Magnotta, including that, as a teenager, Magnotta had lived close to Brunton in Peterborough.

On September 13, Detective Harris emailed the draft to Detective Constable Coffey. She asked him to compare the names, usernames, and websites in the document with those in Mr. Navaratnam's and Magnotta's computers as well as with usernames and passwords for Brunton.

## **McArthur Identified by Name for the First Time**

On September 14, Detective Constable McKenzie's notes read: "production order for Microsoft, *silverfoxx51@hotmail.com*, Faizi and Skanda connection." However, it does not appear that a judicial production order was applied for or obtained for the email address, nor would such an application

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<sup>36</sup> In 2012, Luka Magnotta murdered and dismembered a man in Montreal, Quebec. Mr. Magnotta posted a video depicting the murder online and fled the country. The case attracted significant national and international attention. Mr. Magnotta was arrested in June 2012 and was convicted of first-degree murder in December 2014.

make sense. Months earlier, Detective Constable Rughoo had noted that an MLAT request would be required to access the American Hotmail account.

The next day, September 15, Detective Constable McKenzie, using XIRAF, found McArthur's telephone number in Mr. Navaratnam's extracted computer files by doing a keyword search for *silverfoxx51@hotmail.com*. The telephone number was associated with the email address in Mr. Navaratnam's deleted computer files.

Detective Constable McKenzie told the Review that he was able to find the telephone number because he was searching through the imaged data copied from Mr. Navaratnam's computer. Back in February 2012, Detective Constable Loria, in contrast, did not have the imaged data: it appears she was working from a Word document or Excel spreadsheet that Detective Constable Coffey had prepared. The evidence indicates, however, that Detective Constable Coffey, if asked, could have extracted McArthur's telephone number back in February 2013.

Having found McArthur's telephone number, Detective Constable McKenzie performed a Unified Search on it – a Toronto police database search (see Chapter 4). By inputting the telephone number, he was able to check whether the number had come up in any earlier investigations. An officer had recorded McArthur's telephone number in 2005, when McArthur was stopped while driving without a valid insurance card.

Detective Constable McKenzie's memobook notes from September 15 reflect that "United search of phone # comes back to Bruce McArthur." He also noted that the website *silverdaddies.com* listed *silverfoxx51* as "Bruce" with the email address *silverfoxx51@hotmail.com*. And Mr. Navaratnam's Facebook page listed McArthur as a friend, with a similar photo to the one used on *www.silverdaddies.com*.

## **Mr. PP Interviewed a Second Time**

On September 16, 2013, the police interviewed Mr. PP a second time: they had discovered through Mr. Faizi's phone records that Mr. PP exchanged 41 text messages with Mr. Faizi before Mr. Faizi disappeared and had spoken with him on the telephone. This information contradicted his earlier claim that he did not know Mr. Faizi. Mr. PP explained he had met Mr. Faizi on *www.bearforest.com*, a dating site, and they exchanged text messages about the printing company Mr. Faizi worked for. The police never found a link between Mr. PP and Brunton.

On September 23, Detective Harris obtained a general warrant<sup>37</sup> for Magnotta. On October 3, Detective Harris, Detective Constable McKenzie, Detective Constable Coffey, and a detective from Montreal executed a warrant in Montreal on a computer seized from Magnotta. Detective Constable Coffey discovered that Magnotta was a member of *www.daddyhunt.com*, a dating website on which Mr. Navaratnam and Mr. Faizi had also been members. He attempted to find any email link between Magnotta and the missing men by cross-referencing Magnotta's email address and online usernames with the contents of Mr. Navaratnam's and Mr. Faizi's computers.

Through October 2013, the police continued to investigate the possibility of a link between Magnotta and the missing men and/or Brunton. Among other investigative steps, they again reviewed the photos obtained from Brunton's computer to compare them against the content of Magnotta's computer.

On October 4, Peel Detective Sergeant Cowan emailed Detective Harris to ask for an update on Project Houston. Detective Harris replied the same day, advising there were no further updates on the three missing men. She said that Project Houston was working on an "angle" with the Montreal police but did not disclose what it was.

On October 17, Detective Constable McKenzie found five photographs of a teenaged boy on Magnotta's computer. The boy was clothed, but appeared to Detective Constable McKenzie to be the type of male in whom Brunton had been interested. The police reviewed Brunton's computer again to see if images of the same boy were in the files. The young male Brunton was ostensibly "interested in" did not fit the profile of the three missing men.

## **McArthur Interviewed**

On November 7, 2013, Detective Constable McKenzie scheduled an interview with McArthur for the following week. The Project Houston daily log for November 7 reflected that "Bruce knew Skanda and Basir from *Silverdaddies.com*." It is unclear whether Detective Constable McKenzie learned of this connection from McArthur while scheduling the interview or if it was intended to convey that the police knew they all had profiles on this website. We know that before the interview, Project Houston had learned that McArthur's username, *silverfoxx51*, was on Mr. Faizi's notepad.

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<sup>37</sup> A general warrant is a judicial authorization for the exercise of powers other than those associated with a conventional warrant to search property; for example, permitting covert entry into the homes of suspects or installing a video surveillance camera in a hotel room.

In preparation for the interview, Detective Constable McKenzie assembled some photographs to show McArthur, including those of the missing men, Brunton, and Brunton's associate(s). He did not have an interview plan or questions prepared. Nor did he do a Canadian Police Information Centre (CPIC) database search relating to McArthur – one that would have revealed McArthur's 2003 convictions. As well, at the time, the Service had just switched over to using the Versadex record management system from the previous in-house occurrence database called "eCOPS" A component of eCOPS was the Unified Search tool, which allowed access to eCOPS's predecessor, CIPS. Versadex replaced the Unified Search tool with a Legacy Search tool (described in greater detail in Chapter 4). An officer, seeing McArthur's 2003 convictions on CPIC, could obtain the underlying synopsis of McArthur's 2001 pipe attack through the Unified Search or the Legacy Search. By using the Legacy Search, the Project Prism officers discovered all this information in 2017, once McArthur became a person of interest (see Chapter 7).

Detective Constable McKenzie told the Review he thought he did a Unified Search. However, there is no reference whatsoever in his memobook notes to either the 2003 convictions or the underlying facts. Nor did he mention them during his interview of McArthur or in any post-interview documents.

I conclude that Detective Constable McKenzie is mistaken in his recollection of his preparation for the interview with McArthur. He did not know that McArthur had been convicted in 2003 for an unprovoked attack on a gay man in the Village or that he had been prohibited for three years from entering into an area that included an address next door to where Mr. Kayhan lived.

I also note that, in preparing for his interview of McArthur, Detective Constable McKenzie did not search Project Houston's files to see whether "Bruce" or "Bruce McArthur" or a "florist, gardener, or landscaper" had been referred to in earlier interviews. The project was not using PowerCase in the way it was intended, making it impossible to use its search functions to find out such information. However, there was search capacity, although less extensive, in the P Drive.

Furthermore, before the interview, Detective Constable McKenzie failed to do any background workup of any kind on McArthur. Detective Sergeant Idsinga told the Review that a full background workup should be done for every witness in a homicide investigation, either before or after the witness is interviewed. This preparation was not done for McArthur. Nor was it done for many of the other individuals Project Houston officers interviewed. As I indicate earlier, when Detective Sergeant Idsinga was still the major case



manager, he ordered a complete background workup, and Detective Harris requested a lifestyle report (involving a surveillance team), on Mr. PP, who had a connection to two of the missing men and had lied about that connection. Detective Sergeant Idsinga told the Review that, if he had remained involved in the investigation in November 2013, a background check on McArthur would “absolutely” have been done.

I note that Detective Constable McKenzie was, at the time, a relatively junior officer. As he told the Review, he did what he was told to do. Had he been asked to do a background workup on McArthur, he would have done so. It appears that a Homicide investigator may well have known to do this check independently of any direction. However, by the time McArthur was interviewed, no Homicide investigators were still involved with Project Houston. As I say earlier, the Service no longer regarded this project as a homicide investigation.

On November 13, Detective Constable McKenzie interviewed McArthur. Another officer took notes. The entire interview lasted about 16 minutes.

It would be unfair to base my description or evaluation of how this interview was conducted on what we now know about McArthur. Detective Constable McKenzie was eager to solve the disappearances of the missing men and did some valuable work during Project Houston and later during Project Prism. He was the officer who discovered the identity behind the username *silverfoxx51*. However, even without the benefit of hindsight, I find that the interview was inadequately prepared for and conducted. It is important for this Report to identify the serious deficiencies in this interview, and the opportunity lost as a result.

- Detective Constable McKenzie told McArthur he was investigating the disappearance of Mr. Navaratnam. He was, in fact, investigating the disappearances of all three men.
- When Detective Constable McKenzie produced a photograph of Mr. Faizi, McArthur denied knowing him. Detective Constable McKenzie never asked him about the reference to *silverfoxx51* on Mr. Faizi’s notepad or the information contained in the daily log that McArthur knew Mr. Faizi through the *silverdaddies.com* website. Detective Constable McKenzie appeared to overlook that evidence.
- Although McArthur acknowledged he had a sexual relationship with Mr. Kayhan, Detective Constable McKenzie asked no questions about the duration and nature of that relationship or other things that McArthur

might have known as a result of it. As one example, he did not ask about Mr. RR's comment that Mr. Kayhan had a friend named "Bruce" who might know with whom he went camping. Detective Constable McKenzie acknowledged he had not made the connection between the "Bruce" in Mr. RR's interview and McArthur.

- McArthur indicated he had a non-sexual relationship with Mr. Navaratnam. Detective Constable McKenzie asked somewhat superficial questions about that relationship as well. He did not explore the nature of the relationship, given the known connection between them through a dating website. Although he asked McArthur about his whereabouts on certain dates years earlier, such questions are not useful, given the passage of time and the absence of any discussion about contemporaneous aids McArthur might have (emails, diaries, etc.) to enable him to answer the questions.
- Detective Constable McKenzie did not explore the possible connection between McArthur and Mr. Navaratnam based on McArthur's work as a gardener / landscaper. The project had collected evidence that Mr. Navaratnam was involved or interested in landscaping. The police learned nothing during this interview about where McArthur worked, the proximity of his residence or work locations to other important locations, or even the nature of his landscaping work.
- For the reasons already given, McArthur was not asked about his previous convictions for an unprovoked attack with a pipe on a man in the Village or the terms of his sentence, which prohibited him from entering an area that included the Village.

Despite the flaws in the interview, the police now possessed evidence that McArthur had a potentially meaningful connection to all three of the missing men. However, this important fact went unnoticed: Detective Constable McKenzie's summary of the interview failed to include it. Moreover, although fundamental to major case management, no supervisor appeared to review the interview or instruct any follow-up action because of it. Neither the interview nor its summary was entered in PowerCase or even recorded in Versadex.<sup>38</sup> I explain in Chapter 7 the significance of these omissions. For example, an officer who investigated McArthur in 2016 for choking a man did not know that McArthur had been interviewed during Project Houston. Nor would Project Prism officers necessarily have discovered

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<sup>38</sup> The summary of the interview was contained in the P Drive, although as already indicated, the summary failed to refer to the connection McArthur had to all three of the missing men.

that McArthur had been interviewed during Project Houston if Detective Constable McKenzie hadn't remembered it.

One investigator summarized – accurately, in my view – the implications of the information obtained during the McArthur interview:

He [McArthur] would have been the one and only person who was linked to all three disappearances at that point from all the information we had, and we went through so much information. We finally found one person who was connected to all three of them. That would be a huge red flag as to who this person might be. And I would have conducted some searches for sure on his background. And we would have been able to see that in [2003] that he was involved and convicted ... for a violent crime. So for an investigator he looks like a pretty good person to approach and not only just interview but maybe do some follow up on or some more research regarding him. He was connected to all three guys. He was the only one who was connected to all three guys that we could get.

He would be on the top of the list of finding out what more is he capable of and what he does. The prime suspect, if you will.

## **November and December 2013**

On November 7, 2013, the MLAT request for Mr. Navaratnam's email account was completed and submitted to the Crown attorney's office for review. It must be remembered that it was now three years since Mr. Navaratnam had been reported missing.

Throughout November 2013, the police continued to search for links between Magnotta, Brunton, and the missing men. They canvassed homes in the neighbourhood of 26 Moore Avenue, where Mr. Faizi's car had been found. They left posters about Mr. Faizi's disappearance with the staff at a church located in an area marked on a map on his computer. They also investigated what was described as a "sex club" that Magnotta and Mr. UU, a Brunton associate, had possibly frequented.

On November 29, 18 days after his interview with the police, McArthur purchased and registered a 2001 silver Dodge Caravan.

On the same day, Detective Constable McKenzie had a meeting with a Crown attorney about the MLAT request, where they agreed they did not have sufficient information to link Mr. Navaratnam to either Magnotta or Mr. UU. They decided to focus first on obtaining Magnotta's and Mr. UU's email content, before attempting to obtain the content for Mr. Navaratnam. Through December 2013, the police continued searching for a link to Magnotta.

In January 2014, the officers prepared an application for a judicial production order for Mr. Faizi's health records from the Sherbourne Health Centre. Detective Constable McKenzie revisited the area where Mr. Faizi's car had been found in 2012. He followed the route set out in the Google maps found on Mr. Faizi's computer and formulated a search area with the Service's Mounted Unit.

Detective Constable McKenzie and Detective Constable Coffey interviewed Mr. Faizi's wife. She had not heard from her husband since his disappearance and believed he may have started a new life elsewhere. On January 7, 2014, Detective Constable McKenzie interviewed Mr. Faizi's brother. He told the police that Mr. Faizi was a happy person who wanted to leave his marriage to pursue his gay lifestyle but had been planning to wait until his daughters were adults.

In addition, Detective Constable McKenzie contacted the webmaster at *www.bearforest.com* about Mr. Faizi's account. The webmaster advised that he was concerned for the safety of the missing men and agreed to compile the messages on file. There were approximately five thousand messages in Mr. Faizi's account. Detective Constable McKenzie combed the messages to attempt to see who Mr. Faizi may have been in contact with before he went missing.

The Service activated a Facebook page for the missing men and also placed more posters in the Village.

On January 8, Detective Harris emailed Detective Brad Hoover of the Service's Major Case Management Unit about PowerCase. She advised him that although Project Houston had once had a PowerCase clerk, she had not received any PowerCase linkage reports for some time and assumed that the project no longer had anyone assisting it. Indeed, Project Houston had not had a file coordinator or a PowerCase indexer since May 2013.

Superintendent Elizabeth Byrnes at 51 Division suggested having one or two of the three officers still assigned to Project Houston trained on PowerCase so they could do the uploading themselves. She also indicated that she wanted to give the Project Houston officers access to the search function in PowerCase so that they could conduct Freetext searches.<sup>39</sup>

On January 16, arrangements were made for Detective Hoover to train the investigators on certain aspects of the PowerCase program. Ultimately, PowerCase was installed on several of the project's computers.

The investigators contacted CIBC Corporate Security to inquire about a safety deposit box belonging to Magnotta that had been opened by authorities

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<sup>39</sup> A Freetext search functions as a simple word search and find. See Chapter 4.

in July 2012. For the next several weeks, until March 2014, the police continued to investigate any potential links to Magnotta. None were discovered.

In mid-January 2014, the Project Houston officers contacted many individuals for interviews relating to the disappearance of Mr. Navaratnam, including a security guard and other employees who were at Zipperz the night he went missing as well as friends who frequented the Black Eagle.

On January 21, Detective Constable McKenzie met with Police Constable Danielle Bottineau, the LGBTQ2S+ liaison officer, to discuss how to get information about the missing men to that community. She said she would reach out to community leaders and would also ask contacts she had in the Vancouver, Montreal, and Ottawa police forces to distribute the missing person posters in those cities as well.

On January 28, Detective Sergeant Idsinga emailed Inspector Bott, Staff Superintendent McLane, and Detective Harris to say he had some great news from the Project Houston “windfall.” Orfanogiannis, whose communications were intercepted by the FBI when investigating some of the Project Houston targets, had been arrested for plotting to drug and sexually assault a woman. The arrest followed an investigation conducted co-operatively among the FBI, the Service, and the Peel police. Detective Sergeant Idsinga noted it was “a bit of a distraction from Brunton, but well worth the effort.”

In February 2014, Brunton was sentenced to a suspended sentence and probation on the child pornography charges, based on his 10 months of pre-trial custody that were equivalent to a 15-month sentence.<sup>40</sup>

The officers continued their attempts to locate Brunton’s cabin. On February 20, the police went to a cabin close to Mr. AA’s cabin, where Mr. Navaratnam spent time before his disappearance. The cabin belonged to a man, Mr. VV, whose brother had helped Brunton with his taxes in 2013. Sadly, Mr. VV had died in a house fire several days before the police arrived. On February 24, the police interviewed Mr. VV’s brother. He did not recognize Mr. Navaratnam’s photo but did recognize Brunton. He stated that although he did Brunton’s taxes, Brunton had never mentioned hunting or having a cabin property.

In March 2014, the Project Houston team continued to try to locate Brunton’s cabin. They located and interviewed more friends and acquaintances of the missing men and attempted to identify an individual named “Richard”

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<sup>40</sup> Convicted individuals are often given enhanced credit for time spent in custody awaiting trial, based on pre-trial conditions in custody and the fact that such time is not counted for purposes of parole or early release eligibility.

from Maine whose name had come up in another interview. They also attempted to locate Mr. TT and Mr. WW (the two individuals identified in the police sketches prepared by Mr. FF).

On March 18, Detective Constable McKenzie interviewed one of Mr. Kayhan's brothers for the first time. Mr. Kayhan's brother told him that Mr. Kayhan was a happy man who loved his pet birds and would never leave them for an extended period without arranging for someone to care for them.

At the end of March 2014, Detective Constable McKenzie located and attempted to identify several more telephone numbers from Mr. Kayhan's notebook. On March 29, the officers interviewed Mr. TT. He indicated he used to work at Zipperz but had not been to Toronto since 2008. The officers went to Zipperz that day to try to obtain employment records for Mr. TT. While there, they met Mr. XX, who was Zipperz's head of security. Mr. XX had never been interviewed by police, although he was working the night Mr. Navaratnam went missing. They scheduled an interview with him for April 2.

On March 31, the officers conducted their second interview with Mr. BB. Mr. BB told the police that the sketch of the blond man who was allegedly with Mr. Navaratnam the night he disappeared looked like Mr. YY, who moved to Winnipeg shortly after. Mr. BB also told the police that a man named Mr. ZZ told him that Mr. Navaratnam had been murdered. According to Mr. ZZ, someone in the gay community knew who murdered Mr. Navaratnam but was not talking. The police reached out to Mr. BB for an interview.

Through April 2014, the police continued to interview people associated with Brunton and friends and acquaintances of the missing men. On April 2, the officers interviewed Mr. XX, who remembered seeing Mr. Navaratnam at Zipperz the night he went missing but did not recall the people with whom he left the bar. Mr. XX also remembered Mr. Faizi and Mr. Kayhan from the bar.

On April 13, Detective Constable McKenzie interviewed Mr. AA for a second time. Mr. AA remembered Mr. Kayhan from the Black Eagle. He gave Detective Constable McKenzie a portable hard drive that had belonged to Mr. Navaratnam. Detective Constable McKenzie reviewed the contents of the drive and determined it did not contain any new information.

## **The End of Project Houston**

On April 13, Detective Constable McKenzie emailed Detective Harris to say he had met with Detective Sergeant Richmond, who told him that Project Houston had five weeks to wrap everything up. In the meantime, Detective Constable McKenzie planned to fly to Winnipeg to conduct several interviews. He would also ask the police in British Columbia to conduct an interview with

Mr. TT, who lived there. Detective Constable McKenzie concluded the message: “[W]e brought up the additional work that still needed to be done and it didn’t seem to matter anymore. I’ll let you know when the MLAT stuff comes back, but other than that, we will be shutting things down over here by the end of May.”

On April 23, Detective Constable McKenzie interviewed Mr. ZZ who had seen Mr. Navaratnam the night he went missing. He said that Mr. Navaratnam was with Mr. BB in a group of people in the parking lot. Mr. Navaratnam said loudly to someone in the group: “[W]hat, you’re going to take me home, fuck me and then kill me?” April 23 was the last date recorded in the Project Houston daily log.

On July 9, the police interviewed Mr. AB. He was a bartender at Zipperz at the time Mr. Navaratnam went missing but had been in Manitoba the week of his disappearance. Mr. AB told police that his old roommate, Mr. YY, was very close to Mr. Navaratnam and would have more information. According to Mr. AB, Mr. YY said he had seen Mr. Navaratnam the day before he disappeared.

Mr. AB told the Review he had reached out to the police shortly after Mr. Navaratnam went missing in 2010. He asked for information about the investigation, but the police would not tell him anything. They advised him to speak to a family member. Mr. AB told the Review: “Well, you know what, we are family. We are his family members. We don’t need to share biological blood to get this information. We know more about where Skanda may or may not be than his family right now because we are the ones who know him.” He did not reach out to the police again for several reasons: he was in Manitoba, he explained; the police had brushed him off when he called the first time; and he had heard stories of police misconduct from others.

On July 28, 2014, the Winnipeg police interviewed Mr. YY on behalf of Project Houston. Mr. YY told the police he last saw Mr. Navaratnam at Zipperz, though he was unsure of the actual day. Mr. Navaratnam left in a hurry without saying goodbye. Later, Mr. YY helped put up missing person posters for Mr. Navaratnam. He said Mr. Navaratnam was into “silver daddies” (older men) and could get aggressive with the men he dated. He wondered whether Mr. Navaratnam had pushed one of these men too far, to the point of retaliation. Mr. YY told the police he did not know who Mr. Navaratnam was living with at the time he disappeared.

This interview was recorded, and it is of note because Mr. YY was later interviewed by the CBC for the podcast “Uncover: The Village.” Mr. YY said in the podcast that Mr. Navaratnam had been in a relationship with McArthur

at the time of his disappearance. McArthur was jealous and controlling and would become angry if he felt Mr. Navaratnam was not paying enough attention to him. According to Mr. YY, he and Mr. Navaratnam were playing pool the Sunday before the disappearance when Mr. Navaratnam got a call and left abruptly. Mr. YY believed the call was from McArthur. We have no evidence that any of this information was ever provided to the police.

There is no evidence that any further work was done on the project. In 2015, McArthur killed again.

## **Summary and Findings**

### *Overview*

Project Houston occurred only because the Swiss authorities shared an informant's tip with Toronto police. The tip suggested that a cannibal ring was targeting victims around the globe and that one of its members, soon to be identified as James Brunton from the Peterborough area, killed Skandaraj (Skanda) Navaratnam.

The tip could not be ignored – and it wasn't. Project Houston investigators spent countless hours investigating Brunton and his associates. Were they killing and eating people or were they engaged in pure fantasy? They also looked into whether Brunton or his associates were involved in the disappearances of Mr. Navaratnam, Mr. Faizi, or Mr. Kayhan. They found nothing to substantiate any such involvement.

Project Houston ended without solving the disappearances of the three men. Only several years later when Mr. Kinsman was reported missing was the investigation into the disappearances of these first three missing men reactivated.

There is no question that Toronto police thoroughly investigated the alleged cannibal ring. Their work with other police agencies ultimately resulted in child pornography–related and other charges being brought against Brunton and a man from Peel Region, John Orfanogiannis. They also conducted many interviews of individuals who potentially had relevant information about the three missing men.

These interviews highlighted shortcomings in the investigations Toronto police had conducted when Mr. Navaratnam and Mr. Kayhan were initially reported missing. They added to the information that had been accumulated about Mr. Navaratnam, Mr. Faizi (although Peel police continued to retain the investigation into his disappearance), and Mr. Kayhan. That said, Project Houston was seriously flawed. These flaws meant that the Service lost valuable opportunities to identify Bruce McArthur as a serial killer much



earlier. They also exposed systemic issues to be addressed.

What were the serious flaws in how Project Houston was organized and conducted?

### ***Major Case Management***

When Project Houston commenced its work, Mr. Navaratnam had been missing for more than two years. Provincial adequacy standards mandated that any disappearance unsolved for more than 30 days from when someone had been reported missing was to be treated as a major case. Further, as I explain in Chapter 5, although the evidence had not yet established that Mr. Navaratnam was the victim of foul play, that outcome was, at a minimum, a strong possibility given the circumstances around his disappearance. This strong possibility also required that any investigation into his disappearance be treated as a threshold major case. In any event, the informant's tip in November 2012 was regarded as sufficiently reliable to characterize the ensuing investigation as a homicide case and to seek judicial production orders based on reasonable grounds that Mr. Navaratnam had been murdered. Both these developments reinforced the point that, under provincial adequacy standards, the investigation had to be treated as a threshold major case.

This categorization meant, among other things, that the investigation into Mr. Navaratnam's disappearance, whether viewed in isolation or as part of a larger investigation, had to be conducted in accordance with major case management standards, as set out in Ontario Regulation 354/04 and in the province's *MCM Manual*. It also meant that the investigation was required to use PowerCase as its case management software program.

Moreover, even before the Toronto police received the informant's tip, there were sufficient similarities among the three missing men and the circumstances of their disappearances to treat them as "linked." Contrary to the views of several senior Toronto officers, the evidence does not need to establish definitively that the same person is responsible for all three disappearances before the cases can be treated as "linked" for the purposes of major case management. Unfortunately, on a systemic level, the Toronto police did interpret the requirement that way, thereby avoiding the applicable major case management standards.

### ***The Serial Predator Coordinator***

Even leaving that error aside, once the informant's tip led to the establishment of Project Houston, the Toronto police were investigating an international cannibal ring with alleged involvement in serious crimes, including murder,

around the globe. From the outset of Project Houston, again contrary to the views of several senior Toronto officers, the available evidence required that the serial predator coordinator within the Ministry of Community Safety and Correctional Services be notified of this investigation and that the issue of a multi-jurisdictional joint investigation be addressed. This decision should not have been made by the Toronto police alone. Nor was it a decision to be informally discussed only with Peel or Peterborough officers.

There are compelling policy and public safety reasons for the provincial protocols to be followed, including appropriate oversight, accountability, effective use of and access to resources, and the appropriate sharing and allocation of responsibilities. The mere fact that Project Houston officers believed, on reasonable grounds, that Mr. Navaratnam had been murdered and that his probable death was tied to an international cannibal ring involving Brunton and others in and outside Canada made it not just important but necessary for the Toronto police to comply with provincial adequacy standards for multi-jurisdictional investigations.

Alarmingly, they didn't. The serial predator coordinator knew nothing about Project Houston – or even about the later Project Prism (see Chapter 7). In both cases, the Toronto police did not follow basic standards for multi-jurisdictional investigations.

I fully recognize that there was extensive informal co-operation among the Toronto police, international law enforcement agencies, and both Peel and Peterborough police officers in the investigation. But these efforts were no substitute for a strict adherence to provincial adequacy standards. It is obvious to me that several senior Toronto officers still do not accept that this approach was problematic. They still believe that the informal co-operation among agencies worked just fine, and that the involvement of the serial predator coordinator or a formal multi-jurisdictional joint investigation was unwarranted, unnecessary, and too bureaucratic.

This attitude presumes that the Toronto police were best situated to direct this investigation, although at least one internal document described Toronto as the “secondary area of operation” and the scope of the investigation as “international.” It presumes that the Toronto police could learn nothing or benefit little from a true multi-jurisdictional joint investigation. It presumes that Toronto taxpayers, more particularly 51 Division's investigative reserves, should assume most of the significant costs associated with an investigation that had, at best, an uncertain connection to Toronto. It presumes that a multi-jurisdictional joint investigation would have given the same priority or credibility to the cannibal theory that figured so prominently in how Toronto conducted its investigation. Or that a multi-jurisdictional joint investigation

would have continued to devote significant resources to Brunton's alleged involvement in the disappearances of the three men well after his arrest and after that involvement had effectively been discounted.

There were internal discussions – indeed, Detective Sergeant Idsinga proposed a plan for a true multi-jurisdictional joint investigation with CISO funding support. But it was apparent to me from the Review's interviews and from documents generated during the project that, with some exceptions, the Toronto police were reluctant to involve other services as true partners in this investigation. It was also apparent to me that at least some Peel officers were reluctant to be involved in the joint investigation, even if the Toronto police welcomed it, both because some Toronto officers were secretive about their own investigation and because the Peel police regarded the cannibal theory as dubious at best.

Equally important, because this investigation was not treated as a multi-jurisdictional joint investigation, both the Peel and the Toronto police were investigating Mr. Faizi's disappearance. Peel repeatedly asked for updates on Project Houston. Information was sometimes withheld from Peel, either deliberately or inadvertently. At an earlier stage of the investigation, at least one Toronto investigator was not prepared to tell the Peel police why the Toronto police were looking for missing person cases that fit a certain age group and ethnicity. In October 2013, when Peel Detective Sergeant Cowan asked for an update on Project Houston, he was told there were no further updates on the missing men, though the project was working on an undisclosed "angle." That angle was the Luka Magnotta component of the investigation.

Of considerable significance is the fact that in September 2013, the Toronto police learned that *silverfoxx51*, a username found on Mr. Faizi's notepad, was McArthur. There is no evidence that anyone shared that information with the Peel police. There is no evidence that anyone told Peel that McArthur was being interviewed or that, at the conclusion of the interview, the Toronto police had learned he was connected to all three missing men, including Mr. Faizi. I characterize this lapse as inadvertent non-disclosure to Peel because its significance was also lost on the Toronto police. But it illustrates the very danger Judge Archie Campbell identified in the aftermath of Paul Bernardo's undetected crime spree – siloed policing.

I also observe that the Toronto police searched for Brunton's cabin in the Bancroft area. Bancroft is within the OPP's jurisdiction, and the OPP local officers might be expected to have greater knowledge than the Service about the community they serve. But the Service never approached the OPP to assist in this search.

One rationale I was given for why this investigation was not structured as a multi-jurisdictional major case and why no application was made for CISO funding was because it was premature to do so until a link was established between Brunton and the missing men. I do not accept this rationale: it seriously undermines the reason why we have a multi-jurisdictional major case regime. So far as the Service was concerned, the evidence was sufficient to vigorously investigate an international cannibal ring, to obtain judicial orders to advance the investigation, and, informally, to engage other police services in Ontario as well as international law enforcement agencies. None of these initiatives was dependent on any connection between Brunton and the missing men, although, again, the Service had no hesitation in investigating the potential connection between Brunton and the missing men based on the available evidence. It is circular reasoning to suggest, in effect, that the police must affirmatively prove the linked crimes before they should investigate them within a multi-jurisdictional major case framework.

Even if Project Houston had not contained a multi-jurisdictional component – which it most certainly did – it was still mandatory for it to be conducted in accordance with major case management standards for homicide cases as well as missing person cases involving disappearances over 30 days or the strong possibility of foul play.

### ***PowerCase***

In Chapter 4, I describe, in detail, how PowerCase is designed to work, and the systemic issues around its use by the Service in its McArthur-related investigations and more generally. PowerCase was intended to be used as the project's case management tool, but it wasn't. Instead, it was used largely as a "data dump." Information was sporadically uploaded into PowerCase, often well after it had been obtained. Actions or assignments were not placed in PowerCase. The PowerCase indexer, who was well qualified for her job, had insufficient information about the investigation to meaningfully index incoming information. She, like the analyst for the project, was not working at 51 Division and was not integrated into its work. Once Brunton was arrested, little or nothing was uploaded into PowerCase. The indexer was no longer assigned to the project, and PowerCase's search and trigger capacities were not used as intended. The file coordinator trained in PowerCase had relatively little to do with the project, and the other file coordinator was untrained in PowerCase. Neither file coordinator was at fault for these difficulties. The skeletal remainder of the Project Houston team after Brunton's arrest received some training on PowerCase, but it proved to be of limited assistance.

Several senior officers, including the former police chief, Mark

Saunders, told me that PowerCase might work for other services, but not for Toronto, given the nature and number of its cases. There are at least three problems with that perspective:

- first, PowerCase is provincially mandated – if there are larger issues with its use for Toronto, they should have been addressed at the ministry level rather than by ignoring provincial standards;
- second, it became obvious to me after extensive evidence on point, including PowerCase experts, that many Toronto officers are unfamiliar with how PowerCase can be used effectively – thereby raising doubts about their criticisms; and
- third, major police services in Ontario do use PowerCase in complex investigations. And they use it effectively.

As I explain in Chapter 4, this criticism has significant practical implications. I would still have been concerned about the project's non-compliance with provincial adequacy standards if adequate proxies had been in place to ensure that the investigation did not suffer because of it. But such proxies were not in place. The investigation did suffer as a result of the non-compliance in at least the following ways:

- On January 31, 2013, Detective Constable Loria had identified the reference to *silverfoxx51* on Mr. Faizi's notepad but had been unable, through her own efforts, to determine the identity of the owner of this username. On February 26, she identified an email address or username common to Mr. Navaratnam's computer and Mr. Faizi's notepad: *silverfoxx51*. The next day, Detective Sergeant Idsinga requested that an officer obtain the subscriber information for *silverfoxx51@hotmail.com*. It was determined that this task could be accomplished only through an MLAT request to Microsoft.

However, there is no evidence that anyone followed up in a timely way to make an MLAT request to identify the subscriber for this username, *silverfoxx51*. The assignment should have been recorded on PowerCase, together with the completion date and its priority, so as to allow members of the project's command triangle to monitor its status. In fact, the assignment was not even listed on the action log contained in the P Drive. As a result, the investigation completely overlooked the fact that the assignment was never completed. This example is no isolated event. Assignments, or actions, were often assigned verbally and not recorded or

tracked in a formalized way.

- The Review’s examination of the P Drive and the PowerCase file contents revealed that very few actions were recorded as either assigned or completed. The project was relying largely on memory and a manual tracking system (such as officer notes or the contents of daily logs) to keep track of assignments. This uncertainty is precisely what provincial adequacy standards around PowerCase are designed to avoid. Otherwise, actions fall between the cracks.
- Further, as I state earlier, both Detective Constable Loria and Detective Sergeant Idsinga appreciated the need to identify the subscriber associated with *silverfoxx51@hotmail.com*. The potential significance of this contact address was highlighted in documents prepared by the project for the court and in a flowchart dated April 18, 2013, which set out the known connections that linked the missing men. Nonetheless, the need to identify who *silverfoxx51* was remained unaddressed for many months – and was addressed only after both Detective Constable Loria and Detective Sergeant Idsinga had left the project.
- Neither the McArthur interview nor the summary of the interview was uploaded into PowerCase. As a result, McArthur was not identified as an “object” or “person of interest”<sup>41</sup> for others, including Project Prism officers, several years later. It was purely fortuitous that Detective Constable McKenzie subsequently remembered he had interviewed McArthur in November 2013.
- The Project Houston files were not set up to permit easy searches for keywords such as “Bruce,” “Bruce McArthur,” “landscaper,” “landscaping,” or “gardener.” The failure to upload relevant information into PowerCase meant that the extensive information collected by officers was often never used. For example, the police interviewed Mr. KK about his relationship with Mr. Navaratnam, not realizing that Mr. KK’s name had already been found in Brunton’s computer search history. It meant that Mr. KK was not asked about this connection, although the police were investigating Brunton and any connection he had with the missing men. It is astonishing that a project of this complexity relied so heavily on its investigators, in preparation for their interviews, both to know and to remember what information had been collected throughout the investigation.
- Usernames and dating websites referred to in Mr. Navaratnam’s

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<sup>41</sup> This point is not dependent on a determination that McArthur was a “person of interest” in November 2013. At the very least, he should have been identified as an “object” in PowerCase.

computer were not uploaded into PowerCase as “objects.” This omission meant, among other things, that in 2013, after the police learned that McArthur identified himself as *silverfoxtoronto* and *silverfoxx51* and that he denied any sexual relationship with or interest in Mr. Navaratnam, they remained unaware that Mr. Navaratnam’s internet history showed that he and *silverfoxtoronto* exchanged sexualized messages through the dating website *www.daddyhunt.com*.

### ***The OPP Violent Crime Linkage Analysis System***

Earlier, I point out that the Toronto police did not submit ViCLAS reports, or booklets – though they should have – in relation to the initial investigations into the disappearances of Mr. Navaratnam and Mr. Kayhan. Once Toronto investigators believed, on reasonable grounds, that Brunton or a person unknown had killed Mr. Navaratnam, and potentially others as well, in connection with a cannibalism ring, a ViCLAS booklet or ViCLAS booklets should have been submitted to the OPP, as required. The strong possibility that one or more of the missing men had met with foul play undoubtedly existed during Project Houston. But it was not until years later that any ViCLAS booklets were submitted in relation to these disappearances.

As I state above, there was no valid excuse for the Service’s failure to submit ViCLAS booklets in relation to the missing men. In fact, the failure was aggravated because David Moore, the ViCLAS civilian analyst, specifically asked the Toronto police to submit ViCLAS booklets for the missing men. The police chose not to submit booklets even in the face of the ViCLAS Unit’s request and the Service’s own treatment of Project Houston as a murder investigation relating to these same missing men. This decision showed, at a minimum, a lack of commitment to ViCLAS, provincial adequacy standards, and, unfortunately, an unwarranted “We know better” attitude.

### ***Technical Support***

The project failed to take a coordinated approach to technical support. For example, Detective Constable Loria, to her credit, found the reference to *silverfoxx51* in Mr. Faizi’s notepad. She was unable to figure out, through Twitter or online open sources, the identity of its owner. There is no evidence that the Tech Crimes Unit was consulted on this issue or that this unit would have been unable to determine who *silverfoxx51* was in a timely way. Eventually, seven months later, Detective Constable McKenzie used XIRAF to find out the answer to that question. The combination of the failure to make a timely MLAT request and the failure to use all available technological

support meant that McArthur, as the owner of *silverfoxx51*, went undetected for many months.

The approach to the internet and social media was also deficient in ways other than those I have already described. It should have been obvious to the Project Houston officers that this investigation relied heavily on electronic and internet searches. Indeed, the officers spent an extraordinary number of hours examining Brunton's computer, including emails, his online search history, websites he visited, and his chat messages. Yet no one systematically and comprehensively examined each missing man's involvement in social media and the internet. If McArthur had been appropriately scrutinized as a person of interest once his connection to all three men (and his previous history) was known or available to the police, his involvement in social media and the internet could have and should have been comprehensively examined as well.

I also observe that Detective Constable Coffey, who was able to work only part time on the project. It was obvious that, in several instances, his other commitments prevented a timely response to Detective Constable Loria's requests.

### ***Underuse of the Project's Analyst***

When Project Houston began in late 2012, Toronto's Intelligence Services Unit had relatively little involvement with individual investigations. One analyst told the Review that this avoidance stemmed from a culture of siloed information within the Service and the attitude of some officers that, rather than rely on a civilian analyst, they would try to perform analytical work themselves.

Given the sheer volume of collected information, it was commendable that an analyst was assigned to Project Houston. Quite simply, the vast quantity assembled cried out for analytical assistance. However, the project failed to use Mr. Retchford's skills to the full.

Detective Constable Loria may have been regarded informally as the project's analyst – Detective Sergeant Idsinga referred to her as such at a police conference much later. Through perseverance and hard work, often through manual searches only, she did some laudable analytical work and created spreadsheets to track information about relevant usernames and websites. But this project could have greatly benefited from a well-informed, professionally trained analyst such as Mr. Retchford. Analysts of his calibre serve a critical role in investigations of this kind, bringing an objectivity or a fresh perspective that might otherwise be lacking in the investigators. This statement may be especially true for civilian analysts.

In this case, Mr. Retchford's only point of contact with the Project



Houston investigation was Detective Constable Loria. He did not work alongside the investigators at 51 Division and did not have access to the P Drive. He had only the information that Detective Constable Loria gave him. Once she left the project on maternity leave in May 2013, Mr. Retchford received no information whatsoever. He was not told that *silverfoxx51* had been identified as McArthur or that McArthur had acknowledged having a relationship with Mr. Kayhan. Given his earlier work in identifying potential connections on the file, this lapse represented another lost opportunity – this time through analytics – to discover and examine McArthur’s links to the missing men.

### ***Need for a Coordinated Investigation***

I acknowledge that the Toronto police interviewed a number of individuals who, potentially, had relevant information about the three missing men. However, there were significant shortcomings in how they collected information about these men.

No true investigative plan was devised regarding what information to collect and from whom – particularly as Project Houston was winding down. Many people were interviewed, but not in any methodical way. Officers did not necessarily know what information had already been collected relevant to these interviews. Often, interviewers did not ask basic questions that might have elicited relevant information. Supervisors engaged in little or no quality control over these interviews. For example, there is no evidence that anybody reviewed the contents of the McArthur interview until years later. Robust case management requires an ongoing assessment of the work being done.

Such supervision and oversight were particularly important in this project for several reasons. First, it was a serious and complex investigation, whether it was characterized as a homicide case or not. But the officers conducting the investigations were not members of the Homicide Unit. Once Brunton was arrested, the few members from the Homicide Unit left the team. Their departure created an urgent need for supervision of how the remaining investigative tasks would be performed, yet there was none.

In the aftermath of the arrest of McArthur in 2018, witnesses came forward or were identified who had important information about his relationship with some of the missing men and his abusive conduct toward others. There are a variety of reasons why the police were unaware of this information, but some of it could certainly have been obtained through a methodical questioning of witnesses and a detailed investigative plan years earlier.

***The LGBTQ2S+ Liaison Officer***

The LGBTQ2S+ liaison officer had little to do with Project Houston. In January 2014, she was asked how to get information about the missing men to the LGBTQ2S+ communities. She told the investigators she would reach out to leaders in the communities and also forward contacts she had for the Vancouver, Montreal, and Ottawa police to help get the missing persons posters distributed in those cities as well.

Project Houston was an investigation into the disappearances of three men from the Village. It became obvious to me that the Toronto investigators undervalued the importance of using officers closely connected to the LGBTQ2S+ communities – whether that be the liaison officer or others – in order to facilitate information coming forward, create a safe and welcoming environment for potential witnesses, dispel existing mistrust and provide needed assurances, familiarize investigators with the significance of information they were being provided, correct stereotypical assumptions or preconceptions that could infect the investigation, and access street-level community members better situated to assist the investigation. A number of investigators acknowledged that the project underused existing human resources within the Service, including the LGBTQ2S+ liaison officer, to advance the investigation.

I say above that not all the relevant information came forward during the period in which Project Houston was active. There are myriad reasons for that delay, including barriers to reporting for members of vulnerable and marginalized community members. LGBTQ2S+ officers, if properly used, can bridge some of these barriers. In this case, though, there appeared to be little appreciation that these officers could provide such assistance.

***Support for Those Affected***

When people go missing, their disappearances deeply affect their loved ones – their families and their friends. The justice system recognizes and provides support for victims of crime and their loved ones and families. However, the support given to those affected by the disappearances of these three men was, at best, uneven. Such support should have been available, it should have been provided, and it should have been consistent and ongoing – but it wasn't, neither in the interval between the initial investigations and Project Houston nor during the project itself. I heard the same complaint in relation to missing person cases generally. That said, I note there were loved ones who described acts of kindness by individual officers.

One problem is that those affected by the disappearances of their loved

ones or family members are not seen as victims when those cases remain unsolved. Another problem is a failure to recognize, within the context of LGBTQ2S+ missing persons, who the affected loved ones and family members are who need support. All missing persons' situations are different – for example, they may be members of a heteronormative family while also self-identifying as LGBTQ2S+ with friends and loved ones existing in different circles.

The *MCM Manual* requires that a victim liaison officer be selected and assigned by the major case manager. There was no victim liaison officer for Project Houston.

### ***Police Transparency and Communicating with the Public***

Understandably, the police are reluctant to discuss active investigations with members of the public because it is important that they avoid jeopardizing an ongoing investigation. But most officers acknowledged to the Review that the Service did a poor job in communicating with the public about Project Houston. Many community members did not know that the police were vigorously investigating the disappearances of the three men. They believed the police were not devoting adequate attention and sufficient resources to the investigations. Moreover, on a systemic level, the Toronto police have undervalued the affected communities' role in advancing many investigations: in order to partner with the communities in solving cases, they must rethink how to communicate more regularly and in a more transparent way about their plans and actions.

The police were anxious to keep Project Houston secret on the theory that transparency would harm the investigation. However, I am satisfied that the secrecy around Project Houston transcended anything needed to preserve the investigation's integrity. That excessive secrecy set the Service up for heightened mistrust when community members later learned they were misled (as many expressed following Project Prism) or, at a minimum, shut out. Inaccurate or unnecessarily censored statements by the Service and/or its senior command undermine respect for the Service and, ultimately, future investigations. This lesson is best illustrated in Chapter 7, when I examine Project Prism. Although Project Prism was considerably more transparent than Project Houston, Chief Saunders's public statements were ill-advised and damaged the already frayed relationship with many members of the LGBTQ2S+ communities.

***How Project Houston Was Wound Down and How It Ended***

From the outset of Project Houston and into April 2013, the police devoted a tremendous amount of time to investigating Brunton. Despite an intensive and elaborate effort, including presenting an undercover officer as though he was prepared to be eaten, they found nothing to substantiate Brunton's involvement, or that of a cannibal ring, in the disappearances of the three men. In early April 2013, Detective Harris contemplated that the team was nearing the end of its investigation and consulted with the Crown attorney about the unrelated charges to be laid against Brunton. As I explain above, the April 18, 2013, informant interview made Brunton's connection to the missing men even more doubtful. Detective Sergeant Idsinga recorded that the interview disclosed "no specific link from Brunton to any of our victims." He told the Review that by April or May 2013, he was pretty satisfied that Brunton was "full of crap" and merely engaged in fantasy. On May 1, Detective Harris advised the project team as well as senior officers that Brunton would be arrested on charges related to child pornography and Project Houston would be "taken down."

In the sections above, I fully document the work done by Project Houston after Brunton's arrest. Suffice it to say here that, following Brunton's arrest, a much-reduced police team continued to investigate Brunton's activities, some of which related to child pornography, while they also continued to look for any connection to the missing men. At one point, they examined the possibility that Magnotta was connected with Brunton and was involved in the disappearances of the missing men. They also conducted investigative tasks relating directly to the missing men. Project Houston was scaled down to three officers.

So where did that leave the investigation into the missing men? Inspector Bott felt there was no evidence to suggest that the missing men were the victims of a homicide or that foul play was involved. Similarly, he said there was no evidence that the missing men were dead except that they had been missing for a long time. In his view, and that of Detective Sergeant Idsinga, Project Houston reverted to simply a missing person investigation. The Homicide Unit's involvement was no longer warranted.

In my opinion, this position is problematic for several reasons. On any interpretation, the disappearances of the three missing men constituted major cases – either because there was circumstantial evidence that raised a strong possibility of foul play or because the men had gone missing for over 30 days – indeed, several years. No serious effort appeared to have been made to assess in a comprehensive way what investigative steps might be pursued and how

the disappearances should be characterized. Indeed, some investigators were quite troubled that the project was winding down while certain identified tasks remained unperformed.

Equally important, the fact that the investigation reverted to a missing person case undervalued the circumstantial evidence that these three men had met with foul play. Several senior officers involved in Project Houston appeared to take the view that might be expressed as “no body, no crime” or “no confession, no crime.” I revisit this theme when I discuss the December 8, 2017, statement Chief Saunders made to the public that the evidence did not point to a serial killer (see Chapter 7).

The lack of introspection over how the police should treat these disappearances is also reflected in the inconsistency between the view expressed by Inspector Bott and the few officers who remained on the Project Houston team and their actions. In an attempt to gather evidence about the missing men’s disappearances, they obtained several judicial authorizations after Brunton’s arrest which indicated they believed, on reasonable grounds, that one or more of the men had met with foul play. On July 4, 2013, for example, Police Constable Platte obtained a judicial production order for Brunton’s bank records. The materials in support of the order reflected the officers’ belief that Mr. Navaratnam had been kidnapped by an unknown person.

In my view, the way in which this project ended raises two additional related systemic issues.

### ***The Absence of an Internal Review***

Project Houston was active for about 17 months. The Service invested substantial human and financial resources to advance the investigation: 80 percent of 51 Division’s investigative fund was spent on the project. Equally important, it was a Toronto project only because of the purported connection between Brunton or the cannibal ring and a Toronto missing man. There turned out to be no connection, and the project was unsuccessful in solving the disappearances of the missing men. Despite all this effort, no case review or case conference was convened, as contemplated by the *MCM Manual*, to evaluate the investigation objectively and thoroughly, including the many deficiencies and shortcomings I have identified, or to consider the lessons to be learned from it and the possible next steps. The question of what to do next was of particular importance because these missing person cases still qualified as major cases, and they remained unsolved and deeply troubling. Some officers are still concerned that there has been little introspection into the

lessons to be learned from the operation.

The *MCM Manual* specifically contemplates an introspective, comprehensive case conference or case review in these kinds of situations. Such a review was particularly necessary after Project Houston because it was shut down even though identified work was left undone.

### ***Notification to the Board***

Project Houston easily transcended the “critical point” at which it should have been disclosed to the Toronto Police Services Board, either while it was active or, at the very least, once it ended without successfully solving the disappearances of the missing men (see Chapter 3, where I identify this second systemic issue). This operation was likely to have an impact on the Service’s reputation and on its relationship with the LGBTQ2S+ communities. It raised important issues about the Service’s role in carrying out this investigation and about the resources devoted to it. The range of systemic issues I have identified respecting the project reinforces why it should have been discussed with the Board, without the Board purporting to direct the day-to-day investigative steps. But no one told the Board about Project Houston, either during its operation or after it ended.

I found it problematic that Mark Saunders, then the deputy chief whose portfolio included this project, knew relatively little about the investigation. Curiously, he did not have adequate information about the project to brief the chief of police or the Board itself.

### ***Misinformation About the Case***

On December 12, 2012, near the beginning of Project Houston, the Toronto police learned that Brunton had not identified Mr. Navaratnam as his victim. He had said nothing about killing a man of colour. The description of his victim as 18 to 35 years old with a slim, athletic build did not match Mr. Navaratnam. Nonetheless, some operational plans and other documents that went up the chain of command still stated that Brunton had confessed to killing one of the missing men. The purported confession by Brunton that he had killed Mr. Navaratnam figured prominently in the decision to create Project Houston. I would have expected that every team member would have known early on that Brunton had not confessed to killing Mr. Navaratnam. For several reasons, I would also have expected, that this information would have influenced how the investigation was conducted thereafter:

- the evidence that Brunton had really committed a crime in Toronto was more questionable;

- Brunton lived in Peterborough and apparently had committed or was committing crimes in Peterborough; and
- there was some evidence that Brunton’s alleged activities took place, in whole or in part, on a farm in rural Ontario where he slaughtered animals, again making his connection to Toronto more questionable.

In my view, the clarification that Brunton had not confessed to killing Mr. Navaratnam or provided a description that matched Mr. Navaratnam, taken together with the above points, did not mean that law enforcement agencies should no longer investigate Brunton and his associates. It did mean, however, that Toronto’s senior management should have considered, in consultation with the team, whether these facts should change the Service’s role in this investigation or strengthen the need for a multi-jurisdictional joint investigative team to be created. Similarly, the information was also relevant to the ongoing evaluation as to whether Brunton was likely responsible for the disappearances of the three missing men from the Village.

The fact that the project was so heavily dependent on the informant’s tip created another problem. The informant was not interviewed until April 18, 2013, more than five months after the original tip and after the Service was already deeply involved in the investigation. It was obvious from the outset that the informant would have to be interviewed and that the interview could be done only through an MLAT request. I am told that the MLAT process is a slow one. However, it does not appear that the MLAT application itself was completed or pursued with a sense of urgency. Without question, it should have been.

The April 18, 2013, interview with the informant not only reinforced what was already known or suspected – that Brunton never mentioned a particular victim and, in fact, was looking for younger “muscle meat” – but also that he never said he had victimized someone active in the Toronto gay scene. The informant came up with that association on his own. Indeed, Brunton had not even confessed to killing anybody. Detective Sergeant Idsinga recognized that the interview showed no connection between Brunton and the missing men. It followed that the premise on which the project was conceived and on which formidable resources were expended was seriously eroded.

This evidence leads me to question how Project Houston evaluated the informant’s tip and its limitations.

### *Tunnel Vision*

The informant's tip, some of Brunton's email exchanges, and various potential connections to the missing men through dating websites certainly compelled close scrutiny of whether Brunton had any involvement in the disappearances of the three men. Without applying, in hindsight, what we now know, I understand why Brunton was, for some time, a person of interest in their disappearances. But the investigation quickly yielded evidence that pointed in another direction. Brunton expressed interest in younger "white meat," rather than "dark meat," to use the language contained in cannibal-related conversations. Relatively early in the investigation, the police found no communications between Brunton and any of the three men, although that forensic work was ongoing. Brunton's connection to Toronto was marginal at best. Shortly after Project Houston started, some members of the team were already skeptical about the relevance of the cannibalism theory to the missing men.

Detective Sergeant Idsinga encouraged Detective Constable Loria to pursue other leads, including a detailed examination of the lives of the missing men, and she followed through. Still, it was obvious when the Review examined Project Houston's work product that an inordinate emphasis had been placed on the cannibalism theory, to the exclusion of alternative scenarios. While the project, to its credit, interviewed or re-interviewed people who knew or might be associated with the three missing men, the interviews were somewhat skewed by the prevailing investigative theory about Brunton and the cannibal ring. When someone excited interest as being potentially involved in the disappearances, the focus most often was on whether that person was connected to Brunton. Mr. Navaratnam's computer was examined forensically not in a general sense but through the lens of finding evidence of his connection to Brunton. Detective Harris speculated that Brunton may have been sexually interested in young white men, but preferred men of colour when it came to cannibalism. Although possible, that suggestion also speaks to an unconscious focus on the investigative theory that prompted and then animated the entire project, rather than where the evidence appeared to lead.

The focus on Brunton continued well after Brunton's involvement was largely dismissed by Detective Sergeant Idsinga and even after Brunton's arrest in May 2013. When Magnotta developed as a potential person of interest, the police focused on his connection, if any, to Brunton. When the Toronto police erected a logistically intensive, expensive undercover operation to see if Brunton would take the bait, his involvement had already been significantly discounted.

My point is that this investigation, despite best intentions, suffered from



tunnel vision. Commissioner Fred Kaufman, in his recommendations from the Inquiry into Proceedings Involving Guy Paul Morin, described tunnel vision has been defined as “the single-minded and overly narrow focus on an investigation or prosecutorial theory so as to unreasonably colour the evaluation of information received and one’s conduct in response to the information.”<sup>42</sup> Tunnel vision has also been described as “a trap that can capture even the best police officer or prosecutor.” It must therefore “be guarded against vigilantly.”<sup>43</sup>

The tunnel vision exhibited during Project Houston may have been less pronounced than that described by Commissioner Kaufman respecting the investigation by Durham police into nine-year-old Christine Jessop’s abduction and murder. For example, Detective Sergeant Idsinga did support Detective Constable Loria’s work when it pointed in another direction. But I have no doubt that the collection of evidence during Project Houston was significantly infected by the cannibalism theory, and that the importance of interviews and the information collected during those interviews was inordinately affected by whether they advanced the theory that Brunton was involved. In fairness to the project officers, they appeared to recognize when the evidence did not advance that investigative theory, rather than attempt to shape the evidence unreasonably. For that reason, I distinguish their tunnel vision, to some extent, from that exhibited during the Jessop investigation. The bottom line, however, is that the cannibal theory distracted the project from equal consideration of alternative theories.

The McArthur interview is one notable example. It didn’t occur to Detective Constable McKenzie that a person with McArthur’s connections to the missing men – more substantial than any connection they had to Brunton – should have attracted attention. But McArthur was unable to provide any evidence relevant to Brunton or his associates, so its significance was missed.

### ***The McArthur Interview***

I outline in some detail above why the McArthur interview was deeply flawed. It was inadequately prepared for and poorly conducted. Its significance was lost on the officers. No meaningful supervision of the interview or what was learned from it took place. It was not uploaded into PowerCase, and it was not

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<sup>42</sup> Ontario, Commission on Proceedings Involving Guy Paul Morin, Report, 2 vols, and Executive Summary (Toronto: Ontario Ministry of the Attorney General, 1998) (Commissioner Fred Kaufman), Recommendation 74.

<sup>43</sup> FPT[WU1] [Federal/ Provincial/ Territorial] Heads of Prosecutions Committee Working Group, “Report on the Prevention of Miscarriages of Justice, Chapter 4, Tunnel Vision” [2004], online at: <http://www.justice.gc.ca/eng/rp-pr/cj-jp/ccr-rc/pmj-pej/p4.html>.

communicated to the Project Houston analyst, so its significance was effectively buried. But these flaws are more reflective of systemic issues around the conduct of the investigation than personal criticism of the interviewer. He was entitled to greater guidance, oversight, and supervision. Robust supervision could have ensured that the interview covered all relevant topics and was adequately prepared for. Robust case management should have identified the importance of the interview after it was completed along with its shortcomings.<sup>44</sup> Its significance should not have been tethered to Brunton or the cannibal theory, especially at that stage in the investigation. Detective Constable McKenzie was a caring and dedicated officer – and, by all accounts, remains so today. This Report should provide him and others with guidance on better practices rather than be treated as an indictment of his work.

It is important to be crystal clear about one aspect of the findings in this chapter. Members of the LGBTQ2S+ communities do not become persons of interest merely because of who they love, how they love, or how many people they love. The police must also be vigilant not to fall into that trap. The point here is that full preparation for the McArthur interview, an understanding of his criminal history, and his connection to all three missing men should have resulted in heightened scrutiny of his conduct. Such scrutiny should have carefully examined his whereabouts at the material times (questions that were only superficially addressed during his interview); revealed, through proper forensic examination of Mr. Navaratnam's computer, that he lied about his relationship with Mr. Navaratnam; and, ultimately, resulted in additional investigative work.

I cannot say that McArthur would necessarily have been apprehended earlier if these investigative steps had been taken. He was a true psychopath. He disarmed others, including Detective Constable McKenzie, with his calm and ostensibly helpful approach to the interview. Possibly with the exception of Mr. Kinsman, McArthur carefully selected his victims. But the Toronto police did lose important opportunities to identify him as the killer until they examined the videotape of Mr. Kinsman's departure from his home in McArthur's van in August 2017.

In 2015, McArthur killed again. In Chapter 7, I examine and evaluate the investigations that ultimately ended with McArthur's arrest and prosecution.

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<sup>44</sup> The *MCM Manual* provides that, in every threshold major case, an interviewer shall undertake duties that include, in consultation with the primary investigator and the file coordinator, developing appropriate interviewing strategies and, where practicable, reviewing all documentation relevant to the interview in preparation for the interview. As I explain above, in my view, in November 2013, this investigation should still have been treated as a threshold major case.

## Chapter 7

### THE PROJECT PRISM INVESTIGATION

As set out in Chapter 6, Project Houston ended in 2014 without the police being any closer to solving the disappearances of Skandaraj (Skanda) Navaratnam, Majeed Kayhan, or Abdulbasir Faizi – Bruce McArthur’s first three murder victims. In 2015, McArthur killed again. His victim was Soroush Mahmudi. Like the others, Mr. Mahmudi disappeared without a trace. In 2016, McArthur was arrested for choking a man during a sexual encounter. Fortuitously, the man survived the attack. However, McArthur persuaded the police to drop the case on the basis that he purportedly believed the complainant had consented to rough sex.

McArthur’s crime spree continued. He killed four more men. The disappearances of two of them – Selim Esen and Andrew Kinsman – were reported to the police. It was only after Mr. Kinsman’s disappearance that the Toronto Police Service (the Service) initiated Project Prism, an investigation focused primarily on Mr. Kinsman’s disappearance with a potential link to Mr. Esen’s disappearance.

Project Prism ultimately led to McArthur’s arrest and prosecution on murder charges relating to all eight of his known murder victims. This chapter documents and evaluates the Service’s McArthur-related investigations from 2015 to 2018.

#### Events Leading Up to Project Prism

##### *The Investigation into Soroush Mahmudi’s Disappearance*

On or about August 15, 2015, McArthur murdered Mr. Mahmudi.

Mr. Mahmudi lived with his family in Scarborough, Ontario. On August 22, 2015, his stepson<sup>1</sup> called Toronto’s 43 Division to report his stepfather’s disappearance. (At the time, Mr. Mahmudi’s wife and daughter were in Sri Lanka.) His stepson told the police he had last seen Mr. Mahmudi on August 15, that Mr. Mahmudi’s black bag was missing from his home, and that Mr. Mahmudi often took this bag when he planned to be away for a few days. Mr. Mahmudi’s stepson gave the police Mr. Mahmudi’s photo. The police

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<sup>1</sup> Mr. Mahmudi’s stepson is erroneously identified as his son-in-law in the initial missing person occurrence.

contacted local hospitals and the Centre for Addiction and Mental Health to see if Mr. Mahmudi could be located, as well as a pub in Scarborough he was known to frequent. The results were all negative.

The police Search Urgency Chart prepared by the officer who originally responded to the reported disappearance reflected no foul play or criminal concerns. Indeed, the chart identified the urgency rating as “low.”

Detective Constable Matthew Tim was the officer in charge of Mr. Mahmudi’s investigation. From 2015 to 2017, Detective Constable Tim was the “informal” missing person coordinator for 43 Division. This role was created for him in 2015. It was a good fit, as investigative work appealed to him. He did not receive any formal training in missing person investigations before he took on the role, but, during his tenure as missing person coordinator, he did attend a symposium the Ontario Provincial Police (OPP) hosted concerning such investigations. Every week, he followed up on missing person cases and reported to his supervisor about the status of those cases. He investigated Mr. Mahmudi’s case while he was investigating many other missing person cases.

At the time, Detective Constable Tim was not aware of Project Houston or the disappearances of Mr. Navaratnam, Mr. Kayhan, or Mr. Faizi. There was no Missing Persons Unit or a missing person coordinator for the entire Service. Indeed, divisions did not necessarily have an officer assigned to be a missing person coordinator.

On August 27, 2015, Detective Constable Tim spoke to Mr. Mahmudi’s stepson, who had noticed that some clothing was missing from Mr. Mahmudi’s closet.

On or about October 1, Detective Constable Tim learned that, at 11:02 p.m. on August 15, 2015, Mr. Mahmudi had last used his debit card to purchase food from a pizza place in East York. Detective Constable Tim did not know why the bank was not contacted earlier and agreed it should have been.

I also observe that by late September 2015, more than 30 days had passed since Mr. Mahmudi’s stepson had reported the disappearance. As of November 2013, the definition of “major cases” had been changed to include missing person cases “where police have yet to ascertain whether foul play is involved when the individual remains outstanding and unaccounted for 30 days after being reported missing.” The 30-day anniversary apparently passed unrecognized by the police. Mr. Mahmudi’s case was not converted to a major

case, and even basic information about the case was not entered into PowerCase, the mandatory case management software for major cases.<sup>2</sup>

On October 2, 2015, Detective Constable Tim contacted several hospitals to try to locate Mr. Mahmudi. The results were negative.

On October 14, Detective Constable Tim called Mr. Mahmudi's stepson again. He requested more photos of Mr. Mahmudi and asked if the family would consent to a media release about Mr. Mahmudi's disappearance. Mr. Mahmudi's stepson asked Detective Constable Tim to wait until October 23, when Mr. Mahmudi's wife was scheduled to return from abroad. On October 21, Mr. Mahmudi's stepson told Detective Constable Tim that he had been receiving strange, anonymous telephone calls from someone who said nothing. He believed it could be Mr. Mahmudi who was making the calls.

On October 30, an officer was dispatched to look for Mr. Mahmudi in the area around a community housing building frequented by Mr. Mahmudi in downtown Toronto, just east of Toronto's Gay Village (the Village). This search yielded no results. The officer left Mr. Mahmudi's photo with Toronto Community Housing.

On November 3, Mr. Mahmudi's stepson told Detective Constable Tim that Mr. Mahmudi's cellphone account was registered in the stepson's name. He would try to get information from the cellphone provider about the cellphone's use.

On November 6, Detective Constable Tim learned from Mr. Mahmudi's employer that Mr. Mahmudi last showed up for work on August 15, 2015. Significantly, he had not picked up his most recent paycheque. Detective Constable Tim checked local hospitals again and the coroner's office for Mr. Mahmudi or any unidentified men. He did not turn up anything helpful.

On November 27, Detective Constable Tim met with Mr. Mahmudi's wife and stepson. He learned that Mr. Mahmudi's bank balance was over \$8,000. He also learned that Mr. Mahmudi's passport had expired. He asked Mr. Mahmudi's stepson to check Mr. Mahmudi's cellphone account for text messages on Mr. Mahmudi's cellphone. On November 29, Mr. Mahmudi's stepson called Detective Constable Tim to give him the telephone number of the last text message sent from the cellphone. Detective Constable Tim discovered the number was not in service.

On December 3, 2015, Detective Constable Tim went to the pizza place where Mr. Mahmudi last used his debit card. He asked for the relevant

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<sup>2</sup> As I explain in Chapter 4, for non-threshold major cases, such as missing person cases outstanding for more than 30 days, "tombstone" information had to be entered, indexed, researched, and cross-referenced into PowerCase.

surveillance video footage. Four weeks later, he learned that the footage was no longer available. Detective Constable Tim told the Review that it would have represented better practice to have obtained the video footage earlier.

No canvassing was ever done in the vicinity of the pizza place. Canvassing was perhaps unlikely to produce any evidence unless the pizza location had been identified much earlier in the investigation. I observe, however, that the pizza place is located approximately 800 metres from McArthur's apartment building in East York.

During this same time frame, the Peel police issued another media release about Mr. Faizi's disappearance. The release sought new information about the disappearance, reflecting that, two years earlier, the Toronto police had said his disappearance could be connected to two other men who had disappeared from the Village.

On January 6, 2016, Detective Constable Tim learned from Mr. Mahmudi's wife that her son was still trying to obtain information about Mr. Mahmudi's phone use. On January 13 and January 26, Detective Constable Tim followed up again. On February 4, Mr. Mahmudi's wife told Detective Constable Tim that a log for Mr. Mahmudi's phone use was available from Mobilicity. She later emailed the log to him.

In February 2016 and again in May, Detective Constable Tim took initial steps to obtain Mr. Mahmudi's dental records. In June, they were finally obtained.

On March 4, 2016, Detective Constable Tim contacted several telephone numbers from Mr. Mahmudi's cellphone log. Some of the numbers were associated with businesses. All the individuals Detective Constable Tim spoke with denied knowing Mr. Mahmudi or his stepson, although one individual said he recalled receiving multiple calls from a person speaking broken English. Another said Mr. Mahmudi may have called him in response to a flyer he had posted in the community. Many of the calls had a "00:00" time allotment associated with them in the log, indicating the calls had not been completed. Detective Constable Tim did not find it unusual that the individuals associated with the numbers in the log denied knowing Mr. Mahmudi. (McArthur's telephone number was not in the phone log.)

On April 1, Detective Constable Tim learned that Mr. Mahmudi had significant outstanding debts and had not shown up for an August 21, 2015, meeting to discuss them. On the same day, Detective Constable Tim did a records check on Mr. Mahmudi. He found no activity since Mr. Mahmudi's disappearance. Detective Constable Tim sent Mr. Mahmudi's name to *www.hostels.ca* to see if that site had any information about him.

On May 20, Detective Constable Tim conducted follow-up checks in relation to several numbers that Mr. Mahmudi had contacted. Detective Constable Tim again spoke to Mr. Mahmudi's wife and stepson, who advised him that Mr. Mahmudi may have been attempting to change his identity. In the past, Mr. Mahmudi had talked about changing his name. Detective Constable Tim thought this possibility might be related to his debts.

On November 24, 2016, Detective Constable Tim checked with Canada Border Services Agency to see if it had any record of Mr. Mahmudi's having crossed the border. It didn't. On the following day, and again on March 30, 2017, Detective Constable Tim conducted a query with the Canadian Police Information Centre (CPIC)<sup>3</sup> for Mr. Mahmudi. The results were negative.

Mr. Mahmudi's disappearance did not form part of the Project Prism investigation until January 2018, when his photo was identified on McArthur's computer. This date was after McArthur's arrest in relation to other victims.

Detective Dave Dickinson,<sup>4</sup> Project Prism's primary investigator, said this delay was explained by the absence of any evidence that Mr. Mahmudi was connected to the LGTBQ2S+ communities or to the Village. Detective Constable Tim saw no evidence of such a connection during his investigation – it was only through media reports after McArthur's arrest that he learned about this potential link.

In his recent book *Missing from the Village* (September 2020), Justin Ling described Ms. AC's history with Mr. Mahmudi. Ms. AC, a trans woman, met Mr. Mahmudi in 1997 at Woody's bar on Church Street in the Village. She was Mr. Mahmudi's former romantic partner and the victim of an assault for which Mr. Mahmudi was convicted in Lefroy, Ontario, in Bradford West Gwillimbury, in 2001. During the 2015 investigation into Mr. Mahmudi's disappearance, the police were unaware of the conviction and did not interview Ms. AC.

Had the police looked into Mr. Mahmudi's 2001 conviction and read the related synopsis or Occurrence Report, or interviewed Ms. AC, they might have learned that Mr. Mahmudi, like Mr. Navaratnam, Mr. Faizi, and Mr. Kayhan, was a Church Street regular. But they did not.

Detective Constable Tim learned about Mr. Mahmudi's prior conviction only when he was interviewed for the Review. He pointed out that he had checked out Mr. Mahmudi on CPIC several times but saw no indication of a prior record. He said he believed that, had he seen the prior record, despite its

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<sup>3</sup> CPIC is a central police database maintained by the RCMP that is accessible to all of Canada's law enforcement agencies.

<sup>4</sup> Detective Dickinson is now a sergeant.

age, he would have obtained and read the underlying synopsis or Occurrence Report and attempted to interview Ms. AC to see if she had any relevant information to provide. It is unclear why Detective Constable Tim's CPIC searches did not yield information about Mr. Mahmudi's prior record.<sup>5</sup>

*The Murders of Kirushna Kumar Kanagaratnam and Dean Lisowick*

In January 2016, McArthur murdered Kumar Kanagaratnam. He was never reported missing.

Sometime between April 2016 and July 2017, McArthur murdered Dean Lisowick. After the fact, there was speculation in the community that Mr. Lisowick had been reported missing, but not recorded as missing. The evidence is compelling that he was never reported missing.

The fact that both Mr. Kanagaratnam and Mr. Lisowick were never reported missing raises systemic issues this Review addresses. It is not always obvious when a marginalized and vulnerable person goes missing. As well, barriers exist that inhibit people from reporting someone missing, even if the disappearance is noticed. It is also no crime to choose to disappear, to go off the grid. The challenge is to ensure that a person's disappearance is noticed and that, when circumstances warrant, the disappearance is promptly reported and investigated.

*The 2016 Investigation into McArthur's Choking of a Man*

On June 20, 2016, Toronto Police received a 911 call from a man (described here as Mr. AD) who said that during a sexual encounter a person named Bruce attempted to choke him. This encounter took place in the back of the assailant's red van in a parking lot at the corner of Bathurst Street and Finch Avenue West. Mr. AD provided the assailant's licence plate number to police, and initially attempted to follow the assailant's van while on the telephone to police. The police advised Mr. AD to stop pursuing the van.

McArthur knew Mr. AD was in the process of contacting the police when he (McArthur) fled the scene. A dash cam on Mr. AD's vehicle captured McArthur's quick departure on video. It shows that McArthur, in his haste to get away, briefly drove southbound in Bathurst Street's northbound lane before he continued in the southbound lane. Although Mr. AD told the officers who initially responded to his 911 call that the video was available, the police never examined it.

McArthur anticipated the police would get involved. He therefore came in on his own to 32 Division. In the meantime, two officers met Mr. AD close

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<sup>5</sup> The Review obtained the relevant CPIC record from the Service. It shows the prior conviction.



to the scene of the encounter and recorded his narrative in their memobooks. They learned McArthur was at 32 Division and returned to the station to arrest him for assault. They held him in custody, pending investigation. From the outset, McArthur made it clear that he wanted to tell his side of the story. He provided a brief account to the arresting officers and then provided a videotaped statement to the assigned investigator, Sergeant Paul Gauthier, who was accompanied by one of the arresting officers.

Back in 2001, McArthur had, without provocation, injured another man by hitting him over the head with a pipe. In 2003, McArthur was convicted of assault with a weapon and assault causing bodily harm. He received a conditional sentence. The conditional sentence was followed by a three-year probation that prohibited him from, among other things, being within certain geographical boundaries, including the Village (see Chapter 5).

In June 2014, McArthur was granted a record suspension (previously known as a “pardon”) in relation to these offences. As described below in more detail, the officers involved in the 2016 incident were unaware of McArthur’s prior violent history. They were also unaware that McArthur had used the same proactive strategy in 2001 – that is, coming to the police before he was being sought. He knew his 2001 victim although, immediately before the attack, he showed up at the victim’s home unannounced. I will soon say more about the significance of McArthur’s earlier violent history.

In 2016, when Mr. AD first spoke to the officers dispatched to the scene about being choked, he advised them that, in the past, he and McArthur (whom he knew only as Bruce) had had casual sex. His previous relations with McArthur had given him no cause for concern. This time, McArthur came to see him unannounced. They decided to meet for dinner and ultimately agreed to engage in sex in McArthur’s van. Although at the time it had no importance to those involved, the interior of McArthur’s van was covered in plastic and the items in the van included a fur coat. These items figured prominently in McArthur’s killings.

The attending officers took what was described as a verbatim statement from Mr. AD. He signed the statement as recorded in the memobook of one of the officers.

Mr. AD told the police that “Bruce” had just tried to strangle him. Mr. AD started “freaking out” when McArthur didn’t say anything, but just grabbed Mr. AD by the throat and started squeezing his neck. Mr. AD said something like, “What the fuck, what do you want, are you trying to kill me?” Mr. AD could barely get the words out. McArthur just wouldn’t let go. Mr. AD rolled over, breaking McArthur’s grip, and pushed McArthur off him. Mr.

AD then grabbed McArthur by the throat in a straight-arm fashion to create distance from him and show he wasn't going to allow this to take place. Mr. AD got out of McArthur's van and into his own car, as McArthur fled the scene. As already indicated, Mr. AD contacted 911, while attempting to track McArthur's van.

As a result of McArthur's attack, Mr. AD's throat was sore. It hurt him to swallow, and he felt his voice was hoarse. He declined medical treatment at the time, although he told the police he would follow up with his family doctor if it got worse. He did go to the hospital the following day to have his condition checked out.

Sergeant Gauthier, the assigned investigator, was an experienced officer, had worked in the sex crimes unit, and had been trained in domestic and sexual offence occurrences. He had trained other officers as well. Before interviewing McArthur, Sergeant Gauthier briefly reviewed McArthur's statement that had been recorded in the arresting officer's memobook. He also recalled reviewing the notes again after he met with McArthur. He would have checked (or delegated others to check) whether McArthur had any relevant entries on Versadex, the Service's records management system, and on CPIC. According to Sergeant Gauthier, no relevant history, including the 2001 attack or the 2003 convictions, was found. Nor did Sergeant Gauthier find any reference to McArthur being interviewed during Project Houston. (In the latter case, the Review confirmed that McArthur's interview in November 2013 was never entered into Versadex.) I discuss below whether that relevant history should have been discoverable in 2016.

In the interview with Sergeant Gauthier, McArthur repeated the explanation he initially gave to the arresting officers. He claimed he believed, during his sexual encounter with Mr. AD, that he had Mr. AD's consent to choke him. According to McArthur, during the encounter Mr. AD told McArthur to pinch his penis harder to arouse him. McArthur took this to mean that Mr. AD liked it rough, so he squeezed Mr. AD around the neck, thinking it was welcome. He said Mr. AD became upset and, in response, grabbed McArthur around the neck. McArthur said Mr. AD then departed.

Sergeant Gauthier found McArthur to be "credible, truthful and believable." He accepted that McArthur mistakenly believed he had consent to choke Mr. AD. In his view, this conclusion was fortified by several factors. McArthur, a 64-year-old man, appeared to have no prior record. He voluntarily came forward to tell his story. Based on his professional experience, Sergeant Gauthier understood that rough sex, including autoerotic asphyxiation by strangling, was quite common. Because Mr. AD declined medical treatment, Sergeant Gauthier concluded that Mr. AD had not suffered the kind of injuries

Sergeant Gauthier would have expected if McArthur had been attempting to inflict injury. Sergeant Gauthier also relied on his statement analysis training in evaluating McArthur's truthfulness based on how McArthur answered questions. Sergeant Gauthier regarded it to be significant that McArthur's and Mr. AD's accounts were consistent with each other. Sergeant Gauthier believed both Mr. AD and McArthur. As a result, he did not believe a crime had been committed.

Sergeant Gauthier advised his supervisor of the circumstances. The supervisor approved of Sergeant Gauthier's assessment. McArthur was therefore released unconditionally. This meant that no charges would be pursued. Sergeant Gauthier directed one of the arresting officers to so advise Mr. AD since that officer had met with Mr. AD. That officer left a message for Mr. AD, who, according to the police, did not return her call. As a result, no police officer ever spoke to Mr. AD after the initial police response to his call.

In late 2017, following the disappearances of Mr. Esen and Mr. Kinsman, Project Prism began its work. Once the project focused on McArthur, its primary investigator, Detective Dickinson, conducted a database search. The Versadex search revealed that McArthur had been granted a record suspension. A Legacy Search<sup>6</sup> of prior databases provided the investigator with the underlying Occurrence Report pertaining to those 2001 offences. Project Prism also learned that McArthur had been accused of choking someone in 2016, but that no charges were pursued. Detective Sergeant Hank Idsinga requested that the Service's Professional Standards Unit examine how the 2016 complaint had been dealt with. He expressed concern that police procedures had not been followed. This point also raises an issue for me about whether another opportunity to identify McArthur as a person of interest in the missing person cases had been lost.

After the Professional Standards Unit conducted an investigation, Sergeant Gauthier was charged under the *Police Services Act* with insubordination and neglect of duty. In essence, the Service alleges that, as a domestic violence investigator, Sergeant Gauthier failed to act in accordance with the Service's Domestic Violence Procedure. The procedure states that "the domestic violence investigator shall be responsible for ensuring the needs of the victim are met, effective management of the crime scene, including the gathering of evidence, and ensure that a thorough and comprehensive investigation is conducted." The procedure further provides that, "when

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<sup>6</sup> A "Legacy Search" incorporates queries for the Service's historical records management systems. I explain this term more fully in Chapter 4.

investigating a person who is in custody for an offence resulting from a domestic violence situation, the investigator shall:

- conduct a thorough and complete investigation;
- whenever possible, obtain an electronically recorded statement from the victim, using the *R. v. B (K. G.)* guidelines and comply with procedures 04-32 and 12-08, as applicable; and
- where possible, ensure that injuries sustained by the victim are photographed a second time 48–72 hours after the initial incident.”

Sergeant Gauthier’s disciplinary hearing has not yet been conducted: the charges against him therefore remain outstanding. Sergeant Gauthier disputes the allegations against him. He maintains the Service is using him as a scapegoat for the deficiencies in how it investigated the McArthur killings, and how it reported on its investigation to the public. He also relies on the fact that his supervisor vetted and agreed with his decision to unconditionally release McArthur.

My mandate does not permit me to decide whether Sergeant Gauthier or anyone else engaged in professional misconduct. Both Sergeant Gauthier and the Service are entitled to advance their respective cases at a hearing based on sworn evidence. More importantly, it is unnecessary for me to decide whether Sergeant Gauthier’s conduct amounted to misconduct. I can fully address whether his investigation fell short of best practices. Not every investigation that fails to comply with best practices amounts to misconduct. Few investigations adhere, in every way, to best practices. Having said that, I do conclude that the 2016 investigation should have been done differently in some important ways. I explain the basis of this conclusion in my findings at the end of this chapter. However, that does not constitute any finding of misconduct.

The scope of my mandate also means that, in examining the 2016 investigation, I am not confined to the issues raised in Sergeant Gauthier’s discipline proceedings. The goal here is to identify best practices, whether relied on by the Service in the prosecution of Sergeant Gauthier or not. I must also do so without the impermissible use of hindsight. McArthur’s subsequent exposure as a serial killer cannot skew my analysis of the 2016 investigation. It does explain why the identification of best practices is so important. I also consider, near the end of this chapter, whether and how the 2016 events affected the Service’s ability to discover that McArthur was a serial killer.

*The Investigation into Selim Esen's Disappearance*

On or about April 16, 2017, McArthur murdered Selim Esen. On April 30, Mr. AE, Mr. Esen's ex-partner, reported Mr. Esen missing. Sergeant Henry Dyck was assigned to investigate the case. Sergeant Dyck was – and remains – a high-profile member of the gay communities with a significant community following. He played an important role in the creation of the Service's Neighbourhood Community Officer Program and is active in community outreach.

On April 30, following an initial meeting with Mr. AE, the police looked for Mr. Esen at St. Stephen's Community House on Augusta Avenue, where Mr. Esen picked up his Ontario Disability Support Program cheques weekly. Mr. Esen had not been there since April 12.

The officers noted a domestic incident on record between Mr. Esen and Mr. AE but did not identify any current risks to which Mr. Esen was exposed. On May 1, Detective Constable Guy Kama, Sergeant Dyck's partner in the investigation, called the community house to determine that Mr. Esen had not returned.

On May 9, Detective Constable Kama investigated Mr. Esen's bank account. The account's last activity was shown as April 24, 2017. Detective Constable Kama was contacted by another acquaintance who worried that Mr. Esen had been killed by someone he knew only by a first name (not "Bruce"). Detective Constable Kama requested that the Intelligence Unit obtain the name of Mr. Esen's cellphone provider.

On May 12, Sergeant Dyck filed a C3 Intake Form. This form is a request for the Computer Cyber Crime Unit (C3) to see if it could find any instances on the internet or social media where Mr. Esen was active or had been discussed. Sergeant Dyck told the Review that a C3 request is not a standard part of investigative procedures, but he wanted to cast the net as widely as possible. Through the request, Sergeant Dyck learned that Mr. Esen had an inactive Facebook profile. On the same date, Sergeant Dyck received a call from Mr. AE. Mr. Esen had not shown up for a court hearing the day before. Mr. Esen had mentioned a "bad guy" named "Jimmy." Mr. AE had no other information about "Jimmy." (In 2018, after McArthur's arrest for murdering Mr. Esen and Mr. Kinsman, the Toronto police interviewed Mr. AE again. He recognized McArthur's photo, as being "Jimmy." He met "Jimmy" only once. Mr. Esen was fearful of "Jimmy," Mr. AE said, and believed "Jimmy" was going to kill him.)

By the end of May 2017, 30 days had passed since Mr. Esen had been reported missing. Yet again, this anniversary appeared to have been

overlooked despite the requirement that the case now be treated as a major case.<sup>7</sup>

As a next step, Sergeant Dyck contacted Mr. Esen's lawyer. Mr. Esen had not spoken to her for about two months. This was out of character for him, and she was concerned for his safety. Sergeant Dyck made inquiries with the City of Toronto, the Canadian Air Transport Security Authority, Facebook, the Centre for Addiction and Mental Health, various hospitals, and the Office of the Chief Coroner. He did not turn up any leads. Sergeant Dyck called Mr. AE again. He asked for more photos of Mr. Esen and any additional details about his life. Mr. AE told Sergeant Dyck that Mr. Esen liked to hang out in the Church and Wellesley area. Mr. Esen had been upset the last evening Mr. AE saw him, and left Mr. AE's home with a grey suitcase.

On May 16, the Service issued a media release about Mr. Esen's disappearance and expressed concern for his safety. Sergeant Dyck tweeted Mr. Esen's photo to many of the local Church and Wellesley streets organizations, including bars and the neighbourhood association. This tweet represented one of the few times that any Toronto officer investigating the disappearances of McArthur's victims had directly sought to enlist LGBTQ2S+ and neighbourhood organizations to assist in their work.

In May 2017, Sergeant Dyck spoke with retired superintendent Elizabeth Byrnes. She told him that the disappearance of Mr. Esen sounded a lot like the disappearances of the missing men from Project Houston (see Chapter 6). Superintendent Byrnes urged Sergeant Dyck to speak to Detective Constable Josh McKenzie about the potential similarities in the cases.

Sergeant Dyck was not working at 51 Division when Project Houston was underway. His knowledge of the investigation and of the earlier missing men was limited to discussions with members of the LGBTQ2S+ communities and to media reports. As we know, the communities and media received little information about Project Houston and the investigative steps taken.

On May 23, Sergeant Dyck emailed Detective Constable McKenzie, Detective Sergeant Michael Richmond, and Detective Constable Charles Coffey, writing:

Former Supt. BYRNES saw my tweet on this and suggested that I ask you about project Houston. This pre-dates my time here so I don't have any knowledge of it. I understand my missing person fits the profile of some of the people who had previously gone missing.

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<sup>7</sup> As set out in Chapter 4, this requirement was reflected in the November 14, 2013, All Chiefs Memorandum.

I have some more work to do on this file, namely, I want to fully interview the complainant and do a production order on the phone to see if there is anyone besides the complainant he was talking to before he went missing, but it's disturbing that literally any footprint of him has gone silent.

Could you have a cursory look at the above GO # [the occurrence file number] and let me know if there is something with regard to that prior investigation I should know about with regard to this one.

The same day, Detective Constable McKenzie replied to Sergeant Dyck. He did not think Mr. Esen's case was related: none of the men from Project Houston was addicted to hard drugs or appeared to suffer from depression. (Mr. AE had indicated that Mr. Esen struggled with drug addiction.) Detective Constable McKenzie suggested several potential investigative steps and noted:

Looking at it at this stage of the game, the only similarity is that they have all dropped off the map without a trace. I personally feel that The Toronto Police Service needs a Missing Persons Unit. These investigations are usually never taken as seriously as they should be at the beginning stages, and it's not until they get more interesting which is usually when some time has passed that we start working them harder. I personally would throw your investigative net out as far as it will go, with what you have until you find out that he is ok. That way if it does become a homicide or something like that later, you've done almost all of the required footwork that will help you move forward faster. With the previous three missing men, the only similarities with them was that they all used to frequent The Black Eagle on a regular basis and that they were mainly East Indian background. We didn't have any information that they went to the bar together, but I'm sure there may have been times when their paths crossed.

Skanda NAVARATNAM was very outgoing and loved to party. He bounced around to various friend's [*sic*] houses as places to sleep and was always meeting and going out with new people. He was last seen leaving Zippers [*sic*] with two men and was never seen or heard from again.

Majeed KAYHAN was openly gay with his family and children and lived in an apartment on Alexander alone with his two birds. He always had coffee with a friend in the building every day. He had recently come back from a family wedding and when he met with this coffee friend, he said he had to leave early because he was receiving a very important phone call at home. That was the last time anyone saw him.

Abdulbasir FAIZI lived and worked in Mississauga and was married with two kids. He was not openly gay and his wife had no idea. He would get off work early, tell his wife he was working overtime, and come down to

the Church and Wellesley area. His car was last seen parked on Moore Avenue in Toronto and he was never seen or heard from again.

All very strange, and to this day, almost seven years later, all still missing.

In my view, the similarities among all these men and the circumstances surrounding their disappearances were much more significant than Detective Constable McKenzie believed them to be. Even a cursory examination of their photographs (below), taken together with their disappearances without a trace and the risk factors associated with each, should have prompted the police to treat their cases as if they were potentially related.



*Left to right: Mr. Navaratnam, Mr. Esen, Mr. Faizi, and Mr. Kayhan.*

Indeed, as I explain in Chapter 4, six years earlier, Constable Marie-Catherine Marsot, a Peel officer, had been struck by the obvious similarity between Mr. Navaratnam's and Mr. Faizi's physical presentation and the circumstances of their disappearances.

That said, to Detective Constable McKenzie's credit, he did accurately identify to his superiors some of the systemic issues around how missing person investigations were being conducted and urged Sergeant Dyck to conduct as broad an investigation as possible.

However, for the time being, the investigation into Mr. Esen's disappearance continued, but on its own. The Toronto police were not actively investigating the other disappearances.

Throughout June 2017, Sergeant Dyck attempted to persuade Mr. AE to give a video or audio statement. Mr. AE refused to do so. The officers considered his refusal suspicious. Given the history of domestic assault between Mr. Esen and Mr. AE, the police were becoming increasingly concerned that foul play was involved in Mr. Esen's disappearance. On June 15, Detective Constable Kama asked Mr. AE for any items belonging to Mr.



Esen that he had in his possession. Detective Constable Kama hoped to obtain a DNA sample.

On June 9, about three weeks before Mr. Kinsman's disappearance, the Vice media website published an article titled "The mysterious, unsolved, case of three men who went missing from Toronto's Gay Village." The article outlined the investigation into the disappearances of Mr. Navaratnam, Mr. Faizi, and Mr. Kayhan. (Later, the police found a copy of this article on McArthur's computer.)

On June 21, Detective Constable Kama interviewed Mr. Esen's social worker. He also tried to call Mr. Esen's family in Turkey but was unable to speak to them because they did not speak English or French.

On June 26, Andrew Kinsman went missing. His disappearance was reported to the police two days later. Later in this chapter, I pick up the narrative relating to the investigation into Mr. Kinsman's disappearance. But I observe here that, although Mr. Kinsman was white, there were, again, important similarities between his disappearance and the disappearances of the other reported men. They all vanished without a trace and without explanation. Moreover, it arguably defied coincidence to conclude that these cases were unrelated or that three gay / bisexual men associated with the Village just voluntarily chose to leave prized pets behind, unattended. The cases cried out for a single, coordinated investigation into their disappearances.

The Esen investigation continued. On July 17, a Turkish-speaking officer spoke with Mr. Esen's brother, who lived in Turkey. His brother had not heard from Mr. Esen in about eight months. According to the brother, Mr. Esen had family in London, England, who had not heard from Mr. Esen for more than a year.

Mr. AE finally agreed to be interviewed by police. On July 20, Sergeant Dyck and Detective Constable Robert Chevalier spoke with him for three hours. At the end of the interview, Sergeant Dyck prepared a Supplementary Report, noting that he had "far greater" concerns about Mr. Esen's safety: Mr. Esen had no electronic footprint and no access to funds, and no one had seen him since his disappearance.

On July 21, officers searched several parks with cadaver dogs to try to locate Mr. Esen. On July 24, officers interviewed Mr. Esen's social worker again. She told them that Mr. Esen had a new cellphone and Metropass waiting for him that he never picked up. He also missed a doctor's appointment on April 26, 2017. On the same day, a friend of Mr. Esen told police that Mr. Esen used the Grindr and GROWLr social-networking apps, and frequented

Woody's and the Black Eagle bars. Like Mr. Navaratnam, Mr. Faizi, Mr. Kayhan, and Mr. Mahmudi, Mr. Esen was a Church Street regular.

Sergeant Dyck's July 22, 2017, memobook notes reflect that he was familiar with Mr. Kinsman's case and could not rule out a link between the disappearances of Mr. Kinsman and Mr. Esen, given the many similarities between their disappearances and demographics.

On July 24, Sergeant Dyck and Detective Constable Chevalier went to Mr. AE's former condo to see if they could find Mr. Esen's property. The condo had a new tenant, and the property was gone. On July 25, Sergeant Dyck conducted a 300 metre radius search and checked with local hospitals and the Office of the Chief Coroner for Mr. Esen. All the searches were negative.

Sometime between July 22 and July 27, Sergeant Dyck met with Detective Sergeant Richmond and Detective Constable McKenzie to discuss the case. He urged Detective Sergeant Richmond to include Mr. Esen's disappearance in the anticipated Project Prism investigation. He wrote a Supplementary Report for Inspector Peter Code<sup>8</sup> identifying similarities between Mr. Esen and Mr. Kinsman, including their sexual orientation, the bars they frequented, the area they went missing from, dating applications they used, and their physical appearances. But Sergeant Dyck told the Review that the Service responded differently to Mr. Esen's disappearance than it did to Mr. Kinsman's case: unlike Mr. Kinsman, Mr. Esen was born outside of Canada, had no family in Canada, had fewer close ties to members of the LGBTQ2S+ communities, had addictions, and was underhoused. In Sergeant Dyck's opinion, these circumstances made it difficult to bring both police attention and media attention to Mr. Esen's case. However, Sergeant Dyck adamantly rejected the theory that Mr. Kinsman's case received greater attention from the police because he was white. Rather, in his view, the significant difference was that Mr. Kinsman was considerably more connected to the local LGBTQ2S+ communities. His disappearance was reported quickly, and there was a great deal of community attention to it as well as pressure to find him. I revisit this issue later in this chapter.

I turn now to a more detailed discussion about Mr. Kinsman's disappearance and the investigation that followed.

### *The Investigation into Mr. Kinsman's Disappearance*

On June 26, 2017, McArthur picked Andrew Kinsman up from Mr. Kinsman's apartment building at 71 Winchester Street in downtown Toronto, about two

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<sup>8</sup> Inspector Code is now a staff superintendent.

kilometres from Church and Wellesley streets. Mr. Kinsman left in McArthur's 2004 red Dodge Caravan. He was never seen again.

On June 28, Ms. AF called 911 twice to report Mr. Kinsman missing. She was Mr. Kinsman's neighbour and friend. She waited five hours for a response. When the police did not return her calls or come to her apartment building, she walked to 51 Division late that evening to report Mr. Kinsman's disappearance, in person. The officer at the front desk told her to go home and wait for an officer to be dispatched to meet with her. (As I discuss in Chapter 13, it does not represent good practice to send anyone home in these circumstances without taking a missing person report.) Ms. AF told the officer she would wait outside of her building until an officer arrived. An officer did arrive within 45 minutes. That was early on the morning of June 29.<sup>9</sup>

Ms. AG was another neighbour and friend who reported Mr. Kinsman missing. She was concerned when Mr. Kinsman stopped responding to her text messages and phone calls. This was out of character for him. She called 911 at about 5:00 p.m. Later that night, Ms. AG (separately from Ms. AF) drove to 51 Division to report Mr. Kinsman missing. The officer at the front desk told her that the division was handling a lot of calls that night, and an officer would come by when one was available.

At about 1:30 a.m., two officers came to Mr. Kinsman's apartment building to speak with Ms. AF and Ms. AG. Ms. AF told the officers that another tenant had last seen Mr. Kinsman on June 26, 2017, at about 2:00 p.m. Ms. AF received a final text message from Mr. Kinsman around the same time.

Ms. AF described Mr. Kinsman as a very detail-oriented and responsible person. He was the building superintendent, and it was unlike him to disappear without having assigned his tasks to someone. Mr. Kinsman's cat had been left without food or water. Ms. AF had contacted Mr. Kinsman's ex-boyfriend, who usually cared for Mr. Kinsman's cat when Mr. Kinsman was out of town. His ex-boyfriend had not heard anything from Mr. Kinsman.

Ms. AF had also contacted Mr. Kinsman's workplace, the Toronto People with AIDS Foundation. She learned that he had not shown up for work. Ms. AF also told the officers that Mr. Kinsman depended on his HIV medication. The officers searched Mr. Kinsman's apartment. It was neat, and they could not find his medication. Their calls to local hospitals yielded no information.

The police completed a Search Urgency Chart for Mr. Kinsman at 1:29 a.m. and marked his disappearance as "low" urgency. I simply do not

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<sup>9</sup> Many of the documents in the police file indicate that Mr. Kinsman was reported missing on June 29, 2017. This date is inaccurate.

understand how the circumstances surrounding Mr. Kinsman's disappearance would justify a "low" urgency designation. It speaks to the low priority systemically being given to missing person cases. But it also speaks to how information was quite remarkably siloed within the Service – and even within 51 Division. No officer could reasonably have designated this disappearance as "low urgency" based on Mr. Kinsman's circumstances in isolation, let alone if the officer had been fully and accurately informed of the history of unsolved disappearances of gay men within 51 Division's boundaries. Fortunately, in relation to Mr. Kinsman's disappearance, the police recognized the heightened concerns about him the day after he went missing. His disappearance was assigned to Detective Barry Radford at 51 Division. Detective Radford immediately thought something was amiss: Mr. Kinsman had a regular schedule, was responsible, and was typically in frequent communication with friends. Plus, he had seemingly abandoned his beloved cat.

The same day, officers contacted local hospitals, with negative results. The Toronto police issued a media release with Mr. Kinsman's photo, stating that police were concerned for his safety. They contacted Mr. Kinsman's doctor, cellphone provider, and bank. The police also searched Mr. Kinsman's apartment. They found his iPad, a phone bill, and a chequebook. Police canvassed the area around Mr. Kinsman's apartment building. They found video cameras across the street, at 72 Winchester Street. They spoke with the building superintendent, who told them that the video footage for the building would be kept for 30 days. The superintendent did not know how to download it. Police arranged to follow up. Mr. Kinsman's iPad was given to the Tech Crimes Unit for investigation.

On June 30, the police checked Mr. Kinsman's banking activity and attempted to obtain video footage from a Tim Hortons close to Mr. Kinsman's home. They were told that the footage could not be accessed until the manager returned on July 3. The police contacted Rogers Communications to learn that Mr. Kinsman's cellphone was not responding to pings. This meant the phone was turned off or out of range, or that its battery was dead. One of Mr. Kinsman's friends told the police that Mr. Kinsman had said he would be going to the "Point" campground in Turkey Point, on Lake Erie, for most of the summer. That friend believed Mr. Kinsman was most likely there. The police went back to Mr. Kinsman's apartment and seized his desktop computer. Mr. Kinsman's physiotherapist called the police to tell them Mr. Kinsman had mentioned a heated argument with another tenant during his last appointment on June 21, 2017. A tenant in Mr. Kinsman's building gave the police emails she had received from Mr. Kinsman. On June 26, Mr. Kinsman let her know that he would be away for work between June 29 and July 3.

On June 30, Detective Constable Philip Wong was assigned to go to 72 Winchester Street to retrieve video footage to capture Mr. Kinsman leaving his residence. Detective Radford directed him to obtain footage for June 26, 2017, from 1:00 to 4:00 p.m. Detective Constable Wong was also told to canvass for any video on Winchester Street that may have captured Mr. Kinsman's comings and goings on June 26.

Detective Constable Wong obtained the video footage from 72 Winchester Street. He also obtained footage from a nearby restaurant and a Tim Hortons. Once he returned to 51 Division, he copied the files to his computer for safekeeping. He consulted with Detective Constable Michael Agostinho about his results and allowed Detective Constable Agostinho access to the files for viewing.

On July 4, after returning from his days off, Detective Constable Wong made DVDs of the videos from each location and submitted them to the Service's Video Evidence Section of the Property and Video Evidence Management Unit.<sup>10</sup>

Detective Constable Agostinho's memobook notes reflect that, on June 30, 2017, he reviewed the video footage from the restaurant and the Tim Hortons. His notes make no reference to the footage from 72 Winchester Street. He advised the Review that he did not review the footage from 72 Winchester Street. Based on the length of the other videos, he assumed he was unable to get to the third video before he went off-shift. He did not know if another officer was assigned to review the third video. In any event, the evidence discloses that the 72 Winchester Street footage was not reviewed until August 23, 2017. The footage showed Mr. Kinsman getting into McArthur's red van on June 26, 2017, at 3:07 p.m. (within the time parameters specified by Detective Radford back on June 30). I elaborate on this delay later in this chapter.

In early July 2017, officers interviewed a number of Mr. Kinsman's friends and colleagues. On July 1, the police formally interviewed Ms. AF and Ms. AG. The police learned that Mr. Kinsman used online dating apps, and that he had a troubled relationship with an ex-partner. They also learned that, as of June 25, Mr. Kinsman had appeared happy and upbeat. A friend saw him walking home from Pride, excited about possible permanent employment at the food bank where he volunteered. In the early morning hours of June 25,

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<sup>10</sup> The Property and Video Evidence Management Unit is a support unit of the Service that is responsible for the processing, tracking, storage, maintenance, and disposal of all evidence. The Video Evidence Section of this unit is a centralized area for the intake and management of video within the Service.

Ms. AF had seen Mr. Kinsman at their apartment building with a white-haired man who appeared to be in his late 50s.

On July 2, 2017, Detective Corey Crawford emailed Ontario's Missing Adults website, a civilian-run informational website about missing persons in the province, to ask that Mr. Kinsman be added to the registry. Detective Crawford noted that the circumstances of Mr. Kinsman's disappearance were considered suspicious, and there was growing concern for his safety. The police sent a similar email to Crime Stoppers. The officers also conducted a 300 metre radius check of parks, laneways, and rear lots in Mr. Kinsman's neighbourhood.

On July 3, the police issued a second media release about Mr. Kinsman's disappearance, alerting the public that the disappearance was being treated as suspicious. One of the factors concerning the police was that Mr. Kinsman had left behind his pet cat. As I reflect in Chapter 5, for reasons that I simply do not understand, Mr. Navaratnam's and Mr. Kayhan's ostensible abandonment of their pets did not prompt a heightened investigative priority or urgency when their disappearances were initially investigated.

On July 4, the police went back to Mr. Kinsman's apartment to take photographs and seize Mr. Kinsman's toothbrushes and razor for DNA collection. On July 5, the police went to the Turkey Point campground. Mr. Kinsman was not there. Members of the Marine Unit did a shoreline search in Toronto and searched the Don River Valley.

On July 6, CTV News, along with several other outlets, published a story about Mr. Kinsman's disappearance. The article highlighted his disappearance as one of five men from the LGBTQ2S+ communities who had gone missing since 2010.<sup>11</sup> The article specifically referred to Mr. Faizi, Mr. Kayhan, and Mr. Navaratnam. It noted that the police would not say whether the cases were connected.

On July 7, Sergeant Dyck and Detective Constable Adrian Piccolo responded to a Crime Stoppers tip regarding Mr. Kinsman. The tipster indicated that on June 26, at about 3 p.m., he had purportedly seen Mr. Kinsman on Wellesley Street, near Jarvis Street. Police officers went to the A&W restaurant at the corner of Wellesley and Jarvis to request the external video footage from that date. Sergeant Dyck watched the video but did not see Mr. Kinsman on it.

On July 8, an anonymous tipster called the police to tell them that Mr. Kinsman had been a bartender at the Black Eagle bar about 10 years earlier. The police also learned that Mr. Kinsman may have spent time with two men

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<sup>11</sup> The fifth man mentioned in the article, Zhu Jian "Frank" Wang, was never connected to McArthur.

from Australia over the Pride weekend. The police located the two men and interviewed them. They recognized Mr. Kinsman's photograph, but did not know him personally.

On July 11, Detective Sergeant Richmond spoke to Constable Caroline de Kloet, a Toronto police media relations officer, about the advisability of a public safety media release in relation to gay men using social media dating sites such as Grindr to arrange sexual liaisons. The discussion focused on community members pursuing sexual relationships with strangers through these types of sites and the inherent safety concerns.

However, there was concern that a media release could cause the public to relate Mr. Kinsman's disappearance to his use of social media. It was pointed out that there was no evidence to establish such a connection. Detective Sergeant Richmond followed up with Director Mark Pugash of the Corporate Communications Unit. Director Pugash advised that since there was no established connection to either the earlier Project Houston investigation or Mr. Kinsman's use of social media sites for arranging sexual encounters, such a media release / public warning would not be appropriate at this time.

On July 14, Constable Danielle Bottineau, the Service's LGBTQ2S+ liaison officer, emailed a list of men who had gone missing to Deputy Chief Barbara McLean. Deputy Chief McLean forwarded the list to Superintendent Tony Riviere, 51 Division's unit commander. Deputy Chief McLean noted that she had been speaking with the owner of the Pegasus bar on Church Street. Superintendent Riviere responded the same day:

As mentioned, earlier this week, I did asked [*sic*] D/Sgt Richmond to consider a press release to alert members of the community (based on a few similar criteria that raises [*sic*] some cause for concern), however Pugash declined to support that notion.

I wasn't aware of the cases provided by PC Bottineau (thank you) and so I can't speak to any similarities, suffice to say that they all meet the criteria for MCM [major case management] and hopefully any similarities would have hopefully surfaced and [been] considered.

By way of next course of action, I will be suggesting that a "war room" approach be considered where all the relevant cases be reviewed for patterns and similarities. It might be that a mini taskforce be established with that sole purpose.

I will raise again the notion of a public alert, learning from the Jane Doe investigation, aimed at potential victims.

Thank you for providing Mr. Hudspeth's contact info, like I said earlier, I see merit in meeting with him and/or other prominent members of the LBGTQ community to share exactly what we know, to date, about the

investigations. We also have an embedded Crown at D51, I will ensure that his input be sought and considered.

Superintendent Riviere's perspective was a welcome one. He supported the creation of a task force to examine these similar disappearances, presumed that these cases should be treated as major cases, and promoted a public alert about dating websites and the sharing of information with the LBGTQ2S+ communities.

On July 14, a forensics officer went to Mr. Kinsman's apartment. The officer took photographs. There were no signs of a confrontation in the apartment. The officer could hear sound from other units, making it unlikely that an altercation in the unit would have gone unnoticed. DNA samples were taken.

On the same day, the police interviewed one of Mr. Kinsman's neighbours, who was one of the last people to see Mr. Kinsman alive. She told the police that she saw Mr. Kinsman at his apartment building on June 26, between 1:00 and 2:00 p.m. Mr. Kinsman told her that he was going to meet friends for coffee.

On July 17, a witness told police that he had seen Mr. Kinsman in a heated discussion with several Middle Eastern men sometime before his disappearance.

On July 19, Superintendent Riviere emailed Staff Superintendent Mario Di Tommaso<sup>12</sup> about Mr. Kinsman's disappearance, noting:

As you may be aware, there has been a tremendous amount of public interest in this case as it represents one of many outstanding missing cases, over the years, involving males belonging to the LGBTQ community.

Although there is no tangible evidence of foul play or criminality these disappearances are tremendously suspicious and concerning.

I have recommended that a mini Task Force be comprised to provide a holistic overview of all the related cases to ensure all the due diligence has been afforded to the investigations.

On July 21, Detective Constable Kama went to Mr. Kinsman's apartment to see if he could find a copy of a will or other relevant documentation. Detective Constable Kama did not find a will but did find two boxes containing large amounts of cash in Mr. Kinsman's bedroom closet. This discovery, of course, made it even less likely that Mr. Kinsman had chosen to leave voluntarily.

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<sup>12</sup> Staff Superintendent Di Tommaso is now the deputy solicitor general, community safety.



On July 23, Detective Radford and Police Constable Patrick Platte interviewed another one of Mr. Kinsman's friends. The friend told them that Mr. Kinsman regularly engaged in outreach for safe sex practices in local parks. Mr. Kinsman never mentioned any bad experiences in the parks, but his friend told police that the parks were known to be dangerous: sometimes straight men would wait to beat up gay men. On July 26, the police located another surveillance camera in the vicinity of the site of Mr. Kinsman's disappearance. The owners of the camera told police that the video had since been "written over," but after Mr. Kinsman's disappearance they had checked the footage for June 26, in its entirety. Mr. Kinsman did not appear on it. The friend also told the police that Mr. Kinsman often walked along Carlton Street to get to Parliament Street. The police checked for other video cameras along Carlton Street, with no success.

Detective Constable Cathy Loria learned of Mr. Kinsman's disappearance through the media. She had suspected, during Project Houston, that a serial killer was targeting the Village. She immediately suspected that the serial killer was responsible for this disappearance as well. Although Mr. Kinsman was not Middle Eastern or dark skinned, unlike the missing men from Project Houston, he had facial hair and was an older man. He appeared to be a member of the "bear" community (that is, an older, hairy, heavy-set man). Like the men who had disappeared earlier, his disappearance was out of character. Detective Constable Loria sent a text message to Detective Sergeant Idsinga. "It's happening again." Detective Sergeant Idsinga texted back: "Yup, it's happening again."

#### *A Narrow Escape: McArthur Assaults Sean Cribbin*

Sean Cribbin is a retired preschool teacher and a gay man. He and his life-long partner have spent the better part of their adult lives in the Village. Mr. Cribbin and his partner have an open relationship. Mr. Cribbin and McArthur had communicated on the dating app GROWLr (McArthur used the username *silverfoxx*) for several months.

On July 26, 2017, McArthur picked up Mr. Cribbin in his truck a few blocks from Mr. Cribbin's apartment in the Village. McArthur's truck smelled like landscaping materials and was filled with tools. During the ride, McArthur remained silent as Mr. Cribbin commented on the recent disappearances in the area and the possibility of a serial killer. Mr. Cribbin was referring to Mr. Esen and Mr. Kinsman. Mr. Cribbin recalled that McArthur asked him if anyone knew that he (Mr. Cribbin) was with McArthur. No one did. At McArthur's apartment, McArthur mixed a drink laced with GHB for Mr. Cribbin. GHB is

commonly known as the “date-rape drug.” Mr. Cribbin recalled panicking as McArthur choked him during their sexual encounter. He may have temporarily lost consciousness. Later, Mr. Cribbin would learn that McArthur had taken photos of him when he was unconscious. Fortunately, McArthur’s roommate came home earlier than expected, enabling Mr. Cribbin to “cut the date short.” He was “uncomfortable and wanted to leave.” He considered the experience to be a bad date and did not think of it again until McArthur’s arrest was publicized in the media in January 2018.

When Mr. Cribbin saw McArthur’s photo in the media, all he could say was “Oh, my God.” A day later, the Toronto police contacted him for an interview. The police had found chats between Mr. Cribbin and McArthur as well as photographs of Mr. Cribbin on McArthur’s computer. He met with the police on January 23, 2018. This is when he learned that McArthur had taken photos of him. McArthur had taken similar pictures of his murder victims, and seemingly kept them as “trophies.” Mr. Cribbin knew he had come close to becoming McArthur’s next murder victim.

Mr. Cribbin was understandably traumatized by his experience. In my meeting with him and his partner, I learned about what happened during his experience with McArthur and about the great bravery Mr. Cribbin has demonstrated in the years since. After McArthur’s arrest, Mr. Cribbin considered himself a spokesperson for the murdered men. I commend him for his willingness to share his personal story.

Mr. Cribbin and his partner also shared with me how they have enjoyed a positive relationship with the police, both before and after Mr. Cribbin’s encounter with McArthur. Mr. Cribbin did not report the incident to the police at the time because he considered it a bad date and chose simply to move on; however, he told me he would have felt comfortable doing so. His experience with the police during the McArthur investigation and more generally was positive and supportive. (Mr. Cribbin particularly appreciated Detective Keri Fernandes’s kindness and compassion toward him during his interview with the police after McArthur’s arrest. Mr. Cribbin also contacted Detective Dickinson after McArthur’s guilty plea to thank him for his hard work.)

I observe that, by July 26, 2017, the Toronto police had obtained surveillance footage showing Mr. Kinsman getting into McArthur’s van (likely the same van McArthur used to pick up Mr. Cribbin), but the police had not yet watched it. I explain in this chapter why this footage should have been viewed much earlier than it was, even without my applying impermissible hindsight. Mr. Cribbin’s escape might ultimately be attributable to good fortune – namely, the early return of McArthur’s roommate – as well as to Mr. Cribbin’s quick thinking. Tragedy was averted, but this incident reinforces the

importance of timely investigative steps, including the review of relevant surveillance videos.

## **Project Prism – Official Launch to Aftermath**

### *The Task Force*

In late July 2017, news outlets reported on an upcoming task force to be set up by the Service to investigate the disappearances of Mr. Esen and Mr. Kinsman. This task force would become Project Prism. The media reported that police indicated that the investigation and evidence collected to that point did not lead them to believe the disappearances of Mr. Esen and Mr. Kinsman were linked to the missing men from Project Houston.

Several people called the police after seeing the articles. One of Mr. Esen’s friends told the police he had last seen Mr. Esen about six months earlier. Mr. Esen was an addict in recovery, and he had spoken about suicidal thoughts, an abusive relationship he was in, and a desire to go home to Turkey.

On August 1, 2017, the Toronto *Star* ran an article about the attendance of Toronto police at a town hall meeting at The 519 Community Centre that evening:

Worried friends, families and co-workers of two missing men in Toronto’s LGBTQ community received few answers from police at a Tuesday night meeting at the 519 Community Centre, raising concerns over the pair’s whereabouts.

Officers from a Toronto police team tasked with finding Andrew Kinsman, 49, and Selim Esen, 44, met an overflowing crowd of more than 200 people in the Church and Wellesley neighbourhood.

Toronto police say they have yet to find any criminality in the pair’s disappearances, or connection to three other missing persons cases from 2010–2012.

...

“We do not have a lot of information for you. I understand how frustrating that must be,” said Peter Code, the Toronto police inspector tasked with leading the investigation, who credited the community for sending an abundance of information.

“The police want to know everything. All information is important because we just don’t know what the next piece will lead us to.”

One of the officers who attended the meeting told the Review that the political pressure from the LGBTQ2S+ communities about Mr. Kinsman’s

disappearance was very powerful. That pressure was why Mr. Kinsman's case moved over to the Homicide Unit to become a project investigation. This officer indicated that there was "no way Homicide would have taken this on without some sort of clout." In fairness, Detective Sergeant Idsinga had served as major case manager of Project Houston. As well, the Homicide Unit did not assume carriage of Project Prism from the outset although the project's primary investigator, Detective Dickinson, was a Homicide Unit officer.

### *The Operational Plan*

Project Prism officially started on August 14, 2017. The project's Operational Plan that Inspector Peter Code prepared listed Detective Sergeant Richmond as the major case manager, Detective Dickinson as the primary investigator, and Detective Constable Jeff Weatherbee as the file coordinator. The Operational Plan focused primarily on Mr. Kinsman's disappearance and listed Mr. Esen's disappearance as a potential linked case.

The Operational Plan noted:

In addition to the ESEN case, a TPS investigation into three missing men was also investigated jointly by TPS D51 and TPS Homicide Squad in 2012. This case involved the disappearance of the following three males:

- Skanda Navaratnam (Toronto Police Service)
- Majeed Kayhan (Toronto Police Service)
- Abdulbasir Faizi 11 Division (Peel Regional Police)

These three males also disappeared from the same geographical area as Mr. Kinsman and Mr. Esen, and to date these occurrences still remain open without any information as to the whereabouts of these individuals.

At this time the similarities between these cases has [*sic*] not met the threshold for the cases to be linked as defined by OMCM [Ontario major case management]. However, these cases need to be investigated in totality as part of a prudent investigation to ensure that there is not one offender responsible.

I later address (and disagree with) the conclusion that these cases had not met the threshold for linked cases under provincial adequacy standards for major case management.

Detective Dickinson was Detective Sergeant Idsinga's partner in the Homicide Unit. His appointment as primary investigator facilitated his ability to consult with Detective Sergeant Idsinga about the Project Houston investigation so he could get up to speed. Because he had previous experience

at 51 Division, he knew most of the Project Houston officers and had a good working relationship with them.

A joint management team provided general oversight of Project Prism. The team was made up of Inspector Bryan Bott of the Homicide Unit, Inspector Peter Code of 51 Division, and Inspector Pauline Gray of the Sex Crimes Unit.

The first Project Prism meeting took place on August 14, 2017. Detective Constable McKenzie and Detective Constable Coffey provided an overview to the other officers of the Project Houston investigations and the ongoing Kinsman and Esen investigations. The disappearances of Mr. Kinsman and Mr. Esen were to be investigated separately because, according to police, nothing linked them or connected them to the missing men from Project Houston. There were no known persons of interest.

Officers who worked on both projects told the Review that Project Prism had a more formal structure. At their first team meeting, officers learned the project would be run according to the major case management model. For example, officer assignments would be formally submitted and tracked throughout Project Prism as required by the *Major Case Management Manual*. Officers were required to submit reports on completing assignments, something the Review discovered did not generally happen during Project Houston. One officer told the Review this requirement made a huge difference; during Project Houston, he had not even been aware that major case management existed.

Detective Dickinson told the Review that the Project Prism team understood that links between the Project Houston missing men and the Project Prism missing men may be discovered down the road.

The officers continued to review the data extracted from Mr. Kinsman's iPad. They looked at locations he had Googled shortly before his disappearance and at people he looked up on Facebook. On August 16, the police obtained a judicial production order for Mr. Kinsman's cellphone records. They sent a subpoena to Grindr for Mr. Kinsman's messages, but were told that all messages were deleted from the Grindr system within 15 minutes.

On the same day, August 16, officers found Mr. Kinsman's calendar in his apartment. Detective Dickinson noticed the name "Bruce" or "Bryce" recorded in the calendar for June 26 at 3:00 p.m. (the day of Mr. Kinsman's disappearance).

Detective Dickinson told the Review that, in hindsight, the calendar entry turned out to be an important clue. However, according to him, at the time, the officers did not know what time Mr. Kinsman had gone missing. Discovering the identity of "Bruce" was actioned, but it was not considered a

priority. “Bruce” was not considered to be a suspect. According to the police, until the investigators narrowed down the time of Mr. Kinsman’s disappearance and ultimately watched the surveillance footage showing Mr. Kinsman getting into McArthur’s van, “Bruce” was just another lead. Detective Dickinson was unaware that McArthur had been interviewed during Project Houston. Throughout August 2017, the officers continued to interview friends, colleagues, and neighbours of Mr. Kinsman. After discovering the calendar, they asked interviewees if they knew a “Bruce,” but did not get any leads.

On August 17, shortly after the public announcement of the Project Prism task force, McArthur took possession of a new 2017 van. (The Project Prism team eventually located the van McArthur used to pick up Mr. Kinsman. They found it in a wrecking yard.)

On August 23, Detective Constable Coffey and Detective Constable Weatherbee watched the video footage from 72 Winchester Street. They saw an individual who appeared to be Mr. Kinsman getting into a red Dodge van at 3:07 p.m. On August 24, Detective Constable Coffey went to a Dodge dealership to show the manager a screen capture from the surveillance video. The manager identified the van as a 2004 Dodge Caravan 20th-anniversary edition. The police continued to canvass the area around Mr. Kinsman’s apartment building for further video footage.

On August 24, Detective Sergeant Richmond emailed the Project Prism team, telling them that his bosses had told him

they want to have some consistent updates provided to the community, rather than letting this project run it’s [sic] 60/90/120 course, and then releasing information at the end. I realize that we have to be careful what is released, but there is no harm in advising them generally about what we have done such as searching specific areas and following up on social media or phone records.

The same day, Detective Sergeant Richmond emailed Constable Bottineau to tell her about Project Prism. He indicated that the project team would like to bring Constable Bottineau onboard to disseminate updates to the LGBTQ2S+ communities. The Review did see several emails from Constable Bottineau to the civilian co-chair of the Chief’s Consultative Committee and to some community members.

On August 30, Sergeant Dyck and Detective Radford interviewed one of Mr. Kinsman’s friends with the first name “Bryce.” They showed Bryce Mr. Kinsman’s calendar. The “Bruce” or “Bryce” entry for June 26 was not a

reference to him. He believed he was working that day. There was an earlier reference to “Bruce” on June 15, 2017. Bryce had driven Mr. Kinsman to the Turkey Point campground on that date.

On August 31, 2017, Detective Constable Coffey gave the Project Prism team an update about the video surveillance footage from the day of Mr. Kinsman’s disappearance: the video cameras from 72 Winchester Street showed a man who appeared to be Mr. Kinsman getting into a red van at about 3:07 p.m. The van was a fourth-generation Dodge Caravan with a roof rack, a blown-out headlight on the passenger side, and rain guards on the doors. Detective Dickinson told the team that he was waiting for an engineer from Dodge to narrow down the year of the van. He requested Ministry of Transportation records for all red Dodge Caravans and Grand Caravans from 2003 to 2006. Members of the Computer Cyber Crime Unit (C3) had looked at the videos but were not able to identify the licence plate.

Detective Sergeant Richmond reflected in his notes that he wanted the community to be suitably updated though he was not referring to the van in particular. Up until that point, Project Prism had issued no media releases. A media release went out in October 2017.

### ***McArthur Is Identified***

On August 31 and September 1, 2017, Sergeant Dyck cross-referenced Mr. Kinsman’s Facebook friends against a list from Detective Dickinson of all the people in the Greater Toronto Area owning early-model red Dodge Caravans. One of the people was McArthur. Detective Dickinson ran the names of the identified people and learned that only McArthur had recent contact with the police (regarding the June 20, 2016, choking incident). He still didn’t know that McArthur had been interviewed during Project Houston. That information should have been easily accessible – and it would have been if PowerCase had been properly used or if the interview had been placed in Versadex. (As I note earlier, PowerCase is the mandatory case management software for major cases.)

On September 1, Detective Dickinson and Detective Constable Coffey went to McArthur’s apartment building. They obtained a list of the key fobs assigned to residents and what they revealed about McArthur’s access to the building from June 14 to September 1, 2017. They also learned that McArthur had a roommate. Detective Constable Coffey tried to obtain video footage from the apartment building, but the footage from June 26, 2017, had been overwritten. The officers reviewed footage from July 27, 2017, onward and

observed McArthur driving what appeared to be the same red van that picked up Mr. Kinsman.

On September 5, based on the identification of McArthur as owner of a red Dodge Caravan, Detective Constable McKenzie pulled a copy of his Project Houston interview with McArthur from November 2013. He realized McArthur was the same person. Detective Dickinson requested immediate Mobile Support Services surveillance on McArthur and directed Mobile Support to obtain lifestyle and background information on him and his discarded DNA. (Police have greater latitude in obtaining DNA without a judicial order when that DNA is on a discarded item.) The surveillance team conducted surveillance on 15 separate days between September 5 and November 7, 2017. On September 6, it saw McArthur doing landscaping work at several addresses, including 53 Mallory Crescent.

Detective Dickinson watched McArthur's videotaped statement from Project Houston. His main takeaway from the interview was that McArthur had connections to the three missing men from Project Houston. At that point, McArthur was not a "suspect" in all the disappearances, but the connections heightened Detective Dickinson's concern and his sense that the investigation was going down the right path. Detective Dickinson contacted Sergeant Gauthier. Detective Dickinson had located the 2016 occurrence investigated by Sergeant Gauthier and wanted to know if any photos had been taken of McArthur's van.

On September 6, 2017, Detective Radford interviewed the salesperson who had sold the red van to McArthur. Detective Sergeant Idsinga's notes of that same date indicate that McArthur was believed to have picked up Mr. Kinsman on June 26, 2017. He noted that McArthur had not come forward despite numerous media appeals about Mr. Kinsman, and that McArthur had been arrested in 2016 for choking a man in his van. Officers reviewed and made a copy of McArthur's Facebook page.

On September 7, Sergeant Dyck interviewed one of Mr. Kinsman's neighbours. The neighbour recalled that, in the month before Mr. Kinsman's disappearance, she had seen a man with Mr. Kinsman at the building. The man fit McArthur's physical description.

On September 8, Detective Constable McKenzie contacted Peel police to ask them to hold the property and DNA obtained during the investigation into Mr. Faizi's disappearance, in the event that Project Prism were to find a link to Mr. Faizi's disappearance. Detective Constable McKenzie noted in his memobook that the disappearances of Mr. Navaratnam, Mr. Kayhan, Mr. Kinsman, and the choking victim in 2016 all occurred on a Monday. (Mr. Faizi was last seen on a Wednesday.)



On September 10, Mobile Support continued surveillance on McArthur. The team followed him to a coffee shop in the Church and Wellesley streets area and seized a discarded plate and fork for DNA testing. The plate and fork were ultimately submitted to the Centre of Forensic Sciences on October 25, 2017, to generate a DNA profile.

On September 11, McArthur was formally identified as a “person of interest” in Mr. Kinsman’s disappearance. Detective Radford told the Review that this designation was based on a number of factors, including McArthur’s link to the red Dodge Caravan and to the Project Houston missing men. As well, Detective Dickinson had conducted a search of McArthur’s record to learn he had been convicted of assaulting a man with a pipe in the Village. Ministry of Transportation records had also revealed that McArthur purchased a new van shortly after his Project Houston interview. This information was all suspicious to Detective Radford. In his view, there was a definite possibility that McArthur and the missing men from Project Houston could be linked. But the police did not have evidence of “definitive” ties.

Detective Constable Coffey searched Mr. Kinsman’s desktop computer and cellphone for any reference to McArthur. He found a telephone number for McArthur in a backup of Mr. Kinsman’s cellphone. On September 12, the officers obtained a copy of McArthur’s van purchase from the dealership. They also obtained McArthur’s cellphone records, including text messages, calls, and tower usage. They saw no contact with Mr. Kinsman or Mr. Esen. McArthur’s telephone number was also not in the cellphone records for Mr. Kinsman. Nor was it in Mr. Esen’s cellphone records.

On September 14, the police obtained a tracking warrant for McArthur’s vehicles, enabling them to track the whereabouts of McArthur’s two vans (the 2004 Dodge Caravan that had picked up Mr. Kinsman, and a 2017 Dodge Caravan). However, on September 16, before the police installed the tracking device, McArthur’s son-in-law sold the 2004 Dodge Caravan.

Throughout the rest of September 2017, Project Prism focused exclusively on McArthur. The officers continued to interview witnesses and conduct surveillance on him. They investigated people close to McArthur and evaluated whether they could be involved in the disappearances. At a September 21 project-briefing meeting, the investigative team discussed whether any follow-up was required or if the investigation into Mr. Kinsman’s disappearance could take a direction that was not related to McArthur. They concluded that no leads pointed anywhere else.

On September 25, Detective Dickinson sought an extension to Project Prism. In doing so, he identified McArthur as a “person of interest” in the

disappearances of Mr. Kinsman and Mr. Esen and noted that he was linked to the three missing men from Project Houston. Detective Dickinson told the Review that at that point, McArthur was a “person of interest” only in the Kinsman and Esen disappearances but “could not be excluded” with respect to the disappearances of the Project Houston men.

On September 27, Detective Constable Joel Manherz contacted [www.silverdaddies.com](http://www.silverdaddies.com) to request that certain accounts be preserved until a subpoena could be issued. A representative from the *silverdaddies* website advised that messages are automatically deleted after 30 days. Detective Constable Coffey found several photographs of McArthur in Mr. Kinsman’s computer hard drive. The photos had been taken in September 2011.

On October 3, the officers found McArthur’s previously owned 2004 red van at an auto-wrecking shop. McArthur had last been seen in the van on September 11. Forensics officers began examining the van.

On October 11, officers went back to Mr. Kinsman’s apartment to see if they could find any other information about McArthur. They found a piece of paper with the name “Bruce” on it.

On October 16, Detective Constable McKenzie began looking through Mr. Kayhan’s property for possible connections between Project Houston and Project Prism. Forensics officers requested comparison DNA samples from Mr. Navaratnam, Mr. Faizi, Mr. Kayhan, Mr. Kinsman, and McArthur. On the same day, the officers sent to Apple a Mutual Legal Assistance Treaty request (a request for international assistance through US channels), seeking subscriber information for Mr. Kinsman’s and McArthur’s accounts.

On October 17, Detective Constable Kama asked Police Constable Burak Inal (a Turkish-speaking officer) to contact Mr. Esen’s brother to ask for Mr. Esen’s hairbrush or toothbrush, as well as DNA samples from family members.

On October 16, 17, and 18, Detective Constable Coffey analyzed the forensic image of Mr. Navaratnam’s computer that had been created during Project Houston. He used Internet Evidence Finder, X-Ways Forensics, and Encase 6.5 to perform keyword searches of the computer’s contents. (I discuss relevant search programs in Chapter 4.) He searched for various terms, including “Bruce,” “McArthur,” “*silverfoxx*,”<sup>13</sup> and McArthur’s telephone number.

Constable Coffey found evidence of contact between McArthur and Mr. Navaratnam on Mr. Navaratnam’s computer:

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<sup>13</sup> The police already knew that “*silverfoxx*” was referenced in Mr. Navaratnam’s computer.

- On April 21, 2010, the user of Mr. Navaratnam’s computer appears to have viewed McArthur’s account profile photo on the gay dating website *www.daddyhunt.com*.
- A copy of McArthur’s dating profile from *www.silverdaddies.com* was located in deleted file space on Mr. Navaratnam’s computer. The profile contained the email address *silverfoxx51@hotmail.com*, and described how the profile owner had his own landscaping business. The user of Mr. Navaratnam’s computer appears to have viewed the photo associated with the *silverfoxx51* dating profile.
- A Yahoo messenger chat username appeared for a “BruceM.”
- McArthur’s telephone number was located in deleted file space on the computer; it was associated with McArthur’s dating profile on *www.daddyhunt.com*.
- A partially deleted message from McArthur’s dating profile on *www.daddyhunt.com* to Mr. Navaratnam was found, reading “hey sexy did you get my [*sic*].”

Detective Constable Coffey also logged into Mr. Navaratnam’s Facebook account. He determined that Mr. Navaratnam had “friended” and “unfriended” McArthur several times in 2009 and 2010. Most recently, on February 1, 2010, Mr. Navaratnam had added McArthur as a friend. Finally, Detective Constable Coffey used the forensic software program Axiom to review the entirety of image files within the computer. The findings appeared to indicate that Mr. Navaratnam had been in contact with McArthur through *daddyhunt.com*’s private messaging system as well as through Yahoo Messenger. The partially recovered messages were intimate in nature.

This finding undermined McArthur’s claim during his November 2013 interview that he and Mr. Navaratnam were only friends and did not have a sexual relationship.

Detective Dickinson received an email from a forensics officer. The police had found blood in several areas of McArthur’s van. The source of the blood was not yet identified.

Through to the end of October 2017, the Project Prism team reviewed the Project Houston files. Detective Dickinson was granted access to Peel’s PowerCase file for Mr. Faizi.<sup>14</sup> Detective Dickinson told the Review that

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<sup>14</sup> Information contained in PowerCase is not automatically accessible to all police officers, even when there is a trigger notification potentially linking two cases. To ensure the confidentiality of investigative information entered into the software system, officers who are not associated with the original investigation must be granted access to the investigation in order to view its contents.

Project Prism did not officially take carriage of Mr. Faizi's case until after McArthur's arrest, when Mr. Faizi's remains were found. There was some confusion over which service had carriage of the case, and Detective Dickinson recalled receiving a call from the Peel police about it on the second day of the Project Prism investigation. It was agreed that Peel officers would gather evidence and complete certain tasks, which included locating Mr. Faizi's dental records.

On October 16, the Service issued a media release to update the public about the Project Prism investigation. The release indicated that the task force had been investigating the disappearances of Mr. Kinsman and Mr. Esen for 60 days, and, to date, the disappearances had not been linked. However, investigators were continuing to keep an open mind about any possible links to Project Houston. Constable Bottineau emailed the release to various community members and groups, including The 519 and the Pegasus bar.

On October 24, officers obtained a judicial production order for another gay dating website (*www.squirt.org*) in an attempt to find information regarding the dating profiles belonging to Mr. Navaratnam, Mr. Esen, and McArthur, but found no relevant evidence.

On October 25, Ms. AF participated in a photo lineup. She picked out a photo of McArthur that was similar to the man she saw with Mr. Kinsman the night before he went missing. On the same day, officers submitted the toothbrushes and razor from Mr. Kinsman's apartment and McArthur's discarded fork and plate to the Centre of Forensic Sciences to generate DNA profiles.

On October 31, Police Constable Inal advised Detective Constable Kama that Mr. Esen's family did not have any items containing Mr. Esen's DNA. Mr. Esen's parents were deceased, and Mr. Esen's brother lived in Turkey. Detective Constable Kama requested assistance from Interpol to collect a DNA sample from Mr. Esen's brother.

On November 2, the Project Prism team obtained a forensic copy of Mr. Faizi's computer from the Peel police. On the same date, a transmission data recorder<sup>15</sup> was authorized for McArthur's cellphone. Surveillance of McArthur continued throughout the month. The officers looked through Mr. Kayhan's property and Mr. Faizi's computer for a possible connection to McArthur. On November 7, Project Prism reviewed McArthur's cellphone records for June 24 and 25, 2017, dates when Ms. AF saw Mr. Kinsman with an older man who

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<sup>15</sup> A transmission data recorder is a device that allows the police to collect information relating to cellphone or computer transmissions, such as the location, duration and destination of calls.

resembled McArthur. The records showed that McArthur had been downtown the night of June 24, 2017.

### ***McArthur Officially Becomes a Murder Suspect***

On November 8, 2017, the Centre of Forensic Sciences reported back to Project Prism: Mr. Kinsman's blood was found in three separate locations in McArthur's van. His semen was also in the van. McArthur officially became a suspect in Mr. Kinsman's murder.

On November 12, Detective Dickinson emailed Detective Sergeant Idsinga and Inspector Bott to tell them that McArthur was a suspect in Mr. Kinsman's murder. He wrote:

Based on these CFS [Centre of Forensic Science] results and evidence to date, I believe that MCARTHUR is a suspect in the disappearance of KINSMAN. Additionally, based on the totality of the investigation to date as it relates to Andrew KINSMAN and the linkages and evidence made between Bruce MCARTHUR, Skanda Navaratnam, Majeed Kayhan and Abdulbasir Faizi, I have RG [reasonable grounds] to believe that Bruce MCARTHUR is a suspect in their murders. Direct linkages have not yet been made between ESEN and MCARTHUR.

Detective Dickinson requested Homicide to take over the major case management role and that the investigation team be moved to Intelligence. He wrote that 51 Division, specifically Detective Sergeant Richmond, should continue to be a front for Project Prism. Detective Sergeant Richmond had, to that point, been the main liaison for communication to the media. Detective Dickinson proposed that Detective Sergeant Richmond continue to liaise with the media, suggesting that, at the appropriate time, the media could be updated that Homicide had taken over the investigation. Detective Dickinson met with Inspector Bott the same day to discuss steps moving forward. He also asked Meaghan Gray, the head of the Service's Media and Issues Management Unit within Corporate Communications, to draft a communication to the public about safe dating. The media release was circulated on December 5.

On November 13, Detective Dickinson emailed a PowerPoint presentation for a "Command" presentation about Project Prism to Inspector Bott and Detective Sergeant Idsinga. The PowerPoint presentation summarized the potential connections between McArthur and Mr. Kinsman and Mr. Esen, as well as McArthur's links to the missing men from Project Houston. Regarding Project Houston, it indicated:

- McARTHUR was interviewed on November 11, 2013
- Admitted to knowing Skanda NAVARTHAM [*sic*] and Majeed KAYNAN [*sic*] but denied knowing Abdulbasir FAIZI
- FAIZI's car was located abandoned on Moore Avenue. This location is close to Thorncliffe Park Drive and only metres away from an address that McARTHUR landscapes.
- McARTHUR'S contact (*silverfoxx51*) located in deleted e-mails of Skanda NAVARATNAM
- *Silverfoxx51@hotmail.com* located on notepad at the residence of Abdulbasir FAIZI

According to the Project Prism meeting minutes, as of November 14, 2017, McArthur was formally considered a “person of interest” in the disappearances of Mr. Navaratnam, Mr. Kayhan, and Mr. Faizi. Detective Dickinson told the Review that the minutes were in error: McArthur was not elevated to a person of interest in the Project Houston disappearances. Rather, the proper phrasing should have been that “McArthur cannot be excluded as being involved in their disappearances.” Detective Dickinson told the Review that there cannot be a person of interest in a missing person investigation without indication that a crime was committed.

An officer who participated in Project Prism told the Review that McArthur was a “person of interest” at this stage. In that officer's view, McArthur's 2013 interview during Project Houston formed the basis for the police to consider McArthur as a “person of interest” in the disappearances of Mr. Navaratnam, Mr. Kayhan, and Mr. Faizi. The officer also explained the rationale for keeping 51 Division, and specifically Detective Sergeant Richmond, as the “front” for Project Prism even as the investigation moved to Homicide:

Richmond was still kind of like the central contact point for the community because the gay community is in 51 Division and he was their primary contact. So, they didn't want it to get out right away that it was a Homicide investigation because that would have opened up another whole can of worms with the community. So, they try and keep it on the QT ... There would have been just a political explosion.

Detective Dickinson's assertion to the Review that McArthur was not even a “person of interest” as of November 14, 2017, appears to be inconsistent with his November 12 email. McArthur's designation as a “suspect” or a “person of interest” in the Project Houston disappearances as of November

2017 became particularly significant when viewed in the light of Chief of Police Mark Saunders's comments during a December 8 press conference about Project Prism. Chief Saunders told the public that "the evidence today tells us there is not a serial killer based on the evidence involved." This press conference is addressed in greater detail below.

A follow-up Operational Plan for Project Prism dated November 17, 2017, focused on conducting surveillance of McArthur. McArthur was identified as a suspect in Mr. Kinsman's murder, and a person of interest in the disappearances of Mr. Navaratnam, Mr. Faizi, and Mr. Kayhan. The officer in charge of the investigation was now Detective Sergeant Hank Idsinga. The plan noted:

On August 14, 2017 Project "PRISM" commenced as a 51 Division project investigating the uncharacteristic disappearance of two men from the Church Street and Wellesley Street area in Toronto. Assistance for Project "PRISM" was provided by members from SCI [special criminal investigators] Homicide and SCI-Sex Crime Unit. The recommendation was made that moving forward, SCI-Homicide take carriage of Project "PRISM" and that the Major Case Manager change to a member of the SCI-Homicide.

The objective is to thoroughly investigate the disappearance of two men as well as continue to identify linkages and associates to three other men who went missing between 2010 and 2012. It is being proposed that this be accomplished in two phases.

Phase one will consist of continued traditional investigative techniques with the assistance of members from Intelligence Services to covertly gain entry into locations and premises associated to Bruce McArthur to gather evidence.

Phase two will consist of a full Part VI authorization to intercept communications. The goal of the Part VI authorization will be to gather additional evidence into the disappearances of the missing men.

The Operational Plan outlined the background to the investigation as follows:

Project "Houston" was created in 2012 to investigate the disappearances of three (3) men who were last seen in the Church Street and Wellesley Street area in 51 Division. The disappearances occurred between 2010 and 2012. The project was jointly investigated by members of 51 Division and the Homicide Squad. The project focused on attempting to identify linkages between the three missing men to that of a person of interest. After a thorough investigation, that person of interest was excluded and eventually

the taskforce was disbanded. To date, these three missing men, Skanda Navaratnam, Majeed Kayhan and Abdulbasir Faizi had not been located.

On August 14, 2017 Project “PRISM” was created to investigate the disappearances of two (2) men who disappeared in the spring / summer of 2017 and were last seen in the Church Street and Wellesley Street area, in 51 Division.

Andrew Kinsman was last seen by neighbours and friends in the early afternoon of Monday, June 26, 2017. Kinsman had set routines and schedules and his disappearance was quickly identified as being uncharacteristic. A review of Kinsman’s electronic devices corroborated the belief that something untoward had happened to him in the early afternoon on June 26, 2017.

A van owned by Bruce McArthur was observed on surveillance picking up a person, believed to be Kinsman, at his home address on June 26, 2017 at approximately 3:00 pm. Kinsman has not been seen since this time. An examination of the van owned by McArthur identified blood and semen belonging to Kinsman in several locations within the van. On November 8, 2017, Bruce McArthur was identified as a suspect in the murder of Andrew Kinsman.

Selim Esen was last seen on April 16, 2017 but was not reported missing for several weeks. Esen was living at various residences and at the time of his disappearance could be said to have no fixed address. Third party linkages and associations have been established between Esen and Bruce McArthur and a review of both of their cellular telephones put them in the same general area when Esen was last seen.

In 2013 Bruce McArthur was interviewed by members of Project Houston as physical and forensic evidence was identified associating him to all three of the missing men. During his interview, McArthur admitted to knowing two of the missing men but denied knowing Abdulbasir Faizi.

Bruce McArthur has been identified as a suspect in relation to the murder of Andrew Kinsman. To date, Skanda Navaratnam, Majeed Kayhan and Abdulbasir Faizi have not been located and a criminal offence in relation to their disappearances has yet to be established. Bruce McArthur and his relationship to these missing men will continue to be investigated to either include or exclude him as being involved in their disappearances.

The threat level of the investigation was identified as “medium to high,” and the Operational Plan stated:

To minimize the risk to the public, MSS [Mobile Support Services] is currently providing heightened surveillance on McArthur where reasonably practicable. Additionally, trackers have been placed on his cellular telephone and vehicle. Alerts are provided 24/7 to the investigative team



whenever McArthur's vehicle stops / starts or enters predetermined locations.

Detective Dickinson told the Review that, up until this point, McArthur had been surveilled for fact finding. Now, surveillance was also being conducted to preserve public safety. Surveillance continued throughout November 2017. Detective Constable McKenzie continued reviewing the Project Houston investigation to determine if there was a connection to McArthur.

On November 27, Detective Constable Manherz wrote an application for a judicial production order for Blizzard Media Technologies for the data relating to usernames "*silverfoxtoronto*," "*thirstybear*," and "*hairserviceman*," the usernames associated with McArthur and Mr. Kinsman. The application listed the similarities among Mr. Kinsman, Mr. Esen, and the missing men from Project Houston:

In August 2017 I was assigned to Project Prism, a task force set up to find several missing gay males from Toronto's Church-Wellesley Village including Andrew KINSMAN, Selim ESEN, Majeed KAYHAN, Skandaraj NAVARATNAM and Abdulbasir FAIZI.

...

On August 8th 2017 I was assigned to the Project Prism task force. It is a temporary unit set up to investigate the mysterious disappearances of Andrew KINSMAN, Selim ESSEN [*sic*] and, by extension, Skandaraj NAVARATNAM, Abdulbasir FAIZI and Majeed KAYHAN. Although there are similarities between the missing males, there is nothing to definitively tie them together at this point.

...

16. I know from being briefed as a member of Project Prism that KINSMAN is not the first person to go missing from Toronto's village. In fact, he is the 5th gay male to have vanished without a trace since 2010. Although, at this time we have not yet discovered a concrete connection between the men, they do share some similarities which suggest they may be related:

- a. The other missing men are Selim ESSEN [*sic*] (missing since April 2017), Skandaraj NAVARATNAM (missing since September 2010), Abdulbasir FAIZI (missing since December 2010) and Majeed KAYHAN (missing since October 2012).

- b. All of the missing men, including KINSMAN, had facial hair and would be considered ‘bears’ in the gay community.
- c. All of the men, except KINSMAN, have brown skin (3 of them are from South Asia and ESSEN [*sic*] is from Turkey).
- d. All of the men spent a good deal of time at The Black Eagle bar at one time or another.
- e. All of the men went missing over holidays – NAVARATNAM over Labour Day weekend, FAIZI over the Christmas holidays, KAYHAN over Thanksgiving weekend, ESSEN [*sic*] over an Easter weekend and KINSMAN over a PRIDE weekend.
- f. All of the men lived in or frequented Toronto’s Village.
- g. All of the men were middle-aged (40s and 50s).

The Project Prism team reviewed McArthur’s and Mr. Kinsman’s cellphone records. The officers installed a covert camera to survey McArthur and continued to track him.

On December 1, Detective Radford met with Crown attorneys and a polygraph technician. Detective Radford told the Review that, by this point, it was only a matter of time before McArthur was arrested. Detective Radford provided an update on the investigation to the polygraph technician and the Crown attorneys to allow them to begin preparing for a potential interview with McArthur.

Surveillance continued throughout December 2017. The Project Prism team noted that McArthur acted as a volunteer Santa Claus at a local mall. One officer prepared a workup on the missing men from Project Houston.

On December 4, Inspector Bott emailed a copy of a media release about Project Prism to Superintendent Myron Demkiw<sup>16</sup> of the Intelligence Services Unit. Inspector Bott stated:

We have officially taken the case over as the lead Detective has moved our POI [person of interest] to the status of suspect based [on] recent evidence.

Our carriage of the case has not been made public at this time as we were hoping to use that to our investigative advantage down the road.

What did occur to me with the change in status was[f]or Corporate responsibility to issue a public warning, which prompted discussions with Corp Comm and our LGBTQ2 liaison.

On December 5, the Service issued the media release about Project Prism, and recommended safe online dating practices:

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<sup>16</sup> Superintendent Demkiw is now an acting deputy chief.

- Get to know the person you are connecting with by asking for additional photos and social media profiles or speaking on the phone before meeting.
- When you decide to meet someone, do so in a safe space.
- Consider telling a friend or family member where you are going, or leave a note behind with details of who and where you are meeting.
- At any time, if a situation leaves you feeling suspicious or uncomfortable, consider reporting it to police or Crime Stoppers.

On December 6, Detective Constable Manherz obtained a general warrant to covertly enter McArthur's apartment. That same day, officers entered McArthur's apartment and found a computer and external hard drive. The next day, they entered the apartment again to clone the computer and take DNA swabs from a stained pillow, leather gloves, and a metal bar. Detective Constable Coffey began analyzing the forensic data from McArthur's computer. Surveillance and tracking of McArthur continued.

### ***The December 8, 2017, Press Conference***

On December 8, 2017, Detective Sergeant Richmond and Chief of Police Saunders conducted a press conference to update the media and public about the status of the Project Prism investigation. The chief had just recently returned from medical leave. Detective Sergeant Richmond commented on the connection between the various disappearances and the possibility of a serial killer in the following way:

There is no evidence at this point in time which in any way establishes the disappearance of Selim Esen and Andrew Kinsman are linked to the disappearance of the males from the Project Houston investigation. There is also no evidence to support that the disappearance of Selim Esen or Andrew Kinsman are linked; it simply makes sense to have the same dedicated team investigate these occurrences in parallel. There is no conclusive evidence that establishes any of these males were the victim of foul play, although this cannot be ruled out.

There is no evidence that a serial killer is responsible for the disappearance of any of the missing males. There is no evidence that social media or dating applications played a role in the disappearances of any of the missing males, although all five of the males who disappeared, whose disappearances are investigated under the auspices of both Projects were active on social media.

Near the end of the press conference, members of the media asked Chief Saunders if there was a serial killer. In response, Chief Saunders said:

We follow the evidence, [reporter's name], and the evidence is telling us that that's not the case right now. So, if the evidence changes, if the evidence changes, that's another day. But the evidence today tells us there is not a serial killer based on the evidence involved.

Many community members were outraged by Chief Saunders's statement when McArthur was charged shortly after this press conference. They regarded the statement as demonstrably false. They felt betrayed. Many believed, and continue to believe, the police failed to take seriously the affected communities' concern that a serial killer was targeting them and that, at best, this failure showed indifference. Their anger was compounded by the lack of meaningful communication from police about the ongoing investigation and then by Chief Saunders's later reported comments to the *Globe and Mail*. These later comments were widely condemned as blaming the community for the failure to capture McArthur. I address his comments to the *Globe and Mail* later in this chapter.

The perspectives of officers within the Service about Chief Saunders's public comments, especially those he made on December 8, 2017, varied greatly. Some, including those who were privy to the status of the investigation, were shocked or dismayed by Chief Saunders's statement. Others supported his statement, believing that it accurately captured – at least from a legal perspective – the state of the investigation. They believed, at that point in time, that police did not have concrete evidence of McArthur's involvement in the disappearances or deaths of anyone other than Mr. Kinsman. Others acknowledged that the statement was, at best, unskilful. In their view, it would have been preferable simply to leave all theories open, as Detective Sergeant Richmond did, rather than express the view that the evidence did not suggest the presence of a serial killer. One officer was astonished by Chief Saunders's statement, but attributed it to an effort to mislead or disarm the suspected killer.

Chief Saunders told the Review that, at the time of the press conference, he did not know the Project Prism officers had evidence that gave them cause for concern about McArthur's involvement in the disappearances of Mr. Navaratnam, Mr. Faizi, and Mr. Kayhan. He was told only that Mr. Kinsman's DNA had been found in McArthur's van. Had he been told about the information potentially linking McArthur to the other missing men, he would not have made the comments he did.

On completion of this narrative, I explain why Chief Saunders's comments on December 8, 2017, were unfortunately both inaccurate and corrosive of the relationship between the Service and Toronto's LGBTQ2S+ communities and the public in general. I also explain why, in my opinion, the *Globe and Mail* article did accurately capture what Chief Saunders said, and why some of his comments in the *Globe and Mail* were ill advised and unfortunate.

### ***The Events Leading to McArthur's Arrest***

Throughout December 2017, Project Prism continued to track McArthur and review his computer files. On December 11, Detective Dickinson installed a covert video camera at 53 Mallory Crescent, a property where McArthur did gardening and landscaping work and at which he was observed. On December 19, Detective Dickinson emailed Detective Sergeant Idsinga and Superintendent Bott, providing an update on the Project Prism investigation and McArthur's behaviour:

McArthur appears to also creep men, taking surreptitious photographs of them from the back of his van and then finding open source photographs of the same men from the internet ...

The established pattern that McArthur once had has totally changed and is very unpredictable. It would appear however, that he is playing Santa Claus at the Agincourt mall all week.

On the same date, the police sent the leather gloves, stained pillow, and metal bar to the Centre of Forensic Sciences for DNA testing. The Project Prism team used cadaver dogs to search another property McArthur frequented. Nothing was discovered.

On December 23, Detective Constable Coffey found a file in McArthur's computer relating to his 2016 choking victim. Detective Constable McKenzie continued looking for connections between McArthur and Project Houston. On December 27, Detective Dickinson reviewed photographs of a previously unidentified man from McArthur's computer. The man was an acquaintance of Mr. Esen.

On December 28, Detective Constable McKenzie began preparing a workup on another individual whose photograph was found on McArthur's computer. After McArthur's arrest, the police interviewed this man. He told them that McArthur and Mr. Navaratnam had been in an abusive relationship.

Project Prism continued to monitor McArthur throughout the first half of January 2018. On January 16, the Project Prism team discussed installing

probes in McArthur's vehicle, as well as in vehicles belonging to his friends and family members.

On January 17, the Project Prism team found photographs of a deceased Mr. Esen on McArthur's computer. His body was photographed in McArthur's bed and van. McArthur officially became arrestable for the murder of Mr. Esen and Mr. Kinsman.

Detective Dickinson told the Review that the project planned to prepare search warrants on McArthur's home and then execute the warrants and arrest him on January 20. The search warrants would relate to four separate addresses and four vehicles associated with McArthur. By this point, Detective Dickinson felt that McArthur must be involved in the murders of Mr. Navaratnam, Mr. Faizi, and Mr. Kayhan. A contingency plan was developed for an earlier arrest if McArthur was seen alone with someone, or if someone got into his van or entered his apartment.

On January 18, the Project Prism team observed McArthur going to his apartment with an unknown man. They decided to arrest McArthur immediately. The time lag between McArthur's entering his underground parking garage and his arrest was approximately 15 minutes. Officers described the experience as nerve-wracking.

The Project Prism officers knocked on McArthur's apartment door. They found the previously unknown man tied to McArthur's bed. McArthur was arrested and charged with the murders of Mr. Kinsman and Mr. Esen. Later that day, the police held a press conference to announce McArthur's arrest.

### ***The Events Leading to More Charges***

In the weeks that followed, the Project Prism team interviewed associates of McArthur, including neighbours, friends, and family. The police received numerous tips about McArthur. Witnesses identified Mr. Navaratnam as having been one of McArthur's landscaping employees.

On January 19, 2018, Mr. RR called the Toronto police tip line to indicate that he had last seen Mr. Kayhan with McArthur. On the same day, the team executed a search warrant at 53 Mallory Crescent. Cadaver dogs indicated a "positive hit" on the planters at the back of the property. On January 22, the team interviewed the victim of McArthur's 2016 choking and learned that he had met McArthur on the *silverdaddies* website.

On January 22, the police identified photographs of Mr. Mahmudi on McArthur's computer. On January 24, 2018, the coroner opened up the planters from 53 Mallory Crescent and found human remains. Dr. Kathy Gruspier, a forensic anthropologist, examined the remains and drafted a report

about the scene and the state of the bodies. On January 28, McArthur was charged with three additional counts of first-degree murder, in relation to Mr. Kayhan, Mr. Mahmudi, and Mr. Lisowick. On February 6, Project Prism received the DNA swab via mail from Mr. Esen's brother. It also obtained a DNA sample from Mr. Kayhan's son. Fingerprints from the remains in one of the planters were matched to Mr. Kinsman.

As of February 15, based on the identified remains, the Project Prism team had reasonable grounds to believe that McArthur had committed seven murders: Mr. Kinsman, Mr. Esen, Mr. Kayhan, Mr. Mahmudi, Mr. Lisowick, Mr. Navaratnam, and an unknown person. On February 22, McArthur was charged with Mr. Navaratnam's murder. In early March 2018, the Project Prism team found a photo of a deceased Mr. Lisowick in McArthur's email account. Detective Constable Coffey also found emails between Mr. Kinsman and McArthur.

On March 23, 2018, Detective Constable McKenzie re-interviewed Mr. RR. Mr. RR had originally been interviewed during Project Houston and had recently given a media interview to CTV's *W5*. Mr. RR told Detective Constable McKenzie that he had been mistaken during his *W5* interview about what he had told the police during Project Houston. Mr. RR told Detective Constable McKenzie he was unsure whether he had indeed called the Toronto tip line or sent an email with McArthur's online usernames. Neither the tip nor an email has been located. Mr. RR also told Detective Constable McKenzie that he had participated in a threesome with Mr. Kayhan and McArthur shortly before Mr. Kayhan went missing. He had not shared this information with Project Houston.

At the end of March, Mr. Faizi's remains were identified. McArthur was formally charged with his murder on April 11, 2018. On April 12, Mr. Kanagaratnam's remains were identified through fingerprints. McArthur was charged with Mr. Kanagaratnam's murder. Between April and October 2018, Project Prism continued to conduct interviews with witnesses and associates of McArthur and the missing men.

Once McArthur was charged with murder, Toronto police learned about others who had survived being victimized by McArthur. They also learned more about the connection between McArthur and some of his murder victims. I have set out only some of this information in this Report. In particular, I have chosen to protect the privacy of his survivors whose identities are not generally known. I have also attempted, however difficult, to tell this important story without further traumatizing those affected. But the fact that information came

forward during Project Prism that was not known during Project Houston raises an important systemic issue.

### ***The Serial Predator Criminal Investigations Coordinator***

In Chapter 4, I explain the role of the serial predator criminal investigations coordinator (serial predator coordinator) of the Ministry of the Solicitor General (formerly the Ministry of Community Safety and Correctional Services) and the Service's obligation to notify him or her if an investigation meets certain criteria. These criteria (discussed in detail in Chapter 4) were met during Project Houston and during Project Prism. However, the serial predator coordinator learned about any investigation relating to the disappearances of McArthur's victims only when he read in the media about McArthur's arrest.

### ***The Violent Crime Linkage Analysis System***

In Chapter 4, I also explain the role of the OPP Violent Crime Linkage Analysis System (ViCLAS) and the Service's obligation to submit ViCLAS booklets to the OPP ViCLAS Unit when certain criteria have been met, including for missing person investigations where the circumstances indicate a strong possibility of foul play and the person remains missing. This submission must be made within 30 days of the start of an investigation. In addition, the investigators must update these booklets within 30 days of a material change or of their acquiring information that is significant to the investigation.

As I discuss in Chapter 6, the issue of missing men in Toronto first came to the attention of David Moore, a ViCLAS civilian analyst, in late 2012 or early 2013. He had asked the Toronto and Peel police services for ViCLAS submissions for Mr. Navaratnam, Mr. Faizi, and Mr. Kayhan in 2013. Both services declined: they told Mr. Moore that there was no evidence of foul play in any of the cases. This explanation was both inaccurate and inconsistent with Toronto's applications for judicial production orders before and during Project Houston.

In 2017, Mr. Moore read media reports about the disappearances of Mr. Esen and Mr. Kinsman from the Village. They reminded him of the missing men from 2013. He contacted the Toronto police several times to ask for ViCLAS submissions for all five men. First, he contacted Detective Sergeant Richmond, then he contacted the Service's ViCLAS coordinator, and finally he contacted Detective Sergeant Stacy Gallant. He also again contacted the Peel police to request a ViCLAS booklet for Mr. Faizi.

The ViCLAS Centre ultimately received booklets for the five missing men:



- Mr. Esen's booklet was received on July 31, 2017.
- Mr. Kinsman's booklet was received on August 9, 2017.
- Mr. Faizi's booklet was received on August 25, 2017.
- Mr. Kayhan's booklet was received on September 13, 2017.
- Mr. Navaratnam's booklet was also received sometime in 2017, during Project Prism.

No explanation was provided to the ViCLAS Centre about why the booklets had not been submitted earlier. There is no question they should have been. There is also no question that, years before the booklets were submitted, there was a strong possibility of foul play in relation to the disappearances of Mr. Navaratnam, Mr. Faizi, and Mr. Kayhan.

On December 12, another ViCLAS civilian analyst, Les Show, began an analysis into the five missing men. The ViCLAS Unit decided this analysis was warranted – there was no indication in the media of any viable explanation for why five men would go missing from one small geographical area. ViCLAS had no information from the Toronto police about whether they knew what had happened or whether there were other – potentially related – missing men. Mr. Show contacted the Service's ViCLAS coordinator and asked her to forward his contact information to the Project Prism investigative team because he was interested in receiving any new information about the investigation that could assist in his analysis. He did not receive a reply.

The OPP ViCLAS Unit continued to look for potentially related cases, and analysts identified eight cases of possible interest. All the cases involved missing men, although not all were connected to the Village. ViCLAS forwarded the cases to the Toronto police for further investigation to see if any were linked to McArthur. On January 14, the Toronto police sent ViCLAS information regarding interviews it had conducted with additional victims who had survived their encounters with McArthur.

Mr. Show continued his analysis. On January 18, 2018, he learned through the media that McArthur had been arrested. Mr. Show immediately checked to see if McArthur was in the national ViCLAS database. He was not. The same day, Mr. Show emailed Detective Sergeant Idsinga to tell him ViCLAS was monitoring the media releases and continuing its analysis. Mr. Show offered ViCLAS's assistance regarding the missing men and any found human remains. Detective Sergeant Idsinga replied to Mr. Show's email the same day to confirm he had received it but did not request any assistance or analysis.

***Chief Saunders's Globe and Mail Interview***

Excerpts from the *Globe and Mail* article dated February 27, 2018, entitled “Toronto police chief says civilians failed to help Investigation into alleged serial killer,” appear below.

Toronto police might have identified a suspected serial killer in the city’s gay village earlier if people who had crossed his path had been more forthcoming with investigators in the past, Chief Mark Saunders says.

“We knew something was up ... We did not have the evidence,” Chief Saunders said in an interview with *The Globe and Mail*, noting that Bruce McArthur, who was recently charged with the deaths of six men, was a well-known member of the community. “If anyone knew before us, it’s people who knew him very, very well. And so that did not come out.”

The chief defended his service’s handling of a two-year investigation called Project Houston launched in 2012, into the disappearances of three men of similar ages and physical appearance who had ties to the village. Members of the LGBTQ community have criticized the service for not recognizing a potential serial killer sooner. Chief Saunders said he is confident his officers did all they could based on the information they had at the time.

“I’ve heard a lot of sources say certain things, and had those sources said those things when we had Project Houston, I think there is a very strong potential that the outcome could have been different,” Chief Saunders said.

He later added: “We knew that people were missing and we knew we didn’t have the right answers. But nobody was coming to us with anything.”

Chief Saunders noted that the way the force handles missing-persons cases is under review, but said he thinks his officers did the best they could with Project Houston. Relations have been strained between police and the local LGBTQ community going back decades, to the controversial bathhouse raids, and again last summer, when officers were excluded from the Toronto Pride parade.

“If there are things that we can do to increase relationship [*sic*], if there are things to be operationally better, I’m willing to hear that,” Chief Saunders said.

“But I don’t mind speaking on what we did. Was I satisfied with what we did? At the time, with the information that we had, the answer is yes,” Chief Saunders said.

...

Since Mr. McArthur’s arrest, new information has been brought forward that could have helped investigators years ago, he said, comparing the situation to investigations into sex assaults or street gangs in which detectives do not have the co-operation of people with key knowledge.

“If things are not reported, it emboldens the suspect.”

Chief Saunders thought the article unfairly depicted what he had said in the interview, and he chose to release the full audiotaped interview to the public. Given its impact on community members and the disagreement over what Chief Saunders said or intended to say, I have reproduced much of the transcript at the end of this chapter.

### *The Guilty Plea*

On January 29, 2019, just over one year after his arrest, McArthur pled guilty to eight counts of first-degree murder. On February 8, 2019, McArthur was sentenced to life in prison with no eligibility for parole for 25 years.

McArthur declined my request to be interviewed by the Review.

## **Summary and Findings**

### *The Investigation into Mr. Mahmudi's Disappearance*

Detective Constable Tim, the assigned investigator, was a dedicated officer. He did a considerable amount of work to solve Mr. Mahmudi's disappearance. However, there were deficiencies in the investigation – steps left undone and, perhaps, more importantly, steps not taken in a timely way. For example, there were delays in learning where Mr. Mahmudi banked, in finding out when and where he last used his debit card, and in seeking to obtain video footage from the location where he last used that card. No canvassing was done in the area.

To the detriment of the McArthur-related investigations, the Toronto police were very slow in identifying links among the missing person cases. There were lost opportunities to learn that a serial killer was on the loose, as many community members feared, and that McArthur was that killer.

But I understand why the connection between Mr. Mahmudi's disappearance and the disappearances of the other men was much less obvious. The police were unaware of his connection to the LGBTQ2S+ communities. There was no evidence known to police that he disappeared from the Village. He lived in Scarborough, and his disappearance was being investigated by a Scarborough-based officer. He was not active on social media. He had apparently talked about assuming a different identity and was in debt. As a result, his case was not treated with any urgency.

There were some circumstantial signs that he might be the victim of foul play, but these were less pronounced than the red flags associated with the

other disappearances. Notwithstanding all that, the system did fail Mr. Mahmudi and his loved ones as well. I say that for several reasons.

First, once a person had been missing without a trace for more than 30 days, provincial adequacy standards required that the investigation be treated as a major case. It is obvious to me that Toronto investigators were either unaware of or failed to act on the 2013 change in the definition of a major case – investigators certainly did not initiate major case management on multiple occasions, when it should have been begun.

Second, the low priority and diminished urgency associated with this investigation meant that certain investigative steps were not taken. For example, because this case was not designated as a major case, it was not entered into the PowerCase software system.

This failure represented another lost opportunity to potentially link Mr. Mahmudi's case to the others.

The failure to recognize when cases should be designated as major cases is a recurrent theme in my Report. To be clear, the designation does not necessarily mean that the investigation must be led by three separate officers (the command triangle) or that every major case attracts endless resources. Indeed, the days of endless resources are gone – if they ever existed. But the major case designation does impose certain obligations on the Service, obligations designed to recognize the priority to be given to cases, to promote a more thorough investigation, and to make it more likely that linked cases will be swiftly identified.

Third, the Service had no centralized unit to examine all missing person cases, a Service-wide missing person coordinator, or even an analyst dedicated to reviewing unsolved missing person cases. A Service-wide, comprehensive approach to missing person cases, with analytical support, would have increased the likelihood that Mr. Mahmudi's disappearance was not viewed in isolation.

Fourth, the investigator did not contact the OPP's Missing Persons and Unidentified Bodies Unit about the case (see Chapter 13). However, I cannot say that this omission features as prominently in my analysis.

Finally, Detective Constable Tim indicated that he would have looked into Mr. Mahmudi's prior assault conviction if he had been aware of it. Although the conviction was in 2001, it was worthwhile at least to read about the underlying facts to provide background information and perhaps some insight about where Mr. Mahmudi might have gone. Detective Constable Tim advised the Review that he would have also attempted to contact Ms. AC. (As I note earlier, Ms. AC was Mr. Mahmudi's former romantic partner and the victim of an assault for which Mr. Mahmudi was convicted.)

Such an approach could have provided clues that may have linked Mr. Mahmudi to the Village and, thus, to the other cases. However, in fairness, this potential investigative lead would have been far less obvious than others I have described in this Report. As well, I accept that Detective Constable Tim did make several Canadian Police Information Centre (CPIC) queries pertaining to Mr. Mahmudi. It remains unclear why those queries did not reveal the prior conviction.

In summary, the combination of at least some of these systemic deficiencies, and some shortcomings in the investigation itself, represented another lost opportunity – though less pronounced than others – to identify a serial killer when lives could have been saved.

*The 2016 Investigation into McArthur's Choking of a Man (Mr. AD)*

Mr. AD did not consent to being choked. That is crystal clear. There was no evidence that he did consent. In fact, there was evidence to the contrary. He did not invite McArthur to choke him, he objected immediately, he took forceful steps to stop the choking, and he courageously reported the events to police.

Sergeant Gauthier accepted that Mr. AD did not consent to being choked. Instead, he concluded that McArthur honestly, though mistakenly, believed Mr. AD was consenting. In 2018, when Mr. AD was re-interviewed by homicide officers, he also acknowledged that, at one point, he questioned himself about whether McArthur mistakenly believed Mr. AD wanted to be choked. To be clear, Mr. AD has nothing to answer for. He bears no responsibility for McArthur's behaviour. His quick response to McArthur's unsolicited choking probably saved his life. His immediate call to 911 enabled the police to investigate McArthur's conduct.

In my view, it was, at best, premature for Sergeant Gauthier to conclude, based on McArthur's purported mistaken belief in consent, that no offence had been committed. Indeed, it is well arguable, in any event, that the evidence did not support this conclusion.

*Re-interviewing Mr. AD*

Sergeant Gauthier decided not to interview Mr. AD before deciding McArthur would be unconditionally released. In Sergeant Gauthier's view, the Service's Domestic Violence Procedure did not mandate taking a second statement from Mr. AD. The lead arresting officer, also trained in domestic violence investigations, had taken a satisfactory, verbatim statement signed by Mr. AD. That officer was also present for McArthur's interview in order to identify any

inconsistencies to be explored. She raised none. Generally, it is undesirable to compel a domestic complainant to provide multiple statements. Furthermore, Sergeant Gauthier saw no need to do so here once he decided that charges were unwarranted – an electronically recorded statement is of importance only where a matter is likely to proceed to court. As well, he questioned whether the procedure even applied here, based on his conclusion that this event did not involve domestic “violence” and on the limited relationship between Mr. AD and McArthur. Nonetheless, out of caution, he treated it as a domestic occurrence.

I need not decide whether existing procedures mandated an electronically recorded statement. I can contemplate circumstances in which such a statement may be unnecessary or counterproductive. However, in my view, Sergeant Gauthier should have interviewed Mr. AD. I do not agree that McArthur’s and Mr. AD’s statements were largely consistent. McArthur described how Mr. AD asked him to pinch his penis harder. This statement may have been accurate, as it turned out, but Mr. AD did not mention it to the police at the time. More importantly, McArthur said he briefly placed his hand around Mr. AD’s neck and that Mr. AD reciprocated. He presented the event as if they simply choked each other for a few seconds before parting company. But Mr. AD was unequivocal in saying that *without warning* McArthur grabbed him by the throat and started squeezing and *wouldn’t let go*, despite Mr. AD’s protestations. McArthur’s narrative gave scant attention to or emphasis on his own actions but emphasized Mr. AD’s action in grabbing McArthur by the throat, and his purported statement to McArthur (a statement *never* raised with Mr. AD) that “now I am going to show you what I am going to do to you.”

Sergeant Gauthier should have put these differences to McArthur during McArthur’s interview, and he should have tested what McArthur said by re-interviewing Mr. AD. Detective Andrew Taylor recalled that Sergeant Gauthier told him there were conflicting versions of events, but Sergeant Gauthier didn’t believe he had grounds to lay a criminal charge. Sergeant Gauthier told the Review that Detective Taylor’s recollection was inaccurate. Sergeant Gauthier did not regard the versions of events to be conflicting. That may have been his perception. But I see things differently. There were materially conflicting accounts, and they needed to be addressed.

#### *The Availability of a Defence to the Allegation*

Not every asserted mistaken belief in consent affords a defence. Even McArthur did not claim that Mr. AD asked him to choke him. Sergeant Gauthier observed that, contrary to conventional views, strangulation fetishes

and autoerotic asphyxiation are quite common. But Mr. AD gave no indication that these practices were acceptable to him, and the police never asked McArthur whether his prior sexual encounters with Mr. AD. ever involved consensual choking, rather than merely Mr. AD's willingness to be touched roughly on his private parts. Sergeant Gauthier did not regard this allegation as one of sexual assault because Mr. AD consented to the sex, not to the choking. He acknowledged that it might have been characterized as a sexual assault if he disbelieved McArthur, but he never reached the point of identifying charges. In my view, the jurisprudence does not support compartmentalizing McArthur's conduct in the way Sergeant Gauthier described. Based on Mr. AD's allegation, McArthur's conduct was potentially a sexual assault or an aggravated sexual assault (since choking could place Mr. AD's life at risk). In other words, the choking potentially formed part of an assault committed in circumstances of sexuality.

If understood in this way, even an honestly held belief on McArthur's part that Mr. AD consented to being choked would not have afforded him a defence. It cannot be said that, before choking Mr. AD, McArthur took reasonable steps, as required under the *Criminal Code*, to ascertain whether Mr. AD consented to being choked. And it would be difficult to see Mr. AD's request as licence to choke him. (Of course, there is something surrealistic about this legal analysis since, based on what we now know, I have little doubt that McArthur intended to kill Mr. AD, but was thwarted in his efforts. But that hindsight has no place in this analysis.)

Although I understand Sergeant Gauthier's concern that this encounter may not have evidenced a crime, it would have been best practice to question McArthur on the version of events Mr. AD presented and to explore with Mr. AD the plausibility of the account McArthur provided. It also would have constituted best practice to explore whether McArthur's mistaken belief in consent, even if genuine, would have afforded him any defence.

#### *The Photographing of Injuries*

In Sergeant Gauthier's statement to the Professional Standards Unit, he said he would have expected observable swelling if the choking had been intense. He corrected this statement at his interview with the Review because swelling may not appear immediately. His point was that the absence of any observable injuries, and Mr. AD's decision to decline immediate medical attention, supported McArthur's lack of intent to injure Mr. AD. I take Sergeant Gauthier's point that it is difficult to criticize him for failing to photograph injuries several days later when there were no observable injuries on initial

observation. But in my view, the decision not to photograph Mr. AD's injuries was also connected to the decision not to charge McArthur. If Sergeant Gauthier had decided that further investigation was warranted, including an interview with Mr. AD, it might well have led to further inquiries about Mr. AD's hospital visit and more detailed information about what, if any, injuries had been sustained. We also know that some injuries become more observable with the passage of time.

#### *McArthur's 2003 Convictions*

Project Prism's primary investigator, Detective Dickinson, was able to find, based on Versadex and Legacy searches, that McArthur had previously assaulted another male with a lead pipe. Sergeant Gauthier told the Review that a 2016 search of CPIC and Versadex yielded no such information. He also questioned the relevance of the prior occurrence, noting that it was dated and that he must evaluate the merits of a potential charge based on the evidence pertaining to that charge, untainted by a suspect's history. During questioning by my counsel, he acknowledged that, for investigative purposes, the prior history may well have relevance in assessing credibility, although it should not overwhelm an investigator's analysis. I accept the accuracy of that acknowledgement. Sergeant Gauthier also felt that offences for which McArthur was granted a record suspension could play no role whatsoever in his investigation. A record suspension reflects official acceptance that an offender has been rehabilitated and that prior conduct should no longer be used against him or her. As I discuss immediately below, I disagree with Sergeant Gauthier, as does the Ministry of the Attorney General, that McArthur's prior conduct could play no role in a subsequent investigation into his conduct because he had been granted a record suspension. Equally important, the inconsistent understandings held by Toronto officers surrounding this issue must be resolved.

McArthur's 2003 convictions and the subsequent record suspension raise several systemic issues.

First, to what extent does a record suspension prevent the subsequent use by the police of the underlying conduct for investigative purposes?

Second, if police are entitled to use the underlying conduct for investigative purposes, to what extent are the police aware of its permitted use? Similarly, to what extent do the police fully use existing databases to access relevant historical information?



Third, leaving aside the issues around a record suspension for a moment, to what extent is prior conduct such as that engaged in by McArthur in 2001 relevant to subsequent investigations?

#### The Use of Underlying Conduct Relating to a Record Suspension

Sergeant Gauthier was correct that, once McArthur had been granted a record suspension, the use of McArthur's prior underlying conduct in or related to court was necessarily circumscribed in law. However, I am not convinced that its use for investigative purposes only is similarly circumscribed.

The *Criminal Records Act* (CRA)<sup>17</sup> is the governing federal legislation for record suspensions. It was amended in 2012 to substitute the term “record suspension” for “pardon.” Record suspensions are designed to assist offenders in their rehabilitation and reintegration into society by reducing the social barriers and stigma a criminal record creates. Record suspensions constitute evidence that the Parole Board of Canada is satisfied that a successful applicant is of good conduct and that the conviction should no longer reflect adversely on the applicant's character.<sup>18</sup> However, a record suspension does not “retroactively wipe out” a conviction. Instead, it is intended to minimize the future consequences of a conviction in a variety of ways.

Under s. 6(1) of the CRA, the minister of public safety and emergency preparedness may require a person having the custody or control of a judicial record of a conviction that is the subject of a record suspension to deliver it to the commissioner of the Royal Canadian Mounted Police. The RCMP is responsible for CPIC. Such a record in the custody of the commissioner or any federal department or agency shall be kept separate and apart from other criminal records; and the record, its existence, or the fact of the conviction cannot be disclosed to anyone without the minister's approval. The legislation creates certain exceptions to non-disclosure that are not relevant here. Record suspensions may cease to have effect if, for example, their beneficiaries are subsequently convicted of certain offences. Record suspensions may also be revoked by the Parole Board of Canada in its discretion.<sup>19</sup>

Nothing in the legislation requires that municipal or provincial police services purge their own databases of records, such as Occurrence reports or transcripts relating to convictions that are the subject of record suspensions. The legislation primarily regulates disclosure by the federal government and access to its records. The RCMP purges CPIC of entries from individuals'

<sup>17</sup> *Criminal Records Act* (CRA), RSC 1985, c C-47, as amended.

<sup>18</sup> CRA, s. 2.3

<sup>19</sup> CRA, ss. 6, 6.2, 6.3, 7, 7.2.

criminal records that have been the subject of record suspensions, thus affecting what municipal or provincial police officers see when they conduct CPIC checks. However, this purge does not mean that the same officers cannot access, through their services' own databases, information about prior convictions that have been the subject of record suspensions, including summaries of the related underlying conduct.<sup>20</sup>

Simply put, there were restrictions on the use of McArthur's prior convictions in any subsequent court proceedings because they no longer formed part of his criminal record.<sup>21</sup> However, there was no legal impediment to the use of the underlying prior conduct by the police, if relevant, for investigative purposes. Moreover, although a record suspension reflects the view that the prior offender should be treated for certain purposes as untainted by the prior convictions, this view does not preclude the use of the prior conduct, again if relevant, in subsequent investigations. To take an obvious example, the prior conduct may be so strikingly similar to the criminal conduct in a currently unsolved investigation to invite consideration as to whether the same person is involved.

Such investigative use comes with a cautionary note – the indiscriminate or unbridled use of such information could undermine the rationale of record suspensions by preventing rehabilitated individuals from escaping the stigma of their past.

I am advised that my view of the law in this regard is shared by Ontario's Ministry of the Attorney General. I also understand that the Ministry of the Attorney General is unaware of any existing policies it has that prohibit a municipal police officer from accessing such information for investigative purposes. I also find support for this position in how the Supreme Court of Canada, in *Re Therrien*,<sup>22</sup> described the legal effect of pardons, as they were then called.

#### Police Access to Relevant Information

Sergeant Gauthier delegated the responsibility to check McArthur's history to another officer. We do not know whether that officer conducted an adequate search for this history. But we do know this information, which turned out to

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<sup>20</sup> As stated above, s. 6(1) of the CRA confers discretion on the minister of public safety and emergency preparedness to direct any person having custody or control of any judicial record of a conviction in respect of which a record suspension has been granted to deliver that record into the custody of the commissioner. Although unnecessary for the purposes of this Report, I do not regard this subsection as addressing the types of records held by municipal or provincial police services at issue here.

<sup>21</sup> This observation is subject to McArthur's record suspension's ceasing to have effect or being revoked based on the homicides he committed.

<sup>22</sup> [2001] 2 SCR 3.

be relevant, was easily discovered during Project Prism. Sergeant Gauthier did point out that there are inconsistencies in the ways in which the Service's database searches yield such information, especially as the Service repeatedly transitions from one record management system to another. I am unable to say whether those inconsistencies explain why McArthur's prior history went undiscovered in 2016.

What became obvious to me during this Review is that officers have varying (and sometimes inaccurate) understandings of what is available to them on their own databases. They have equally varying understandings of whether they can or cannot use underlying conduct relating to a record suspension for investigative purposes. There is a need for clarity in these areas.

#### The Relevance of the Prior Conduct

Leaving aside the record suspension McArthur was granted, the 2001 events, had they been known, would have been useful to Project Houston and to the 2016 investigation.

As I stated earlier, in November 2013, Project Houston should have recognized the connection between McArthur and all three missing persons. This connection should have led the police to closely scrutinize McArthur, scrutiny that would have intensified as a result of his crimes in 2001. Someone with a connection with all three missing persons who had attacked another member of the LGBTQ2S+ communities and been banned from the Village for a period should undoubtedly have qualified as a person of interest. Plus, no record suspension had been granted back then.

Similarly, McArthur's crimes in 2001 were logically relevant to his credibility in responding to the 2016 complaint. Absent information about the 2001 offences, he presented as a 64-year-old man with no prior violent history. As well, McArthur's credibility was supposedly enhanced because he came forward to police on his own initiative. (However, he employed the same strategy in 2001 in anticipation of his arrest.) Finally, Mr. AD told the officers who first interviewed him that his assailant might have been stalking him or engaged in obsessive behaviour. He noted that the assailant always showed up unannounced. Sergeant Gauthier could not remember this entry in the officers' notes, but he pointed out that Mr. AD also told the officers he did not fear McArthur – in Sergeant Gauthier's view, a statement that was inconsistent with a continuing concern about being stalked. A review of McArthur's 2001 offences reveal he arrived unannounced at the victim's residence, as he did in 2016.

Admittedly, some of these points are more significant than others. I also accept that Sergeant Gauthier identified the danger of misusing or giving undue prominence to prior misconduct. Surely, however, the prior history invited closer scrutiny of what McArthur had to say.

#### *The Dash Cam*

The dash cam on Mr. AD's vehicle captured McArthur's quick departure on video and showed that McArthur fled the scene so hastily that he initially proceeded southbound in the northbound lane of Bathurst Street. Sergeant Gauthier never viewed the dash cam. He said he would have asked to see it if he had noticed the relevant entry in the officers' memobooks. When the dash cam's contents were outlined to him, he reflected that someone can flee the scene for reasons unrelated to guilt. That is true but, in my view, the way in which McArthur fled the scene was another reason heightened scrutiny was called for.

#### *Follow-up with Complainant*

Sergeant Gauthier directed one of the arresting officers who interviewed Mr. AD to contact Mr. AD to advise him that the case would not proceed to trial. The arresting officer left a message on Mr. AD's voicemail, but said that Mr. AD never responded. During the investigation by Professional Standards, the issue was raised about whether the complainant's "needs were met" in accordance with the Domestic Violence Procedure.

I cannot say that Sergeant Gauthier should have personally contacted the complainant, based on the arresting officer's prior interaction with the complainant. That, of course, assumes the decision not to proceed on charges against McArthur was the correct one. Ideally, there should have been further follow-up to ensure that the complainant had received the voicemail message and received an explanation for the decision made. But the real issue here is the decision itself, which, as I have said, was at best premature and at worst unsupported even by the evidence available to Sergeant Gauthier.

#### *Implications of Siloed Information*

If McArthur had been charged with sexual assault or aggravated sexual assault,<sup>23</sup> the following procedures would have been mandatory. The investigation would have been subject to major case management, requiring that information about the offender and the offence be placed on PowerCase.

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<sup>23</sup> Sexual assault under the circumstances outlined was a non-threshold major case. Aggravated sexual assault was a threshold major case. Even if McArthur was charged only with sexual assault, basic information (otherwise known as "tombstone information") should have been entered into PowerCase.

If Project Houston had earlier entered McArthur's name into PowerCase as an "object"<sup>24</sup> or "a person of interest" (as it should have been, based on the complete facts available to the project), then in 2016, the entry of McArthur's name in PowerCase by Sergeant Gauthier would have caused Project Houston's primary investigator or the file coordinator to be notified of the link between the cases – even after the project had wound down.

Sergeant Gauthier had a valid related point. Apart from entering McArthur's name into PowerCase, Project Houston should have recorded the McArthur interview in Versadex. It didn't.

Sergeant Gauthier said that, had McArthur even been identified as someone who had contact with three missing persons connected to a lengthy Toronto project, then, before making his decision in relation to the 2016 occurrence, he would have contacted those involved in that project to see if there was something more he should know about McArthur. As well, the Project Houston investigators could have determined if the 2016 incident was potentially relevant to their project. It disturbed Sergeant Gauthier that he was not even aware of Project Houston, despite its length and the resources devoted to it. He saw this situation as a counterproductive siloing of relevant information. I agree with him.

#### *Gender, Sexual Orientation, and Sex*

My counsel asked Sergeant Gauthier whether the result would have been the same if this incident had taken place during a heteronormative encounter between a male suspect and a female complainant. Sergeant Gauthier said that the result would have been exactly the same, unless other factors (such as a weight or height differential or other indications of a power imbalance) existed. That said, I can understand why an objective observer might conclude otherwise: based on the ready acceptance or assumption that Mr. AD might be expected to be involved in autoerotic asphyxiation. Some might regard Sergeant Gauthier's approach as based on a stereotypical view of how gay men interrelate. There is no basis on which to conclude that Sergeant Gauthier consciously treated the case differently based on bias. But that is not the sole litmus test to avoid discrimination-free policing. The point must be made, an important point, that officers have to be vigilant in ensuring that their work is not inadvertently infected by bias or stereotypical thinking.

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<sup>24</sup> The use of "objects" in PowerCase is explained in Chapter 4.

### ***The Investigation into Mr. Esen's Disappearance***

Sergeant Dyck and Detective Constable Kama showed a shared commitment to solving Mr. Esen's disappearance. Certain steps were taken in this investigation that were not taken in earlier Toronto investigations. As I mentioned earlier, Sergeant Dyck drew on his contacts in the LGBTQ2S+ communities, tweeted about the case, and reached out to community organizations and the neighbourhood association. All this should be standard-fare, rather than exceptional.

Sergeant Dyck also requested that the Cyber Crimes Unit examine, in a comprehensive way, Mr. Esen's internet and social media profile. As it turned out, Mr. Esen made limited use of the internet and social media. But I have compared Sergeant Dyck's approach to the approaches in other investigations. For example, Mr. Navaratnam's computer went unexamined during the original investigation into his disappearance. His social media and internet activity were too narrowly examined during Project Houston.

The Review met with many officers who did not have a full understanding of how to obtain a comprehensive internet and social media profile of missing people: whether it involves forensic searches of computers, iPads and cellphones, open-source searches, judicial production orders, Mutual Legal Assistance Treaty requests, or some combination. Social media and the internet represent critical sources for investigative information, subject of course to appropriate privacy boundaries. But the information available to this Review disclosed a lack of a uniform approach to this work. It also revealed an incomplete understanding of resources available to investigators to assist them in obtaining relevant evidence from the internet and social media.

The Esen investigation highlighted several systemic issues of importance.

First, Sergeant Dyck cannot be criticized for knowing little about Project Houston. He was conducting a missing person investigation into the disappearance from the Village of one gay man. He knew virtually nothing about the other men who had gone missing from the Village and remained unaccounted for. This was not his fault. It reflected the absence, in Toronto, of any centralized oversight of missing person investigations. It reflected inadequate communication with affected communities and even within the Service itself in relation to Project Houston. And it reflected a failure to employ major case management tools, internal and external, to ensure that investigations did not operate in silos. Let's face it: it was largely fortuitous that Sergeant Dyck found out about the earlier missing men and the similarities among all these cases. By "fortuitous" I mean, for example, that retired superintendent Byrnes happened to see his Esen-related tweet and

commendably wrote to him to ensure that he knew about the other disappearances. Others within the Service, though not active on these cases, told Sergeant Dyck about the other cases as well. The police cannot count on these fortuitous interventions to advance their investigations.

Second, by the end of May 2017, 30 days after Mr. Esen was reported missing, provincial adequacy standards required that the Esen investigation be designated as a major case. Plus, in June 2017, even the police were concerned that foul play was involved in Mr. Esen's disappearance. In my view, the circumstances of his disappearance, taken together with the similar cases, did raise a strong possibility of foul play. But the Esen investigation was not designated as a major case until it was incorporated into Project Prism.<sup>25</sup> Nor did there appear to be any systemic consideration within the Service about whether it or other missing person cases should be so designated.

A major case designation is not the answer to all shortcomings of an investigation. That is clear. But, as I have repeatedly explained, such a designation facilitates a more thorough, properly resourced investigation and increases the likelihood that links to other major cases will be established.

Third, there was institutional resistance to the notion that these cases might be linked and that a serial killer might be preying on Toronto's LGBTQ2S+ communities. This systemic failure is perhaps the most troubling. Some officers understood fully why the disappearances of four gay / bisexual men might well be related. Several officers reached out to Sergeant Dyck to ensure that he was aware of these other cases. But it took several months for the Service to decide to initiate Project Prism – and that took place only because Mr. Kinsman went missing. I am unconvinced that the decision would have been made to have a task force or project investigate all these disappearances if Mr. Kinsman had not gone missing. Indeed, even after Mr. Kinsman disappeared under suspicious circumstances, it took the Service unwarranted time for that decision to be made. In my view, this decision was made primarily as a result of pressure from the public and those close to Mr. Kinsman, media coverage, and advocacy within the Service.

Some officers told the Review that the police must make decisions – including the decision to launch an investigation into multiple disappearances – based on evidence, not speculation, and that they must not jump to the conclusion that disappearances are attributable to foul play or to a serial killer.

I understand, all too well, that, as evidence is collected, police cannot jump to conclusions, too quickly presume what happened, or prematurely

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<sup>25</sup> In fairness, the tracker program of the Service's MCM Unit did enter Mr. Esen's disappearance into PowerCase when it identified Mr. Esen as having been missing for more than 30 days.

narrow their investigative perspective. But that misses the point here. There was ample *circumstantial* evidence that indicated a strong possibility that these cases were connected and deserved a high-priority, coordinated investigative response. There was ample community concern about the possibility of a serial killer to investigate that concern properly and without delay.

### ***Public Warning***

In mid-July 2017, Superintendent Riviere raised with Detective Sergeant Richmond, who in turn advocated to Corporate Communications, that the Service issue a public safety media release in relation to gay men using social media dating sites to arrange sexual liaisons. It appears the release was vetoed by the director of corporate communications on the basis that it could cause the public to connect the disappearances of Mr. Kinsman or the Project Houston missing persons with their use of social media. It was pointed out that there was no evidence to establish such a connection. No such release was issued until December 2017.

In the Jane Doe case, the Service was soundly criticized for failing to warn women about a sexual predator operating in the community.<sup>26</sup> It was commendable that Superintendent Riviere and Detective Sergeant Richmond were alive to the issue.

The Service does have a procedure governing community and public safety notifications.<sup>27</sup>

During the Review, I did not fully explore the decision-making process around whether a warning should or should not be issued. I frankly see no impediment to issuing such a warning regardless of whether the evidence has already established a link between the dating sites and the disappearances. The language of the alert could clearly make that point, as well as reinforcing the legitimacy of using dating websites for sexual encounters. Public safety should trump other considerations. Moreover, I believe that such a release was unlikely to jeopardize the ongoing investigation in any meaningful way.

I also question whether decisions around the propriety of a public warning should be made or vetoed by Corporate Communications, as opposed

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<sup>26</sup> In 1986, a woman known as Jane Doe was sexually assaulted in Toronto. When she reported the crime to the Service, she was advised that the attack fit the pattern of other sexual assaults targeting local women. Ms. Doe successfully sued the police for failing to warn the community about the serial predator. Toronto City Council later appointed an independent auditor, Jeffrey Griffiths, to examine the Service's sexual assault investigations. His report is summarized in Chapter 11.

<sup>27</sup> Ontario Regulation 265/98, entitled *Disclosure of Personal Information* and issued under the *Police Services Act*, permits the disclosure of personal information, subject to certain conditions. During Project Prism, Community / Public Safety Notifications RO 2016.02.08-0158, made pursuant to Ontario Regulation 265/98, was in force.



to the investigators directly involved. I address this point in my recommendations.

Regardless of the merits of issuing or not issuing a public warning at that time, the systemic issue of importance is the need to make these kinds of decisions in partnership or consultation with community leaders. The leaders of affected communities are well situated to advise the police on whether a warning should be issued, how it could most effectively be worded, and how to avoid language that would appear to delegitimize how members of the LGBTQ2S+ communities may connect, particularly when certain avenues may be unavailable or less available to them because of their marginalization. But trust must exist between communities and the Toronto police in order to have those kinds of important conversations.

There are other indications that members of the Toronto police do not entirely trust all the communities they serve. The affected communities remained largely uninformed about Project Houston. The police did not want to tell the affected communities that Project Prism was being taken over by the Homicide Unit, anticipating “political explosion” if this information came out.

These decisions are often cloaked in concerns about maintaining the integrity of ongoing investigations. In my view, however, overemphasis is placed on this concern.

Equally important, the Service generally and many officers in particular fail to appreciate that the lack of transparency comes with a price far greater than the risk of jeopardizing an investigation. If affected communities do not trust the police because they feel the police do not trust them, investigations will inevitably suffer, and public confidence and support for the police will be eroded. Indeed, that is precisely what has happened in Toronto, especially in traditionally marginalized and vulnerable communities. My recommendations suggest a fundamental shift in how the police share information with communities.

### ***The Investigation into Mr. Kinsman's Disappearance***

Detective Radford led the initial investigation into Mr. Kinsman's disappearance. He showed dedication and skill in the interval between his initial involvement and the launch of Project Prism. It was appropriate that, as a member of Project Prism, he continued to investigate the other disappearances as well.

Overall, I was impressed with the quality of the Project Prism investigation, particularly once the police discovered that Mr. Kinsman left his home on June 26, 2017, in a red van. The investigators showed commitment

and skill in identifying McArthur as a killer and ultimately, together with the Office of the Chief Coroner, in identifying McArthur's eight homicide victims. During this same period, and extending to McArthur's guilty pleas, Project Prism officers showed sensitivity and compassion in dealing with affected loved ones and communities, including McArthur's survivors; that is, others who had been victimized by McArthur, but lived to tell about it. In its outreach, the project also involved the LGBTQ2S+ liaison officer. I have criticized Toronto police when they got it wrong. It is no less important to acknowledge them when they got it right. I am also mindful of conscientious officers such as Detective Dickinson, who built respectful relationships with vulnerable witnesses and loved ones of those who were murdered and continues to take steps to prevent unnecessary intrusions into their privacy.

Having said that, I do wish to highlight some systemic issues manifested shortly before and during Project Prism.

### ***Case Management and PowerCase***

In Chapters 4 and 6, I explain how Project Houston failed to meet provincial adequacy standards relating to major case management and to its use of PowerCase, the provincially mandated case management system.

As I indicate earlier, officers who worked on both Project Houston and Project Prism described greater structure to Project Prism's investigation and greater adherence to major case management principles. More data was entered into PowerCase during Project Prism,<sup>28</sup> and greater use was made of the software.

That said, during Project Prism, actions were still largely managed manually through the P Drive<sup>29</sup> rather than through PowerCase, contrary to directives in the existing *Major Case Management Manual*. The lead investigator managed tasks through an Excel spreadsheet he created in the P Drive.

It is important to manage tasks and monitor their completion during complex investigations and avoid allowing them to fall between the cracks. This point is best illustrated by an example of a shortcoming both in the initial investigation into Mr. Kinsman's disappearance and in Project Prism.

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<sup>28</sup> During Project Prism, about 200 officer reports or notes, 155 witness statements, and about 800 other documents (including media reports, search warrants, emails, pathologist's reports, financial records, tracker summaries, and internet-based information), were entered into PowerCase.

<sup>29</sup> An internal computer hard drive set up to store everything relevant to the investigation. In Chapter 4, I describe in some detail the role of the P Drive in the Service's major case investigations.

Almost immediately after Mr. Kinsman went missing, the police obtained evidence that he was last seen on June 26, 2017. Several witnesses appeared to narrow the time he was last seen, although, of course, the police had to keep an open mind on the precise time he disappeared.

As early as June 30, 2017, Detective Radford gave instructions to an officer to obtain the video footage from 72 Winchester Street for June 26, 2017, between 1:00 p.m. and 4:00 p.m. The video footage was obtained the same day. However, there is no evidence that it was viewed until August 23, 2017, almost two months later. Of course, as we now know, it proved to be the most important lead obtained in the case. It showed Mr. Kinsman's departure at 3:07 p.m. on June 26, 2017, in a red van later connected to McArthur.

During Project Prism, a number of actions were entered into PowerCase. For example, the Incident Log for PowerCase shows that an action to "Follow up with Service Canada" (Action 56) was created on August 15, 2017. The associated Action Form shows that this action was completed on September 27, 2017, and marked "concluded." Action forms show the date of a given assignment, details about the assignment, the priority to be given to the assignment, and, on completion, the date the assignment was completed and whether any follow-up investigation is required.

Many of the actions in the Project Prism PowerCase file do not have associated Action forms. The Review was told that some actions do not have Action forms because some actions were assigned and completed before Project Prism officially began. For example, on June 30, 2017, Detective Constable Wong had been assigned to obtain the video from 72 Winchester Street. He completed the assignment on the same day, and prepared a Supplementary Report dated July 4, 2017, to record that he had completed the assignment.

Detective Constable Wong's assignment was retroactively entered into PowerCase as Action 49 on August 15, 2017. However, the Supplementary Report, to the effect that the assignment had been completed, was not entered into PowerCase until March 16, 2018<sup>30</sup> (after McArthur's arrest), and no Action Form was completed.

On the same date as Action 49 was retroactively entered into PowerCase (August 15, 2017), an action was also created in PowerCase to review the video from 72 Winchester Street (Action 59). The action was marked as "unallocated" in the PowerCase file, meaning it was not assigned to anyone. No Action form was completed for this action. Detective Constable

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<sup>30</sup> Data are required to be entered into PowerCase within 30 days. Neither Project Houston nor Project Prism complied with this requirement.

Weatherbee, who ultimately reviewed the footage with Detective Constable Coffey, told the Review that he believes he was given his assignment orally.

On August 23, 2017, Detective Constable Coffey watched the video and recorded in his memobook notes that Mr. Kinsman could be seen getting into the van. Detective Constable Coffey's notes were entered into PowerCase as a report on February 8, 2018, well after McArthur's arrest and the end of the project.

The key question that remains is why it took approximately two months for Project Prism to review the surveillance footage obtained from the building across the road from Mr. Kinsman's apartment building. The Review was told the police did not know precisely when Mr. Kinsman went missing until the end of August, when they pinpointed the time he sent his last email. Detective Constable Coffey did not watch the surveillance footage until after that determination had taken place.

I am not satisfied with this explanation. Investigators knew as of June 30, 2017, that Mr. Kinsman's cellphone had last been used on June 26, 2017. As already indicated, several witnesses described when Mr. Kinsman was last seen on June 26, 2017. Based on those interviews, Detective Radford sought the video footage for June 26, 2017, between 1:00 p.m. and 4:00 p.m. On July 4, 2017, a witness told Project Prism that he believed he was the last person to see Mr. Kinsman alive – on June 26, 2017, at about noon. Media reports at least as early as July 4, 2017, also reflected that Mr. Kinsman disappeared on June 26, 2017.

In my view, the potential significance of video footage at 72 Winchester Street for the afternoon of June 26, 2017, was high. Viewing that video should have been given top priority. But it appears to have fallen between the cracks. It had not been done when Project Prism formally took over the investigation. The officer who obtained the video viewed two other videos, but not this one. It is clear that no one tracked completion of this task in a sufficiently prompt manner.

Although many actions did not have associated Action forms, the Project Prism P Drive did contain detailed information about many of the actions listed in an Excel spreadsheet.

Action 49 reads, "obtain video from 72 Winchester Street," with the note, "attempt to locate MP [missing person] on surveillance video – retained for 30 days." The priority is categorized as "high," and the date assigned is June 30, 2017. The date completed is reflected as July 4, 2017. (Detective Constable Wong gathered the footage on June 30, 2017, but completed his supplemental report on July 4, 2017.)

Action 59 in the Excel spreadsheet reads, “Review video from 72 Winchester, 51B Winchester Street and 537 Parliament Street looking for MP.” No priority was assigned to this task, nor is there any indication of the date it would have been assigned or the officer to whom it would have been assigned. No Action form for this task was found in the P Drive. In other words, there is no documentation that the task was assigned, if it was; when it was assigned; or to whom and what priority it was to be given.

There is no evidence that anyone noticed this omission in a timely way. It is hardly surprising that no one reviewed the video until August 23, 2017. In my view, and without the benefit of hindsight, given what was known at the time, this task should have been a priority item.

The cascading effect of such an omission is obvious. On August 16, 2017, officers found Mr. Kinsman’s calendar in his apartment. Detective Dickinson noticed the name “Bruce” or “Bryce” recorded on the calendar for June 26 at 3:00 p.m. Detective Dickinson advised the Review that, at that point in time, the identification of “Bruce” was not a priority, nor was “Bruce” considered a suspect. But if investigators had watched the video footage before August 23, 2017, the identification of “Bruce” would have been a priority, and Bruce McArthur may well have been categorized as a suspect. He would certainly have been a person of interest.

Further, the police potentially missed an opportunity to obtain surveillance footage from McArthur’s apartment building. On September 1, 2017, Detective Constable Coffey tried to get video footage from McArthur’s apartment building for June 26, 2017, the date of Mr. Kinsman’s disappearance. The footage was accessible only for 30 days and had been overwritten. Had the officers reviewed the footage from 72 Winchester Street sooner, they may have connected McArthur to the van and sought the footage from McArthur’s apartment building sooner.

Fortunately, there is no evidence that the delay in viewing the video resulted in any loss of life. However, as referenced above, Mr. Cribbin was attacked by McArthur at McArthur’s apartment in July 2017, about one month after the police obtained the surveillance footage from 72 Winchester Street. Mr. Cribbin escaped by virtue of the fortuitous return of McArthur’s roommate and his own decision to leave. Had Mr. Cribbin not been able to do so, he could have been McArthur’s next murder victim.

On August 31, 2017, and September 1, 2017, excellent police work connected one of the people in Toronto who owned an early-model red Dodge Caravan, McArthur, to one of Mr. Kinsman’s Facebook friends. The evidence accumulated in relation to McArthur. But it was only on September 5, 2017,

that Detective Constable McKenzie realized he had interviewed McArthur. Detective Dickinson immediately saw the significance of the earlier McArthur interview – it connected McArthur to all missing men from Project Houston.

The point here is not to criticize Detective Constable McKenzie for not remembering the earlier interview sooner. That is understandable, given the low level of importance assigned to the interview at the time. But case management tools are supposed to prevent investigators from relying on memory alone and allow them to search easily for relevant information. Surely, once McArthur was connected to the red van, the police should have been able to search the Project Houston records to see whether anyone named Bruce came up in that investigation. That search was never carried out. It could have been done more easily, of course, if work product had been uploaded consistently into PowerCase or even the P Drive, for that matter. Indeed, proper use of PowerCase could have triggered McArthur's name in 2017, once he was entered as a person of interest in 2017.

It is also unclear to me whether Project Prism notified the Peel police that McArthur was connected to multiple missing men, including Mr. Faizi, immediately on learning about that connection. This notification obviously did not take place in November 2013 because the connection to Mr. Faizi and the others went unnoticed at that time. As I observe in Chapter 6, during Project Houston, the Toronto police did not even notify the Peel police that *silverfoxx51* was McArthur, despite their knowledge that this username was found on Mr. Faizi's notepad.

### ***The Serial Predator Coordinator***

As I previously indicated, the serial predator coordinator learned about any investigation relating to the disappearances of McArthur's victims only when he read in the media about McArthur's arrest. This lack of notification did not represent an isolated failing, but a systemic issue for the Service. It became obvious to me that a number of senior officers failed to appreciate when their obligation to notify the serial predator coordinator arose.

### ***The Violent Crime Linkage Analysis System***

The OPP ViCLAS Unit recognized that something potentially significant was taking place in Toronto involving multiple missing persons but received little co-operation from the Toronto police in conducting its analyses. Only the OPP's perseverance resulted in Toronto's preparation of ViCLAS submissions, well after they were required. As it turned out, McArthur's victims, as far as we know, had a connection to Toronto, either based on their residence or other links to the Village. But what if that were not the situation?

Or what if unidentified bodies reported to the ViCLAS Unit had represented additional McArthur victims? The point here is that, to the detriment of the public, the Service's approach undermined the ability of the OPP ViCLAS Unit to assist in the identification of victims, in its analysis of unsolved missing persons or unidentified bodies. Unfortunately, this approach represented another instance in which the Toronto police preferred not to avail themselves of provincially mandated tools and supports. The status quo is quite unacceptable.

***The December 8, 2017, Press Conference***

At the December 8, 2017, press conference, Chief Saunders advised the public that “the evidence today tells us there is not a serial killer based on the evidence involved.”

At that point in time, the Project Prism documentation reflected that

- By September 2017, McArthur had already been identified as a person of interest in the disappearances of Mr. Kinsman and Mr. Esen and could not be excluded with respect to the disappearances of the Project Houston men;
- according to a November 12, 2017, email from Detective Dickinson to Detective Sergeant Idsinga and Inspector Bott, McArthur was then a suspect in the murders of Mr. Kinsman, Mr. Navaratnam, Mr. Kayhan, and Mr. Faizi; and
- according to the Project Prism meeting minutes, as of November 14, 2017, McArthur was formally considered a person of interest in the disappearances of Mr. Navaratnam, Mr. Kayhan, and Mr. Faizi.

As previously indicated, Detective Dickinson told the Review that the meeting minutes were in error. According to him, McArthur was not elevated to a person of interest in the Project Houston disappearances, and there cannot be a person of interest in a missing person investigation without indication of a crime's having been committed. I disagree.

Ontario's *Major Case Manual* defines a person of interest as follows:

A person whose background, relationship to the victim or the opportunity to commit the offence(s) warrants further investigation but no evidence currently exists to suggest culpability in the commission of the offence.

By contrast, the manual defines a suspect as follows:

A suspect is a person(s) of interest whom investigators believe had culpability in the commission of the offence(s) based on the evidence.

Evidence of the commission of an offence can be, and often is, circumstantial. In the context of a missing person, there can be compelling evidence that a missing person has been the victim of foul play, including murder, based on circumstantial evidence.

The characterization of someone as a “person of interest” or as a “suspect” is not dependent on whether “reasonable grounds” exist of that person’s culpability or that a crime has been committed.

Unfortunately, the characterization of someone as a person of interest or a suspect may be influenced, unintentionally or otherwise, by the purpose for which the characterization is or is not being made. For example, although the police may characterize someone as a person of interest or a suspect to support the issuance of a judicial order, the police may be more reluctant to describe someone as a person of interest or a suspect, or even to state that a person of interest or a suspect exists, in communications with the public.

Viewed objectively, there is no doubt that, as of December 8, 2017, there was circumstantial evidence that McArthur may have been or was likely involved in the crimes relating to the disappearances of all five of the men connected to the Village who were then known to be missing. Indeed, by December 8, 2017, the circumstantial evidence of his involvement was compelling, if not yet overwhelming.

Regardless of these characterizations, it was inaccurate, and unfortunately misleading, to say that the existing evidence told police affirmatively that there was not a serial killer in Toronto. In my opinion, the evidence simply did not support that conclusion. To the contrary, even if the evidence was not conclusive at that point, the police were intently focused on McArthur because it appeared that all roads led to him.

I do not believe that Chief Saunders deliberately misled the public. I accept that he may have had an imperfect understanding of the state of the investigation and may have failed to ensure he was fully briefed on it when he returned to duty. He may also have been much less careful than the circumstances required in how he conveyed his understanding.

Although I do not attribute malevolence to these statements, as some in the communities do, these statements had the effect of further rupturing an already precarious relationship with the LGBTQ2S+ communities. When McArthur was identified as a serial killer shortly after the press conference,



community members felt betrayed. Although the evidence grew stronger between the press conference and McArthur's arrest, the statements were misleading when made.

Nor was it necessary to mislead the public to preserve the integrity of the ongoing investigation. McArthur was under surveillance. The chief of police could candidly have indicated that investigators were carefully considering whether the disappearances were explained by a serial killer or could have conveyed, in some other way, that the investigation was progressing but that he was unable to share more information at the time so as to not jeopardize the work being done.

Chief Saunders's statement was unfortunate because it reinforced the views of some community members that the Service and its chief of police were indifferent to their fears and concerns and too willing to discount prevalent views that a serial killer was at large.

### ***Chief Saunders's Globe and Mail Interview***

Many members of the public, most particularly in the LGBTQ2S+ communities, were deeply offended by Chief Saunders's later statements to the *Globe and Mail*. These statements were summarized earlier in this chapter.

Chief Saunders felt he was misquoted or that his comments were taken out of context. He publicly released an audiotape of his interview to support his position. (See the partial transcript reproduced at the end of this chapter.)

Although, again, I do not attribute malevolence, as some do, to Chief Saunders's comments, they were poorly worded and, in some important respects, unfortunate. I cannot find that the *Globe and Mail* misquoted him or even took his comments out of context. The *Globe and Mail* did place particular emphasis on the more controversial feature of the interview in its headline and in the content of the article.

I say that the chief's comments were unfortunate and poorly worded for several reasons.

First, he said several times that nobody came forward to assist the police, and that the police did everything they could do with the evidence they were given but could not act without evidence.

There can be no question that it was inaccurate to say that nobody came forward to assist the police. Many people came forward to assist and are to be commended for it. Indeed, at a meeting on August 1, 2017, Inspector Code credited the community for providing an abundance of information to the police.

Understandably, those who did so were disheartened by the chief's blanket statements that nobody came forward. They and others believed the chief was blaming the public for the Service's failure to apprehend McArthur.

In fairness, Chief Saunders made these statements in the context of public revelations about what people were now saying about McArthur – revelations that police were previously unaware of. This prompted him to say that people were self-vetting out of concern about falsely implicating someone.

But Chief Saunders failed to acknowledge that reluctance to come forward may also be rooted in concern over how information is likely to be used by police; by the legacy of mistrust toward the police based on prior and ongoing interactions; and by the lack of information provided to the public about the focus of the investigation and what kinds of information police were looking for. As stated earlier, with limited exceptions, the police did not effectively use its officers closely connected to the affected communities or community organizations, neighbourhood associations, and community leaders to build trust and encourage people to come forward. Simply put, the emphasis on the community's responsibility for the inability of the police to solve the disappearances was misplaced.

Equally problematic, Chief Saunders was unequivocal in saying the investigation was well executed without any internal or external review's having even taken place at that point in time. He qualified his comment only when pressed by the questioner. It did not inspire confidence – at least, in any internal review process – when it sounded as if the issue had been prejudged. And, as we now know, he was wrong. It would have assisted in repairing the relationship with affected communities if Chief Saunders had reserved judgment on the Service's performance.

Finally, Chief Saunders reiterated the accuracy of what he had said at the December 8, 2017, press conference about the presence of a serial killer in the community. As he acknowledged during the Review, the chief would have said something different had he known the state of the investigation at that point in time. It would have been preferable if he had properly informed himself of the accuracy of his earlier statement before reasserting its accuracy several months later.

Words matter. However inadvertent, Chief Saunders made it more difficult for his own officers to repair the Service's frayed relationship with affected communities, a relationship that he was anxious to address while chief of police.

***Bias, Discrimination, and Differential Treatment***

A number of community members believe the police truly investigated the disappearances from the Village only when Mr. Kinsman, a white man, was reported missing. Some community members focus on the fact that the other missing individuals were racialized; some focus on the fact that they were gay or bisexual; some focus on other demographics or circumstances or the intersection of these circumstances that made each vulnerable and marginalized. Other community members discount the fact that these were gay men, noting that this demographic was shared with Mr. Kinsman. They observe, as a point of differentiation, that Mr. Kinsman was a well-known, established presence in his community and supported by a large cadre of friends and loved ones who mobilized in a highly visible way when he disappeared. Their powerful voices, together with the previously reported disappearances of five gay / bisexual men from the Village, could not be ignored by the police.

The perception that the police had failed to treat the prior missing person cases seriously is understandable for at least two reasons. First, there were clearly flaws in the earlier investigations – serious flaws that invite scrutiny over whether overt or systemic discrimination explains them. Second, it cannot be disputed that the Service failed to provide the public with meaningful information about the earlier investigations. Even the existence of Project Houston was essentially unknown to the public. This lack of transparency contributed to the perception that, prior to the report of Mr. Kinsman’s having gone missing, the Service had done little or nothing to investigate these disappearances. Indeed, a number of officers told the Review that, without jeopardizing the investigative work, the Service could have done, and should have done, a much better job of communicating with the affected communities.

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In British Columbia, Justice Wally Oppal examined the investigations conducted into the disappearances of vulnerable women from Vancouver’s Downtown Eastside. Robert Pickton was implicated in many of their deaths. Over the course of several years, the police ignored or failed to properly investigate numerous leads concerning the women’s disappearances, leads that incriminated Pickton. Justice Oppal concluded that systemic bias against the women who went missing contributed to critical police failures in the investigation of their disappearances. He found that the police investigators cared about the missing women and were not overtly biased. However, he

found that systemic bias, based on broader patterns of systemic discrimination, was clear in the unreasonable departure of the police from the commitment to provide equal services to all community members.

Here, the public is entitled to know what role, if any, overt or systemic bias or discrimination played in the McArthur-related investigations. This issue must be examined through a human rights lens. I do precisely that in Chapter 12 of this Report.

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### **Audiotape Transcript (Partial) of Chief of Police Mark Saunders's Interview with the Globe and Mail**

Q: Is there something the community doesn't understand about Project Houston? There is a widespread sense that something went wrong, what don't we get?

Chief Saunders: There are a couple of things, first and foremost, when we deal with Projects Houston and Prism and of course the eventual arrest, this was something that hasn't happened in our city before. We've sat back and watched CNN and watched the news reports on serial killers in other countries, but we haven't seen it here. I can tell you from a police agency, if I were to say what was the frustrating piece, I think that everybody takes a role in this one.

When we first came into play with Project Houston, when I look at the amount of resources that were put in, I thought that we clearly were listening, but the issue was, that we didn't have any evidence that allowed us to move any further. There is a responsibility piece for us as an organization, where if you've got evidence and if that evidence is moving you, you go with it, and you continue to go with it, and then there are parts when it evaporates and there's no more evidence whatsoever, and you've put up your pamphlets and you've canvassed and you've patrolled and you've interviewed and you've examined interviews, and you've created different tasks and responsibilities and roles for people to do, and there is nothing left, then we have to wait until more evidence comes in. And we didn't have evidence, and I, the one thing that I, I would say from a level of confusion is, and I now have the privilege of hindsight like everybody else, because I've been reading the amazing things that have come up now since we've made the arrest, and I've heard a lot of

sources say certain things and had those sources said those things when we had Project Houston up, I think that there's a very strong potential that the outcomes could have been different.

A lot of people self-vet, and I learned this in Homicide, where you may have a piece of the puzzle, but you will vet it on your own, and when I say that it's – here's the encounter that I had with this person, but I don't necessarily think that that person would do all of these things, so I'm not going to report that to the police, because my fear is that if I say this, the police are going to go and arrest this person for something that could be incredibly egregious and I don't want to be a part of that process, and not realizing that there's a much bigger picture. And we get this predominantly when it comes to that self-vetting piece, we get this with sexual assault investigations, with, when you have the bad date type of setting, and people will not understand that if things aren't reported it emboldens the suspect. And when we start arresting, especially for sexual offences, and we put up the picture, and we say we're putting this picture up because we believe that there will be more that will be reporting, there will be more that will be reporting, and 9 times out of 10, more people report. And so, had that first person been brave enough, and I understand why people don't, it's their right to make those choices.

But there's always a bigger picture, and if it gets reported at the very front end, that cascading effect of not emboldening that particular suspect gets reduced, but a lot of people, for whatever reason will self vet. I think that the justice system has a piece to do with it and there are other factors as well too, and I'm hoping that there are opportunities to look at the law, and are there other ways in which we can look at the justice system for any gaps of any kind that can deal with some of the pressures that are existing today in today's world, because I really do think that there are some things and some concerns with me when it comes to the judicial system, a big one for me is with street gangs.

Q: You're talking about reluctance from sources? How much did the demographics of the missing men affect this issue in Project Houston?

Chief Saunders: It didn't affect. I would not put my hand up and want to be Chief of an organization if I thought that, understanding that we are the most multi-cultural city in the world, I'm of the belief that all of my officers will do the right thing for the right reasons. And if anyone makes decisions because of race or demographics or any of those things, I've got a problem with that.

Q: I don't mean to say that your officers are racist, but you have people who went missing, and they were vulnerable people, with financial issues who were not out of the closet, I wonder if comprehensively it can – funnels them into believing that they disappeared on their own volition.

Chief Saunders: No. When we do investigations of – the one thing that you don't do is you don't funnel. You open all your lanes. You open all your lanes and then you lead to your conclusion that's based on the evidence. But if you do investigations right, you're never closing doors. And we've learned that from days of old, where that's exactly what we'd do, we'd funnel in, so the fact that we're open, that means we're receptive to everything that comes in, from any lane, and we will investigate it to its fulsomeness, until it closes and then we will slowly cascade it, and so no, I, having worked Homicide, and I heard that narrative quite a bit, you know, because someone is of a certain way, you don't put time or effort into it, but when someone is another way you put lots more time and effort, and that is just not true. Categorically untrue.

We investigate based on the evidence that we have and based on the willingness for people to talk to us, to give us that evidence, and there are complications with investigations, I readily admit, there are hesitations with people wanting to get involved in the judicial system. And if you say that, for me to gather evidence, for me to bring it into a courtroom right now, I have to bring you into a room and I have to put the DVD in, and I have to have you swear or affirm that you're telling the truth, and it's going to be recorded, and it's going to be going to defence counsel, then I'll conduct my investigation, and once the interview is over, I take that out, because that sworn testimony, if I don't have that, it's not going into the courtroom. So, you can't sit with me and say I'm going to give you everything, but I'm not going to go to court. That doesn't become evidence.

Q: Wasn't this in the end though a pretty serious failure by Toronto police? I mean, we had a serial killer abroad in the city for several years now. And everybody in the gay community, not everybody, but many people in the gay community suspected that might be the case, and you didn't see it. Isn't that a failure?

Chief Saunders: No. And listen, we knew something was up, which is why we went in to begin with. We did not have the evidence, and working it back again, in hindsight it is very clear that he was able to navigate in the community, he had friends, family, loved ones, he would be in bars, he was Santa Claus, all of these things, and all the while, nobody knew. If anyone would know before

us, it's people that knew him very, very well. And so that did not come out. And I'm not, this is not, I'm not going to point fingers, because we're past that. The loss of life is catastrophic here, and to move forward, what can we do better? Our role is to follow the evidence. And if you don't have any evidence then you dig harder, to see, to make sure, you do the double check with all of these investigations, you don't just sit back on your hands and go, nothing's coming in, see you later. We go out and we aggressively try to pursue and look for that. We knew that people were missing and we knew that we didn't have the right answers. But nobody was coming to us with anything. Nobody.

Q: Can I just stop you there – you started this by saying that a lot of people had a lot of different responsibility. But then you seem to suggest that the community had to take responsibility for not coming forward to give you guys more evidence. In December, you said you were going to launch a professional standards review of how you handle missing cases. Yet here today you're saying, we did everything we could have, so, is there not a moment of reflection right now, where you're questioning did, we do enough, and are you looking at your force, and thinking, did we do enough? Have you asked for reviews? Or are you sitting here today, saying, no, we did everything, absolutely everything we could have?

Chief Saunders: Well, we're talking specifically about an investigation.

Q: I am talking about that investigation. You're under a lot of criticism from the community on that one. You seem to be saying, no, we did everything, so is that where you stand? Are you going to ask for a review? Are you asking your investigators to look into how they handled things?

Chief Saunders: They are looking into, yes, the missing persons portfolio, I want to have a look at what we knew, when we knew it, and what did we do with it, and I think that is critical. And you're right in the sense that with the public trust issue there are some huge concerns and I need to figure out exactly what the cause of that is. I have, I can tell you that when it comes to any type of, I don't know the details to, the details to the McArthur investigation, but I can tell you that it will be thoroughly examined, and if there are things that we did wrong, I certainly will take ownership for that.

Q: And how are you moving to find that out? Have you asked for there to be an investigation, what is happening actively to know if you guys did – ?

Chief Saunders: Right now there is an active investigation, because we have certain investigations, we've got Alloura Wells, we've got Tess Richey, and we are looking at those particular missing persons reports and investigations, and we are figuring out exactly where were the gaps, the fact that a mother found her daughter is something that I find horrific, and I think the public found horrific as well too, and it's certainly something that I could not even, I don't want to start to begin with what the emotions would be with that, but we need to take that look to see where the gaps were with that.

And that's when we're dealing with over 4,000 missing people a year. We have an incredibly high success rate, but what do we do to get better, and that's the overall objective of that particular thing. I do think that when we're dealing with a serial killer, you can't package those two together. And so with that particular issue, we have an opportunity to meet with the community, which is what we are moving forward on, we definitely want to sit down and listen to what the issues and what the concerns are, and if there are things that we can do to increase relationships ... things that we can do operationally ... better, then I am willing to hear that. So, I don't mind speaking on what we did, and, was I satisfied with what we did? At the time, with the information that we had, the answer to that is yes. The answer to that is yes.

Q: Why did you say so definitively in December that there was no serial killer? You said there was no evidence –

Chief Saunders: That was cherry picking. I've been reading the reports, and I don't have that luxury of cherry picking. I said, based on the evidence that we have right now, there is nothing that indicates that we have a serial killer. And that is something that I am fine with, because I understand law. When I said that, it was because that was the evidence that had been scrutinized for years that came up with, was something going on that was bizarre – absolutely. I don't think anyone didn't think that something was going on. We all knew that something was going on. But we did not have the evidence. Nobody came in.

Q: It's possible at the time that it was a serial killer, wasn't it? You knew something odd was going on, all these people disappeared, were disappearing, why say definitely not a serial killer?

Chief Saunders: I didn't say that. I said that based on the evidence, and that was the fair statement. Because things shifted very, very dramatically based on a particular day and then based on that evidence we received that day, actions



were taken immediately and so if we had that before, it would have been a game changer, but it just was not. And like I said, when this unfolds, I would be open to any type of inquiry at the end of the day, I think that there are levels of frustration because you know, we live in that world where we deal with law. We deal with law.

And it's a much harder pill to swallow if you truly don't understand what it's like in the courtroom, trying to defend a case. I've had cases, homicides, where the evidence was there and it comes back not guilty, so understanding law and the frustrations of law are another layer that a lot of people don't know or understand, nor do they want to understand. I think that at the end of the day, that the emotions are real, is there fear? Yes. Is there still fear? Absolutely. And what can we do to go forward to build and develop the relationships that are necessary so we can open those lines of communication, and I also have to ask, is there something within our policing environment that's causing people not to want to come and talk to us, and not give us those tidbits? I don't know. So hopefully out of this, there's an opportunity to learn a little better.

Q: If you had said at that time, we don't have any evidence that there's a serial killer, but we're worried that there is, is that something you could say, would that have compromised your evidence, or –

Chief Saunders: No, I'm not going to, no. I can't speculate. I don't think that I have that luxury. You can, and in fact many people did. But we can't do that. That's not my role, to speculate, to say, however, this could be the case. Because if it comes out that's not the case, it could, then if it's two or three different people doing different things, then all of a sudden, I've opened the defence counsel to have a heyday in the courtroom. I don't have that, that's not a role that I'm going to deal with. I have to stay on what I have, that is tangible, that will stay solid.

I may not like it, but at the end of the day, on that moment, on December 8, when I said what I said, I did not say that there was not a serial killer, I was not being coy with the words, I put that statement out because that was what we had at the time. And it was the entire statement, not just partial statement. It was the entire statement that obviously didn't get communicated properly. But I was pretty clear with what I said and why I said what I said at the time. And I was asking the very same questions, because I wanted to make sure that when I'm going say what I'm going say, I need to know. And so, the investigators at the time, that's what they had.



## Chapter 8

### TESS RICHEY GOES MISSING

In Chapters 5, 6, and 7, I describe and evaluate the McArthur-related investigations conducted by the Toronto Police Service (the Service), most particularly those relating to the disappearances of Bruce McArthur's homicide victims. My mandate also requires that I examine the investigation the Service conducted into the disappearance of Tess Richey. Although her disappearance and death were not attributable to McArthur, they came at a time when community members, particularly many in Toronto's Gay Village (the Village), were deeply concerned about the prospect of a serial killer in their midst. The fact that Ms. Richey's mother – rather than the police – discovered her body, and that her body was very close to where she was last seen alive, heightened community skepticism over whether the Service was doing everything it could to solve these disappearances.

This chapter scrutinizes the Service's investigation into Ms. Richey's disappearance. It identifies what the police did and did not do, and, ultimately, what should have been done differently.

After Ms. Richey's body was discovered, the Toronto police conducted a homicide investigation that led to the arrest and prosecution of Kalen Schlatter for murder. For two reasons, I have not evaluated that investigation. First, my mandate is focused largely on how the Service has conducted and continues to conduct missing person investigations or investigations into unidentified bodily remains, and on whether cases are turned over to the Homicide Unit in a timely way. It does not include the Service's work once a body has been found and identified and the case has been turned over to the Homicide Unit. Second, according to the Review's Terms of Reference, I must not prejudice any ongoing criminal proceedings. When the Review began, Schlatter was awaiting trial for first-degree murder. As a result, the Review deferred interviews of several trial witnesses until the verdict had been delivered.

On March 23, 2020, Schlatter was convicted of first-degree murder. However, unlike McArthur, Schlatter denies his guilt. He appealed the verdict, and the appeal has yet to be determined. I must therefore continue to ensure that my Report does not prejudice the ongoing criminal proceedings. The law also precludes me from expressing any conclusion or making any

recommendation regarding the criminal responsibility of anyone connected with Ms. Richey's death.

My Report has another limitation that relates to Ms. Richey's case. Two officers involved in the search for Ms. Richey are facing charges of misconduct and neglect of duty under the *Police Services Act*.<sup>1</sup> The hearing into those discipline charges has not yet taken place. Although the officers' conduct is relevant to how the police investigated Ms. Richey's disappearance, I will not express an opinion on whether their conduct amounted to professional misconduct. That is a determination to be made at a discipline hearing based on sworn evidence and governed by the legal protections and rights afforded to the parties at such a hearing.

## **The Missing Person Investigation**

Tess Richey was born and raised in North Bay, Ontario. She moved to Toronto to further her education. Once there, she attended George Brown College in the Assaulted Women's and Children's Counsellor / Advocate Program, and Seneca College for the Flight Services Program. She supported herself by working as a server at the Brass Rail Tavern.

### ***November 25, 2017 – Tess Richey Reported Missing***

On the evening of Friday, November 24, 2017, Ms. Richey told one of her sisters, Ms. AH, she was going with a friend to the Crews & Tangos bar located at 508 Church Street in the Village. As Saturday progressed, Ms. AH became increasingly concerned about her sister Tess. Uncharacteristically, Ms. Richey had not spoken to her that day and was not responding to her texts. In fact, she noticed that her most recent texts were not even being delivered. She was particularly worried because Ms. Richey had been going through a "hard time" in recent days since she discovered that her boyfriend had been unfaithful to her. On her own initiative, Ms. AH contacted some of her sister's friends, her employer, and a number of hospitals.

At 9:15 p.m. on November 25, Ms. AH reported Ms. Richey missing to Toronto's 52 Division – the division closest to her own home. Because Ms. Richey's residence was located within the jurisdiction of 41 Division, the Service's procedures dictated that 41 Division, located at 2222 Eglinton Avenue East in Scarborough, had to be in charge of the investigation. As a result, 52 Division passed on Ms. AH's information to 41 Division, and officers there took over the case. However, officers at 51 Division, located at

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<sup>1</sup> RSO 1990, c P.15, as amended.

51 Parliament Street near the Village, were also heavily involved in efforts to locate Ms. Richey because she was last seen in an area policed by them.

On receiving the Missing Person Report, two 51 Division officers were dispatched to several hospitals to make inquiries about Ms. Richey. The officers' memobook notes indicate that a "300 metre check" was done around the area of the Crews & Tangos bar and the nearby TD bank. One of the officers reported the completion of this search to two senior officers.

***November 26, 2017***

Shortly after midnight on November 26, two police officers from 51 Division met with Ms. AH to obtain further information. Ms. AH told them her sister did not have any mental health issues, was not on any medications, and had no financial problems. She also said she usually spoke with or texted her sister every day, but in her attempts to make contact over the last several hours, she had discovered that her sister's phone was not in service.

Ms. AH provided the police with the following information about Ms. Richey's last known activity. After a drink at Ms. AH's house on the evening of November 24, Ms. Richey left to meet a friend, Ms. AI. Ms. AH had since spoken with Ms. AI, who told her she was with Ms. Richey that evening at Crews & Tangos. Ms. AI remembered she last saw Ms. Richey in the vicinity of the TD bank at 65 Wellesley Street East, on the corner of Church and Wellesley streets, just north of Crews & Tangos.

In addition, Ms. AH told the police about her sister's breakup with her boyfriend, Mr. AJ. The breakup had led to a Domestic Incident Report filed on November 24. When the police read the report, they learned that Mr. AJ had called the police, alleging that Ms. Richey had slapped him and taken his cellphone. The officers who responded to the call had cautioned both parties not to contact each other.

Ms. AH also provided the police with the name of her sister's employer and the name and contact information of a friend. She indicated that her sister's "Fitbit" app/page had been updated between 4:30 a.m. and 5:00 a.m. on November 25, but there had been no recent activity on her Instagram or Facebook accounts.

After speaking with Ms. AH, the police took steps that same day to locate Ms. Richey. One officer spoke with Mr. AJ, who said he had not seen her since they broke up on November 24. The officer then went to Ms. Richey's place of employment and was told she had quit her job a few days earlier. The police were unable to speak with Ms. AI. They called some hospitals. Two officers went to Ms. Richey's residence and found nothing out

of the ordinary. The police continued to check Ms. Richey's residence periodically over the next three days as they searched for her.

The police obtained information from Uber that Ms. Richey's name and number were associated with a ride ordered around the time she disappeared, but it had been cancelled or not taken. Uber could not provide any further details about Ms. Richey's account without a formal request.

At 4:00 a.m., one of the officers who had spoken with Ms. AH completed a Search Urgency Chart and a Missing Person Report. The chart indicated a rating of "low" and designated the occurrence a "level 1 search," the lowest level of search under the Service's procedures. The Missing Person Report identified the area around 65 Wellesley Street East, the address of the TD bank, as the area where Ms. Richey was last seen.

Ms. Richey's family quickly became heavily involved in the effort to find her. Ms. AH told the Review that, at some point on November 26, an officer told her a detective would not be assigned to her sister's case until Monday, November 27. Ms. AH and her partner went to Ms. Richey's apartment and reviewed the messages in her laptop. Ms. AH also texted with Ms. AI to retrace Ms. Richey's steps the previous night. Ms. AI described a house on Dundonald Street, one block north of Wellesley Street, where she and Ms. Richey had been the previous night.

Ms. RR called 51 Division officers at 3:38 p.m. to ask them to investigate the house on Dundonald Street (later determined to be 50 Dundonald Street) and described the house. She told them that this location was where Ms. AI last saw Ms. Richey. A few minutes later, two 51 Division police officers, Constable Michael Jones and Constable Alan McCullough, met Ms. AH at the house. They all spoke with Ms. AK, a resident there. She advised them she had seen Ms. Richey on November 25 around 3:00 a.m. They had met that night by happenstance and chatted before exchanging phone numbers. Ms. Richey left, walking west on Dundonald Street with a woman (Ms. AI) and an unknown man, who Ms. AK described. The police later alleged that the unknown man referred to throughout this narrative was Kalen Schlatter. Ms. AK felt the officers were not taking the matter seriously. She volunteered a great deal of information, but the officers did not appear particularly interested.

Constable Jones and Constable McCullough did not conduct a 300 metre search around 50 Dundonald Street. Because Ms. AK had told them she last saw Ms. Richey walking west along Dundonald Street, the officers drove west along Dundonald Street and south down Yonge Street, checking the street as

they drove. They submitted a Supplementary Report briefly summarizing what Ms. AK had said. It was directed to the officer in charge of the case.<sup>2</sup>

The Service's Missing Persons Procedure 04-05 that applied at the time provided that, when investigating a missing person complaint respecting a level 1 search, the "first police officer" shall

- interview the last person to see the missing person, where possible;
- search the home and the immediate area thoroughly;
- if permission to search the home or adjoining property is not granted, notify a supervisor and add the details to the original eReport; and
- canvass the neighbours.

The procedure did not define a "first police officer." In August 2019, this procedure was changed to require first police officers to complete a 300 metre radius search of the place last seen, if known, or, if it is determined that a 300 metre radius is not required, to record specific details in the original eReport (the Occurrence Report) and advise a supervisory officer. The August 2019 procedure still does not define a "first police officer." I discuss the applicable procedure in the Summary and Findings at the end of this chapter.

At 4:54 p.m., Ms. AI gave another officer a timeline of her night with Ms. Richey. She said they left Crews & Tangos around 1:35 or 1:40 a.m. and walked to 50 Dundonald Street around 2:30 a.m., where they remained outside the residence. Ms. AI's memory was admittedly vague because she had consumed a lot of alcohol. However, she did remember last seeing Ms. Richey around 4:00 a.m. Ms. Richey was sitting on the sidewalk in front of 50 Dundonald Street with the unknown man and Ms. AK. Ms. AI could not recall how they met the man.

### ***November 27, 2017***

In the early morning hours of Monday, November 27, Ms. AH telephoned the police at 41 Division to provide more information. She alerted them to the possible existence of video footage of Ms. Richey at Crews & Tangos. She stated that Ms. Richey banked at the TD Bank and that there is a branch on the

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<sup>2</sup> The original Occurrence Report was an electronic document, as was the Supplementary Report. There was a requirement that the Supplementary Report be placed with the original Occurrence Report. When the Supplementary Report was prepared, no lead investigator had been assigned. Detective Matthew Wighton, from 41 Division Criminal Investigation Bureau (CIB), who was appointed as the lead investigator just before 7 a.m. on November 27, believes he would have read the Supplementary Report at some point, but he has no recollection of doing so. In this context, the reference to the "officer in charge of the case" appears to be used to mean "the lead investigator" as opposed to the officer in charge of the day-to-day running of the division.

corner of Church and Wellesley streets just south of 50 Dundonald, where she was last seen (see map). Ms. AH also told police that Ms. AI had given her additional information, including that she remembered they were with a man that night. Ms. AI had said Ms. Richey may have left with the man, but because of her own level of intoxication, she could not remember what he looked like.

### Locations Ms. Richey visited in the early hours of November 25, 2017



*Note:* Distances are not always accurately reflected (see text below).

*Source:* City of Toronto map, amended by the Independent Review.

After speaking with Ms. AH, one of the detectives at 41 Division reviewed Ms. Richey's Missing Person Report. At about 2:00 a.m. on November 27, Toronto Police Operations published a tweet in relation to Ms. Richey's disappearance. This tweet marked the first public announcement the police made about Ms. Richey's case since the report of her disappearance on the evening of November 25.

A few hours later, just before 7 a.m., Detective Matthew Wighton from 41 Division's Criminal Investigations Bureau was assigned as the lead



investigator in Ms. Richey's case. Detective Wighton was extremely busy that day. He was working on several serious cases, including a robbery, sexual assault, and human trafficking. Near the beginning of his shift, Detective Wighton received a call from Ms. AH about her missing sister. Ms. AH's call was significant because Detective Wighton candidly told the Review that if he hadn't received her call that morning, he may not even have reviewed the Missing Person Occurrence Report until sometime later or realized that the case had been assigned to him.

At 8:35 a.m. the same day, Toronto police issued a media release, which had been arranged before Detective Wighton started his shift. The release included both Ms. Richey's photo and a description of her. It indicated she had last been seen around 3:00 a.m. on November 25 in the vicinity of Church and Wellesley streets and stated: "[P]olice are concerned for her safety."

Between 9:51 a.m. and 1:19 p.m., Detective Wighton had another officer look into Ms. Richey's banking activity. Her account had been dormant since November 25 at 4:02 a.m., when there was an Uber charge for a ride the police learned later she never took.

That afternoon, a supervising officer instructed officers to check for video footage at Crews & Tangos and near 50 Dundonald Street.

At 5:55 p.m., the police at 41 Division formally interviewed Ms. AK. She told the police that the apartment building just across the street at 41 Dundonald might have video footage of Ms. Richey. Ms. AK also showed them phone messages between her and Ms. Richey. The last message was sent at 3:44 a.m. on November 25. Ms. AK indicated that Ms. Richey had been upset about her ex-boyfriend and had expressed suicidal thoughts. Ms. AK repeated the earlier information she had given to police about having last seen Ms. Richey walking west on Dundonald Street with Ms. AI and a man.<sup>3</sup> She described the man as "nice" and recalled he did not say much. Although this information was the second time the police (albeit from a different division) learned that Ms. Richey had last been seen at 50 Dundonald Street, no one made sure that a proper search was conducted for her around that location.

All the while, Ms. Richey's family remained active in the search. Her mother, Christine Hermeston, as well as Ms. AL (another of Ms. Richey's sisters) and Ms. AL's fiancé, had travelled from North Bay to Toronto to look for her. The family distributed flyers in the Village and appealed to the media for assistance. An article the CBC posted on November 27 at 11:20 p.m. included interviews with Ms. Richey's family and Ms. AI. The family also

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<sup>3</sup> Although both Ms. AK and Ms. AI told police they last saw Ms. Richey with the other person, this information does not appear to have affected the police investigation in any way.

posted information about Ms. Richey's disappearance on social media and visited her place of employment.

### ***November 28, 2017***

On November 28, officers including Detective Constable Robert Chevalier, a local neighbourhood community officer,<sup>4</sup> canvassed the Village. The 519<sup>5</sup> community centre provided him with flyers the family had prepared about Ms. Richey's disappearance. Detective Constable Chevalier noted in his memobook: "[T]here had been several other people missing, including Alloura Wells[,] so I particularly wanted to find this person, as fear was beginning to grow in the community."

That day, the police canvassed a variety of locations for video footage. For example, at 12:01 a.m., two officers went to 50 Dundonald Street and found no video. However, the officers did obtain footage from Crews & Tangos for the night Ms. Richey disappeared. The footage showed her being denied entry back into the club at approximately 2:03 a.m. The video picked up Ms. Richey again at approximately 2:15 a.m. as she and Ms. AI walked north on the west side of Church Street.

Another officer on November 28 obtained video footage from Ms. Richey's residence, and he viewed it the following day. Ms. Richey did not appear on it, indicating she did not return to her residence after the early morning hours of November 25.

At 12:58 a.m. on November 28, Detective Wighton called Emergency Medical Services to see if Ms. Richey or a "Jane Doe" had been transferred by ambulance around the time of her disappearance, but there were no such records. That same day, the police again searched her apartment and talked to her employers. The police determined that the clothes she was wearing when she disappeared were not in her apartment. They contacted the Marine Unit and women's shelters and searched the shoreline. None of these efforts yielded any information about her.

Around 7:30 a.m., Ms. AM, a bar owner, called the police and told them she had served Ms. Richey at her bar on November 24. Ms. Richey had seemed distraught over her ex-boyfriend.

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<sup>4</sup> In May 2013, the Service implemented a Neighbourhood Community Officer Program within selected neighbourhoods. The Village is part of this program. Neighbourhood community officers (NCOs) are supposed to work in partnership with local residents and community-based organizations to address community safety and quality-of-life issues. Their mandate includes building relationships and solving problems within their neighbourhoods.

<sup>5</sup> The 519, formerly known as The 519 Church Street Community Centre, is an agency of the City of Toronto and a charitable, non-profit organization operating a community centre in the Village. The Richey family told me about the invaluable moral and emotional support they received from The 519 during the police investigation and subsequent murder trial.

At 7:33 a.m., Detective Glen Cecile<sup>6</sup> created a “to do” list for obtaining further video footage, including at 41 Dundonald Street and other addresses west of number 50. The police records state that at 3:00 p.m. and again at 3:59 p.m. that same day, another officer instructed officers to check for video at 41 Dundonald Street and the surrounding area.

At 2:30 p.m., two officers searched Ms. Richey’s ex-boyfriend’s residence. Nothing of any relevance was found. Later that day at 11:00 p.m., the police interviewed the former boyfriend. He described a disagreement he had with Ms. Richey. Apparently, she had not indicated any intention to leave town.

At 4:04 p.m., an officer went to Ms. Richey’s apartment and took photos. The officer concluded there was nothing in the apartment indicating that Ms. Richey had deliberately left the area.

At 4:38 p.m., an officer received and reviewed Ms. Richey’s phone records. The last recorded phone call took place on November 25 at midnight. The officer also determined that Ms. Richey’s phone was not responding to pings, meaning it was turned off, out of range, or its battery dead.

### ***November 29, 2017***

On Monday, November 27, Ms. AK had suggested to the police that they should look for video footage of Ms. Richey at 41 Dundonald Street. Although on the morning of November 28, Detective Cecile had included that location on a “to do” list for checking to see if video footage was available for the early morning hours of November 25, and the task had been assigned later that same day, it was not until November 29 at 1:09 a.m. that police officers actually went to 41 Dundonald Street to canvass for video footage. The reason for this delay is not clear to me. When two officers finally did go to 41 Dundonald, they observed video cameras both there and at 576 Church Street, on the southwest corner of Church and Dundonald streets, which could have captured Ms. Richey’s movements. However, not surprisingly given the time of night, no one was available at either location to allow them to view the videos. At 1:15 p.m., officers returned to 41 Dundonald to check again for the video. They were not able to access the video at that time, but a staff member told them it would be provided later that day.

At 6:00 a.m. on November 29, the police checked Ms. Richey’s phone records for leads, along with her social media accounts and a website she frequented. Later that day, Detective Cecile and another officer worked on a timeline of Ms. Richey’s movements on November 25. The police also created

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<sup>6</sup> Detective Cecile, now retired, was Detective Wighton’s partner.

a map of what was known about her whereabouts. The timeline and map showed the following steps:

- at 11:59 on November 24, a bank withdrawal was completed using Ms. Richey's bank card at the ATM located beside Crews & Tangos;
- Ms. Richey left Crews & Tangos between 1:35 a.m. and 1:40 a.m.;
- she walked north on Church Street toward Wellesley Street;
- she exchanged cellphone numbers with Ms. AK at 3:44 a.m. in front of 50 Dundonald Street; and
- she was last seen around 4.00 a.m. walking west on Dundonald with an unknown man.

The police followed up on several reported sightings involving Ms. Richey which were ultimately unverified. In one instance, a member of the public reported to Detective Wighton that around the time Ms. Richey went missing, he saw someone who looked like her at the McDonald's restaurant at 470 Yonge Street. Detective Wighton reached out to 51 Division to see if its officers could search the area immediately. He was told 51 Division officers would not do it, though he was not given a clear answer why they would not. As a result, he had to send two 41 Division officers downtown to check this tip out. The officers met the person who provided the tip and reviewed McDonald's video footage. They concluded that Ms. Richey was not the person seen at McDonald's.

On November 29 at 1:47 p.m., two officers went to 576 Church Street to check for video. Because the video was too difficult to view on site, the staff agreed to transfer the footage to a USB key to give to the police later.

At 2:36 p.m., Detective Constable Chevalier was still looking for Ms. Richey in the Village. He and another officer met Ms. Hermeston and Ms. AN, who had travelled from North Bay to help look for Ms. Richey. The two women asked the officers to check 50 Dundonald Street. The officers agreed to do so. As well, they planned to continue looking for video footage. But before they could do so, they learned that Ms. Hermeston and Ms. AN had found Ms. Richey's body.

## **Discovery of Tess Richey's Body and the Aftermath**

### *Tess Richey Is Found*

On November 29, just before 3:00 p.m., Ms. Hermeston and Ms. AN were looking for Ms. Richey in the area around 580–582 Church Street, an elegant

old semi-detached residential property located at the corner of Church and Dundonald streets. This location is about 300 metres from Crews & Tangos, and about 80 metres from 50 Dundonald Street.<sup>7</sup> The property was under construction, and the building was boarded up. There was a large pile of gravel in front of an outdoor staircase.

Ms. Richey's mother found her daughter's body at the bottom of the stairwell – a mother's worst nightmare. The fact that Ms. Richey's body was discovered by her mother during her own private search is, frankly, a disturbing commentary on the quality or scope of the earlier search by the police. Ms. Richey was found in the clothes she was wearing when she was last seen. She had a purplish bruise on her face, but there were no obvious signs of head injuries or trauma. She was lying face up and on her left side, with her chin resting on her chest in an awkward position.

Ms. AN called 911. More than a dozen police officers as well as a coroner, Dr. Anaïs Bélanger, soon arrived. Detective Wighton told the Review that he did not get there from his office near Eglinton Avenue and Birchmount Road until after the coroner and these first officers, who were probably from 51 Division, had released the scene<sup>8</sup> and left the site. The early responders included a forensic identification officer. By this point, the discovery of Ms. Richey's body meant that the investigation had become a sudden death investigation within 51 Division's jurisdiction, and was no longer a missing person case with 41 Division.

### ***Initial Reaction by the Coroner and the Police***

Some police officers initially believed that Ms. Richey's death was accidental, based on the position of her body in the stairwell, her immediate surroundings, and her consumption of a considerable amount of alcohol the night she died. They theorized that she may have fallen down the stairs on her way home. The early media reports reflected this belief that she died by accident.

Dr. Bélanger's comments at the scene were interpreted in different ways. Several officers stated that she told them Ms. Richey's death did not appear to be suspicious and could be explained by a combination of intoxication and positional asphyxia<sup>9</sup> or even hypothermia. Dr. Bélanger told the Review that, at the scene, she did consider the possibility that Ms. Richey had died from hypothermia after falling asleep or from positional asphyxia, based on the

<sup>7</sup> These distances are based on Google maps.

<sup>8</sup> The police may "hold" a scene – that is, continue to cordon it off pending further forensic work – or release it if they consider it need not be preserved as it was found.

<sup>9</sup> Positional asphyxia is a form of asphyxia that occurs when someone's airway is blocked because of an awkward body position, preventing the person from breathing.

position of her head on her chest which, potentially, blocked her airway. She indicated she did discuss these possibilities with the police. However, Dr. Bélanger also told the Review that she treated Ms. Richey's death as suspicious until proven otherwise. Ms. Richey was a young woman who had been found dead in a stairwell on a busy street after leaving a bar, and her leggings were low on her hips. Dr. Bélanger therefore ordered an autopsy. She said she told several officers that, until further notice, she wanted the scene treated as suspicious and would follow up with a warrant for an autopsy. She then left the scene to go to other calls.<sup>10</sup> It was only sometime later that she learned the police had released the scene.

The Service's Preliminary Homicide Investigation Procedure 05-01 includes the following steps:

- Specialized Criminal Investigations – Homicide (SCI – Homicide) shall ... support field officers with the investigation of suspicious deaths.
- Officers are reminded to remain vigilant for the possibility of foul play in every circumstance where there is a sudden, unexpected death ...
- Upon discovering ... a suspicious death or a suspected homicide, which may include an unexplained or unknown cause of death ... [or] any other suspicious circumstances, [a first police officer] shall treat the death as suspicious.
- When advised of a suspicious death or suspected homicide [the first supervisory officer] shall ... ensure a member of the On-Call Homicide Team is notified.
- Upon being notified of a suspicious death or suspected homicide [the divisional detective] shall ... consult with a member of the On-Call Homicide Team prior to leaving the scene. *Note: The On-Call Homicide officer will determine whether a Homicide investigator shall attend the scene.*"
- Upon being notified of a suspicious death or possible homicide [the Officer in Charge] shall ... ensure SCI – Homicide and FIS [Forensic Identification Services] are notified. [Emphasis in the original.]

The officers at the scene did not contact the Homicide Unit as set out in this procedure. I address this issue later in my findings.

Dr. Bélanger prepared a coroner's warrant for post-mortem examination. This warrant authorized a pathologist to conduct the post-mortem

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<sup>10</sup> Dr. Bélanger told the Review that on November 29, 2017, she was the only coroner on duty in the entire city. Changes have since been made so that there are now two coroners on call each day.

examination (commonly referred to as an autopsy) of Ms. Richey's body. It states, in part:

[D]eath appears to be accidental in nature, though foul-play cannot be ruled out at this point. Positional asphyxia and/or hypothermia are likely possibilities. A fall down the gravel pile to the bottom of the obscured stairwell at night while intoxicated is a probable scenario.

On December 6, 2017, according to the memobook notes of Detective Sergeant Graham Gibson, Dr. Bélanger told him and Detective Ted Lioumanis, the detectives in the Homicide Unit who had been assigned on December 1 to take over Ms. Richey's case, that she felt pressured by the officers at the scene to label the death as not suspicious. She advised the Review, however, that she didn't know if "pressured" was the right word to capture what she expressed and felt. She felt the police at the scene took a "narrow-minded view" of the circumstances of Ms. Richey's death. They appeared to have their minds made up that it was an accidental death and quickly dismissed her concerns without really listening to her.

## **Further Steps Taken by the Police**

### ***November 29, 2017***

Shortly after Ms. Hermeston discovered her youngest daughter's body, the police called an ambulance for her, and she was taken to the hospital for assistance. A member of the Service's Victim Services Program arrived soon after to assist the family.

When Ms. Richey's body was found, the police began an extensive search for video footage in the surrounding area. Within a few hours, video footage from 576 Church Street and 41 Dundonald Street was obtained and reviewed. The police had gone to these same locations earlier in the day to review the video footage, but had been unable to do so. The video from 576 Church Street showed Ms. Richey at 4:03 a.m. on November 25 walking south on the west side of Church Street with Ms. AI and an unknown man. The group then turned west on Dundonald Street. At 4:08 a.m., the group walked east on the north side of Dundonald Street. They stopped in front of 50 Dundonald Street, Ms. AK's home, where Ms. Richey spoke with Ms. AK. Between 4:50 and 4:59 a.m., all three left.

At 5:09 p.m., officers from 51 Division as well as Detective Wighton met with the Richey family at the hospital. According to the family, the police told them Ms. Richey had probably fallen down the stairs and bumped her

head. Detective Wighton does not recall anyone saying these words to the family, but he agreed the police should not comment on the cause of death to a family until that cause has been medically confirmed. Ms. Richey's family were in shock. They expressed anger that the police had never issued a media release while Ms. Richey remained missing. An officer informed them that one had been issued.

At 7:34 p.m., an Uber representative told the police that Ms. Richey either cancelled the ride she was scheduled to take on November 25 from 50 Dundonald Street or was a "no show." The representative agreed to provide the driver with the detective's contact information. Several months later, police learned the Uber driver waited for Ms. Richey at 50 Dundonald Street, but she did not show up – so the driver cancelled the ride.

### ***November 30, 2017***

The investigation continued. At 12:36 a.m., the police interviewed Ms. AL, Ms. Richey's sister from North Bay. They also spoke with another resident at 50 Dundonald, Mr. AO, who had seen Ms. Richey with an unknown man the morning of November 25. Mr. AO gave police a description of the man.

At 12:49 a.m., two officers interviewed Ms. AI again. She described her night with Ms. Richey. They were drinking and dancing at Crews & Tangos, then walked north toward the intersection of Church and Wellesley streets with an unknown man who they "picked up along the way." She also recalled meeting Ms. AK outside 50 Dundonald. There were portions of the night Ms. AI could not recall because of her level of intoxication.

The police continued to collect video footage from a variety of locations on and around Church Street. At 6:22 p.m., two officers obtained and reviewed the video footage from 582 Church Street, the old mansion on the corner of Church and Dundonald streets. This video showed Ms. Richey at 7:17 a.m. holding hands and walking with an unknown man in the driveway of 580 Church Street toward the stairwell where her body was ultimately found. At 8:03 a.m., the man on the video could be seen leaving the area alone. Supervisory officers were advised of this video's contents, which later turned out to be key evidence in the investigation.

### ***December 1, 2017***

The police continued to seek additional video footage from Crews & Tangos and footage from various locations on Church and Wellesley streets. They also conducted further interviews with Ms. AL, her fiancé, and Ms. AH. Police attempted to contact Mr. AO again, to ask more questions.



## **Preliminary Autopsy Findings**

On December 1, the preliminary autopsy report for Ms. Richey was completed and given to the police. The pathologist who performed the autopsy believed that Ms. Richey's death was a homicide. She called Detective Sergeant Gibson to discuss the case and told him that the preliminary finding in her report was that Ms. Richey's death was caused by neck compression. (Her final report, dated March 28, 2018, confirmed that Ms. Richey's death was caused by neck compression, not positional asphyxia or intoxication.) This finding was not consistent with the earlier theory that Ms. Richey might have slumped forward with her chin resting on her chest, accidentally cutting off her own airway. Simply put, her death was a homicide, not an accident. A few hours later, Detective Sergeant Gibson and Detective Lioumanis were assigned to the case.

Sometime after the autopsy, the police told Dr. Bélanger and the pathologist about the video that showed Ms. Richey and the unknown man holding hands and entering the construction site. Dr. Bélanger told the Review it would have been best practice for this information to be shared before the autopsy, but at that point in the day, the Homicide Unit officers had not yet been called into the investigation. At a later date, the Chief Pathologist's Office held a meeting to discuss the fact that Ms. Richey's death had not been flagged as a homicide before the autopsy and to discuss communication issues among the police and the Offices of the Chief Coroner and the Ontario Forensic Pathology Service.

Following the release of the preliminary autopsy results, Dr. Bélanger also spoke with Ms. AH and told her that Ms. Richey's death was a homicide. This conversation, Ms. AH explained to the Review, marked the first time she was given this information.

## **The Homicide Unit Takes Over**

### *December 1, 2017*

On the afternoon of December 1, 2017, the Homicide Unit's investigative team held its first formal briefing regarding this case. They discussed canvassing for video footage, returning to the scene where Ms. Richey's body had been found, and obtaining judicial authorizations to obtain more information.

At 5:05 p.m., Detective Sergeant Gibson reviewed a timeline of Ms. Richey's final movements. That same evening, Ms. AH handed over to the police Ms. Richey's laptop. The police began investigating her social media platforms and examined her computer.

Sometime before 9:50 p.m., the police published a media release stating that they were investigating her death as a homicide. Some media stories also reported that Ms. Richey was involved in sex work. At 10:30 p.m., Ms. AH called Detective Lioumanis about the information reported by the media: she was upset because the police had not told her about the release before it was made public and also because of the allegations about her sister being involved in sex work. Detective Lioumanis told her the police had received information suggesting this allegation was true, but they had not given the information to the media.

That same evening, two detectives spoke with a hot-dog vendor who recognized Ms. AI from a photo. He recalled that she and Ms. Richey bought hot dogs from him on November 25 and that they were with a man. He provided a description of the man.

### **The Richey Family's Criticisms of the Missing Person Investigation**

On December 2, 2017, the media quoted Ms. AH as being critical of the way the police had handled Ms. Richey's case. She said her sister's body had been found close to where she was last seen, suggesting the police had not conducted a proper search. She also disputed the suggestion that Ms. Richey worked as an escort.

Ms. Richey's family spoke positively to the Review about Detective Sergeant Gibson and Detective Lioumanis, who took over the case when it became a homicide investigation. The family described the officers as professional, attentive, and thoughtful. However, they expressed frustration that the earlier missing person investigation never seemed to go anywhere. Ms. AH felt she needed to get things done herself. She reported being told by more than one officer that her sister was an adult and that sometimes people her age do not want to respond to texts. Although she felt the police were receptive to the information she provided, their interactions with her came across as superficial and dismissive. She also felt powerless during the missing person investigation because the police did not share information with the family about her sister's case. The Richey family felt alone in their search for their loved one: Ms. Hermeston personally told me that she felt she had to find her daughter herself.

Moreover, the Richey family were frustrated that the police took two days after Ms. Richey was reported missing on Saturday, November 25, to issue a public statement about her disappearance. The lead investigator in charge was not assigned to the investigation until Monday, November 27. Ms.

AH also indicated that, in the early days of her sister's disappearance, when she tried to contact police at one division, she was told, on more than one occasion, to contact another division.

During the months that followed, members of Ms. Richey's family, through the media, continued their criticism of the police investigation. Sometimes the police responded through the media. For example, on December 4, 2017, an officer told CBC news:

From the time that Tess Richey was reported missing, we took that investigation, as we take all missing-people investigations, seriously ... We had a command post, we mounted a search, we canvassed people that may have been in the area to see if they had seen her.

The evidence established, however, that there was no command post during the missing person investigation.

The police also spoke to the media to explain the steps they took as part of the investigation. They provided the description of the unknown man seen with Ms. Richey and appealed to the public for more information.

## **The Public Response**

By early December 2017, if not sooner, members of the public were voicing their concerns over Ms. Richey's death as well as their pre-existing concerns about the unsolved disappearances of other people from the Village and the possibility of a serial killer. On December 3, when police canvassed for more video footage, a number of residents expressed their safety concerns to the Service's neighbourhood officers and the media.

News reports at the time quoted those who did not feel safe in the area and were bothered because "so many people are disappearing." Many articles tied Ms. Richey's disappearance to other missing persons from the area, including Mr. Esen and Mr. Kinsman. The disappearance of Ms. Wells was also mentioned at times (see Chapter 9). These articles stated that some community members had begun to take their own steps to address safety issues. For example, community members organized walk-safe programs and created an online map of unsolved disappearances in the area dating back to 2010. The media also captured the view that the police were not taking the fears expressed by the communities in the Village seriously.

## **The Events Leading to Schlatter's Arrest**

As I explain at the beginning of this chapter, my focus is not on the Homicide Unit's investigation leading to Schlatter's arrest but on the Service's handling of Ms. Richey's disappearance. Accordingly, I describe Schlatter's arrest only briefly in the paragraphs that immediately follow.

### ***December 2–10, 2017***

During this period, the police continued to seek video footage and conducted further interviews. They reviewed Ms. Richey's iPhone and laptop. They published media releases with an updated description of the man last seen with Ms. Richey and then with stills of the man from some of the video footage obtained. They requested assistance from the public in obtaining further relevant video material. Detective Sergeant Gibson and Detective Lioumanis met with the Richey family to provide them with an overview of the investigation and to reconnect them with members of the Service's Victim Services Program. They submitted various samples taken from Ms. Richey's body to the Centre of Forensic Sciences for examination. They issued an internal bulletin to Toronto officers to see if anyone could identify the unknown man. They attempted to use facial recognition and enhancement software to assist in the identification.

On December 8, Chief Mark Saunders attended a meeting with members of the LGBTQ2S+ communities. This meeting was an open forum for members to voice their concerns and fears about what was happening in the Village. Ms. AH attended this meeting. After the meeting, Chief Saunders spoke at a press conference. As I discuss in Chapter 7, he said "the evidence today tells us there is not a serial killer based on the evidence involved." He also announced there would be an internal review into how the Service handles Missing Person reports and investigations. Chief Saunders stated:

I do have some concerns ... When they (families) are setting up their own search parties to look for missing people[,] then I have to question whether or not as a service we are offering the right value to the community. The key to our success is relationship development and whenever that is fragmented is when we start to have issues.

On December 10, Schlatter notified the police that he was the man they were looking for. He was not arrested but was placed under surveillance. A warrant was obtained to seize items from his home, and the investigation continued. In the meantime, the media reported on the safety concerns

expressed by members of the communities and their growing distrust in the Service.

On February 4, 2018, the police arrested Schlatter and charged him with the second-degree murder of Ms. Richey. In the media coverage of Schlatter's arrest, some members of Ms. Richey's family indicated they were happy with the progress of the homicide investigation. Ms. AN told the police she appreciated the professionalism and assistance of the officers involved in the initial search, but Ms. Richey's family members did not share this view.

After Schlatter was arrested, the police conducted further interviews. Some of the employees of Crews & Tangos told them they remembered seeing Ms. Richey and/or Ms. AI on the night of November 25.

Schlatter's charges were later upgraded from second-degree to first-degree murder. On March 21, a media release advised the public of the new charge.

On March 28, the final autopsy report reflected the following points:

- the cause of Ms. Richey's death was neck compression (not positional asphyxia or intoxication);
- the bruise over her left forehead could have been caused during a struggle;
- Ms. Richey was intoxicated at the time of her death, but her level of intoxication would not have been lethal; and
- Ms. Richey's death was initially investigated as accidental.

## **Outline of Discipline and Other Proceedings**

On December 4, 2017, the Service announced that its Professional Standards Unit had launched an investigation into how officers initially handled the report of Ms. Richey's disappearance and the discovery of her body. This investigation was prompted by a complaint about the conduct of certain officers at 51 Division. Ultimately, the investigation resulted in charges of misconduct and neglect of duty under the *Police Services Act* against Constable Jones and Constable McCullough. The prosecution alleges that although the officers were made aware of Ms. Richey's last known location, they failed to investigate the area and to notify a supervisory officer of all the information they learned.

These discipline proceedings have been deferred until the criminal proceedings involving Schlatter are over. As I indicate above, Schlatter's conviction is under appeal.

Constable Jones and Constable McCullough dispute the allegations against them. With their consent, we were provided with their detailed statements to the Professional Standards Unit. I understand their position to be that 41 Division was responsible for the missing person investigation. As 51 Division officers, they were simply attending a “check address call” at 50 Dundonald Street. Neither officer believed they were the “first police officers” responding. As I explain above, the Service’s Missing Persons Procedure imposed certain requirements on the first police officer who responds.

Both officers maintain that before they were tasked to check an address, they were unaware that Ms. Richey had gone missing. Constable Jones indicated that they interviewed Ms. AK at 50 Dundonald Street. She told them that after Ms. Richey left this address, she walked west on Dundonald Street toward Yonge Street. Because Ms. Richey was seen leaving that location, neither officer felt that a 300 metre search was necessary. In any event, they did not have sufficient information about the investigation to conduct a search. Constable McCullough indicated that the officers completed a Supplementary Report, which included the information they learned from Ms. AK, and submitted it to the officer in charge. In Constable McCullough’s view, this report constituted notification to their supervisor of what they had done.

On November 21, 2019, Ms. Richey’s family filed a civil lawsuit against several defendants, including Schlatter, the Toronto Police Services Board (the Board), Chief Saunders, Constable Jones, Constable McCullough, the Crews & Tangos bar, and three businesses associated with the construction site where Ms. Richey’s body was found. The documents the Richey family filed include a number of allegations:

- that a lack of police presence in the Village made Ms. Richey vulnerable to predators such as Schlatter;
- that the Toronto police ignored requests for service and reports of crime in the area;
- that the police falsely reported to the family that Ms. Richey was working as an escort; and
- that the police falsely told the family that Ms. Richey died by misadventure.

The civil action also includes allegations that the Board, Chief Saunders, Constable Jones, and Constable McCullough failed to respond promptly to the report of Ms. Richey’s disappearance and that the two officers failed to search the area around 50 Dundonald Street adequately. The Richey family members

further allege that the police failed to alert the public to a possible serial killer. At the time of writing this Report, these allegations remain unproven.

## **Summary and Findings**

Tess Richey was reported missing by her sister the evening of Saturday, November 25, 2017. She was last seen in the Village. Her mother, Ms. Hermeston, discovered her body on the afternoon of Wednesday, November 29. Ms. Richey's body was at the bottom of a stairwell within 80 metres of 50 Dundonald Street, in the area where she was last seen. It had been there for four and a half days.

The police failed to find her body. They should have. This failure is both tragic and disturbing because it was Ms. Richey's mother who discovered the body during her own search of the area. No parent should have to bear this terrible burden. For this reason and many others too, it is important to identify what went wrong in the investigation into Ms. Richey's disappearance.

### ***The Failure to Conduct a Second 300 Metre Radius Search***

The police were well aware of the importance of conducting a 300 metre radius search of the area where Ms. Richey was last seen. They carried out such a search of the area around the Crews & Tangos bar and the nearby TD bank. That area was initially identified as the last location where Ms. Richey was seen. But the evidence changed when the police learned that, after Ms. Richey left that area, she walked to 50 Dundonald Street. Officers from both 51 Division and 41 Division were separately given this information. This change should have resulted in a second 300 metre radius search focused on the area around 50 Dundonald Street – but it didn't. Had this second 300 metre radius search been done, I am confident that Ms. Richey's body would have been discovered several days earlier. Ms. Hermeston would have been spared the terrible ordeal of discovering her youngest daughter's body.

No one the Review spoke with disputed that the police should have conducted such a search, including Detective Wighton, the lead investigator. He assumed that the appropriate physical searches had been done before he was assigned on Monday, November 27, 2017. There was no basis for this assumption.

The Review also spoke with officers who belong to the Service's Emergency Management and Public Order Unit (EMPO Unit). If requested, the unit's search managers provide guidance to officers on how to conduct missing person searches. When a missing person warrants a level 3 search,

representing the highest level of search, the EMPO Unit's search managers oversee and conduct the search.

The search managers told the Review that the origin of any missing person search is that person's last known position – generally, at least a 300 metre search should be conducted around that location. The police may have to carry out multiple 300 metre searches as new information is provided. The search managers shared the view that, in this case, the police should have done a second 300 metre radius search. As well, search managers are trained to prioritize certain locations, such as “hazards,” within the radius. Hazards include a construction site in an urban setting, such as where Ms. Richey's body was found. In my view, had a search manager overseen the search for Ms. Richey or provided advice, it is likely her body would have been discovered several days sooner.

There is no requirement that search managers be deployed for searches that are designated level 1 searches. Nor is there a requirement that officers seek their advice in conducting such searches. In Chapters 13 and 15, I discuss the existing procedures on level 1, 2, and 3 searches and make recommendations for change. Regardless of whether search managers should have been deployed or contacted in connection with Ms. Richey's search, however, it is basic to policing – and to plain common sense – that a second 300 metre radius search should be done when new information comes to light. The issue is not whether such a search should have been done, but why it was not done. In my view, the answer is largely rooted in systemic issues.

First, the Service's Missing Persons Procedure dictated at the time, as it continues to dictate today, that the division where Ms. Richey resided – 41 Division in Scarborough – should conduct the missing person investigation. But most of the early investigative work to be done was in the downtown core. It made sense that 51 Division officers should do much of or all that work. As I explain in Chapter 13, in circumstances such as those connected to Ms. Richey's disappearance, the investigation should be assigned to the division where the missing person was last seen, rather than where the person lived. But the existing procedure meant that the Tess Richey investigation was divided between two divisions, reinforcing the need for clear lines of reporting and coordination. Neither line existed. In several instances, tasks were duplicated and, in other instances, tasks were not performed in a timely way or at all.

In my view, these shortcomings were attributable, in part, to the absence of any true coordination of effort. In one instance, 51 Division refused, without explanation, Detective Wighton's request for 51 Division officers to investigate an important downtown lead. This refusal speaks to the need to



assign investigations where they can most efficiently be conducted and to coordinate tasks that must be shared between or among divisions.

Second, no lead investigator was assigned to this investigation until Monday, November 27, two days after Ms. Richey was reported missing. In the interim, officers on duty worked on the case. But the absence of a lead investigator made it less likely that the search would be conducted in a comprehensive, coordinated way. Unfortunately, the concern about the impact of the delay in assigning a lead investigator proved to be true. The Service's mandate is to serve and protect the public. I ask, rhetorically, what message was being communicated to Ms. Richey's family, who, in deeply stressful circumstances, were told that no lead investigator would be assigned to Ms. Richey's disappearance until Monday, November 27?

Third, when Detective Wighton was assigned as the lead investigator, he had already been assigned to deal with a bank robbery, sexual assault, and human trafficking, all matters that had to be dealt with the same day. Detective Wighton candidly acknowledged that given his workload, it was fortuitous he learned on Monday morning he had been assigned to this missing person investigation – and he learned about it only because Ms. AH knew he had been assigned before he did and called him.

During this time frame, due to the challenges associated with shift work, most missing person investigations were passed from officer to officer – with the inevitable result of inadequate continuity during the transitions. It was also typical that, with limited exceptions, missing person investigations were given lower priority than other types of cases.

The point here isn't that a missing person investigation, regardless of circumstances, has higher priority than a bank robbery. Instead, the point is that the police have an obligation, regardless of circumstances, to investigate missing person cases in an effective and timely way. The systems in place in 2017 made it difficult to meet that obligation.

Fourth, at the time, the Service's Missing Persons Procedure provided limited direction on how to conduct a missing person investigation. It relied too heavily on initiatives by individual officers, particularly officers with no specialized training in these cases. As one of many examples, there was no template or checklist to guide missing person investigations. The early investigation into Ms. Richey's disappearance appeared at times to be driven largely by Ms. AH – by the information she provided or what she and others urged the officers to do – rather than any investigative plan.

Fifth, at the time, the Missing Persons Procedure provided that the “first police officer” shall “search the home and the immediate area thoroughly.”

Although in 2017 the desirability of a 300 metre radius search of the missing person's last known location was well known, the procedure did not make this requirement explicit. It was only in 2019 that it was amended to require the first officer to complete a 300 metre radius search of the place where the person was last seen, if known. If the first officer determines that a 300 metre radius is not required, the procedure requires the officer to record specific details in the original electronic Occurrence Report and to advise a supervisory officer. However, the procedure has never provided a definition for the term "first officer." I find it difficult to understand why the obligation should be confined to the "first police officer."

As I indicate above, Constable Jones and Constable McCullough, two 51 Division officers, face outstanding discipline proceedings for failing to conduct the 300 metre radius search around 50 Dundonald Street and for failing to notify their supervisor of all pertinent facts. They say they were not the first police officers under the Missing Persons Procedure – they were merely conducting a "check address call." They state they were directed that 41 Division had jurisdiction over Ms. Richey's case, and they fulfilled their responsibilities by filing a Supplementary Occurrence Report.

For the reasons I give above, I do not intend to make findings in relation to whether these officers engaged in professional misconduct. Regardless of those allegations, it is obvious to me that the systemic circumstances I have outlined above, including the lack of clarity in the Missing Persons Procedure, contributed to the failure to conduct an appropriate radius search focused on 50 Dundonald Street as well as the failure of any supervisor to notice that such a search had not been conducted.

### ***Other Shortcomings in the Early Investigation***

In my view, most of the same circumstances described above also contributed to other shortcomings in the early investigation of Ms. Richey's disappearance.

#### ***The Failure to Issue a Timely Media Release***

No media release was published over the weekend of November 25–26. It should have been. Detective Wighton acknowledged that an earlier media release than the one issued at 8:35 a.m. on November 27 would have reflected the best practice in this case, given the circumstances surrounding Ms. Richey's disappearance.

#### ***Untimely and Uncoordinated Assembly of Video Footage***

The police did search for video footage of Ms. Richey, but their search began only on November 28, more than three days after she was reported missing.

Not until November 29 did they look for video footage at the apartment building at 41 Dundonald Street, as Ms. AK had recommended two days earlier. It was only after Ms. Richey's body was found that the police discovered the video from the other half of the semi-detached building next door, 582 Church Street, at the corner of Church and Dundonald streets. This video showed Ms. Richey walking with an unknown man (later identified as Schlatter) into the construction site where she was ultimately found.

In terms of timeliness, the best practice is for officers to obtain (and view) relevant video footage as soon as possible. Many businesses and residences have surveillance cameras, and video footage often yields critical evidence. Equally important, the footage is frequently retained for only short periods.

Another best practice for the police is to seek out video footage in a comprehensive, coordinated way, particularly in an urban environment. Before Ms. Richey's body was discovered, their canvassing for video footage was not properly coordinated or given the urgency it required. The use of a grid search or mapping tool, such as that used by the EMPO Unit and other officers since this investigation, is an excellent way to coordinate a search for video footage. A grid search ensures that the police do not miss important locations and makes it more likely that critical evidence is obtained quickly. Detective Wighton agreed with this assessment and said the police now use a grid search. A coordinated search for video footage also makes it more likely that officers need not be dispatched to seek videos from private residences and businesses in the middle of the night, when the prospects of obtaining such videos are lower.

#### *The Role of the Missing Person's Loved Ones*

As I outline in Chapter 15, community members and the loved ones of those who go missing must play an important role in locating missing persons in a timely way. If the police are involved in the search, they must work in true partnership with others. In the Tess Richey investigation, family members, particularly Ms. AH, were active in investigating leads and in urging the police to pursue those leads. Their involvement was commendable. But the family also felt, with some justification, that they were compelled to be as engaged as they clearly were because of the limitations in the police response. Families and other loved ones of missing persons should not bear the burden of ensuring that an investigation is conducted properly.

*The Approach to Risk Assessment*

I explain in Chapters 5 to 7 how the police often failed to appreciate the level of urgency that should have accompanied the reported disappearances of McArthur's victims. This tardiness relates directly to how the police assess risk, whether related to possible foul play or other safety concerns. Here I identify several systemic issues associated with risk assessment that had particular application to the Tess Richey investigation:

- The Search Urgency Chart did not reflect an evidence-based approach to risk assessment. Nor was any separate risk assessment done in this investigation.
- The distinction among level 1, 2, and 3 searches is outdated and prone to inconsistent interpretation or application. One senior search manager the Review interviewed felt that the Tess Richey investigation should have been elevated to at least a level 2 search.
- As concerns deepened over Ms. Richey's disappearance, there did not appear to be any re-evaluation of whether the search level should be elevated.
- As I explain in Chapters 13 and 15, the interplay between the search levels and provincial adequacy standards respecting when a missing person investigation should be treated as a major case is not adequate.

In my view, apart from issues around the assessment of risk, the urgency associated with a search must also be connected to the concerns expressed by community members. In this case, members of the communities were feeling unsafe because of the number of unexplained disappearances in the Village over the previous few years. Some believed that Ms. Richey's disappearance was related to the other disappearances. This belief turned out to be inaccurate. But the pronounced – and frankly justified – community concerns about safety should figure prominently in how the police respond to a disappearance. I am not convinced that the Service's approach to Ms. Richey's disappearance reflected the added urgency associated with these community fears.

*The Treatment of the Scene*

When Ms. Richey's body was discovered, the cause of death was not obvious. The coroner, Dr. Bélanger, considered the possibility that her death was accidental, but, given the circumstances, correctly ordered an autopsy. It remains unclear precisely what Dr. Bélanger and the initial attending officers at the scene actually said. Officers may have overinterpreted Dr. Bélanger's speculation or too readily expressed their own views about the likely cause of

death. It was important that everyone remain open-minded about the possibilities, pending proper medical and police investigative work. A lack of precision in communication may have contributed to any misconceptions about the cause of death. Similarly, it was both premature and unhelpful if, shortly after Ms. Richey's body was found, any officer told her family that her death appeared to be accidental. Detective Wighton did not hear any officers express that opinion to family members but agreed it would have been inappropriate for them to do so.

Three related problems were associated with the discovery of Ms. Richey's body. First, the scene should have been held pending an autopsy or further direction. It was not. Dr. Bélanger was surprised and troubled it was not held. With respect, the evidence disclosed that Dr. Bélanger did not clearly direct that the scene be held pending further investigation. There should have been unequivocal dialogue around that issue.

The second problem relates to the involvement of the Homicide Unit in the case. This case involved the sudden death of a young woman with no known cause of death. The Service's own procedure mandated that the Homicide Unit be contacted in these circumstances. Detective Sergeant Gibson also told the Review that, in his view, the Homicide Unit should have been informed of this death in a timely way. He learned about her death only because the forensic pathologist who conducted the autopsy contacted him. The Homicide Unit potentially had an important role to play in investigating the scene, but that opportunity was lost. In Chapter 9, I discuss another situation, involving the discovery of Alloura Wells's remains, that should have triggered an immediate report to the Homicide Unit. Although my focus is on missing person investigations and the related matter of how the police investigate unidentified bodily remains, it is trite to say that missing person investigators must ensure that subsequent sudden death or homicide investigations are not adversely affected by their own conduct.

The third problem identified here relates to the concern that the forensic pathologist who performed the autopsy was not provided with all the relevant information before conducting the post-mortem examination. This issue figured prominently at the Inquiry into Pediatric Forensic Pathology in Ontario<sup>11</sup> and was the subject of recommendations by its commissioner, Justice Stephen T. Goudge. In Chapters 13 and 15, I address the systemic issues identified in connection with the investigation into Ms. Richey's disappearance and make recommendations for change.

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<sup>11</sup> A copy of this Inquiry's report can be found on the website of the Ontario Ministry of the Attorney General at <http://www.attorneygeneral.jus.gov.on.ca/inquiries/goudge/report/index.html>



## Chapter 9

# THE ALLOURA WELLS INVESTIGATIONS AND RELATED CASES

Six of Bruce McArthur's murder victims were reported missing between 2010 and 2017. In November 2017, Tess Richey went missing. A few days later her mother discovered her body. In July 2017, Alloura Wells disappeared. In August of that year her bodily remains were discovered. Not surprisingly, some community members questioned whether all these cases were related.

Unlike the cases involving the six McArthur victims who were reported missing, and unlike the circumstances surrounding Ms. Richey's death, Ms. Wells's remains were discovered before she was reported missing to the Toronto Police Service (the Service). Initially, her remains were not identified. It took just under four months before the authorities connected the found remains to Ms. Wells.

This chapter examines both the initial investigation 53 Division officers conducted into Ms. Wells's unidentified remains and the separate investigation 51 Division officers conducted into Ms. Wells's disappearance. My examination forms part of a larger discussion about how the Service, the Office of the Chief Coroner (see Chapter 13), and the Ontario Forensic Pathology Service work together in dealing with unidentified bodily remains.

Ms. Wells's case was not the only situation in which a person's bodily remains lay unidentified at the Toronto morgue while family members searched for their loved one. I also heard about the disappearances of Kenneth Peddle and Dovi Henry and their loved ones' active searches for them, only to later learn that their bodies lay in the morgue – unidentified. These cases inform the larger discussion about how unidentified bodily remains are dealt with. Mr. Peddle's case is discussed below, and Mr. Henry's case appears as a case study that follows Chapter 14.

## The Alloura Wells Investigations

Ms. Wells was a member of Toronto's trans community. She was Indigenous, a sex worker, and struggled with drug abuse. When she died, she was living under a bridge in Toronto. She was marginalized and vulnerable in several

ways that intersected. She was loved by family and friends. Her life was valued.

My examination of her case provides me with a valuable opportunity not only to examine how the authorities deal with unidentified bodily remains, but also to consider the Service's relationship with the trans and other marginalized and vulnerable communities.

In Chapter 2, I provide a brief biography of Ms. Wells. Here, I highlight some aspects of her life that are relevant to the narrative that follows.

Ms. Wells was born in August 1990. She came out as a trans woman when she was 17 years old. Her father, Michael Wells, was supportive of her gender identity, counselling her to “do what you need to do. Just be a good person.”

Ms. Wells was described as a vibrant, bubbly person and a “great soul.” She had a variety of interests and aspirations, some tied to her Indigenous heritage. At the same time, her life was a struggle in many ways, a common experience for many trans women. She was a sex worker who had accessed the services of Maggie's Toronto Sex Workers' Action Program (Maggie's), an organization that addresses the needs of sex workers. Ms. Wells had also volunteered at Maggie's. She attended programs at The 519,<sup>1</sup> including its weekly drop-in Meal Trans program – a hub for trans women and men, particularly sex workers, to connect and to share information.

Ms. Wells was reportedly last seen in July 2017. At the time, she was living under a bridge in the ravine near Parliament and Bloor streets. This area was known for sex work, for drug use, and as a site where marginalized trans women lived. Ms. Wells was having difficulty dealing with her mother's recent death. To cope with the loss, Ms. Wells had turned to drugs.

Ms. Wells had been in a relationship with Augustinus Balesdent, the only boyfriend she ever introduced to her father. Sadly, there were indications this was a violent relationship. (Following the discovery of Ms. Wells's remains, Mr. Balesdent became a person of interest in the police investigation into Ms. Wells's death.)

### ***Discovery of The Unidentified Remains***

On August 5, 2017, at about 5:34 p.m., Ms. AP and Mr. AQ, were walking in the Rosedale Valley Road ravine when they found a partially decomposed body. The deceased was in women's clothing and wore a blonde wig. A purse containing a broken cell phone, but no identification, was found near the body.

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<sup>1</sup> As reflected in Chapter 8, The 519, formerly known as The 519 Church Street Community Centre, is an agency of the City of Toronto and a charitable, non-profit organization operating a community centre in the Village.



Vomit and drug paraphernalia were on the ground nearby. Ms. AP and Mr. AQ reported the discovery to the police.

The coroner who went to the scene estimated that the body had been exposed to the elements for approximately two to four weeks. As a result, the deceased was not easily recognizable. The bodily remains were located within the jurisdiction of the Service's 53 Division. As a result, Detective Richard Proctor from that division's Criminal Investigation Bureau went to the location where the remains were found.<sup>2</sup>

The police initially suspected the cause of death to be a drug overdose. Officers noted there was "nothing overtly suspicious" at the scene and nothing to indicate foul play. The Service's procedure on preliminary homicide investigations provides that an officer who discovers a person who has died unexpectedly or whose cause of death is unknown shall treat the death as "suspicious." The procedure also directs the officer to notify the on-call homicide team of any suspicious death. However, Detective Proctor did not notify any member of the Homicide Unit that unidentified bodily remains had been discovered. Detective Sergeant Jordan Latter, an officer with the Service's Professional Standards Unit, later reviewed how the investigations relating to Ms. Wells had been handled. He concluded that, following the Service's procedure, Detective Proctor should have contacted the on-call homicide team before leaving the area where the remains were discovered.<sup>3</sup>

The police canvassed three of the homes with backyards that faced the ravine, but their questions produced no relevant information. Between August 6 and 8,<sup>4</sup> Detective Randy Wynia, another 53 Division detective, was assigned as the lead investigator. Detective Wynia had not been to the place where the body was discovered. He did not suspect foul play. Nonetheless, he correctly treated the death as "suspicious" pending determination of the cause and circumstances and because foul play had not been ruled out. Detective Wynia told the Review that, in conducting this investigation, he followed the major case management (MCM) model, performing all the command triangle roles required under the model and submitting a ViCLAS booklet. (In Chapter 4, I describe the MCM model and ViCLAS requirements.) The *Major Case Management Manual* provides that threshold major cases include "occurrences

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<sup>2</sup> The bodily remains were discovered during the evening shift. Detective Proctor was then on duty, so he went to the scene. However, he was not assigned to investigate the case. A detective on the day shift was subsequently assigned.

<sup>3</sup> An expert also advised the Review that a forensic anthropologist should have been called to the scene as well.

<sup>4</sup> There is a discrepancy in the evidence as to when Detective Wynia was assigned. I address this issue in my Summary and Findings respecting this investigation.

suspected to be homicide involving found human remains.” It is unclear whether the Service’s procedure on preliminary homicide investigations that directs officers to treat unexplained bodily remains as suspicious also means that such remains should be categorized as threshold major cases for the purposes of MCM. I address this issue in my recommendations because the interplay between the Service’s procedures and provincial adequacy standards is unclear and unsatisfactory. I observe, however, that Detective Wynia did not have access to PowerCase, the mandatory case management software for threshold major cases.

### ***Initial Attempts to Make an Identification***

From the outset, the police attempted to identify the human remains. They received information about women who possibly could be a match, but this information did not lead to an identification.

On August 7, an autopsy was completed. It was unable to identify the cause of death or the deceased’s race. The autopsy did reveal the deceased was biologically male and between 20 and 29 years old. Fingerprints were too degraded to permit a positive identification. A dental workup was done. The police were advised about the possibility of having a reconstruction of the person’s face created to assist in the identification. Detective Wynia understood that the reconstruction would be done.

On August 17, Dr. Renee Kosalka, a forensic anthropologist, provided a further profile of the deceased, a profile that included possible race,<sup>5</sup> height, hair length and colour, and the presence of healed injuries for which the deceased might have sought medical treatment. Dr. Kosalka also provided a detailed description of the clothing and other items found with the body, including the blonde wig. About a month later, a DNA profile from the body was generated and uploaded to the Canadian Police Information Centre (CPIC).<sup>6</sup>

Given the information collected, the police were of the view that the deceased was likely transgender. Detective Wynia learned that a man named Augustinus Balesdent was known to “hang out” in the ravine and associate with trans women. The police conducted checks on Mr. Balesdent but, at the time, did not learn about his connection to Ms. Wells. Police later learned,

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<sup>5</sup> The “ancestry estimation” included possible Indigenous and/or Greater Asia tic, Caucasian, or a dmixture of Indigenous / Greater Asia tic and Caucasian.

<sup>6</sup> CPIC is a national repository for policing agencies to enter law enforcement and public safety operational information. It contains data on charged, wanted, and missing persons, stolen vehicles, and stolen property, and other crime-related data.

however, that Mr. Balesdent had been under a court order to not contact another trans woman.

Ms. AP, who, with Mr. AQ, had discovered the body, remained in contact with Detective Wynia and learned, as a result, that the deceased was a trans woman who still remained unidentified. On August 17, Ms. AP did a Google search to identify organizations, including Trans Alliance Canada and The 519, that were involved in assisting and supporting trans individuals. Ms. AP emailed the general email address of The 519, indicating that on August 5 she had found a body in the ravine. She asked if anyone knew of any transgender women who had been reported missing. At the time, the police did not know Ms. AP had emailed The 519. The 519 had acted as a conduit between the police, particularly those in 51 Division, and community members. The police had previously provided information to The 519 about missing person investigations.

On August 25, a community organizer at The 519 responded to Ms. AP's email. He told her he would reach out to his contacts in the Service and requested the contact information for the detective handling the case. He also offered counselling services, if she needed them. In response, Ms. AP provided Detective Wynia's name and contact information. Unfortunately, this information was not "elevated" to The 519's leadership team for appropriate follow-up. (On December 12, 2017, The 519 issued a public apology for mishandling the information it received from Ms. AP. It also apologized to Ms. AP.)

The police continued their investigation into the unidentified human remains. A victim profile of the remains<sup>7</sup> was uploaded into CPIC and, as previously indicated, Detective Wynia submitted a ViCLAS booklet to the OPP ViCLAS Unit.<sup>8</sup> He also ensured that 53 Division's crime analyst was fully aware of the investigation so the analyst could flag any Toronto missing person occurrences to be checked against the unidentified remains.

Detective Wynia understood that submitting a ViCLAS booklet meant the OPP ViCLAS Unit would automatically send information on the unidentified human remains to the provincial Missing Person and Unidentified Bodies Unit (MPUB) and to every police service in Canada so that any missing person occurrence reported across the country could be compared to the unidentified remains. In reality, the ViCLAS Unit does not notify MPUB of any unidentified remains cases. For an unidentified remains case to be

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<sup>7</sup> This is a biological profile of the body including attributes such as eye colour, hair colour, weight, and identifiable markings.

<sup>8</sup> In Chapter 4, I discuss the OPP ViCLAS Unit and the submission process for ViCLAS booklets.

compared to all missing person cases in Canada, it would need to be added to the National Centre for Missing Person and Unidentified Remains (the national centre) database.<sup>9</sup> Information about all unidentified remains cases in Ontario are provided to the national centre's database by the Ontario Forensic Pathology Service, working in concert with the Office of the Chief Coroner. Ontario Forensic Pathology Service staff fill out a CPIC form with information about the unidentified remains. The form is then emailed to the national centre's CPIC operator at the OPP, with a copy sent to MPUB. The operator then inputs all the information from the form onto CPIC, which then automatically populates the information onto the national centre's database. (MPUB and the national centre's database are discussed in greater detail in Chapter 13.)

Detective Wynia emailed ViCLAS to provide this information.<sup>10</sup> In early September, he was advised that the information had been uploaded on the National Centre for Missing Persons and Unidentified Remains database (the national database). Detective Wynia subsequently received notifications of possible matches of the unidentified remains to missing persons both inside and outside Ontario. He quickly determined that none of them matched the bodily remains he was investigating. As I explain later in this chapter, at this juncture Ms. Wells's disappearance had not yet been reported to the police. Ms. Wells's family and friends mistakenly believed her to be in jail.

During the investigation, Detective Wynia decided not to publish a media release about the discovery of the unidentified human remains. He believed the Centre of Forensic Sciences<sup>11</sup> would be creating a full facial reconstruction photo that would provide more information to the public than the vague or generic descriptors he had. Unfortunately, the reconstruction was delayed when other injuries on the body were discovered. Ultimately, other events, described below, intervened and the reconstruction was never completed.<sup>12</sup> In late August, Detective Wynia prepared an internal bulletin about the discovery. This bulletin circulated across the Service. He also posted the discovery on 53 Division's "special attention" board.<sup>13</sup>

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<sup>9</sup> To date, only Ontario, British Columbia, and Alberta have signed a memorandum of agreement with the RCMP and the federal government regarding the national centre. It follows that not all of Canada's missing person and unidentified remains cases are in the national database (see Chapter 13).

<sup>10</sup> For a period of time, the MPUB Unit was located within the same section of the OPP that included ViCLAS. It has since been moved and is now within another section. At the time of Detective Wynia's email, the person he contacted was working within both ViCLAS and the MPUB Unit.

<sup>11</sup> He was mistaken. The Ontario Forensic Pathology Service creates facial reconstructions.

<sup>12</sup> The Review was advised that facial reconstructions take a lengthy time to complete, are not always reliable, and are often employed only as a last resort when other identification techniques have failed.

<sup>13</sup> At the beginning of each shift, the sergeant reads the new notices posted on this board to the officers, to ensure that every officer at 53 Division has been notified about their content.

In late August, Detective Wynia reviewed all Missing Person reports in Toronto from July 1, 2017, onward for possible matches to the unidentified body. There were no matches. Ms. Wells had not yet been reported missing to police.

### ***The Disappearance***

As I indicated, Ms. Wells was last reported being seen alive in July 2017. In the past, there had been stretches of a month or two when she had no contact with her family. However, she had always been active on social media. That activity stopped – something very unusual. There was also a strange “RIP” post on her Facebook page. Ms. Wells’s sister understood this post to mean Ms. Wells had passed away. Worried, the family began looking for her, reaching out to several of Ms. Wells’s friends and social media contacts. Shortly before Ms. Wells’s disappearance, she had been distressed and confided in a friend that her boyfriend had beaten her up. She had also become involved in drugs. At least one friend expressed concern that she might have overdosed or been put in jail for a minor offence. This friend contacted a nearby women’s jail and was told a person with the last name of Wells was incarcerated. The friend told Ms. Wells’s sister that Ms. Wells was in jail. This information proved to be inaccurate but, at the time, reduced the family’s concern.

When fall arrived, Ms. Wells’s family and friends were worried that there was still no sign of her. They canvassed the jails to discover that Ms. Wells had not been incarcerated after all. Michael Wells, Ms. Wells’s father, contacted the Office of the Chief Coroner. Mr. Wells told me that someone there indicated there were some remains at the morgue that could not be identified because of the state of the body. Since Ms. Wells’s family had still not heard from her, they decided to report her disappearance to the police. Unfortunately, they were unaware that a body had been found in the ravine in early August, important information that was not generally known to the public.

### ***53 Division’s Initial Involvement***

On November 4, 2017, Michael Wells went to 53 Division, the station closest to his home, to report his daughter’s disappearance. He spoke to the booking sergeant, indicating it was unlike his daughter not to contact him and not to be active on social media for such a lengthy time. He also advised the sergeant that his daughter was trans. Mr. Wells told the Review that the sergeant responded by saying Ms. Wells would come back, and not to worry – Ms.

Wells was young. Mr. Wells did not recall seeing the sergeant make any notes or check anything on the computer. He said the entire interaction took only a few minutes. The booking sergeant would later tell the Professional Standards Unit that he conducted CPIC and Versadex checks<sup>14</sup> on Ms. Wells, but they yielded no helpful results.

It is undisputed, however, that no official Missing Person Report was taken at that time. The sergeant indicated to the Professional Standards Unit that he advised Mr. Wells he could wait for an officer on the road to become free to take the Missing Person Report or he could go home and call the non-emergency police number to have officers come to his home to complete the report. Mr. Wells told the Review he was not provided with these options. He was upset by the dismissive manner with which the police treated his daughter's disappearance. He felt the police were too busy to take his concerns seriously and that he was "a day late and a dollar short" in seeking their help. He felt that his daughter's disappearance was not regarded as a priority, and that "it all plays a part, being transgender, addicted, homeless." He worried that it seemed like, to the police, his daughter was a "nobody."

As I note below, on or about November 30, 2017, the unidentified human remains were determined to be those of Ms. Wells. On December 9, Chief of Police Mark Saunders met with Mr. Wells to personally apologize for the Service's failure to take a Missing Person Report when Mr. Wells was at the police station on November 4. The Service's LGBTQ2S+ liaison officer also attended this meeting. Mr. Wells advised me he suggested to Chief Saunders that if his daughter had been affluent, the police response that day would have been different. On the day of his meeting with Mr. Wells, Chief Saunders issued an apology and publicly acknowledged that the interaction between Mr. Wells and the police could have been better and presented an opportunity for the police to improve.

### ***The Missing Person Investigations***

Following Mr. Wells's visit to 53 Division on November 4, Ms. Wells's family continued their own efforts to find her. A community member suggested to Mr. Wells that he should contact 51 Division because there was an investigator there he could speak to.

As a result, on November 6, Mr. Wells called 51 Division, and an officer took the information about Ms. Wells over the phone. Mr. Wells told the police he had not seen or heard from his daughter since July. He gave them other names she sometimes went by and provided further information about her,

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<sup>14</sup> I explain these checks in Chapter 4.

including that she was transgender, was a drug user, had no fixed address, had a criminal record, and was currently wanted on an arrest warrant. He also provided the police with the name of the last person he knew to have seen Ms. Wells. He advised the police that he had already contacted the Office of the Chief Coroner, to be told that, to its knowledge, no one with either Ms. Wells's date of birth or any known alias had died. The officer who took down this information completed the Search Urgency Chart and assigned the highest level of urgency to the matter but, curiously, categorized the search to be conducted as a level 1–2 search – not the highest level in the search hierarchy. Two officers at 51 Division also contacted the Office of the Chief Coroner. One officer's memobook notes state: "Coroners office contacted ... Neg results for names and alias. No unidentified persons at morgue with no prints on file from that time frame."

A few days after the information about Ms. Wells was received by 51 Division, Detective Constable Guy Kama became involved in Ms. Wells's case.<sup>15</sup> He was 51 Division's sudden death and missing person investigator, meaning he assisted other officers with such cases and was aware of all the missing person cases in the division.<sup>16</sup> Detective Constable Kama regarded the matter as urgent and immediately began reviewing Ms. Wells's social media accounts. He spoke to Ms. Wells's sister and contacted three addiction centres to see if Ms. Wells was receiving treatment. He also learned more about Ms. Wells's outstanding criminal charges.

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Ms. AP saw the media release that included the contact information for Maggie's, prompting her to tell Maggie's about her discovery in the ravine. She expressed hope that the body did not belong to Ms. Wells. Nonetheless, she felt that "nobody seems to care about this lady we found and I want to give her family some kind of closure." This was the first time Maggie's and, more generally, community members were made aware of the remains found in the ravine. Shortly after this contact, Maggie's told Ms. Wells's family about the information Ms. AP had provided. The family contacted Ms. AP directly.

In the meantime, Mr. Wells met with Detective Constable Kama, saying his other daughter had heard rumours from Mr. Balesdent that Ms. Wells died from an overdose in a park near Parliament and Bloor streets and that Mr.

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<sup>15</sup> Detective Constable Kama does not believe he was assigned as the lead investigator of this missing person investigation, but he could not recall which officer was assigned. He said he was never the lead investigator in these matters; he only assisted the assigned detectives. The police records did not assist the Review in resolving that question. I address this point in my recommendations.

<sup>16</sup> When he left this position in 2020, two officers replaced him, given the time-consuming nature of the role.

Wells had heard about an unidentified body located in August in the Rosedale Valley Road ravine. This was the first time Detective Constable Kama had heard anything about an unidentified body recently found in that area. It was also the first time he had heard Mr. Balesdent's name, although, unbeknownst to him, it was a name familiar to Detective Wynia at 53 Division.

Detective Constable Kama immediately followed up on the information relating to the unidentified bodily remains. He located the Occurrence Report on file and emailed Detective Wynia. Mr. Wells felt that Detective Constable Kama was taking his daughter's case seriously. Detective Constable Kama indicated Michael Wells's DNA would be sent to the Centre of Forensic Sciences to compare it to the DNA extracted from the human remains. He also advised the Office of the Chief Coroner that the remains could belong to Ms. Wells. As a result, the office obtained copies of Ms. Wells's medical records.

The investigators at both divisions continued to conduct their investigations separately while they waited for the DNA testing to be completed. They did communicate with each other. Detective Wynia interviewed Ms. Wells's sister and one of Ms. Wells's friends. Detective Constable Kama initiated a BOLO<sup>17</sup> alert for Mr. Balesdent, indicating he was a person of interest in the missing person and unidentified remains investigations. The officers involved in each of the two investigations interviewed some of the same witnesses.

### ***Community Efforts to Find Ms. Wells***

In early November, Ms. AR, a leader in the trans community, contacted the Service's LGBTQ2S+ liaison officer to discuss what the police were doing about Ms. Wells's disappearance and the communities' efforts to try to find her, including an organized search. Ms. AR wanted to discuss her concerns about how the search might affect the police investigation, her suspicion that Ms. Wells might have been murdered, and rumours circulating about a trans individual's body being found in August. She was upset that the police did not notify Ms. Wells's family or the trans community about this discovery. Ms. AR and the liaison officer exchanged Facebook messages and Ms. AR left voicemails, but the two were never able to set up a time to discuss the matter. Ms. AR then contacted Deputy Chief Barbara McLean about her frustrations at not being able to connect with the LGBTQ2S+ liaison officer. Deputy Chief McLean agreed to put Ms. AR in touch with someone from the liaison officer's

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<sup>17</sup> A BOLO alert is a Canada-wide notification to all police services to "be on the lookout" for an individual. That person might be a person of interest in a particular investigation. In this case, the BOLO alert indicated that both Detective Wynia and Detective Constable Kama should be contacted if Mr. Balesdent was found by any officer in Canada.



unit. As I describe below, later that month Ms. AR met with Deputy Chief McLean and other senior members of the Service to discuss Ms. Wells's case and her concerns.

On November 11, Ms. Wells's family and friends organized a search of the ravine. Some of the searchers asked the police to come to Riverdale Park because they found what they regarded as suspicious holes in the ground and a nearby shovel. This discovery was about two and a half kilometres from the ravine where the unidentified remains were found, and in an area where Ms. Wells had been known to stay. The police determined there was no indication of recent digging or signs of foul play at the site.

Some community members felt the police were still not taking Ms. Wells's disappearance seriously. One of Ms. Wells's friends voiced the concern that the police responded to Ms. Wells's disappearance only after community members contacted the media. On November 19, a rally in support of Ms. Wells took place at police headquarters. Throughout November and into early December, Ms. Wells's friends and family were quoted in several articles in the media about their concerns that the police were giving insufficient attention to her disappearance. Some felt this lack of attention was explained by the fact that Ms. Wells was a homeless trans sex worker with addictions. Family and friends also criticized the police for not coming to the searches organized for Ms. Wells. One of Ms. Wells's friends told the Review that the police

didn't really want any help from the community in the sense of information. They were being very closed-lipped about it. You know, they weren't giving us any information which is understandable. But, at the same time, they weren't really connecting with the community to find out who this could have been.

Ms. AP and Ms. Wells's sister also told the Review they were disappointed with the police investigation into the unidentified remains. Ms. AP indicated that, on several occasions, she had reached out to the police to obtain an update on the case, to see if she could do anything to assist and to find out whether the police had identified the remains. She felt the police treated her in a dismissive manner. Both Ms. AP and Ms. Wells's sister felt the police could have done more, and should have done more, to try to identify Ms. Wells sooner – for example, by communicating with trans organizations as Ms. AP had done.

The Service publicly apologized for its officers' inability to attend the searches, indicating the police had searched the area previously.<sup>18</sup> A police spokesperson also insisted the police were taking the missing person case seriously and that the investigation into Ms. Wells's disappearance had been promptly initiated and was ongoing. On November 20, when Ms. AR met with senior members of the Service, she expressed a concern about the quality of the police investigation and what she perceived as a "breakdown of communication between police jurisdictions" involving where the body was found and where Ms. Wells's disappearance was being investigated. She indicated that someone had told the Wells family that the police do not care about the trans community. Ms. AR was also troubled by the lack of engagement, as she saw it, between the Service's LGBTQ2S+ liaison officer and the affected communities.

Ms. AR also spoke to Detective Wynia about her concerns and information circulating within the communities regarding Ms. Wells's death. Detective Wynia told the Review he felt the concerns were the result of miscommunication by officers to the family about the different levels of urgency assigned to missing person investigations and the various search criteria that are applied. He acknowledged that much of the criticism could also have been prompted by the lack of information the police provided to the public.

As the investigation into the unidentified remains continued, community members provided additional information to Detective Wynia about Ms. Wells, her relationship with Mr. Balesdent, and rumours circulating about statements Mr. Balesdent made about Ms. Wells's death.

### ***The Identification of Ms. Wells's Bodily Remains***

On or about November 30, 2017, the unidentified remains were confirmed to be those of Ms. Wells. After notifying Ms. Wells's family of the identification, the Service issued an updated media release. The identification ended the missing person investigation. Detective Wynia at 53 Division continued to investigate the matter as a sudden death. As I indicated earlier, the autopsy did not reveal a cause of death. The investigation is still open. In the circumstances, I do not intend to describe it in any detail. I can say that, although Detective Wynia has received second-hand information about the circumstances surrounding Ms. Wells's death, at this point that information is unsubstantiated. Mr. Balesdent has not been located. Alloura Wells's family and friends understandably want answers as to how and why she died.

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<sup>18</sup> There was also some discrepancy in the evidence, which I need not resolve, about whether any officer was delegated to attend the search.

### *The Professional Standards Review*

I earlier referred to a review the Service's Professional Standards Unit conducted into how the police had investigated the unidentified bodily remains and Ms. Wells's disappearance. The unit identified three areas where the police could have done more to advance the investigations:

1. The divisional detective at the scene where Ms. Wells's bodily remains were found should have notified the on-call homicide team in accordance with the procedure on preliminary homicide investigations.
2. A media release should have been issued in relation to the discovery of the bodily remains.
3. It would have been prudent for the officers in charge of both investigations to seek the assistance of the Service's LGBTQ2S+ liaison officer.

### *The Failure to Issue a Media Release*

After Ms. Wells's bodily remains were identified, her family was upset that the police hadn't issued a media release when her remains were found. They felt a media release might have led to the earlier identification. They were right. A media release setting out what was known about the deceased, including the existing profile, as well as the body's location and immediate environs, especially if these facts were brought to the attention of Toronto's trans community, might well have prompted additional leads or resulted in an earlier identification. Detective Wynia candidly acknowledged to the Review that such a media release would have been well advised. As reflected above, the Service's Professional Standards Unit later came to the same conclusion in its review of the investigation.

### *The Failure to Involve the Liaison Officer*

Detective Wynia from 53 Division did not reach out to any members of the public or the trans community to seek assistance in identifying the deceased. He had no previous exposure to trans organizations or trans community leaders, who were largely based in the downtown core, closer to 51 Division. He did not know what resources were potentially available to assist him. Those resources included the Service's LGBTQ2S+ liaison officer. She or others similarly situated within the Service could have facilitated the engagement of community organizations and members in attempting to identify the remains. In hindsight, Detective Wynia agreed that engaging the LGBTQ2S+ liaison officer in these circumstances would have assisted in bridging the gap between

police investigators and community members. As reflected above, the Professional Standards Unit found that it would have been prudent for Detective Wynia to involve the LGBTQ2S+ liaison officer. Detective Wynia did contact front-line officers in the Community Response Unit shortly after the bodily remains were discovered to find out who frequented the ravine. Through this initiative, he learned about Mr. Balesdent's connection to trans women in the ravine.

Detective Constable Kama told the Review that when he met with Mr. Wells, he believed the unidentified remains were those of Ms. Wells. In the circumstances, he did not think that, at that point, it was necessary to engage the liaison officer. Instead, he waited to see if Mr. Wells's DNA confirmed his belief.

### ***Summary and Findings (Alloura Wells)***

In many ways, the issues respecting the Alloura Wells investigations are a microcosm of the systemic issues existing at the Service. Here, I refer to a number of such issues.

#### ***Engaging the Community***

The first issue relates to how the police failed to engage with affected communities. Ms. Wells was a member of Toronto's trans community. She was also Indigenous, was a sex worker, and struggled with drug abuse. At the time of her death, she lived under a bridge. Simply put, Ms. Wells was marginalized and vulnerable in several ways that intersected. She was loved by family and friends and known to many community members.

Based on the location of the unidentified human remains, the nearby drug paraphernalia, and the limited profile, Detective Wynia was aware that the deceased was likely a trans woman who might well be a sex worker and involved with drugs. The profile also revealed that her ancestry might, in whole or in part, be Indigenous. This is precisely the type of profile that called out for community engagement. Ms. AP, the woman who had discovered the body and subsequently made attempts to involve The 519, understood this situation completely. One thing is certain: although Ms. AP's efforts were admirable and indeed welcome, she should not have been the one who ended up assuming the burden to ensure that the affected communities knew about the discovery of the bodily remains.

Detective Wynia took some appropriate steps to try to identify those remains, including submitting a booklet to ViCLAS, attempting to match the remains to outstanding Missing Person Reports, issuing an internal bulletin for all Service members, and contacting members of the Community Response

Unit to learn more about the people who frequented the ravine. However, as he conceded, he was unaware of the community resources available to assist him, as well as the Service's own resources, including the LGBTQ2S+ liaison officer.<sup>19</sup> As I explain in Chapters 5, 6, and 7, with several notable exceptions, officers in the McArthur-related investigations similarly failed to use available resources to partner with affected communities to advance their work. This type of community engagement cannot be regarded as peripheral or optional. Rather, it is at the core of effective investigative work. This is especially so for missing person and unidentified bodily remains cases involving marginalized and vulnerable individuals. Community members may well be important sources of information who would assist investigators. However, they cannot provide such information if they don't know an investigation is even taking place. Moreover, as I explain in my recommendations, if associates or friends of a missing person feel at risk in speaking to the police – because, by way of example, they are sex workers, are involved in illicit drugs, or are trans individuals, whose community has historically been overpoliced, underserved, and discriminated against – the police need to cultivate relationships with and avail themselves of trusted individuals within these communities to act as conduits to those who have relevant information.

#### *Issuing a Media Release*

The second issue is related to the first. If the police are to act in true partnership with affected communities, they must provide those communities with basic knowledge to enable them to assist. Early in the unidentified remains investigation, the police had more than sufficient information to issue a media release. However, no such release was issued. A media release represents only one of many ways in which the police can get the word out. Robust use of social media with targeted audiences is important. The Professional Standards Unit correctly concluded that, as was the case in the Tess Richey investigation (see Chapter 8), the failure to issue an early media release represented a deficiency in the initial investigation.

#### *Identifying and Assigning a Lead Investigator*

Effective missing person and unidentified remains investigations require the prompt assignment of a lead investigator. There was an unacceptable delay in assigning Detective Wynia as the lead investigator here. Detective Wynia could not explain the delay. As I set out in Chapter 8, there was also an unacceptable delay in assigning a lead investigator in relation to Ms. Richey's

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<sup>19</sup> Those resources now include neighbourhood community officers, an initiative I describe in Chapter 14.

disappearance. These delays created the unfortunate message that the police regard these investigations as unimportant.

Moreover, on a related point, it remains unclear – even today – who the assigned lead investigator was for Ms. Wells’s disappearance. Detective Constable Kama indicated he was not the lead investigator, but the records fail to disclose who, if anyone, was assigned this role. In Chapter 5, I identify a similar issue in relation to the initial investigation into Skandaraj Navaratnam’s disappearance. It was unclear, at times, who the lead investigator into Mr. Navaratnam’s disappearance was.<sup>20</sup> The absence of clarity about the identity of the lead investigator undermines an effective investigation. It also makes supervision and accountability more difficult, if not impossible.

#### *Notifying the Homicide Unit*

The evening Ms. AP and Mr. AQ found and reported the unidentified remains, the detective who went to the scene failed to notify the on-call homicide team, as required by the Service’s procedure on preliminary homicide investigations. In Chapter 8, I identify this same failure following the discovery of Ms. Richey’s body. A sudden death investigation arising from the discovery of a body or bodily remains might well require the expertise of the Homicide Unit. The unit obviously cannot lend its expertise to the investigation or, where appropriate, assume carriage of it, unless it is aware of the discovery. The unit’s ability to evaluate the situation is also potentially impaired when its officers are prevented from going to the scene of the discovery in a timely way.

#### *Communicating with the Office of the Chief Coroner*

The next issue relates to the need for clear and accurate communications by the Office of the Chief Coroner, and an accurate record of those communications. Before Ms. Wells’s remains were identified, both Mr. Wells and the police contacted the Office of the Chief Coroner to find out whether Ms. Wells’s body was at the morgue in Toronto. There is no reliable record of precisely what Mr. Wells was told when he contacted the office, nor is there a record of who spoke to him and to the police when they initiated inquiries. (Similar issues arose in the case of Kenneth Peddle, discussed later in this chapter.) It appears the chief coroner’s representative’s responses were either inaccurate or incomplete (or both) and led Mr. Wells and the police to believe there were no bodily remains at the morgue that could belong to Ms. Wells. The Review was advised by the Office of the Chief Coroner that, until recently,

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<sup>20</sup> See also Chapter 4. The Ontario Ministry of the Solicitor General’s 2019 Inspection Report on the Service’s major case management practices recommends that the Service’s procedures be revised to require that officers in the command triangle of major cases be clearly identified.

no procedure was in place to ensure that inquiries were accurately answered. This situation sometimes resulted in the office's giving out inaccurate information. However, the office is currently in the process of creating a procedure to ensure all inquiries are directed to the appropriate staff member so that accurate information can be conveyed. As I later recommend, such exchanges with the Office of the Chief Coroner should be properly memorialized in writing to enhance accountability and avoid miscommunication or misunderstanding. In my view, these exchanges raise a critically important systemic issue; namely, the quality of communication between the police, affected loved ones, and the Office of the Chief Coroner. I address this systemic issue later in this chapter and in my recommendations. This systemic issue is informed not only by the Alloura Wells case but also by other instances in which loved ones searched for a missing person only to learn later that the person's body was at the morgue all along.

#### *Completing Timely Missing Person Reports*

The booking sergeant at 53 Division did not complete a Missing Person Report when Mr. Wells first reported his daughter missing. As I discuss in Chapter 13, it constitutes best practice to ensure that such a report always be completed in these circumstances. No one should be sent away to pursue other options. Such an approach discourages reporting, undermines timely investigations, and signals, however unintentionally, that the police regard the occurrence as unimportant. Chief Saunders's apology to Mr. Wells for this aspect of the investigation was appropriate.

#### *Treating Affected Persons with Respect*

Members of Ms. Wells's family and friends, as well as Ms. AP, expressed concern about the attitude they felt some of the officers, or the Service more generally, exhibited in these investigations. Ms. AR, as a leader in the trans community, raised similar concerns with senior officers. The police were described, at times, as dismissive, uncaring, and uninterested. Mr. Wells felt the booking sergeant at 53 Division gave the initial report short shrift and was insensitive in telling him that his daughter would come back and not to worry – she was young. He and others believed the police initially gave inadequate attention to Ms. Wells's disappearance because she was a homeless trans sex worker with addictions.

Mr. Wells felt – as do I – that Detective Constable Kama took the missing person investigation seriously. The officer conducted a largely effective investigation. Although I identify deficiencies in Detective Wynia's

investigation into the unidentified bodily remains – deficiencies he candidly acknowledged – I do not in any way attribute them to an uncaring attitude.

During a number of my community consultations, I heard accounts about police officers with poor attitudes, or with overt or implicit biases. Although it is not my role to evaluate the officers' conduct in relation to each of these accounts, their sheer volume underscores an important issue about how police officers interact with, or are perceived to interact with, community members. The Review's community engagement survey revealed that many community members share the views expressed to me during some of these consultations (see Chapter 10).

In Chapter 12, I scrutinize the role that bias or discrimination has played at the Service and the extent to which it is relevant to the specific investigations I examine in this Report. Here, I wish to address another aspect of police attitudes, or perceived attitudes, during missing person or unidentified bodily remains investigations. I add "or perceived attitudes" because a police service is most effective when the public has confidence in its work. Perceptions that the police do not care or are dismissive undermine that confidence. Negative interactions or perceptions may be fuelled both by the attitudes of specific officers and by the systemic approach the Service has taken to missing person investigations generally.

As I reflect in Chapter 13, the Service has generally given low priority to missing person investigations. The Service's approach to missing person cases has manifested itself in a number of ways, including by delayed assignments (already discussed); a lack of ongoing communication with family members, loved ones, and friends; no continuity when assigned officers go off-shift; and limited deployment or availability of resources. It is not surprising that many people affected by a disappearance feel unheard and, in these circumstances, regard the Service and its officers as dismissive or inattentive.

As I reflect in later chapters, unlike in cases where institutional support is provided to identified victims of crime, the Service has done a poor job generally in providing support to those affected by the disappearance of a loved one or friend. Those victimized by the disappearances of their loved ones deserve the same attention. Moreover, when police fail to adequately communicate their efforts to family members and other loved ones of missing individuals, it is understandable that those affected believe the police are uninterested and unmotivated. Communication is one antidote to perceptions of a lack of interest.

Finally, officers all too often attempt to minimize the concerns expressed about a missing person – with comments like "he's probably just partying with friends"; or "she'll come back – she's young." These types of



comments may be motivated by the desire to give someone hope, but they may also reveal stereotypical notions about certain missing persons. They feed into a perception that the police are not taking a Missing Person Report seriously. After all, the reporting individual is often better situated than the police to know whether the disappearance of a loved one or friend should be of concern. I address these points in my recommendations.

#### *Issues Around Existing Procedures*

The Alloura Wells investigations also highlight several systemic issues addressed in my recommendations. As I state earlier, it is unclear whether the Service's procedure on preliminary homicide investigations – most particularly, on treating unexplained bodily remains as suspicious deaths – means that the unidentified remains investigation meets the criteria for a threshold major case under provincial adequacy standards. My recommendations address this lack of clarity.

An officer filled out a Search Urgency Chart when Ms. Wells was reported missing and categorized the appropriate search level as 1–2. My Review has disclosed that this chart was sometimes completed in missing person investigations – but sometimes not. When it was filled in, as it was in relation to Ms. Wells's disappearance, I see no correlation between how it was completed and how an investigation was conducted. I am unconvinced that, across the Service, the contents of Search Urgency Charts were completed in a consistent way or that the somewhat rudimentary assessments contained in them were truly evidence-based. Here, it was even difficult to reconcile the high urgency reflected in the Search Urgency Chart with the separate categorization of the required level of search.

Finally, I observe that two parallel investigations at two different divisions took place in relation to the unidentified bodily remains and Ms. Wells's reported disappearance. At one point, the steps taken in the concurring investigations were duplicated. As I previously observe, Detective Wynia and Detective Constable Kama interviewed some of the same witnesses. This duplication clearly does not represent best practice but involves the unnecessary use of police resources and imposes an unnecessary burden on witnesses, who must tell their stories twice. I address these issues in my recommendations.

## **The Kenneth Peddle Case**

Key issues raised by the Alloura Wells investigations are not confined to her case. They represent systemic issues that must be addressed. In this chapter, I also describe the tragic case of Kenneth Peddle. His family reported him missing and actively searched for him, not knowing that his bodily remains had been recovered shortly after his death. I describe the cases of two other missing men, Arthur Louttit and Dovi Henry, in case studies that precede and follow Chapter 14.

Mr. Henry was a young Black man who went missing in 2014. However, the police never took a Missing Person Report. Mr. Henry's body was found in Toronto shortly after he was last seen but was not identified by police because there was no missing person investigation. His body remained unidentified for two years, until his mother found a reference to his unidentified remains on the OPP's Missing Person and Unidentified Bodies Unit's website.

Mr. Louttit was an Indigenous man who had brain surgery shortly before he disappeared in September 2012. The police conducted a missing person investigation. However, Mr. Louttit's body was not located until almost two months later, not far from where he was last known to be.

### ***Mr. Peddle's Disappearance and Death***

On May 31, 2017, Kenneth Peddle took his own life. He was 72 years old. He had two daughters – Vanessa McCarthy and Rebecca Bingeman. They loved him dearly. For much of his life, he had been an IT specialist and consultant. His work had taken him around the world, sometimes on behalf of high-profile clients. Sadly, when he died, he was unemployed, suffered from leukemia and diabetes, and was experiencing mental health issues, including severe depression. He had lived in various locations across the country, including in the area of Wellesley and Bay streets in Toronto. When he died, he was homeless or underhoused despite prior efforts to assist him by his daughters and Mr. AS, an ex-partner.

On the evening of May 31, Mr. Peddle left Mr. AS's condominium in the Village, where he sometimes stayed. Tragically, a few hours later, he jumped off a bridge that overlooked a ravine and creek within David A. Balfour Park. He died at the scene. A bystander contacted the police.

### ***The Unidentified Remains Investigation***

Because David A. Balfour Park is located within 53 Division's boundaries, officers from that division went to the scene, as did the coroner. No personal items were found on the deceased's body. His identity was unknown to the authorities. His body was transported to the morgue, where fingerprints were taken and an autopsy was conducted. The autopsy determined that death was caused by blunt impact trauma from the fall. The death was classified as a suicide.

The next day, on June 1, the unidentified body investigation was assigned to Detective Sajeev Nair, who worked in 53 Division's Criminal Investigations Bureau. This was the last day of Detective Nair's shift. He then went off-duty, as scheduled, from June 2 to 7. During his absence, the investigation was not passed on to another officer.

When Detective Nair returned to work on the evening of June 8, he was told that the deceased's fingerprints were not on the Service's database and, therefore, they did not assist in identifying him. Detective Nair checked 53 Division's missing persons log to see if there were any missing person occurrences in the division that matched the unidentified body. There were none.

Detective Nair told the Review that, at this point, the investigation was at a standstill. In any event, he had to focus on other investigations. He was on a typically busy evening shift, which consumed him with his other tasks. He did not enter the unidentified remains information onto the Canadian Police Information Centre (CPIC) at that time. He understood, incorrectly as it turned out, that pursuant to major case management protocols, he needed to wait until the deceased had remained unidentified for 30 days before the information could be placed on the system. He understood the information would then be included on the RCMP national database.

Detective Nair contacted morgue staff to find out if there were any identifying features on the body to assist in identification. When interviewed during the Review, he could not recall whether he had reviewed Missing Person reports, media releases, or internal Service bulletins from other divisions to determine if the unidentified remains matched any of those occurrences. He had done that kind of review in some cases. Detective Nair acknowledged that many Missing Person reports come in daily; he described the difficulty in attempting to review them all. He said that, sometimes, the Service's crime analysts look for "commonalities" among the Missing Person reports and unidentified remains occurrences, but there is no evidence such an investigation was requested or took place in this case. Detective Nair favoured

the creation of a single portal containing all missing people in Toronto and their photographs, rather than sifting through what the division's crime analyst might send or looking at every media release distributed, while, at the same time, attempting to wrestle with the daily volume of work. When this investigation took place, Detective Nair was unaware of MPUB.

Detective Nair also considered whether to issue a public media release or internal bulletin about the unidentified body. He felt this initiative would be appropriate once the body had not been identified within the first 30 days and he had exhausted other means of identification.

### ***The Missing Person Investigation***

On May 31, Mr. AS noticed Mr. Peddle had not returned. Mr. AS contacted Mr. Peddle's daughters, Ms. McCarthy and Ms. Bingeman. The next day, Ms. McCarthy called the police to report her father missing. Because Ms. McCarthy was calling from an address located within 53 Division, officers from that division met with her and completed a Missing Person Report-. She provided the officers with her father's photograph and explained that he was possibly suicidal. The available records did not enable the Review to determine what steps, if any, 53 Division officers took to look for Mr. Peddle, including whether they contacted the Office of the Chief Coroner to determine if any unidentified remains matched Mr. Peddle's description. Because Mr. Peddle's last known residence (Mr. AS's home) was located in 51 Division's jurisdiction and he was last seen in that area, the missing person investigation was transferred to 51 Division where, on June 2, it was assigned to Detective Henry Dyck.<sup>21</sup>

That same day, Detective Dyck and Detective Constable Robert Chevalier spoke with Mr. AS, the last person to see Mr. Peddle. Mr. AS told the officers that Mr. Peddle was unemployed and homeless before his disappearance. Mr. Peddle had often stayed with Mr. AS for a few weeks while he applied for IT contracts before moving on to another place. Mr. AS had given Mr. Peddle a May 31 deadline to leave his condominium. Mr. Peddle left around 7:30 p.m. that day. Their discussion that day had been polite and casual. Mr. Peddle left all his belongings behind. Mr. AS told police that he and Mr. Peddle's family were concerned about him because his "back was to the wall": he refused to take any public funds, had nowhere to go to live, and was unable to find new work. He had only \$11 in his bank account.

Detective Constable Chevalier completed a Lost Person Questionnaire based on the information provided. It included a description of Mr. Peddle's

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<sup>21</sup> Detective Dyck has since become a sergeant.

clothing, his current physical and mental health issues, and Mr. AS's description of Mr. Peddle's current crisis over a place to stay. The police looked at Mr. Peddle's phone and found no incoming phone calls or messages. Mr. AS told them about some coffee shops Mr. Peddle liked to visit. The police searched the condominium and the contact list on Mr. Peddle's phone but found nothing to assist them. They also checked the common areas of the building and spoke to the building management. The officers asked for the building's video footage. It was provided a few days later.<sup>22</sup>

The same day, Detective Constable Chevalier arranged for officers to conduct a 300 metre search around the building. Detective Dyck returned to 51 Division and immediately prepared a media release. He also updated the staff sergeant about the Missing Person Report. At 10:30 a.m., the police published a tweet about Mr. Peddle's disappearance. It included his photo and a description of the clothing he was wearing and where he was last seen. The media release contained similar information, as well as Detective Dyck's contact information. It stated that the police were concerned about Mr. Peddle's safety. The police also contacted hospitals to see if they could find him. Detective Constable Chevalier called the Office of the Chief Coroner and was told either that the morgue did not have any unidentified remains or that it had none which matched Mr. Peddle's description. This information was inaccurate as it turned out. Unfortunately, Detective Constable Chevalier did not record exactly what was said or the name of the person he spoke to. It is also unclear whether the police searched the Service's Versadex system to see if it contained any reports of unidentified remains that matched Mr. Peddle's description.

Mr. Peddle's family were also trying to find him. On June 3, Detective Dyck received two calls from Ms. Bingeman, who was understandably distraught. She told him her father had told her he was going to "go sit under an oak tree and die." He considered himself a "nominal Buddhist" and had at one time considered leaving everything for a monastery. Detective Dyck followed up by asking the division's front desk staff to contact nearby Buddhist organizations. He also asked front-line officers to conduct a more detailed check of the waterfront area and cafés Mr. Peddle was known to frequent. These efforts proved fruitless. Detective Dyck's staff sergeant sent an email to Mr. Peddle's Hotmail account and asked the Technological Crime Unit to determine if Mr. Peddle had been online. On June 5, the unit advised Detective

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<sup>22</sup> When Detective Constable Chevalier watched the video footage a few days later, he observed Mr. Peddle depart and what he was wearing.

Dyck that somebody had logged into Mr. Peddle's account, but Detective Dyck learned, that same day, that Mr. Peddle's family had accessed the account through his computer. Detective Dyck obtained more of Mr. Peddle's email addresses and passwords from Ms. Bingeman and forwarded them to the Technological Crime Unit.

On June 6, Ms. Bingeman advised Detective Dyck about a possible sighting. The police investigated various possible sightings, obviously to no effect given what we now know.

On June 7, Ms. Bingeman emailed Detective Dyck to ask if the police could "hack" into her father's computer to review his browser history. She also asked if the police wanted Mr. Peddle's phone number. The police did not take Mr. Peddle's computer at this time. On June 16, Ms. McCarthy emailed Detective Dyck and told him she was continuing to try to get into her father's laptop. She understood that Detective Constable Kama, another 51 Division investigator who assisted on missing person cases, was going to ask Microsoft to monitor her father's email account and apologized if her efforts came to Microsoft's attention as a result. Eventually, Ms. McCarthy overrode her father's computer password, but found nothing of assistance in his browsing history or files other than confirmation that her father had not sent or read any emails since May 31. She asked Detective Dyck if he wanted Mr. Peddle's laptop. The next day, Detective Dyck told her he did not need the computer at that point but would add the information she provided him to the file. He told her to "keep checking periodically and if anything changes let me know immediately." Detective Dyck advised the Review that he did not accept the computer because of privacy concerns. He did not know if Mr. Peddle was still alive, and it would have been difficult for him to obtain a warrant in the circumstances. As well, Ms. McCarthy was checking the computer regularly. Detective Constable Kama also told the Review that it is generally impractical for police to have the Technological Crimes Unit examine a password-protected computer. It is time consuming, and the unit often cannot process these requests in a timely fashion. I observe, as did Detective Dyck, that the new *Missing Persons Act* confers greater authority on the police to obtain a warrant in these circumstances.

On June 8, Detective Dyck emailed various community organizations, including The 519, providing information about Mr. Peddle and a copy of the media release, encouraging them to distribute the information throughout the community.<sup>23</sup> That day and the next, Ms. McCarthy emailed and telephoned

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<sup>23</sup>As I note in Chapter 7, Detective Dyck emailed these organizations in relation to Selim Esen as well. In fact, the same email contained both names.

the police with additional information, including a photograph of a unique baseball cap her father wore. Detective Constable Kama attached the photo to the Occurrence Report. He also obtained information about dentists who might have had Mr. Peddle's dental records; however, he did not request these records at that time.

Within the first week of Mr. Peddle's disappearance, his family and friends made and distributed missing person posters around the city. They continued to do so for several weeks. They also contacted shelters, soup kitchens, LGBTQ2S+ community centres, bathhouses, the Centre for Addiction and Mental Health, and other locations. They followed leads on Facebook and reached out to Mr. Peddle's brother in British Columbia. On June 12, Ms. McCarthy was in contact with a reporter regarding a story about her father's disappearance. The story was published the next day.

On June 13, Detective Constable Kama called Ms. McCarthy to update her about the steps the police were taking. Ms. McCarthy told him that someone appeared to be retrieving voicemail on her father's phone because, at one point, she was able to leave a message when the voice mailbox had been full before. Detective Constable Kama immediately called Mr. Peddle's phone number but the voicemail was full. He also contacted his phone provider, which was unable to say who was checking the voicemail.

On June 21, Ms. Bingeman and Detective Dyck discussed the voicemail issue and whether it meant that her father was remotely accessing his messages. Detective Dyck told her he would follow up. The next day, Ms. McCarthy emailed Detective Dyck to tell him she may have put one of her father's email accounts on lockdown by trying to figure out his password. She also asked whether it was possible for her father to have returned to British Columbia, where he was originally from, without identification. Ms. McCarthy received an automatic email in response indicating that Detective Dyck was out of the office until June 26.

There is no indication that, after June 21, any officer was working on the investigation.

### ***The Identification of Mr. Peddle's Remains***

On July 1, 2017, Detective Nair came across a CPIC message about dental charts being required for a missing person occurrence outstanding for 30 days.<sup>24</sup> This message related to Mr. Peddle. Detective Nair viewed the

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<sup>24</sup> This notification would have been created by the Records Management Unit when Mr. Peddle's name was put on CPIC as a missing person. The records management operator would have set a 30-day diary date reminder for dental records. In 2017, at the 30-day mark, CPIC sent an automated message to the assigned division for the missing person case, advising that dental records are required. The detective sergeant at the

underlying Occurrence Report and realized that, although the Missing Person Report had initially been reported to 53 Division and “put through the 53 Division queue,” it became a 51 Division case. This was why the 30-day notice was sent to 53 Division, rather than 51 Division. Detective Nair read Mr. Peddle’s description and then checked his photograph, realizing it matched his unidentified remains case. Had this message been sent to 51 Division, as it should have been once the missing person investigation had been transferred there, it is unclear how long Mr. Peddle’s body would have remained unidentified at the morgue.

Detective Nair contacted 51 Division. The lead investigator of Mr. Peddle’s case was unavailable so, to Detective Nair’s credit, he contacted Ms. McCarthy directly and accompanied her at the morgue where she identified her father’s body. Detective Nair offered her assistance from the Service’s Victim Services Program. Ms. McCarthy greatly appreciated his sensitivity. The following day, Detective Dyck also contacted Ms. McCarthy and Ms. Bingeman to offer his condolences about their father.

### ***Summary and Findings (Kenneth Peddle)***

There are some obvious similarities between the issues raised by the Alloura Wells and the Kenneth Peddle investigations. One of Mr. Peddle’s daughters described how her father’s disappearance and the month-long uncertainty of what happened to him tortured his family and represented the most traumatic event in their lives. Before Mr. Peddle’s remains were identified, the police contacted the Office of the Chief Coroner to find out whether Mr. Peddle’s body was at the morgue in Toronto. Similar to the inquiries made about Alloura Wells, there is no reliable record of precisely what the police were told when they contacted the office, nor is there a record of who spoke to the police when they initiated those inquiries. Nonetheless, it appears the responses given by the chief coroner’s representative were inaccurate and led the police to believe there were no bodily remains at the morgue that could belong to Mr. Peddle.

The unidentified remains investigation was deficient in several ways, some of which reflect larger systemic issues. The investigation largely ground to a halt when the lead investigator went off-shift. His workload made it difficult for him to devote considerable time to this investigation. He was under the misunderstanding that he could not immediately enter information about the unidentified remains onto CPIC. He was unaware of the assistance that

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division would receive the notification. The detective sergeant also has the ability in Versa dex to set up a reminder and follow-up respecting the request. The Service’s Missing Persons Procedure required the detective sergeant to request the missing person’s dentist to complete an RCMP Dental Characteristics Input Data Form if the missing person is not located within 30 days.



MPUB could potentially provide. His review of outstanding Missing Person reports was not comprehensive and may have been confined to other Missing Person reports within the division. He acknowledged that the system needed improvement to permit a comprehensive search to be easily performed. He mistakenly believed he was constrained from issuing a media release pertaining to the remains for 30 days. A timely media release may have produced more leads.

Detective Dyck and Detective Constable Chevalier, with assistance from Detective Constable Kama, conducted a credible missing person investigation. Indeed, this investigation stands in contrast to others I describe in this Report. Although Mr. Peddle's family were understandably frustrated at times with their inability to access the assigned officers – a systemic issue addressed in my recommendations – both detectives were largely responsive to the family, followed up on a range of leads, contacted community agencies such as The 519 and Buddhist organizations, updated family members, and were sensitive to their concerns and pain. Detective Dyck agreed that for Mr. Peddle to have been unidentified for such a long time was a systemic failure and “obviously an issue of disconnect.” Of course, the misinformation from the Office of the Chief Coroner undermined the investigation. Detective Dyck agreed it would have been prudent to make a follow-up call to the morgue, although he couldn't recall whether he had done so in this case. He suggested that the Office of the Chief Coroner should send an email to the police every day about the bodies that just arrived at the morgue, with details including their approximate age, gender, and distinguishing features. In Chapter 15, I address how to improve the timeliness of identifications of bodily remains. Some important improvements have already taken place.

From a systemic perspective, one cannot ignore that, in the end, Mr. Peddle's bodily remains were identified largely because of a mistake. Detective Nair came across a CPIC message about dental charts being required for a missing person occurrence outstanding for 30 days. This message related to Mr. Peddle. Detective Nair viewed the underlying Occurrence Report and realized that the message should have gone to 51 Division, not 53 Division where he worked. Had this message been sent to 51 Division, as it should have been once the missing person investigation had been transferred there, it is unclear how long Mr. Peddle's body would have remained unidentified at the morgue. Once Detective Nair saw this message, he acted quickly and sensitively to meet with Mr. Peddle's family and arrange for the formal identification of Mr. Peddle's body.

In Chapter 13, I outline in detail how unidentified remains cases have been and are currently conducted in Toronto, leading to my recommendations in Chapter 15.