



**PUBLIC REPORT OF THE
CHIEF CIVILIAN DIRECTOR**

Regarding a fatal officer-involved shooting on March 29, 2015
involving the Burnaby RCMP

IIO 2015-053

INTRODUCTION

The Independent Investigations Office (IIO) is responsible for conducting investigations into all officer-related incidents which result in death or “serious harm” (as defined in Part 11 of the Police Act) within the province of British Columbia. The Chief Civilian Director (CCD) of the IIO is required to review all investigations upon their conclusion, in order to determine whether he considers “that an officer may have committed an offence under any enactment, including an enactment of Canada or another province” (see s.38.11 of *the Police Act*). If the CCD concludes that an officer may have committed an offence, he is required to report the matter to Crown counsel. If the CCD does not make a report to Crown counsel, he is permitted by s.38.121 of the *Police Act* to publicly report the reasoning underlying his decision.

In this public report, the CCD includes a summary of circumstances that led to the IIO investigating and a summary of the findings of the investigation.

This is a public report related to an investigation into an officer-involved shooting of an adult male on March 29, 2015. The male affected person advanced towards the officers with a knife, did not comply with orders to drop the knife and was subsequently shot. The affected person later died in hospital.

Pursuant to s.38.11 of *the Police Act*, RSBC 1996 Chapter 367, the CCD has reviewed the concluded investigation. The CCD does not consider that any officer may have committed an offence under any enactment and will not be making a report to Crown Counsel.

In this public report, the CCD is only permitted to disclose personal information about an officer, an affected person, a witness, or any other person who may have been involved if the public interest in disclosure outweighs the privacy interests of the person. Prior to disclosing any personal information, the CCD is required, if practicable, to notify the person to whom the information relates, and further, to notify and consider any comments provided by the Information and Privacy Commissioner (s.38.121(5) of the Police Act). The CCD has considered the advice provided by the Information and Privacy Commissioner. In this report, the CCD will not be using the name of the affected person or the name of any other person involved in this matter.

NOTIFICATION AND JURISDICTION DECISION

The Independent Investigations Office (IIO) asserted jurisdiction as the affected person was shot in the leg by an RCMP officer. The male died as a result of severe blood loss from multiple injuries.

The interaction with police began when an occupant of a residence in Burnaby was awoken by screams and then left his residence to borrow a cell phone to call 911. Two Burnaby RCMP officers attended the residence in response to a call of an alleged double stabbing. Both officers, with their firearms drawn, directed the affected person, who was the subject of the complaint, to drop the knife he was holding. However the evidence is to the effect that he did not. The male affected person advanced and was subsequently shot by an officer, who is the subject of this investigation. The affected person then went over a handrail and fell to the pavement approximately 12 to 15 feet below. He was taken into custody, put into an ambulance and died later in hospital.

The IIO was notified on March 29, 2015 at 06:22 a.m. as the affected person's death falls within the jurisdiction of the IIO as described in the *Police Act*. The purpose of the IIO investigation was to determine whether an officer may have committed any offence during the course of their contact with the affected person.

ISSUES

At the conclusion of any IIO investigation, the CCD is required to consider whether an officer may have committed any offence. If the answer is in the affirmative, a report to Crown Counsel must be made for consideration of charges.

The legal issue to be considered in this case is whether the subject officer reasonably discharged his firearm at the affected person. If the death of the affected person was the result of an unreasonable discharge of his firearm, then the subject officer could be liable for the offences of murder or manslaughter.

EVIDENCE CONSIDERED

Evidence examined in this investigation includes statements made by civilian witnesses, witness officers, medical evidence and police dispatch records.

AFFECTED PERSON

As the affected person in this case is deceased, no statement is available.

The affected person lived at the residence in Burnaby where he was shot. He was aged 35 at the time of his death.

TIMELINE

The timeline below was compiled using police dispatch records. All events below occurred on March 29, 2015.

0548 hours	911 call
05:55:30 hours	Witness officer 1 heard on radio saying “lots of blood”
05:55:51 hours	Voices on the radio saying “Drop the knife, drop the knife”
0556 hours	The affected person jumped off the balcony
0558 hours	More officers arrived
0604 hours	Ambulance personnel arrive and are at the affected person’s side
0620 hours	Ambulance departs with the affected person
0640 hours	The affected person arrives at the hospital
1041 hours	The affected person is pronounced deceased at the hospital

CIVILIAN WITNESSES

In addition to the affected person suffering injuries in this incident, a male resident suffered fatal stab wounds. It is alleged that the affected person caused these wounds. Throughout this report this male will be referred to as “the male resident.”

Civilian Witness 1 (CW1)

CW1 lived at the residence and gave a statement to the IIO on the day of the incident. He told the IIO he was awoken by a loud bang and then what he described as “blood-curdling screams” of “what are you doing?” and “no, no”.

CW1 said he decided to get out of the house; he left through the front door and went to a motorhome that was parked nearby. He knew civilian witness 2 (CW2), who was staying in the motorhome, and asked her to call 911.

CW1 told the IIO that he and CW2 went back to the house and saw the affected person coming out of the male resident’s room. According to CW1, the affected person had a “big wound on his wrist gushing blood” and there was “blood all over him.” CW1 also noticed blood in the hall and kitchen areas. CW1 looked into the affected person’s room near the front door and saw the affected person bleeding heavily from his wrist. He said he tried putting paper towels on the affected person’s injury however the affected person “threw them off”.

By this time CW2 had called 911. The call was recorded and at 40 seconds into the call CW1 took the phone from her and spoke with the dispatcher. During the first minutes of the call CW1 told the dispatcher that the affected person was in his own room. He also stated that that the male resident was in his own room, unconscious and that CW1 believed the male resident had been stabbed. CW1 told the dispatcher that he couldn’t wake the male resident and that there was a bloody knife beside the male resident.

At 6 minutes into the 911 call CW1 said "...we can hear some sirens coming in" and at 8:07 into the call he said the "police are just arriving now".

CW1 told the IIO he waited with CW2 outside the house until two officers arrived. CW1 advised the officers that the male resident had been stabbed and needed help. The officers told them to stay back and went up the stairs with their guns drawn. CW1 followed, and as the officers entered the house CW1 looked into the kitchen through a window at the top of the stairs. CW1 said the affected person took a knife out of a kitchen drawer and began to stab himself in the torso. At this point CW1 shouted that the affected person was stabbing himself and he heard the officers shout drop the knife several times.

At 08:32 into the call, CW1 can be heard on the 911 recording saying, "This guy, yeah ... Watch out, watch out, watch out... Oh he just stabbed himself, he just stabbed himself."

CW1 told the IIO that the affected person started to walk towards the officers but he could not see if the affected person was still holding the knife as the affected person's hands were out of his sightline. CW1 told the IIO he believed one of the officers must have backed up the hallway as he could not see him. CW1 said that the other officer backed just out of the doorway. According to CW1, the affected person continued to walk towards this officer at a slow pace and:

"...the officer backed out of the door and he was probably this far away [CW1 later said "He was, arm's-length, maybe four feet" and was, "...maybe one step out of the door"], and one shot, bang. Guy didn't even flinch... And he walked to the railing at the top, jumped over, like that, onto his head."

CW1 told the IIO both officers went down to where the affected person had landed and were telling him not to move and to put his hands out in a 'T'. At 10:41 of the 911 recording, a voice, neither CW1's nor the 911 dispatcher's, can be heard shouting, "Arms out to form a T" and "Don't move".

CW1 told the IIO he did not know what accounted for the affected person's actions and stated he could not blame the officer for shooting as the affected person was coming at the officer with a knife.

Civilian Witness 2 (CW2)

CW2 gave a statement to the IIO on the day of the incident. CW2 told the IIO that she resided in an RV that was parked immediately to the north of the residence. She knew the residents there and told the IIO that the affected person had been sad recently and had told her that he had considered harming himself.

CW2 told the IIO that at approximately 0530 hours, CW1 knocked on her door and asked her to call 911. She went with him to the residence and saw the affected person in the hallway. She said

he was incoherent and had a wound spurting blood on his left wrist. CW2 went into the male resident's room and saw he was bleeding heavily. She called 911 then passed the phone over to CW1.

CW2 said two police officers arrived and went up the stairs, CW1 followed while CW2 remained at the bottom of the stairs. The officers had their guns drawn.

CW2 told the IIO she heard CW1 say that the affected person was stabbing himself. She saw both officers at the door of the house and heard them shouting to drop the knife and heard one shot being fired. CW2 told the IIO she believed it was WO1 who fired and that he was right by the door with the other officer beside him. She said both officers backed down the stairs and the affected person walked onto the landing and jumped over the railings.

CW2 said the affected person landed on the concrete below and the officers went down the stairs and kept their guns pointed at him and were telling him to put his arms out. CW2 told the IIO the affected person was trying to get up but couldn't manage. The officers kept their guns and flashlights pointed at the affected person. More police officers arrived and she was told to go to the back of the house with CW1 where a police officer took her details.

Civilian Witness 3 (CW3)

CW3 lived at the residence and was interviewed by the IIO on March 31, 2015. CW3 remained in his room during the entire incident. He told the IIO he did not see anything but was woken up at about 0540 hours by what he described as "a real loud whine".

CW3 got dressed and ready for work. About ten minutes after he heard the sound, he said he heard the voices of what he thought were the male and female occupants of the RV parked outside the house. CW3 said he heard the male voice talking to 911.

CW3 told the IIO that about five minutes later he heard police come into the house and believes they announced themselves. He thought there was more than one police officer as he heard the footsteps. He said he heard a man's voice shout "Drop the knife, Drop the knife" for about 30 seconds. CW3 told the IIO this voice was coming from the kitchen and then he heard one loud pop that he believed was a gunshot. CW3 said a police officer came into his bedroom and when he was taken out he saw lots of blood in the hall and kitchen.

Civilian Witness 4 (CW4)

CW4 was interviewed on March 31, 2015. He lived near to the residence and was woken up by the sound of a male and female voice in what he called "escalating panic". He told the IIO he then heard sirens and got up to look however before he reached the window he heard "Stop" and "Get down" and then he heard a gunshot.

CW4 told the IIO he looked out of the window and saw police running and heard, “Don’t move, Don’t move”. CW4 went out and saw a male on the ground and four police officers pointing their guns at the male. The police told CW4 to go back inside as he was in their line of fire.

CW4 told the IIO the male on the ground was moving around and that two people were taken away in ambulances.¹

FIRST RESPONDER WITNESSES

Civilian Witness 5 (CW5)

CW5 is a paramedic and was interviewed by the IIO on April 20 and April 29, 2015. He told the IIO he arrived at the scene and saw a female officer attempting to apprehend the affected person. CW5 told the female officer not to handcuff the male with his hands behind his back.

CW5 told the IIO he noticed a large head injury on the affected person however when he asked what happened; the only answer he got was that the affected person had fallen from the railings. He said he started to treat the affected person and noticed multiple stab wounds to his chest and abdomen.

CW5 travelled to the hospital with the affected person. CW5 said that en route to the hospital he noticed a lot of blood coming from the affected person’s lower leg. He cut off the affected person’s pants and saw a bullet wound on the affected person’s right hip. CW5 dressed the wound.

OFFICERS

The IIO uses the term witness officers and subject officers to distinguish between officers who merely witnessed the incident as opposed to officers who are the subject of the IIO investigation over their direct involvement, which may have caused the serious harm or death.

Witness Officer 1 (WO1)

WO1 is a general duty member of the Burnaby RCMP and was interviewed by the IIO on the morning of the incident.

WO1 told the IIO he had just completed another call with the subject officer when he heard a call to a double stabbing. WO1 received updates that there were two victims inside the house, one was barely breathing and the other was walking around; the suspect was as yet unknown and outstanding. WO1 told the IIO that he and the subject officer arrived at the same time and upon arrival he saw CW1 and CW2 at the top of the stairs leading into the residence.

¹ Both the affected person and the male resident who had been stabbed were transported by ambulance from the scene.

WO1 told the IIO that CW2 told him there was someone inside who was bleeding out. He said he saw blood in the open area in front of the house and while walking up the steps he did not know if the suspect may have been in the house.

WO1 said both he and the subject officer had their firearms drawn. WO1 said he led and as he entered the hallway he saw the affected person walking from right to left along a corridor into the kitchen. WO1 said he called out to the affected person who just ignored him. WO1 said he glanced to his right and saw some other rooms, one of which had a slightly open door.

WO1 told the IIO that when he turned back to look into the kitchen, the affected person was out of his sight and next he heard CW1 say, "He's stabbing himself". WO1 next saw the affected person holding a knife and he pointed his pistol at him and told him to drop the knife.

WO1 said the affected person turned away momentarily and then back and started to walk towards him. WO1 could no longer see the knife and backed away down the corridor. WO1 said he did not know if the affected person was the suspect or if there was a possible suspect in the rooms behind him.

WO1 told the IIO he felt that his firearm was his only option as he felt trapped due to the small size of the hallway. WO1 told the IIO he knew a goal oriented suspect could fight through being OC sprayed² and due to the confined space he thought he would also suffer from the effects of the OC spray. WO1 said he felt that, as he had already stabbed himself, the affected person would not feel pain if hit with a baton.

WO1 told the IIO he did not want to use his fists as he did not know where the knife was. WO1 said that neither he nor the subject officer had any other less-lethal use-of-force options, such as a CEW (Taser).

WO1 said he was about to fire at the affected person when the affected person suddenly turned toward the front door. He heard the subject officer shout something and then heard a gunshot. WO1 said he was looking at the affected person's back when the shot was fired. The affected person kept moving forward and flipped over the rail at the top of the stairs. WO1 did not know if the affected person had been hit by the shot.

WO1 said he and the subject officer went down the stairs. The affected person would not comply with commands so they kept their firearms aimed at him. A short time later other officers arrived and assisted to restrain the affected person who was dealt with by Emergency Health Services staff and taken to hospital by ambulance.

Witness Officer 2 (WO2)

WO2 was interviewed by the IIO on the day of the incident. He was a new recruit with the Burnaby RCMP and partnered with witness officer 3 (WO3) when a call came over their radio. WO2 was driving and WO3 navigated.

² OC spray, commonly known as pepper spray, is used by police agencies as a non-lethal use-of-force option.

WO2 told the IIO he drove with lights and siren activated and on arrival parked a few houses away. He and WO3 approached the residence on foot. He said it was very dark out and raining heavily. From the gate he saw the subject officer standing beside the house and WO1 behind him. In front of them towards the fence he saw a male lying in a prone position, face down, making groaning sounds. The male appeared to be bloody. WO2 told the IIO:

“There was quite a bit, I heard quite a bit of stop, stay down, stay down or get down. Just sounded like the whoever, the guy on the ground was trying to get up and the members kept communicating to him quite loudly to stay down. That happened quite a few times. That stands out.”

WO2 was instructed, along with WO3 to make sure the backyard was clear. While at the rear of the house, looking up to the top right corner window WO2 saw two RCMP officers inside the house who appeared to him to be clearing the house.

Witness Officer 3 (WO3)

WO3 is a general duty member of the Burnaby RCMP and was interviewed by the IIO on the morning of the incident.

She told the IIO she was training a new recruit and a call came about a stabbing incident. Whilst on their way to the call, a second stabbing was reported.

WO3 told the IIO she heard over the radio "Drop the knife, drop the knife, yelling, obviously a sense of panic and urgency" and that "they need more members. We have one male proned out, or one male on the ground".

WO3 told the IIO that upon arrival it was dark and raining heavily. At the gate to the residence she saw the subject officer and WO1, both of whom had their firearms pointed at the affected person. From the vantage point of the gate WO3 noticed the affected person was lying on the ground bleeding heavily with a large pool of blood around him. He was conscious, moving around and making sounds.

WO3 went to the back of the house to make sure WO2 was okay with the two witnesses (CW1 and CW2). From the back of the home, WO3 told the IIO she could still hear the subject officer and WO1 continuing to yell "Get on the ground, get on the ground". From this she believed they had not yet secured the affected person and needed assistance to get him under control. WO3 returned to the front of the house and saw:

“The guy on the ground kept trying to move, and try to push himself up. He was covered in blood. I noticed a huge laceration to his forehead or head. And he, I don't know, he was bleeding from his arms, chest, pool of blood around him. He kept moving around and trying to get up. At one point he was moving around and it looked like he was reaching for something.”

When it appeared to her that the subject officer and WO1 were going to handcuff the male she shone her flashlight at the affected person. The affected person reacted to the light, appeared disoriented and said, "I want water, I want water." The affected person then became more active and tried to get up.

WO3 told the IIO that when WO1 and the subject officer moved in to apply handcuffs, the affected person pushed himself abruptly up onto his knees and was waving his arms. All three officers yelled for the affected person to get on the ground. The affected person did go onto his stomach and continued moving around. WO3 said that when paramedics and fire personnel arrived, the affected person was not yet in handcuffs and as she had her gloves on she grabbed the affected person's left arm, twisted it back and put one cuff on and then the other.

Once handcuffed, paramedics assessed the affected person and requested he be handcuffed in the front. While being re-handcuffed to the front the affected person continued kicking and trying to hit WO3 and the paramedics. WO3 observed the affected person being taken off in an ambulance.

Subject Officer

The subject officer declined to be interviewed or provide any statement to the IIO, as is his right pursuant to the *Charter of Rights and Freedoms*. As of the time this decision is being issued, it does not appear that the subject officer has completed any reports or notes of his recollection of the incident.

MEDICAL EVIDENCE

An autopsy was performed on the affected person. The doctor's findings were that:

The Cause of Death was exsanguination³ due to or as a consequence of multiple injuries.

A number of stab wounds were noted on the affected person's chest and arms in addition to a gunshot wound on the right thigh.

The doctor opined that:

"...the gunshot wound to the thigh is likely to have been the most significant contributor to blood loss in this case; however significant additive blood loss may also have occurred as a result of sharp force injury to the chest and radial artery and from the large scalp laceration. The precise degree to which each wound contributed to death cannot be reliably established at autopsy."

³ Exsanguination is the severe loss of blood.

LAW

Culpability for an officer's use of force is governed by the following provisions set out in the *Criminal Code of Canada*:

1. A police officer acting as required or authorized by law "is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose." (section 25(1)).
2. A police officer "is not justified for the purposes of subsection (1) ... in using force that is intended or is likely to cause death or grievous bodily harm unless the [officer] believes on reasonable grounds that it is necessary for the self-preservation of the [officer] or the preservation of any one under that [officer's] protection from death or grievous bodily harm" (section 25(3)).
3. Any police officer who uses force "is criminally responsible for any excess thereof according to the nature and quality of the act that constitutes the excess." (section 26).

In an evaluation of the reasonableness of an officer's use of force, the following application of the law is required:

The Supreme Court of Canada in *R. v. Nasogaluak*, 2010 SCC 6 held that:

[32] ... police officers do not have an unlimited power to inflict harm on a person in the course of their duties. While, at times, the police may have to resort to force in order to complete an arrest or prevent an offender from escaping police custody, the allowable degree of force to be used remains constrained by the principles of proportionality, necessity and reasonableness. Courts must guard against the illegitimate use of power by the police against members of our society, given its grave consequences.

However, the Court went on to say that:

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

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

R. v. Kandola, 1993 CanLII 774 our Court of Appeal cited *Brown v. United States* (1921), 256 U.S. 335, where at p. 343, Holmes, J., noted:

Detached reflection cannot be demanded in the presence of an uplifted knife.

The caveat on the use of force set out above in s. 25(3) that applies where the force used is intended or is likely to cause death or grievous bodily harm requires that there must be a reasonable belief by that officer that the force is necessary for the self-preservation of herself or the preservation of any one under her protection from death or grievous bodily harm. The allowable degree of force to be used remains constrained by the principles of ‘proportionality, necessity and reasonableness’ (*Nasogaluak*).

ANALYSIS

The subject officer would have heard the same transmissions as WO1 while travelling to the residence where multiple stabbings had been reported. Specifically the report that CW1 made during his 911 call and that WO1 referred to that:

“there were two victims inside the house, one was barely breathing and the other was walking around; the suspect was as yet unknown and outstanding”

On arrival, the subject officer was unaware of who was responsible for the reported stabbings and drew his firearm (as did the other officer) and the question for the investigation becomes: Were there reasonable grounds for the subject officer to believe that it was necessary for the self-preservation of himself from death or grievous bodily harm to fire at the affected person when he did?

CW1 described the blood that was within the residence. The subject officer would have seen at least some of the blood which tended to confirm a stabbing had occurred and that there may be danger. CW1 observed the affected person obtain a knife and stab himself with it moments before he was shot. CW1 called out that the affected person was stabbing himself. This was heard by WO1 and as the subject officer was between WO1 and CW1, the subject officer had to have heard it as well. Additionally the recording of the 911 call reflects CW1’s warning to the officers, “Watch out, watch out, watch out...Oh he just stabbed himself, he just stabbed himself.”

WO1 described his thought process as the affected person approached him, bleeding, and not responding to police commands. WO1 was about to fire his weapon when the affected person suddenly changed course and turned toward the subject officer.

CW1 said that the affected person was within arms-reach when the officer fired his weapon and the officer was backing away from him. CW1’s statement to the IIO is consistent with his 911 call which occurred as the events were unfolding.

It should be noted that the affected person continued toward the front door and over the railing as described by CW1, “one shot, bang. Guy didn’t even flinch... and he walked to the railing at the top, jumped over, like that, onto his head”.

As the Supreme Court of Canada decision in *Nasogaluak* reads:

It must be remembered that the police engage in dangerous and demanding work and often have to react quickly to emergencies. Their actions should be judged in light of these exigent circumstances.

As the British Columbia Court of Appeal ruled in *Bottrell*:

“In determining whether the amount of force used by the officer was necessary the jury must have regard to the circumstances as they existed at the time the force was used. They should have been directed that the appellant could not be expected to measure the force used with exactitude.”

and quoted in *Kandola*:

“Detached reflection cannot be demanded in the presence of an uplifted knife.”

“The allowable degree of force to be used remains constrained by the principles of proportionality, necessity and reasonableness” (*Nasogaluak*) and on a review of all the circumstances in this incident it cannot be said that the use of force by the subject officer was unreasonable, unnecessary or un-proportional to the danger that was being posed by the affected person.

Decision of the Interim Chief Civilian Director

Based on all of the evidence collected during the course of this IIO investigation and the law as it applies, I do not consider that any police officer may have committed an offence under any enactment and therefore the matter will not be referred to Crown Counsel.

Clint Sadlemyer, Q.C.
Legal Counsel

March 28, 2017
Date of Release

A.O. (Bert) Phipps,
Interim Chief Civilian Director

March 28, 2017
Date of Release