



**PUBLIC REPORT OF THE
CHIEF CIVILIAN DIRECTOR**

Regarding a fatal officer-involved shooting of a male on 2015 July 08
involving Port Hardy RCMP

IIO 2015-098

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 a fatal officer-involved shooting of an adult male on 2015 July 08. According to multiple witnesses, the male advanced towards officers with a knife, did not comply with orders to drop the knife and was shot. The male died at the scene.

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 by an RCMP officer and subsequently died.

The incident began with reports that the affected person had displayed a knife and made threatening comments to members of the public near the high school track in Port Hardy. The affected person was then confronted shortly thereafter by police officers. The interaction between the affected person and officers took place approximately 300 metres away from the high school track.

Witnesses say the affected person moved toward police with a knife in his hand and was shot and fell to the ground. Some witnesses say the affected person then got up and continued toward police and was shot again and again fell.

The IIO was notified of this incident at 1135 hours 2015 July 08 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 an 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 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, statements made by witness officers, medical evidence, ballistics reports, photographic evidence and police dispatch records.

AFFECTED PERSON

As the affected person is deceased, no statement is available. The affected person was 24 years of age at the time of his death.

INCIDENT TIMELINE

All events occurred on 2015 July 08.

TIMES	EVENT
11:04:45	9-1-1 call of man threatening others with a knife;
11:06:28	Police dispatched; three members in separate vehicles;
11:08:23	Police encounter the affected person walking along sidewalk;
11:08:27	The affected person threatens police with knife;
11:09:19	Police shoot the affected person;
11:17:32	Paramedics attend and pronounce the affected person deceased.

CIVILIAN WITNESSES

This incident took place in a public area and was witnessed by a large number of people. Statements obtained by the IIO from these witnesses are summarized below. These witnesses' statements are grouped according to their vantage point or role in responding to the incident.

Civilian Witnesses 1, 2 and 3 (CW 1, 2 and 3)

CW 1, 2 and 3 were working close to the incident location. They were standing together when they had contact with the affected person prior to his interaction with police. Below is a summary of their statements.

CW1 stated that the affected person moved towards them, produced a knife and started waving the knife about. CW1 stated that the affected person was cursing and calling on CW3 to come and fight. CW2 stated that the affected person said, "I'll f***** kill you. You know, it wouldn't be the first time..."

Once CW3 mentioned that he was going to call police, the affected person began walking quickly away from their location. All three witnesses stated that between five to 10 minutes later they heard shots fired. The shots were described by these witnesses as follows;

- CW1 heard six - eight shots that he estimated were fired about one and a half blocks to the east of his location.
- CW2 described the shots as "pops" which he heard in a two round and a three round burst.
- CW3 described the shots as a "a popping sound in the distance."

Civilian Witnesses 4 – 11 (CW 4 – 11)

This incident took place at Granville Street and Island Highway in Port Hardy. This is a busy intersection with a lot of vehicle traffic. CW 4 – 11 were in vehicles located close to the incident scene. Below is a summary of their statements to the IIO.

Civilian Witnesses 4, 5 and 6 (CW 4, 5 and 6)

CW 4, 5 and 6 were all in the same vehicle. They were located one to two car lengths away from where the incident took place. CW4 described seeing the affected person walking “really fast and looking around,” All three witnesses observed two police SUV’s pull up alongside the affected person and two police officers exited the vehicles. CW5 estimated the distance between the officers and the affected person to be 15 feet at this point.

CW4 and CW5 then described seeing the affected person run at officers, neither witness was able to say whether or not the affected person had anything in his hand. All three witnesses described hearing the police shout at the affected person prior to shots being fired but were unable to make out what was said because the windows of their vehicle were up.

CW4 described the affected person’s movements towards an officer as “...a lunge toward him” and “sidestepping” around, “like, almost like if you're playing a game with somebody, tag and you're trying to evade them.” CW6 thought the affected person was trying to get into the police vehicle as the door of one of the SUVs was open.

CW5 described seeing the affected person running towards an officer and estimated that the first shot was fired when the affected person was ten feet away from the officer. CW5 then heard two more shots and observed the affected person’s body contort as he continued towards the officers before falling to the ground. CW5 stated that officers then approached the affected person and when they were within two feet of him, the affected person got back up to an almost fully standing position, “jumped up ... and lunged... at the same officer he had [earlier] been running towards.” and was shot two more times.

None of the three witnesses were able to say which officer fired their weapon, nor were they able to state as to whether or not the affected person was carrying a weapon. Immediately after the incident took place they were directed from the area by a female officer.

With regard to the police response, CW4 stated the officer did not have a choice, that it happened quickly and the affected person was aggressively going toward the officer.

Civilian Witness 7 (CW7)

CW7 was at the intersection, close to where the incident took place when two police cars drove past his vehicle. Both police cars parked 12 feet behind CW7’s vehicle, CW7 continued to observe the vehicles through his open driver side window.

CW7 observed one officer exit his vehicle and draw his gun. CW7 then heard screaming and saw the affected person moving toward the officer. CW7 heard officers yell “put down the knife, put down the knife.” As the affected person continued to approach the officers, the second officer pulled out his gun and shot the affected person.

After shots were fired, CW7 continued to observe the incident through his rear view mirror. CW7 saw the affected person “bounce a couple of times” when the bullets hit him. CW7 then observed the affected person being shot five more times, in two separate bursts and both coming when the affected person moved towards the officers. After the affected person fell to the ground, CW7 observed one of the officers kicking away a knife that was lying close to the affected person. CW7 could not recall seeing the knife prior to that. CW7 was then directed away from the scene by a female officer.

Civilian Witness 8 (CW8)

CW8 was approaching the intersection when he saw two marked police vehicles with emergency lights activated coming towards him, the lead vehicle was a Chevrolet Suburban. CW8 pulled over approximately 75 feet from the police vehicles. CW8 said that almost immediately after the police vehicles stopped, the affected person ran towards the Suburban. CW8 said it appeared to him that the affected person was running to tell the police something.

CW8 said the affected person ran within two to three feet of the Suburban and then backed away a short distance. CW8 heard voices yell “drop the knife” three or four times. CW8 said the officer who eventually fired his gun (the subject officer) positioned himself near the centre line of the road and about six feet from the open door of his SUV. At this point CW8 said the subject officer and the affected person were facing each other and were approximately six to 10 feet apart, the subject officer had both hands together and was slightly crouched.

CW8 observed another officer standing approximately 15 feet from the subject officer. This officer was in a slight crouch and had his hands in front of his chest in a firing position; CW8 was unable to see if the officer had a gun in his hand.

CW8 then heard, “Several shots, maybe three, four” about 30 seconds after the subject officer was out of his vehicle. The shots seemed to have no effect on the affected person and CW8 did not think he could have been hit. CW8 believed the subject officer had fired his weapon but did not actually see the weapon discharge. Following the shots, CW8 heard more shouts from officers of “drop the knife.” CW8 heard two more shots and the affected person fell to the ground.

CW8 estimated that it was about 30 seconds between the two groups of shots being fired. The subject officer then kicked at something in the right hand of the affected person as he lay on the ground, but CW8 did not see what it was.

Civilian Witness 9 (CW9)

CW9 was driving on Island highway when he saw two police vehicles pass through the intersection. The police vehicles stopped and officers got out with their guns drawn. The officers were approximately 20 feet to 25 feet apart from each other and near the centre of the street. The police vehicle closest to CW9 was about 90 feet away and the front door of the vehicle was open.

CW9 saw the affected person walk out from between the two police vehicles with a knife in his right hand pointed outwards and held up between his chest and waist level. CW9 said the subject officer yelled “put the knife down, put the knife down”.

CW9 said the affected person moved fairly quickly towards the officer and was almost 15 feet away when four shots were fired. CW9 said the affected person fell, "almost like slow motion, he turned on his back ... didn't really fall ... just went down slowly" and he still held the knife in his hand.

CW9 said the affected person lay on his back but he had his head off the ground and was holding the knife up and then slowly laid his body back. CW9 said a police officer again yelled at the affected person to drop the knife. The officers waited until the affected person's hand went down and directed the vehicles to, “get back.” CW9 then left the scene.

CW9 said that from the time he saw the officers to the time the affected person was shot was approximately 20 seconds.

Civilian Witness 10 (CW10)

CW10 was at the intersection and saw two police officers exiting their vehicles and point their firearms at the affected person who appeared to be between the officers. CW10 thought the affected person was seven to eight feet away from either officer. The officers were shouting for the affected person to drop the knife, CW10 did not see a knife in the affected person's hand. The affected person then took a couple of steps; CW10 described the affected person's movements following this as:

“From what I saw he was -- it looked like he was trying to run out of their little circle formation or whatever, from what I saw. Because he did move, like, he wasn't just standing there. I think he did try to run. Or go at a cop, one of the two. I can't really tell you if he went at a cop or if he was just trying to run out of the circle, but it looked like to me he was just trying to get away. From what I saw.”

CW10 then heard a gunshot and saw the affected person grab himself where he had been shot, the affected person did not fall down. CW10 heard an officer call on his radio that shots had been fired. CW10 said his attention was then divided between what was going on between the two officers and the affected person and another police officer who was directing traffic through the intersection.

CW10 heard more gunshots and then saw the male lying on the ground. CW10 saw one of the officers approach the affected person kick a knife out of his hand.

Civilian Witness 11 (CW11)

CW11 was driving behind the two police vehicles, both vehicles stopped and she stopped behind them. Two officers got out of their vehicles and drew their guns. As they did so, CW11 saw the affected person bolt out into the road, run behind the police vehicles and then run towards the subject officer. The affected person was carrying a knife and CW11 described the affected person as having an, “intense expression on his face. His eyes were huge and his body tensed and he had this grimace like he was going to bite somebody.”

CW11 she was about 20 feet or less from the subject officer and the affected person, “...was running at them like he wanted to die.” CW11 said the police were screaming at him to drop the knife. CW11 said she was sure that the subject officer shot the affected person multiple times and was not sure if the other officer fired.

CW11 said more shots were fired and the affected person stumbled to the ground on his back. The affected person had his arms up above his head and was still holding the knife. CW11 said the police repeatedly yelled at him to drop the knife.

CW11 said the affected person did not drop the knife and he was shot numerous times as he lay on the ground. CW11 believed it was these shots that took his life. CW11 said she tried to offer help but was told the by police in no uncertain terms to immediately leave.

CW11 was re-interviewed on two further occasions regarding her description of the shots fired at the affected person as he was on the ground. These interviews are referred to below under the medical evidence heading.

Civilian Witnesses 12 – 16 (CW12 – 16)

The witnesses listed below observed the incident from their workplace which was roughly 30 metres from the incident location.

Civilian Witnesses 12, 13 and 14

CW12 was working at her desk when she saw two police vehicles parked outside of her office. CW12 heard shots being fired and said out loud “somebody’s getting shot.” At this point CW13 and CW14 joined her at the window.

CW12 saw the subject officer walking with a gun in his hand firing at the affected person. CW12 said the affected person was moving towards the subject officer and she couldn’t remember if the affected person had anything in his hands. CW12 said that when the affected person fell down she saw him move one of his hands, the affected person then seemed to have stopped breathing. CW12 recalled hearing the subject officer yelling before he began firing his gun the first time.

CW12 said that there were two bursts of shots, the affected person was “jerking backwards” as the shots were fired and then fell backwards.

CW13 was standing beside CW12, and heard CW12 say that someone was being shot. CW13 did not hear the initial shots. When CW13 looked out the window she saw that both officers had their guns drawn and pointed at the affected person. CW13 could not recall if the affected person had anything in his hand. CW13 then heard shots, which she believed came from the subject officer. CW13 looked away as the shots were fired, when she looked back the affected person was on his back on the ground.

CW14 heard CW12 say that “somebody’s got shot.” CW14 then looked out the window and observed the affected person beside the open door of a police SUV. CW14 does not remember seeing the affected person being shot.

Civilian Witness 15 (CW15)

CW15 heard CW12 say that someone had been shot so went to his window to see what was happening outside the office. CW15 saw two marked police SUV’s, the affected person was standing in the open drivers door of one of the SUVs/ Two police officers were on the road facing the male, both officers had their guns drawn and were pointing them at the affected person.

CW15 heard a shout that he believed came from one of the officers, the affected person then turned to face the officers. CW15 said the officers then took three paces towards the affected person. CW15 heard three gunshots in quick succession and the affected person fell to the ground. CW15 described what he observed as follows:

“When I stood up, right away I saw this -- within a second they shouted something to him and within a second he turned and they shot him. Right? So the whole thing I saw was maybe two seconds, right?”

CW15 was not aware of the affected person having anything in his hands but did say he could see something on the ground beside the affected person after he had been shot.

Civilian Witness 16 (CW16)

CW16 was in her office when she heard two loud bangs from outside. CW16 then heard CW12 say that someone had been shot. CW16 went to her window and saw the affected person at a marked police Chevrolet Suburban. CW16 said it appeared that the affected person was in the process of getting into the vehicle.

Two officers were standing on the road pointing their guns at the affected person. CW16 heard the police shouting, “drop the...” but she could not tell what else was shouted or who shouted it, although she believed it was one or both of the officers.

CW16 said the affected person turned to face the officers and moved towards them at a walking pace. CW16 could not recall what position the affected person's hands and arms were in, or if he was holding anything.

The affected person reached the edge of the open driver's door and CW16 heard another shout of, "drop the..." and again she could not tell what else was shouted. The affected person took steps towards the officers and CW16 heard two shots, CW16 did not know which officer had fired.

CW16 said the affected person was about two feet away from the edge of the open door of the vehicle when the shots were fired and was about six feet away from the subject officer and seven to eight feet from the other officer. After the affected person fell to the ground, CW16 said one of the officers kicked an object out of the affected person's hand. She said she thought it was a gun and she could not recall which hand the object had been in or which officer kicked it away. CW16 said the officers then stood off until the ambulances arrived.

Civilian Witnesses 17 and 18 (CW 17 and 18)

The witnesses listed below observed the incident from outside of their workplace which was roughly 100 metres from the incident location. Both witnesses were standing beside each other and saw the incident from the same vantage point.

Civilian Witnesses 17 (CW17)

CW17 was taking a break outside her workplace with CW18 when she saw two marked police vehicles stop about two to three car lengths apart on the roadway. CW17 saw the subject officer jump out of his vehicle, draw his weapon and yell at somebody. CW17 then saw the affected person running towards the police vehicles. CW17 said it was her impression the subject officer was yelling at the affected person to stop and get down on the ground. She said the affected person ran approximately 50 feet toward the subject officer before being confronted. CW17 did not see anything in the affected person's hands nor did she hear him say anything.

CW17 said the affected person was about 20 to 25 feet from the subject officer when the subject officer fired three shots. CW17 said the affected person was still moving toward the officers after the first shots were fired but was moving slower. CW17 said she saw the affected person move forward about 10 feet and then she heard three more shots and the affected person fell to the ground. CW17 said the affected person was about 10 to 15 feet away from the subject officer when he fell to the ground.

CW17 lost sight of the affected person when he went down. She said she saw the subject officer kicking at the affected person and thought he was kicking at a weapon in the area of where the man went down.

CW17 said the incident lasted about 35 to 40 seconds from the time the first officer pulled up until the last shots were fired.

Civilian Witnesses 18 (CW18)

CW18 was on a break outside her workplace overlooking the intersection of Granville and Island Highway.

CW18 saw two police vehicles on Island Highway with flashing lights on, no sirens. She saw the vehicles turn east and within minutes they were coming back.

CW18 saw the affected person on the sidewalk running, and at the same time the second police vehicle came up fast and to a “screeching halt” in her view. CW18 said she saw the affected person running away from the two police vehicles towards her direction.

CW18 said that the subject officer:

“...swung his door open and as soon as he came out, he shot. And I didn't hear him say, ‘Stop, put your gun down.’ I didn't hear nothing. I heard bang, bang, then I seen the kid drop. And then the officer lowered his gun and kept shooting.”

CW18 said she heard two shots before she saw the male go down, slight delay and then more shots. She said:

“And then I noticed the officer's gun, because I'm very familiar with guns. The first shot was up at the guy, and after the first shot that I heard, the second shot -- after the second shot I heard, he fell. I seen him go down. And I noticed he had black hair and a grey shirt on. And then -- then the officer's gun went down to towards the ground, and he kept shooting. So I was a little devastated to think that he was -- you know, the guy was down. I couldn't see if he was dead or hurt or not moveable. I couldn't see that. But I do know that he did continue to shoot him. And then he walked up to him and kicked him, like you would kick someone to see if they were alive. And that's all I saw.” [See below under medical evidence for a further discussion of CW18's statement]

CW18 said she could not see the affected person once down as her view was obstructed after the affected person fell to the ground. She said she heard the subject officer yell something, to the other officer after the shots were fired.

CW18 said the subject officer was about eight feet away from the affected person when the first shots were fired. CW18 also said that the affected person was running away from the officer, who continued to shoot at him. She said the subject officer took two more steps towards the affected person and continued to shoot; one more step and then he kicked the affected person. An ambulance arrived shortly after and CW18 went back inside to work.

Civilian Witnesses 19, 20 and 21 (CW 19, 20 and 21)

The witnesses listed below observed the incident from a number of businesses located around the incident scene.

Civilian Witness 19 (CW19)

CW19 was at work and heard someone yelling “drop the knife, drop the knife” a few times. She said the command to drop the knife got louder each time it was said, and that it was said by the same voice each time. CW19 did not hear anything in response.

CW19 heard three shots and went to a window and looked out. She said by time she got to the window, the affected person was on the ground, an officer went over to the affected person and kicked a knife away from him.

CW19 said she saw the subject officer standing next to the man’s body with the gun facing towards the affected person, with another officer on the other side of the affected person. She heard this officer saying “shots fired” on his radio. CW19 said the subject officer still had his gun out and said “I got it” as he walked up to the affected person and kicked the knife away.

Civilian Witness 20 (CW20)

CW20 was working outside when he saw a marked RCMP vehicle with lights on, driving south on Island Highway to Granville Street. He said he walked towards the area where the police vehicle was located.

CW20 saw the affected person running down the street in the area of the police vehicles. CW20 saw the subject officer jump out of the police SUV, the affected person was running towards the police vehicle with his fists clinched. CW20 described the affected person’s movements as:

“It was like a normal run, running downhill. His arms weren't out to the side, you know. He was running like, like a normal person would run. It was a full out -- I would say a sprint.”

CW20 said the affected person cut in front of the SUV. At this point CW20 lost sight of the affected person but heard him let out a screeching yell. The door of the SUV was open and CW20 then saw the following:

“Because the officer was out, and the officer was probably standing a foot off from the door -- with his gun drawn, on [the affected person]. And then, then I see sight of [the affected person] again. He comes from out, to the side of the -- where the door is too, and he's in front of the officer. And multiple times I heard, you know, ‘Drop the knife, drop the knife. Get down, and then the two shots were fired.’

CW20 said that prior to the shots being fired, the affected person was walking towards the subject officer who was backing up away from him. CW20 said “He took maybe; I'd say two,

two or three steps back.” CW20 said the affected person’s fists were clenched but he did not see anything in the affected person’s hands. CW20 said he was about 150 feet away from where the affected person and the subject officer were at that time. CW20 said another officer was about eight feet away from the affected person and he also had drawn his gun.

CW20 said the officers repeatedly told the affected person to drop the knife and to stay down:

“I believe he moved, he started moving over to the left more, away from the SUV, and then that's when the -- more commands coming out, to drop the knife and get down, and then the remaining shots. I believe two more or maybe three. It just -- it happened so fast, it was -- and then he goes down.”

CW20 said the affected person took two or three steps closer to the subject officer and was five or six feet away from him when the second set of shots were fired. CW20 said the same officer fired all the shots and said there was between five and seven seconds between the first shots and the second shots.

CW20 said the affected person went down on his back on the pavement. The officers then moved in close to the affected person and holstered their guns. CW20 said an ambulance arrived about five minutes later.

Civilian Witness 21 (CW21)

CW21 was at work with a view of the intersection of the Island Highway and Granville Street. CW21 heard yelling voices or loud talking that was followed by “popping sounds”. He said he heard a couple of popping noises, then some more yelling followed by more, “multiple” popping noises.

CW21 said he looked out the window and saw a police vehicle just on the other side of the intersection. He also saw an RCMP officer standing in the middle of the street with his gun drawn. CW21 moved to a better vantage point and started video recording his observations on his cell phone.

CW21 said he saw two police cars, two police officers and the affected person who was lying on the road. One of the officers was still pointing his gun at the affected person; the other officer was closer to the affected person and bending over him. A third officer arrived and started directing traffic in the intersection.

CW21’s video shows an officer standing in a tactical cover position with his arms stretched out in front of him while the subject officer appears to be checking for signs of life and talking on his radio. CW21 said the video was recorded within a minute of hearing the voices and shots.

Civilian Witness 22 (CW22)

CW22 is a telecommunications operator and is both a call taker and a dispatcher as required. CW22 said he heard his supervisor talking to somebody on the telephone about a male who presented a knife to the complainant (CW3). The file then appeared in his queue and because of the knife it was given a high priority designation.

CW22 said a computer data base check indicated the affected person had a number of flags for violence and had been convicted of forcible confinement and this information was transmitted.

CW22 said both the responding officers radioed they were going to the location where CW3 had been threatened with a knife. The next transmission CW22 heard was, “shots fired” and that, “shots have been fired, I need EHS Code 3.”

CW22 also said the subject officer telephoned him and advised that the affected person had produced a knife and lunged at one or both of the members and was then shot.

BRITISH COLUMBIA EMERGENCY HEALTH SERVICES

Both witnesses below are paramedics who were working close to the incident scene when the shooting took place.

Civilian Witness 23 (CW23)

CW23 was working at her office when she heard two shots, then three more with a male shouting, “*get down, get down*” in between the two volleys of shots. She went downstairs with colleagues, dispatch advised of the shooting told them to wait for police to advise all was safe to proceed.

CW23 said she drove the ambulance to the right side of the affected person. CW23 saw a knife approximately four feet from the affected person. CW23’s partner, CW24 attended to the affected person and confirmed he was deceased.

CW23 spoke with the subject officer who confirmed to her that the affected person, “charged at him with a knife and that he shot him centrally to protect himself.” CW23 retrieved a blanket from the ambulance and covered the body.

Civilian Witness 24 (CW24)

CW24 was working at her office when she heard a, “popping sound” and after a brief pause, another pop, a longer pause then three more in quick succession.

CW24 said she looked out the window and saw a police vehicle driving quickly up the street. Shortly thereafter there was a call for a shooting and police advised it was safe to go in.

CW24 and her partner, CW23 attended in their ambulance and parked close to where the affected person was lying on the ground. CW24 saw two officers, one whom she recognized. The other officer, the subject officer was the corporal who had been on the radio.

CW24 said she heard from the subject officer that the affected person:

“Had approached the RCMP with that knife and that he was shot by the Corporal and...that information...came from the Corporal and we knew by the time we were done doing our assessment that he was shot. Those were possible bullet holes done by the Corporal, and that he had chased the Corporal with the knife kinda (sic) of thing.”

CW24 said she saw a knife near the affected person, a few feet away from his head.

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 said he was at the Port Hardy RCMP detachment when a call about a threat made to CW3 was reported. WO1 said the caller advised that the affected person had threatened to stab CW3 after saying that he had already stabbed two other people.

WO1 said he took the initial call and his partner witness officer 2 (WO2) and the subject officer also responded. WO1 said as he approached the intersection of Highway 19 and Granville, he saw a male who matched the vague description provided, but he turned out not to be the person being sought. He said he continued to the four way stop at Granville Street and Highway 19 and saw another male [the affected person] walking down Granville on the sidewalk towards him on his right hand side.

WO1 said that when there was about 30 to 40 feet between them he turned on his emergency vehicle lights and pulled over to the side of the road so that he was not blocking traffic. WO1 said as soon as he turned on his lights and parked his vehicle which was then about 20 feet away from male:

“The guy just went absolutely berserk, he jumped up [right on the spot as if he was startled], reached into his right hand side pocket...with his right hand and produced a knife”

WO1 said the knife was a folding knife that you can flick out with your hand, silver with a three to four inch blade. WO1 said the affected person’ had a “*mad look*” on his face when he jumped. WO1 said that while he was still in his vehicle the affected person started to run towards him and he instinctively drew his pistol because, “the guy is screaming at me, running towards....I think he might have seen the pistol”.

WO1 said the affected person ran past his driver's side door. He said his windows were up and he did not have time to communicate with the affected person. He said he turned and saw the subject officer about 60 feet behind him, out of his vehicle standing behind the open driver's side door with his pistol drawn. He said the affected person was letting out a tribal yell and screaming [no words]. He said the affected person had the knife in his right hand and was holding it in front of him. He said the expression on the affected person's face was "pure rage".

WO1 said he got out of his vehicle as the affected person was running toward the subject officer. He could still see the knife in the affected person's hand and could see the subject officer had also drawn his weapon. WO1 said he moved to his right, to the other side of the road as they were in a cross-fire situation. He said the affected person was "running full speed towards" the subject officer.

WO1 said that the subject officer said, "... 'drop the knife' ... as the guy was running with a knife in his hand toward him". He heard shots and saw the affected person stumble a couple of times, seven to eight feet from the subject officer who was "*retreating*". He said the affected person continued towards the subject officer, still with the knife, and he heard the other shots.

WO1 said when he got to where the affected person and the subject officer were located, the affected person was already down on the ground. The affected person had gone first on all fours and then onto his back and still had the knife in his hand. He said the subject officer kicked the knife from the affected person's hand and it landed about four to five feet away. The affected person was not moving.

WO1 continued to watch over the male with his pistol drawn while the subject officer called shots fired over the radio and called for an ambulance. WO1 said he too called shots fired over the radio.

WO1 said the affected person was "advancing" on the subject officer with a knife in his hand when the shots were fired and he recalls two bursts of shots three to four seconds apart, but cannot say how many shots in each burst.

WO1 said the subject officer was telling the affected person that help was coming. WO1 said WO2 blocked off the intersection and he blocked off the other entrance with his vehicle. He said an ambulance arrived and pronounced the affected person deceased.

WO1 said he believed the affected person was going to stab the subject officer, and believes that if the subject officer did not draw his weapon the subject officer would be dead.

Witness Officer 2 (WO2)

WO2 was at the police station when the threatening complaint came in. WO2 said she asked the details be also sent to her police vehicle and she also responded to the call. She said she heard other dispatches coming in advising that the suspect had told the complainant (CW3) that he was going to stab him and that he had stabbed two other people. She said she heard over the radio

that when the suspect was told to leave the area, he “flipped out” and pulled out a switchblade, then he put the blade back in his pants and left.

Prior to locating the affected person, WO1 and the subject officer were heading to the high school. WO2 said she was also heading that way when she heard, “pop-pop-pop-pop”, a slight pause and “pop-pop-pop”. She said it seemed to be just a couple seconds between and about five seconds until she could see the incident scene. She said she parked perpendicular to the road so as to block access from traffic.

WO2 said she could see the affected person on the ground and the subject officer and WO2 were approximately ten feet away in a, “very tactical kind of position over the person on the ground, and just constantly looking around, scanning the scene.”

She said that shortly thereafter, paramedics attended and covered the body with a blanket.

Subject Officer

The subject officer declined to be interviewed by or provide any report to the IIO, as is his right pursuant to the Charter of Rights and Freedoms.

MEDICAL EVIDENCE

An autopsy was conducted on the affected person on 2015 July 13. The autopsy determined that the cause of death was multiple gunshot wounds. The pathologist found that there were five entrance wounds, two complete exit wounds and one partial exit wounds on the body of the affected person.

Blood samples provided to a lab for the purpose of a toxicology report indicated that there were no illegal drugs or prescribed medications in the affected person’s system when he died. The report also noted the presence of a trace amount of ethyl alcohol.

Following a review of the file, the evidence of two witnesses, CW11 and CW18 raised the issue of whether the affected person was shot to death while he lay on the ground.

The pathologist was asked whether any of the bullet wounds sustained by the affected person could have been inflicted while the affected person was on his back. The pathologist dealt with each of the wounds sustained by the affected person and ruled out any possibility of the injuries being inflicted, while the affected person was on the ground, as described by CW11.

BALLISTICS EVIDENCE

Six expended 9mm cartridge casings were collected from the incident scene. No other casings at the incident scene were seen nor identified by anyone. Both WO1 and the subject officer’s pistols were seized. WO1’s pistol had a full load of ammunition, suggesting his weapon was not fired.

The subject officer's pistol had six bullets less than a full load. During autopsy three spent bullets were removed from the affected person's body. Another spent bullet was located and seized from the incident scene. These bullets along with the expended casings were identified as having been fired from the subject officer's pistol.

USE OF FORCE EVIDENCE

The IIO requested a Use of Force report in March of 2016. The report was provided in February of 2017 and found that the subject officer's actions conformed to RCMP policy and training.

PHOTOGRAPHIC EVIDENCE

Below is an image of the knife that the affected person was carrying during the incident.



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]

In *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

There were many witnesses that provided statements and information during the course of this lengthy investigation. All witness statements were reviewed in the preparation of this decision. Many witnesses were auditory only and their evidence has been reviewed however not summarised herein as they were in general agreement with the eyewitness statements.

The evidence of CW1, CW2 and CW3 detail threats made by the affected person to them and how the affected person became the subject of a complaint to the police. Statements from CW22 set out how this information was relayed to the three involved officers.

The affected person was said by the first three witnesses he encountered to have brandished a knife and to have spoken of having killed people. CW22 relayed this information to the police and the witness officers confirmed receiving that information.

There are almost as many different accounts of the incident as there are witnesses to those events. Some saw the entire event but most saw only parts. Almost everyone agreed there were two bursts of gunfire separated by a short interval. Several witnesses believed both the subject officer and WO1 fired their weapons however the physical evidence shows that only the subject officer fired his weapon.

That the affected person moved towards the police while carrying an edged weapon is articulated by many witnesses. CW4's description of the affected person "lunging", CW20's narrative that 'prior to the shots being fired the affected person was walking towards the subject officer who was backing up away from him and CW11's description of the affected person, "...running at them like he wanted to die" suggests that the subject officer facing the affected person's approach would have had to act decisively and with an appropriate measure of force.

Various witnesses described the affected person's approach to the officers as:

Moving quickly

He made "a lunge toward him"

As the officers got within approximately two feet the affected person "jumped up ... and lunged..."

It was a full out -- I would say a sprint

WO1's description of the affected person as he ran past his vehicle was that the affected person was letting out a tribal yell and screaming [no words]. He said the affected person had the knife in his right hand and was holding it in front of him. He said the expression on the affected person's face was "pure rage".

Several witnesses attested to hearing commanding shouts from the police for the affected person to drop the knife prior to the first burst of gunfire and then again between bursts and some

commands even again after the second burst. That the affected person's final position was on his back was also noted by most witnesses.

Many witnesses saw the subject officer kick the knife away albeit one witness, whose view was partially blocked, thought the officer was kicking the affected person.

Because of CW11's proximity to the incident scene and her certainty that the affected person was shot while he was on the ground, combined with CW18's shared belief that the affected person was shot while on the ground, further investigation was warranted and necessary.

The pathologist's further independent opinion, based on the wounds of the affected person and the location of the subject officer, is conclusive evidence that the subject officer did not shoot the affected person when he was on the ground.

CW18 was approximately 100 metres from the incident scene. Her view of the road was obscured. CW18 said she could not see the affected person once down. CW17, who had the same vantage point as CW18 said she lost sight of the affected person when he went down. CW17 saw the kicking motion but did not hear or see the affected person being shot at while down on the ground.

Had the physical evidence coincided with the affected person being shot while lying on the ground a further examination of whether that level of use of force on a person in that position could be justified would be dictated.

In all the circumstances herein however the question is whether the degree of force used by the subject officer can be seen to have been constrained by the principles of proportionality, necessity and reasonableness.

The subject officer faced a man rushing at him, making incoherent sounds and with a knife pointed at him. The man was directed to drop the knife but didn't and continued his approach at the subject officer. WO1 thought the subject officer would be dead if he had not used his weapon. A knife can certainly be a lethal weapon.

Our highest Court has recognised that when facing an attacker no-one could be expected to measure the force used with exactitude and further that detached reflection cannot be demanded in the presence of an uplifted knife.

A review of all the evidence collected during this investigation shows that when the subject officer shot the affected person it would be reasonable for him to believe that the lethal force he invoked was necessary for his self-preservation as is required to justify that force in accordance with s. 25(3) of the Criminal Code of Canada.

Finally and although not determinative but in concurrence with this decision is the Use of Force report. That report, almost a year in the making, concludes that this situation was handled by the subject officer professionally and in accordance with the policies and training he was subject to.

That report, the ballistics report, further follow up witness interviews necessitated by the possibility that the affected person was shot as he lay on the ground and finally the intense workload upon the members of the IIO contributed to the lengthy delay in the timeliness of this decision.

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, it is not considered 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

2017 July 21
Date of Release

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

2017 July 21
Date of Release