



**PUBLIC REPORT OF THE
CHIEF CIVILIAN DIRECTOR**

Regarding an officer-involved shooting of a male by the Lower Mainland
Emergency Response Team
in Burnaby on 2015 September 18.

IIO 2015-130

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 incident involving an armed male affected person who died when members of the Lower Mainland Emergency Response Team were attempting to rescue a hostage on 2015 September 18. Police received a 911 call from a female stating that her ex-husband (the affected person) was in her house with a gun and that he had already shot someone. Police responded and during the course of their interaction with the affected person shot him twice while he simultaneously shot himself in the head. 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 incident began when police received a call from a female (Civilian Witness 1) asking for help as her ex-husband (the affected person) was in her house with a gun. During her 911 telephone call she reported the affected person had just shot her boyfriend. Several other 911 calls with reports of gunfire and a woman screaming were also received.

Burnaby RCMP, Vancouver Police, the Lower Mainland Emergency Response Team (LMD ERT) and the Vancouver Police Department Emergency Response Team (VPD ERT) attended the call. By the time the ERT units arrived everyone had fled for safety from the house except CW1's boyfriend, the affected person and a tenant (Civilian Witness 5) who was sleeping upstairs.

Following unsuccessful attempts to make contact with the affected person, a number of tactical plans were developed. The immediate action plan, enacted based on the information known to police, included the LMD ERT entering the residence from the back. The affected person was in the lower section of the home near the back when the LMD ERT entered the residence. The affected person was encountered immediately after they entered the residence.

At that time the affected person was holding a rifle with an attached bayonet which was pointed towards the subject officers. The subject officers shot at him and he was hit with two bullets in the chest. Almost simultaneously the affected person looked down the barrel of his rifle and shot himself in the head. The affected person died instantaneously.

The Independent Investigations Office ("IIO") was notified of this incident at 0838 hours on 2015 September 18. The Independent Investigations Office (IIO) asserted jurisdiction as the affected person died during his interaction with police.

The IIO investigation collected evidence to present to the CCD who would then determine whether or not any officer may have committed an offence during the course of their contact with the affected person.

ISSUES

The legal issue to be considered in this case was whether the subject officers may have committed an offence by using excessive force and causing the death of the affected person.

EVIDENCE CONSIDERED

Evidence examined in this investigation includes statements made by civilian witnesses, statements made by witness officers, medical evidence, a forensic firearm damage report, a blood spatter analysis, ballistic evidence, photographic evidence and police dispatch records.

TIMELINE

All events occurred on 2015 September 18

TIME	EVENT
0655	CW1 calls 911 to report that her ex-husband is at her home with a gun. During the call she says that someone has been shot.
0711	VPD ERT advises they are coming.
0712	Dispatch says LMD ERT call-out approved for active shooter situation.
0756	The incident commander (WO1) arrives at scene.
0813	Front and rear entry teams (VPD and LMD ERT respectively) are ready.
0813	WO1 gives the command to enter the residence.
0815	WO1 hears 3 gunshots.
0818	WO4 announces there is a deceased victim and a deceased suspect.

AFFECTED PERSON

As the affected person is deceased, no statement is available. The affected person was 48 years old at the time of his death.

CIVILIAN VICTIM

The affected person shot and killed CW1's boyfriend during the course of the incident. CW1's boyfriend is referred to as the "civilian victim" in this report.

CIVILIAN WITNESSES

Civilian Witness 1 (CW1)

CW1 lived in the ground floor suite of a house, with her boyfriend, her son, his girlfriend and their two infants. She said she and the affected person were married but had relationship issues that spanned 25 years. She had moved out of the affected person's house approximately a year before.

CW1 said that over the years the affected person had spoken of suicide and approximately three weeks before the incident he had told her that he tried to hang himself. CW1 said the affected person also told her:

...he had realized that he could shoot himself...and that was what he was going to do. He had somebody that was going to get him a gun and he was going to shoot himself.

CW1 said she had texted the affected person the day before the incident and advised him of her plan to file for divorce.

On the day of the incident, CW1 said she had gotten up at about 0530 or 0600 hours and was getting ready for work. She heard a bang at the door and then heard the door, "bust open". CW1 said the affected person was yelling at everyone to get into the living room. She said he had a rifle with a bayonet at the end of it.

CW1 said she told him get out of the house. She called 911 and advised the operator that a man with a gun had broken into her home and that there were babies in the home.

At 56 seconds into the 911 recording a sound like a gunshot can be heard along with a male's voice believed to be the civilian victim confronting the affected person. CW1 is also heard on the recording stating that the affected person is: "Oh my God. He's just shooting. Oh my god."



Rifle seized from the floor next to the affected person.

CW1 said her son came out of a room with an electric guitar and hit the affected person on the side of his head with it. CW1 said she was on the phone with 911 as this was happening. CW1 said she went to the front door and the affected person was lying on the ground. CW1 tried to close and lock the door however she could not as it was broken.

CW1 said her boyfriend (the civilian victim) came down the hall to see what was going on. She told the civilian victim to get the affected person out of the house. The affected person pushed the door open and CW1 went into a bedroom. She said she heard two gunshots and smelled

gunpowder. She said she came back out of the bedroom and saw the affected person in the hallway with the gun.

She said she saw the civilian victim had blood, *“pouring out from the other side of his neck”*. She believed he was deceased. CW1 said she told the affected person, he was going to *“rot in jail”* and that the police were going to kill him, to which he replied, *“That’s what I’m hoping for”*.

CW1 said she picked up her granddaughter and her cell phone, still connected to 911, and yelled into the phone that the civilian victim had been shot. CW1 also said that the affected person; *“just told me that if I didn’t have my granddaughter in my arms he would have shot me.”*

CW1 said she went into the kitchen. The affected person was pointing the rifle at her and told her to pass the baby out the window to CW2 as he had been there but had moved away. The affected person was yelling at CW2 to come to the window. The 911 call ended shortly thereafter.

CW1 said the affected person told her to give her the telephone or he’d shoot her and she gave it to him. CW1 said she moved toward the back door and the affected person told her he would shoot her if she opened it. She told him she was going to put the baby outside and she opened the door and ran. She said she heard two shots as she ran.

CW1 said she ran to the front of the house and met up with her son, CW2. At that stage she saw fire trucks and ran to the fire trucks yelling for help. CW1 later said that a female police officer saw her and put her in the back of her police car.

Civilian Witness 2 (CW2)

CW2 is CW1’s son. He said that just before 0700 hours he heard a *“big bang”* at the front door of the house. There was a second bang and the door *“blew open.”*

CW2 said he saw the tip of a gun with a knife on the end of it just in front of the door. CW2 said the knife was pointing out. He said the affected person was holding the gun and was yelling at people in the living room. CW2 said the gun was long and black and it looked like a rifle. He said as the affected person entered the house he said, *“It’s all over now.”*

CW2 went into his bedroom and brought out his electric guitar and hit the affected person with it. He said, *“I hit him pretty hard, like right in the face.”* CW2 said he ran out the front door and the affected person followed him. CW2 said he hit the affected person with the guitar a second time. As CW2 ran to the back of the house he said that the affected person shot at him:

He was standing on the cement pad in front of our front door...he pointed the gun at me, as I was running away I looked behind and then I, I saw the gun pointed at me so I just focused on running.

As CW2 ran to the back of the house he heard two or three more shots and CW1 screaming. CW2 left his guitar in the back. CW2 said the affected person was yelling but he could not make out what he was saying. CW1 was saying, *“Oh my God, oh my God”*. CW2 called 911.

CW2 said he went around the back of the house to the west side and looked through the kitchen window where he saw CW1 and his daughter sitting in a chair.

CW2 said the affected person said, *“Put the phone down or I’ll kill both of you.”* CW2 said he went around the back to the east side of the house and got his girlfriend (CW3) and her son out of the house through a bedroom window.

CW2 came back to the front of the house and CW3 went to a neighbour’s house with her son. CW2 said he heard two more shots and saw CW1 running down the outside of the house with his daughter. He said that after those last two shots he did not hear anything from inside the house.

CW2 he met up with an officer and was taken to the police station for a statement.

Civilian Witness 3 (CW3)

CW3 said she was at home in bed with her son at about 0630 hours. Her boyfriend, (CW2), said goodbye and a few minutes later she, *“...heard a bang...like the front door of the house ...slamming against the wall.”* She heard the affected person yelling, *“Everybody needs to get into the living room.”*

CW3 said she heard CW1 yelling *“Get out, get out”* and *“he’s got a gun”*. CW3 said she heard the affected person telling CW2 to get outside. She heard the civilian victim say, *“Erm, what are you doing here? Um, you need to leave... you need to calm down...”*.

CW3 said she heard CW1 on the phone to police. She said she heard, *“three gun shots...[and] a while after three more.”* CW3 heard the civilian victim say *“You’ve got to be kidding me.”* She said there was a pause of silence for about a minute and CW1 said, *“...Oh my God, oh my God...”*

CW3 called police and told them what had happened including that somebody had been shot. She heard CW1 yelling, *“Somebody needs to come. My boyfriend’s been shot ... he’s going to die.”*

CW3 said she heard the affected person say, *“Get outta my sight.”* She heard CW1 say, *“...you need to come ... he has me and my granddaughter at gun point. I’m holding my two year old granddaughter...”* followed by the affected person saying:

get off the phone, give me the phone, it doesn’t matter if you call the police. I’m killing myself anyways...[and]...give me that phone or I’m gonna shoot you...[and]...If you didn’t have this baby, you’d be dead by now. I would have shot you.

CW3 said CW2 knocked on the bedroom window and she passed her son to him and crawled out the window. CW3 went into her neighbour’s home and stayed there for about half an hour.

CW3 said it was quiet for about five minutes and she heard two or three more gunshots. The shots were one right after another and she thought were going *“from the back towards the*

front...” of the house. She heard CW1 scream and thought CW1 was running from the gunshots on the path between the houses.

CW3 said she heard a male on a loud hailer say, “*come out with your hands up...it’s the Police*” and she did not hear a response to police commands. She said that shortly after she heard:

...the guns going off...the first gun I heard I recognized which I believe was the same gun that was going off earlier...I heard it go off once...and then I heard guns go off after that which I never heard before, so I believed it was the police.

CW3 said the gunshots happened right after one another. The different shots were “*not as loud.*” She does not recall hearing much after that as her son was fussing. She said about fifteen minutes later she was escorted towards other officers and taken to the Burnaby RCMP detachment.

Civilian Witness 4 (CW4)

CW4 lived upstairs in the home where the incident occurred. He said that at about 0630 or 0645 hours he heard a loud sound from downstairs and what he thought was glass breaking. CW4 said it was his belief the tenants downstairs were fighting.

CW4 heard CW1 say “*Oh, no, no, no, oh my God, oh my God*” and a “*Pom-pom*” sound that he thought might have been from a gun but at the time he did not think it was. He said he heard the sound three to five times.

CW4 said he received a phone call from his neighbour reporting that someone was shooting in the home and that she had called police. CW4 did not believe there had been a shooting in his house. He said he heard a scream and went downstairs thinking there was an argument happening.

CW4 said when he got downstairs he partially opened a doorway and saw a man with a gun in his right hand. He said he went back upstairs and woke up his other tenant (CW5) but she refused to leave the house. CW4 said that as he walked away from the house police officers asked who he was and whether there was anyone upstairs in the house. He confirmed the other tenant was still there.

CW4 said that between 0800 and 0820 hours, after “*many police*” had arrived, he heard a “*boom*” from his house that sounded like a bombing. He said he could not see his house and did not hear any other noises.

Civilian Witness 5 (CW5)

CW5 lived upstairs and was asleep when the incident occurred. She said CW4 woke her up by banging on her bedroom door. She said he told her someone was shooting a gun and he was not sure if someone had been killed.

CW5 said she was very tired and did not hear anything so she went back to bed. She said that 30 or 40 minutes later, while half-asleep, she heard something “*really loud, very noisy downstairs.*” She also heard a dog barking. She said she heard sounds pertaining to some sort of conflict downstairs and a “*murmuring or moaning or light crying*” that she believed to be a woman’s voice.

CW5 said she heard two very loud sounds. She described the sound as being like something heavy hitting the ceiling downstairs, which was her bedroom floor. She described wondering why people were “*hammering, or striking or punching, or banging*”. She said she heard heavy footsteps on the stairs and an RCMP member came into her bedroom and escorted out of the house.

CW5 said that when she heard the noises downstairs she looked at her phone and it was 0718 hours. She believed it was about 0815 or 0820 hours when she left the house.

Civilian Witness 6 (CW6)

CW6 lives nearby and said that sometime before 0700 hours he heard two loud gunshots. He said he looked toward the home where the incident took place and saw a male standing in the front yard. CW6 said the male appeared to be arguing with someone and he heard a third gunshot and saw the muzzle flash. He said that just as he heard the third gunshot he heard a woman scream “*a very eerie scream.*”

CW6 did not see who had fired or who had screamed. He estimated it was 20 to 30 seconds from when he heard the first two shots to when he heard and saw the third shot. CW6 said:

I saw the male to the right of the front door and he was facing east bound that way and when I saw the muzzle flash go off I ran back in the house.

CW6 said the male ran to the back of the house and he thought someone may have been shooting at the male he saw running. CW6 called 911 at 0657 hours and reported what he had seen. During the call he heard two more shots and when he looked out he saw the same male and he was now holding a little girl.

CW6 said at approximately 0815 to 0820 hours he heard two sounds like “boom boom” that he thought sounded like a grenade blast. He did not hear any shots fired after the police arrived.

OFFICERS

The IIO uses the term witness officers and subject officers to distinguish between officers who 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 was the police Superintendent who took charge of the incident. WO1 was notified of the incident by the Federal Operation Command Centre (FedOCC) and he and other ERT officers turned the police radio to the Burnaby channel to listen to the ongoing 'shots fired' incident. WO1 said he decided to send a team. He said he did not assume command of the incident while he was en route as:

The officers on the ground are best equipped to assess any imminent risk and take the appropriate action without having to report back to a remote officer.

And:

Part of my training and experience if you take command while not at the scene it 'handcuffs' the members the scene from doing what they have been trained to do.

As WO1 traveled to the scene he became aware the VPD ERT was also attending and would arrive first. He said he became aware that WO2 was with CW1 and the officer was relaying information as to the circumstances of the incident including that the affected person had broken into the house and shot the civilian victim.

WO1 said he was advised that WO3 was in charge at the scene and he requested that WO3 take steps to contain the scene and to provide a response plan to the incident.

WO1 requested three initial plans be developed to deal with the incident and he also confirmed that the VPD ERT had less lethal and lethal use of force options available to them.

WO1 said that three plans were developed which dealt with various scenarios including the affected person attempting to get away from police, the affected person surrendering and an action plan should ERT members need to enter the home. WO1 said that he confirmed he had approved the immediate action plan (IA) for officers to enter the home to WO3 prior to LMD ERT arriving.

WO1 said that at approximately 0730 hours he requested negotiators and was told VPD negotiators were on route. He said he told the negotiators to pull over and attempt to make contact with the affected person and any resident inside the premises because his priority was to initiate a call right way. WO1 said the negotiators advised that after repeated attempts the phone appeared to be off.

WO1 said:

[CW1] had her phone on and was using it ...[the affected person] ordered her to put the phone down and he grabbed it from her. And the phone is now off. He does not want to talk...His phone was also off.

WO1 said he was advised that the members on inner containment could see no movement from their vantage points. He was advised that a daughter had climbed out a window and was in a house nearby.

WO1 said his main priority was to rescue the civilian victim and to locate and get medical help for civilian victim and locate and arrest the affected person.

WO1 said that once the 3 initial plans were in place he was provided further information including that the affected person had:

- forced his way into the residence armed with a rifle and bayonet;
- held CW1 at gunpoint while she was on the phone; and
- taken CW1's phone when she bent down to grab her grandchild.

He was also advised:

- CW2 hit the affected person with a guitar and ran;
- CW1 and her granddaughter ran;
- CW1 believed the affected person was shooting at her as she ran out the door;
- CW1 believed the back door was open and she did not know if the affected person had followed her or stayed in the residence;
- Shots fired from that address had been confirmed;
- A female (CW3) and young child had got out;
- It was highly possible three people were in the residence; an armed suspect (the affected person), the females boyfriend (the civilian victim) had a gunshot wound and was believed to be still alive and an additional person (CW5) possibly upstairs were in the house;

WO1 said he arrived at 0756 hours and was further advised:

- The civilian victim was bleeding heavily from a gunshot wound to his neck in the lower living room area;
- There was another female still in the residence in an upper suite and there was connectivity from the suite inside;
- The affected person had not been seen since CW1 ran out;
- There had been no activity since members arrived and CW1 had gotten out; and
- There had been multiple callers who had described a man with a gun with a knife on the end.

WO1 said officers who were observing the back door advised they felt the back door was still open.

WO1 said he assumed command and verbalised it over the radio. He said he briefed WO3 personally at the front about the plan and confirmed the above details. He said:

When I briefed the VPD members I told them their primary option was the front door and they had to proceed upstairs to the as yet unknown but confirmed occupying female. We knew she was inside but didn't know where she was. That was their priority to gain entry and get up and secure her.

WO1 said he briefed WO4 personally at the back regarding the plan and confirmed the above details.

WO1 said he received confirmation the two sergeants had shared his briefing with their teams. He said he advised both teams to stand up ready to enter the home. WO1 outlined the factors that caused him to launch this action:

Unknown location of the suspect and he has already projected death or grievous bodily harm to individuals inside and if he is not located inside where is he? He now presents unknown risks to other unknown persons which I am now responsible for because I am in command...

Current status and location of [the civilian victim] who was at last known location seen by [CW1] bleeding heavily from the neck but breathing and conscious so potentially breathing out so there was a rescue and life saving measure needed to be rendered for him...

I was not prepared to wait because of [the civilian victim's] impending situation...

Other unknown female who was said to be upstairs inside the residence and as I said there is interconnectivity between downstairs and upstairs by way of a door...

A medic, was with the LMD ERT entry team to get help to [the civilian victim] as soon as possible.

[The affected person] was bipolar and has a drug issue mental stability/instability prior issues, that was important to me. This was clearly not the actions of a sound operating rational person.

What was most of concern to me at the time was he forced entry, came to kill his ex-wife, was in fact in possession of a rifle with a bayonet and had already demonstrated his aim, ability, intent and means to deliver that.

WO1 said he was satisfied he had sufficient information to make the decision and gave the order, “*On my go, standby, standby, go go go*”. He said he only heard the first hit on the door and assumed it was front team breaching the door. He said the VPD ERT announced they were in.

WO1 said he heard “*three successive hits*” from the LMD ERT at the back. He said he heard a Noise Flash Diversionary device (NFDD) after the three hits and then heard “*simultaneously at the back door my team goes in and then I hear the three what I call sonic events, shots heard.*”

He said the time frame was:

Two to three seconds after the third hit of the ram by the breacher, would be when the NFDD goes off and then approx three or four seconds after that would be the three shots.

He said the sequence of shots was:

I heard bang and then bang bang. Not even intervals just slightly minute. All three shots would have captured in two seconds. Right in close proximity with each other.

WO1 said that after the shots WO4 advised the affected person was dead. He said he was also advised that the civilian victim was dead. Shortly after there was a further transmission that the woman who was upstairs in the home had been located alive.

WO1 said following the incident he met briefly with both teams to quickly debrief. He met VPD ERT on the street in front of the residence and LMD ERT at the rear lane way. Two officers identified themselves as subject officers and were separated, segregated and instructed not to discuss the matter. He said they were placed in separate rooms with the staff representatives.

Witness Officer 2 (WO2)

WO2 responded to the call and observed a woman (CW1) running on the street where the incident took place. She said CW1:

told me that -- who she was and that it was her ex-husband that had come in and shot her boy- -- her current boyfriend ... she thought he was dead or dying.

WO2 said she got CW1 into her vehicle and moved to a safer location nearby and took a short statement from her. She said she then took CW1 to the Burnaby RCMP detachment for a more formal interview.

Witness Officer 3 (WO3)

WO3 is a team leader of the VPD ERT. A call for ERT assistance came over the police radio and WO3’s team were authorized to attend. He said his team changed into operational uniforms, drove the short distance to the scene and parked near the residence where the incident took place.

Once there, WO3 said he was advised that it was understood one victim had been shot; another innocent person was last seen on the upper floor; and the affected person was inside the house and had attempted to shoot his ex-girlfriend who had fled the house with a child.

WO3 said members of the LMD ERT began to arrive and the RCMP Tactical Commander, WO1, came over the radio and "*it was obvious that he would be in control of the call*" from the command level.

WO3 said initially the plan was to enter the front door of the house before LMD ERT arrived but after the arrival of additional resources, the plan was changed to have LMD ERT enter the rear of the house and VPD ERT the front. He said the plan was for both ERT teams to enter the house simultaneously.

WO3 said he was not aware of the layout of the house before entry. He said once the two ERTs radioed they were "*set to go,*" WO1 gave the "*go-go-go*" command. He said he heard the LMD ERT team strike the rear door and the sound of a loud bang from a NFDD at the back of the house before VPD ERT entered the front of the house.

WO3 said that approximately five seconds after entry into the house and 10 to 12 feet from the front door down the hallway he heard a rapid succession of three loud bangs, which he believed were gun shots coming from the rear of the house. WO3 said the first gunshot sounded louder and slightly different than the other two.

WO3 said he heard someone whom he believes was an RCMP member broadcast over the police radio "*shots fired*" and something to the effect "*the suspect committed suicide.*"

WO3 said that after the house was evacuated and turned over to investigators, VPD ERT departed at approximately 0828 hours.

Witness Officer 4 (WO4)

WO4 leads an RCMP Emergency Response Team. He was on duty and was advised by WO1 that a firearms incident was in progress in Burnaby. WO1 was the critical incident commander and responsible for directing tactical and investigative decisions including the flow of information. WO4 and others, including Subject Officer 1 (SO1) arrived near the scene at 0740 hours.

The information received was that there was a domestic situation and a male at the premises had been shot and was bleeding heavily. Further there was a civilian in the residence whose status was unknown.

WO4 said he deployed his team to the back of the residence and he went to the front to liaise with the Vancouver Police Department Emergency Response Team (VPD ERT).

WO4 said he considered other less lethal intervention capabilities. Two of his team members were carrying conducted energy weapons (CEWs). He considered other options which included

the suspect surrendering or escaping. WO4 also considered an action plan to enter the residence which all his team members had practiced and drilled on a regular basis. WO4 stated his responsibility was containment at the back of the premises; WO3 was responsible for the front of the house.

WO4 said he believed that a door going directly into the basement at the rear of the premises was open and provided the best access point in the event of hostage rescue. He said if the action plan was called his team would enter and secure the basement and the VPD would enter and secure the front of the house. WO4 said his primary objective was the safety of the hostage.(As the police did not know the status of the civilian who was in the house they were treating that person as a potential hostage)

WO4 said a second wave of ERT members arrived to join his team at the rear of the house. The four additional members included Subject Officer 2 (SO2). WO4 said the team of eight was a good number for implementing the plan. He said he advised WO1 that his team was ready to enact the plan if required.

WO4 said a series of radio updates were made and from those transmissions he was aware that attempts by a negotiator to contact the affected person had been unsuccessful. WO4 said he was gravely concerned for the welfare of the hostage. He said he followed the chain of command and awaited WO1's decision to implement the plan.

WO4 said his plan was to breach the basement door, drop a distraction device and then locate and save the hostage and his team was briefed to this effect.

WO4 said his team walked in single file into the alley which led to the backyard. The basement door was down a few steps and was closed. He called up an officer with a ram to breach the door; the first strike went straight through. WO4 said that at that point he used the muzzle of his carbine to break a small bathroom window. He looked into the window and saw an empty bathroom with a door that was slightly ajar. He said he maintained this position until the breach was successful and the distraction device went off.

WO4 said he was unsure of the order of the officers behind him but knows for sure that SO1 and SO2 were in front of him making him number three in the order of the line of officers entering the residence. WO4 said the subject officers both yelled, "*Police don't move, Police don't move.*"

WO4 said from entry into the kitchen to shots being fired was no more than 1.5 seconds. WO4 said he saw the affected person at the end of a hallway facing them. He said the affected person was crouched down and had a large caliber rifle to his right-hand side which was held at hip level. The rifle was pointed towards the subject officers. He said his immediate thought was that the affected person had set up an ambush for the police and, "*I was sure he was going to shoot them.*"

WO4 said the affected person had his hand on the trigger, the rifle was against his right hip and was holding it in a position for firing. WO4 said the threat and risk was immediate and at the moment he saw the affected person he felt there was justification to shoot him.

WO4 said he saw the affected person's eyes turn from a visible panic, to anger. He said the affected person began to raise the rifle. WO4 said things happened in an instant and he could not recall the exact sequence of events. He said he heard a shot fired and believes that there were two shots. SO1 shot first and SO2 shot second. He said he saw the round impact the suspects' left chest area.

WO4 said that almost simultaneously the affected person rotated his gun, leaned over it, looked down the barrel and pulled the trigger. WO4 was unable to say in what order the sequence of events took place.

WO4 said he would have shot the suspect if he had a safe arc of fire but was not able to shoot because of the two members in front of him. The threat was such that he was sure the affected person was there to ambush and shoot police. WO4 said that once the affected person had pulled the trigger of his rifle he fell back and dropped the rifle. WO4 said he was certain the affected person had shot himself in the head and was dead.

WO4 did not see the actions of either of the subject officers once they entered the kitchen as he was completely focused on the affected person. He said he and the subject officers moved toward the affected person. The gun had fallen into the affected persons lap and he was clearly deceased. WO4 said any attempt to administer first aid would have been futile.

WO4 ordered his team to continue the search for the civilian victim; each room was searched one by one. He said he was informed the civilian victim was deceased. WO4 said he moved the affected person's body to enable him to open the door behind the affected person and search the room. He said he was advised an uninjured woman had been found upstairs in a bedroom and she was being taken out of the house.

WO4 said WO1 then instructed that there was to be no conversation about the incident.

WO4 later participated in a scene interview which provided a comprehensive understanding of his point of view of the incident. During the scene interview he said:

...when he started moving the gun to -- and it became clear -- at first I thought, oh, I thought -- I thought he as raising it to, to come to the shoulder position. I thought he was raising it to shoot. And so that -- when he's first started moving, I was like, "Oh, he's raising it to shoot, like he's going to -- this is -- this is going to happen, these guys need to -- you know, need to shoot him right away, this is bad."

But then just as quick he rotated and, and just by whatever nuances of his body language happened, it became clear to me he was going to shoot himself, and that's when I -- you know, and that was a better outcome for us, is that instead of shooting us he was shooting

himself, and then I -- "Oh, here he goes," and I thought he was going to put it in his mouth, but he, he bent over it and, and shot himself.

WO4 said regarding order of shots

I saw -- so those two shots, I mean, simultaneous to that, I saw the impact and then him shoot himself.

The other reason I think that was the case, and this is a bit reconstruction, is how quickly he dropped when he shot himself in the head. He was on the ground.

Subject Officer

Both subject officers declined to be interviewed by or provide any report to the IIO, as is their right pursuant to the *Charter of Rights and Freedoms*.

Forensic Scene Reports

A forensic firearm damage report was conducted at the scene. This showed six areas of bullet impact damage fired by the affected person and the subject officers.

A blood spatter analysis performed at the scene showed a pattern consistent with the affected person having shot himself in the head in the manner described by WO4.

Medical Evidence

An autopsy was performed and the pathologist identified three gunshot wounds; one to the head and two to the chest. The head wound was described as showing “*surrounding soot and focal gunpowder ... which is in keeping with a shot fired from a close range.*”

The pathologist stated that it was not possible to say which, if any, of the gunshots were more significant than others in relation to the cause of death.

Toxicological analysis of samples taken at autopsy identified the presence of ethanol, codeine, alprazolam and morphine. The toxicology report indicated a mild level of intoxication with alcohol and it was noted that morphine was present at a level that is within a range where toxic and lethal effects have been observed. Despite the elevated level of morphine the pathologist said that given the extent of the injuries, none of the substances identified would have contributed to the affected person’s death.

Firearms Analysis

An examination and analysis was performed on expended ammunition components collected from the scene and submitted for testing. One of the expended cartridge casings seized from the scene was identified as having been fired by the rifle seized from SO1.

The expended bullet removed during the autopsy on the affected person was identified as being fired by the rifle seized from SO2.

Two of the four casings located were consistent with the ammunition for the affected person's rifle and were identified as having been fired from that rifle. A total of 63 bullets were seized and forwarded to the analyst were found to be of a design for use in the affected person's rifle.

Other Evidence

The affected person brought a black guitar case to the scene that he left outside the front door of the residence. The case was seized and a search inside the case uncovered two boxes of 7.62mm live cartridges of the type used in the affected person's rifle.



Guitar case and ammunition left outside the front door of the residence by the affected person.

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]

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 himself or the preservation of any one under his 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 frantic 911 call by CW1 relayed to police that a firearm was being discharged within her home. She told police that the civilian witness had been shot and she and her baby grandchild were at gunpoint. The call ended after the affected person could be heard telling CW1 to, "hang it up."

Exactly when the shot was fired through the front door is not clear i.e. whether before the affected person's initial entry or after his interaction out front with CW2. In either event however CW3 and her infant son were in their bedroom when a bullet passed through their room. That shot and the one that went through a storage room of the home to the east and hit a tree in the yard to the east of that home demonstrate how powerful the affected person's rifle was.

Once CW1 escaped she was interviewed by WO2 and taken to the detachment for further interviewing. WO1 said information from those interviews was relayed to him from WO2 and was considered in making the decision to enter the residence.

The decision process and the contingency plans are set out above. WO1 considered that there was a seriously injured person (the civilian victim) and an upstairs tenant still in the house.

He considered that CW1 was unsure whether the affected person had left the residence when she escaped which raised the further concern expressed by WO1 that:

...if he is not located inside where is he? He now presents unknown risks to other unknown persons which I am now responsible for because I am in command.

The decision having been made to enter the house WO4's team breached the back basement door and located the affected person who raised his rifle in their direction even though he was being yelled at by both subject officers who were saying, "Police don't move, Police don't move". WO4 comments that:

when he's first started moving, I was like, "Oh, he's raising it to shoot, like he's going to -- this is -- this is going to happen, these guys need to -- you know, need to shoot him right away, this is bad.

WO4 said he would have shot the suspect if he had had a safe arc of fire but was not able to shoot because of the two members in front of him. That both subject officers and WO4 felt deadly force was necessary is confirmed by WO4's comment that he would have shot and by the fact of both subject officers did shoot.

WO4 was unable to say in what order the sequence of events took place. His description of the affected person raising his rifle, being shot by both subject officers and almost simultaneously that the affected person rotated his gun, leaned over it, looked down the barrel and pulled the trigger is corroborated by several pieces of evidence.

The blood spatter report indicates that the affected person's blood (confirmed by DNA) traveled upward, radiating and consistent with being part of a forward spatter pattern. The blood was traveling in the same direction (upward) as the impact force applied. That force was determined to be from just over a metre from the floor where he died. The path of other bullets also appears consistent with the bullet fired by the affected person as described by WO4 especially given the steep angle it traversed.

At the autopsy of the affected person two chest wounds and one head wound were identified. The pathologist reported that the head wound to the affected person showed signs of, "surrounding soot and focal gunpowder stippling on the central forehead...being in keeping with a close range of fire" which is also consistent with what WO4 said happened.

CW3 was also corroborative in that she said that when police were on scene she heard:

the first gun I heard I recognized which I believe was the same gun that was going off earlier...I heard it go off once...and then I heard guns go off after that which I never heard before, so I believed it was the police.

She said the gunshots happened right after one another.

WO1 also said:

at the back door my team goes in and then I hear the three what I call sonic events, shots heard...all three shots would have captured in two seconds. Right in close proximity with each other.

Section 25(3) of the *Criminal Code of Canada* requires that the use of force that is intended or is likely to cause death or grievous bodily harm is only permitted where there is a belief, on reasonable grounds, that force is necessary for self-preservation or the preservation of any one under that person's protection from death or grievous bodily harm.

Likewise the words of the Supreme Court of Canada quoted above bears repeating here:

the allowable degree of force to be used remains constrained by the principles of proportionality, necessity and reasonableness...

And:

It must be remembered that the police engage in dangerous and demanding work and often have to react quickly to emergencies.

And:

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.

Given the urgency to rescue and get medical assistance for the civilian victim, to protect and rescue CW5 and to ascertain the exact location and threat the affect person posed either to the people in the residence or had left the residence thereby potentially endangering others, the entry into the residence was necessary and reasonable. When the subject officers located the affected person and he moved his rifle to point in their direction rather than complying with their commands the, "*use of force that is intended or is likely to cause death,*" became proportional, reasonable and was necessary for the subject officers' self-preservation.

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 for consideration of charges.

Clint Sadlemyer, Q.C.
Legal Counsel

2017 August 29
Date of Release

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

2017 August 29
Date of Release