



**IN THE MATTER OF THE SERIOUS INJURY OF A MALE  
WHILE BEING APPREHENDED BY  
MEMBERS OF THE RCMP IN  
THE CITY OF SURREY, BRITISH COLUMBIA  
ON JANUARY 5, 2017**

**DECISION OF THE CHIEF CIVILIAN DIRECTOR  
OF THE INDEPENDENT INVESTIGATIONS OFFICE**

Chief Civilian Director: Ronald J. MacDonald, Q.C.

General Counsel: Clinton J. Sadlemyer, Q.C.

IIO File Number: 2017 - 003

Date of Release: September 5, 2018

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## Facts

At 6:56 a.m. on January 5, 2017, 911 received a call indicating that the Affected Person (AP) had cut or stabbed a complainant on the nose and that AP was in possession of a knife. Police were dispatched on a high priority basis within one minute, and Officer 1 arrived on scene just under three minutes after being dispatched. Officers 2 and 3 arrived and located AP in the backyard. AP was holding a knife and moved towards police despite repeated warnings by the officers to drop the knife and to stop. Officer 1 shot AP. AP fell to the ground and dropped the knife. AP survived the gunshot wound.

The Independent Investigations Office (IIO) was notified by the RCMP at 7:35 a.m. the same day and commenced its investigation as AP sustained "*serious harm*" as defined in *the Police Act* and an officer was involved.

Evidence collected during the investigation included the following:

- 1) Statements of AP and six civilian witnesses;
- 2) Statements of four police officers;
- 3) Ballistic report; and
- 4) AP's medical records.

Pursuant to section 17.4 of the Memorandum of Understanding between the IIO and BC Police Agencies, and consistent with the *Canadian Charter of Rights and Freedoms*, officers who are the subject of an investigation are not compelled to provide a statement, nor submit their notes, reports and data. In this case the Subject Officer, Officer 1 did not provide those items or a statement to the IIO.

AP told the IIO that after an argument with the complainant he went out into the backyard. He said when police arrived they came into the backyard looking for him. AP said when the police located him an officer said "*there he is*" and he was shot in the chest and fell. AP told the IIO that because he was intoxicated he is not sure if police said anything else to him before he was shot.

AP told the IIO that at the time he was shot he was holding the knife in front of him but was pointing the knife, "*towards me. Not anybody else,*". He was unsure whether he was moving his arms. He did not describe moving toward or away from the officers.

Officer 2 told the IIO that Officer 1 was on scene when he arrived and Officer 3 arrived next. Officer 2 saw someone in the back and the three officers moved into the carport

and towards the backyard. Officer 2 said the yard was dark. Officer 2 drew his firearm as he entered the back yard. He said they had been advised that AP had a knife and from the moment he entered the backyard he was giving loud and clear commands such as, "*whoever's out there, come out with your hands up. Police, come out with your hands up.*" As he went further into the yard, Officer 1 kicked a gate open and stepped back. Officer 2 said AP was standing at the gate holding a 10 inch knife in front of him which was pointing up and out.

Officer 2 said AP took a step towards them, then a step back. AP stepped forward again and took a second step forward and Officer 1 shot AP. Officer 2 said that if Officer 1 had not fired:

*I would have shot the individual. Because I felt the male was coming...towards us in a threatening manner, with the knife still at chest level. And I felt like he was going -- I feared for my safety. I feared for my life. I thought he was going to stab one of us, and kill us.*

Officer 2 said that after AP fell, Officer 3 kicked the knife away from "*arms reach*" of AP. Officer 2 told the IIO he handcuffed AP behind his back, searched him and found no other weapons. EHS arrived and at their request Officer 2 moved the handcuffs to the front. AP was treated and taken to an ambulance.

Officer 3 told the IIO he arrived as Officers 1 and 2 were still in the carport. He said Officer 2 advised that he saw someone move behind the shed in the back yard. Officer 3 said the yard was dark and that he immediately drew his pistol. He said that as Officers 1 and 2 moved toward the shed, he (Officer 3) swept wide.

Officer 3 said Officer 2 was repeatedly yelling "*Police*" and ordering the person to show themselves. Officer 3 said he was looking towards the house and heard Officer 1 kick the gate open. Officer 3 said both Officers 1 and 2 were shouting commands and specifically Officer 1, who was in front of the gate, was shouting, "*Drop it. Drop the knife.*" Officer 3 said he was close to and behind Officer 1.

Officer 3 said he saw AP step forward slightly out of the shadows and he then disappeared from Officer 3's view as he (Officer 3) passed behind Officer 1. Officer 1 continued shouting commands at AP and when Officer 1 stepped back slightly, Officer 3 could again see AP over Officer 1's shoulder. Officer 3 said the male appeared to be coming forward, at which point Officer 1 fired once.

Officer 3 saw AP fall and noted that AP's hands were very close to a long kitchen knife. Officer 3 moved the knife away from AP and Officer 2 moved in and secured AP.

A single spent bullet casing was located at the scene of the incident and a forensic examination confirmed it was fired in Officer 1's police pistol.

Forensic testing of AP's clothes show that the shot was fired from further than one half a metre. Officers 2 and 3 gave estimates of how far AP was from Officer 1. That distance was somewhere in the range of two to three metres. This is very close, and a distance where a potential assailant with a knife can quickly move forward and stab a person before that person can react to protect themselves. Evidence from the scene, including the location of a spent bullet casing, did not contradict these estimates.

### **Relevant Legal Issues and Conclusion**

The purpose of any IIO investigation is to determine whether an officer, through an action or inaction, may have committed any offence in relation to the incident that led to AP's injury.

A police officer who is 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. This includes the defence of self or others. If a police officer uses unreasonable or excessive force, those actions may constitute a criminal offence.

More specifically, the issue to be considered in this case is whether Officer 1 may have used excessive force when he shot AP. Had he done so, he may have committed aggravated assault.

Officer 1 attended a high priority call that involved the victim being stabbed or cut. Officer 2 observed AP in the back yard and communicated this to Officers 1 and 3 prior to the officers entering the yard. The yard was dark and AP reportedly had a knife.

The officers were under a duty to apprehend AP. When Officer 1 kicked the gate open AP became visible and was holding a knife. Both Officers 2 and 3 describe AP as initially stepping forward. Officer 2 said AP stepped back, Officer 3 said he lost sight of AP, but then both Officers again describe AP as moving forward and then being shot.

Both officers describe verbal warnings being directed to AP who is unable to recall whether officers said anything beyond "*there he is.*" It would be surprising for officers not to be yelling such commands as this is a common and routine practice.

AP told the IIO he was holding a knife in front of him and although he denies it was pointed anywhere but at himself he did not drop the knife until he had been shot.

Lethal force was used in this incident and fortunately AP survived. A bladed weapon is also potentially lethal force and Officer 2 articulated his concern that AP was in a position where he could inflict lethal injuries to any of the officers and that had Officer 1 not shot AP, he, Officer 2 would have.

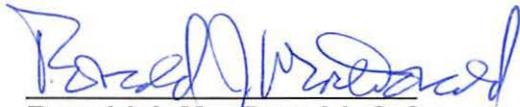
Officer 1 acted as required by his duties and in accordance with the law. The evidence collected does not provide grounds to consider any charges against any officer. He had to make a difficult decision faced with a male with a large knife moving toward him. The decision he made to shoot was understandable and reasonable.

Accordingly, as the Chief Civilian Director of the IIO, I do not consider that an officer may have committed an offence under any enactment and therefore the matter will not be referred to Crown counsel for consideration of charges.



**Clinton J. Sadlemyer, Q.C.**  
**General Counsel**

September 5, 2018  
**Date of Release**



**Ronald J. MacDonald, Q.C.**  
**Chief Civilian Director**

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