



**PUBLIC REPORT OF THE
CHIEF CIVILIAN DIRECTOR**

Regarding a fatal officer-involved
shooting on July 16, 2015
involving the Dawson Creek RCMP

IIO 2015-000104

INTRODUCTION

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

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

This is a public report related to an investigation into an officer involved shooting of an adult male on July 16, 2015. The male affected person confronted police with a knife. The affected person did not comply with orders to drop the knife and moved towards the officers. He was subsequently shot and did not survive his injuries.

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

At a July 16, 2015 event organized by BC Hydro in Dawson Creek related to the Site C Project, police were dispatched to a disturbance call at the Stonebridge Hotel at approximately 6:34 p.m. At the scene, police observed a male (the affected person) disguised in a mask with one hand behind his back outside of the hotel. It would later become evident that the affected person was not the subject of the original complaint. Officers asked the affected person to show his hand but the affected person kept on moving past them. Officers noted the affected person was carrying a

switchblade but initially it was not open. According to several witnesses, the affected person opened the knife and moved towards the officers. Civilian witnesses who saw this interaction described the affected person's behavior as "lunging towards", "jabbing at" and "coming towards" the officers.

Police ordered the affected person to drop the knife. Pepper spray was deployed with no apparent effect. The affected person did not comply and was subsequently shot once by an officer who is being referred to in this public report as the "subject officer". The affected person did not survive his injuries and was pronounced deceased in hospital.

The IIO was notified on July 16, 2015 at 8:50 p.m. and an investigation was commenced. This incident falls within the jurisdiction of the IIO as described in the *Police Act*.

The IIO's office is located in Surrey. There was no available flight to Dawson Creek that evening. IIO investigators arrived on scene the following morning. As is their responsibility per the *Police Act* (Part 7.1, Section 38.09) and the Memorandum of Understanding between the IIO and police agencies, police are required to secure the scene under the direction of the IIO until investigators arrive. In this case RCMP secured the scene until investigators arrived the following morning, to the IIO's satisfaction.

ISSUES

The affected person was fatally wounded by a single bullet fired from a police service pistol during a confrontation with two on-duty RCMP officers. The IIO's investigation is focused on whether the subject officer who fired the fatal shot was legally justified in doing so.

Accordingly, this public report will focus principally on evidence tending to establish what the affected person did in relation to the police officers in the moments leading up to the shooting, what their response to those actions was, and whether the use of lethal force in the circumstances was reasonable, justified, necessary and proportionate.

TIMELINE

The timeline below has been compiled from radio transmissions, 911 recordings and BC Ambulance Service (BCAS) records. All occurred on July 16, 2015.

- 6:34 p.m. police dispatched to a disturbance call at the Stonebridge Hotel
- 6:57 p.m. two officers arrive on scene
- 7:16 p.m. voices on open microphone on dispatch channel saying "drop it now", "put the knife down, put the knife down" and "put it down now", then "one male down, shot", and another voice asking "where", with the response "at the Fixx Grill"

7:17 p.m. voice on the dispatch channel calling for an ambulance, saying there is “one suspect down”

7:20 p.m. ambulance dispatched, one male subject shot, ambulance told to “stage” briefly outside the scene until cleared by police

7:21 p.m. ambulance en route towards scene

7:23 p.m. request from dispatch for confirmation that ambulance can move in, and confirmation that they can

7:23 p.m. ambulance at scene, paramedics attending to patient

7:24 p.m. hospital notified that shooting victim coming to them

7:29 p.m. ambulance departed from scene

7:32 p.m. ambulance arrived at hospital

7:37 p.m. an officer requests that dispatch contact the duty officer to notify the IIO

AFFECTED PERSON

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

IIO investigators identified a Twitter account believed to be that of the affected person. Posts from this account suggest that the affected person was planning to attend the area in relation to the Site C Project meeting. The focus of all IIO investigations is the actions or inactions of police. The IIO does not investigate alleged criminality of affected persons. The information from Twitter was analyzed to give context to the events that led to the interaction between the affected person and police on July 16, 2015.

EVIDENCE CONSIDERED

Evidence examined in this investigation includes statements made by eighteen civilians, two paramedics, three witness officers; medical evidence; firearms evidence; dispatch records; police radio-to-radio communications; video and CCTV evidence; autopsy reports and other forensic evidence collected and analyzed from the scene.

CIVILIAN WITNESSES

CIVILIAN WITNESS 1 (CW1)

CW1 was interviewed on July 17, 2015. He said he had been approaching the Stonebridge Hotel when he heard a police officer yelling clearly and repeatedly “put the knife down.” He could only see one officer, who was pointing a gun “pretty much towards the ground” but in the

direction of the affected person, who he said was standing “nonchalantly”, and then stepping towards the officers. CW1 took cover with another civilian witness behind a vehicle, but continued watching until he saw the affected person get close to the officer and saw the officer’s gun “come up”, at which time CW1 dropped behind the vehicle, and then heard a single gunshot. He was not able to see anything at that point. As he left, he heard an officer say, “move away from the knife.”

CIVILIAN WITNESS 2 (CW2)

CW2 was interviewed on July 18, 2015. He was standing outside the restaurant talking on his phone at the time of the incident. He saw the affected person walking towards him, wearing a mask and a white hoodie. At that time, the two police officers walked out. When they saw the affected person they questioned him “in a nice polite [manner]” about what he was doing. One officer asked him what he had in his hand. CW2 saw the affected person had a switchblade with about a six inch blade in his hand, showing it to the officers as if to say “get away from me, look, I’ve got a knife.” The officers both drew their guns and were yelling repeatedly at the affected person to “put down the knife.” They repeated these commands “multiple times” as the affected person walked towards them. There was then “almost a chase around the pillars ... just a mad thing.”

CW2 backed away, concerned that he was now in the potential line of fire. At the time of the shot, he could see one of the officers, but was not able to say which officer fired the shot. Before the shot, he said, the officers were “begging” the affected person to put down the knife.

After the shooting, CW2 recalled officers quickly bringing a first aid kit and working on the affected person, apparently trying to stop the bleeding.

CIVILIAN WITNESS 3 (CW3)

CW3 was interviewed on July 19, 2015. He said he had been standing outside the restaurant with another witness. He noticed a man (the affected person) wearing a mask and hoodie approaching. The affected person had a knife in his right hand. Two officers came out into the parking lot at that time, and challenged the affected person, asking him to drop his knife. The affected person opened the knife, which was a switchblade, and the officers repeatedly yelled at him to drop it. The officers moved past CW3 and the other witness, towards the affected person, continuing to order him to drop the knife, but the affected person would not do so. One officer deployed pepper spray, “but then he (the affected person) screamed and got mad, and then he actually started chasing all of us.” CW3 and the other witness moved back towards the restaurant doors, at which point CW3 “kinda heard a bang” and saw the affected person fall, but did not see which officer fired.

CIVILIAN WITNESS 4 (CW4)

CW4 was interviewed on July 19, 2015. She witnessed the disruption at the Site C Project meeting, and said she had been outside the meeting afterwards with another witness. The two RCMP officers came out through the door into the parking lot. She saw the affected person approach, wearing a mask (which she referred to as a “protester’s mask”), and assumed it was the man who had caused the disturbance at the meeting. She heard the officers repeatedly asking the affected person what was in his hand, and to “state his business.” Initially unconcerned, she turned away, but then heard CW3 say “holy sh*t”, and saw him go in the door. Turning back, she saw that the affected person had “gotten out a knife” and that one of the officers had drawn his gun. She saw the affected person “lunge” at one officer. She knew that an officer had used pepper spray because “I got some on me, and I was blinded a little bit.” Unable now to find the door, she stood where she was, and then “heard the bang.” When she looked, she saw the affected person “leaning up against the post, bleeding”, and “the cop kept saying ‘move away from the knife, move away from the knife’, or maybe it was ‘weapon’, I’m not sure.”

She said the officers “did identify themselves as the police, in case he (the affected person) couldn’t see through the mask.”

CIVILIAN WITNESS 5 (CW5)

CW5 was interviewed on July 28, 2015. He said he had been approaching the restaurant from the back parking lot when he heard “a bit of commotion.” As he came around the corner of the building and in sight of the front entrance area he saw a police officer pointing a gun towards the affected person near a pillar at the front of the restaurant. He then heard a gunshot (“just as I looked”) and saw the affected person slump to the ground. Beginning to record video with his phone, he then watched as the affected person lay on the ground, holding a knife in his hand with police yelling at him “numerous times” to throw it away, before the officer kicked it away.

IIO investigators viewed the video on the phone at the time of the interview and determined that it did not contribute any additional evidence.

CIVILIAN WITNESS 6 (CW6)

CW6 was interviewed on July 28, 2015 and said she had been waiting for her husband just inside the outer doors of the restaurant when she saw a man (the affected person) approaching. He was wearing a mask and had a hood pulled up over his head. He stopped and seemed to be talking with someone out of her view. At this point, her husband joined her by the doors, and started to exit ahead of her. There were pillars in front of the doorway, to left and right. She saw a police officer to the left, and then noticed another officer was to the right. Realizing at this point that the affected person had a knife in his hand, she alerted her husband, and called him back into the space between the inner and outer doors. The affected person appeared to be trying to stab one of the officers. He was “lunging towards” this officer, who sprayed the affected person in the face

with what she “assumed was Mace.” The affected person then moved towards the other officer, on the right.

CW6 heard another man describe the affected person as a “protester.” CW6 said she “must have looked away,” but remembered hearing a “loud bang noise.” When she looked back, the affected person was on the ground, leaning against the post on the right. Blood was coming from under his leg. Both police officers, at that point, had their guns drawn. She believed the weapons had been drawn earlier, and that the officers had been yelling and gesturing at the affected person either to get on the ground or to put his knife down. She said the affected person was struggling while an officer was trying to handcuff him.

CW6 also provided written notes that she had written on the day after the incident. In those notes she states that she was standing outside the restaurant when she saw a person in a Guy Fawkes mask and a grey hoodie with the hood up, walking slowly towards the restaurant. She saw the affected person advance towards one officer with a knife in his hand, “jabbing at” the officer. CW6 said when the affected person got very close, the officer pepper sprayed him, but it seemed to have no effect. The affected person then walked towards the other officer. She heard a shot and then saw the affected person on the ground. She did not see the shooting. She saw one officer kick the knife away from the affected person, and then saw officers lay the affected person on his front and handcuff him.

CIVILIAN WITNESS 7 (CW7)

CW7 was interviewed on July 28, 2015. He said he noticed two police officers with their guns already drawn. In front of one of the officers was a “knife-wielding masked man,” walking towards that officer “without hesitation.” As he got closer, CW7 said the affected person began making “waving” or “jabbing” motions with the knife towards the officer: “he was definitely threatening with the knife.” The officer was motioning for the affected person either to get down or to put down the knife. The affected person was “not listening to any commands”, was “not doing anything to show... to stop the aggressiveness.” The affected person pointed in the direction of the other officer: “he didn’t walk too close to him, but he kind of moved over, and kinda jabbed, you know, jabbed at him, like, you know, threatening him too, like ‘you know what, you’re in this too’, so...”

CW7 said this interaction lasted perhaps two minutes (the whole incident, he said, lasted perhaps ten or fifteen minutes). Finally, the witness officer sprayed something at the affected person, who continued to come “really close” to the officers, with “threatening motions to each one ... going back and forth.” He recalled that the interaction, which he characterized as “surreal” and “a dance” continued for an extended time, with the officers giving the affected person “every chance” to comply and submit.

At one point, the affected person “focused on” the subject officer for “probably a couple of minutes.” That officer, he said, “backed up and backed up and backed up ... I could tell he just did not want this to go where this was probably going to end up.” The affected person then turned back again to the witness officer who seemed to “make a decision.”

CW7 was very clear in his recollection that it was the witness officer who then shot, and that he did it in a very measured manner:

“He didn’t just blindly shoot him. He actually... like, I watched... he actually took consideration of where he was going to shoot him. Because he was... he looked at him, like up and down and back up again, you could tell he was actually, like... what an incident, I mean, I couldn’t imagine being in that scenario ... but you could tell he thought about where he was going to shoot him. So, when he... when the shot... when he finally... when he did shoot him, it looked to me from where I was standing it was either top of his leg, it would be probably... his left leg, or side abdomen.”

CW7 said the affected person did not immediately fall. He took a couple of steps back, still in a “defiant stance.” “He finally crumpled, alongside a post”, and the officers secured his wrists with “zip ties”, after the subject officer kicked the knife away. He also recalled seeing a “cylindrical object” under the affected person’s left arm, and thought it was a “pipe bomb”, or perhaps a rolled-up magazine. His wife, he acknowledged, had not seen this item, but he thought that perhaps “someone picked it up afterwards.”

In response to clarifying questions from the IIO investigator, CW7 confirmed that in his recollection it was the witness officer who shot the affected person.

CW7 also provided a copy of written notes he had made on July 17, 2015. In those notes he states that as he started to exit through the outer doors of the Fixx he saw a masked person with a knife in his hand. He saw two police officers gesturing “as if to have the masked person put down the knife or get down on the ground.” He recalls seeing the affected person move towards the police, and describes the affected person “waving his knife.” Both officers had their guns drawn and were shouting at the man. Pepper spray was deployed with no impact, and the affected person “began advancing towards [the subject officer] with his knife jabbing towards the officer”, who was moving backwards.

CW7 describes the affected person turning his attention back towards the witness officer “with his knife jabbing towards the officer,” who then shot the affected person.¹ The affected person stumbled back against a post and crumpled towards the ground, leaning against the post. One of the officers kicked the knife away.

¹ CW7 is mistaken in identifying the officer who shot the affected person. A ballistics report confirmed that the bullet in the affected person’s body was fired from the subject officer’s firearm. See discussion of this issue below, under ‘Analysis’.

CIVILIAN WITNESS 8 (CW8)

CW8 was interviewed on July 18, 2015. She said she had been sitting in a window booth at the Fixx Grill Restaurant. She saw two police officers arrive and park outside. Later, her attention was drawn to a man (the affected person) wearing a mask and a hoodie, and holding “a blade”, “coming at” a police officer. She said she believes she heard a gunshot, then saw the affected person slump to the ground. She was not able to describe the police officer, except to say he was a male.

CIVILIAN WITNESS 9 (CW9)

CW9 was interviewed by the IIO on July 19, 2015. He said he had been leaving the BC Hydro meeting after witnessing the disruption of that meeting and the attendance and departure of the two officers. As he followed them out to the front door, he heard “put the knife down” shouted, followed by a gunshot. He then saw the two officers with their guns drawn, and immediately backed up and watched the aftermath through the windows.

Note: the following civilian witnesses made only partial observations of the incident. Their statements, collectively, provide perspective and context to it.

CIVILIAN WITNESS 10 (CW10)

CW10 was interviewed on July 18, 2015. He witnessed and took video of the initial disturbance at the Site C Project meeting, and later spoke with the officers when they attended. He told investigators that subsequently, as he had been about to walk out, he heard one gunshot and saw the affected person on the ground with both officers pointing guns at him.

CIVILIAN WITNESS 11 (CW11)

CW11 was interviewed on July 19, 2015. He said he had been in bed in his hotel room when he heard a “bang” outside his window. He looked out and saw two officers with handguns drawn, and one male (the affected person) “going to the ground.” He took a video, and subsequently provided a copy of that video to the IIO (see description of video evidence below).

CIVILIAN WITNESS 12 (CW12)

CW12 was interviewed on July 18, 2015. He said he had observed the aftermath of the incident from a window booth at the Fixx, but did not observe the shooting itself. He took video and two still photographs as the police were handcuffing the affected person. This material has been reviewed by the IIO (see below).

CIVILIAN WITNESS 13 (CW13)

CW13 was interviewed on July 18, 2015. He said he had observed the aftermath from the window of the Fixx, but did not witness any part of the preceding confrontation.

CIVILIAN WITNESS 14 (CW14)

CW14 was interviewed on July 19, 2015. He said he had been working as hotel security on the evening of July 16, at a different location in the complex. He was called to the scene of the incident at the Site C Project meeting, and witnessed the police attend. Subsequently he heard a “pop”, and then saw a police officer pointing a gun at a man (the affected person) on the ground. The affected person was wearing a mask and a hoodie.

CIVILIAN WITNESS 15 (CW15)

CW15 was interviewed on July 19, 2015. She was working at the hotel on July 16 and was in the parking lot at the time of the incident. She heard a call that there was a “ruckus” in the banquet hall. She saw the two police officers arrive, and about fifteen or twenty minutes later heard a “big bang.” She did not witness the incident that led to the affected person’s death.

CIVILIAN WITNESS 16 (CW16)

CW16 was interviewed on August 15, 2016, more than one year after the event. He had been identified as the person who caused the original disturbance at the Stonebridge Hotel that led to police being called on the evening of July 16, 2015. He had previously identified himself to the media as that person, but there had never been any suggestion that he was present for, or made any observation of, the interaction between the affected person and police. He told IIO investigators that as he had been leaving, he saw a person that he thought might have been the man subsequently shot by the police, but the description he gave did not match that of the affected person.

Note: the following witness interview was conducted by RCMP investigators. The eyewitness was interviewed immediately at the scene by RCMP major crime investigators, as he identified himself as a long distance trucker who was scheduled to leave the following morning (July 17, 2015) at 3 a.m. The interview was video and audio-recorded and the recordings were subsequently reviewed by IIO investigators.

CIVILIAN WITNESS 17 (CW17)

CW17 said he was entering the Fixx Grill when he saw two officers leaving from a side door. He saw a man approaching wearing a mask (the affected person). The affected person said “you f****d up” to the officers. One of the officers asked, “What do you have behind your back?” (CW17 demonstrated that the affected person had his right arm behind his back). The affected person then “flashed a knife”, which looked like a switchblade, and opened the blade. The officers drew their guns and told the affected person to drop the knife. The affected person came at one of the officers, who said something like “put it down” or “put it away.” CW17 went into the restaurant to take cover, and then heard a gunshot.

PARAMEDICS

Two paramedics attended at the scene and transported the affected person to the hospital. One paramedic stated that during the time he dealt with the affected person he was not conscious. The other paramedic did not recall the affected person being able to speak. Both paramedics stated that police did not provide any account of the incident to them.

OFFICERS

The IIO uses the term “witness officer” and “subject officer” to distinguish between officers who merely witnessed the incident as opposed to officers who are the subject of the IIO investigation because of their direct involvement, which may have caused the serious harm. In this case, the subject officer is the officer who fired the shot.

WITNESS OFFICERS

WITNESS OFFICER 1 (WO1)

WO1 was interviewed by IIO investigators on July 17, 2015, and subsequently took part in a video ‘walk-through’ re-enactment at the scene.

In his IIO interview, WO1 said that a little before 7 p.m. on July 16, 2015 he had heard a call to a disturbance at the Fixx Grill Restaurant. The subject officer was responding to the call, and WO1 “tagged along.” Upon arrival, they discovered that the disturbance had actually been in the conference room of the Stonebridge Hotel, next to the restaurant. The two officers went there and spoke with the complainant, who told them a man had come in and had damaged some of the exhibits (related to the Site C Project). The officers were introduced to an attendee who showed them a video he had taken of that incident, and were given a plate number for the vehicle in which the ‘suspect’ had left.

As the two officers exited the building, a male walking across the parking lot (the affected person) caught WO1’s attention. The affected person was wearing a white hoodie and a mask. He had a “determined look”, and had one arm behind his back. WO1 warned his partner, identified the officers as police and asked the affected person what he had in his hand, and to take off the mask. The affected person refused, and “kept coming.” His hand “moved forward” and WO1 saw he had a switchblade. WO1 told the affected person to “drop the knife”, and took out his pistol. Using a pillar as cover, he ordered the affected person to “stop right there”, and “drop the knife.” The affected person again said “no”, and “his walking pace started going really fast.” As he approached, both officers took a step back. The affected person appeared “startled, because he didn’t know which officer to run towards.” WO1 “still kept telling him to drop the knife, but he didn’t.”

Then, as the affected person turned towards WO1, the officer could “see his eyeballs”, and decided to use his pepper spray. That, he thought, would “defuse the threat right there, and he would most likely go on his knees, and then we can proceed to take the knife away from him.” The affected person opened the knife, and at that point, WO1 sprayed him in his eyes. The affected person said “you f****r”, and charged at WO1 “with the knife up.” As the affected person moved forward in the direction from which the spray had come, the officer moved off to the side, taking cover. The affected person was “swearing ... and like, he was going to get me and all that.” As WO1 moved behind the pillar, in his peripheral vision he saw the affected person now “rushing towards” the subject officer. The subject officer said “drop the knife” again, and then WO1 “heard a pop.” He saw the affected person on the ground, and saw the subject officer kick the knife away. “The guy was still looking to put up a fight, even though he’s been shot”, said WO1. He was concerned that the affected person might have another knife, or a firearm, and that if they approached “he might use it on us.” In fact, shortly after this, WO1 could see the affected person had another knife in his back pocket, so he came behind the affected person and removed the knife from his pocket.

WO1 called for an ambulance. With the subject officer “keeping watch” he then moved in to handcuff the affected person, assisted by another officer (WO2), who had just arrived. WO2 then came to “secure the scene.” Another officer also attended, and brought his medical kit. The other officers were trying to render aid to the affected person, but could not tell where the bullet wound was, so WO1 used his knife to cut his jeans open. At this point, the ambulance pulled in, dealt with the affected person and transported him to hospital.

Immediately following the incident, WO1 gave a brief account of the incident at the scene, to an RCMP sergeant. According to the sergeant, WO1 said that a male armed with a knife and wearing a mask had advanced towards him and the subject officer. WO1 had deployed pepper spray, and the male then ran at the officers with the knife. The subject officer had then shot the male. WO1 said he had placed knives and the mask in the trunk of his vehicle. The sergeant subsequently retrieved a mask, a switchblade, a dagger in a sheath, an umbrella and a cell phone from WO1's trunk.

WITNESS OFFICER 2 (WO2)

WO2 was interviewed on July 18, 2015. He said he had arrived on scene shortly after the shooting, and saw the subject officer maintaining "lethal overwatch" while WO1 was attempting to handcuff the affected person. WO2 assisted with the handcuffing, and told WO1 to secure the knives. He then rolled the affected person onto his side and tried unsuccessfully to locate the bullet wound.

Two more officers arrived shortly after, one of whom had worked as a medic. The officers cut open the affected person's pants to locate the source of profuse arterial bleeding, and WO2 tried to stop the bleeding with his hand and a blood clotting agent. The affected person at this point was groaning, and WO2 tried to talk with him, but the affected person had become unresponsive. Paramedics then arrived and loaded the affected person onto a back board and into the ambulance.

WO2 led the ambulance to the hospital and stayed with the affected person in the trauma room, until he was pronounced deceased.

WITNESS OFFICER 3 (WO3)

WO3 said he had attended the scene shortly after the shooting, in response to a call for assistance. He assisted with scene security, but did not witness the incident, and the subject officer did not say anything to him about what had occurred.

SUBJECT OFFICER

There was one subject officer in this investigation—the officer who fired the fatal shot. He declined to be interviewed by the IIO or to voluntarily provide any written notes or report to the IIO, as is his right pursuant to The *Charter of Rights and Freedoms*.

As of the time this decision is being issued, it does not appear that the subject officer has completed any reports or notes of his recollection of the incident. The IIO has, and continues to engage with the RCMP on the necessity of officers completing timely reports.

SCENE EVALUATION AND PHYSICAL EVIDENCE

The subject officer's sidearm, together with his other duty equipment and uniform, was seized by an RCMP sergeant. The seizure was video-recorded, and the video was reviewed by an IIO investigator. The equipment of WO1 (the officer who was present at the time of the shooting) was seized by an RCMP Corporal.

From an inventory of the two officers' equipment, it was apparent that neither officer had been carrying a conducted energy weapon (Taser).

The fifteen-round magazine from the subject officer's pistol was found to contain thirteen live rounds, and there was one live round in the chamber. The subject officer's duty belt was carrying two more magazines for the weapon, each full with fifteen rounds.

WO1's pistol had a full complement of fifteen rounds.

One expended 9 mm cartridge case was located close to where the subject officer was seen standing in the moments after the affected person was shot.

The subject officer's firearm, the bullet recovered from the affected person's body and the expended cartridge case were sent for forensic comparison analysis on August 28, 2015, and the IIO was advised that the analysis would be completed by November 25, 2015. On November 18, 2015, the forensic lab advised that the analysis would not be completed until March 20, 2016.

Then on March 7, 2016 the IIO was advised that the forensic comparison analysis² would be completed by August 16, 2016. Once again on August 8, 2016 the IIO was advised of a delay and that the analysis would not be completed until December 13, 2016. The report was finally received by the IIO on October 5, 2016 and confirmed that both bullet and cartridge case matched the subject officer's firearm. Throughout this process there was ongoing communication between the IIO and the forensic laboratory in an effort to expedite completion of the required analysis.

PHOTOGRAPHIC EVIDENCE

The following photograph depicts the mask the affected person was wearing at the time of the incident:

² A forensic comparison analysis was conducted to determine whether the bullet recovered from the affected person's body was fired from the subject officer's gun.



The following photograph depicts two knives that were seized from the affected person, the lower being the switchblade described by a number of witnesses, and the upper being a smaller sheathed knife taken by WO1 from the affected person's back pocket after he was shot:



VIDEO EVIDENCE

CW11 VIDEO

A video captured by CW11 shows the affected person lying on the ground on his right side, with his shoulders against a pillar. The subject officer is standing approximately two or three metres in front of the affected person, and witness officer WO1 is standing about two metres behind. Both officers are still covering the affected person with their pistols.

A woman approaches the affected person but is waved away by the subject officer.

The subject officer steps forward and kicks away the switchblade on the ground near the affected person, then steps back again. The witness officer moves around to the affected person's right. The affected person then slumps to his right, recovers slightly, and then rolls into a prone position. A significant and increasing amount of blood can be seen flowing onto the ground.

The witness officer comes back around to the affected person's left rear, and appears to remove something from one of the affected person's back pockets, throwing or dropping it to one side in the same area where the switchblade has been kicked.

WO3 appears on scene, quickly returns to his car to silence the siren, and then hurries forward to assist WO1 in handcuffing the affected person. The subject officer then holsters his pistol.

WO1 goes to his car and appears to do something in the trunk (WO3 indicated that he had directed WO1 to secure the two knives).

The subject officer appears to bring a first aid kit and kneels beside the affected person briefly. WO3 continues to deal with the affected person, and the video then ends.

CW12 VIDEO

CW12's video shows three officers tending to the affected person, with WO3 rolling the affected person up onto his side (he described having been searching for and trying to suppress the source of the bleeding).

RESTAURANT CCTV

CCTV video from the restaurant was examined, but did not provide useful evidence. There is no CCTV video of the incident itself, nor of what led up to it.

BC AMBULANCE PATIENT CARE REPORT

The report indicates that when the ambulance arrived the affected person was on the ground in handcuffs, with an RCMP member applying pressure to a gunshot entry wound on the right hip. The affected person was transported to hospital. He initially had a weak pulse, but "coded" (no pulse) just prior to arrival at the hospital.

AUTOPSY REPORT

At the autopsy on July 21, 2015 it was determined that the bullet had entered the right front of the affected person's body in the pelvic area. As the bullet travelled to its point of rest in the left buttocks area, it tore the right femoral artery and vein, causing death through massive blood loss.

The bullet's trajectory was "front to back, right to left, with no significant up or down deviation". The entry wound "showed no characteristics typical of contact, close, or intermediate ranges of fire, and thus could have resulted from a distant range of fire (greater than 2-3 feet)".

There were wrist abrasions consistent with the application of handcuffs, and sternal and rib injuries consistent with resuscitation efforts.

APPLICABLE LAW

OFFENCES

Below are the potential offences considered by the IIO in this decision.

Homicide

Subsection 222(1) of the *Criminal Code of Canada* states that “a person commits homicide when, directly or indirectly, by any means, he causes the death of a human being.”

Homicide as Culpable or Not Culpable

Subsection 222(2) goes on to say that “homicide is culpable or not culpable” and subsection 222(3) clarifies that “homicide that is not culpable is not an offence.”

Paragraph 222(5)(a) has potential application to a case where death has resulted from a shooting, saying that “a person commits culpable homicide when he causes the death of a human being ... by means of an unlawful act.”

Culpable Homicide as Murder or Manslaughter

By paragraph 229(a) of the *Criminal Code*, “culpable homicide is murder where the person who causes the death of a human being means to cause his death, or means to cause him bodily harm that he knows is likely to cause his death, and is reckless whether death ensues or not.”

Section 234 of the *Criminal Code* states further that “culpable homicide that is not murder ... is manslaughter.”

Murder as First or Second Degree

Subsection 231(1) of the *Criminal Code* states that “Murder is first degree murder or second degree murder”, and subsection 231(2) defines murder as first degree murder “when it is planned and deliberate”.

DEFENCES

In a situation where an on-duty police officer has used lethal force against a person during a confrontation, the law may—if certain prerequisites are met—make available to him a defence to what would otherwise be one of the offences set out above. The Canadian *Criminal Code* contains provisions (set out below) that can operate to justify such a use of force. Legally, a ‘justification’ defence of this sort answers a criminal charge by asserting that the alleged act, though admittedly committed, was not wrongful in the particular circumstances.

Use of Force by a Police Officer

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

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." (subsection 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" (subsection 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 ("*Nasogaluak*") held that:

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

However, the Court went on to say that:

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

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

R. v. Kandola, 1993 CanLII 774 the B.C. 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 the 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*).

Self Defence and Defence of Another

By subsection 34(1) of the *Criminal Code*, “a person is not guilty of an offence if they believe on reasonable grounds that ... a threat of force is being made against them or another person; the act that constitutes the offence is committed for the purpose of defending or protecting themselves or the other person from that ... threat of force; and the act committed is reasonable in the circumstances.”

Subsection 34(2) sets out the following non-exhaustive list of factors that a court is to consider in determining whether the act was “reasonable in the circumstances”:

- the nature of the force or threat;
- the extent to which the use of force was imminent and whether there were other means available to respond to the potential use of force;
- the person’s role in the incident;
- whether any party to the incident used or threatened to use a weapon;
- the size, age, gender and physical capabilities of the parties to the incident;
- the nature, duration and history of any relationship between the parties to the incident, including any prior use or threat of force and the nature of that force or threat;
- any history of interaction or communication between the parties to the incident;
- the nature and proportionality of the person’s response to the use or threat of force; and
- whether the act committed was in response to a use or threat of force that the person knew was lawful.

ANALYSIS

No civilian witness was able to point definitively to the subject officer as the officer who shot the affected person. The only civilian witness making a clear assertion about which officer fired the shot was CW7, who was firm in his recollection that it was the witness officer who shot the

affected person. It is not open to the IIO simply to ignore available evidence. Rather, the totality of the evidence must be considered, analyzed and balanced. The following additional evidence has been considered in identifying the identity of the subject officer in this investigation:

- when the officers' firearms were examined after the incident, the 'round count' appeared to confirm witness accounts that just one shot had been fired, and it was the subject officer's gun that appeared to be one round short;
- on video, at a point evidently just a few seconds after the affected person was shot, the subject officer and the affected person are essentially face to face, the subject officer's pistol leveled, and the affected person had been shot in the front of his body;
- the single expended cartridge case was found close to the position where the subject officer was standing at that same moment; and
- the RCMP laboratory report indicated that the bullet recovered from the affected person's body, and the expended cartridge case found at the scene, had both been fired from the gun seized from the subject officer after the incident.

In any event, notwithstanding whatever uncertainty remains because of the inconsistencies in the available evidence, it is possible to come to a clear decision on the proper outcome of this investigation. That is because the analysis that follows applies equally to either officer.

POTENTIAL OFFENCE

If no defence applies to render the act of the subject officer in this case justified and blameless, that act would most likely be viewed by a criminal court as second degree murder:

- it was an act that caused the death of another person, so is homicide;
- if no defence were available to the officer, it would be culpable homicide;
- the deliberate shooting of a person with a 9 mm pistol, if culpable, and if it caused the death of that person, would generally be murder, because the officer would either be found to have intended the consequence to be the victim's death, or to have been reckless about that consequence; and
- finally, because in the circumstances of this incident there is no evidence of planning or deliberation, if the shooting amounted to murder it would be second degree murder.

Consideration must also be given, though, to the evidence that the affected person was shot at quite close range but not in the chest or otherwise in the 'centre of mass', together with the evidence of CW7 about what he described as a very careful, deliberate shot placement by the officer. If the bullet wound had taken a slightly different path, so that major blood vessels had been spared, it appears that the affected person might very well have survived. Indeed, that might have been the intention of the shooting officer. Based on those factors, an argument could also be

made that if no defence operates in this case, an appropriate alternative charge might be ‘unlawful act’ manslaughter.

AVAILABLE DEFENCES

On the evidence summarized in this document, it is clear that the subject officer caused the death of the affected person, which by definition as set out above was homicide. The question remaining is whether that homicide was culpable or not culpable. The matter must be referred to Crown counsel unless it can be concluded with confidence that the shooting was justified in the circumstances, so as to render the homicide not culpable.

In the circumstances of this case, based on the totality of the evidence as summarized above, the use of deadly force was justified under both subsection 25(3) and subsection 34(1) of the Criminal Code.

The officers were on duty, lawfully about their business, and their initial questioning of the affected person was reasonable and justified. They had just attended at an event that they understood had attracted some controversy in the community, in response to an incident involving a degree of violence. They found themselves directly approached by a man inexplicably wearing a mask, with a hood over his head, and seemingly concealing something behind his back.

Very quickly, it became apparent not only that the man was armed with a knife, but also that he was threatening them with it. It is not insignificant in this regard that he was not simply carrying the knife, but opened it as he approached them, and that it was of a type that is specifically designed for use as a weapon and is a prohibited weapon in Canada.

The evidence is essentially unambiguous regarding the affected persons’ next acts. According to witnesses the affected person was: “waving” the knife, “threatening”, “lunging at”, “jabbing at”, or “trying to stab” them. The manner of his advance is described variously as approaching “really fast”; “coming at”, “rushing towards”, or “chasing” them: “just a mad thing”.

There is no evidence that either officer did anything to provoke or justify these actions, but they were confronted with threatening and potentially deadly assaultive acts involving a non-trivial weapon. The threat was undeniably real and imminent.

The officers’ response was, on the evidence, measured and appropriate. The officers told the affected person repeatedly to drop the knife (one witness even characterized them as “begging” him to put it down). The affected person confronted two uniformed, armed police officers with guns drawn and he did not to comply or desist.

Both officers are described as stepping back, backing up, retreating, avoiding immediate recourse to force. When force was used, it was in an attempt at control of the affected person by non-lethal means, but the deployment of OC spray was unfortunately ineffective, and the

affected person appears to have become even more assaultive. Since neither officer was equipped with a Taser conducted energy weapon, it was not possible to escalate to that weapon as an option.

In those circumstances, it would be unreasonable to conclude that the ultimate use of deadly force—a single gunshot not aimed at the centre of mass—was unnecessary or disproportionate. This is true whether the shot is viewed as authorized under section 25 or justified as self-defence under section 34, and is also true whether it was fired to defend the officer who shot, or to defend his partner.

Finally, on the evidence, the officers acted reasonably and appropriately in the manner in which they secured the wounded affected person, who was initially still resistive, and in their attempts to assist him by staunching his bleeding. It should be noted in this regard that the ambulance attendants concluded immediately upon their arrival that the situation was not one for which first aid at the scene would be useful, and that immediate transport instead was called for.

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 nor will the IIO take any further action in relation to this case.

Martin F. Allen
Legal Counsel

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

November 16, 2016
Date of Release