



**IN THE MATTER OF THE SHOOTING OF A MALE BY
A MEMBER OF THE RCMP NEAR
THE CITY OF KELOWNA, BRITISH COLUMBIA
ON AUGUST 3, 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 - 096

Date of Release:

December 6, 2018

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Facts

On August 3, 2017 at approximately 12:55 p.m., Officer 1 and a City of Kelowna employee (CW 1) responded to a complaint of an unauthorized encampment. As they neared the encampment, the Affected Person (AP) approached them carrying an axe handle. When AP was directed by Officer 1 to drop the axe handle he ignored the direction and continued towards them. Officer 1 and CW 1 continued their retreat until they neared a wire fence (the Fence). AP continued his approach and Officer 1 directed AP to stop or he would be shot. AP did not stop, and Officer 1 shot AP.

BC Emergency Health Services attended and AP was taken to hospital with a serious but non-life-threatening wound.

The Independent Investigations Office (IIO) was notified by the RCMP at 1:45 p.m. The IIO commenced its investigation as the injury to AP was within the definition of “*serious harm*” as defined in the *Police Act* and an officer was involved.

Evidence collected during the investigation included the following:

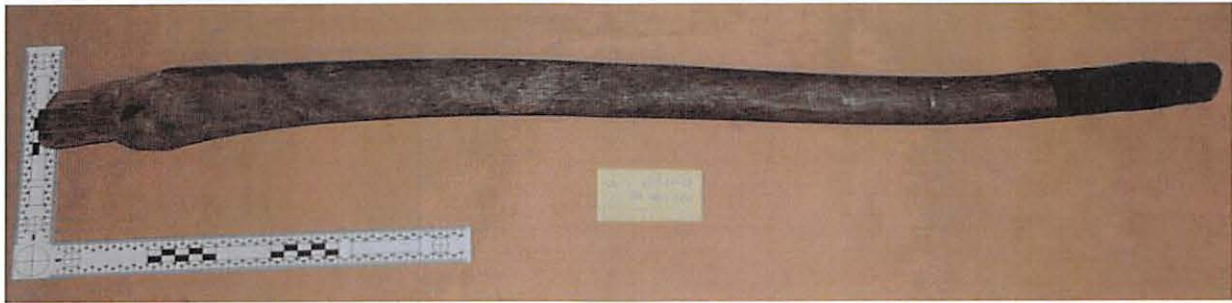
- 1) Statements of AP and Civilian Witness 1 (CW 1);
- 2) Statements of three police officers;
- 3) Photographs taken by CW 1;
- 4) Photographs of the scene;
- 5) Scene examination;
- 6) Emergency Health Services (EHS) records; and
- 7) Police radio transmissions.

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, declined to provide a written statement, notes, reports or data to the IIO.

AP told the IIO that he had found himself without a residence and an acquaintance showed him the unauthorized encampment. AP told the IIO he had lived there for approximately six months without issue.

AP said he had gone into town on the morning he was shot for treatment of a spider bite on the side of his knee. AP said he returned home sometime before noon and was in his tent when he heard Officer 1 self-identify as a police officer and that they (Officer 1 and CW 1) were “*coming down*” to the encampment.

AP said he came out of his tent and saw Officer 1, in a police uniform, pointing a firearm at him. He said he was using an axe handle as a crutch. AP said he was not instructed to put the axe handle down or to show his hands and Officer 1 “*...just told me to stand still...*” Officer 1 then called for backup over the radio.



Axe Handle seized from the Scene is approximately One Metre in length (measuring square is 150 mm by 300 mm)

AP said he told Officer 1 that he had just been “jumped” and was upset. AP also told Officer 1 that although he was acting aggressively it was not against Officer 1, but because of his situation. AP said Officer 1 told him they were there to check on campfires, to which AP said he replied:

You can see mine and my fire pit. There's stuff in it, but I'm not going to light it because I know how dry it is...I'm not that stupid...

AP told the IIO that during this conversation he moved sideways from his tent to “the end, end part of the path...down in, down in sort of the landing” where he was in full view of Officer 1 and CW 1. AP said he did not move in the direction of Officer 1. AP said Officer 1 and CW 1 moved away from him to within a few inches of the Fence.

AP said the interaction lasted approximately 10 minutes until he struck the ground with the axe handle to indicate his frustration. AP said he “wobbled” from side to side and Officer 1 shot him.

AP told the IIO that:

...because [Officer 1's] an officer, right? [Officer 1] may have -- construed maybe something, for some stupid reason, that I may have been coming at [Officer 1] when I wobbled. Because, when I walked, I walked backwards, I didn't walk forwards, so. But in those situations, you know, they may, they may think that you're coming at them, right?

AP said after he had been shot CW 1 came down to him and tried to comfort him. Officer 1 stayed at the top of the hill until paramedics arrived and AP was transported to the hospital and made a full recovery.

CW 1 is employed by the City of Kelowna and told the IIO a complaint of a remote and unauthorized encampment was received by the City. The RCMP were contacted for assistance and CW 1 and Officer 1 drove to a location approximately 600 metres from the unauthorized encampment.

CW 1 said they followed a path that led downhill. The Fence crossed the path and tarps were visible approximately 40 feet down the hill. With some difficulty, they scaled the

Fence and continued for about 15 feet to a hillcrest where the path became steeper. CW 1 could see a tarp or tent against a large tree.

CW 1 told the IIO that Officer 1 announced their presence and a male (AP) stood up behind the tent and was visible from head to mid-torso. AP's arms were down and his hands not visible and Officer 1 directed AP to raise his hands. AP told them, *"You fuckers are chasing me all over the place [and] I'm not leaving"* to which Officer 1 advised AP *"You can't be here and you do have to raise your hands, step away."*

CW 1 said AP showed one hand at a time and then both at once revealing that he was holding an axe handle. AP then moved to his left, passing behind a large tree and stood facing them from the bottom of the downward grade. Officer 1 told CW 1 to get back and once behind Officer 1, CW 1 saw that Officer 1 had drawn a firearm and was radioing for backup.

CW 1 told the IIO that AP took several steps towards them and waved the axe handle around. CW 1 said AP yelled that, *"You're going to have to shoot me. I'm not leaving here."* CW 1 said Officer 1 repeatedly warned AP to the effect that:

Look, I don't want to have to shoot you, but you do have to lay your weapon down. We have to make this scene safe for both [CW 1] and myself. And you do have to -- and yourself as well...

CW 1 was behind Officer 1, closer to the Fence, and they both backed away from AP. Officer 1 asked CW 1 to go flag down the backup officers. Officer 1 told AP to *"...drop it, drop it. You don't want to do this..."*

CW 1 backed up to the Fence and tried to lean on it to make it easier to climb over. CW 1 said AP was yelling and moving towards them. CW 1 said AP was getting *"...too goddamn close."* CW 1 took two photographs of AP approaching.

The photo below is a crop of CW 1's first photograph. AP is shown near the tree with short branches as he approached Officer 1. A fence post and some of the fence wire are circled in red.





AP holding the axe handle with his middle finger raised to Officer 1 moments before he was shot.

An analysis of the photographs together with the electronic measurement of the scene showed that the approximate distance between AP and Officer 1 was at this point 5.5 metres.

AP fully recovered from the injury sustained in this incident.

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 the injury to AP.

A police officer who is acting as required or authorized by law is, if they act on reasonable grounds, justified in doing what is required or authorized to be done and in using as much force as is necessary for that purpose. Both the defence of self and others is not only permitted but expected of a police officer. However, 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 by shooting AP. If so, the offence of attempted murder, aggravated assault or assault causing bodily harm may have been committed.

Officer 1 was on duty and performing the duties of a police officer. It is apparent that Officer 1 was asked to go with CW 1 to not only keep the peace when CW 1 attended the unauthorized encampment but to protect CW 1 in the performance of that duty if the need arose. It did. When AP acted aggressively toward Officer 1, not only Officer 1's safety was threatened. Officer 1 directed CW 1 to move to a point of safety and from the photographs taken by CW 1 it would appear that CW 1 was on the other side of the Fence.

AP was in close proximity to Officer 1 and not only displaying clear disrespect towards an Officer but brandishing a metre long axe handle. AP had the means and ability to cause grievous harm to Officer 1 with the axe handle.

Although AP denies that he left the area where his tent was pitched and denies that he moved forward up the path towards Officer 1 in a threatening manner, the photographs contradict those assertions. AP's statements to the IIO that he complied with Officer 1's directions are inconsistent with his own statement that moments after he was told by Officer 1 to "*stand still*" he moved sideways to the bottom of the path. His assertions that he never moved forward towards Officer 1 and CW 1 are clearly incorrect as shown by the photo showing him 5.5 metres from the officer.

In addition, there is no reason to believe that Officer 1 did not follow usual police procedure in directing someone to drop their weapon. The comments to AP by Officer 1, as related by CW 1, indicate that Officer 1 appropriately attempted to de-escalate the situation while at the same time protecting herself and CW 1.

Finally, Officer 1 was between AP as he approached with the axe handle and the Fence that had already been difficult to get over. She had backed up almost all the way to the fence. Turning and attempting to climb over the fence was unreasonable as it would have left her defenceless.

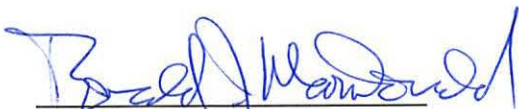
In all the circumstances, Officer 1 was faced with an angry man advancing toward her with a large axe handle in a threatening manner. The fact he had failed to comply with any direction from the officer only made the perceived threat worse. While she attempted to retreat to safety, she found herself blocked by the fence. Thus, it was certainly reasonable for her to conclude that this non-compliant and angry male with a significant weapon could easily cause her imminent grievous bodily harm. The five metre distance could be closed by him very quickly. As CW1 said AP "*was too goddamn close.*" It was therefore reasonable for Officer 1 to act in defence of herself and CW1 by shooting AP.

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

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