



PUBLIC REPORT OF THE
CHIEF CIVILIAN DIRECTOR

Investigation into the September 10, 2012
fatal shooting of Gregory Matters by the
Royal Canadian Mounted Police near the city
of Prince George, British Columbia.

IIO 2012-0002

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. As the Chief Civilian Director of the IIO (CCD), I am required to review all investigations upon their conclusion, in order to determine whether I “consider 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 I conclude that an officer may have committed an offence, I am required to report the matter to Crown counsel. If I do not make a report to Crown counsel, I am permitted by s.38.121 of the *Police Act* to publicly report the reasoning underlying my decision.

In my public report, I may include a summary of circumstances that led to the IIO asserting jurisdiction; a description of the resources that the IIO deployed; a statement indicating that the IIO, after concluding the investigation, has reported the matter to Crown counsel; or a summary of the results of the investigation if the matter has not been reported to Crown.

This is a public report related to the investigation into the fatal shooting of Gregory Matters that occurred on September 10, 2012, near the city of Prince George. Pursuant to s.38.11 of the *Police Act*, RSBC 1996 Chapter 367, I have reviewed the concluded investigation. I do not consider that any officer may have committed an offence under any enactment and will not be making a referral to Crown counsel.

In my public report, I am 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, I am required, if practicable, to notify the person to whom the information relates, and further, notify and consider any comments provided by the Information and Privacy Commissioner (s.38.121(5) of the *Police Act*).

In this case, I have considered both the advice provided by the Information and Privacy Commissioner as well as the views of the affected person’s next of kin and family. In this report, I will be using the name of the deceased, Gregory Matters, and will be referencing involved family members by their relationship. This decision was based, in part, on the fact that Mr. Matters’ identity had already been extensively reported in the media and his family did not object to the use of his name in this report.

Gregory Matters was 40 years old at the time of his death. He lived with his mother on a large piece of rural property near the city of Prince George.

CIRCUMSTANCES LEADING TO NOTIFICATION TO THE IIO

Day One

On September 9, 2012, at approximately 3:00 a.m., an off-duty RCMP officer attended a dispute and vehicle collision that occurred outside of his residence. There, he found Mr. Gregory Matters and his brother who appeared to be engaged in a dispute. Gregory Matters alleged that his brother had trespassed onto his property (“doing donuts” with his vehicle in Gregory Matters’ driveway). Gregory Matters’ brother alleged that Gregory had chased his vehicle down the road, forced his vehicle into a ditch and then had punched him in the face.

After speaking with the two brothers, the off-duty officer called 911. The off-duty officer subsequently reported that Gregory’s brother had left the scene and noted that that Gregory’s brother had blood on his nose and his face, but stated his injuries were “nothing overly major.”

Gregory Matters called 911 less than 2 minutes after the off-duty officer called 911. He reported that his brother had been drunk and had trespassed onto his property. He indicated he had a restraining order against his brother and that he had given chase; he reported that his brother’s vehicle had crashed into a ditch alongside the road.

Two RCMP officers were dispatched to handle the call for service at 3:20 a.m.

At 3:21 a.m., Gregory Matters called 911 again to find out the status of his call for service. He was advised that it would take time for an officer to respond to the call. Mr. Matters repeated that his brother had been drinking and driving and expressed concern that his brother was being “protected” by an off-duty police officer.

The responding officers reported talking to Gregory Matters at approximately 3:30 a.m. According to one of the responding officers, Gregory confirmed what he had earlier reported to the 911 dispatcher. According to the officer’s notes, Gregory stated: “that his brother came into his driveway and did donuts in his yard and left – Greg then chased after him in his vehicle and ran him off the road. Said he made contact with his vehicle on [his brother’s] vehicle. Stated we could find the vehicle in the ditch. . .”

At 3:46 a.m., Gregory Matters called 911 again, trying to determine whether his brother was in custody, because he believed his brother had access to firearms from his nearby residence. Mr. Matters was advised that officers were currently attending the location of the collision and was told that officers would be advised to contact him “as soon as they have him in custody.”

The responding officers reported that they were able to locate Gregory’s brother at 3:59 a.m. Gregory’s brother had left the scene and gone to an unknown location. He told the investigating officers that he had gone to see his mother (who lived with Gregory) and when he found her not at home, he left. He alleged that Gregory had chased him down, ran him off the

road and punched him in the face. The responding officers noted the following injuries to Gregory's brother: "a swollen forehead, cheek, bloody lip and nose."

At 4:29 a.m., Gregory Matters called 911 again, asking whether his brother had been taken into custody. He was advised by the 911 operator that he could not call 911 to get an update on a file. Instead, he needed to call the non-emergency number and leave a message. Mr. Matters complained that no one was getting back to him and once again asked to be contacted as soon as his brother was in custody.

The dispatcher immediately advised the investigating officers that Mr. Matters had called 911 for an update. The investigating officer advised dispatch: "don't worry, I've got one coming for him." The dispatcher advised the officer that Mr. Matters was "kind of angry with us." In response, the officer commented: "What else is new?"

At 5:14 a.m., Gregory Matters called 911 again to report that he knew where his brother was located. The dispatcher admonished Mr. Matters about repeatedly calling 911 to get a file update. Mr. Matters replied: "Stop interrupting me. I'm telling you, I don't have a – the other number on hand. I'm just telling you, if the police are looking for him, I know where he is." Mr. Matters then asked that the investigating officers contact him.

One of the investigating officer's notes reflected that at 5:23 a.m., he contacted Mr. Matters again, and that Mr. Matters threatened to "shoot [his brother] if he sees him again." His notes also reflected that Mr. Matters stated: "if anyone comes in his yard and threatens him, he will shoot them dead." According to the notes, Mr. Matters stated: "he didn't know who was in the vehicle until he was face-to-face" and that "if the police don't deal with [his brother], he will ... Stated he would take matters into his own hands – and it would not be pretty." According to the officer, Mr. Matters became "enraged" after being told that his brother had not yet been arrested. Mr. Matters also reportedly threatened that "if anyone, including police, points a gun at him, that he would shoot them dead."

The investigating officer subsequently asked the day shift to follow up and attend Mr. Matters' residence and arrest him for dangerous driving, assault with a weapon, assault and breach of a peace bond. The restraining order referenced by Mr. Matters had proven to be a Common Law Peace Bond dated April 16, 2012 naming Mr. Matters as the "person bound" to have no contact or communication directly or indirectly with his brother except through an arbitrator or during the course of arbitration. The investigating officer requested the day shift "make note of donuts in the yard of the accused" and photograph Mr. Matters vehicle.

At 2:00 p.m., a day shift officer contacted Mr. Matters and asked him to come to the detachment to make a statement. Mr. Matters reportedly agreed to be there between 4:30 p.m. and 5:00 p.m. that day. However, according to the day shift officer, Mr. Matters called at 4:40 p.m. and advised that he could not get to the detachment as his vehicle was not drivable. Mr. Matters invited the officer to pick up a written statement from him at his residence.

At 5:17 p.m., four officers attended the Matters residence with the intent to take him into custody; two officers were to meet with and arrest Mr. Matters and two were to provide covert cover. Their plan was to try to draw Mr. Matters out from his residence on the pretext that they needed to take a statement from him and that they would photograph any tire tracks left by his brother's vehicle.

Mr. Matters reportedly met the officers at the gate to his residence and provided them with a written statement and a copy of the peace bond. When asked to point out the tire tracks, he deferred to his mother, who was present. He subsequently moved into the doorway of the residence, apparently suspecting officers were interested in making an arrest. The officers determined that proceeding with an arrest was not safe and took no further action towards making the arrest.

The officers reportedly left the residence at approximately 5:56 p.m. and took up a position nearby.

At 8:55 p.m., the RCMP Operations NCO¹ contacted the Matters residence in an attempt to negotiate a way for Greg to be safely taken into custody. Mr. Matters' mother was told that he would be arrested. She reportedly told the NCO that Mr. Matters suffered from Post - Traumatic Stress Disorder and that an arrest could have a detrimental impact on his well-being. The NCO spoke to Mr. Matters and advised him that his brother had not been arrested and that police were investigating the assault allegation made by his brother against him. Mr. Matters was described as agitated and reportedly stated "I'm going to get a gun right now." He subsequently acknowledged to the NCO that there were no guns in the residence and that he was frustrated and angry.

Throughout the evening, the NCO had numerous telephone conversations with Mr. Matters and his mother. During those calls, the NCO reportedly restated that while police were willing to listen to his side of the story, the issue of Mr. Matters' arrest was non-negotiable. Mr. Matters' mother agreed to have Gregory surrender to police at the detachment the following morning.

Officers remained in position overnight in the event that Greg left his residence and an arrest could be safely made.

Day Two

By 12:30 p.m., September 10, 2012, Gregory Matters had not reported to the detachment. When the NCO contacted him, Mr. Matters advised that he would not turn himself in until he had spoken to a lawyer. Mr. Matters also advised the NCO that his mother did not speak for him.

¹ Non-Commissioned Officer.

At 12:33 p.m., Mr. Matters left a voicemail for the NCO and stated: "Hi (NCO), you guys really don't want to approach me on my property...I appreciate you guys putting vehicles on the road though I don't really understand why. Until I'm fully , you know, until I understand everything fully,...believe me from past experience, I have no reason to trust the police...please you don't want to approach me on this property...I'll wait for the lawyer to contact me."

At 1:54 p.m., officers observed a vehicle driving in the field between Mr. Matters' residence and an adjacent property, also owned by the Matters family, located directly to the south of his residence. Officers believed that Mr. Matters was likely driving the vehicle and was now located on the adjacent property, which included several structures.

At 2:07 p.m., a decision was made by a senior RCMP supervisor to deploy the Emergency Response Team (ERT) in order to affect the arrest of Mr. Matters. According to the supervisor, he based this decision, in part, on information obtained from the original investigating officer, that Mr. Matters was arrestable. The supervisor spoke to the NCO who had been in contact with Greg Matters and his mother and asked his opinion on what would happen "if we do nothing...if we just back off." The NCO expressed concern about the threats made against Greg's brother as well as threats made against potential trespassers and the police as well.

Prior to the deployment of the ERT, two officers attempted to track and locate Mr. Matters on the adjacent property. They reported breaking open a gate to the road which had apparently been padlocked by Mr. Matters after he had arrived on the property. They later explained that the gate was broken open in order to ensure appropriate access for police and other emergency vehicles if needed anytime thereafter. The officers were unsuccessful in locating Mr. Matters and left the property believing it was too dangerous to confront Mr. Matters in the absence of ERT officers.

The NCO continued to negotiate with Mr. Matters for his surrender, which reportedly included making an offer to go out to the Matters property himself to pick up Gregory, but Gregory declined that offer.

At 4:08 p.m., based on the continuing conversations between Mr. Matters and the NCO, the following information was provided to police dispatch to broadcast to officers attending the scene: "he's threatening suicide by cop, he's going to do whatever it takes to have them shoot him and he is going to get a gun or a knife to do it ... he's somewhere out in the bush."

At approximately 4:15 p.m., the ERT was assembled and was debriefed about the incident. After the briefing was concluded, a command post was set up near the Matters property. The command post was occupied by the Incident Commander, support staff, radio operators, a police negotiator and the ERT leader. As per normal ERT protocol, emergency medical personnel were also called to attend the command post in case any injuries were sustained by any person relating to the attempt to arrest Mr. Matters.

Throughout the afternoon, police had tried to contact Mr. Matters' psychiatrist and eventually spoke to him at 6:42 p.m. The psychiatrist explained that Mr. Matters had a complicated history and that when "badly triggered," he would be capable of acting in an aggressive manner. When asked about a strategy to de-escalate Mr. Matters, the psychiatrist suggested that police explain they were aware of his issues with his brother and that they needed to hear his side of the story. The psychiatrist noted that Mr. Matters had good experiences with police when they were willing to listen.

At 6:53 p.m., ERT was contacted by the command post and told that Mr. Matters wanted to surrender. Events thereafter took place quickly.

At 6:55:01 p.m., ERT was advised that Greg Matters was "out of the residence on the driveway, hands up at the grandfather's place right now." ERT responded: "Copy that. We're going to move out double time."

At 6:56:07, ERT advised the command post that they were going to head to the area by vehicle and meet up with Mr. Matters.

During this time, Greg Matters remained in telephone contact with the NCO who, with the aid of a negotiator, was attempting to walk Mr. Matters through a peaceful surrender.

At 6:57:13, the command post advised ERT that Mr. Matters said he could not see the officers but that he was almost to the end of the road.

At 6:58:03, the command post directed an assigned helicopter to "fly a little higher or back off" as it was "agitating" Mr. Matters.

At 6:59:05, ERT advised that "we're just approaching the end of the driveway now." The command post responded "he's walking down the driveway, I believe."

At 6:59:38, ERT was advised that "the helicopter freaked him out and he is headed inside the residence."

At 6:59:59, ERT was directed by their team leader to "compress down the driveway so you can get eyes on the res[idence]."

At 7:01:03, ERT was advised that Mr. Matters was still on the phone with the NCO.

At 7:01:23, ERT was instructed to "get to a point in the driveway where vehicles are out of sight of the house and...flank the driveway so you can intercept him walking down from the house."

At 7:04:37, ERT advised they had advanced up the driveway.

At 7:12:13, ERT advised that they were approximately 200 metres from the residence.

At 7:13:23, ERT advised they had “eyes” on Mr. Matters and that he was on a cell phone.

At 7:13:31, ERT was asked “are you in a position to intercept him before he gets back into a structure?” ERT responded “he’s skirting the brown structure.”

At 7:13:56, ERT advised that Mr. Matters was walking down the driveway toward the team: an ERT officer broadcast: “I can’t see anything in his hands, but it looks like not.”

At 7:14:06, ERT was advised that Mr. Matters “was escalating and talking about a confrontation.” According to the NCO, his last conversation with Gregory Matters involved an instant change in Matters’ demeanour when he started talking about a “fence” or “a gate.” He quoted Matters as saying: “Hey, what’s going on?” It looks like something is changed” or “You guys are fucking around with that gate.” The NCO reported that Matters became very agitated regarding what happened to the gate. The call was then “dropped.” The NCO stated that he called Matters’ telephone number several times. The line eventually re-activated, and although he did not hear Matters answer the telephone, he could hear a confrontation, and yelling of words to the effect: “What the fuck are you guys doing?” The line then went dead.

At 7:14:58, the ERT senior officer broadcast: “he has a small hatchet with him, a small hatchet;” the senior officer can be heard calling out to another officer: “get up here with that taser.”

At 7:15:11, an ERT senior officer could be heard over the radio saying: “Greg, we’re here to help you, just throw – put down the hatchet – hatchet.”

According to the ERT members, the CEW was deployed however was not effective. Within seconds, an ERT member shot Mr. Matters with two bullets to the chest.

At 7:15:36, ERT broadcasted that shots had been fired: “We got shots away – shots away.”

Within 11 seconds of that broadcast, ERT called for an emergency medical response. Emergency medical personnel responded from the command post. Although treated at the scene by ERT members and emergency medical personnel, Mr. Matters did not survive his injuries.

There were four members of the Emergency Response Team – one was armed with a shotgun capable of shooting less lethal bean bag rounds; one who was armed with a Conducted Energy Weapon (CEW); one who was armed with a pistol and an M-16 rifle; and a K-9 officer was armed with an M-16 rifle and accompanied by his police service dog. For the purposes of the analysis, the four ERT members will be referred to as:

- ERT shotgun less lethal;
- ERT/CEW;
- ERT Senior Officer;
- ERT K-9 Officer.

NOTIFICATION AND IIO JURISDICTION

The IIO was notified of the officer involved shooting on September 10, 2012 at 7:36 p.m. and immediately asserted jurisdiction. IIO investigators were deployed from the lower mainland and arrived at the scene of the shooting at 12:12 a.m. on September 11, 2012. Eight IIO investigators and the Acting Director of Investigations were initially deployed to attend the scene. This was the first deployment for the IIO; the IIO had begun accepting cases as of midnight, September 10, 2012.

ISSUES

The general issue in any IIO investigation is whether or not there is evidence that a police officer may have committed an offence under any enactment. There are a number of legal issues to be considered in this specific case.

I must consider whether there may be culpability for an officer's use of force or deadly force, pursuant to the following *Criminal Code* provisions:

- (1) 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).
- (2) 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)).
- (3) 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)).

Emergency Response Team officers entered upon Mr. Matters' land having reasonable grounds to arrest him for indictable offences. They did not have a section 529.1 warrant to arrest within a dwelling-house, but the fatal incident occurred some distance from the dwelling-house on the property. It is clear that a fellow-officer may be a person under an officer's protection, within the meaning of section 25(3).

In this case, there are two sub-issues of culpability for use of force. First, whether the attempted use of the Conducted Energy Weapon (CEW) against Gregory Matters constituted excessive force, and thus the offence of assault with a weapon contrary to section 267 of the *Criminal Code*.

Second, I must contemplate whether the fatal shooting of Mr. Matters constituted a culpable or non-culpable homicide.² Homicide that is not culpable is not an offence. Culpable homicide may take the form of murder, manslaughter, unlawful act manslaughter, or criminal negligence. Criminal negligence is defined by section 219 of the *Criminal Code*: “Everyone is criminally negligent who (a) in doing anything, or (b) in omitting to do anything that it is his duty to do, shows a wanton or reckless disregard for the lives or safety of other persons.” Therefore I must consider whether there may be criminal culpability for the decision to order the arrest of Mr. Matters at the time and place where the attempted arrest culminated in his death.

EVIDENCE CONSIDERED AND ANALYSIS

The Use of the Conducted Energy Weapon (CEW)³

The involved ERT members attended to Mr. Matters’ property after being advised that he was walking down the driveway, ready to surrender himself. Upon arrival at the foot of the driveway, the ERT members were advised that the police helicopter had “freaked out” Mr. Matters and that he was retreating back to a structure on the property. They were instructed to “compress down the driveway so you can get eyes on the res[idence].”

The ERT members, based on what they had reason to believe were lawful instructions, entered the property and made contact with Mr. Matters within 15 minutes of entering the property. Within 90 seconds of ending his telephone contact with the NCO, Gregory Matters had been confronted by the ERT officers and had been shot.

According to the ERT senior officer, he saw Mr. Matters coming down the driveway. When Mr. Matters was parallel to him, he and the ERT K-9 officer came around the tree line and “presented themselves.” He yelled: “Police. Stop.” He described Mr. Matters as “upset” and noted that “he definitely looked a bit wild.” He stated that he noted that, at a certain point, Mr. Matters had a hatchet in his hand: “he had brought it up, made it visible.” “It ... had a curved blade on it ... a stainless steel kind of finish on it, very shiny” (see attachment 1 – photograph of hatchet located at the scene). The ERT senior officer stated that he told Mr. Matters: “Greg, put down the hatchet. We’re here to help you.” He noted that Mr. Matters did not respond to that statement, but instead yelled at the officers to get off his property.

² “A person commits a homicide when, directly or indirectly, by any means, he causes the death of a human being.” *Criminal Code*, section 222(1).

³ The Conducted Energy Weapon (CEW) is commonly referred to as a “taser.”

According to the ERT senior officer, Mr. Matters actions were “erratic:” “he started turning around, and he starts going back ... he would start heading back and he’d sort of stop and turn and yell something.” He then called for the ERT/CEW officer, to bring up the “taser.” “In between turning and facing us to yell or to flap his arms, or ... hold the hatchet up, and he sort of turns back ... at one point there, Gregory turns and faces me and then starts coming towards me ... somewhere in that 5 to 10 metre range.” The ERT senior officer stated he again called for the ERT/CEW officer to bring the “taser.” According to the ERT senior officer, he told Mr. Matters: “Stop, Greg, you’re going to get tasered.” He stated that he called for the ERT/CEW officer to deploy the CEW against Mr. Matters because he did not have appropriate “less lethal” options if Mr. Matters advanced on him. Other than his firearms, he was armed solely with pepper spray and a baton. He noted that Mr. Matters was highly agitated and, because he was so “volatile,” he did not want Mr. Matters to have an opportunity to return to the structure on the property where he was believed to have been staying: “there’s no reasonable idea as to what he’s going to do ... if he was to return to the property, what he would do next.”

The ERT/CEW officer stated that he heard the ERT senior officer repeatedly call for the CEW: “I remember (him) yelling: “Get it [the CEW] ready. Get it ready. Get up here. We need it. We need it.” The officer stated that he ran towards Mr. Matters and got within 12 to 15 feet, “maybe a little more,” and deployed the CEW. “He turned to me and reared that axe up ... he reared it up and I deployed.”

RCMP policy authorizes an officer to deploy a CEW device “when a subject is causing bodily harm, or the member believes on reasonable grounds, that the subject will imminently cause bodily harm as determined by the member’s assessment of the totality of the circumstances.” (RCMP Operational Manual, Section 17.7. Conducted Energy Weapon, at paragraph 3.1.1.)

Given the ERT members’ accounts, and the above-noted RCMP policy, the CEW deployment would not constitute excessive force or assault. The involved officers had been informed by superior officers that Mr. Matters was immediately arrestable. As such, they had the right and duty to arrest Mr. Matters at that time and before he could retreat into the structure located on the property. The use of the CEW was an attempt to safely arrest Mr. Matters, who had armed himself and was capable of imminently causing bodily harm to officers attempting to affect a lawful arrest. In addition, a successful use of the CEW to take Mr. Matters into custody would have avoided the danger to officers, and Mr. Matters himself, of attempting to arrest Mr. Matters if he had barricaded himself in the structure located on the property. As such, it was reasonable for the ERT senior officer and the ERT/CEW officer to conclude that the CEW deployment was an appropriate tool to safely take Mr. Matters into custody.

The Shooting of Mr. Matters

The fatal shots were fired by the ERT K-9 officer. According to the K-9 officer, it was his original intent to deploy his police service dog (PSD) against Mr. Matters in order to take him into custody. Once Mr. Matters armed himself with the hatchet, however, the officer concluded that the use of the PSD was no longer an appropriate option as the PSD would have been vulnerable to a hatchet strike.

In a written statement provided to the IIO, the K-9 officer noted that he shot Mr. Matters only after it was clear that the CEW deployment by the ERT/CEW member was ineffective and that Mr. Matters “continued moving towards [the ERT/CEW officer] after the taser was fully deployed.” According to the K-9 officer, “there was no hesitation in Matters’ advance with the hatchet raised and I was left with no option if I was to prevent Matters from wounding or killing [the ERT/CEW officer]. . . I switched off the safety of my rifle, aimed at Matters’ center of mass, and fired two rounds.”⁴

The ERT K-9 officer stated that at the time he fired the fatal shots, he believed the ERT/CEW officer was in imminent danger from Mr. Matters. The ERT/CEW officer, for his part, believed that Mr. Matters was continuing on towards the ERT senior officer and the ERT K-9 officer at the time he was shot. However, he also stated that he was focused on Mr. Matters because he was concerned about getting struck by the hatchet. He described sprinting towards Mr. Matters and deploying the CEW: “it did not work. He kept that thing up, reared, turned and then I heard two shots.” He further stated “I find that with the deployment of the CEW not working, my – I became scared. I realized that at that point I was too close to him and that I felt that absolutely [sic] fear that that hatchet was going to strike me.”

The ERT/less lethal shotgun member stated: “It was a very chaotic scene. People are yelling. Matters is yelling, and I see [the ERT/CEW officer] deploy a taser, and I hear a quiet pop from the taser. And immediately after that, Matters has the ... hatchet ... above his head, and from my angle ... I don’t know if it was his height or just the way I was standing, but it looked like he was right on top of [the ERT/CEW officer], and it looked like he was bringing the hatchet down on top of his head, very blatant like, you know, downward swing with a hatchet. I was pretty sure that [the ERT/CEW officer] was going to take a hatchet to the head at that point, and if I had a clear line of fire at that point, even with my less lethal shotgun, I would have definitely, definitely shot at Mr. Matters, because I feared death and grievous bodily harm, the most I have ever felt in my life ...”

The ERT senior officer, who was closest to the ERT K-9 officer, stated that he was focused on the CEW and he did not see what Mr. Matters was doing during the seconds between the deployment of the CEW and the shots fired by [the ERT K-9 officer]: “I feel really embarrassed about this, but I feel sort of mesmerized with what [the ERT/CEW officer] was doing, just to

⁴ I am aware that police training teaches officers when intentionally discharging a firearm at a person to generally aim at “center mass.” Officers are taught not to “shoot to kill” but to “shoot to stop.” However, an officer can be assumed to foresee that shooting at a person’s chest with a high-powered rifle is likely to cause that person’s death.

make sure that there was a deployment, and I didn't – I didn't adjust quickly to watch [Mr. Matters] and see if he was tensioning or, you know, if it was effective in that way." According to the ERT senior officer, he was not aware that the CEW was ineffective until after the fatal shots were fired.

As indicated above, the statements of the four ERT members are not entirely consistent. Such inconsistencies are to be expected, however, in any fast-moving critical incident. It is widely recognized that witnesses to critical incidents will often perceive the same incident differently.

The different perceptions in this case do not appear to me to indicate any attempts to deceive, nor do the differences cause me to believe that the officer who fired the fatal shots may have committed an offence. All the officers stated that Mr. Matters was non-compliant with their orders, and that he brandished a hatchet at them. Mr. Matters was described alternatively as "erratic," "angry," and "wild." In order to conclude that the shooting officer may have committed an offence, I would have to find that he may have used excessive (deadly) force without the reasonable belief that it was necessary for the preservation of another officer from death or grievous bodily harm. Based on the evidence that I have reviewed, I am not able to reach that conclusion.

The Decision to Order the Arrest of Mr. Matters

Family members in this case have raised questions regarding the appropriateness of the decision to order Mr. Matters' arrest and to deploy the ERT to arrest Mr. Matters on his property without further delay.

Given the concerns identified by Mr. Matters' family, I find it necessary to consider whether any officer or supervisor who was involving in the decision-making process would face any criminal culpability for criminal negligence in ordering Mr. Matters' immediate arrest by ERT officers. Such culpability could arise only if those officers may have acted with a wanton or reckless disregard for the life or safety of Greg Matters (section 219 of the *Criminal Code*.)

Even if it was assumed that the decision to order Gregory Matters' immediate arrest was not reasonable, I would not be able to conclude that any involved officer may have exhibited a wanton or reckless disregard for the life or safety of Mr. Matters. ERT officers are specially trained to take dangerous and difficult people into custody in a safe manner. The vast majority of ERT deployments do not result in death or serious injury, even though they are amongst the most dangerous of all police actions.⁵ Therefore I cannot conclude that any officer would reasonably been able to foresee that an ERT deployment to arrest Mr. Matters would result in serious injury or death to anyone.

⁵ For example: according to the RCMP, the North District ERT was deployed 13 times since January 2012 – however, the only incident involving death or injury occurred as a result of the deployment in this case. Overall in B.C., since January 2012, out of 190 ERT deployments: two involved deaths (1%) and another 7 involved different levels of injuries (including minor injury) to the arrested person (3.6%).

CONCLUSION AND DECISION OF THE CHIEF CIVILIAN DIRECTOR

Since I cannot conclude that any officer may have committed a criminal offence in this case, no further action can be taken by the IIO. Any issues or concerns relating to the decision to immediately arrest Mr. Matters or relating to the competency or fairness of the underlying investigation that led to his arrest fall outside the jurisdiction of the IIO and my mandate as the Chief Civilian Director. These are, instead, issues that fall within the jurisdiction of the RCMP as the employing agency and the Commission for Public Complaints Against the RCMP (CPC) as civilian oversight for the RCMP. It should be noted that the IIO investigation was focused on the question of potential criminal culpability. In order to answer questions regarding the reasonableness of police decisions which led to the deployment of the ERT, further investigation would need to be conducted by the RCMP and/or the CPC.

Given the concerns raised by the Matters' family, the IIO file will be forwarded to the RCMP and CPC for further investigation and review in accord with their policies and procedures.

Submitted this 29th day of April, 2013 by

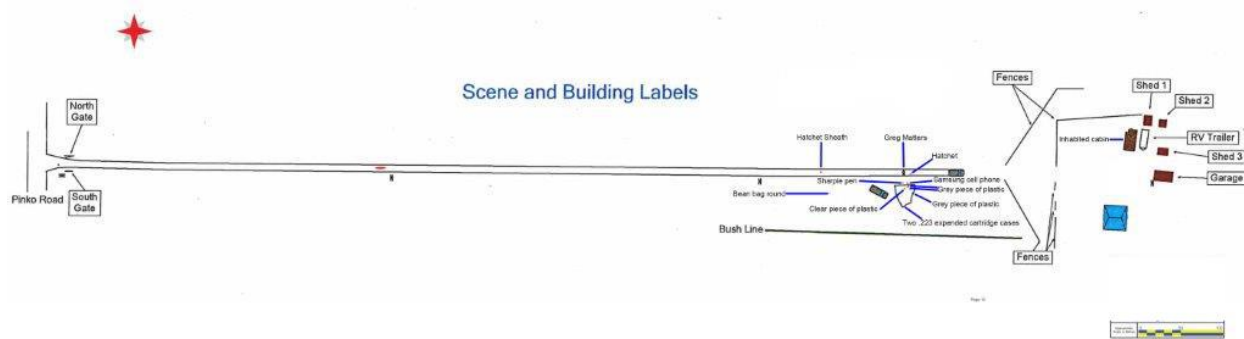
Richard A. Rosenthal
Chief Civilian Director
Independent Investigations Office of BC

Attachments:

- #1: Photo of Hatchet
- #2: Diagram of location of shooting



#1: Photo of Hatchet



#2: Diagram of location of shooting