



SUPPLEMENTAL 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 Counsel.

This is a supplemental 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. In my original public report dated April 29, 2013, I indicated that pursuant to s.38.11 of the *Police Act*, RSBC 1996 Chapter 367, I had reviewed the concluded investigation. I further indicated that I did not consider that any officer may have committed an offence under any enactment; therefore I did not make a referral to Crown Counsel.

In my public reports, 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.

An inquest relating to Mr. Matters’ death was held from October 7 through 18, 2013 and from January 27 through January 30, 2014, in Prince George. The inquest heard the testimony of many of the witnesses who IIO investigators interviewed and whose evidence was considered as part of my April 2013 public report. The inquest also heard evidence which I did not have when I issued my original public report.

IIO counsel participated in the inquest and represented IIO interests during the course of the proceedings. The inquest jury rendered a verdict that Mr. Matters died of “two gunshot wounds to the left posterior chest.”

During the inquest, counsel representing Mr. Matters’ family identified additional issues not addressed in my initial public report. Counsel raised many of these issues again in a letter to me dated March 11, 2014. In addition, he and three civil rights organizations questioned the original public report and my finding that Mr. Matters died as the result of bullet wounds to the chest. They called for an independent review of the IIO investigation.

As a result of questions raised and new evidence made public at the inquest, I made a commitment to reconsider my original decision to see whether the available evidence, including the new information presented at the inquest, suggests that an officer may have committed an offence.

I have concluded that the totality of the evidence provides no reason to believe that any of the involved officers may have committed a criminal offence. In addition, I have provided some analysis which I am hopeful will satisfy questions raised by Mr. Matters’ family and their counsel.

It should be noted that at the time of the shooting, four members of the RCMP Emergency Response Team (ERT) were engaged with Mr. Matters. For the purpose of clarity throughout this report, they are designated as follows:

1. The Subject Officer is the ERT officer who shot Mr. Matters. This officer is also a police dog handler and at the time of the incident, was armed with an M-16 rifle and accompanied by his police service dog (PSD).
2. Witness Officer 1 is an ERT officer who was armed with a shotgun equipped with less lethal “beanbag” ammunition.
3. Witness Officer 2 is an ERT officer who was armed with a Conducted Energy Weapon (CEW), commonly referred to by its brand name, TASER.
4. Witness Officer 3 is the senior ERT officer, who was armed with an M-16 rifle.

#### **ADDITIONAL EVIDENCE CONSIDERED**

I will not recount all of the testimony given at the inquest. The hearing lasted almost three weeks. Witnesses testified about many topics, including Mr. Matters’ good character, how he acquired post-traumatic stress disorder (PTSD), and how it affected him. To determine whether an officer may have committed an offence, I found the following evidence probative.

## The Testimony of the Subject Officer

The Subject Officer testified during the course of the inquest. His testimony was compelled as a matter of law and cannot be used against him in a court of law in any future criminal proceeding. Specifically, Section 35 of the *Coroners Act* prohibits the admission of any evidence he gave at the inquest in any criminal trial against him. Furthermore, sections 7 and 13 of the *Charter of Rights & Freedoms* protect the Subject Officer's right not to be compelled to give evidence against himself, and not to be incriminated by compelled evidence. To the extent that the Subject Officer provided a legal justification for his use of deadly force against Mr. Matters, those provisions do not prevent me from considering his testimony.

## Testimony Regarding the Physical Health of Mr. Matters

Gregory Matters' mother testified that Mr. Matters could not run because of his bad back and used a cane to assist him in being mobile. Counsel for the family suggested that Mr. Matters' injuries rendered him too feeble to pose any threat to police and that the police overstated his ability to be a threat to them.

However, Mr. Matters' family doctor undermined that argument. He testified that Mr. Matters took medication that allowed him to move smoothly and comfortably. The problem was that he had a tendency to over-exert himself; this would cause him pain the following day.

Even if I were to conclude that Mr. Matters lacked the actual physical ability to harm police officers, I would have to consider whether the officers at the scene, who were not aware of Mr. Matters' physical abilities, were reasonable in their belief that Mr. Matters was a threat. Given the overall circumstances, I cannot conclude that the officers were unreasonable in that belief.

## Psychiatric Evidence

Mr. Matters' psychiatrist testified that Mr. Matters suffered from PTSD, but was making progress in overcoming it.

The inquest heard new evidence of Mr. Matters' psychological state. This included:

- A report from Mr. Matters' psychiatrist dated August 25, 2011
- An email from Mr. Matters to his psychiatrist dated September 7, 2012
- A letter from Mr. Matters to another psychiatrist received January 6, 2011 and
- Mr. Matters' psychiatrist's testimony explaining Post Traumatic Stress Disorder (PTSD).

This evidence suggested that Mr. Matters *would have* behaved on his farm just as the ERT officers described. This evidence, therefore, tends to corroborate their accounts.

The psychiatric evidence confirmed a deep distrust of police and added evidence of strong territoriality. Mr. Matters' psychiatrist identified many injustices Mr. Matters suffered in the past which led to his condition. While I may feel sympathy for Mr. Matters' psychological condition, the law requires me to set aside any personal bias in that regard and consider whether police committed an offence during this incident.

As set out in the original IIO public report, a senior officer alleged that Mr. Matters threatened to get weapons and to harm police officers. In addition, the ERT officers alleged that Mr. Matters produced a hatchet and approached an officer aggressively. The actions described by these officers were consistent with the assessment provided by Mr. Matters' psychiatrist at the inquest.

### The Failure to Use Mr. Matters' Psychiatrist as a Third-Party Intermediary

Mr. Matters' psychiatrist testified emphatically that the RCMP could have resolved this incident without resorting to lethal force. He said that police should have let him speak with Mr. Matters. He felt confident that he could have persuaded Mr. Matters to surrender.

A trained RCMP negotiator testified about the risks of using a Third Party Intermediaries (TPI), and the need for the police personnel to have complete confidence in their ability. She described positive and negative experiences she had with such intermediaries. In her opinion, one should not use a TPI without a thorough interview first.

The negotiator testified that she reached Mr. Matters' psychiatrist shortly before Mr. Matters was shot. She ended her call with him abruptly because she understood that Mr. Matters was in the process of surrendering.

Assuming that employing Mr. Matters' psychiatrist's skills and better relationship with Mr. Matters would have ended the stand-off safely, I must consider whether the evidence establishes that the police committed a crime by choosing not to link him into the ongoing conversation between the Staff Sergeant and Mr. Matters.

The only crime that would apply is criminal negligence. This requires evidence of a "wanton and reckless disregard" for Mr. Matters' life or safety.

The negotiator testified that during her telephone conversation with Mr. Matters' psychiatrist, she learned that Mr. Matters decided to turn himself in. She ended the conversation because she no longer expected to need his assistance.

Given the totality of the circumstances, the available evidence provides enough support for the decision not to further engage Mr. Matters' psychiatrist, that it does not suggest a wanton and reckless disregard for Mr. Matter's life or safety such that the police may have committed the offense of criminal negligence.

## GPS Data

The Subject Officer carried a GPS device; IIO investigators were aware of this device by November 30, 2012, but did not pursue it. During the inquest, counsel for the RCMP provided a copy of the data it recorded.

An IIO analyst reviewed this data, and found it recorded movements which were consistent with the evidence provided by the Subject Officer in his written statement to the IIO, as well as in the testimony he provided during the course of the inquest.

## Evidence Provided by the Attending Pathologist

At the inquest, the pathologist who conducted the autopsy on Mr. Matters provided a further opinion not set out in his autopsy report.

The pathologist believed that, of the two bullets that hit Mr. Matters, the one that tracked the horizontal path more than likely struck him first.

On April 14, 2014, IIO staff met with the pathologist to clarify details of his opinions. He repeated the evidence he gave at the inquest, and provided some new information regarding how Mr. Matters would likely have held his hand across his chest.

As further highlighted below, if one accepts the pathologist's analysis, the weight of the evidence suggests that Mr. Matters appeared to pose an immediate threat to the ERT at the moment at which he was shot.

## **ADDITIONAL ANALYSIS AND CLARIFICATIONS**

### Absence of a Warrant

Police did not obtain a warrant before entering the Matters property. Counsel for the Matters family suggested that this rendered the use of force against Mr. Matters unlawful.

No new evidence on this point arose at the inquest. As the former Staff Sergeant and an RCMP Constable testified, the Constable started the necessary paperwork to apply for warrants, but did not complete it before Mr. Matters died.

Section 495 of the *Criminal Code* authorizes police officers who reasonably believe that a suspect committed an indictable offence, to arrest the suspect even without a warrant.

Section 529.1 of the *Criminal Code* provides for a warrant to arrest a person *inside a dwelling-house*. This kind of warrant is commonly referred to as a "*Feeney* warrant" after the Supreme Court of Canada decision in *R. v. Feeney*, [1997] 2 SCR 13. In that case, the court modified the

common law rule that permitted police to enter residences to make arrests even without a warrant. Thereafter, police required permission from a resident or a warrant to enter a dwelling-house.

That said, the court did not change the law of arrest *outside* dwelling-houses. Police having grounds to arrest for indictable offences may still enter onto private land to make an arrest. Because the Subject Officer never entered a residence, the absence of a *Feeney* warrant did not bear on the lawfulness of his actions.

### Location of Impact Wounds

My first public report described the shooting of Mr. Matters in a single sentence: “Within seconds an ERT member shot Mr. Matters with two bullets to the *chest*.” Counsel for the Matters family asserted that the Subject Officer shot Mr. Matters in the *back*. The inquest jury concluded that Mr. Matters died of “2 Gunshot wounds to the left posterior chest.”

As heard at the inquest, the IIO received the pathologist’s autopsy report shortly after it was written. That autopsy report summarized the cause of death as “gunshot wounds to the chest.” By repeating the word “chest,” the IIO public report gave the impression that Mr. Matters faced the Subject Officer when the Subject Officer fired. I deeply regret the confusion this caused, and will strive to use clearer language in future reports.

An IIO investigator attended the autopsy and obtained photographs of the body. In considering the evidence, I was under no misapprehension about the locations of the wounds.

The pathologist wrote in his report and testified at the inquest that the two bullets entered on Mr. Matters’ back on the left side; one at the flank, and one half-way between the flank and the spine. Both bullets exited out the right front of his chest, one six centimetres below the right nipple, and the other 12.8 centimetres above it.

Bullet wounds in the back could potentially undermine a claim of self-defence if the evidence indicates that the shooter used deadly force against an assailant who was attempting to flee or who did not constitute an immediate threat. But as I indicated in my first public report, this was not a case of self-defence. If the Subject Officer fired to save another person – Witness Officer 2 – from death or grievous bodily harm, then the direction from which he fired did not make any difference to the final analysis in this case.

### Mr. Matters’ Location

Counsel for Mr. Matters wrote “The totality of the [evidence] led at the inquest revealed that Mr. Matters was walking away from all four police officers present and had his back turned to the ERT member when the fatal bullets were fired.”

However, the eyewitness evidence, the physical evidence and the forensic evidence suggest that Mr. Matters was actually facing toward Witness Officer 2 at the time that he was shot.

The four ERT officers all said that they saw Mr. Matters on the property driveway moving towards the road. They agreed that he changed directions, returning towards the cabin as they approached him. They differed on how many times Mr. Matters changed direction.

In their statements to the IIO and in their testimony, Witness Officer 1 and the Subject Officer stated that Mr. Matters was approaching Witness Officer 2 when the Subject Officer fired the bullets. Witness Officer 2 testified that Mr. Matters faced toward him, but in his two statements to IIO investigators, he said Mr. Matters moved southward, and turned his face toward him. Witness Officer 3 said that he wasn't watching Mr. Matters at the crucial moment, but when last he looked at Mr. Matters, he was walking *away* from the police officers, back towards the cabin.

According to all the ERT members:

- The Subject Officer stood south of the driveway near some trees when he fired
- Mr. Matters was north of the Subject Officer, just south of the driveway
- Witness Officer 2 ran to a point just south of the driveway, further west than Mr. Matters, to the Subject Officer's left, when he fired the CEW.

The physical evidence at the scene tends to confirm what the officers said about their locations. A subsequent search of the area located the shell casings which fired the bullets, deep in the grass, approximately 12 metres south of the road. This evidence tends to corroborate the Subject Officer's location at the time he fired the shots.

The search of the area located CEW "blast doors" in the grass near the road, near Mr. Matters' cell phone, and very close to the place on the road where Mr. Matters was treated by paramedics. The "blast doors" are disposable pieces of plastic which fly forward from the CEW cartridge when fired. The location of these blast doors suggests that the CEW was likely deployed close to where Mr. Matters fell as he was reportedly in possession of the cell phone when he was shot.

The shell casings were almost directly south of the cell phone and CEW blast doors. This suggests that Mr. Matters was north of the Subject Officer when the Subject Officer fired.

Counsel for the family wrote "The autopsy report and forensic pathology testimony indicated that both bullets entered Mr. Matters' back, passed through his body and exited the front of his chest."



In fact, the bullets did not pass through Mr. Matters from *directly* behind him. The pathologist wrote in his report, and testified at inquest, that the bullets passed through Mr. Matters' body from the "back to front" and from "left to right."

The pathologist's autopsy report recorded that both bullets broke ribs when they first entered Mr. Matters' body. This raised questions for me about how bones can potentially change the directions of bullets. For this reason, I did not initially rely on the bullet trajectories to determine where the Subject Officer stood.

On April 14, 2014, when IIO staff met with the pathologist, they asked about the reliability of trajectory information. The pathologist explained that striking ribs would not materially change the directions the bullets travelled. He therefore asserted that the trajectories through the body showed the directions from which the bullets came.

The testimony and the physical evidence at the scene suggest that the Subject Officer fired north. If so, the trajectories show that Mr. Matters was facing west or northwest at the time that he was shot.

The ERT officers said in their statements, and later testified, that they *followed Mr. Matters eastwards* just before the shots were fired. Witness Officer 2 trailed after the Subject Officer. The Subject Officer's GPS data, which the IIO obtained during the inquest, also suggests that he moved eastward just before the shots were fired.

According to all accounts, the police approached Mr. Matters' property from an entrance on the street from west to east.

As such, the totality of this evidence suggests that when the Subject Officer fired, Mr. Matters was facing west or northwest, towards the direction of the officers' approach, and towards Witness Officer 2, who would have been quite close to him after firing the CEW. This matches the statements and testimony of the ERT officers.

### The Use of the Police Service Dog

At the inquest, and in the letter to me, counsel for the Matters family argued that the Subject Officer could have deployed his police service dog (PSD) to apprehend Mr. Matters instead of shooting him. The inquest heard conflicting evidence as to whether this would have been the best course of action.

The Subject Officer testified that he did command his dog to attack Mr. Matters, but he called the dog back when he saw the hatchet. He "no longer believed that [deploying the dog] was an effective option." He explained that he knew Mr. Matters to be a trained soldier, and he expected that Mr. Matters would be able to successfully kill or disable the dog.

A former police officer testified about the tools and techniques that officers use to defend themselves. Although the former officer was not qualified as an expert at the inquest, he testified to having extensive experience in the use of force by police officers.

He testified that a PSD is a tool rather than a pet, and that a PSD can take a person to the ground. He further testified that police dogs can be deployed against a person with an edged weapon, despite the obvious risk of injury to the dog. He stated that in his opinion, a police officer who will not release a PSD against a subject with an edged weapon is unsuitable for work in emergency response teams.

The Subject Officer testified that his PSD was not trained to take down a subject armed with an edged weapon. He explained that the manner in which his PSD was trained to attack would have rendered the dog vulnerable to Mr. Matters' weapon. As such, it was the Subject Officer's position that a deployment of the PSD would have been futile.

At the conclusion of the inquest, the jury recommended that police service dogs be trained and utilized in apprehending armed subjects.

Section 25 of the *Criminal Code* governs what force the Subject Officer could lawfully use under the circumstances. The Subject Officer could fire his rifle only if he "believe[d] on reasonable grounds that it [was] necessary ... for the preservation" of Witness Officer 2's life.

The former police officer's testimony suggested that the Subject Officer's PSD provided an alternative to shooting Mr. Matters. The Subject Officer testified that he did not believe that his PSD provided an alternative for the following reasons:

- His PSD was not trained to attack a person armed with an edged weapon
- He understood that as a soldier, Mr. Matters had combat training
- He believed that his PSD would not be able to successfully stop Mr. Matters

Even if it were to be assumed that it was *possible* that the PSD might have been able to take Mr. Matters into custody, the available evidence does not establish that the Subject Officer had any reason to be confident in the success of this tactic. In addition, because of his concerns, he would have been reasonable in deferring to Witness Officer 2's use of the CEW as a less lethal alternative to the use of the PSD.

The available evidence suggests that once the Subject Officer saw the hatchet, he had reason to believe that deploying his PSD would not succeed. Because he knew that the other officers carried less harmful weapons – the CEW and a beanbag shotgun – the Subject Officer still had reason to believe that his team could disarm and arrest Mr. Matters without endangering the PSD.

The risks changed after the CEW failed. According to the ERT officers' testimony, Mr. Matters was close to Witness Officer 2 and holding the hatchet as if to strike. This would have left little time for the PSD to intervene.

Section 25 of the *Criminal Code* addresses what the officer reasonably believed. The available evidence suggests that the Subject Officer's failure to deploy his PSD did not render the use of deadly force unlawful.

#### Was Mr. Matters Armed with a Hatchet?

Counsel for the family wrote, "In our view there is a real question as to whether Mr. Matters even had a hatchet in one of his hands when he was killed. All four police officers described him walking down the lane with empty hands. Their descriptions as to how he produced the hatchet, from where, and which hand he was holding it in, were vague and inconsistent."

The Subject Officer's testimony about the hatchet at the inquest matched what he wrote in his statement to the IIO. At first, he saw nothing in Mr. Matters' hands. He then saw Mr. Matters reach into his jacket or sweater and produce the hatchet. He saw Mr. Matters remove a black sheath. He believed Mr. Matters held it in his left hand, but consistently stated that he was not sure which hand held the hatchet.

At the inquest and in his statement to the IIO, Witness Officer 3 testified that at first, because he was behind the other officers and had an obstructed view, he couldn't initially see anything in Mr. Matters' hands. He later saw Mr. Matters hold a phone to his ear and at a certain point noted that Mr. Matters had a hatchet in his hand. At the inquest, he added that he saw Mr. Matters holding a hatchet in one hand and a phone in the other. Neither in his statement on September 11, 2012 nor at the inquest could Witness Officer 3 recall which hand held the hatchet.

Witness Officer 2 testified that at first, Mr. Matters had the hatchet concealed. He later produced it, holding it in his right hand. This matches the statement Witness Officer 2 gave on September 11, 2012.

Witness Officer 1 testified that at first, Mr. Matters walked purposely, swinging his arms with nothing in his hands. Then Mr. Matters had a hatchet in his hand. Witness Officer 1 did not see where it came from, and he could not remember which hand held the hatchet. This matched his statement of September 13, 2012.

This evidence contains differences which one would expect from human recollections of an emotionally charged, fast-moving incident, but it contains no significant inconsistencies that would warrant a conclusion that the officers were not truthfully recalling their individual perceptions of the incident.

Examination of the scene after the incident located a hatchet near where Mr. Matters' body lay. A hatchet cover was found 28 metres down the driveway.

In the minute before declaring "shots away," Witness Officer 3 broadcast over the radio "He has a small hatchet with him, small hatchet. [Witness Officer 2] get up here with that Taser." "Greg, we're here to help you, just throw – put down the hatchet. -- hatchet."

At the inquest, counsel for the Matters family suggested that the IIO should have tested the hatchet forensically for DNA and fingerprints.

The IIO did test the hatchet for fingerprints during the course of the investigation. However, the handle of the hatchet was determined not to be a suitable surface for fingerprints, and none were found on the blade. It is well accepted in the criminal justice system that the lack of identifiable prints on an item cannot be used as evidence that a person did not touch an item.

Although the IIO obtained swabs from the hatchet which was reportedly in Mr. Matters' possession at the time of his death, DNA analysis of the hatchet was not attempted. This was based on the understanding that DNA analysis of the hatchet would not have provided evidence that would have assisted me in making my decision.

If Mr. Matters' DNA had been found on the hatchet, it would not have proven that he was, in fact, in possession of the hatchet at the time of the incident as he could have previously touched it. It is equally possible that an ERT officer could have transferred DNA when moving the hatchet away from Mr. Matters' body after the shooting. It is important to note that not every contact between a human being and an inanimate object leaves enough DNA behind to yield a DNA profile. As such, even if DNA testing failed to detect Mr. Matters' DNA on the hatchet, it would not establish that he was not in possession of the hatchet at the time of his death.

With respect to the involved officers, if their DNA was in fact found on the hatchet, it would only have confirmed they had touched it at some point. However, the evidence supported the conclusion that the hatchet was moved away from Mr. Matters, likely by one or more of the officers. The fact that it was found near the road, away from Mr. Matters, is not surprising. Although none of the officers specifically recalled moving the hatchet, Witness Officer 3 and the Subject Officer both explained that it was "basic training" or "standard practice" to move a weapon away from a subject. As such, even if testing detected an officer's DNA on the hatchet, it would not have helped determine who touched the hatchet before the shots were fired.

The swabs remain preserved in case an interested party requires them. However, after reconsidering whether to test the hatchet swabs for DNA, the evidence still leads me to conclude that this testing would provide no greater insight into the case.

All of the available evidence suggests that Mr. Matters held a hatchet. No source of evidence suggests otherwise.

### Position of the Hatchet

All of the ERT officers testified that Mr. Matters held the hatchet above his head. During the inquest, counsel for the Matters family suggested that Mr. Matters did not hold the hatchet in a threatening manner when the Subject Officer shot him.

The available evidence suggests that Mr. Matters held the hatchet at or above his head.

Mr. Matters' mother testified that Mr. Matters was right-handed. If he was holding a hatchet, it is likely that it would have been in his right hand. Witness Officer 2 said in his statement, and testified, that Mr. Matters held the hatchet in his right hand. The Subject Officer thought it might have been the left hand, but was never sure.

The Subject Officer fired two shots, both of which hit Mr. Matters. The autopsy photographs show what the pathologist wrote and testified that a bullet entered the "palmar side" (inside) of his right arm, 8 centimetres below the tip of the elbow.

One bullet exited Mr. Matters' body 8 centimetres below his right nipple. As the pathologist explained at the inquest, the appearance of this wound and the wound on the arm led him to believe that it was more likely that this lower bullet entered the arm. The pathologist theorized that Mr. Matters held his arm against his chest with his arm possibly as much as an inch away from this wound, but not more.

In a follow up interview with the IIO, the pathologist was asked to explain where Mr. Matters' right hand would have been. He said that given the location of the wounds, Mr. Matters' right forearm would have been across the front of his chest, horizontal to the ground or tilted up towards his left shoulder. His palm would have faced towards his body. If his right hand held a hatchet, the blade of the hatchet would have been approximately at the level of his left ear.

The other bullet rose upwards at an angle, leaving Mr. Matters' body 12.8 centimetres above his right nipple. The pathologist considered it possible but less likely that this bullet lodged in Mr. Matters' right arm. The only way this bullet could have lodged in Mr. Matters' arm was if he held his right arm above his head on the right side.

As such, the pathology evidence suggests that when the Subject Officer fired, Mr. Matters held the hatchet at or above the level of his head, either on the left or the right side of his body.

Whether or not Mr. Matters actually intended to harm any officer, holding the hatchet at either of these positions during a confrontation would have given the officers cause for concern. The evidence suggests that Mr. Matters did this while facing towards Witness Officer 2, and approaching close to him. As such, the physical evidence tends to corroborate the officers' testimony that the Subject Officer had reason to fear that Witness Officer 2 faced imminent death or grievous bodily harm at the time that he fired the fatal shots.

### Hatchet Continuity

A photograph entered as an exhibit at inquest showed the hatchet in the grass at the scene. The blade was shiny. A second photograph showed the hatchet beside a ruler. In this photograph, the blade was dull and tarnished. This raised a question about continuity.

Date stamps on the second photograph show that it was taken after an IIO investigator tested the hatchet for fingerprints. It is clear that the difference of appearance was due to the chemical processing of the hatchet in support of fingerprint testing.

### Discrepancy in the Timelines

During the incident, an RCMP civilian member monitored ERT radio calls and maintained a log which summarized their broadcasts. An automated system audio-recorded their words, and recorded time-stamps on each broadcast. The times differed between the manual log and the automated system.

At inquest, the Matters family and others theorized that this difference may have provided the ERT members time to conspire and fabricate a version of what occurred. In his letter to me, counsel for the family wrote “To make matters even more unclear, there was an inexplicable and unexplained six minute gap in the radio transmission records. Oddly, one of the only spoken phrases captured from the scene of the shooting on an open radio microphone was ‘Greg, drop the hatchet.’”

At the inquest, the RCMP explained the discrepancies were due to the civilian member using a timepiece that was out of sync with the automated system.

As part of my review of the evidence, a chronology of the various timelines was developed. The chronology indicated the civilian member who maintained the log of the radio transmissions appears to have used a timepiece which was generally six minutes behind the automated system which recorded the voices as they spoke. It appears that she typed or time-stamped several summaries some minutes after she heard the radio transmissions.

The complete set of summaries and recorded transmissions would fill many pages. The essential ones before and after the shooting appear below:

<b>Time</b>	<b>Civilian member’s Log</b>	<b>Time</b>	<b>Automated System/Actual words transmitted</b>
18:31:10	With PDS wagons	18:37:17	Yeah, we are out with the PDS wagons right now

			here. We haven't made contact with the handlers yet.
18:38:33	Main structure is large blue farm house	18:42:18	OK, copy that the biggest structure is a light blue farm house. To the east there's three shed-like structures and to the east of that an old barn with roof caved in?
18:40:24	three structures to east of main building	18:42:18	
18:40:38	Old barn, roof has fallen in	18:42:18	
18:40:57	To north travel trlr with 2 shed structures	18:42:41	Copy to the north of the property travel trailer with two shed-like structures
18:41:04	No movement seen	18:42:57	Copy, no movement seen. Do you see a metal Quonset?
		18:44:00	Air 4, Oscar Charlie
18:42:39	Is out with Z7	18:48:36	Have you guys located Zulu 7? Yes, we've just met with him now at the vehicles. We're just getting an update.
18:47:23	Do you have eyes on grandparents	18:53:20	Do you guys have eyes on the grandparents' property? They've got eyes on the brother's property but not on the grandparents' property. They're really not in a position to intercept the badger if he does decide to go back to the home. Well, he is saying he is at grandma's place right now.
18:47:44	No, just eyes on brother's property		
18:49:22	Badger has visual on members	18:55:41	Apparently badger is out of the residence on the driveway hands up
18:50:10	going in by vehicle	18:56:07	We're going to remount here Zulu 50 and head by vehicle.
19:01:51	Now on ERT coms with Z51 is still up at the res. Z7 has PSD with him	19:07:48	I'm on ERT comm now, I am with Z51. Zulu is still up at the res and I have my PSD with me.
19:02:13	[Subject Officer] now on ERT not on city	19:07:48	Zulu 50 from Zulu 7. I'm on ERT comms now...
19:03:14	How far are you from the residence?	19:09:13	I just need to know how far away you guys are from the residence once you guys set up there with some concealment to formulate an arrest

			plan
19:07:06	Male moving by red barn, neg can hear him calling to dog	19:13:13	Yeah, negotiators can hear him calling to his dog.
19:08:04	He is off phone now but walking down driveway no longer on phone	19:13:56	Walking toward us, He's walking down the driveway. I can't see if there's anything in his hands but it looks like not.
		19:14:06	Hung up the phone now and he was escalating and talking about a confrontation.
19:08:32	Within 50 meters of SOC		TRACK BLANK
19:08:49	Badger has a small hatchet - come with Taser	19:14:58	He has a small hatchet with him, small hatchet. [Witness Officer 2], get up here with that Taser. (Yelling in background.)
19:09:06	Gregory we're here to help - put the hatchet	19:15:11	Greg, we're here to help you, just throw - put down the hatchet. Hatchet.
19:09:26	Shots away	19:15:36	We got shots away, shots away. Shots
19:09:43	Code 3 Warm badger	19:15:47	Yeah, get us EHS, Code 3
19:10:26	Doing CPR on badger	19:16:30	We (are) giving CPR

On its face, the discrepancy appeared to me to represent a six-minute difference between timepieces, not a six-minute gap of unaccounted events.

In order to be certain, IIO staff examined independent sources of information about events which correlated to these logs. This included cell phone records, records from BC Ambulance Services, data from the CEW and from GPS.

Mr. Matters used a cell phone to communicate with the Staff Sergeant. The telephone company bill recorded a call at 18:43, lasting 25 minutes. The end of that call coincides with the ERT log time of 19:08, where the civilian member recorded the end of the call. It appears that the telephone company's clock and the civilian member timepiece were synchronized within a minute. The automated system indicated the call ended at 19:14.

Two ambulances attended the scene. A paramedic in the first ambulance was at the command post before police reported shots fired. He recorded arriving at the command post, a short distance away, at 19:08. He waited "a couple of minutes", and then heard "shots away." He immediately attended the scene. He recorded being "on route" at 19:11, and being at Mr. Matters' side, with a heart monitor attached at 19:14. A paramedic in the second ambulance,



recorded being “on route” at 19:13 and arriving at 19:26. These timelines are within a minute of those noted by the civilian member in the log.

The CEW which Witness Officer 2 used recorded its own time-stamp when he fired it. An IIO investigator with expertise in CEW downloaded the data from the device. It recorded activation at 19:17:54 on September 11, 2012. However when analyzed on October 11, 2012, the CEW’s internal clock was approximately six minutes fast. The IIO investigator reported that with this specific model “it is common that it will gain or lose time over extended periods.” This suggests the CEW was deployed at about 19:12. Assuming that the shots were fired shortly thereafter, this differs from the civilian member’s ERT log by two minutes.

At the inquest, the RCMP provided a download of the data from a GPS device the Subject Officer wore during the event. The data showed his position and movement from 3:12 pm to 11:53 pm that day. An IIO analyst compared it to the Subject Officer’s account, and it appeared to match the movements he described.

The Subject Officer testified that he moved east towards Mr. Matters’ cabin, on the south side of the driveway and stopped to watch Mr. Matters. He told the IIO that after he shot Mr. Matters, he moved north. The GPS data shows movements which match such movements starting at 18:54, stopping and moving very slowly east several times up until he moved north between 19:10:21 and 19:10:42. This suggests that the shots were fired at approximately 19:10 by his GPS. This suggests that the manual ERT log maintained by the civilian member was closely synchronized with the GPS timepiece.

In summary, entries in the manual ERT log appear to match, within a minute or two, the independent timepieces of the paramedics, the telephone company, the CEW and the GPS. The automated system which recorded the calls logged them as occurring six minutes later. As such, the evidence suggests that the clock on the automated system ran six minutes faster than most other timepieces.

Because the earlier recorded times appear to accord best with external timepieces, the available evidence suggests that the ERT members did not delay reporting the events as they occurred. I have, therefore, concluded that the six minutes was not a gap, but a difference in timepieces.

#### Potential Value of a Re-enactment

Counsel for the family wrote “the scene of the shooting should be reconstructed and re-enacted based on the physical evidence and witness testimony.”

On September 13, 2012, IIO investigators video-recorded Witness Officers 1, 2 and 3 as they separately re-enacted the events. Counsel for the Matters family suggested that the IIO create a computer simulation model “that can be used to accurately position the participants at the time of the incident.” Such a model, however, would require precise input data in order to

produce an accurate simulation. Even at the scene three days after the shooting, the witness officers were unable to identify their precise locations, which is not surprising considering the dynamic nature of the incident. Creating a simulation based on guesswork would at best merely approximate the event, and at worst, mislead.

#### Clarification in IIO Public Report

In a footnote on page 13 of the first IIO public report, there was a reference to the number of deployments of the ERT in British Columbia since January 2012; it was noted that the ERT had only caused injury in 4.6% of the incidents to which it was deployed. This reference was questioned by counsel for the Matters family, who was aware of other ERT deployments in which people were shot and killed. These ERT deployments included shootings that had involved the Subject Officer and had occurred in previous years.

The footnote was intended to show that RCMP supervisors who ordered the deployment of the ERT against Mr. Matters would not be successfully prosecuted for criminal negligence. In their defense, they could show that only a small percentage of ERT deployments resulted in death or injury and, as such, it could not be concluded that they deployed the ERT with a wanton or reckless disregard for the safety of Mr. Matters.

#### Subject Officer's History of Use of Deadly Force:

Counsel for the family wrote that the IIO, as a guardian of the public interest, should have considered the Subject Officer's prior history of shootings in ERT deployments.

When considering whether a subject officer may have committed a criminal offence, I must look at the evidence relating to the specific act under investigation. If there is no evidence of a criminal act, a subject officer's prior acts, even if they were questionable, of concern, or even criminal in nature, would not support the contention that the officer may have committed an offence.

#### Follow Up Interview of Subject Officer

At the inquest, counsel for the family suggested that the IIO investigation was incomplete. This was based, in part, on 19 questions prepared by the IIO for the Subject Officer which were never submitted to him for answers.

On September 22, 2012, a written statement, vetted through counsel, was provided to the IIO by the Subject Officer. On October 3, 2012, an IIO investigator prepared a list of follow-up questions to ask the Subject Officer "should a Q&A occur." The Subject Officer was asked to participate in an interview, but on November 26, 2012, he advised that he would only be willing to respond to "questions in written form."

It is my view that the submission of written questions to subject officers involved in critical incident investigations is generally not a best practice and would not have been appropriate in this particular case. First, providing a subject officer with written questions necessarily discloses specific concerns investigators may have and provides the subject officer with the opportunity to prepare answers with the assistance of counsel. Naturally, this would be done in a manner that would best protect his or her interests. In addition, given that I cannot compel a subject officer to answer any question, there is no way to ensure that questions would be answered fully or even at all. Finally, it is impossible to control whether or not the questions would be provided to other persons which could negatively impact the overall investigation.

### Potential Value in Appointing a Civilian Monitor

On October 25, 2013, I received a letter co-signed by representatives of the BC Civil Liberties Association (BCCLA), the Pivot Legal Society (Pivot) and “Justice for Girls.” In their letter, the signatories stated that they were “troubled by the apparent discrepancies between” the description of the gunshot wounds in the public report and the evidence presented by the pathologist during the inquest.

The letter noted that “the evidence in question – whether Mr. Matters was shot in the chest or back is crucial and basic. Whether or not it would have changed your conclusion as to whether any officer may have committed a criminal offence in this case, there can be no dispute that Matters being shot in the back is a highly relevant and material fact to be considered and publicly reported in the IIO investigation. The fact that your public report fails to present this evidence accurately raises significant questions about your investigation into the fatal shooting of Mr. Matters by the RCMP. We are also troubled by apparent discrepancies between the IIO public report and the evidence, as we understand it, of the pathologist at the inquest in relation to bullet trajectory.”

The letter then suggests that “a thorough review of the case be initiated by a body that is fully independent of the IIO. The results of any such review must be made public directly rather than being internal to the IIO or subject to IIO-controlled amendment. The review should be able to independently consider whether any officer may have committed a criminal offence in this case, and be able to report this to the public, the IIO and the Attorney General.”

In a response to that letter, I indicated that at the conclusion of the inquest, I would take the appropriate action to examine any new evidence.

Section 38.08 of the *Police Act* allows me, as the Chief Civilian Director, to “appoint a person who is not a current or former member of a police force in British Columbia or the RCMP to review and assess the integrity of a specific investigation in accordance with this section and the terms of reference, if any, established by the CCD in the appointment.”

I have considered whether to appoint a civilian monitor to review the IIO investigation into the shooting of Mr. Matters and have concluded that it is not necessary. A civilian monitor would

review the evidence collected by the IIO and identify any significant gaps he or she found in the evidence.

With consideration given to the evidence adduced during the Coroner's Inquest, this investigation has already been subjected to intense scrutiny within the IIO and by the Chief Civilian Director. As such, appointing a civilian monitor, in my view, would not reveal any new information that would assist the IIO in its future work.

BCCLA, Pivot and Justice for Girls called for an independent review because in their view, my first public report seemed to suggest that I had misunderstood the trajectories of the bullets which killed Mr. Matters. I have stated publicly that the one sentence in question could have been worded more clearly. This public report has now explained the trajectories, using evidence which, for the most part, was heard in a public forum. As such, I see no need for a civilian monitor to review this evidence again.

## **CONCLUSION AND DECISION OF THE CHIEF CIVILIAN DIRECTOR**

There is no new evidence that would support the conclusion that any of the officers involved in the shooting death of Gregory Matters may have committed a criminal offence. For this reason, I will not refer this file to Crown Counsel.

In reaching this conclusion, I cannot help to recognize that the death of Gregory Matters was a tragedy and that his family suffered a great loss which is beyond anybody's power to heal. As previously indicated, however, an evaluation of the various decisions made and tactics used by police is under review by the Commission for Public Complaints against the RCMP (CPC) and the Professional Standards Unit of the RCMP.

It is the role of the CPC and the RCMP to examine the conduct of RCMP members in the execution of their duties against applicable training, policies, procedures and guidelines and where applicable, take remedial action. These issues fall outside the mandate of the IIO.

Submitted this 26th day of May, 2014 by

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