



**IN THE MATTER OF THE INJURY OF A MALE  
WHILE BEING APPREHENDED BY A MEMBER OF THE RCMP  
NEAR THE CITY OF KELOWNA, BRITISH COLUMBIA  
ON SEPTEMBER 12, 2019**

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

Chief Civilian Director:	Ronald J. MacDonald, Q.C.
IIO File Number:	2019-172
Date of Release:	June 5, 2020

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## **Introduction**

On the evening of September 12, 2019, the Subject Officer ('SO') responded to a complaint about the Affected Person ('AP') who was alleged to have jumped out at a passing motorist near a campground on the lakeshore north of Kelowna, and to have swung a stick at her car. SO found AP and tried to talk with him about the allegation, but AP fled, threatening SO and making aggressive gestures towards him with items he was carrying. SO told AP he was under arrest and followed, intending to take him into custody. At the edge of the lake, AP made a move towards SO that caused SO to discharge his firearm at AP, the bullet striking AP in his hip. AP swam out into the lake and climbed onto a nearby log boom, where he sat for several hours until police officers were finally able to take him into custody the next morning.

The Independent Investigations Office ('IIO') was notified and commenced an investigation. The narrative that follows is based on evidence collected and analyzed during the investigation, including the following:

- statements of AP, thirteen other civilian witnesses and two witness police officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- scene examination, photographs and physical evidence; and
- medical evidence.

Pursuant to section 17.4 of the Memorandum of Understanding between the IIO and BC Police Agencies, officers who are the subject of an investigation are not compelled to submit their notes, reports and data. In this case, the Subject Officer ('SO') permitted access to his written report on the PRIME system, and later provided a further written statement to the IIO.

## **Narrative**

AP told IIO investigators that on the evening of September 12, 2019, he was walking along a road near Bear Creek Campground, on the shore of a lake north of Kelowna. He said he had "gardening tools" and two "sticks" with him, and was barefoot (one of the "sticks" was a metal pole, approximately six feet in length, with a scraping blade on the tip, and was recovered from the scene along with a pair of garden shears). A police officer

pulled up beside him, he said, and told him there had been a complaint that AP had swung a stick at a vehicle, which AP denied.

AP said that the officer almost immediately unsnapped the safety strap on his holster, which made AP think that something more serious was involved and so, afraid, he ducked around behind the police car and slid down an embankment to evade the officer. AP said the officer started yelling at him, and said, "I didn't want to become a victim of police brutality," so "took off running." He said he ran off, shouting at the officer to stay away, but the officer shot him from behind as he ran out into the lake. AP said the bullet struck him in the buttock and exited at the front left of his hip. For the next nine hours, AP said, he tried to evade the police and just stay alive. AP denied threatening SO with any of the items he was carrying, or with a rock.

The initial complaint had come from Civilian Witness 1 ('CW1'), who told IIO investigators that on September 12, 2019, at about 10:50 p.m., she was driving near Bear Creek Provincial Campground when she encountered a yelling male (AP) who jumped out and swung a stick at her car. CW1 drove on for a distance and then called 911.

At 11:12 p.m., SO went to the scene in response to CW1's complaint. SO was driving a marked police car and was armed with a baton, OC spray and a pistol, but did not have a Conducted Energy Weapon ('CEW'). SO wrote in his PRIME report that he found a male (AP) who matched the description provided by CW1. AP was walking in the middle of the road carrying what SO described as "what appeared to be a spear and metal garden shears." AP said he was hiking. SO said he ordered AP to put down what he was carrying and to identify himself, but AP instead ran off and tried to hide. SO said he then told AP he was under arrest for obstruction, and said AP "produced a knife and threatened to kill [SO] with it." AP moved away in the darkness towards the nearby lake and SO followed, advising AP that SO had drawn his firearm. AP, said SO:

*...continued to move away and made more threatening comments and gestures directed at [SO]. At one point near the lake [AP] faced [SO] and raised his spear in a throwing action. [SO] felt at risk of imminent harm or death by [AP's] words and actions. [SO] elected at that point to fire his sidearm to stop the threat. [AP] then ran into the lake, dropping what he was carrying, and swam to some nearby logbooms. [SO] maintained watch until backup arrived and engaged the subject.*

In his follow-up written statement, SO said that as he followed AP, AP was occasionally making stabbing movements with the shears he was carrying, and several times picked up rocks and made throwing motions. SO said that given the way AP was acting while SO was trying to get him under control, there was a concern for the safety of people in the campground that AP was approaching, in addition to the fear that SO would be harmed himself.

SO wrote that when AP reached the edge of the lake he said, "The only way that you are going to arrest me is if you kill me." SO said that as AP turned suddenly towards SO and raised the "spear", he "took a step consistent with being about to throw it at [SO]," at which point SO "discharged his firearm once."

SO's account of events preceding the shooting was corroborated by civilian witnesses, several of whom said they had heard and/or seen parts of the incident, though no one had a view of the shooting itself. For example:

- CW2 heard a man (SO) shout four or five times, "put your weapon down, stop or I'll have to shoot";
- CW3 saw SO leave his car and run down the embankment beside the road, and heard him saying, "Get on the ground," "Put your hands behind your back" and "Drop the stick" while AP swore at and berated the officer;
- CW4 saw and heard AP yelling angrily at SO, who was telling him he was under arrest, and to "drop the weapon", and then saw SO with his gun in his hand saying, "You need to drop your weapon, I'm going to have to fire on you. I don't want to shoot you"; CW4 also saw AP "coming at" SO with the shears and throwing a rock at him;
- CW5 saw SO's flashlight, heard him saying "Drop the shears sir, you're under arrest" and "Drop the rock, I consider that a weapon", and subsequently heard what she thought was a gunshot.

The entrance wound from SO's bullet appeared to be at the front left side of AP's left hip, and the exit wound appeared to be in his buttock.

AP's scraper pole and shears were found at the scene, just off the shore in the water. A single expended pistol cartridge case was located a short distance from the water's edge. No knife was recovered from the scene.

## **Legal Issues and Conclusion**

The purpose of any IIO investigation is to determine whether there are reasonable grounds to believe that an officer, through an action or inaction, may have committed any offence in relation to an incident resulting in serious harm or death. More specifically, the issue to be considered in this case is whether SO's use of force against AP was justified and reasonable. If he was acting as required or authorized by law, on reasonable grounds, he was justified in using as much force as was necessary. Use of unauthorized or excessive force, on the other hand, could result in criminal liability.

SO was acting in execution of his lawful duty when he approached AP, as SO had received a complaint that a male had committed an offence against CW1, and AP matched the description of that male. SO was justified, therefore, in detaining AP to question him. When AP evaded SO and ran off, he was obstructing SO in the execution of that lawful duty, and was arrestable for that offence also. AP's threats and assaultive behaviour added more offences to the list.

There is no reason to doubt SO's account of what preceded the shooting, given the degree of corroboration from a number of disinterested civilian witnesses, as noted above. On the evidence, the officer was not acting precipitously, and did not draw his firearm until AP had repeatedly demonstrated aggressive, threatening behaviour. Given that behaviour by AP, SO had little choice but to try to bring him into SO's custody, to prevent the furtherance of offences and danger to civilians at the campground.

Unfortunately there was no eyewitness to the shooting itself. By AP's account, he was simply shot from behind for no reason as he walked into the water. SO, on the other hand, describes a sudden turn and aggressive gesture by AP that caused SO reasonably to fear AP was about to attack him with the metal pole he was carrying. On the evidence as a whole, including eyewitness accounts of AP's behaviour that are not consistent with AP's account, and the apparent directionality of AP's wound, SO's statement is more credible than that of AP. The civilian witnesses make it clear from what they heard that AP was acting in a threatening manner toward the officer, and one witness observed actual threatening actions. A move by AP to apparently prepare to throw the pole as if it

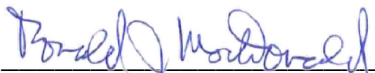
was a spear was an escalation of AP's behaviour. However that is consistent with the fact that he was trying to get SO to stop following him, and as he had reached the water's edge, it was predictable that his efforts would now increase. There is no reason to doubt that when he was shot AP had made some sort of sudden move involving the pole that would appear threatening to SO.

The pole was long, with a sharp implement at the tip, clearly capable of causing serious bodily harm in a few moments. Based on the location of SO's fired cartridge case SO was most likely well within the reach of the pole at the time he fired. By way of contrast, SO's police baton had insufficient reach to be effective.

There is also SO's evidence that AP was in possession of a knife. Although one was not found at the scene or on AP's person when he was arrested, that was several hours later and AP had spent those hours out on a log boom on the lake. The evidence recovered closer to the shore shows that he disposed of the pole and the shears in the water as he fled, and it is possible that he did the same with other potentially incriminating items in his possession, but later and farther out in deeper water. The forensic search for exhibits did not extend out as far as the log boom.

In any event, it was the metal pole that AP was holding when he was shot, and it was the metal pole that had the potential to bridge the distance between AP and SO and cause serious bodily harm to SO. In the circumstances, SO's action in shooting AP was necessary for his self defence, and it was not unreasonable or excessive for him to do so. The fact that he only fired a single shot, despite AP not being disabled by that shot, is also evidence of a measure of restraint on SO's part.

Accordingly, as the Chief Civilian Director of the IIO, I do not consider that there are reasonable grounds to believe 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.

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

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