



**IN THE MATTER OF THE DEATH OF A MALE
IN CONNECTION WITH THE ACTIONS OF MEMBERS OF THE RCMP
IN CHILLIWACK, BRITISH COLUMBIA
ON MAY 23, 2020**

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

Chief Civilian Director:	Ronald J. MacDonald, Q.C.
IIO File Number:	2020-100
<u>Date of Release:</u>	<u>November 29, 2021</u>

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INTRODUCTION

On the evening of May 23, 2020, police responded to a report that the Affected Person in this case ('AP') was brandishing a firearm at a residence in Chilliwack. After several hours of attempted negotiations and de-escalation, during which AP fired several shots from a shotgun, AP was fatally wounded by a bullet fired by an Emergency Response Team ('ERT') officer.

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 20 civilian witnesses, one first responder and 38 witness police officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- police notes;
- recordings of police radio and telephone communications;
- police training records;
- cellular video footage;
- a digital download of data from AP's cell phone;
- scene and exhibit examinations; and
- autopsy and toxicology reports.

The IIO does not compel officers who are the subject of an investigation to submit their notes, reports and data. In this case, the Subject Officer ('SO') has declined to provide any evidence to the IIO.

NARRATIVE

In the days leading up to the climactic incident, AP first came to the attention of police on the afternoon of May 21, 2020, when it was reported that he had been asked to leave a Canadian Tire store in Chilliwack after attempting to purchase a gun safe. It was said that his behaviour at the store had been "concerning". A short time later, a similar incident was reported at a Canadian Tire in Abbotsford. Police were provided with a vehicle licence number, from which they identified Civilian Witness 1 ('CW1') as the registered owner of the vehicle. AP lived in the same home as CW1.

AP was contacted and asked to come to Chilliwack RCMP detachment for a conversation. AP and CW1 met with Witness Officers 1 and 2 ('WO1' and 'WO2') and engaged in an extended dialogue, parts of which were captured on AP's own cell phone. AP told the

officers that he was stressed and frustrated, as he was unemployed due to the government's COVID rules, which he saw many other people flouting. WO1 later told IIO investigators that his main purpose in meeting with AP was to assess whether there was justification to apprehend him under the *Mental Health Act*. By the end of their conversation, he said, he concluded that while AP seemed "a bit odd", there were no significant mental health concerns, and no grounds to apprehend AP. In the course of the meeting, AP told the officers that he was trying to buy a gun safe as he was a registered firearms owner and needed proper storage for his guns.

Later that day, CW2 told investigators, AP jumped over the fence from CW1's property and talked with CW2. CW2 said AP talked about being upset about the state of the world, and said that AP was "vibrating" as he talked. CW2 said that AP came back the next day, and engaged in what CW2 described as a "rant" before abruptly leaving to return to what he called his "dungeon", a room in the home's basement. CW1 later told IIO investigators that AP consumed a case of beer that day, which he described as out of character.

CW3 told investigators that on May 23, 2020, he saw AP "walking around with guns" and talking aggressively. CW4 said he saw AP burning what appeared to be personal papers in the backyard of his home. AP, he said, was "growling" and talking about the end of the world. CW4 said that AP was holding a 26 ounce bottle of whisky. Later, CW4 said, AP came over to him at his garage talking nonsense and describing himself as "a soldier now activated". Subsequently, CW4 called the police non-emergency line requesting a wellness check for AP. The call was assigned a relatively low priority in a list of incoming calls for service, and no officer initially responded.

Shortly before 7:00 p.m., CW5 called 911. She said she had observed AP through a window in his home. She said that AP was waving a handgun in the air, and passed on information she had received from CW6 that AP had other firearms, had been seen earlier arranging ammunition and magazines, and was a user of testosterone and steroids. Police were advised that CW1 was still in the residence with AP. Later in the 911 call, CW5 advised the call taker that AP was now holding a shotgun. This call was assigned a high priority.

WO1 told investigators that when he became aware of the situation, he considered it "as serious as could be". All available officers were sent to the scene, with their first priority being to establish containment of the residence. WO3 told the IIO that as he took a position near the front of the home, the garage door opened and he heard AP speaking on the phone. He said he heard AP say, "I love you", "I see them", "I have to go", and possibly "goodbye". As AP then started closing the garage door, WO3 shouted, "You're under arrest!"

Shortly after this, CW1 was seen standing at the living room window, and then exited the residence in response to officers' signals. He told police that AP had a pistol and possibly a shotgun, and had access to vehicles parked in the driveway of the residence.

At 7:24 p.m., AP was seen from the 'Air One' police surveillance helicopter walking back and forth in the back yard, yelling and waving his arms.

At 7:27 p.m., WO3 began calling to AP through the public address system of his police vehicle, telling him he was being apprehended under the *Mental Health Act*, and that he was to come out with his hands up and empty. WO3 also told AP that police were there to help him, not hurt him. WO3 told investigators that in response he could hear AP shouting in the back yard, together with sounds that WO3 recognized as the 'racking' of a shotgun.

At 7:29 p.m., police attempted to contact AP via one of three telephone numbers they had been told were associated with him, but without success. AP was seen to continue walking around in the back yard, and at 7:34 p.m. he took off his shirt.

AP then went into the residence, opened the front door, and shouted at police, "Fuck you! I fucking see you, I know where you are!" He then appeared in the living room window banging the muzzle of the shotgun against the glass and making motions that WO4 told investigators he interpreted as meaning "come on". Subsequently, AP began activating the alarms on vehicles parked in the driveway, and in response police set up spike belts in the street, both east and west of the residence.

At 7:40 p.m., back at the living room window, AP pointed the shotgun to the left of WO4 and fired a shot through the glass in the direction of WO3 and WO5. WO3 told the IIO that he ducked behind a parked vehicle, and that "gravel, rocks were thrown around the car". AP then fired a second shot towards WO4. None of the officers returned fire. AP then began shooting out through the roof of the residence, and then out in the back yard. Officers at the rear described shotgun pellets raining down around their positions. These significant acts on AP's part were recorded on video from the Air One helicopter.

At 7:43 p.m., AP was seen to break a small window beside the front door and look out. He then continued moving through the residence, discharging the shotgun through the roof and out in the back yard.

At 7:47 p.m., WO6, an Emergency Response Team ('ERT') Constable on his way to the scene, radioed that "Based on the totality of circumstances, [AP] cannot be allowed to get into a vehicle or exit that house with a firearm".

AT 7:55 p.m., AP again opened the garage door, then went into the back yard and completely undressed.

At 8:05 p.m., ERT members started arriving on scene and set up a command post nearby. ERT members began to relieve General Duty officers, who extricated themselves from their containment positions. ERT Team Leader WO7 told investigators that upon being briefed he assessed the situation as an “active shooter” incident with extremely high risk for both the public and the police. He authorized officers to use lethal force against AP if he should exit the residence and shoot at police.

By 9:16 p.m., ERT members had completed containment of the residence. This process included placing armoured vehicles behind AP’s vehicles in the driveway to prevent their use by him in any potential escape attempt. Two ERT snipers—SO and WO8—took up positions with a view covering other ERT members on foot, containing the rear. SO was given primary responsibility for surveilling the lower floor and WO8 the upper floor. Crisis Negotiation Team members were on scene, speaking with relatives and neighbours of AP in preparation for attempting a de-escalation negotiation. Repeated calls to AP went unanswered, and extensive police attempts to arrange for a ‘line break’ that would give them exclusive access to the landline telephone in the house were unsuccessful for technical reasons.

WO8 told IIO investigators that at 9:55 p.m., he saw AP by a basement patio door/window, “moving his arm up and down” (evidence gathered subsequently demonstrated that at this moment AP was holding the loaded shotgun to his shoulder and was bringing it up in the direction of the window, but WO8, who was principally surveilling the upstairs windows, did not see that). As WO8 radioed the observation, SO discharged his rifle, and WO8 then broadcast, “Shots away”. He said he could not tell whether AP had been hit, but “within one to three seconds” he heard a quieter gun shot, and thought AP had used a firearm on himself.

Subsequent investigation demonstrated that the round fired by SO had penetrated the window of AP’s basement bedroom, struck the shotgun he was holding, and entered his chest. The impact was closely followed by a second sound, the source apparently the discharge of the shotgun by AP, as heard by WO8. It is not clear whether the firing of the shotgun by AP was a voluntary act, or an involuntary one in response to AP having been shot.

Shortly afterward, AP walked out naked through the open garage door, blood visible on his upper body. He sat down, and then lay back on the driveway. These events were recorded on a civilian eyewitness’s cell phone camera. AP can be heard to say, “Please don’t shoot me, please, please, I am an American citizen, I am an American citizen”. Then, before the officers are able to move in and take AP into custody, he can be seen

to start back pedalling with his feet, sliding back towards the house. At this point, there is the sound of a 'less lethal' blunt impact projectile launcher being fired by ERT member WO9, who explained later that his intention was to halt AP's movements back towards the house and a renewal of the crisis. It is not clear whether or where the projectile struck AP, but his response was to continue his motion, back-pedalling towards the house, before rising quickly to his feet and running back into the garage. Two ERT members ran after him, but he was able to re-enter the house and close the interconnecting door, and the members were instructed not to follow him into the house because of the risk that would involve.

Police were now uncertain to what extent AP had sustained injury, and considered the situation they were facing as essentially unchanged. They were aware that AP had access to weapons and had been prepared to use them, and they also knew that AP was alone in the house—that this was not a hostage situation. More call-outs were made over the police public address system telling AP that the officers wanted to help him, and that he should come out of the house. More calls were also made, unsuccessfully, to telephones to which AP was believed to have access. A doctor and paramedics were staged nearby.

Shortly after midnight, after all options for communicating and negotiating with AP had been exhausted, three ERT officers tried to locate AP visually through basement windows. When he was not seen, they entered the garage and opened the connecting door into the house. They found that AP had apparently piled items against the back of the door as a barricade, and was now lying unresponsive close to the door. An ERT doctor and ERT medics attended and moved AP out into a more open area in the garage. After attempting several resuscitation techniques, they determined at 12:14 a.m. on May 24, 2020, that AP was deceased.

There was no evidence that AP had used any firearm other than the shotgun during the incident. Fourteen expended shotgun shells were found upon examination of the scene. Twelve of those utilized shot pellets, and two utilized shot slugs.

At autopsy, a 2 cm piece of wood from the stock of the shotgun was found embedded in the left side of AP's neck. Another similar piece of wood, 5.8 cm in length, was found on the floor near where AP had been standing when shot by police. That piece was consistent in shape with a missing piece from the front portion of the gun's forestock. The path of the bullet could be traced from the front portion of the forestock, to a piece of the steel forestock that was bent. The angle of the bullet's path was close to the angle at which the shotgun was being held. The bullet entered the front of AP's chest, and blood spatter was behind him.

All of this evidence is strongly suggestive that AP was holding the shotgun pointed in the general direction of the exterior wall and window of the bedroom, which was generally in the direction of SO and the other officers forming containment in the backyard.

The autopsy report concluded that AP died from a penetrating gunshot wound of the right chest, which impacted the right lung and right posterior ribs. The trajectory was determined to be front to back, left to right, and downwards. AP was also found to have suffered blunt force injuries to his left arm, left thigh and to his knuckles and feet. Wood fragments were removed from the left side of his neck and from below the skin of his right knee.

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.

The responding officers in this case were clearly acting in lawful execution of their duty in attempting to apprehend or arrest AP. There were grounds for an apprehension under the *Mental Health Act*, given AP's erratic behaviour and the obvious risk it posed to himself and to others. There were also grounds for his arrest once police observed his threatening acts with the shotgun followed by multiple discharges of the firearm, two of those discharges being in the direction of police officers.

Directions given to the ERT members on scene regarding the potential use of lethal force were consistent with provisions of the *Criminal Code* that justify use of such force by police when there are reasonable grounds to believe it is necessary for the preservation of life or the prevention of grievous bodily harm to any person.

By the time SO fired the fatal shot, police had attempted over a period of approximately three hours to communicate with AP and to find ways to end the standoff peacefully, without injury to anyone. They were authorized to shoot if AP presented an immediate risk of serious harm, and officers had initially displayed restraint in not returning fire when he had shot more than once in their direction as well as randomly out of the house, actions that clearly risked serious harm to one or more officers.

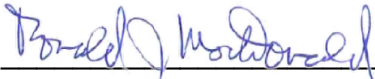
The objective forensic evidence, including the wounds to AP, the pattern of damage to the shotgun and an examination of the room, including analysis of fragments and blood spatter, indicate that AP was pointing the shotgun in the direction of the exterior wall or window of the bedroom when he was shot. There were ERT officers outside, in that direction, maintaining containment of the backyard. As detailed above, AP had previously pointed the shotgun at the living room window and had then fired it twice through the

glass in the direction of officers maintaining containment in front of the residence. It would be reasonable for SO to judge that there was now significant risk to the officers in the rear—officers he had been tasked with covering. Such a perceived risk to a police officer of grievous bodily harm or death would justify another officer (SO) using force against AP that was itself likely to cause grievous bodily harm or death. That use of lethal force was necessary, proportionate and lawful in the circumstances.

It is unfortunate that AP, after appearing to surrender to police by exiting the house and lying down on the driveway, almost immediately began to move back towards the garage door, quickly getting to his feet and running away. The discharge of a blunt impact projectile by WO9 was reasonable in the circumstances as an (unsuccessful) attempt to prevent AP from re-entering the home and barricading himself again inside.

There will never be any way of knowing why AP apparently changed his mind so quickly about surrendering, but by doing so he made it extremely difficult for the police to get him medical assistance for his injury. Officers could not be expected to charge blindly after him into a house where AP, whose actions were completely unpredictable, was known to be in possession of firearms and ammunition and had previously been firing wildly through walls, windows, ceiling and roof. The evidence demonstrates that as soon as officers were able to venture inside the building with a relative degree of safety, they immediately provided AP with medical attention and attempted to save his life.

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.



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

November 29, 2021

Date of Release