



**IN THE MATTER OF AN ATTENDANCE BY MEMBERS OF THE
VICTORIA POLICE DEPARTMENT
IN CONNECTION WITH THE DEATH OF A MALE
IN VICTORIA, BRITISH COLUMBIA
ON FEBRUARY 6, 2022**

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

Chief Civilian Director:

Ronald J. MacDonald, KC

IIO File Number:

2022-018

Date of Release:

February 3, 2023

THIS PAGE INTENTIONALLY LEFT BLANK

INTRODUCTION

On February 6, 2022, Victoria police officers went to the residence of the Affected Person ('AP') after AP's mother called to say that AP was suicidal. Officers were not sure whether AP was in the unit, and delayed entry. When they subsequently heard sounds from inside, they forced entry, and found AP deceased from self-inflicted injuries. Because of the connection between AP's death and the actions of police, 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 six civilian witnesses and three witness police officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- audio recordings of 911 and radio calls; and
- residential security video.

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 has declined to provide his account to the IIO.

NARRATIVE

This case, fundamentally, is about the timing of information and police actions based on that information. The chronology, as provided to the IIO by civilian and police witnesses, is readily verified by reference to time-stamped telephone and radio communications and video recordings, and is set out below:

- At 1:24 p.m. on February 6, 2022, Civilian Witness 1 ('CW1'), AP's mother, called 911 to say that AP was threatening suicide and was in possession of a razor blade. She said she had dropped AP off at his mental health assisted-living apartment building a few minutes earlier. She believed he was in his unit, as she had not seen him come back down.
- At 1:27 p.m., police Dispatch assigned the call to Witness Officer 1 and 2 ('WO1' and 'WO2'). Dispatch advised the officers that there had been earlier contacts between police and AP, and he had been cooperative on those occasions.
- Between 1:39 and 1:41 p.m., WO1 called Dispatch to check that he was at the correct apartment, and advised that there was no response at the door. WO1 then

called his Sergeant, the Subject Officer ('SO'), and asked if the constables at AP's door should kick it in. At 1:35 p.m., SO asked, "Do you think it's exigent?" WO1 replied that AP's mother said AP had the means, as he had razor blades with him. SO asked if the officers knew AP was in the apartment, and WO1 told him, "Negative, only that mom said he went up to his suite. That's all we know". SO told the officers to "keep going with voice commands and we will go from there".

- At 1:42 p.m., SO advised that he was coming to the location, and asked if there was any other way to see into the suite, apart from the front window, and whether officers had tried to reach AP by phone.
- At 1:46 p.m., WO2 stated that someone could be heard moving inside the suite, but there was still no response to the officers attempts to communicate through the front door.
- At 1:50 p.m., SO arrived on scene.
- At 1:55 p.m., SO announced that officers were going to try to make entry, and said, "just for the log ... a cry for help or making a sound like he needed help".
- At 1:58 p.m., WO1 called for an ambulance to attend "Code 3" (emergency lights and siren).
- At 2:05 p.m., an ambulance was on scene, but it had already been determined that AP was deceased, and the Coroner was called.

AP was found to have died in a bathroom at the rear of the apartment, from severe and extensive self-inflicted wounds.

Interviewed by IIO investigators, WO1 said that when he arrived at AP's apartment, he knocked repeatedly at the front door, taking a non-confrontational approach and calling to AP, asking him if he needed help and asking him to come to the door. CW2, AP's next-door neighbour, told the IIO that he heard this, and confirmed that he did not hear any response from AP.

CW2 told the officers that there was no staff member present as it was the weekend, but directed them to a telephone number posted on a noticeboard downstairs, if they needed to contact someone with a pass key. A notice to that effect was subsequently photographed during a site examination by IIO investigators.

WO1 sent WO2 to try to obtain a key. WO2 said he found the phone number, which connected him to a staff member at another location. That individual said he had a key for AP's apartment, but had no way to get there. WO2 started to drive to the other location, which was only a few blocks away, but while *en route* he was advised that officers had entered the apartment and had found AP deceased.

WO1 said that when a moan or groan was heard from inside the apartment, it confirmed that someone was inside, but did not resolve the issue of whether to break the door open. He was aware that AP was potentially an 'armed and barricaded' person, and a forced entry could precipitate a high-risk confrontation.

The decision was made, nevertheless, to break in. WO1 said he announced to AP that police were going to force the door, and again there was no response. After repeated unsuccessful attempts to kick the door open, SO went to his car for a battering ram. In the Victoria Police Department, only supervisors' vehicles carry battering rams. This practice is consistent with WO1's advice to IIO investigators that only a supervisor can authorize a forced entry into a residence, that officers cannot "go rogue".

The door was breached by SO with some difficulty, and WO1 led the officers into the apartment, drawing his pistol. AP was almost immediately discovered in the bathroom, evidently deceased.

LEGAL ISSUES AND CONCLUSION

The Independent Investigations Office of British Columbia has been given the task of investigating any incident that occurs in the province, in which an Affected Person has died or suffered serious physical harm and there appears to be a connection to the actions (or sometimes inaction) of police. The aim is to provide assurance to the public that when the investigation is complete they can trust the IIO's conclusions, because the investigation was conducted by an independent, unbiased, civilian-led agency.

In the majority of cases, those conclusions are presented in a public report such as this one, which completes the IIO's mandate by explaining to the public what happened in the incident and how the Affected Person came to suffer harm. Such reports are generally intended to enhance public confidence in the police and in the justice system as a whole through a transparent and impartial evaluation of the incident and the police role in it.

In a smaller number of cases, the evidence gathered may give the Chief Civilian Director reasonable grounds to believe that an officer has committed an offence in connection with the incident. In such a case, the *Police Act* gives the CCD authority to refer the file to Crown counsel for consideration of charges.

In a case such as this one, involving the potential for an allegation of police negligence, one of the threads of the IIO investigation will be the gathering of evidence about whether, in the circumstances, officers met the relevant standard of care. In order to constitute the possible offence of criminal negligence, the actions of an officer would have to fail to meet the required standard of care in a marked and substantial way, such that it showed a

wanton and reckless disregard for human life. This is a significant test, as Canadian criminal law does not sanction “ordinary” negligent errors, just very significant ones that therefore justify a criminal sanction.

The officers’ duty was to safeguard AP’s welfare, in circumstances where there was a clear indication that he could well be intending to harm himself, or might already be doing so. Given CW1’s evidence, there were sufficient grounds for a forced entry on an exigent basis, very soon after WO1 arrived. It was reasonable, of course, for officers initially to attempt to have AP come to the door, particularly as they were aware that he had historically shown himself to respond cooperatively to police presence. When he failed to do so, breaking into the unit would have been a justifiable decision.

On the other hand, the concerns voiced by WO1 were also reasonable ones. A precipitous entry into the suite by armed officers, in these circumstances, might well have provoked either violent resistance from AP, with the associated risks for himself and for the officers, or immediate resort to self-harm, perhaps in a locked bathroom, also with potentially tragic consequences.

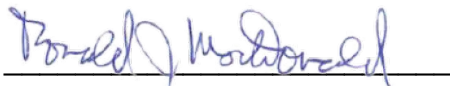
It is significant that the officers were left with only two options: to wait outside, trying to get a response from AP through the locked door, or to kick the door open. The failure of the responsible organization to have either a lock box or a staff member on site with a pass key was a significant factor in this tragedy. While it could be argued that the police policy restricting availability of a battering ram to supervisors also limited the options available, that did not really affect the outcome significantly in this case, as the battering ram was available by the time the decision was made to force entry. On the other hand having police force their way into someone’s home is an action that can impact a resident very significantly, and carries with it real risks. Having policies that require a supervisor’s authority before such an entry can be made, and limiting the availability of battering rams as a result, makes good sense.

The supervising officer here was designated as the Subject Officer because the question of whether there was any degree of culpable negligence turned on the timing of the decision to force entry into the suite, and that was SO’s responsibility. While SO has not set out his decision-making rationale for the IIO and for the public, it is reasonable to conclude that he was balancing risk in much the same way as WO1, and in the way that has been set out above. That cannot be said to be negligence, and certainly not negligence rising to the level of criminality.

The evidence gathered in this case indicates that when AP closed himself in his apartment he had made a firm decision, one that the responding officers were effectively powerless to head off. Given the nature and severity of AP’s injuries, the evidence also strongly suggests that, even if entry to the apartment had been made some minutes earlier, the

outcome for AP would have been the same. In other words, not only can it not be said that any delay between police arrival and the entry was in any way blameworthy, it also cannot be said that it was causally connected to AP's death.

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, KC
Chief Civilian Director

February 3, 2023

Date of Release