



**IN THE MATTER OF THE DEATHS OF TWO MALES
DURING AN INCIDENT INVOLVING MEMBERS OF THE
SAANICH AND VICTORIA POLICE DEPARTMENTS
AND THE GREATER VICTORIA EMERGENCY RESPONSE TEAM
IN SAANICH, BRITISH COLUMBIA
ON JUNE 28, 2022**

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

Chief Civilian Director:

Ronald J. MacDonald, K.C.

IIO File Number:

2022-150

Date of Release:

December 21, 2022

THIS PAGE INTENTIONALLY LEFT BLANK

INTRODUCTION

On the morning of June 28, 2022, multiple 911 calls alerted police to an incident at a Bank of Montreal on Shelbourne Street in Saanich. The Affected Persons in this case ('AP1' and 'AP2') had been seen entering the bank with firearms, and were now inside taking hostages and robbing the bank. Upon arrival, officers observed that the Affected Persons were wearing body armour and were carrying military-style rifles.

When the Affected Persons exited the bank, Greater Victoria Emergency Response Team ('GVERT') members in an unmarked van pulled in to the parking lot, intending to challenge them. What followed was an exchange of gunfire that left six police officers wounded and both Affected Persons deceased. No other person was injured, including the people who were inside the bank at the time of the robbery.

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 seven civilian witnesses and 24 witness police officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- audio recordings of 911 calls and police communications;
- Closed-Circuit Television ('CCTV') recordings from multiple locations;
- police Watchguard dash camera video;
- cell phone video from multiple civilian witnesses;
- forensic scene photographs and detailed analysis, including firearms, ballistics and trajectory analysis and a shooting incident reconstruction report;
- BC Emergency Health Services records; and
- medical evidence, including autopsy and toxicology reports regarding both Affected Persons.

NARRATIVE

In the course of this investigation, IIO investigators have gathered a very extensive body of evidence. Comprehensive and intricate analysis has been conducted to support the factual conclusions set out below. This report will not set out every detail of the evidence

or the analysis, mainly to protect police tactics and procedures and the ability of police to respond effectively in future, if necessary, to incidents of the sort that occurred here. The public can be confident, though, that as Chief Civilian Director of the IIO, I have been presented with ample information to be assured in the narrative that follows, and in the decisions that flow from it.

The incident began just after 11:00 a.m. on June 28, 2022. AP1 and AP2 pulled their vehicle into the parking lot on the south side of the Bank of Montreal branch at 3616 Shelbourne Street in Saanich. They left the car's trunk slightly open and walked to the bank entrance. They were dressed in baggy windbreakers and were both wearing gloves and black balaclava-style masks. Protruding visibly from under the windbreakers was olive-coloured body armour. The lower legs of both men were encased in rigid protection and they were wearing combat boots. Each of them was armed with a 7.62 mm calibre SKS semi-automatic rifle with an extended magazine. AP1 had a large sheath knife hanging on the back of his belt and was carrying a large black bag.

Events inside the bank were recorded on video with no audio track. Upon entry, AP1 fired a single shot from his rifle into the ceiling of the bank vestibule. The two men then corralled bank employees and customers and walked them back to the area of the vault. They were able to obtain only a very limited amount of cash, and appeared to be disappointed. They then spent several minutes pacing around and occasionally looking out through the vestibule windows into the parking lot. While there is no 'typical' bank robbery, usually persons in this situation would attempt to escape as quickly as possible. AP1 and AP2 did the opposite.

During this period, police had been made aware of the robbery in progress and were responding. Soon, Saanich police and members of the Greater Victoria Emergency Response Team ('GVERT') arrived in the area close to the bank.

Just over 16 minutes after they entered the bank, the Affected Persons went to the front door, still carrying their rifles, muzzles pointed down. AP1 was in the lead, with AP2 following several steps behind. They opened the door and walked out into the parking lot, turning to the right in the direction of their parked car on the west side of the lot. At the same moment, an unmarked police van carrying seven GVERT members turned from Shelbourne Street into the parking lot entrance, close to the bank doors. A series of dramatic and violent events then occurred in the space of mere seconds.

Available video does not record the reaction of AP1, but AP2 was still close to the bank door and within the view of internal CCTV cameras. As the van pulled in, AP2 turned towards it, raising his rifle in the direction of the police vehicle. A GVERT member in the

rear compartment of the van pulled open the passenger side sliding door and threw out a Noise Flash Diversionary Device ('NFDD' or 'flashbang'). As the van braked to a halt, the side door momentarily slid forward, almost closing again, and then was pulled open for a second time. The stated intention of the GVERT members was to exit the van, to challenge the suspects and to arrest them, and the NFDD was expected to distract or even stun them momentarily, making the arrest quicker and safer. Unfortunately, what transpired instead, almost simultaneously with the detonation of the NFDD, was a lethal exchange of gunfire.

It is not possible to determine definitively whether police or the Affected Persons fired first. A civilian eyewitness with a good perspective from directly across the street, described one AP (it appears to have been AP2) shooting first:

...as soon as this van opened up, the slide, this guy [AP] starts shooting, this guy starts shooting the police and police were falling down, and after that, 'bang bang' it goes... it was just terrible.

The witness believed, though, that the AP he saw was shooting from inside the vestibule and that it was his shot that broke the window. He may have been confused by the fact, evidenced by bank video, that all in the same moment, AP2 stumbles back towards the vestibule window and the window shatters, apparently penetrated by a projectile coming from the direction of officers stationed at the south end of the parking lot. Three Saanich officers were stationed there, and were joined by two GVERT members seconds after the shooting began. It may well be that one of those officers took the first shot in response to AP2 raising his rifle in the direction of the GVERT van. In either event, the interval between the first shot from an AP and the first shot from an officer appears to have been very, very short.

It is also important to note that the experience of the GVERT officers inside the van was that, as soon as the side slider was fully opened, officers armed with rifles who were preparing to step out were struck by incoming bullets. One of them described hearing the "boom" of the NFDD, "and it was almost like a continuation right with that was another boom, and then just more boom, boom, boom". He said he could feel "the percussion of each one of them, they were so loud and so close". "Simultaneous with that", he continued, he was shot through his leg and fell back into the van (when the shooting stopped, he found he had been wounded in both legs and one arm). The officer who had been exiting the van ahead of him was able briefly to return fire, but was now lying beside him on the floor, shot in the upper abdomen and thigh, "staring through me ... and all he's able to do is just exhale". At the same time, he said, a third officer was shouting from the back of the van that he had been shot in the neck. The officer who had thrown the NFDD was the team medic, so was armed only with a pistol. He stepped out of the van with the pistol "punched out" in both hands and took a position in front of his disabled colleagues,

facing the incoming gunfire and shooting at their assailants. The driver of the van, a sergeant who was leading the GVERT team, fired at least 28 rounds from his pistol out through the windshield of the van before exiting through the driver's door and continuing firing from beside a bush in the parking lot. At some point, he was hit in the foot by a ricochet from a police bullet.

Two GVERT members exited through the back doors of the van, both wounded in the legs. One worked to fasten a tourniquet on the other's badly bleeding leg while the shooting was still continuing. The officer who had shouted that he had been shot in the neck (and was indeed badly wounded in the shoulder) was only able to pull himself half out of the vehicle through the rear doors. Meanwhile, Saanich officers were running towards the scene along the sidewalk from the north. Some engaged the Affected Persons with gunfire while others moved in quickly to help with first aid for the wounded GVERT members.

AP1 initially fired his rifle at the police van, and was moving towards the west side of the parking lot when he was struck in the head by a police round fired from the south end of the lot, and fell to the ground. AP2, also firing at the van and the officers inside it, was hit by several police bullets. The civilian eyewitness observing from across Shelbourne Street told IIO investigators that he saw AP2 staggering but still firing his rifle, and then falling. AP2, the witness said, was still trying to crawl, with officers shouting at him, "Drop your weapon". It was discovered subsequently that the magazine of AP2's rifle had been damaged when it hit the ground and the weapon was no longer functional. One of the Saanich officers recalled seeing AP2 on the ground, crawling towards AP1, whose gun was lying beside him, and said there was more firing from police at that time.

As the gunfire ceased, officers transitioned rapidly into life-saving first aid for the wounded, some of whom were transported from the scene to hospital in police vehicles because of safety concerns for ambulances attending the scene. Arrest teams went to the Affected Persons to handcuff them and remove their weapons, but they were both already deceased at this time. Officers entered the bank to check for other suspects and to ensure the safety of the employees and customers.

Follow-up investigative work disclosed a large cache of weapons, ammunition and improvised explosive devices in the trunk of the car the Affected Persons had left in the bank parking lot with the trunk slightly opened.

As part of the IIO investigation, extensive analysis was conducted with the objective of determining the paths and ending locations of bullets fired in the incident. Apart from AP1's initial shot into the ceiling inside the bank, both he and AP2 were found to have fired all their rounds in the direction of the police van. Two of AP2's expended bullets

crossed Shelbourne Street, one striking the window of a bistro and the other entering a dry cleaners and lodging in a blanket on a shelf above the heads of staff and customers.

At autopsy, AP1 was found to have suffered three wounds from police bullets, and AP2 was found with nine. Expended police bullets were also found to have been stopped or deflected by the body armour worn by the pair. It is estimated that altogether, police fired just over 100 rounds, which is not surprising given the circumstances and that many officers were firing rounds during the incident. Given this, the number of wounds suffered by each AP was relatively low, a likely testament to the effectiveness of their body armour.

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 use of lethal force by officers, one of the threads of the IIO investigation will be the gathering of evidence about potential justifications for that use of force. The CCD will then apply legal tests such as necessity, proportionality and reasonableness to reach conclusions as to whether officers' actions were lawful. The specific focus will be on the degree of threat posed by each Affected Person and whether, in the words of the *Criminal Code*, it gave reasonable grounds for the officers to believe lethal force was "necessary for the self-preservation of [the officers] or the preservation of any one under [the officers'] protection from death or grievous bodily harm".

All the officers involved in this case were acting in lawful execution of their duty. They were responding to a series of calls about an armed robbery in progress, and had a duty

both to protect the victims and to arrest the perpetrators. They were justified in using force to achieve those ends, provided the force used was within the range permitted by the criminal law. In this case, that range was effectively determined by the actions of the Affected Persons. When those Affected Persons offered lethal force or the imminent threat of it, the officers were justified in using lethal force in response.

Conceptually, the police use of lethal force here can be broken down into three phases: (1) any initial threat from the Affected Persons before they first shot at officers; (2) the time during which one or both Affected Persons were actually shooting; and (3) any period of residual threat after both Affected Persons had stopped shooting.

As noted above, even the exhaustive analysis conducted by IIO investigators has not been able to eliminate ambiguity about exactly who first discharged a firearm in the incident (that is, about whether the first two 'phases' of the incident suggested above were effectively just one). Certainly, if the Affected Persons were doing no more than walking to their car, rifles pointed at the ground, it could not be said that it would be reasonable for police to immediately open fire on them, without any challenge or opportunity for surrender. The evidence, though, shows quite clearly that AP2, at least, reacted to police arrival by turning in their direction and raising his rifle.

Whether he pulled the trigger at that exact moment, or not, he was a bank robber leaving the scene of the crime, and he was pointing a high-powered assault rifle at police. In those circumstances, he (and by extension, AP1 also) posed a clear and imminent threat of death or grievous bodily harm to officers and to the public, and the use of lethal force in response was justified. The first member exiting the GVERT van would have seen AP2's threatening posture, as would the officers covering the scene with their firearms from across the parking lot. Any of those officers would have been justified in defending against the clear threat to the van's occupants in 'phase (1)'.

Whether they shot first or not, of course, once the Affected Persons started discharging their weapons at police, in 'phase (2)', and once GVERT members were falling, grievously wounded by those rounds, all officers present with a clear sight picture were lawfully justified by *Criminal Code* self-defence and defence-of-others provisions to return fire.

The issue that remains concerns the gunfire that was directed at AP2 after he fell to the ground and abandoned his damaged rifle. A CCTV recording covering the northwest corner of the parking lot shows AP2 falling, several seconds after the detonation of the NFDD. Live rounds can be seen spilling from the broken magazine of his rifle, and AP2 then crawls away out of the view of the camera, leaving the weapon lying on the ground behind him.

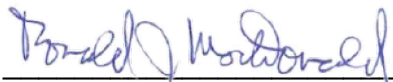
What must be considered, however, is what he was crawling toward, which was the rifle lying beside AP1. He was also crawling in the general direction of the Affected Persons' parked car, which was a potential source of further weapons (as mentioned above, the car did contain a large quantity of weapons, though this was not known to police at the time). Finally, of course, it was not known whether AP2, who appeared to be outfitted for military combat, might be in possession of another firearm or other offensive weapon.

Generally, a potential or suspected risk that has not 'crystallized' around solid fact(s) more substantial than mere possibility is not sufficient to justify the use of force that would only be proportionate if the possibility were confirmed as true. For example, the fact that a suspect on the ground is resisting police and is holding his hands under his body should not, generally, be relied upon by an arresting officer as justification for the use of an elevated level of force because the suspect "might be reaching for a weapon". There is a significant difference between caution based on a possibility and the use of excessive force based on an assumption.

In this case, in fact, the evidence of witness officers is that AP2 at one point, after crawling for a distance, did put his hands under his body. But, in this case, AP2's prior actions provided significant support for a valid belief that he still posed a very real threat. He and AP1 had apparently equipped themselves for an extremely serious armed confrontation with police. They had reacted to police presence with unbridled violence at the upper end of the scale that could reasonably be anticipated in a civilized society. Now, although AP1 was down and apparently mortally wounded or already deceased, and despite the obvious hopelessness of his own situation, AP2 showed a clear determination to continue resistance rather than surrender. Added to these elements is the fact that much of AP2's body was protected by armour. The body armour he was seen to be wearing would provide both carrying capacity for more weapons and the ability for him, potentially, to survive police gunfire long enough to produce and fire those weapons. The armour's protective capability, in fact, was demonstrated by AP2's continued ability to function despite the very considerable number of rounds that had already been fired at him by police, and the relatively few that actually wounded him.

Taking all these factors into account, it cannot be said that it was unreasonable for officers to discharge further rounds at AP2 as he tried doggedly to move toward AP1's still-functional rifle, or reached under himself into the area of the front of his body armour. It was taking a great deal to stop him. If police had waited until he reached the rifle, it was reasonable to assume he would be firing at them and would be able to get off more rounds before he could be finally stopped. The bottom line was that AP2 was a proven risk of significant lethal force who could not be easily stopped. It was more than reasonable for police to make sure he was never able to get to another high powered rifle.

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. Indeed, several officers showed remarkable courage under potentially deadly circumstances and should be commended for what they did to protect and then offer aid to their colleagues.



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

December 21, 2022
Date of Release