



**IN THE MATTER OF THE INJURY OF A MALE
IN AN INCIDENT INVOLVING MEMBERS OF THE RCMP
IN PRINCE GEORGE, BRITISH COLUMBIA
ON JULY 11, 2022**

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

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| Chief Civilian Director: | Ronald J. MacDonald, KC |
| IIO File Number: | 2022-169 |
| <u>Date of Release:</u> | <u>September 29, 2023</u> |

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INTRODUCTION

The incident in which the Affected Person ('AP') in this case was injured occurred in the booking area of the RCMP detachment. In the course of his processing, he was able to access a pepper spray canister and discharge it at officers. AP was then struck in the groin by a bullet fired by the Subject Officer, and was taken to hospital for treatment. 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 and two other civilian witnesses, one first responder and two witness police officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- audio recordings of a 911 call and police radio transmissions;
- video recordings from the RCMP cell block;
- forensic examinations of scene and exhibits;
- RCMP detachment records;
- RCMP policies and training records; and
- ambulance service and other medical records.

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 not provided any account to the IIO.

NARRATIVE

On the morning of July 11, 2022, the Affected Person ('AP') was arrested by Prince George RCMP members after fleeing from police who were investigating him on suspicion of shoplifting. AP was found to be in possession of a knife and what appeared to be a restricted or prohibited firearm. He was transported to the RCMP detachment by the Subject Officer ('SO').

At the detachment, officers conducted a second search of AP and his backpack, and found another knife and a can of bear spray. Witness Officer 1 ('WO1') subsequently told the IIO that he saw SO examine the firearm and determine that it was a CO2-powered pellet pistol. All four weapons seized from AP were placed on a shelf below the counter in the booking area. AP was provided access to a phone and called a lawyer, and was also notified that he was subject to an outstanding arrest warrant from Dawson Creek.

What happened next was recorded by video cameras covering the cell block area.

The video shows AP standing, unaccompanied, in front of the booking counter. His handcuffs have been removed. He leans forward on the counter, then reaches over it and grabs the can of bear spray from the unsecure shelf behind and below the counter. He then immediately begins spraying through the open window into the area behind the counter, first to his right towards SO and then sweeping farther to the left across the guard room, before dropping the can and falling to the floor, apparently wounded. The primary target of the spray appears to be SO, who is closest to the counter.

Video evidence and examination of firearms indicates that it was SO who discharged his firearm at AP in response to the pepper spraying. The video shows WO2 coming out into the booking area at about the time AP is shot, but WO2's pistol is still holstered at that point. WO2 told investigators that he heard SO shouting something like "stop" at AP before the gunshot.

Two civilian employees were also present in the guard room area behind the booking counter at the time of the incident, and were also in danger of being affected by the bear spray or injured by any other weapon available to AP by simply reaching over the counter.

Asked later by IIO investigators about his actions, AP acknowledged having shown a lack of judgement in grabbing the bear spray and in spraying it at the officers: "I didn't give it any thought. It just happened". AP recalled that he was initially spraying at SO's head from about two and a half feet away, and then directed the spray down SO's body.

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 ('CCD') 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 an officer, 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 the officer's actions were lawful. The specific focus will be on the degree of threat posed by the Affected Person and whether, in the words of the *Criminal Code*, it gave reasonable grounds for the officer to believe lethal force was "necessary for the self-preservation of [the officer] or the preservation of any one under [the officer's] protection from death or grievous bodily harm".

While an assault with bear spray, in itself, would not usually be considered as posing a threat of death or grievous bodily harm, the circumstances of this case were not 'the usual'. In the few moments over which the incident occurred, SO found himself with impaired vision and retreating from an unexpected and completely irrational attack by a person who had other weapons within easy reach. There were unarmed civilians within the same enclosed area, and there was little if anything to prevent AP from climbing or jumping over the counter and posing a serious threat to them.

The practice of police placing seized weapons on an unsecured shelf within easy reach of detainees can certainly be criticized as sloppy and risky, to say the least. SO's response to AP's assault on him, though, in these circumstances, was within a reasonable and justifiable range. He fired one round, was able to neutralize the threat to himself and those under his protection, and used no further force. AP's injury was the result of his own impulsive and essentially inexplicable acts.

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.



Martin Allen, General Counsel
For Ronald J. MacDonald, KC
Chief Civilian Director

September 29, 2023

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