



**IN THE MATTER OF THE DEATH OF A MALE
IN AN INCIDENT INVOLVING MEMBERS OF THE
RCMP IN
KEREMEOS, BRITISH COLUMBIA
ON SEPTEMBER 13, 2022**

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

Interim Chief Civilian Director: Sandra Hentzen

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INTRODUCTION

On the morning of September 13, 2022, the RCMP Southeast District Emergency Response Team (ERT) was attempting to arrest two people pursuant to a warrant (the Affected Persons or 'AP1' and 'AP2'). When officers arrived, they encountered AP1 and AP2. AP1 was in possession of what appeared to be a gun, and AP2 was armed with a machete and a homemade taser. This resulted in an interaction where the Subject Officer ('SO') shot both AP1 and AP2. AP1 died, and AP2 was seriously injured.

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 two civilian witnesses;
- statements of ten witness police officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- BC Emergency Health Service records;
- police radio transmissions;
- medical records;
- video recordings;
- firearm and forensic scene 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 has not provided any account to the IIO.

NARRATIVE

On September 13, 2022 at 7:20 a.m., the Southeast District Emergency Response Team ('ERT') was called in to assist in the arrest of Affected Person 1 ('AP1') and Affected Person 2 ('AP2') pursuant to a warrant.

AP1 and AP2 were being arrested for their role in a previous incident where they had failed to attend court after being arrested for obstructing and assaulting police. During that interaction, AP1 was obstructive and allegedly punched a police officer's hand and yelled "*freedom or death*" and "*you will have to shoot me*".

The RCMP had received information that AP1 and AP2 were living in a bus which was on a makeshift campsite on Crown land. It was understood by officers that AP1 and AP2 followed a 'freeman on the land' ideology, based on their previous encounters with police and other law enforcement agencies. Witness Officer 1 ('WO1') described this as people who do not believe in the authority of police to enforce the laws that government makes. When interviewed by the IIO investigators, AP2 described herself and AP1 as "*anarchists*".

Police officers spent time planning the arrest and involved the ERT due to the previous violent encounter that AP1 and AP2 had with law enforcement and the ideology of AP1 and AP2.

ERT arrived at 7:20 a.m. with a Tactical Armoured Vehicle ('armoured vehicle'), which they parked outside APs' bus. The bus had drapery over the windows, making it difficult to see inside. Witness Officer 2 ('WO2') called out over the loudspeaker to AP1 and AP2, announcing that police were present, that they were under arrest and to come out with nothing in their hands. There was no response from AP1 and AP2.

At 7:26 a.m., further announcements were made and tactics attempted to get AP1 and AP2 to exit the bus. Those tactics failed, and there continued to be no auditory or visual response from AP1 or AP2.

AP2 said that she saw and heard the police arrive that day. AP2 suspected that police would be coming for them, as they had a recent encounter with a conservation officer, and she knew there were warrants out for their arrest. She said that it was "*freedom or death*" due to their anarchist ideology.

At 7:37 a.m., Witness Officer 3 ('WO3') deployed chemical gas into the bus, which prompted AP1 and AP2 to exit the bus. AP2 was armed with a machete and a homemade cattle prod, which contained an electrical current. When interviewed by IIO investigators, AP2 referenced this cattle prod to be her "*homemade taser*".

Witness Officer 4 ('WO4') described that AP2 made eye contact with him and was snarling at police with weapons in the air. His impression was that AP2 was prepared for a fight. WO4 then saw AP1 with what WO4 believed to be a semi-automatic gun with a detachable magazine in his hand. [It was discovered after the incident that it was a pellet

gun that looked like a real firearm.] AP2 later confirmed that they wanted police to believe that this was a real gun.

Video from a drone captured the incident as it unfolded. AP1 moved towards the front of the armoured vehicle holding the realistic-looking pellet gun.

WO2 described AP1 holding the gun and noted that he was pointing it in dangerous directions and in a way that could be easily used and fired. There were mobile home parks in the distance and other officers nearby. Officers had concerns about stray bullets flying and/or APs fleeing and creating a stand-off situation. WO2 said he commanded that AP1 drop the gun over the loudspeaker, saying words to the effect of:

“if you don’t drop the gun, you can get hurt, we don’t want to hurt you, you need to drop the gun”.

An audio recording from a nearby mobile home park captured police commanding AP to drop the weapon. AP2 described this similarly as:

“They asked us to drop the weapon, and we didn’t, we didn’t acknowledge. So before I could ask him [AP1] like ‘are we doing the right thing?’ a shot was fired and he went down”

Subject Officer (‘SO’) fired a shot from a distance, which struck AP1 who dropped to the ground. WO2 told AP2 to not pick up the gun. Video showed that AP2 grabbed the gun and faced the armoured vehicle.

AP2 said that she pulled the slide of the gun back, as she wanted police to think that she had loaded the chamber. AP2 described her thinking to IIO investigators that it was her intention *“to get shot, to be killed, not to live”*. She said it went against her ideology to kill herself, *“so if I’m going to die, somebody has to kill me”*. AP2 said she was on her knees at the time, but the video shows her standing.

WO2 said that he heard AP2 say something to the effect of *“I hate you, I’d rather die”*.

Witness Officer 5 (‘WO5’) described his risk assessment when AP2 had the gun in her hand, noting that he was getting ready to fire his own gun at AP2:

She had multiple opportunities to drop the gun, and not to take the gun, and she has the gun. She had to be stopped right away because of her behaviour, her commitment to fight throughout, I’m not going to wait until she points at someone, or worse she shoots, and the bullet lands into somebody’s trailer [mobile home] and kills someone that has nothing to do with this”

SO fired a shot which struck the bus. As WO6's finger was on the trigger, SO fired the shot which struck AP2. AP2 dropped to the ground, still in possession of the gun.

ERT members used a device to remove the gun from AP2's possession prior to providing medical assistance to both AP1 and AP2, and in anticipation of the arrival of paramedics who had been called and were waiting nearby. During this period, Witness Officer 6 ('WO6') heard AP2 say that she wanted to die, and that she wanted him to kill her and let her die.

Medical efforts were discontinued on AP1 as he was considered deceased. AP2 was transported to the hospital with a gunshot wound to the shoulder, where she was treated and later released.

When interviewed by IIO investigators, AP2 said that they were prepared to die that day, noting *"We were prepared to die for our freedom, and I wanted them to kill me...so they didn't do a very good job of that"*.

The Post-Mortem Examination Report indicated that AP1 was shot in the chest, and that he died as a result of this gunshot wound. The toxicology report indicated no substances contributed to his death.

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(s) 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(s) 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 avenues of the IIO investigation will be gathering 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 officer actions were lawful or not. The specific focus will be on the degree of threat posed by the Affected Persons 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 officer] or the preservation of any one under [the officer’s] protection from death or grievous bodily harm*”.

In this case, both AP1 and AP2 were holding what appeared to be a real gun when they were shot. Although it was later discovered to be a pellet gun, Witness Officers who were present believed it was a real gun. When interviewed, AP2 said that they had intended for it to look like a real gun. Based on the video footage and evidence of all the witnesses, it was objectively reasonable for the officers to believe that APs were both holding a real gun at the time they were shot.

The video footage showed AP1 holding the gun when he exited the bus. WO2 explained that the gun was carried in a way that could be easily used and fired. A person who is prepared to take a shot will be faster than a police officer responding, based on reaction times and the physiological processes involved.

Based on all of the previous history with law enforcement, and their refusal to obey any commands of the police, it was reasonable to believe that there was a threat of grievous bodily harm or death to officers and/or the public at that point. After giving many opportunities for AP1 to obey commands throughout the encounter, it was not reasonable for the SO to wait until the AP1 pointed the gun at police or fired a round before responding, given all of the threat and risk associated up to that particular point.

The risk escalated further when AP2 picked up the gun after AP1 was shot. AP2 had just seen AP1 get shot for holding the gun while not listening to police commands but continued the same behaviour. She escalated it further by taking control of the gun, brandishing it in a confrontational manner, and bringing it up to a shooting position, contrary to police direction. AP2 herself admitted that she wanted the police officers to kill her on that day. This was made clear by the video, which showed her escalating behaviour towards the police.

There was a significant risk faced by the officers, and potentially to the public if AP1 and AP2 escaped. There were mobile home parks nearby, and although some officers were protected by the armoured vehicle, there were others nearby who could be injured by stray bullets or the escape of AP1 and AP2. The officers could not simply stand down and walk away from this situation - they had a duty to act and protect. They were also there lawfully pursuant to an arrest warrant.

An officer is allowed to use force, provided that they are acting in the lawful execution of their duties and the amount of force used by an officer is necessary. The law requires that the use of force not be excessive, and the use of force is constrained by the principles of proportionality, necessity and reasonableness. When applying lethal force, there also must be a threat of grievous bodily harm or death. In this case, the APs had a history of non-compliance, were armed with a gun, and not listening to police commands. Given all of the considerations, it cannot be said SO's decisions to shoot AP1 and AP2 were unreasonable in the circumstances. Unfortunately, AP1 died of his injuries.

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



Sandra J. Hentzen
Interim Chief Civilian Director

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