

**REPORT OF THE POLICE COMPLAINTS AUTHORITY
ON THE FATAL SHOOTING OF ERIC BRUCE GELLATLY
AT INVERCARGILL ON 27 SEPTEMBER 1995**

Introduction

At about 2023 hours on Wednesday 27 September 1995 Eric Bruce Gellatly (hereinafter mostly referred to as the intruder or the deceased) was shot and killed by a member of the New Zealand Police after unexpectedly emerging from the rear of H & J Smith's Outdoor World Sports Shop situated in Tay Street, Invercargill, in circumstances to be described. The death occurred on a block of land near the intersection of Forth and Nith Streets, which is at the rear of the building from which he had just emerged. The city block is an open park area devoted to recreational purposes and is known as Otepunu Gardens. A bowling green plus rooms are to the south of the block next door to a Senior Citizens Centre. Otepunu Stream passes through the block and a path runs alongside the stream for about half its length in the Gardens. It was over this path that the deceased made his final dash to the corner of Forth and Nith Streets. The shooting took place at the end of a 21 hour siege that had begun at about 2324 hours on the night of 26 September when the deceased used a brick to smash a hole in the glass front door on Tay Street of the Outdoor World Sports Shop through which he climbed to gain entry. This event triggered an alarm which operated the electronic pager of an employee of the shop which enabled him to identify the physical point of entry and to trace the intruder within the building. The term intruder is used because it was not until some 20 hours later, or under an hour before the fatal shooting, that he was identified as Eric Bruce Gellatly. This inability to identify the intruder greatly inhibited Police planning in the operation. The employee knew that the intruder had proceeded to the gun racks. Police were alerted to the situation almost immediately. The full circumstances that led to the fatal shooting some 21 hours later are described in detail hereafter.

Following the shooting the deceased died quickly at the scene.

Report to Police Complaints Authority and Subsequent Action

There was full media coverage of the siege that took place during Wednesday 27 September and the Authority viewed with apprehension the events as they unfolded. It was only shortly before the siege ended the Police were able to identify the intruder and only after appeals had been made through the media for assistance in identification.

The Deputy Police Complaints Authority, Mr E B Robertson, was advised of the fatality at 2129 hours on 27 September. Next day he made arrangements to travel to Invercargill where he was met by Detective Chief Inspector R G McMeeking and Detective Senior Sergeant John Lyall who had already been assigned to carry out a full Police investigation and to assist the Authority in its enquiry. Both Police officers are based in Christchurch.

The notification to the Authority was given pursuant to Section 13 of the Police Complaints Authority Act 1988 which requires that the Commissioner advise the Authority of any death caused by a member of the Police acting in the course of the member's duty. In the circumstances a joint investigation was conducted into the incident by the Authority and the Police officers named above. A separate investigation into possible criminal liability arising out of the shooting was conducted by Detective Inspector Chris Kelley and will be referred to hereafter.

No complaint against conduct of the Police arising out of this incident has been made.

Mental Condition of Eric Bruce Gellatly

After the fatal shooting took place following the identification of the deceased, it was extensively canvassed in all branches of the media that the deceased had a longstanding mental affliction diagnosed as paranoid schizophrenia. He was aged 34 years. The deceased had been under the care of the community forensic services. It was reputed that he had at least a 10 year history of schizophrenia and was apparently well known to the psychiatric services in Southland/Otago districts. He had been a patient in psychiatric hospitals. In the course of an extremely thorough enquiry into the events surrounding the shooting carried out in the joint investigation the history, recent and past, of the deceased was canvassed. The investigation revealed the deceased was seriously mentally afflicted and apparently sharply deteriorating in the months prior to his death. No useful purpose is served in this report by giving extensive coverage to this aspect for it is not in any dispute.

However I think something should be said of the few hours before 2324 on 26 September because it is relevant. That afternoon he was due to appear in the District Court on criminal charges but failed to do so. At about 1700 hours he embarked on a round of visits to his friends and family. It is not necessary to give details of the evidence obtained at interviews but the persons spoken to seemed of the opinion that he was exhibiting signs of delusional thought processes although their views were not expressed precisely in that language. To one person he inappropriately said "*Four Police are going to shoot me tonight. I don't know why. I am going to die tonight.*" It must also be said many of these people were somewhat conditioned to strange statements and behaviour by Mr Gellatly.

On the day after the fatal shooting, 28 September 1995, there was a debate in the House of Representatives on the case focussed largely on the adequacy of the services available in the district to meet the needs of persons mentally disturbed to the extent suffered by the deceased. The Parliamentary debate was given wide media coverage and many of the facts outlined above were in the media, and more.

There can be little doubt that the behaviour of the deceased at the material time was greatly influenced by his mental instability but the Authority can go no further. Some mention of his mental condition up to the time he forcefully entered the store has been given so as to set properly the scene Police faced on being called to the store near midnight on 26/27 September although most of it was not known to Police until very late in the siege. The overall media reporting of the deceased mental condition and the debate that followed was of a high standard in balance, taste and sensitivity. The public seemed to well understand the condition of the person with whom the Police had had to deal in the siege of about 21 hours. The level and adequacy of the hospital, social and psychiatric services available to persons such as the deceased is entirely outside the scope of this report. The attention of the report is focussed on the behaviour and response of the many Police officers who attended the scene and ultimately brought Mr Gellatly's life to an end. Faced with the situation they were on that occasion the task of the Authority is to decide whether the Police acted lawfully, within the guidelines set out in General Instructions and Manual of Best Practice.

In making this report, which is basically to inform the public of the events surrounding the shooting, it is necessary to distil a huge amount of information which has been gathered in a very thorough and detailed investigation. The public will appreciate that the Authority

unavoidably has had to select from that information and concentrate on central issues and conclusions.

Narrative of Events

Invercargill is a medium sized city in the South Island. It is the business centre of the Southland District. H & J Smiths Outdoor World is on Tay Street which is one of the main streets of Invercargill's commercial business district. Outdoor World is situated on the south side of Tay Street which runs approximately east/west direction. Tay Street is a wide four-laned roadway. Outdoor World has a rear access onto Wood Street which runs parallel to Tay Street. On the southern side of Wood Street are the Otepunu Gardens, the previously described park area. To the east Nith Street runs in a north/south direction and intersects with Wood Street and Forth Street. Immediately opposite the rear access of Outdoor World is a footbridge from Wood Street which crosses the stream and connects with a footway which runs behind some community buildings down to meet Nith Street. When the deceased exited the rear of Outdoor World he crossed Wood Street onto the bridge and turned left down the path to about near the intersection of Nith Street and Forth Street where he was shot. The distance over which the deceased ran was 152 yards. It is already clear that the events which began with a forced break-in to Outdoor World off Tay Street and ended some few hundred metres to the south took place in the busy central business district of Invercargill which required the closing of several streets to the public during the 21 hours of the siege.

As stated earlier, the siege commenced at about 2324 on 26 September with a violent break-in to Outdoor World by smashing the glass door which is the front of the store onto Tay Street. Outdoor World is a fairly large store retailing a wide variety of outdoor sporting equipment as its name implies. There is a basement floor, the ground floor, a mezzanine floor, and a full first floor. Inside the shop were some 200 hundred light, medium and heavy calibre weapons, with access to thousands of rounds of ammunition and explosive gunpowder. The history of the deceased revealed he had spent some years in his early life in the armed services where he would have gained knowledge and experience with different types of weapons.

A store employee, Mr W J Grindell, carried an electronic pager which was triggered by the break-in. Mr Grindell knew the point of break-in and that on entry the intruder had proceeded to the part of the store on the ground floor where the gun racks were located. Outdoor World operates the franchise for Gun City and as a result deals in the sale of new and secondhand firearms and the storage of new and secondhand firearms as well. The shop

also deals in ammunition for a wide variety of firearms and holds quantities of explosive gun powder on the premises. The reconstruction points quite strongly to the supposition that on previous visits to the store the deceased had worked out a system whereby a gun could be extracted from security. He understood the shotguns would “break” at about the middle and with relative ease the gun could be removed from the rack. To gain access to other secured guns he simply shot the framework to pieces. Several gun racks had been shot to give access to the guns. I will return to this issue.

Mr Grindell attempted first to call the Invercargill Police on his cellphone as he was driving from his home towards the shop but could not make contact. On arrival at the shop at 2335 hours he could observe the intruder standing by the gun racks. At this point contact was made with the Police and an Incident patrol manned by Constables Joanne Parnham and Blair Corlet arrived quickly outside the damaged door on Tay Street. Through the door the Constables could see the intruder standing in an aisle empty handed. They could not recognise him. Constable Corlet tried the door which was locked. At this point the intruder suddenly disappeared behind a glass counter and when he stood up the Constables were startled to see him pointing a side-by-side shotgun directly at them from a distance of about 9 metres. The Constables quickly separated to the right and left respectively out of the line of fire. A split second after separating a shotgun blast was fired through the glass door at the point where the Constables had been standing. The parked Police car was hit. As the Constables ran away a further two or three shotgun blasts followed. As Constable Corlet fled he collected Mr Grindell and took him with him as he headed for the corner of Tay and Nith Streets. Two other civilians were also gathered up to safety. Those events were immediately reported to the Invercargill Police Station at 2338 hours and an Armed Offenders Squad call-out was instituted.

In summary to this point entry had been gained to the shop at about 2324 in violent circumstances by using a brick to smash glass. Within 11 minutes the Police were called and because of the shootings described above at 2338 (ie. within 14 minutes) extreme violence had been demonstrated by the intruder discharging three or four shots from a shotgun from which it can be reasonably inferred from the circumstances the first at least was deliberately aimed at two Constables. At that point the AOS were called out. Except for coming out onto the footpath in Tay Street near the abandoned Police vehicle at around midnight and briefly emerging on a second occasion at 0640 the intruder returned and remained inside Outdoor World until his sudden re-emergence at the rear at about 2023 on 27 September. The

inception of the incident was violent with some evidence of premeditation and 21 hours later it ended violently with the shooting of the deceased.

I turn now to the events that occurred from about midnight on 26/27 September to about 2023 hours on 27 September when the deceased was shot in a garden area as described above. The most careful assembly of all known facts and circumstances have been made in the course of the investigations but in the interests of concision only the important features are dealt with here.

Two matters are of importance and one of these has already been mentioned. The intruder was not able to be identified until very shortly before he was shot. The disadvantages the Police suffered are obvious. They knew nothing of this person who had begun acting so violently and lack of knowledge or intelligence naturally caused problems in planning their course of action. Limited by their inability to identify him the Police were also never able to establish any form of meaningful communication with him throughout the entire time of the siege. The establishment of some form of communication, or dialogue, is a primary target which for obvious reasons gives Police an opportunity to discover some explanation for the bizarre behaviour and obviously provides a way to attempt to persuade the intruder to surrender peacefully.

I now record the efforts made by Police and the minimal communication that actually was achieved. As part of an AOS call-out there is available a Police Negotiation Team which is a specialist group formed to help other operational staff to resolve situations by using negotiation techniques. The PNT is professionally trained for such an exercise. At 0130 hours the PNT were aware three extension telephones existed in Outdoor World and called the intruder. He answered and a very short conversation took place between Detective Sergeant McCambridge and the intruder with the first object establishing the latter's identity. The intruder told the officer that his name was "Dirty (this word indistinct) James Jeff" and added that there were five people in Outdoor World and then hung up. His voice was recorded and broadcast some hours later over the television together with a photograph of him inside the store in a plea to the public to assist in identification. It was successful and the Police received a few calls naming him but it was very late into the siege. To return to the sequence at 0135 the officer called again and the intruder gave his identity using the name of the then Mayor of Invercargill and hung up. Further calls were persevered with over the next few hours but the intruder either chose not to answer them, or did so by removing the

telephone and leaving it off the hook. On two occasions he answered the telephone but hung up immediately. Eventually by 0425 all three extension phones had been left off the hook rendering further attempts at communication by that means as unavailable. A fourth telephone connection was reserved as a connection to the alarm sensors to be described.

There was a separate telephone line to a fax machine and Police commenced sending fax messages at 0812 on 27 September appealing to the intruder to contact Invercargill Police. In all 17 faxes were sent between 0835 and 1922. The fax messages were later found by the fax machine apparently unread except one which had been crumpled in a nearby bin.

Because of failure to establish dialogue by telephone the AOS constantly endeavoured throughout the siege to engage the intruder in communication by inviting him to respond to voice appeals made by a Police loudhailer. No verbal reply was ever achieved by this method and the intruder's regular response was to discharge a firearm at buildings opposite Outdoor World from where he obviously thought the voice appeal had emanated.

Up to eight staff continued to work on identifying the intruder and drew up a list of 33 possible names and throughout 27 September they were eliminated. This was a very time consuming exercise.

Following leads obtained through the media the intruder was identified at about 1930 hours and his parents were able to offer some confirmation and the first appeal using his Christian name was used at about 1945 hours. This provoked no response.

Obviously the actions and behaviour of the deceased and those of the Police interacted but it may help to clarify the steps taken by the Police if attention continues to be focussed on the behaviour of the deceased as it was observed at the time and revealed by the scene examination following the shooting.

So as to explain how the Police were able to track the deceased when inside the shop it is necessary to outline the alarm system which protected the shop. Outdoor World has installed an alarm system a feature of which is the division of the shop into five key zones, each of which is covered by a movement sensor. Any movement into one of the cone-shaped sensor zones triggered a fresh activation on the paging device in such a sophisticated way as to enable the possessor to know into which zone the intruder had just entered. Police took

possession of this pager soon after the incident started. This provided Police planners with a tactical advantage during the siege, which would have been very significant had it been necessary to enter the building to attempt to apprehend the intruder, who now could be called a gunman. Guidance from the pager established a total of 287 activations during the 21 hours which represented movements from one zone to another. On only two occasions did he remain in one zone longer than an hour. The pattern of the activities therefore indicates quite regular movement about the shop except for a small number of activations attributed to the intruder throwing shop items about.

There was evidence that the intruder took precautions against Police mounting an entry through Tay Street (the one which he had himself used) to apprehend him. He had moved sporting goods away from the western wall to give himself an unobstructed view of the Tay street doorway.

Enough has already been said to demonstrate that the intruder was constantly moving throughout the store, probably in an agitated state. During this period the intruder had continually discharged firearms but that can be left to later to give details. A very significant strategy of his was to develop protected positions within the shop from which he had a commanding perspective for either observing activities outside the shop (on either Tay or Wood Streets) or for sniping at Police or Police dogs should he spot their locations of cover in the inner cordon, or in the event of a forceful entry by Police.

The first location (and seemingly the most effective) was situated on a small mezzanine floor situated in the south-west corner of the shop which could only be reached by climbing a narrow stairway and which he had barricaded with shop equipment to prevent easy access. Much of the 21 hours was spent in this area. The intruder had nine pre-loaded shotguns readily at hand and 40 boxes of shotgun ammunition and 660 additional rounds of shotgun ammunition in a sports bag nearby. There was also food and a clock taken from the downstairs canteen.

The second protected position was crafted by the intruder on the ground floor of the shop where he moved items including gun safes and display units apparently to provide a barrier against a human or dog assault. In this position were located five firearms (three shotguns, a .22 rifle and a .30-06 rifle). Only one of the shotguns was loaded when found, but there was clear evidence the .30-06 rifle and .22 rifle had been fired during the siege. Large quantities

of ammunition for the weapons was readily at hand, along with food and drink items and binoculars.

The third position of interest was located near the top of the main shop stairs leading from the ground floor to the first floor. This location is on the opposite (east) wall of the shop to that of the mezzanine floor and similarly provided an elevated perspective to look out of the shop onto Tay Street, with an increased angle of view of the shops west along Tay Street. In this position there was no attempt to create a barricaded hiding position, but a repository of shotgun ammunition was placed there and as with the two protected positions which he had barricaded this third position (if he had adopted use of it) allowed the intruder domination over the entire ground floor area.

During the 21 hours the intruder occupied himself with activities other than wandering about and preparing the protected positions. Probably the most significant and influential on Police planning was that he regularly fired shots out of the front and back of the building towards or at Police positions and other apparently random targets such as the Placemakers sign on top of the Placemakers building on the south side of Forth Street, and to fire shots around the interior of the shop itself. Based on spent cartridge cases found about 320 shots were fired. More than 180 of these shots were from .22 calibre rifles and more than 110 from shotguns. Five shots (of the total) were fired using heavy calibre .25-06 ammunition fired from a .30-06 calibre rifle. It would appear from the scene and exhibit examination that Mr Gellatly had discharged five different weapons ranging from .22 calibre to .30-06, including shotguns.

A careful scene examination attempted to determine the number of shots fired internally about the Sports Shop as compared with those fired out of the front and back windows of the shop to the potential danger of the public and the Police. It was a difficult exercise but it appears that approximately 167 of the 320 (about 52%) shots had points of impact within the shop noted as shotgun (106); .22 (57) and .25-06 (4). By deduction it seems just under half the total shots fired were directed outside the building and perhaps more than 120 of these were of .22 calibre. It must be conceded the evidence of this distribution is not conclusive. Seven .22 projectiles were located on Placemaker's roof.

The Police vehicle abandoned by Constables Corlet and Parnham in front of the Sports Shop was peppered on the passenger's side by shotgun blast(s). There is also evidence from deployed AOS members that each attempt to negotiate with the gunman (by voice appeal)

resulted in shots being fired towards the general area of the voice source. These shots, usually shotgun, sometimes resulted in pellets striking the windows of AOS occupied buildings opposite the Sports Shop, forcing the members to take additional cover. Of the shots fired internally in the Sports Shop, many were directed at shooting out the fluorescent light tubes suspended in rows throughout the shop. Some shotgun blasts were used to destroy the locking bars on the gun cases to yield more firearms for the intruder's use. Other blasts were directed at a stag's head trophy on the wall, and others had the effect of destroying windows through which the intruder then fired.

The foregoing is an account of the principal features of the intruder's behaviour during most of the 21 hour siege. The facts are assembled from the evidence of witnesses and the examination of the shop after the siege ended. The photographs of the inside of the shop reveal that it was left in a chaotic state by the intruder's actions. The exact details of the final minutes of the siege with the intruder unexpectedly leaving the rear of the building are better left until the actions of the Police are examined. It was probably some actions of the Police that caused the intruder to leave.

Police Management of the Incident

It is appropriate to return to the beginning of this operation and briefly to re-state some matters already referred to. The emergency erupted violently at about 2324 hours on 26 September with a brick through the glass door of the shop. Within 14 minutes two Police officers were at the door and barely escaped a shotgun blast almost certainly aimed at them from about 9 metres away. The behaviour of the intruder, whose identity was not established until about 20 hours later was violent, aggressive, irrational and dangerous. A fundamental fact in this case was that the intruder by virtue of the shop he broke into had available to himself a huge arsenal of weapons and ammunition. Almost immediately the Invercargill AOS were called out and because of the seriousness of the situation the Dunedin AOS was called to assist and arrived in Invercargill at 0245 hours on 27 September. It was absolutely essential the Police be on the highest alert.

Statutory authority for use of force is contained in ss39 and 40 of the Crimes Act 1961. That is the prime authority but further developed in detail in the policy, practice and procedure of the New Zealand Police relating to firearms which are contained in General Instructions and Manual of Best Practice Volume 1.

The starting point for examination of the basic principles, practices and procedures for dealing with armed offenders is Volume One of the Manual of Best Practice. The next point for examination is the Police General Instructions, particularly those relating to the issue, carriage and use of Police firearms which reflect current Police policy on these matters. These are referred to hereafter.

Two of the basic principles of the Police response to armed offenders are outlined in the Manual of Best Practice, as:

- Cordon and contain the suspect and adopt a wait and appeal role
- Any force used should be the minimum necessary to achieve the objective, and reasonable under the circumstances.

(These basic principles have been the cornerstone of armed offenders operations since the inception of the AOS Squads in 1964).

I turn now to Police management of the incident. With the call for AOS Inspector A H O'Neill of the Invercargill squad took control. District Commander Superintendent N M G Cook subsequently assumed the role of Operations Commander of all Police resources applied to the incident. Because the incident lasted about 21 hours Police officers and AOS had to be relieved and replaced by others. However it is important to examine the initial response which basically remained in place throughout the incident.

The early emergence of the incident has been recorded. At about 2340 Inspector O'Neill's pager was activated and he called the Station to be told a burglar was in the premises of Outdoor World and that shots had been fired. At the same time other Invercargill AOS members were called and all proceeded to the Police Station arriving about 2350. A safe arrival point was established at Pak n Save carpark and AOS members after kitting out proceeded there. The establishment of a SAP is standard practice. Inspector O'Neill briefed the AOS and in particular told them fire orders were in accordance with General Instruction F61. I have attached to this report F61 and F62. A fundamental practice of an AOS turnout is that the suspect must be contained geographically and therefore immediate steps were taken to establish the inner cordon (the heart of an AOS operation) and the outer cordon. Inspector O'Neill instructed the AOS staff that the suspect was not to leave the cordoned area and that the Immediate Action (IA) drill applicable was:

- If the offender came out without a firearm he was to be called upon to surrender, and arrested. A dog could be used if needed to effect this;
- If the offender came out with a firearm he was to be called upon to surrender, and if he did not do so and did any hostile act he should be shot;
- The primary objective was to cordon and contain the offender and then contact would be attempted per phone or loudhailer.

It is properly mentioned that at several times during the siege the Police were able to obtain clear sightings of him moving about inside the shop (eg. a newspaper photographer obtained a photograph of him which was used later for identification purposes) but the above plan was strictly adhered to and there was never any suggestion he be shot at inside the shop.

The staff were questioned again by Inspector O'Neill that they understood their role and F61 fire orders. They acknowledged they did. This preliminary work was completed by about 0015 hours.

In accordance with AOS procedures Outdoor World building was colour coded as follows:

Tay Street frontage	White
Wood Street rear	Black
Clyde Street side	Red
Nith Street side	Green

Staff took up their positions within the designated colour sector and remained in communication by radio. The Dunedin AOS arrived and went into the field to increase cordon capacity. As staff built up they were deployed at various points around Outdoor World and on top of neighbouring buildings. Because of the ability to track the movements of the intruder within the shop the officers were confident he was contained and after initial uncertainty that there was only one person.

When focussing on the intruder earlier in this report I dealt with failed attempts to establish a dialogue through the PNT. Again I repeat it was a difficult situation for the Police planners not to know the identity of the intruder.

Inspector O'Neill deployed dog handlers at appropriately safe positions at the front and rear of Outdoor World whose roles were to support the arrest of the intruder if he had been

convinced to leave the building unarmed. In fact the intruder did leave the building but because of the route he took the dog although deployed was unable to assist for reasons to be given. I deal in greater length with possible more extensive use of dogs hereafter.

As the day of 27 September progressed various alternatives had to be examined to bring the stand-off to an end. The intruder continued to discharge shots at regular intervals and every signal given by him was that he had no intention of surrendering. Contact had been made with AOS 106 and 17 who are both at Police National Headquarters in Wellington. AOS 106 is the (National) Co-ordinator of the District Armed Offender Squads and responsible for the AOS and Special Tactics Group within the service. The STG is a specialist group established to deal with situations the Police might face of a higher degree of complexity and danger than is usually faced by an AOS operation. Officer 17 is the (National) Commander of the STG. There were features of the Invercargill situation that called for possible involvement of STG one of which was the possibility a Deliberate Assault (DA) being made into the building. If a DA was chosen it would have been too dangerous to attempt with ordinarily trained and armed AOS. STG is trained for this particular operation and uses specialised weaponry. AOS 17 consulted that morning with Commissioner Richard Macdonald when a decision was made to dispatch to Invercargill STG personnel (many of whom coincidentally were assembled in Wellington for training) to reinforce the AOS but that STG was to operate within the confines of an AOS operation unless special permission was given by the Commissioner. This arrangement worked satisfactorily and STG provided valuable assistance but were not in the end required to be deployed in their primary role. Many personnel are common to AOS and STG. AOS officers 17 and 106 made arrangements for all the available STG staff to fly to Invercargill and they went with them. AOS officer 106 took control of the AOS response from Inspector O'Neill at 1500 hours. AOS officer 17 positioned himself in the operation command structure concerned with planning to decide whether DA should be ultimately undertaken.

The Final Stages

As stated earlier, permission had been allowed by the Commissioner to deploy STG members and in the morning of 27 September a group was flown to Invercargill under the supervision of the two senior Police officers at Headquarters in Wellington. This group was to integrate with the existing AOS personnel and act in AOS mode with the capability of switching to STG mode if the circumstances required. From a study of the various command reports it seems no-one was left in any doubt that despite the staff deployed in the inner cordon being

all STG members (excepting two dog handlers) this was still an AOS operation managed in accordance with AOS principles.

As the final stage is analysed for the sake of clarity each separate officer where necessary will be identified by an AOS number. At this point the intruder had been identified as Eric Bruce Gellatly.

The following is a reconstruction of the final stages of the incident. Immediately prior to the incident the positions of all persons relevant to the reconstruction were:

- 1 Mr Gellatly was on the mezzanine floor in a prone position within H & J's Outdoor World.
- 2 AOS members 6, 7 and 8 were in the basement of Southern Micrographics in Wood Street (AOS 8 was the Dog Handler).
- 3 AOS members 74 and 62 were on the rooftops in the vicinity of the Inland Revenue Department (IRD). They had been tasked to gain access to the rooftop area of H & J's Outdoor World and had sought authority to break a window to achieve this. The intention was to take up a position on the external roof of Outdoor World to prevent the intruder emerging from the building onto that roof and then escaping from the scene across other roofs. In short this possible avenue of escape had to be closed but it was necessarily a noisy exercise.
- 4 AOS 77 and 102 were snipers keeping observations on the rear of H & J's Outdoor World (black sector) from within the clubrooms of the Southland Bowling Club.
- 5 AOS member 100 was a sniper keeping observations on the front of H & J's Outdoor World (white sector) from Farmers Building in Tay Street.
- 6 AOS 1 was in the basement of the IRD building in Wood Street with AOS members 2 and 5.
- 7 AOS members 3 and 4 were on the lawn area within the Senior Citizens Centre. They were in the process of setting lighting up to illuminate the black sector.

AOS 4 was in the vicinity of the wooden fence situated between the Senior Citizens Centre and the Bowling Green.

AOS 3 was beside the generator and lighting plant situated on the lawn beside a garden adjacent to the overbridge.

Both members were behind the concrete flood wall (to the south) and had cover from both view and fire.

They had just tested the generator briefly and were awaiting authority from AOS 106 to turn on the generator and the lights.

AOS 3 was positioned to turn on the generator and AOS 4 was positioned to adjust the light to shine in the right direction.

8 AOS 10, 13, 14, 42 and 69 were in the vicinity of the brick pumphouse on Nith Street to the south of its intersection with Wood Street.

The foregoing deployment of staff basically in the colour sectors focussed to the south of Outdoor World which is to the rear of the building.

The following analysis starts in time at about 2020 hours or about 3-3 1/2 minutes before the fatal shooting. AOS members 74 and 62 on the roof top near the IRD building smashed a window in the course of the attempt to gain access to the rooftop area of Outdoor World. AOS 77 situated in the Bowling Club immediately to the south heard the smashing glass and almost instantly observed Mr Gellatly move from the mezzanine floor and saw he was carrying a rifle. He saw him move with quick and deliberate action walking east along the ground floor and ultimately he travelled into the basement. By the time Mr Gellatly reached the basement it was 2023 hours. AOS 1 from the back of the IRD observed Mr Gellatly (not immediately identified by AOS 1 as him but it undoubtedly was) run out across Wood Street heading for the ramp to gain entry to Otepunu Gardens and noted he was carrying a firearm. The inner cordon immediately prior to Mr Gellatly's emergence had him contained within the building. His emergence onto Wood Street effectively breached the containment and the whole exercise had reached an absolutely critical stage. Mr Gellatly was now in the open

public area with little chance of the AOS re-establishing an effective containment with an inner cordon. Put another way the action of Mr Gellatly making a bolt into the open public area brought the crisis to a head. From here on each individual member had to fall back on principles learned in training and judgment. AOS 1, 2 and 5 moved east along Wood Street. At this point AOS 6, 7 and 8 in the building on the north side of Wood Street moved to view the scene to the south into which Mr Gellatly was moving. AOS 8, the dog handler, released his dog with command to rouse but the dog got disorientated because of the stream. Mr Gellatly was observed sprinting along the pathway leading to the east and the corner of Nith and Forth Streets. AOS 6 and 7 called to Mr Gellatly with statements like "*Police, don't move*" or "*Police Stop*". AOS 6 caught Mr Gellatly in his torch light beam. AOS 3 and 4 were positioned to the south behind the flood wall. AOS 3 moved into the garden area behind the overbridge and started making his way to its eastern end. It should be mentioned that AOS 3 was aware of members of the public "milling about at the roadblock 2 blocks to the south and might be at risk if Mr Gellatly broke the cordon". It was about this time Mr Gellatly fired three shots from the .22 rifle he was carrying. The three shots were fired in a north/east direction almost certainly at AOS members who were advancing east along Wood Street or south in Nith Street. AOS 6 and 7 thought there was no doubt Mr Gellatly was deliberately shooting at them. There is other objective evidence to support this. There would have been possibly 11 members in this vicinity. All three shots hit the Peter Sims building on the north side of Wood Street and the corner with Nith Street. The shots were fired in rapid succession probably from just before the overbridge, at the western end of the overbridge and at its apex. All three spent cartridge cases were found in the area including the one found in the rifle. It was fortunate no officer was hit. The grouping of the shots on Peter Sims building was close.

AOS 3 heard the shots fired by Mr Gellatly as he was moving through the garden towards the eastern end of the overbridge. AOS 3 saw some other members approaching down Nith Street in the vicinity of the pumphouse at about the intersection of Wood and Nith Streets. AOS 3 also saw Mr Gellatly running towards him from the apex of the overbridge. He observed the barrel of the weapon pointing in the direction of the AOS members in Nith Street. At this point AOS 3 challenged Mr Gellatly again with the command "*Police, put it down, put it down*". This command was heard by other members in the vicinity. Mr Gellatly did not respond and continued running down the overbridge towards the intersection. The condition of his weapon when recovered indicated Mr Gellatly was preparing to reload the weapon.

At this point AOS 3 was standing in the garden at the base of the overbridge which is about 22cm below the level of the pathway. Having within seconds discharged his gun almost certainly at Police officers, and having not responded to repeated challenges AOS 3 concluded that Mr Gellatly represented an immediate danger of death or grievous bodily harm to other AOS members running towards him from the brick pumphouse. Furthermore he also said he feared for the safety of the public if Mr Gellatly was allowed to pass him, thereby breaching the cordon and containment, and become a very real danger to the public. AOS 3 also feared for his own safety.

AOS 3 then engaged Mr Gellatly as he drew level and passed him by firing his H&K MP5 9mm weapon. The weapon was set on a single shot and 5 shots were fired by AOS 3 as Mr Gellatly ran away from him. Three of the shots hit Mr Gellatly, one passed through his clothing without hitting his body and the other shot apparently missed completely. The five spent cartridge cases corresponding to the five shots fired were located in the garden beside where AOS 3 had been standing. It is apparent from the reconstruction that the first shot was fired by AOS 3 when Mr Gellatly was 2-3 metres from him. It is also apparent that the shots were fired while Mr Gellatly was running away from AOS 3's position and he was thereby hit in his back. These five shots were the only ones discharged at Mr Gellatly throughout the entire siege. From when Mr Gellatly emerged onto Wood Street to the point where he was shot the time lapse was one minute at around 2023 on 27 September. The distance he travelled was 152 yards sprinting. In that time he also discharged three shots as previously described. The rifle carried by Mr Gellatly found near his body was a bolt action Stirling model 14P rifle of .22 calibre. It was filled with a 10 round magazine which still contained 3 live rounds. The rifle was part of the Outdoor World stock and had no sights. Some 749 live .22 calibre rounds were found in Mr Gellatly's clothing or beside where he fell, including a fully charged 10 shot magazine.

Mr Gellatly fell on the pathway at almost its end. At post mortem Mr Gellatly was found to have suffered three gunshot wounds to the back. The most significant two of these passed through Mr Gellatly's heart and (respectively) through his left and right lungs and the resultant massive haemorrhage was fixed as the cause of death. AOS 4 was the closest eyewitness to the shooting being about 3-4 yards directly behind AOS 3 and had heard his challenges go unheeded. AOS 4 was the first to reach Mr Gellatly after he fell. The ambulance was there almost immediately and defibrillators were applied to the chest but to no avail. Mr Gellatly died within a few minutes of being shot.

Examination of Firearms by Police Armourer

Senior Armourer R Ngamoki began his examination of two firearms at the Invercargill Police Station on 28 September 1995 and visited the shooting scene at Outdoor World Sports Shop and the adjacent environment. The two firearms were that fired by Mr Gellatly during his dash from the building and the one used by AOS 3 when he shot Mr Gellatly as previously described. Mr Ngamoki returned to Wellington with the two firearms to conduct further tests.

The Stirling rifle model 14p .22 calibre was the weapon recently fired by Mr Gellatly and at his side when he was felled. After firing residue was present in the barrel. Tests on the trigger mechanism proved that the rifle did not fire accidentally. The safety catch was functional. The sights were missing. The rifle was test fired and found to function normally. Mr Ngamoki concluded the rifle was mechanically safe.

The other weapon fired by AOS 3 was the Heckler & Koch model MP5, 9mm calibre. It had two 30 round magazines. After firing residue was found in the barrel. The same tests as for the rifle were performed on the trigger mechanism. The mechanism did not fire accidentally. The safety catch was functional. The gun was test fired functioning normally. Mr Ngamoki found the firearm to be mechanically safe.

On 16 October 1995 Mr Ngamoki returned to Invercargill taking with him the two firearms. The purpose was to fire live rounds from the positions identified as firing positions during the actual event. All shots were recorded by the National Tape Laboratory for later analysis. Nothing of relevance was revealed by these further tests.

Post Mortem Result

The investigations revealed that Mr Gellatly had been a regular cannabis user over many years with some evidence his use at times was heavy. Beyond that it is not possible to go further.

A forensic toxicology report has been received in respect of the submitted body samples taken at the post mortem examination of Mr Gellatly. No alcohol was found in the blood or urine samples. Traces of Haloperidol (the anti-psychotic injection received monthly by Mr Gellatly) were found to the measurement of 7 nanograms per millilitre, in his blood sample. No opiates, cocaine metabolites or amphetamines were found in the urine sample.

Tetrahydrocannabinol (THC) was found to the measurement of 0.2 nanograms per millilitre, in the blood sample. Interpretive comments added to this report by the toxicologist, are as follows:

Provided that there has been no recent history of heavy cannabis use, the blood THC levels are consistent with the smoking of an average amount of cannabis within 5 to 24 hours or more prior to death. Subjective symptoms of cannabis intoxication usually peak 10 to 15 minutes after smoking cannabis and last about 1.5 to 4 hours. Occasionally subjective symptoms may last much longer than 4 hours. Blood levels are a poor indicator of cannabis intoxication. It is not possible to determine, from the blood levels alone, whether or not Gellatly was intoxicated by cannabis. A 'hangover' effect is possible as performance decrement have been reported for complex mental tasks up to 24 hours after smoking cannabis at a time when subjective effects had long since returned to baseline.

Mr Gellatly's psychiatrist expressed the opinion that if Mr Gellatly was intoxicated with cannabis when in the Outdoor World Sports Shop that intoxication could have exacerbated his schizophrenia to the extent of paralysing his decision-making process. For example whether to stay in the sports shop or go; whether to run or give up, or shoot it out.

In my opinion the views expressed above of the toxicologist and psychiatrist are somewhat speculative (they could not be anything else in the circumstances) but are relevant and of assistance.

Security of Outdoor World Firearms

This issue could appropriately be addressed at this point. Some surprise was expressed by experienced Police (after the incident) that Mr Gellatly was able to access his initial firearm ie. side-by-side shotgun, so quickly after gaining entry to the Outdoor World Sports Shop, that is to say, within the first 10 minutes.

Later reconstruction showed that a "breakable" shotgun such as a side-by-side model could be removed from the gun security cabinets even when securely locked in place, by the simple method of dismantling the weapon in situ, ie. removing the fore-end first, then breaking the gun into its two halves, and lifting the stock half out through the security railing, allowing the barrel half to then be removed between the railing and the top wooden section. This process could be achieved by a person with firearms knowledge in 20 seconds, with a further 10 seconds then required to reassemble the shotgun ready for loading and firing.

Having accessed the first weapon, there is ample evidence Mr Gellatly used that weapon to destroy the top sections of other gun racks by shotgun blasts. This allowed him to select the numerous shotguns, the two .22 rifles, and the .30-06 rifle from the racks.

Regulation 8 of the Arms Regulations 1992 prescribes certain conditions relating to security precautions which are to be complied with by licensed firearms dealers. The New Zealand Police have indicated to firearms dealers a minimum security standard which is referred to as Police Specification C2279. Outdoor World were in compliance with that specification and their overall security had been checked and approved within the previous 12 months by the Invercargill Arms Officer.

The examination of the security systems was carried out by the investigations of Detective Chief Inspector McMeeking and Detective Inspector Kelley in the respective spheres in this overall enquiry. I do not intend to canvass all the features that were either deficient or inadequate but this part of the Report is to draw to the attention of Police administration that there is required an urgent review of the systems currently in place.

The incident has drawn attention to the vulnerability of the previously existing specification indicated to firearms dealers as minimum security. The District Commander, Invercargill, took early steps to bring this unsatisfactory specification to the attention of the Police National Firearms Co-ordinator so that the specification can be upgraded. Storage of ammunition in easily accessible areas in sports shops was also recommended to be reviewed in the context that the Arms Regulations could perhaps be amended to regulate that open accessibility. It is also the responsibility of Police administration in each District to ensure that personnel given the important task of administering the Arms Act 1983, Arms Regulations 1992 and auditing compliance with the Police Specification are fully trained for their job and insist on adherence to any prescribed standards.

It is essential that Police and firearms dealers are aware of the considerable responsibility in this area and the Invercargill incident should be used as a starting point to re-examine current systems and practices.

Firearms and Training Personal Records of AOS 3

Firearms training for Police is regulated by General Instructions F181-187, under the head "Firearms - Maintenance Training". Firearms maintenance training for Police not exempted

is set at two training days annually, which preferably should be six months apart, GI F182(1). Specialist squads receiving regular firearms instruction are exempted from this training, GI F182(2). The specialist squads affected are AOS, STG, DPS (Diplomatic Protection Squad), and VIP Squad.

AOS and STG members receive firearms training at a much greater frequency than general duties branch members. All AOS members (includes STG) are required to achieve qualification standard in the use of the Glock pistol and the AOS bolt action rifle, annually. Officer 3 qualified in both weapon types on 26 October 1994. This was 11 months prior to the Gellatly incident, so the Officer was compliant with the AOS qualification standard at the relevant date. Specific reports indicating the nature of Officer 3's AOS and STG firearms training during the past 12 months have been examined and are in order.

It is apparent from a study of Officer 3's STG training record that prior to the Gellatly shooting he had undergone firearms training with the firearm used in the incident on the following dates, within the previous 12 months:

31.10.94
03.05.95
04.05.95
22.05.95
23.05.95
27.08.95
31.08.95
24.09.95

Taking into account the firearms maintenance training specification for general duties staff is set at two days annually, it is appropriate to record that Officer 3 had undergone adequate training in the use of this weapon to be classified as competent in its use.

Detective Chief Inspector McMeeking examined the personal file of Officer 3. He has been in the Police service for more than nine years at the time of the incident. He is an experienced officer in AOS and STG specialist groups. His appraisal reports are good and it suffices to say there are no adverse reports on his file.

What was the Planning and Use of Police Dogs in the Incident?

Five AOS rated Police dogs were deployed on the operation. Invercargill has one AOS rated Police dog and that handler was on leave 100km from Invercargill when the incident occurred. so was recalled from leave. Extra AOS rated dogs were sent to support the

operation from both Dunedin and Christchurch. All five dogs were deployed in the field when Officer 106 assumed command of the operation at 1500 hours on 27 September. As three of the dogs had been deployed for 13 hours Officer 106 withdrew them for rest and they were stood down. The two Christchurch dogs were deployed to support the AOS sections at the front and back of Outdoor World so that, if the intruder had emerged in response to the voice appeals from either the front or back doors the relevant dog could then have been used to carry out a standard arrest drill of the intruder in accordance with the Immediate Action Plan. If one were to ask why were the dogs not sent into the sports shop to overpower the intruder the answer is that the intruder was beyond their ability to apprehend. He was in an elevated position (mezzanine floor) for the majority of his time in the shop, and the stairs leading up to that floor were barricaded. From this position the intruder commanded a zone of domination comprising the whole floor. Using any of his nine pre-loaded shotguns he would have had ample opportunity to destroy any Police dog(s) sent into the shop. Police dogs deployed in this way would not have been under the immediate control and observation of their handler, as he would obviously be shot as well. Finally, deployment of Police dogs into the shop would have amounted to a “deliberate assault” on the shop, which was contrary to the standard AOS tactics of “cordon, contain and voice appeal” which were still being persevered with when Mr Gellatly ran out of the premises.

Was Tear Gas Considered During His Hours in the Shop?

Tear gas was seriously considered during the siege. The report of Officer 40, leader of the STG planning team indicates the considerable number of factors which would have influenced this tactic being adopted. Not the least was the enormous size of the shop, 20 metres by 36 metres, ie. 720 square metres. However, the ceiling was 7 metres high so the cubic capacity of the main floor of the shop alone was 5040 cubic metres. This did not include the basement, or first level floors. It would have taken an enormous amount of tear gas to blanket the whole shop, although the AOS Commander had the resources to do so. However, it was established by the planning team that there were a number of unpredictable hazards contained within the shop which would normally derogate from the use of tear gas (due to its risk of starting a fire) and these were:

- 40kg of gunpowder
- Thousands of rounds of ammunition
- Pressurised oxygen bottles
- Gas cooking cylinders

If tear gas insertion had started a fire in the shop the Police would then have had two problems, although the building was fitted with sprinklers. Furthermore, as a paranoid schizophrenic the AOS were unsure to what extent the intruder could tolerate tear gas. These were only some of the factors influencing the possible use of tear gas on this operation. Suffice to say that this particular incident comprised one of the most difficult AOS scenarios for resolution by tear gas option that the Police could (realistically) expect to face.

Police Investigations and Commissioner's Report

As stated earlier, the total Police involvement in the examination of the incident divides into two areas. The first is the investigation carried out by Detective Chief Inspector McMeeking and other officers into the total circumstances that resulted in a person losing his life as a result of Police action. This is the area in which the Authority is most closely involved and represents the joint investigation. The central issues for DCI McMeeking's investigation and report is to focus on Police policies, practices and procedures which were adopted during the incident and to decide whether they were proper and appropriate. The results of this investigation are available to the Commissioner of Police to make his own assessment of the investigation and its results and to advise the Police Complaints Authority of his view. He has done that and it will be referred to hereafter.

The second one is more narrowly focussed and it concerns the possible criminal liability of any Police officer involved in the exercise. That is dealt with in the next section.

Detective Chief Inspector McMeeking's report was completed in early December 1995 and forwarded by him to Region Commander, Assistant Commissioner M E Derecourt, Region 5 Headquarters at Christchurch. It is appropriate to mention here that DCI McMeeking is stationed in Christchurch and is Manager of the CIB Services Region Support Group. The investigation comprised four volumes of Eastlight folders, further containers of various reports, plans, video cassettes, numerous photographs and copies of media releases and reports. In all a very considerable volume of information was assembled. All this material was reviewed by Assistant Commissioner Derecourt after briefings with DCI McMeeking. The conclusion of DCI McMeeking on the totality of the incident was that Police policies, practices and procedures adopted were proper and appropriate.

All the aforesaid material and conclusions were forwarded to Police National Headquarters and there reviewed again by Deputy Commissioner (Operations) B E Matthews on behalf of the Commissioner. Deputy Commissioner Matthews forwarded all material assembled to the Authority with his firm view that no other option was open to the Police than to take the action that was necessary.

Criminal Liability

As stated earlier in this report, the aspect of possible criminal liability of the officer who in the course of his deployment shot the deceased was carried out separately.

A very extensive investigation was done by Detective Inspector Kelley and naturally there was considerable overlap with the other investigation in that the decision on criminal liability rested largely on the same factual basis as for the other Police report. Homicide is defined in the Crimes Act as the killing of a human being by another. There was no question but there had been a homicide because the facts revealed the cause of death of the deceased was indisputably the result of being shot whilst trying to break out of the inner cordon in circumstances that have already been described. Homicide that is not culpable is not an offence.

Detective Inspector Kelley prepared an 118 page report on this aspect and came to the conclusion that no offence had been committed by the officer.

It has been the practice of the Authority to request the Police investigator to obtain the opinion of independent legal counsel so that the public are aware an objective and impartial assessment is made on the aspect of criminal liability.

The opinion of the Dunedin Crown Solicitor, Mr William Wright, was sought and made available to the District Commander and ultimately to the Authority. Mr Wright had all relevant material made available to him that had been assembled. He provided a full opinion dated 24 January 1996. He canvassed the essential factual basis. The conclusion of Mr Wright was that the homicide was non-culpable and that there was no basis upon which a charge or charges could be laid against the Police officer responsible for the fatal shots.

That conclusion was adopted by the District Commander, Superintendent N M G Cook, and forwarded to DCI McMeeking who forwarded it to Police National Headquarters with the other material.

I accept the opinion of Mr Wright as has Deputy Commissioner Matthews.

Conclusions

As I have stated on similar previous occasions, it is always a tragedy when a life is lost in the circumstances revealed by the facts.

It appears to me the distinctive nature of this confrontation, which began late in the evening of one day, and finished 21 hours later was that there was little to no interaction between the deceased and the Police who were legally obliged to respond in the way they did. The Police played no part in provoking the violent burglary of the said premises which resulted in shots being discharged from a weapon at two Police officers within 14 minutes of the break-in and who were fortunate not to have been severely injured, or to have lost their lives. From there on until its end nearly 21 hours later it was the unilateral acts of extreme violence of the intruder that dominated the siege. The Police from the beginning adopted the very reasonable policy in accordance with their regulatory procedures and training to contain, cordon and appeal for peaceful surrender. The consistent actions of the intruder throughout never gave any reasonable cause to believe he would ever surrender. The very few verbal exchanges with Police were antagonistic and irrational. His non-verbal ones aimed in the direction of the loudhailers were violent by discharging weapons.

I imagine the end of the 21 hour siege would have coincided with physical exhaustion on the intruder's part, but whether it was for that reason or the apprehension that the Police were breaking into the building it was he who effectively brought the siege to a head by seeking to break out of containment and the cordon thereby causing a response from Police. There are occasions when contain and wait is the proper response (and that had been adopted for many hours) but when the intruder made a determined bid to escape, with his previous 21 hours response to be taken into account, time was no longer on the side of Police because the probability at that point of loss of lives of public or Police was very real.

In my judgment the Police conducted themselves in conformity with regulatory ordinances and their training. I have no adverse comment on their policy, practices and procedures within the incident.

It is appropriate I reproduce and adopt for this case a paragraph from my recent report on the Ronald Lewis incident.

My task is to take an overall view to gauge whether there was any aspect of the AOS operation that clearly stood out as in some way significantly faulty and in the public interest requires disapprobation. If there were it would be my function to say so and in clear terms. I have stepped back and reviewed this incident bearing in mind the foregoing. In my view the operation was conducted in accordance with the general law as outlined earlier. In addition the operation also adhered to the procedure set out in the Manual of Best Practice and the General Instructions which also have been reproduced. Other than what is contained in my recommendations I need not make any other comments. To avoid any misunderstanding I specifically state it is not my task to pass judgment on the decision to shoot. Any such rating or assessment as that has the distinct potential for creating confusion and uncertainty for future Armed Offender operations. This Authority is not a substitute for the general law, the Manual of Best Practice or General Instructions.

Recommendation

Arising out of this tragic incident and its examination I make a recommendation to the Commissioner that there be instituted as soon as possible a complete review of the statutory regulations and Police guidelines on the control and storage of guns, ammunition, weapons

and explosives, particularly in places to which the public have access . The ease with which access was obtained to one weapon and ammunition, which acted as a 'key' to most other weapons and ammunition in the shop, is the strongest warning that the system is in need of complete overhaul.

Sir John Jeffries
POLICE COMPLAINTS AUTHORITY
11 March 1996

A93 Deployment of Armed Offender Squads

- (1) *AOS members are trained for the express purpose of carrying out forward operations against armed offenders.*
- (2) *Where time and the actions of the offender permit, all forward operations, particularly any direct approaches to the offender are to be carried out by AOS personnel assisted by Police Negotiation teams.*
- (3) *If AOS members are not available, or due to the prevailing circumstances, there is insufficient time to call them, the senior member in charge at the incident shall take immediate steps to deal with the situation. Whenever practicable the operational procedures and requirements detailed in the Operations Manual, section entitled "Armed Offenders", shall be followed.*
- (4) *The AOS may be deployed for other risk situations or duties where the potential use or possession of firearms is likely. For these types of operations it is not necessary that AOS personnel wear AOS uniform.*
- (5) *Where it is necessary to arm personnel in a planned operation the Operation Commander should, if practicable, consult with the O/C : AOS as to the tactics intended and AOS personnel available for this role.*

F61 Use of Firearms by Police

- (1) *Members must always be aware of their personal responsibilities in the use of firearms. Under Section 62 of the Crimes Act 1961 a member is criminally liable for excess force. An overriding requirement in law is that minimum force must be applied to effect the purpose. Police should not use a firearm unless it can be done without endangering other persons.*
- (2) *Police members shall not use a firearm except in the following circumstances:*
 - (a) *To defend themselves or others (Section 48 Crimes Act 1961) if they fear death or grievous bodily harm to themselves or others, and they cannot reasonably protect themselves, or others, in a less violent manner.*
 - (b) *To ARREST an offender (Section 39 Crimes Act 1961) if they believe on reasonable grounds that the offender poses a threat of death or grievous bodily harm in resisting his arrest;*
AND
the arrest cannot be reasonably effected in a less violent manner;
AND
the arrest cannot be delayed without danger to other persons.
 - (c) *To PREVENT THE ESCAPE of an offender (Section 40 of the Crimes Act 1961) if it is believed on reasonable grounds that the offender poses a threat*

of death or grievous bodily harm to any person (whether an identifiable individual or members of the public at large);

AND

he takes to flight to avoid arrest, OR he escapes after his arrest;

AND

such flight or escape cannot reasonably be prevented in a less violent manner.

(3) *In any case an offender is not to be shot:*

(a) *Until he has first been called upon to surrender, unless in the circumstances it is impracticable and unsafe to do so.*

AND

(b) *It is clear that he cannot be disarmed or arrested without first being shot.*

AND

(c) *In the circumstances further delay in apprehending him would be dangerous or impracticable.*

F62 Fire Orders

“Every sworn member of Police who is issued with a firearm in the course of duty shall ensure that he or she is thoroughly conversant with the provisions of GI F61.”