



PUBLIC REPORT OF THE
CHIEF CIVILIAN DIRECTOR

Regarding the death of an adult male on
February 11, 2015 while in the custody of the
Chilliwack RCMP

IIO 2015-000022

INTRODUCTION

The Independent Investigations Office (IIO) is responsible for conducting investigations into all officer-related incidents which result in death or “serious harm” (as defined in Part 11 of the Police Act) within the province of British Columbia. The Chief Civilian Director (CCD) of the IIO is required to review all investigations upon their conclusion, in order to determine whether he considers “that an officer may have committed an offence under any enactment, including an enactment of Canada or another province” (see s.38.11 of the Police Act). If the CCD concludes that an officer may have committed an offence, he is required to report the matter to Crown Counsel. If the CCD does not make a report to Crown Counsel, he is permitted by s.38.121 of the Police Act to publicly report the reasoning underlying his decision.

In this public report, the CCD includes a summary of circumstances that led to the IIO sustaining jurisdiction; a statement indicating that the IIO, after concluding the investigation, has reported the matter to Crown Counsel; or a summary of the results of the investigation if the matter has not been reported to Crown Counsel.

This is a public report related to an investigation into the death of an adult male on February 11, 2015. The affected person resisted being taken into custody and in the course of his arrest a Conducted Energy Weapon (CEW) was deployed to assist officers to apply handcuffs. Shortly thereafter, the affected person went into respiratory distress and heart failure. CPR was commenced by Chilliwack RCMP and continued by medical personnel. The affected person was taken to hospital and was pronounced deceased.

Pursuant to s.38.11 of the Police Act, RSBC 1996 Chapter 367, the CCD has reviewed the investigation. The CCD does not consider that any officer may have committed an offence under any enactment and will not be making a report to Crown Counsel.

In this public report, the CCD is only permitted to disclose personal information about an officer, an affected person, a witness, or any other person who may have been involved if the public interest in disclosure outweighs the privacy interests of the person. Prior to disclosing any personal information, the CCD is required, if practicable, to notify the person to whom the information relates, and further, to notify and consider any comments provided by the Information and Privacy Commissioner (s.38.121(5) of the Police Act). In this case, the CCD has considered the advice provided by the Information and Privacy Commissioner. In this report, the CCD will not be using the name of the affected person or of any other person involved in this matter.

NOTIFICATION AND JURIDICION DECISION

On February 11, 2015, Chilliwack RCMP officers responded to a call of a male in distress at a private residence, which he shared with two roommates. Seven officers responded to the call, five of whom were designated as subject officers due to their direct involvement. Nine First Responders (three Paramedics and six Firefighters) were also interviewed, although all nine arrived after the affected person had been taken into custody.

The affected person is said to have resisted arrest; a Conducted Energy Weapon (CEW) was then deployed which allowed the officers to apply handcuffs. Shortly thereafter the affected person went into respiratory distress and heart failure. CPR was commenced by the RCMP and then continued by medical personnel who arrived a short time later. The affected person was taken to hospital and was pronounced deceased.

The IIO was notified and sustained jurisdiction as the death of the male falls within the established definition of serious harm under the Police Act.

ISSUES

At the conclusion of any IIO investigation, the CCD is required to consider whether an officer may have committed an offence. If the answer is in the affirmative, the CCD must forward a report to Crown counsel.

The legal issue to be considered in this case is whether any subject officer unreasonably deployed the CEW or unreasonably used excessive force that, in turn, caused the death of the affected person. If his death was the result of unreasonable or excessive use of force, any of the subject officers could be liable for the offence of criminal negligence causing death or manslaughter. The further legal issue is whether police failed to provide the necessities of life following the deployment of the CEW and while the affected person was in the custody of the RCMP.

1. A police officer acting as required or authorized by law “is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.” (section 25(1)).
2. Any police officer who uses force “is criminally responsible for any excess thereof according to the nature and quality of the act that constitutes the excess.” (section 26).
3. “Culpable homicide is murder
 - (a) where the person who causes the death of a human being
 - a. (i) means to cause his death, or
 - b. (ii) means to cause him bodily harm that he knows is likely to cause his death, and is reckless whether death ensues or not” (S. 229)

4. “Culpable homicide that is not murder ... is manslaughter.”(section 234)
5. Everyone is under a legal duty to provide the necessities of life to a person under his charge, if that person is unable, by reason of detention, age, illness, mental disorder or other cause, to withdraw himself from that charge, and is unable to provide himself with the necessities of life. (section 215 (1) (b) and (c)).
6. Every one commits an offence who, being under a legal duty within the meaning of subsection (1), fails without lawful excuse, the proof of which lies upon him, to perform that duty, if (b) ...the failure to perform the duty endangers the life of the person to whom the duty is owed or causes or is likely to cause the health of the person to be injured permanently. (section 215 (2)(b))
7. Everyone is criminally negligent who (b) in omitting to do anything that it is his duty to do, shows a wanton or reckless disregard for the lives or safety of other persons. (section 219(1))

TIMELINE

TIME	EVENT	INFORMATION
1602	911 call	dog bleeding, roommate “ <i>freaking out</i> ”
1605	Dispatch call	affected person has stabbed dog
1608	Dispatch updates	affected person has criminal history
1609	Patrol queries Dispatch	is EHS attending?
1614	Patrol calls for EHS	advises Taser deployed
1617	Patrol checks EHS status	affected person “ <i>foaming at mouth</i> ”
1623	Patrol asks for EHS to	“ <i>step it up</i> ”
1623	EHS arrives at scene	
1625	Request for Fire to Attend	“ <i>EHS is requesting Fire attend</i> ”

EVIDENCE CONSIDERED

Evidence examined includes statements made by civilians and witness officers; information from police indices; officer’s notes and policy manuals of the RCMP that pertain to the proper care of those released from custody and use of the CEW. The autopsy and toxicology reports were also examined.

Witness Officers

Witness officer 1 (WO1)

WO1 provided the IIO with a detailed scene walk-through. WO1 told IIO investigators that prior to arrival he had been advised that the affected person was high on drugs, in distress and had stabbed a dog at the location. He was also advised by dispatch that the affected person was considered violent and had a drug history.

WO1 said, once entering the house, he saw the affected person sitting in a chair beside a table and was holding a large glass bong in his hand that he was waving in the air. WO1 said he considered that the bong could be used as a weapon.

WO1 gave several commands to drop the bong, but the affected person failed to respond. The affected person was also rocking back and forth in the chair making unintelligible sounds. After a few moments, the affected person appeared to accidentally drop the bong.

WO1 said another officer (subject officer 1) had entered through the back sliding glass door and upon the affected person dropping the bong, subject officer 1 took hold of the affected person by the shoulders with two hands and then pulled him either around or over the table and onto the floor face down.

WO1 said the other officers (subject officers 2, 3 and 4) along with subject officer 1 attempted to handcuff the affected person, but they could not get his hands together behind his back and there was a call for a "Taser" as there was a level of risk the affected person presented.

WO1 said another officer (subject officer 5) came in and pushed the Taser into the middle of the affected person's back. WO1 said within a split second of the CEW being deployed, the affected person was handcuffed.

WO1 stated that once the handcuffs were on the affected person and he was under control, all officers backed off.

WO1 said he stepped outside to provide radio updates and was later informed by subject officer 1 that the affect person had stopped breathing.

Witness officer 2

WO2 told IIO investigators that, prior to arrival, she had been advised there was a person who had stabbed a dog, was on drugs and behaving erratically inside a residence. She assessed the risk level to be high.

Once at the scene, she heard an officer ordering the affected person to "drop the bong." She said she was able to see subject officer 5 deploy his CEW. She estimated the struggle lasted for under a minute before the CEW was deployed at which point a request was made for handcuffs and she supplied hers.

She described the deployment of the CEW as a "push stun" to the affected person's lower back: "three point contact, so he deploys it and then moves it over."

WO2 said she tried to engage the affected person but he was not responsive and appeared to be on cocaine or meth.

Subject Officers

All subject officers declined to provide a statement as within their right under the Charter.

CIVILIAN WITNESSES

Civilian witness 1

Civilian witness 1 (CW1), is a paramedic and, along with civilian witness 2, was the first non-police witness to arrive while the affected person was in the custody of the RCMP on the floor of his dining room. CW1 told IIO investigators she initially believed she was responding to a poisoning but was updated along the way that it was a possible “Taser incident.” She said upon her arrival she saw a man leaving, carrying a bleeding dog. She said a police officer told her, “...the patient may not be conscious but was breathing.”

CW1 said she understood the patient had been under the influence of something, and had abused a dog that resided in the home.

CW1 told IIO investigators she and her partner went into the residence, up the stairs and saw the affected person lying on the dining room floor and saw a member of the RCMP performing CPR on the affected person, who was on his back and without a shirt. She added the affected person was gasping and that her partner commenced ventilating him.

CW1 said while her partner and the RCMP officer continued CPR, she went to retrieve more equipment and called for Advanced Life Support, while also confirming that they were dealing with a cardiac arrest. She said that on her return she relieved the RCMP officer who was conducting chest compressions. She said the affected person was, “...absolutely pulseless and not breathing when we arrived as well as in this transition until our advanced car came.”

CW1 added that she observed “Taser wires” underneath the affected person; however, she did not see whether they were attached to him. She made no comments suggesting that the affected person was still handcuffed when she arrived.

Civilian witness 2

Civilian witness 2 (CW2),

CW2 is a Primary Care Paramedic and was partnered with CW1. He told IIO investigators that his recollection of the initial call was that it came in as non-emergent and was changed to a Taser incident and the patient wasn't breathing well.

CW2 said upon arrival at the scene there were several RCMP vehicles already there and three or four RCMP members nearby. He added, one of the RCMP officers told him the affected person

is not breathing very well. As he approached the house where the call was located, he heard another RCMP officer say, “I don’t think he’s breathing at all now.”

CW2 said he saw three or four RCMP members inside the home and one of them was performing CPR on the affected person. CW2 added that an officer said the affected person had been extremely agitated and that police had “Tasered him.” CW2 said the affected person was unconscious the whole time he tended to him and that he was not able to detect a pulse.

Civilian witness 3

Civilian witness 3 (CW3) is an Advanced Life Support paramedic. He told IIO investigators that he saw an RCMP officer performing CPR. He said that he took over medical care and began to perform advanced life support, which included attaching a heart monitor; however, the monitor did not detect a “shockable rhythm.”

CW3 said officers told him that following the use of the CEW and handcuffing the affected person it was, “a little while later they noticed he wasn’t breathing.”

Civilian witness 4 (CW4)

CW4 is a senior Fire Fighter at Chilliwack Fire Hall 1. He told IIO investigators that when he arrived at the scene, he saw an RCMP officer doing CPR on a male patient who was lying on the floor. He told the IIO that he directed the two men with him to take over compressions from the police officer.

CW4 said he spoke with an officer who had been injured in a struggle inside the house with the affected person. CW4 noted CPR was continuing and that a CEW barb was being removed from the affected person’s back as he was being prepared for transport.

Civilian witness 5 (CW5)

CW5, a Chilliwack Fire Fighter, told IIO investigators that when he arrived, an RCMP officer was performing CPR on the affected person, who had handcuffs attached to one hand. He added that when he was helping to prepare the patient for transport to hospital, he noticed two CEW probes in the patient’s lower back which he removed and threw into a corner.

Conducted Energy Weapon Evidence

The IIO requested an analysis of the CEW to be performed. The data download indicated that the device was activated on February 11, 2015 at 16:13:29 hours for five seconds. Testing of the CEW determined it to be functioning properly at the time of examination and was in good working condition.

Training documentation for the RCMP use of CEW reveals that officers are trained to utilize three-point contact when deploying a CEW in probe mode at close range. Examples given regarding the types of situations where deployment in contact mode may be appropriate include where a “member in a fight with a subject” and where a “member observes another police officer in a fight with a subject.”

Training also instructs that a CEW, fired in probe mode, at close range (1"-2"), will cause pain compliance only. With the probes still attached and the CEW still cycling, the CEW is immediately moved (more than 4 "from the probe location) and touched on the subject which will cause neuromuscular incapacitation which affords the officer a five second window of opportunity to take control of the subject.

Target areas are specifically given and include the “back (below the neck line, between the shoulder blades and off the midline of the spine) and the buttocks and hamstring.”

Medical Evidence

An autopsy was conducted on Feb. 13, 2015 and the forensic pathologist concluded the affected person died of acute cocaine toxicity during restraint and that extensive and severe atherosclerotic cardiovascular disease (90% or greater at some points) was a contributing factor.

In his summary, the forensic pathologist noted the sternum and ribs may have been broken by resuscitation procedures (CPR) and that there was no evidence of recent myocardial infarction (heart attack) or other significant heart abnormality.

“Although the reported circumstances and autopsy findings in this case generally are in keeping with cocaine-induced excited delirium, the very high cocaine and benzoylecgonine concentrations reported in the blood are considered unusual for a cocaine-induced excited delirium-related death and more in keeping with acute cocaine toxicity.”

The autopsy report concluded the affected person, “died of acute cocaine toxicity during restraint.”

Policy

National RCMP Policy

17.7. Conducted Energy Weapon

1. General

1. 3. Subject to sec. 1.6., only trained members and certified instructors who have successfully completed the CEW User Course (HRMIS Code 000028) or the CEW Instructor Course (HRMIS Code 000029) are permitted to use a CEW operationally.

3. Deployment

3. 1. General

3. 1. 1. The CEW must only be used in accordance with CEW training, the principles of the Incident Management/Intervention Model (IM/IM) and when a subject is causing bodily harm, or the member believes on reasonable grounds, that the subject will imminently cause bodily harm as determined by the member's assessment of the totality of the circumstances. See also ch. 17.1.

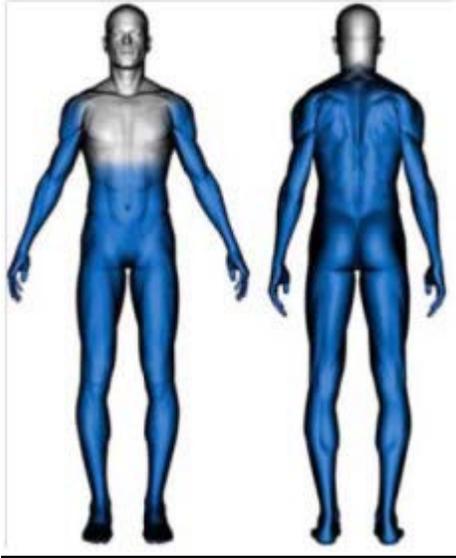
3. 1. 8. Acutely agitated or delirious persons may be at a higher risk of death. Whenever possible, when responding to reports of an individual who is violent or in an acutely agitated or delirious state, request the assistance of emergency medical services. If possible, bring medical assistance to the scene.

5. 3. Members must ensure that the subject receives medical assistance if the subject has any apparent medical or physical injury or affliction, the subject is in distress, or the subject requests medical assistance. See ch. 19.2. for policy related to assessing responsiveness/medical assistance.

17.7.3 - Preferred Targeting Areas

New: 2012-02-06

1. The preferred targeting areas are highlighted in blue.



Upper Fraser Valley Regional Detachment RCMP Policy

Part 17.7 Incident Management Intervention Model - Conducted Energy Weapon (CEW)- TASER

1.1 . Only those members who have successfully completed the Conducted Energy Weapon - CEW - (Taser) Operators Training Course (annual certification) or the CEW Instructor's Course are authorized to use the Conducted Energy Weapon.

1.3. The CEW may be deployed when the subject is causing G.B.H. or the member believes that the subject will imminently cause B.H. as determined by the members' assessment of the totality of the situation.

Analysis:

The CCD must consider whether there is reason to believe that police may have committed an offence, firstly regarding the deployment of a CEW and secondly, following its use, regarding the actions/inactions of officers towards a person under their care.

In *R. v. Nasogaluak* [2010] SCC 6, the Supreme Court of Canada set out the law regarding the assessment of the use of force by a police officer as set out in s.25 of the *Code*.

34 Section 25(1) essentially provides that a police officer is justified in using force to effect a lawful arrest, provided that he or she acted on reasonable and probable grounds and used only as much force as was necessary in the circumstances. That is not the end of the matter. Section 25(3) also prohibits a police officer from using a greater degree of force, i.e. that which is intended or likely to cause death or grievous bodily harm, unless he or she believes that it is necessary to protect him- or herself, or another person under

his or her protection, from death or grievous bodily harm. The officer's belief must be objectively reasonable...

35 Police actions should not be judged against a standard of perfection. It must be remembered that the police engage in dangerous and demanding work and often have to react quickly to emergencies. Their actions should be judged in light of these exigent circumstances. As Anderson J.A. explained in *Bottrell v. R.* (1981), 60 C.C.C. (2d) 211 (B.C. C.A.): In determining whether the amount of force used by the officer was necessary the jury must have regard to the circumstances as they existed at the time the force was used. They should have been directed that the appellant could not be expected to measure the force used with exactitude. [p. 218]

The deployment of the CEW to the affected person's back was within RCMP policy both in terms of location and duration, there being a single discharge for five seconds into the back. The deployment allowed the situation to be immediately de-escalated and the affected person to be handcuffed.

In this highly charged situation and given the information received by the responding officers that the affected person had stabbed a dog, the officers' initial response was to attempt to physically restrain the affected person once he dropped the glass bong. When that was attempted and the four subject officers could not gain compliance from the affected person, the CEW was a legitimate option. Given that they were in an enclosed space, pepper spray would not have been a viable option.

In these circumstances, the officers' use of force was not excessive. By choosing to deploy a CEW rather than a firearm under these circumstances, is consistent with the officers' training and RCMP policy. The officer cannot be seen to have intended to cause the death of, or to have meant to cause him bodily harm. Therefore, the elements for a charge of murder are absent.

Even though police did not use excessive force in the events surrounding the affected person's death, they may be held liable if they failed to act appropriately in the face of his medical distress following the deployment of the CEW. To establish criminal liability, the evidence must show they acted or failed to act in a manner consistent with their duty towards a person under their care or were negligent to the extent of a wanton or reckless disregard for that person.

The timeline above indicates a CEW had been deployed and a call regarding EHS was made at 16:14. This coincides with the time of the CEW data download and is consistent with policy regarding CEW deployment.

None of the first responders observed the affected person to be handcuffed other than a set of handcuffs on one wrist and all reported observing an RCMP officer performing CPR.

Evidence from the autopsy is clear that the affected person died of acute cocaine toxicity during restraint. It is evident his actions justified the restraint.

The unfolding of the events reveal that RCMP officers acted appropriately in the deployment of the CEW and appropriately removed the handcuffs from the affected person's back and rolled

him on to his back to better perform CPR and that there is no evidence that either excessive force was used or that officers failed to diligently administer care to a person under their care. Furthermore, there is no evidence of any wanton or reckless disregard for the life or safety of the affected person.

Decision:

Based on the evidence obtained during the course of this investigation, the CCD does not consider that any police officer may have committed an offence in relation to the affected person's death. As such, the IIO file will not be referred to Crown counsel for consideration of possible charges.

Clint Sadlemyer, Q.C.
Legal Counsel

January 22, 2016
Date of Decision

Richard Rosenthal,
Chief Civilian Director

January 22, 2016
Date of Decision