



PUBLIC REPORT OF THE
CHIEF CIVILIAN DIRECTOR

Regarding serious injuries suffered by an adult male during an interaction with
Prince George RCMP on December 8, 2014

IIO 2014-000214

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 the Crown counsel. If the CCD does not make a report to the 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 and a summary of the findings of the investigation.

This is a public report related to the serious injuries of a male affected person during an arrest by Prince George RCMP on December 8, 2014. The male affected person suffered a stab/laceration wound to the right side of his neck resulting in a medically induced coma and a stroke.

Pursuant to s.38.11 of the Police Act, RSBC 1996 Chapter 367, the CCD has reviewed the concluded 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 and will not disclose the name of any person involved in this incident.

NOTIFICATION AND JURISDICTION DECISION

On December 8, 2014, a member of Prince George RCMP spoke with three individuals, including the male affected person and checked for warrants. After the member received a radio transmission the three individuals were allowed to leave the area.

A second officer arrived on the scene and advised that there was in fact a warrant for the male affected person. As both officers attempted to arrest the affected person he, either intentionally or accidentally, severed his right internal carotid artery with a knife he had in his possession.

The IIO investigated as the affected person's injuries fell within the definition of "serious harm" as defined in the Police Act, in that it was a life threatening injury. The purpose of the IIO investigation was to determine whether any officer may have committed any offence in relation to the incident.

ISSUES

The legal issue to be considered in this case is whether the two subject officers reasonably engaged the affected person and whether they used excessive force during that engagement. If the injuries to the affected person had been the result of an unreasonable or excessive use of force, the subject officers could be liable for the offence of assault, assault causing bodily harm or aggravated assault. Culpability for an officer's use of force is governed by the following *Criminal Code* provisions:

1. 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).
2. 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)).

Timeline

All times cited below are on the night of December 8, 2014. Times are taken from Police Dispatch

22:54:23	Subject Officer 1 (SO1) states over radio that he is "out with two males and one female"
22:54:47	SO1 asks dispatch to run the name of the affected person
22:55:11	SO1 asks dispatch to run the names of Civilian Witnesses 1 & 2
22:56:08	Dispatch radios that there is a warrant for the affected person
22:59:07	An officer calls for an ambulance
23:02	BC Ambulance arrives at affected person's side
23:05	BC Ambulance Advanced Life Support (ALS) arrives at affected persons side
23:11	Affected person is transported to hospital
23:14	Affected person arrives at hospital

Affected Person

IIO investigators interviewed the affected person on two separate occasions, both of which are captured below.

In his first interview with the IIO, The affected person said that prior to his interaction with police he did not feel he was doing anything to cause suspicion. He said that whilst he could not recall what had happened before his interaction he “came to” and that he had told police to “stay back.” After being told he was under arrest he told police “stay away from me” and then “flicked out the knife.”

The affected person said that officers tried to verbally engage with him and told him that he needed to drop the weapon. After this verbal exchange, the affected person said that both officers threw him to the ground. The affected person alleged that one of the officers then hit him in the head and that both officers left him in a wheelchair. The affected person alleged that he was not taken to hospital immediately. He also said that he was drunk, high on methamphetamine and was “flipping out” when he was being placed under arrest.

During his second interview with the IIO, the affected person again described his interaction with the police. In this interview, the affected person said that police tried to place handcuffs on him. He said he pulled out a knife and told the officers to stay away from him. He said he was thrown to the ground with an officer landing on top of him. The affected person said that when the officer landed on top of him: “My knife kind of folded into me, and went into my throat.”

The affected person alleged police began to punch and kick him. He also alleged police “tased” him twice. During this interaction with the police, the affected person said his friend (Civilian Witness 4) tried to stop the officers but was told by police to back off. The affected person told the IIO that while in hospital he was told that it was believed he had cut his own neck in a suicide attempt. However, the affected person was adamant that is not something he did or would do.

Civilian Witnesses

Civilian witness 1 (CW1)

CW1 was with the affected person during the arrest. She provided a statement to the IIO. CW1 said that she was with the affected person and one other male, Civilian Witness 2, when two police officers pulled up alongside them. SO1 got out of the vehicle and checked all three of their names for any “wants or warrants.” SO1 asked the affected person about having met some time before and then told all three they were free to go. CW1 said another officer, Subject Officer 2 (SO2), arrived as the affected person began to walk away and whispered something to SO1. Both officers then called for the affected person to stop. CW1 said that the affected person turned sideways towards the officers and appeared to have both of his hands up in fists. CW1 told the IIO that a physical exchange followed in which both officers “rushed” the affected person. CW1 said that SO2 had what she assumed was a Taser which he stuck into the affected person’s throat.

CW1 told CW2 it was time to leave. Before leaving, CW1 said she heard one of the officers shout: “Watch out, there’s a knife” and “He’s cut, he’s cut me.”

Civilian witness 2 (CW2)

CW2 was with the affected person and CW1 at the time of the incident. CW2 gave two recorded statements to the police which were obtained by the IIO. CW2 said that he did not see a weapon involved at any point during the incident. He said that as soon as the affected person hit the ground he left the scene at CW1’s direction.

Civilian witness 3 (CW3)

CW3 was the passenger of a “ride along” with SO1. CW3 said he saw three people on the street and that SO1 stopped the vehicle and got out. CW3 said that the affected person began to walk away but was told by SO1 that he had to stay. CW3 said another police officer arrived and parked directly behind SO1’s vehicle. CW3 said the three people who had been stopped began to walk away and that SO1 returned to the vehicle where CW3 was waiting. CW3 said he then heard both officers shouting the affected person’s name, calling for him to stop. CW3 said he then heard over the police radio that the affected person had “slit his own throat” and later heard that SO1 had been stabbed in the leg.

CW3 told the IIO he did not see anything with respect to the actual arrest of the affected person as his view was blocked by the police car which was parked behind the vehicle he was in. CW3 said he stayed in the vehicle the entire time until a police officer came to get him to drive him home.

Civilian witness 4 (CW4)

CW4 is alleged by the affected person to have tried to stop the officers in their altercation with the affected person but was told to back off. The affected person was asked to pass on IIO investigator’s contact information to CW4 and despite numerous attempts by the IIO to contact this witness, including messages left with family members of CW4, he never made himself available for an interview. No other witnesses stated that CW4 was present during the incident.

First Responder Witnesses

Civilian witness 5 (CW5)

CW5 is a firefighter who told the IIO that he was the first non-police officer to arrive at the scene. CW5 noticed that the affected person was handcuffed behind his back and was agonal breathing (gasping for air) and saying that he couldn’t breathe. CW5 said that an officer was

applying pressure to both sides of the affected person's neck with a gauze pad and that he (CW5) took over the care of the patient.

CW5 told the IIO that he continued to apply that pressure until he was inside the ambulance with the affected person and was advised to assist with artificial respirations as the affected person had stopped breathing.

CW5 told the IIO that he was on scene for as little as 30 seconds and no more than one minute before ambulance personnel arrived and that he was with the patient until they got to the hospital.

Civilian witness 6 (CW6)

CW6 is a paramedic who arrived to the affected person's side at 23:02. CW6 noted that two police officers were holding gauze to the affected person's neck. CW6 said that he asked the officers to remove the handcuffs and that was done.

CW6 told the IIO that the affected person was moving his arms and kicking his legs, gasping for air and was saying that he couldn't breathe. CW6 drove the ambulance with the affected person to the hospital.

Civilian witness 7 (CW7)

CW7 is a paramedic who told the IIO that he was driving the first ambulance that arrived on scene. CW7 noted that firefighters were already there. He said that it was either a firefighter or a police officer he saw holding gauze against the affected person's neck.

CW7 told the IIO that police were twice requested to remove the handcuffs from the patient and that was done.

Civilian witness 8 (CW8)

CW8 is a paramedic who was driving the Advanced Life Support (ALS) ambulance. CW8 said that when he arrived he noted that the first ambulance crew and a firefighter were with the handcuffed patient. CW8 noted that a request was made to remove the handcuffs and that was done.

CW8 told IIO investigators that a firefighter was applying pressure to the wound that looked to him like a single stab wound, "not like a laceration or a slice." CW8 said he rode with the affected person to the hospital and that the patient "was not combative, but, just very anxious, moving around, flaying, saying I can't breathe." He said the affected person was trying to roll, sit up, twisting his head, and was difficult to manage which CW8 attributed to the affected person not getting enough oxygen to the brain.

Civilian witness 9 (CW9)

CW9 was the attending paramedic on the ALS vehicle. CW9 told IIO investigators that when he arrived he noted a firefighter holding pressure on the patient's neck and he asked the firefighter to remove his hands and the pad so he could observe the injury. CW9 told the IIO he saw what looked to him to be a "single puncture" wound but couldn't be sure there wasn't also a slash.

Witness Officers

Witness officer 1 (WO1)

WO1 told IIO investigators that he was monitoring police radio and heard that, "someone had been stabbed in the throat or someone stabbed himself in the throat." WO1 said that when he arrived at the scene, he saw blood on the sidewalk and SO2 holding the affected person's neck. WO1 said it appeared to him that the affected person was trying to move SO2's hands away.

WO1 said the affected persons' combativeness seemed to be a natural physical reaction to being pinned down and being unable to breathe. WO1 said he assisted in handcuffing the affected person behind his back to stop him fighting the assistance they were trying to give. Shortly after paramedics arrived, he was asked to remove the handcuffs. He moved them to the front but the affected person had been moved onto a gurney at that stage so he handcuffed the affected person to the gurney.

Witness officer 2 (WO2)

WO2 told IIO investigators he attended to the scene with WO1 and noted a large amount of blood. He said he assisted WO1 to handcuff the affected person who was struggling and hampering the first aid.

WO2 said the only comments he recalls being made to the affected person at the scene was: "Stop. We're just trying to help you." WO2 told the IIO that the only thing he heard the affected person say was: "I can't breathe, leave me alone, get away from me," which he continued to repeat.

Witness officer 3 (WO3)

WO3 told IIO investigators he attended the scene and saw WO1 trying to handcuff the affected person. WO3 said he saw a lot of blood and he applied a gauze pad with pressure to the affected person's neck for approximately 30 seconds until a firefighter (CW5) took over.

Witness officer 4 (WO4)

WO4 told the IIO that she was the supervisor on the watch. She said she attended the scene and saw SO2 performing first aid and there was a stream of blood down the sidewalk and road.

She told the IIO that the affected person was going in and out of consciousness, and was saying: “I can’t breathe, I can’t breathe, get your hands off me, I can’t breathe” as first aid was being performed. She heard him being told that they, “were trying to help him” as the affected person was struggling.

Subject Officers

Subject officer 1 (SO1)

SO1 provided a written statement to the IIO and then participated in an interview with IIO investigators in the presence of his counsel.

SO1 told the IIO that whilst patrolling in the city of Prince George he noted three people, the affected person, CW1 and CW2 that he recognized from previous police dealings; in an area which had been the subject of complaints of drug dealing and drug using.

SO1 said the affected person looked at him, pulled a bandana over his face and started to walk away. SO1 called out to the group to “hang on a second” and all three stopped.

SO1 said that the affected person removed the bandana from his face and asked if he was under arrest to which SO1 responded in the negative but wanted to check on everyone and they could be on their way.

SO1 told the IIO he took their information and relayed it to the dispatch. SO1 told the IIO that while awaiting results of the computer checks, the affected person began to argue with him regarding a previous dealing and SO1 was speaking with the affected person when his information came back. SO1 thought he had heard that there were conditions for the affected person but did not catch the message that would have indicated to him that there was a warrant for the affected person’s arrest. SO1 told the group they could go just as SO2 arrived.

SO1 told the IIO that SO2 indicated to him that the affected person actually did have a warrant and so he (SO1) called out to the affected person and heard SO2 say to the affected person to “hang on we need to figure this out.” SO1 said he and SO2 approached the affected person and SO2 told the affected person that he might have a warrant for his arrest.

SO1 told IIO investigators that the affected person turned suddenly away from the officers, appearing to SO1 as if to run and told officers to back off. SO1 said he then saw the affected person remove his right hand from his coat pocket and place his hand and arm up near his face area on the left side toward where SO2 was taking hold of the affected person’s left side. SO1 said that as the affected person removed his hand from his pocket he heard a distinct “click” sound and SO2 called out “pepper spray.”

SO1 said this happened in the same moment as both he and SO2, who was about two feet closer to the affected person, were closing the distance to prevent him from fleeing. SO1 said the

affected person's arm then came back down to his right side, where SO1 was taking hold of the affected person – cutting SO1's leg.

SO1 told the IIO he backed off slightly to check on his injury and SO2 and the affected person continued to grapple for something. SO1 said he saw a cut on the affected person's neck and yelled to SO2 that the affected person had a knife. SO1 said he then performed a leg sweep which brought all three men to the ground.

SO1 told the IIO that he got up again and shortly thereafter he heard the sound of metal hitting brick and that SO2 said he had thrown the knife to the side.

SO1 said he saw SO2 trying to keep his hands on the affected person's neck and that SO2 was yelling at the affected person to stop, that he was trying to save his life. SO1 said that the affected person was grabbing at SO2's hands, pulling them off saying "f--- off, I want to die, or f--- you I want to die."

SO1 said each time SO2 put his hands on the affected person's neck to stop the bleeding the affected person tried to pull them down.

Subject officer 2 (SO2)

SO2 declined to provide the IIO with a statement, which is his right under the Charter. His notes from December 8, 2014 relate that he went on shift at 6 p.m. that day and that he had a CEW. Contrary to RCMP policy, the serial number of the assigned CEW was not recorded in his notes.

Medical Evidence

Apart from the stab wound to the right side of the neck, there were no other injuries to the affected person. The bleeding to the wound on the right side of the neck was controlled with direct pressure.

CEW - Chain-of-Custody:

SO1 told the IIO that he was not carrying a CEW during this incident as his certification had recently expired. SO2 was carrying a CEW which was not immediately seized. A Corporal of Prince George RCMP explained that the CEW was not immediately seized as it "was not used during the altercation." This corporal also advised the IIO that:

"The Taser was placed in SO2's locker after his shift on the night of the incident. It was then locked in SO2's locker until he came back to work after four days off. Once SO2 was back to work, the Taser was seized first thing on the morning that SO2 returned to work. The Taser was not used by anyone during those four days."

The Prince George RCMP advised that no CEW logs for the date of the incident were available, as the logs were not properly filled out or lost in transition from general duty to their filing system.¹

According to the RCMP, a CEW was seized from SO2's locker upon SO2's return to work and that CEW was subsequently provided to the IIO. The CEW was examined by an IIO Use-of-Force expert. There was no visual damage to the CEW which:

“Was in good condition with no noted damage or alterations to the body of the CEW...The surfaces of the CEW...are smooth to the touch and unless the CEW had been modified from original Manufacturer specifications, it would not be possible to cause a stab type injury with a TASER Model X26.”

A spark test was conducted and the CEW appeared to be functioning properly. A CEW data download was completed and an analysis revealed the CEW was activated for one second duration on December 8, 2014 at approximately 5:12:23 p.m. This is consistent with a spark test to assure the functionality of the CEW commonly which commonly takes place at the start of an officer's shift (which per SO2's notes was at 6:00 p.m.) There were no other CEW activations shown for the December 8, 2014 in the data.

In addition to noting that the CEW examined could not have caused a stab type wound, the IIO Use-of-Force expert also reported that: “the types of injuries that would be expected from a CEW deployment would be:

“two small burn marks on the skin at the point of contact [if deployed in contact mode without an air cartridge attached]...or two small puncture marks similar to an insect bite or bee sting with some reddening of the skin around the puncture marks [if deployed in the probe mode]”

Analysis

The affected person gave two statements to the IIO wherein he made a total of seven complaints:

1. The police had no reason to initially stop and question him.

Due to the affected person's allegation in this regard, it must be considered whether the subject officers had any lawful authority to stop and then engage the affected person. The affected person had no recollection of what happened prior to “coming to” however SO1 articulated his grounds for initially engaging the affected person and his group as follows:

- a. The area of Prince George had been the subject of complaints regarding the selling and buying of drugs.

¹ The IIO has been advised by Prince George RCMP that a new sign-out system is now in place at the detachment where each CEW unit has its own sign-out log and RCMP Members are required to complete this log each time that particular unit is signed out.

- b. The affected person masked himself with his bandana and started walking away when he and SO1 saw each other.

Although these grounds set out by SO1 would not be sufficient grounds to make an arrest, it is clear SO1 felt the affected person was acting in an unusual manner which merited his attention. The police are not prohibited from engaging people in conversation and asking for their names. When SO1 was satisfied (albeit mistakenly) that there were no warrants for the affected person, by all accounts, he advised the affected person that he was free to go. SO1, when informed that there was in fact a warrant, called to the affected person to stop.

As such, I do not consider that SO1 committed any offence in relation to his initial contact and interaction with the affected person.

2. The police ought not to have engaged him when he had displayed a knife.

The law requires that the police protect the safety of the public. By the affected person's own recollection, he brandished a knife against the police. The law is clear that police officer safety is essential to public safety and there can be no suggestion that brandishing a knife, as the affected person said he did, can be anything but a threat to police officer safety.

SO1 believed that the affected person was about to flee and being then aware of the existence of a warrant for the affected person's arrest he was obliged to attempt to arrest the affected person. As such, neither of the Subject Officers committed any offence by engaging the affected person and using force to prevent what was perceived to be an attempt to flee. In addition, there is no reason to believe that the officers were in a position to deescalate the situation upon becoming aware that the affected person was armed. At that point, they were fully engaged and had the responsibility to disarm the affected person and take him into custody.

3. He was kicked or punched after he was on the ground bleeding from the knife wound to his neck.

The affected person described that after his neck was cut he was subjected to "multiple punches to my face, and there was multiple kicks to my body...I was -- I was fairly bruised up on my face."

The medical records of the affected person, obtained by the IIO, indicate that the only injury to the affected person was the stab wound to his neck. The affected person admitted that he was suffering from hallucinations at the time. It is possible that the actions of the officers and the paramedics in holding down the affected person and putting pressure on his neck, may have led to the affected person's belief that he was beaten. However, there is a complete absence of any physical or eye witness evidence of a beating as described by the affected person.

As such, it cannot be considered that any officer committed any offence in relation to an assault on the affected person, as described by him following his injury.

4. The affected person's friend (CW4) came by and questioned what the police were doing to him.

As indicated above, the affected person told the IIO that he was hallucinating. CW4 could not be located. No other witnesses at the scene reported any other civilian witnesses to the interaction.

5. The affected person was 'tased twice in the neck' after he was on the ground bleeding.

This allegation was not mentioned by the affected person in his first statement. CW1 saw something that she assumed was a Taser, however her description that "it looked like a round tube with like a silver, like a flat silver end on it" is not consistent with the appearance of a Model X26 CEW, (see photo below).



The medical records of the affected person, obtained by the IIO, are objective evidence that indicate that the only injury to the affected person was the stab wound to his neck. There is no reason to believe that a CEW deployment would have caused this type of injury. The affected person said he was hallucinating and the injury to his neck may explain what he felt and believed was a CEW deployment to his neck.

While it is unfortunate that the CEW carried by one of the Subject Officers was not seized until several days later, and the police records are incomplete to conclusively establish that the CEW that was examined was, in fact, the CEW that was possessed by SO1 at the time of the incident, there is no reliable evidence to suggest that a CEW was deployed.

Accordingly in the face of the absence of any medical evidence, an assumption by CW1 and the lack of any description of a CEW deployment which would commonly include the sound of an electrical discharge, it cannot be considered that a CEW was deployed and therefore it cannot be considered that any officer committed any offence in relation to the use of a CEW.

6. The affected person was put into a wheel chair, pushed around downtown thereby considerably delaying his transport to the hospital, and that delay caused him to have a stroke.
7. During the time the affected person was being pushed around in the wheelchair he was struck by a third officer.

The 911 dispatch timeline indicates that 22:59:07, was the earliest record of a request regarding a man with his throat cut. B.C. Ambulance Service records confirm that at 22:59:59 they recorded a transmission that police were with someone who “just slit his throat.”

The patient care report, contained within the affected person’s medical records, indicates BCAS arrived at the scene 23:02, that ambulance with the affected person left the scene at 23:11 and arrived at the hospital at 23:14.

The evidence of CW5 that he was with the affected person for up to a minute prior to BCAS arrival leaves perhaps a two-minute window where only police witnesses were present.

The evidence of the first responder witnesses is consistent with the conclusion that the affected person was placed onto a gurney, put into an ambulance and taken to the hospital on an emergent basis.

The affected person’s sixth and seventh complaints could not have happened and the affected person was admittedly hallucinating following the interaction with the police. He also stated at one point in his second statement that he was told about the wheelchair incident by CW2 notwithstanding that at other points he says he remembered the incident on his own.

Decision of the Chief Civilian Director

Based on all of the evidence collected during the course of this IIO investigation and the law as it applies, it cannot be considered that any police officer may have committed an offence under any enactment, and therefore the matter will not be referred to Crown counsel. This file has been referred to RCMP professional standards for further review and evaluation.

Clint Sadlemyer, Q.C.
Legal Counsel

May 4, 2016
Date of Signature

Richard Rosenthal,
Chief Civilian Director

May 4, 2016
Date of Signature