



**PUBLIC REPORT OF THE  
CHIEF CIVILIAN DIRECTOR**

Regarding an In-Custody Death of a male in Chilliwack on  
April 6, 2016 involving the  
Chilliwack RCMP

IIO 2016-00065

## 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 investigating and a summary of the findings of the investigation.

**This is a public report related to an investigation into the death of an adult male on April 6, 2016 while in the custody of Chilliwack RCMP. The male affected person was arrested and handcuffed that morning, and stopped breathing shortly after. Attempts to resuscitate him were unsuccessful and he was pronounced deceased at 08:16 that morning.**

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*). 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 the name of any other person involved in this matter.

## NOTIFICATION AND JURISDICTION DECISION

The interaction between police and the affected person began at approximately 7:36 a.m. on April 6, 2016 outside of the Uptown Grill restaurant in Chilliwack. Officers arrived, arrested the affected person (who was on the street in front of the restaurant) and took him into their custody by handcuffing him. Shortly thereafter he was noted to have stopped breathing and the officers began to perform CPR and removed the handcuffs. An ambulance was called and attended, resulting in the affected person being taken to hospital. Continued attempts to revive him were unsuccessful and he was pronounced deceased at 8:16 a.m. that morning.

The Independent Investigations Office was notified at 8:20 a.m. and deployed investigators to the scene. This incident falls within the jurisdiction of the IIO as described in 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, a report to Crown Counsel must be made.

The legal issue to be considered in this case was whether officers used excessive force that, in turn, caused the death of the affected person during their interaction with him.

A further legal issue is whether the RCMP failed to provide the necessities of life while the affected person was in their custody.

## **TIMELINE**

The timeline below has been compiled from radio transmissions, 911 recordings and BC Ambulance Service (BCAS) records.

- 07:23:35 - police are called by a witness about a disturbance in the Uptown Grill.
- 07:29:35 - second call to police by the same caller stating that a security guard just arrived.
- 07:34:56 - third call by same person "...he's now outside...rolling on the floor...fighting the security guard".
- 07:35:56 - officers arrive on scene.
- 07:37:27 - officers place the affected person in handcuffs.
- 07:37:51 - ambulance is requested.
- 07:39:56 - officer reports they are administering CPR and that the affected person is not responsive.
- 07:43:25 - officer reports Emergency Health Services (EHS) "just arriving".
- 07:44:00 - Paramedics at the affected person's side.

## **AFFECTED PERSON**

The affected person was 45 years of age when he died. He was a long-time resident of Chilliwack.

## **EVIDENCE CONSIDERED**

Evidence examined in this investigation includes statements made by civilians; witness officers; medical evidence; dispatch records; video footage; police radio-to-radio communications; autopsy and toxicology reports and other forensic evidence collected from the scene.

## **CIVILIAN WITNESSES**

### **Civilian Witness 1 (CW1)**

CW1 was in the Uptown Grill on the morning of April 6, 2016 and contacted police as set out in the timeline above. IIO investigators interviewed her later that day, and she stated that the affected person was causing a disturbance in the restaurant. Prior to police arrival, a security guard attended. She said the security guard asked the affected person to leave and that the two men “took hold of each other” and went out the door towards the street.

CW1 told IIO investigators that she saw the affected person fall to the ground outside, like a stumble, and then try to regain his footing as he moved toward the center of the road where he fell on his back. The security guard did not have a hold of him but was following him as this happened. She said this occurred at or near the time she made her third 911 call.

CW1 told IIO investigators police arrived shortly after and “they had him in cuffs very quickly...maybe 20 seconds,” although she didn’t actually see the handcuffs being applied nor the interaction with police as her view was blocked. She estimated that it was 45 seconds to a minute after the handcuffs were put on until CPR was being performed.

### **Civilian Witness 2 (CW2)**

CW2 is a security guard and he told IIO investigators on April 8, 2016 that he witnessed the affected person acting aggressively and holding a chair. CW2 said he tried to calm him down. CW2 reported the affected person eventually came towards him and then pushed him out the front door of the restaurant. He said that the affected person then fell to the ground, got back up and ran into the street and fell to the ground again. CW2 stated the affected person “grappled” him several times and that in less than two minutes, two RCMP officers arrived.

CW2 said the affected person took hold of one officer’s legs and that officer told him he was under arrest. CW2 noted he and the two officers restrained the affected person and got him into, what CW2 described as, a fetal position, on his knees. He said one officer placed a handcuff on the affected person’s left arm and he (CW2) took hold of the affected person’s right arm and positioned it so the officer could complete the handcuffing.

CW2 said the affected person was resisting so he (CW2) and one officer tried to put the affected person into a prone position on the ground. CW2 said he placed his knee on the lower left side of the affected person’s back and the officer placed his knee about six inches higher than the security guard’s knee. About five seconds later, the affected person went prone on the ground and became calm, at which time CW2 stepped back from the affected person.

CW2 described the interaction to IIO investigators:

“...we put him down onto the ground a little bit more. Like he kind of willingly lets himself go down. Then he began struggling greatly at that point. Just kinda probably five or six seconds after he had fully had the handcuffs on. And the three of us used force, and

put him toward the ground, because he was trying to stand up to his knees, kind of struggling and wiggling to the best of his ability. And we put him onto the ground, and that was that.”

CW2 said within 10 seconds of the affected person being put on the ground, an officer’s voice he believed to be female, asked if the affected person was still breathing. The two officers that had participated in the arrest turned him over and CW2 observed that the affected person didn't appear to be breathing. CW2 said: “(an) officer performed, I think it was four to five compressions, and [he] started breathing again ... his stomach began to rise and fall. And I had stepped back at this point...I'm not trained in first aid...and that was it for my involvement in this incident.”

CW2 said that another officer ran to get a defibrillator which was also used. He added that the handcuffs were still on the affected person when he moved away from him. He reported an ambulance arrived and left with the affected person. He also said the officers used, “no weapons, no striking, nothing.”

### **Civilian Witness 3 (CW3)**

CW3 was interviewed in the afternoon of April 6, 2016. She stated that she saw the security guard who attended push the affected person out the door of the restaurant.

CW3 said that once outside, the affected person:

“fell down on the ground and was rolling around and, and the security guard went to help, help him, and ... they were struggling a bit. And, and he, and he's rolling around and rolling around on the sidewalk and he rolled to the end over here...”

CW3 said the affected person was on the ground when police arrived. The police got the affected person handcuffed and pushed him down. She reported that it was “maybe three seconds” after being handcuffed that the affected person stopped moving. CW3 said the police did not use any force. She clarified there were no punches or kicks or weapons used. She was unable to say whether any weight was put on the affected person.

She said that within a few seconds of being handcuffed, the RCMP officers started performing CPR which she estimated to continue, “for about five or 10 minutes there, as the ambulance is coming. But they kept working on him and working on him...they just kept working on the poor guy.” CW3 said once CPR started, one officer ran back to the police car to get “a kit...and soon as the guy went and got the kit they released the handcuffs and they were just going at it.”

### **Civilian Witness 4 (CW4)**

CW4 was interviewed by IIO investigators on April 8, 2016. She was walking past the incident on her way to work and saw two police officers and a security guard beside the affected person, who was face down on the ground and handcuffed.

CW4 said the affected person was making “gibberish” noises. One officer was holding the affected person or putting the cuffs on and was trying to calm him. CW4 said that after about, “like, couple of seconds, like, maybe 20 seconds the male stopped making noise.”

CW4 estimated that four or five minutes later she looked out of a window where she was and saw police flip the male over and begin CPR. She told the IIO that:

“one of the police said something and rushed over to his car and got, like, an emergency kit and then went over, and they were trying to revive him, doing CPR, and, and that was it. Eight to 10 minutes later ambulance and fire department arrived. And then the ambulance came and took him.”

### **Civilian Witness 5 (CW5)**

CW5 was interviewed by IIO investigators on April 6, 2016. She said she saw the affected person rolling around on the ground outside. “It looked as though the man was trying to roll away ... and he rolled toward the police car...I didn’t see, I didn’t see the -- any sort of physical interaction (prior to police arrival)...”

She said two police officers arrived and were “tussling” with him, as was a security person.

The affected person was yelling but she couldn’t make out what he was saying. The affected person stopped moving and more police arrived. Police began performing CPR. CW5 said that “very shortly” after handcuffing the affected person the police were taking the handcuffs off again.

CW5 described the police interaction with the affected person by saying that one officer was on either side of the affected person, trying to get his hands behind him. CW5 did not see any strikes, only wrestling between the police and the affected person. Police did not use any weapon. She said the affected person was fighting.

CW5 said that when the affected person had been brought to the ground and had his hands behind his back he was using his head to push himself off the ground. CW5 said the struggle lasted 30 seconds to a minute. After being handcuffed, CW5 said that initially the affected person was still yelling.

CW5 told IIO investigators:

“They, they got him into the cuffs and they, they were all standing for a minute or one of – maybe one of the police was still crouched over him actually and, and -- but the, the security guy was back in standing and I remember watching the security guy move his leg. He used his foot to kind of move the guy's leg over to make sure he didn't kick up or whatever. And then they rolled -- I don't know why they were, they were rolling him a bit. If he had maybe already lost consciousness or they -- maybe he said or did something, I don't know, but he kind of rolled and he had his -- like the, the guy was on

his stomach with the cuffs on and then they kind of rolled him to the back and the way his head was on the ground now I could tell that he was not conscious any more.”

CW5 said that she was distracted by something else for less than a minute and when she looked back at the scene she saw that the handcuffs had been removed and police were performing chest compressions. She said that more police officers arrived while they were doing the chest compressions and then the ambulance attended and the paramedics took over.

CW5 video recorded a portion of the interaction on her phone.

### **Civilian Witness 6 (CW6)**

CW6 was interviewed by the IIO on April 6, 2016. CW6 said he saw the affected person rolling around on his hands and knees. He heard one of the officers say, “you are under arrest”. “I got down there and there was two officers on a gentleman who was in obviously in distress, and yelling and screaming and swearing. And very difficult to contain, and I could see that they were -- all they were doing was holding him to, looked like, get handcuffs on him. There was also a third fellow down there in red that I believe is a security employee...” CW6 said.

CW6 said when he returned to his workplace nearby, with visibility of the scene, he looked out and saw that the affected person was handcuffed. CW6 described that the affected person was squirming and that an officer had a knee on the affected person’s shoulder.

CW6 described the affected person as lying partly on his stomach and chest, tilted up at a bit of an angle. CW6 said the affected person was resisting while in handcuffs, possibly trying to push the police off of him or trying to get up.

CW6 told IIO investigators the officers were “really quick” to get the handcuffs off the affected person as soon as they realized that he needed medical assistance. He said they rolled him over and began performing CPR on him and that it was “within minutes...very fast an ambulance showed up and first aid guys began to work on the individual.”

### **Civilian Witness 7 (CW7)**

CW7 was interviewed by IIO investigators on April 11, 2016. She was in a bus nearby from where she saw the affected person as he was in the street. She said he ran and then suddenly dropped then rolled and crawled, got up again and repeated the cycle.

CW7 said two officers arrived and got the affected person secured face down on the ground. There was an officer on either side of the affected person and the security guard was at his feet. The officer on the right side had one knee on the affected person’s back and was holding an arm. She thought the other officer was doing the same on the other side but was uncertain.

The officers did not use any weapon. More police arrived and her view was subsequently blocked.

## **Video Evidence**

Video taken by CW5 shows the affected person on the road with CW2 assisting the two officers attempting to get the affected person into handcuffs. No other people are seen near to the affected person. The duration of the video is 39 seconds; however, CW5 pans away from the struggle at 18 seconds and the video comes back to the affected person at 33 seconds. Other than the handcuffing of the affected person, no other force is apparently being used. The placement of CW2's knee and one officer's knee on the affected person's back is consistent with CW2's description. The affected person appears to be resisting during both portions of the video where he is visible.

## **OFFICERS**

The IIO uses the term witness officers and subject officers to distinguish between officers who merely witnessed the incident as opposed to officers who are the subject of the IIO investigation over their direct involvement, which may have caused the serious harm or death.

### **Witness Officers**

#### **Witness Officer 1 (WO1)**

WO1 was interviewed by the IIO on April 6, 2016. WO1 was partnered with WO2. A call came over the radio and they attended in their patrol car. Upon arrival, WO1 said she saw two members (the subject officers) kneeling on the ground next to the affected person who appeared to be handcuffed.

She approached and said, "He's not breathing" and instructed them to roll him over and start CPR. She said one of them, she thought subject officer 2, started chest compressions and the affected person appeared to be breathing so they put him into the recovery position. WO2 had left to get an AED. WO1 said she felt for a pulse and couldn't find one; WO2 returned with an AED and cut the affected person's shirt off. Subject officer 1 took the cuffs off before they laid him on his back and applied the AED pads.

WO1 said that subject officer 2 had called for an ambulance near the time of her and WO2's arrival and it arrived at that point and the EMT's took over.

#### **Witness Officer 2 (WO2)**

WO2 was interviewed by IIO investigators on April 6, 2016. WO2 said he was travelling with WO1 when they heard a radio transmission and decided they would attend. WO2 told the IIO when they arrived on scene he saw both subject officers. He said he saw the affected person who was face down on the roadway handcuffed and he looked "blue in the face, kind of grayish" and he heard WO1 say "hey guys he's not breathing."

WO2 told the IIO that he went in search of a defibrillator and when he located one, returned to the affected person with it and instructed subject officer 2 to roll the affected person and to remove the handcuffs. He said he cut the affected person's shirt off and applied the AED pads and EHS arrived shortly after and took over.

WO2 estimated it was about two minutes from the time they arrived until the handcuffs were removed.

### **Subject Officers**

There were two subject officers in this investigation. Both officers declined to be interviewed by the IIO or to provide any report to the IIO, as is their right pursuant to The *Charter of Rights and Freedoms*.

As of the time this decision is being issued, it does not appear that the subject officers have completed any reports or notes of their respective recollection of the incident. The IIO has, and continues to engage with the RCMP on the necessity of officers completing timely reports.

### **British Columbia Ambulance Service (BCAS)**

BCAS records indicate that on arrival the attending EMTs noted CPR was being performed on the affected person who was not breathing nor was his heart beating. EMTs noted the affected person had no eye opening response, no verbal response, and no motor response. The EMTs continued CPR and the affected person was transferred to the ambulance which left the scene 10 minutes after arrival. The affected person was taken to Chilliwack General Hospital.

### **Medical Evidence**

Medical records obtained from Chilliwack General Hospital indicate that when the affected person arrived at hospital the chief complaint was a cardiac arrest. The affected person was pronounced deceased at 8:16 a.m.

### **Autopsy and Toxicology Reports**

A forensic pathologist performed the autopsy on the affected person on April 7, 2016. The autopsy report became available and was provided to the IIO on September 14, 2016 by the BC Coroners service.

The pathologist noted in his report:

"based on my observations, experience and training, and the information supplied to me, it is my opinion that the cause of death of (the affected person) was as follows:

1. Direct Cause (disease or condition directly leading to death):
  - (a) The toxic effects of cocaine and methamphetamine  
...
2. Other significant conditions contributing to the death but not relating to the disease or condition causing it: hypertensive and atherosclerotic cardiovascular disease.”

The pathologist also reported that no significant injuries were identified during the autopsy, and no specific evidence was found to suggest an asphyxial component to the death.

At the autopsy, the pathologist told an IIO investigator, who was in attendance, that the affected person’s airway appeared to have been in good shape with no signs of injuries consistent with choke holds or head locks.

The toxicology report dated August 12, 2016 reported that blood drawn at 08:10 on April 6, 2016 from the affected person contained significant levels of Methamphetamine and a metabolite of cocaine (which indicates recent cocaine use). This report was included with the autopsy report and relied upon by the pathologist.

## **Law**

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)) of the Criminal Code of Canada.
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. Everyone is under a legal duty to provide the necessaries 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 necessaries of life. (section 215 (1) (b) and (c)).
4. 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))
5. 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))

## **Analysis**

Police were summoned to a disturbance at the Uptown Grill in Chilliwack. Upon police attendance, the evidence is consistent that the affected person was already down and rolling around on the road. The officers approached him and he is said to have tried to take hold of one of the officer's legs whereupon the officer warned him to stop and then told him he was under arrest. With the assistance of CW2, the officers put the affected person into handcuffs and again the evidence is consistent that no strikes or weapons were used by the officers in this process.

The pathologist's report is clear and definitive that the affected person died as a direct result of the toxic effects of cocaine and methamphetamine upon his hypertensive and atherosclerotic cardiovascular system. The autopsy report confirms there were no signs of injuries consistent with choke holds or head locks.

The officers were under a duty to attend and in all the circumstances as set out herein to arrest the affected person. Section 25 of the Criminal Code of Canada allows that where a police officer "acts on reasonable grounds, [he is] justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose."

The measure of force used by police to detain the affected person herein does not rise above what was required for that purpose.

Having arrested and detained the affected person, he fell under the charge of the subject officers who then came under a legal duty to provide the necessaries of life to the affected person. The affected person was then unable to withdraw himself from that charge and was also unable to provide himself with the necessaries of life. It is noteworthy that the radio transmission first requesting an ambulance occurred only 24 seconds after the transmission confirming that officers had the affected person handcuffed.

CPR was commenced immediately by the subject officers upon noting that the affected person was not breathing. Handcuffs that had been applied to restrain the affected person's arms behind his back were removed to better facilitate resuscitation. CPR was continued until medical personnel attended and took over.

In these circumstances, it cannot be said one or both of the subject officers omitted to do anything that it was his duty to do, or showed a disregard for the life or safety of the affected person.

## **Decision of the Interim Chief Civilian Director**

Based on all of the evidence collected during the course of this IIO investigation and the law as it applies, I do not consider that any police officer may have committed an offence under any enactment and therefore the matter will not be referred to Crown Counsel nor will the IIO take any further action in relation to this case.

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**Clint Sadlemyer, Q.C.**  
**Legal Counsel**

November 30, 2016  
**Date of Release**

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**A.O. (Bert) Phipps,**  
**Interim Chief Civilian Director**

November 30, 2016  
**Date of Release**