



**PUBLIC REPORT OF THE
CHIEF CIVILIAN DIRECTOR**

Regarding injuries suffered by an adult male while being taken into custody by the Vancouver Police Department on August 16, 2015.

IIO 2015-118

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 serious injuries suffered by a male affected person during an interaction with members of the Vancouver Police Department. During the interaction, the affected person refused to drop a pair of pliers he was holding and was shot twice with a beanbag shotgun. As a result of this, the affected person suffered a fractured wrist which required surgery.

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 Independent Investigations Office (IIO) asserted jurisdiction as the affected person's injuries fell within the definition of "serious harm" as defined in the *Police Act* as he suffered a fractured left wrist which required surgery.

The interaction started when an officer, who is the subject of this investigation, entered the affected person's apartment in response to a call of a suicidal male. The affected person moved to the rear door of his apartment. The back door was latched and required the use of pliers to unlatch it. Upon reaching the door, the affected person picked up a pair of pliers and turned to face police. He was directed to drop the pliers but did not do so and was shot two times with a beanbag shotgun from which he suffered the above noted injury.

The IIO was notified at 1550 hours on August 16, 2015. The purpose of the IIO investigation was to determine whether an officer may have committed any offence during the course of their contact with the affected person.

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 for consideration of charges.

The legal issue to be considered in this case is whether the subject officer reasonably deployed his bean bag shotgun thereby causing injury to the affected person. If the injuries to the affected person were the result of an unreasonable use of a force, the subject officer could be liable for the offence of assault, assault causing bodily harm or assault with a weapon.

EVIDENCE CONSIDERED

Evidence examined in this investigation includes statements made by a civilian witness, statements made by witness officers, medical evidence, photographic evidence and police dispatch records.

AFFECTED PERSON

The affected person was interviewed by the IIO on September 2, 2015 at his home where the incident occurred. The affected person told the IIO that on the night in question he'd taken a number of Valium pills. He said that a witness in the house at the time called the police and during that call, "I think I said something like...I had weapons or some shit." The statement of that civilian witness is outlined below.

The affected person told the IIO he wanted to leave before the ambulance arrived but civilian witness (CW) did not want him to. He said, "I was trying to leave, and basically the police showed up before the ambulance did."

The affected person said that the police were knocking at the door and CW let them in. He said:

"I just remember heading to the back. And then just, you know, trying to get out my back door. There's a latch at the bottom, and then she (CW) latched it. Sometimes I have to use pliers to open it. I picked up a pair of pliers on the thing, and then I turned around. Basically saw the officer..."

The affected person said he was:

"Trying to get open the back door, turned around, and one of the officers shot me (inaudible), I guess. That's twice. Once in the gut, and I put my hand over it, and then -- and he shot me in the wrist. I don't believe any words were exchanged. They could have been, but I don't believe they were."

The affected person told the IIO he thinks he was shot twice before he went down to his knees. He said he was handcuffed and taken out into the alleyway at the rear of his residence. He was taken to hospital by ambulance.

CIVILIAN WITNESS

The only Civilian Witness in this case was in the residence at the time of the interaction with police.

CW spoke with the IIO on September 9, 2015. CW told the IIO she called 911 because the affected person had taken a number of Valium pills. The call was recorded.

CW told the IIO that during the 911 call she described taking various items from the affected person so he couldn't present at the door with anything in his hands. She said she also wanted them (911) to know that she was not under duress.

During the 911 call CW said, "He is trying to leave but I am blocking him..."

The affected person can be heard in the background of the 911 shortly thereafter saying, "If I see any cops I'll pull my gun". The 911 operator asked, "Did he just say he had a gun?" CW replied that the affected person did not have a gun. She also said that the affected person was picking up a number of other items including a flower scoop, a ratchet and a screwdriver but did not have a gun. CW also mentioned that the affected person was trying to "do the suicide by cop thing." CW also said:

"...He is not becoming violent he is OK. He has a ratchet, he no longer has a ratchet. He is holding a screwdriver now. I have taken it from him he is just being antagonistic."

CW told the IIO she remained on the phone with the 911 operator and had advised the 911 operator about removing tools from his hand so they (the police or ambulance personnel) would be aware of it. CW told the IIO that she “didn't want him to be in a situation where he would be treated with undue force by accident.”

CW said that just prior to unlocking the door for police she broke part of a perfume bottle she thought looked like a gun so, “it wouldn't be in his hands when he answered the door.” CW said she then unlocked the door. The 911 audio reflects the sound of glass breaking followed shortly after by the sound of a woman screaming or shouting but ends prior to the sound of the police entering.

CW told the IIO that as the police entered, the affected person ran to the back door of the residence. She said she followed directly behind him. She said he was trying to undo the lock with pliers but was unable to do so. She said she was right behind him, “pretty much body contact” as he was facing the door and then he turned toward her.

CW said she told the affected person to drop the pliers. CW said the police had also followed and stopped several feet away. She could not recall any police commands or warnings during the incident but said that they may have, but she could not remember hearing anything.

CW told the IIO she was facing the affected person at that point as he had turned and was facing the police. She said she was within three feet of the affected person when she heard two rapid gun shots and saw him fall. He was handcuffed and moved outside.

OFFICERS

The IIO uses the term witness officers and subject officers to distinguish between officers who 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 Officer 1 (WO1)

WO1 is a member of the Vancouver Police Department (VPD). He was interviewed by the IIO on September 11, 2015. WO1 told the IIO he was working in plain clothes in an unmarked car with the subject officer. The subject officer was driving when a call came in about a suicidal male. It was relayed that a female had reported her boyfriend had taken a number of Valium pills and was trying to kill himself and leave the suite.

WO1 told the IIO that when further information came in that the subject of the complaint had picked up a flower scoop and a screw driver and may be attempting suicide by cop, he (WO1) and the subject officer attended because the subject officer is a trained bean bag gun operator.

WO1 told the IIO that based on what had been communicated to them, his objective was to take the male safely into custody and get him mental health care. WO1 said that when they arrived other officers were at the door of the residence. One of the officers, witness officer 2 (WO2) had radioed that he had heard screaming and smashing coming from inside the suite.

WO1 told the IIO that he and the subject officer put on black nylon jackets that have a police crest on either shoulder and have Vancouver Police written on the front and back. The subject officer got his bean bag gun, a three-foot long black shotgun from the trunk.

WO1 said CW opened the door and the subject officer entered first. WO1 described a narrow hallway and said he heard the subject officer yell "Police". He said the officers went through a doorway into a workshop and spread out just inside the entrance.

WO1 said CW was standing directly behind the affected person, facing his back. CW's right hand was on the affected person's right wrist and her left hand was around his left wrist. WO1 said he could see a pair of pliers in the affected person's hand and was concerned for CW's safety as the affected person was "flailing in a violent manner." He recalled the subject officer giving verbal commands but the affected person did not let go of the pliers.

WO1 told the IIO the subject officer yelled "bean bag" twice. The first round hit the affected person in the belly button area of his stomach and the affected person brought his hands in to his stomach area. He could not recall where the pliers were at this point but said the affected person remained standing. He heard a second bean bag round fired but did not see where it hit. The affected person fell to the floor.

WO1 said other officers then put handcuffs on the affected person who remained on the ground yelling and agitated. Fifteen seconds after being handcuffed, the affected person was patted down and seated by the back door. WO1 told the IIO he did not see any other force used on the affected person and he had no concerns about how the handcuffs were applied. He took CW out to the back lane where the affected person had been taken, so she could see he was okay.

Witness Officer2 (WO2)

WO2 is a member of the VPD. He was interviewed by the IIO on September 17, 2015. WO2 told the IIO that he and his partner were on patrol in uniform driving a marked police car and they were dispatched to a call of a suicidal male. The information received was that CW had called saying the affected person was suicidal, had taken a number of Valium pills and was trying to leave the residence.

WO2 told the IIO that dispatch had also relayed that there was mention of a gun and that the affected person might try "suicide by cop." WO2 said this meant to him that the affected person, "might do something overt to threaten police to force the police to use lethal force to kill him". Dispatch also reported that CW said the affected person had picked up various tools like a flower scoop and a screwdriver which she had taken away from him.

WO2 said on attendance to the residence and before the door was opened he heard a sound like smashing glass and a female scream. WO2 advised dispatch of what he had just heard. He told the IIO he tried the door but it was locked and within seconds he was joined by WO1 and the subject officer.

WO2 told the IIO he kicked at the door which at the same time swung open. WO2 motioned for the subject officer to go first as he had a bean bag shotgun. On entering they immediately turned left and down a long hallway. He said he heard the subject officer announce "Vancouver Police."

WO2 said that at the end of the hallway he saw CW and the affected person near an exit door about five meters away. The affected person was facing the subject officer and CW was slightly behind the affected person, with her left side or chest area positioned behind his right shoulder, holding onto him. As soon as WO2 entered the room he saw the affected person grab a pair of pliers from a work bench located to the affected person's left. WO2 told the IIO: "When I saw him pick up the pliers I immediately thought he was possibly a danger to her or to one of us because he had these metal pliers in his hand."

WO2 said he yelled twice for the affected person to put the pliers down and he heard another officer yell the same direction, however the affected person continued yelling and holding the pliers.

WO2 said the subject officer, who was one meter to his right, fired the bean bag shotgun twice, with one or two seconds between each deployment. WO2 said he saw the first bean bag round hit the affected person in the center of his abdomen and he appeared to be in pain from a wincing expression on his face however he remained standing, still holding the pliers. WO2 said the affected person brought his left hand down to cover his stomach and after the second shot the affected person fell down forward. WO2 applied handcuffs to the affected person with the aid of another officer.

Subject Officer

The subject officer declined to be interviewed or provide any statement to the IIO, as is his right pursuant to the *Charter of Rights and Freedoms*.

PHOTOGRAPHIC EVIDENCE



Expended Bean bag

LAW

Culpability for an officer's use of force is governed by the following provisions set out in the *Criminal Code of Canada*:

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).

In an evaluation of the reasonableness of an officer's use of force, the following application of the law is required:

The Supreme Court of Canada in *R. v. Nasogaluak*, 2010 SCC 6 held that:

[32] ... police officers do not have an unlimited power to inflict harm on a person in the course of their duties. While, at times, the police may have to resort to force in order to complete an arrest or prevent an offender from escaping police custody, the allowable degree of force to be used remains constrained by the principles of proportionality, necessity and reasonableness. Courts must guard against the illegitimate use of power by the police against members of our society, given its grave consequences.

However, the Court went on to say that:

[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 *R. v. Bottrell* (1981), 1981 CanLII 339 (BC CA), 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]

ANALYSIS

The affected person had reportedly ingested a significant dose of prescription drugs and said, when he knew the authorities were on the line with CW that, “If I see any cops I’ll pull my gun.” CW reported that although the affected person did not have a gun, he was picking up various items that were potential weapons. These circumstances were relayed to the subject officer.

Just prior to police entering the residence, WO2 heard glass breaking and a woman scream which he reported and which could be heard on the 911 call. The residence was cluttered and disorderly and although the presence of a gun had been denied, the potential spots to hide a gun were numerous.

The affected person fled to the rear of the residence upon police entry and when followed into the back room was seen by the officers, his girlfriend and by his own statement to pick up a large pair of pliers.

His purpose as related by both he and CW was to unlatch the back door however it would be impossible for the police to be aware of that purpose. In all the circumstances herein the use of force by the subject officer was constrained by the principles of proportionality, necessity and reasonableness.

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, it is not considered that any police officer may have committed an offence under any enactment and therefore the matter will not be referred to Crown Counsel.

Clint Sadlemyer, Q.C.
Legal Counsel

March 31, 2017
Date of Release

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

March 31, 2017
Date of Release