



PUBLIC REPORT OF THE

CHIEF CIVILIAN DIRECTOR

Regarding the serious injuries sustained by
an adult male involving officers of the
Royal Canadian Mounted Police,
On March 9, 2014, in Surrey.

IIO 2014-000043

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. As the Chief Civilian Director (CCD) of the IIO, I am required to review all completed investigations, in order to determine whether I consider that an officer may have committed an offence under any enactment. If I conclude that an officer may have committed an offence, I am required to report the matter to Crown Counsel. If I do not make a report to Crown Counsel, I am permitted by Section 38.121 of the *Police Act* to publicly report the reasoning underlying my decision.

In my public report, I may include a summary of circumstances that led to the IIO asserting jurisdiction; a description of the resources that the IIO deployed; 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 public report relates to the investigation into the injury of an adult male that occurred on March 9, 2014, in the city of Surrey. The affected person sustained a serious injury to his shoulder while being taken into custody by the Royal Canadian Mounted Police (RCMP).

Pursuant to Section 38.11 of the *Police Act*, RSBC 1996 Chapter 367, I have reviewed the completed investigation. I do not consider that any officer may have committed an offence under any enactment and I will not be making a report to Crown Counsel.

In my public report, I am 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, I am required, if practicable, to notify the person to whom the information relates, and further, notify and consider any comments provided by the Information and Privacy Commissioner. I have considered the advice provided by the Information and Privacy Commissioner, and in this report, I will not be using the name of the affected person or any other person involved in this matter.

At the time of the incident, the affected person was 38 years old.

NOTIFICATION AND JURISDICTION DECISION

On March 9, 2014 at 5:50 p.m., the RCMP received a report that the affected person was screaming and swearing while walking in traffic, near 144 Street and 68 Avenue. Several officers attended, and over the course of taking him into custody, the affected person sustained a broken arm. The BC Ambulance Service transported him to hospital where he was treated for his injuries.

The IIO asserted jurisdiction, as the affected person’s injuries fell within the *Police Act* definition of “serious harm”.

INVESTIGATIVE EVIDENCE CONSIDERED

Interviews were conducted with five civilian witnesses; four witness officers and one of the two subject officers. A second subject officer declined to participate in an interview or provide a statement to the

IIO. Photographs and video evidence captured by civilian witnesses were reviewed, as were police dispatch records, radio transmissions and a BC Ambulance Service report.

Affected Person

Despite numerous attempts, by the IIO, the affected person declined to meet with investigators to provide a statement for the purposes of this investigation. He did not provide consent for the IIO to access his hospital records.

General Timeline of Event

The following timeline was established by reviewing police dispatch records, 911 calls and the BC Ambulance Service report.

5:52:34 p.m.	Call received and police en route
5:52:37 p.m.	Civilian Witness 3 following the affected person in his vehicle
5:56:49 p.m.	Affected person not responding to verbal arrest commands
5:57:00 p.m.	Affected person resisting
5:57:59 p.m.	Affected person cooperative, but not detained
5:58:52 p.m.	Affected person resisting again; no additional officers requested
5:59:19 p.m.	Affected person's arm broken; paramedics requested
6:09:59 p.m.	Affected person still resisting
6:12:59 p.m.	Paramedics arrived
6:17:35 p.m.	Paramedics sedated the affected person
6:35 p.m.	Paramedics departed the scene with the affected person; en route to hospital

Civilian Witnesses

Civilian Witness 1

IIO investigators interviewed Civilian Witness 1 on May 12, 2014. According to Civilian Witness 1, on the day of the incident she observed the affected person yelling and waving his arms around, near 145 Street and 68 Avenue. The affected person looked toward Civilian Witness 1 and yelled that he had killed his father. He also yelled other things that she could not understand, and was stopping cars and hollering at drivers.

Civilian Witness 1 told the affected person to get off the road and asked whether he needed help. Civilian Witness 1 stated that the affected person turned around and walked towards her and then turned and walked away, all the while yelling that he had killed his father. Civilian Witness 1 stated that she was on the phone with police at that time.

Civilian Witness 1 stated that a man in a security car (Civilian Witness 3) followed the affected person and videotaped him. Civilian Witness 1 stated that police officers showed up within minutes, she and a number of others in the area provided statements to police. Civilian Witness 1 stated that she did not see the affected person being apprehended by police officers.

Civilian Witness 2

IIO investigators interviewed Civilian Witness 2 on May 9, 2014. According to Civilian Witness 2, on the day of the incident he saw the affected person running along 68 Avenue, stopping and striking cars, while yelling that he killed his father. Civilian Witness 2 stated that his daughter, Civilian Witness 1, called 911. Approximately five to ten minutes later, officers attended Civilian Witness 2's residence and spoke to him and Civilian Witness 1. Civilian Witness 2 stated that he did not see the affected person being apprehended by police officers.

Civilian Witness 3

IIO investigators interviewed Civilian Witness 3 on April 16, 2014. According to Civilian Witness 3, on the day of the incident he was working as a security guard, conducting routine vehicle patrols on 68 Avenue, when he saw the affected person between 145A and 144B Street. Civilian Witness 3 stated that the affected person was hollering and appeared frantic, but he did not recall specifically what the affected person was saying. Civilian Witness 3 stated that he started following the affected person in his vehicle, driving slowly a very close distance behind him. He began video recording the affected person with his phone.

Civilian Witness 3 stated that the affected person walked alone westwards on 68 Avenue and turned south onto 144 Street. Civilian Witness 3 stated the three to five minutes elapsed between the time he first saw the affected person and the time that police officers approached him.

Civilian Witness 3 stated that officers approached and began talking to the affected person, and then one officer approached him to throw him to the ground. All of the officers then grabbed the affected person and took him to the ground, with a knee to the back and twisting his arms. Civilian Witness 3 stated that when the officers grabbed the affected person's arm, they instructed him not to resist. Civilian Witness 3 could not tell if the affected person was resisting the officers.

Civilian Witness 3 stated that once the affected person was taken to the ground, there were three to four officers holding him down. Civilian Witness 3 stated that one officer was on the affected person's leg, another officer was on one arm, and a third officer was on the other arm.

Civilian Witness 3 also stated that the officers were trying to get the affected person's arms behind his back, and the affected person was making sounds as though he was in pain. He stated that he did not observe that the affected person was injured in any way prior to the time that he was taken down by the police officers.

Civilian Witness 3 stopped recording the affected person on 68 Avenue and then started recording him again after he was on the ground with the officers. He did not record the actual process of the officers taking the affected person to the ground. Civilian Witness 3 stated that he was the only civilian close to the location at which the officers were holding the affected person.

Civilian Witness 4

IIO investigators interviewed Civilian Witness 4 on May 1, 2014. According to Civilian Witness 4, on the day of the incident he saw the affected person walking in oncoming traffic, kicking cars and randomly swearing at people, near 145 Street and 68 Avenue. The affected person then walked towards 144

Street and continued to yell loudly and swear in Punjabi. Civilian Witness 4 called 911 and a police officer arrived. Civilian Witness 4 told the officer the direction the affected person went, and the officer then headed in that direction. Civilian Witness 4 stated that he did not see the affected person being apprehended by police officers.

Civilian Witness 5

IIO investigators interviewed Civilian Witness 5 on May 21, 2014. According to Civilian Witness 5, on the day of the incident he was in his home when he heard police cars and sirens outside. He stepped outside and saw several police cars on the roadway near his home. Civilian Witness 5 went back inside his residence to retrieve his camera, proceeded to the location of the scene and began taking photographs. Civilian Witness 5 saw a police officer directing traffic, and at least three other officers trying to arrest the affected person, who was on the ground. The police officer directing traffic approached Civilian Witness 5 and said he would need the photographs Civilian Witness 5 was taking. Civilian Witness 5 stated that after a brief conversation, he agreed to provide the photographs to police.

Subject Officers

Subject Officer 1

Subject Officer 1 notified the IIO via his counsel that he would not submit to an interview for the purposes of this investigation. He did, however, provide the IIO with a copy of his written report in relation to this incident.

In his report, Subject Officer 1 indicated that on the day of the incident, he was dispatched to a report of a male running up and down the street kicking cars near 145A Street and 68 Avenue. While en route, Subject Officer 1 was advised that the male was telling people he had shot someone. Subject Officer 1, Subject Officer 2 and Witness Officer 2 located the affected person, who appeared large and physically fit, in the area. The officers established a verbal dialogue with the affected person, asking if he was all right. At one point, Subject Officer 1 heard Witness Officer 2 tell the affected person he was under arrest and instruct him to place his hands behind his back. The affected person reportedly stared at the officers and did not respond to the verbal direction.

The three officers then reportedly moved in to physically arrest the affected person. Subject Officer 1 took the affected person by his right arm. The affected person then reportedly tensed his arm, preventing Subject Officer 1 from taking control of him. Subject Officer 1 heard other officers telling the affected person to stop resisting; however the affected person did not relinquish control of his arms. The officers then pulled the affected person to the ground.

Subject Officer 1 reportedly tried to pull the affected person's right arm around to the small to his back to facilitate the application of handcuffs. Subject Officer 1 had his right knee on the affected person's shoulder and was holding his forearm with his left hand, and his arm, just above the elbow, with his right hand. When Subject Officer 1 attempted to pull the affected person's arm around he heard a loud cracking sound, making it clear to him that the affected person's arm was broken. Subject Officer 1 immediately expressed surprise, as the injury was unexpected.

The affected person appeared to have no idea that he had sustained an injury, and attempted to get up. The officers told the affected person not to move and Subject Officer 1 released his arm. Paramedics

were immediately requested to attend. The affected person continued to resist by pulling with his left arm and kicking at the officers. In order to prevent further injury, the officers did not handcuff the affected person.

Paramedics arrived and sedated the affected person prior to transporting him. At approximately 6:30 p.m. Subject Officer 1 followed the ambulance transporting the affected person to a local hospital. After arriving at the hospital, medical staff restrained the affected person to the bed.

Subject Officer 1 advised the affected person of his charter rights and the official warning. The affected person reportedly advised that he understood his rights. The affected person did not say much and appeared to be comfortable. Subject Officer 1 remained with him affected person until approximately 9:45 p.m., at which time he left the hospital.

Subject Officer 2

Subject Officer 2 declined to provide a statement for the purposes of this investigation, as is his right under the *Charter of Rights and Freedoms*.

Witness Officers

Witness Officer 1

IIO investigators interviewed Witness Officer 1 on April 1, 2014. According to Witness Officer 1, he heard a report over the police radio of a male kicking vehicles, swearing loudly and saying he shot someone. Shortly after the initial call, Witness Officer 1 heard someone radio that the male was not responding to verbal commands, that he had been advised he was under arrest and that he was walking away. The next update he heard over the radio was that help was needed as the male was struggling and they were having trouble getting handcuffs on him.

Witness Officer 1 attended and saw officers attempting to arrest the affected person, who was on the ground. Witness Officer 1 described the affected person as taller as and bigger than any of the other officers present. The affected person was lying on the ground struggling and kicking his feet while the officers held him down. When Witness Officer 1 approached, Subject Officer 1 told him the affected person's arm was broken and to be careful.

Witness Officer 1 stated that in an effort to assist, he placed one hand on the affected person's right shoulder blade and the other hand on the back of his neck. Witness Officer 1 also stated that from what he could recall, Subject Officer 1 was on the right side, Witness Officer 2 was on the left arm side, Subject Officer 2 was on one of the legs and (an officer) that Witness Officer 1 did not know was on the other leg. Witness Officer 1 stated that the affected person was not responsive to questions.

According to Witness Officer 1, the affected person continued to struggle even with a broken arm. There was no blood present, but Witness Officer 1 could see by the position of the right arm and a bulge in the arm that it was broken. Witness Officer 1 stated that the affected person has enormous strength, and that even though there was an officer on each of his limbs, the affected person was strong enough that he was able to move them around several times and try to lift himself up.

Witness Officer 1 stated that since the affected person could not be handcuffed due to his broken arm, the officers were just trying to restrain him while they waited for the ambulance. Once paramedics arrived, they injected the affected person with something that calmed him quickly. After the affected person was calm, Witness Officer 1 helped the paramedics load him into the ambulance.

Witness Officer 2

Witness Officer 2 was originally designated as a Subject Officer, but was subsequently re-designated as a Witness Officer. IIO investigators interviewed him on July 25, 2014.

According to Witness Officer 2, on the day of the incident he was working in full uniform, driving a marked police vehicle when he heard a radio call, reporting a male running up and down the street, swearing, kicking at cars and challenging people to fight in the area of 68 Avenue and 145A Street.

Upon responding to the area of the call, Witness Officer 2 saw the affected person and activated his emergency lights in an attempt to get his attention. He pulled up approximately ten feet away from the affected person. The affected person stopped walking and Witness Officer 2 noted that Subject Officer 2 arrived at the same time. Witness Officer 2 exited his vehicle and called out to the affected person, but the affected person did not respond. Witness Officer 2 noted that Subject Officer 2 also tried to speak to the affected person, but he still did not respond. Witness Officer 2 stated that the affected person planted both of his feet and clenched his fists with his arms back and beside him, like he was standing at attention, but he was not looking at the officers.

Subject Officer 1 also arrived and the officers attempted to talk to the affected person, but were getting no response. Based on the information he received via radio, Witness Officer 2 believed the affected person was arrestable, so he told the affected person he was under arrest for mischief and instructed him to turn around and put his hands behind his back. The affected person did not respond and Witness Officer 2 made the statement again. The affected person shook his head and said "no." This statement and reaction led Witness Officer 2 to believe the affected person understood his instruction.

According to Witness Officer 2, he approached the affected person to take him into physical custody, and the affected person took a step back. Witness Officer 2 tried to grab the affected person's left arm. At the same time, both Subject Officers approached the affected person on the right.

When Witness Officer 2 grabbed onto the affected person's arm, the affected person tensed and struggled to pull away. Witness Officer 2 could not see if the other officers had control of his other arm, but he heard one of them say, "down, down on the ground" and the officers took the affected person to the ground. Once they got the affected person face down on the ground, Witness Officer 2 focused on maintaining control of the affected person's left arm and he was able to position it behind his back in preparation for handcuffing. Witness Officer 2 was holding the arm in this position waiting for handcuffs, but he could still feel the affected person struggling, tensing his body, and trying to pull his arm away.

Witness Officer 2 kept telling the affected person that he was under arrest and to stop resisting, but the affected person continued to struggle. At some point, Witness Officer 2 saw that Witness Officer 3 had also arrived, but he remained focused on the affected person's left arm. Witness Officer 2 stated that he heard a "pop" sound shortly after Witness Officer 3 arrived. Witness Officer 2 could see the arm near the affected person's elbow was bulged. He stated that both Subject Officers and Witness Officer 3 had

released their grip on that arm. According to Witness Officer 2, the other officers appeared to be surprised and they leaned back, away from the arm. Witness Officer 2 heard Witness Officer 3 instruct Subject Officer 2 to call for paramedics.

According to Witness Officer 2, from that point the officers attempted to control the affected person, Witness Officer 2 kept a hold of the left arm, while the other officers held his legs. Witness Officer 2 stated that he kept trying to talk to the affected person, advising him that an ambulance was coming, that the officers were going to help him and to stop resisting. The affected person did not respond.

Witness Officer 2 stated at one point the affected person planted his right arm and appeared to be trying to lift himself up, which shocked Witness Officer 2 because the arm appeared to be broken. Once the paramedics arrived, the officers assisted in moving the affected person to a gurney and strapping him down. Witness Officer 2 then left the affected person in the custody of Subject Officer 1, and had no further involvement with the affected person.

Witness Officer 3

Witness Officer 3 was originally designated as a Subject Officer, but was subsequently re-designated as a Witness Officer. IIO investigators interviewed him on July 25, 2014.

According to Witness Officer 3, he heard a call over the police radio of a male damaging vehicles. As he pulled up to the area to assist other officers already on scene, Witness Officer 3 heard over the radio that the affected person had been told he was under arrest but was not obeying commands. As Witness Officer 3 arrived, he could see the other officers around the affected person giving him direction to put his hands behind his back.

Witness Officer 3 saw the affected person being taken to the ground, facedown on a grassy area. Witness Officer 3 saw both Subject Officers and Witness Officer 2 trying to control the affected person's arms and handcuff him. Witness Officer 3 stated he ran to the right side of the affected person, to assist in handcuffing him. Subject Officer 1 was also on the affected person's right side. Witness Officer 3 indicated that Subject Officer 1 was holding the affected person near his forearm.

Witness Officer 3 stated that he attempted to give the affected person direction in what he believed to be his first language. The affected person seemed irrational and did not respond to Witness Officer 3's commands to put his hands behind his back. As the officers had control of the affected person's left arm, Witness Officer 3 stated "as I was assisting with the right arm, trying to move it in behind the person's back, I heard a snap and as soon as I heard a snap I told the other officers to stop applying force to this arm." Witness Officer 3 stated that the sound was quite loud and he believed the other officers involved also heard it.

Witness Officer 3 stated that he could tell by the sound and the angle of the affected person's arm that it was broken. At that point, dispatch was asked to send an ambulance to the scene, advising that the arm was possibly broken. Witness Officer 3 stated that the affected person was still struggling and did not seem to be affected by the pain of having his arm broken. Witness Officer 3 moved to holding the affected person's right leg, and the other officers also adjusted to try and keep the affected person from getting up. When the paramedics arrived, they administered a sedative to the affected person. Once the paramedics departed, Witness Officer 3 had no further interaction with the affected person.

Witness Officer 4

IIO investigators interviewed Witness Officer 4 on April 4, 2014. According to Witness Officer 4, she heard a radio call that a male was kicking at cars and walking in traffic. Witness Officer 4 attended to assist other officers if needed.

When she arrived, Witness Officer 4 saw Subject Officer 1 and knew he was the first officer to respond. She also saw Witness Officer 2 and two other male officers. The officers were trying to arrest the affected person, who was face down on the grass. As she approached the scene, Witness Officer 4 was pulled aside by Civilian Witness 3, who informed her that the affected person had been yelling saying he had shot his father. Witness Officer 4 stated that when the affected person heard Civilian Witness 3 tell her this, he stated that he did not shoot anyone. Witness Officer 4 stated that Civilian Witness 3 then showed her a video he had taken of the affected person prior to the arrival of the officers.

Medical Records

The Patient Care Report from the BC Ambulance Service indicated that the affected person was physically restrained and pharmaceutically sedated. His “mental status” was recorded as “combative”. He was placed on a stretcher and his arm was placed in a splint. He was subsequently transported to hospital.

The affected person did not consent for the IIO to access to his hospital records.

Photo and Video Evidence

The photographs taken by Civilian Witness 5 were reviewed by the IIO. The photos depicted officers arresting the affected person, restraining him on the ground, and paramedics at the scene. All police officers that appeared in the photos had been identified by the IIO and designated as either witness or subject officers.

Two videos recorded by Civilian Witness 3 were reviewed by the IIO in their entirety.

The first video showed the affected person walking west along 68 Avenue towards 144 Street. The affected person could be heard yelling. Much of what he was saying was inaudible. Two witnesses on the video could be heard saying that the affected person had stated that he just shot someone. The affected person was seen walking in and out of traffic.

In the second video, the affected person was seen on 144 Street, south of 68 Avenue, on the ground, being held down by four police officers. One officer could be heard saying, “Stop resisting you’re under arrest.” Another officer could be heard saying, “He’s still fighting us.” The first officer was then heard saying, “Sir, stop resisting, okay? Stop resisting, you’re under arrest. Stay still okay? Stay still and we’ll help you.” Fourteen seconds thereafter, an officer could be heard saying, “Don’t get up sir, stay where you are, don’t move.” Approximately 30 seconds later, an officer was heard saying, “Stay still, stay still sir.” Eleven seconds later, the affected person could be heard to yell “no” and struggling with his feet. The officers could be seen controlling his feet and an officer was heard saying, “Stay still, you understand? Don’t move.”

Civilian Witness 3 was heard informing the officers that the affected person had stated that he shot someone. In apparent response, the affected person began struggling again and stated, "I never shot anybody."

The video did not provide a clear view of to what, if any, extent the affected person was resisting the officers.

ISSUES

The general issue in any IIO investigation is whether a person suffered serious harm or death as a result of the actions of an officer and, if so, how and why. If I consider an officer may have committed an offence, I must forward a report to Crown Counsel. Pursuant to the *Criminal Code*, police officers are permitted to use reasonable force against members of the public. Relevant *Criminal Code* provisions state that:

- 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)).
- 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).

ANALYSIS

To constitute criminal assault by a police officer in the course of his or her duties, it would have to be established that in the context of the totality of the circumstances known to the officer, the force was disproportionate or unnecessary. The intentional application of force to another person, without the consent of that person, may constitute an assault under the *Criminal Code*. A peace officer who is acting within the course of his or her duties, however, is granted authority under Section 25 of the *Criminal Code* to apply force which is reasonable and necessary in the circumstances.

Despite this, police officers do not have an unlimited power to inflict harm on a person. The Supreme Court of Canada has clearly established that the allowable degree of force remains constrained by the principals of proportionality, necessity and reasonableness. What is proportionate, necessary and reasonable within the meaning of the law will depend on the totality of the circumstances and is assessed from the point of view of the officer, recognizing the characteristically dynamic nature of police interactions with citizens. Police are not held to a standard of perfection and are not required to measure with nicety the force that they use. A legally acceptable use of force is one which is not gratuitous, and which is delivered in a measured fashion.

In this case, the officers had ample reason to use force to take the affected person down to the ground and to apply handcuffs to him. Although the available video evidence does not show the take down, it does record the aftermath. While holding the affected person down, the officers can be heard to communicate specific instructions that are clearly attempts to stop the affected person from being further injured. The officers could be seen using control holds only, and not using any type of weapon or strikes in order to accomplish their goal of restraining the affected person.

Subject Officer 1 reported that he was surprised when his application of force appeared to have broken the affected person's arm, and he took immediate steps to mitigate the injury by stopping any attempt

to handcuff the affected person. In addition, listening to the officers' voices (tone and content) on the video confirms that there is no reason to believe that they were acting, at that time, in an arbitrary or capricious manner in holding the affected person down until medical assistance could be provided.

The officers described the affected person as unresponsive to verbal commands. This behaviour before the arrest justified the use of force. After the arrest, the affected person continued to struggle in a manner that suggested he did not feel pain as a result of his broken arm.

The fact that the affected person's arm was broken does not in and of itself give reason to believe that the officers' actions were gratuitous or unmeasured. The affected person was described as a large man, and all of the officers described the affected person as being very strong. It was reasonable for the officers to match his strength with their strength in order to bring him under control. Under these circumstances, the officers were not in a position to release the affected person and had to continue to apply whatever force was necessary to get him in handcuffs. Unfortunately, that level of force resulted in his arm being broken.

The video evidence and the radio transmissions suggest that the officers intended to arrest the affected person without hurting him. When the affected person's arm broke, they stopped trying to handcuff him, even though he continued to struggle. They sought medical help for him immediately after they realized that he had been injured. No evidence suggests that the officers held malice or any intent to injure the affected person.

Because the officers had ample reason to apply force, and because all the evidence supports the conclusion that the officers used reasonable force under the circumstances, I find no reason to believe that they committed any offence.

DECISION

Based on the evidence obtained during the course of this IIO investigation, I do not consider that an officer may have committed an offence and therefore the IIO will take no further action.

Prepared for release this 25th day of August 2014.

Richard A. Rosenthal
Chief Civilian Director
Independent Investigations Office of BC