



PUBLIC REPORT OF THE
CHIEF CIVILIAN DIRECTOR

Regarding the injuries sustained by an adult
male on July 5, 2014, involving a member of
the Abbotsford Police Department in
Abbotsford

IIO 2014-000118

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 of the IIO (CCD), I am required to review all investigations upon their conclusion, in order to determine whether I “consider 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 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 s.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.

This is a public report related to an investigation into the injury of an adult male that occurred on July 5, 2014, in the city of Abbotsford. The male affected person sustained serious injury to his hand while being taken into custody by an officer employed by the Abbotsford Police Department.

Pursuant to s.38.11 of the *Police Act*, RSBC 1996 Chapter 367, I have reviewed the concluded investigation. I do not consider that any officer may have committed an offence under any enactment and 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 (s.38.121(5) of the *Police Act*).

In this case, I have considered the advice provided by the Information and Privacy Commissioner. In this report, I will not be using the name of the affected person or of any other person involved in this matter.

NOTIFICATION AND JURISDICTION DECISION

Jurisdiction was asserted as the injury fell within the *Police Act* definition of “serious harm” which includes injury that may cause substantial loss of use or mobility of the body as a whole or the function of any limb.

INVESTIGATIVE EVIDENCE CONSIDERED

Information was obtained from interviews with the subject officer, witness officers and several civilian witnesses. A brief interview with the affected person took place; his hospital records related to the incident were obtained and reviewed.

Interview with the Affected Person

On July 15, 2014, IIO investigators attempted to interview the affected person while he was in the custody of the Abbotsford Police Department. When the affected person was asked how his left hand (which was in a cast) was injured, he replied: "cops hit me with a baton." At one point during the interview, he asked IIO investigators: "Did you guys see the video of them beating on me yet? There should be a video of everything isn't there? Yes, they have the video, the full video, the video from up top."

The affected person denied hitting the police officer: "I never hit the police officer or went to throw him to the ground or did any of that stuff that I am quite capably trained in doing..."

The affected person declined to submit to a full interview with the IIO investigators until after he had a chance to confer with his lawyer.

On July 28, 2014, after being notified by the affected person's lawyer that he was no longer in any jeopardy as a result of the underlying incident, IIO investigators attempted to conduct a full interview.

The affected person declined to submit to a full interview at that time, stating that he wanted to first confer with his lawyer. He did state that he "did not want to get arrested" as he had experienced abuse in the past from Abbotsford police officers, including being struck after having been handcuffed. The affected person believed the officer was going to attack him and that if the officer had just told him he was under arrest, he would have complied with that request.

The affected person's hospital records were obtained by IIO investigators. Emergency Room notes indicated he was a male who had been brought in multiple times with a drug induced psychosis. Although the affected person was noted to be "medically stable," it was noted that he would not engage in any conversation with the physician and exhibited "bizarre behaviour." It was noted that he had had suffered a fracture to his left hand. According to the physician, the affected person "has had absolutely no insight into his problem. He is psychotic and he is acting quite bizarre and will need to be certified, restrained and sedated...and evaluated by the psychiatrist."

He was committed under the Mental Health Act.

Civilian Witnesses

Civilian Witness 1 (CW1) was first interviewed by an Abbotsford Police Officer on July 5, 2014, at 12:30 p.m., at the scene of the incident. The interview was recorded.

CW1 saw the affected person running across Clearbrook Road followed by a police officer. They were both running. The police officer caught up with the man about half a block down Clearbrook. The affected person started fighting and the officer was able to get him to the ground. The affected person started kicking the officer.

Another officer arrived and they were using their “billy clubs” to try to subdue the affected person. He fought at least three officers after that. It took a long time for officers to subdue the affected person. CW1 observed the affected person swinging and kicking at the officers mostly from where he was on the ground. CW1 described the affected person as definitely resisting arrest. The officers were giving him commands and he didn’t seem to be responding.

On July 14, 2014, CW1 was again interviewed by IIO Investigators.

CW1 recalled seeing the affected person on the west side of Clearbrook running north diagonally across the road with an officer in pursuit. They ran about half way down the east side of Clearbrook when the officer caught up with the affected person. The affected person began to fight with the officer.

“The policeman took his billy club and hit him a few times to try to calm him and he was just wild – that guy was wild, there was no way he was calming.”

CW1 stated that the officer chased the affected person down and grabbed him. The affected person was described as “fighting like crazy” – kicking and punching.

Subsequently, a second officer arrived and joined in the fight. A third officer arrived and they finally got the affected person to the ground to get the handcuffs on. CW1 noticed that the second officer pulled out his handcuffs and attempted to handcuff the affected person. CW1 stated the first officer was giving commands to the affected person but could not hear what he was saying. The third officer blocked much of the view.

When asked how many baton strikes the officer used, CW1 estimated it may have been five or six times and that a couple of baton strikes may have occurred after the affected person was down, because he was fighting so hard.

Civilian Witness 2 (CW2) was interviewed by IIO investigators on July 15, 2014.

CW2 saw the affected person in an altercation with two male police officers. “There was a guy; he seems to be very aggressive. He was very aggressive. He was swearing at the police and trying to hit the policeman.”

CW2 described the affected person as “making a fist” and “trying to hit them.” CW2 believed that the affected person did actually strike one of the officers.

CW2 stated the affected person wanted to get away and ran from west to east on Clearbrook Road. CW2 saw the officers chasing the affected person who then went down to the ground – CW2 did not know if the affected person fell or if the officers put him down.

“They catch him, put him down and cuffed him at the back.” CW2 described the affected person as seeming quite strong and fighting hard. The officers were trying to bring him under control and one officer was observed using what CW2 referred to as “little black sticks.”

Other officers subsequently arrived. CW2 stated that once handcuffs had been applied and the affected person was under police control, he had calmed down. It was CW2’s belief that the police had not used further force. In relation to the force that CW2 had seen used by the officers: “Before, to catch him to make him come under control. After that they didn’t do anything. So far as I know, the policeman was doing his job properly.”

CW2 heard the affected person screaming and swearing at the officers but did not hear anything the officers might have said.

Civilian Witness 3 (CW3) was initially interviewed by an Abbotsford Police Officer on July 5, 2014 at 12:41 p.m. at the scene of the arrest.

CW3 reportedly saw an officer speaking with the affected person. The affected person began to walk away and when asked by the officer to come back, the affected person “took a swing at the officer.”

According to CW3, the officer ducked. The affected person ran across the street in bare feet, to the other side of Clearbrook Road. The officer chased him and grabbed him by the bushes. The affected person pushed the officer down and kept running. The officer then used his baton and hit the affected person on the leg; he went to the ground. The affected person kept swinging at the officer. Other officers arrived however the affected person kept fighting. CW3 stated the officers “maced” the affected person but he was still fighting.

CW3 believed there were four or five officers involved with actually handcuffing the affected person: “I just wanted to (say) that I don’t think the officer used over force. If anything, he didn’t use enough force to deal with him. He’s a small officer and I’m sure that guy would’ve beat him up pretty bad. He did use the baton on his leg but it didn’t do anything. It didn’t faze him at all.”

CW3 did not respond to requests by the IIO for a follow-up interview.

Civilian Witness 4 (CW4) was initially interviewed by an Abbotsford Police Officer on July 5, 2014 at 12:48 p.m. at the scene of the arrest.

CW4 saw an officer with his lights on in his police car having a conversation with the affected person. CW4 recalled it appeared to be a general conversation until the affected person took a step toward the officer. As the officer extended his baton, the affected person initially backed up and then took another step forward. CW4 believed the officer “defended himself” and tried to “slash” at the affected person’s leg to “get him down.”

The affected person tried to get away from the officer and ran south across the street. CW4 saw the affected person continue to run with the officer in pursuit. The officer was able to take the affected person to the ground but not before receiving “at least one good punch.”

A second officer arrived and both officers tried to subdue the affected person. He was reportedly fighting being detained. The officers were finally able to detain the affected person. CW4 indicated there was a lot of commotion.

CW4 stated the affected person “was definitely resisting and you guys took what necessary (steps) that you needed to subdue him so that he didn’t hurt another officer, himself or somebody else.”

CW4 did not respond to requests by the IIO for a follow-up interview.

Civilian Witness 5 (CW5) was initially interviewed by an Abbotsford Police Officer on July 5, 2014 at 8:55 p.m. and subsequently interviewed by IIO investigators on July 14, 2014.

CW5 saw an officer talking to the affected person. It looked like the officer was trying to arrest him. There was a tree obscuring the view but to CW5, it looked like the affected person pushed the officer. It looked like the affected person was going to “charge” at the officer but instead he took off across the street. The officer pursued on foot.

A second officer arrived and between the two officers, they took the affected person to the ground, hitting him with batons. To CW5, it looked like the officers used pepper spray on the affected person. CW5 saw the officers using their batons to keep the affected person down, however he was fighting them. The ambulance arrived shortly after that, then several more police cars.

On July 14, 2014, CW5 was re-interviewed by IIO Investigators. On July 5, 2014, CW5 saw an officer talking to the affected person: “It looked like the police officer was about, was going to arrest the guy, when he moves towards him.” CW5 believed the situation looked to have become confrontational, although he could not see if the affected person hit the officer. The affected person rushed towards the officer and then out into the road.

The first officer had drawn and extended his baton and was running with it in his hand. CW5 stated: “That’s how he (got) the guy to hit the ground; he had hit him from behind while he was

running. I don't know if it was the back of the head or the back or whatever but he hit him from behind and that guy went right down."

CW5 described this as an overhand strike by the officer with the baton traveling vertically downward. This took place approximately 100 yards from CW5's position. A second officer had arrived and caught up with the first officer as the affected person was on the ground. Both officers were striking the affected person in an attempt to keep him down.

"I don't know if he had a baton or what but it took the two of them struggling to keep this guy down on the ground and then I did see one of the two cops spraying the one, spraying that guy, in the face." CW5 was not able to specify which officer used the spray.

CW5 described the hand movement of the officer as if using an aerosol spray and moving his hand back and forth. The affected person was shouting but CW5 could not hear what words were being used and did not hear the officers say anything.

CW5 said: "It was two of them on one but this guy here, he wasn't giving up. He was a fighter." CW5 estimated that the struggle continued for approximately two minutes with the officers striking the affected person, trying to restrain him and the affected person refusing to give up. In CW5's opinion, the affected person was trying to get up. Additional officers arrived and subsequently, CW5's view was blocked.

Witness Officers

Witness Officer 1 (WO1) was interviewed on July 14, 2014. He stated that on July 5, 2014, he responded to a complaint of assault. He interviewed the victim and determined that the alleged suspect description matched that of the affected person.

WO1 was aware that the Subject Officer (SO) was conducting area patrols around where the assault had occurred. The SO subsequently radioed that he had located the affected person. WO1 asked that the SO detain the affected person for investigative purposes.

According to WO1, at approximately 12:30 p.m., he was in his vehicle heading towards the SO when the SO came over the air requesting Code 3 cover and that he was in a fight. WO1 activated his lights and siren and proceeded to the location, arriving in less than one minute.

WO1 noted that he had prior knowledge of the affected person based on his five years of policing in Abbotsford, including multiple interactions with the affected person. None of the interactions were described as "super violent" but he did know the affected person had a history living with mental illness and substance abuse.

At the scene, WO1 observed the affected person running on the west side of Clearbrook Road along the sidewalk with the SO close by. As WO1 U-turned around a meridian, he observed the SO with his baton out giving commands for the affected person to stop and get down on the ground. The affected person was not complying.

WO1 stated that his intention was to get in front of the affected person to prevent him from running further down the street. He parked his police car in front of the affected person's direction of travel, prompting him to stop.

The affected person then turned and took a fighting stance toward the SO, with hands up and feet bladed apart. The SO again told the affected person to stop and get down on the ground. The affected person did not comply and instead, "went at" the SO. WO1's view was obscured momentarily by a passing vehicle but afterwards, he observed the SO and the affected person together in a fight.

The SO pushed the affected person away, causing him to fall to the ground and landing on his back. Continued commands to stop and quit fighting were not being obeyed. The affected person had both his hands and feet in the air and was trying to punch and kick both officers.

According to WO1, the SO deployed a baton strike at some point during the struggle to the affected person's thigh "to gain compliance" but it had no effect.

Witness officer 2 (WO2) then showed up and assisted the other officers by lying across the affected person's legs. The affected person rolled on to his left side. The SO deployed his OC spray with no effect. The officers went down to try to control him and at one point, the affected person grabbed the SO's mike and baton.

WO1 stated that he delivered a knee strike to the affected person's left rib. That eventually got him on the ground but he was face down on his hands. WO1 pried the affected person's left hand from underneath him and applied a handcuff. The SO brought the right hand to the affected person's back and handcuffs were applied to both hands.

The affected person stopped fighting; the officers rolled him over onto his left side. He began to vomit what they initially thought was blood. The affected person was put into the recovery position and EHS was requested code 3.

The ambulance arrived, assessed the affected person and then cleared him, suggesting he may have a broken thumb. WO1 put the affected person into his police vehicle and drove him to Abbotsford Regional Hospital where he received treatment.

WO1 confirmed he deployed a single knee strike to the affected person's left ribs and did not utilize his baton or OC spray.

On July 9, 2014, Witness Officer 2 (WO2) was interviewed by IIO investigators and stated that on July 5, 2014, at approximately 12:00 p.m., he left the office in a marked patrol car and headed south on Clearbrook Road. While driving south, he noticed a marked police car with its overhead lights flashing around the 2100 block. WO2 saw the SO speaking with the affected

person; WO2 stopped to ensure everything was all right. The affected person seemed quite jovial. WO2 returned to his patrol car and continued on his way.

Shortly thereafter, WO2 heard over his police radio the word “fight” as well as what sounded like “code three.” When he arrived back at the scene, WO2 observed the SO and WO1 struggling with the affected person on the sidewalk.

WO2 observed the affected person face down on the sidewalk or on his knees. WO2 took control of his upper legs until the affected person was able to be handcuffed. During that time, the affected person was struggling. WO2 heard one of the officers tell him to put his hands behind his back. At one point, WO2 believes pepper spray was deployed although he could not smell or taste it. There were a couple of knee strikes to the affected person’s right side, although WO2 did not know which officer made contact.

WO2 recalled that the affected person was “belly down” on the sidewalk with WO1 squatting at his left side and the SO situated at his right side. WO2 did not notice any injuries to the affected person and did not recall any complaints made by him.

Witness Officer 3 (WO3) was interviewed by IIO investigators on July 14, 2014 and recalled that WO1 and the SO were conducting an assault investigation in the area of Peardonville Road and Clearbrook Road. WO3 heard the SO come over the air saying he needed help and was in a fight. WO3 knew that just prior to this radio transmission, the SO was conducting a street check of an individual who was a suspect in WO1’s assault investigation.

WO3 stated that he responded and when he arrived, observed three officers and the affected person on the east side of Clearbrook Road. The affected person was lying face down on the sidewalk. WO2 was trying to control the affected person’s legs by lying across them, while the SO and WO1 were trying to get handcuffs on him.

WO1 was on the affected person’s left side while the SO was on the right side. WO3 helped control the affected person’s body by placing his knee on his back. At this point, one handcuff was on his left hand. Within seconds of WO3’s arrival, the officers were able to pry his right hand free and apply the handcuffs.

WO3 stated that he could smell the odor of OC spray, and looking at the affected person, observed he had the symptoms of being sprayed – his eyes were closed and he began to vomit dark brown bile. The SO called for an ambulance (Code 3) and the affected person was placed into the recovery position.

When the ambulance arrived, WO3 notified paramedics that the affected person had abrasions to his arms, that OC spray had been deployed and based on what he had been told, had been struck more than once with a police baton.

Paramedics decontaminated the affected person's face for the OC spray. After being treated at hospital, the affected person was subsequently apprehended under the Mental Health Act.

WO3 confirmed that at the time of his arrival, he heard commands for the affected person to release his hand so that handcuffs could be applied. WO3 clarified that during the handcuffing process, the affected person's right hand was pulled on and brought to his back to be handcuffed - "he was overpowered." WO3 described the affected person as "actively resisting."

WO3 advised that APD vehicles are not equipped with video cameras.

Subject Officer (SO)

On July 7, 2014, the SO filed a detailed police report relating to his arrest of the affected person. On July 14, 2014, he submitted to a voluntary interview with IIO investigators.

On July 5, 2014, the SO was in uniform, driving a marked police vehicle. At 1204 hours, WO1 was dispatched to an assault on Clearbrook Road. The SO was on patrol in the area and received a description over the radio of the alleged suspect. WO1 later radioed that the suspect matched the description of the affected person.

The SO acknowledged that he had dealt with the affected person on several previous occasions, and was of the belief he was mentally unstable with violent tendencies.

The SO stated that he was driving south on Clearbrook Road when he observed a man matching the description of the suspect as well as confirming that it was the affected person. The SO activated his police lights, then pulled his vehicle over and approached the affected person.

The SO stated that he attempted to engage in a friendly conversation, noting that the affected person did not stop and continued walking south on Clearbrook. After a brief dialogue, the SO asked the affected person what happened regarding the alleged assault. The affected person became angry, explaining to the SO that he thought he saw a family member walking with a strange male. The affected person denied any physical confrontation with the male. According to the SO, the affected person was rambling and somewhat incoherent.

The SO stated that at one point, the affected person became very agitated and started making comments about cannibalism. This led the SO to ask the affected person about any mental health issues or drug or alcohol usage. The affected person denied having any mental health problems and denied using drugs.

By this time, WO2 arrived in his police vehicle, got out and had a short conversation with the affected person without incident. WO2 left the SO to deal with the affected person.

The SO and the affected person continued the discussion with the affected person displaying up and down mood swings. When the SO formally advised the affected person that he would be arrested, the affected person continued to walk south on Clearbrook.

The SO was in the process of reading the affected person "the Official Warning" when the affected person leapt into traffic. He turned towards the SO and took a fighting position. The SO described the affected person's posture and disposition as extremely serious and that he was foaming at the mouth. The SO radioed indicating "fight" and requested Code 3 cover.

According to the SO, he extended his police baton, held it up to his side and told the affected person to get down on the ground. Instead, the affected person walked directly towards the SO, lunged and tried to strike him in the face with a closed fist. The SO stated that he avoided the punch and struck the affected person with at least two baton strikes to his upper left thigh. The affected person attempted to block the baton strikes with his arm / hand while also trying to grab the SO. The SO stated he was then intent on arresting the affected person for assaulting a police officer.

According to the SO, the affected person disengaged from the fight and ran towards the meridian in the middle of Clearbrook Road. He then stopped, turned and walked towards the SO. The SO continued to issue commands for the affected person to get on the ground. Once again, the affected person spun around and ran north on Clearbrook, crossing diagonally to the east side of the street.

The SO began a foot pursuit which lasted approximately 300 feet. He caught up quickly but before he made contact, the affected person turned around and bladed his stance. The SO decided to deploy a "bear tackle," aiming to direct the affected person to the east side of the sidewalk and away from traffic.

As the SO made contact, the affected person delivered a closed fist punch to the SO's left eye. During this exchange, the SO was able to force the affected person off balance with him falling near a bush and pole on the sidewalk.

The affected person was flailing at the SO and was throwing punches. The SO got to his feet and delivered another baton strike to the affected person's upper thigh. Another attempted baton strike resulted in the affected person cushioning the blow and trapping the baton with his left arm. The affected person grabbed the SO's baton with his hand.

In an attempt to get his baton back, the SO deployed one leg strike to the affected person's torso, described as a kick to the stomach. The SO deployed several short bursts of his OC spray at the affected person with no apparent effect. The SO believed his OC spray malfunctioned.

According to the SO, at this time, WO1 arrived on scene and began to assist. The SO used his knees against the affected person's arm to regain control of his baton. The affected person was on his stomach and had put his hands underneath his waistband. WO1 was eventually able to

gain control of one of his hands and place it into handcuffs, while the SO was able to gain control of the other hand. Both hands were then handcuffed.

At approximately the same time, WO2 arrived and took control of the affected person's upper legs and torso. After gaining control of the affected person, the SO determined the affected person needed medical attention.

He was described as "having a mental health issue", was white in the face with blotchy skin and began to vomit a dark substance. The SO radioed that the affected person was suffering from "hyper maniac" meaning excited delirium and requested EHS (Emergency Medical Services) Code 3.

The officers placed the affected person into the recovery position. His demeanour changed at that point becoming cooperative and jovial. When asked by officers if he had any injuries or pain, the affected person only smirked.

The SO indicated that he had investigated the affected person several times over the past three years. He clarified and estimated deploying approximately four-six baton strikes, all directed towards the affected person's upper left thigh. The SO believed that the injury to the affected person's left hand was likely caused by a baton strike during the initial interaction on Clearbrook Road.

The Subject Officer's interview statement was consistent with his detailed police report.

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 that an officer may have committed an offence, then I must forward a report to Crown Counsel. There are a number of legal issues to be considered in this case in order to determine whether a report to Crown Counsel must be made.

Pursuant to the *Criminal Code*, police officers are permitted to use reasonable force against members of the public. As such, I must consider the involved officers' culpability pursuant to the following *Criminal Code* provisions:

- 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).

In this case, the issue at hand is whether any of the involved officers' actions in striking the affected person with a baton, hitting and kicking him and using O.C. spray were reasonable and appropriate use of force options given the totality of the circumstances.

ANALYSIS

In this case, the subject officer received information from Witness Officer 1 (WO1) which required him to detain the affected person. All of the available evidence supports the conclusion that the affected person refused to be detained and aggressively resisted arrest.

The only witness who identified any potential use of excessive force was Civilian Witness 5 (CW5) who believed that the subject officer hit the affected person with his baton, as the affected person was attempting to flee. According to CW5: "That's how he (got) the guy to hit the ground, (because) he had hit him from behind while he was running. I don't know if it was the back of the head or the back or whatever but he hit him from behind and that guy went right down."

If the subject officer had hit the affected person with a baton from behind in the back of the head, such a use of force would likely have been excessive. Medical records, however, did not indicate any injury to the affected person that would have been consistent with such a use of force. In addition, CW5 was not only unsure of where the affected person was hit but was also the only witness who suggested that he was hit from behind while in flight.

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 duties, however, is granted authority under 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.

Given the general consistency of the witness statements and the lack of any objective evidence that would appear to support a conclusion that any excessive force was used, I find no reason

to conclude that the subject officer, or any other officer, committed any offence while taking the affected person into custody.

Although the affected person has alleged that he resisted only because he believed he was going to be attacked by the subject officer, there is no reason to believe that his perception in that regard was a reasonable one. In addition, the affected person's act of resisting gave the subject officer appropriate cause to use whatever force was reasonably necessary to overcome the affected person's resistance.

In this case, the officers were faced with a non-compliant suspect who attempted to flee a lawful detention and who aggressively resisted arrest. The use of the baton, hand and leg strikes and O.C. spray do not appear to have been unreasonable or gratuitous under these circumstances. The fact that any of these force options may have caused substantial harm to the affected person's hand is not sufficient in itself to conclude that the force that was used was unreasonable.

CONCLUSION AND DECISION

Since there is no reason to believe that the subject officer may have committed any offence in this case, the IIO file will not be referred to Crown Counsel for consideration of possible charges. Due to the nature of injuries sustained by the affected person, an automatic review of the use of force in this incident will be conducted and monitored, and reviewed by the Office of the Police Complaint Commissioner.

Prepared for Public Release this 28th day of November, 2014

Richard Rosenthal,
Chief Civilian Director
Independent Investigations Office