



PUBLIC REPORT OF THE

CHIEF CIVILIAN DIRECTOR

Regarding the November 7, 2013 serious
injury of an adult male involving the
Vancouver Police Department

IIO 2014-000041

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 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 Counsel.

This is a public report related to the investigation into the serious harm of an adult male that occurred on November 7, 2013, in Vancouver. The affected person alleged that his forearm was fractured as the result of use of force by officers in the employ of the Vancouver Police Department (VPD).

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. I will not be disclosing names of any persons involved.

The affected person was 35 years old at the time of his injury.

NOTIFICATION AND JURISDICTION DECISION

On November 8, 2013, the VPD notified the Office of the Police Complaint Commissioner (OPCC) regarding a “reportable injury” to the affected person.¹ On December 17, 2013, after his discharge from hospital, the OPCC received a formal complaint from the affected person wherein he alleged that police had fractured his forearm. Given that the alleged injury potentially fell within the definition of “serious harm,” the OPCC subsequently notified the IIO about the incident (on March 7, 2014). After reviewing

¹ Municipal Departments are required to report all incidents where an individual in the care or custody of the police suffers a “**reportable injury**” that requires emergency care by a medical practitioner and transfer to a hospital. (Source: Office of the Police Complaints Commissioner of British Columbia).

the information, and concluding that the affected person alleged that he had suffered injuries that may have met the *Police Act* definition of “serious harm,” IIO jurisdiction was sustained. It does not appear that the VPD was aware of the nature of the alleged injuries at the time of the affected person’s release from custody such that VPD would have been aware that a notification to the IIO needed to be made.

EVIDENCE

IIO investigators obtained police dispatch records, radio transmissions, PRIME data, and medical records. A civilian witness and police witnesses also provided information pertinent to the investigation.

GENERAL TIMELINE

The following police radio transmissions were made relating to the incident:

7:31:51 p.m.	“We’re dealing with a – with an EDP [Emotionally Disturbed Person] male, East Hastings. We need containment to the west of Carrall immediately.”
7:32:27 p.m.	“I’m pretty sure just from my ID this guy is a guy who wants suicide by police.”
7:32:53 p.m.	“We’re in a bit of a foot pursuit now westbound on Hastings.”
7:33:04 p.m.	“He is in the middle of the street.”
7:33:24 p.m.	“Couldn’t see anything in his hands.”
7:33:29 p.m.	“Across from Save on Meats looks like three males have him on the ground.”
7:33:41 p.m.	“Not in custody yet. Still struggling.”
7:34:13 p.m.	“On scene and in custody. Send EHS [paramedics]. Conscious white male, head injury and arm injury.”

Paramedics arrived at 7:38 p.m. and treated the affected person at the scene. They transported the affected person to a local hospital, where he arrived at 8:03 p.m.

AFFECTED PERSON

IIO investigators briefly spoke with the affected person prior to a court appearance. He stated that his broken arm was not as bad as the concussion he had received from police in an earlier incident. Although he agreed to follow up with IIO investigators at a later date, no additional contact was made.

SUBJECT OFFICERS

All three Subject Officers provided the IIO with voluntary written statements.

In his written Statement, Subject Officer 1 reported that on the day of the incident, he was on duty with the “Beat Enforcement Team,” assigned to the Downtown Eastside. Subject Officer 1 was standing with the Witness Officer, interacting with local pedestrians.

Subject Officer 1 heard yelling that sounded increasingly aggressive. He observed the affected person yelling and pushing a shopping cart along the sidewalk. People were quickly moving out of his way.

Approximately 10 metres away from the officers, the affected person kicked a number of large garbage bins into the street. The garbage bins flew into traffic and the garbage spilled out of them. Subject Officer 1 noted that the affected person appeared to be in “a heightened state of mind.”

Subject Officer 1 stated that the affected person turned towards himself and the Witness Officer, his body very tense, and that he “appeared to be in some sort of rage.” Subject Officer 1 observed the affected person staring at the officers before he yelled “Kill me again. Come and get me.” According to Subject Officer 1’s statement, he believed the affected person was in a mental health crisis, a drug induced rage or both and that he needed immediate intervention to keep himself and others safe. Subject Officer 1 did not know if the affected person was armed, however believed he could be apprehended under the *Mental Health Act*.

As the officers moved towards the affected person, Subject Officer 1 heard the Witness Officer refer to him as the “Cambie Street Bridge guy”. Subject Officer 1 explained that two weeks earlier, police had circulated a safety bulletin alerting officers to be aware that the affected person had followed an off duty police officer and tried to coax him to a fight on the Cambie Street Bridge.

Subject Officer 1 stated that when officers were about 10 feet away, the affected person began walking backwards and took up a lowered stance as if he was preparing to react. He used a shopping cart to block the officers, and after a few seconds, he turned and ran into traffic. Officers pursued him. The affected person changed direction and started running east, toward Subject Officer 3.

Subject Officer 1 observed the affected person charge at Subject Officer 3. Subject Officer 3 tackled him and he fell backwards. Subject Officer 1 grabbed the affected person and both fell to the ground. Subject Officer 1 stated that as he and the affected person fell to the ground, the affected person ended up mostly on top of him. Subject Officer 1 stated that he felt at risk as he was unable to free himself from the affected person’s body weight. He took control of the affected person’s head while the other officers took the affected person into custody. Subject Officer 1 stated that Subject Officer 2 and Subject Officer 3 took control of the affected person’s arms; however the affected person continued to fight with them as the officers tried to take control of him.

Subject Officer 1 reported that the struggle continued for a minute before the affected person was handcuffed. Once the affected person was handcuffed, Subject Officer 1 was able to get out from under him. Subject Officer 1 and Subject Officer 3 subsequently took the affected person to a local hospital for assessment under the *Mental Health Act*. While waiting in the triage section of the hospital, the affected person reportedly told the officers that his plan had been to tackle Subject Officer 3, but failed.

In his statement, Subject Officer 2 reported that he was on duty on the day of the incident, in the area of Subject Officer 3 and the Witness Officer. Subject Officer 2 was sitting in a marked police vehicle when he heard a male scream, and saw the affected person approximately 30 metres to the west. The affected person was on the sidewalk, facing three officers, shouting angrily at them. Subject Officer 2 observed the affected person kicking several garbage bins into the street.

Subject Officer 2 joined the officers who were near the affected person. He observed the affected person plant his feet on the ground “squaring towards” the officers. Subject Officer 2 stated that the affected person then leaned forward and screamed “What are you gonna do? Shoot me? Come on, kill me. You already killed me once. Kill me again.”

Subject Officer 2 reported that the Witness Officer told officers "This is the guy from the Cambie Street Bridge." The Witness Officer relayed the information over the radio and asked for a police vehicle to block off the west side of the area. Subject Officer 2 recalled seeing an officer safety bulletin regarding an incident with a male on the Cambie Street Bridge threatening to kill police officers.

The affected person had a shopping cart and began to move away from the officers. Police called out for him to stop, that they needed to speak with him. Subject Officer 2 observed Subject Officer 3 drive his police vehicle up onto the sidewalk. The affected person pushed the shopping cart towards Subject Officer 2 and ran across the street. Subject Officer 2 reported that Subject Officer 3 had exited his police vehicle and was trying to block the affected person. The affected person avoided Subject Officer 3 and changed direction. Subject Officer 2 stated that he believed the affected person was suffering from either an adverse reaction to a narcotic or mental health distress. Subject Officer 2 reported that he believed that if not taken into custody, it was highly probable that the affected person would cause harm to himself or endanger others. Subject Officer 2 reported that he and Subject Officer 1 started running after the affected person.

According to Subject Officer 2, the affected person was running westbound on the sidewalk when Subject Officer 2 became concerned that he would run into traffic. Subject Officer 2 and the other officers were running on the street and on the sidewalk when Subject Officer 3 was able to block the affected person. Subject Officer 2 observed Subject Officer 1 and Subject Officer 3 tackle the affected person to the ground between two parked cars.

Subject Officer 2 joined Subject Officer 1 and Subject Officer 3, who were attempting to gain control of the affected person. He observed Subject Officer 3 having control of the affected person's left arm and Subject Officer 1 trying to secure the right arm. Subject Officer 2 tried to grab the affected person's legs. He stated, "he was kicking violently and I was unable to grab on...I punched [him] on his right buttock. His kicking and flailing slowed down to a degree where I was able to put my body weight on his legs."

Subject Officer 2 gained control of the affected person's right arm and applied handcuffs. He asked Subject Officer 3 to give him the affected person's left arm. Subject Officer 3 responded "Careful, this one might be broken." The affected person had stopped struggling, and Subject Officer 2 handcuffed the left arm. Subject Officer 2 reported that as a result of the warning from Subject Officer 3, he handcuffed the affected person's left arm slowly and carefully.

In his statement, Subject Officer 3 reported that he was on duty in the area when he heard the Witness Officer broadcast that officers were dealing with an emotionally disturbed person. The Witness Officer was requesting containment to the west. Subject Officer 3 drove his marked police vehicle past the Witness Officer and the affected person, who was kicking shopping carts and yelling. Subject Officer 3 parked on the sidewalk to prevent pedestrians from getting close.

As Subject Officer 3 got out of his vehicle, he saw the affected person run out into the middle of East Hastings Street yelling, "Come get me...let's go." Subject Officer 3 ran parallel to the affected person, as Subject Officer 1 and Subject Officer 2 ran behind him.

The affected person ran behind a car parked on the south side of West Hastings Street. He raised his hands up into striking position with closed fists and ran toward Subject Officer 3. Subject Officer 3 stated he ran directly at the affected person, hitting him in the upper body forcing him to fall backwards

onto the street. As the affected person was falling, Subject Officer 1 grabbed his upper body and turned him 180 degrees. Subject Officer 3 followed the affected person to the ground and attempted to take control of his left arm. Subject Officer 3 indicated that once they were on the ground, the affected person attempted to free his arm and to get on his back. Subject Officer 1 and Subject Officer 2 then attempted to immobilize him.

Subject Officer 3 reported he secured the affected person's left shoulder and attempted to secure his arm holding his left wrist. He told the affected person they were the police, to stop resisting and to show his hands. Subject Officer 3 stated he felt the affected person's left arm "pop" at the elbow and the arm went limp, at which time the affected person stopped resisting. Subject Officer 2 secured the affected person's right arm in a handcuff. Subject Officer 3 advised Subject Officer 2 that the affected person may have a broken left arm, so as to avoid potential further injury.

Subject Officer 3 asked the affected person if he was hurt in any way. The affected person replied "My left arm is broken." Subject Officer 3 requested paramedics attend.

The affected person was transported to hospital.

At the hospital, Subject Officer 3 asked the paramedics about any injuries to the affected person. They indicated they did not believe his arm was injured. Subject Officer 3 also raised concern with medical staff at the hospital. They advised they had no concerns about his arm.

WITNESS OFFICER

The Witness Officer, a police supervisor, was interviewed by IIO investigators. The Witness Officer stated he was with Subject Officer 1 and Subject Officer 2 on East Hastings Street when he observed the affected person screaming, flailing his arms and body and kicking objects. He recalled the area was moderately busy with pedestrians and that he observed people moving out of the affected person's way.

Approximately 15 metres away from the officers, the affected person kicked over garbage cans. The affected person continued to yell and subsequently grabbed a shopping cart. The Witness Officer and the other officers started to walk slowly toward the affected person, who yelled, "What are you going to do? Are you going to try to kill me like last time...come on and do it."

When the Witness Officer saw the affected person, he recognized him from a recent officer safety bulletin and alerted Subject Officer 1 and Subject Officer 2. According to the Witness Officer, this increased his level of concern for the safety of the affected person, the officers and passersby. He broadcasted over the radio to make a plan for containment. The Witness Officer stated that he believed the affected person was in an altered state, due to drugs or mental health.

According to the Witness Officer, the affected person took up a fighting stance and continued to yell at the officers. The Witness Officer told him to stop so they could speak to him. The affected person pushed the shopping cart towards the officers and ran out into the street. The officers chased after the affected person and a marked police vehicle attempted to block his path. The Witness Officer believed Subject Officer 3 arrived in this vehicle, then exited the vehicle and joined in the foot pursuit.

The Witness Officer continued to broadcast over the radio and fell behind the pursuit. The officers followed the affected person across Carrall Street into the 100 block of West Hastings Street, between two parked cars. The Witness Officer stated, "In between those parked cars I did see [the affected person] turn and stand and stop his actual flight. He turned directly towards [Subject Officer 3]. [Subject Officer 3] was very close and in my opinion, because of his proximity and distance, the reactionary gap left him no choice [but] to actually go physical with [the affected person]; and to what I observed tackle him to the ground between the vehicles. He did not have the time to use any other options."

The Witness Officer described the tackle as a football style of tackle. Subject Officer 1 and Subject Officer 2 were there helping Subject Officer 3 in the struggle. The Witness Officer took control of the affected person's ankles while the other officers applied handcuffs. Subject Officer 2 and Subject Officer 3 had the affected person's arms, and the Witness Officer did not hear or see any obvious indication of injury to the affected person's arm.

The Witness Officer recalled the affected person complained that his arm was injured. He did not recall anything about a head injury. He stated the route of the foot pursuit was over a distance of 150 metres and that it took less than a minute. He indicated he was the senior officer at the scene and that all officers were in uniform.

CIVILIAN WITNESSES

Civilian Witness 1 was in the area when the affected person came into contact with the officers.

Civilian Witness 1 recalled that she was parked alone in her vehicle on East Hastings Street between Abbott and Carrall Streets. She was about to pull out onto the street, when she "Saw a man run diagonally across the street but kind of slowly and like dodging." Civilian Witness 1 initially thought a group of people were running, then realized it was two people chasing one person. She recalled "They managed to corner him and almost tackle him into the back of my car. So, I actually could not see very much because of my angle."

Civilian Witness 1 saw people to her left, running west, but towards her car. She stated that they [the men] were "jockeying around trying to corner him." She heard the affected person and possibly the officers hit her car and then recalled the three people being on the ground. She heard dialogue and recalled feeling unable to leave because of her positioning.

Civilian Witness 1 remained in her vehicle for 10-15 minutes. She could not hear what the officers were saying, but could hear the affected person yelling, "I think you broke my arm...please get off me... I don't want to go to the hospital." She did not witness the affected person being handcuffed but recalled an officer on top of him and the affected person saying he would surrender.

Civilian Witness 2 is a BC Ambulance Service paramedic.

Civilian Witness 2 recalled attending to the affected person as part of a two person crew on November 7, 2013. She stated, "The only reason I remember this guy was that he was so aggressive and so firm in his convictions that he was being abused."

When Civilian Witness 2 and her partner arrived, they saw a handcuffed male lying on the sidewalk. She described him as loud, and hollering that people wanted to kill him.

According to Civilian Witness 2, there were at least six uniformed officers and two non-uniformed officers at the scene. When she asked the group what happened, she was told the man was acting aggressive, screaming, smashing things with a shopping cart and threatening people. An officer advised that in order to gain control, they had to “take him down.”

Civilian Witness 2 did not recall officers mentioning any concerns about possible injuries to the affected person other than perhaps a bump to the head. She stated two officers helped steady the affected person as he stood up and that he tried to pull away. The affected person appeared delusional; he repeatedly mentioned his lawyer’s name and said that police and medical staff were trying to kill him.

Civilian Witness 2 stated she palpated the affected person’s clothed arms, but found no injuries and elicited no pain reaction. The affected person had what appeared to be a new, very small bump to the back of the head.

In preparation for transport to hospital, Civilian Witness 2 wanted the affected person to lie on his side on the gurney, but he was adamant he would only lie on his back (with his handcuffed arms beneath him). Civilian Witness 2 used shoulder-waist-knee straps to restrain the affected person. While in the ambulance, the affected person told her he had consumed alcohol and crack cocaine approximately five and a half hours prior.

Civilian Witness 3 is also a BC Ambulance Service paramedic.

On November 7, 2013, Civilian Witness 3 was part of a two person Basic Life Support crew. He drove the ambulance to the incident with the affected person in the Downtown Eastside. He acknowledged having a poor memory of the incident. Civilian Witness 3 recalled that when they arrived at the call, there were more than two police vehicles and more than four police officers.

Civilian Witness 3 stated that the affected person was positioned between two police cars on the south side of Hastings Street. He described the affected person as on the ground, in custody and in an agitated state.

Civilian Witness 3 couldn’t remember if the affected person was handcuffed. He recalled that the affected person was using profanity, referencing past experiences with police and that he repeatedly mentioned the name of a lawyer.

Civilian Witness 3 stated that because of his large physical size and dark blue BC Ambulance Service uniform, he has been perceived as a police officer in the past, so he did not engage the affected person at that time. He could not tell if intoxication or mental illness played a role in the affected person’s behavior, but stated “there was definitely something.”

BC AMBULANCE SERVICE CREW REPORT

The IIO obtained the Crew Report completed by one of the paramedics. In the report, it is noted that the affected person admitted to consuming beer and crack cocaine five and a half hours earlier. It was also noted that the affected person was generally healthy.

In the report, the paramedic documented that the affected person was delusional and claimed police and hospital staff wanted to harm him.

HOSPITAL RECORDS

The affected person was admitted to hospital via ambulance immediately following the incident. He was committed under section 28 of the *Mental Health Act* and remained in hospital until December 17, 2013. The affected person provided informed consent to the IIO that allowed investigators to review records related to his admission on November 7, 2013.

According to the records, at 8:55 p.m., the affected person complained of pain in his right arm and left pinky finger "after falling while being apprehended." The notes indicated the affected person remained combative and agitated and was given medication and restrained.

His discharge summary listed paranoid behaviour as the presenting complaint with psychosis as the primary discharge diagnosis. There was reference made to an x-ray of the affected person's left elbow five days after admission, however as the consent to records were specific to November 7 only, the IIO was not able to confirm the nature of any injury.

ISSUE

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. There are a number of legal issues to be considered 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. 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

Based on the available evidence in this case, there is no reason to believe that any officer may have committed any offence in taking the affected person into custody.

Police officers have a duty protect life and property. If there was reason to believe that the affected person was about to harm himself or others, or destroy other people's property, the officers had an obligation to intervene.

The affected person wrote in his complaint "I was having a mental health incident..." This statement appears to confirm the observations made by the officers. They said the affected person asked them to kill him. Ambulance attendants heard similar remarks afterwards. The officers stated they saw the affected person kick garbage cans onto the street and run on the road. As such, it appears that the officers had good reason to fear that he would harm himself or others, or damage property.

Section 28 of the *Mental Health Act* provides:

- (1) A police officer or constable may apprehend and immediately take a person to a physician for examination if satisfied from personal observations, or information received, that the person
 - (a) is acting in a manner likely to endanger that person's own safety or the safety of others, and
 - (b) is apparently a person with a mental disorder.

The affected person also wrote in his complaint that he fled from police; a representation which corroborated the statements made by the involved officers. If the officers had let him run away and harm befall him, they would have been open to criticism for failing to serve and protect a needy member of the public.

Section 25 of the Criminal Code permits police to use as much force as necessary to do what the law authorizes or requires them to do. Section 26 holds them accountable if they use unnecessary force.²

In the affected person's brief complaint to the OPCC, he indicated that he tripped, and police broke his arm when they "jumped" on him to hold him down and handcuff him. His complaint neither alleged nor absolved the officers of malice or excessive force.

The police officers' version of the event differs somewhat from the affected person's complaint. According to their version, the affected person provoked an encounter with officers, and then attempted to flee. Some officers said Subject Officer 3 tackled the affected person. Subject Officer 3

² In the Supreme Court of Canada decision *R. v. Nasogaluak*, 2010 SCC 6, Lebel J. observed:

[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 CanLII 352 (BC CA), (1981), 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]

said that he and the affected person ran into each other. Regardless, the two collided and the affected person was then taken down to the ground.

As per Subject Officer 3's statement, it appears that the affected person's forearm may have been fractured while he was being handcuffed. Although handcuffing would not normally be expected to cause such an injury, there is no evidence to suggest that malice or other improper purposes affected any of the officers.

Because the officers had ample reason to apply force, and because no evidence suggests that they applied more force than was necessary given the totality of the circumstances, I find no reason to believe that they committed any offence.

DECISION

Based on the evidence obtained during the course of this investigation, I do not consider that any police officer may have committed an offence in relation to the affected person's injury. As such, the IIO file will not be referred to Crown Counsel for consideration of possible charges.

Prepared for release 30th day of May, 2014 by

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Independent Investigations Office of BC