



PUBLIC REPORT OF THE
CHIEF CIVILIAN DIRECTOR

Regarding the December 14, 2013 serious
injury of an adult male involving the
Vancouver Police Department in Vancouver,
British Columbia

IIO 2013-000068

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 December 14, 2013, in Vancouver. The affected person sustained serious injuries while being taken into custody by 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 66 years old at the time of his injury.

NOTIFICATION AND JURISDICTION DECISION

On December 14, 2013, at 6:14 p.m., the IIO was notified that an adult male (the affected person) had sustained multiple injuries while being taken into custody by officers of the Vancouver Police Department. His injuries included fractured ribs, a small laceration to the kidney and a dislocated shoulder. Jurisdiction was asserted to determine whether the affected person’s injuries occurred as a result of any action (or failure to act) on the part of any police officer in the province of British Columbia.

EVIDENCE CONSIDERED

IIO investigators interviewed five civilian witnesses, three of whom were security guards engaged with the affected person prior to officers attending the scene. Three subject officers, all members of the Vancouver Police Department agreed to be interviewed as well as the affected person. Police call logs and radio transmissions were obtained, as well as medical records, police training records and security video.

911 Call

At 2:50 p.m., a security guard made a 911 call to VPD Dispatch. Two minutes later, Dispatch radioed an "assault in progress involving security guards". Two additional minutes later, an officer broadcast "one in custody". **Transcript of 911 Call**

During just over one minute between 2:53:52 p.m., and 2:54:27 p.m., the following was recorded:

- Officer: "Hands. Give me your hands."
- Dispatcher: "Okay, is that guy resisting?"
- Caller: (security guard): "Yeah."
- Dispatcher: "Yeah, he's resisting the police?"
- Caller: "Yeah, he's resisting with the police too. Now there's undercover cops there too. He's resisting with them."
- Officer: "Get up! Give us your hands!"
- Dispatcher: "Are they fighting?"
- Caller: "Yeah."
- Dispatcher: "they're fighting the police?"
- Caller: "Yeah. ...He's not giving his hands to them."
- Dispatcher: "He's not giving his hands to the police?"
- Caller: "Yeah. Yeah. Yeah. ...He's resisting with them."
- Officer: "Hands. Give us your hands."
- Caller: "He's still resisting with them."
- Officer: "I said give me your..."

CIVILIAN WITNESSES

Five civilian witnesses were identified as having been at or near the scene of the incident. They were interviewed by IIO investigators.

Civilian Witness 1 (CW1), (an on-duty security guard) was interviewed by IIO investigators. CW1 stated that on December 14, 2013 at 2:54 p.m. he was in his security uniform at Vancouver City Hall when a male (the affected person) punched him and ran away. CW1 stated that he gave chase and caught the affected person. The affected person fell on his left side with the left side of his face hitting concrete. He got up and started to run again. He slipped on a grassy area allowing CW1 to hold onto him. CW1 stated that he physically held the affected person down while he waited for police.

CW1 stated that when the three officers arrived, the affected person was in a face-down position. He refused the officers' verbal commands to place his hands behind his back. CW1 stated that he observed the plainclothes officers knee the affected person. Officers continued to order the affected person to

put his hands behind his back. CW1 stated that after approximately three minutes, the affected person was handcuffed, seated upright with no obvious signs of injury. CW1 noted another person close by who was attempting to video the incident and who appeared to be acting aggressively towards the police.

Civilian Witness 2 (CW2), (an off duty security guard) was interviewed by IIO investigators. At the time of the incident, he was off duty and wearing civilian clothing. He saw the initial conversation involving CW1 and the affected person and he saw the affected person strike CW1 in the face. CW2 participated in the chase of the affected person and saw the subsequent actions of the responding police.

CW2 stated that he called 911 at 2:50 p.m., requesting the attendance of the police. CW2 was present when the officers arrived, and described how the affected person kept his hands underneath him resisting the officer's attempts to handcuff him. The officers were yelling "bring your hands on your back". He had remained on the phone with the 911 operator and reported that the affected person was resisting and that police had not managed to handcuff him.

According to CW2, "somebody's shoes (were) like hitting on the left side near the ribs" but that the affected person kept his hands under him. He did not observe any other strikes to the affected person.

CW2 was interviewed again and in his statement, he suggested that the officer who kicked the affected person was SO3.

Civilian Witness 3 (CW3), (an off duty security guard) was interviewed by IIO investigators. CW3 was just about to start his shift. He observed the commotion on the grass and saw police officers holding the affected person, instructing him to stop resisting and to show them his hands. "They were trying to see if they could get an opening, but (the affected person) was packed in pretty tight. From what I could tell, they didn't get a chance to find an opening". He did not see any other use of force.

Civilian Witness 4 (CW4) was interviewed by IIO investigators. CW4 was working in the immediate area when she saw uniformed security guards holding a man face down on the grass telling him not to move. Thinking the man was ill, CW4 asked the security guards if they needed first aid. They responded that they did not, but they asked her to summon additional guards.

CW4 stated she observed the arrival of two police officers who physically held the affected person down and applied three or four knee strikes. She also heard officers commanding the affected person to give them his hands multiple times. She recalled the knee strikes as being intermittent "like knee him three or four times, tell him give me your hands, three or four more times...I watched the struggle to get the hands out more than I saw the knee, but it looked pretty brutal in my mind."

CW4 stated the officers used their hands to pin the affected person down. She knew they were police officers because of the unmarked car they got out of. She looked away for a few seconds and when she looked back, the affected person was still and the police were taking his hands.

Civilian Witness 5 (CW5) was interviewed by IIO investigators. He stated he was walking on the street and saw two police officers jump out of their vehicle and start dealing with a man who was being held down on the ground by two other males. He recalled the affected person was on the ground with his hands underneath his body. He stated the officers were kneeling on the ground and using one knee to deliver knee strikes. He stated each officer delivered about six knee strikes and only used their knees. He recalled the affected person was not struggling "he was not being belligerent whatsoever. And these

chaps were like, they were giving him head shots with their knees. They were giving them into the ribs and they were going for points of pain”.

CW5 did not hear police issue commands and stated that the scuffle ended when police rolled the affected person over. He said he had attempted to video the incident with his phone but was unable to record the incident. He allowed both police and IIO investigators to examine his phone however no photographs or videos were found.

SUBJECT OFFICERS

All three Subject Officers agreed to submit to voluntary interviews with IIO investigators.

Subject Officer 1 (SO1) was interviewed by IIO investigators. SO1 stated he was on patrol in full uniform when at 2:51 p.m. he responded to a call that a City Hall security guard had been assaulted. Upon arrival, SO1 observed two males who appeared to be security guards and who were having difficulty holding a male down on the grass.

As SO1 approached, the affected person was prone on the ground. One security guard was standing near the affected person’s head and the other was on the phone standing near the affected person’s left side. There was blood on one of the security guard’s hands.

SO1 stated that as he approached, “I announced in a clear loud voice, police, stop resisting, show me your hands”. He recalled the affected person said “no”. SO1 repeated “Show me your hands and stop resisting.”

SO1 reported that the affected person continued to keep his arms underneath his body. He noticed a small sheath on the affected person’s left hip, containing what appeared to be a small multi-tool hammer. SO1 considered this to be a potential weapon and decided that, as it posed a threat, the affected person should be taken into custody. SO1 stated that he attempted to pull the affected person’s right arm from under his body, but was unsuccessful. He continued to order the affected person to remove his hands; however the affected person did not comply.

SO1 stated that Subject Officer 2 (SO2) and Subject Officer 3 (SO3), both in plainclothes, arrived five to ten seconds after he did. SO3 went to the affected person’s left side and SO2 to his right. SO1 informed them that the affected person was not obeying commands and was carrying a potential weapon on his hip.

SO1 stated, “Because he (affected person) wasn’t listening to dialogue and my inability to remove his arms, I completed two knee strikes using my left knee to his right upper thigh area.”

The two strikes had no effect however. SO1 recalled seeing SO2 complete knee strikes making contact with the affected person’s right lower back area. SO1 observed movement from the affected person’s left side, but did not know what the movement involved. Together, the three officers freed the affected person’s arms and applied handcuffs.

Subject Officer 2 was interviewed by IIO investigators. SO2 stated that on December 14, 2013, at approximately 2:53 p.m., he was working plainclothes with Subject Officer 3 (SO3) and they were driving

an unmarked vehicle. A call came in that a male had punched a City Hall security guard, and that the guard was attempting to restrain the man. SO2 stated that SO3 drove to the area where they saw SO1 struggling with the affected person.

According to SO2, the affected person was face down on the ground with his arms underneath him. His elbows were tucked into his side, and his fists were up underneath his chin. He was neither moving nor speaking and was being held down by SO1's bodyweight.

SO2 did not recall where SO1 or the security guards were positioned, but noted that he went to the affected person's right side and SO3 went to the affected person's left. He knew the affected person had assaulted a person in authority, and was concerned that he may have had a weapon. According to SO2, his training was to assume the affected person had a weapon, and with the presence of the blood on the affected person's jacket, it appeared that a violent incident had taken place.

SO2 told the affected person to get his hands out, but he did not comply. SO2 pulled on the affected person's arm and as he was unable to move it, he applied a knee strike to the right side. According to SO2, he "paused to see if there had been any effect, and then applied another knee strike and again shouted (for him) to pull his arm out." SO3 had arrived at this point in time; SO1 told them that the affected person had a hammer.

SO2 stated "My assumption at that point was that he had a hammer underneath his body and that is why he was turtled so tightly. This kind of raised the stakes a little bit because it went from being he is assaultive to potentially lethally assaultive."

SO2 gave another knee strike, and then pulled out the affected person's left arm. At the same time, the affected person stated he was giving up.

SO2 stated that given that police presence, verbal commands and soft control had not worked, he moved to knee strikes. In addition to the knee strikes he had delivered, SO2 recalled both SO1 and SO3 delivering one each. (However, he noted that it was possible that SO3 had delivered more than one). The three officers worked to handcuff the affected person. SO2 recalled seeing a small black pouch on the affected person's belt containing a multi-tool hammer.

Subject Officer 3 was interviewed by IIO investigators. SO3 stated that on December 14, 2013, he was working with SO2, in plainclothes. The officers received a call involving an assault, which indicated that City Hall security guards were experiencing difficulty restraining the male suspect. When they arrived, SO3 saw SO1 on the ground attempting to take the affected person into custody. The affected person was "pinching his elbows into his side, sort of underneath his body and sort of what we call a turtle position".

SO3 stated that he went to the affected person's left side with SO1 and SO2 on the affected person's right. SO3 did not recall how SO2 was positioned, and believed SO1 was either squatting or kneeling. SO3 stated that he told the affected person to "give up your arms," or "stop resisting," at which point the affected person tightened up even more. SO3 stated that he tried to get the affected person's arm from under him. He told the affected person to stop resisting, and when he did not comply, SO3 delivered a knee strike.

SO3 heard an officer (believed it to be SO1) yell, "Watch out, he's got a hammer underneath him." Again, SO3 issued verbal commands to the affected person to stop resisting and to give up his arms. SO3 stated "and again, I could feel resistance on his arms... at that point, I gave him another knee, like another couple of knee strikes. I don't know if it was two or three."

SO3 recalled that the affected person was pulling his arm towards his head. He stated "At that point I gave him another couple of knee strikes." All the knee strikes probably made contact with the left upper body area. Officers were able to take control of the affected person's arm and place him in handcuffs. SO3 saw a miniature hammer-like tool in a black pouch attached to the affected person's belt, and he immediately removed it.

SO3 stated that he believed he was dealing with an assaultive, actively resistant subject. He stated that he did not kick the affected person, nor did he see anyone else kick the affected person.

INTERVIEW OF AFFECTED PERSON

IIO investigators interviewed the affected person.

The affected person stated that on December 14, 2013, he was walking away from the Vancouver City Hall when he "felt someone chasing" him. He did not look back and began to run. He stated, "When I run, three security officers come out and push me down in the lawn and beat me up."

The affected person stated two of the men were security guards, and were the men he saw at the building where he had earlier "touched" one of their faces while trying to go inside. The affected person did not know where the third guard came from. He stated that the security guards were all male, wearing similar uniforms with the word "Security" on the back.

The affected person stated that he was on his knees, with his buttocks in the air and his stomach down, though not flat on the ground. He was able to turn his head to either side. He did not know how his hands were positioned. The affected person stated that the security guards kicked him on both sides of the rib area, "at least several times" on the left side and "not more than a couple times" on the right. The affected person saw a boot when he turned his head from side to side, coinciding with the pain from the strikes.

The affected person stated that as he was being kicked, the guards were telling him not to move and to lie down. He also stated he was struggling and that when he stopped moving, the kicking stopped and he was searched. He stated that the men who kicked him were those who took his belongings, including a jacket, wallet and multi-tool he wore on the left front side of his belt. The affected person did not know if security guards or police handcuffed him.

According to the affected person, no other force was used on him, and it was only the security guards who kicked him. After his property was taken, the affected person saw two police officers arrive. One officer told him that police officers were different from security guards and insisted he go to the hospital.

VIDEO CANVASS

IIO investigators obtained security video of the doorway where the affected person and the first security guard met. The video does not show precisely what contact occurred between them. It does show the guard's head suddenly move back and his left hand move to his left ear. At that moment, the affected person turned and ran. The guard pursued him out of view of the camera.

TRAINING RECORDS

IIO investigators obtained and reviewed information from the Force Options Training Unit of the Vancouver Police Department as it relates to "the knee strike technique" as a use of force option.

"The technique that is taught at both the British Columbia Police Academy as well as during in service officer safety training days, to consider using when a subject resists (in the empty hand realm) is called the knee strike. This is performed to cause a temporary motor dysfunction (impair the muscle) as well as to initiate a mental stun (distraction). The primary target for the knee strike is the common peroneal nerve (the outside of the thigh). One of the goals of the technique is to take the subject's mind off of the upper body (often an arm lock) resistance, to allow the officers to then take the arms and reposition them for handcuffing behind the back. The technique is generally performed by the officer usually standing to the side and rear of the subject."

"This positioning allows for the officer to employ the knee strike to the preferred target of the subject's outer thigh area. The officer uses the knee to strike the target in a spearing or pendulum type of manoeuvre. The reasons for the spearing motion are to enhance the energy transfer into the common peroneal motor nerve point and thus cause the desired results. Although the desired target is the common peroneal nerve (or lateral femoral nerve/inside of the thigh), the technique is not limited to those areas. Sometimes during a dynamic encounter the technique will unintentionally land on other parts of the body due to the bio-kinetics of confrontation. An officer can also use a knee strike to target other locations on the body such as large muscle groups (shoulder, arms, torso, etc.) should that be the only target present or a situational assessment dictates that target area."

Further, "a knee strike can also be used in an assaultive subject situation such as a weapon retention scenario (head, face, neck)...Officers are taught to maximize the power into any technique for several reasons: to eliminate the need for multiple strikes...and to psychologically overwhelm the subject...to efficiently control the subject."

ISSUES

The general issue in any IIO investigation is whether a person sustained 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 subject 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 the subject officers' actions in using knee strikes that appear to have fractured two of the affected person ribs and punctured a lung were reasonable and appropriate given the totality of the circumstances.

ANALYSIS

Communications from the scene indicate that just over a minute elapsed between the time police arrived and when they indicated they had one in custody, namely handcuffing the affected person.

At the time of the incident, the affected person was in possession of a multi-tool instrument contained in a pouch. Subject Officer 1 reported that he saw the pouch and warned the other officers of the presence of a potential weapon. The other officers reported hearing his warning. The officers therefore had reason to fear that the affected person was refusing to show his hands possibly because he was in possession of a weapon. The need to control an apparently assaultive man, struggling to conceal what may be a weapon, justified prompt action to get control of him.

The evidence appears compelling that the only significant force that was used by the involved officers were knee strikes. Although one of the security guards stated he saw "somebody's (purportedly an officer's) shoes hitting the left side near the ribs," the three officers denied delivering any kicks. This was corroborated by another security guard and a civilian witness (CW5).

Civilian Witness 5 stated that he believed the officers "were giving (the affected person) head shots with their knees," although no injuries to the affected person's head were noted. However, none of the other witnesses or the affected person described blows to his head. Civilian Witness 5 denied hearing any commands being given by officers. The evidence that officers did issue numerous commands was corroborated by other witnesses and could be heard on the 911 recording. This leads me to conclude that I cannot rely on Civilian Witness 5's assertion that the police struck the affected person in the head.

Although Civilian Witness 4 stated that the knee strikes "looked pretty brutal in my mind," the actual description of the knee strikes that were delivered appears to have been in accord with Vancouver Police Department training. In this situation, the officers had an alleged assaultive suspect who had some form of tool/hammer on his belt and who was refusing to remove his hands from under his body. Under such circumstances, the officers had reason to believe that the affected person might have been armed and as such, they had cause to use any force that was reasonable or necessary to get him to remove his hands and be safely taken into custody.

Due to the nature of the affected person's other injuries (a small kidney laceration and a dislocated shoulder), it appears possible that these injuries may have been caused when he first fell to the ground prior to the arrival of the involved officers. In assessing the affected person's statement, it is apparent that he appears confused as to who searched him and confiscated the tool that was on his belt. He stated it was the guards however officers recalled seeing the tool on the belt at the time they took him into custody.

To constitute criminal assault by a police officer in the course of his 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.

The involved officers were faced with an individual who had reportedly assaulted a security guard, who was clearly refusing to comply with orders to show his hands and submit to handcuffing. All of the witnesses confirmed that the affected person had his hands under his body and that officers had to force him to put his hands behind his back in order to be handcuffed.

The use of knee strikes to obtain compliance does not appear to be unreasonable or gratuitous under these circumstances. The fact that the knee strikes may have caused substantial harm to the affected person is not sufficient in itself to conclude that the force that was used was unreasonable.

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.

Prepared for Release March 28, 2014

Richard Rosenthal,
Chief Civilian Director
Independent Investigations Office

