PUBLIC REPORT OF THE

CHIEF CIVILIAN DIRECTOR

Regarding the serious injury of an adult male on December 30, 2012 by officers of the Vancouver Police Department in the city of Vancouver, British Columbia

IIO 2013-01-00001

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 the investigation into the serious injury of an adult male that occurred on December 30, 2012, in the city of Vancouver. The affected person sustained these injuries during a prolonged struggle with eight members of the Vancouver Police Department (VPD). The affected person was subsequently taken into custody under section 28 of the *Mental Health Act*.

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 both the advice provided by the Information and Privacy Commissioner as well as the views of the affected person's next of kin and family. In this report, I will not be using the name of the affected person, and will be referencing family members by their relationship.

The affected person was 26 years old at the time of his injury and subsequent hospitalization. He is a developmentally delayed person who is diagnosed with autism. He lives with his mother and father in their Vancouver home. I have obtained the consent of the parents to make reference to the affected person's diagnosis of autism as well as medical information related to his injuries.

NOTIFICATION AND JURISDICTION DECISION

The VPD notified the IIO of the incident on December 30, 2012, and reported that the affected person had sustained injuries while being taken into custody. Initially, the jurisdiction decision was suspended as the extent of the affected person's injuries and his prognosis was not clear.

On January 10, 2013, the IIO asserted jurisdiction after establishing the affected person's injuries met the definition of serious harm.

The affected person was hospitalized for 33 days. The treating physician diagnosed the affected person with an acute kidney injury that subsequently developed into Rhabdomyolysis "presumably due to potential crush injury from (the) physical altercation (with the police) and a seizure."

Rhabdomyoylsis is the breakdown of muscle fibers that leads to the release of muscle fiber contents (myoglobin) into the bloodstream. Myoglobin is harmful to the kidney and often causes kidney damage.

INVESTIGATIVE FACTS

IIO investigators obtained information from: dispatch records; interviews and statements from the affected person's parents, VPD officers both subject and witness officers; a mental health nurse assigned to Car 87; Advanced Life Support and other paramedics who attended the residence; and from professionals who knew and had worked with the affected person.

GENERAL TIMELINE

Based on police communications, at 11:32 a.m. on December 30, 2012, the affected person's mother called 911 to request that police attend her residence as her autistic son was on "a rampage," and was "trying to hit us." The mother advised that her son was autistic, was 26 years old, and not able to talk. She asked that police arrive quietly because "we just want to maybe scare him or something."

At 11:42 a.m., four police officers and a mental health nurse (who was partnered with one of the officers)[1] arrived at the home. At 12:01 and 12.02 p.m., officers at the residence requested "emergency cover" - additional officers to provide immediate assistance.

By 12:08 p.m., an officer reported that sufficient resources were present and that no additional emergency cover was needed.

[1] The "Car 87 program" teams mental health nurses with VPD to provide on-site assessments and intervention for clients with psychiatric problems. The nurse and the police officer work as a team in assessing, managing and deciding about the most appropriate disposition.

At 12:11 p.m., VPD dispatch called the BC Ambulance Service (BCAS) advising that they had six officers holding down an autistic male who was "fighting them" and that they needed an advanced life support ambulance to respond and sedate the subject of the call.

At 12:15 p.m., officers requested the ambulance respond "code 3" (lights and sirens on an emergency basis). The officers initially reported that the affected person was unconscious however within a minute, officers confirmed he had taken a breath and then had resumed breathing.

BC Ambulance Service (BCAS) paramedics reportedly arrived at 12:19 p.m.

At 12:40 p.m., an officer reported that the paramedics were trying to sedate the affected person, and that he was "sucking up the drugs like you would not believe." The officer reported that the affected person had three officers on him and that he had been administered "a whole pile of Midazolam."[2]

At 12:49 p.m., an officer reported that the affected person was still "fighting" and that paramedics were trying to sedate him intravenously.

At 12:53 p.m., an officer reported that the sedation was taking some effect and that the affected person had stopped kicking and resisting. At 1:02 p.m., an officer reported that the affected person was "on a board,"[3] and that the sedation had worked.

He was en route to the hospital at 1:10 p.m.

CIVILIAN WITNESSES

The Mother's Statement and Observations

At approximately 11:00 a.m. on the day of the incident, she began to notice a change in her son's behaviour. She observed him to be clapping, making noises, getting loud, upset and exhibiting "escalating" behaviour. She described her son as "a big guy" and stated that at one point he was hitting her on the shoulder, open-handed. Her husband tried to stop their son from hitting her and was "chin-butt[ed]." After locking herself in the bathroom for a few minutes, the mother opened the door and was grabbed by her son. She subsequently took the phone, went outside and called the police.

The mother noted that the police arrived at the residence in stages. She recalled the first group consisted of approximately five officers and one mental health nurse. She explained her son's autism to the officers and that he "doesn't really understand." She explained that she had

[2] "Midazolam" was a sedative administered by BCAS as prescribed by the on-call physician.
[3] Referring to a stretcher.

called police to try to pacify her son. She noted that, in the past, any violence by him would stop, but that in this case it had continued.

While the mother was speaking with the officers, the affected person left the room and went upstairs to his bedroom. The mother indicated that this was common after an "episode", and that he would retreat to his bedroom to calm down. She expected the police to leave at that time, but the mental health nurse asked if they could go upstairs and speak with her son.

According to the mother, she observed all but one officer go upstairs to her son's bedroom. From the base of the stairs, she saw officers attempting to "drag" her son. She described him as "frightened" and noted that he was not capable of saying "go away, leave me alone."

The mother observed two officers holding her son, one on either side, dragging him and telling him to get down on the floor. She noted that he was resisting "because he doesn't know why they [are] there . . . he doesn't understand." After they moved out of her view, she described hearing noises and yelling and a police officer demanding her son "get down on the floor." She could hear feet pounding on the floor, scuffling and her son "screaming, like you've never heard."

By this time, she observed additional officers had arrived at the house; she estimated three officers arrived in the second group and then two officers in a third group. She also saw two separate teams of paramedics arrive.

She was advised that her son was sedated and that they would be taking him to the hospital for treatment. An officer advised that the police would not be laying charges against him "because of his condition."

The Father's Statement and Observations

According to the father, he told his wife to call the police in an attempt to pacify their son who had a violent outburst in the home. He acknowledged that when he tried to shield his wife from their son, he was "chin-butt[ed]." After police arrived, he observed his son leave the living room where he was seated on the couch and go upstairs to his bedroom. He and his wife discussed their son's behaviour with the officers. They advised that they had made a doctor's appointment for their son for January 3, 2013 to ask for medication to calm him down. The police appeared to be about to leave when a mental health nurse, who accompanied the police into the residence, asked if they could speak to their son. The father and his wife agreed and he observed the officers and the nurse go upstairs.

According to the father, less than five minutes after the officers and the nurse went upstairs, he heard his son screaming and sounds of a commotion. He went upstairs and observed officers holding his son by the arms. His son was struggling to break free from the officers.

The father acknowledged that he himself was crying, screaming and hysterical when the officers were struggling with his son. He reported that his son was not "fighting with the police," but that he was "squeezing his body" in an effort to get free. He heard police repeatedly yelling for his son to "get down to the floor." He stated that the officers could not get his son to the ground and that he observed one officer slap him four times across the face. He then observed the same officer knee his son in the lower abdomen twice.

He stated that although the mental health nurse was present, he was standing off to the side and not taking any action.

The father saw the police push his son into another bedroom, onto the bed and hold him down, one officer on either side of him. He stated that the sounds coming from his son were "scary," and that his screaming continued as he was put onto the bed. The father saw a third officer bending over his son; he assumed that the officer was applying pressure to his son's chest and shoulder.

After additional officers and paramedics arrived, the father was told he had to go downstairs. He later observed his son being brought downstairs on a stretcher by paramedics. The father recalled his son was unconscious and he noted that the colouring of his face was unusual.

The Affected Person

The affected person was not able to be interviewed by IIO investigators due to his limited ability to communicate.

The Mental Health Nurse (Car 87) Statement and Observations

The Mental Health Nurse (MHN) stated that he and his VPD partner, Subject Officer (SO) 1 arrived at the residence along with three other police officers (Subject Officer 2; Subject Officer 3; and Subject Officer 4).

SO 2 met with the mother and father. The MHN observed the affected person in a room off the kitchen watching television and rocking in his chair. Although he did not remember exactly how the parents described their son's background, the MHN recalled that he was "somewhat mentally handicapped." The mother described her son's actions that day as "out of the blue." She told the officers that he could "get kind of aggressive and angry at times," but that he had "never really struck out to the degree that he had done that morning."

The MHN noted that while they were talking to the parents, the affected person "all of a sudden . . . jumped up and ran upstairs." The MHN heard SO 3 speak to SO 1 and SO 4 saying: "let's go and make sure he's safe."

The MHN reported that while he and SO 2 remained downstairs speaking with the parents, the three other officers (SO 1; SO 3; SO 4) went upstairs. The MHN believed that the officers who

went upstairs would have known that the affected person was "mentally handicapped" and non-verbal, because they were privy to that portion of the conversation with the parents. The MHN stated that those left downstairs discussed how to "figure out what's going on for this guy." The MHN stated that he and SO 2 discussed whether the affected person required hospitalization. The MHN could see how the police presence could potentially over stimulate the affected person and that they should attempt to "reduce the environmental stimulus of the client," to keep him calm.

He formulated a plan to not hospitalize the affected person and noted that it would be best if they could remove themselves as a source of stimulation. The MHN stated that once the officers upstairs had determined that the affected person was safe, they would decide if they could leave. The MHN recalled that SO 2 initially thought hospitalization might be the best course of action.

Following this decision, the MHN went upstairs to talk to SO 3 about the idea of backing down to the living room if everything was okay. The MHN recalled that SO 3 agreed with the plan. The MHN was "literally two steps into going back downstairs," with SO 3 "on [his] heels" when the affected person jumped up from his bed "unprovoked" and "fairly solidly pushed" SO 4.

The MHN observed SO 4 come "flying towards" his direction. Officers immediately responded by trying to grab each of the affected person's arms, but were not successful. The MHN observed the affected person "absolutely freak[ed] out" and began to "violently strike out at the three officers." The MHN described how the three officers tried to "contain him physically" and heard the officers give verbal commands to try and direct the affected person to the ground.

The MHN stated that he backed off into a nearby bathroom to get out of the way and observed SO 2 come up the stairs to assist the other officers. At one point, he observed officers trying to apply handcuffs however the affected person broke free; although he was not striking out at the officers, "he was wriggling and squirming and moving around."

The MHN noted that there was no room to effectively take the affected person into custody and it was "all that they could do to keep him from not going down the stairs." Officers continued unsuccessfully to try to handcuff the affected person; the MHN heard SO 1 call for "code 3" cover, requesting emergency assistance from additional officers.

The MHN described the struggle as "arms and bodies bouncing around like a pinball" and stated that it was "literally like riding a bucking bronco." He recalled the affected person's strength was "absolutely amazing," and that "the four officers were losing."

When the officers "re-directed" the affected person into the second bedroom, the MHN pulled his feet out from under him and the four officers "pretty much dog-piled him . . . everyone was struggling to hold what they were holding." The MHN described the affected person as lying face down, and to be half on a mattress at some level of an incline. He noted that there was no

space to pull the affected person off the mattress. The MHN requested an emergency ambulance response as a safety protocol, "just in case something happened."

The MHN described a continuing struggle. When additional officers arrived, a hobble was applied to the affected person's legs and another handcuff on his other hand. He noted that no weapons or less lethal means were used and that all the officers' firearms were holstered as "it was strictly hand to hand." After the incident, he heard SO 3 say that he tried to do a knee strike at one point, but that it was "totally ineffective."

The MHN requested an Advanced Life Support (ALS) ambulance to respond "code 3" because he knew that they had the ability to sedate a patient with a physician's order. He believed sedation would be necessary because "they were still not able to contain" the affected person and he saw it as the only way to get through the incident safely so that no one got hurt.

The MHN stated that he observed the affected person finally starting to calm down a bit and that he was "slowing down." He observed SO 2 lying on the affected person's back and that officers were able to join two sets of handcuffs together around SO 2. The two sets of handcuffs were necessary because the affected person was stocky and "barrel chested." When the second handcuff was applied and the police were "getting the other cuff around the back," it appeared that the affected person was starting to get tired and worn down.

Shortly thereafter, the MHN noted that the affected person went limp – this was an indicator to him that the affected person may have stopped breathing due to "positional asphyxia."[4]

The MHN and an officer pulled the affected person off the bed, put him in the prone position and tilted his head up to open up his airway. He requested a "code 3" response from BCAS.

Subsequently, the affected person took a "big, huge breath" and began breathing. Once the paramedics arrived and were briefed, they started to administer oxygen. The MHN observed a paramedic on the phone requesting a medication order.

The affected person began to escalate again. He was medicated five times by intramuscular injection, but there was no impact on his continued level of resistance. Only after IV administered medication did he settle down allowing paramedics to put him on a stretcher and transport him to hospital.

In regards to the timeframes of the incident, the MHN provided the following estimates:

- The discussion with the parents lasted "a good 10 minutes";
- The time between SO 4 being pushed and the affected person being moved to the second bedroom was 5 to 10 minutes;

[4] The MHN understood this term to mean: "restricting the ability of the muscles, the airway, to take in the air and breath."

- The time from the MHN pulling the affected person's feet from out under him to the time that he stopped breathing was 10 minutes;
- The length of time that the affected person was not breathing was 30 to 60 seconds.

The BC Ambulance Service Paramedics Statements and Observations

Advanced Life Support Crew (ALS)

ALS 1 and ALS 2 attended the scene and treated the affected person. When ALS 1 arrived at the residence, she observed the affected person to be face down, with handcuffs applied behind his back, and with four officers holding down his upper and lower limbs. She asked officers to turn him over onto his back; after he was flipped over, she noted his eyes were open, but he did not respond to the application of a pain stimulus. It appeared to her that the affected person was not aware of his surroundings or alert to them being in the room.

ALS 1 inserted a nasal airway and administered oxygen. At the point that she attempted to assess his vital signs, the affected person started to rouse and "started to fight." As a result, the involved officers restrained him by holding his limbs. It appeared to her that the police had to exert a lot of effort and had to place all of their weight on the affected person's limbs to hold him down. She noted that he was "quite aggressive" and it appeared as though he was expending a lot of effort to get free. She described the affected person attempting to lift himself up and push away from the officers and free himself from being restrained. In her opinion, his efforts to free himself were "quite amazing." At no time did she witness any physical strikes by any of the attending officers.

Another ambulance crew arrived 4 to 5 minutes after the ALS unit. According to ALS 1, that crew assisted with patient care, helping to obtain vital signs and to apply a blood pressure cuff on the affected person. Vital signs indicated that his heart rate was "extremely high" at 160 beats per minute. In addition, his respirations were 60, which according to ALS 1, was also very high. ALS 1 concluded that sedation was the best course of action to ensure that the affected person could be safely treated and transported to the hospital. She subsequently obtained a sedation order from an on-call physician. She administered Midazolam several times and recalled it took approximately 45 minutes to obtain the necessary level of sedation to safely transport the affected person to the hospital.

ALS 2 stated that when she entered the bedroom where the affected person was being restrained, she noted that he appeared "a bit cyanotic" (blue in color) and that he was fighting very hard against four or five officers who were holding him down. She did not see any of the officers on top of the affected person, but observed them holding down his arms and legs. According to ALS 2, it was clear to her that the affected person required sedation.

Midazolam was injected intramuscularly over a period of 25 minutes before it had the desired effect. During the process, the affected person remained in a prone position. ALS 2 recalled they were unable to turn him because he was "fighting too much." She stated that while the

sedation was being administered, officers were trying to calm the affected person down with words such as: "you're okay," and "we're not going to hurt you . . . calm down." ALS 2 observed officers squatting, holding the affected person with two hands, "holding hard" because every time they tried to release, hard pressure would have to be applied again. At no time did she observe any officer strike the affected person.

Emergency Medical Paramedic Crew

Two additional paramedics from the BCAS attended at the residence. One recalled seeing seven officers struggling with the affected person on the floor of the bedroom. He noted that the officers had been drained of their strength; they "were dripping wet." He did not observe police compromising the affected person's chest or abdominal area. He stated that the restraint utilized strength and body weight. He did not observe any strikes, stuns, blows or open hand techniques.

He himself was holding down the affected person's head and recalled "it took everything in me" to do so. He described the affected person's actions as resistive but not "aggressive." He observed the affected person lifting the officers (and himself) off the ground; he stated that during this time, officers would become fatigued and would relieve each other.

The second paramedic described the affected person as "very aggressive" and believed him to be in a state of "agitated delirium." He used the term "agitated delirium" in reference to a person acting agitated, aggressive, and someone who is "super hard to deal with." He noted that the affected person acted aggressively for approximately 30 minutes while the ALS crew was trying to sedate him.

He described the officer's actions as matching "the patient's force and efforts." It was obvious to him that the officers were struggling and working hard to keep control of the affected person and keep him from flailing about. At no time did he observe the officers strike the affected person; there was no physical contact other than body weight. It took about 30 to 40 minutes for the affected person to be sedated enough to the point that they could transport him to hospital.

SUBJECT OFFICER STATEMENTS

The IIO designated eight VPD officers as the subjects of the IIO investigation. Each of these officers was determined to have used force against the affected person in their efforts to subdue and restrain him. Seven of the eight officers (SO 1 to SO 7 inclusive) provided voluntary written statements, all vetted through a common lawyer.

Subject Officer 8 declined to provide a voluntary statement to the IIO.

Subject Officer 7 provided a copy of a duty report that acknowledged that his role in the incident involved "holding down" the affected person's legs "with physical force" and noted

that he assisted in handcuffing. The report contained no detail explaining the reason for his actions and was too general to be of any assistance in determining whether he or other officers may have committed an offence in relation to this incident.

Subject Officer 6 provided a four-page written statement. He confirmed that when he arrived to assist the original attending officers, the officers appeared to be exhausted and "desperately in need of assistance." He acknowledged placing a hobble[5] on the affected person's feet in an attempt to restrain him. SO 6 reported that "[w]ith the assistance of SO 1 we both leaned on [his] legs with our hands and using our body weight we were able to prevent his lower body from wildly moving around." After the affected person lost consciousness, SO 6 "immediately provided first aid treatment…by performing a jaw thrust on him to open his airway. After doing this…he took a breath. I maintained [his] airway to ensure that his breathing was not obstructed and then his eyes opened and he regained consciousness." Upon regaining consciousness, the affected person "once again started struggling and officers had to constrain him so that the paramedics could safely work on him again."

Subject Officer 5 submitted a fourteen-page written statement. She confirmed she had responded to the emergency cover request made by attending officers. When she entered the bedroom, she located several officers "hunched over a bed in an apparent effort to restrain the affected person." She acknowledged kneeling on his left arm in an attempt to restrain him and assist SO 2 who was trying to control the affected person's upper body and left arm. She noted that SO 2 was sweating profusely and was out of breath. She proceeded to secure the affected person by handcuffing two sets of handcuffs together across his back.

According to SO 5, she is a trained negotiator with the VPD. As such, she attempted to "negotiate" with the affected person by placing her face in close proximity to his face and "frantically encouraged him to look at my face so we could communicate." She reported, however, that he continued to resist and that he was able to lift the officers as they attempted to restrain him. She continued to attempt to communicate with him – verbally and physically, by stroking his left wrist to comfort and reassure him. She then recommended a request be made for sedation and that EHS Advanced Life Support attend "Code 3." When the affected person became unresponsive, he was quickly put into "the recovery position." [6] After he resumed breathing, he became increasingly agitated and combative. EHS personnel arrived on scene and began sedating him by injection.

---

[5] A restraint device used to tether the legs together.

[6] The "recovery position" is generally described as "being used for unconscious or nearly unconscious victims, in order to avoid various airway-related complications but still allow the person to breathe. The common position involves placing the body on the side, using the legs and hands to stabilize the body, and the chin up so that the epiglottis remains open. The mouth is placed downward so that any fluid accumulated in the back of the throat can be drained safely." See www.ArticleWorld.org. See also, www.Wikepedia.com & www.Health.Harvard.edu/fhg/firstaid/recovery.shtml.

Subject Officer 4 submitted a four-page written statement and confirmed that he and SO 2 arrived at the residence at the same time as SO 1, SO 3 and the Mental Health Nurse (MHN). The affected person's mother told the officers that she feared for her safety and that she had been struck by her son who had also pulled her hair. She said his "condition" had grown worse recently and that he had been acting out violently. SO 4 learned that the affected person was autistic and in his mid-20's. He noted that he was much larger than and appeared to be much stronger than either of his parents.

According to SO 4's statement, while the officers were speaking to the parents, their son suddenly got up from the couch and then ran up the stairs to the second floor. SO 4 "heard one of the other officers say that someone should go upstairs to keep an eye on him, to make sure he is okay." SO 4 followed SO 1 and SO 3 up the stairs. He reported seeing the affected person go to one of the bedrooms and lie down on the bed.

SO 4 observed that the affected person was "staring at the ceiling," and was "grunting and holding his hands near his face." SO 4 followed SO 1 and SO 3 into the room where they all stood around the bed; they "all spoke to [him] in calm, friendly tones stating that we were just there to help and how was he feeling." After a few minutes, SO 4 and the other two officers left the room. SO 4 remained just outside the room in the open doorway so that he could continue to observe the affected person for safety reasons.

SO 4 wrote that the affected person suddenly jumped out of bed "and quickly charged at me where I was standing in the doorway . . . [he] struck me with his hands with great force . . . his strike on my chest was powerful enough to knock me off balance and out of the doorway, into the side of the hallway against the wall. [He] barged past me and into the other constables at the top of the stairs."

In his statement, SO 4 reported that he attempted to assist the other constables in handcuffing the affected person. He described him as "extremely strong, violent and assaultive. [He] was grunting, bucking, charging, and knocking us into walls." They could not get the affected person's hands together behind his back for handcuffing and they could not get him on the ground in the narrow hallway. The affected person was "wildly grabbing at the equipment on our duty belts." He heard SO 1 call for "Code 3" backup on the radio as they could not get the affected person under control.

SO 4 wrote that they were eventually able to forcibly move the affected person into another bedroom and that "[he] continued to fight violently, but we were able to keep him face down on the bed. [He] did not quit fighting and was violently bucking . . . at that point we were just trying to hold him, and hold on until help could arrive."

After other constables arrived, they were able to handcuff the affected person. SO 4 noted that SO 2 was "caught up in the handcuffs; (the affected person) was on his chest, half on the bed, and SO 2 was on his back, entangled in the handcuffs." According to SO 4's statement, "At this point, I observed that [he] appeared to be losing consciousness." He wrote that other officers

"worked quickly to remove the cuffs . . . within a few seconds" and noted that the affected person was "immediately" re-handcuffed with his hands behind his back then put into "the recovery position… only a very few seconds passed between when I saw him apparently unconscious and the time when he was placed in the recovery position."

According to SO 4, after a few seconds, the affected person resumed breathing. After he regained consciousness, the affected person began fighting again. SO 4 continued to assist in holding the affected person down while EHS personnel attempted to and eventually sedated him.

Subject Officer 3 provided a five-page written statement. He reported that after a few minutes of him speaking with the mother, the affected person hit himself in the head, got up from the couch, ran past the (officers) up the stairs and into his bedroom. SO 3 followed the affected person up the stairs with SO 1 and SO 4 "for officer safety reasons" and to ensure that the affected person would not try to hurt himself.

SO 3 entered the bedroom, opening the door slowly and saw the affected person lying on his back on the bed. The affected person appeared "nervous/agitated." SO 3 wrote: "Based on my experience, when are (sic) dealing with a person with a mental disability, it is very important not to leave them alone because they may injure themselves, or they may get something that could be used as a weapon. It is important to keep an eye on the person, but at the same time try to keep the situation calm."

SO 3 was in the process of returning downstairs to confer with SO 2 and was positioned near the middle of the hallway with SO 1 and SO 4 between himself and the bedroom. The affected person came charging out of the room and into the officers; SO 3 tried to grab one of the affected person's arms, but noted that he was "extremely strong" and that "I was having a very difficult time trying to control his one arm."

SO 3 wrote: "It became a very dynamic situation with all of us trying to control [the affected person] who was resisting violently." SO 3 attempted to "foot sweep" the affected person "a couple of times…to knock him off balance," but to no effect. He delivered "two or three knee strikes" into one of the affected person's legs that also had no effect. He wrote: "At one point, I came close to losing my balance and falling down the stairs along with the MHN."

SO 3 reported that the officers were able to force the affected person into another bedroom and struggled with trying to hold him down onto a bed. He wrote: "we didn't even try to handcuff [him] as he was still struggling with us. We were just trying to hold on until more help could arrive."

After additional constables arrived, he saw SO 6 secure the affected person's leg with a "hobble." He also observed SO 7 grab the ends of two sets of handcuffs and lock them together resulting in SO 2 being "caught up I (sic) the cuffs, basically cuffed to [him]."

Shortly after the affected person was handcuffed he stopped struggling and one of the officers advised that he had stopped breathing. SO 3 quickly unlocked the handcuffs to release SO 2; the handcuffs were locked again while other officers put the affected person in "the recovery position" on the floor.

According to SO 3's statement, the affected person resumed breathing shortly thereafter. After EHS units arrived on scene, SO 3 went back downstairs to speak to the parents. He wrote: "I was sweating, breathing quite heavily and [was] fatigued to the point of feeling nauseous."

Subject Officer 2 provided a five-page written statement and confirmed that he and SO 4 were the first officers to arrive at the residence. SO 2 observed the affected person quietly watching television in an area next to the kitchen. He noted the affected person as being a "large individual, approximately 5'10" and 260 lbs." The mother had told him that her son had previously assaulted her by pulling her hair and slapping her. He learned that the affected person was autistic and as a result, a criminal investigation was not appropriate, but he had concerns that the mother was still at risk. The mother told him that she feared for her personal safety and that she did not know what to do anymore.

SO 2 was joined at the residence by the Car 87 nurse who was also trying to find options for (the affected person). SO 2 observed the affected person violently hitting himself numerous times directly in the face prior to suddenly jumping up and running upstairs. SO 2 instructed the other officers "to go upstairs and just keep an eye on the affected person as there was an unknown element of what could happen upstairs if he was not watched."

SO 2 reported that he stayed downstairs talking to the mother and the Car 87 nurse until he heard a struggle upstairs. He ran upstairs and observed the other officers involved in a struggle with the affected person.

SO 2 began ordering the affected person to get down on the ground and joined in the attempt to gain control of him. He attempted to trip him and attempted to lock one of his arms and sweep him to the ground. All these attempts were unsuccessful. He wrote: "He was so strong he threw me into the wall numerous times… (the struggle became) completely out of control…he had pushed me to the top of the stairs almost causing us to fall out of control down the stairs."

SO 2 reported that the affected person was overpowering him and the other officers and that he struck him hard in the face with open palm hand strikes in an attempt to distract him and allow him to be handcuffed: "I stuck (sic) him six times directly in the face, which had no effect at all." SO 2 then hit his emergency button calling for help "as we were losing this struggle."

During the struggle, SO 2 believed that the affected person was pulling on his sidearm and wrote: “I immediately dropped my body down and drove my shoulders into his waist and pushed as hard as I could towards a closed bedroom door on the other side of the hallway. I drove him as hard as I could and had him off balance and we broke through the door and several pieces of furniture. He landed face down on the bed and I landed on top of him.”

SO 2 asked other officers for help and hit his emergency button additional times. Other police officers arrived on scene and SO 2 continued in his position holding the affected person down. Once the handcuffs were affixed securing the affected person’s hands behind his back, SO 2 found himself caught up in the handcuffs and the affected person. He observed the affected person had stopped moving and was turning blue and immediately gave directions to get the handcuffs off. Once the handcuffs were removed, the affected person was placed in the recovery position and the handcuffs replaced.

After the affected person began breathing again, he started to struggle. SO 2 assisted in holding him down for many more minutes. By this time EHS crews were on the scene and it was decided that they needed to sedate him before any transport to hospital was made. SO 2 apprehended the affected person under s.28 of the *Mental Health Act* and escorted him to hospital in an ambulance.

Subject Officer 1 provided a written three-page statement and confirmed she had responded to the residence with the MHN. SO 1 wrote: “It seemed like a situation where the mental health car might be of assistance, so I decided that we should attend to assist if we could.”

As the mother was describing her son’s behavior to officers, he suddenly began moaning and was observed running up the stairs to his bedroom. SO 1, SO 3 and SO 4 followed upstairs to speak with the affected person and to make sure he was okay and did not harm himself. He was observed going into his room and attempting to close the door. SO 4 placed his foot at the door so it could not be closed and then opened it fully.

SO 1 noted that officers had not yet obtained the full story from the mother and did not know what her son might do to injure himself or others. SO 1 attempted to communicate with the affected person in a calm and soothing tone of voice but noted that he did not respond.

She observed the affected person getting off of his bed and charging at SO 4. Officers attempted to handcuff the affected person; SO 1 broadcasted a request for “Code 3” cover. She wrote: “During the fight it was almost impossible to restrain him because of his super strength. He was 5’10” and approx. 260 pounds. I delivered 2 knee strikes to his right leg side upper area but it had no effect. . .He was lifting us off the ground and was not responding to any pain. . .he then nearly pushed SO 3 and the MHN off the stairs but they managed to stay on.”

SO 1 reported that after other officers finally arrived on scene, they were able to get the affected person's feet hobbled but he was still trying to lift them and kick. After he became unresponsive and stopped breathing, she got on the radio to ask for an ALS unit to attend. She subsequently went back downstairs to speak to the parents and explain the situation.

Professional Collateral Witnesses

IIO investigators interviewed three mental health professionals who were familiar with the affected person's condition and behaviour. While the information obtained was helpful in understanding his actions and reactions, I must consider what information officers had available and accessible to them at the time of the incident. This information was provided by the affected person's parents.

ISSUES

The general issue in any IIO investigation is whether or not there is evidence that a police officer may have committed an offence under any enactment. In this case, the issue at hand is whether the force used by the officers in restraining the affected person constituted an offence of assault, assault causing bodily harm, or aggravated assault. Culpability for an officer's use of force is governed by the following *Criminal Code* provisions:

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).
2. 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)).

An included issue is whether the officers were "acting as required or authorized by law" – whether they were properly exercising their common-law duties and powers to protect persons and property, or whether they were properly exercising statutory powers under s. 28 of the *Mental Health Act*:

> 28 (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.

<u>Analysis and Conclusions of the Chief Civilian Director</u>

The only significant inconsistency in the statements provided in this case concerns the circumstances in which the officers followed the affected person upstairs after he left the living room to go to his bedroom. According to the parents, the MHN asked if the officers could go

upstairs and talk to their son. According to the officers and the nurse, they went upstairs to ensure the affected person did not harm himself or do anything that would jeopardize the safety of his parents or the officers. There is no evidence that the parents tried to stop the officers from going upstairs; in fact, the father confirmed he told the MHN that it was all right for them to go upstairs. As such, all of the evidence indicates that the officers had a lawful right to go upstairs and observe and/or attempt to communicate with the affected person.

That said, as indicated below, any review of the appropriateness of that decision falls within the scope of an administrative review of this incident by the Office of the Police Complaint Commissioner (OPCC) and the Vancouver Police Department.

Before the altercation in the upstairs hallway, officers had decided not to arrest the affected person for the alleged assault on his mother. This changed after the affected person shoved and pushed Subject Officer 4 at the top of the stairs. At that point, officers had the right to act within the course of their common-law duties by restraining the affected person to prevent any further assault. In addition, when the struggle continued without relief, there were objective grounds to arrest him under the s. 28 of the *Mental Health Act*, as he was "acting in a manner likely to endanger [his] own safety or the safety of others . . ."

The ultimate result of police efforts to detain the affected person was tragic: a life-threatening injury and month-long hospitalization of a developmentally disabled young man. I am cognizant that s. 25(4) of the *Criminal Code* states:

> . . . [an officer] is not justified . . . in using force that is intended or likely to cause death or grievous bodily harm unless [the officer] believes on reasonable grounds that it is necessary for the self-preservation of [the officer] or the preservation of anyone under that [officer's] protection from death or grievous bodily harm.

Based on the evidence presented, I do not conclude that any officer in this case reasonably believed that it was necessary to inflict grievous bodily harm. Nor do I conclude that any officer used force that was intended or, in the officers' reasonable perception, was likely to cause death or grievous bodily harm. Therefore I cannot conclude that any involved officer may have used excessive force and may have committed an offence.

As such, the IIO file will not be referred to Crown counsel for consideration of possible charges.

FURTHER COMMENTS

The question of whether officers could have used different tactics to avoid an altercation with the affected person, for example, by not following him to his bedroom, is an administrative issue that falls within the jurisdiction of the Vancouver Police Department and the Office of the Police Complaint Commissioner for British Columbia (OPCC). It is those agencies who are required to determine whether officers involved in an incident such as this acted according to the policies, procedures, training and expectations of the VPD and the people of British

Columbia. The decision to conclude the investigation by the IIO is, thus, just the first step in a larger process to ensure safe and effective policing in British Columbia.

Submitted this 6th day of August, 2013 by

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