



PUBLIC REPORT OF THE

CHIEF CIVILIAN DIRECTOR

Regarding the injuries sustained by an adult male on May 17, 2013, involving an officer of the Vancouver Police Department.

IIO 2013-000020

## INTRODUCTION

The Independent Investigations Office (IIO) is responsible for conducting investigations into all officer-related incidents which result in death or “serious harm” (as defined in Part 11 of the *Police Act*) within the province of British Columbia. As the Chief Civilian Director of the IIO (CCD), I am required to review all investigations upon their conclusion, in order to determine whether I “consider that an officer may have committed an offence under any enactment, including an enactment of Canada or another province.” (See s.38.11 of the *Police Act*). If I conclude that an officer may have committed an offence, I am required to report the matter to Crown counsel. If I do not make a report to Crown counsel, I am permitted by s.38.121 of the *Police Act* to publicly report the reasoning underlying my decision.

In my public report, I may include a summary of circumstances that led to the IIO asserting jurisdiction; a description of the resources that the IIO deployed; a statement indicating that the IIO, after concluding the investigation, has reported the matter to Crown counsel; or a summary of the results of the investigation if the matter has not been reported to Crown.

This is a public report related to an investigation into the injury of an adult male that occurred on May 17, 2013, in the city of Vancouver. The affected person sustained serious injury to his shoulder and arm while being detained by an officer 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. In this report, I will not be using the name of the affected person or of any other person involved in this matter.

At the time of his injury, the affected person was 68 years old.

## **NOTIFICATION AND JURISDICTION DECISION**

On May 17, 2013 at approximately 8:49 p.m., the subject officer, in full police uniform, was driving his unmarked police vehicle in the area of Main Street and East Hastings Street when he observed an adult male engaging in a physical altercation with an adult female. The officer intervened and physically brought the male to the ground. A review of the male's medical records revealed that he sustained an injury to his left shoulder and arm, which was diagnosed as a dislocation and comminuted proximal humeral shaft fracture.

The IIO asserted jurisdiction after consulting with the Police Complaint Commissioner and concluding that the injury suffered by the affected person met the statutory definition of "serious harm".

## **INVESTIGATIVE EVIDENCE CONSIDERED**

Information was obtained from a written statement voluntarily provided by the subject officer, along with interviews with the affected person and the civilian witness who had been involved in the altercation. Police reports written by responding officers relating to the incident were also reviewed. IIO investigators attempted to locate additional witnesses by posting flyers at several local social services facilities in the area, but no additional witnesses were identified. In addition, a visual canvas of the area of the incident did not identify the presence of any video cameras that may have recorded the incident.

### **Affected Person**

A VPD officer who was not directly involved in the incident interviewed the affected person, in hospital, immediately following the incident.

According to the officer, the affected person was conscious, but in pain. The affected person reportedly advised the officer that he had consumed approximately 10-20 beers over the course of the day and that he believed the female involved in the incident had thrown him to the ground. He had no recollection that police were present or that any officer had touched him.

IIO investigators conducted a follow-up interview with the affected person on May 31, 2013. He advised that he had no recollection of what occurred that night. He stated that a police officer "took him down" and he had suffered a "beating," but he could not explain how or why this occurred.

### **Civilian Witness**

A VPD officer who was not directly involved in the incident interviewed the witness, at the scene, immediately following the incident.

The officer reported that he spoke with the witness about her contact with the affected person, and she stated that she had met him at a nearby bus stop not long before the altercation. She advised that they had a verbal disagreement and that she began to walk away from him, at which time he grabbed her from behind and she felt as though he had jumped onto her. She then noticed a police officer physically moving the affected person away from her.

The VPD officer noted that the witness had no visible injuries and that she did not require any medical attention at the time.

IIO investigators were able to locate and interview the witness on September 25, 2013. She stated that she met the affected person at a bus stop and engaged in conversation with him. She described him as heavily intoxicated at the time. She advised that they had a verbal disagreement and that she began to walk away from him, at which time he jumped on her from behind and struck her on the back of her head.

She advised that she saw a police officer arrive in a silver car, get out and put the affected person on the ground in a forceful manner. She stated that the affected person was being non-compliant and aggressive toward the officer while the officer was trying to apply handcuffs to him.

She stated that she did not see the officer strike the affected person and she did not recall hearing the officer say anything to him. During the course of the interview, she stated her opinion that she did not believe the officer “did anything inappropriate” or “anything wrong.”

### **Subject Officer Statement**

The subject officer provided a voluntary written statement to the IIO which was vetted through his lawyer.

According to that statement, at approximately 8:48 p.m. on May 17, 2013, he observed a male (the affected person) in front of 390 Main Street attack a female (the civilian witness) from behind and punch her in the head twice after taking five or six swings at her with his right fist.

The subject officer immediately stopped, got out of his vehicle and said, “stop, Vancouver Police.” He stated that the male continued to move aggressively toward the female and he told the male to put his hands behind his back. He reported that he reached for the male’s right hand with his right hand, and the male pulled away from him and moved towards the female again.

The subject officer explained that he felt that the male posed a serious risk to the female and that he took the male to the ground by his wrist using an “arm bar” technique. The male went to the ground and continued to struggle by lifting himself off the ground and attempting to roll over. The subject officer advised that he gave the male verbal commands to stop resisting.

The subject officer reported that when he attempted to place the male's left hand behind his back, it appeared that the male was in pain. He then stopped any further attempts to restrain the male's hands and did not handcuff him. He stated that he released the male's right hand and requested via radio that another police unit attend the location. The male remained on the ground until two other officers arrived.

## **ISSUES**

The general issue after any IIO investigation is whether or not there is evidence that a police officer may have committed an offence under any enactment.

I must consider whether there may be culpability for an officer's use of force pursuant to 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)).

In this case, the issue at hand is whether the subject officer's actions in physically bringing the affected person to the ground would constitute the offence of assault or assault causing bodily harm.

## **ANALYSIS**

The statement provided by the witness was generally corroborative of the statement provided by the subject officer. The affected person was unable to provide any information about the cause of his injury and made a prior statement indicating that he believed the witness had attacked him. As such, there is no evidence of any use of force above and beyond the force necessary to stop the affected person from attacking the witness and subsequently placing him into custody.

The subject officer had a duty to protect that witness from being assaulted by the affected person. Although the affected person received significant injury as a likely result of his arrest, the nature of the injury does not suggest in and of itself that excessive force was used.

## **CONCLUSION and DECISION**

Based on the evidence obtained as a result of the IIO investigation, I cannot conclude that the subject officer may have committed any offence in this case. As such, no further action will be taken by the IIO and the IIO file will not be referred to Crown counsel for consideration of possible charges.

Prepared for Public Release this 22<sup>nd</sup> day of October, 2013

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Chief Civilian Director  
Independent Investigations Office of BC