



PUBLIC REPORT OF THE  
CHIEF CIVILIAN DIRECTOR

Regarding the June 28, 2013 detention and  
subsequent death of an adult male involving  
officers from the Vancouver Police  
Department in the city of Vancouver, British  
Columbia

IIO 2013-000031

## 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 death of an adult male that occurred on July 4, 2013, in the city of Vancouver. The affected person suffered a significant medical event on June 28, 2013 after having been placed into police custody. The affected person was transported to hospital and subsequently died due to “anoxic brain damage secondary to drug use.”

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 death, the affected person was 50 years old.

## **NOTIFICATION AND JURISDICTION DECISION**

On June 28, 2013, at approximately 9:43 p.m., the affected person was observed near Main Street and Terminal Avenue in obvious distress. Police handcuffed him, took him into custody and moved him off of the road to the sidewalk. By the time emergency health paramedics arrived at the scene, the affected person was unresponsive. After a period of resuscitation, spontaneous heartbeat and respiratory efforts were restored and the affected person was transported to hospital. The IIO was notified about the incident at 10:22 p.m.

The IIO asserted jurisdiction as it appeared that the affected person suffered a life threatening medical event while in the custody of officers in the employ of the Vancouver Police Department.

## **INVESTIGATIVE EVIDENCE CONSIDERED**

Interviews were conducted with civilian witnesses and voluntary written statements were obtained from the subject officers. The IIO reviewed radio communications as well as reports provided by the hospital and the Coroner.

### **9-1-1 Emergency Calls**

At 9:43 p.m., a 9-1-1 caller requested an ambulance attend to Main Street and Terminal Avenue. The caller advised he had seen the affected person walking across a green light and collapsing.

A second 9-1-1 caller advised that the affected person was on the road and that police may be needed as well as an ambulance: "I think he is a little psychotic, like spraying beer around."

A third call was made to 9-1-1 at 9:44 p.m. The caller advised the affected person was acting very strange and that police had arrived and were taking him into custody.

### **VPD Radio Communications**

At 9:44 p.m., subject officer 1 radioed that she and subject officer 2 were with the affected person and that he was lying in the middle of traffic.

At 9:47 p.m., subject officer 1 requested an ambulance and reported that the affected person was conscious and breathing.

At 9:58 p.m., subject officer 2 requested the ambulance "step it up" as the affected person while breathing, was in and out of consciousness.

At 10:06 p.m., subject officer 1 reported the affected person was being treated by BC Ambulance personnel and that he had stopped breathing. She requested a supervisor respond to the scene.

At 10:18 p.m., the responding supervisor reported the affected person had a pulse.

### **Civilian Witnesses**

IIO investigators interviewed five civilian witnesses to the incident.

Civilian witness 1 (CW 1) was working near the Main Street Skytrain Station and described seeing the affected person walking in traffic “his arms were flailing, his legs were flailing, he was very vocal and very loud.” CW 1 observed the affected person throw himself down on the road; vehicles were swerving to avoid hitting him. The affected person appeared to be unconscious when CW 1 called 9-1-1. He saw an unmarked police vehicle arrive with two officers who went to provide aid to the affected person. The affected person was resisting; however the officers were kneeling on either side of him and did get control. The affected person was handcuffed and was “dragged out of the intersection” to the sidewalk. CW 1 stated that one of the officers placed his hand on the affected person’s back and told him to “be still, stay calm, be still.” CW 1 did not see the affected person get to his feet. He estimated the time between the officers’ arrival to moving the affected person to the sidewalk was about four to five minutes.

CW 2 was driving northbound on Main Street crossing Terminal Avenue. He observed an altercation between the affected person and another person. He later realized the other person was trying to assist the affected person and that it was not a dispute. CW 2 called 9-1-1 and remained at the scene until after the officers had arrived. He observed the officers handcuffing the affected person with at least one of the officers kneeling on the affected person’s back.

As soon as the affected person was handcuffed, the officers “half lifted and half dragged” him to the sidewalk. CW 2 recalled the officers as being “not overly harsh, no kid gloves.” CW 2 stood near the affected person trying to protect his legs from traffic and described him as “somewhat dazed.” He heard him say “I’m sorry, I’m sorry.” He observed the affected person was not moving and verified with one of the officers that emergency health services had been called.

CW 3 was working near the Skytrain Station. She recalled hearing “hooting and hollering” for about ten minutes and observed the affected person “stagger” into the intersection. She stated he was walking erratically, flailing his arms and hollering. She saw the affected person flat on his stomach six to ten feet from the curb, not making any noise. She continued to watch as pedestrians tried to assist the affected person, however he resisted. Officers arrived and rolled him over. She observed one officer putting his knee on the affected person’s back. She then saw the officers “drag” the affected person to the corner holding him under the arms. She estimated the time between when the officers arrived until they moved the affected person was 10-15 seconds.

CW 4 was on the median near Main Street and terminal Avenue. She recalled meeting up with the affected person and knowing that he had been up for several days. She recalled having a conversation with him and then leaving for about an hour. When she returned, she observed the police vehicle and then an ambulance. She saw the affected person in “really bad condition” lying on the sidewalk. He was handcuffed on his left side, unconscious and unresponsive. She observed blood coming from his ear and that his eyes were rolled back.

CW 5 was near the area and observed the affected person yelling and screaming. He saw him do a “face plant.” CW 5 observed people nearby who tried to assist the affected person, however he yelled at them and sprayed them with beer.

Within 30 seconds, officers arrived. They tried to roll him onto his stomach but he resisted. One of the officers got the affected person turned over by using his knee and upper body. After the affected person was handcuffed, the officers pulled him by the upper arms to the sidewalk.

### **Subject Officer 1 - Written Statement**

Subject officer 1 stated she and subject officer 2 were working plainclothes in an unmarked police vehicle. At approximately 9:40 p.m., she saw the affected person “flailing about directly in front of westbound traffic.” She concluded the affected person needed immediate medical attention.

She reported that she and her partner approached the affected person and identified themselves as police. The affected person was saying that they (the police) were going to kill him. The officers decided to remove the affected person from the intersection. They each grabbed an arm and were able to move the affected person on to his stomach. Subject officer 1 secured the affected person’s left arm while her partner tried to get the right arm out from under the affected person’s body. She reported seeing subject officer 2 deliver “a knee strike or two” and they subsequently assisted the affected person to the sidewalk. They placed the affected person in the recovery position and called for BC Ambulance Services. At that time, the affected person was conscious and breathing.

### **Subject Officer 2 – Written Statement**

Subject officer 2 stated that while on patrol, he and his partner observed the affected person lying on the ground at the intersection of Main Street and Terminal Avenue. He activated the emergency lights and parked the police vehicle about 15 feet away from the affected person. Subject officer 2 concluded the affected person was either intoxicated or otherwise impaired by substances and that the affected person was a danger to himself and others.

He reported that the affected person did not cooperate with commands. The two officers rolled him over but could not gain control of his hands. Subject officer 2 delivered “3-4 knee

strikes” to the affected person’s right thigh and rib area. The affected person was handcuffed and moved to the sidewalk.

Subject officer 2 observed the affected person had redness to his forehead and that he was bleeding slightly from the right side of his face. Subject officer 2 did not believe the injuries were as a result of the struggle as there was no strike to the affected person’s head.

While the officers were waiting for the ambulance, the affected person stopped moving his legs but continued to “mumble incoherently.” When he observed the affected person going in and out of consciousness, subject officer 2 asked for the ambulance to “step up” its response.

### **Information Obtained from the Coroner**

A post mortem external examination was conducted by the Coroner in the presence of the IIO investigator. There was no significant evidence of injury with the exception of recent abrasions to the affected person’s face and lower extremities.

Toxicology results found quantitative levels of drugs including cocaine and methamphetamine. The Coroner made the determination: “In the view of the evidence at hand I am satisfied that the medical cause of death – the anoxic brain injury – did not result from any sort of physical altercation, nor any other scenario involving bodily injury...(there is) compelling evidence that multi-drug use (was) a significant contributing factor in this death.”

### **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. There are a number of legal issues to be considered in this case.

I must consider whether there may be culpability for an officer’s use of force or deadly 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)).
- (3) A police officer “is not justified for the purposes of subsection (1) ... in using force that is intended or is 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" (section 25(3)).

In addition, in the case of any in-custody death, I must consider whether there was any action on the part of an officer that could have constituted a culpable or non-culpable homicide. Homicide that is not culpable is not an offence. Culpable homicide may take the form of murder, manslaughter, unlawful act manslaughter, or criminal negligence. Criminal negligence is defined by section 219 of the *Criminal Code*: "Everyone is criminally negligent who (a) in doing anything, or (b) in omitting to do anything that it is his duty to do, shows a wanton or reckless disregard for the lives or safety of other persons."

### **Analysis**

The statements of the officers and the statements of the civilian witnesses in this case are basically consistent. There is no evidence of any use of force above and beyond the force necessary to pull the affected person's hands behind his back in order to handcuff him, the acknowledged use of "3-4 knee strikes" to his right thigh and rib area, and to move him from the street to the sidewalk. The force that was used was not force that any reasonable person would expect to be likely to cause death or grievous bodily harm, nor is there any reason to believe that the force actually caused the affected person's medical distress or his subsequent death.

The subject officers had a duty to protect the affected person. They located him lying in a busy intersection, flailing about and yelling incoherently. His conduct posed a danger to himself and required prompt action to protect him from oncoming traffic. The subject officers also had the right to protect themselves. The affected person's comment that he believed the officers were going to kill him gave officers the right to handcuff him to ensure his safety as well as their own.

There is no reason to believe that the officer's delivery of the knee strikes exceeded what was necessary to accomplish the handcuffing. The force was applied to the affected person's back and legs. The blows did not leave any visible injury. Independent witnesses described seeing no significant violence applied to the affected person.

I find no evidence of negligence. The officers called for an ambulance immediately after they restrained the affected person and placed him in the recovery position. Although they placed him on the ground while waiting for the ambulance, it does not appear that there were any other reasonable options available given his prior statements and actions. When his condition worsened, they requested that the ambulance respond on an emergent basis. As such, the officers' actions during their contact with the affected person seem reasonable and appropriate.

**Conclusion and Decision of the Chief Civilian Director:**

Since there is no reason to believe that either officer may have committed any offence in this case, 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 19th day of September, 2013  
Richard A. Rosenthal  
Chief Civilian Director  
Independent Investigations Office of BC