



PUBLIC REPORT OF THE

CHIEF CIVILIAN DIRECTOR

Regarding the July 14, 2013 serious injury of  
an adult male, involving an RCMP officer in  
North Vancouver, British Columbia

IIO 2013-000036

## 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 July 14, 2013, in North Vancouver. The affected person sustained serious injury to his clavicle following an incident with the North Vancouver RCMP.

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 40 years old.

## **NOTIFICATION AND JURISDICTION DECISION**

On July 14, 2013 at approximately 9:30 p.m., the subject officer and the witness officer responded to a complaint from a North Vancouver restaurant. The restaurant was requesting the removal of the affected person, who was reportedly intoxicated and refusing to leave the property. While being taken into custody, the affected person was taken down to the ground, and sustained a fractured left clavicle.

The IIO asserted jurisdiction after it was determined that the affected person's injury fell within the statutory definition of "serious harm".

## **INVESTIGATIVE EVIDENCE CONSIDERED**

Information was obtained from interviews with the affected person, the witness officer and four civilian witnesses. Police dispatch records and video from the RCMP cellblock were also reviewed. The subject officer submitted to a voluntary interview with IIO investigators.

### **Police Dispatch Records**

According to police dispatch records, Civilian Witness 1 (CW1) first called the non-emergency police line at 9:21 p.m. According to the record: "C [complainant] Manager [at restaurant] req[uesting] mem[ber] [to] attend to remove intox[icated] customer who is being very rowdy & refusing to leave".

At 9:25 p.m., records show that CW1 called police again to advise that the customer was becoming more aggressive.

Officers were reported to have arrived at the restaurant at approximately 9:30 p.m.

### **Affected Person**

The affected person was interviewed by IIO investigators on July 19, 2013. He believed that he was injured as the result of unnecessary force used at the North Vancouver RCMP detachment cellblock. According to the affected person, he was inside the cellblock at the detachment when officers were removing his handcuffs. Instead of having him "go forward," officers "pushed [him] really hard" while his hands were behind his back. He stated that officers "threw [him] into the ground" instead of holding his arms and allowing him to go down on the ground while they removed the handcuffs.

The affected person stated that the officers "jumped on [him] with their knees on [his] back and that "right away [I] knew something was really hurt". The affected person reported that he hit his head and his shoulder on the ground, but that his shoulder took most of the impact.

The affected person stated that he did not sustain any injuries when he was arrested at the restaurant, prior to being taken to cells. He recalled officers putting him in a police vehicle and driving to the police station. He did not remember any force being used. He was not sure whether the officers present at the restaurant were also involved in the incident in the cellblock.

### **Cell Video**

Video from the booking area (which included audio) showed the witness officer calling the BC Ambulance Service at 9:40 p.m. She could be heard saying that the affected person was complaining of his head hurting. She reported that the affected person was “conscious, breathing and very arrogant”.

The video showed the affected person being brought in and seated on a bench at 9:41 p.m. Approximately 90 seconds later, the affected person was taken toward the cell. The affected person was visible in the booking area and did not appear to exhibit any obvious signs of distress. He appeared to be cooperative and to be following directions.

Just before 9:43 p.m., the subject and witness officers brought the affected person into a cell. The affected person was put into a kneeling position and then in a prone position, where he was searched. The force used to put the affected person into the prone position appeared to be measured rather than sudden or forceful.

After being placed prone on the ground, the affected person was searched. At one point, the affected person was seen kicking his legs. The witness officer held the affected person’s upper body down, while the subject officer held his legs. The subject officer was seen apparently striking the affected person once in the torso with a closed fist.

The officers continued the search and the subject officer moved off of the affected person’s legs, at which point the affected person began kicking again. A third officer held down the affected person’s legs as the subject and witness officers moved him back into a prone position. The search continued for another 23 seconds until the subject officer removed the handcuffs.

Within two seconds of the handcuffs being removed, the third officer released the affected person’s legs. The witness officer left the cell followed by the subject officer at 9:46 p.m. Shortly after, the affected person was seen rolling onto his back rubbing his left collar bone area while favouring his left arm. Paramedics entered the cell at 9:52 p.m.

### **Witness Officer**

According to the witness officer, she and the subject officer were walking the affected person out of the restaurant, and did not intend to arrest him at that time. The subject officer was standing to the affected person’s left and the witness officer was about a step and a half behind.

As they walked towards the door, the affected person grabbed the top of a host stand and started to pull the stand down. The witness officer “immediately jumped to the stand” in order to stop it from falling to the ground. The subject officer then grabbed the affected person by the shoulders and took him to the ground, using his right arm.

The witness officer stated that the take down was not unusual. She believed it was an effective method and that it was the quickest way to get the affected person to the ground. The witness officer stated that officers are taught that the quickest way of getting people to the ground is by directing their head first. She explained that the intent is not to hit the person’s head on the ground, but that when someone’s head is controlled, the rest of their body follows. She stated that she did not believe the subject officer’s use of force was excessive or unnecessary.

The witness officer explained that it is easier to gain control over someone when they are on the ground. She felt that if they had stayed standing, they might have needed to use more force. Once the affected person was on the ground, the subject officer told him he was under arrest.

The witness officer described the affected person as landing on his left side with his left arm underneath him. She stated the affected person was not cooperating in that he was not moving his left hand out from under himself. The officers had to pull the affected person’s left hand out in order to handcuff him. After they got him into handcuffs, they stood him up and walked out of the restaurant.

The witness officer went to the cellblock to meet the subject officer, who was transporting the affected person. She stated that when the subject officer arrived at cells, he asked her to call an ambulance because the affected person was complaining of a sore head. Although she did not recall the affected person hitting his head, the subject officer told her that he did hear the affected person strike his head on the floor of the restaurant.

The witness officer stated that when paramedics attended the affected person’s cell, he complained several times about his shoulder hurting.

### **Subject Officer**

The subject officer stated that the witness officer had been dispatched to a call of a male causing a problem at a restaurant. While en route there was an update that the male was “getting more rowdy” and refusing to leave. When he arrived at the restaurant, he and the witness officer were greeted at the front door by the manager.

The subject officer recognized the subject of the complaint (the affected person) as he had dealt with him once before. The subject officer noted that according to the complainant, the affected person was intoxicated. The subject officer stated that the affected person had a

reputation for getting into fights when he was intoxicated. He intended to give the affected person “the benefit of the doubt” with the hope that he would cooperate with the officers.

He and the witness officer approached the affected person, and told him that it was time for him to leave. The subject officer stated that the affected person gave him a “blank look” in response and that he again told the affected person that he was not welcome and had to leave.

The subject officer stated that the affected person got up and started walking down the steps toward the front door. The affected person walked to the host station where there was a metal stand. As they passed the stand, the affected person grabbed onto it and pulled it down toward himself. The witness officer was able to grab the stand to prevent it from falling.

At that point, the subject officer determined that the affected person was “under arrest for causing a disturbance and mischief”. The subject officer did not say the words at that time but decided to “take control of him right away”. The subject officer placed his right arm over the affected person’s right shoulder and grabbed onto the front of his shirt. The subject officer used his left hand to grab onto the side of the affected person’s arms. The subject officer stated that he leaned back to put the affected person off balance and then pulled the affected person to the ground. The subject officer could not remember which side the affected person landed on but he recalled hearing the sound of the affected person’s head hitting the tile. The affected person remained conscious and was swearing at the subject officer. The subject officer told the affected person that he was under arrest. He and the witness officer put handcuffs on the affected person.

The subject officer and the witness officer had to lift the affected person up because he didn’t want to move. They eventually got him up and escorted him to the police vehicle where he was placed in the back seat. The subject officer transported the affected person to the detachment. When they reached the detachment, the subject officer asked the affected person if he wanted an ambulance (for his head). The affected person said “yes”. The subject officer was not aware of any injury to the affected person’s shoulder at that time.

The affected person was taken to a bench in the booking area of the cells and was told to kick-off his steel-toed boots. The affected person told the subject officer that he would “head-butt” him. The subject officer decided to take the affected person into a cell before dealing with him any further. He further decided it was best to put the affected person onto the floor of the cell prior to removing the handcuffs. The affected person was asked to go down on his knees and then his stomach, which he did. The subject officer proceeded to search the affected person with the assistance of the witness officer.

At one point, while being searched, the affected person used his knee to hit the subject officer. The subject officer stated that he attempted to punch the affected person “in the gut,” but the witness officer’s hand got in the way. The witness officer then finished the search.

Once the paramedics arrived, the affected person started complaining about his shoulder. The subject officer did not recall the affected person mentioning anything about his shoulder prior to that time. While being searched, the affected person was yelling a lot but the subject officer did not know whether the affected person was yelling in pain or just yelling.

### **Civilian Witnesses**

Four employees of the restaurant were interviewed by IIO investigators.

**Civilian Witness 1 (CW1)** stated that she was working as the manager of the restaurant when she observed the affected person yelling at a staff member. After the affected person was told that he needed to leave, he paid his bill, but would not leave. When CW1 warned the affected person that the police had been called he began swearing at her, however he did not leave. The police arrived within five minutes. The officers asked the affected person to leave twice before he went with them. He began leaving with the police, but as he was leaving, he attempted to pull a host stand down to the ground.

CW1 stated that the witness officer stopped the stand from falling and put it back upright. When the affected person tried to pull it down again, the subject officer took the affected person to the ground, and handcuffed him. CW1 stated that the subject officer “wrapped his arm around him and kind of just brought him down.” She observed that the affected person was “kind of resisting a bit.” After being handcuffed, he was moved into a seated position, but would not stand up. The officers dragged him a little bit until they got him up onto his feet. CW1 did not hear the affected person say anything when he was taken down and handcuffed. She did not hear him complain about any pain and she did not observe any interaction between the police and the affected person outside of the restaurant.

**Civilian Witness 2 (CW2)** had just finished her shift at the restaurant and was sitting at a table near the bar. The affected person got her attention by calling out to her. When she turned around, the affected person was looking directly at her and made an obscene comment. She stated that she had no prior interaction with the affected person.

CW2 stated that CW1 subsequently approached the affected person, told him that his behavior was not appropriate, asked him to pay his bill and leave. Although the affected person paid his bill and agreed to leave, he did not leave. CW2 stated that CW1 told the affected person that she would call the police if he did not leave. Even after being told that the police were being called, the affected person would not leave. While waiting for the police, the affected person challenged another patron to fight. CW2 stated that CW1 told the affected person that the police were on their way. Less than five minutes after that call, two police officers arrived.

CW2 described the affected person as being “outraged” that the police had attended. The officers stood on either side of the affected person, and the subject officer asked him if he was going to leave peacefully. The affected person stood up and started walking out, with the subject officer in front of him and the witness officer behind him. CW2 described that the

affected person calmly walked out, but he grabbed the host stand near the door and started to push it over.

CW2 stated that the subject officer “got him around the neck” and pulled him to the ground. She described that the subject officer was behind the affected person and that that the subject officer “took [the affected person] around the shoulders” with his forearm then pulled him down onto the ground. She could not see what was being done on the ground, as her view was obstructed. CW2 stated that the affected person did not appear to be struggling as the officers led him out of the restaurant.

**Civilian Witness 3 (CW3)** was on a break from his job at the restaurant when he first became aware of the affected person attempting to get the attention of another staff member. He stated that the affected person yelled a couple of profanities at the male staff member, at which time he and CW1 both got up to attend to the situation.

CW3 stated that CW1 went over to the affected person and spoke with him, telling him that “he shouldn’t be doing that”. CW3 described the affected person as looking “distant” and being “fidgety.” CW3 stated that CW1 asked the affected person to leave and although he said he would, he did not leave.

CW3 stated the affected person started swearing loudly and was told again that he would have to leave and that they (restaurant staff) had called the police. At one point, while waiting for the police, the affected person challenged a person to fight, but the person ignored him. The police arrived shortly thereafter.

CW3 stated that the police asked the affected person to leave and he was going “well enough” until he was about to go out the door, at which time he grabbed the host stand and tried to pull it down. It was at that time that one of the officers restrained the affected person and took him down to the ground. CW3 described that the officer was standing behind the affected person wrapping his arm around the affected person’s neck to his shoulder.

CW3 stated that the subject officer held the affected person on the ground while the witness officer handcuffed him. CW3 saw the affected person place his feet on both side of the doorframe, making it difficult for the officers to get him out of the restaurant. CW3 described that the affected person “kind of played limp and didn’t want to get up”. The affected person was taken outside and CW3 did not see anything further.

**Civilian Witness 4 (CW4)** was working at the restaurant and served the affected person one beer. About 15 minutes after he arrived, she observed him speaking to patrons at another table. She noted that the affected person was speaking loudly and slurring his words. Approximately 15 minutes later, she heard the affected person swear at CW2.

CW4 stated that CW1 intervened and told the affected person that he would have to pay his bill and leave. The affected person paid his bill, but refused to leave. CW1 indicated she would call police and the affected person became upset and was yelling.

The police arrived and an officer said: “come on, let’s go.” As the affected person stood up he tried to knock over his chair. On the way out, the affected person grabbed a host stand and attempted to pull it down. At that time, the subject officer put his right arm around the affected person’s upper chest/shoulder area and pulled him to the ground. CW4 did not see how the affected person landed, nor did she see anything after he was taken to the ground. She did not recall hearing anything that the police or the affected person said during or after the physical interaction.

## **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 officer’s culpability pursuant to the following *Criminal Code* provisions:

- (1) 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)).
- (2) 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 officer’s actions in physically taking the affected person to the ground, without notice, were unnecessary or unreasonable. In addition, I must consider if excessive force was used while the affected person was being searched in the cellblock.

## **ANALYSIS**

According to the affected person, the involved officers used excessive force while searching him in the cellblock. He did not remember any force being used against him at the time of his arrest. The detachment video system recorded his arrival in the cellblock and the search in **the**

cell. This video did not indicate any force used by the officers which could have accounted for the affected person's shoulder injury.

The officers responded to a complaint that the affected person refused to leave the restaurant. This gave the officers authority to arrest him under the *Trespass Act*. Instead, they tried to escort him out.

While the affected person was being escorted out of the restaurant, the officers and restaurant staff observed the affected person attempt to overturn the restaurant host stand. At that point in time, the officers had the right to arrest the affected person for mischief. The question in this case is whether the subject officer's decision to take the affected person down to the ground, instead of taking him into physical custody while he was standing, was unnecessary and unreasonable.

The subject officer believed the safest way to take the affected person into custody at that time was to take him to the ground to avoid a possible fight. The subject officer stated that he was aware that the affected person was known to get into fights when he was intoxicated. The affected person appeared intoxicated.

The witness officer stated that the safest way to take the affected person into custody at that time was to take him to the ground to avoid a possible fight. When the affected person attempted to overturn the host stand, the subject officer would have been reasonable in concluding that he would not be compliant with verbal orders to submit to arrest. While the affected person remained on his feet, he posed an ongoing risk of harm to the people and property around him. The decision to take him to the ground was, therefore, a reasonable decision under the circumstances.

Neither the restaurant staff nor the affected person recalled any unnecessary violence in the subject officer's response. If the response did, in fact, result in a fracture to the affected person's shoulder, the harm appears to have been unintended and unexpected.

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.

In this case, the subject officer had reason to believe that there was a reasonable risk that the affected person would not comply with an order to submit himself to arrest without resistance. As such, the subject officer's decision to take the affected person to the ground without notice cannot be concluded to be unreasonable. In addition, video evidence is conclusive that there was no excessive or unnecessary force applied to the affected person while he was in the cellblock. Whether or not the single punch attempted by the subject officer actually struck the affected person, that application of force would not be considered excessive as it was preceded by an apparent attempt by the affected person to kick the subject officer.

### **CONCLUSION and DECISION**

Based on the evidence obtained as a result of the IIO investigation, I cannot conclude that any officer may have committed any offence. 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 17th day of December, 2013



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