PUBLIC REPORT OF THE

CHIEF CIVILIAN DIRECTOR

Regarding the March 8, 2013 injury to an adult male involving the RCMP in the city of Prince George, British Columbia

IIO 2013-000021

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 injury of an adult male that occurred on March 8, 2013, in the city of Prince George. The affected person alleged he sustained a serious head injury after an incident involving members of the Prince George RCMP. During that incident, police deployed a Conductive Energy Weapon (CEW) and applied subsequent use of force while taking the affected person into custody.

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 30 years old.

NOTIFICATION AND JURISDICTION DECISION

On May 22, 2013, the affected person contacted the IIO and alleged he had sustained a fractured skull and significant brain injury after being "tasered" by police on March 8, 2013.

The IIO obtained the affected person's medical records with his consent. The records confirmed he had suffered a subdural hematoma and a fractured skull which had required medical treatment on March 8, 2013.

The IIO asserted jurisdiction as it appeared that the affected person sustained injuries that met the definition of serious harm as defined by the *Police Act*.

INVESTIGATIVE EVIDENCE CONSIDERED

Interviews were conducted with the affected person, a family member, three witness officers, and members of the BC Ambulance Services and the Prince George Fire and Rescue Department. In addition, information was obtained from medical professionals including the affected person's primary care provider.

The subject officer declined to provide a voluntary statement as was her right under the Charter of Rights and Freedoms.

Affected Person

The affected person was unable to provide a detailed account of the events that took place on March 8, 2013. He acknowledged having been diagnosed with diabetes and stated he was experiencing low blood glucose levels on that day. He stated he had "passed out" and was found by a family member on the floor. The affected person had no memory of what followed including no memory of his interaction with paramedics, members of the fire department or the RCMP.

The Family Member

The family member recalled being in another part of the residence and hearing a "big bang" come from the basement. The family member found the affected person unconscious in a supine position on the floor and assumed he had collapsed due to a sugar low. 911 was called however before they arrived, the affected person regained consciousness. He appeared to be dazed and agitated.

According to the family member, when paramedics and the fire fighters arrived, the affected person did not want to be approached and continued to be agitated. The affected person got up and went into the kitchen where he grabbed what was described as a "butter knife." The first responders reportedly reassured the affected person that they were there to help him and

asked him to drop the knife. When he did not comply, the first responders left the residence and called the police.

The family member stated the affected person locked himself in his bedroom. Once police arrived, four officers entered and the affected person came out of his bedroom. According to the family member, the subject officer "tasered" him while he was standing and described him as falling to one knee. Two other officers pushed the affected person to the ground and "bashed" the right side of his head to the floor in order to apply the handcuffs.

The family member demonstrated (for IIO investigators) how the incident took place, and showed how the arresting officers "slammed" the right side of the affected person's head onto the carpeted floor.

BC Ambulance Services

Witness Paramedic 1 stated that when his emergency health services unit and fire fighters responded to the emergency medical call, they found the affected person acting very aggressive and confused. He would not allow the paramedic to touch him for assessment and was verbally and physically aggressive with first responders.

Subsequently, the affected person went to the kitchen where he grabbed a steak knife. The paramedic thought "he looked like he was ready to stab somebody." As per BC Ambulance protocol, he had his partner call "Code 33" (paramedic in distress) in order to obtain the presence of the police and they left the residence. The paramedic did not see the CEW deployed; when he re-entered the residence he saw the affected person ¾ prone on his belly with his face on the floor and noted that the police were in the midst of handcuffing him. He noticed some "rug burn" to the affected person's face which he assumed was from being tackled to the ground.

Witness Paramedic 2 confirmed that upon their arrival, the affected person was aggressive and did not want to be touched. She described him as uncooperative and noted that he appeared to be unable to understand what was going on. She stated that he went to the kitchen and "armed himself with a knife." When she re-entered the residence, after the deployment of the CEW, the affected person was on the couch handcuffed.

Prince George Fire Department

According to **Witness Fire Fighter 1** (the supervisor at the scene), fire fighters arrived at the same time as the paramedics and followed them into the residence. He described the affected person as very agitated and dismissive of the paramedics. Fire personnel and paramedics tried to reassure and calm the affected person but they were unsuccessful.

According to the supervisor, the affected person went to the kitchen where he grabbed a steak knife (with a five inch blade) from the drying rack. He was described as appearing to be

confused and agitated. Due to the risk to paramedics and fire personnel, the supervisor ordered everybody out of the house.

Once police arrived, the fire department supervisor re-entered the residence and saw the affected person exit the bedroom with the knife in his hand, held at waist height. The supervisor heard the subject officer issue the command "drop the knife now!" three times. He stated that he saw the affected person take a step forward toward the subject officer. She deployed the CEW from a distance of between ten and twelve feet. The probes hit the affected person in the middle of his chest; he dropped down to his knees on the carpeted floor and then slumped over to his side.

The supervisor observed two fire fighters and two police officers trying to subdue the affected person after he was hit by the CEW. The struggle to handcuff him lasted about five minutes. During this time, the supervisor heard the family member screaming at the subject officer "why did you have to do that?" After the affected person was handcuffed, he was transferred to the hospital.

Witness Fire Fighter 2 recalled the affected person acted aggressively towards the first responders. He described the knife that the affected person had as "a medium sized butcher knife." Although he was not in the residence when the police entered, he heard the command "drop the knife, drop the knife now!" and then heard the deployment of the CEW.

When he re-entered the residence, he saw the subject officer with a CEW in her hands and three police officers wrestling with the affected person on the floor. He and another fire fighter assisted the officers by each holding a leg. The officers were eventually able to handcuff the affected person and he was taken to hospital.

Witness Fire Fighter 3 described the knife as "a long kitchen knife from a butcher block." He stated he was present in the residence at the time the officer issued the command to "drop the knife – do it now!" a total of three times. When the affected person did not comply, the CEW was deployed for one cycle causing him to drop the knife and fall to the floor. The fire fighter described the fall as more of "a crumple" where the lower part of the affected person's body was the first part to hit the floor. The fire fighter did not observe the affected person hit his head on anything at that time. He did observe that he had a bloody nose after the struggle to be handcuffed.

Witness Officers

Witness Officer 1 stated that he was the first RCMP member to respond to the paramedics' call for assistance. The subject officer arrived and was equipped with a CEW. Witness Officer 1, Witness Officer 2 and the subject officer entered the residence and then saw the affected person armed with the knife. Witness Officer 1 recalled the affected person had an "aggressive stance/look on his face, accompanied with the lack of acknowledgment of the commands to

drop the knife." Witness Officer 1 ordered the CEW deployed and within five minutes of being "tasered," the affected person was being cared for by the paramedics.

Witness Officer 2 also responded to the paramedics' call for assistance. He described seeing the affected person holding a kitchen knife (with a three to five inch blade) at thigh level in front of his body. According to Witness Officer 2, Witness Officer 1 yelled more than once, "drop the knife!" He also recalled the Subject Officer also yelling commands to drop the knife.

Witness Officer 2 recalled Witness Officer 1 stating "we need to end this now" and the Subject Officer deployed the CEW for a single cycle. The CEW probes struck the affected person and the knife flew out of his hand. Witness Officer 2 recalled the affected person folded with his knees hitting the ground first and then he rolled onto his right side. After the CEW was deployed, Witness Officer 2 and Witness Officer 3 worked to restrain and handcuff the affected person. This was a prolonged struggle as his hands were under him and he strongly resisted being handcuffed.

Witness Officer 3 entered the residence with Witness Officers 1 and 2 as well as with the Subject Officer. On entry to the basement suite, he saw the affected person near the back wall with a knife in his hand. Although he and the other officers had a couch in between themselves and the affected person, he did not believe the couch was appropriate "cover." He stated that given that the gap between them could be (closed) quickly, the affected person needed to be restrained quickly to avoid injury to those present.

Witness Officer 3 recalled the affected person being given commands to drop the knife, to which he did not comply. Once the CEW was deployed, Witness Officer 3's main focus was the location of the knife and the containment of the affected person. Witness officer 3 immediately attended to the affected person in order to handcuff him. He stated his intent was to use minimal force as he was aware that the initial call was for medical assistance. He described the affected person as "strong" and as his hands were under his body, officers needed assistance from the fire fighters in order to apply the handcuffs. Witness Officer 3 described himself as on top of the affected person who was lying on his stomach; he pulled his head and neck up while the others retrieved his arms from underneath him and eventually handcuffed him.

CEW Evaluation

A download of the CEW that was used showed a single five second deployment or cycle.

Medical Evidence

The affected person had been diagnosed with Type 1 Diabetes.

According to the responding paramedics, immediately after being taken into custody, the affected person's blood glucose levels were low, however not at the extreme end.

The affected person did not present as "a typical low blood sugar patient" as he had displayed energy and strength. According to the paramedics' statements, the affected person was "inappropriately aggressive" even after he was treated with sugary fluids after he was restrained. Further, although normal patients with low blood sugar will recover quite quickly when they are given sugary fluids, the affected person's confusion, disorientation and aggression reportedly did not subside.

According to the affected person's primary care physician as well as the attending physician at the hospital, if his presentation with the first responders was strictly due to a hypoglycemic episode in itself, (low blood glucose levels) his responses would have quickly changed once he was administered the sugary fluids. The ER physician noted that the affected person was still agitated when under his care in the emergency room.

According to the attending physician at the hospital, the subdural hematoma sustained by the affected person would explain the described level of aggression and his inability to comprehend commands and directions.

According to the primary care physician, the affected person had a probable hypoglycemic episode which caused a collapse. As a result of the subsequent fall, he "smashed" his head on the floor, causing the skull fracture. This injury would have resulted in an immediate swelling around the fracturing causing pressure on the brain which would further cause a state of confusion.

Medical records indicated that the injury to the affected person's skull were "stable, undisplaced comminuted right occipital fractures extending all the way inferiorly and medially to the margin of the foramen magnum." The occipital bone is at the very back of the head.[1]

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, I must consider specifically, the allegation of excessive use of force which, if confirmed, would constitute the offence of 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)).

[1] See http://www.daviddarling.info/encyclopedia/O/occipital_bone.html.

ANALYSIS

The affected person was not able to recall the events related to the incident. The family member however, did allege excessive use of force through the "bashing" of the affected person's right side of the head by officers while they were handcuffing him.

Based on the descriptions of the affected person's fall after the CEW was deployed, there is no reason to believe that he sustained a head injury at that time. Instead, the medical evidence and observations by paramedics and medical personnel suggest that the affected person experienced a skull fracture and brain injury prior to contact with paramedics or police. Further, the injury to the affected person was at the back of the skull and not on the right side as alleged by the family member.

The use of the CEW was appropriate given that the officers were faced with an aggressive and noncompliant adult male armed with a knife. Whether the deployment was necessary because of the affected person's aggressive actions toward the police or in order to quickly and safely take him into custody to ensure necessary and immediate medical treatment, the CEW deployment would have been justified under *Criminal Code* s.25(1). Independent accounts from other first responders raised no concerns about the force that was used to restrain the affected person.

CONCLUSION and DECISION

There is no evidence to support the belief that any officer may have committed an offence and as such, no further action will be taken by the IIO. Investigative materials will, however, be made available to the Commission for Public Complaints Against the RCMP (CPC) and the RCMP's Professional Standards Unit in the event that the affected person or a member of his family wishes to pursue an excessive force complaint through the citizen complaint process.

Prepared for Public Release this 3rd day of October, 2013

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