



**IN THE MATTER OF A SERIOUS MEDICAL CONDITION DIAGNOSED
IN A MALE AFTER HE WAS APPREHENDED
BY MEMBERS OF THE VANCOUVER POLICE DEPARTMENT IN
VANCOUVER, BRITISH COLUMBIA
ON AUGUST 27, 2020**

**DECISION OF THE CHIEF CIVILIAN DIRECTOR
OF THE INDEPENDENT INVESTIGATIONS OFFICE**

Chief Civilian Director:	Ronald J. MacDonald, K.C.
IIO File Number:	2021-041
<u>Date of Release:</u>	<u>December 8, 2022</u>

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INTRODUCTION

In February 2021, the Independent Investigations Office ('IIO') was notified by the Office of the Police Complaint Commissioner ('OPCC') about an incident that had occurred on August 27, 2020. The OPCC had received a complaint that the Affected Person ('AP') had been injured in the incident by Vancouver police officers and had authorized an investigation. Subsequently, on January 29, 2021, the OPCC received updated medical information indicating that the injuries were serious enough to meet the threshold for an investigation by the IIO. Accordingly, the IIO commenced an investigation. The narrative that follows is based on evidence collected and analyzed during the investigation, including the following:

- statements of a civilian witness and five witness police officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- audio recordings of 911 calls and police radio transmissions;
- a data download from a police Conducted Energy Weapon ('CEW' or 'Taser');
- medical records; and
- an expert medical opinion.

The IIO does not compel officers who are the subject of an investigation to submit their notes, reports and data. In this case, the Subject Officer ('SO') initially indicated to IIO investigators that he wished to provide a statement, but was advised by a representative from the Vancouver Police Union ('VPU') to seek legal counsel. Some months later, the VPU representative told the IIO that SO still wished to give a statement but had been unable to contact counsel. At the time of writing, the IIO still has not received any account from SO.

NARRATIVE

On the afternoon of August 27, 2020, police responded to 911 calls about a domestic dispute in which the Affected Person ('AP') was said to be arguing with his spouse, Civilian Witness 1 ('CW1') outside a recreational vehicle ('RV') parked on a Vancouver street. CW1 was described as yelling or screaming for help and as being "forced into" the RV.

When officers located the RV, it had moved to a different location, and CW1 was standing outside. When officers attempted to communicate with AP, who had locked himself inside

the vehicle but came to a window, he held up an opened utility knife and threatened to cut his own throat. After a number of attempts by police to call AP out using their public address systems, AP told them he had released propane inside the RV and had doused himself with gasoline. He threatened to set himself on fire if police attempted to enter the vehicle.

Within about an hour, a number of Emergency Response Team members had arrived on scene, with the Subject Officer ('SO') among them. They attempted to communicate with AP over a period of several hours. At one point, an officer delivered a 'throw phone' through a window, and said he did not detect any smell of propane from inside.

After multiple further attempts to communicate with AP, aimed at de-escalating the situation, the decision was made to insert CS gas (a variety of tear gas) into the RV. AP was seen to drop to the floor after insertion of the gas, and officers became concerned about his condition. Forced entry into the vehicle was authorized.

Witness Officer 1 ('WO1') later told IIO investigators that he was the first officer to enter, in the role of 'lethal overwatch'. He said the interior was significantly cluttered, impeding movement. AP, he said, was lying in the kitchen area with his hand on the extended utility knife, which was on his chest. WO1 warned the other members of the entry team and shouted at AP to drop the knife. He said that AP did not respond.

SO then deployed a CEW against AP, and WO2 moved forward to remove the knife, though he was impeded in doing so by the need to pass by WO1 and SO in the narrow space. AP was then placed in handcuffs. Because of a concern that he might be under the effect of narcotics, a dose of Naloxone was administered.

AP was taken to hospital, where he was found to be in an altered state of consciousness. An "extremely elevated" level of creatine kinase was measured in his blood. AP reported to hospital staff that he was a regular user of crystal methamphetamine, and also used a variety of other illicit drugs.

He was subsequently diagnosed with compartment syndrome in his right leg. This is a painful and damaging build-up of fluid pressure within the fascia (connective tissue) surrounding muscles. It is sometimes associated with Rhabdomyolysis (a condition in which muscle tissue breaks down rapidly after trauma and releases fluids). A surgeon consulted about this diagnosis while AP was being treated noted that Rhabdomyolysis "is possibly related to tasing but stimulant induced Rhabdomyolysis is also possible".

A data download from SO's CEW indicated that the device had been fired once and activated four times, for a five second period each time. A completed circuit was reported, suggesting that neuro-muscular incapacitation should have been achieved.

Because a CEW had been deployed repeatedly against AP during the police incident, the IIO obtained an expert medical opinion regarding a possible causal connection to AP's medical condition. The expert concluded that the CEW was "very unlikely" to be the cause, and gave detailed reasons for that conclusion. He opined that AP's heavy use of methamphetamine created "significant risks" for Rhabdomyolysis, and said he suspected that AP's compartment syndrome may have been pre-existing at the time of the incident.

LEGAL ISSUES AND CONCLUSION

The Independent Investigations Office of British Columbia has been given the task of investigating any incident that occurs in the province, in which an Affected Person has died or suffered serious physical harm and there appears to be a connection to the actions (or sometimes inaction) of police. The aim is to provide assurance to the public that when the investigation is complete they can trust the IIO's conclusions, because the investigation was conducted by an independent, unbiased, civilian-led agency.

In the majority of cases, those conclusions are presented in a public report such as this one, which completes the IIO's mandate by explaining to the public what happened in the incident and how the Affected Person came to suffer harm. Such reports are generally intended to enhance public confidence in the police and in the justice system as a whole through a transparent and impartial evaluation of the incident and the police role in it.

In a smaller number of cases, the evidence gathered may give the Chief Civilian Director reasonable grounds to believe that an officer has committed an offence in connection with the incident. In such a case, the *Police Act* gives the CCD authority to refer the file to Crown counsel for consideration of charges.

In a case such as this one, involving the use of force by an officer, one of the threads of the IIO investigation will be the gathering of evidence about potential justifications for that use of force. The CCD will then apply legal tests such as necessity, proportionality and reasonableness to reach conclusions as to whether the officer's actions were lawful, or whether the officer may have committed the offence of assault.

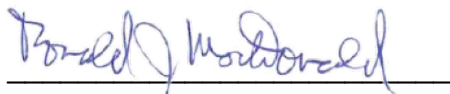
All the officers involved in this incident were acting in lawful execution of their duty when they attended in response to the initial 911 calls. They were investigating allegations about a domestic incident possibly involving violence, and quite soon encountered an individual who was uncooperative and threatening self-harm. Those threats then escalated to the point where there was potential danger to others from a propane explosion.

The evidence establishes that police attempted over an extended period to negotiate with AP and to de-escalate the situation. When the attempt to force AP out of his barricaded location using CS gas resulted in what appeared to be physical distress on his part, it was reasonable for them to risk entry into the RV. As they did so, finding AP still in possession of the knife, either in or under his hand, the use of the CEW to subdue and apprehend him was proportionate and reasonable.

Because the IIO does not have an account from SO, there is no clear evidence as to why he judged it necessary to activate the CEW four times. It does appear likely, though, that the difficulty WO2 apparently experienced moving in the confined, cluttered space impeded the logical next step, which was to disarm AP before the effects of the CEW passed. In the circumstances it cannot be said that the repeated CEW deployments amounted to excessive force.

With respect to AP's medical condition as subsequently diagnosed, the expert opinion obtained and referenced above makes it highly unlikely that the CEW deployment was the cause.

Accordingly, as the Chief Civilian Director of the IIO, I do not consider that there are reasonable grounds to believe that an officer may have committed an offence under any enactment and therefore the matter will not be referred to Crown counsel for consideration of charges.



Ronald J. MacDonald, K.C.
Chief Civilian Director

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