



PUBLIC REPORT OF THE  
CHIEF CIVILIAN DIRECTOR

Regarding the injury to an adult male on  
June 23, 2014, involving an officer employed  
by the Vancouver Police Department.

IIO 2014-000114

## **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 sustained by an adult male that occurred on June 23, 2014, in the city of Vancouver. The male affected person sustained a serious injury to his arm after being bitten by a Police Service Dog (PSD) under the control of a Vancouver Police Department (VPD) officer.

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, to 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.

## **NOTIFICATION AND JURISDICTION DECISION**

On June 23, 2014, officers were monitoring the actions of the affected person and made the decision to arrest him. Officers attempted to stop the affected person’s vehicle. During this contact, the affected person’s vehicle was hit by a police vehicle and overturned. The affected

person reportedly remained in the vehicle despite police commands to exit. A police service dog (PSD) was deployed and bit the affected person.

The affected person suffered laceration and puncture wounds to his left forearm due to a bite by the PSD, requiring surgical intervention. No injuries were associated with the vehicle rollover. The Independent Investigations Office (IIO) initially declined to assert jurisdiction as the affected person's injuries did not appear to fall within the definition of "serious harm" as defined in the *Police Act*. The *Police Act* definition includes injuries that result in "serious disfigurement," or "a substantial loss or impairment of mobility of the function of any limb..."

On July 3, 2014, the IIO was notified by the Office of the Police Complaint Commissioner that they had received medical information indicating the affected person had sustained "muscle and tendon damage" such that it appeared that he may have suffered "serious harm."

Based on that information, the IIO sustained jurisdiction and commenced an investigation.

### **Investigative Evidence Considered**

IIO investigators interviewed the affected person. IIO investigators reviewed the subject officer's duty to report (with his consent). He subsequently provided written responses to questions posed by IIO investigators. Four witness officers were interviewed as well as several civilian witnesses. IIO investigators reviewed the expert report and photographs provided by the VPD Collision Investigation Unit; this material was further reviewed by the IIO Collision Reconstructionist.

### **Affected Person**

The affected person gave a statement to IIO investigators on August 25, 2014. He described being in the vehicle intending to make a turn. He observed a dark vehicle in his intended path, about one to one/one-half car lengths away.

The affected person stated that he continued straight and "all of a sudden" he felt "a boom" that disoriented him, then he was upside down. He described being dazed.

Shortly after, while he was still in the over-turned vehicle he heard the command to "put your hands out of the vehicle." The affected person described that it took him a couple of seconds to realize what was going on and that he was going to put his hands out of the vehicle, but the dog handler let the dog come at him. The affected person said that he tried to come out of the vehicle at least three times, however the dog handler kept "...putting the dog and he kept on just like nipping me and nipping me..." The affected person said that he was trying to comply with the commands of the subject officer but he was frightened of the dog.

The affected person said that when he first saw the dog he was four or five feet away. He tried to put his hands out of the vehicle and recalled: "the cop's holding him like that, and when I put

my hands out, he'd let the dog go at me, and it'd lunge at me, to bite, and that is why I am like, 'whoa' and -- I tried to put my hands out, and I just see a dog going pssh.--.and then I just kept on doing that, like he kept on just trying to nip me. I don't know if I should have just tried to just retreat back in, but I did and -- and then those dogs are as scary as you can see. That is why I -- just went back in the car. In my mind, I was like, if I go back in, there is a 50-50 chance I might not get bit because there is another person in the car."

The affected person did not recall any announcement prior to the dog coming into the vehicle and that just as he was about to retreat further into the vehicle, the dog popped its head in and latched onto him very quickly. He said that he was pulled out of the vehicle and dragged 12 to 14 feet away. He recalled two officers being there but didn't recall what was being said.

The affected person said that he attempted to "peel" the dog off but that he didn't hit the dog. His recall was that the dog bite continued for over a minute and then he was handcuffed.

### **Subject Officer**

The subject officer gave the IIO permission to review his police (duty to account) report and, on August 28, 2014, responded in writing to written inquiries made by the IIO.

With respect to the apprehension of the affected person, the plan had been developed in consultation with the supervisors.

The subject officer was to enter the lane from the west to box and pin the vehicle while another officer was to enter the lane from the east.

The subject officer reported that he stopped south of the lane and out of view rather than block the lane because the affected person had not yet reached his vehicle and was on foot. The subject officer was concerned that he would have been visible. In his experience, this would have compromised the arrest.

The subject officer also believed it would have caused the affected person to become aware of police presence and flee on foot between the houses giving an opportunity to escape. Further, it was his view that this would give the affected person the opportunity, should he have reached the vehicle, to speed in the lane as he escaped. This would have presented a dangerous situation for the public, other police officers and himself.

As the subject officer was waiting for the affected person to reach his vehicle, he was relying on broadcasts made by other officers to time his entry into the lane to execute the box/pin. The last broadcast that he heard was that the affected person was walking toward his vehicle.

Before any further broadcasts were made, the subject officer observed the vehicle exiting the lane. From his stationary police vehicle the subject officer saw the affected person look directly at him from approximately 10-15 feet away. He recognized the affected person and believed

the vehicle was fleeing from him. He observed as it exited the lane and instead of stopping at the lane mouth, the engine "rev'ed" and the vehicle immediately begin to accelerate across the street and the subject officer heard the tires squealing.

The subject officer began to drive forward to make contact. He advised that he was stationary when he first observed the vehicle exiting the lane and that he had observed numerous pedestrians in the lane to the west of the vehicle. He said there were also pedestrians on the street. He determined that the affected person was aware of police presence and if allowed to continue, would be a danger to the public. He had prior knowledge that this had occurred in the past.

The subject officer advised that he made contact with the driver's side of the vehicle as it accelerated in front of him and attempted to flee. His intention was to pin the vehicle before it was allowed to continue. He pushed the vehicle attempting to pin it into the north-west corner of the lane, against a large tree and fence. There were no pedestrians or vehicles in proximity of the pin. The vehicle continued to accelerate, squealing its tires as he was pinning it.

As he was pushing the vehicle, it came into contact with the raised curb on the north-west corner, and slowly began rolling onto its roof. The vehicle rolled onto its roof and came to rest on the north-west corner. The pin was performed at low speed as both vehicles were very close, within 10-15 feet, and he had initiated the pin from a complete stop. The affected person's vehicle had just begun accelerating as the subject officer was moving in to pin the vehicle; travelling between 10-20 km/hr.

Once the vehicle was stopped, the subject officer exited his police vehicle and deployed the PSD on a three foot leash. The subject officer began yelling loud commands for the affected person and his passenger to exit the vehicle and show their hands. He advised that he yelled, "Police, you are under arrest, get out of the car and show me your hands!" and that neither man complied after numerous verbal commands. The subject officer moved around to the driver's side of the affected person's vehicle and continued to yell for the men to exit the vehicle.

The subject officer determined that the men were non-compliant to verbal demands. He could not see them as the curtain airbags were deployed blocking his view.

The subject officer opened the driver's door of the vehicle and observed the affected person in the driver's seat laying on his right side facing him. He saw a black "man purse" around the affected person's neck with a large can of bear spray attached. He knew it was bear spray as he could clearly see the top of the can and the orange safety clip attached to it.

The subject officer saw a fixed blade knife directly in front of the affected person within reach. He again began yelling "Police, you are under arrest, show me your hands and get out of the vehicle or you will be bit!" According to the subject officer, the affected person ignored these

commands and moved away from him and further back into the vehicle towards the passenger side and out of view.

The subject officer gave both occupants two verbal commands as he was at the vehicle and another verbal command after the driver's door had been opened. The duration of these three commands was approximately 30 seconds.

The subject officer's view was that the affected person had numerous opportunities to surrender during the arrest, both in the vehicle prior to the pin and after the pin when he was given numerous verbal commands to exit. The subject officer believed that if he had continued to give further commands and continued to give him more time, the affected person would continue to attempt to flee out the passenger side of the vehicle or access the weapons he was armed with and pose a significant threat of harm to the subject officer, his dog and other members on scene.

The subject officer reported that lower levels of force would have put him and/or other members in extremely close proximity of the affected person. Given that he was armed with a knife and bear spray, that would have been inappropriate and dangerous to do. It was the subject officer's opinion that the deployment of the dog to apprehend the affected person was the most efficient and appropriate method to take him into custody while ensuring the safety of the public, other police members and himself.

He gave his PSD the command to take the affected person into custody. This is a command used solely to direct the dog to apprehend the individual by making contact and holding or pulling the person from his place of concealment.

The subject officer reported that his PSD made contact with the affected person's left forearm. As soon as contact was made, the subject officer began pulling back on the line and harness, trying to quickly extract the affected person from the vehicle. This in part, was so that the subject officer could see the affected person's hands, quickly gain control of him and prevent him from accessing any weapons.

According to the subject officer, the affected person was pulled from the vehicle with his left arm exiting first and the rest of his body on its side. As he was pulled from the vehicle, the affected person rolled on top of the dog and began choking him with his right arm, in a headlock/choke hold.

The subject officer advised that he continued pulling on the dog's line and harness as the affected person was choking him. He could not see the affected person's hands and was concerned that he had accessed the knife and was stabbing the dog. The affected person's body was positioned directly on top of the dog. He had his back to the subject officer and both arms and hands under the dog. The subject officer observed the affected person continuing to choke the dog.

The subject officer gave continuous commands for the affected person to “Stop fighting the dog” and “Show me your hands”. The subject officer pulled the affected person back approximately 10 feet from the vehicle until he was able to pull his PSD out from underneath him and out of the choke hold.

Once the affected person was under the control of another officer, the subject officer gave his dog the command to release. When the PSD did not immediately respond to this command, the subject officer took physical control of him and effected the “out” removing him from contact with the affected person.

The subject officer stated the PSD was in contact with the affected person for less than 30 seconds from the point he was given the command to apprehend until the dog was released from contact.

### **Witness Officers**

**Witness Officer 1** (WO1) was interviewed by IIO investigators on July 30, 2014. WO1 stated the subject officer went to the driver’s door giving the command: “Vancouver Police - show me your hands” to which he received no response.

WO1 advised that the PSD “slightly went in the vehicle” although he could not see what happened in the vehicle ...The dog must have bit his forearm and I remember the dog coming out of the vehicle with the (affected person’s) forearm in the dog’s mouth and slowly taking the affected person back.”

WO1 assumed that the subject officer was pulling the dog back. The affected person went out of WO1’s view “pretty quick,” as WO1 was focused on the door of the vehicle.

**Witness Officer 2** (WO2) was interviewed by IIO investigators on July 29, 2014. WO2 reported that he immediately attended the scene and observed that there were two occupants inside (the vehicle) who were being given commands by other officers. The occupants did not appear to be complying and there was very little visibility inside due to the side-curtain airbags which had deployed and were hanging down across the door windows.

WO2 advised that the affected person was removed from the vehicle by the subject officer and the dog. WO2 grabbed the affected person’s right arm, handcuffed it and waited for the affected person to become compliant with the subject officer’s commands.

WO2 advised that he then searched the front area of the affected person’s vehicle and located a can of bear spray and a grey handled knife with a silver blade.

**Witness Officer 3** (WO3) was interviewed by IIO investigators on July 23, 2014. WO3 said that she did not see the crash and that it took her 10-15 seconds, perhaps more, to get to the

vehicle. WO3 advised that when she arrived at the scene, the affected person was on his stomach and the PSD was attached to one of his arms. The subject officer had hold of the dog by its collar and was pulling it off of the affected person. The subject officer was issuing commands, but WO3 could not recall the words that were used.

**Witness Officer 4 (WO4)** was interviewed by IIO investigators on July 30, 2014. WO4 was in a supervisory role that shift. His unit had been monitoring the affected person's actions just prior to the incident. While monitoring the affected person, WO4 also observed a large group of young children, walking together in the area.

According to WO4, he had knowledge that the affected person was shown on CPIC as armed and dangerous. WO4 had prior knowledge of the affected person and knew him to drive in a dangerous manner.

WO4 briefed his unit and told them to consider the affected person armed and dangerous. WO4 instructed his unit to try to contain the affected person (given the heavy pedestrian traffic in the neighbourhood) and requested that the subject officer stage his vehicle to the west end of the south lane and another officer stage to the east end of the lane.

WO4 stated he drove his unmarked police vehicle directly behind the subject officer's vehicle and as he approached the south lane, he was able to identify the affected person and his vehicle. WO4 noted that the affected person's vehicle began accelerating westbound.

WO4 advised that he looked on as the subject officer pinned the affected person's vehicle and noted that it was accelerating away from the officer. WO4 advised that it appeared as though the subject officer's vehicle made contact with the affected person's vehicle which then made contact with the curb. According to WO4, these actions, paired with the affected person's acceleration, initiated the vehicle to start rolling. The affected person's vehicle subsequently ended up on its roof. WO4 exited his vehicle as did the subject officer and the PSD.

WO4 advised that prior to this day, he was aware that both the affected person and his passenger were considered armed and dangerous and as such, he drew his duty issue firearm from his holster and repeatedly gave loud, audible commands for both men to show their hands out the windows.

As WO4 and the subject officer were still the only officers there, WO4 returned to the passenger side of the affected person's vehicle. He made his way around back to the driver's side and as the affected person had already been pulled out, WO4 began yelling commands at the passenger. WO4 reported he didn't see the affected person being removed from the vehicle.

## **Civilian Witnesses**

Although several civilian witnesses were interviewed none saw the collision nor were any able to corroborate statements made by the affected person or the subject officer. The affected person's passenger was not located.

### **Expert Report – VPD Collision Investigation Unit**

It is evident from the photographs of vehicles at the scene that this collision occurred at relatively low speeds. Vehicle damage can be seen to the driver's side quarter panel of the affected person's vehicle and to the right front of the police vehicle.



The VPD Collision Investigation Unit reported the following:

The (affected person's) vehicle appears to have been travelling at a relatively low speed when the contact occurred, and was likely accelerating as observed by the subject officer. From the Regulations and Procedure Manual of the Vancouver Police Department (RPM), it is safe to conclude that this was not a boxing event, as the (affected person's) vehicle was not stopped at the time of the contact and the incident only involved on[e] police vehicle.

“The only remaining possibility is that this constituted a pinning or a ramming. In the opinion of the VPD Collision Investigation Unit, this collision satisfies the requirements of a pinning, which is specifically defined as the use of a police vehicle to safely make physical contact with, and contain, the suspect vehicle. Pinning only occurs at very low speeds or when a suspect vehicle is stopped.”

The VPD Collision Investigation Unit report concluded that in this case, the use of the pinning technique complied with VPD policy. It was noted that the fact that the affected person's vehicle ended up rolling over was more the result of the dynamics of the collision and the physical make-up of the collision scene, than the force of the pinning attempt by the subject officer... “Had the (affected person's) vehicle been rammed at high speed, the principle direction of force of the collision would have caused the (affected person's) vehicle to end up north of the police vehicle and there would have been significant front end damage to the police vehicle and severe intrusion into the driver side of the (affected person's) vehicle.”

It was further noted that none of the individuals involved in the collision sustained injuries directly related to the collision; the air bag of the police vehicle did not deploy. The side curtain air bags of the affected person's vehicle deployed as a result of the rollover sensors rather than the force of the collision.

The VPD Collision Investigation Unit concluded that "the collision resulted in the apprehension of the (affected person), prevented a police chase and ensured the safety of numerous pedestrians that were in the lane at the time of the event."

An IIO Collision Reconstructionist peer reviewed the report and agreed with the findings.

## **ISSUES**

The general issue in any IIO investigation is whether a person suffered death or "serious harm" 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. The legal issues to be considered in this case are whether the subject officer reasonably used force against the affected person in the initial pinning maneuver and in the subsequent deployment of the PSD. If the subject officer's actions were unreasonable, he could be liable for the offense of assault, assault causing bodily harm or aggravated 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)).

## **ANALYSIS**

The decision by the subject officer to pin the vehicle that he saw the affected person driving was made with great rapidity and as a matter of public concern. The affected person was believed to be taking flight in a residential neighbourhood where a group of small children had recently been seen and were potentially at risk.

The subject officer had been advised that an offence had occurred and that both the affected person and the other man were arrestable. The subject officer had further been advised that the men were to be considered armed and dangerous.

The subject officer had the training to undertake such a maneuver and was in the correct position to do so. According to the affected person, the police vehicle was only one to one and half car lengths away. According to witness officers, the distance was 10 – 15 feet. As such, the decision to pin the vehicle was within the subject officer's authority and his duty to perform. It did not appear to cause any undue risk of injury to the affected person, the involved officers or any member of the public.

With respect to the affected person's removal from the overturned vehicle, from his perspective, it may be that the officer used unnecessary force. When the subject officer commanded him to show his hands, the affected person indicated he complied, however was fearful of the PSD. He claimed that the dog lunged at him when he put his hands out of the vehicle. Notwithstanding repeated commands to exit, the affected person retreated into the vehicle.

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 Supreme Court of Canada has clearly established that the allowable degree of force remains constrained by the principles 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.

There are very few differences between the statements of the subject officer and the affected person. The subject officer was advised that the affected person was to be considered armed and dangerous. The subject officer observed a knife and a can of bear spray in the vehicle. He decided to deploy his PSD to force the affected person from the vehicle. Despite the affected person being given several opportunities, he would not come out voluntarily.

With respect to the duration of the contact between the affected person and the PSD, the subject officer's actions would only constitute a criminal offence if he had negligently or maliciously allowed his PSD to continue to bite the affected person after forming the reasonable belief that he was complying. The decision to use the dog to remove the affected person from the vehicle provided appropriate protection from any risk of serious harm to the police, without imposing any life-threatening harm to the affected person. Although the dog left injuries, the force applied did not exceed the risks of the situation as the subject officer reasonably appeared to perceive them.

## **CONCLUSION AND DECISION**

Based on the evidence obtained as a result of the 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 I will not be making a Report to Crown Counsel for consideration of possible charges.

Prepared for public release this 15<sup>th</sup> day of January, 2015.

Richard Rosenthal  
Chief Civilian Director