



PUBLIC REPORT OF THE
CHIEF CIVILIAN DIRECTOR

Regarding death of a youth on June 15,
2014, involving an officer employed by the
RCMP in Kamloops.

IIO 2014-000108

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 death of a youth that occurred on June 15, 2014, in the city of Kamloops. The affected person died after jumping from a hospital parkade. Just prior to this, an officer had deployed a Conducted Energy Weapon (CEW) in order to assist in taking the youth into protective 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, 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. Further, as the affected person was a youth, additional steps have been taken to protect the privacy of the deceased.

NOTIFICATION AND JURISDICTION DECISION

On June 15, 2014, officers responded to a complaint at a hospital involving the affected person. The affected person had left the hospital and was in emotional distress. Officers were attempting to take the affected person into protective custody.

After approximately 40 minutes of unsuccessful negotiations, an officer deployed the CEW. The CEW was not effective in immobilizing the affected person. The affected person jumped from the parkade and sustained life threatening injuries. The affected person did not survive.

The Independent Investigations Office (IIO) was notified immediately; jurisdiction was sustained.

Investigative Evidence Considered

IIO investigators interviewed four civilian witnesses and a witness officer. IIO investigators received voluntary written statements from the two subject officers; statements that were vetted through their legal counsel. The IIO obtained radio communications and CCTV.

General Timeline -Radio and Video

- 7:21 p.m. A 911 emergency call was received from the hospital
- 7:24 p.m. Subject officer 1 arrived at the scene
- 7:25 p.m. Subject officer 2 arrived at the scene
- 7:26 p.m. Witness officer 1 arrived at the scene
- 7:35 p.m. Officers requested cigarettes for the affected person
- 7:39 p.m. Witness officer 1 called for a crisis negotiation team
- 8:07 p.m. CEW was deployed by subject officer 2; the affected person jumped

Interviews: Civilians and Witness Officer

Civilian witness 1 confirmed that he observed subject officer 1 negotiate with the affected person, although he could not hear the specific conversation between them. He saw subject officer 1 provide the affected person with at least two or three cigarettes in an attempt to establish a rapport.

After a third cigarette was provided, civilian witness 1 saw subject officer 2 pointing the CEW and deploying it. Subject officer 2 was about five feet away from the affected person. According to civilian witness 1, the affected person showed no response to the CEW and immediately turned, took about four or five strides and jumped off the corner of the parkade.

Civilian witness 2 described hearing the affected person tell security guards to stay away or (the affected person) would jump. After the arrival of the police, civilian witness 2 could not hear the conversation between the affected person and the officers, but she did hear the affected person shouting.

Civilian witness 2 recalled hearing the call for blankets as the affected person was shivering.

Civilian witness 2 heard the CEW deploy, but she did not see which officer had the device. She recalled seeing the affected person jump off the parkade. She saw the officers run toward the

affected person (she believed to catch the affected person) but did not see the officers touch the affected person.

Civilian witness 3 recalled he had tried to talk to the affected person, but the affected person responded by yelling at him, telling him to get back and threatening to jump. Civilian witness 3 stated he and another person backed away approximately 50 feet. Civilian witness 3 stated that two officers tried to speak to the affected person, but he could not hear what the officers said.

After hearing a request for some blankets over the radio, civilian witness 3 obtained some blankets and then went back to the parkade. Civilian witness 3 saw the two officers and the affected person standing close to each other. The officers were talking to the affected person and civilian witness 3 thought that the matter was over.

Civilian witness 3 stated that he went behind a wall and then heard “the unmistakable sound of a taser.” He did not see which officer deployed the CEW. He did not see any physical altercation between the officers and the affected person, nor did he see the affected person jump.

Civilian witness 4 described being told to back away from the affected person by officers at the scene. He backed away and watched the interaction between the police and the affected person from a window in the parkade stairway. Civilian witness 4 said that he could not hear what the officers were saying, but he heard the affected person yelling. He said that the officers were approximately 20 yards from the affected person.

About a half an hour later, at the request of the police, civilian witness 3 went down the parkade stairs to get blankets. Civilian witness 4 was in the stairway with witness officer 1 when he heard the CEW being deployed. Witness officer 1 turned around and ran towards the affected person.

Civilian witness 4 subsequently saw what he recalled were three or four constables running toward the affected person. He saw the affected person jump. One of the officers had the CEW in his hand, however once the affected person jumped, the officer stopped. Civilian witness 4 did not see any of the officers physically touch the affected person.

Witness officer 1 was interviewed by IIO investigators on June 17, 2014.

Witness officer 1 acknowledged arriving at the parkade shortly after subject officers 1 and 2. His responsibility was to assign roles and try to get the appropriate resources needed to deal with the affected person. Witness officer 1 asked the security guards “to back away” because the affected person “really seemed to be focused on the security people.” Witness officer 1 assigned subject officer 2 as the “over watch” next to subject officer 1 who was assigned to negotiate with the affected person and safely resolve the incident.

Witness officer 1 described subject officer 1 as “very non-threatening. She negotiated with (the affected person)...I thought it was good in terms of taking the affected person sort of from that brink...”

Witness officer 1 thought several times that the affected person was going to jump. Witness officer 1 noted that the affected person moved (closer to officers) several times to get cigarettes, but it did not appear that subject officer 1 could have grabbed (the affected person) as there was only a very narrow area between a parked vehicle and the ledge. Witness officer 1 recalled - “It didn’t look to me like an ideal option to rush (the affected person). I could see that being ineffective and then perhaps a precipitating factor for jumping.”

At approximately 8:00 p.m., subject officer 2 asked witness officer 1 about the potential use of a CEW. Witness officer 1 indicated that if the affected person was on the ground, it would be a viable option. Witness officer 1 told subject officer 2 that he would need to “be satisfied imminent bodily harm is present.”

Witness officer 1 recalled observing and hearing the affected person. Witness officer 1 was concerned about the level of distress and worried that the affected person was going to jump at some point.

Witness officer 1 saw the affected person move closer in order to get a third cigarette from subject officer 1. Witness officer 1 was making notes when he heard the deployment of the CEW. He snapped his head up and saw that the deployment was not effective. The affected person was still moving and “was sort of struggling to keep subject officers 1 and 2 from touching (the affected person)”.

The two officers appeared to recognize that the CEW was not effective as they did not wait for the affected person to drop and were moving in. Witness officer 1 saw the affected person break free, run towards the corner of the parkade and jump over.

Witness officer 1 stated he had requested the assistance of a crisis negotiation team, but the team did not arrive prior to the affected person jumping.

Statements: Subject Officers

Subsequent to being designated as subject officers, both officers provided the IIO with written statements that were vetted through their legal counsel.

Subject officer 1 described being assigned to be the primary negotiator with the affected person. Subject officer 1 moved to within 30 feet of the affected person and began talking. The affected person warned subject officer 1 not to come any closer or the affected person would jump.

Subject officer 1 reported that she repeatedly tried to engage the affected person in conversation, but that (the affected person) was unresponsive and appeared distressed.

Subject officer 1 provided the affected person with cigarettes in an attempt to calm the situation and engage in conversation.

When the affected person asked for a third cigarette, subject officer 1 was able to draw the affected person to the ground level. The affected person took the cigarette and was backing away, when probes from subject officer 2's CEW came over her shoulder towards the affected person. Subject officer 2 moved in. The affected person backed up and jumped.

Subject officer 2 provided the IIO with a written statement which was vetted through his lawyer.¹ Subject officer 2 reported that subject officer 1 did the majority of communicating with the affected person while his role was to cover subject officer 1.

Subject officer 2 recalled cigarettes being brought to the area at the request of the affected person. After the second cigarette was provided, the affected person went back to the railing and continued to act oddly including balancing on the outside of the railing. Subject officer 2 was concerned that the affected person may jump at any moment and that there was nothing that he or subject officer 1 could do to prevent it. The sun was setting, the temperature was beginning to cool and the wind picked up. The affected person commented that it was getting cold but that (the affected person) "wouldn't be shivering for long." Subject officer 2 felt that the affected person was ready to jump.

A third cigarette was placed on the ground. The affected person refused to come down from the ledge to take it and continued to threaten to jump. Subject officer 1 picked up the cigarette and held it while the affected person slowly came down from the ledge and approached.

Subject officer 2 stated that he was positioned off the right side of subject officer 1 and he had the CEW in his hand "at the ready." As the affected person approached closer, subject officer 2 saw the opportunity to deploy the CEW. He reported that the manner in which the affected person was dressed should allow for the CEW probes to be effective.

Subject officer 2 believed that the affected person's behaviour had worsened. As such, he made the decision to deploy the CEW. The CEW ended up being ineffective and the affected person "began fighting" to get away. Subject officers 1 and 2 attempted to gain control however the struggle lasted mere seconds before the affected person broke free. The affected person ran and went over the ledge.

ISSUES

¹ Both subject officers were represented by the same lawyer. In October 2014, the Law Society of BC published an Ethics Committee opinion which reached the following conclusion: "The committee has concluded that, as a general rule, a lawyer should not jointly advise or represent two or more police officers under investigation for, or witnesses to, a serious incident that arose in the course of their duties."

The general issue after any IIO investigation is whether a person suffered serious harm or death as a result of the actions of an officer and, if so, whether an officer may have committed an offence in relation to that incident. If I consider that an officer may have committed an offence, then I must forward a report to Crown Counsel.

The legal issue to be considered in this case is whether subject officer 2 was unreasonable in deploying the CEW against the affected person and whether his actions in deploying the CEW, which appeared to have precipitated the affected person's jump, was criminally culpable in any way.

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)).

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 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.

Additionally, given that subject officer 2's actions in deploying the CEW appear to have precipitated the affected person's jump, it must be considered whether such action was criminally negligent. 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 use of the CEW is governed by a Provincial Policing Standards Policy. Specifically, "an officer is prohibited from drawing or displaying a CEW unless the officer is satisfied, on reasonable grounds, that the situation has some potential for bodily harm." Further, "An officer is prohibited from discharging a CEW against a person unless that person is causing

bodily harm to either himself/herself... or the officer is satisfied, on reasonable grounds, that the person's behaviour will imminently cause bodily harm to either themselves, the officer, or a third party."

Given these standards, subject officer 2 was justified in using the CEW as a use of force option as it was clear that there was potential for death or serious harm were the affected person to have jumped from the parkade. As such, the only significant issue of concern is whether subject officer 2's decision to use the CEW, at the time that he used it, constituted a wanton or reckless disregard for human life such that his action at that time constituted criminal negligence under the law.

Subject officer 2 was faced with making a split second decision. As long as it appeared that the effective deployment of the CEW allowed for the affected person to be taken into protective custody, the decision to deploy the CEW at that moment could not possibly constitute wanton and reckless disregard for human life or safety. In fact, there is no reason to believe that the deployment of the CEW was for any purpose other than attempting to ensure that the affected person was no longer in a position to self-harm.

The tragic result of the unsuccessful deployment was that the affected person reacted and jumped from the parkade. It is impossible however to know what actions the affected person might have taken if no attempt, other than negotiation, was made to ensure protective custody.

Subject officer 2 appeared to have had reasonable cause to believe that he could end the crisis with the deployment of the CEW and therefore ensured the safety of the affected person. Given all of the evidence, there is no cause to believe subject officer 2 committed any offence based on the actions he took in attempting to take the affected person into protective custody.

CONCLUSION AND DECISION

Based on the evidence obtained as a result of the investigation, I cannot conclude that any 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.

Public Report Prepared for Release on March 12, 2015.

Richard Rosenthal
Chief Civilian Director