



**PUBLIC REPORT OF THE
CHIEF CIVILIAN DIRECTOR**

**REGARDING INJURIES SUFFERED BY A FEMALE DURING AN
INTERACTION INVOLVING THE KAMLOOPS RCMP ON
2016 FEBRUARY 20**

IIO 2016-033

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. The Chief Civilian Director (CCD) of the IIO is required to review all investigations upon their conclusion, in order to determine whether he considers “*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 the CCD concludes that an officer may have committed an offence, he is required to report the matter to Crown counsel. If the CCD does not make a report to Crown counsel, he is permitted by s.38.121 of the *Police Act* to publicly report the reasoning underlying his decision.

In this public report, the CCD includes a summary of circumstances that led to the IIO investigating and a summary of the findings of the investigation.

This is a public report related to an investigation involving a female who suffered a serious injury during an interaction involving a Kamloops RCMP officer on 2016 February 20. Police received a call from an employee of a retail establishment about a distressed female who believed she was being followed. An officer attended to the call and together with a victim services worker, accompanied her to her residence. She was later apprehended under the *Mental Health Act* and taken to Hospital. During restraint she suffered a broken hip that required surgery.

Pursuant to s.38.11 of *the Police Act*, RSBC 1996 Chapter 367, the CCD has reviewed the concluded investigation. The CCD does not consider that any officer may have committed an offence under any enactment and will not be making a report to Crown Counsel.

In this public report, the CCD is 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, the CCD is 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*). The CCD has considered the advice provided by the Information and Privacy Commissioner. In this report, the CCD will not be using the name of the affected person or the name of any other person involved in this matter.

NOTIFICATION AND JURISDICTION DECISION

The incident began on 2016 February 20 when Kamloops RCMP received a call from an employee of a retail establishment that a female customer (the affected person) had reported someone was following her in the store. The affected person later spotted a male in the parking lot and became terrified because she believed he was stalking her.

An officer, who is the subject of this investigation, attended and met with the affected person in the retail establishment first aid room. He accompanied her to her car and there met up with a victim services worker and they drove to the affected person's residence; each in their own vehicle with the Subject Officer (SO) leading the way in his marked police vehicle.

When they arrived, the SO and the victim services worker helped to bring the affected person's groceries into her residence. As they were leaving, the affected person saw her house door was unlocked and claimed the victim services worker had unlocked the door so that somebody could enter the house. The affected person took a can of bear spray and ran to a neighbour's house two doors away.

She threatened to use the bear spray on anyone that came close to her and was then detained at a different neighbour's house under the *Mental Health Act* (the *Act*). A physical altercation occurred and the SO took the affected person into custody and to the hospital where she was triaged and taken to a psych room.

RCMP policy requires an officer who brings a person to hospital under the *Act* to stay until a doctor examines the person and certifies the person is to be held. Accordingly the SO waited outside the affected person's room.

A doctor attended to assess the affected person but she would not cooperate.

The affected person was shouting and threatening to strike medical staff with a pair of boots. The SO remained to assist in her restraint so she could be sedated by medical staff.

The affected person was physically challenging and threatening. The SO and three security staff combined efforts to disarm her and lay her down on a mattress on the floor. They held her there while a nurse administered the sedative.

The affected person complained they were hurting her, and shouted that her hip had been broken. After the sedative was administered the SO left the hospital. The affected person was found to have a broken hip the following morning.

The Independent Investigations Office (IIO) was notified of this incident by the Kamloops RCMP at 0105 hours on 2016 February 22. The IIO initiated an investigation

as the affected person's injuries appeared to fall within the definition of "serious harm" as defined in the *Police Act*.

ISSUE

The issue to be considered in this case is whether or not the SO may have committed any offence by failing to act in a manner consistent with his training and RCMP policy which in turn may have contributed to the injury to the affected person.

EVIDENCE CONSIDERED

Evidence examined in this investigation included statements made by the affected person, civilian witnesses, and attending physicians. CCTV footage and medical evidence was also assessed.

TIMELINE

The following timeline took place on February 20 and 21, 2016

| TIME | EVENT INFORMATION |
|-------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2040 hours | The SO updated dispatch that the affected person was combative and he will transport her to the hospital. |
| 2048 hours | The SO arrived at the hospital. |
| 2050 hours | The SO took the affected person, in handcuffs into the hospital to a nurse (Civilian Witness 1, CW1) at the Triage Desk. |
| 2051 hours | CW1 assessed the affected person. |
| 2054 hours | The affected person was escorted to a psychiatric room by the SO. |
| 2136 hours | CW1 and the attending physician (physician 1) attempted to assess the affected person. |
| 2230 hours | The SO stood near the room while the affected person yelled and banged on the door with her boots on her hands. The SO held the door closed but it was not locked. |
| 2233 hours | The SO and hospital staff assemble outside the room. |
| 2234 hours | The SO and security guards entered room. The affected person resisted and was moved to the mattress and placed face down. CW1 injected the affected person and staff changed her clothes. |
| 2238 hours | The nurses, security guards and SO exited the room. |
| 2248 hours | The SO left the hospital |

2016 February 21

| | |
|------------|--------------------------------------------------------------------------------------------------------------|
| 0721 hours | The affected person reported she was unable to move her right hip. A physician examined the affected person. |
| 1028 hours | X-ray and CT Scan reveal a displaced cervical fracture of the right hip. |

Affected Person

The affected person was interviewed by IIO investigators and told the IIO that on the day of the incident she had a “*psychotic break*” while shopping at a retail establishment in Kamloops. She said she thought someone was there to kill her.

The affected person said the Subject Officer (SO) arrived and took her to her car and a victim services worker met them there. She said the SO agreed to drive in front of her and the victim services worker would follow her home. She said when they arrived she was assisted with her groceries.

The affected person said she became afraid as they approached her residence because she thought the victim services worker had unlocked the door so that somebody could enter the house. She said she then ran to a neighbor’s house with bear spray in her hand.

She said the SO came into her neighbours’ residence and other officers stood outside. She said she thought one of the other officers was going to shoot her.

She said she asked for her counsellor and she came. Her counsellor spoke with her and took the bear spray and gave it to the officer.

She said she was handcuffed and was told by an officer that she was being taken to a hospital under the *Mental Health Act*.

The affected person said she was taken to the hospital by the SO and once there the SO went inside, then came back and got her out of the car and they walked into the hospital. She was placed in a small room with only mattress on the floor, and the SO took off the handcuffs. She said the SO stood outside the room and a nurse came into the room and spoke with her.

The affected person said she went in and out of sleep and each time she woke up, the SO was standing outside the room. She said she was upset and agitated and called out for the nurse because she trusted her. She said a doctor came into the room to examine her but she became scared and the doctor left.

She said she held the door closed but the door was pushed open.

“...I remember pushing on the door to keep them out. I don't know why I was doing that. But I was pushing on the door to keep them out and they dog-piled me...I remember...when they came in or when I got tackled, I don't remember seeing who did what, but I remember feeling my hip going right up under my ribcage. At least that's what it felt like.”

She said she went face down on the concrete floor and added, "...you've broken my f***** hip" but nobody believed her.

The affected person said the next thing she remembered was getting up on a Monday afternoon (2016 February 22) with a new hip.

She suffered a displaced cervical fracture of the right hip and underwent surgery for a total right hip replacement.

Medical Staff Civilian Witnesses

Civilian Witness 1 (CW1)

CW1 is a nurse and was at the triage desk in the emergency department. She said the Subject Officer (the SO) brought the affected person to her desk and noticed she was handcuffed. She said the affected person walked on her own and was compliant.

CW1 said her impression was that the affected person, "...was having an acute crisis mentally."

CW1 said she did not observe any injuries on the affected person. She said the SO told her the affected person needed to be seen by a doctor as a result of her mental state. CW1 said she "*triaged*" the affected person for about five minutes and took her and the SO to the psychiatric room. She said the affected person walked there without assistance.

CW1 said that in cases under *the Mental Health Act*, police officers who bring patients to the hospital will not leave until that patient is admitted and the SO could not leave the hospital until the affected person was admitted.

CW1 said about 90 minutes later a physician asked her to accompany him while he examined the affected person. She said when they entered the room the affected person was sitting on the mattress (on the floor) and the SO waited outside. The door stayed open.

CW1 said within two minutes:

"...things escalated with [the affected person] and it was clear that this was going to become more of an issue and she would likely require a little bit of -- more involvement to kind of -- it was, it was clear that she was going to be staying under Mental Health Act essentially [the affected person was] calling out, she was yelling, she -- in just that little, that little brief period she had escalated and she was screaming...yelling "Help." She was calling for the psych nurse to come back...."

CW1 said the affected person was still yelling five minutes later so she got some oral medication to help the affected person settle. It was not administered because the affected person was:

“...screaming, she was calling out for the psych nurse to come see her, and she was, she was getting paranoid and probably scared at that point. She didn't know what was going on. So, our next step is to give an IM injection [intramuscular injection], so that's when I went to go get that.”

CW1 said when she returned the SO, two or three security guards and about five hospital staff were gathered outside the psychiatric room and the affected person had boots on her hands and was threatening to hurt everyone. CW1 said the SO asked, "Well, what's the plan?" and was directing security to take the affected person's arms and legs and the nurses would come in behind them to change her clothing and administer the injection.

CW1 said when the SO opened the door the affected person was behind it:

*“...yelling, she was threatening all of us, she had boots on her hands that she was prepared to use as weapons, there was a lot of swearing, there was a lot of I'm going to F*** you up -- I'm going to take all of you down.”*

CW1 said the SO and security entered the room and took hold of the affected person. She said she did not see everything but saw the affected person and a “*bunch of people*” standing on the mattress in the corner of the room.

CW1 said there was a “tussle” but she could not really see because there were people in front of her and she was picking things from the floor. She said in five to 15 seconds the SO and security guards placed the affected person's face down on the mattress.

CW1 said once the affected person was being held down on the mattress the nurses started to change her clothes while she, CW1, partially removed the affected person's pants and gave the injection on the right side sub-gluteal muscle (buttocks area).

CW1 said she did not see any injury, swelling or discoloration on the affected person's right side of her leg which was held straight down. She said there were people in the room but could not give any specifics.

CW1 said about five minutes later the nurses, then the guards and lastly the SO left the room. CW1 said, “*Everybody was fine. I don't think anybody was hurt in that event.*” CW1 said that during the night she saw the affected person on the monitor at the nurse desk lying on the floor by the door.

CW1 said that early the next morning another nurse asked her to assess the affected person's hip and upon examination, the affected person was having a lot of pain. CW1

asked the emergency room physician to assess the affected person. Her shift was over and she left.

CW1 said that the SO's actions seemed to her that:

"There was nothing that stood out; he was another body, another set of hands, kind of getting her under control. Nothing else, nothing stood out about it."

Civilian Witness 2 (CW2), and Civilian Witness 3 (CW3)

The other nurses present during the altercation gave very similar descriptions. CW2 said the affected person said at one point, *"I think you broke my hip. I think you broke my hip."* CW3 said he heard the affected person say, *"you f*****, you broke my hip."* Both nurses said they did not believe she had been injured. None suggested the SO acted in a manner that was anything less than professional.

Security Staff Witnesses

Security staff present gave detailed descriptions of the interaction that were also similar to CW1's description. None of the security staff suggested the subject officer acted in a manner that was anything less than professional.

Subject Officer

The Subject Officer declined to provide a statement to the IIO which is his right pursuant to the *Charter of Rights and Freedoms*. He did, however, agree to provide his PRIME report which was corroborated with the other available evidence and was helpful in reaching this decision.

Medical Evidence

Following X-rays it was determined the affected person suffered a displaced cervical fracture of the right hip. It was decided to proceed with a right total hip replacement. The following medical evidence is based on statements provided by attending physicians.

Consultation notes by physician 2:

"I saw the affected person in the emergency room on the morning of February 21, 2016. She was reported to have slept all night and still asleep this morning when she was seen by the emergency room physician (physician 1) and diagnosed with a fractured hip bone which will require surgical treatment. It is [physician 1's] view that this fracture might have occurred while the affected person was being physically restrained at the emergency room."

On 2016 February 24 at 1900 hours the affected person was discharged from hospital.

Video Evidence

CCTV obtained from hospital by the IIO shows the affected person getting out of the SO's police car at the hospital. She was handcuffed behind her back. She stood up and walked unassisted into the emergency department. She can be seen sitting down at the triage desk and standing up without difficulty. The SO can be seen holding on to her upper arm throughout.

POLICY

The following section outlines RCMP policy on mentally ill persons.

19.7. Mentally Ill Persons - RCMP National

1. General

1. 1. Members are not qualified or expected to make a diagnosis of mental illness.

1. 1. 1. A member should be able to recognize when a person's behaviour shows signs of a mental illness, and the person is acting in a manner likely to endanger his/her safety or the safety of others.

19.7. Mentally Ill Persons – British Columbia “E” Division

General

1. 1. Refer to:

...

1. 1. 3. the B.C. *Mental Health Act*.

1. 2. The police have the following roles under the Mental Health Act:

1. 2. 1. Authority to apprehend a person with an apparent mental disorder and transport them to a physician for an examination.

1. 3 Other police roles include:

1. 3. 1. Assisting the hospital staff in keeping the peace.

1. 3. 2. Maintaining custody of a person at the hospital until a physician has examined the patient and decided whether to admit the patient under the Mental Health Act.

1. 3. 2. 1. Once the physician has made this decision, custody of the patient transfers to the hospital, if admitted under the Mental Health Act.

4. Emergency Police Intervention

4. 1. A police officer may apprehend and immediately take a person to a physician for examination if satisfied from personal observations, or information received, that the person:

4. 1. 1. is acting in a manner likely to endanger that person's safety or the safety of others; and

4. 1. 2. is apparently a person with a mental disorder.

4. 2. If a person, including a prisoner in RCMP custody, exhibits symptoms of a mental disorder and is endangering him/herself or others, arrange immediate escort to a physician in accordance with Sec. 28 MHA.

4. 2. 1. It is important to remember that such persons may not be responsible for their behaviour, even though they are potentially violent and dangerous.

4. 2. 3. Although medical patients are usually transported by the B.C. Ambulance Service, the RCMP may be required to transport a person with a mental disorder admitted under Sec. 22 MHA to a designated facility, if the person is too violent to be transported by the B.C. Ambulance Service.

4. 2. 3. 2. Responsibility and liability for the person remains with the RCMP, until the person is admitted to a designated psychiatric facility...

MENTAL HEALTH ACT INCIDENTS POLICY (Kamloops Detachment)

5. Royal Inland Hospital - Emergency Room

a) In most cases, clients apprehended under section 28 of the MHA will be transported to the hospital emergency room. Police have to wait in the regular line-up for a triage assessment.

...

- c) The Members must remain with the client until assessed by a physician. If the client is certified, the Members will remain on scene until hospital staff has secured the door, if required.

ASSISTANCE TO MEDICAL FACILITIES

This supplement deals with the type of assistance that will be provided to Royal Inland Hospital and other medical facilities in the Kamloops area.

GENERAL

1. Police assistance may be utilized to keep the peace if a patient or visitor to the hospital creates a disturbance.
2. Police intervention and the use of force to end violent situations and prevent offences ends when no further threat to public safety exists.
3. There is a distinction between police attending the hospital to maintain public safety (e.g. restraining a violent person who must be sedated in order to end their dangerous behaviour) versus restraining patients who are refusing to take their prescribed medication.
4. If the hospital staff require physical restraint assistance during the delivery of medication to patients, this assistance must come from hospital staff and their security teams.
 - a) Police officers are not medically trained to determine which patients require particular medications and whether those patients have a legal right to refuse medication.

MEMBER

1. If requested by hospital staff, attend the hospital and keep the peace if a person is violent or causing a disturbance.
2. If you respond to a violence-in-progress call caused by a person, your duty of “keeping the peace” may require you to assist the hospital staff by restraining the person, while a sedative is administered to calm the person and end the violence.
3. **DO NOT** attend the hospital for the purpose of assisting hospital staff in restraining a

patient who is refusing routine delivery of their **prescribed medication**, unless section 2 above applies.

LAW

Mental Health Act – [RSBC]

Emergency procedures

28 (1) A police officer or constable may apprehend and immediately take a person to a physician for examination if satisfied from personal observations, or information received, that the person

(a) is acting in a manner likely to endanger that person's own safety or the safety of others, and

(b) is apparently a person with a mental disorder.

(2) A person apprehended under subsection (1) must be released if a physician does not complete a medical certificate in accordance with section 22 (3) and (4).

Culpability for an officer's use of force is governed by the following provisions set out in the *Criminal Code of Canada*:

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 an evaluation of the reasonableness of an officer's use of force, the following application of the law is required:

The Supreme Court of Canada in *R. v. Nasogaluak*, 2010 SCC 6 held that:

[32] ... police officers do not have an unlimited power to inflict harm on a person in the course of their duties. While, at times, the police may have to resort to force in order to complete an arrest or prevent an offender from escaping police custody, the allowable degree of force to be used remains constrained by the principles of proportionality, necessity and reasonableness. Courts must guard against the illegitimate use of power by the police against members of our society, given its grave consequences.

However, the Court went on to say that:

[35] Police actions should not be judged against a standard of perfection. It must be remembered that the police engage in dangerous and demanding work and often have to react quickly to emergencies. Their actions should be judged in light of these exigent circumstances. As Anderson J.A. explained in R. v. Bottrell (1981), 1981 CanLII 339 (BC CA), 60 C.C.C. (2d) 211 (B.C.C.A.):

In determining whether the amount of force used by the officer was necessary the jury must have regard to the circumstances as they existed at the time the force was used. They should have been directed that the appellant could not be expected to measure the force used with exactitude. [p. 218]

ANALYSIS

The SO, by national RCMP policy, is not qualified or expected to make a diagnosis of mental illness, however is, by the same policy expected to:

“...recognize when a person's behaviour shows signs of a mental illness, and the person is acting in a manner likely to endanger his/her safety or the safety of others.”

The affected person told the IIO that on the day of the incident she had a “*psychotic break*.” Her own description of her thoughts and actions while at the retail establishment and later at her home and neighbours’ residences suggest she was experiencing extreme fear.

At the hospital triage, CW1 was with her for a few minutes and determined the affected person was having “*an acute crisis mentally*.” CW1 decided the affected person needed to be seen by a physician and had her placed in a psychiatric room.

Provincial RCMP policy closely reflects s.28 of the *Mental Health Act* of British Columbia permitting the apprehension of someone apparently dangerous to themselves or others where that person’s actions are observed by an officer AND the person is apparently suffering a mental disorder.

The SO personally observed the affected person’s behaviour and he apprehended her and took her to hospital in compliance with the *Act* and policy. Once at the hospital, Kamloops RCMP policy, specific to that hospital required him to remain until the affected person was seen by a physician. She was subsequently found to be in need of hospitalization.

Further, policy required that the SO perform his:

“...duty of “keeping the peace” [which] may require you to assist the hospital staff by restraining the person, while a sedative is administered to calm the person and end the violence.”

The affected person was yelling and threatening hospital staff. Hospital staff determined she needed to be sedated. The SO played no role in that decision, however the affected person needed to be restrained while a sedative was administered.

It may be that physician 1’s view that this fracture might have occurred while the affected person was being physically restrained at the emergency room is correct. If so, it may be likely that occurred when the affected person cried out that, “...you broke my hip.”

Four medical professionals were in the room at the time; not one of whom indicated they had a concern that the affected person had been injured. The affected person was struggling to the extent that three security staff needed the SO’s help.

There is no evidence that the SO used a degree of force that was not constrained by the principles of proportionality, necessity and reasonableness and in the words of CW1:

“There was nothing that stood out; he was another body, another set of hands, kind of getting her under control. Nothing else, nothing stood out about it.”

Decision of the Chief Civilian Director

Based on all of the evidence collected during the course of this IIO investigation and the law as it applies, I do not consider that any police officer may have committed an offence under any enactment and therefore the matter will not be referred to Crown Counsel.

Clint Sadlemyer, Q.C.
Legal Counsel

2017 September 18
Date of Decision

Albert Phipps,
Chief Civilian Director

2017 September 18
Date of Decision