



PUBLIC REPORT OF THE
CHIEF CIVILIAN DIRECTOR

Regarding the injury to an adult male on
June 4, 2014, involving an officer employed
by the RCMP in 100 Mile House.

IIO 2014-000100

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 4, 2014, in the city of 100 Mile House. The male affected person sustained serious injuries at some time prior to, during, or after being taken 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, 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 4, 2014, officers responded to a complaint at a residence involving the affected person. The affected person was subsequently taken into custody and lodged in police cells. Several hours later, the affected person was taken to hospital where he was diagnosed with a fracture to his left arm.

The Independent Investigations Office (IIO) was notified on June 5, 2014 and asserted and sustained jurisdiction as the affected person's injuries fell 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..."

Investigative Evidence Considered

IIO investigators interviewed the affected person and a civilian who was present during the initial police contact. A second civilian witness was also interviewed.

IIO investigators received voluntary written statements from the two subject officers, statements that were vetted by their legal counsel.

The IIO obtained medical records, radio communications as well as the cell block video from the detachment.

General Timeline -Radio and Video

- 6:49 p.m.: A 911 emergency call was received reporting a complaint.
- 7:00 p.m.: Subject officer 1 responded to the call and reported confronting the affected person.
- 7:06 p.m.: The affected person was reported as having fled the location.
- 7:35 p.m.: Subject officer 2 reported physically engaging with the affected person and attempting to place him under arrest: "I'm fighting with him here but we're going, we're under control I think..."
- 7:45 p.m.: Subject officers 1 and 2 report that the affected person has been placed into custody.
- Between 7:59 p.m. and 8:05 p.m.: The affected person is reported to have lost consciousness and is transported to hospital.
- 8:26 p.m.: After being released from hospital, the affected person is lodged in cells.
- 8:30 p.m.: The affected person falls in cells.
- 10:32 p.m.: The affected person reports himself as injured and is transported to hospital.

Affected Person

The affected person gave a statement to IIO investigators on June 11, 2014 and a follow-up statement on July 3, 2014.

According to the affected person, after police arrived at his residence, he left to walk to a friend's residence. He did not recall being pursued but acknowledged jumping over a five foot high chain link fence and falling, head first with his head down. He did not recall feeling any pain at that time. After he arrived at the residence of his friend (civilian witness 2) he got into the friend's car and the police turned up before they could leave.

The affected person stated that he went to walk away and “something just flattened me.” The affected person stated that he had little memory of how he ended up on the ground or of being placed in the police vehicle, but he was “thrown in the back of the truck when [he] was handcuffed and shackled.”

The affected person did not have a specific recollection of being taken to the hospital prior to being lodged in cells and did not remember much about his initial time in cells, but noted that he may have taken a fall while in cells. He did recall however, that when he got to the station he couldn't sign his name and noted that he is left handed.

According to the affected person, while he was in cells, he realized he was in pain. He remembered telling the treating doctor that he must have injured himself when he fell from the fence. The affected person acknowledged that “there's a big chunk missing” when questioned about what happened between being at his friend's house and being in cells.

Civilian Witnesses

Civilian witness 1 was interviewed by IIO investigators on June 12, 2014. Civilian witness 1 confirmed being present during the initial contact between the affected person and subject officer 1. Civilian witness 1 recalled that when the officer arrived, the affected person opened the door while armed with “a weapon” and “lunged at the police officer.” Civilian witness 1 noted that there was no physical contact between the affected person and the officer. Although subject officer 1 drew his firearm, no force was used and the affected person ran out of the door. “He was perfectly fine at that point.” Civilian witness 1 did not observe the affected person's arrest.

Civilian witness 2 was interviewed by IIO investigators on June 11, 2014. Civilian witness 2 stated that on June 4, 2014, the affected person arrived at his residence unannounced. Civilian witness 2 recalled that he had unlocked his door after buzzing the affected person into the building. The affected person took a long time to arrive and then had some difficulty opening the unlocked door.

He stated that the affected person “didn't look like himself... (he looked) wiped out.” He noted that the affected person “wasn't really making a lot of sense.” Civilian witness 2 stated that the affected person wanted him to take him somewhere, but civilian witness 2 couldn't make out where the affected person wanted to go.

On the way downstairs to civilian witness 2's vehicle, the affected person fell halfway down the stairs. Civilian witness 2 was ahead and was able to catch him, so the affected person did not hit the ground. The affected person had his right hand on the railing, but may have caught himself with his left hand. When they reached his vehicle, civilian witness 2 saw subject officer 2 arrive.

Subject officer 2 ordered the affected person to stop, but instead, he approached subject officer 2 and attempted to strike him. The affected person missed.

Civilian witness 2 described the officer wrestling with the affected person as the officer attempted to get his arm and get the affected person onto his stomach. He observed subject officer 2 attempting to get hold of the affected person's hands and described it as "quite the tug." Subject officer 1 subsequently arrived and assisted in handcuffing the affected person. Civilian witness 2 described the incident as "a wrestle on the ground." He did not see any punches thrown.

Subject Officers

On July 25, 2014, subject officer 1 provided a voluntary written statement vetted by his lawyer.

According to subject officer 1, he attended the initial call at the residence alone. He did not wait for cover as he was concerned that an ongoing assault might have been in progress.

The affected person came out into the hallway with a knife in his right hand. Subject officer 1 stated that he drew his pistol and ordered the affected person to drop the knife. The affected person "growled" and lunged toward him. Subject officer 1 stepped backwards and the affected person fled down a stairwell.

Subject officer 1 subsequently responded to a call for backup by subject officer 2. When he arrived, subject officer 1 saw subject officer 2 kneeling on the affected person's back with his left arm immobilized. The affected person was lying on his right arm and was refusing to pass it to subject officer 2.

Subject officer 1 reported that he took hold of the affected person's right arm and straightened it from a bent position and rotated it behind his back so that it could be placed in cuffs by subject officer 2.

Both officers then assisted the affected person to a standing position. The affected person was escorted to a police vehicle where he appeared to lose consciousness.

The affected person was immediately transported to the hospital. While at the hospital, he was examined and no injuries were detected. After he was placed in cells, the affected person complained of an injured left elbow and was transported to the hospital for a follow-up examination.

On July 25, 2014, subject officer 2 provided the IIO with a voluntary written statement, vetted through the same lawyer as subject officer 1.

According to subject officer 2, he was called to assist with a complaint. He was advised that the affected person had fled the scene, on foot, and was armed with a knife. After making patrols to attempt to locate the affected person, he went to civilian witness 2's residence as he was a known associate of the affected person.

When he arrived, subject officer 2 saw civilian witness 2's vehicle and saw the affected person in the passenger seat. The affected person got out of the vehicle, rushed at him and attempted to punch him. Subject officer 2 reported that he was able to block and avoid several punches from the affected person.

Subject officer 2 reported hearing civilian witness 2 say that the affected person was too drunk to know where he was. Subject officer 2 stated that he "wrapped the affected person up" with both arms around his chest under his armpits and then tripped him to the ground. He reported struggling with the affected person on the ground. He could see signs of heavy intoxication in the affected person and saw him put "a flap of cocaine" into his mouth. Concerned that the affected person might overdose on the cocaine, he pulled his head back and applied pressure to the affected person's throat with a choke hold to try to prevent him from swallowing.

Subject officer 2 subsequently let go of the choke hold as it was not successful and he attempted to force the affected person's mouth open and sweep out the substance. The affected person kept trying to bite his finger.

A bystander appeared and assisted subject officer 2 in getting the affected person onto his stomach; the bystander then disappeared shortly thereafter.

Subject officer 2 reported that he was able to get the affected person's left hand twisted behind his back in an arm lock. He then applied upward pressure to his left arm (to cause pain by stretching the shoulder joint) but the affected person seemed immune to pain.

Subject officer 2 "relaxed the pressure" when subject officer 1 arrived. Subject officer 2 placed a handcuff on the affected person's left wrist. Subject officer 1 was able to free the affected person's right arm and assisted in getting it behind his back. Subject officers 1 and 2 were subsequently able to get the affected person into the back of a police truck.

The affected person was standing on his own weight and hurling insults at subject officer 2, but a short time later, he appeared to lose consciousness and "flopped over" on the seat. Subject officer 2 attempted to wake the affected person, who did not respond to verbal or physical stimulus. Subject officer 2 took the affected person to the hospital.

By the time they arrived at the hospital, about three to four minutes later, the affected person was beginning to wake up.

Medical Records

Hospital intake records confirmed that when the affected person was first seen at the hospital, (at 8:15 p.m.), he was diagnosed with mixed drug intoxication. At 8:30 p.m., he was discharged back to police.

When he was returned to hospital at about 10:40 p.m., the affected person told medical staff that he had injured his arm while jumping over a fence. The treating physician noted that the

injury would have required significant impact force and would not have been caused by twisting or wrenching.

Video Evidence

Video was obtained and examined by the IIO which showed the affected person arriving at the detachment, and his period of incarceration until he was transported to the hospital as a result of his complaint of injury to his left arm.

Video was also reviewed which showed the affected person being removed from an RCMP truck inside the garage bay to the detachment at 8:26 p.m. The affected person can be seen being escorted into the detachment and appearing very unsteady on his feet. There is no indication of any resistance on his part or force used by any officer.

Video of the booking area shows the affected person, supported by officers, being dragged/assisted down the hallway with his legs trailing passively and placed into a sitting position near the booking counter.

At 8:27 p.m., the affected person is searched and his handcuffs are removed. He appears calm and subdued. He is subsequently assisted to his feet and led to his cell at 8:29:56.

At 8:30:54, the affected person can be seen falling over a metal sink/toilet assembly and rolling down onto his left buttock, onto his back and striking his left elbow onto the concrete floor. The affected person appears to lose consciousness, but pulls his left arm in towards his waist.

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 issue to be considered in this case was whether any police officer used unnecessary force that caused the injury to the affected person or failed to protect him from harm.

In this case, it was impossible to determine the exact cause of the affected person’s injury. The injury could have occurred during the course of his flight from the police and outside the presence of the police, been the result of force used to take the affected person into custody, or occurred as the result of a fall while the affected person was being held in cells. Regardless of when the injury occurred, there is no evidence of any use of unnecessary force, nor is there any evidence that the affected person did not receive adequate care subsequent to his arrest.

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

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. *R. v. Nasogaluak*, [2010] 1 SCR 206 at para. 32.

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.

Based on the evidence presented, it is impossible to determine with any confidence when or how the affected person fractured his arm. It may be, as the affected person stated to medical personnel, that he injured himself while fleeing from his first contact with police while attempting to jump a fence. It is certainly possible that due to his level of intoxication, he did not realize he was injured until later in his incarceration. This is supported by his difficulty opening civilian witness 2's unlocked door and his inability to sign his name upon arrival at the station.

It is also possible that the affected person may have been injured during his struggle with subject officer 2 (although the nature of the injury would appear inconsistent with the type of force described by the witnesses). Even if the injury did occur during this time, there is no evidence to suggest that subject officer 2 used unnecessary or unreasonable force. The most significant force used, a choke hold, was described as ineffective and no evidence of injury associated with that use of force exists.

Subject officer 2 had been assaulted by the affected person and had the right to place him into custody. There is no evidence of any striking or hitting or any force used to place him into custody that was in excess. Even the choke hold, as described, was used to attempt to prevent the affected person from ingesting any substances that may have caused him significant harm.

If the affected person injured himself as a result of a fall in cells, there is no evidence of any act by police which would have failed to protect him from such injury. The affected person was first brought to hospital and released by medical personnel to police custody. Police had no reason to believe that he was a danger to himself such that he could not be lodged in a cell.

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.

CCD Decision Written on February 3, 2015.

Public Report Prepared for Release on February 23, 2015.

Richard Rosenthal
Chief Civilian Director