



PUBLIC REPORT OF THE
CHIEF CIVILIAN DIRECTOR

Regarding the injuries sustained by an off duty member of the RCMP on July 20, 2014, involving an off duty member of the Quesnel RCMP.

IIO 2014-000128

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 of an off duty RCMP officer that occurred on July 20, 2014, in the city of Quesnel. The injured officer sustained serious injury to his ankle while “rough-housing” with another off duty RCMP 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, 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 injured officer or of any other person involved in this matter.

NOTIFICATION AND JURISDICTION DECISION

On the evening of July 20, 2014, a detachment related party was held at a private residence of an employee of the Quesnel RCMP. During the party, two off duty officers engaged in what was described as horseplay or rough-housing. This resulted in one of the officers receiving a fractured ankle.

The incident was reported to the IIO on July 23, 2014 after the RCMP received confirmation of the nature of the injury.

Jurisdiction was asserted as the injury fell within the *Police Act* definition of “serious harm” which includes injury that may cause substantial loss of use or mobility of the body as a whole or the function of any limb.

INVESTIGATIVE EVIDENCE CONSIDERED

Information was obtained from interviews with the injured officer and several witness officers who were present when the incident took place. The subject officer declined to be interviewed as is his right under the *Canadian Charter of Rights and Freedoms*.

Taken in their totality, the statements were all consistent with the statement taken from the injured officer.

The injured officer was interviewed by IIO investigators on July 25, 2014. He indicated that he and the subject officer are friends and had worked together on the same watch for several years. They and 30-40 others attended a promotion party on the evening of July 20, 2014.

During the party, both officers engaged in what was described as mutual, consensual physical horseplay. The injured officer stated that “we are very rough with each other...that’s basically how we are.” The injured officer indicated he was intoxicated at the time of the incident. He recalled that after he had punched his friend (the subject officer), his friend came over and put him in a hug. This caused the both of them to fall to the ground and resulted in the injury to his ankle.

The injured officer was clear that the physical horseplay was consensual. He understood why the matter needed to be investigated by the IIO but maintained the injury was accidental.

ISSUES

The general issue in any IIO investigation is whether a person suffered serious harm or death 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.

There is only one legal issue to be considered in this case in order to determine whether a report to Crown Counsel should be made, namely whether the subject officer assaulted the injured officer.

Criminal Code Sections 265 reads in applicable part:

Assault

(1) A person commits an assault when

- (a) without the consent of another person, he applies force intentionally to that other person, directly or indirectly;

(3) For the purposes of this section, no consent is obtained where the complainant submits or does not resist by reason of

- (a) the application of force to the complainant or to a person other than the complainant;
- (b) threats or fear of the application of force to the complainant or to a person other than the complainant;
- (c) fraud; or
- (d) the exercise of authority.

Criminal Code Section 268 reads in applicable part:

Aggravated Assault

(1) Everyone commits an aggravated assault that wounds, maims, disfigures or endangers the life of the complainant.

Here the injury suffered falls within the meaning of maim.

“The common law limits on consent imposed for policy reasons apply to assaults and, thus, consent is vitiated where adults intentionally apply force causing serious hurt or non-trivial bodily harm to each other in the course of fist fight or brawl. These limits do not, however, affect the validity or effectiveness of freely given consent to participate in rough sporting activities, so long as the intentional application of force to which one consents is within the customary norms and rules of the game.” *R. v. Jobidon*, [1991] 2 S.C.R. 714, 66 C.C.C. (3d) 454.

“Serious bodily harm must be both intended and caused for consent to be vitiated.”
R. v. Paice, [2005] 1 S.C.R. 339, 195 C.C.C. (3d) 97.

“Where the accused did not intend to cause bodily harm, consent is available as a defence if the bodily harm is inadvertently caused.” *R. v. Zhao* (2013), 297 C.C.C. (3d) 533 (Ont. C.A.).

There is no reason to believe that the physical actions that took place during the course of this incident were anything other than consensual. Nor is there any suggestion that bodily harm was intended or that the subject officer breached any of the customary norms of the horseplay being engaged in. As such, there is no reason to believe that the subject officer committed an offence.

CONCLUSION AND DECISION

Since there is no reason to believe that the subject officer may have committed any offence in this case, the IIO file will not be referred to Crown Counsel for consideration of possible charges.

Prepared for Public Release this 26th day of November, 2014

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Independent Investigations Office of BC