



PUBLIC REPORT OF THE

CHIEF CIVILIAN DIRECTOR

Regarding the injuries sustained by an adult
male on July 26, 2014, involving a member
of the RCMP in Powell River

IIO 2014-000129

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 adult male that occurred on July 26, 2014, in the Municipality of Powell River. The male affected person sustained multiple serious injuries after falling down a steep embankment while evading arrest.

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 affected person or of any other person involved in this matter.

NOTIFICATION AND JURISDICTION DECISION

On July 26, 2014, at approximately 10:30 p.m., the affected person was arrested by RCMP officers for a curfew violation. While waiting to be transported to the detachment, the affected person, who had not been handcuffed, fled the scene. During the course of his flight, he fell down an embankment and sustained fractures to his wrists and other serious injuries.

The IIO was notified on July 28, 2014 after the medical assessment confirmed the injuries. Jurisdiction was asserted and sustained 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 affected person, the subject officer, witness officers and civilian witnesses.

Interview with the Affected Person

On July 29, 2014, the affected person was interviewed by IIO investigators. He began the interview by stating: “The police were actually pretty good with me. They brought me aside. I don’t remember much because I blacked out.”

The affected person explained that he was waiting for a ride home from the “Sea Fair” because he was under a curfew. He saw the police officers approach and then ask him about his curfew. The affected person admitted that he was past his curfew and explained to the officers his circumstances, asking them not to arrest him.

The affected person stated that the police officers pulled him aside and told him he was being arrested for breach of curfew. The officers told him that another police car was called to come and pick him up. The two arresting officers did not use handcuffs.

The affected person stated: “When he turned his head for a second I took off running...I remember running then jumping down a bank and then landed in some prickles, and I jumped up and started running again, and then I remembered getting tackled. I think that’s when I broke my wrists.”

The affected person stated: “It’s not really their fault that it happened. The way I see it, it’s my own fault for being a stupid idiot and running.” The affected person stated that he could not remember more details from the incident and thought that he had blacked out.

Although the affected person stated that the police “were kind of rough with me” after he was handcuffed, he did not describe any particular police actions in support of that assertion. He told the police that he did not like being confined or held and that he could walk on his own.

The following day, the hospital took x-rays and a CT scan and then confirmed the multiple injuries. The affected person concluded the interview by stating, “I just want to apologize to everyone for what I’ve done.”

Civilian Witnesses

Civilian Witness 1 (CW1) was interviewed by IIO investigators on July 26, 2014. He stated that he and his family were sitting about one foot from the edge of the bank at Willingdon Park and were waiting for the fireworks display during "Sea Fair." Suddenly "out of nowhere," the affected person went flying past in full sprint and jumped over the bank. One second later, a police officer went right behind him.

Halfway down the bank, the affected person took a hard right and went into the blackberry bushes and was hovering in a hiding position. The officer did not seem to be able to find him and was looking left to right as he made his way to the bottom of the steep bank. After about 20 seconds, the affected person came out of the bushes and seemed to trip, putting his hands out and landing on his face on the rocks. According to CW1, the affected person stumbled and tried to get up, when the officer noticed him, ran over and was able to control him.

Approximately 20-30 seconds later, a female officer came up and made her way down the bank and joined the other officer. The two officers handcuffed the affected person, picked him up and proceeded south down the beach.

CW1 confirmed that the affected person was already down on the ground when the officer came over and held him down. CW1 did not observe any sort of struggle and could not hear any discussions or commands between the officers and the person due to the noise of the fair.

Civilian Witness 2 (CW2) was interviewed by IIO investigators on August 8, 2014. According to CW2, she was seated near the embankment with family members when she saw the affected person run past her. She saw him jump off the cliff with a police officer right behind him. The police officer was looking in the prickly bushes on the left while the affected person was hiding on the other side. The affected person subsequently came out of the bushes and tripped, falling face first on the boulders. The police officer then came over and held him down. Around this point, a female officer went down the cliff and helped handcuff the affected person.

Witness Officers

Witness Officer 1 (WO1) was interviewed and corroborated the version of the initial contact between the officers, the affected person and what occurred during his initial flight. Although WO1 saw the affected person go off the embankment, he did not see the cause of his injuries.

Witness Officer 2 (WO2) recalled when she arrived at the fair to transport the affected person, she saw the subject officer start to run. She heard radio transmissions from which she ascertained she might be needed on the beach.

WO2 saw members of the public looking over the edge of the cliff/bluff down towards the beach. She slid down the slope and found the subject officer struggling to hold down the affected person. The subject officer was telling the affected person to "Stop fighting me, stop fighting me." She described the affected person as almost cross legged with his feet

underneath him and bent over forward, with the subject officer on his right side, holding him down. WO2 assisted in handcuffing the affected person who continued to resist. Shortly thereafter, he became more compliant, apologizing for having run off from the officers.

Subject Officer

On August 1, 2014, the subject officer voluntarily submitted to an interview with IIO investigators. The subject officer stated that on July 26, 2014, at approximately 10:30 p.m., he was on uniform foot patrol with witness officer 1 in the area of the "Sea Fair" above Willingdon Beach in Powell River. In the area where carnival rides were situated, the officers saw a person known to both of them and identified as the affected person. It was known to them that the affected person was on a court ordered curfew from 10:00 p.m. onward. As such, the officers approached the affected person to address the situation.

According to the subject officer, when they spoke with the affected person, he acknowledged the curfew and pleaded with them not be arrested. The officers then escorted him to the edge of the carnival area and witness officer 1 informed him that he was under arrest for breach of the curfew. He radioed for vehicle transport. The subject officer explained that the affected person was not handcuffed as both officers had dealt with him previously and they did not feel it was necessary.

When the transport officer arrived, they all moved towards the vehicle. The subject officer gathered the affected person's property from where he had placed it at the time of conducting a search. The subject officer stated: "Out of the corner my eye I see (the affected person) just bolt past witness officer 1 and into the crowd of people. So I drop everything and I run on the opposite side of the trailer."

The subject officer stated that the affected person ran north through the crowds who were waiting to watch a fireworks display and that he went after him. At one point, the crowd thinned out and the subject officer found himself two or three arms lengths behind the affected person as he ran along the western edge of the fairground. The subject officer stated that it was quite dark as the lights had been extinguished in preparation for the fireworks display.

"And all of a sudden, I don't even... (the affected person) goes off of this embankment. I don't know how, um, I didn't really see, I just, it was in blackness he was just gone. I'm running full sprint, like as fast as I can run and I don't have time to slow down or stop or anything and I just go right off as well and it must be at least a 20 or 30 foot drop before I hit the ground 'cause as I was falling I could see him laying... and then trying to get to his feet and scramble and jump into some blackberry bushes...He jumped into the blackberry bushes and as I fell I kinda landed where he was laying down as I was in mid-air."

The subject officer stated that he was uninjured and was on top of some large rocks which make up a wall along the edge of the beach. He moved over to where the affected person was in the bushes. The subject officer stated that upon reaching the affected person he reinforced that he was under arrest and took hold of his arm.

The affected person then turned and jumped off the top of the wall down onto the beach which the subject officer estimated was 15 feet below them. The subject officer was balancing himself on top of the rock wall and because of his precarious situation, had not applied as much force as he usually would when taking hold of the affected person.

As the affected person jumped, the subject officer let go of his arm to prevent himself from being dragged over the edge. The affected person landed "face first on the beach." The subject officer jumped off the rocks, pushed the affected person down to the ground and jumped on top of him.

The subject officer stated: "I saw him land. He landed face first I can't say which way his arms were, but he definitely landed face first like smack (slapped his hand on the table) it was like a smacking noise when he hit the ground."

The subject officer restrained the affected person using his body weight to pin him as he was bucking and trying to get back up. Witness officer 2 arrived within seconds and assisted in handcuffing the affected person. The subject officer had the affected person's right arm and witness officer 2 had the left arm. Witness officer 1 also arrived and the affected person was escorted back to the police vehicle.

ISSUES

The general issue after any IIO investigation is whether a person has suffered 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 is whether the attending officers were in any way criminally culpable for harming the affected person or failing to protect the affected person from harm after he was taken into custody.

The affected person stated that he believed his wrists were fractured (his most substantial injury) as the result of the subject officer pushing him to the ground. As such, I have to consider if the subject officer used excessive force in taking the affected person into custody in that manner. In addition, I have to consider if there was any failure on the part of the arresting officers to protect the affected person from himself by failing to handcuff him at the time of his arrest (which would have likely reduced the chances that he would try to flee). The only theory of criminal culpability for the failure to handcuff would be that of criminal negligence. 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

Under Canadian law, an “arrest” consists of the actual seizure or touching of a person’s body with a view to his or her detention. “The mere pronouncing of words of arrest is not an arrest, unless the person sought to be arrested submits to the process and goes with the arresting officer.” (*R. v. Asante-Mensah*, 2003 SCC 38).

The evidence supports that the affected person initially appeared to submit to the arrest process prior to taking flight. As police officers, the subject officer and witness officer 1 were responsible for ensuring the safety of the affected person after he was placed in their custody.

Although they arrested the affected person, the officers did not immediately handcuff him. Instead, they used their discretion to allow him to come with them to the police vehicle without physically restraining him. Both officers described having previously dealt with the affected person and both believed that he would voluntarily comply with their orders.

A review of the RCMP’s Prisoner Escort policy disclosed no requirement that an arrestee be immediately handcuffed at the time of arrest. National policy requires that before conducting a prisoner escort, officers should consider a risk assessment (which is based on situational factors to include the subject’s behaviour, the officer’s perceptions and tactical considerations). E. Division (B.C.) policy requires that members “must conduct escorts in a manner that is safe and secure for the prisoner, the general public, and all escorting members.”

In order to refer this file to Crown Counsel based on the failure to handcuff, I would need to conclude that the officers’ decision to allow the affected person to accompany them to the police vehicle without having been physically restrained was taken with a “wanton or reckless disregard” for his safety.

There is no evidence to support such a conclusion. In fact, the officers appeared to have been trying to avoid embarrassing the affected person with an arrest in a public place and were therefore attempting to act in his best interest.

The subject officer acknowledges that he pushed the affected person to the ground in order to take him into custody. The affected person suggests that the push to the ground may have been the act that caused him his serious injury.

To constitute criminal assault by a police officer in the course of his or her 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 intentional application of force to another person, without the consent of that person, may constitute an assault under the *Criminal Code*. A peace officer who is acting within the course of his duties, however, is granted authority under the *Criminal Code* to apply force which is reasonable and necessary in the circumstances.

Despite this, police officers do not have an unlimited power to inflict harm on a person. 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.

In this case, the subject officer was lawfully attempting to detain the affected person and take him into custody. Due to the affected person's means of flight, there were no other officers immediately available to assist the subject officer. As such, a push to the ground to facilitate the arrest cannot be considered to be disproportionate or unnecessary. In addition, civilian witness testimony supports the contention that the affected person's serious injuries were more likely the result of his having fallen face first onto the rocks while he was still attempting to evade the subject officer.

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 1st day of December, 2014

Richard Rosenthal
Chief Civilian Director
Independent Investigations Office