



PUBLIC REPORT OF THE
CHIEF CIVILIAN DIRECTOR

Regarding the injury to an adult male on
July 1, 2013 by a member of the RCMP in the
city of Squamish, British Columbia

IIO 2013-000032

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 the investigation into the injury of an adult male that occurred on July 1, 2013, in the city of Squamish. The affected person sustained a serious injury to his wrist, allegedly sustained while being taken into custody at his residence.

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.

At the time of the incident, the affected person was 41 years old.

NOTIFICATION AND JURISDICTION DECISION

On July 1, 2013, the affected person was arrested in his residence based on an allegation of domestic assault. He alleged that during the course of that arrest his wrist was broken. After being notified by the RCMP of the incident, the IIO asserted jurisdiction as it appeared that the affected person's injuries fell within the definition of "serious harm" in the Police Act, which includes injuries that result in "a substantial loss or impairment of mobility of the body as a whole or the function of any limb or organ."

INVESTIGATIVE EVIDENCE CONSIDERED

Interviews were conducted with the affected person, civilian witnesses and witness officers who were present when the affected person was taken into custody. Video and medical evidence were also examined.

The subject officer declined to be interviewed as is his right under the Charter of Rights and Freedoms.

The Affected Person

The affected person was interviewed shortly after the incident. According to the affected person, he was woken in his bed by the police. He believed that there were two officers who escorted him from his bedroom down the hallway towards the front door. He stated it was there that an officer broke his arm.

He was taken outside to the police car and transported to cells. After a short while, he complained of injury to his arm and was taken to hospital for medical treatment.

The affected person acknowledged that he was intoxicated at the time of the incident. He could not recall if he was in handcuffs when his arm was injured. He stated "they said that I stopped and was fighting with them and that's not what happened. They stopped me. I stopped to do something for a second and they grabbed my arm, pushed, forced it behind my back and snapped it...they used two hands and snapped it, grabbed it and snapped it." The affected person described the action as taking a stick between both hands and levering down on both ends to snap the middle. He stated that no other instrument was used and that he had not fallen or injured himself in any other way.

The affected person recalled the subject officer asked him "How's your arm feeling?" and that he was "laughing about it."

Civilian Witnesses

A witness was interviewed by IIO investigators. The witness had observed three police officers at the affected person's residence trying to get him to answer the door. The witness recalled one officer left and returned about an hour later with an arrest warrant and after making an announcement to that effect, the police forced entry through the front door.

Two officers entered the house and about ten minutes later, they came out with the affected person between them. The witness observed the affected person was in handcuffs, with his hands behind his back and one officer on each side of him. As the officers escorted him to the police car, the witness observed the affected person was intoxicated and was stumbling. The affected person was heard saying "ouch," but the witness did not see any use of physical force by the police. When they reached the police car, the affected person did not want to go in, but he was verbally persuaded to do so by the officers.

The affected person's **roommate** was interviewed by IIO investigators. He stated that he went to bed sometime around 11:00 to 11:30 p.m. At the time, the affected person was with his girlfriend, was not injured and was in a good mood.

The roommate reported he only became aware of the police presence that night when they were banging on the door stating that they had a warrant. The police entered, removed the roommate from his room and took him to the front door. He remained there with one officer while another officer was dealing with the affected person.

The roommate advised he did not hear any physical altercation only the officer saying "Come on (affected person) let's go" and other similar commands. The subject officer and the affected person came around the corner of the hallway and out of the house through the front door. The roommate advised "they had to forcibly drag him out of the room or out of the hallway here" and that the affected person was intoxicated and was handcuffed with his hands behind his back.

The roommate heard the affected person say "ow, ow" and assumed he was complaining that the handcuffs were too tight. The affected person was escorted down the stairs by the same officer and then away from the house. The roommate stated that he saw nothing occur that could have caused any injury to the affected person.

Other witnesses were interviewed by IIO investigators. One witness was outside at about 11 p.m. The witness heard voices, observed a physical altercation between the affected person and his girlfriend and called the RCMP.

The police arrived approximately 15 minutes after being called. After talking to the girlfriend, the officers attempted to get the affected person to come out of his residence, but were unsuccessful. At approximately 2:30 a.m., one of the officers left and upon his return, the

witness heard an officer announce that they had a warrant and that the affected person should come out.

The officers subsequently entered the residence and escorted the affected person out. He was observed to be handcuffed with his hands behind his back with one officer on either side of him holding onto his arms. Just before they arrived at the police car, the witness observed the affected person lose his balance and fall onto his left side. The officers assisted in picking him up and continued walking him to the car. At the car, the witness heard an officer tell the affected person to watch his head. According to the witness, the affected person did not resist arrest and fully cooperated with officers. The witness did not observe officers use excessive force while they were in contact with the affected person nor hear him complain that he was hurting. The witness did not take note of any apparent arm or wrist injury at that time.

Another witness also observed the physical altercation between the affected person and his girlfriend. The witness saw the affected person brought from his house and placed in a police car. The affected person was being escorted by two officers when he fell and was helped back up by the officers. According to the witness, the officers were respectful and behaved in a professional manner throughout.

Witness Officers

Witness officer 1 (WO 1) stated that he and the subject officer were dispatched to “a domestic” complaint at the affected person’s residence. Prior to obtaining a warrant to enter the residence, WO 1 heard the affected person moving around, opening five or six cans, bumping around and knocking things over. The affected person refused to come out of the home, so a warrant was obtained.

After obtaining the warrant, WO 1 and the subject officer forced entry into the residence. WO 1 located the roommate in one bedroom; the subject officer located the affected person. WO 1 stayed with the roommate while the subject officer escorted the affected person out of the house. WO 1 noted that the floor of the house was slippery with spilled beer.

WO 1 stated he assisted in handcuffing the affected person by standing to the right and holding his right hand. The subject officer moved the affected person’s left hand to centre, “cuffed it” and then handcuffed the right hand.

WO 1 stated he was behind the subject officer and the affected person as the subject officer escorted the affected person down the hallway and to the front door of the house. As they left the house and went down four stairs, WO 1 heard the subject officer say “stop grabbing my fingers.” Witness officer 2 (WO 2) went to the other side of the affected person and the three walked towards the police vehicle. WO 1 saw the affected person trip forward onto his knees; he was subsequently lifted up by his biceps by the subject officer and WO 2. The affected person was placed into the police vehicle and was driven by the subject officer to the detachment.

Witness officer 2 (WO 2) stated that at the time of initial call involving the affected person, he was involved with another matter and did not attend the initial call.

After monitoring the radio, WO 2 could hear that the affected person was refusing to open the door to his residence. He attended the scene, was updated by the other officers and decided to request a warrant for entry.

WO 2 returned to the residence with the warrant. The subject officer and WO 1 announced themselves to the affected person and advised that they had a warrant to enter. WO 2 provided cover at the rear of the property. After a second announcement, with no response from the residence, WO 2 heard the subject officer and WO 1 force entry and enter the residence. He subsequently heard an officer yelling "you are under arrest."

According to WO 2, he assumed that the officers had located the affected person. He heard WO 1 broadcast that they had found the affected person in the residence and made his way around to the front of the property. He looked inside the front door and could see the other officers at the end of a narrow hallway and decided to wait outside.

A couple of minutes later, he saw the subject officer come out of the front door with the affected person handcuffed with his hands behind his back. The subject officer was on the right side of the affected person, positioned slightly behind him, holding on to his upper arms. WO 2 recalled the subject officer was "holding the affected person up (be)cause he was severely intoxicated."

As the subject officer and the affected person came down the front steps to the property, WO 2 stated that he heard the subject officer yelling "ow," and then "don't grab my arm" or "don't grab my finger." WO 2 did not see any grabbing or resisting by the affected person.

The subject officer and the affected person continued walking towards the police car which was parked approximately 50 feet away from the front of the property. WO 2 recalled the affected person was very intoxicated and that he was having difficulty walking "at one point he kinda tripped and went down on one knee." WO 2 assisted bringing the affected person back to his feet and then helped place him in the rear of the police car.

While at the detachment, WO 2 assisted in booking the affected person into cells. He recalled asking the affected person standard questions including "are you injured?" The affected person responded with a profanity and stuck his middle finger of his left hand in WO 2's face. When he was specifically asked about some scrapes on his shin, the affected person refused to answer any questions.

Video Evidence

IIO investigators obtained video recordings from the Squamish Detachment. A review of that video established that the affected person arrived at the Detachment, driven by the subject officer, at 2:12 a.m. The affected person was seen exiting the police vehicle without any physical assistance, but with some apparent difficulties with his balance. He was escorted to a booking counter, where at 2:19 a.m., he made an obscene gesture to WO 2.

Audio of the booking process was available. Although the affected person can be heard saying “ouch, ouch,” when his handcuffs were removed, at no time could the affected person be heard complaining about the injury to his right hand. When asked about his injured leg, he can be heard replying: “I’ll live.”

At approximately 2:20 a.m., the affected person was escorted from the booking counter, by his right arm, to a detachment cell. Almost immediately, he laid down on his right side and went to sleep.

The affected person was seen getting up for the first time at 3:04 a.m., where it appeared that he was favoring his right hand. He was attended by officers at the cell door at 4:50 a.m. By 5:00 a.m., the affected person was removed from cells to be transported to hospital for treatment.

From the time the affected person arrived at the detachment to when he was removed from cells, there was no evidence of any use of force or accidental fall that could be associated with an injury to his wrist.

Medical Evidence

IIO investigators asked the treating radiologist what mechanics likely caused the injury to the affected person. According to the radiologist, the affected person’s injuries were consistent with “FOOSH (fall on outstretched hand).”

ISSUES

The general issue in any IIO investigation is whether or not there is evidence that a police officer may have committed an offence under any enactment. 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)).

The affected person alleged that the subject officer intentionally took his arm, put it behind his back and snapped his arm without cause. Any such action taken by the subject officer, as alleged by the affected person, would constitute the offence of assault, assault causing bodily harm or aggravated assault.

REASONS

The only evidence present that suggests that an unlawful use of force against the affected person took place was contained in his statement. The affected person did however, acknowledge that he was intoxicated and was unable to remember any aspect of the event other than the officer's alleged act in breaking his wrist.

No other witness, police or civilian, indicated that any use of force occurred while taking the affected person into custody. Although none of the civilian witnesses would necessarily have been in a position to see what occurred in the residence, they did see the police contact with the affected person immediately thereafter, as he was being escorted into the police vehicle. None of the witnesses noticed any action or comment which might have corroborated the affected person's allegation.

The medical evidence appeared to be inconsistent with the allegation made by the affected person. Instead, the opinion of the treating radiologist indicated that the injury was consistent with the affected person falling and injuring himself. Based on the evidence I have reviewed, I believe it is quite unlikely that the subject officer inflicted the injuries complained of by the affected person.

An interesting item of note: if the affected person had actually broken his wrist prior to police making entry into his residence, then he may well have experienced pain when being handcuffed. He may have honestly interpreted this as the police breaking his wrist. That any such injury could have been caused prior to the affected person's contact with police would also be consistent with the witness officer's observation that while officers were waiting to gain entrance into the residence, he heard the affected person moving around the home, bumping around and knocking things over. In addition, the witness officer noted that the floor of the residence was slippery with spilled beer.

The fact that the affected person did not request medical assistance for his injury until well after he was placed into in cells, leads to the conclusion that the true extent of his injury may not been noticeable to anyone, including himself, until such time as his level of impairment decreased.

DECISION

Based on the evidence obtained during the course of this IIO investigation, I do not consider that an officer may have committed an offence and therefore the IIO will take no further action.

Prepared for Public Release this 8th day of September, 2013

Richard A. Rosenthal
Chief Civilian Director
Independent Investigations Office of BC