



PUBLIC REPORT OF THE
CHIEF CIVILIAN DIRECTOR

Regarding the serious injury sustained by a
male on June 29, 2013 involving an officer of
the RCMP in the city of Nanaimo,
British Columbia

IIO 2013-000030

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 serious injuries sustained by a male on June 29, 2013, in the city of Nanaimo. The affected person came into contact with police and subsequently fell off of a cliff.

Pursuant to s.38.11 of the *Police Act*, RSBC 1996 Chapter 367, I have reviewed the concluded investigation. The facts of the case appear to be undisputed. 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 will not be disclosing the names of any persons associated with this case or any other personal information.

The affected person was an adult at the time of his serious head injury and subsequent hospitalization.

NOTIFICATION AND JURISDICTION DECISION

The RCMP notified the IIO of the incident on June 29, 2013. Jurisdiction was asserted immediately as the incident appeared to be officer related and the injuries met the definition of serious harm.

INVESTIGATIVE FACTS and EVIDENCE CONSIDERED

IIO investigators obtained information from the affected person, the subject officer and civilian witnesses. In addition, investigators examined photographic evidence collected by the RCMP and attended the actual location of the incident.

On June 29, 2013, at approximately 1:45 a.m., the subject officer was patrolling nightclubs and bars in Nanaimo as part of the "Bar Watch" program. He saw the affected person apparently urinating in the parking lot adjacent to Club 241. The officer approached the male, illuminated him with his flashlight and called out to him. The male turned his head towards the officer and stepped away towards the edge of the parking lot.

The edge of the parking lot was not fenced, exposing a steep cliff with vegetative growth. The male fell off the edge and down the cliff.

Subject Officer

The subject officer provided a voluntary statement to IIO investigators. He indicated that while on duty, he attempted to make contact with the affected person who appeared to be urinating at the edge of the parking lot. He illuminated the male's chest and said "hey buddy. "

The male began to move away from the officer, toward the edge of the parking lot and then disappeared over the cliff.

The subject officer and his partner, the witness officer, immediately proceeded to search for the male. He was located at the bottom of the cliff; officers called for BC Ambulance Services. The subject officer estimated it was three minutes from the time he first saw the male to the time the ambulance was called.

Witness Officer

The witness officer was interviewed by IIO investigators. He confirmed that he saw the subject officer with a flashlight across the parking lot adjacent to Club 241. He recalled the subject officer telling him that he heard crashing in the bushes and believed that a man had gone over the cliff. They left the parking lot and located the male at the bottom. He was breathing but not responsive. The officers called for an ambulance.

Affected Person: The male

The male was interviewed by IIO investigators. He was unable to remember what caused his injury. Medical records indicated he was intoxicated at the time of his hospital admission.

Other Witnesses

A witness who was working at Club 241 recalled seeing the subject officer walking at a normal pace up to the parking lot adjacent to the club. He saw the officer shine his flashlight towards an individual and saw a silhouette that then disappeared. He saw the subject officer leave the parking lot with another officer. The witness assumed someone had fallen down the cliff.

Another witness employed at the club stated the officers did not reach the male before he fell down the cliff. He estimated the officers were in the parking lot for less than two minutes.

Video Evidence

Closed circuit television recordings from a nearby pub were obtained and reviewed. The recordings indicated the male was inside the pub from 12:20 a.m. to 1:17 a.m.

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. In this case, there was no use of force by the subject officer. Although it could be concluded that the officer's action in attempting to make contact with the male was a proximate cause of his injury, there are no relevant Criminal Code provisions that would be applicable in this case.

ANALYSIS

There is no reason to believe that the subject officer took any action other than calling out to the male in order to make contact with him. There was no use of force and no police action other than the officer's verbal attempt to get the male's attention. There is no reason to believe the officer committed any offence.

DECISION

Based on the evidence obtained during the course of this IIO investigation, I do not consider that the subject police officer may have committed an offence in relation to the fall that resulted in serious injury to the male. Therefore the IIO will take no further action in relation to this case.

Prepared for release 19th day of August, 2013 by

Richard A. Rosenthal
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Independent Investigations Office of BC