



**IN THE MATTER OF THE DEATH OF A MALE  
WHILE IN THE CUSTODY OF MEMBERS OF THE  
RCMP IN THE CITY OF NANAIMO, BRITISH COLUMBIA  
ON OCTOBER 28, 2018**

**DECISION OF THE CHIEF CIVILIAN DIRECTOR  
OF THE INDEPENDENT INVESTIGATIONS OFFICE**

Chief Civilian Director:

Ronald J. MacDonald, Q.C.

IIO File Number:

2018-135

Date of Release:

May 14, 2019

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## **Introduction**

In the early morning hours of October 28, 2018, police in Nanaimo, B.C. received a report of an impaired driver. When officers attended, they found a male sitting in the driver's seat of a vehicle that had apparently been involved in a collision with a utility pole. The male showed signs of significant intoxication, and officers attempted without success to obtain breath samples from him using a roadside screening device. As they were preparing to transport him, he exhibited medical distress and paramedics were called. He was taken by ambulance to hospital but was pronounced deceased later that morning.

As a person had died during his involvement with police officers, the Independent Investigations Office (IIO) was notified and commenced an investigation.

The narrative set out below is based on evidence collected and analyzed by IIO investigators, including the following:

- statements from five civilian witnesses;
- video recordings taken by a civilian witness;
- evidence from first responders;
- police computer-aided dispatch ("CAD") and PRIME records;
- recordings of 911 calls and police radio transmissions;
- police vehicle dash camera audio/video; and
- medical and autopsy records.

Two police officers were involved in this incident. An officer who is the subject of an IIO investigation is not compelled to submit to interview by IIO investigators. In this case, the interactions of both officers with the deceased male while he was in their custody are sufficiently documented by the statements of civilian witnesses and by video and audio recordings.

## **Evidence**

At about 1:30 a.m. on October 28, 2018, Civilian Witnesses 1 and 2 ("CW1" and "CW2") told IIO investigators, they were awakened by a "*horrendous grinding noise*" outside the house. A car was manoeuvring back and forth in the back lane and had struck a utility pole. When they went outside, they found the car was missing a tire and the bare rim was scraping against the road surface. The car finally stopped on a neighbour's driveway, and CW2 went to it and removed the ignition key. Other civilian onlookers witnessed the same events. The driver of the vehicle was the Affected Person ("AP") in this case.

Police were called. Two police vehicles attended, one driven by Officer 1 with a civilian 'ride-along' passenger, CW3, and the other driven by Officer 2.



When Officer 1 arrived, he called the matter in to Dispatch as a suspected impaired driver, and had AP exit his vehicle to comply with a demand to provide a breath sample into a roadside screening device. Officer 1 held AP's arm to steady him as he walked from his car to the police vehicle. These events, and those that followed, were recorded on police dash camera equipment, corroborated by statements from CW3.

Throughout the officers' dealings with AP, despite comments between themselves that they had rarely seen a driver so evidently intoxicated, and his admission that he had drunk a considerable amount of alcohol that day, they treated him with notable courtesy, consideration and patience. The fairly simple procedure for giving a breath sample into the device was explained and demonstrated several times, but despite this AP failed over approximately fifteen attempts to provide a satisfactory sample. AP was coughing occasionally, and told the officers that he had a bad cold and was having breathing problems. He said he had "*a respiratory thing right now.*" He was, however, able to converse normally with the officers, albeit with very slurred speech, and appeared to be breathing unremarkably.

Eventually, AP was warned that he could be charged with a criminal offence for failing to provide a sample. After another failed attempt, at this point nearly half an hour after Officer 1 had arrived on scene, Officer 1 started to read AP his *Charter* rights. AP stopped him, saying he was "*trying his best.*" The officers asked AP what they could do to help, and AP told them "*it's how I've been breathing in the last three or four days.*" They gave him further opportunities to blow, but when he again failed, he was finally arrested (failure or refusal to supply a breath sample upon demand is an offence). He was advised that there would be a 90-day driving prohibition and a 30-day vehicle impoundment.

AP was then taken to sit in the back of Officer 2's police vehicle. He was asked if he wanted to go to the hospital or to his home. Officer 1 told him that unless there was someone at home to take care of him, AP would have to spend the night in the 'drunk tank', because he was "*stupefied drunk*" and not in a condition to take care of himself.

Very shortly after this, Officer 2, who had been in conversation with AP as he sat in her vehicle, said "*let's call an ambulance, his eyes are going back.*" Officer 1 called for an ambulance, and then told Dispatch to "*step it up to Code 3 [lights and siren], it looks like he might be seizing.*"

Officer 2 tried unsuccessfully to communicate with AP, who was still breathing but was not responsive. While the ambulance was still en-route, though, Officer 1 updated AP's status: "*We need an ambulance here now. This guy's gone into cardiac arrest and I think he's dying here. What's the ETA?*" A minute later, the officers were taking AP out of the police vehicle and laying him on the ground as the ambulance arrived. Officer 1 began chest compressions until paramedics took over. CW3 assisted by moving the police vehicles aside to make room for the ambulance to reach the spot where AP was lying.

AP was transported to hospital, where he was declared deceased later that morning. An autopsy was performed on November 1, 2018. The preliminary cause of death was given as bilateral severe pneumonia.

**Relevant Legal Issues and Conclusion**

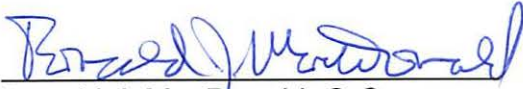
The purpose of any IIO investigation is to determine whether an officer, through an action or inaction, may have committed any offence in relation to the incident that led to the injury to AP.

More specifically, the issue to be considered in this case is whether the attending officers' actions in detaining and demanding breath samples from AP were unlawful in the sense that they were unjustified or unreasonable. There is no allegation, and no evidence, that there was any use of force against AP, or any improper treatment of him.

As detailed above, the evidence demonstrates that both officers, who were in the execution of their lawful duty investigating an apparently impaired driver, performed that duty in a reasonable and professional manner. AP presented as an individual who was unable or unwilling to cooperate with their requirements of him, either because he was heavily intoxicated or because he was simply being obstructive, not as someone about to lapse into catastrophic medical distress.

There is no evidence that either officer did anything that caused AP's death, or failed to do anything that could reasonably be expected of them, that might have prevented it.

Accordingly, as the Chief Civilian Director of the IIO, I do not consider that an officer may have committed an offence under any enactment and therefore the matter will not be referred to Crown counsel for consideration of charges.

  
Ronald J. MacDonald, Q.C.  
Chief Civilian Director

May 14, 2019  
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