



PUBLIC REPORT OF THE

CHIEF CIVILIAN DIRECTOR

Regarding the February 3, 2014 serious
injury of an adult male involving the
Royal Canadian Mounted Police

IIO 2014-000022

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 (CCD) of the IIO, 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 Counsel.

This is a public report related to the investigation into the serious harm of an adult male that occurred on February 3, 2014 in Creston. The affected person sustained serious harm while being arrested by officers in the employ of the Royal Canadian Mounted Police (RCMP).

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. I will not be disclosing names of any persons involved.

The affected person was 46 years old at the time of his injury.

NOTIFICATION AND JURISDICTION DECISION

On the evening of February 3, 2014, Civilian Witness 1 called 911 requesting assistance from police in removing the affected person from her residence. Upon attending the residence, the two Subject Officers located the affected person hiding in a bedroom closet. While attempting to take him into custody, the Subject Officers engaged in a physical altercation with him, during which the affected person sustained a broken ankle.

The IIO asserted jurisdiction after determining that the affected person’s injuries fell within the *Police Act* definition of “serious harm”.

INVESTIGATIVE EVIDENCE CONSIDERED

IIO investigators obtained PRIME data, 911 audiotapes, RCMP policy, RCMP cellblock documentation, and medical records. The affected person, civilian and police witnesses also provided information pertinent to the IIO investigation.

General Timeline

The following sequence was established by reviewing radio transmissions, police data and information provided by subject and witness officers. All times are approximate.

February 3, 2014:

6:00 p.m.: RCMP dispatch received an abandoned 911 call from the residence of Civilian Witness 1. A 911 operator returned the call and was advised by the occupant of the residence that a child had accidentally called 911. Subject Officer 1 then called the number back, and the call went directly to voicemail. Subject Officer 1 left a message, however his call was not returned.

7:03 p.m.: RCMP dispatch received a second 911 call from the same address and assigned Subject Officer 1 and Subject Officer 2 to attend. The affected person was subsequently arrested inside the residence, as he had been previously ordered by a judge not to be in the presence of Civilian Witness 1 or at her place of residence. Civilian Witness 1 was also arrested for allegedly refusing to allow the officers to enter her residence and attempting to assist the affected person in avoiding arrest.

February 4, 2014:

12:35 a.m.: Civilian Witness 2, an RCMP jail guard, advised Subject Officer 2 that the affected person was requesting to go to the hospital as a result of an injury. Subject Officer 2 denied the affected person's request.

7:08 a.m.: Witness Officer 1 checked the affected person in his cell and found him to be asleep.

10:45 a.m.: Witness Officer 1 awoke the affected person, who requested medical attention.

11:50 a.m.: After determining that medical personnel were available to attend to the affected person, Witness Officer 1 instructed Witness Officer 2 to transport the affected person to a local hospital. The affected person was diagnosed with a broken right ankle and a puncture wound to his right leg, and was admitted for treatment.

AFFECTED PERSON

The affected person stated that Civilian Witness 1 called the police, but when the officers arrived, she told them they were not required. He stated that there was no violence taking place when the officers arrived.

The affected person stated that when the police arrived, he hid in a bedroom closet. He heard the police and Civilian Witness 1 talking and Civilian Witness 1 told them he was not there. The police insisted on coming in, and eventually the closet door opened and a police officer told him to get out.

The affected person stated, "From what I remember is that they maced [pepper sprayed] me and then they dragged me out by my leg of the closet, and I believe that was when I got the fractures because they were twisting my legs and both my knees are all messed up."

The affected person believed when he was pulled from the closet, the twisting of his leg caused the fracture. The affected person stated that when he was pepper sprayed, the spray was two inches from his face. The police dragged him out of the closet by his legs, turned him over and handcuffed him. The affected person stated, "They drug me out of the closet by my legs and flopped me around on my back and handcuffed me and then took me out to the car. And at that time I was complaining about my leg."

The affected person stated that he was on the ground when he was sprayed but only recalls being pulled from the closet by his right leg and that he tried to kick one of the officers. The affected person thought someone pulled his hair back and then sprayed him, at which point he blacked out. The affected person stated that in the morning, he was surprised by the extent of his injuries. He could remember being in the hallway, and being placed in the police car.

The affected person stated that while in the cellblock, he complained about leg pain but did not receive assistance. He also had a puncture wound on his leg that was bleeding. The affected person stated, "I went to city cells, I complained about my leg all night, banged on the door tried to get them to take me to the police, or the hospital; they wouldn't."

The affected person stated that his leg was bleeding throughout the night and his pants were soaked with blood. He stated that after banging on the cell door all night to get them to take him to the hospital, he finally gave up and lay down to sleep.

The affected person stated that in the morning, he knocked on the cell door and the police said it would be a few more minutes until someone could take him to the hospital. While waiting to go to the hospital, he was moved to another cell. Approximately five minutes later, he was taken up to the hospital where an x-ray was completed and it was discovered that he had a broken ankle.

SUBJECT OFFICERS

Subject Officer 1 voluntarily submitted to an interview with IIO investigators. He stated that at approximately 6:00 p.m. on the day of the incident, he and Subject Officer 2 received a report of an abandoned 911 call from the residence of Civilian Witness 1. Subject Officer 1 called the number back and it went to voicemail. He left a message including his name and contact number.

Subject Officer 1 stated that approximately two hours later, police received another call from the same location. Subject Officer 1 and Subject Officer 2 arrived at the address, which was an apartment block. It took approximately five minutes before they could get access to the apartment building, during which time the police dispatcher advised that they could hear a male and female arguing on the line.

Subject Officer 2 told Subject Officer 1 that he had been to the address in the past, and that the affected person, who was the partner of Civilian Witness 1, was bound by an undertaking not to have any contact with Civilian Witness 1. The dispatcher confirmed the validity of the undertaking.

Once Subject Officer 1 and Subject Officer 2 entered the building and arrived at the apartment, they could hear a male and female talking from outside the door. They knocked on the door and announced their presence. They heard a female voice saying everything was okay and the police were not required. They told her that they were responding to a 911 call and had to ensure all was well. The female eventually opened the door and the officers entered.

Once the door was open, Subject Officer 1 arrested the female, Civilian Witness 1, and placed her in handcuffs. While Subject Officer 1 held on to her, Subject Officer 2 announced to the male to come out and that he was under arrest.

Subject Officer 1 stated, "At this time [Subject Officer 2] has his baton out and he's using it to go through the room, like lead with it."

Subject Officer 2 searched the living room and proceeded to the bedroom. The folding closet door in the bedroom was closed. The officers were telling the male to come out, as they believed there was no other place he could be hiding. Subject Officer 2 opened the closet door and found the affected person crouching down inside the closet.

Subject Officer 2 told the affected person to come out, but he did not comply. Subject Officer 2 hit the closet door with his baton. The affected person then got in to a "fighting stance" and came towards Subject Officer 2. Subject Officer 1 stated, "[Subject Officer 2] I believe strikes as the guy is coming at him, strikes him one blow with the baton and the guy goes down."

Subject Officer 1 stated that the affected person then got up and continued to fight with Subject Officer 2. At this point, Subject Officer 1 used his pepper spray on the affected person's eyes. The affected person fell to the ground, but it appeared that the pepper spray did not have any effect on him.

The affected person again got up and started towards Subject Officer 2. Subject Officer 1 let go of Civilian Witness 1, stepped in front of Subject Officer 2 and punched the affected person once in the face. The affected person then fell to the floor and the two officers were able to place him in handcuffs. Thereafter, the affected person was "very verbal." There was blood coming from the affected person's face. The officers removed him from the apartment, walked him up a hill, and placed him in a police car and transported him to the cellblock.

The affected person was placed in a cell and the handcuffs were removed. After the cell door was closed, the affected person was either hitting or kicking at the cell door. After a while, he complained that his leg hurt. Subject Officer 1 stated, "I assumed that if it was sore or hurt it was probably because it took a blow from a steel baton trying to get control of him".

Subject Officer 1 stated that the male continued to yell and that he was looked after by the jail guard. Civilian Witness 1 was also lodged in the cellblock, until her release the following morning.

Subject Officer 2 declined to be interviewed by the IIO, but provided IIO investigators with a voluntary written statement via his counsel.

According to his statement, on the night of the incident, Subject Officer 2 and Subject Officer 1 were dispatched to a 911 call reported as a domestic disturbance in progress. They made their way to an apartment suite and were met by Civilian Witness 1, who was uncooperative with them. It was determined that the affected person was inside the residence as well, and that he was on release conditions not to be in Creston and to have no contact with Civilian Witness 1.

Subject Officer 1 remained outside the suite while Subject Officer 2 entered. Subject Officer 2 announced "police" and that the affected person was under arrest. A search of the suite located the affected person hiding in a bedroom closet. He was hiding under clothes and would not show Subject Officer 2 his hands.

Subject Officer 2 was inside the bedroom alone as Subject Officer 1 remained with Civilian Witness 1 in the hallway. According to Subject Officer 2, as he was attempting to remove the clothes from on top of the affected person, the affected person began to kick him. Subject Officer 2 stated that he felt two blows to his shin. Subject Officer 2 took a step back and told the affected person to stop kicking.

Subject Officer 2 backed away further, but the affected person chased him and again kicked him in the leg. As Subject Officer 2 attempted to gain control of the affected person, the affected person grabbed Subject Officer 2's leg. Subject Officer 2 was able to free himself and move back towards the door. The affected person came to his feet and swung at Subject Officer 2 with a closed fist.

According to Subject Officer 2, the force he used was ineffective as the affected person continued to assault him. Subject Officer 2 retreated out of the bedroom where he was joined by Subject Officer 1, and the two officers were able to arrest the affected person.

Once he was apprehended, the affected person was removed from the third floor suite under his own power. He walked down the stairs, up a snow embankment, and sat in the police vehicle without a complaint. Once inside the police vehicle, the affected person began to kick the vehicle door and window. At the RCMP detachment, the affected person exited the vehicle without assistance and walked into the cell area without complaint. Throughout the night, the affected person was kicking at the cell door.

It should be noted that Subject Officer 2's written statement did not describe what force he used against the affected person.

WITNESS OFFICERS

Witness Guard 1 is an RCMP jail guard who was on duty the evening this incident occurred.

Witness Guard 1 recalled that the affected person complained of a leg injury at approximately 12:30 a.m. on February 4. She observed that the affected person had blood on his pants and his face, and a wound on his leg. The affected person said his leg was broken and he could not stand on it. Witness Guard 1 observed the affected person standing; however he could not put weight on the injured leg. Witness Guard 1 stated that the affected person told her the police caused his injury, but he was not specific as to how it occurred.

Witness Guard 1 explained the regulations she abides by, and that it is up to the attending RCMP officers to make decisions regarding the health care of the prisoners she is responsible for.

Witness Guard 1 stated that when she told Subject Officer 2 about the affected person's injury and his request to go to a hospital, Subject Officer 2 indicated that he was too busy and the affected person was too intoxicated.

Witness Guard 1 stated that prior to going off of his shift, Subject Officer 2 walked by the affected person's cell and visually checked on him through the window, but did not enter the cell. She indicated that Subject Officer 2 went off of his shift at 2:00 a.m.

Witness Officer 2 was a supervisor whose shift began at 7:00 a.m., February 4, 2014. She made notations in the guard log book regarding her interactions with the affected person while he was in cells and provided a copy of the log book and the prisoner report to IIO investigators.

At 7:08 a.m., Witness Officer 2 conducted a physical check on the two prisoners that were being held in custody to ensure there were no issues. Witness Officer 2 stated this check is done at the start of shift but the guards also do a check every 15 minutes. Any issues are documented in the guard log book.

At approximately 10:45 a.m., Witness Officer 2 attended the affected person's cell and woke him up. Witness Officer 2 explained to the affected person who she was and that she was trying to arrange a bail hearing for him. Witness Officer 2 further explained what charges the affected person was being held on.

Witness Officer 2 stated that the affected person informed her that his leg was sore and he wanted to go to the hospital. Witness Officer 2 noted blood on the bottom of his right pant leg. According to Witness Officer 2, the affected person stated he didn't know what happened. Witness Officer 2 raised the affected person's pant leg and saw a small puncture wound in his calf, midway between his ankle and knee, on the outside of his leg. Witness Officer 2 decided to move the affected person to a cell that had a bed and place to sit.

At approximately 10:47 a.m., Witness Officer 2 moved the affected person to another cell and noted he had trouble getting up. The affected person limped to the cell and Witness Officer 2 told him she would get someone to take him to the hospital.

Witness Officer 2 instructed another officer to contact the local hospital and determine whether a doctor was present. A nurse returned the call and indicated that a doctor could see the affected person at 12:00 noon. Witness Officer 2 sent Witness Officer 3 to take the affected person to the hospital to see the doctor.

Shortly afterwards, Witness Officer 3 informed Witness Officer 2 that the affected person was diagnosed with a broken ankle that he would be transferred to another hospital for surgery.

Witness Officer 3 also started his shift at 7:00 a.m. that day. Witness Officer 3 was informed by Witness Officer 2 that the affected person was complaining of some pain in his leg and that he would have to be taken to the hospital. Witness Officer 3 entered the cellblock with Witness Officer 2. He observed the affected person raise his right pant leg and saw a cut on his right shin.

Later in the shift, Witness Officer 3 drove the affected person to the hospital. Witness Officer 3 sat with the affected person until approximately 3:00 p.m., when he was released from custody. While at the hospital, Witness Officer 3 asked the affected person what happened to his leg and the affected person indicated that he did not remember.

CIVILIAN WITNESSES

Civilian Witness 1 is the occupant of the residence at which this incident occurred.

Civilian Witness 1 stated she could not recall much of what happened on the night of the incident. Civilian Witness 1 stated she was at home in her apartment when the police arrived. She stated that she and the affected person had been drinking that evening, and she remembered opening the door to find two officers there. She stated that the police told her that there was a disturbance and that the affected person was not allowed to be there. Civilian Witness 1 stated there was a gap in her memory but she recalled there being some fighting.

After that, all Civilian Witness 1 could recall was being in jail. She heard the affected person in another jail cell saying he had to go to the hospital. She was subsequently released and driven home by police.

Civilian Witness 1 told investigators that the affected person “would never resist the police.” She also commented that she did not want “anything to go against him [the affected person] because,.. there is a better person [in] there.”

Civilian Witness 2 is the occupant of the apartment beside Civilian Witness 1.

Civilian Witness 2 stated that he was in bed, when he heard a loud banging and thought he could smell smoke in the building. He got up to ensure there was not a fire.¹

Civilian Witness 2 looked into the hallway from his apartment unit and could see smoke coming from Civilian Witness 1’s suite. He walked down the hallway and could see inside the suite the smoke was coming from. Civilian Witness 2 saw the police were wrestling with someone in the apartment, and one of the officers told him to go back to his suite.

Civilian Witness 2 asked if there was a fire and was told there was not. He witnessed the police taking the affected person out of the apartment and noted that he was handcuffed behind his back. Once the affected person was out of the suite and in the hallway, he stumbled and fell face-first to the floor. Civilian Witness 3 noticed a lot of blood on the floor, which he believed to be from the affected person’s nose. He recalled that there were two male police officers present and there was one male and one female involved in the incident.

¹ According to the subject officers, when they entered the apartment, there was a pan on the stove that was causing smoke to fill the residence.

MEDICAL RECORDS

The affected person gave informed consent to IIO investigators to review his medical records. The records showed that he was diagnosed with a spiral [twisting] fracture to his right ankle and a puncture wound to his lower right leg. The etiology of the puncture wound was unknown. The Emergency/Outpatient record indicated an abrasion, contusion and sprain to the inner front right knee.

CELLBLOCK VIDEO

The cellblock area of the Creston RCMP Detachment is not equipped with video surveillance.

ISSUE

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 an officer may have committed an offence, I must forward a report to Crown Counsel. There are a number of legal issues to be considered to determine whether a report to Crown Counsel must be made.

Pursuant to the *Criminal Code*, police officers are permitted to use reasonable force against members of the public. Relevant *Criminal Code* provisions state that:

- 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)).
- 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).

ANALYSIS

The available evidence suggests that Subject Officer 2 struck the affected person with a baton at some point during the struggle. One issue to be resolved is whether the use of the baton under these circumstances was possibly unreasonable. I noted no substantial injuries that appeared to be the result of Subject Officer 2’s use of his baton.

Subject Officer 1 stated that he observed Subject Officer 2 striking the affected person with his baton. However, Subject Officer 1 explained that he was distracted by Civilian Witness 1’s struggling and that from his position he could not clearly see whether the swing of the baton struck the affected person. In addition, he could not see the affected person’s actions at the time the baton was used. Subject Officer 1 did remember that Subject Officer 2 extended his baton before searching the bedroom.

Subject Officer 2 alleged that the affected person kicked him while the affected person was still down on floor of the closet. He said that the affected person subsequently grabbed his leg.

The affected person stated that even when he was drunk, he was not violent; as such he believed the officers used unnecessary force upon him. Despite this, he did remember kicking at the officer who was attempting to pull him from the closet.

Because he was distracted and observed the baton strike from a poor angle, Subject Officer 1 was not able to provide a justification for Subject Officer 2's use of the baton. Subject Officer 2 did not provide a clear description of how and why he used his baton, although he did describe the affected person as uncooperative and aggressive. Although the affected person suggested that he would not have resisted arrest (because, even when drunk, he is not a violent person), he did acknowledge that he attempted to kick Subject Officer 2. Therefore, I have no evidence beyond speculation that Subject Officer 2 unnecessarily struck the affected person.

The affected person recalled that an officer grabbed his legs and twisted them. He believed that action broke his ankle. Medical evidence supports this recollection because the break to his ankle was consistent with a twisting action.

Considering that the affected person was kicking at a police officer and possibly grabbing the officer's legs, restraining the affected person's legs would not appear to be an unreasonable use of force. Twisting the legs of a struggling man to control him would not appear to pose an unreasonable or obvious risk of substantial injury. As such, I cannot conclude this use of force may have been unreasonable under the circumstances.

Civilian Witness 3 recalled the affected person falling on the hallway floor. He was the only witness who recalled the affected person falling there. He did not allege any unnecessary force by the police officers, and there is no evidence that suggests that a police officer made him fall.

Based on the available evidence, there is no reason to believe that the police committed any offence in taking the affected person into custody.

To constitute criminal assault by a police officer in the course of his 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.

The involved officers were faced with an individual who was attempting to hide in a closet in order to avoid being lawfully arrested for breach of court conditions. The force that was used appears to have been limited to one or two strikes with a baton that caused no apparent injury and a fractured ankle

that may have occurred as the result of the affected person having to be dragged by the foot away from the closet where he was hiding.

There is no evidence that any of the force used was unreasonable or gratuitous under the circumstances.

There evidence does indicate, however, that the affected person was not transported to hospital for treatment of his injuries until 12:00 noon on the day after his arrest. Creston Detachment RCMP policy requires that if a prisoner complains of illness, or it is suspected that a prisoner is ill, "the on duty member will be advised and medical attention sought." At 12:30 a.m., Witness Guard 1 documented that the affected person "is complaining of pain in his right leg, blood on his pants, says he can't stand on it & wants to see a doctor." According to Witness Guard 1, Subject Officer 2 was informed of the complaint, but indicated he was too busy to take the affected person to hospital and that he did not think the affected person was sober enough to go to hospital.

When Witness Officer 2 determined that the affected person needed to receive medical treatment, at 10:45 a.m., she reported that she was informed by hospital staff that no doctor was available to treat him until 12:00 noon.

Even if one were to assume that a doctor was available, and no pressing duties prevented Subject Officer 2 from acting, I know of no offence that would arise from his failure to take the affected person to the hospital.

He did not commit criminal negligence under s.221 of the *Criminal Code*, nor any breach of his duties under s.215, because no evidence suggests that he caused or even risked bodily harm by delaying medical treatment.

If Subject Officer 2 had intentionally inflicted severe pain or suffering for an improper purpose, he would be liable under s.269.1 to a conviction for torture. No evidence suggests that he caused the injury, nor that he delayed treatment for the improper purposes that section prescribes.

I know of no other offences which would apply to these circumstances.

As such, even if the decision not to seek immediate medical treatment for the affected person was not reasonable, no referral to Crown Counsel would be appropriate.

DECISION

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

Any issue regarding whether medical attention should have been provided to the affected person in a more timely fashion falls within the jurisdiction of the Professional Standards Unit of the RCMP and/or the Commission for Public Complaints against the RCMP (CPC).

It is the role of the RCMP Professional Standards Unit and the CPC to examine the conduct of RCMP members in the execution of their duties against applicable training, policies, procedures and guidelines and where applicable, take remedial action. These issues fall outside the mandate of the IIO.

Prepared for release 30th day of May, 2014 by

Richard A. Rosenthal
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