



PUBLIC REPORT OF THE

CHIEF CIVILIAN DIRECTOR

Regarding the injuries sustained by an adult
male on August 20, 2014, involving a
member of the RCMP in Richmond

IIO 2014-000145

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 August 20, 2014, in the city of Richmond. The male affected person sustained serious injury to his face while being taken into custody by an officer employed by the RCMP in Richmond.

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 the evening of August 20, 2014, an officer responded to a complaint near the Steveson Marina. The affected person was allegedly causing a disturbance. The officer located the affected person and became concerned for his well-being due what he believed has a high level of intoxication. The officer decided to arrest the affected person. During the arrest, both the officer and the affected person reportedly fell to the ground causing an injury to the affected person’s face.

The incident was reported to the IIO in the early hours of August 21, 2014.

Jurisdiction was asserted 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 and several civilian witnesses.

Interview with the Affected Person

The affected person was interviewed by IIO investigators on August 21, 2014.

He advised that he had come to the Richmond area to work as a fisherman on a local fishing boat. As of August 20, 2014, he had been in port at the Steveston dock for seven days.

The affected person stated that on August 20, he had been drinking steadily throughout the day.

He had gone to a local pub for supper around 7:00 pm and indicated that they did not have what he wanted which he stated that he may have made him “a little grumpy.” He said that he had consumed one drink at the pub and then left. He purchased a 750 ml bottle of [whiskey] at the liquor store which was attached to the pub.

He stated that he did not usually drink hard liquor. He indicated that he then went to the dock area which is about a block from the pub to an area which he described as a little private. The affected person noted that there was a movie company at that location in the process of shooting a TV series. He stated that he started talking with a male and a female who were working at the movie set. During that period of time, he had “maybe five drinks” of whiskey. He indicated that he felt that everything was all right at that time. He stated that it was still light out so he thought the time was before nine p.m.

The affected person indicated that the next thing he remembered was waking up in the [Richmond] hospital. Two police officers told him he had caused a disturbance and that he was charged with causing a disturbance and obstructing a peace officer. He stated that he did not recognize either of the police officers. The affected person stated that he did not remember what had happened.

The affected person stated that when he had the beer he would have been “just happy” but when he started to drink the whiskey, he was drunk. He recalled becoming intoxicated as he was talking to the male and female near the deck.

A review of the affected person's medical records showed that as of 1:45 a.m. on August 21, 2014 (approximately three hours after his arrest), he was impaired.

Civilian Witnesses

Civilian Witness 1 (CW1) was interviewed by IIO investigators on August 21, 2014. According to CW1, earlier in the day, he spoke with the affected person letting him know that later on, the production company would be filming on location and that he would have to leave once they got started:

"I just said to him you know you are fine for now, but at some point we are going to have to move you along to film here." CW1 noticed the affected person drinking from a bottle of whiskey.

CW1 assigned one of his production assistants to the location about 6:00 or 6:30 p.m. and he returned to the set where there was filming taking place. A short while later, he returned to the location to check on his assistant and she informed him she was extremely uncomfortable due to the affected person's comments to her.

CW1 decided to change production assistants and assigned a male staff, CW2. He recalled this was about eight or nine p.m.

Later in the evening, CW1 returned to the location to check on things. He saw a police officer trying to put the affected person in handcuffs. According to CW1, the affected person was "was so drunk that he sorta went around in circles and took the officer down with him and smacked his face on the boardwalk, and that's just as I got there at which point (CW2) told me what had happened, I guess the fellow had fallen and (CW2) tried to pick him up and the guy tried to take a swing at CW2... so he just sorta stepped back and the police sorta took it from there."

CW1 saw the officer "trying to handcuff him, the guy couldn't stand so he was going around in circles and the police officer was trying to go around with him and I guess he was so drunk he fell down and took the officer down with him and the officer fell down and he sorta left him on the ground and at that time I believe he put cuffs on him at that time the guy pass, literally passed out...he finished handcuffing him, but the guy had passed out, so he sorta put the cuffs on him and left him there."

According to CW1 a couple of police officers attended about 10 to 20 minutes later, after the incident had occurred. The subject officer had called for emergency response to attend, but there was apparently a long wait for EHS.

Civilian Witness 2 (CW2) was interviewed by IIO investigators on August 21, 2014.

CW2 stated that on the night of August 20, 2014, he was working as a production assistant. He was posted to "a lock out position" at the mouth of the Steveston fishing dock. CW2 said that

he saw the affected person drinking a “26” of whisky out of a paper bag and that he appeared to be quite inebriated. He saw the affected person sitting down on a chair trying to get out a cigarette and thought that he was “harmless.”

CW2 said “He got up and crawled over after stumbling and falling a couple of times and hitting his head on the chair, by himself. He then crawled over to beside me and couldn’t get up. So I got up and tried to help him up with my right hand. I took his hand with my right hand and put my two feet in front of his feet and helped him up and then once he was up and standing and wobbling about quite a bit. He came into me and asked me if he could slap me in the face.”

CW2 said that he declined and that the affected person “lifted his wrist put it in a fist position and slowly started pushing towards me. At that point I just moved to the side and let his swing momentum take him to the floor and I did not support his weight anymore.”

CW2 stated that he called security on his radio. Security came to him and called the police.

A police officer arrived about 10 to 15 minutes later. CW2 stated that while waiting for the police, the affected person was murmuring incomprehensively. When the police officer arrived he sat the affected person down on one of the patio chairs and asked him some questions. The officer took the affected person’s wallet and found some identification. CW recalled the officer asking the affected a few questions like where did he live and who could take care of him?

“Then the officer I guess detained him and tried to cuff him because he was not cooperating. He would not give him enough information and he was clearly intoxicated to the point of not being able to get home or wherever he needed to go...The officer (who was approximately my height maybe 5’8” tops and weighing in at maybe 170 - 175 with all his gear on), he tried to pick up the (affected person) and escort him to the vehicle.

“The (affected person) then lost his footing and seemed to do it purposely because they ‘doe-see-doe’ for quite a couple of seconds there. They did a circular motion and the officer tried to support him and hold him up. Nobody interfered at that point as it was out of our hands. It was out of my hands I had no jurisdiction to touch this (affected person) while he was cuffed and the cop lost his footing and they both went to the floor. There was a little bit of momentum that was gained in that action...his hands were cuffed behind his back so he could not fall on anything and his head hit the floor thus knocking him out or severing his head.”

CW2 clarified that the officer handcuffed the affected person while he was sitting down on the chair. “When (the affected person) got up he was handcuffed. Very quickly the officer was retaining him from behind and trying to escort him, holding him by one shoulder and holding the other hand on his hands so that he wouldn’t try and I guess fight, you never know. The officer then tried to escort him and the (affected person) just leaned to one side making the officer lose his balance ...Now I’m assuming that at one point one of them lost their footing and they went to the floor.”

CW2 said that he believed the affected person and the officer both fell at the same time. He noted the officer landed on his shoulder and the affected person landed on his face. The officer did not fall on the affected person.

CW2 said that the officer removed the handcuffs and put the affected person in a recovery position and called for an ambulance and backup. The affected person was not moving and that he thought the ambulance must have been called as a non-emergency as it took 30 to 45 minutes to arrive.

IIO Review of Interview of CW2 by Subject Officer

CW2 had previously been interviewed by the subject officer shortly after the affected person's injury and prior to EHS transporting him to hospital. That interview was on audiotape and was reviewed by an IIO investigator.

During that interview, CW2 stated that as the subject officer was attempting to put handcuffs on the affected person, the affected person "spun around a couple times" pulling the subject officer and himself to the ground where he struck his face on the ground.

That statement was different from the statement provided by CW2 to the IIO in which he stated that the affected person was already handcuffed on the ground and then stood up and was being moved from the scene when he fell and struck his face.

The version given by CW2 to the subject officer as to how and when the affected person sustained his injury was consistent with the information provided by CW1, CW3 and the subject officer.

Civilian Witness 3 (CW3) stated that on the night of August 20, 2014, he was working as a security guard on a film set in Steveston. CW3 said that he received a call over the radio from a production assistant stating there was an individual lying down on the boardwalk and that he had been violent. CW3 said that CW2 asked him to call the police.

After calling the police, CW3 said that he saw the affected person lying on the boardwalk. CW3 said that the affected person crawled to a chair by the time the officer arrived.

After the subject officer carried out an investigation, he decided to take the affected person into custody for his own protection. CW3 recalled the officer asked the affected person some questions. The affected person mumbled short answers.

The subject officer asked the affected person if he could search him for ID. He found a wallet with ID. CW3 stated that the subject officer determined the affected person "was a fisherman from one of the boats and that he shouldn't be walking around on the deck and should go to the drunk tank... I could only see that he had one hand handcuffed but by the way they fell, it looked as if both were handcuffed. It was quick. I couldn't really tell as he was handcuffed. I

think he realized what was happening and tried to get away kinda and then they tangled up together I guess tripped up their feet or the officer's feet and they fell over together."

CW3 said that the subject officer and the affected person fell side by side with the affected person going down first and the officer followed beside him.

The next officer arrived five or 10 minutes after the arrival of the subject officer. CW3 was asked what he thought caused the officer and the affected person to fall to the ground and he replied: "I believe it was kind of a couple of things - the drunk individual was trying to run in a circle and I think his feet kind of slipped into the officer's feet and they kind of tripped together. I believe it was the feet tangling together."

CW3 said that he believed that it was an accident.

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 subject officer was in any way criminally culpable for either causing harm to or allowing harm to come to the affected person during the course of his arrest.

The force reportedly used by the subject officer against the affected person was minimal in that there is no evidence to suggest any application of any force caused the injury.

As such, the only theory of criminal culpability for the injury caused to the affected person 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

There is no evidence to suggest any use of excessive force nor was the subsequent fall (that resulted in the injury) anything other than an accident caused by the affected person's state of intoxication and his own actions in resisting the arrest. The subject officer was engaged in his lawful duties and had the right and responsibility to place the affected person into custody for his own protection.

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.

In this case, the subject officer was lawfully attempting to detain the affected person and take him into custody. The fall to the ground was an unforeseeable accident and any application of force against the affected person was minimal. As such, there is no reason to believe that the subject officer committed any offence.

Conclusion and Decision of the Chief Civilian Director

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.

Richard Rosenthal,
Chief Civilian Director

November 26, 2014