



Niagara Regional Police Service

68 Church St., St. Catharines, Ontario, Canada L2R 3C6
Tel. (905) 688-4111 Fax. (905) 685-5081
www.nrps.com nrps@nrps.com

C. 318.

Chief of Police Wendy E. Southall

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REPORT OF THE POLICE SERVICE

TO

THE REGIONAL MUNICIPALITY OF NIAGARA POLICE SERVICES BOARD
(By-Law 169-97)

Board Report Number:

C. 291 / 2009

Date of Report:

November 17th, 2009

Date of Board Meeting:

December 17th, 2009

Chairperson Larry Iggulden
and Members of the
Regional Municipality of Niagara Police Services Board

Reference:

Special Investigations Unit Investigation into an In-Custody Death – Incident #09-76053, SIU #09-OOD-219

Recommendation:

1. That the Board receives the report.

Background

On Sunday August 9th, 2009 at approximately 9:08 pm an adult male jumped from a bridge into the Chippawa River near Bridgewater St. Niagara Falls. There were two civilian witnesses who saw that the male was having trouble swimming. They notified 911 and the Niagara Regional Police responded. The male was followed by Niagara Regional Police Officers walking along the shoreline while the man drifted down into the Welland River. The male ignored any attempts to give him assistance. Niagara Falls Fire Department attended with two boats and set out on the water. Two police officers went out on the water with the owner of a private boat. All attempts to rescue the male



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were unsuccessful. He disappeared under the water. Further search efforts were hindered by the arrival of a severe thunderstorm and the boats were called in off the water for safety reasons.

The Niagara Regional Police Rescue boat was not deployed as the Marine Unit had worked a day shift and was not available.

The body of the deceased male was recovered on August 13th, 2009 at the Ontario Power Generation intake ducts located at the Welland and Niagara rivers.

On August 26th, 2009 the Special Investigations Unit notified the Niagara Regional Police Service that they had received a complaint from the father of the deceased that a Niagara Regional Police patrol boat had struck the deceased while he was in the water. The SIU invoked their mandate. No police officers were designated as witness or subject officers during the Special Investigations Unit investigation.

On October 21st, 2009 the Director of the Special Investigations Unit wrote Chief Southall a letter clearing any Niagara Regional Police officer of any criminal wrong doing. The name of the involved party has been blanked out for privacy reasons. In the letter Mr. Scott wrote:

In my view, there are no reasonable grounds to believe that any NRPS officer committed any criminal offence in relation to the unfortunate demise of XXXX on August 9th, 2009. This matter initially came to the attention of the SIU as a complaint from a friend of the father of the deceased. That individual reported that he spoke to two witnesses who told him the police boat struck the decedent in the head while attempting to rescue him from drowning in the Welland Canal. The investigators interviewed one of the two named witnesses, who said he saw the decedent jump into the Welland River and was struggling in the water. He observed NRPS officers commandeer a civilian boat and go out on the water. The rescue boat also approached XXXX. He then observed XXXX slip under the water and go to the other side of the rescue boat. The boat containing the officers was not in the imminent proximity of XXXX. Shortly thereafter the rescue mission was called off due to reports of an imminent storm. On August 13th, 2009, XXXX body was recovered approximately one and a half km downstream.

The other civilian witness who purportedly saw a boat operated by NRPS officers strike the decedent was never located and none of the canvassed witnesses support the initial hearsay assertion that NRPS officers did anything inappropriate. Information gathered as a result of the investigation suggests that all parties involved made a valiant effort to rescue XXXX, but were unable due to a combination of the decedent's actions thwarting their efforts, difficult currents, darkness and the impending inclement weather.

Section 11(1) and (2) of Ontario Regulation 673/98 under the Police Services Act states:

- (1) The chief of police shall also cause an investigation to be conducted forthwith into any incident with respect to which the SIU has been notified, subject to the SIU's lead role in investigating the incident.*
- (2) The purpose of the chief of police's investigation is to review the policies of or services provided by the police force and the conduct of its police officers.*

This report will examine the following three (3) areas:

1. The policies of the police service,
2. The services provided by the police service, and
3. The conduct of its police officers.

The Policies of the Police Service

GENERAL ORDER 079.05 - SPECIAL INVESTIGATIONS UNIT

This General Order sets out policy as it relates to the notification of, and co-operation with the Special Investigations Unit.

Although the Special Investigations Unit started their investigation seventeen days after the incident there was no delay on the part of the Niagara Regional Police Service as they were not aware of the allegation until notified by the Special Investigations Unit. The officers involved in this incident followed the guidelines laid out in the Special Investigations Unit General Order. The Order showed no deficiencies, therefore, no further action is to be taken and no recommendations are to be made in relation to this policy.

GENERAL ORDER 028.06 SUDDEN DEATH AND HOMICIDE INVESTIGATION

It is the policy of the Service, to have a standardized approach for all sudden death investigations. Any officers investigating sudden deaths shall be cognizant of any current memoranda from the Chief Coroner Office of Ontario.

The officers involved in this incident followed the guidelines laid out in the Sudden Death and Homicide Investigation General Order. The order showed no deficiencies, therefore, no further action is to be taken and no recommendations are to be made in relation to this policy.

GENERAL ORDER 144.04 MARINE UNIT

It is the policy of the Niagara Regional Police Service to:

- (a) provide an effective Marine presence and response within the jurisdiction of this Service.
- (b) during it's operating season and unless otherwise provided by law, be responsible for emergency response and general patrol upon the navigable waters within the Region of Niagara,
- (c) provide all Service members with information relating to the structure and capabilities of the Niagara Regional Police Marine Unit.

This Order is not applicable in this case. No Marine Unit boat was available for deployment. A citizen's boat was used in the rescue attempt.

The Services Provided By The Police Force

This incident lasted one hour and a half hours. The entire complement of "B" Platoon #2 District, Casino Patrol and Special Enforcement Unit became involved in some way with the rescue attempt. The officers exemplified the spirit of the Niagara Regional Police

Service. The Special Investigations Unit Director noted that the efforts of the officers that day were "a valiant effort to rescue XXXX."

The Conduct of the Officer

There is no evidence to suggest the involved officers breached any Policy or General Order of the Niagara Regional Police Service.

Conclusion

The General Orders applicable to this situation give appropriate guidelines to the members of the Niagara Regional Police Service. There is no reason to change or add to these General Orders.

The officers involved in this incident acted appropriately and there is no evidence to show there was a breach of any General Order.

The investigator recommends that no further action be taken in regards to this matter.

Relevant Policy Considerations:

Section 11(4) of Regulation 673/98 under the *Police Services Act*

Cost of Recommendations:

There are no costs associated to the recommendations

Alternative Options:

1. Not to receive the report.

Reasons for Recommendation:

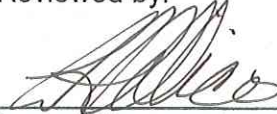
To comply with provisions of Section 11(4) of Regulation 673/98 under the *Police Services Act*

Prepared by:



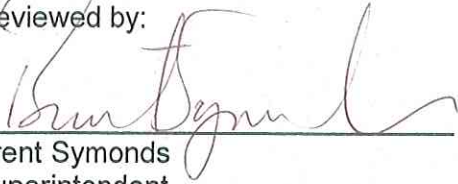
Glenn Miller
Detective Sergeant
Policing Standards Unit

Reviewed by:



Lorne Lillico
Inspector
Policing Standards

Reviewed by:



Brent Symonds
Superintendent
Executive Services

Respectfully submitted by



Wendy E. Southall
Chief of Police