



**IN THE MATTER OF THE SERIOUS INJURY OF A MALE
WHILE IN THE CUSTODY OF
THE VANCOUVER POLICE DEPARTMENT,
IN THE CITY OF VANCOUVER, BRITISH COLUMBIA
ON JUNE 20, 2017**

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

Chief Civilian Director:	Ronald J. MacDonald, Q.C.
Legal Counsel:	Martin F. Allen
IIO File Number:	2017-067
<u>Date of Release:</u>	<u>September 26, 2018</u>

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Introduction

On June 20, 2017, the Affected Person (AP) was arrested for causing a disturbance at a hospital in Vancouver. He was taken by Vancouver Police Department (VPD) officers to police cells. He was subsequently injured while in VPD custody and was taken back to hospital. The IIO was not notified until June 26, 2017, when the extent of AP's injuries became apparent: he had suffered crushing injuries to two toes that required partial amputation, and deep cuts to a third.

Present at the time AP was injured was a VPD police officer (Officer 1) and a Vancouver City jail guard (Guard 1) whose actions appeared to have caused AP's injury. Jail guards at Vancouver City cells are appointed under section 9 of the *BC Police Act* as Special Provincial Constables (SPCs), and the *Act* gives the IIO jurisdiction to investigate the actions of SPCs.

Evidence collected during the investigation included:

- Video recordings from the jail cells area;
- A statement from Officer 1; and
- Computer aided dispatch (CAD) recordings.

IIO investigators were not able to locate AP to obtain a statement from him as he had been discharged from hospital by the time the IIO was notified and was of no fixed address.

An officer who is subject to an IIO investigation is not required to provide a statement to the IIO, pursuant to memoranda of understanding between the IIO and both police services and agencies employing SPCs, and consistent with the *Charter of Rights and Freedoms*. In this case, Guard 1 was not interviewed and no statements were taken.

Narrative

Witness Officer Interview

Officer 1 told IIO investigators that AP was brought to the cells shortly before 9:00 p.m. on June 20, 2017. He had an injury to his face and appeared to be under the influence of drugs. Officer 1 decided that AP should be detained, as he "*would continue to breach*

the peace” if released at that time, and was a potential threat to the public and to himself.

A few minutes later, Officer 1 heard yelling from the cells area. Going there from his office, Officer 1 said he saw AP struggling with Guard 1 and another jail guard, Guard 2. The two guards dragged AP into an ‘intox cell’. Officer 1 said that AP was “*kicking ... as he was brought into the cell face down*” and was “*slid to the very far wall of the cell.*” Guard 2 “*pushed his legs up towards his bum ... so he wasn’t kicked, and as [Guard 2] was exiting the cell he was instructing [AP] to not kick.*”

At this point, Officer 1 told investigators, he backed out of the cell and could no longer see AP from his vantage point. He saw Guard 2 exit the cell also, and saw Guard 1 close the cell door. It appeared to Officer 1 that “*there was some resistance of the door*” and Guard 1 “*gave it a push.*”

“*Throughout this time,*” said Officer 1, AP was “*yelling and screaming, sort of throughout this process,*” but Officer 1 said he “*noticed a bit of a change in the tone of the yelling.*” Guard 1 opened the door and looked in, said Officer 1. The yelling from AP stopped, and Guard 1 closed the door again and told Officer 1 he was thankful AP had not been injured. Officer 1 returned to his office.

Officer 1 said few minutes later he asked Guard 1 to check on AP again to make sure he had not been injured. After doing so, Guard 1 came back to Officer 1 and reported that “*unfortunately he had actually, what he believed was closed the door on [AP’s] foot.*” The jail nurse and paramedics were called to attend to AP.

Cell Block Video

Video evidence from several locations in the cell block was obtained and examined. None of the video material includes audio.

The video shows AP being searched upon arrival in the cells area, and then becoming uncooperative and passively resistant to jail guards, apparently refusing to walk and sliding down onto the floor. Several officers are seen to drag him by the arms to a small cell. He is placed face down with his head close to the far wall of the cell, but the cell is so small that his feet are still in the doorway. AP is wearing socks, but no shoes. AP does not appear to be kicking at any point during this process. He is essentially limp, and his legs are dragging behind him on the floor.

Once he is in the cell, Guard 2 can be seen tucking both AP's feet up and away from the door. As the guards leave the cell and the door is being closed, AP straightens his legs towards the closing door. The toes of his left foot wind up between the door and the door jamb and are caught by the closing door. Guard 1 pushes the door closed, and it appears he has some difficulty closing it as he has to give it an extra push. This all occurs over a space of several seconds. Once the door is closed, Guard 1 looks briefly through the door's observation window, and then closes the window's cover. Officer 1 steps forward, opens the window again and looks down at AP through it for a few seconds. Officer 1 then steps back and says something to Guard 1, who steps forward again to the door.

Guard 1 looks at AP through the window, and both officers look down at the hinge side of the door. Guard 1 then unlocks the door and tries to open it approximately 15 seconds after it was closed. It opens with some difficulty, and only after several tugs by Guard 1. The door is opened a few inches, Guard 1 looks through the observation window, and then closes the door again. This time, it appears to close easily.

Video from inside the cell shows AP apparently in significant distress when the door is closed. He can be seen struggling, looking up at the observation window and pointing at the door and his foot in a very animated manner.

AP tried to pull his foot from the door hinge, and is finally able to do so when Guard 1 opens the door slightly. AP's left sock is still stuck in the door as Guard 1 closes it again, but AP is able to pull it out after a few more seconds. He put it back on his left foot and lay back down on the cell floor, initially just on his left side in a fetal position.

Outside the cell, Guard 1 examined the lower hinge side of the door, and there appeared to be a discussion about the door hinge area with Officer 1. The two officers then left the area.

A few minutes later AP took off his sock and his foot is clearly injured and bleeding. Seven minutes after the door was first closed, and after another person was put into the cell beside AP, Guard 1 stops at AP's cell and appears to speak with him. It would seem he detects AP's injury at that point (video shows there is blood visible on the floor of the cell). Shortly after that the door is opened and the injury is assessed by other guards. Seven minutes later other officers and nursing staff attend. AP is taken from the cell within 20 further minutes for additional medical attention.

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.

VPD policy makes police officers and jail guards responsible for the safe custody of all prisoners guarded by them. VPD jail guards are peace officers and are authorized to use force against a prisoner in the jail, if that force can be justified as necessary, reasonable and proportional. They may be criminally liable for any use of force that is in excess of what is reasonably necessary in the circumstances.

Under s. 215 of the *Criminal Code*, officers may also be criminally liable for a failure to provide “necessaries of life” to a person under their charge, if that failure causes or is likely to cause the health of the person to be “endangered permanently.”

The actions of the guards in dragging AP to the ‘intox cell’ and detaining him there were justified because of his intoxication and non-compliance. The force used was no more than what was reasonably required in the circumstances.

Once AP was in the cell, steps were taken to push his legs up, presumably to ensure his legs were not in the path of the closing door. Guard 1 closed the door very quickly thereafter. However, AP straightened his legs, leading to the toes of his left foot being caught in the bottom of the door as noted above. It is clear from the video this was an unfortunate accident. There is nothing to suggest it was an intentional act by Guard 1.

In hindsight, it might be argued that because Guard 1 had to use some force to close the door that was a signal something may have been caught in the door. However, it did not take much extra effort to close the door and it closed quite quickly. Additionally, the resistance could be explained by AP pushing against the door, given he was quite uncooperative up to that point.

It would seem Guard 1 did not realize right away that AP had been injured. Hindsight might suggest this was somewhat obvious, but it must be remembered that AP was being loud and uncooperative. More yelling when the door was closed could be explained by an injury or just further frustration on the part of AP because he was put in the cell. Thus while 15 seconds passed before the door was re-opened, this time was legitimately spent attempting to quickly determine what the issue was.

After this point, it was seven minutes before Guard 1 looked in and could see that AP was injured. Again, preferably this would occur more quickly. Nevertheless, in the end,

first aid was given within 15 minutes, and AP was taken to hospital 36 minutes after the injury. Any delays had no real impact on AP's injury.

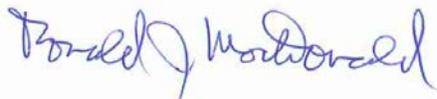
On the evidence, nothing Guard 1 did—or failed to do—was wilful or motivated by an intent to injure AP. Further, as noted above, the actual injury to AP was caused accidentally and the delays in obtaining assistance for AP were short, and certainly did not cause or aggravate the injury, or cause AP's health to be "endangered permanently." The evidence collected, as a whole, does not provide grounds to consider any charges against any officer.

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.



Martin Allen
Legal Counsel

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