



**PUBLIC REPORT OF THE
CHIEF CIVILIAN DIRECTOR**

Regarding serious injuries suffered by a male whilst in the custody of a
Vancouver Police Department officer on August 17, 2015

IIO 2015-000119

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. The Chief Civilian Director (CCD) of the IIO is required to review all investigations upon their conclusion, in order to determine whether he considers “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 the CCD concludes that an officer may have committed an offence, he is required to report the matter to Crown counsel. If the CCD does not make a report to Crown counsel, he is permitted by s.38.121 of the *Police Act* to publicly report the reasoning underlying his decision.

In this public report, the CCD includes a summary of circumstances that led to the IIO investigating and a summary of the findings of the investigation.

This is a public report related to an investigation into the serious injuries of a male while in the custody of the Vancouver Police Department. The male suffered serious spinal injuries after falling down a flight of stairs which resulted in permanent partial paralysis of his legs and arms.

Pursuant to s.38.11 of *the Police Act*, RSBC 1996 Chapter 367, the CCD has reviewed the concluded investigation. The CCD does not consider that any officer may have committed an offence under any enactment and will not be making a report to Crown Counsel.

In this public report, the CCD is 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, the CCD is required, if practicable, to notify the person to whom the information relates, and further, to notify and consider any comments provided by the Information and Privacy Commissioner (s.38.121(5) of the Police Act). The CCD has considered the advice provided by the Information and Privacy Commissioner. In this report, the CCD will not be using the name of the affected person or the name of any other person involved in this matter.

NOTIFICATION AND JURISDICTION DECISION

On August 17, 2015, police received a report that a male (the affected person) had set fire to his room at a hotel¹ on Hastings Street in Vancouver. Firefighters also responded and after ensuring the fire was out, requested that the affected person leave the hotel.

¹ Throughout this report, reference is made to a hotel that the affected person resided at. This hotel is a residency hotel and rents rooms for long periods of time on a Single Room Occupancy (SRO) basis.

Upon arrival, an officer, who is the subject of this investigation, made his way up a flight of stairs towards the affected person's room. The subject officer was met on the stairs by firefighters and the affected person who were all making their way down. The subject officer took hold of the affected person's arm and as he attempted to escort the affected person down the remaining stairs, they both fell down 14 stairs. The subject officer suffered minor injuries. The affected person suffered a serious spinal cord injury that has resulted in permanent partial paralysis of his legs and arms.

The Independent Investigations Office was notified on August 18, 2015 at 1:05 a.m. This incident falls within the jurisdiction of the IIO as described in the *Police Act*. The affected person suffered injuries which fall within the definition of "serious harm" as defined in the *Police Act*.

ISSUES

At the conclusion of any IIO investigation, the CCD is required to consider whether an officer may have committed an offence. If the answer is in the affirmative, a report to Crown Counsel must be made for consideration of charges.

The legal issue to be considered in this case was whether it was reasonable for the subject officer to take hold of the affected person's arm prior to the two men falling, and whether the subject officer applied force that caused the fall. If the injuries to the affected person were the result of an unreasonable action or use of force, the subject officer could be liable for an offence of assault, assault causing bodily harm, aggravated assault or criminal negligence causing bodily harm.

EVIDENCE CONSIDERED

Evidence examined in this investigation includes statements made by civilian witnesses, statements made by witness officers, medical evidence, photographic evidence and police dispatch records.

AFFECTED PERSON

Because of his injuries, the IIO was not able to interview the affected person until November 1, 2015.

The affected person told IIO investigators he was living at a hotel on Hastings Street in Vancouver for approximately two years prior to the incident. He said that to get to his room he had to go up a flight of stairs from Hastings Street to the second floor.

The affected person told IIO investigators he recalled that on the date of the incident, he got up in the morning and started drinking and the next thing he remembers, “is the cops.” He said he thought he was in his room and that the police had brought him from his room. He said he thought it was the police taking him to the stairs.

The affected person said he remembered police officers showing up but did not remember that there was a fire or that the firefighters had dealt with him. He said he could not remember why the police officers were there.

He told IIO investigators:

“I was leaving my residence as the police were behind me, and as I was going down the stairs, I recall getting pushed. It felt like getting pushed. I don’t know if I did, but it felt like getting pushed. And I ended up at the bottom of the stairs with a police officer on top of me. And an ambulance outside, and they took me to the hospital and basically I don’t remember too much after that... I don’t really recall the exact things that happened, right?”

The affected person said he could not recall starting down the stairwell nor where he was on the stairs when he fell. He said that he did not remember anything from after his fall in August until November 2015 when he was interviewed.

In follow up meetings with the IIO in June and September 2016, the affected person indicated he had no memory of the events of the incident and reiterated his difficulty with memory recall.

CIVILIAN WITNESSES

Civilian Witness 1 (CW1)

CW1 was the resident caretaker of the hotel that the affected person was residing in and was interviewed by the IIO on August 18, 2015.

CW1 told the IIO that at 10:45 p.m. on August 17, 2015, he heard yelling coming from the affected person’s room so he knocked on the door of the room. When he knocked, he got no response but the yelling stopped.

Ten minutes later, CW1 went back to check on the affected person and found him in a common washroom. CW1 said the smoke detector started to go off in the affected person’s room so he opened the door and found that the room was full of smoke. There were clothes burning on the floor and a lit cigarette was on the bed in the room.

CW1 doused the burning clothes, pulled the fire alarm and called 911 for the fire department. The fire department attended, put out what remained of the fire and requested that CW1 leave the

building. Once he was out of the building, CW1 called 911 again, this time for the police. In this call to 911, CW1 stated that the affected person was not cooperating with the fire department members on scene. CW1 stayed on the line until police attended and the subject officer entered the building.

CW1 next saw the subject officer attempting to escort the affected person down the stairs leading out of the building. CW1 stated that the following then took place:

“When the tenant raised his fists to the officer, even then the officer wasn’t excessively aggressive. He just put the guy's arms down, and then [the affected person] lost his footing on the stairs and pulled them both down,” CW1 said.

CW1 added both the subject officer and affected person fell down the stairs with the affected person landing at the bottom of the stairs, unconscious.

FIRST RESPONDER WITNESSES

Civilian Witness 2 (CW2)

CW2 is a Vancouver firefighter and was interviewed by the IIO on November 30, 2015. The delay in interviewing CW2 was due to the witness being unavailable.

CW2 was part of a four-man crew that responded to a call regarding a fire in a hotel on Hastings Street. Upon arrival, CW2 spoke with the hotel caretaker (CW1) who advised him there was a fire in a room in the hotel.

CW2 and his crew entered the hotel via the front door and climbed a long narrow staircase to the second floor. CW2 stated there was a hand rail on the right hand side as he was climbing the stairs and a small landing at the halfway point on the stairs. When CW2 reached the top of the stairs and opened a fire door leading to the hallway, he observed the affected person standing just inside the hallway with his back to the wall and arms held up in front of him with his fists clenched.

Once CW2 had established that the fire was out, he told the affected person that he had to get outside. CW2 took hold of the affected person by the right arm and directed him toward the exit at the fire door at the top of the stairs. CW2 said the affected person was walking on his own but supported by CW2 holding his arm. When they reached the fire door, the affected person started to punch the door and CW2 reached around the affected person and opened the fire door.

CW2 told the IIO the affected person stopped punching the door and again raised his fists in front of his body. CW2 and the affected person started to move side by side, slowly making their way down the stairs. As they came to the landing at the halfway point, they were met by the subject officer who had been coming up the stairs.



View from the top and bottom (respectively) of the stairs from Hastings Street to the tenants' rooms on the second floor

CW2 stepped back up the stairs and the subject officer took hold of the affected person by the left arm. CW2 said the affected person stepped back a little bit and pulled away from the subject officer, but the subject officer continued to hold his arm.

The affected person put one foot down on the landing and with the other foot stepped off the landing and started to fall sideways down the stairs from the landing to the bottom of the staircase. He appeared to drag the subject officer down the stairs with him. CW2 expressed it this way:

“He puts one foot down, and what I notice, he's like, "Oh, oh." And that's the end of that. He steps off the step... The VPD's got his arm. He goes down, and now that's it... They're down the stairs. This guy does head over heels, VPD does the splits and he -- this guy drags the VPD down with him to the bottom”

CW2 said the subject officer was trying to hold onto the affected person to stop him from falling down the stairs. CW2 saw the affected person stepping off the landing sideways and falling and hitting all the steps on the way down.

CW2 stated that he did not see anything in what the subject officer did that would be considered unreasonable or overly aggressive.

Civilian Witness 3 (CW3)

CW3 is a Vancouver firefighter and was interviewed by the IIO on September 2, 2015.

CW3 was part the crew that responded to a complaint of a fire at a hotel on Hastings Street. He told the IIO that he and members of his crew entered the front entrance and attended an area up a long flight of stairs leading to the second floor where the hotel rooms were located.

CW3 told the IIO that when he reached the second floor he saw the affected person standing outside the suite they were attending. The affected person was holding a lighter in his hand, his fists were clenched, his arms were up and he was, "kind of muttering to himself." CW3 entered the room and put out the fire which consisted of some smoldering blankets.

CW3 said that CW2 remained outside the room and was trying to convince the affected person to leave the building, as the hallway was smoke filled. The affected person initially appeared not to want to leave the building but after the fire was put out he started to move toward the exit door at the top of the stairs. As they proceeded down the stairs CW2 was on the affected person's right, CW3 was a few steps behind them. The affected person was moving slowly but did not appear to have any issues walking. CW3 told the IIO that as they were coming down he observed the subject officer start up the stairs and a second police officer remained at the entrance door at the bottom of the stairs.

CW3 told the IIO that as CW2 and the affected person reached the halfway point of the stairs, they were met by the subject officer. CW2 took a couple steps back up the stairs as the subject officer met them at the landing. The affected person still had his hands up and fists clenched and the subject officer took hold of his left arm at the wrist and his elbow.

CW3 told the IIO the subject officer appeared to try to turn and pull the affected person toward him but the affected person appeared to be pulling back and then started falling down the stairs.

CW3 stated that:

"It looked like they, they lost balance, because the officer stumbled as well. He managed to catch himself and the male didn't, he kept falling."

CW3 said the subject officer stumbled a few steps down the stairwell as well and managed to regain his balance although he still ended up at the bottom of the stairs. He said the subject officer then went outside and stood with another police officer.

CW3 said the subject officer was not being loud or yelling at the affected person and that the affected person was uncooperative with the subject officer, as "he kept pulling...away from the officer." CW3 continued with his duties in the building, the affected person was assisted by paramedics and taken away in an ambulance.

Civilian Witness 4 (CW4)

CW4 is a Vancouver firefighter and was interviewed by the IIO on September 12, 2015. He entered the building with CW2 and CW3.

CW4 was leaving the building as the subject officer arrived at the hotel. CW4 did not observe anything out of the ordinary as the subject officer passed by him; he stated that the subject officer was moving normally. CW4 did not see the interaction which led to the subject officer and affected person falling down the staircase. He observed that the affected person was not conscious when he was at the bottom of the stairs.

Civilian Witness 5 (CW5)

CW5 is a Vancouver firefighter and was interviewed by the IIO on August 31, 2015. He was a member of a second fire crew that arrived at the hotel.

CW5 said he was at the hotel entrance when he saw the affected person falling down the stairs and landing on his back in front of him. He did not see the subject officer fall or how he landed but did see the subject officer get up off the ground.

CW5 assisted moving the affected person to the sidewalk where he and another firefighter provided medical attention until paramedics arrived. CW5 subsequently attended the hospital in the ambulance.

CW5 said that while he was in the back of the ambulance on the way to the hospital the subject officer, who had fallen down the stairs, made comments about the incident. CW5 told the IIO the subject officer asked him how the affected person was and CW5 told the subject officer, "I don't think he's breathing." CW5 also said that he remembered the officer saying "he didn't push me, I didn't push him, we just fell."

Civilian Witness 6 (CW6)

CW6 is a Vancouver firefighter and was interviewed by the IIO on September 2, 2015. He was assigned to a position just outside the main entrance to the hotel while other firefighters entered the building.

CW6 told the IIO that the subject officer moved past him, entered the hotel and went up the long stairs leading to the second floor. He said that shortly after the subject officer entered, the witness officer moved past him and also entered the hotel.

CW6 told the IIO he was initially standing where he could see to the top of the stairs. When the other firefighters were bringing the affected person down, he had backed up but still had a view of the landing at the half-way point.

CW6 said he saw firefighters coming down the stairs above the landing and the police seemed to take over. CW6 said the subject officer was with the affected person on the landing. CW6 said he saw a struggle and heard some yelling from the stairs:

“And I saw the two police officers² there with an individual. And there was a struggle that ensued, and some yelling, and next thing there was kind of a crash-bang sound. And the individual, the civilian, and the officer ended up on the ground level, or stair ground level.”

He described what he saw next as:

“You know, struggle, sort of thing -- Like a rugby scrum. And then just see the two parties going down the stairs... Well, they were, it was like a -- like a scrum going over the edge.”

CW6 said he asked the subject officer if he was okay and the subject officer said, “I hurt my leg, I hurt my knee”, but did not make any other comments.

British Columbia Ambulance Service

Two paramedics travelling in the same ambulance who responded to the incident were interviewed by the IIO on August 31, 2015 and September 1, 2015 respectively.

Both paramedics had attended the hotel and were standing by when they were asked to help at the area directly in front of the hotel. They were unable to rouse the affected person at the scene and he was placed in the ambulance along with the subject officer. One of the paramedics stated that at the hospital the subject officer told her:

“I don’t really know what happened, I was just walking down the stairs and the next thing you know, I’m rolling down the stairs”.

² CW6 stated that he saw two officers on the stairs with the affected person. All other witnesses stated that the subject officer was the only police officer on the stairs.

OFFICERS

The IIO uses the term witness officers and subject officers to distinguish between officers who merely witnessed the incident as opposed to officers who are the subject of the IIO investigation over their direct involvement, which may have caused the serious harm or death.

Witness Officer

The witness officer is a member of the Vancouver Police Department. He was interviewed by the IIO on August 18, 2015.

The witness officer told the IIO he was partnered with the subject officer and they had received a call to a hotel on Hastings Street regarding a male (the affected person) who was said to have tried to set a fire in his room. The witness officer said they had been advised that the affected person was punching the walls in the hallway and was trying to stop firefighters from entering the room.

The witness officer told the IIO their plan was for the subject officer to enter the building first while he parked the police vehicle. The witness officer said:

“We decided we were gonna to talk to him first... And if he didn’t comply, we would take him in custody, let the firefighters do their job, and then depending on what they find there we’ll deal with that later.”

The witness officer described the entrance as leading to a landing at the base of a set of stairs which lead up to the second level. He said that just as he entered he saw the subject officer and the affected person falling down the stairs. The witness officer said that the affected person was unresponsive at the bottom of the stairs so he radioed to ask for an ambulance. The witness officer then recalled there were paramedics standing by outside so he ran out to ask for help.

The witness officer told the IIO that he did not see where the subject officer and the affected person started to fall from and did not see how the subject officer fell. He said they were already falling when he looked up. He said the affected person’s feet were up and his head was down.

The witness officer told the IIO that the subject officer was in the building for approximately 15 to 20 seconds before he arrived and saw the subject officer and the affected person falling down the stairs. The witness officer said he did not have any conversation with the subject officer about what had happened (relating to the fall).

Subject Officer

There was one subject officer in this investigation. This is the officer who entered the hotel and fell down the stairs with the affected person.

The officer declined to be interviewed by the IIO or to provide any report to the IIO, as is his right pursuant to The *Charter of Rights and Freedoms*.

As of the time this decision is being issued, it does not appear that the subject officer has completed any reports or notes of his recollection of the incident.

Law

Culpability for an officer's use of force is governed by the following provisions set out in the *Criminal Code of Canada*:

1. 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)).
2. A police officer "is not justified for the purposes of subsection (1) ... in using force that is intended or is likely to cause death or grievous bodily harm unless the [officer] believes on reasonable grounds that it is necessary for the self-preservation of the [officer] or the preservation of any one under that [officer's] protection from death or grievous bodily harm" (section 25(3)).
3. 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).

In an evaluation of the reasonableness of an officer's use of force, the following application of the law is required:

The Supreme Court of Canada in *R. v. Nasogaluak*, 2010 SCC 6 held that:

[32] ... police officers do not have an unlimited power to inflict harm on a person in the course of their duties. While, at times, the police may have to resort to force in order to complete an arrest or prevent an offender from escaping police custody, the allowable degree of force to be used remains constrained by the principles of proportionality, necessity and reasonableness. Courts must guard against the illegitimate use of power by the police against members of our society, given its grave consequences.

The allowable degree of force to be used remains constrained by the principles of 'proportionality, necessity and reasonableness' (*Nasogaluak*).

ANALYSIS

Vancouver firefighter CW2 told the affected person to go outside because of the smoke, took hold of the affected person by the right arm and directed him toward the exit at the fire door at the top of the stairs. He said the affected person was walking on his own but supported by CW2 holding his arm.

CW2 told the IIO that he escorted the affected person down the stairs to the landing where the subject officer took hold of the affected person by the left arm. He said the affected person stepped back a little bit and pulled away from the officer, but the officer continued to hold the affected person's arm.

CW2 said the affected person put one foot down on the landing and with the other foot stepped off the landing and started to fall sideways down the stairs from the landing to the bottom of the staircase. He appeared to drag the officer down the stairs with him as the subject officer was trying to hold onto the affected person to stop him from falling down the stairs.

This description, except for minor variations, is consistent with what every witness to the fall, including firefighters, police and the resident caretaker, said they observed.

At the point in time when the subject officer took hold of the affected person's arm he was arguably in the custody of the subject officer even though the witness officer related to the IIO that the affected person was not going to be taken into custody unless he would not comply with the firefighter's direction to leave the building. Accordingly, the subject officer became responsible for the affected person and acted, by all accounts, in accordance with that responsibility by trying to prevent him from falling.

Although the subject officer declined to provide a statement to the IIO he did say to a paramedic at the hospital, that:

"I don't really know what happened, I was just walking down the stairs and the next thing you know, I'm rolling down the stairs."

The subject officer was also heard by CW5 to say:

"He didn't push me, I didn't push him, we just fell."

CW1 told the IIO he saw the affected person "square off" with the officer at the top of the stairs and:

"When the tenant raised his fists to the officer, even then the officer wasn't excessively aggressive. He just put the guy's arms down, and then [the affected person] lost his footing on the stairs and pulled them both down."

On the evidence as a whole, the subject officer's actions are consistent with an attempt to assist firefighters in escorting the affected person from the scene of the fire and the resulting smoke. It cannot be said that the subject officer's actions in taking over responsibility for the affected person were unreasonable in the circumstances.

The subject officer had been presented with a scene in which a firefighter was assisting the affected person down the stairs, holding his arm. It was also reasonable for the subject officer, in assuming responsibility for the affected person, to take his arm. On the evidence, the affected person was resistant to that act, to some extent. It was his response—pulling away from the subject officer—combined with his apparent state of intoxication, that caused the fall.

Although the affected person told the IIO that he “felt” like he had been pushed, he also said, “I don't know if I did”. On the evidence, the limited force used by the subject officer was not part of an effort to detain or arrest the affected person but rather to assist him down the stairs, and then to prevent him from falling. None of the eyewitnesses saw or perceived any kind of a push by the subject officer. They all gave accounts in which the subject officer acted appropriately.

Accordingly there is no evidence of a use of force by the subject officer that was not demonstrably constrained by the principles of ‘proportionality, necessity and reasonableness’ (*Nasogaluak*).

Therefore, the subject officer's actions are not consistent with his having committed any of the assaultive offences enumerated above.

Decision of the Interim Chief Civilian Director

Based on all of the evidence collected during the course of this IIO investigation and the law as it applies, I do not consider that any police officer may have committed an offence under any enactment and therefore the matter will not be referred to Crown Counsel for consideration of charges.

Clint Sadlemyer, Q.C.
Legal Counsel

February 8, 2017
Date of Release

A.O. (Bert) Phipps,
Interim Chief Civilian Director

February 8, 2017
Date of Release