



**IN THE MATTER OF THE DEATH OF A MALE
IN THE CITY OF KELOWNA, BRITISH COLUMBIA
DURING THE ATTENDANCE OF THE RCMP TO HIS DOOR
ON OCTOBER 14, 2017**

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

Chief Civilian Director:	Ronald J. MacDonald, Q.C.
Director of Legal Services:	Clinton J. Sadlemyer, Q.C.
IIO File Number:	2017-129
Date of Decision:	NOVEMBER 24, 2017

Introduction

Kelowna RCMP Officers 1, 2 and 3 responded to a report from a local hotel that a guest (AP) was causing issues with hotel staff on the seventh floor. Upon arrival at AP'S room, the Officers announced their presence; however, AP did not acknowledge his presence in his room. The Officers advised they were about to enter but found that AP had latched the swing-lock (the device common to hotel rooms that have replaced chain latches), which was discovered when the door was unlocked by Officer 1 with a staff member's key card. Several minutes passed while a staff member went to get a bolt-cutter to cut the swing-lock. During this time, AP climbed over the balcony and fell to his death. The swing-lock was cut and the Officers found no one in the room.

Facts

Evidence collected during the investigation included the following:

- 1) Statements of ten civilian witnesses including AP's spouse, hotel staff and guests, a witness from another building and a witness in a car;
- 2) Recordings of 911 calls;
- 3) Recordings of police radio transmissions;
- 4) Photographs of the scene; and
- 5) Closed Circuit Television recordings.

The investigation showed that AP checked into a room on the seventh floor of a Kelowna hotel at 3:43 p.m. on October 14, 2017. AP did not request any particular room or any particular floor and was assigned what was available. Sometime later, the guest in the room next to AP heard a man (AP) screaming at someone in the hallway. The guest heard AP calling someone a "bitch" and then the sound of movement up and down the hallway. The guest looked out and saw AP trying to get into a room. The guest closed and locked the door and reported the matter to the front desk.

Two staff members attended the seventh floor. They were advised that a battery charger had been thrown at a housekeeping staff member who was working on that floor. When the senior staff member spoke with AP, he was un-cooperative, swore and "*got right in my face.*"

One of the staff members was in radio contact with the front desk and police were called. AP can be heard swearing via the staff radio on the police recording of that call, which occurred at approximately 4:39 p.m.

CCTV recordings show police officers beginning to arrive at 4:50 p.m. Officers 1, 2 and 3 attended the seventh floor and knocked on AP's door, announced themselves as RCMP and tried calling AP by name. AP did not respond.

One staff member remained with the police and provided his key card to Officer 1, who tried to open the door. As the swing-lock was engaged, Officer 1 could not open the

door. The remaining staff member advised the officers that a bolt-cutter was available and it could allow the swing-lock to be defeated. The staff member left for several minutes to retrieve it. On his return, Officer 1 again partially opened the door and Officer 2 cut the swing-lock with the bolt-cutter. The Officers entered the room and found it to be empty. One of the Officers went out onto the balcony and discovered that AP had fallen to the ground below.

Five civilian witnesses gave statements regarding AP's fall.

A hotel guest in the room immediately below saw AP's legs and feet, which were pointed into the building, coming down from above. AP was moving his body, "*back and forth, back and forth*" in what the witness said looked like an attempt to get onto the witness's balcony. The witness said that once AP let go, he had one leg over the balcony and tried to grab hold but the momentum pulled him back towards the outside of the building.

Another civilian witness was in a vehicle and saw AP climb over a balcony railing and hang from it. AP began to swing himself in an, "*out and under*" motion and when AP let go, it appeared he hit the railing below and possibly other railings as he fell. This witness said there was no one else on the balcony from which AP climbed from.

A third civilian witness saw AP come onto the balcony and quickly put both hands on the railing. AP then jumped over the railing and lowered himself down the railing in one continuous movement and started to dangle. This witness believed AP was trying to get down to the lower balcony. There was no one else on the balcony at the time. The witness said it all happened in approximately twenty seconds, from the time AP came out to the balcony, to his fall. Approximately one minute after AP fell, a uniformed police officer stepped onto the balcony, looked down and then went back into the hotel.

Two hotel guests were nearby to where AP landed. Both gave descriptions that were similar to each other and to the other civilian witnesses. They both said that it appeared AP tried to get to the balcony below his by swinging onto it. Neither of these guests saw anyone else on AP's balcony.

The senior staff member who left the seventh floor when police arrived was on the ground floor and heard a sound. On attending outside, the staff member saw AP and checked for a pulse. AP still had a weak pulse but was not moving. 911 was called at 5:01 p.m. for medical first responders. AP did not survive his fall.

Relevant 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.

Pursuant to the *Hotel Keepers Act* of British Columbia, when an occupant of a hotel fights, screams, shouts, sings or otherwise causes loud noise while in the hotel, he may be requested by hotel staff to stop the disturbance and, failing same, to leave.

The *Act* makes it an offence for the occupant to continue causing a disturbance or remain after they have been requested both to stop and to leave. Where there is a reasonable concern for the safety of staff, the *Act* gives a police officer the power to make these requests if asked by staff to do so. .

In addition, Police may arrest, without a warrant, the person continuing to cause the disturbance or refusing to leave after the requests have been made to the person, by either police or staff.

In this case, it was not unreasonable for the front desk staff to call the police where that staff member could hear AP swearing at the staff. It was not unreasonable for the hotel staff to request the police to deal with AP, given that he had earlier thrown something at the housekeeping staff.

Thus when the officers went to AP's room they were acting under the authority of the *Act*. They had a duty to remove AP from the hotel given the risk he posed to staff and other guests. They attempted to communicate with AP by knocking on the door. When he refused to respond they had no choice but to enter his room to attempt to remove him from the hotel.

Unfortunately, it is apparent that AP was attempting to flee police when he went over the balcony railing and attempted to get to the balcony below.

In this case there is no evidence that any officer spoke with AP prior to his fall, other than when officers made their presence known at AP's hotel room door. There is no evidence of any inappropriate behaviour by the officers in the hallway. Nor did any Officer do anything to directly cause AP's fall from the balcony as the evidence shows they entered the room after AP fell.

Therefore, there are no grounds to consider any charges against an 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.

Clinton J. Sadlemyer, Q.C.
Director of Legal Services

November 24, 2017
Date of Decision

Ronald J. MacDonald, Q.C.
Chief Civilian Director

November 24, 2017
Date of Decision