



**PUBLIC REPORT OF THE
CHIEF CIVILIAN DIRECTOR**

Regarding serious injuries suffered by an adult male while being taken into custody by members of the Vancouver Police Department on 2015 November 09

IIO 2015-151

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 serious injuries suffered by a male affected person while being taken into custody by members of the Vancouver Police Department (VPD). Officers responded to reports that the affected person was causing a disturbance and had attacked members of the public. Police subsequently located the affected person, he fled and was eventually caught and arrested. As he was being booked into cells it became apparent the affected person had suffered an injury to his left wrist and he was taken to hospital.

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

The Independent Investigations Office (IIO) asserted jurisdiction as the affected person's injuries fell within the definition of "serious harm" as defined in the *Police Act* as the affected person suffered an injury to his wrist which required surgery.

On 2015 November 09, the VPD received several reports that a man (the affected person) was jumping on cars, was accosting people, had attacked a cab driver and had tried to attack a girl in the Tinseltown area of Vancouver.

Two officers who were the subject of this investigation attended where the affected person was situated. The affected person fled and the two officers engaged in a short foot pursuit, at the end of which they caught the affected person, and arrested him. The affected person was handcuffed and taken to VPD cells. While being booked in, it became apparent that he had suffered injury to his left wrist and he was taken to hospital.

The IIO was notified on 2015 November 09 at 2151 hours. The purpose of the IIO investigation was to determine whether an officer may have committed any offence during the course of their contact with the affected person.

ISSUES

The issue to be considered in this case was whether the two subject officers may have committed an offence by using excessive force in the apprehension of the affected person. If the injury was the result of an unreasonable use of force the subject officers or either of them could be liable for the offence of assault causing bodily harm.

The IIO has concluded its investigation of this matter. It is not considered that the SOs may have committed an offence under any enactment, so the matter will not be referred to the Criminal Justice Branch ("*Crown Counsel*") for consideration of charges.

EVIDENCE CONSIDERED

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

TIMELINE

All events occurred on 2015 November 09

TIME	EVENT
20:05:31	911 call to incident in progress at junction of Abbott and Keefer Streets, Vancouver
20:10:05	The affected person was first reported as being seen by police supervisor on scene at location
20:10:29	The affected person is seen crouching behind a vehicle
20:10:47	The affected person is seen running North on Abbott Street
20:10:56	The affected person is apprehended by police
20:11:20	The affected person is taken into custody by police
20:11:53	Police request EHS for the affected person
20:14:36	VPD Jail wagon on scene
20:26:50	Update on EHS requested by Police supervisor
20:28:53	Units on scene advised EHS unavailable
20:41:28	EHS cancelled by VPD Dispatch. The affected person is to be seen by Jail nurse
20:59:00	The affected person enters pre-hold cell at VPD jail
21:17:00	Handcuffs removed from the affected person and his injury is discovered
21:19:00	The affected person is examined by the jail nurse
22:00:00	Paramedics arrive at the jail
22:15:00	The affected person is released to EHS
22:50:00	The affected person is assessed at St. Paul's Hospital Emergency Department.

AFFECTED PERSON

The affected person said he was in the Tinseltown area of Vancouver, near the mall on the night of 2015 November 09. He said he was just wearing shorts that night. The affected person said that when he saw the police he ran. The affected person said he saw two police officers, “...one of them had a uniform and one didn’t.” He said the officers were, “...a couple of feet away” from him when he first saw them.

The affected person said he did not hear the officers say anything but when they were about four metres from him he said he saw, “...them catch up, so [he] gave [him]self up...because [he] didn’t want to get tackled”. He said he “...laid down to the ground [and] they arrested me. They put the handcuffs way too tight on me.”

The affected person said he gave himself up by stopping, getting down on his knees and then onto his “belly”. He said the chase and apprehension all lasted less than a minute. He said he wasn’t pushed by either of the officers. The affected person said he was laying on his front, and the handcuffs were applied half-way up both his arms, behind his back. He said he was picked up by his arms after which he was told to sit on the side of the curb.

He said he felt his arm hurting, “...when they put the cuff on”. He said he told the officers he was in pain and the cuffs were too tight. He said an officer picked him up off the curb by both his arms and later said he thought his arm was broken when, “...they picked me up off the curb.” The affected person said his pain level was 10 out of 10 at the time he was arrested. He said no one checked his handcuffs until they were taken off later, and that the handcuffs stayed up in the same position half way up his arms the whole time.

He said when he arrived at the jail he repeatedly asked to have the cuffs loosened however to no avail. He said they finally removed the handcuffs and it was then they discovered his arm was injured. He said he did not see a nurse and was made to wait about 90 minutes for an ambulance to arrive.

The affected person was asked specifically:

Q Where do you think that arm got broken? In that incident, which bit of that incident?

A I don't know.

The affected person remained in hospital until 2015 November 16.

CIVILIAN WITNESSES

Civilian Witness 1 (CW1)

CW1 said he saw a man (the affected person) not wearing a shirt or shoes running west on Keefer just west of Taylor Street. The affected person jumped on to the hood of a taxi-cab and jumped up and down on it. CW1 said the affected person then jumped on to the roof and the taxi driver (CW2) got out and yelled at him. CW1 said the affected person got off the top of the taxi-cab and stood in front threatening the taxi driver with his fists raised. CW1 then called 911.

CW1 said the taxi driver did not engage. The affected person jumped on to a second vehicle, an SUV, that had pulled up by the taxi-cab. The driver of the SUV got out and yelled at the affected person to get off. CW1 said the affected person went west on the south side of Keefer Street.

CW1 said the affected person met some people on the south east corner of Abbott at Keefer and a woman got him to put a jacket or hoodie on. The police arrived and CW1 said he saw the affected person again without a shirt running north down the middle of Abbott Street.

CW1 said a police car heading south stopped at the corner and the officer got out and chased the affected person. CW1 said, "...the policeman was clearly running faster than the assailant so I knew he was caught at this point..." but CW1 did not see the affected person being apprehended.

Civilian Witness 2 (CW2)

CW2 is a taxi driver and was stopped at on Keefer Street awaiting a passenger. CW2 said he saw a shoeless young man (the affected person) walking towards his car wearing only pants. CW2 said:

I didn't realize he's going to come on my car. Soon I saw him he just jumped on my hood of the car. Then, fast he walk on my roof. And at end of my roof he jumped, like twice.

CW2 said the affected person jumped twice on his trunk and:

By the time I got out of my car and I said, 'What are you doing? What are you doing to my car?' And he went on the curb on passenger side. And then I said, 'Are you okay? What, why you, why you did that to my car?' And he goes, he goes, no, and as soon I turn my head, myself around to, like, see how much damage on my car, he come right from my back and kicked in my passenger side door...And he went on the other side and he kicked driver's side door. So, then I went on other side. I said, "Can you stop it?" And he goes, 'I can kick that one too.

CW2 said a BMW SUV pulled up beside his cab and the affected person, "... jumped on that vehicle's hood, went on the roof, did the same thing." CW2 said shortly after police were called he heard sirens and saw two uniformed police officers running through the Abbott and Keefer intersection about half a block away. CW2 said a police wagon pulled over and he pulled his car to approximately one car length away. CW2 said he saw two uniformed police officers bringing

the affected person from across the street. The officers were holding on to the affected person who had hands behind his back as they put him in the back of the police wagon.

Civilian Witness 3 (CW3)

CW3 was driving his BMW SUV east on Keefer Street towards the intersection of Keefer and Taylor Street. He said he saw a shirtless male (the affected person) interacting with a taxi driver. CW3 said:

...as soon as I'd stopped he ran at my vehicle, the individual, and jumped onto the hood. He did a fair amount of jumps up and down onto the hood. From there he proceeded to jump to the roof of the car and jump up and down on the sunroof. The sunroof is pretty large and we were pretty concerned he was going to come through it. I put it in park, jumped out, hoping to get him off. As I got out of my car he jumped from the back of my vehicle down to the ground. And took off about 20 feet away, stood in the park which is the Andy Livingstone Park.

CW3 called the police and advised that the affected person was running down Keefer Street towards Abbott. CW3 said that approximately five minutes later he saw the affected person in handcuffs, escorted by at least two police officers. He said he did not see any signs of pain nor did he hear anything from the affected person.

Civilian Witness 4 (CW4)

CW4 said she saw a cab driver (CW2) and a man with no shirt (the affected person) having a confrontation in the street. CW4 described the interaction and said the affected person “..hit the hood of the car with his hands...with the sides of both fists, rapidly, five times or so.”

CW4 said the affected person then he ran up the front of the hood of an SUV type vehicle on all fours, with his hands first:

...kind of like put his hands down on it and, like, sort of swung himself, like, jumped on to it...Ran up the hood and then was on, on the roof at this point, standing. And kind of jumped up and down...[and] I called the cops.

CW4 said the affected person jumped off the SUV on the passenger side and ran out of sight into Andy Livingstone Park for approximately 30 seconds. She said he then emerged from the park and ran out of her sight.

CW4 said she saw the affected person after she had written a statement for the police. She said she saw him sitting in a small cell right behind the passenger seat of the police wagon with his hands behind his back. She said police, “...asked if he was okay.” CW4 said the affected person was verbally unresponsive.

Civilian Witness 5 (CW5)

CW5 was walking through the area and saw a male (the affected person) with no shirt on. CW5 said the affected person called to him, "*Hey b**ch, want to fight?*," CW5 ignored him.

CW5 said the affected person ran up to a taxi-cab and was hitting the hood with his hands. CW5 said the affected person then jumped up on top of the taxi cab and started stomping on it. CW5 said the affected person then ran towards another vehicle and jumped on it.

CW5 went into a restaurant for take-out food and when he came out he saw who he was pretty sure was the affected person, running away from police. CW5 said he saw three or four uniformed officers chasing the affected person north up Abbott Street and when he lost sight of them, "*I think they were just about to catch him, right there, right on his heels.*"

Civilian Witness 6 (CW6)

CW6 is a registered nurse at the VPD jail on Cordova Street.

CW6 said that on the night of the incident, a jail guard approached him and asked that he look at the affected person. CW6 said the affected person's wrist was "*very, very swollen*" and "*it didn't look like a handcuff injury*". He said:

...like it was deformed. So I was, like, okay, this doesn't look like a typical wrist injury, it looks like it's broken....So then I, I tried asking him questions. I asked, "Hey, does it hurt? How did it happen? Where did it happen? When did it happen?" And...[the affected person] didn't, didn't say anything he just cried and, and just looked at his wrist and just cried. He was very intoxicated too.

CW6 said, "*...usually the patients come in with those injuries, it's from a fall usually.*" CW6 advised the sergeant on duty that the affected person needed to be taken to the hospital. He said the affected person was put in a cell to await the ambulance. CW6 said that while the affected person waited for the ambulance he slept other than when he was brought out to sign some papers, which he tried to do with his broken wrist.

BRITISH COLUMBIA EMERGENCY HEALTH SERVICES

Civilian Witness 7 (CW7)

CW7 is a primary attending paramedic. He said he and partner were called for an arm injury at VPD cells and they attended. CW7 said that when asked about how he injured his wrist the affected person, "*didn't seem to be confused if that makes any sense, he just didn't know.*" CW7 also said the affected person did not say anything about either the police or jail guards.

CW7 said he completed the patient care report for the affected person which reads in part, "*...[The affected person is] intoxicated and unable to explain how he injured his wrist.*"

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 1 (WO1)

WO1 was driving an unmarked police car and was partnered with Subject Officer 1 (SO1). He said they were both in plainclothes and responded to a call. WO1 said he was driving southbound on Abbott Street when he saw a male (the affected person) run out from behind a car into the middle of traffic. He said he turned on his police vehicle's lights to identify that they were police and the affected person ran past their vehicle.

WO1 said SO1 got out of their car. WO1 saw other officers run past the car in pursuit yelling at the affected person to stop. WO1 said by the time he turned his car around the affected person was on the ground and SO1 had control of what he thought to be the affected person's right arm in a handcuffing position. WO1 watched Subject Officer 2 (SO2) take control of the other arm. WO1 said he did not see them put the handcuffs on the affected person.

WO1 said the affected person lay on his stomach for a minute or so and SO2 helped the affected person roll over into a seated position by pushing him up with his hand,

WO1 said the affected person's:

answers were very sporadic, and he was very -- he jumped from topic to topic about how he, you know -- he had only ever been caught by the police once before, and this was the second time. And that he was never going to get caught by the police again. But the entire time was just essentially talking -- not answering any of our questions, just talking about various sort of random different things. Never once complaining about anything to us in terms of pain, or needing anything from us, or -- and I could hear the other -- one of the constables on scene requested an ambulance to come to scene.

WO1 said:

either he was heavily under the influence of something, or he was suffering from some mental health issues, and so we wanted EHS to attend in order to treat him, or check him medically for those issues.

WO1 said, "There was no -- nothing in my entire time dealing with him that led me to believe that he was in any pain whatsoever," nor did the affected person say anything about his handcuffs.

WO1 said that when he and SO1 returned to their car, "I just asked him what happened...I asked him if he chased after him." WO1 said SO1 told him that he announced himself as a police

officer and that he pushed the affected person from behind, and that the affected person had then fallen to the ground. SO1 also told WO1 he then got on top of the affected person and got control of the affected person's arm. SO2 then came in and they put the affected person in handcuffs.

Witness Officer 2 (WO2)

WO2 was driving east on Cordova Street when dispatch gave a broadcast of the incident at Keefer and Abbott Street. He said he was first on the scene and spotted the affected person shirtless, crouching and peeking out from behind a parked car two to four car lengths southeast from the intersection of Keefer and Abbott Streets. WO2 said he transmitted this information over the radio, parked his car and started walking down the street toward the affected person.

WO2 said the affected person ran northbound. He said SO1 ran after the affected person and yelled, "Police, stop." WO2 said SO1 and the affected person ran northbound on Abbott and the affected person fell after approximately a quarter block.

WO2 saw the affected person, "...kind of stumble, like just kind of go down." He said SO1 was:

catching up to him. And there was some parked cars right up as they were, seemed to be getting like almost neck and neck. And all of a sudden I see the suspect go down.

WO2 said he was later told, he thought by Witness Officer 3, that SO1 ran after and caught up to the affected person, gave him a push on the back or on the shoulder, and down the affected person went.

WO2 said it was his belief the affected person was suffering from, "excited delirium" and he requested EHS. He said the affected person was:

...either down on his stomach, or kind of on his side. They were kneeling down on either side of him. They had their hands on him, and then I asked SO2, I said, "Let's get this guy seated up, so he's sitting up and not laying on the ground because he's just been running a full tilt for four or five, five or six seconds. Given that he's probably on some kind of drugs, his heart rate is going to be extremely elevated. His body was warm, and I wanted to get him up and if everything was okay, get -- just get him moving, walking around, instead of just sitting still.

WO2 said SO2 assisted the affected person into a seated position by touching his shoulders and hands. He said the police wagon arrived shortly after and he advised the officers to put the affected person in the side door of the wagon. WO2 instructed the officers to keep the door open so he could observe the affected person.

WO2 said EHS was not yet available for their call and because they were near the VPD jail he told the police wagon driver, to take the affected person where he could be seen by the nurse there. WO2 said he was:

thinking at that time it would be more on the -- in relation to the ingestion of street drugs...[and that] Nothing at that time was indicated to me by either SO1 or SO2 that the individual was hurt.

WO2 said he did not hear any complaint from the affected person about his handcuffs nor did the affected person say anything at all. WO2 said he did not hear or see any signs that the affected person was in pain. WO2 said he did not see an injury to the affected person's wrist during his interactions on scene and he did not hear about any injuries from other officers.

WO2 stated that sometime later he was advised the affected person had a broken wrist which required medical attention and that the affected person needed to go to the hospital. He said based on the circumstances it was reasonable to release the affected person from custody at that time without having members attend the hospital with him and proceed by summons at a later date,

WO2 said:

...I recall from my days in the academy, that's -- we're told when you start tackling people -- and I don't know if it's, it's changed, but that's when we get hurt and that's when they get hurt...the prescribed method that I, I was taught 25, 26 years ago in the academy, when you're chasing after somebody instead of tackling them -- because not at all -- at all times you're not on a nice, soft artificial turf or a -- nice grass, a push, a nudge to the back throws them off balance, down they go. Now, now you, now you have a moment or two advantage to be able to move in as someone has hit the ground and tumbling to take advantage of that momentary, you know, lapse of what they were doing to be able to -- it creates a moment of -- how do you say it? It's a moment to our advantage to be able to, you know, grab someone, subdue them, and take them into -- into custody with minimal, you know, danger to either the member or to the individual.

Witness Officer 3 (WO3)

WO3 was driving a marked police car, in uniform and partnered with SO2 who was also in uniform. He said they were dispatched to a call regarding a shirtless, shoeless male (the affected person). As they approached Abbott and Keefer WO3 was directed to the affected person's location. He got out of his police car and could see the affected person crouched behind a car to the south of them.

He said when he and SO2 approached the affected person he stood up and started running. WO3 broadcast that the affected person was running north on Abbott Street. WO3 said he saw a plainclothes member in a foot pursuit with the affected person and they ran north up Abbott through the intersection of Keefer.

WO3 said he returned to his police car and, *"...before I even turned my car around, I heard a broadcast saying that the male was already in custody."* WO3 said the affected person was in handcuffs and:

By the time I got out of my police car, the male had already been, had been stood upright, and he was escorted over to the police wagon. I didn't see that.

WO3 asked the affected person if he was okay. WO3 said:

His eyes were open, he was sitting upright, and when I called out to him, he did look up at me, but he didn't say anything.

Witness Officer 4 (WO4)

WO4 drove the police wagon and transported the affected person to the VPD jail. WO4 said that he and a uniformed member (SO2) lifted the affected person to a standing position and put him in the wagon. WO4 said the affected person said something to the effect of, "...next time you won't catch me."

With regard to the affected person's injury, WO4 said:

I saw, like, redness, like fresh, like fresh cut to both elbows right on the bone area and it appeared to me -- like I compare it to like if you fell off your bike on the concrete, on asphalt and like road rash.

WO4 said the handcuffs on the affected person were located where someone would wear a watch. He said he checked the affected person's hands and handcuffs and he did not notice anything wrong with his wrists. He said the affected person did not complain of pain when he was lifted to his feet. WO4 said it did not take much effort to lift the affected person, it was not forcible, and that the affected person was not resisting in any way.

WO4 said the affected person got into the wagon under his own power and did not make any complaints. After waiting for an ambulance for a short time, a radio direction came to transport the affected person to the VPD jail where he could see the jail nurse. WO4 said that once at the jail the affected person used his own power to get out of the police wagon.

Witness Officer 5 (WO5)

WO5 was the police supervisor in the jail on 2015 November 09. He said the jail nurse advised him that he believed the affected person had a broken wrist and needed medical attention. WO5 said he took photos of the affected person's wrist and called for an ambulance. WO5 said the affected person appeared to be lucid, was communicating freely, looked like he was in pain, and WO5 noted no sign of excited delirium in the affected person.

JAIL GUARDS

Below is a summary of statements from two jail guards who were on duty and present for the removal of the affected person's handcuffs.

When the handcuffs were taken off the affected person he started making sounds of discomfort and touching his wrist, and that's when both guards noticed it was red, swollen, and he appeared to be in pain.

Both jail guards, "...kept on asking [the affected person] how that happened. He said he didn't remember." One of the guards stated the following about the injury:

...there was, like, a lump on the side of his wrist, on his left hand...we asked him to sit down on the bench...we tried to talk to him, ask him what happened, and he didn't say anything. You know, we asked him, you know, like. "How -- does it hurt, or what's going on?" That kinda thing. He didn't say anything.

After the nurse had seen the affected person he was moved to a cell and was "screaming and shouting" but neither of the guards could recall or make out what the affected person was saying.

Subject Officer

Both subject officers declined to be interviewed by or provide any report to the IIO, as is their right pursuant to the *Charter of Rights and Freedoms*.

Medical Evidence

The surgeon's final operative report includes the following but does not indicate the source:

"The affected person is a 24-year-old male who was in police custody last night after being intoxicated when he was lifted by his handcuffed arm to some amount of force."

A resident surgeon at St. Paul's Hospital operated on the affected person. The surgeon said that pre-op the affected person told him that he had fallen onto his arm when he was handcuffed. The surgeon said this type of injury is commonly caused by a fall.

This surgeon's supervisor said that the type of injury that the affected person sustained is usually caused by a fall, such as a snowboarding accident.

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. 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.

However, the Court went on to say that:

*[35] Police actions should not be judged against a standard of perfection. It must be remembered that the police engage in dangerous and demanding work and often have to react quickly to emergencies. Their actions should be judged in light of these exigent circumstances. As Anderson J.A. explained in *R. v. Bottrell* (1981), 1981 CanLII 339 (BC CA), 60 C.C.C. (2d) 211 (B.C.C.A.):*

In determining whether the amount of force used by the officer was necessary the jury must have regard to the circumstances as they existed at the time the force was used. They should have been directed that the appellant could not be expected to measure the force used with exactitude. [p. 218]

ANALYSIS

The evidence from civilian witnesses collected during this investigation indicates how the affected person came to the attention of police. It is the duty of the police to protect people and their property from unprovoked and unwarranted violence.

The affected person, by all accounts including his own, fled from the police when they attended. The affected person said he surrendered by lying down and said he was not pushed by either

officer. He said the officers were two feet away from him when he started to flee and just before he “*surrendered*” he turned and looked and they were four metres away.

This conflicts with the civilian evidence of both CW1, who said he saw, “*the policeman was clearly running faster than the assailant so I knew he was caught at this point...*” and CW5 who describes police as, “*right on his heels*”.

Although the affected person first became aware of an injury to his wrist when he was handcuffed and later said the injury occurred when he was brought to his feet, the medical evidence suggests that the type of injury he suffered is most often incurred in a fall.

The paramedic who authored the patient care report related that the affected person could not remember what happened. It was also reported that the affected person was, “*...intoxicated and unable to explain how he injured his wrist.*”

The resident orthopedic surgeon said the affected person told him, “*he had fallen onto his arm when he was handcuffed.*” Another surgeon who attended to the affected person dictated for his report that the affected person’s injury occurred, “*...after being intoxicated when he was lifted by his handcuffed arm to some amount of force*”.

The affected person told the IIO he didn’t know when the injury occurred.

The affected person was seen hitting vehicles with his hands which would suggest that at least to that point his wrist was not broken.

The affected person told the IIO he felt pain when he was handcuffed which suggests his wrist was already injured when the handcuffs were applied. This is reinforced by the jail nurse’s five years of experience that the affected person’s injury did not appear to be the type of injury sustained from handcuffs. The affected person did not tell the IIO he fell at any time prior to or during his arrest nor did any witnesses say they saw him fall other than SO1’s account to his partner WO1.

The affected person said the handcuffs were applied behind his back and placed high up on his arms and they remained in that position until they were removed. CCTV video reviewed for this investigation show the handcuffs in the usual position.

The affected person said he was not seen by a nurse while in the jail. Both the jail nurse and CCTV images from the cell substantiate that he was seen by the nurse.

The affected person said he waited more than 90 minutes for an ambulance to arrive after the handcuffs were removed although the time stamp on the video of the handcuffs being removed until an ambulance arrived was less than half that time.

The police were under a positive duty to apprehend and detain the affected person for his behaviour and the subject officers herein were able to do so. SO1’s account as related to the IIO by his partner was that he did push the affected person and the affected person fell.

WO2 described his training that a push is a safer maneuver than a tackle during a foot chase and the loss of balance it creates allows the pursuer to take the upper hand.

The conflicts in the evidence between the affected person and civilian and medical professionals, as well as video evidence and the affected person's own inability to articulate how his wrist was broken does not allow a consideration that an officer used force that was other than proportional, necessary, and reasonable in the circumstances.

The only fall described that would have been the likely mechanism of the affected person's injury was as described by SO1. If SO1 in fact pushed the affected person to end the foot chase, that force falls within the level of force permitted by s. 25 of the *Criminal Code of Canada*. There is no apparent evidence of the inappropriate use of force herein.

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

2017 August 08
Date of Release

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

2017 August 08
Date of Release