



**IN THE MATTER OF THE INJURY OF A FEMALE
WHILE BEING APPREHENDED BY MEMBERS OF THE
NEW WESTMINSTER POLICE DEPARTMENT IN
NEW WESTMINSTER, BRITISH COLUMBIA
ON OCTOBER 3, 2021**

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

Chief Civilian Director:

Ronald J. MacDonald, K.C.

IIO File Number:

2021-291

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October 12, 2022

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INTRODUCTION

On the morning of October 3, 2021, New Westminster police officers responded to a complaint that someone had set garbage on fire in a parking garage. When they attended, officers determined that there were grounds to arrest the Affected Person ('AP') for arson and to apprehend her under the *Mental Health Act*. AP resisted arrest, and officers had considerable difficulty controlling her and getting her into the back of a police vehicle. She was transported to hospital where she was certified and detained. Subsequently, she was found to be suffering from a fractured knee. The Independent Investigations Office ('IIO') was notified and commenced an investigation. The narrative that follows is based on evidence collected and analyzed during the investigation, including the following:

- statements of three civilian eyewitnesses and three witness police officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- audio recording of a 911 call; and
- photographs of AP and other medical evidence.

The IIO does not compel officers who are the subject of an investigation to submit their notes, reports and data. In this case, Subject Officer 1 ('SO1') did not provide any evidence. SO2 and SO3 gave access to their written notes and reports. AP has declined to provide any account to the IIO.

NARRATIVE

At 7:24 a.m. on October 3, 2021, New Westminster police received complaints about a female who was yelling and appeared to be either intoxicated or suffering from mental health difficulties. SO1, SO2 and Witness Officer 1 ('WO1') investigated, and encountered AP, who appeared to be intoxicated but able to take care of herself, so did not apprehend her.

A little later, at 8:00 a.m., there was another call, this time to a small fire that AP was alleged to have lit in a parking garage. The fire department dealt with the fire, and SO1 and SO2 again attended. Their interactions with AP were observed by three civilian eyewitnesses who were subsequently interviewed by IIO investigators. Despite resistance from AP, she was handcuffed, but continued to struggle and to deny any wrongdoing. Witnesses describe AP as kicking and screaming incoherently.

SO3, a female officer, arrived to assist and tried to conduct a search incident to arrest. AP's struggles in response caused the officers to take her down onto the ground to limit her ability to twist and kick.

Officers were able to calm AP at one point, and stood her back up, but she then immediately began to kick again, trying to trip the officers with her legs. As WO1 arrived on scene, he told IIO investigators, he could see the three Subject Officers struggling to escort AP to the door of a police vehicle. He said AP was pulling away and thrashing around, and once at the door she refused to get inside. Civilian witnesses confirmed that AP was kicking at the officers as they tried to push her into the back seat, taking care with her to ensure she did not hit her head. As SO3 used her body weight to push the door closed, AP was bracing her foot and kicking against it to prevent it closing. One civilian witness stated that even after the door was closed, AP could still be heard screaming, and the vehicle was rocking back and forth from her violent movements inside.

At 8:30 a.m., SO1 and SO2 transported AP to hospital. Upon arrival, AP complained of leg pain and said she could not walk. A wheelchair was brought for her, but she fell onto the ground while getting out of the police SUV, landing on her shoulder. She did not complain of any injury from the fall, saying it was her leg that hurt.

AP was admitted to the psychiatric ward, and SO3 explained to her that she was being charged with arson and assaulting a police officer. SO3 stated that AP apologized for kicking SO3.

On October 8, 2021, AP's knee was operated on and repaired. On October 21, she contacted the New Westminster Police Department to complain that her knee had been broken when an officer closed a vehicle door on it. Once police confirmed with the hospital that AP had suffered a broken knee, they notified the IIO.

While AP had asserted that her knee was injured by having a door closed on it, there is a note in her medical records stating, "the mechanism is not entirely [in] keeping with this fracture pattern". Interviewed by the IIO, the surgeon who operated on AP's knee stated that it would be "atypical" for the injury to have been caused by a car door shutting on the knee. Medical records obtained from AP's family physician include a note saying that AP "reports that she fell as she was cuffed by police and that messed up her knee".

LEGAL ISSUES AND CONCLUSION

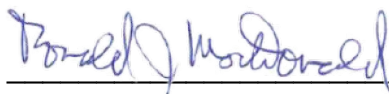
The purpose of any IIO investigation is to determine whether there are reasonable grounds to believe that an officer, through an action or inaction, may have committed any offence in relation to an incident resulting in serious harm or death. More specifically, the

issue to be considered in this case is whether any officer(s) may have used unauthorized, unnecessary or excessive force in their dealings with AP, and thereby may have committed an assault.

The attending officers were acting in lawful execution of their duty, both in arresting AP and in apprehending her under the *Mental Health Act*. She matched the description of the person believed to have committed an arson, and was behaving in a way that gave reason to believe she was suffering from a mental disorder and was not able to look after herself.

There is no doubt, based on the accounts obtained both from police and from civilians, that AP was physically very resistive and combative, including struggling against officers' efforts to get her into a police vehicle and to get the door closed on her. It is not clear whether her injury occurred in the initial efforts to restrain her, to get her handcuffed and to conduct a search of her person, or in the course of confining her in the back of the police vehicle. At no point, though, does the evidence indicate that any officer used unnecessary or excessive force against her. Any injury was an unfortunate accident caused by AP's resistance to lawful police action.

Accordingly, as the Chief Civilian Director of the IIO, I do not consider that there are reasonable grounds to believe 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.



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

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