



**IN THE MATTER OF THE INJURY OF A MALE  
WHILE BEING APPREHENDED BY MEMBERS OF THE  
VANCOUVER POLICE DEPARTMENT IN  
VANCOUVER, BRITISH COLUMBIA  
ON JULY 23, 2021**

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

Chief Civilian Director:

Ronald J. MacDonald, Q.C.

IIO File Number:

2021-202

Date of Release:

December 7, 2021

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## INTRODUCTION

On the afternoon of July 23, 2021, police responded to a complaint that the Affected Person ('AP') was causing a disturbance on Seymour Street in Vancouver. AP was apprehended under the *Mental Health Act* by the Subject Officer ('SO') and two other police officers. In the course of the apprehension, AP suffered a broken right arm.

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 AP and two witness police officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- recordings of police radio transmissions; and
- recording of a 911 call.

The IIO does not compel officers who are the subject of an investigation to submit their notes, reports and data. In this case, SO has not provided any account to the IIO.

## NARRATIVE

AP told IIO investigators that on July 23, 2021, he was going to visit someone at a highrise building on Seymour Street. He said he had been there the day before, but the concierge had refused him entry. When he arrived at the building, he said, he found police officers there, who asked him whether he was under the influence of alcohol or drugs. AP told investigators that at the time he had not been sleeping for about two days, but his mind was clear. He also said that "every day was like an emergency to me", and that he had dialled the police non-emergency line every day for the past six years. On the day of this incident, he said, he felt in danger and thought the police were there to protect him.

In fact, the officers were there in response to a 911 call complaining that a male (AP) was yelling, exposing himself and charging at people. The caller stated that AP appeared to be very "high". Witness Officer 1 ('WO1') told the IIO that when he arrived he saw AP naked except for shorts, covered in "an orange substance" and shouting at people in a foreign language. SO and WO2 also responded to the call as backup for WO1. The officers were receiving updates from Dispatch, and understood that AP had been seen rushing at an elderly couple on the street.

As he approached AP, WO2 said, he shouted, "Police, you are under arrest, put your hands behind your back". AP described being told by police to get on his knees, and wanted to know why, but was finding it difficult to communicate with them.

WO2 said he grabbed AP's right arm, but lost his grip because AP was "spinning around". He said he then took hold of AP's left arm and as AP pulled away, used AP's momentum to take him to the ground using a leg sweep. All three officers then held AP down using their body weights on different parts of his body. WO1 explained that, based on the information they had about AP's behaviour, it was necessary to take him into custody for his own safety as well as that of the public. WO1 said that AP "turtled up" as the officers took hold of him, and was struggling and kicking after being taken down to the ground. WO2 said that AP was holding his left arm under his body. As he pulled out the left arm, WO2 said, he heard a "pop", and SO, who was holding AP's right arm, stated he thought it had broken. AP was handcuffed to the rear and was sat up.

Recordings of police radio transmissions include statements from the attending officers such as "Just taken into custody, a little resistance", and "Can we get EHS Code 3 [Emergency Health Services ambulance using emergency lights and siren] ... bone snap ... I think his arm is broken", followed shortly after by "He is calming down here now" and a request for a Korean-speaking officer.

AP told investigators that no force was used against him other than that required to bring him down onto the ground and apply handcuffs. He said that at some stage he felt pain in his arm, and thought it might have been caused by the handcuffs not being applied properly.

The officers were told there was currently no ambulance available, so AP was transported to hospital in WO1's police vehicle. WO1 said that AP asked if he could "have the radio on with some classic rock", and said he obliged. At the hospital, AP was diagnosed with a spiral fracture of the right humerus bone. There was no other significant injury. AP was detained in hospital under a *Mental Health Act* certificate.

The witness officers told the IIO that when they arrived on scene there had been a cluster of civilian witnesses nearby, but they left the area during the incident and were not subsequently identified. IIO investigators were not able to locate any video of the incident, and the original 911 caller refused to be interviewed.

## **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. In this case, the issue is whether any officer may have committed an offence through the use of unjustified, unnecessary or excessive force against AP during his apprehension.

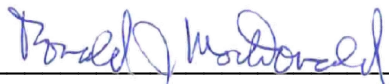
All three involved officers were acting in lawful execution of their duty in responding to allegations of behaviour on AP's part that, if true, would amount to a variety of criminal offences. His behaviour also provided grounds for his apprehension under the *Mental Health Act*, as a person who is apparently suffering from a mental disorder and acting in a manner likely to endanger either himself or others.

Based on the evidence from the witness officers, one option that the officers appear to have discounted upon arrival was to approach AP initially without laying hands on him, and attempt to de-escalate the situation through conversation with him. Having said that, at law they had grounds to proceed as they did, and it is of course quite likely that, given AP's mental state, his response would not have been compliant. Nevertheless, an initial attempt at de-escalation might possibly have led to an outcome where AP did not become physically resistant, and the failure to make the attempt is worth noting.

In any event, because of AP's reported behaviour the officers' duty was to apprehend and transport him, which of necessity would involve taking hold of him to apply handcuffs. The evidence is that AP reacted to officers taking his arms by becoming physically resistant, at which point it was not inappropriate for them to put him down onto the ground. There is nothing in the accounts of either AP or the witness officers to suggest that unnecessary or excessive force was used in the course of that manoeuvre.

Further, once AP was on the ground, it was entirely reasonable for the officers to hold AP by the arms and bring them together behind his back for handcuffing. While it was unfortunate that these actions while AP continued to struggle caused an injury to his arm, there is no evidence that the injury was the result of an act by any officer amounting to an assault.

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, Q.C.  
Chief Civilian Director

December 7, 2021

Date of Release