



**IN THE MATTER OF THE INJURY OF A FEMALE
WHILE BEING APPREHENDED BY MEMBERS OF THE RCMP
IN BURNS LAKE, BRITISH COLUMBIA
ON AUGUST 4, 2022**

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

Chief Civilian Director:

Ronald J. MacDonald, KC

IIO File Number:

2022-210

Date of Release:

April 14, 2023

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INTRODUCTION

On the afternoon of August 4, 2022, officers were called to deal with a domestic incident between intoxicated individuals at a residence in Burns Lake. The Affected Person ('AP') was arrested and transported to cells. While being booked in at the RCMP detachment, AP, who had offered resistance during the arrest, again became resistant. She was taken to the floor by the Subject Officers and was subsequently found to have suffered a fractured tibia. 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 a witness police officer;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- video recordings from RCMP cells; and
- EHS records.

The IIO does not compel officers who are the subject of an investigation to submit their notes, reports and data. In this case, neither Subject Officer has provided any evidence to the IIO.

NARRATIVE

At about 5:50 p.m. on August 4, 2020, RCMP members responded to a complaint that AP and another individual were in the caller's residence and were intoxicated and arguing. Upon arrival, the Witness Officer ('WO') told IIO investigators, police were asked simply to remove AP from the residence. He said they unsuccessfully tried to persuade her to let them give her a ride home, and then were left with little choice but to arrest her for mischief and breach of the peace and take her into custody. WO described seeing the two Subject Officers push a resistant, screaming AP into the back of the police car, and said AP was kicking at the door as officers closed it.

Asked about the manner in which AP was dealt with at the detachment, WO did not describe any overt use of force. At the cell door, he said, AP was screaming incoherently and swearing at the officers. She was pulling away as the female Subject Officer (SO1) tried to conduct a search, making it impossible for SO1 to complete the search safely. WO said the two officers gave AP "numerous commands" to lie down in the cell for them to complete the search. Then, he said, he heard some "thuds and thumps" as he was completing paperwork, and when he looked up, all three were on the floor in the cell.

WO said that when he visited the cell later in his shift at about 2:00 a.m., AP was “screaming incoherently”, and complaining that her leg was broken. He said that she “shuffled” over to the window, and her movements did not seem to him to indicate that she had a broken leg. He said he could see the shape of her leg clearly because she was wearing tights, and he saw no indication of swelling or any other sign of injury. WO said the guard told him that

the only time [AP] starts screaming and shouting is when a uniformed member attends the cell block and as soon as we leave she stops. So she’s not doing these things within the presence of the guard.

WO said that the guard also told him that about an hour before his visit, AP had walked to and from the toilet.

Later that morning, though, when WO went to release AP, he said she did not come out of the cell, which persuaded him she must actually be injured, so he called for an ambulance.

In her own interview, AP told IIO investigators that the responding officers refused to let her friend (who she said was also intoxicated) take her home. She described being placed in handcuffs, taken out to a car and driven to the police station. She said that she would not walk with the officers from the car, as she just wanted to go home. Then, she said, “That lady cop went and kicked me in the back of my leg”. AP was clear that her injury occurred “before I got to cells”.

AP said she complained repeatedly about her injury to guards, but was ignored. One officer, she said, told her it was “just a sprain”. In the morning, she said, police told her she could leave, after all night in custody. They then called an ambulance.

AP told investigators that at the hospital her right leg was so swollen she could not move, and doctors could not operate until the swelling had been reduced. Surgeons replaced her knee cap, she said, which was shattered.

Video recordings from the RCMP detachment show AP walking normally, escorted by the Subject Officers, through the vehicle bay and into the building interior. She is then seen being stood beside a cell door by SO1, and appears to be resisting or swaying while SO1 holds her in place.

AP is then taken into the cell with SO1 holding her right arm and SO2 holding her left. There appears to be a period of a few seconds during which the officers are talking to AP, and SO1 then attempts a leg sweep to AP’s right leg, which is unsuccessful as AP is moving her feet around, resisting. SO2 then reaches his right leg across in front of both

AP's legs and pushes them from under her as the two officers lower her forwards onto the floor.

Neither of the leg sweep manoeuvres appears very forceful, and there is no other significant use of force. AP was not kicked in the back of her leg, by SO2 or by anyone else.

Cell video through AP's stay in custody shows that she was clearly in physical distress, and at no point is she seen to stand on her feet. At one point she crawls across the floor, dragging her right leg, and pulls herself up onto the toilet, then subsequently lowers herself back down onto the floor, holding the same leg.

A cell log completed by the civilian guard on duty throughout the night records 46 observations from 6:32 p.m. until EHS arrival at 5:02 a.m., almost all of which note clear signs of physical distress and evidence that AP's right leg was injured, with mention of AP "whining", "moaning", "sobbing" and "complaining". There is no mention of WO's reported visit to the cell at about 2:00 a.m.

LEGAL ISSUES AND CONCLUSION

The Independent Investigations Office of British Columbia has been given the task of investigating any incident that occurs in the province, in which an Affected Person has died or suffered serious physical harm and there appears to be a connection to the actions (or sometimes inaction) of police. The aim is to provide assurance to the public that when the investigation is complete they can trust the IIO's conclusions, because the investigation was conducted by an independent, unbiased, civilian-led agency.

In the majority of cases, those conclusions are presented in a public report such as this one, which completes the IIO's mandate by explaining to the public what happened in the incident and how the Affected Person came to suffer harm. Such reports are generally intended to enhance public confidence in the police and in the justice system as a whole through a transparent and impartial evaluation of the incident and the police role in it.

In a smaller number of cases, the evidence gathered may give the Chief Civilian Director reasonable grounds to believe that an officer has committed an offence in connection with the incident. In such a case, the *Police Act* gives the CCD authority to refer the file to Crown counsel for consideration of charges.

In a case such as this one, involving the use of force by officers, one of the threads of the IIO investigation will be the gathering of evidence about potential justifications for that use of force. The CCD will then apply legal tests such as necessity, proportionality and

reasonableness to reach conclusions as to whether officers' actions were lawful, or whether an officer may have committed the offence of assault.

There is no evidence of any significant application of force to AP by any officer, up to the point where the Subject Officers were trying to complete a search before lodging her in the cell. The video evidence, the statement of WO and the account of AP herself all make it clear that she was resisting at that point, and it was reasonable for the officers to elect to take her inside the cell and have her lie on the floor, to make her more controllable. The video evidence in particular demonstrates that she was not cooperative with that requirement, and that neither officer did anything beyond what was necessary and reasonable to complete the search and leave her safely in the cell. It does not appear that either of the leg sweep moves executed used any unreasonable force, even though one of them appears to have caused the fracture to AP's leg. Neither of the Subject Officers committed any offence in the course of their physical handling of AP.

However, while the evidence gathered supports that finding regarding the use of force, it raises separate issues around the quality of care AP received while in police custody. As noted above, AP spent more than ten hours in a cell with a broken leg, disabled and in evident pain. Her distress was recorded on cell video, and the guard on shift clearly observed it. It was the guard's responsibility to make an officer aware of AP's need for medical attention, and it was the duty of a responsible officer to ensure that such attention was provided.

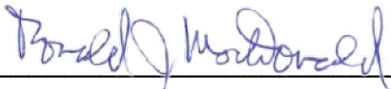
The *Criminal Code* imposes a specific legal duty on a custodian to provide "necessaries of life" to a person detained in custody. In applicable circumstances, such necessaries include medical attention. Failure to fulfill the duty, "without lawful excuse", is a criminal offence if it "endangers the life of the person to whom the duty is owed or causes or is likely to cause the health of that person to be injured permanently".

In this case, it was apparent very soon after she was left in the cell that AP was in need of medical attention. There is no explanation for the failure of the guard to do anything more than simply record AP's distress repeatedly in the cell log. For his part, WO's account that he observed AP at 2:00 a.m. and judged her to be uninjured is inconsistent both with the cell log and with the cell video. Both individuals may well be judged to have failed in their duty with respect to AP.

The jurisdiction of the IIO to investigate and refer for prosecution does not extend to RCMP civilian jail guards, who do not fall within the definition of 'officer' in Part 7.1 of the *Police Act*. That jurisdiction does, of course, cover an RCMP member such as WO. There are not sufficient grounds, though, to believe that any failure to provide timely medical care endangered AP's life or risked causing her health to be injured permanently. It is very troubling that she was left to spend the night in pain and discomfort, and while in

many ways this is wrong, it cannot be concluded that any responsible individual committed a criminal offence.

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. The matter will be referred to the RCMP for their consideration of whether the officer's conduct constitutes a violation of their code of conduct.



Ronald J. MacDonald, KC
Chief Civilian Director

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