



**IN THE MATTER OF THE INJURY OF A FEMALE
WHILE IN THE CUSTODY OF THE RCMP
IN PRINCE RUPERT, BRITISH COLUMBIA
DURING THE NIGHT OF OCTOBER 26-27, 2022**

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

Chief Civilian Director:

Ronald J. MacDonald, KC

IIO File Number:

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INTRODUCTION

On the evening of October 26, 2022, the Affected Person ('AP') was arrested in Prince Rupert for public intoxication after police received 911 calls saying that she was running into traffic, screaming at passing cars, and at risk of being struck by a vehicle. AP was described as dressed in dark clothes and wearing glasses. While in custody in police cells, AP complained of leg pain and was transported to hospital, where she was diagnosed with a fracture at her left knee joint. 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, three witness police officers and one paramedic;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- audio recordings of 911 calls and police radio transmissions;
- video recordings from the arrest scene and from the RCMP detachment;
- RCMP guard log and Prisoner Report; and
- ambulance service and other medical 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 account to the IIO.

NARRATIVE

Affected Person

AP told IIO investigators that when she came to the attention of police, late one evening on the street in Prince Rupert, people were driving past shouting at her. She said she was arrested for being intoxicated, and told investigators she had drunk "four beers". AP described an officer "punching [her] face" when he took her phone from her. She said that the same officer, identified by the IIO as Subject Officer 1 ('SO1'), "opened the [police vehicle's] door, and then the door slammed right on my knee really hard". AP pointed to that as the cause of her leg injury, and also said that police "threw" her into the back of the police vehicle, breaking her glasses and bruising her face.

AP told investigators that she did not complain about the leg injury at the time it occurred, but said that subsequently, "I was put in a cell and then the knee just kept swelling and

swelling...” Describing how she had been placed into the cell, AP said, “They threw me around like a rag doll”. AP said she asked repeatedly for an ambulance over a period of several hours before medical attention was provided.

Police Notification to IIO

The first two officers to engage with AP were designated by the IIO as Subject Officers 1 and 2 (‘SO1’ and ‘SO2’). Although neither of the Subject Officers provided any evidence directly, the notification received by the IIO from the RCMP included details apparently provided by SO1. He is said to have reported that AP was “mildly resistant” when she was arrested, “and did require some help into the back of the vehicle”. It was reported, further, that AP

...began hitting her head against the silent patrolman [the partition between front and rear in the police vehicle] and kicking at the backseat area. She broke her glasses, which were located in the backseat of the vehicle after her lodging in cells.

Witness Officer 1

The third officer to arrive on scene was designated by the IIO as a Witness Officer (‘WO1’). WO1 arrived seconds after SO1 and SO2. He told IIO investigators that as he approached he saw the Subject Officers standing at the side of the road with AP, who was yelling that the officers “had broken her arm and broken her leg”. He said that AP appeared uninjured, but was not cooperating as the officers tried to handcuff her. He said she resisted physically when they placed her in the back of a police vehicle, putting her foot up against the door frame. SO1 and WO1 were able to get AP into the back seat, and WO1 said AP then began kicking the partition in front of her, still screaming that police had broken her arm and leg. WO1 said that the officers did not put AP into the vehicle “forcefully”.

WO1 told the IIO that AP did not go to the ground at any point during the arrest. Investigators did hear, though, from WO2, who was not present for the arrest, that he “vaguely” recalled being told by another officer that there had been “a bit of, like, a scuffle”:

I recall that there is something about [AP], like, I know that she went to the ground at one point, or at least that’s what I was led to believe. But exactly how that happened or what happened after, I wouldn’t have any, I wouldn’t know.

Video Evidence

Video from commercial premises near the scene of AP's arrest shows AP walking or running into traffic several times, with vehicles having to swerve or brake to avoid hitting her. There is no indication that AP has any leg injury or any difficulty walking at this time. Three police vehicles can be seen arriving within a space of about thirty seconds, but the interaction between the officers and AP is not visible on the video.

Detachment video records AP's time in custody from various viewpoints. She is first seen being removed from the police vehicle by SO2, and she walks into the cells area with SO1 holding her left arm and SO2 her right. AP appears to be having some difficulty walking, but it is not clear if she has a leg injury at this time, or if her gait is caused by intoxication.

At 12:02 a.m., AP is taken directly into a cell, where the two Subject Officers take her down onto the floor to be searched. This appears to be intended as a standard controlled manoeuvre, but the video shows that SO2 loses her grip on AP's arm, so that AP lands with more force than was likely intended. It also appears that her legs are awkwardly crossed as she goes to the floor, the left leg bent under the right. WO2 is seen to take control of AP's legs, holding them still while SO2 searches her and removes some outer clothing. WO3 kneels beside SO1 and places his hands on AP's back and handcuffed wrists.

For the remainder of the time AP spends in the cell, the video shows her holding her left leg, banging on the cell door and yelling towards the camera. She pulls herself around the cell using her arms, and is not seen standing at any point. At 6:38 a.m., an officer opens the cell door and speaks with AP, and at 7:00 a.m., a paramedic assists AP to her feet and helps her out of the cell and onto a stretcher.

AP is not seen to be wearing glasses at any time while at the detachment, and it does not appear that glasses were removed from her during the search. The detachment video also shows that after AP was secured in the cell, the Subject Officers returned to the police vehicle and retrieved items from the back seat area. AP's booking paperwork noted two pairs of glasses amongst her effects.

Witness Officers 2 and 3

In his IIO interview, WO2 recalled hearing that AP was being brought into cells in an "agitated" state, so he attended to assist. He said that AP was "uncooperative" upon arrival, initially refusing directions to get out of the police vehicle. He said that his role while AP was being searched on the cell floor was holding her legs, crossing them and

folding them up towards her buttocks to immobilize them and prevent kicking. He said this did not require much pressure, and not enough to cause injury. WO2 added that during the search, AP was complaining of pain on her left side and saying that her arm and leg were broken. He said that he did not observe any apparent injury.

WO3, the Watch Commander, told the IIO that he heard AP screaming and swearing at officers as she was being brought into cells. She was yelling, he said, that her arm, leg and body hurt. WO3 said that the officers followed standard procedure for an uncooperative detainee, bringing her directly into a cell and laying her face down on the floor for the search, which was carried out primarily by SO2, a female officer. WO3 said that his role during the search was placing his hands on AP's back to help control her, as she appeared heavily intoxicated and highly agitated. He said that he did not observe any cuts, bruises or any other apparent injury to AP.

WO3 said that during the time AP was in cells, he checked on her approximately every two hours. He said that she was yelling, screaming and "chanting" the whole time. Explaining why she was not immediately taken to hospital, WO3 said that, given AP's level of agitation,

...our hospital here is very strongly against using any kind of restraints on people at the hospital, they are very against it, so it would be of risk to paramedics and nurses if I were to have sent her up to the hospital for any kind of assessment. And with the info I had with this, this individual, I had no indication of any significant injuries...

Cell Log

The guard's log records AP being brought into cells shortly after midnight. Between that time and 6:30 a.m., three cell checks by WO3 are recorded. There are three entries to the effect that AP is yelling and asking for medical attention. At 6:22 a.m., the note is that AP "says her left leg is broken". At that point the guard called for assistance from an officer, and paramedics were called.

Paramedic and other Medical Evidence

The EHS Patient Care Report details AP's complaint as an injury to her left knee caused when AP was put down onto her knees while being placed in the cell. An attending paramedic interviewed by the IIO confirmed that AP told him the injury occurred when she was forced down onto her knees in the cell.

AP's hospital records indicate that AP told staff she had been injured during her admission into cells when she was pushed to the ground, landing on her left knee and then falling forward, striking her face on the floor and breaking her glasses.

AP was diagnosed as having a fracture of the tibial plateau (part of the knee joint). She was also recorded as suffering from osteopenia (a lower bone density than normal, and resulting weakness of the bones).

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 ('CCD') 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.

The uses of force that must be scrutinized here can be grouped into two interactions: firstly, AP's arrest on the street; and secondly, her handling when officers placed her in the cell. Finally, the delay in providing medical attention to AP must also be considered.

Arrest

It appears from the evidence that AP was already complaining of a broken arm and leg when the Subject Officers had just located her and were placing her under arrest. While the evidence of WO1 is that he did not see AP on the ground, there is at least a suggestion from WO2 that this may have occurred at some point. However, neither AP nor anyone else, in statements to the IIO, has said that she was actually injured while being apprehended on the street, and there is no evidence giving grounds to believe that either Subject Officer used excessive force in doing so.

What followed, according to AP's IIO statement, was that the door of the police vehicle struck her knee when it was opened, causing the injury. AP does not seem to suggest that this was done deliberately. It must also be considered that when she made statements about her knee injury to medical personnel, much closer in time to the incident, this particular allegation was not made. There is no reasonable way to find that either of the officers deliberately used force against AP by striking her knee with the door.

In AP's IIO interview, the other allegation about the arrest was that she was pushed or thrown forcefully into the back seat, causing her face to be injured and her glasses to be broken. Significantly, again, this is inconsistent with her statements to medical staff that her glasses were broken when she was pushed to the floor in the cell. There is also evidence from WO1, consistent with AP's recorded demeanour when she arrived at the RCMP detachment, that she was resisting the arresting officers, and that a degree of assistance or persuasion was reasonably needed to get her into the police vehicle. Further, there is the second-hand report from SO1, partially corroborated by WO1, that AP was kicking and banging her head against the interior of the vehicle. The video and Prisoner Report evidence mentioned above strongly suggests that AP's glasses were left in the police vehicle and that she was not wearing them when she went to the floor in the cell. In the final analysis, though, largely because AP's allegations are so inconsistent, it cannot reasonably be concluded that excessive force was used against AP when she was placed into the police vehicle for transport to cells.

It is significant, also, that there is no medical evidence and no statement from any other witness about facial injuries to AP, whether from being punched in the face by SO1, or from being thrown into the back of the police vehicle, or from striking the cell floor.

Search in Cells

Whereas the interaction between AP and police at the arrest scene must necessarily be analyzed by reference only to witness statements, with their inherent frailties, what happened in the cell, fortunately, was recorded on video.

On the balance of the evidence, it appears that AP was both significantly intoxicated and uncooperative when she was brought to the detachment. In those circumstances, it is common police procedure to bypass booking-in and to take the detainee directly into a cell. Likewise, it is common practice, not unreasonably, to have the subject lie face-down on the cell floor to be searched. The purpose is to make them more easily controlled, for their own safety as well as that of the officers.

The video evidence shows that the Subject Officers were in the process of taking AP down in a controlled fashion, supporting her by her arms, when SO2 lost her grip. This appears to have caused AP to land more forcefully than intended on the concrete floor. As mentioned above, her legs were crossed at the same time, and this unfortunate combination of factors seems most likely to have caused her knee injury. It is not insignificant that following this, her generalized complaints about pains in her arm, leg and body changed to specific distress and complaints about a broken left leg. At the same time, her physical condition changed from being able to walk, albeit shakily, to being unable to get to her feet.

While the conclusion is that the Subject Officers' actions in putting AP to the floor in the cell probably led to her knee injury, those actions were necessary in the circumstances, and not unreasonable. Certainly, while AP may have felt, subjectively, that she was "thrown around like a rag doll", the objective evidence does not support that characterization of what occurred. AP's diagnosis as suffering from a condition leading to weakened bones, in fact, may well have been a contributing factor in her injury. The force used was not excessive, and there are no grounds to conclude that any offence was committed in the course of AP's handling.

Delayed Medical Attention

AP spent more than six hours sitting or lying on a concrete cell floor with a badly injured knee that was swelling and painful. She asked repeatedly for assistance and a civilian RCMP guard, who was also able to monitor her on a video system, heard and noted down her calls. Her condition had clearly deteriorated significantly, and it would have been obvious to any reasonable person that she needed to be seen by medical personnel. WO3, the Watch Commander, is recorded as having checked in on her three times during this period, and heard her calls.

The lack of a timely response from both the guard and the officer is concerning. On its face, it amounted to a failure to fulfill the duty the criminal law imposes on a custodian to provide 'the necessities of life' to a person in his custody. Those 'necessaries', in law, include medical care as required. If the custodian is not able to provide care personally,

the duty extends to summoning assistance from health professionals. That is what finally happened when another officer called for an ambulance at about 6:30 in the morning.

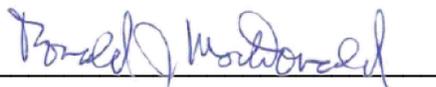
What is particularly concerning is that the steps that need to be taken in order for the police or guard to meet their obligations in a case like this are very simple. All one need do is call for medical help. It is certainly not onerous. The Watch Commander, WO3, suggested he knew that the local hospital did not want people in restraints, apparently explaining a failure to call earlier. However, this does not excuse the inaction. The issue of restraints is not a police issue, but a hospital issue. The police have an obligation to seek medical attention when someone is injured. It is then up to the hospital to determine how they will deal with that person. It is certainly not up to the police to determine who will or will not be accepted at the hospital for treatment.

Despite all this, neither the failures of the guard nor those of WO3 will be referred to Crown counsel.

The B.C. *Police Act*, as currently drafted, does not give the IIO investigative jurisdiction over the actions of guards at RCMP detachments, who are hired as civilian employees and are not included within the definition of 'officer' in the *Act*.

While, on the other hand, the IIO does have jurisdiction to investigate the behaviour of WO3, in the circumstances of this case his inaction does not amount to a criminal offence. That is because the potential offence, 'failure to provide necessities of life', includes as an element that the failure endangers the life of the detainee or causes or is likely to cause the health of that person to be injured permanently. The failures to provide timely care in this case clearly caused extended pain and suffering to AP, but the evidence does not establish that they created a material danger to her life or to her long-term health.

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 consideration of the actions of the officers and guard regarding the failure to seek medical attention earlier.



Ronald J. MacDonald, KC
Chief Civilian Director

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