



**IN THE MATTER OF THE INJURY OF A MALE
WHILE BEING APPREHENDED BY MEMBERS OF THE
VANCOUVER POLICE DEPARTMENT IN
VANCOUVER, BRITISH COLUMBIA
ON DECEMBER 6, 2022**

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

Chief Civilian Director:

Ronald J. MacDonald, KC

IIO File Number:

2022-326

Date of Release:

August 9, 2023

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INTRODUCTION

On the evening of December 6, 2022, a 9-1-1 call was placed to Vancouver Police Department from a residential building after the Affected Person ('AP') was alleged to have threatened a neighboring occupant with a pair of scissors. Officers arrived at the building and attempted to arrest AP in a hallway. As they were speaking with AP, AP moved towards the officers, and the Subject Officer ('SO') fired a beanbag gun several times at AP. AP broke several fingers in both of his hands while being taken into custody.

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 four civilian witnesses;
- statements of eight witness police officers;
- statements of three first responders;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- medical records;
- audio recordings of 9-1-1 call and police radio transmissions;
- scene photographs; and
- VPD policies and training materials.

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

NARRATIVE

At 8:21 p.m. on December 6, 2022, the Vancouver Police Department received a 9-1-1 call asking for assistance at a housing complex because two occupants were fighting, and one had pulled a pair of scissors.

Earlier that evening, the Affected Person ('AP') got into an argument with a neighboring occupant Civilian Witness 1 ('CW1'). According to CW1, AP had reportedly yelled at CW1

unprovoked while CW1 had his door open, and CW1 feared for his safety. CW1 closed his door and called for assistance from staff within the building.

Civilian Witness 2 ('CW2') responded to CW1's call for assistance by requesting another staff member, Civilian Witness 3 ('CW3'), go check on the situation with AP and CW1. CW3 left his unit and witnessed AP yell at CW1's door. During this interaction, CW3 said that AP walked towards CW3 and came to within approximately five feet of him, before pulling out a pair of scissors from his front left jacket pocket.

At 8:21 p.m., CW2 called 9-1-1 and asked for police to respond. CW2 said that AP had pulled a pair of scissors on a staff member and the situation was escalating.

At 8:26 p.m., six police officers arrived on scene, along with Civilian Witness 4 ('CW4'), who was on a ride-along that evening accompanying the officers. The officers gathered information from CW3, who indicated AP had chased CW3 with a pair of scissors and cut tags off his door.

Officers determined AP was arrestable for assault with a weapon. Three officers went upstairs to the location of the room, while another officer secured the stairwell on the same floor and two other officers remained in the lobby area in case AP escaped.

Witness Officer 1 ('WO1'), Witness Officer 2 ('WO2'), and the Subject Officer ('SO') entered the narrow hallway of the floor to arrest AP. WO1 knocked on AP's unit, announcing that they were police and to come out of his unit with his hands up. CW3 was in his room and heard an officer say: "*open the door, open the door, come out, come out. Make sure you don't have nothing in your hands when you come out the door*".

AP opened the door a crack, and yelled at the police in words that could not be understood by the officers.

AP then entered the hallway with a dish towel in his right hand. WO1 said that he repeated commands for AP to "*drop the towel*" as he was concerned because he could not see AP's hands and was aware of the report that AP had scissors.

AP did not listen, instead walking towards the three officers, despite ongoing and repeated commands to stop and show them his hands. WO1 then heard SO deploy the bean bag gun. AP reacted to this by clutching his stomach and attempting to return to his room. WO1 said that they did not want to put other occupants in the hallway at risk and allow AP to return to his room.

SO deployed his bean bag two more times. WO1 explained that the officers did not want AP to return to his room, because it was not certain what other weapons that AP had access to in his room.

After the third round of bean bag deployment, AP put his hands up in the air. AP was arrested and placed in custody. A pair of scissors were located in AP's rear pants pocket.

AP was taken to the hospital and sustained a laceration to his stomach, a broken finger on his right hand, and three broken fingers on his left hand.

AP was asked to voluntarily provide a statement for the IIO investigation, but he refused.

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 firing of a bean bag gun by an officer, one of the avenues of the IIO investigation will be 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 the officer's actions were lawful, or whether he may have committed the offence of assault.

By the time officers encountered AP, they were already aware that he had been in a verbal altercation with CW1 and had threatened CW3 with scissors. They proceeded to call him out of his room, and he came towards them in a narrow hallway where he did not respond to their commands, while other occupants remained in their rooms within the same hallway.

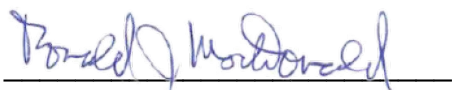
The first beanbag shot was necessary as the officers had information that AP had scissors which could be used as a weapon that could cause the officers or another occupant

serious injury. Because he had a towel in his hand, the contents of his hand were also not clearly visible, and it was unclear where the scissors were located.

The AP presented less of a threat when he was walking away from the officers and back towards his room. However, it was clear that the officers could not allow him to return to his room, as he potentially posed a danger to himself or others. With this in mind, the further use of the bean bag shotgun by SO to gain AP's compliance cannot be said to be unreasonable in the circumstances.

In situations where someone is experiencing a mental health crisis, there is some research that indicates that police commands that are delivered in a loud and/or aggressive manner are likely to have adverse outcomes when the person is experiencing a mental health crisis. There may have been an opportunity for officers to try to de-escalate the situation before yelling commands at AP, who was clearly facing some sort of mental health crisis. This may have provided a better chance that AP would have been compliant with officers. However, SO's use of force in this case remains within the range of reasonableness to stop AP from proceeding further into the room and/or harming the officers or other occupants.

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, KC
Chief Civilian Director

August 9, 2023

Date of Release