



**IN THE MATTER OF THE INJURY OF A MALE  
WHILE BEING ARRESTED BY MEMBERS OF THE RCMP  
IN NANAIMO, BRITISH COLUMBIA  
ON JULY 14, 2023**

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

Interim Chief Civilian Director:

Sandra J. Hentzen

IIO File Number:

2023-209

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## **INTRODUCTION**

In the early morning hours of July 14, 2023, the Affected Person ('AP') was arrested in a Nanaimo parkade after failing to leave when told to do so by a security guard. The AP's knee was injured in the course of the arrest, and he was taken to hospital from the RCMP detachment, the next day. 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 the AP, a civilian eyewitness, two paramedics, four jail guards and two witness police officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- audio recordings of a 911 call, a police call requesting ambulance attendance, and police radio transmissions;
- police cell block records;
- video recordings from the RCMP detachment; and
- medical and ambulance service records.

## **NARRATIVE**

This is a case in which a number of witnesses provided accounts from differing perspectives, so it is most appropriate simply to set out those accounts individually, beginning with that of the Affected Person ('AP') himself.

The AP told IIO investigators that early on the morning of July 14, 2023, he was in a parkade with a man he had met earlier that night, drinking and playing music (this male was never identified or interviewed by the IIO). The AP recalled a security guard telling him to leave, but he did not leave, so the security guard called the police.

When two officers arrived, the AP said, one of them asked him, "Do you want to go home or do you want to go to jail?" He said he told them he did not have a home, and they pinned him against a wall and arrested him, telling him to "stop resisting" even though he was not resisting. The AP said that one officer kned him in the leg and "buggered up my knee". He said he told the officers he thought his leg was broken, and was told, "You're homeless, it doesn't matter". He said he was walked to some stairs, and an officer told him that if he did not walk down them, "we're going to throw you down". At the detachment,

he said, he asked to see a doctor or nurse and was told, “You’re homeless, you don’t deserve to see anybody”. The AP said that in the morning, he was brought from the cell in a wheelchair and police called an ambulance. He said he underwent surgery and was in hospital for over a week.

Hospital records confirm that the AP was admitted on July 14, 2023, with a “mildly impacted intra-articular fracture of the lateral tibial plateau”. He was discharged on July 23, 2023.

IIO investigators also interviewed a Civilian Witness (‘CW’), the security guard who called police to deal with the AP after attempting to get the AP to leave the parkade. The CW described watching two RCMP officers attend and tell two unwanted males (one of whom was the AP) to leave. The CW said that the officers attempted to arrest one of the males by holding him against some railings and pulling his arms behind his back, but said that the male was pulling away and resisting.

The CW said the officers took the male to the ground, chest first, by holding his arms. He said he did not see them contact the male’s legs, and the male was not complaining about any pain. He said the male was then handcuffed and lifted to his feet. The CW said that the only complaint from the male as he was being walked down the stairs and placed in the police vehicle was that his pants were slipping down, and the officers assisted him by pulling them up. He said the male was placed in the back of the vehicle and sat there normally, apparently uninjured.

According to the report of Subject Officer 1 (‘SO1’), the officers were able to get one group of unwelcome individuals to “move along”, but when they approached the AP, he became “very agitated and aggressive” and said that police would have to “taser me or shoot me if you want me to leave”. SO1 described the AP as showing “high levels of intoxication, barely able to stand”, but said he was taken into custody “without further issue”. The AP was arrested for causing a disturbance, to be released when sober.

Video recordings from the detachment seem to show the AP limping as he walked from the police vehicle into the booking area. He also appears to be limping as he is taken to a cell.

The two jail guards who were on duty that night were interviewed, and both stated that no one was brought into cells injured during that shift. They conducted regular fifteen-minute checks on the AP, and neither of them were made aware of any injury. One of the two guards who came on shift at 7:00 a.m., though, said that she found the AP lying down, and he asked her, “Do you know what happened to my knee, because I can’t remember”. She said she had noticed that he appeared to be in pain, but he had not asked for medical

attention. She said she called Witness Officer 1 ('WO1'), and he summoned an ambulance.

Video from the AP's cell shows that he appeared to be in increasing pain during the approximately ten and a half hours he spent there, and was clearly having more and more trouble moving around. Even though there is no evidence that he asked for attention, it would have been obvious to anyone watching him on the video monitors that he was in physical distress.

WO1 told the IIO that he was on duty in the morning, and went to the AP's cell when the AP was due to be released. He said that the AP told him he could not stand up or walk. WO1 said that when he asked the AP how the injury had occurred, the AP told him he did not remember because he had been drunk. He was sure, though, that it had happened when he was arrested. WO1 said that he called for an ambulance, and the AP was taken from the cell in a wheelchair.

WO2 remembered being called to the cells by WO1 and told that a male due for release had been injured. WO2 said that the AP told him his leg had been injured during his arrest, but he did not know how.

Information gleaned from the attending paramedics in their interviews was to the effect that the AP had apparently twisted his leg while falling during his arrest. It was not clear who had told the paramedics this.

## **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 AP has made a specific allegation about having been kned in the leg during his arrest, and says that this is what caused his injury. If the allegation were supported by other evidence, it might raise a question about whether an officer may have applied unnecessary or excessive force. The CW, though, has told the IIO that the AP was not struck in the leg at any time, and the AP himself has told a number of witnesses that he had no memory of what caused the injury. Certainly, neither Subject Officer has acknowledged having done it, and SO1's account, in fact, is of a relatively unremarkable arrest. The AP's allegation, then, is not sufficiently reliable to lead to a conclusion that he was subjected to any unjustified use of force. It appears that the "mild" tibial plateau fracture he suffered is more consistent with his leg twisting, accidentally, as he was taken to the ground while resisting being handcuffed.

The AP has also alleged that one or both of the arresting officers made derogatory remarks in the course of their dealings with him, as outlined above. As unprofessional as such behaviour might be, if it occurred, the allegation suffers from the same frailties as the AP's other complaint.

What remains of concern is the manner in which the AP was allowed to pass a lengthy period of custody, in obvious pain and distress, before an ambulance was finally called for him. It would appear that no one, including the AP, realized that he was injured when he was booked into cells, perhaps because of his state of intoxication. Later, though, as is evidenced by the video recordings, the jail guards (whose primary duty is to safeguard detainees and to call for medical assistance when needed) and responsible officers (who are ultimately charged with the wellbeing of prisoners and the proper performance by guards of their duties) should have summoned medical aid much sooner than they did.

Because of this concern, IIO investigators sought an expert medical opinion about the potential effect(s) of delayed treatment for the AP's injury. The opinion obtained was that the injury would not have been rendered more serious or more difficult to treat, and the prognosis for the AP's health would not have been affected negatively. That does not, of course, excuse the lax care the AP experienced during his stay at the RCMP detachment — a circumstance that the IIO has highlighted in a number of other investigative files —

but in the final analysis, it cannot be said that any negligence on the part of detachment staff rose to the level of a criminal offence.

Accordingly, as Interim 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.



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Sandra J. Hentzen  
Interim Chief Civilian Director

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