



**IN THE MATTER OF THE INJURY OF A MAN
WHILE IN THE CUSTODY OF MEMBERS OF THE
VICTORIA POLICE DEPARTMENT IN
VICTORIA, BRITISH COLUMBIA
ON AUGUST 30, 2023**

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

Chief Civilian Director:

Jessica Berglund

IIO File Number:

2024-047

Date of Release:

May 29, 2025

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INTRODUCTION

On March 21, 2024, the Independent Investigations Office (“IIO”) received a complaint from the Affected Person (“AP”) about an incident that occurred on August 30, 2023, in which the AP suffered an injury to his leg while in the custody of the Victoria Police Department (“VicPD”). It appeared that the injury of which the AP complained met the “serious harm” threshold set out in the *Police Act* for IIO jurisdiction, so IIO investigators commenced an investigation.

The narrative that follows is based on evidence collected and analyzed during the investigation, including the following:

- statements of the AP and five witness police officers;
- police Computer-Aided Dispatch (“CAD”) and Police Records Information Management Environment (“PRIME”) records;
- audio recordings of a 911 call and police radio transmissions;
- video recordings from the VicPD police station;
- specifications and photographs of police vehicle interior;
- investigative file from the Office of the Police Complaint Commissioner (“OPCC”); and
- police training records;

The IIO does not require officers whose actions are the subject of an investigation to give an account. In this case, the Subject Officer (at the time a Jail Guard and Special Municipal Constable with VicPD) has not provided any evidence to IIO investigators.

NARRATIVE

Arrest of the AP

On August 30, 2023, Victoria police received a 911 call asking for officers to remove the Affected Person (“AP”) from a city residence. On a recording of the call, the caller stated that the AP was “hitting” him and then said that the AP was “kicking my bathroom [door] in” after the caller tried to hide in the bathroom.

Witness Officer 1 (“WO1”) stated in his PRIME report of the incident that the initial call for service escalated into a “fight” with one of the participants yelling for help. WO1 said that responding officers found two men “wrestling” in an apartment. Both were “bleeding from minor scrapes and cuts.” The two men were separated and handcuffed. One of the men resided in the apartment, and the other was the AP.

Police were told that the incident had started when the men started arguing after drinking beer and ingesting “magic mushrooms” together. Each accused the other of assault. In his report, WO1 stated that officers took the AP out of the apartment and planned to drive him home, but he was intoxicated and became aggressive and combative. WO1 stated that, because the AP did not appear to be able to take care of himself, he was transported instead to VicPD cells to sober up.

Injury to the AP

In the sally port of the police station (an enclosed area where police vehicles enter and exit), in the process of being removed from the back of a police vehicle while handcuffed, the AP suffered an injury to his left leg. He subsequently provided a written statement to the IIO. Regarding the manner in which he was injured, he wrote as follows:

Summary: I was in a police car, sitting passenger side, back seat with hands cuffed behind my back. I was pinned in place by the seat in front of me. I was weak from extreme heat & humidity exposure; and I was injured by excessive force & without duty of care when I was removed from the car.

Seat position: Front seat had been pushed all the way back. My legs were touching both the front & back seats. As a result, my legs were pinned in position (I could not move them). Also, the seat was reclined (further immobilizing me). This point is material when [the SO] removed me from the car.

*Excessive Force: Force used by [the SO] to remove me from car was excessive. I was semi-conscious from heat exposure. [The SO] was removing me from car * my foot got jammed sideways between front & back seats (due to lack of available space). I yelled loudly in protest to STOP.*

*[The SO] stopped momentarily (surprised); and rather than move the seat forward to release my foot * he used excessive force to un-jam my foot * thus torqueing my foot even further sideways * resulting in a severely sprained ankle and a fractured leg.*

Interviewed by investigators after his complaint was received by the IIO, the AP said that he “immediately” knew he was injured as soon as he exited the police vehicle, and that he was hobbling and complaining continuously, but officers ignored him and laughed at him. The AP also acknowledged that he was unaware that he had suffered a fractured leg until one week after the incident, when an X-ray confirmed an oblique fracture to his left fibula.

Officers’ Accounts

The jail supervisor, Witness Officer 2 (“WO2”) reported in PRIME that the AP was brought into cells for being intoxicated in public and was to be released without charge when sober. The AP was described as “elevated and agitated and exhibiting symptoms of intoxication.” He was placed in a cell with a blanket and fell asleep. Interviewed subsequently by the IIO, WO2 stated that he was present when the AP was removed from the police vehicle in the sally port, and did not see any action by any officer that he would describe as a use of force. WO2 said that the AP only mentioned pain in his ankle when he was being released from the jail the next day.

WO1 told the IIO that he was not aware at any point that there had been any use of force against the AP by any officer, or that the AP had suffered an injury.

Witness Officer 3 (“WO3”), who attended the call for service with WO1, transported the AP in his police vehicle and was present in the sally port when the AP was removed from the vehicle by the SO. WO3 said that he did not see any action by the SO that could be described as a use of force, and was not aware of any injury to the AP.

Witness Officers 4, 5 and 6 (“WO4,” “WO5” and “WO6”) were also present in the sally port at the time, and later told the IIO that they did not see any use of force, or observe any apparent injury to the AP.

The Prisoner Intake Record, which showed the Subject Officer (“SO”) as the “searching officer,” reported no force used by police on the AP and no injury to him. Against the question “known drug addict and/or consumed drugs,” “yes” is ticked, with the note “booze/mushrooms” added.

The next morning, the AP complained to WO2 that he should not have been arrested, though he acknowledged having been in a fight after consuming “magic mushrooms” and several beers. WO2 also noted that as the AP was leaving, he said that he had a sore foot, which he said had been hurt when he was removed from the back of the police vehicle that brought him to the police station.

On September 1, 2023, the AP went back to the station to complain that he had been assaulted in the August 30 incident, and to demand that police investigate. WO1 subsequently wrote in PRIME, on November 19, 2023, that despite his efforts to follow up with the AP, no further information had been provided, and the investigation would be closed.

Video Evidence

Video recordings from the VicPD sally port show that the vehicle carrying the AP arrived at 8:34 p.m. Another detainee had just been brought into the police station and was taken through into the booking area. Officers waited until that individual had been processed and placed in a cell before taking the AP out of WO3's vehicle, which occurred at 8:55 p.m.

The rear passenger side door of the vehicle was opened, and the SO reached in to help the AP exit. The AP had got his left foot stuck in a gap between the seat and the partition between front and rear areas of the vehicle. The SO reached past the AP's upper body and pulled his left foot free. The video shows no indication of aggression or excessive force used by the SO or any other officer, and no sign of resistance or distress on the part of the AP.

The AP was then helped out of the vehicle and walked out of view towards the booking area unassisted and apparently without difficulty, not visibly favouring either leg.

OPCC Complaint

The day after his release, the AP sought medical help for his sore foot. His ankle was X-rayed, and he was told that it did not appear to be broken. The AP submitted a complaint to the Office of the Police Complaint Commissioner ("OPCC"), in which he alleged that he had been injured during "torture" by police.

One week after this, a second X-ray showed that the AP had a fracture of his fibula, six inches below the knee. A medical opinion received by the OPCC indicated that the injury would not require treatment, that it should heal by itself within six weeks, and that the AP should assist healing by using crutches to minimize weight-bearing.

In November 2023, the AP was still experiencing pain, but his physician concluded that this was due to the AP having discontinued use of the crutches after one or two days because they were "not stable" and difficult to use.

The OPCC applied the definition of "serious harm" set out in section 76 of the *Police Act* and concluded that the AP's injury did not meet the threshold at which the matter must

be referred to the IIO for investigation. Accordingly, the Police Complaint Commissioner directed that an investigation be conducted instead by the Professional Standards Department of VicPD. As detailed above, the matter did not come to the attention of the IIO until the AP reported it directly in March of 2024. The description of his injury provided to the IIO at that time appeared to meet the “serious harm” threshold, though the IIO investigation triggered by the AP’s complaint ultimately led to a conclusion that it did not.

Other Evidence

The police vehicle in which the AP was transported is fitted with a fixed solid partition between the rear prisoner compartment and the front seats. The space into which the AP’s left foot was inserted was a narrow gap between the rear seat and this fixed partition, which is a flaw in the design of the vehicle’s modifications. The injury was not caused by any rearward movement or reclining of the front seat, which was separated from the rear compartment by the fixed partition.

A further complaint made by the AP to IIO investigators was that he was left handcuffed in a police vehicle for 10 to 15 minutes after his arrest on a very hot day, with a humidex (a composite index incorporating air temperature and humidity) of 33 degrees Celsius. He also said that he was left in the car “semi-conscious from heat exhaustion” for a further 30 minutes at the police station, banging his head against the window for assistance while several officers stood around laughing at him.

Environment Canada records for Victoria on the day on which the AP was arrested show a maximum temperature of 21.8 degrees Celsius. At about the time of evening when the AP was in the police vehicle, the temperature was 14.6 degrees Celsius. Video recordings from the police station sally port do not appear to show the AP banging his head on the rear window of the police vehicle at any point while he was waiting there. Officers approach the vehicle periodically, seemingly to check on the AP. It is not possible to tell whether any of them laugh at the AP, but there is nothing apparently inappropriate about their actions or behaviour.

LEGAL ISSUES AND CONCLUSION

The Independent Investigations Office of British Columbia is mandated to investigate 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 most 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 justice system 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, where a person appears to have been injured during an interaction with police, IIO investigators collect evidence with respect to any officer's actions that may have caused the injury. The IIO then analyzes this evidence to reach conclusions as to whether officers' actions were lawful, or whether an officer may have committed an offence.

There is no evidence of any culpable act by any officer during the AP's detention. The narrative set out above demonstrates that the AP was not immediately aware, himself, that he needed medical attention, and there was nothing to alert the officers that they should summon it for him.

The AP alleges that the injury occurred when the SO pulled the AP's foot from where it had become wedged in the rear footwell of the police vehicle. Based on the evidence, it appears that this is the most likely point in the incident when the injury happened. There is no evidence, however, that the SO did anything more than to assist the AP in freeing his foot and, in particular, there is no evidence that he used any unnecessary or excessive force in doing so.

Accordingly, as 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 the matter will not be referred to Crown counsel for consideration of charges.



Jessica Berglund
Chief Civilian Director

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