

PART 3—FRANK PAUL’S FINAL DAYS

G. Conclusions

Sgt. Sanderson wrongly refused Frank Paul access to the Jail’s sobering cell, and Cst. Instant wrongly left him exposed to the elements, when he was incapable of caring for himself and where there was obvious risk to his health and safety.

Sgt. Sanderson’s explanations for refusing Frank Paul admission to the Jail are wholly unpersuasive and I reject them in their entirety. The arresting officers were correct to conclude that Mr. Paul was severely intoxicated and unable to care for himself, and they were acting within existing departmental policy in referring him to the sobering cell of the Jail.

Frank Paul’s condition at the Jail without question justified his admission to the sobering cell, and also justified an immediate assessment as to whether he also required medical assistance. He made no resistance and offered no objection to people caring for him, and he did not in any way cause or contribute to being left exposed to the elements in an alleyway on a winter’s night. He was not left in circumstances similar to those in which he lived on the street—he was arrested under the cover from the rain afforded by an awning on the street front where he was found, but was left exposed to the wet and the rain in the alleyway. It is not the case that the risks to his health and safety were the same where he was left as they were in his daily existence.

I accept that Cst. Instant honestly believed that he was not placing Frank Paul at any greater risk than he encountered during his daily life on the street. I also accept that this belief was caused or promoted by his training and orientation—leading him to the erroneous perception that homeless chronic alcoholics possess an unusually sturdy resistance to cold and wet.¹

I also find that Cst. Instant was, by reason of his junior rank in the paramilitary culture of the VPD, intimidated by the authority of the Jail sergeant, and reluctant to seek the intervention and assistance of senior officers or other caring organizations such as the Detox Centre, Ambulance Service or shelters. He was given orders that he did not

¹ See the evidence of Dr. J. Butt. Transcript, Mar. 19, 2008, pp. 13–15.

understand, but was not equipped in his training to reject them and to seek suitable advice and assistance where it was clearly required. He did seek advice from a senior constable, but that poor advice compounded, rather than redressed, the situation.

The Aboriginal community quite understandably became concerned about the actions of the police officers involved, and became suspicious of the adequacy of the investigation. However, in my view, some of that community's more grave concerns can now be laid to rest. Specifically, Frank Paul did not die in the police wagon—the witness Patrick Lewis saw Frank Paul alive at least two hours after Cst. Instant left him in the laneway. I am also satisfied that neither ethnic discrimination nor overt hostility motivated Frank Paul's arrest, and that his Aboriginal status was not a factor in Sgt. Sanderson treating him with callous indifference. Although I have seriously criticized the decisions and actions taken by some of the police officers involved, I accept that they did not intend to cause Frank Paul harm and were not seeking to accelerate or bring about his death.