



**IN THE MATTER OF THE SERIOUS INJURY OF A MALE  
WHILE BEING TAKEN INTO THE CUSTODY OF THE RCMP IN THE  
CITY OF WILLIAMS LAKE, BRITISH COLUMBIA  
ON JUNE 19, 2016**

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

Chief Civilian Director:	Ronald J. MacDonald, Q.C.
Director of Legal Services:	Clinton J. Sadlemyer, Q.C.
IIO File Number:	2016-125
Date of Decision:	NOVEMBER 24, 2017

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## Introduction

On June 19, 2016, at approximately 8:05 p.m., the Affected Person (AP) was arrested by Officer 1 for being intoxicated in a public place (a bus stop in Williams Lake). Officer 2, (an off duty auxiliary constable not within IIO jurisdiction), along with Officer 3, assisted Officer 1 during the arrest. All three officers were attached to the Williams Lake RCMP. During the arrest, AP suffered broken cheek bones on the left side of his face.

The Independent Investigations Office (IIO) was notified by the RCMP at 3:10 a.m. the next morning. The IIO commenced its investigation as AP's injuries appeared to fall within the definition of serious harm as defined by the *Police Act* and were related to the actions of an officer.

## Facts

Evidence collected during the investigation included the following:

- 1) Statements of four civilians: AP, a friend of AP, EHS personnel and a doctor;
- 2) Reports filed by Officers 1 and 3;
- 3) Statement of an off duty auxiliary constable who is not required to file reports (Officer 2);
- 4) Statement of Officer 3;
- 5) Recordings of police radio transmissions;
- 6) Medical records of AP;
- 7) Photographs of the scene; and
- 8) BCEHS related records.

Pursuant to section 17.4 of the Memorandum of Understanding between the IIO and BC Police Agencies, Officers are not compelled to submit their notes, reports and data with the exception of those portions which record statements made to Officers by any witness. In this case, Officer 1 agreed to provide the IIO with his written reports of the incident. Officer 2 and Officer 3 provided voluntary statements to IIO investigators.

AP told investigators he only remembers being at the bus stop, the police pulling up, and the next thing waking up at the hospital.

Between 7:46:36 p.m. and 7:46:42 p.m., the following exchange between AP and Officer 1 was transmitted and recorded over the police radio system.

AP	<i>What are you doing this to me for, what did I do to you?</i>
Officer 1	<i>You're under arrest.</i>
AP	<i>Why?</i>
Officer 1	<i>(indecipherable) pepper spray need backup.</i>

Shortly before this transmission, AP's friend was on his bicycle and rode by the bus stop and when he saw AP, he stopped. He said AP was drinking a beer and was drunk. AP's friend departed but then returned a few minutes later as he'd forgotten his backpack when he was there before. He told IIO investigators that on his return, there were two to five police Suburban's. He said:

*I didn't know exactly what happen. When I saw that was – [AP] was already in the ground and I said, 'What happened? Did he get hit by a car or something?'*

He also said:

*Every single driver, every cop car, they were in there, hitting him and punching him.*

AP's friend told IIO investigators the police officers were all in uniform except for one, who came in a pick-up truck (Officer 2). He said it went on for about five minutes during which time the officers had:

*all their...weight on top of him, and being hit so many times...there were over five police officers out there...when he stopped moving, then he start getting sick, vomitating [sic]. Like he was -- they said, oh, he had too much to drink...that's when the ambulance shows up.*

From 7:48:30 p.m. to 7:49:12 p.m., Officer 1 is again heard on the police radio transmitting the following:

*Yeah I just had to pepper spray a male he started to swing at me there, I got him in custody now, had to take him down to the ground and we're get an ambulance on scene...they're on scene they were actually going by while we were struggling so they're here now we're going to get him checked out he's got a cut to his forehead when I took him down he hit the pavement...yeah I pepper sprayed him he was trying to punch me...*

A paramedic told the IIO that she and her partner were in their ambulance and drove past the bus stop. She looked out her (passenger) side of the vehicle and noticed Officer 1, out of his vehicle, speaking with AP. They were slowing down for the red light at the intersection that was approximately 75 metres further on. The officer's police vehicle was pulled over and not impeding traffic. She did not notice anything of concern.

While the ambulance was stopped at the traffic light the paramedic's partner told her, "Oh, something is happening. [Officer 2] is waving us down." Her partner turned the ambulance around and pulled up to the bus stop facing opposite the direction of travel.

The paramedic told the IIO she went to the patient, who was lying on his side on the ground. Officer 1 was standing nearby. She did not recall other officers being present

until later. Officer 1 told her words to the effect that AP, "...got agitated or aggressive, and he had to take him down." At no point did the paramedic see any officer strike AP.

The paramedic saw three or four people nearby and asked them generally if they had seen what happened and got no response.

She treated AP, got him on a stretcher, put him in the ambulance and left for the hospital. She noted that she could smell ETOH (alcohol) on him.

Officer 1 reported that he was on patrol and saw AP drinking beer at the bus stop. He stopped and it was his intention to give AP a ticket for consuming liquor in public. When he spoke with AP, he realized how intoxicated AP was as he was having difficulty standing. Officer 1 arrested AP for being intoxicated in a public place.

Officer 1 reported AP became angry. Officer 1 took hold of AP's arm and pulled him over to his police car. AP pulled away and wanted to bring his pack into the police car. Officer 1 put the pack into the trunk and AP began yelling and turned to Officer 1 with his fists clenched. Officer 1 attempted to apply handcuffs (police policy requires that arrestees be handcuffed when they are transported) and AP stepped away and turned back to fight.

Officer 1 reported he stepped back and pepper sprayed AP; however, it was not effective as AP was wearing sunglasses. Officer 1 called for backup on the radio as Officer 2 arrived.

Officer 1 reported that he and Officer 2 took AP face down to the ground. AP's face hit the ground. AP fought to avoid being handcuffed by trying to roll onto his side. Officer 1 reported that Officer 3 arrived and put his knee into AP's back and pushed AP flat onto the sidewalk, and Officer 1 was then able to handcuff AP.

Officer 2 told IIO investigators he is an auxiliary constable and was driving with his family when he saw AP struggling with Officer 1. He stopped to assist just as the pepper spray was being deployed. He said AP told Officer 1, "*Fuck you, I'm not going with you.*"

Officer 2 said AP took a swing at Officer 1, who in turn took hold of AP's arm. Officer 2 took hold of AP's other arm and took him to the ground. As AP hit the ground, Officer 3 arrived and put his knee on AP's back to hold him down. Officer 2 pulled AP's arm behind his back, as did Officer 1 with AP's other arm, and Officer 1 attached handcuffs.

Officer 2 had seen the ambulance going by and went into the street and waved at it. The ambulance returned and the paramedics attended on AP. Officer 2 assisted putting AP on the stretcher.

Officer 3 told IIO investigators he responded to the request of Officer 1 for back up. On arrival, he saw AP struggling with Officers 1 and 2. He saw AP being taken to the ground and struggling. He put his weight onto AP's back using his right knee onto AP's

shoulder as he went down. He took AP's arm from Officer 2 and, together with Officer 1, handcuffed AP.

Medical records including hospital admission assessment nursing notes obtained by the IIO indicate AP's injury was with respect to the left side of his face only. No other injuries were noted therein, nor did AP make any complaints of other injuries.

### **Relevant Legal Issues and Conclusion**

The purpose of any IIO investigation is to determine whether an officer, through an action or inaction, may have committed any offence in relation to the incident that led to the injury to AP.

More specifically, the issue to be considered in this case was whether any of the officers may have used excessive force during the arrest of AP. Had they done so, they may have committed assault causing bodily harm.

In this case, AP's friend related his perception of AP's arrest. His perception was that five or more officers were hitting and punching AP for about five minutes.

The time stamp of the above quoted radio transmissions, however, contradicts that length of time. The paramedic's evidence confirms the number of officers at the scene was less, and also contradicts the length of time that elapsed. Finally, had the incident unfolded as the friend described AP would have suffered many more injuries. The lack of any medical evidence of any injury in addition to the broken cheek bones does not support the friend's description of the incident.

Pursuant to the *Liquor Control and Licensing Act* of British Columbia, a person must not consume liquor, or possess liquor in an open container, in a place other than a private residence or certain other places as spelled out in the *Act*. Further, intoxication in a public place is not permitted and a peace officer may arrest, without a warrant, a person who is intoxicated in a public place.

Officer 1 was on duty and patrolling when he saw AP drinking beer at a bus stop, which is not a place where a person can lawfully consume liquor. His initial intention was to give AP what is known as a liquor ticket. Upon interacting with AP, it was apparent that AP was intoxicated. AP's friend later confirmed this to the IIO.

Officer 1 was performing his duty by arresting AP. Officer 2 saw Officer 1 having difficulty with AP and Officer 3 assisted after Officer 1 requested back up. Given the circumstances, that assistance was appropriate.

A police officer who is acting as required or authorized by law is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose. In addition, if he faces an assault

by a person he is entitled to use reasonable force to protect himself from that force. If a police officer uses unreasonable or excessive force, those actions may constitute a criminal offence.

Officer 1 was observed by the paramedic to be talking to AP without raising concerns. Moments later, Officer 2 happened along and saw AP fighting with him. Officer 3 responded to a call for back up and on arrival assisted in bringing the situation under control in short order, such that by the time the paramedic returned the struggle was over.

The evidence collected does not provide grounds to consider any charges against any Officer. Indeed, the evidence shows that Officer 1 acted as required by his duties as a police officer. The force he did apply was primarily to protect himself from the actions of AP. Officer 2 assisted when it was apparent to him that a fellow officer needed assistance. Officer 3 was also at the ready to assist his fellow officers. Any injury caused was unintentional. Had AP cooperated with the requests of Officer 1 when placed under arrest no injury would have occurred.

It is important to note that the cooperation of the officers in this matter assisted the IIO in a determination of what happened in this case.

Accordingly, as the Chief Civilian Director of the IIO, I do not consider that an officer may have committed an offence under any enactment and therefore, the matter will not be referred to the Crown Counsel for consideration of charges.

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**Clinton J. Sadlemyer, Q.C.**  
**Director of Legal Services**

November 24, 2017  
**Date of Decision**

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**Ronald J. MacDonald, Q.C.**  
**Chief Civilian Director**

November 24, 2017  
**Date of Decision**