



**IN THE MATTER OF THE SERIOUS INJURY OF A MALE
WHILE BEING TAKEN INTO THE CUSTODY OF THE RCMP IN THE
CITY OF PRINCE RUPERT, BRITISH COLUMBIA
ON JUNE 23, 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:	2016-127
Date of Decision:	NOVEMBER 14, 2017

Introduction

On June 23, 2016, at approximately 2:05 p.m., the Affected Person (AP) was arrested by Officer 1, a member of the Prince Rupert RCMP, for causing a disturbance and being drunk in a public place. During the arrest AP's left arm was broken immediately above the elbow.

The Independent Investigations Office (IIO) was notified by the RCMP at 5:33 p.m. of the same day. The IIO commenced its investigation as the 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 nine civilians: AP, EHS personnel and six other civilians;
- 2) Recordings of police radio transmissions;
- 3) Medical records of AP;
- 4) Photographs of the scene; and
- 5) BCEHS related records.

Pursuant to section 17.4 of the Memorandum of Understanding between the IIO and Police, Officer 1 is not compelled to submit to IIO investigators his notes, reports and data with the exception of those portions which record statements made to Officer 1 by any witness. As is his right, Officer 1 chose not to provide the IIO with anything further than he was required to do.

The investigation showed that at 1:50 p.m., emergency services received a 911 call reporting an intoxicated male (AP) lying on a flower bed near the street between the Safeway and BC Liquor Store in Prince Rupert. The caller reported that AP did not appear to need medical attention, but that he had responded violently when a woman went to check on him.

The woman who checked on AP also spoke with the 911 operator and advised AP may have hit his head, and he had been flat on the ground but got up and was aggressive toward her. She reported AP chased her and swung at her before falling back down to the ground. She also described AP as being "*slow-moving*", "*weak*", and "*disoriented*". She remained on scene for approximately 15 minutes until Officer 1 arrived.

At 2:54 p.m., a third person spoke with 911 and reported a "*seriously intoxicated*" man (AP) lying on the ground.

Officer 1 responded to the call and radioed that he arrived to the scene at 2:02 p.m. A bystander saw Officer 1 struggle with AP. AP was “*swinging wildly....like a big windmill.*” Officer 1 took hold of AP by the shoulders to hold him back, and told him to “*calm down and relax.*”

The bystander came to assist Officer 1 after he observed Officer 1 and AP fall over a curb on the edge of the parking lot. The bystander took hold of AP by the ankle to stop AP from kicking and then helped Officer 1 to roll AP over to a face-down position on the ground. The bystander told the IIO, “*I think the officer knew that that fellow was impaired and was going really, really easy on the guy because he was impaired.*” The bystander told the IIO that Officer 1 said he believed AP’s arm may be broken.

Another witness who was approximately 100 feet away saw AP on the ground waving at Officer 1 and saying words to the effect of, “*go away*”, “*don’t bother me*” or “*leave me alone.*” This witness said Officer 1 straightened out AP’s legs so they were no longer hanging over the curb, then he appeared to roll AP using his (AP’s) arm. The move caused his view to be obstructed. He said he was unsure whether it was, “*...legal to just sleep on a public street?*” but that if it was not, Officer 1, “*...did everything right. That was my one personal thought.*”

At 2:02 p.m., Officer 1 transmitted, “*He’s trying to fight, not doing a good job though.*” At 2:06 p.m. he requested, again over the radio, for a paramedic to attend on AP, “*...and he has a broken arm.*” Officer 1 also reported that AP was, “*...handcuffed on the ground.*”

EHS personnel attended and, notwithstanding AP’s arm being visibly and “*completely inverted*” and “*flipped in behind itself*”, AP did not appear to be in any pain. Officer 1 told EHS personnel that when, “*...he went to apprehend [AP]...a fight ensued.*” Officer 1 also told EHS personnel that when he took AP down he, “*...felt a snap in his arm.*”

AP was taken to the local hospital and later transferred to another hospital for further treatment.

AP recalls having drinks with friends and then waking up in hospital. He told IIO investigators that he no memory of the incident and he did not make any allegations against Officer 1.

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 Officer 1 may have used excessive force when he detained and restrained AP. Had he done so, he may have committed assault causing bodily harm.

Pursuant to the *Liquor Control and Licensing Act of British Columbia*, 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.

In this case, Officer 1 was summoned to where AP was lying in a flower bed near retail stores. Upon attendance, AP began to assault Officer 1, thereby creating reasonable grounds to arrest AP, in addition to any other grounds (including being intoxicated in a public place) that may have already existed.

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. If a police officer uses unreasonable or excessive force, those actions may constitute a criminal offence.

Officer 1 was observed by witnesses to be, “*going really, really easy on the guy because he was impaired*” and to have done, “*...everything right...*” as he performed the arrest of AP.

The evidence collected does not provide grounds to consider any charges against Officer 1. 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. Any injury caused was unintentional.

Accordingly, as the Chief Civilian Director of the IIO, I do not consider that Officer 1 may have committed an offence under any enactment and therefore, the matter will not be referred to Crown counsel for consideration of charges.

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

November 14, 2017
Date of Decision

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

November 14, 2017
Date of Decision