



**IN THE MATTER OF THE SERIOUS INJURY TO A FEMALE
WHILE BEING APPREHENDED BY MEMBERS OF THE RCMP
IN THE CITY OF WEST KELOWNA, BRITISH COLUMBIA ON
MARCH 18, 2016**

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

Chief Civilian Director:	Ronald J. MacDonald, Q.C.
Director of Legal Services:	Clint Sadlemyer, Q.C.
IIO File Number:	2016-054
Date of Decision:	December 13, 2017

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Introduction

On March 18, 2016, West Kelowna 911 received a telephone call reporting a woman (the Affected Person [AP]) was running down the street and shouting, “*help me, help me.*” The caller further reported AP was screaming. 911 received further calls about the incident, including from AP who asked for help but did not articulate the problem.

Police attended the area and located AP. As they were speaking with AP, she suddenly tried to run into traffic. Officers 1 and 2 apprehended her pursuant to the *Mental Health Act*. AP physically resisted being put into a police vehicle. Officers 1, 2, and 3 used force to secure her in the police vehicle and during that use of force, AP suffered a broken arm.

The Independent Investigations Office (the IIO) was notified of this incident by the RCMP. The IIO commenced its investigation as AP’s injuries appeared to fall within the definition of “serious harm” as defined in the *Police Act*.

Facts

Evidence collected during the investigation included the following:

- 1) Statements of five civilians: AP and four others;
- 2) Statement of Officer 4;
- 3) Police vehicle dash-cam audio and video;
- 4) Recordings of 911 calls;
- 5) Recordings of police radio transmissions; and
- 6) AP’s medical records;

Pursuant to section 17.4 of the Memorandum of Understanding between the IIO and BC Police Agencies, officers who are the subject of an IIO investigation are not compelled to submit their notes, reports and data. In this case, Officers 1, 2, and 3, who are the subjects of this investigation, declined to provide voluntary statements, notes, reports or data to the IIO.

In her statement to the IIO, AP reported that she had a psychotic episode wherein she believed her children were in danger. She recalled running against the flow of traffic on the highway and that she was screaming for help. She reported that she was barefoot.

AP called 911 and asked for help but could not say whether she needed police or ambulance.

Police had also received an earlier 911 call that reported AP was, “...*going through a psychosis right now*”

Police arrived to her location and asked what was wrong.

AP reported in her statement to the IIO that the officers demanded that she lie down. Dash-cam video, however, shows AP on a side street near the highway speaking with police. AP can be seen to try to run by Officer 1 towards the highway and he and Officer 2 took hold of her. AP is shown falling on her backside and landing partially on the highway. Officer 4, who was in his police vehicle with a dash-cam operating, told the IIO he felt it was for AP's protection as she was stopped from running onto the highway.

Immediately thereafter, Officer 4 moved his vehicle across the highway and blocked traffic for the safety of AP and the officers. Audio was activated at that time; however, AP and the officers cannot be seen for a period of time until AP was moved toward the police vehicle used to transport her.

Officer 4 told the IIO that because of her behaviour, he believed AP was detainable either under the *Mental Health Act* or because she was intoxicated in a public place.

Officer 2 can be heard on the audio saying, "...*can you please put your hands behind your back, thank you, thank you so much*" followed by the sound of the handcuffs being applied. Officer 4 said that AP did not appear to be injured when they were handcuffing her.

A civilian witness who was at the scene told the IIO that when Officers 1 and 2 were trying to apply handcuffs to AP, she was on the ground, shouting for help and calling out for the safety of her children. He knew AP and told Officer 2 that she was suffering from a psychotic breakdown.

Officers can be heard during this time telling AP it is time to get in the vehicle and go, whereupon AP said, "*I've made this mistake before.*" Officer 2 is heard saying, "...*we like to give you the respect that you deserve. We don't like to manhandle you, so please walk over there so we can discuss this together, ok?*"

Officer 4 told the IIO that he and the other officers lifted AP to her knees and stood her up. He said that as they guided her towards the police vehicle she resisted by thrashing and kicking her legs. He said as a result of AP kicking, her pants came off (this is shown as AP and the officers pass through the frame of the dash-cam). AP nonetheless continued to resist entering the police vehicle for more than two minutes.

Officer 4 said when they got AP to the opened rear driver side door of the police vehicle she braced her feet and legs against the door frame. Officer 3 went around to the other side of the vehicle to try to pull her in. During the struggle, while AP was resisting going into the police vehicle she can be heard on the audio to say, "...*No, you guys are going to have to kill me.*"

AP herself reported that she resisted being put into the police vehicle and braced her leg against the door jam. She reported that the officers tried to lift her into the vehicle while at the same time Officer 3 was trying to pull her into the vehicle (dash-cam video

shows Officer 3 entering the rear of the vehicle through the passenger side door opposite the side of the vehicle AP had been taken to).

A civilian witness confirmed Officer 3 went to the passenger side of the vehicle to drag AP into the car.

AP reported that she heard “*a loud snap*” which she said was her left arm breaking.

AP reported that she was not acting violently and that after her arm snapped, she “*stopped any sort of struggle.*”

Officer 4 said he also went to the passenger side to try to help Officer 3 but by the time he got there, AP was in the vehicle. Officer 3 is heard on the audio saying, “*... something broke.*”

Officer 4 told IIO investigators that the detention of AP was for the purpose of taking AP to the hospital for an assessment under the *Mental Health Act* and AP was taken to hospital where nursing notes reflect that she was, “*...psychotic on arrival with hallucinations, screaming...*”

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 issues to be considered in this case are:

- 1) did the officers act within the scope of their duties?; and
- 2) did the officers use excessive force in their dealings with AP?

If the officers did not have authority to apprehend AP or if they did have that authority but used excessive force in their dealings with AP they may have committed an assault causing bodily harm.

The *Mental Health Act* provides for the apprehension of a person by a police officer to immediately take that person to a physician for examination if the officer is satisfied from personal observations, or information received, that the person is acting in a manner likely to endanger his or her safety or the safety of others.

In this case, the police had information that AP was suffering from “a psychosis”. When police went to where AP was, she was barefoot and on the street. It was winter. AP attempted to run into traffic and was stopped by Officer 1 and Officer 2. Officer 4

created a “safety pocket” with his vehicle to protect both AP and the officers from the traffic on the highway.

The audio of the interaction between AP and the police is convincing evidence that the officers were polite and respectful throughout their interaction with AP, notwithstanding the considerable resistance she gave. AP was clearly a danger to herself, and it was the officers’ duty in these circumstances to apprehend her and take her to hospital for her own protection.

The level of force used to detain AP was reasonable and necessary for the officers to perform their duty because of AP’s significant resistance. Had AP not resisted, there likely would not have been a need to use any force. Unfortunately, AP did not wish to go with police voluntarily.

Our investigation has demonstrated that AP needed to be taken to the hospital. Further, there is no evidence that the officers herein used excessive force to apprehend and detain AP. All of their actions were lawful. The injury suffered by AP was an unintentional result of the struggle between the officers and AP.

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.

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

December 13, 2017
Date of Decision

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

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