



**IN THE MATTER OF THE SERIOUS INJURY TO A MALE  
WHILE BEING APPREHENDED BY MEMBERS OF THE  
VICTORIA POLICE DEPARTMENT IN  
THE CITY OF VICTORIA, BRITISH COLUMBIA  
ON JUNE 5, 2017**

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

Chief Civilian Director:

Ronald J. MacDonald, Q.C.

General Counsel:

Clinton J. Sadlemyer, Q.C.

IIO File Number:

2017-055

Date of Release:

March 6, 2018

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## **Introduction**

On June 5, 2017, at 4:10 p.m., a 911 call was received concerning the mental health of the Affected Person (AP). Numerous officers attended, and AP was apprehended pursuant to the *Mental Health Act*. During the apprehension AP suffered broken ribs and a pneumothorax.

The Independent Investigations Office (IIO) was notified by the Victoria Police Department (VicPd) at 6:00 p.m. the next day. 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 officers.

## **Facts**

Evidence collected during the investigation included the following:

- 1) Statements of five civilians: AP, a mental health professional and three witnesses to the arrest;
- 2) Statements and diagrams of Officers 4, 5 and 6;
- 3) Recordings of police radio transmissions;
- 4) Photographs of the scene; and
- 5) Medical records of AP.

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

On June 5, 2017, AP was seen on the front lawn of the complex where he lived; he was burning a pair of rubber boots with a hand-held blowtorch. Later that day, a neighbour complained that a smell of burning rubber was coming from AP's unit. This was reported to 911.

Officer 1 arrived to AP's residence followed shortly after by Officer 2. Officer 1 spoke briefly with AP through the window of his residence. Officer 1 said to AP, "*you're not in trouble*" and "*talk to us.*" Civilian Witness 1 (CW1) lives near AP and told the IIO she heard the officers telling AP not to use the blowtorch in or near the building.

Officers 1 and 2 left AP's doorway and spoke with a mental health professional nearby. They were advised that AP's neighbours were fearful because AP had threatened to kill one of them. The incidents with the blowtorch were discussed. The officers were also advised that about two weeks prior AP had cut the live electrical wire for his stove and discarded his stove onto the lawn of the property.

Following this conversation, Officers 1 and 2 determined that it was apparent that AP had a mental disorder and was acting in a manner likely to endanger his own safety or the safety of others. Pursuant to the *Mental Health Act*, the officers decided that AP should be taken to a hospital.

At approximately 5:35 p.m., Officer 1 radioed that they were returning to AP's unit to apprehend him.

CW1 heard the officers return. They told AP they wanted to speak with him and then one of the officers said, "*whatever you have in your hands, please put down when you come to the door, we don't want anything in your hands.*" CW1 said AP opened his door and the officers kept telling AP to put the tools down but he did not do so.

CW1 said AP was in the doorway and had not stepped outside.

AP told the IIO that Officers 1 and 2 came to his door and without provocation, "*...they just, they tackled me basically, right from my front door.*" He said he was taken by each hand and shoulder and brought to the ground on the sidewalk outside of his suite.

CW1 said the officers took the tools from AP. One of the officers took hold of AP's arm. CW1 told the IIO that:

*As soon as the officer reached for him he just lay down, so that they wouldn't be able to take, like grab him or anything. Cause there's not much space in that little walkway at the front there between the stone and the building so he could lay down in there and put his elbows out like this and his knees up and they couldn't get him out of there. He was basically stuck in there.*

CW1 said the officer told AP not to struggle and to cooperate. The officer told AP he didn't have to lay on the path and suggested AP sit up and talk to him. CW1 told the IIO:

*It sounded very reasonable to me, what the officer was saying to him but [AP] would not cooperate at all and was yelling and flailing around making a big scene. I know at the time he was high on crystal meth, he'd been up for days.*

AP told the IIO he "*thinks*" he had used methamphetamine earlier that day and that he experiences delusions when using methamphetamine but that he doesn't think any delusions had a bearing on this incident. In hospital, AP told both the admitting physician and a psychiatrist that he had been using methamphetamine on the day of his apprehension. The next morning in hospital AP tested positive for methamphetamine.

At 5:37 p.m., Officer 1 radioed that there was a struggle with AP and requested for further members to attend. Officers 3, 4 and 5 were dispatched almost immediately. Officer 6 also attended.

CW1 said the first officer left AP on the ground unrestrained and lying face-up while he sat with him and spoke quietly to him. The second officer was standing approximately 20 feet away. The officer then asked AP, “*can we get you sitting up*” and AP agreed; however, he tried to run away and was again restrained by Officers 1 and 2.

Other officers arrived and later an ambulance. AP was put on a stretcher. AP continued to struggle and CW1 said it took all six officers to restrain AP and get him on the stretcher. He continued to struggle after having been placed on the stretcher and was strapped down; CW1 did not know which of the officers applied the straps.

CW1 did not hear AP complain of any pain and did not see any injuries on him. CW1 did not see any of the officers strike him or restrain him with their legs at any time.

Civilian Witness 2 (CW2) heard AP scream, “*I’m not on methamphetamines*” and “*you maced me*” and “*it hurts, stop, please stop, stop, it hurts*”, and “*I’m not resisting*” but did not witness the cause of those complaints. CW2 heard the above comments shouted out and came out and saw four to six officers struggling with AP. CW2 said that other than the number of officers, nothing in the conduct of the police gave cause for concern. CW2 went back inside before the ambulance arrived.

Civilian Witness 3 (CW3) said initially just two officers engaged AP and a third officer stood to the side. CW3 said the two officers tried to pull AP down; however, AP tried to punch Officer 1. Officer 1 caught AP’s arm. AP continued to struggle and Officers 1 and 2 pulled him to the ground. Officer 2 then was able to get AP’s left arm behind his back.

CW3 saw Officer 3 put his knee on the man’s bottom as they handcuffed AP. AP was on his right side to the wall and Officer 3’s knee on AP’s right gluteus. CW3 said AP was trying to get away by kicking out with his legs, which is why CW3 thought the officer had his knee on the man’s bottom.

CW3 saw three officers apprehend AP. Two other officers were standing by but neither had contact with AP. The ambulance arrived and two paramedics stood with the two officers who were watching.

CW3 did not see any other officer use their knees to control the man and stated, “*I thought they were great, the way they handled it.*”

Officers 4, 5 and 6 all said AP was struggling and that they saw no strikes by any officer to AP. Officer 6’s diagram showed the relative positions of Officers 1 and 2 in relation to AP. Officer 5 commented that, “*...it wasn’t a fight, it was a struggle...*”, that AP was trying to get away and that AP was, “*...either rubbing or trying to bang his head into the ground...*”

Officer 5 told the IIO that Officer 3 directed that leg restraints be used as AP was kicking at members. Leg restraints were applied.

Medical records obtained by the IIO report AP arrived in triage at 6:30 p.m. and was alert. AP was closely monitored by medical staff and no complaints by AP related to broken ribs were recorded until he had shortness of breath the next afternoon. X-rays were taken and the pneumothorax was then discovered. Police were notified and the IIO was notified by police shortly thereafter.

AP suffered two fractures through the right fifth rib and also a fracture of the sixth and eighth rib, with a non-displaced seventh rib fracture and a pneumothorax. He was treated and the pneumothorax was fully resolved by June 13, 2017.

### **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 is whether any of the officers may have used excessive force during the apprehension of AP. Had they done so, they may have committed assault causing bodily harm.

In this case, police were summoned regarding the actions of AP using a blowtorch outside and then apparently inside his residence. The *Mental Health Act*, in effect, makes women and men who are police officers society's front line mental health workers. Section 28 of the *Act* provides for police apprehension of a person who is, "*acting in a manner likely to endanger that person's own safety or the safety of others*" and is, "*apparently a person with a mental disorder.*"

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.

Not one of the witnesses, neither civilian nor police, suggested that excessive or unreasonable force was used to apprehend AP. All of the witnesses agreed that AP was unreasonably uncooperative with the police. There is no evidence that any officer used excessive or unreasonable force.

The evidence collected does not provide grounds to consider any charges against any officer. Indeed, the evidence shows that the officers acted as required by their duties and in accordance with the law.

In particular, there is no evidence to show the injury occurred during AP's interaction with police. However, if it did, it was an accidental result of the ongoing struggle by AP, and not from excessive or unnecessary force of the officers. Indeed, the evidence of the

civilian witnesses supports the conclusion that the officers acted entirely appropriately throughout.

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 Crown counsel for consideration of charges.

Clinton J. Sadlemyer, Q.C.  
**General Counsel**

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**Chief Civilian Director**

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