



**IN THE MATTER OF THE SERIOUS INJURY OF A MALE  
WHILE BEING APPREHENDED BY  
A MEMBER OF THE RCMP IN  
THE CITY OF NANAIMO, BRITISH COLUMBIA  
ON AUGUST 3, 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 – 097
Date of Release:	September 13, 2018

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## **Facts**

On August 3, 2017, at approximately 5:00 p.m., the Affected Person (AP) was arrested by Officer 1 outside of a local neighbourhood pub (the Pub). During the arrest AP was resistant and hit his head as he was taken to the ground by Officer 1. AP suffered a serious head injury.

The Independent Investigations Office (IIO) was notified by the RCMP at 7:45 p.m. The IIO commenced its investigation as the injury to AP was within the definition of serious harm as defined in the *Police Act* and an officer was involved.

Evidence collected during the investigation included the following:

- 1) Statements of AP and eight civilian witnesses;
- 2) Statements and notes of three police officers including Officer 1;
- 3) Police radio recordings;
- 4) BC Emergency Health Services (EHS) records; and
- 5) AP's medical records.

Pursuant to section 17.4 of the Memorandum of Understanding between the IIO and BC Police Agencies, and consistent with the *Canadian Charter of Rights and Freedoms*, officers who are the subject of an investigation are not compelled to provide a statement, nor submit their notes, reports and data. In this case, however, the Subject Officer (Officer 1) provided a statement to the IIO and authorized access to his notes, reports and data.

AP sustained a broken nose; two broken orbitals; his right elbow and right thigh were sore and tender; and he suffered a traumatic brain injury.

AP told the IIO that he has no recollection of any interaction with or use of force by the police. He does not recall any interaction with EHS, or being near the Pub or how he came by his injuries. AP said he did not previously have any similar injuries. Blood taken at the hospital from AP and analysed at 5:55 p.m. showed an extremely high blood/alcohol concentration many times greater than the legal limit to drive.

At approximately 4:30 p.m., Nanaimo RCMP received a complaint from BC Transit about an unruly, intoxicated passenger who was on one of their city buses and had allegedly assaulted other passengers. It is believed this was AP. Approximately 12 minutes later the AP left the bus which was stopped across the street and slightly to the east of the Pub.

CW 1 told police that he was standing outside the Pub at the time and saw AP coming from the east towards the Pub "*with a beer in his hand; he seemed to be intoxicated.*" CW 1 told police he went back into the Pub and when he came out again a bit later, he saw Officer 1 with AP who was in handcuffs and on the ground. Officer 1 was patting AP down. He said he saw Officer 1 remove the handcuffs and attempt to bring AP up

into a sitting position. AP appeared to CW 1 to be unconscious. CW 1 then departed as his ride had arrived.

CW 2 came out of the Pub and saw Officer 1 and AP before AP was injured. CW 2 said:

*...basically the police officer was trying to put handcuffs on him and he was just kind of taunting the police officer...the police officer would come close and he'd just move his arm out of reach.*

CW 2 believed Officer 1 "helped" AP to turn around and face the wall to enable the handcuffing. Officer 1 managed to get one handcuff on AP. CW 2 said Officer 1 was very calm and seemed to have everything under control. CW 2 turned away.

Shortly thereafter, CW 2 heard a loud "thunk" and turned back. Officer 1 was trying to rouse AP by tapping him on the face but there was no response. Officer 1 knelt next to AP and cradled him. CW 2 said AP was bleeding from his head and nose and CW 2 suggested to Officer 1 that an ambulance ought to be called but Officer 1 said there was already one on the way.

CW 2 said Officer 1 stayed with AP and appeared to do everything he could until EHS arrived.

CW 3 came out of the Pub to smoke and saw Officer 1 kneeling next to AP who was on the ground and "...in trouble". Officer 1 rubbed AP's back vigorously, talking to him trying to get a reaction, and looking concerned.

CW 3 offered to direct arriving vehicles and Officer 1 agreed. CW 3 directed a police vehicle (Officer 2) and ambulance (CW 4) to where AP and Officer 1 were located.

CW 4, a paramedic with EHS, arrived to help AP. CW 4 told the IIO that Officer 1 was:

*...standing there, he looked a little bewildered like he didn't know what to do...it's like he wants to do something for this guy but he doesn't know what to do.*

CW 4 and his partner examined AP who was transferred to an ambulance and transported to the hospital. CW 4 said Officer 1 was directed by another officer (Officer 2) to "step away." Officer 1 stepped away and "...didn't say a word...until we left he was just standing there."

Officer 2 was acting supervisor for the area and heard Officer 1 over the police radio requesting EHS. Officer 2 arrived on scene and saw Officer 1 kneeling by AP and then being relieved by paramedics. Officer 2 directed Officer 1 to return to his vehicle and begin to write his report.

## Officer 1's Account

Officer 1 responded to the complaint of an unruly bus passenger and spoke with the bus driver who advised that the subject of that complaint, now believed to be AP, had left on foot in the direction of the Pub. Officer 1 drove towards the Pub and saw AP sitting on the grass nearby. Officer 1 parked and approached AP.

AP told Officer 1 where he was going and denied having been where the bus stopped. Officer 1 believed AP was intoxicated but went back to his car to confirm the description of the person who had been on the bus. Officer 1 received a more complete description that better matched AP and while he was doing that AP got up and walked some distance away. Officer 1 decided to *"...arrest AP for being intoxicated in public to prevent any further offence and sort out the investigation after that."*

Officer 1 approached AP, who was again sitting down, this time with his back against the Pub's liquor store. Officer 1 advised AP that he had *"...confirmed he'd been the one causing problems at the bus and that he was under arrest for, for being intoxicated in public."* He did not then arrest AP for the allegations related to the bus as he felt it could escalate the situation.

Officer 1 considered handcuffing AP in the seated position but felt no significant threat and stood AP up to handcuff him as he believes it can be more humiliating for a person to be handcuffed on the ground. Officer 1 took hold of the AP's left bicep, then AP's forearm with both hands and asked the AP for his other hand. AP *"...pulled away and he clenched his fists...and then he started kinda turning."*

Officer 1 said he stayed behind AP to keep control of AP's arm and:

*...we end up facing the wall so we do a, a turn because he's pulling, pulling away from me. I repeated the instruction for him to place his hands behind his back, tried to apply some pressure to his, his left wrist which is the hand that I had. But again he pulled away and turned so that he's facing the brick wall of the pub.*

Officer 1's risk assessment increased because AP was getting angry and was strong enough to resist. Officer 1 said he realized this was *"...a bad situation to be in by yourself."* AP was pulling away and Officer 1 believed he could not handcuff an uncooperative person in the standing position without assistance, which he could not call for as he was using both hands to control AP.

Officer 1 told the IIO that he was trained that:

*...you want to get control of those situations quickly, yes you'd use communication, you repeat the instruction, make sure that they've heard it which I was doing here. But you know there's no point in saying ten times, 'put your hands behind your back' if he's not listening you're going to have to try something else.*

Officer 1 considered taking AP to the ground but he was concerned that "...either one of us could get hurt." He considered moving backwards but was concerned about tripping over the concrete parking space markers directly behind him. Officer 1 again directed AP in a firmer tone to give his other arm which he did briefly but when Officer 1 reached for his handcuffs AP again pulled his arm away and Officer 1 then had even less control as he was then also holding his handcuffs. He quickly applied one handcuff and AP:

*...clenched his fist and pulled away again and this time he turned his head back to look over his shoulder at me. I just felt like he was testing me out to see, you know, some opportunity. He's either gonna try to attack or escape or something he's, he's, he's testing the limits here from you know all the steps that we've gone through I still didn't have control and the only viable take down that I felt the, in the one's that I am trained to use at this point was, they call it the steel arm bar but it's an arm bar takedown with a handcuff on. For this exact situation, you get one cuff on and the person is still pulling away and not cooperating...*

*...on this occasion he went down and I heard a smack sound when he hit the ground. At first I thought, OK it's knocked the fight out of him. I cuffed him up quickly saying some of his right things, his rights, you know, 'you're under arrest', again, and then I realized OK he's not, he's not conscious, he's not responding to me at all here...*

*...right away I called for an ambulance...*

*...then I thought, well you know he's not going to be combative anymore, I gotta take these cuffs off him so I took them off. I took off his coat and used it as a pillow for his head. Put him in the recovery position, um, until the ambulance arrived.*

*...There was a woman there...she said 'oh he's bleeding do you want me to call an ambulance,' I said 'yes I already called an ambulance'...There was another fellow who came around and asked me if he should wait for the ambulance...I said 'yes please show them the route here'...the police officers and ambulance arrived and [Officer 2] arrived...*

## **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.

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.

More specifically, the issue to be considered in this case is whether Officer 1 may have used excessive force when he used the “*steel arm bar*” technique to take AP to the ground. Had he done so, he may have committed aggravated assault.

Officer 1 has voluntarily given the IIO a complete account of the incident. While the actual moment AP was taken to the ground was not witnessed by anyone else, much of the interaction between Officer 1 and AP before and after that point was seen by civilian witnesses. That evidence, along with the other available evidence, corroborates Officer 1’s statement to the IIO and demonstrates its credibility.

Officer 1 was acting in the course of his duties when he arrested AP. Before the arrest, he confirmed the description of the person who was alleged to have committed assaults on the bus. The updated description closely matched the appearance of AP. The updated description gave Officer 1 sufficient grounds to arrest AP regarding the assaults. In addition, Officer 1 had clear grounds to arrest and detain AP for public intoxication. He made the decision to arrest for that public intoxication only, leaving discussion of the assault allegations until after AP was detained. This was done to avoid escalating the situation. This was a good decision in the circumstances.

AP was physically refusing to cooperate with Officer 1. Because of that resistance, AP presented a physical threat to Officer 1. In particular, when AP had one handcuff on, if he freed that arm the handcuff could become a dangerous weapon. Officer 1 appropriately relied on his training that was specifically tailored to the situation he found himself in.

Officer 1 therefore acted as he was trained to act and required by his duties and in accordance with the law. Putting AP to the ground was necessary to arrest AP, and was reasonable to protect the officer from AP’s physical threat. As Officer 1’s actions were reasonable, appropriate, and necessary, the evidence collected does not provide grounds to consider any charges against any officer.

The injuries that occurred were unintended. AP’s intoxication likely played a role in him going down awkwardly. The technique used by Officer 1 is a common method to gain control of an unruly person, and rarely results in injuries of this significance. Those injuries were an accidental consequence of all the circumstances.

It is important to note both prior to and after AP was taken to the ground, Officer 1 was noted by civilian witnesses to be acting entirely appropriately with AP. Indeed, he demonstrated concern and compassion for AP after he was injured.

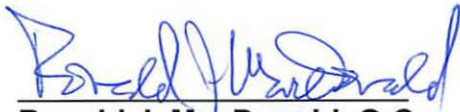
Accordingly, as the Chief Civilian Director of the IIO, I do not consider that an officer may have committed an offence under any enactment and therefore the matter will not be referred to Crown counsel for consideration of charges.



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

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**Chief Civilian Director**

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