



**IN THE MATTER OF THE SERIOUS INJURY OF A MALE
WHILE BEING DETAINED BY THE RCMP
IN THE CITY OF KELOWNA, BRITISH COLUMBIA
ON DECEMBER 1, 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 – 155
Date of Decision:	October 11, 2018

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Introduction

On December 1, 2017, at approximately 4:40 p.m., the Affected Person (AP) was detained pursuant to the *Mental Health Act*. Officers 1, 2, and 3 participated in the detention during which AP suffered a fracture of the left tibial plateau and a fracture to the left shoulder blade.

The Independent Investigations Office (IIO) was notified by the RCMP about 20 minutes after the incident. 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 police officers.

Facts

Evidence collected during the investigation included the following:

- 1) Statements of AP, his mother, and a mental health professional;
- 2) Written statements (two) of Officer 3;
- 3) Recordings of police radio transmissions;
- 4) Medical records of AP;
- 5) Photographs of the scene; and
- 6) BCEHS related records.

Pursuant to section 17.4 of the Memorandum of Understanding between the IIO and BC Police Agencies and consistent with the *Charter of Rights and Freedoms*, Officers who are the subject of an investigation are not compelled to submit their notes, reports and data. In this case, Officers 1 and 2 declined to provide a statement or their notes, reports and data to the IIO. Officer 3 provided two written statements.

AP told the IIO he was at home alone when his mother and a mental health nurse (CW 1) arrived. AP said he was told he had to go either to his mother's house or to the hospital, neither of which he wanted to do. CW 1 made a telephone call and shortly thereafter the police arrived.

AP said he spoke to the police calmly but he was getting upset as he was trying to talk to CW 1 and he was "*too out of it to comprehend what they were trying to say.*" AP said he did not want to go with the police and told them that he did not want to leave his apartment. He also said the officers harassed him verbally and physically, made him get off his couch and surrounded him by different sides, and "*...they put their knee in my back and forced me to the ground and cuffed me.*"

AP also told the IIO that:

...when I was arrested eventually and cuffed, I was sitting against my fridge, they pushed me forwards and they pulled my knee and an officer broke it and bent it backwards on purpose, not by accident, on purpose...

and

...one of the officers kicked back my shin, and started kicking it and shoving it, and moving it to the left this way, so I couldn't move. They moved me over towards the fridge and they stood me up, put me up on my knees and they bent my leg backwards, and the whole leg bent backwards. They pushed all their knees, three guys knees on my shin bone and it broke. They shoved me illegally and touched me illegally; I didn't want to be touched at all.

During his statement to the IIO, AP said that "*...not all of this is true I was kind of out of it, I'd been staying up for three days straight.*"

AP's mother told the IIO that AP lives with a brain injury and mental disability. She went to AP's residence on December 1, 2017 as she had concerns about his recent behaviour. She told the IIO that she contacted a mental health worker (CW 1) who had previously worked with AP because AP was exhibiting behaviours that she felt merited at least an assessment by the worker.

CW 1 arrived shortly after 3 p.m. and spoke with AP in his mother's presence. AP's mother told the IIO she heard CW 1 ask AP if he was hearing a voice other than CW 1's and AP's response indicated that he was.

CW 1 told the IIO that AP was asked whether he was listening to someone other than CW 1 and that AP responded that someone was talking to him. CW 1 expressed concern to AP's mother and recommended that AP should either go to his mother's home or to the hospital to see a doctor.

CW 1 said that as AP and his mother were about to depart to his mother's residence, AP stopped at the doorway, pointed and shouted towards CW 1 that CW 1 was "*a member of the Shriners...*" and CW 1 "*...was going to force him [but]...he didn't want to leave.*" CW 1 said it escalated from there and AP, who CW 1 described as a large fellow, made a movement toward CW 1. CW 1 later told the IIO that with "*the unpredictability of the situation at that moment, I felt we needed some back up.*"

AP's mother said that CW 1 said "*I'm going to call the team in for an assist*" and stepped out into the hallway of the apartment to make a telephone call. AP's mother said when CW 1 stepped out, AP appeared unhappy and followed CW 1 and asked who was being called and then returned to the apartment.

CW 1 told the IIO that the Police and Crisis Team (PACT) were requested during the 911 call so that a *Mental Health Act* apprehension could be made. The PACT includes

both a police officer and nurse trained for mental health calls who CW 1 believed would know how to manage the situation.

AP's mother said that approximately 20-30 minutes later two uniformed police officers, Officer 1 and Officer 2, arrived. AP's mother said the officers spoke with AP and that "*both were trying to be respectful and firm in their tone.*" She said AP, however, did not want to leave his apartment.

CW 1 said the PACT nurse was not in attendance and Officers 1 and 2 were advised that CW 1's assessment was that AP required apprehension under the *Mental Health Act*. CW 1 said Officer 3, who was a part of the PACT, arrived and he spoke with AP. After several minutes of discussion, Officer 3 signaled to CW 1 that the officers were going to bring AP out of the apartment.

CW 1 told the IIO that AP began shouting and, although it was out of view, CW 1 could hear a scuffle and then AP yelling "*you broke my leg, you broke my leg.*"

CW 1 said an ambulance was called and arrived but AP was very resistant to going with them. A second ambulance crew was called to assist in providing sedation, after which AP was taken to hospital.

AP's mother said she saw Officer 3 signal CW 1 which she interpreted as a direction to CW 1 to get out of the way because the police were about to restrain AP. She said right after the signal all three officers tried to restrain AP; however AP was "*...quite well braced up against the doorway.*" She said while the officers struggled with AP she saw his leg bend backwards.

AP's mother said she saw the officers using only hand control techniques to control AP and she believed the officers were "*trying to do their best to get [AP] to the ground but it wasn't a very good spot...*" and that she "*...did not believe the officers were trying to hurt [AP].*"

AP's mother estimated AP's height to be 6 feet 1 inch and weight to be approximately 300 pounds.

AP's mother said that once AP was face down on the floor the police appeared to have difficulty placing handcuffs on his wrists. She said AP was screaming loudly "*you can't do this, you have no right to touch me, this is my home, you're not going to take me to the psych ward...*" and "*...you broke my leg.*"

AP's mother said Officer 1 told her that the officers had been trying to put AP off balance and then push him into the hallway but AP had been positioned in a solid stance. She said Officer 1 told her:

I'm sorry how that went down, it was a really tight area and your son has really big wrists, he's a big guy [and] it was really tough handcuffing him [and] ...we didn't want to tase him, we didn't want to tase him in front of his mum...

AP's mother said that after AP was sedated and being moved to the ambulance:

I remember he tried to bite them once when he was on the stretcher; all he had left was his mouth...

Officer 3 provided two written statements to the IIO. He reported the PACT work he'd done gave him valuable experience and training in dealing with and understanding mental health crisis.

Officer 3 reported he had been asked to assist Officers 1 and 2. When Officer 3 arrived, it was apparent to him that AP was in a psychosis and seeing and hearing both auditory and visual hallucinations. Officer 3 reported that AP was a threat to not only his own safety, but others as well.

Officer 3 reported that he spent 15 minutes trying to gain AP's cooperation but AP continued to challenge police and stand chest to chest with members. When Officer 3 told AP he was apprehended under the *Mental Health Act* and that he was required to go to hospital, AP continued to refuse.

Officer 3 was able to get one handcuff on AP's right wrist but AP then pulled his arms away. When Officer 3 tried to get control of AP's left wrist, AP forcefully tossed Officer 3 into the doorway toward the hallway. Officer 3 said the other two officers tried to manoeuvre AP to a position where Officer 3 could complete the handcuffing; however, it was a very confined space due to the narrow walkway.

Officer 3 reported that they were able to get AP onto his stomach without blows but once on the ground AP continued to resist being handcuffed. Eventually he was handcuffed and Officer 3 reported he could see AP's leg bent at an awkward angle.

Officer 3 reported that he immediately asked for an ambulance and AP was put in the recovery position. Another ambulance arrived and Officer 3 saw two doses of medication given to AP, the second about 10 minutes after the first and when the first had no apparent effect.

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 detention of AP. Had they done so, they may have committed assault causing bodily harm.

In this case, AP's mother sought the help of a mental health professional who in turn called the police. AP's mother did not believe that any of the officers appeared to injure her son intentionally.

Both AP's mother and CW 1 heard AP admit that he was having auditory hallucinations.

When Officer 3 arrived it was obvious to him that AP was suffering from a mental illness and pursuant to the provisions of the *Mental Health Act* could be apprehended and taken to a hospital.

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.

Officers 1, 2 and 3 were performing their duty by apprehending AP. AP's mother and CW 1 made no allegations that police acted inappropriately. AP made the allegations set out above; however, neither the statement of his mother nor of the mental health professional corroborate those allegations.

The evidence collected does not provide grounds to consider any charges against any Officer. Indeed, the evidence shows that Officers 1, 2 and 3 acted as required by their duties as police officers. Had AP cooperated with the requests of the officers no injury would have occurred.

It is important to note that the cooperation of Officer 3 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.



Clinton J. Sadlemyer, Q.C.
General Counsel

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Chief Civilian Director

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