



**IN THE MATTER OF THE SERIOUS INJURY OF A MALE
WHILE BEING APPREHENDED BY
MEMBERS OF THE RCMP IN
THE CITY OF SALMON ARM, BRITISH COLUMBIA
ON DECEMBER 28, 2015**

**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:

2016 - 188

Date of Release:

July 06, 2018

THIS PAGE INTENTIONALLY LEFT BLANK

Facts

On December 28, 2015, at approximately 5:30 p.m., the Affected Person (AP) was arrested by Officer 1. During the search of AP subsequent to that arrest and prior to placing him in the police vehicle, AP resisted, was taken to the ground, and suffered a fracture dislocation to his left knee. AP was released from custody to British Columbia Ambulance Services as a result of the injury.

The Independent Investigations Office (IIO) was notified by the RCMP eight and a half months later on September 15, 2016 when the injury to AP was brought to the attention of senior members of the RCMP. This was as result of a complaint made by AP to the Civilian Review and Complaints Commission for the RCMP made at that time. 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 three civilian witnesses;
- 2) Statements of six police officers;
- 3) CCTV from the emergency bay at the hospital;
- 4) CCTV from the RCMP detachment;
- 5) Emergency Health Services (EHS) records; and
- 6) 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 written statement to the IIO.

At approximately 5 p.m. on December 28, 2015, the RCMP was requested to attend the emergency room at a local hospital where AP was being discharged. Officer 3, who had interacted earlier with AP, advised Officer 1 and Officer 2 that AP was so intoxicated that he was a danger to himself.

Officers 1 and 2 arrived at approximately 5:30 p.m. Officer 1 arrested AP for public intoxication and led him to the ambulance bay where his police vehicle was parked. CW 1 saw AP walking unassisted out of the hospital with the police. When AP and Officers 1 and 2 arrived at the police vehicle AP was handcuffed and Officer 1 began to search him. This was consistent with policy for officer safety reasons.

A CCTV camera recorded the interaction between Officer 1 and AP. Officer 1 is shown to apply handcuffs and search AP. Officer 1 is then shown pushing AP against a wall and using his leg to sweep AP’s legs out from under him, causing him to fall to the ground. Officer 1 can be seen to prevent AP’s head from striking the ground during the leg sweep. AP’s right foot appears to catch against the wall, leaving AP’s weight on his left leg. As AP falls, his left lower leg is prevented from moving freely and results in the

knee bending against the joint movement. As the officers assist AP to the police vehicle his left knee appears to bend backwards.

AP does not recall the incident nor the interaction with police captured on CCTV. AP believed his knee was injured while he was in police cells; however, he could not say how that occurred. AP told the IIO that the police "...put me in the cell and must have leaned on me or something."

In his statement, Officer 1 reported that he believed AP "...was intoxicated to a level that he was unable to care for himself which would require him to be lodged in cells for his safety..." Officer 1 also reported that as he was performing the search, AP began to pull away. Officer 1 reported that he told AP that if he:

...was unable to complete the search of [AP's] person with him standing due to his resistance, [he] would place him on the ground.

Officer 1 also reported that after he took AP down, AP "...did not cry out in pain, or make any other audible or verbal indication that he sustained injury."

Officer 2 also can be seen in the CCTV capture of the incident; he told the IIO that:

...there was no resistance to the takedown...[and]...I thought it was fine, like I, I mean I'm a supervisor. It's my job to note if someone is doing something they shouldn't....[and] when I watched it [the CCTV] I was like, holy smokes, like your leg didn't turn. How do you, how do you not say something? Like he didn't say something.

After Officer 1 completed his search of AP, he and Officer 2 put AP into Officer 2's vehicle and transported him to the detachment. Once there, Officer 1 used a rolling chair (without restraining AP to it), to move AP to the cell area and into a cell. A civilian jail guard (CW 2) said that AP was "...very grossly intoxicated and they [Officers 1, 2, 4 and 5] actually didn't want him even walking so they used a chair." Officers 4 and 5 as well as CW 2 indicated that AP did not complain of an injured leg.

AP is first recorded as complaining of leg pain at 9:11 p.m. Officer 6 checked on AP at 9:14 p.m. and again at 10:11 p.m. Following the second check, EHS was requested and arrived at 10:21 p.m. AP was released from custody to EHS at 10:47 p.m.

Paramedic, CW 3, told the IIO that AP said his injury occurred when "...a cop leaned on me."

CCTV records from the Salmon Arm detachment for the period of the AP's detention were collected and reviewed. CCTV does not show any use of force by officers interacting with the AP.

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 took AP down. Had he done so, he may have committed assault causing bodily harm.

Officer 1 has a duty to search a detained person following arrest for AP's own safety as well as the safety of Officer 1 and other officers that might subsequently come into contact with him.

When AP began to pull away from Officer 1 the minimal use of force by Officer 1 is readily seen on the CCTV recording. Unfortunately AP's foot and leg got caught and did not move properly. This unintentionally caused injury to AP. Officer 1's lack of intent to cause injury is demonstrated by the care taken by Officer 1 in lowering AP to the ground to ensure AP's head did not strike the ground.

Once on the ground the search was completed and AP was assisted into the police vehicle. That AP did not cry out or react in any physical manner visible on the CCTV recording is further evidence that the Officers were not aware that AP had suffered serious injury.

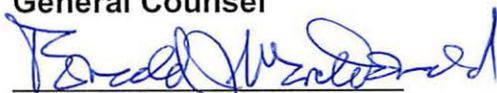
The CCTV recording confirms the force used in this incident was not excessive. Officer 1 acted as required by his duties and in accordance with the law. The evidence collected does not provide grounds to believe any officer may have committed an offence.

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

July 06, 2018
Date of Release



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

July 06, 2018
Date of Release