



**IN THE MATTER OF THE SERIOUS INJURY OF A MALE  
WHO WAS APPREHENDED BY A  
MEMBER OF THE RCMP IN  
THE CITY OF WILLIAMS LAKE, BRITISH COLUMBIA  
ON OCTOBER 28, 2016**

**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 - 216

Date of Release:

January 17, 2019

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## Facts

On Friday, October 28, 2016, at approximately 2:25 a.m., Officer 1, the subject officer in this incident, arrested the Affected Person (AP) for public intoxication and transported him to the RCMP detachment in Williams Lake where AP was booked in and lodged in a cell. Almost three hours later, AP became short of breath. AP was released from custody and Officer 1 gave AP a ride to the hospital and accompanied AP, who walked unassisted, to the triage area of the emergency department where medical personnel attended to him. AP stopped breathing shortly after and was resuscitated by medical staff; however, AP was then found to have a broken neck, an injured spinal cord and is now disabled and unable to walk.

The Independent Investigations Office (IIO) was notified by the RCMP later that morning. The IIO commenced an 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 four Civilian Witnesses (CW 1, 2, 3 and 4);
- 2) Statements of Officer 1 and Officer 2;
- 3) Statement of Jail Guard 1;
- 4) Statements of two Registered Nurses (RN 1) and (RN 2);
- 5) Opinions of two Doctors (Dr.1) and (Dr. 2);
- 6) CCTV from a retail store;
- 7) CCTV from a local restaurant (the Restaurant);
- 8) CCTV from the RCMP detachment; and
- 9) Medical records of AP.

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 or data. In this case the Subject Officer, Officer 1, provided a written statement to the IIO.

Medical records indicate AP suffered from a degenerative spinal condition for many years which caused the fusion of his spinal column and resulted in his spine changing from a “flexible chain” to a “fragile rod.” The records indicate AP is below average height and that shortly after arrival to hospital on the morning of October 28, 2016, AP had a blood alcohol concentration more than six times the provincial limit for driving.

On October 27, 2016, at 3:01 p.m. CCTV in a retail outlet shows AP as he moves about, unassisted by anyone. His gait is consistent with his spinal condition. CCTV from the police station shows his arrival at the police station on October 28, 2016, almost 12 hours later, walking with the same gait.

At 6:28 p.m. on October 27, 2016 police received a report that AP and a woman were at the hospital in Williams Lake and were intoxicated and causing a disturbance. Prior to

police arrival, AP and the woman departed in a taxi. There was no interaction with police at this time and the matter was marked as closed.

CW 1, an employee of a local restaurant near the bus station in Williams Lake (the Restaurant), said that around 9:15 p.m. on October 27, 2016, a person (CW 2) entered the Restaurant and requested that an ambulance be called. The reason given was that "*somebody got beat up*" out front. CW 1 checked and, although three people were seated outside, no one was seen to be fighting or in distress.

CCTV from the Restaurant was obtained and CW 2 was identified as speaking with CW 1 at approximately 9:22 p.m. CW 2 told police that, although they had not seen a fight, a man was noticed to be on the ground in a parking lot near the Restaurant and a woman was trying to help him up. CW 2 named the same woman who had been with AP at the hospital earlier.

CW 3 spoke with the IIO on October 28, 2016. CW 3 said that in the early hours of that morning he saw a man he didn't know (AP), lying in the fetal position on the pavement at the bottom of a staircase near the Restaurant. CW 3 said AP appeared to have been in a fight and had scars on his face along with what he believed to be a split lip.

CW 3 said AP was "*totally wet*" and was mumbling. CW 3 told AP that if he didn't get up he was, "*...going to get arrested...going to go to the drunk tank. Like, get up. I'll help.*" CW 3 said AP appeared to be extremely intoxicated "*alcohol poisoning type thing*" and that there were several beer bottles, beer cans and a "*mickey*" of vodka nearby.

CW 3 said AP asked for someone by first name (which investigation later showed was the name of a close relative of AP) and CW 3 attempted to help AP to get up but CW 3 could not get AP off the ground.

CW 3 left AP on the ground and told the IIO that not far away he saw an RCMP officer (Officer 1), who CW 3 described as "*tall,*" sitting in a marked police SUV working on his computer. CW 3 told Officer 1 about AP and said Officer 1 replied that police would check on AP. CW 3 departed the area.

A few days after CW 3's interview with the IIO, CW 3 told RCMP that when AP held out his hand to let CW 3 pull him onto his feet, AP:

*...didn't put any effort into it, he was deadweight, and as soon as I pulled on his arm he said 'No, I'm good, I'm good, have a good night man.'*

On November 29, 2016, Officer 2 interviewed AP in Kamloops where AP had been transferred for treatment. AP told Officer 2 that on the night he was arrested he had been in a fight with another man not far from the bus station in Williams Lake. AP told Officer 2 that the fight was over a woman. AP told Officer 2 that he had been punched, which caused injuries to the left and right sides of his head.

AP told Officer 2 that he was later taken into police custody for being drunk in public but would not comment on the police custody unless his lawyer was present.

AP gave a statement to the IIO on January 20, 2017. AP told the IIO that during the day and evening of October 27, 2016 he had been drinking with friends near the bus station in Williams Lake. AP said that sometime between 7:00 p.m. and 9:00 p.m., in the presence of several civilian witnesses and a second police officer, he was put into a "headlock" by a police officer for 30 to 45 seconds and during this time he heard his neck crack. AP believes that is how his neck was broken. AP told the IIO that he had not fallen or been in any fights with anyone prior to his physical encounter with the police officer on the night the injury occurred.

AP told the IIO that a female friend (not the same name as the woman who was earlier the subject of the complaint with AP at the hospital) was with him at a location near the bus station in Williams Lake that evening and that some of her friends came and went.

AP told the IIO that a close relative of his was with him that night and may have seen the arrest. The IIO later interviewed that close relative, and he denied seeing the incident. This relative had the same first name as the person AP asked for when CW 3 was dealing with him. AP also gave the first and last name of a male friend AP said had been with him for part of the evening. Despite considerable efforts, the IIO was unable to locate the male friend.

AP described the level of force used by the officer as, "*quite a bit of force because I felt like I was going to sleep.*" AP told the IIO the crack he heard to his neck felt like a regular neck crack that would occur if his neck was stiff. AP told the IIO that he did not feel any pain after the officer released his neck; he said "*...I felt okay...I didn't feel no pain at all.*"

AP described the officer who held him by the neck as "*short*" and that the officer was wearing a police uniform. AP said the same officer also handcuffed him behind his back; however, CCTV from the police station at 2:26 a.m. on October 28, 2016, shows AP's arrival at the station, handcuffed to the front and accompanied only by Officer 1. AP said the other officer who he described as "*the big guy*" drove back to the detachment.

AP made a number of claims about his treatment while in police custody, including that he wasn't thoroughly searched before he was put in the drunk tank, that he was not intoxicated, that there was someone else passed out in the drunk tank with him, and that he was not checked on. However, none of these claims are supported by the evidence. CCTV shows a methodical and non-aggressive search of AP's person by Officer 1, medical records indicate AP was highly intoxicated and cell CCTV shows AP was alone in his cell the entire time he was at the detachment and was checked on regularly. AP did say he slept for some time "*because of the alcohol,*" which was confirmed by CCTV evidence.

Although AP said he started to feel pain after about three hours and estimated it took 30 to 40 minutes from when he requested assistance until he was allowed to leave the cell, CCTV footage confirms that 15 minutes after AP requested assistance, he was leaving the detachment, unhandcuffed, with Officer 1 to be transported to hospital.



AP said that when they arrived at the hospital he got out of the car unassisted and walked to the sliding doors leading to the Emergency Department where AP said he got a little dizzy and fell. AP said the officers (he mistakenly believed there were two officers with him) were walking beside him and no one was holding him. AP told the IIO that his next memory is waking up in the Kamloops Hospital where he had been transferred.

Near the conclusion of his statement, AP asked the IIO Investigators whether, "...any of this sounds accurate to you or if I was dreaming now I but don't think I am but..."

On May 7, 2018, after more than a year of attempting to track down the male and female that AP told the IIO may have been present at the incident, IIO investigators again met with AP. AP told an IIO Investigator that he wasn't sure what time the incident occurred but it was after dark and a nearby retail store was still open (investigation has confirmed the retail store closed at 11:00 p.m. on October 27, 2016).

AP also told the investigator that the close relative he said may have witnessed the incident was also in police cells when AP was brought in, although the relative denies this. AP also said that the male friend that had been with him for part of the evening had different first and last names than he had previously told the IIO and the IIO ought to speak to that person.

Despite an extensive and thorough search, no one with the same name that AP provided for his female friend will admit to knowing AP or having been at or witness to the incident.

The IIO located AP's male friend, CW 4, the same day that AP provided his name. CW 4 told the IIO about an incident that occurred in May or June of 2016. CW 4 said he saw AP being arrested at about 7:30 p.m., near the bus station and before it was dark out.

CW 4 said that two uniformed police officers approached him, AP and about four others who were with them. CW 4 said one of the officers, who was about 5'7", grabbed AP around the neck in a chokehold and both fell to the ground and rolled down a slope.

CW 4 said the second officer threatened the others present that, "...if they step in they're going [to jail] next." CW 4 also told the IIO the officers moved the police car down to where AP was because AP couldn't move. CW 4 said the officers did not handcuff AP and forced him into their police vehicle and left the area.

CW 4 said he knew the names of the others present but declined to give their names. CW 4 said that he did not see AP until some months later when AP was in a wheelchair.

Jail Guard 1 (JG 1) was interviewed by the IIO and said Officer 1 brought AP into police cells at about 2:30 a.m. on October 28, 2016. JG 1 said Officer 1 conducted a search of AP. JG 1 said that during the search Officer 1 lifted the back of AP's shirt and JG 1 saw a bump on the side of AP's back, which is corroborated by CCTV footage. JG 1 said AP didn't know how he had gotten the bump and that he wasn't hurt.

JG 1 said AP was intoxicated but was a "model prisoner" and after Officer 1 placed AP in the drunk tank he sat down in the corner and went to sleep. JG 1 said about three hours

later AP banged on his cell door and he was holding his neck area. AP said he was having a hard time breathing. JG 1, following proper procedure summoned the Watch Commander and shortly after Officer 1 returned and AP was released.

Prior to being released, AP was photographed by JG 1. JG 1 said that AP was asked if he'd been in a fight and AP said he didn't know and that he wasn't feeling well.

CCTV from the detachment records the entire time that AP was in the detachment including Officer 1 and AP's arrival, AP moving from the police vehicle to the booking-in counter, and AP in his cell. No force was exerted upon AP who is seen moving without assistance. AP was not in a cell with anyone else.

Officer 1 provided a written statement to the IIO on June 13, 2018. Officer 1 reported that he was parked not far from the bus station in Williams Lake and was report writing on his police computer.

Officer 1 reported that CW 3 approached Officer 1 and related that a male (AP) was lying in the street by a Restaurant near to the bus depot. CW 3 related the attempt to help AP move and told Officer 1 that AP was too "*shit-faced to stand.*"

Officer 1 reported that he drove towards the bus station and saw AP "*stumbling*" toward the bus station. Officer 1 knew AP and asked if there was somewhere safe for him to go to which AP responded that "*it's all good.*" AP made his way to the bus station near where a small group of people were standing.

Officer 1 felt AP could not care for himself and arrested him for public intoxication. Officer 1 reported handcuffing AP in the front and assisting him into the rear seat of his police vehicle. AP complained to Officer 1 about his back.

At the detachment Officer 1 searched AP and noticed the "*lump*" on AP's lower back. JG 1 also observed the lump and pointed out that AP was wearing hospital issue socks. On the Detachment CCTV Officer 1 can be seen looking at AP's back and conversing with him.

Officer 1 reported being called back to cells at approximately 5:20 a.m. as AP had complained of having trouble breathing. Officer 1 reported that he released AP from cells and drove him to the hospital. During the drive and in reference to his throat, AP said that "*nothing has ever happened like this before.*" AP also asked Officer 1 if he (AP) was alone when he was "*picked up*" to which Officer 1 replied to AP that he was on his own.

Officer 1 reported arriving at the hospital at 5:30 a.m. and assisted AP by taking his arm while walking into the hospital. Once at triage, RN 1 had AP sit down at which time AP stopped breathing and had no pulse. A doctor supervised as AP was resuscitated.

RN 1 told the IIO that when AP arrived, only Officer 1 was with him. AP was seated in a chair at triage, said his throat was sore and then went limp. AP was placed onto a stretcher and his clothing removed. RN 1 noted AP's neck was swollen.

RN 1 also noticed that AP had a scratch on his forehead and abrasions below AP's kneecaps all of which appeared to have been healing for 12 to 24 hours and which looked to RN 1 to be more consistent with having been caused by a fall than an impact wound.

RN 1 said that all the medical professionals involved were familiar with AP's pre-existing spinal condition.

Medical records indicated that Dr. 1 had seen AP one week prior to the incident. Dr. 1 indicated that AP's neck was completely fused and that an X-Ray did not show a fracture to AP's neck.

Dr. 1 also reported that AP's alcohol level was quite high and suggested that AP may not have realized he was injured prior to arrival at the hospital.

Dr. 2's opinion contained in the medical records was that the fracture to AP's neck occurred prior to his arrival at hospital and AP was able to walk because, although his neck was broken, his spinal cord was not yet damaged. Dr. 2 also believed that AP's spinal cord was, "...likely damaged either when [AP] collapsed in the hospital, or during medical intervention in the hospital during CPR."

Dr. 2 said that with AP's condition there is a high risk of significant injury with a fall and it is not uncommon for someone with this condition to have a result like AP's from a fall on their own as it is not necessary for force to be applied to have this result.

### **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 arrested and detained AP. Had he done so, he may have committed aggravated assault.

In this case AP, who is below average height, described the officer whom he had said put him in the "headlock" as "short." CCTV from the police station shows Officer 1 is several inches taller than AP and it is highly unlikely that a person of AP's stature would suggest that Officer 1 was short.

AP's description of time of the incident and of there being two officers is inconsistent with the CCTV obtained from the RCMP detachment.



AP's perceptions of what occurred which are contained in his statements to the IIO are inconsistent with each other and inconsistent with the evidence collected. CW 4's description is also inconsistent with AP's statements regarding key points given by AP including the time of year, rolling down the hill, AP not being handcuffed and four identifiable witnesses being present.

The medical witnesses and records do not relate that AP mentioned anything about an officer injuring him that night. Witnesses that AP suggested were present did not agree they were present including a close family member who specifically denied being there.

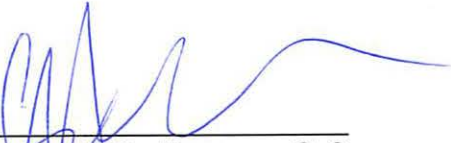
Additionally, CW 4's statement suggests that although there may have been an incident several months earlier when AP was put into a headlock that did not result in serious injury.

The investigation indicates that there were many opportunities for AP to have been injured before the encounter with the police that evening. Further, AP's medical condition was such that he could unfortunately suffer this injury with nothing more than a fall.

Finally, the CCTV from the police station does not suggest feelings of ill-will between Officer 1 and AP that might be expected had there been the earlier significant physical struggle that AP suggests occurred.

The totality of the evidence in this case does not provide grounds to consider that Officer 1, or any Officer, committed an offence in relation to AP. Officer 1 acted as required by his duties and in accordance with the law. The evidence collected does not provide grounds to consider any charges against any officer.


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.

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

January 17, 2019  
**Date of Release**

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

January 17, 2019  
**Date of Release**