



**IN THE MATTER OF THE SERIOUS INJURY OF A FEMALE
WHILE BEING APPREHENDED BY
A MEMBER OF THE RCMP IN
THE CITY OF KELOWNA, BRITISH COLUMBIA
ON FEBRUARY 28, 2018**

**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:

2018 - 038

Date of Release:

February 26, 2019

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Facts

On February 28, 2018, the Affected Person (AP) was arrested by Officer 1 in her residence. During the arrest, AP and Officer 1 fell to the floor with Officer 1 on top of AP. AP suffered a fracture to her right knee that required surgical intervention.

The Independent Investigations Office (IIO) was not notified by the RCMP and on March 26, 2018, AP contacted the IIO. AP also filed a written complaint with the RCMP on March 12, 2018. 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) Two statements of AP;
- 2) Statements of 6 Civilian Witnesses (CWs);
- 3) Statement of Officer 1;
- 4) Recording of Police Radio Transmissions;
- 5) Emergency Health Services (EHS) records;
- 6) Opinion of an orthopedic surgeon; and
- 7) 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 or data. In this case, however, the Subject Officer, Officer 1, provided a written statement to the IIO.

AP lives in a multi-unit residential building. She told the IIO that at 10:00 p.m. she lowered the volume of her music in accordance with the bylaw regulations and only her television was on. AP said she was exercising including running and jumping jacks.

At 10:42 p.m. on February 28, 2018, a complaint was made to Kelowna RCMP that AP was disturbing her neighbours in the building.

AP told the IIO that she heard knocking on her door and when she answered it was a uniformed police officer (Officer 1). AP said when she saw it was the police she told him to wait because she wanted to get her phone to record the conversation. AP said she got her phone and came back toward the door.

In her written complaint to the RCMP, AP alleged that Officer 1 used excessive force against her by “*foot sweeping her and causing her to fall.*” In a statement AP gave to the RCMP’s Professional Standards Investigator, AP said Officer 1 “*...burst into my room, did some sort of sweep at the back of my knee, broke my leg I ended up on the floor an’ he threw me in handcuffs.*” She also said Officer 1 “*...kicked the back of my...leg the back of my knee...[and] broke my knee cap.*”

AP told the IIO that as she came back toward the door and when she was about three feet away, Officer 1 "*stormed into my room...*" and kicked her behind her right knee which caused her to fall. AP told the IIO that the injury was from the kick because she did not fall on her right knee.

AP said Officer 1 turned her onto her stomach, handcuffed her and pulled her up to her feet using two hands on her left arm. AP said she fell as she could not stand because of her knee and was again pulled up and again fell. AP said she repeatedly asked for an ambulance; however, it was 15 minutes before Officer 1 called an ambulance for her. AP said she was very vocal because she was in a lot of pain.

AP said that less than five minutes passed from when Officer 1 knocked on her door until she was kicked. AP said Officer 1 never told her she was under arrest.

CW 1, the landlord of the building, told the IIO that he received noise complaints about AP including loud music, yelling and "*stomping around in her*" apartment. CW 1 said he contacted AP who told CW 1 to "*eff off*" and refused to lower the volume of the music as it wasn't after 10:00 p.m.

CW 1 said he waited until after 10:30 p.m. to call police as he hoped AP would quiet down at 10:00 p.m. but the complaints continued, and CW 1 called the police.

Officer 1 provided a written account of the incident to the IIO and said that at 10:42 p.m. (confirmed by police radio recordings) he was dispatched regarding a noise complaint. Officer 1 said he contacted CW 1 and was advised that there had been several complaints of loud music, jumping on the floor and the slamming of doors.

Officer 1 radioed at 10:46 p.m. to have EHS attend and stand by. EHS records confirm an ambulance was dispatched at 10:50 p.m.

Officer 1 radioed in at just before 10:57 p.m. that he had arrived at the building. Officer 1 told the IIO that he spoke with CWs 2, 3, 4 and 6 and was told that AP was "*banging on the walls, slamming doors, singing, yelling and listening to loud music in her apartment.*" Officer 1 said that after speaking with the civilian witnesses he went to AP's door and could hear loud banging, slamming doors and loud music coming from AP's apartment.

Officer 1 reported that he knocked on AP's door, but there was no response. Officer 1 said he continued to knock and announced that it was the police. After two minutes AP called through the door and asked, "*What do you want?*" Officer 1 reported he told AP he was there regarding noise complaints and AP replied that she "*didn't do anything wrong*" and to leave her alone.

Officer 1 reported he continued to knock and AP finally opened the door. Officer 1 reported that he introduced himself as a police officer and again told AP there had been a complaint about the noise. Officer 1 reported that AP said "*I turned the music off at 10*"

p.m. but Officer 1 could hear loud music coming from AP's television. Officer 1 said AP told him that it was her apartment and that she said, "[I] *can do whatever I want.*"

Officer 1 reported that he told AP that if she continued the disturbance she could be arrested. Officer 1 said he asked AP for her full name and AP repeated that she "*can do whatever I want*" and then tried to shut the door. Officer 1 reported he had his foot in her door and warned AP to stop trying to shut the door on his foot, at which point she turned and stepped back in her apartment. Officer 1 reported that he asked AP if she understood his warning that she could be arrested; however, AP said that she "*...won't stop [and] ...you are not going to fucking tell me what to do in my own apartment.*"

Officer 1 reported he believed AP would continue the disturbance and decided to arrest her. Officer 1 reported that AP came toward him, with her right arm extended with a phone in her hand, telling Officer 1 that she was recording with it. Officer 1 said he "*took a hold of [AP's] right arm, [and advised] her that she was under arrest for Breach of Peace.*"

Officer 1 said AP attempted to pull away by twisting her body to the left and her right foot got caught on her left leg which caused her to lose her balance and she fell onto her left side. Officer 1 said he was still holding on to AP's arm and he also fell to the floor. Officer 1 said he then handcuffed AP.

Officer 1 said that as soon as the handcuffs were on, AP began screaming "*you tackled me [and] you broke my knee [and] 911...call 911.*"

CW 2 said Officer 1 asked AP for her name through the closed door and she refused to give her name. CWs 2, 3 and 4 told the IIO that Officer 1 knocked several times before the AP answered. CW 2 said it was 10 minutes before AP opened the door. CW 4 and CW 5 both thought it was longer than that.

CW 2 heard Officer 1 tell AP that she was "*...under arrest for disturbance of the peace.*" CWs 3 and 4 also heard Officer 1 tell AP she was being arrested.

Officer 1 radioed for the ambulance to be sent in at 11:05 p.m.

CW 6 is a paramedic and recorded EHS arrival at AP's side at 11:08 p.m.

The IIO obtained a report from an orthopedic surgeon who reported that it is possible to cause an injury similar to AP's by being kicked to the ground at the knee; however, they also said that even "*seemingly trivial trauma*" could also be the cause. In the doctor's experience, a fall of "*a couple of feet*" could cause the same injury. Twisting would not be a likely cause of this type of injury.

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 hold of AP's arm and forcibly arrested her. Had he done so, he may have committed assault causing bodily harm.

In this case, both AP and Officer 1 say that AP fell to the floor almost immediately upon contact with Officer 1. AP reports she was facing Officer 1 and he kicked her at the back of her leg in a "*foot sweep*." Officer 1 reports that upon taking hold of AP's arm she turned away and tripped herself pulling them both to the floor. The orthopaedic surgeon reported that the injury to AP could be caused by either of those movements.

AP told the IIO that she was exercising in her apartment including running and jumping jacks and that only her television was on. The civilian witnesses and Officer 1 reported loud music from AP's television and that AP was "*stomping around*."

AP told the IIO that it was less than five minutes from the time Officer 1 knocked on her door until he "*kicked*" her.

Officer 1's transmission that he arrived at AP's apartment building was at approximately 10:57 p.m. His next transmission requesting that EHS personnel be sent in was approximately eight minutes later at 11:05 p.m.

AP told the IIO that Officer 1 waited 15 minutes after she was injured to call in the ambulance; however, EHS records show their arrival at AP's side three minutes after Officer 1's transmission asking that EHS be sent in.

Thus, the entire incident, from Officer 1 arriving at the building to the arrival of EHS was approximately 11 minutes meaning the time Officer 1 spent at AP's door and dealing with her was even less. AP's comments about time are not accurate.

AP's estimate of time from when Officer 1 knocked on her door until she was injured reflects that AP did not immediately answer her door and corroborates the civilian witnesses' assertion to that effect. Either AP heard the knocks and police announcement and refused to answer or had the television volume so loud that she couldn't hear his knocking.

The evidence is clear that AP was disturbing her neighbours. Officer 1's belief that she would continue to do so was well founded and based on AP's comments. Indeed, her behaviour throughout indicated that she did not wish to change her behaviour to accommodate the needs of others in the building. This therefore justified Officer 1's arrest of AP. She was interfering with the other tenants' lawful use and enjoyment of their property, thereby committing the offence of mischief.

AP claimed she was never told she was under arrest; however, civilian witnesses heard Officer 1 advise AP that he was arresting AP for the lesser infraction of disturbing the peace.

Officer 1 was acting in the course of his duties as a peace officer when he arrested AP. An officer is justified in doing what is required to perform his duties including using as much force as is necessary for that purpose. AP claims she was within her rights to do jumping jacks with her television turned up. She was not.

Officer 1 reported that AP pulled away, tripped and fell and brought both herself and Officer 1 to the floor. The orthopaedic surgeon's opinion is consistent with both AP and Officer 1's versions of events; however, Officer 1's statement to the IIO is also consistent with independently verifiable facts and with the civilian witnesses to the incident.

The evidence does not support the proposition that the force used by Officer 1 was excessive in the circumstances. 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.

There is, however, some issue regarding the lawfulness of Officer 1's entry into AP's apartment to effect the arrest. His actions up to that point were lawful: he knocked on the door, announced himself, and AP opened the door voluntarily. As a result, Officer 1 was entitled to stay in the doorway and have a conversation with AP. However, a question arises about whether he was entitled to make actual entry into her home without a warrant.

Officer 1 was in a difficult position: he was faced with a situation where AP was clearly causing a disturbance and impacting many residents of the building. She was being completely uncooperative: not only was she not turning down her loud television, she made it clear she intended to keep up her noise making.

It might be argued that nevertheless, even though AP was clearly committing an offence and intended to keep on doing so, Officer 1 should have left to obtain a warrant to permit his entry into AP's home.

On the other hand, at the time Officer 1 attempted the arrest it appears he was still in the door way. Even by AP's account she was only three feet from him when he moved to arrest her. Had AP been cooperative with Officer 1 he would not have entered the home. When Officer 1 took hold of AP's arm, she pulled away which resulted in Officer 1, being

pulled into the home, and both falling as noted. In these circumstances the fact Officer 1 wound up within AP's home does not impact that lawfulness of his actions.

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.

It should be noted that Officer 1 was aware, at a minimum, that AP complained she had suffered a serious injury; however, the incident was not reported to the IIO at the time it occurred. AP's complaint to the RCMP on March 12, 2018, also did not trigger a notification. The IIO became aware of the incident almost four weeks after the fact when AP herself reported it to the IIO. RCMP Command has been advised of this failure to report the incident to the IIO.



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