



**IN THE MATTER OF THE SERIOUS INJURY OF A MALE
WHILE BEING APPREHENDED BY MEMBERS OF THE
PORT MOODY POLICE DEPARTMENT IN
THE CITY OF PORT MOODY, BRITISH COLUMBIA
ON DECEMBER 23, 2017**

**DECISION OF THE CHIEF CIVILIAN DIRECTOR
OF THE INDEPENDENT INVESTIGATIONS OFFICE**

Chief Civilian Director:

Ronald J. MacDonald, Q.C.

IIO File Number:

2017-164

Date of Release:

April 24, 2019

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Introduction

Late in the evening of December 23, 2017, Port Moody police officers encountered three males they believed to be the subjects of a complaint police had received a few minutes earlier. Based on their observations, the officers concluded that one of the males, the Affected Person ("AP"), was too intoxicated to take care of himself and tried to persuade him to take a cab home. When he refused, he was placed under arrest, but resisted physically. In the ensuing struggle, the male hit his head and suffered a fractured vertebra. Since the injury was serious and had occurred in connection with the actions of police officers, it fell within the mandate of the Independent Investigations Office of BC ("IIO"). The IIO was notified and commenced an investigation.

Set out below is a summary of the IIO's factual findings based on evidence collected during the investigation, which included the following:

- statement of a civilian witness ("CW1", who was one of AP's companions);
- statements of three police Witness Officers ("WO1", "WO2" and "WO3");
- statements of two Professional Witnesses (attending paramedics "PW1" and "PW2");
- photographs and a forensic examination of the scene;
- closed-circuit television ("CCTV") recordings from Port Moody police facilities;
- audio recordings of interactions between AP and officers at the police station;
- police Computer Aided Dispatch ("CAD") and PRIME records for the material times;
- Mobile Data Terminal ("MDT") recordings from police vehicles;
- police policies on use of force, prisoner transport, jail care, and control and arrest;
- the Subject Officer's ("SO") training records; and
- medical records related to AP's injury.

Pursuant to section 17.4 of the Memorandum of Understanding between the IIO and BC Police Agencies, officers who are the subject of an investigation are not compelled to submit their notes, reports and data. In this case, the Subject Officer declined to provide IIO investigators with any written materials or to participate in an interview.

AP also declined to be interviewed by IIO investigators, though there is evidence of statements he made about the incident that night to paramedics. A Notice of Civil Claim

has been filed on his behalf, alleging unlawful arrest, assault and battery, unlawful imprisonment, malicious prosecution and breaches of a number of his rights under the *Charter of Rights and Freedoms*, as well as negligence and a failure to provide timely medical attention.

Evidence

The incident began when staff at a Port Moody pub called police complaining that AP and two male companions were intoxicated and acting aggressively, and that they were refusing to leave the establishment. Two officers (WO1 and WO2) responded, and found the three males on the street, walking away from the pub. They stopped the trio and talked with them. Shortly after, WO3 and SO arrived on scene.

On the evidence, the behaviour of the three males in response to police questioning, as well as their level of intoxication, spanned quite a wide range. CW1 was relatively sober and cooperative, and provided his ID upon request. AP and the third male were initially unwilling to provide their ID, but complied after some time, though both continued yelling angrily at the officers.

AP's friend CW1 characterized the behaviour of WO1 and WO2 at this point as "*very nice*" and "*professional*." He was asked by SO to control his companions, and said the officers just wanted to get the three friends into a cab to go home.

Because of the complaints police had received, WO1 would not allow the three to go drinking anywhere else that night, but AP was insisting that he was going to another pub. The third male left on foot to go home, but AP continued to shout loudly and aggressively at the officers. Both WO1 and WO2 concluded that AP was too intoxicated to be allowed to be out in public on his own. CW1 and WO1 flagged down a passing cab and tried to persuade AP to get in and go home, but he refused and started to walk away.

WO1 then told AP he was under arrest for being intoxicated in a public place. He reached for AP to effect the arrest, but AP resisted and became combative, raising and swinging his arms at WO1, and the two men started to struggle. SO then moved in and struck AP in the upper body, causing him to fall and hit his head on a lamp post. AP was still struggling on the ground as WO1, WO2 and SO restrained and handcuffed him. He was transported to Port Moody police station.

Upon arrival at 11:25 p.m., AP complained of neck pain, and at 11:42 p.m. police called for paramedics to attend. An ambulance arrived at the police station at 11:59 p.m. Paramedic 1 ("PW1") observed that AP was very aggressive and angry, and was repeatedly saying that "*the officer smashed his head.*" PW2 heard AP complain that police had used excessive force on him, and had "*slammed him into a pole.*"

AP was taken to hospital, where he was released from police custody. At the hospital he made further complaints, to the effect that "*police rode me into a pole,*" and "*could have killed me.*" He was sent home from the hospital in a neck brace, and X-rays subsequently indicated acute minimally displaced fractures of the C4 vertebra.

Relevant Legal Issues and Conclusion

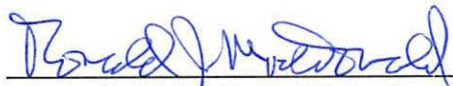
The purpose of any IIO investigation is to determine whether an officer, through an action or inaction, may have committed any offence in relation to the incident that led to the injury to AP. In this case, the question is whether SO may have committed the offence of assault causing bodily harm by striking AP and causing him to fall and hit his head, an action that appears to have been the cause of the fractures to his C4 vertebra.

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. The issue to be considered in this case, then, is whether SO may have used excessive force when he struck AP in response to AP's resistance to being arrested for public intoxication.

Authority for the arrest can be found either in section 74 of the the BC *Liquor Control and Licensing Act* or section 175 of the *Criminal Code*, both of which prohibit public intoxication. There was ample evidence to support a reasonable belief on the part of both WO1 and SO that AP could be arrested lawfully under those provisions.

Likewise, there is ample evidence that AP resisted that arrest and engaged in a struggle with WO1. The single blow to the body delivered by SO, in those circumstances, cannot be said to be unreasonable or excessive, as SO cannot reasonably be believed to have foreseen that AP, in going to the ground, would strike his head against a lamp post. The blow itself caused no injury, and the unfortunate consequences caused to AP by the subsequent accidental impact do not make the otherwise justifiable use of force unjustified.

On the evidence, the arrest of AP was lawful, and both WO1 and SO were acting as authorized by law. None of the involved officers used more force than was reasonably necessary for the purpose of the arrest. 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.

A handwritten signature in blue ink, appearing to read "Ronald J. MacDonald", is written over a horizontal line.

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

April 24, 2019

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