



**IN THE MATTER OF THE SERIOUS INJURY OF A MALE DURING HIS
ARREST BY RCMP MEMBERS IN PORT HARDY, BRITISH COLUMBIA
ON JANUARY 15, 2019**

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

Chief Civilian Director:

Ronald J. MacDonald, Q.C.

IIO File Number:

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April 2, 2019

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Introduction

On January 15, 2019, RCMP members went to a home in Port Hardy in response to a call from one of the residents alleging disruptive behaviour on the part of an intoxicated male, the Affected Person ("AP"). It was reported he had been yelling and throwing chairs. Two officers attended and were invited into the residence to talk to AP, who was also a resident in the home. Initially AP agreed to leave without incident but then began yelling again. An officer advised AP he was under arrest for breach of the peace. He was arrested and transported to Port Hardy RCMP detachment. While in custody in police cells, he complained of a sore ankle. He was seen at the hospital later the next morning, where he was advised he had a broken ankle that required surgery.

The Independent Investigations Office (IIO) was notified by the RCMP when the extent of the injury became apparent. As the injury to AP was within the definition of "*serious harm*" as defined in the *Police Act* and officers were involved, the IIO commenced an investigation.

The narrative set out below is based on evidence collected by IIO investigators, including the following:

- 1) statements of AP and four civilian witnesses;
- 2) statements of two police Witness Officers ("WO1" and "WO2");
- 3) notes and reports of the Subject Officer ("SO");
- 4) police computer-aided dispatch ("CAD") and PRIME reports; and
- 5) medical evidence.

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, or submit to IIO interview. In this case, the Subject Officer ("SO") declined to participate in an interview but agreed to provide investigators with his duty reports and notes.

Evidence

On January 15, 2019, RCMP officers were called to attend a residence in Port Hardy following a report of an intoxicated man throwing chairs and yelling at others within the property. They found AP in the home with a group of several other intoxicated people.

SO advised AP that he was under arrest for a breach of the peace, but according to witnesses in the room, AP continued to shout and swear loudly, and approached SO waving his arms. In his own report, SO said that AP's fists were clenched, and that AP pushed SO as he came up to him, so he took AP to the floor using an 'arm bar' and handcuffed him, telling him he was now under arrest for resisting arrest.

In his interview with IIO investigators, AP acknowledged having raised his arms in a manner that could have been "*called aggressiveness [sic]*," but "*it wasn't ... I don't know what I thought ... like I said, I was drunk.*"

Meanwhile, WO1 was dealing with another male outside, and was called by SO to assist with AP. He found SO on top of AP, with AP yelling profanities and struggling against being handcuffed. WO1 took a position between SO and the group of intoxicated individuals in the room, some of whom, WO1 said, were telling AP to cooperate. SO got AP to his feet and the two officers then walked AP out of the residence. AP was unsteady, but WO1 attributed this to intoxication rather than injury. Witnesses in the room said that AP did not appear to be injured when he left with police.

Once in cells, jail guards made regular checks on AP and noticed he was avoiding placing weight on his right foot. SO observed some swelling at AP's ankle, and gave him a mat and blanket for comfort. AP requested to see a doctor, but medical staff were not available at the local hospital until the morning. SO made advance arrangements for X-rays to be taken at the hospital as soon as staff were available, and instructions were left for the next police shift to take AP to the hospital for those tests.

WO2, starting his shift at 8:00 a.m., found AP sufficiently sober for release, and offered to take him to the hospital. AP at first agreed but changed his mind on the way and requested to be taken home instead, saying he would make his own way to hospital later. Later that morning, he was taken to hospital via ambulance from his home. He was diagnosed with a broken right ankle, which was subsequently repaired by surgery.

When AP was interviewed by IIO investigators, he turned his mind to when and how this injury might have occurred. *"From my apartment door to the front door, I was fine, my leg was fine"*, he said, *"and then from the entrance door to the cop car, that was all a black-out."* When he arrived at cells, he continued, *"I had a little limp in my leg"*. Later, he had woken up to find his leg *"throbbing, and I looked at it, and it was swelled right up."* He speculated that he had injured his ankle on the way to the police vehicle, or that SO might have closed the vehicle door on his ankle, but there is no evidence either to support or contradict that speculation. What is clear is that AP's only memory of a painful ankle was when he was in police cells, and there is no indication from witness accounts or cell block video that the injury occurred while AP was at the police detachment. The take down by SO is the only evidence of an incident which could have caused the injury.

Legal Analysis 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. In this case, the issue is not the amount or nature of the force used by SO, which appears to have been moderate, but whether the officer was acting lawfully in the execution of his duty in arresting AP, initially, for breach of the peace.

Authority for a police officer to arrest for breach of the peace is found in s. 31 of the *Criminal Code*, and in the common law. The *Code* provision is limited to situations where the officer actually witnesses the breach. Under the common law in British Columbia, though, an officer is authorized by virtue of his general peace-keeping powers to arrest for a breach of the peace he reasonably anticipates will otherwise occur.

Before police arrived, AP had been intoxicated and behaving in a manner that caused enough concern for another resident in the home to call the police. That behaviour appears to have moderated to some degree by the time SO entered the residence, but AP was still intoxicated and yelling, and moved towards the officer moments before the arrest in a manner that would likely have been interpreted as aggressive. It was not unreasonable for SO to conclude that if he simply left, AP's previous behaviour was likely to recur. In those circumstances, the arrest was lawful and there is no evidence that SO's use of force was other than justified and proportional.

Accordingly, as the Chief Civilian Director of the IIO, I do not consider that any officer may have committed an offence under any enactment and therefore the matter will not be referred to Crown counsel for consideration of charges.


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

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