



**IN THE MATTER OF THE SERIOUS INJURY OF A MALE
WHILE BEING APPREHENDED BY
MEMBERS OF THE RCMP IN THE TOWN OF
BELLA BELLA, BRITISH COLUMBIA
ON AUGUST 8, 2017**

**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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Introduction

On August 8, 2017, at approximately 7:30 p.m., the Affected Person (AP) was apprehended by Officer 1 (the Subject Officer) and Officer 2. During the apprehension, a physical struggle occurred, and AP suffered a fracture to his right knee.

The Independent Investigations Office (IIO) was not notified by the RCMP until August 16, 2017. 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) statement of AP
- 2) statements of six civilian witnesses (CWs);
- 3) statement of Officer 2;
- 4) scene photographs; and
- 5) 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, or submit their notes, reports or data. In this case, the Subject Officer, Officer 1, declined to provide a statement, notes, reports or data to the IIO.

AP told the IIO that he “*was pretty upset*” that day and was drinking heavily. AP said that he “*...blacked out...and came to at home.*” AP said he remembered walking up the stairs, going to his bedroom with his power saw and “*...I dumped some [gas from the saw] on the stairs on the way up, and on myself.*”

AP “*blacked out*” once again and his next memory was in the master bedroom; the police and firefighters were there. He said he asked to have a cigarette but “*...they wouldn’t allow me because they said it smelled like gas.*” AP recalled that he took a lighter out of his pocket and the “*cops and firefighters*” were surprised and the lighter was taken from him.

AP said his final recollection before his leg was hurt was that the police agreed to let him have a cigarette and he “*blacked out*” again. He said his next recollection was that he was “*face first on the...floor... screaming... [and telling Officer 1 that they] broke [his] leg. And they didn’t believe [him].*”

AP told the IIO that he “*blacked out*” from the pain and his next recollection was that:

...then cops were on me. I think there [were] two cops. One of them had their legs on my -- their knees on my leg and the other cop had one knee on my back and was forcing my arm up my back so he could cuff me...the next thing I remember, cops took me to the local hospital...

AP said he told the doctors his leg was broken. AP said he was kept overnight and received an x-ray the next morning. AP told the IIO that he was discharged with crutches and told that his leg was not broken; it was internally bruised. AP went home with a relative.

AP told the IIO that two days later the same relative took him back to the hospital and they sent him to a hospital in the lower mainland where he underwent surgery for a fracture to his right knee.

Six civilian witnesses were interviewed, who each saw a part of all of AP's interaction with Officers 1 and 2. A friend of AP's was told by AP that he intended to burn himself and his house down. The friend went to AP's residence and put out one fire in the back and another at the front of the residence. Another civilian witness also saw the fires AP lit and called two other witnesses to let them know what had occurred. A relative arrived and tried to talk with AP, who was very intoxicated and *"was in such a drunken rage that he wasn't listening to anybody."* AP told the relative to *"fuck off."*

AP's friend called the local fire service and advised that AP was suicidal and had doused himself along with the interior of his residence in gasoline. The fire service contacted the police, passed on the information received and went to AP's residence.

Upon arrival at AP's residence, the fire, which had been outside the house, had already been extinguished by the friend who first arrived after receiving the call from AP. Firefighters told the IIO that there was the smell of gasoline throughout the residence and a ventilation fan was retrieved from the fire hall and set up in the front door to vent the fumes from the house. Firefighters found AP asleep in an upstairs bedroom and took two cigarette lighters from the window sill.

Officers 1 and 2 arrived and spoke to AP who agreed to go with the officers and went down the stairs as the officers followed. They all went outside of the home. AP's friend told the IIO that to that point, the officers had not touched AP.

Once AP was outside, he requested a cigarette from Officer 2. Officer 2 declined, and witnesses reported seeing AP then try to run back into the house. Officers rushed after AP and detained him at the bottom of the stairs back in the residence. When officers caught AP at the stairs, he landed on top of Officer 2 and both officers struggled to get control of AP.

Witnesses then heard Officer 1 tell AP to cooperate and to put his hands behind his back but AP continued to resist:

...his arms wouldn't come out, so he hit him, I think it was three times...in that same area where [AP] broke his leg...and then they were able to handcuff [him].

Witnesses said Officer 1 “*stomped*” or “*kicked*” on AP’s leg and he began yelling “*you broke my leg.*”

The account of Officer 2 largely corroborates the witnesses’ accounts. Officer 1 and Officer 2 were both on duty and were dispatched to AP’s residence. Officer 2 told the IIO that a police radio broadcast referred to a suicidal male (AP) lighting his house on fire. Officer 2 considered this to be a high-risk call. On arrival at AP’s residence, things seemed to be under control and Officer 2’s risk assessment was somewhat reduced.

Officer 2 said that, on arrival to AP’s residence, AP’s relative came up to Officer 2 and advised that AP had tried to commit suicide by lighting the house on fire and that he needed to get help. Following this conversation, Officer 2 went upstairs to where AP was.

Officer 2 told the IIO that the information received from the relative, along with the earlier police radio broadcast, informed their decision to apprehend AP pursuant to the *Mental Health Act*.

Officer 2 told the IIO that there was an odour of gasoline in the house and asked AP if he had any matches or lighters. AP handed a lighter to Officer 1. AP also produced a package of cigarettes and handed them to Officer 2.

Officer 2 said that after a brief discussion AP agreed to accompany Officers 1 and 2 down the stairs and out of the residence. Officer 2 said the risk assessment at that time was moderate and “*...we’re all pleasantly walking down the stairs without any incident.*”

Officer 2 told the IIO that the intention at the time was for AP to voluntarily go with them to the hospital because:

...sometimes if you tell people they’re apprehended [pursuant to the Mental Health Act] ...it can cause an escalation of behavior...if you can get the person somehow cooperatively to go to the hospital without any issues, then that’s the goal.

Once outside, AP asked for a cigarette and before Officer 2 could reply, AP said, “*fuck you*” and bolted back into the house. Officer 2 told the IIO that because AP had attempted to burn himself and his house and that the residence was “*engulfed with gasoline fumes*” AP was presenting as a high risk as:

...it appeared he was going back to try and kill himself, potentially taking [his relative], firefighters, Officer 1 and myself with him.

Officer 2 ran after AP, as did Officer 1. AP stumbled near the stairs. Officer 2 got AP into a headlock and they landed hard on the stairs. Officer 2 told the IIO “*my left elbow hit so hard I thought it might have been broken.*” Officer 2 said both he and Officer 1 tried to restrain AP, but they were initially unable to get control of him.

Officer 2 said that during the struggle, AP was told several times to stop resisting.

Officer 2 said when AP went to the ground he pulled his arms under his body and resisted being handcuffed. Officer 2 said that AP's resistance to the officers' attempt to control him indicated that he was "very goal oriented" and Officer 2 believed that goal was to kill himself and potentially kill or injure anyone there.

Officer 2 could not tell whether AP had anything in his hands, specifically another lighter. Officer 2 said there was "an overwhelming smell of gasoline [and]...I wanted to get out of that potentially explosive, dangerous confined space." Officer 2 said AP's left arm was eventually pulled out and brought behind his back.

Officer 2 said that during the struggle:

...out of the corner of my eye I saw [Officer 1's] leg come up and then go back down...I saw motions like that about three times [and] I heard what sounded like an impact once. I did not see any strike hit [AP] because I was focused on his upper body and the view of his lower body was impeded because I was so close...

Officer 2 said that moments later Officer 1 pulled AP's right arm out and together they were able to handcuff AP behind his back. Officer 2 said that AP:

...needed to be taken into custody to prevent him from killing himself and others and needed to be taken to the hospital for mental health assessment.

Officer 2 said they advised AP he was apprehended pursuant to the *Mental Health Act* and then took AP to the hospital. AP's clothes were removed by hospital staff because they smelled strongly of gasoline.

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 kicked and/or stomped AP's leg. Had he done so, he may have committed assault causing bodily harm.

By all accounts, AP was suicidal and had been acting in a manner that could cause serious harm to himself or others and was thereby subject to apprehension pursuant to the provisions of the *Mental Health Act*. Officer 2 intended to have AP voluntarily attend the hospital rather than a formal apprehension under the *Mental Health Act*, but due to AP's subsequent resistance, AP was apprehended and taken to hospital.

Officers 1 and 2 had a duty to get AP to the hospital once either of them concluded that he ought to be apprehended pursuant to the *Mental Health Act*. Officer 2 had made that conclusion following the conversation with one of the witnesses. The plan to have AP attend the hospital voluntarily was not contrary to law and is, in fact, a reasonable way to proceed as AP had appeared cooperative until he ran back into the house where he had earlier spilled gasoline.

AP posed a serious threat when he re-entered the house due to the known gasoline spilled in the house and because officers could not guarantee there were no other methods to start a fire remaining in the house, such as an additional lighter. Officers 1 and 2 acted appropriately when they prevented him from going further back into the house.

When AP was stopped and was struggling with the officers, he refused to bring his hands out from under his body. Officers were not certain if he may have had a weapon or another lighter in his possession. AP's clothes had gasoline on them; there was gasoline spilled inside the house and AP had already lit two fires. Officers knew that AP was suicidal.

It would have been impossible for the officers to know whether AP had another lighter or any other source of ignition on his person or somewhere else in the house. Indeed, a witness had earlier located two lighters in AP's bedroom.

Officers 1 and 2 acted in accordance with their duties and brought AP under control. CW 2 believed that if AP had lit a lighter, there would have been a high risk of a large fire breaking out, possibly even an explosion due to the suspected quantity of gasoline spilled. There were people in the house and the risk of injury or death by the ignition of the gas fumes was a real threat.

Officer 2 was underneath AP for at least part of the interaction and Officer 1 struck AP and stopped striking when they were able to stop the threat that AP had created by keeping his hands under him. Once AP's hands were securely handcuffed behind his back, the threat was under control.

The force used in this incident was not excessive. The evidence is consistent with Officer 1 taking actions to prevent serious injury or death to all persons in the house at the time. He acted as required by his duties and in accordance with the law. The facts do not provide grounds to consider any charges against any officer.

Apart from natural concerns raised about the incident that led to AP's injury, and about the injury itself, some community members questioned the manner in which AP was

physically taken from the home by police. Seven civilian witnesses observed these police actions and were asked by IIO investigators about them. Several mentioned that AP was either unable or unwilling to stand up or walk after being restrained, because of his injury, and was struggling and swearing continuously. He and the officers were in a house where AP had created an extremely hazardous situation, with flammable materials and explosive fumes that firefighters were actively attempting to clear. On the evidence of the eyewitnesses, the two officers simply carried AP by his arms away from this imminent danger and placed him on the ground near the police vehicle to await the expected ambulance. No eyewitness said anything to suggest that AP was "dropped" or otherwise placed roughly on the ground. In the circumstances, given the danger of fire in the house, the inability or unwillingness of AP to stand or walk and his continued non-compliance, nothing the officers did, as reported to the IIO by the civilian eyewitnesses, could be said to be unreasonable, unnecessary or excessive.

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.

Officers involved herein became aware of the serious injury suffered by AP within days and did not immediately report the incident to the IIO. The IIO was not advised until eight days after the incident. RCMP Command has been advised of the delayed report.


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

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