



**IN THE MATTER OF THE SERIOUS HARM OF A MALE
DURING AN INTERACTION WITH MEMBERS OF THE
RCMP IN SALMON ARM, BRITISH COLUMBIA
ON MAY 17, 2018**

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

Chief Civilian Director:

Ronald J. MacDonald, Q.C.

IIO File Number:

2019-073

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Introduction

The IIO received a call from a male, the Affected Person ("AP") in this case, on April 25, 2019, regarding an incident that he said had occurred on May 16, 2018. The message left by AP alleged that he had been in Salmon Arm on the roof of a house in a standoff with the RCMP. He alleged that they sprayed him with a hose which made him fall and break something in his foot and caused many other problems.

The IIO commenced its investigation as the injury described by AP may have been within the definition of "serious harm" as defined in the *Police Act* and officers were present.

The narrative that follows is based on evidence collected and analyzed during the investigation, including the following:

- statement of AP;
- two Civilian Witness statements;
- four Witness Officer statements;
- medical records;
- Emergency Health Services (EHS) record;
- scene photographs;
- 911 call and radio transmission recordings; and
- Police Records Information Management Environment ("PRIME") records.

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, Subject Officer ("SO1") declined an interview.

Narrative

Some time before the incident which AP reported to the IIO, he disclosed he had jumped out of a two or three storey building in Alberta. At the hospital it had been determined he had a heel fracture. AP told the IIO that following this earlier incident, he decided to drive to B.C. to hand himself in to police as he was aware of outstanding warrants against him. AP stated he drove to Vernon with his broken foot and admitted he had not slept for days due to consuming illegal substances.

The IIO investigation determined that the incident complained of actually occurred on May 17, 2018. At approximately 3:00 p.m., AP had a tire puncture in Enderby, BC. Emergency Health Services (EHS) and police were called due to APs unusual behaviour being witnessed by civilians. AP was making claims people were after him and he had to get to the police.

EHS arrived at 3:25 p.m. and noted AP's paranoid behavior and left foot heel fracture. Police attended but did not arrest AP as he needed medical attention at the hospital. EHS arrived at Salmon Arm Hospital at 5:07 p.m.

At the hospital, AP stated that he recognized staff from previous dealings and thought they were out to get him. He stated that as the police officer was not with him at the hospital, he considered that he was not under arrest, and left. He left in just shorts and a t-shirt and one sandal on his healthy foot. He went to the houses opposite the front of the hospital.

About an hour after leaving the hospital, AP reached a property on 8th Avenue in Salmon Arm, and tapped on the door, screaming for help and for someone to call police. The owner of the house, Civilian Witness 1 ("CW1"), told the IIO that she saw a male in her back-garden shouting to call the police. This made her lock the doors. She then became aware of AP climbing onto her shed and heard him on her roof.

CW1 went out of the house and told AP to get down, as he was ripping off roof tiles and throwing them down.

Witness Officers 1 and 2 (WO1, WO2) attended in plain clothes but with police marked vests; Witness Officer 3 (WO3) arrived in uniform and a marked police car. AP did not believe they were real officers. AP stated that the bad guys after him would pretend to be police and as the officers did not show a badge when he asked, he refused to believe them.

WO1 and WO3 asked AP to come down from the roof. WO2 told AP he was under arrest for mischief and was being detained under the *Mental Health Act*.

Officers stated that AP continued to throw roof tiles, and not believe they were real officers. Officers said AP seemed agitated and continued screaming for help.

Emergency Response Team (ERT) members were training nearby and offered assistance with less-lethal weapon options. Three ERT members attended and attempted to coax AP down. The local fire department also attended but AP did not believe either service was real.

Two ladders were put up to the roof to help AP get down, but AP remained on the roof holding the shingles he had ripped off, like weapons. AP demanded food, and a sandwich and drink were placed in the gutter. AP went down to the food but then turned around and returned to the top of the roof.

AP's family was contacted and arrived at approximately 9:00 p.m. to try and coax AP down. The family was also unsuccessful and left the scene at approximately 10:00 p.m. The fire department also left, leaving the two ladders to help in getting AP down.

At approximately 10:20 p.m., a crisis negotiator was contacted, and the situation was explained. The negotiator explained that if AP had taken an illegal substance just before police contact, the effects would soon be wearing off. It was also suggested that a garden hose could be used to make AP wet and uncomfortable in an effort to get him down.

At approximately 11:30 p.m. a new plan was devised for all officers to leave the scene apart from ERT members who would maintain visual contact. It was hoped that with no one else on scene AP would climb down the ladders.

ERT informed all that it appeared AP was falling asleep by the chimney. An officer was instructed to drive by with sirens to wake AP up; this was successful several times, but AP would just fall asleep again.

Officers stated they now feared for AP's safety and it was determined that the garden hose option should be used. The Subject Officer (SO) climbed the ladder and used his thumb to make a spray. Due to low pressure, he climbed to the top of the ladder to reach AP. Another officer was holding the ladder at the base. AP threw a ladder he had pulled up onto the roof toward the officers. It hit SO's ladder and nearly knocked him off.

SO told AP he would continue spraying until AP came down. AP eventually said he was coming down as he was getting cold. He started to climb down but then went back up the roof and ripped off the satellite dish and threw it down. SO continued to spray, and as AP started to climb down again, he slipped and fell, landing astride the handrail on the side steps of the house. The bottom post of the handrail broke with the force of the impact, and AP landed on the ground.

AP was arrested and was taken to hospital by EHS. He was subsequently transported to a larger hospital for further medical treatment, where it was determined he had suffered injuries to his groin area which required medical treatment. AP was also diagnosed with a fractured heel, but it was determined this was not a new injury.

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 of AP. If the officers were acting as required or authorized by law, on reasonable grounds, they were justified in using as much force as was necessary. Use of unauthorized or excessive force, on the other hand, could result in criminal liability.

The use of force in this case was indirect: a spray of cold water onto AP from a garden hose, which also had the unavoidable effect of wetting the roof around him. The tactic was intended simply to keep AP awake (so he would not fall from the ridge of the roof) and uncomfortable (so he would agree to climb down). It is clear from the evidence that it was not intended to result in AP slipping and falling, although that was the unfortunate consequence.

The evidence shows that AP single-handedly created the situation that eventually led to his injury. The responding police officers cannot be held responsible for the ultimate failure of their well-meaning efforts to bring him down safely. They deployed considerable resources in trying to bring the incident to a peaceful conclusion. Importantly, the police displayed commendable patience and restraint in the face of AP's stubbornness and dangerous behaviour, which included assaulting an officer.

Based on the facts of this case, AP needed to be taken down from the roof, both because he was committing an offence while he was up there, and, more importantly, he was in danger of falling asleep and then falling from the roof, potentially hurting himself seriously. Putting an officer on the roof to force him down would have put AP and the officer at risk. The use of the hose was a very reasonable alternative option, which had an unintended result.

It cannot be said that any of the officer's actions in the course of the incident were unjustified or unreasonable, or that any use of force was excessive in the circumstances.

Accordingly, as the Chief Civilian Director of the IIO, I do not consider there are reasonable grounds to believe that an officer committed an offence under any enactment. Therefore the matter will not be referred to Crown counsel for consideration of charges.


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

December 4, 2019
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