



**IN THE MATTER OF THE INJURY OF A FEMALE
WHILE BEING APPREHENDED BY MEMBERS OF THE RCMP
IN THE CITY OF NANAIMO, BRITISH COLUMBIA
ON MARCH 18, 2020**

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

Chief Civilian Director:

Ronald J. MacDonald, Q.C.

IIO File Number:

2020-088

Date of Release:

October 6, 2020

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Introduction

On March 18, 2020, the Affected Person ('AP') was apprehended under the *Mental Health Act* by Nanaimo RCMP members. AP was resistive and non-compliant, and was taken to the ground by the Subject Officer ('SO'). AP was transported to hospital and was subsequently found to have a broken leg. The Independent Investigations Office ('IIO') was not notified of the incident until May 10, 2020, and at that point commenced an investigation. The narrative that follows is based on evidence collected and analyzed during the investigation, including the following:

- statements of AP, five civilian witnesses and one witness police officer;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- 911 call recording;
- police radio dispatch channel recordings;
- an incident report from Island Health; and
- medical evidence.

The IIO does not compel officers who are the subject of an investigation to submit their notes, reports and data. In this case, SO did not provide any evidence to the IIO.

Narrative

AP told IIO investigators that on the morning of March 18, 2020, she had a difficult conversation with staff at a residential facility run by the Vancouver Island Mental Health Society, where she lived. AP said she "wasn't very happy with the conversation", and "things were escalating in my brain".

Civilian Witness 1 ('CW1') said that AP was in "a visibly upset state". CW2 said that facility staff attempted to calm AP down, but AP became more angry and verbally threatening as time passed, and it was decided to call the RCMP non-emergency line. The call included the information that AP was "behaving quite impulsively" and, according to CW2, that she was "voicing suicidal ideation".

The Witness Officer ('WO') attended to the home in response to the call. WO told investigators that staff reported AP had been making "suicidal comments", and said she felt "there was more than sufficient grounds for a mental health apprehension". Witnesses said that WO tried to engage AP calmly in conversation, but AP continually backed away and went down into the building's basement. AP told investigators that she had been alright talking to WO, but did not want to go to the hospital with her.

Shortly after this, AP was seen to have left the building, and was sitting on a bench outside in the parking lot, smoking a cigarette. WO called for a back-up officer. AP told investigators that when she saw SO arrive, she felt scared and moved away around WO's police vehicle: "I wasn't trying to flee, I was scared for my life". WO said that AP ran around the vehicle with the two officers chasing her in opposite directions. SO reached AP first, and civilian witnesses described SO grabbing AP and trying to apply handcuffs. AP acknowledged that she was "trying everything to avoid it ... struggling a little". She said that SO was talking to her, but it was "going in one ear and out the other".

CW2 described AP as "quite combative at that point ... not cooperating with being restrained". Both officers were trying to hold AP by the arms, but AP was "pulling her arms away and flailing her arms trying to pull out of their grip". CW2 said that SO then took AP to the ground with one leg in front of her and his upper body behind her. Both officers then re-engaged, handcuffing AP. CW2's opinion, as someone who had "seen lots of people taken to the ground", was that "it looked like an appropriate take-down ... a supported fall, not a push". CW2 said that at no point did either officer use any other force, such as blows or kicks, on AP. WO's recollection was that AP was already on the ground when WO first made physical contact.

AP told investigators that she had already been suffering with leg pain and did not initially think she had been injured. When she was asked to stand up though, she said, she realized something was wrong. CW2 said that AP was complaining while still on the ground that her leg had been injured and that it hurt. CW2 said that the officers were telling AP to calm down, and that they were going to take her to the hospital. The officers helped AP into a police vehicle, where she began hitting her head against the panel in front of her until CW2 told her to stop. CW3 described AP "hopping" and not putting weight on her injured leg as she was taken to the police vehicle. He said she was repeatedly complaining that the officers had broken her leg.

WO said that AP was transported to hospital, where SO obtained a wheelchair and wheeled AP over to hospital staff. CW2 said that when she arrived at the hospital she saw AP being taken inside as police were leaving.

At the hospital, AP was found to have a broken leg ("a comminuted medial tibial plateau fracture with a gap at the articular surface"). The injury was surgically repaired using a plate and screws.

On May 2, 2020, AP made a complaint to the RCMP. In response, police requested and obtained the relevant medical records. The records indicated that the injury was sufficiently serious that it met the threshold for IIO jurisdiction, and accordingly the RCMP notified the IIO on May 10, 2020.

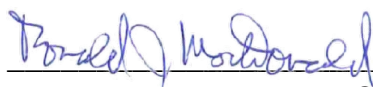
Legal Issues and Conclusion

The purpose of any IIO investigation is to determine whether there are reasonable grounds to believe that an officer, through an action or inaction, may have committed any offence in relation to an incident resulting in serious harm or death. More specifically, the issue to be considered in this case is whether SO may have used unjustified, unnecessary or excessive force in the course of AP's apprehension.

The *Mental Health Act* contains a provision authorizing a police officer to apprehend and detain a person if satisfied that the person "is acting in a manner likely to endanger that person's own safety or the safety of others, and is apparently a person with a mental disorder". Those grounds may be formed on the basis of "information received", but the officer must also consider evidence gained from his or her own observations. In this case, the officers were acting on information that AP, a person suffering from a mental disorder, was behaving impulsively, was angry and verbally threatening, and had been talking about suicide. Their own observations would have been consistent with those reports, and would have confirmed that they were justified in using necessary and reasonable force to take AP into their custody and transport her to hospital for an evaluation.

A significant amount of effort went into unsuccessful attempts at negotiation and persuasion before AP made it necessary to apply physical force to restrain her. By her own admission and on the evidence of civilian eyewitnesses, AP was resistant and non-compliant when SO, assisted by WO, attempted to handcuff her, making it necessary for SO to take her down to the ground. It is unfortunate that AP's leg was injured in that manoeuvre, but there is no indication that SO used unnecessary or excessive force at any point. Indeed, based on the evidence of the civilian witness it seems clear that the move to the ground was well within the bounds of what was reasonable in the circumstances.

Accordingly, as the Chief Civilian Director of the IIO, I do not consider that there are reasonable grounds to believe 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.



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

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