



**IN THE MATTER OF THE INJURY OF A MALE
OCCURRING IN OR NEAR CHEMAINUS
IN AUGUST 2020,
AND A SUBSEQUENT COMPLAINT AGAINST
A MEMBER OF THE RCMP**

**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 February 4, 2021, the IIO received a complaint, forwarded from the Civilian Review and Complaints Commission for the RCMP ('CRCC') via the RCMP, that on August 19, 2020, the Affected Person ('AP') had suffered serious harm during an incident in Chemainus involving RCMP members. Accordingly, the IIO commenced an investigation. The narrative that follows is based on evidence collected and analyzed during the investigation, including the following:

- statements of AP, nine civilian witnesses (including four paramedics) and three witness police officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- recordings of 911 calls and police radio transmissions;
- records of the complaint to the CRCC; and
- medical evidence, including Emergency Health Services records and the statement of a medical witness.

The IIO does not compel officers who are the subject of an investigation to submit their notes, reports and data. In this case, the Subject Officer has not provided any evidence to the IIO.

NARRATIVE

The CRCC complaint was not made by AP directly, but by AP's mother, Civilian Witness 1 ('CW1'). The incident about which she complained occurred on one of a series of troubled days AP had experienced in August 2020, at the end of which he was found to be suffering from an injury to his stomach. The evidence collected and analyzed by IIO investigators concerns events spanning from August 19 to 21, 2020, and reveals the following chronology:

- At 6:45 p.m. on August 19, police received two 911 calls from Civilian Witness 2 ('CW2') reporting that AP had been making suicidal comments. Officers were dispatched to look for AP. They were made aware that AP was currently facing charges of assault and attempted assault, had a record for firearms offences, uttering threats and criminal harassment, had made previous suicide threats and had spent time in a psychiatric ward, and were also told by CW2 that although AP

was under a court ordered no-alcohol condition, he was “drunk”. She added that AP had access to a firearm.

- Meanwhile, AP was sitting on a bench outside a grocery store in Chemainus, engaged in conversation with Civilian Witness 3 (‘CW3’).
- CW3 later told IIO investigators that AP complained about the produce manager in the store, and told her he was going to kill himself. She said AP confronted an unidentified male over a comment the male had made in passing, and said that the male punched AP in the face or head and knocked him to the ground. CW3 told investigators that AP started crying and she consoled him.
- At about 7:50 p.m., the Subject Officer (‘SO’) and Witness Officer 1 (‘WO1’) located AP and approached him. CW3 told them that AP had told her he had a very specific suicide plan, and the officers concluded they had grounds to apprehend him under the *Mental Health Act* (‘the Act’) and take him to hospital for a psychiatric evaluation. In the course of the apprehension, AP resisted the officers and it is alleged that SO used excessive force against him:
 - AP told the IIO that he did not want to go with police, but they grabbed him and took him down onto the ground, face down. He said the officers were having trouble getting him handcuffed, and the female officer (SO) kicked him “too hard”. He also said he had been “stomped” by SO. He said he was not sure where he had been kicked, but thought it might have been his left side. He said he was also hit two or three times in the chest while handcuffed when he resisted getting into the police car.
 - CW3 told IIO investigators that the attending officers appeared calm and polite, and told AP they were concerned he was going to hurt himself. She said that when AP refused to go with police, the officers took him to the ground “very quickly”. CW3 said that SO held AP down with her knee on the side of his neck or face. She said that the male officer (WO1) got a cuff on AP’s right wrist but SO was having trouble getting AP’s left arm out from under his body, and kned him in his left side. In response, CW3 said, AP asked, “Is that all you’ve got?” and SO kned him again, harder. The officers were then able to handcuff AP and put him in the back of a police vehicle. CW3 said that in the process, WO1 slammed the car door on AP’s leg. She said she asked the officers if AP was a violent criminal, and they said that he was.
 - In his IIO interview, WO1 recalled that it appeared to him that AP was having “a rough day”. He said that when the officers told AP he had to come with

them because he was being apprehended under the *Act*, AP refused, and WO1 tried to reason with him. He said that when he took AP's arm, AP pulled away. WO1 described AP as resistant rather than assaultive. He said he took AP to the ground with a leg sweep. He said that SO took control of AP's left side, and between them they were able to get AP into handcuffs and into the police vehicle despite his continuing resistance. He said that at one point, AP laughed at the officers, saying they were not strong enough to get control of his arms. WO1 said that AP was not punched, kneed or kicked, and only saw SO control AP by placing weight on his shoulder. He said AP did not complain about any pain or injury.

- At about 8:15 p.m., AP arrived at the hospital and was examined by medical staff. He was certified under the *Act* and kept overnight.
 - AP stated to the IIO that he told the doctors and nurses about his stomach pain on that occasion, but then acknowledged that he may not have done so.
 - There is no report in hospital records of any complaint about physical injury, or of any chest or abdominal pain.
- Later that day, CW3 said, she had a conversation with AP's mother, CW1, telling her about the incident.
- The next morning, August 20, at 10:01 a.m., AP was de-certified and discharged from hospital.
 - Again, there is no record of any complaint to medical personnel at that time about any pain or injury.
- AP was asked about events following his discharge from hospital, but stated that he did not remember: "My memory is a little bit foggy".
- At about 2:00 p.m. that day, AP met with his mother, CW1, who later stated that AP had complained to her on that occasion that his stomach hurt.
- At 6:10 p.m., CW1 called 911 to say that AP had passed out after deliberately overdosing in front of her on Diazepam washed down with a bottle of gin. EHS paramedics attended, but summoned police because AP refused to go to hospital with them and had locked himself in CW1's car.
- Three officers, including SO, arrived to assist, but AP refused to have anything to do with SO. By 6:47 p.m., officers and paramedics had managed to convince AP to go with them, and he was taken to hospital.

- CW1 later alleged that during that attendance, SO admitted “booting” AP twice “in the side and the ribs and the stomach” during the incident on the previous day. CW1 stated further that two paramedics and a police officer heard that admission. CW1 also said that SO threatened to arrest her for obstruction when she tried to prevent AP from being apprehended again.
 - WO2 was present throughout police attendance on this occasion, and said that he could tell CW1 was “frustrated”, “upset” and “emotional” about the previous day’s incident, but said he did not recall specifics of what was said between CW1 and SO.
 - WO3 arrived near the end of the incident, and could only recall that SO seemed to be having a “civil” conversation with CW1.
 - CW4, a paramedic, was also interviewed by the IIO. CW4 recalled the incident, and described CW1 appearing “very distressed” and “hyped up”, interfering with and obstructing attempts to treat AP and ask him questions. CW4 said that it was necessary to take CW1 off to one side to permit AP to be evaluated by the other paramedic. CW4 said that when SO arrived on scene, CW1 became “verbally abusive” towards her, accusing her of injuring AP the night before. CW4 said SO responded that she was not on duty the night before, so had not been involved in arresting AP. CW4 said that AP told her he had been arrested the previous night, and complained of a bruised elbow, but not about any pain in his chest or abdomen.
 - CW5, the second paramedic, was involved in convincing AP to go to hospital in the ambulance or risk being apprehended again by police, and did not recall the conversation between CW1 and the attending officers.
- By 7:30 p.m., AP was being treated at the hospital for his deliberate overdose.
 - As on the previous day, there is no record of him complaining to medical personnel of any pain or injury to his chest or abdomen.
- At about 9:09 p.m., despite staff wanting to keep AP overnight for observation, he refused to stay and left the hospital.
- The next morning, August 21, at about 10:53 a.m., AP was found unconscious on the ground outside a Duncan restaurant after witnesses observed him apparently injecting heroin. Again, there was a call to 911, and a shelter support worker performed artificial respiration (‘rescue breaths’) on AP, as well as administering Narcan/Naloxone. IIO investigators have determined from witness interviews that no chest compressions were administered at this time.

- At 10:58 a.m., EHS responders arrived and AP was further treated with Narcan, oxygen and 'bag-valve-mask' artificial respiration.
- At 11:16 a.m., the ambulance arrived at the hospital, and a written report notes that upon arrival, AP was "screaming out in pain and clutching his abdomen".
- A urine drug screen showed positive for amphetamines, methamphetamines, benzodiazepines, oxazepam, cannabinoid, opioids and fentanyl.
- Emergency surgery was carried out that afternoon, and AP was found to have a 5 cm tear in his stomach, which was repaired.
- In her CRCC complaint on behalf of AP, CW1 writes that the surgeon told her that it would have taken "a heavy blow" to cause the injury, and that the blow must have happened within the previous thirty hours. Another physician who was involved with AP's care, in response to questions from IIO investigators, gave a time frame for survival from a perforated stomach (before the onset of "overwhelming sepsis") as approximately three days.
- Upon discharge from hospital, September 9, 2020, AP went to recuperate at the home of CW3, the witness he had met on August 19 on the bench outside a Chemainus grocery store.

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 excessive force in the course of apprehending AP on August 19, 2020, and whether her actions may have caused the serious harm subsequently complained of by AP.

Both SO and WO1 were acting in lawful execution of their duty in responding to the initial 911 calls about AP. The information they were given provided ample grounds for AP's apprehension under the *Mental Health Act*, and they were justified in applying necessary and reasonable force in the process.

The evidence regarding that application of force comes from the following sources:

- AP, who has described it variously as having been "kicked" or "stomped";
- CW3, who said that SO "kneed" AP twice;

- CW1, who states that SO admitted having kicked AP (though no police or paramedic witness present at the time recalls hearing that admission, and it would seem odd that in the midst of an emotional confrontation, an officer would calmly make such an inflammatory admission); and
- WO1, who states that he saw SO put weight on AP's shoulder, and did not see any kick or knee strike (as noted, SO has not provided an account to the IIO).

On the evidence as a whole, it appears likely that SO, in the course of struggling to subdue AP (who has acknowledged he was resisting and mocking the officers for not being able to control him), may have done more than simply hold her knee on his shoulder, and may have applied a knee strike, or two, to his torso. This would be a fairly standard application of force by an officer aiming to gain control over a resistant subject's arms and hands for the purpose of handcuffing, and would not generally be viewed as an application of excessive force in most circumstances.

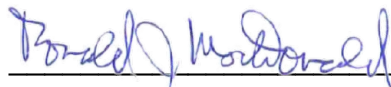
Having said that, if there were compelling evidence establishing that the force used was so great that it caused an injury of the sort with which AP was later diagnosed, that evidence could potentially lead to a conclusion that the force was excessive.

In that respect, however, the evidence is inconclusive. By AP's account, the injury occurred during his apprehension on August 19 at about 7:50 p.m. The first complaint to any medical personnel, throughout the course of repeated interactions over the following days, was on August 21 at about 11:16 a.m., close to forty hours later. According to AP's CRCC complaint, the surgeon who operated on AP opined that the injury would have been caused by trauma within the previous thirty hours, and the medical opinion provided to the IIO is that the onset of death from sepsis would be expected within 72 hours. It seems unlikely that AP would not have been compelled to seek medical assistance earlier than he did, had the injury been caused by SO during the apprehension on August 19.

It is also significant that AP appears to have been experiencing a particularly turbulent period in his life at the material time. CW3, an individual apparently sympathetic to AP, acknowledged having been witness, during the short time she was with AP, to his engaging in an apparently pointless confrontation with a stranger and seeing him punched in the head as a result. AP, apparently, has no more than a "foggy" memory of the morning of August 20, after which CW1 says he started complaining (for the first time) of stomach pain, nor of that night or the following morning when he was found lying unconscious on the ground and resuscitated.

Despite the existence of both an allegation and a documented injury, the evidence available simply does not establish a causal connection between the two. Neither does it establish to the requisite standard that SO used excessive force against AP.

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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