



**IN THE MATTER OF THE INJURY OF A MALE  
WHILE BEING APPREHENDED BY MEMBERS OF THE RCMP  
IN THE VILLAGE OF BURNS LAKE, BRITISH COLUMBIA  
ON AUGUST 27, 2020**

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

Chief Civilian Director:	Ronald J. MacDonald, Q.C.
IIO File Number:	2020-218
<u>Date of Release:</u>	<u>May 10, 2021</u>

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## **INTRODUCTION**

On the afternoon of August 27, 2020, the Affected Person ('AP') was arrested by two members of the RCMP after a traffic stop. The Subject Officer ('SO') took AP to the ground after a verbal altercation and AP suffered a broken arm. The Independent Investigations Office ('IIO') was notified and commenced an investigation. The narrative that follows is based on evidence collected and analyzed during the investigation, including the following:

- statements of AP, one other civilian witness, two paramedics and one witness police officer;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- recordings of police radio transmissions;
- photographic evidence;
- 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 permitted access to his duty report and also provided a further brief emailed statement.

## **NARRATIVE**

### **Civilian Witnesses**

AP told IIO investigators that on August 27, 2020, he was driving home when he saw a police vehicle behind him with its emergency lights flashing. He said he pulled over and SO pulled up in front of him, with the Witness Officer ('WO') pulling up behind him. He said that when he exited his pickup truck, SO was "yelling and screaming" at him. SO, he said, told him he was not supposed to be driving.

SO tried to handcuff him, AP said, despite being told by AP that he had injuries to his shoulders. AP said that SO forced his hands behind his back, and he felt his arm break. He said that SO did not tell him at any point that he was under arrest. He said that he was not taken down to the ground during the interaction.

He said he was taken by WO to hospital and then got a ride home. He was diagnosed with a broken bone in his left elbow. He was subsequently charged with driving while prohibited and assaulting a police officer.

A Civilian Witness ('CW') observed the incident. She told IIO investigators that she saw SO immediately exit his police vehicle, screaming and swearing at AP. She said she saw

AP get out of his truck and then lost sight of him behind it. She said she heard SO say “I’m going to punch you in the face in three seconds”, and said he then started counting, with AP saying “I can’t”. She next saw AP when he and the two involved police officers were getting up after some sort of scuffle on the ground.

One of the attending paramedics told the IIO that at the hospital he overheard AP telling a doctor that he “got in a fight with a cop and lost”.

### **Witness Police Officer**

WO told the IIO that at about 4:50 p.m. that day, she saw AP drive away from the Royal Canadian Legion. She said she knew AP was a prohibited driver, so decided to conduct a traffic stop and potential impaired driving investigation. At about 5:03 p.m., police records indicate that she and SO had AP pulled over off the side of the highway, and began to “run the truck’s plates”.

She said that she saw SO approach AP’s truck speaking “in a direct and reasonable way”. AP suddenly opened the driver’s door, she said, hitting SO in the chest. She said she then heard yelling between SO and AP, who were behaving “like two bulls”. She said AP was facing the bed of his pickup truck when SO placed his left hand on AP’s right shoulder. AP turned, twisting, she continued, and SO took him down to the ground by pulling down on the back of his head or neck. AP, she said, fell on both his elbows and SO fell on top of him.

WO said she exited her police vehicle when she saw AP strike SO with the truck door. She said it was only six to eight steps to where SO and AP were now struggling on the ground. She said that the officers were ordering AP to give them his hands, and he was responding “I can’t” and “my shoulder”, but he was successfully handcuffed after SO told him he would use a CEW on him otherwise.

### **Subject Officer**

In his written PRIME report, SO states that when he pulled in front of AP on the side of the highway, he approached AP’s truck and told him he was under arrest for driving while prohibited, but AP refused to get out of the vehicle. He says that when AP did exit the vehicle he refused to permit SO to handcuff him, pushed SO in the chest with one hand and raised the other in a fist. The pair started to struggle, SO says, and he saw AP apparently reaching into the bed of the truck, possibly intending to grab a weapon of some sort. Accordingly, SO says, he threw AP “very hard to the ground” using a “hip pivoting manoeuvre”.

SO states that WO then came to assist and the two officers struggled with AP for a time before SO was able to pull AP's left arm behind his back, at which point "[AP] did yell out in pain". As he held AP down, SO says, he drew his "CEW" (Conducted Energy Weapon, or 'Taser') and threatened to use it. AP, he says, then stopped resisting.

## **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 committed an assault offence by using unnecessary or excessive force against AP in the course of his arrest. Both involved officers were acting in lawful execution of their duty in apprehending AP after seeing him committing the offence of driving while prohibited. They were justified in using force for that purpose if necessary.

On AP's account, SO may have used excessive force in pulling AP's arm behind his back and breaking it after being warned by AP that he had injuries that would create a risk of further damage from the manoeuvre. The difficulty with AP's account, though, is that it is not consistent with any other evidence, either from the involved officers or, importantly, from an uninvolved civilian witness. While AP says that his arm was broken by SO as he stood beside his truck, all other witnesses describe some sort of struggle that took place on the ground, and AP denies ever going down to the ground.

A reasonable conclusion from the evidence is that, while WO remained in her police vehicle in a calm manner, logging the traffic stop and checking police records for any outstanding concerns, SO approached AP's truck in a rather precipitous and apparently angry manner, and AP immediately responded in kind. AP alleges SO was immediately yelling and screaming; CW describes SO screaming, swearing and threatening; and WO, while saying SO's approach was initially reasonable, acknowledges that he and AP were soon acting "like two bulls".

It is also reasonable to conclude that AP, for his part, immediately acted with anger and defiance to SO's approach, and the evidence shows that AP was either resistive or actually assaultive during the interaction. While it appears as though SO's approach unnecessarily provoked or inflamed AP's emotions, as a matter of law that provocation is not a defence to assaulting a police officer.

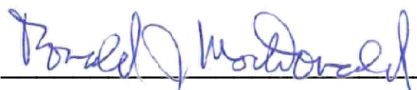
Finally, the most reasonable conclusion from the evidence as a whole is that, to deal with AP's physical resistance, SO took AP down onto the ground quite hard. The fall appears to have been face forward and probably onto one or both elbows as WO reported, causing the fractured bone that AP suffered. It is unfortunate that the incident escalated to a

physical struggle as quickly as it did, but it cannot be said that the force used by either officer in bringing AP under control was excessive, once it had. Taking someone to the ground when they are actively resisting arrest allows police a better opportunity to control the person.

One may wonder how the matter would have proceeded if SO had simply approached AP in a calm and professional manner. Unfortunately that did not occur.

In sum, AP was apparently driving illegally, giving SO the right to arrest him in these circumstances. While SO's attitude may well have inflamed AP, at law that did not give justification to AP to resist the arrest or possibly assault the officer. However, AP's actions did permit the police to use additional force to control AP once he acted out in that fashion.

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. While the conduct does not justify a referral to the Crown, the matter has been referred to the Professional Responsibility branch of the RCMP for their consideration of SO's attitude and conduct during his dealings with AP.

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

May 10, 2021  
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