



**IN THE MATTER OF THE INJURY OF A FEMALE
WHILE BEING APPREHENDED BY MEMBERS OF THE RCMP
IN KELOWNA, BRITISH COLUMBIA
ON APRIL 26, 2022**

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

Chief Civilian Director:

Ronald J. MacDonald, KC

IIO File Number:

2022-181

Date of Release:

August 10, 2023

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INTRODUCTION

On July 19, 2022, the RCMP notified the Independent Investigations Office ('IIO') of an incident that had occurred earlier in the year. The matter had not been referred at the time because police were not aware that the injury involved was serious enough to meet the IIO's jurisdictional threshold. The incident occurred when officers were in the process of apprehending the Affected Person ('AP') under the *Mental Health Act*. Once the IIO was notified, it commenced an investigation. The narrative that follows is based on evidence collected and analyzed during the investigation, including the following:

- statements of AP, a civilian eyewitness and a witness police officer;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- scene photographs; 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, the Subject Officer has not provided any account to the IIO.

NARRATIVE

On the afternoon of April 26, 2022, AP's doctor issued a Form 21 under the *Mental Health Act*, directing the RCMP to apprehend AP and bring her to hospital. Police were told that AP was suffering from the effects of a brain injury, and that she often becomes combative and belligerent.

Interviewed later by the IIO, AP recalled her mother answering the door to two police officers, a man and a woman. She said they told her they needed to take her to the hospital, but she was scared and did not want to go. She acknowledged deliberately sliding down onto the floor as they tried to take her by the arms, but they lifted her up. Later, she found that the arm the female officer had been holding was injured. A bone was broken and she had to wear a brace for almost three months.

AP's mother, Civilian Witness 1 ('CW1') told investigators that the male officer arrived first. He had "a piece of paper" (the Form 21) saying AP had to go to her doctor, but AP was "crying and screaming" that she would not go. CW1 said the male officer tried for about fifteen to twenty minutes to persuade AP, without success, before a female officer arrived to assist. CW1 said that AP slid down off the recliner where she was sitting, and

the two officers lifted her back up by her arms. The female officer was on AP's left side. CW1 said the officers did not appear to realize that AP's arm was broken. Although AP complained of pain to CW1, this was not in English. CW1 learned later, after AP was in hospital, that AP's arm was broken.

The female officer involved was designated as a Subject Officer ('SO') by the IIO because the arm she held when the two officers lifted AP was the arm that was injured. SO was permitted to decline to give any account to investigators, and provided neither written nor oral evidence.

The male officer was designated as a Witness Officer ('WO') and answered investigator's questions at an IIO interview about the incident. WO said that AP's mother warned him, upon his arrival, that AP would not go with him willingly. He said that when he advised AP there was an order for her to be returned to the hospital, she refused. He said that he tried for about twenty minutes to persuade her to come, but she yelled and screamed and continued to refuse. WO said that CW1 spoke to her daughter in Arabic, apparently trying to change her mind.

WO said he then decided to call for another officer to assist, and SO responded. In the meantime, WO said, AP continued to yell at him, telling him to get out of the house. He said he told her that if she would cooperate, he would try to find some other transport for her, other than a police car. He said that when SO arrived, he explained to her that they would have to use force to apprehend AP, and would need to place her in handcuffs. He said SO tried to speak with AP, but AP yelled over her and would not listen.

WO said that he took hold of AP by her right arm and wrist, while SO took her left arm. He said AP was physically resisting, pulling her arms back, and the officers had difficulty gaining control. He said AP was dropping her weight while they tried to hold onto her, and AP was "a larger lady so the weight was heavy when she dropped". WO also noted that there was a significant height difference between himself and SO, who was much shorter than him, which created further difficulty in holding AP steady.

WO said he was able to get a handcuff onto AP's right wrist, but SO was having difficulty controlling the left arm, as AP was still resisting and trying to drop down. He said he was trying to speak with AP to calm her, but she continued to scream at the officers. Once both cuffs were on, he said, AP finally quietened down and stood normally, bearing her own weight.

WO said that, once at the hospital, AP complained that her arm hurt, so he advised the triage nurse accordingly. He said he then called CW1 to let her know her daughter had arrived at the hospital, and that she should call the hospital if she had any concerns.

AP's medical records note that upon admission she was "yelling and screaming, refusing care". She was subsequently diagnosed with an "obliquely oriented minimally comminuted midshaft fracture of the left humerus with mild displacement and angulation".

On July 13, 2022, Kelowna RCMP received a letter from legal counsel for AP, complaining that "the female officer" (SO) had been 'overly aggressive' during the apprehension of AP. In turn, now that the RCMP were aware of an allegation of serious injury caused by an officer, they notified the IIO.

LEGAL ISSUES AND CONCLUSION

The Independent Investigations Office of British Columbia has been given the task of investigating any incident that occurs in the province in which an Affected Person has died or suffered serious physical harm and there appears to be a connection to the actions (or sometimes inaction) of police. The aim is to provide assurance to the public that when the investigation is complete, they can trust the IIO's conclusions, because the investigation was conducted by an independent, unbiased, civilian-led agency.

In the majority of cases, those conclusions are presented in a public report such as this one, which completes the IIO's mandate by explaining to the public what happened in the incident and how the Affected Person came to suffer harm. Such reports are generally intended to enhance public confidence in the police and in the justice system as a whole through a transparent and impartial evaluation of the incident and the police role in it.

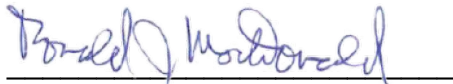
In a smaller number of cases, the evidence gathered may give the Chief Civilian Director ('CCD') reasonable grounds to believe that an officer has committed an offence in connection with the incident. In such a case, the *Police Act* gives the CCD authority to refer the file to Crown counsel for consideration of charges.

In a case such as this one, involving the use of force by officers, one of the threads of the IIO investigation will be the gathering of evidence about potential justifications for that use of force. The CCD will then apply legal tests such as necessity, proportionality and reasonableness to reach conclusions as to whether officers' actions were lawful, or whether either officer may have committed the offence of assault.

Both involved officers were acting in lawful execution of their duty in apprehending AP, pursuant to an order under the *Mental Health Act*. Both were justified in using necessary and reasonable force to do so. There is no evidence giving rise to concerns that either of the two officers used unnecessary or excessive force. WO, who had been at the residence the longest, had clearly made significant efforts to persuade AP to come along with him peacefully.

It is abundantly clear that AP was adamantly refusing to cooperate with the officers' lawful demands, and immediately became physically resistant when they tried to lift her from her seat. The primary cause of her subsequent injury was that resistance, which included dropping her weight while her arms were being held. Neither of the two officers can be blamed for that. AP may now be alleging that SO was "overly aggressive", but that assertion did not form part of the account she gave the IIO.

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, KC
Chief Civilian Director

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