



**IN THE MATTER OF THE INJURY OF A MALE
WHILE BEING APPREHENDED BY MEMBERS OF THE RCMP
IN ALDERGROVE, BRITISH COLUMBIA
ON NOVEMBER 28, 2022**

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

Chief Civilian Director:

Ronald J. MacDonald, KC

IIO File Number:

2022-314

Date of Release:

June 15, 2023

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INTRODUCTION

On the morning of November 28, 2022, police received a call from staff at a community centre in Aldergrove requesting a welfare check on the Affected Person ('AP'), who had been at the centre acting strangely. Later the same day, there was a report that AP had stolen a hockey jersey from a memorial display at the centre. Officers attended, and AP was arrested in a parking lot after being found in possession of the jersey. He suffered a broken leg during the arrest, so 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, two other civilian witnesses, a first responder and two witness police officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- audio recordings of a 911 call and police radio transmissions;
- BC Emergency Health Services records and a video recording showing ambulance arrival at the scene; and
- medical evidence with respect to AP's injury.

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

NARRATIVE

Affected Person

AP gave IIO investigators an account of how his leg was broken. He said that two police officers came up behind him in a parking lot behind the Aldergrove Community Policing Office. A female officer, AP said, struck him in the back of his left leg with a retractable "pole", causing him to fall to the ground, where he was handcuffed. AP said that neither officer told him he was under arrest, and he was not given any commands or warnings. He said he told the officers that he was "a barrister ... an attorney" (he is not). They called an ambulance, and he was transported to hospital where he was found to have a fractured tibia.

Civilian Witnesses

Civilian Witness 1 ('CW1') told IIO investigators that on the morning of the day in question, AP entered the community centre and spent just a few minutes there. After he left, staff discovered that he had taken a hockey jersey from a memorial case and had thrown it into the garbage. The jersey was restored to its proper place and the decision was made that if AP returned, he should be issued a suspension from the centre. Staff also made a report to police on the non-emergency line.

Later that day, said CW1, AP returned to the centre and removed the jersey again, this time attempting to leave with it. CW1 said that staff were aware that police had been called again and were on their way, and as AP was becoming aggressive, they let him walk away towards his nearby residence, still in possession of the stolen jersey.

CW1 said that two RCMP members arrived and spoke with AP outside in a parking lot. She said AP told the officers "multiple times" that he was a barrister and "could not be touched". Ordered to give back the jersey, she said, AP refused, and "kind of lunged towards" the male officer, who took him to the ground. The female officer and a civilian bystander ('CW2') assisted in controlling AP on the ground, and when AP complained of leg pain, an ambulance was summoned.

CW2 gave a similar account. In written exchanges, he told IIO investigators that he saw SO take AP down onto the ground, and said he helped by controlling AP's legs as he struggled against police. CW2 said AP was yelling and swearing and complaining that his leg was broken. CW2 stated that he did not see a baton or any similar item displayed or used by an officer at any point in the incident, and did not hear any officer threaten to use one.

CW2 had earlier given a statement to police. In it, he described AP as "resisting" when SO took hold of him to effect the arrest, and said that AP was "non-compliant and struggling" while being handcuffed.

Witness Officer

A Witness Officer ('WO') told the IIO that upon arrival at the scene, she saw a group of people, and a male matching the description of the male suspect. She said she remembered that a jersey had been involved and saw that AP had one in his hand. SO asked, "Is that the jersey?" and the response from AP was "yes". SO told him he was under arrest, said WO, and AP "became, like, aggressive", and "squared off" against SO. WO described SO reaching out to take AP's left arm to put him in cuffs, and said that AP pulled away, so SO executed an "arm bar" take-down. She said that AP was bigger than both officers, so was able to resist effectively once on the ground. For some time, they

could not get his arms behind him, and even then could not immediately get the cuffs on him. Once he was finally secured, she said, he yelled obscenities at them, told them repeatedly that he was a barrister, and complained that his leg hurt.

Medical Evidence

AP's medical records state that he had suffered "left tibial plateau and proximal fibular fractures". He was advised by multiple orthopedic surgeons to have surgery, but refused.

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.

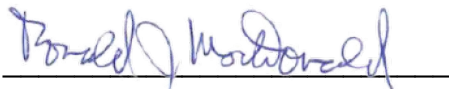
In a case such as this one, involving the use of force by an officer, one of the threads of the IIO investigation will be the gathering of evidence about potential justifications for that use of force. The CCD will then apply legal tests such as necessity, proportionality and reasonableness to reach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

The responding officers were acting in lawful execution of their duty in placing AP under arrest. They had received a complaint of a theft, and their observations at the scene provided reasonable grounds to believe that AP was the alleged thief. AP's immediate resistance justified the use of necessary and proportionate force to effect the arrest (it is of some significance that the evidence of witnesses was that AP was considerably larger, physically, than either police officer). It is not generally unreasonable for police to put a

non-compliant subject onto the ground for handcuffing, and there is no suggestion that the arm bar technique described amounted to an inappropriate use of force in the circumstances.

The injury AP suffered is typically associated with an impact onto a hard surface, so most likely was a result of AP's knee striking the ground as he was taken down. Nevertheless, no witness suggests that SO used excessive force in his handling of AP, and AP's allegation of having been struck in the leg with a baton by another officer—unsupported by any other evidence—is simply not credible.

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

June 15, 2023

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