



**IN THE MATTER OF THE INJURY OF A MALE  
WHILE BEING APPREHENDED BY MEMBERS OF THE  
RCMP IN DUNCAN, BRITISH COLUMBIA  
ON DECEMBER 3, 2022**

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

Interim Chief Civilian Director:

Sandra J. Hentzen

IIO File Number:

2022-321

Date of Release:

September 18, 2024

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## INTRODUCTION

On the evening of December 3, 2022, RCMP members were conducting an impaired driving check stop on Vancouver Island. In the course of their investigation of a vehicle driven by the Affected Person ('AP'), there was an altercation that ended with the AP being pulled out of the vehicle by several officers. The AP was taken to the ground and suffered an injury to his left 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 two witness police officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- Watchguard police dash camera video;
- audio recordings of police radio transmissions; and
- ambulance service records.

## NARRATIVE

This IIO investigation has been adversely impacted by a lack of cooperation on the part of the AP and failures by the involved RCMP officers to abide by their statutory duty to cooperate with IIO investigators.

The AP, as a civilian, has no legal or moral duty to assist IIO investigators with their work, and chose not to do so. Because of that, the investigative file does not include information from the AP's hospital records detailing his injuries. Also, the lack of an account from the AP's perspective has prevented the IIO from determining with any confidence which of the several involved officers appears to have caused those injuries.

The IIO has traditionally 'designated' such an officer as a 'subject officer' and has accorded 'subject officers' special privileges, such as permission to decline to give an account to investigators. All other involved officers are usually designated as 'witness officers', and are required by their duties under the *Police Act* to cooperate fully with the IIO, including providing written notes and statements and attending for interview.

In this case, all the involved officers initially refused to provide their written notes or reports to the IIO until they had been formally 'designated'. That refusal to cooperate caused significant difficulty and delay in the investigation, in circumstances where there was very little evidence other than that of the officers themselves about which police actions had caused the harm under investigation. Eventually, four 'subject officers' were identified, and those officers continued to decline to provide any account of their uses of force that may have injured the AP, but the IIO was eventually able to access SO1's duty report on PRIME. Two witness officers were identified and gave their accounts.

Based on the available evidence, what follows is a reconstruction of how the unfortunate events unfolded.

At 10:10 p.m. on December 3, 2022, the AP pulled up to a police check stop on the Island Highway north of Duncan. He was alone in his vehicle. Questioned by Subject Officer 1 ('SO1'), the AP acknowledged having consumed a glass of wine earlier that evening. He was directed to drive over to one side for further investigation, and did so. The incident from that point is captured on dash camera footage from a police vehicle SO1 had parked a short distance behind the AP's vehicle, but the officer failed to activate his microphone while he was dealing with the AP, so no audio of the interaction was recorded.

At roadside, the AP was read a demand for a breath sample into a screening device and was asked to step out of his vehicle for the test to be administered. The AP refused to leave the vehicle and told the officers to give him the test while sitting in the driver's seat (police will generally not permit this, as it is preferable for the test to be conducted in front of a police vehicle so it can be recorded on video).

After about five minutes of repeated demands, refusals and discussions, the police dash camera recording shows SO1 putting on his gloves. The AP was told he was under arrest for obstruction. SO1 opened the driver's door and reached inside. There was resistance from the AP, and SO2 joined SO1 in attempting to pull the AP out of the vehicle, which can be seen in the dash camera video rocking from side to side.

Witness Officer 1 ('WO1'), a superior officer, told the IIO that he heard a radio call for assistance as he sat in a police vehicle nearby. He went towards what he described as "a commotion" at the driver's door of the AP's vehicle. He found officers trying to extract the AP, who was clinging to the steering wheel with both hands.

A second Witness Officer, WO2, opened the passenger door and reached inside. He told investigators that he considered using a Conducted Energy Weapon ('CEW' or 'Taser') against the AP, but said he did not feel the circumstances justified it. Instead, he took the keys from the ignition, for safety reasons.

WO1 then went into the vehicle from the passenger side, and pushed the AP, telling him, "It's time to get out". At this point, the four subject officers were able to get the AP out, standing on the roadway facing the open door. In the dash camera footage, SO3 can be seen making downward striking motions with his right hand. Then, SO4 pulled on the AP's right leg. The AP turned to his right and fell onto his knees, facing the rear of the vehicle, his left arm still inside the vehicle. WO1 told the IIO that he thought the AP's arm had been caught between the back of the driver's seat and the body of the vehicle, while WO2 said he thought it was caught up in the seatbelt. WO1 said he heard the AP say words to the effect of "You broke my arm". In total, the physical struggle had taken a little over two minutes.

Police called an ambulance for the AP. He was diagnosed as having suffered fractures to both the radius and ulna of his left arm. While at the hospital, he told an escorting officer that four officers had removed him from the vehicle, and the door had closed on his arm while it was trapped in the seatbelt.

## **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 an officer may have committed the offence of assault.

It is unfortunate that the involved officers exhibited such reluctance to account to the IIO for their actions, as the evidence in this case does not raise any suspicion of criminality on their parts. It is clear that police at the check stop were legitimately carrying out their duties under the *Motor Vehicle Act* in monitoring traffic for potential impaired drivers. Likewise, when the AP acknowledged having recently consumed an alcoholic drink, officers were acting in lawful execution of their duties in making a demand under the *Criminal Code* for him to provide a roadside breath sample into an approved screening device. It is certainly within the discretion of the officer administering the test to do so outside the vehicle and on video, for safety and evidentiary reasons. The AP's adamant refusal amounted to obstruction of a peace officer in the execution of his duty, which justified his arrest (and the use of a reasonable level of force to effect that arrest).

There is no evidence that it was unnecessary or unreasonable for the involved officers to pull him out of the car and take him to the ground so as to place him in handcuffs while under control. It is unfortunate that the mechanics of his removal caused an injury to his arm, but the real cause of that injury was the AP's continued refusal to cooperate, not any unjustified actions on the part of any police officer.

Accordingly, as Interim 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.



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Sandra J. Hentzen  
Interim Chief Civilian Director

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