



**IN THE MATTER OF THE INJURY OF A MALE  
WHILE BEING ARRESTED BY MEMBERS OF THE  
RCMP IN WEST KELOWNA, BRITISH COLUMBIA  
ON FEBRUARY 28, 2023**

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

Chief Civilian Director:

Ronald J. MacDonald, K.C.

IIO File Number:

2023-053

Date of Release:

October 16, 2023

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## **Introduction**

In the evening hours of February 28, 2023, RCMP received a report of a 'hit and run' in the West Kelowna area. The Subject Officer ('SO') responded and was directed to the Affected Person ('AP'), who was alleged to have been involved in the car collision and was walking away from the location. As SO attempted to arrest AP, they toppled to the ground and AP suffered broken bones to his face.

Because the injuries occurred in connection with the actions of police officers, 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 civilian witnesses;
- statement of one first responder;
- statement of one witness police officer;
- police Computer-Aided Dispatch ('CAD');
- Police Records Information Management Environment ('PRIME') records;
- police radio to radio transmissions and 9-1-1 calls;
- medical records and photographs of injuries; and
- photographs from incident scene.

The IIO does not compel officers who are the subject of an investigation to submit their notes, reports and data. In this case, following advice to SO's counsel that the Chief Civilian Director would be issuing this public report, SO provided access to his notes and PRIME police statement.

## **Narrative**

On February 28, 2023 at 8:10 p.m., Civilian Witness 1 ('CW1') called West Kelowna RCMP to report that there was a 'hit and run' near the intersection of Elliot and Gossett roads in West Kelowna.

Subject Officer ('SO') responded to the call and spoke to several witnesses who were still at the scene of the car collision. Those witnesses reported that the Affected Person ('AP') had been driving a vehicle involved in the collision, and that he had fled on foot. They pointed the SO to a laneway where AP was walking quickly away from the area.

At 8:35 p.m., a dispatch was made by SO over the radio: "*running custody, he was running*".

Civilian Witness 2 ('CW2') lived nearby to the incident location. He was in his house when he noticed the flashing lights of a police car outside his window. He looked outside and saw SO's car stopped in the middle of the road. He observed SO get out of his car and attempt to stop AP from walking away. CW2 said it had just snowed, it was dark, the road was quite slippery, and the roadway was approximately an 8.5-degree grade.

CW2 saw SO attempting to speak to and holding on to AP to prevent him from getting away. CW2 saw AP try to pull away and keep walking down the road. CW2 was concerned for the safety of SO, as he was alone and CW2 was not sure whether AP had any weapons.

CW2 saw SO take AP to the ground. CW2 said it happened quickly, and it appeared like SO lost his footing and fell on top of AP. CW2's view was partially impaired by a police vehicle that was in between his viewpoint and SO and AP.

Other officers arrived on scene. AP was then helped to his feet. CW2 did not observe any officer strike, punch, or kick AP.

Witness Officer 1 ('WO1') was the first officer to arrive following SO's earlier request for assistance over the radio. WO1 saw SO standing with AP, who was handcuffed behind his back. WO1 described the weather as being cold and said that there had been intermittent snowfall throughout the night.

WO1 said that SO told him that AP had run away and would not put his hands behind his back. SO said that he and AP had slipped during the encounter and told WO1 "*we slipped, we fell... there wasn't any strikes delivered*" ["strikes" can include punches]. WO1 observed a "scuffle" pattern in the snow, along with some drops of blood.

WO1 said AP was not acting aggressive towards them, but he was "amped up" and yelling for his wife. WO1 described AP had slurred speech and smelled like alcohol, even when he stood 6 to 7 feet away.

Civilian Witness 3 ('CW3') was in a residence nearby and saw the end of the interaction between the officers and AP. CW3 said he saw AP sitting on a curb handcuffed behind his back. CW3 thought that AP was intoxicated because he heard swearing and saw him attempting to get up. CW3 felt that the police officers were being "*pretty nice*" to AP and saw them trying to clean his face with a towel. CW3 noted that it was dark, and the road was slippery.

Officers called an ambulance to attend and Civilian Witness 4 ('CW4') responded as the primary paramedic. CW4 said that AP was agitated and yelling when she arrived, with his

arms flailing around. As she approached, AP started yelling at her and said, “*I don’t need an effing ambulance*”. CW4 said AP was acting aggressively to the officers, calling them names, and swearing. CW4 saw no use of force between AP and the officers.

AP refused medical treatment from CW4, which led to SO transporting AP to hospital. On the way there, SO broadcasted over the radio that he wanted to make sure AP was “*taken care of*” and that he was going to get security to help him with AP, because “*he says he wants to fight me now*”.

AP consented to providing medical information to IIO investigators but did not provide a written statement as to what occurred despite several attempts by investigators. He did tell investigators that he had been “*boot fucked*” by two officers but declined to provide any specific details as to what he meant. The medical records indicated that AP had fractured both his orbital bones (eye sockets) and had also sustained multiple nasal fractures.

Following advice to SO's counsel that the Chief Civilian Director would be issuing this public report, SO provided access to his notes and PRIME police statement which indicated that AP attempted to break loose of SO's grip and both SO and AP fell to the ground, due to the ice and light dusting of snow. This is consistent with the evidence provided by CW2.

### **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 avenues 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.

SO acted lawfully, in execution of his duty, when he arrested AP following the collision. SO had information that there had been a 'hit and run', and AP was pointed out to be the driver involved by several witnesses and was leaving the scene of the collision. SO had grounds to arrest him and ensure that he did not drive away again, causing further damage or injury to others.

At law, AP was required to stop for SO. However, AP refused to comply with SO's direction to stop, which was witnessed by an independent civilian witness (CW2). After verbally engaging AP, it was reasonable for SO to use some amount of force to stop AP in order for him to comply with his direction. Given that AP did not stop, SO was left with no option but to try to restrain him physically.

As several witnesses noted, it was dark, the ground conditions were slippery, and they were on a slight incline. It is reasonable to believe that AP and SO lost their footing on the slippery roadway, and went to the ground with SO trying to restrain AP. As indicated by CW3, CW4, and WO1, AP was swearing, and appeared to be intoxicated. Despite several attempts to gain his account of the incident, AP did not provide information that contradicts any of the witnesses' observations, and his comment that he was "*boot fucked*" by the officers does not accord with any of the evidence gathered.

It is unfortunate that AP was injured during this incident. However, I cannot conclude that the amount of force used was unreasonable. It was necessary to get AP under control, as he was walking away from SO after allegedly just taking part in a 'hit and run.' AP could have stopped for SO, but he did not. It was necessary to identify AP and prevent AP from driving again, and potentially causing further damage or injury.

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.



**Martin Allen, General Counsel for  
Ronald J. MacDonald, KC, Chief Civilian Director**

October 16, 2023  
**Date of Release**