



## Serious Incident Response Team

Civilian Director's Report  
SIRT-NL File No. 2022-0059

Michael NR King  
Director  
March 6, 2023

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## Introduction

On October 13, 2022, the Royal Canadian Mounted Police (RCMP) notified the Serious Incident Response Team (SIRT-NL) of an incident involving an on-duty RCMP officer. An individual (the “affected person”) had sustained a serious injury in the course of being arrested by the subject officer.

## Mandate

SIRT-NL is a civilian led oversight agency that conducts its own investigations into serious incidents. Serious incidents within this context are those involving serious injury, death, sexual offence, domestic violence or any matter of significant public interest arising from the actions of a police officer in Newfoundland and Labrador. Because this matter involved an individual sustaining a serious injury, potentially caused by a police officer, I directed a SIRT-NL investigation into the incident.

## Terminology

I have made the following substitutions to protect the privacy of those involved:

- “Affected person” or “AP” for the individual who sustained the injury;
- “Subject officer” or “SO” for the police officer who is the subject of the allegations and this investigation;
- “Witness #” or “W#” for any other individual who provided relevant information; and
- “Witness officer #” or “WO#” for any other police officer who provided relevant information.

## Investigation

The SIRT-NL investigation began on October 26, 2022 and concluded on February 6, 2023.

The investigation involved the following:

- SIRT-NL collected and reviewed all preliminary investigative material from the RCMP. This included:
  - Related RCMP internal files;

- Medical records of the affected person relating to his injury on October 13, 2022;
- Notes authored by WO1;
- Photograph of AP's facial injury, taken by WO1;
- SO's General report, handwritten notes and "Subject Behaviour Officer Response" report in relation to the incident; and
- Recordings of calls and radio transmissions in relation to the incident.
- The SIRT-NL investigator interviewed the affected person, one witness officer and two civilian witnesses.
- The investigator invited the subject officer to provide a statement; however, SO declined and relied on his written police notes and reports of the incident.

## Overview

Shortly after 9:00pm on October 12, 2022, the RCMP received a report of a court order breach involving AP at a residence in Avondale. W1 reported that AP was not supposed to be around W2. Despite this, AP was reported to be at W2's house, intoxicated and refused to leave.

In response, SO spoke with W1 and W2 and attempted, unsuccessfully, to locate AP. At 3:40am on October 13, 2022, RCMP received a second call for service to the same residence. SO responded again. Upon his arrival at the residence, SO spoke with W1 and W2 and learned that AP was hiding nearby.

SO located AP a short distance away, in a wooded area. SO told AP he was under arrest. During the arrest, SO used physical force. Following the arrest, SO placed AP in the back of the police vehicle. During the incident, SO also pepper sprayed AP.

SO transported AP to the local police detachment and requested an ambulance attend to treat AP. While waiting for the ambulance, AP's condition deteriorated. The ambulance arrived at the detachment and determined AP would need to be taken to hospital for treatment.

It was later learned that AP had suffered a fracture to a bone in his face.

## The Affected Person (AP)

The SIRT-NL investigator took an audio/video recorded statement from AP on December 8, 2022. AP stated the following:

AP knew he was not allowed at W2's house. When W2 called the police, AP hid in the woods, close to her house. SO found him. SO pushed AP to the ground and smacked AP

in both sides of his head. SO's knee was on AP's back. When SO put the handcuffs on AP, SO continued to strike AP in the sides of his head. AP was screaming "stop, stop, why are you hitting me". SO kept hitting AP for no reason.

SO then dragged AP through the woods. AP was "almost knocked out". SO struck AP again when AP was in the back of the police car. AP was looking at SO in the face when SO pepper sprayed him in the eyes. Then AP blacked out.

AP woke up in the back of the ambulance. When asked about his injuries, AP stated he was still "half sore" from the incident. His arms were all cut up, he had a cut under his eye, he had a broken bone in his upper cheek area.

The incident occurred around 1:00am. AP left W2's house the first time around 2:00pm in the day. He consumed three or four beer the entire day. He also had "a draw of weed". He did not remember hitting his head against the barrier in the police vehicle. He stated he was not intoxicated by beer as he has a tolerance.

## Civilian Witness

### Witness 2

W2 provided an audio-recorded interview on December 19, 2022. In her interview, she stated the following:

AP is her ex-boyfriend/spouse. On the day of the incident, at 8:30pm, AP came to her house "loaded drunk". She asked him to leave several times. After AP had an altercation with W1, AP left. W2 locked her doors and went to bed.

At 4:00am, W2 heard banging on her bedroom window. She called the police immediately. By the time a police officer (SO) came to her house, AP had gone and was hiding in the woods. W2 indicated to SO where AP was hiding. When SO left to locate AP, W2 went out behind SO on W2's deck. SO was gone for about 10 seconds. W2 heard SO say "stop resisting".

AP was yelling, cursing and swearing at SO. SO brought AP back and put him in the police vehicle. AP started hitting his head on the window in the back of the car (the divider or "silent patrolman"). AP did this five or six times. He told SO he was going to sue him. AP then started hitting his head and face off the divider again. SO asked him to stop. When AP would not stop, SO got out of the car, opened the back door and sprayed something at AP. AP stopped but kept yelling profanities at SO.

W2 suspected AP was "on something" because he was beating his face off the glass "really hard". When AP is on harder drugs, he is angry. When he is sober, he is quiet.

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When SO was arresting AP, SO's demeanor was quiet. SO sprayed AP to stop AP from beating himself up.

W2 reiterated the arrest took about 10 seconds. She could see SO walking AP back from the wooded area and placing AP in the car. AP was yelling and cursing at SO. W2 stated, when AP was hitting his head and face on the silent patrolman, he could have injured himself. She described what AP was doing as "pretty violent".

## **Witness Officer**

### Witness Officer 1

WO1 provided an audio/video recorded interview to the SIRT-NL investigator on December 19, 2022.

WO1 was called in to assist SO, who was dealing with a person in custody. When WO1 arrived at the local RCMP detachment, an ambulance and two paramedics were there. The male subject (AP) in custody seemed very agitated. The paramedics and SO were talking to AP but AP was not cooperative. It appeared to WO1 that AP was impaired by some type of narcotic.

WO1 attended the hospital with AP and sat with him there for a couple of hours. WO1 did not observe any severe injuries, other than a little mark on AP's face. Eventually, the doctor discharged AP, at which point, WO1 and AP left to go back to the detachment. While on the way, WO1 was contacted by the doctor, who indicated medical staff had some concern with one of the scans. They asked that AP be brought back to the hospital. When WO1 and AP returned to the hospital, the doctor advised AP had a cracked bone on the left side of his face. AP met with a plastic surgeon, who advised it was not an urgent matter that needed to be operated on at that time. WO1 then brought AP back to the detachment.

WO1 added that, when AP was at the hospital, he admitted to the doctor he was on cocaine.

## **Subject Officer**

The SIRT-NL investigator invited SO to provide a non-custodial cautioned interview. On January 3, 2023, SO replied, via email, and stated: "At this time I am going to decline the interview and let my [Subject Behaviour Officer Response] and various reports speak to the event."

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“Subject Behaviour Officer Response” or “SBOR” is an internal RCMP form used to articulate details of an incident involving an officer using physical force.

While SO’s report speaks to related information before and after the incident, I will refer only to those portions that describe the subject physical altercations.

At approximately 04:00 hours, [SO] arrived on scene. [AP] was not present. [SO] spoke with [W2] who advised that [AP] had been knocking on the door moments before police arrived. Because she did not believe [AP] arrived in a vehicle, therefore he was likely nearby.

[SO] conducted foot patrols and located [AP] hiding approximately 20 ft into the forest located near the South side of the property. He was found curled-up behind a group of trees. The area was not illuminated, the ground was rocky and uneven, and [SO] was relying on a flashlight. [SO] immediately advised [AP] that he was under arrest for breaching his Probation Order. [AP] became belligerent and refused to put his hands behind his back. [AP] was in close proximity when he located [AP] and immediately attempted to gain positive control by grabbing his left arm. [AP] attempted to pull away and clenched his fists. [SO] recognized this as assaultive behavior and attempted to deliver a strike which landed ineffectively with his right forearm striking some unknown part of [AP]. Both people fell to the ground and [SO] obtained a semi-mounted position on [AP]’s back. [AP] attempted to push himself upright to resume fighting, and [SO] delivered a strike to the right side of the head. From this point [AP] stopped trying to stand-up and [SO] was able to transition to single arm control and secure him in handcuffs.

At approximately 04:15 hours, [SO] then placed [AP] in the back of the police car and attempted to read him his Charter Rights and Caution verbatim from the Charter Card. [AP] was refusing to listen and answer the requisite questions. He was preoccupied with screaming threats and profanities at a high volume. [AP] was also alternating between kicking the doors and smashing his head off the Plexiglas divider. [AP] was causing injury to himself but also damage to the vehicle as both the Plexiglas and doors were seen buckling.

At approximately 04:35 hours, [SO] then deployed a small amount of OC spray on [AP] from outside the vehicle.

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At approximately 04:57 hours, [SO] arrived at the Holyrood Detachment. From there [SO] requested an ambulance attend to flush [AP]’s eyes as he was still complaining.

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## Medical Records

AP consented to the disclosure of his personal health information to SIRT-NL. Eastern Health provided the records to the SIRT-NL investigator on January 17, 2023. The records stated as follows:

- Hospital emergency triage assessment at 0710 on October 13, 2022;
- Emergency room record states: patient involved in altercation with police this morning. Reports kicked in chest, jaw, shoulder and knees. Complaining of left shoulder pain, anterior chest pain and left jaw pain;
- Injury discovered: minimally displaced left zygomatic arch;
- No other injuries noted on the Diagnostic Imaging report;
- No blood or urine testing related to toxicology.
- [AP] suffered a left sided zygomatic arch fracture;
- On October 20, 2022, [Witness 3] performed surgery for a depressed fracture of the zygomatic arch on the left side. Surgical procedure to elevate fractured zygoma. No complications reported.

## Issue and Conclusion

The issue for my consideration is whether there are grounds to believe the subject officer assaulted the affected person.

Section 25 of the Criminal Code authorizes a peace officer to use as much force as is necessary for the purpose of enforcing the law. An officer is criminally responsible if he or she uses more force than is necessary. Here, it is established there was a physical altercation between SO and AP. Determining whether SO assaulted AP involves assessing whether SO used more force than was necessary to arrest AP.

The only evidence of excessive force comes from AP himself. Consequently, grounds to lay a charge must be based on the credibility and reliability of AP's statement. In assessing his credibility, it is necessary to examine all corroborating or refuting evidence. Minor inconsistencies or discrepancies are to be expected. Significant inconsistencies or discrepancies are more problematic.

In assessing all the evidence, I have several points of concern in relation to AP's credibility. They are as follows:

1. Timeline of events

The witness statements put the time of the first call from W2's house to the RCMP between 7:00pm and 9:30pm, which is consistent with the time the call was

entered by the Operational Communications Centre (OCC), at 9:06pm. Yet, in AP's statement, he stated he was at W2's house around 1:00 or 2:00 in the afternoon. I view this as a significant discrepancy, especially considering the fact that, at 9:00pm, it would have been dark.

The second time police were called, 911 notified the RCMP at 3:40am. In her statement to SIRT-NL, W2 says this was around 4:00am. In AP's statement, he says he was at W2's house at around 1:00am. While this inconsistency is not as obvious as the first, considering AP's claim he was sober, he ought to have known the time.

2. AP's level of intoxication

The calls to the RCMP, the witness statements and SO's reports all indicate AP was intoxicated. Both W1 and W2 say AP was drunk and "on something". This is consistent with the observations made by both SO and WO1. In contrast, in his statement, AP says he had three or four beer the entire day and one "draw of weed". He says he was not intoxicated as he has a tolerance when he drinks alcohol.

3. AP's arrest

According to W2's statement, she remained outside on her deck when SO left to find AP. She could hear what was going on. She stated SO was gone for about 10 seconds before walking AP back to the police car. She heard SO say "stop resisting" and AP was yelling, cursing and swearing at him. When AP was placed in the back seat of the police car, he started hitting his head and face on the divider between the front and back seats. W2 described this as "pretty violent" and she thought AP could have injured himself. SO told AP to stop because he was beating up the back of the car. When AP would not stop, SO got out, sprayed something at him and shut the door. AP then stopped beating his head but kept yelling profanities at the officer.

In his statement, AP has a different account of what transpired. He stated, when the officer got him down in the woods, AP was on the ground, hiding behind a tree. SO pushed him down and started striking him on both sides of his head. When SO handcuffed him, SO was still hitting him in the head. Initially, AP said he did not recall SO saying anything to him, but when questioned further, he said SO said "get down, hands behind your back". AP stated he was screaming at the officer, saying "Stop, stop, why are you hitting me". He did not remember hitting his head against the divider in the vehicle. He claims he was merely looking at SO in the face when SO pepper sprayed him in the eyes.



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As stated above. SO did not consent to an interview with SIRT-NL but did release to us his reports in relation to the incident. His notes, general report and SBOR are consistent with one another and with W2's statement. He stated he struggled to gain positive control of AP while trying to affect the arrest, in the dark, on uneven terrain. He described AP's behavior as assaultive and SO delivered two strikes, one being in the side of the head. On the SBOR, SO stated "Member kept telling the subject to stop resisting".

As to AP's injury, there is no doubt he sustained a fracture to a bone in his face. Given the evidence we have, however, it is unclear whether the injury was sustained during the arrest, or when AP was hitting his head off the silent patrolman in the police vehicle.

In summary, it appears, based on the evidence collected, SO was justified in arresting AP for breach of a court ordered condition to stay away from W2. Due to the inconsistencies between AP's statement and the remaining evidence, I have concerns regarding AP's allegation SO assaulted him. In contrast, SO's reports are consistent with the other witness accounts. In my opinion, the evidence indicates SO did not use more force than was necessary to arrest AP.

As the civilian director of SIRT-NL, I do not consider there are reasonable grounds to believe the subject officer committed a criminal offence. No charge will be laid.

This file is now concluded.

**Final Report prepared by:**

Michael NR King, Director  
Serious Incident Response Team - Newfoundland and Labrador  
March 6, 2023  
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