

## Summary Report

# Use of force during arrests in Whakatane

## INTRODUCTION

1. During the evening of 23 November 2013, Whakatane Police received two calls from Officer A, an off-duty Police officer, reporting a domestic disturbance at a neighbouring property.
2. Police responded to the calls and visited the property, occupied by Ms X and her partner. While they were there an altercation broke out which resulted in the arrest of Ms X, her partner and her father (Mr Y).
3. Ms X and Mr Y later complained to the Police about the conduct of the officers involved in their arrests. Ms X said that she was assaulted by Officer A, while Mr Y said that he had been subject to excess force during his arrest. They further complained that one of the officers had assaulted Mr Y's twelve-year-old son, Z.
4. The Police notified the Independent Police Conduct Authority of the incident and the Authority conducted an independent investigation. This report sets out the results of that investigation and the Authority's findings.

## BACKGROUND

5. At about 8pm on 23 November 2013, Police received the first of two calls from Officer A, an off-duty Police officer, who reported a domestic disturbance at a neighbouring property, occupied by Ms X and her partner.
6. During this call Officer A - who had become increasingly concerned by the events occurring at Ms X's address - said that a male, who had come from the property, was in possession of a chainsaw and was threatening people on the street outside the address.
7. Ms X lived at the property with her partner and elder brother. Ms X's father, Mr Y, and his son, Z, were frequent visitors to the property. Mr Y had been there earlier that day before leaving to go home in the late afternoon. Ms X, Mr Y and Ms X's partner had all been drinking alcohol.

8. In response to Officer A's call, Officer B, a sergeant, visited the address. He spoke to Ms X who told him that she and her partner had been followed home by a group of gang members and that a fight had broken out at the house, but that the gang members had since left.
9. Officer B asked to look inside the house, to ensure that there was no one inside who had been injured. Ms X agreed. Officer B did not find anyone in the house, so left the property. Neither Mr Y nor Z were at the property at this stage.
10. Officer A made a second call to the Police station about ten minutes later, reporting that a fight had broken out at the property.
11. At around the same time Police also received two calls from Ms X's other neighbours about the disturbance at Ms X's property. The neighbours reported that they could hear smashing glass and verbal abuse, and that the occupants of the property had gang connections.
12. Officer B returned to the property. As he approached the house he saw Ms X and Mr Y standing on the front deck. Officer B asked them what had happened that had prompted a second call to the Police. Officer B told the Authority that, at that stage, it appeared to him that the situation had been resolved.
13. While this conversation was taking place Ms X's partner was inside the house. Z and his friend were also on, or around, the property.
14. While Officer B was speaking to Ms X and Mr Y, Officers C and D arrived, having also responded to Officer A's second call. All three of the officers remained on the driveway in front of the deck.
15. According to Officer C both Ms X and Mr Y loudly asked the officers to leave. Mr Y also told the officers that he knew the Police were there only because a neighbour had called them. In interview with the Authority, Ms X said that she and her Dad were angry that the Police were back, as they had already visited and *"nothing had happened since then."*

#### **Altercation between Ms X and Officer A**

16. As the officers spoke to Ms X and Mr Y, Officer A arrived. Neither Ms X nor Mr Y knew that Officer A, who was dressed in plain clothes, was an off-duty Police officer.
17. Ms X said that as Officer A came around the corner of the driveway she was yelling and screaming at Ms X, saying *"I'm fucking sick of your shit you little bitch."* Mr Y said that Officer A was ranting and raving at Ms X.
18. Ms X told the Authority that she jumped off the deck and moved towards Officer A, asking *"who the fuck are you?"* Ms X said that she got *"right up in her [Officer A's] face,"* despite Officer A telling her not to.

19. According to Ms X and Mr Y, Officer A then pushed Ms X. Ms X stumbled backwards, then retaliated and *“shoved”* Officer A with both hands. Ms X said she was then arrested by Officer C and another officer, *“pulled”* to the ground and handcuffed.
20. In contrast, Officer A told the Authority that she followed the on-duty officers to Ms X’s property to talk to them about what had happened. As she approached Ms X’s house she saw Ms X standing on the deck. Ms X noticed Officer A, and immediately started yelling at her, saying *“you fuckin ho, why’d you call the fuckin pigs?”*
21. Officer A said that Ms X then jumped off the deck and ran towards her. She said that Ms X stopped about a foot away from Officer A and was yelling abuse at her. Officer A put her hands up in front of her and told Ms X to calm down. She said she did not touch Ms X or use any abusive language towards her. Ms X responded by pushing Officer A in the chest, with both hands.
22. Officer A said that two of the other officers then grabbed Ms X and placed her in handcuffs. She said that Ms X resisted arrest and that, despite being restrained, Ms X continued to yell abuse at Officer A.
23. Officer A told the Authority that she had never had any issues with Ms X before and that she was surprised that Ms X was so volatile towards her.
24. Officer B described Officer A as *“pretty animated”* and *“heightened”* when she arrived at the property, and said that Officer A said *“something about [Ms X] yelling and screaming and throwing bottles.”* He said that Officer A seemed *“pretty pissed off”* about the situation.
25. Officer D described Officer A as *“quite agitated”* and *“angry,”* and said that she told Ms X that she was *“sick and tired”* of what had been happening at the property.
26. Aside from this, the on-duty officers’ account of the interaction between Officer A and Ms X is largely consistent with Officer A’s version of events.
27. However, Officer C said that while he arrested Ms X immediately after she pushed Officer A, he did not handcuff her until a short while later after noticing that Ms X and Officer A were *“still squaring off, shouting at each other.”* He then went up behind Ms X, handcuffed her, and forced her down onto the ground in order to gain control of her.

### Issue with Ms X’s clothing

28. In her complaint to Police, Ms X said that her top - which was strapless - fell down during her arrest, and exposed her bra. She said that *“everything was showing.”* She was handcuffed so was unable to fix it herself.
29. Ms X said that her partner noticed that her top was down, and came to try and help her straighten it up, but a Police officer threatened to pepper-spray, and then arrested, him.

30. Ms X also said that, at this stage, Officer A was trying to get past Ms X's partner in order to punch her when she was sitting handcuffed on the ground. Ms X said that she kicked out at Officer A while telling her to *"fuck off."*
31. According to Ms X, Z was eventually able to get to Ms X and help her fix her top.
32. In contrast, Officer A told the Authority that, following her arrest, Ms X was shouting at her partner, telling him that her top had fallen down. Officer A noticed that part of Ms X's breast was exposed, so she reached over and pulled Ms X's top up.
33. Officer C told the Authority that after he handcuffed Ms X from behind and forced her to the ground she started yelling *"my top is off, fix my top up."* Officer C could not see Ms X's front, or if any part of her chest was exposed, as he was behind her. He told her *"I'm not touching your top."*
34. According to Officer C either Officer A or Z fixed Ms X's top. He was unsure exactly who had done it as the incident *"happened really fast."* He added that it would have been highly unethical for him to have touched Ms X's top.
35. Officer D told the Authority that he could recall Ms X's top falling down but that he had not been able to help her because he is a male officer. He didn't look at Ms X, and didn't touch her as he wanted to protect himself.
36. Officer B told the Authority that he was not aware at the time that Ms X's top had fallen down, but agreed that it would have been highly unethical for a male officer to have touched Ms X's top in that situation. However, he added that he did not think it would have been unethical per se for a male officer to have fixed her clothing as long as they *"got the okay from her."*

#### Arrest of Mr Y

37. According to Mr Y, as Ms X was being arrested by Officer C, Mr Y ran towards them to try and help Ms X. He told Officer A to *"back off"* so that he could calm Ms X down. Mr Y told the Authority that he could not remember if any of the officers had said anything to him or warned him that he would be arrested.
38. Mr Y said he was manhandled away from Ms X by an officer. He admits resisting the officer as he was trying to get to Ms X, who was becoming hysterical.
39. Mr Y said he was then forced to the ground by two officers and handcuffed with his hands behind his back. One of the officers found a wooden baton in the waist band of his pants. Mr Y told the Authority that, earlier that day, he had taken the baton from Z who had found it in the street. He described it as a short wooden baton and thought that it might have been used to club fish.
40. Mr Y said that the officer then grabbed the baton, put his knee into Mr Y's back and struck him with it two or three times at the top of each arm.

41. Police say that as Officer C arrested Ms X, Mr Y jumped from the deck and tried to physically intervene and stop the arrest.
42. In contrast, Officer B said that he told Mr Y to stop interfering or he would be arrested for obstruction. When Mr Y failed to comply with this instruction, Officer B placed him under arrest and then grabbed Mr Y's arm in order to physically restrain him. Mr Y resisted and Officer B, assisted by Officer D, forced Mr Y to the ground. As they did so Mr Y placed his arms under his body, which meant that the officers were unable to handcuff him.
43. Officer B said that he then found a small wooden baton tucked in the back of Mr Y's shorts. Officer B told the Authority that he was concerned that the baton may be used against Police, so removed it from Mr Y. He and Officer D then instructed Mr Y to release his arms, before trying to pull them out from under his body.
44. Officer B said that Mr Y continued to resist, and that his behaviour was physically threatening. Officer B then used the baton, which was still in his hand, to hit Mr Y four or five times on each tricep in order to get Mr Y to release his arms. According to Officer B this use of force was in line with Police training.
45. Officer B handcuffed Mr Y while he was still on the ground. Mr Y then told Officer B that he had asthma and that he could not breathe properly, so Officer B sat him up.

#### Involvement of Z

46. In their complaint to Police, Ms X and Mr Y said that a Police officer hit Z on the head with a torch.
47. Mr Y said that Z tried to come to his aid after noticing that he was struggling to breathe during his arrest. Z pushed the arresting officer off Mr Y and helped sit him up so that he could catch his breath. An officer then pushed Z out of the way. Mr Y later heard from Z that the officer had hit Z on the head. Mr Y said that Z suffered a "huge bump" to his head but did not require any medical attention.
48. Z told the Authority that he heard Mr Y yelling at him, saying "I can't breathe," and also saw Mr Y being beaten by a Police officer using the wooden baton he had found earlier. Z said he ran towards Mr Y, shoulder charging the Police officer who had been beating Mr Y. The officer then grabbed Z by the arm, pulled him away and hit him on the head with a torch.
49. According to Officer B, as soon as the struggle between Mr Y and the officers ended, Z approached Officer B and told him "let my Dad go." Officer B said that he told Z that his Dad would be alright, but Z was crying and kept trying to talk to Mr Y.
50. Officer D says that he told Z "come on buddy, you need to leave and let us deal with this." He then put his hands on Z to guide him away, but did not hit him.

### Comments on Officer A's involvement

51. Officer B told the Authority that it would have been better if Officer A had spoken to him and the other officers at the top of the driveway rather than coming down to Ms X's house, but added that any member of the public - regardless of whether they are an off-duty Police officer - has the right to have their story heard and that Officer A obviously felt that she needed to come down the driveway to ensure that this happened.
52. Officer C said that he did not think that Officer A inflamed the situation, and that she helped by clarifying for the officers what had happened before they arrived.
53. Officer D told the Authority that he thought Officer A exacerbated the situation, and that she had acted as though she was a uniformed officer. He said it would have been better if she had spoken to the officers as an independent witness and that, if she hadn't become involved, there would have been a completely different outcome. He added that if she had been a normal member of the public she would have been warned to "*back off.*"

### Police investigation

54. The Police conducted an investigation in response to the complaints received from Ms X and Mr Y. The investigation concluded that:
  - there was no evidence to suggest that Officer A assaulted Ms X;
  - while Officer B hit Mr Y with the baton that had been in Mr Y's waistband, Mr Y's complaint of assault by the Police while handcuffed was not upheld;
  - there was no evidence to suggest that "*anyone present saw Ms X in a state of undress that would be embarrassing to her*";
  - Z's complaint that he was pushed by a Police officer, or hit with a torch, was not upheld;
  - it was not appropriate for Officer A to approach Ms X's property in the manner she did. Her presence inflamed the situation and it would have been advisable for Officer A to speak to the other Police officers out of sight of Ms X and Mr Y.
55. As a result of this incident, Ms X was charged with assaulting Officer A, and Mr Y was charged with obstruction, resisting arrest and possession of an offensive weapon.
56. At trial Ms X was found not guilty, while Mr Y was found guilty of obstruction and resisting arrest, but not guilty of possession of an offensive weapon.

## THE AUTHORITY'S INVESTIGATION

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57. The Police notified the Authority of the incident, and the Authority commenced an independent investigation into the matter.
58. During its investigation the Authority interviewed Ms X, Mr Y, Z, the three on-duty officers directly involved in the incident and Officer A. The Authority also interviewed a friend of Z who witnessed part of the incident, and Mr Y's wife.
59. The Authority also examined the Police file relating to the incident, including statements from all of the parties involved, notebook entries, Officer B's Tactical Options Report, and transcripts of relevant radio transmissions and 111 calls.
60. The Authority's investigation focussed on the following issues:
  - 60.1 Did Officer A push Ms X?
  - 60.2 Did Police staff respond appropriately when Ms X's top fell down?
  - 60.3 Was the force used during Mr Y's arrest excessive?
  - 60.4 Did a Police officer hit Z on the head?
  - 60.5 Did Officer A act appropriately when she involved herself in the situation at Ms X's address?

## LAWS AND POLICIES

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### Law relating to assault

61. Section 196 of the Crimes Act 1961 makes it an offence for a person to assault any other person.
62. Section 2(1) of the Crimes Act 1961 defines assault as the act of intentionally applying, or attempting to apply, force to another person.

### Law relating to use of force

63. Section 39 of the Crimes Act 1961 provides for law enforcement officers to use reasonable force in the execution of their duties such as arrests and enforcement of warrants. Specifically, it provides that officers may use "*such force as may be necessary*" to overcome any force used in resisting the law enforcement process unless the process "*can be carried out by reasonable means in a less violent manner*".
64. Section 48 of the Crimes Act 1961 states: "*Everyone is justified in using, in defence of himself or herself or another, such force as, in the circumstances as he or she believes them to be, it is reasonable to use.*"

65. Section 62 of the Crimes Act 1961 renders officers criminally responsible for any excessive use of force.

### **Policy relating to use of force**

#### *General guidance on use of force*

66. The Police have a range of tactical options available to them to help restrain a person, make an arrest or otherwise carry out lawful duties. These range from using handcuffs and open hand tactics to use of batons, OC spray, Tasers and firearms.

#### *Tactical Options Framework*

67. The Tactical Options Framework sets out a range of options available to Police in responding to a situation, depending on the actions of the offender.
68. Options range from communication with the offender, to 'empty hand' tactics such as distracting or punching the offender, to 'intermediate options' which are those unlikely to cause death or serious injury such as OC spray or baton, to the use of lethal force which includes use of firearms or strikes to the head or neck.
69. Which option is appropriate depends on whether the offender:
- is cooperative;
  - is resisting, either passively or actively;
  - is actively hostile and intending to cause physical harm; or
  - presents a threat of death or grievous bodily harm.



## THE AUTHORITY'S FINDINGS

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### Did Officer A push Ms X?

70. Ms X told the Authority that when Officer A arrived she got “*right up*” in Officer A’s face. Ms X said that Officer A responded by pushing Ms X backwards, causing her to stumble. Ms X retaliated and “*shoved*” Officer A back.
71. Officer A told the Authority that, following her arrival at Ms X’s property, Ms X ran towards her, stopping about a foot away. Officer A said she raised her hands to stop Ms X getting any closer, but did not touch her. According to Officer A, Ms X then pushed her in the chest with both hands.
72. The on-duty officers told the Authority that while Officer A raised her hands in front of her chest as Ms X approached, she did not push Ms X. Mr Y, however, supports Ms X’s version of events.
73. Based on the evidence available, the Authority is unable to resolve the conflict between the two versions of events, and is therefore unable to make a finding on this point.

### FINDING

Due to the conflict in evidence, the Authority is unable to make a finding on whether or not Officer A pushed Ms X.

### Did Police staff respond appropriately when Ms X’s top fell down?

74. Ms X said that during her arrest her top fell down, exposing her bra so that “*everything was showing,*” and that Officer C blocked anyone from coming to her assistance. She said that Z eventually managed to get close enough to pull her top back up for her.
75. Officers A, C and D all said that they had noticed that Ms X’s top had fallen down during her arrest. Officer B said that he did not notice. However, at the time, neither Officer C nor D were in a position to offer or arrange any assistance for Ms X. Officer C, who had arrested Ms X, was trying to keep her under control while Officer D was assisting Officer B with Mr Y’s arrest.
76. The on-duty officers all told the Authority that it would have been unethical and inappropriate for them, as male officers, to help Ms X replace her top. Officer C said that he told Ms X this at the time.
77. Officer A said, in contrast with Ms X’s account of events, that she pulled Ms X’s top up as soon as she realised that it had fallen down.
78. It is clear from Ms X’s statements to Police and the Authority that this situation caused her significant embarrassment and distress.

79. The available evidence does not allow the Authority to reach a conclusion on who helped Ms X fix her top. If it was Officer A then the Authority is satisfied that she did so to assist Ms X and that her actions were reasonable in the circumstances.
80. The Authority finds that the situation at the property was fast-paced and volatile, and that the officers wanted to keep it under control. The officers had little opportunity to respond to Ms X's requests for assistance. However, as it happened, the situation was resolved quickly by either Officer A or Z fixing Ms X's top.
81. However, comments made by the on-duty officers to the Authority indicate that they would have been unlikely to intervene even if the situation had continued (see paragraphs 34 to 36).
82. The Authority notes that ideally, officers should be proactive in resolving a situation like this and should either offer to assist the person themselves, or arrange for another person to assist. In the majority of circumstances it would not be reasonable for officers to leave a person in an embarrassing or vulnerable situation for any length of time.

## FINDING

The issue with Ms X's clothing caused her significant embarrassment and distress but, given the speed and volatility of the situation, the on-duty Police officers had little opportunity to assist Ms X when her top fell down.

### Was the force used by Police during Mr Y's arrest excessive?

83. Officer B said that he warned Mr Y that he would be arrested for obstruction if he did not stop interfering in Ms X's arrest, and arrested Mr Y when he failed to comply with instructions. Mr Y told the Authority that he did not recall hearing this warning.
84. The Authority is satisfied that Officer B warned Mr Y before arresting him, and that his arrest for obstruction was justified. The Authority also notes that Mr Y was subsequently found guilty of this charge.
85. However, while the Authority is satisfied that Officer B was justified in using force to arrest Mr Y, there is a conflict between Mr Y and Officer B as to whether additional force was used after Mr Y was handcuffed.
86. In his complaint to the Authority, Mr Y said that he was forced to the ground with his hands handcuffed behind his back before he was hit with the baton.
87. However, Officer B said that as Mr Y was forced to the ground, Mr Y tucked his arms under his body so they were between his torso and the ground. This made it impossible for Officers B and D to secure him in handcuffs.

88. Once on the ground, Officer B found the baton in Mr Y's waistband. Officer B was concerned that Mr Y may use it against Police if he wasn't restrained properly, or that someone else might use it against Police if it was left unattended. He therefore kept hold of it.
89. Officer B used the wooden baton to hit Mr Y several times on each tricep, which caused Mr Y to release his arms. He was then handcuffed. Officer B considered that this tactic was in line with Police training.
90. After considering the available evidence, the Authority prefers the evidence of Officers B and D and is satisfied that Mr Y was struck by Officer B before he was handcuffed. In the Authority's opinion, the level of force used against Mr Y was necessary to gain compliance, and proportionate to the threat he posed.
91. Police officers are issued with a selection of tactical options that they are permitted, under Police policy, to use in certain circumstances. The wooden baton used on Mr Y was not an authorised tactical option under Police policy.
92. However, the Authority recognises that the situation faced by Officer B needed to be controlled quickly and required urgent action. It would have been impractical for Officer B to retrieve and use his Police issue ASP baton. Therefore the Authority considers that Officer B's use of the wooden baton, while not ideal, was justified in the circumstances.

## FINDINGS

Officer B struck Mr Y with the wooden baton in an attempt to get him to release his arms for handcuffing. Mr Y was not handcuffed at the time.

The force used against Mr Y was justified in the circumstances, and did not amount to excessive force.

### Did a Police officer hit Z on the head?

93. Z told the Authority that, as he tried to help his father, an officer grabbed him by the arm, pulled him away and hit him on the head with a torch. The blow left him with a large bump on his head.
94. Officers B and D told the Authority that Z approached them following Mr Y's arrest as he was concerned for his father. Officer D calmly told Z to leave before putting his hands on Z to guide him away. Officer D was adamant that he did not hit Z.
95. No one else at the property witnessed the interaction between Police and Z, and there is no independent evidence to support one version of events over another. As such, the Authority is unable to make a finding as to whether or not Z was assaulted.

## FINDING

There is insufficient evidence available to the Authority to establish whether Z was hit on the head by a Police officer.

### Did Officer A act appropriately when she involved herself in the situation at Ms X's address?

96. During the afternoon and evening of 23 November, Officer A became increasingly concerned by the events occurring at Ms X's address. This prompted her to ring the Police on two occasions.
97. Shortly after her second call, Officer A saw Officer B walking down the driveway to Ms X's house. He was followed soon after by Officers C and D. Officer A decided to follow them so that she could recount to them what had happened.
98. Officer B told the Authority that Officer A was "*quite agitated,*" and "*angry*" when she arrived at Ms X's house. Officer D said that she was "*pretty animated,*" "*heightened*" and "*pissed off.*" Ms X and Mr Y said that she was yelling and swearing at Ms X.
99. The Authority believes that it was reasonable for Officer A, as a concerned neighbour, to follow the on-duty officers down the driveway in order to tell them her version of what had happened prior to their arrival.
100. However it is clear to the Authority that, by remaining at the property, Officer A injected herself into an arrest situation, leaving her vulnerable to suggestions that she was acting with the authority of a Police officer despite being off duty, and that her arrival and demeanour acted as a catalyst for the events that followed. As such, Officer A's ongoing presence at the property was undesirable and she should have removed herself from the situation as soon as possible.

## FINDINGS

Officer A acted reasonably when she approached the officers at Ms X's property to inform them of her version of events.

Officer A injected herself into an arrest situation and her presence acted as the catalyst for the incident that followed. She should have removed herself from the property as soon as the situation became volatile. Her ongoing presence was undesirable.

## CONCLUSIONS

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101. The Authority is of the opinion that:

101.1 There is insufficient evidence to conclude whether or not Officer A pushed Ms X.

101.2 There was little opportunity for the on-duty Police officers to assist Ms X when her top fell down.

101.3 The force used against Mr Y by Police was reasonable and justified in the circumstances.

101.4 There is insufficient evidence to conclude whether or not a Police officer hit Z on the head.

101.5 Officer A's initial attendance at Ms X's property while off duty was reasonable, however her presence acted as the catalyst for the incident that followed. Her ongoing presence was undesirable and she should have removed herself from the situation as soon as it became volatile.



**Judge Sir David Carruthers**

Chair  
Independent Police Conduct Authority

17 February 2015



## ABOUT THE AUTHORITY

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### Who is the Independent Police Conduct Authority?

The Independent Police Conduct Authority is an independent body set up by Parliament to provide civilian oversight of Police conduct.

It is not part of the Police – the law requires it to be fully independent. The Authority is overseen by a Board, which is chaired by Judge Sir David J. Carruthers.

Being independent means that the Authority makes its own findings based on the facts and the law. It does not answer to the Police, the Government or anyone else over those findings. In this way, its independence is similar to that of a Court.

The Authority employs highly experienced staff who have worked in a range of law enforcement and related roles in New Zealand and overseas.

## WHAT ARE THE AUTHORITY'S FUNCTIONS?

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Under the Independent Police Conduct Authority Act 1988, the Authority:

- receives complaints alleging misconduct or neglect of duty by Police, or complaints about Police practices, policies and procedures affecting the complainant in a personal capacity;
- investigates, where there are reasonable grounds in the public interest, incidents in which Police actions have caused or appear to have caused death or serious bodily harm.

On completion of an investigation, the Authority must form an opinion on whether any Police conduct, policy, practice or procedure (which was the subject of the complaint) was contrary to law, unreasonable, unjustified, unfair, or undesirable. The Authority may make recommendations to the Commissioner.



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