

Use of force on man in Kaitaia unjustified

1. On 11 April 2024, a man (Mr X) attended a resolution meeting at the Kaitaia Police Station regarding an incident his son had been involved in. During the meeting, Mr X became frustrated and left. A Police officer (Officer A) escorted the man out of the station. Mr X pushed the officer who was standing at the top of a flight of stairs. In response, the officer tackled the man, and they both fell down the stairs. The officer arrested the man for disorderly behaviour. Police charged Mr X with assaulting the officer.
2. Mr X complained to us about the force used against him, saying that:
 - He pushed the officer because the officer first tried to push him down the stairs.
 - The officer punched him in the face, causing him to fall down the stairs and dislocate his shoulder.
 - When he wanted to complain, an officer (Officer B) told him he could not take his statement because he had a conflict of interest.¹ However, the same officer then investigated the case against Mr X for assaulting Officer A.
3. As part of our independent investigation, we interviewed Mr X and his wife, Officers A and B, and three other Police staff members who witnessed parts of the incident. We also reviewed the station's CCTV footage and documents related to the incident.
4. Police investigated the events in parallel to the Authority's independent investigation.

¹ Officer B directed him to make an online complaint to the IPCA.

The Authority's Findings

Issue 1: Was Officer A justified in using the force he did on Mr X?

Officer A should have arranged for someone else to accompany Mr X out of the station.

Officer A inadvertently pushed Mr X at the top of the stairs.

Officer A did not punch Mr X.

The arrest of Mr X for disorderly behaviour was unlawful, therefore the force used to effect the arrest was not justified.

Even if Officer A tackled Mr X in self-defence, the use of force at the top of the stairs was disproportionate and unjustified.

The Authority does not recommend that Police lay criminal charges against Officer A.

Issue 2: Was Officer B's conflict of interest appropriately managed and was it appropriate for him to charge Mr X with assault?

Police did not appropriately manage Officer B's conflict of interest.

The decision to charge Mr X for assault was misguided. Officer B should not have given Mr X a summons to appear in court.

Analysis of the Issues

THE AUTHORITY'S ROLE

5. After supervising a Police investigation or conducting an independent investigation, the Authority's statutory responsibility is to:

"... form an opinion on whether or not any decision, recommendation, act, omission, conduct, policy, practice, or procedure which may be the subject matter of the investigation was contrary to law, unreasonable, unjustified, unfair or undesirable."

6. The Authority must convey its opinion to Police and may make whatever recommendations it regards as appropriate. The Authority's jurisdiction is wide-ranging and expressly includes reaching a view as to whether or not the Police should consider commencing civil (disciplinary) or criminal proceedings.

ISSUE 1: WAS OFFICER A'S USE OF FORCE AGAINST MR X JUSTIFIED?

7. Here we will consider:
 - a) whether the officer's use of force was unjustified; and
 - b) if so, whether we recommend Police:
 - i) commence civil or disciplinary action against the officer; and/or
 - ii) commence criminal proceedings.

What happened?

8. Officer A was managing a case of careless driving involving Mr X's 17-year-old son, who had crashed into another car. Officer A arranged a meeting at the Kaitaia Police Station to facilitate a resolution. Although Mr X's son was unable to attend due to work commitments, Mr X and his wife attended along with the other party.
9. Officer A started the meeting by reading a summary of the facts. Mr X disagreed that Officer A's account was correct and started challenging him in a raised voice. Mr X says he became upset because he felt Officer A was not impartial and lied about his son's actions.
10. One of the people at the meeting told Mr X to let Officer A finish reading. Another witness says Mr X then "*exploded*" and started swearing at everyone, calling them a "*pack of mongrels*" and "*cunts*." Officer A told Mr X to calm down, and he responded by saying: "*fuck you (Officer A)!*". He then said to his wife: "*Fuck this bullshit, I'm leaving, get up (name), let's go now.*"
11. Mr X walked out of the room and into a side corridor that connects to the station's main corridor. The main corridor ends at a doorway leading into and out of the public reception area.
12. Officer A called Mr X back and told him to leave through a side door, which was closer to their location. However, Mr X continued walking to the main corridor, followed by Officer A. Mr X turned around and walked towards Officer A, again yelling: "*Fuck you (Officer A)!*" Officer A told Mr X to calm down, or he would be arrested for disorderly behaviour.
13. Mr X did not calm down, and Officer A decided to escort him out of the Police station. They arrived at the top of a flight of stairs in the main corridor, where the alleged uses of force took place.

Was it appropriate for Officer A to guide Mr X out of the station?

14. According to Officer A, when he followed Mr X down the hallway, Mr X turned around and walked "*...straight into me... It was almost like it was a chest-to-chest touch.*" He told Mr X to exit through the side corridor's door. According to Officer A, Mr X continued to abuse him. Officer A says he told Mr X that he could be arrested for disorderly behaviour.

15. Officer A says Mr X turned around and walked back to the main corridor. Officer A followed him and placed his hand on Mr X's back to guide him out. Officer A says Mr X was visibly frustrated and angry.
16. Mr X told us he did not like it when Officer A placed his hand on his back. Officer A acknowledges that placing his hand on Mr X's back to escort him physically escalated the situation. Officer A explained that he did so inadvertently, saying: *"It just became a reactive thing to do... I just based that on just getting him out as quick as possible."*
17. Officer A says he thought Mr X may walk past other people in the corridor or at the public counter. Officer A says he wanted to prevent a potential confrontation between Mr X and others, which is why he escorted him out of the Police station.
18. In our assessment, it was unnecessary and unwise in the circumstances for Officer A to escort Mr X out of the station, particularly physically. Mr X and his wife entered the station through the door leading into the main corridor from the reception area, and he was going to the same door to leave. The door did not require controlled access to exit.
19. Although Officer A says he was concerned about a potential confrontation between Mr X and others, he did not point to any grounds for such a belief. The fact that Mr X was angry at a meeting, and with Officer A in particular, does not mean that Mr X would confront people in the corridor who had nothing to do with the meeting.
20. Officer A acknowledged that there could have been an opportunity to de-escalate the situation by asking another staff member to accompany Mr X out of the Police station, but said he did not see anyone in the corridor who could assist at the time. However, Officer A knew other staff were in the adjoining offices. One officer (Officer C) was following closely behind them.
21. Our view is that Officer A should have disengaged and asked someone else to accompany Mr X out of the station, which may have made any confrontation less likely.

What does Officer A say happened at the stairs?

22. Officer A says that when they reached the top of the stairs, Mr X turned around and pushed him in his chest. In response, he tried to grab hold of the upper part of Mr X's body to restrain him. Officer A acknowledges his method of restraining Mr X amounted to a tackle. He says: *"I did play sports a long time ago, that's how we tackled, but my, my intention was to go up high, grab him up high."*
23. As Officer A grabbed him, Mr X apparently ducked, and Officer A's bicep connected with Mr X's head. Officer A says that when he then grabbed hold of Mr X, they both lost their balance and fell down the stairs.
24. Officer A stood up and told Mr X: *"You're under arrest for disorderly behaviour."* Mr X told him that his shoulder was dislocated. Other staff arrived to assist. Mr X's wife asked Officer A to leave because Mr X was agitated. At this point, Officer A removed himself from the area. Other Police staff called an ambulance for Mr X, who was taken to the hospital.

What does Mr X say happened at the stairs?

25. Mr X relates that Officer A deliberately pushed him when they reached the top of the stairs. Mr X describes what happened:

“He’s just given me a little nudge just to, away you go, you know, and that’s where I’ve taken offence to, and I didn’t like that at all. So, I’ve turned around and shoved him in the chest.”

26. Mr X thinks Officer A’s ‘nudging’ push was deliberate because he was angry about what had happened in the meeting.

27. After shoving Officer A, Mr X says:

“I pushed and turned and went to leave, you know. So, as soon as I pushed him, I was not looking at him anymore. I’ve reacted, and then I’m out. It’s self-defence, and then as soon as I’m out, that’s when he’s just woof, attack. Now, I don’t know – I swear it was a punch – but you can’t hold me to that because I haven’t seen the footage and could’ve been knocked out for a split second... my memory’s come back; I’m at the bottom of the stairs. I’m on the ground, and I have two officers over the top of me.”

What does Officer C say happened?

28. Officer C was working in a nearby office with an open door facing the side corridor.
29. He says he could hear raised voices in the meeting room. He heard the door open and saw Mr X walking past his open office door. He heard Officer A calling out to Mr X, telling him to exit at the door nearest to them. He then saw Officer A walking past his office door.
30. Officer C went to see if he could assist and saw Mr X standing very close to Officer A, yelling: *“fuck you!”* Officer A told Mr X to get back and pushed him. Officer C’s account is inconsistent with those of Mr X and Officer A, neither of whom recalls pushing occurring in the side corridor. Officer C recalls Officer A saying: *“Look, no, just get out. Go on, off you go, get out.”* Mr X turned around and walked towards the main corridor, with Officer A following him. Officer C says he followed behind them.
31. At the top of the stairs, Officer C heard Officer A saying: *“Right, you’re under arrest.”* Officer A reached out to grab Mr X, who hunched down. As Officer A tried to grab Mr X, they both lost balance and fell down the stairs.

What does the station’s CCTV footage show?

32. The station’s CCTV camera recorded what occurred in the main corridor. The camera only partially captures the top section of the stairs; consequently, some of what happened is not visible. The footage shows the following:
- Mr X enters the main corridor from the side corridor, holding a red file in his right hand. He returns to the side corridor.

- Within a second, both Mr X and Officer A enter the main corridor. Mr X walks in front of Officer A, who has his left hand on Mr X's upper back. Officer A shows Mr X where to go with his open right hand.
- As they approach the top of the stairs, Mr X looks down the stairs.
- Mr X slightly stumbled onto the first step, where he was standing with both feet on the step.
- Mr X's upper body turns right towards Officer A, standing behind and to the right of him.
- Mr X moves the red file into his left hand, and Officer A removes his hand from Mr X's back.
- Mr X places his closed right hand on the left side of Officer A's chest and forcefully pushes him. As Mr X pushes Officer A, his closed right-hand moves diagonally (from left to right) across Officer A's chest.
- Officer A sweeps his arms upward, disengaging Mr X's arm from his chest.
- Mr X's upper body turns forward again.
- Officer A grabs hold of Mr X's hoodie with his left hand.
- At this point, Officer C enters the main corridor.
- Officer A moves toward Mr X with his body, and the upper part of his right arm moves towards Mr X. Mr X's head moves downwards (at this point in the footage, the lower part of Officer A's arm and Mr X's head cannot be seen).
- Both Officer A and Mr X quickly move down the stairs and out of the camera's view. This is likely where they're falling down the stairs.

What force did Officer A use against Mr X, and was it justified?

33. There are three alleged or actual uses of force to consider:

- Officer A's push of Mr X at the top of the stairs.
- Officer A punching Mr X in the head.
- Officer A tackling Mr X at the top of the stairs.

Did Officer A push Mr X at the top of the stairs?

34. Officer A denies pushing Mr X at the top of the stairs.

35. As explained, the CCTV footage shows Mr X stumbling onto the first step of the stairs. After showing him the footage, Officer A responded:

“I still don’t believe I pushed him... it’s not a clear push for me... the footage shows that I had my hand on his back, and... it’s all momentum, him stepping down. I wasn’t even looking at pushing him; I was actually looking down at the steps where I was walking... and then my hand came away from him.”

36. Although there cannot be absolute certainty about this, our view is that Mr X likely stumbled onto the first step because he felt some degree of force exerted on his back. In assessing the footage, Mr X, who wore gumboots, proceeded to the top of the stairs. He stopped briefly and looked down the stairs to take the first step. Officer A, who had been guiding Mr X along, was also looking down the stairs when this happened. It is unlikely that he noticed Mr X stopping, and he continued moving forward. This forward motion likely resulted in him unintentionally applying force to Mr X’s back.
37. On that basis we cannot conclude that Officer A deliberately pushed Mr X at the top of a flight of stairs.

Did Officer A punch Mr X at the top of the stairs?

38. Mr X felt a blow to his head during the altercation. Although unsure, he thinks this may have been Officer A punching him.
39. Officer A explained that his bicep connected with Mr X’s head after he ducked when he grabbed him at the top of the stairs. Officer C did not see any punching; his account is similar to Officer A’s about Mr X ducking down.
40. The footage does not show Officer A punching Mr X. We cannot see what happens after Officer A grabs Mr X, and they fall down the stairs.
41. In our assessment, Officer A’s account of his arm unintentionally connecting with Mr X’s head is a more likely explanation than that he punched Mr X.

Was Officer A justified in tackling Mr X to overcome his force in resisting the arrest?

42. Officer A believes that the force used to tackle Mr X was justified under section 39 of the Crimes Act 1961.
43. Section 39 of the Crimes Act 1961 empowers Police to use “*such force as may be necessary*” to overcome any force used in resisting an arrest or the execution of any sentence, warrant, or process. “*Necessary*” force in this context is generally accepted as meaning “*reasonable*” and “*proportionate to the degree of force being used to resist*”.
44. Police can only use force to overcome resistance to effect an arrest if the arrest is lawful. Therefore, we must establish whether the arrest was lawful before considering the force under section 39.

Was Mr X's arrest for disorderly behaviour lawful?

45. Officer A explained that he arrested Mr X for disorderly behaviour, specifically section 4 of the Summary Offences Act 1981. Under section 4, it is an offence if a person behaves in an offensive or disorderly manner in public or uses words that threaten, alarm, insult, or offend someone.
46. In *Brooker v Police*,² the Supreme Court considered a person's right to freedom of expression against the limitations the Summary Offences Act places on a person's behaviour. The Court concluded that if the behaviour is an expression of someone's opinion, it is not enough if it annoys or even wounds a person's feelings; it has to be disruptive of public order. The Court concluded that the legislation protects the public order and does not restrict any person's freedom of expression. It does not forbid abusive or insulting language.
47. Further, in *R v Ali'Imatafitafi*, the Court found that where a person's conduct is likely to cause a reaction from the Police only, it will not amount to disorderly behaviour because the only outcome of such behaviour is a Police response, and there is no actual threat to the public order.³
48. Mr X's conduct had to occur within a public place for it to be considered an offence under the Act. This is because the behaviour has to risk upsetting the public order. Although a Police station is public property, the offices (and corridors) of a Police station are not a 'public place', as it is not a space that is freely open to the general public to access and use.
49. In addition, after Mr X left the meeting and Officer A followed him down the corridor, his behaviour was directed at Officer A. The only outcome of such behaviour was a Police response from Officer A, and this did not risk upsetting public order.
50. As Mr X could not be lawfully arrested for disorderly behaviour, any force used to effect an arrest on that ground was unjustified. Accordingly, section 39 is unavailable to Officer A as a justification for the use of force.
51. That said, Officer A would have been justified in arresting Mr X for assault on a Police officer, even though it is doubtful that such a charge would succeed at trial.

Was Officer A justified in tackling Mr X to defend himself?

52. Officer A explained his reason for arrest, saying: *"I just had it in my head that he should be arrested for... disorderly behaviour at the time."* He says his reason for believing Mr X was resisting the arrest for disorderly behaviour was based *"purely on him hitting me."* However, Officer A also told us: *"I couldn't remember him hitting me until I saw the video."*⁴
53. Mr X's push to Officer A was obvious and forceful; it is difficult to believe that Officer A would have been unaware of such force when it occurred. It appears to us that Officer A could not have failed to register that a forceful act was directed at him, so his subsequent response was a

² [2007] NZSC 30.

³ [2007] NZCA 329.

⁴ Because Officer A did not remember that Mr X had pushed him, he could consequently not have arrested Mr X for assault in the immediate aftermath.

reaction to this. It is a matter of common knowledge that hormones such as adrenaline, which flush the central nervous system in stressful circumstances, can adversely affect memory consolidation.⁵

54. In our assessment, Officer A's actions were likely in response to being pushed. Therefore, we have assessed his actions under section 48 of the Crimes Act 1961.
55. Section 48 of the Crimes Act 1961 provides that any person, including a Police officer, is legally justified in using reasonable force to defend themselves or another. Under section 48, we must assess Officer A's actions by reference to these questions:
- a) What were the circumstances as the officer believed them to be (a subjective test)?
 - b) Was the officer's use of force against Mr Z for the purpose of defending himself/herself or another (a subjective test)?
 - c) Was the officer's use of force against Mr Z reasonable in the circumstances as the officer believed them to be (an objective test)?

What did Officer A believe the circumstances to be?

56. Officer A's view of the circumstances at the time he tackled Mr X is outlined above in his description of what occurred as he escorted Mr X out of the station and in paragraph 22, where he describes Mr X pushing him at the top of the stairs.
57. Though Officer A cannot remember Mr X pushing him, in our assessment, he must have believed Mr X was assaulting him.

Was Officer A's use of force to defend himself?

58. Given a genuine perception of assault, Officer A's immediate response to this force was clearly directed at defending himself.

Was Officer A's use of force against Mr X reasonable in the circumstances, as he believed them to be?

59. As explained above, Officer A says he wanted to grab hold of Mr X to restrain him. However, Mr X ducked, resulting in both men losing balance and falling down the stairs.
60. We asked Officer A if he thought tackling someone at the top of a flight of stairs was safe. He explained that he had not thought of that at the time. We asked him if the incident could have been resolved differently, to which he responded: "I could have let go."

⁵ Gold PE, van Buskirk R. Facilitation of time-dependent memory processes with post-trial epinephrine injections. Behav. Biol. 1975;13:145. [PubMed](#)

61. However, when we asked Officer A if he agreed then that he could have taken a step back, he said:

“It would be nice to say yes, but at the time, I didn't think that I could take a step back with that kind of behaviour... in fact, whatever happened there, what's happened there was purely reactive, like someone hurting me and I'm – I've reacted.”

62. We agree that Officer A's response was an instinctive reaction to being pushed, as opposed to a thoughtful and directed defensive act. This does not mean such 'reactive force' will automatically be justified. The test under section 48 requires us objectively to consider if the officer's force (a tackle) is reasonable in light of the officer's belief as to the circumstances.
63. No doubt it is dangerous to tackle a person standing on a flight of stairs, so the threshold for using such force must reflect the risk involved. In our view, the force used by Officer A (in tackling Mr X, who was standing and moving on a flight of stairs) was not proportionate to the threat the officer perceived.
64. In short, our view is that Officer A's force in tackling Mr X at the top of the stairs was disproportionate and unjustified.

Should Officer A be prosecuted for his unjustified use of force against Mr X?

65. In light of the 'reactive' nature of Officer A's use of force, in our assessment, it would be difficult to establish to the criminal standard (i.e., beyond a reasonable doubt) that Officer A had the required criminal intent (mens rea). The same lack of criminal intent also suggests to us that prosecution would not be in the public interest.
66. For those reasons, we do not recommend that Police consider laying criminal charges in this case.

Should Officer A be subject to an employment process for unjustified use of force?

67. As outlined above, Police have concluded their investigation of this matter. We have reviewed the Police investigation and conveyed our view on its adequacy to Police.

FINDINGS ON ISSUE 1

Officer A should have arranged for someone else to accompany Mr X out of the station.

Officer A unintentionally pushed Mr X at the top of the stairs.

Officer A did not punch Mr X.

The arrest of Mr X for disorderly behaviour unlawful, therefore the force used to effect the arrest was not justified.

Even if Officer A tackled Mr X in self-defence, the use of force at the top of the stairs was disproportionate and unjustified.

The Authority does not recommend that Police lay criminal charges against Officer A.

ISSUE 2: WAS OFFICER B'S CONFLICT OF INTEREST APPROPRIATELY MANAGED, AND WAS IT REASONABLE FOR HIM TO CHARGE MR X WITH ASSAULT?

68. In this section, we will examine the nature and extent of Officer B's conflict of interest and how that should have been managed. We also assess the decision to charge Mr X.

Was Officer B's conflict of interest appropriately managed?

What does Police policy say about conflicts of interest?

69. Police staff must carry out their duties with integrity, impartiality, and fairness. To ensure this, Police employees are required to declare conflicts of interest to their supervisors. Supervisors have to identify the risks involved with declared conflicts and employ appropriate strategies to manage risks.
70. The Police Managing Conflicts of Interest policy defines a conflict of interest as a conflict between someone's duty and a personal interest. Personal interests include close relationships between colleagues.
71. A conflict of interest may be actual (existing), potential, or perceived. The policy prescribes that the possibility of conflicts of interest should be carefully considered in both internal and external investigations, as it is essential that investigations are seen to be independent. The independence of a Police investigation must actively be considered in each case.

What was the nature of Officer B's conflict of interest?

72. Officer B was the on-duty sergeant for the Public Safety Team. After the incident, Mr X returned to the Police station and wanted to make a complaint about what had happened. Officer B told him he was unsure if he could take a statement from him because he thought he might have a conflict of interest. According to Officer B, he thought this because he had known Officer A for a long time. Officer B explained: *"... you're pretty friendly with your work colleagues when you work with them that much... we don't socialise together but yeah, work colleagues, work mates yeah."*
73. Officer B told Mr X that he needed to check with his supervisor about the conflict. In other words, Officer B's perception was that he might not be able to act impartially. Officer B's supervisor informed him the next day that he could take Mr X's statement; he also tasked Officer B with investigating the assault on Officer A.
74. In our view, having regard to Officer B's concerns about whether he had a conflict of interest of the sort described, he should not have been directed to act in the matter.

How was the conflict of interest managed?

75. Officer B contacted Mr X and explained that he was now investigating an allegation of assault against him and wanted to take a statement from him for this purpose. Mr X did not want to make a statement and became aggressive with Officer B when he asked him for it.

76. According to Officer B, he would have told Mr X that his supervisor had said it was appropriate for him to take Mr X's statement. However, he does not remember if he explained to Mr X why he was no longer concerned that he might have a conflict of interest. Mr X says this was not explained to him.
77. We asked Officer B if he had any discussions with his supervisor about how any bias or conflict of interest was to be managed. He told us that there were no discussions about this.

What is our analysis regarding the conflict of interest?

78. Police informed us that conflicts of interest are often unavoidable at smaller and rural stations such as Kaitaia, as staff there would normally know each other or members of the communities they serve. It would be impractical to assign staff from other stations to deal with Police business in every such case. Presumably, such decisions are made on a case-by-case basis in light of the risks involved. We accept this.
79. However, Officer B told Mr X that he could not take his statement of complaint because he believed he might have a conflict of interest. Officer B then contacted Mr X to inform him that he was investigating an allegation of assault by him, and he now wanted to take Mr X's statement as a suspect. The lack of an explanation to Mr X about the status of Officer B's potential conflict of interest no doubt reinforced Mr X's perception that he was not being treated fairly.
80. It is also apparent that there was no strategy for managing Officer B's conflict of interest. In our view, the situation required Police to assign a different person to take a statement of complaint from Mr X. Police could also have undertaken to have the investigation independently reviewed and the outcome (including any charging decisions) to be independently made. This should have been communicated to Mr X to assure him that the matter would be dealt with impartially.
81. We conclude that Police did not appropriately manage Officer B's conflict of interest.

Was the decision to charge Mr X for assaulting Officer A appropriate?

What does Police policy say about charging decisions?

82. The Police 'Charging decisions' policy guides staff in making appropriate charging decisions. The policy requires staff to follow the Solicitor General's Prosecution Guidelines,⁶ in making charging decisions. The Solicitor General's Prosecution Guidelines set out a two-step process for deciding if someone should be prosecuted. Police staff should consider the first step (known as the evidential test), and if this is met, consideration should be given to the second step (known as the public interest test).

⁶ [Prosecution Guidelines - Crown Law](#)

Step 1 – The Evidential Test

- Police must evaluate the admissible evidence and determine if it would reasonably result in a conviction for an offence.

Step 2 – The Public Interest Test

- Police must determine that prosecuting someone is in the public interest.

Why did Officer B decide to charge Mr X for assaulting Officer A?

83. Officer B believes that the footage clearly showed Mr X pushing Officer A, which, in his view, amounted to an assault. However, Officer B says he did not believe that it was in the public interest to prosecute Mr X because the offence was minor. According to Officer B:

“This is why I’ve had the talks with my bosses, because in my mind, and I’ve said it to everyone I’ve spoken to, is that any other day of the week a push like that to me doesn’t warrant public interest of charging someone. Some of their comebacks have been that ‘well, he’s in a police station, being disorderly, he’s been warned multiple times, and then he pushes a police officer, he needs to be held accountable’.”

84. We asked Officer B why he served a summons on Mr X to appear in court if he didn’t think it was in the public interest. Officer B explained:

“Because he wouldn’t talk to me... if he can’t tell me what happened, in his view and I’ve just gotta go off that footage... and the way he’s carrying on and yelling and screaming at me down the phone and blocking his driveway and being obstructive... then, what am I just gonna file it?... I need to do something about it. And my idea was to summons him and say, well, let the courts decide if the Judge or a jury wants to look at that and decide that yes he has assaulted a police officer then so be it.”

Would the available evidence reasonably result in a conviction against Mr X?

85. Officer B says he reviewed the CCTV footage, which showed Mr X assaulting Officer A. We asked Officer B if he saw Officer A pushing Mr X at the top of the stairs when he reviewed the footage. Officer A said: *“No, I didn’t see him get pushed.”*

86. However, when Officer B arranged to serve a summons on Mr X, Mr X told him that he pushed Officer A in reaction to Officer A pushing him first. Officer B relates: *“I said: ‘Yeah, well, I guess,’ he has his point there...”* Officer B described looking at the footage, saying:

“... from what I can see on that footage, you can definitely see, in my mind, that (Officer A) has put his hand on his back and possibly pushed him and then he, (Mr X) swapped his folder from one hand to the other so he can get a good push on (Officer A) and then it’s gone from there, that’s how I see it.”

87. Officer B was aware of Mr X's claim that he reacted after Officer A pushed him at the top of the stairs. If this is true, it would mean that Mr X could rely on the justification under section 48 (acting in self-defence) for the force he used.
88. A reasonable assessment of the footage would have determined that the possibility of a push by Officer A could not be summarily excluded. There is enough doubt on the evidence to conclude that there would be a reasonable prospect of a conviction. Therefore, we do not find the evidential test to be met.

Was there a public interest in prosecuting Mr X?

89. Regardless of whether the evidential test is met, we do not think that it was in the public interest to decide to prosecute Mr X for pushing Officer A.
90. Officer B shared this view but determined that he should serve a summons on Mr X because *"he wouldn't talk to me,"* and he had to be held accountable for his conduct. This is not the test for prosecution. We would also draw attention to the fact that Mr X was not obligated to make a statement to Officer B and was entitled to exercise his right to remain silent.
91. Officer B explained that although he issued a summons to Mr X to appear in court, he has not formally filed any charges.
92. We conclude that the decision to charge Mr X for assault was misguided. Officer B should not have given Mr X a summons to appear in court.
93. We raised our concerns with Police after Mr X was served a summons. Police subsequently informed Mr X to discard the summons. However, Police say they are yet to make a final decision on whether they will continue with a charge against Mr X.

FINDINGS ON ISSUE 2

Police did not appropriately manage Officer B's conflict of interest.

The decision to charge Mr X for assault was misguided. Officer B should not have given Mr X a summons to appear in court.

Subsequent Action

94. Section 31 of the Independent Police Conduct Authority Act 1988 states that the Authority should not make adverse comments about any individual unless that person has been given an opportunity to respond. In line with the principles of natural justice, copies of our draft report were provided to the Commissioner of Police and the involved Police employees, who were invited to submit their feedback regarding the report's findings.
95. We acknowledge all submissions received and appreciate the contributions of those who provided feedback. We have carefully considered all submissions. Where we found common

ground, we have amended our report accordingly. Submissions that we do not substantively agree with have been considered but are not detailed in the report.



Judge Kenneth Johnston KC

Chair
Independent Police Conduct Authority

19 December 2024

IPCA: 24-22496

About the Authority

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.

We are not part of the Police – the law requires us to be fully independent. The Authority is overseen by a Board, which is chaired by Judge Kenneth Johnston KC.

Being independent means that the Authority makes its own findings based on the facts and the law. We do not answer to the Police, the Government or anyone else over those findings. In this way, our 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?

Under the Independent Police Conduct Authority Act 1988, the Authority receives and may choose to investigate:

- complaints alleging misconduct or neglect of duty by Police;
- complaints about Police practices, policies and procedures affecting the complainant in a personal capacity;
- notifications of incidents in which Police actions have caused or appear to have caused death or serious bodily harm; and
- referrals by Police under a Memorandum of Understanding between the Authority and Police, which covers instances of potential reputational risk to Police (including serious offending by a Police officer or Police actions that may have an element of corruption).

The Authority's investigation may include visiting the scene of the incident, interviewing the officers involved and any witnesses, and reviewing evidence from the Police's investigation.

On completion of an investigation, the Authority must form an opinion about the Police conduct, policy, practice or procedure which was the subject of the complaint. The Authority may make recommendations to the Commissioner.

THIS REPORT

This report is the result of the work of a multi-disciplinary team. At significant points in the investigation itself and in the preparation of the report, the Authority conducted audits of both process and content.



Mana Whanonga Pirihimana Motuhake

PO Box 25221, Wellington 6140

Freephone 0800 503 728

www.ipca.govt.nz
