

Unjustified use of force on woman who gave the 'thumbs down' to a Police officer

1. At about 8.30am on 22 December 2022, 48-year-old Ms Z gave Officer A the ‘thumbs down’ gesture as she drove past him in Waitematā, Auckland. Officer A signalled for Ms Z to stop her car. Ms Z continued a further 800 metres to her home before stopping, then refused to give Officer A her details. Officer A told Ms Z she was under arrest.
2. Ms Z turned away from Officer A and he attempted to grab her. Ms Z’s halter-neck top was ripped during the interaction leaving her underwear exposed. Ms Z ran down the driveway, yelling for her parents to help her.¹ She ran into the house, slamming a sliding door behind her. Officer A’s hand was cut in the door as it closed.² Ms Z immediately went upstairs to change her top. A short time later, when she returned downstairs, Officer A sprayed her with pepper spray.³
3. Ms Z was charged with failing to stop when signalled to do so, refusing to give an officer her details, and resisting arrest. She pleaded guilty and was convicted of these charges. She was also charged with reckless disregard for the safety of others (for injuring Officer A). Ms Z pleaded not guilty to this, and in April 2025, the charge was ultimately dismissed.
4. Ms Z complained to us, saying Officer A made no attempt to de-escalate the situation and that he was unnecessarily brutal in his dealings with her. She believed there was no need for him to use pepper spray on her.
5. Police investigated the matter and found the officer’s actions to be justified in every respect.
6. We conducted our own independent investigation. We reviewed radio communications and Police statements, including from neighbours who witnessed the exchange at the top of the driveway, and officers who arrived to assist Officer A immediately after the incident. We also interviewed Officer A, Ms Z, and Ms Z’s parents.
7. We have concluded that Officer A’s actions were unlawful and disproportionate from the start of this incident. He over-reacted to Ms Z’s gesture, then escalated the situation with his decision-

¹ Ms Z was living with her elderly parents at the time of the incident.

² Officer A had a 7.5cm wound which required 13 stitches.

³ Pepper spray is also known as oleoresin capsicum or OC spray.

making and by the way in which he dealt with her. The situation could have been de-escalated if Officer A had communicated more effectively and sought to understand why Ms Z was acting in the manner she was, and if he had utilized other options available to him.

8. Our investigation was completed in March 2024. The release of this report was delayed until the conclusion of Ms Z's court proceedings in June 2025.

The Authority's Findings

Issue 1: Did Officer A act lawfully when he stopped Ms Z and when he arrested her?

We do not accept that Officer A signalled Ms Z to stop her car for a genuine land transport purpose. Therefore, the stop and subsequent arrest were unlawful.

Issue 2: Did Officer A act lawfully when he grabbed Ms Z and followed her to her house?

Given the stop and arrest were unlawful, Officer A had no legal basis for using force when he grabbed Ms Z to prevent her from escaping. He also had no legal authority to enter her house.

Issue 3: Was Officer A justified in using pepper spray on Ms Z?

Officer A's use of pepper spray was unlawful and unjustified.

General: Officer A's overall manner in dealing with Ms Z was over-reactive. He should have sought to de-escalate the situation. Had he done so, it is unlikely he would have found himself needing to use force.

Analysis of the Issues

ISSUE 1: DID OFFICER A ACT LAWFULLY WHEN HE STOPPED MS Z AND WHEN HE ARRESTED HER?

9. In this section we describe what happened when Officer A saw Ms Z and why he says he signalled her to stop. We go on to describe what happened when Ms Z stopped her car at her parent's property.
10. We then discuss whether the stop was for the purposes of enforcing the Land Transport Act 1998, and whether Officer A had the legal authority to arrest Ms Z after she refused to provide him with her details.

What happened?

11. Ms Z had taken her son to work and was returning home. She was in a black Honda car, at an intersection, when Officer A approached from the opposite direction in a marked Police patrol

car. As Officer A came closer, Ms Z extended her right arm out of the driver's window and gave him the 'thumbs down', moving her arm up and down several times.

12. Ms Z explained to us that, at the time, she was feeling traumatized by the way in which Police had been dealing with members of the public in recent years. She says: *"I am usually a very quiet and modest woman, but the events of the past year made me want to send a message to the policeman that things are not okay."* She made the 'thumbs down' gesture because it is the sign language used internationally to indicate 'all is not okay'.⁴ Ms Z says: *"I hoped the cop would take it on the chin."*
13. Officer A says he and Ms Z looked at each other as they drove past, and that: *"... she mouthed something at me but I had my window up so I don't know what she said..."*. Ms Z disputes this. She says she looked into Officer A's eyes while gesturing but: *"I wouldn't have called out to him... I'm not the kinda person to do that. It was just a signal."*
14. Officer A made a U-turn and caught up with Ms Z as she turned into Totaravale Drive. He says he got directly behind the Honda and turned his siren on, signalling for Ms Z to stop. He says Ms Z momentarily braked before continuing to drive: *"... so I knew that she'd heard and seen me"*. Ms Z continued driving at the normal road speed, not making any effort to get away from Officer A.
15. Ms Z explains that she did not hear Officer A's siren and only saw him behind her as she approached one of the last corners before turning into her street. She says:

"I just saw the blue and red flashing lights and [Officer A] was screaming down the road and then to try to chase, to catch up to me and then... I sort of paused a little bit 'cos I thought I'll just stop here, but I was so close to home and I was so scared I just wanted to be home ... where Mum and Dad were."

"I didn't speed. I just wanted to get home. I just was so in fear of him, in absolute fear ... I guess I thought to myself it's such an overreaction, or I don't know what, I just was panicked."
16. Officer A followed Ms Z for about 460 metres before she turned into her street. He says he was just about to take Ms Z's registration number and tell the Northern Emergency Communications Centre (NorthComms) that he had a driver who was not stopping, when Ms Z turned into a driveway (about 380 metres from the road entry).
17. After pulling into the driveway, Ms Z turned into a car bay on the left side, adjacent to the house below. Officer A stopped over the pathway at the top of the driveway.
18. At about this point, Officer A contacted the NorthComms for the first time concerning the incident. He asked them to check the Honda's registration number and gave the address, saying said it was up the driveway. When asked why he did not tell NorthComms that the driver had

⁴ Ms Z says, as a diver, she is particularly familiar with the 'thumbs down' gesture as it is used internationally to communicate when something is 'not okay' underwater.

failed to stop, he said that by asking them to “*take a rego*”, he had given them an indication that it was not a normal traffic stop.

19. About 15 seconds later, the dispatcher told Officer A the registered owner’s name (Ms Z’s). The Honda was registered to a different address from the one they were at, and the registration had lapsed. Officer A did not acknowledge this information and cannot recall hearing it. He says he remained unaware of who Ms Z was throughout the incident.⁵
20. Ms Z got out of her car and approached Officer A as he got out of his. She told us she believed Officer A had followed her because she had done the ‘thumbs down’ gesture to him, so asked him: “*Am I not allowed to give you a thumbs down? ... Did you turn around and follow me because I gave you a thumbs down?*” She says he replied: “*No, you’re not allowed to.*”
21. Officer A says Ms Z was not being aggressive when she approached him, though she appeared agitated. He says he did not reply to Ms Z’s question about being allowed to do the ‘thumbs down’ and instead asked for her driver’s licence and details.
22. Each time Officer A asked Ms Z to provide him with her details, she told him: “*I do not consent.*” Ms Z admits this occurred. She told us she was “*following common law*”, which she believes made Officer A angry.
23. Officer A told Ms Z she was obligated to provide her details, and that she may be arrested if she failed to do so. He says Ms Z replied: “*I’m not giving you my fucking details. I do not consent to this.*” Officer A says Ms Z then turned and started to walk away from him. At this point, Officer A says he told Ms Z she was under arrest.
24. Radio records indicate the exchange at the top of the driveway took about 45 seconds.
25. Officer A says he remained polite and was patient throughout, but that Ms Z became “*elevated*”. Ms Z says Officer A was unfriendly from the start of the interaction and made no attempt to de-escalate the situation.

Was the stop and arrest lawful?

26. Section 113 of the Land Transport Act 1998 provides Police officers with powers to enforce transport legislation.⁶ Section 114 of the Act provides officers with the power to stop a vehicle for the purpose of enforcing the Act. The courts have been clear that the s114 power can only be used for the purpose of enforcing the provisions of the Act.⁷
27. When an officer stops a driver for the purposes of enforcing the Act, the driver is required to provide their details when demanded. Failure to do so is an offence. Section 114 provides

⁵ Had Officer A heard the dispatcher provide these details, he could have looked at the registered owner’s photograph on his device, and matched it to Ms Z.

⁶ The Land Transport Act 1998 can be found at www.legislation.govt.nz.

⁷ *Tapara v Police* [1990] 3 NZLR 204; *R v Jefferies* [1994] | NZLR 290; *Jones v Attorney-General* [2004] | NZLR 443; *McGarrett v R* [2017] NZCA 204; *Tahapehi v Police* [2018] NZHC 2666; *C v Police* [2021] NZHC 2208; *Wind v R* [2024] NZHC 1907; and *Campbell v Police* [2024] NZHC 3091

officers with the power to arrest a person without warrant if the officer “*has good cause to suspect*” them of having failed to comply with a requirement of the Act.

28. For Officer A to have required Ms Z to stop her car for the purposes of enforcing the Act, he must first have believed she may be committing an offence under the Act.
29. Officer A says Ms Z’s “*unusual behaviour*” was the reason he stopped Ms Z. However, simply seeing a driver behaving unusually is insufficient reason for an officer to require a driver to stop.
30. After the incident, Officer A sought to justify the signal to stop on the basis that Ms Z’s unusual behaviour led him to believe she may be under the influence of alcohol or illicit drugs (‘under the influence’). Driving while ‘under the influence’ is an offence under the Act and provides sufficient reason for an officer to signal a driver to stop.

Did Officer A genuinely suspect Ms Z of being ‘under the influence’?

31. There was nothing in Ms Z’s manner of driving that indicated she was ‘under the influence’. Officer A says she drove at the normal road speed and that her manner of driving was “*fine*”.
32. When Officer A requested the NorthComms dispatcher check the car’s registration number, he did not give them any indication he thought she may be ‘under the influence’ or that he intended to conduct a breath test.
33. Officer A did not tell Ms Z (or her parents) why he had stopped her or mention his concern she may be ‘under the influence’ at any stage during the incident. Ms Z only learned of Officer A’s alleged concern around her potential intoxication when provided with his Police statement sometime after the incident.
34. Officer A says, when he engaged with Ms Z at the top of the driveway: “*I didn’t even have my device out, you know, because she was coming up to me so I didn’t have time to go to the back of the car and get my [breath testing device] ...*”. It appears obvious to us that if Officer A had suspected Ms Z of driving under the influence, he could have had his breath testing device with him when he left his car to confront her.
35. Officer A says there was no time to ask Ms Z whether she had been drinking alcohol and that he did not get the opportunity to tell her he was going to conduct a breath test on her. We do not accept this. When Ms Z first approached Officer A she asked if she had been stopped because of the ‘thumbs down’ gesture. Rather than telling her he intended to breathalyse her, his first step was to ask her for details.
36. One of the officers who later came to assist, conducted a passive breath test on Ms Z. He cannot recall anyone asking him to do the test. Rather, he told us he conducted the test because it is good practice to do so when offending is related to driving.
37. On 23 December 2022, the day after the incident, Officer A completed a Tactical Options Report providing his justification for the use of force. When outlining the background to the use of force, Officer A did not mention alcohol or drugs at all. He merely said: “*The Honda Fit was signalled to stop after unusual behaviour from the driver was observed*”.

38. Officer A also completed a Fleeing Driver Report the day after the incident. In it, he said: *“I noted unusual behaviour from the driver in that she was giving me the thumbs down signal... This lead [sic] me to suspect that she was under the influence of alcohol or an illicit drug.”*
39. Six days later, Officer A made a formal statement. In addition to describing Ms Z’s *“unusual behaviour”* as being the thumb gesture, he said that Ms Z had said something indistinguishable as she drove past.
40. When we interviewed Officer A in November 2023, we asked him to describe exactly what the *“unusual behaviour”* looked like, and how it led him to believe Ms Z may be ‘under the influence’. He said the ‘thumbs down’ gesture caused him to wonder: *“What’s she up to?”*, and that Ms Z *“mouthed something at me”*. In addition to his previous accounts, Officer A also said that Ms Z’s eyes had been wide open, like *“a possum caught in headlights”* and that he subsequently thought: *“Oh gosh ... Is she pissed?”* This was the first account where Officer A mentioned Ms Z’s eyes being wide open.

Conclusion

41. We are not convinced that Officer A genuinely believed Ms Z might have been ‘under the influence’. In our assessment, Officer A stopped her because he was annoyed by her gesturing to him in what was no doubt a rude and disparaging way. Therefore, in our view, the stop was unlawful.
42. Given this, Officer A had no legal power to require Ms Z provide her details and the arrest was unlawful.
43. Under section 177 of the Criminal Procedure Act 2011, a court may order a retrial of charges or a rehearing in relation to the sentencing of a defendant.
44. Ms Z pleaded guilty to failing to stop when signalled to do so, refusing to give an officer her details, and resisting arrest. However, in our view, given there is a strong argument that Officer A acted unlawfully in requiring Ms Z to stop in the first place, it would be appropriate for Police to apply for a rehearing pursuant to s177 and offer no evidence.

FINDING ON ISSUE 1

We do not accept that Officer A signalled Ms Z to stop her car for a genuine land transport purpose, with the result that the stop and subsequent arrest were unlawful.

ISSUE 2: DID OFFICER A ACT LAWFULLY WHEN HE GRABBED MS Z AND FOLLOWED HER TO HER HOUSE?

45. In this section we describe what happened when Officer A grabbed Ms Z at the top of the driveway and followed her down to the house. We consider whether the use of force was justified and whether Officer A had legal authority to enter the house.

What happened?

46. Ms Z explained to us that she turned away from Officer A to get her driver's licence from her car. She acknowledges she did not tell Officer A this was her intention.
47. Ms Z says Officer A told her she was under arrest while she was moving towards her car. This caused her to panic, so instead of continuing to her car, she turned to go down the driveway to get help from her parents.
48. Officer A then grabbed Ms Z by the shoulder, attempting to stop her from walking away. Ms Z says she "*freaked out majorly*". She thrashed around and tried to get out of Officer A's grasp, while screaming for her parents to help her.
49. As Ms Z pulled away from Officer A, a strap holding up Ms Z's halter-neck top came off, causing her top to fall. Officer A says he did not realise Ms Z's strap had torn off, exposing her bra.
50. Ms Z says she panicked as this happened in full view of the neighbourhood. She was worried Officer A may take her into custody in her bra: "*... for me ... to be arrested in my bra and led away in my bra was ... more mortifying to me than anything.*" Ms Z says, in her panic to cover herself, she broke away from Officer A and ran down the driveway, yelling for her parents to help her.
51. At this point, Officer A asked NorthComms to provide "*priority assistance*". Four Police units responded, saying they were on their way. Officer A then followed Ms Z down the driveway. Officer A told to us:

"I still didn't know whether she was under the influence ... if I had of let her go ... would she have gone into the house, got a weapon, would she have someone there, you know, I was on my own so ... dealing with the female on her own is sort of much better than going into the unknown ...

I was just following procedure ...".

52. Ms Z's mother says she was in the kitchen when she heard Ms Z calling for help. She came out of the sliding door and saw Ms Z running down the driveway with her bra exposed and Officer A running behind her. Ms Z's mother stepped outside. She did not see what occurred next, when Ms Z closed the door. (Officer A disputes Ms Z's mother being outside at this point.)
53. Ms Z ran through the sliding door, slamming it to lock Officer A outside. She says she was not looking down at the door. She ran upstairs to change her top.
54. Officer A says after running inside the house, Ms Z turned to face him. He says he very calmly repeated: "*Look, you're under arrest, you have to come with me*". Officer A says:

"I went to put my hand out and, I mean the look of aggression on her face, I can still remember, she got the sliding door with both hands and she just slammed the door on my hand."

55. Officer A tried to open the door, but Ms Z had locked it. He did not immediately realise that his hand had been cut when she had initially pulled the door to close it.
56. Officer A told us Ms Z's mother came outside and pulled him away from the door, telling him that her daughter was a good girl. They both then realised Officer A's hand had a large laceration. Ms Z's mother began trying to stop the bleeding.
57. Officer A told NorthComms he had been assaulted, that he was injured, and that he was bleeding quite heavily. The dispatcher said several Police units were on their way to assist and that they would organise for an ambulance to attend.
58. Meanwhile, Ms Z says she was "racing" to change her top so she could return downstairs, not wishing to antagonise Officer A any further by keeping him waiting. After about two minutes, she heard her mother yelling out for her to get a towel because Officer A was bleeding. She says: *"... that is when I knew then that I'd hurt him. I didn't know before that."*
59. Ms Z says she ran downstairs with a towel. She told us:

"... I was so scared 'cos I knew at that point then now like I'm so in trouble, but I opened the door. I wasn't coming out in anger or anything, I was coming out in peace... I just wanted to... help...the Police officer."

Did Officer A have legal justification for grabbing hold of Ms Z?

60. Officer A says he grabbed Ms Z's shoulder: *"... in an attempt to stop her from going away"*. Plainly the force used was at the lower end of the scale.
61. Section 40 of the Crimes Act 1961 allows officers to use *"such force as may be necessary"* to prevent someone from escaping arrest.
62. Force can only be used to prevent an escape where an arrest is lawful. We have concluded that the arrest here was unlawful. It follows that the force used was unlawful and unjustified.

Did Officer A have authority to try to enter Ms Z's house?

63. Section 119 of the Land Transport Act confers on officers power to enter any premises which a person has entered if they are freshly pursuing a person whom they have *"good cause to suspect"* has failed to comply with a requirement of section 114 of the Act and who may have been driving 'under the influence'.⁸
64. We do not accept Officer A genuinely suspected Ms Z of driving while 'under the influence'. As already said, it follows that the signal to stop was unlawful as was the subsequent arrest and use of force. It also follows that Officer A's attempt to enter the property was unlawful and unjustified.

⁸ There is no legal definition of a 'fresh pursuit'. However, it requires an officer to be actively following a person who they believe to have committed an offence, with no diversion breaking the chain of events during the pursuit.

Did Ms Z deliberately injure Officer A?

- 65. Officer A believed Ms Z had deliberately slammed his hand in the door. Ms Z says she would never have hurt him on purpose.
- 66. In our assessment, at the time Ms Z was focusing on running inside to cover her exposed bra, and it appears unlikely in the extreme that she was aware that Officer A had his hand in the sliding door.
- 67. We conclude that Ms Z did not intentionally injure Officer A.

FINDINGS ON ISSUE 2

Given the stop and arrest were unlawful, Officer A had no legal basis for using force when he grabbed Ms Z to prevent her from escaping, and no legal authority to enter her house.

ISSUE 3: WAS OFFICER A JUSTIFIED IN USING PEPPER SPRAY ON MS Z?

- 68. Here we consider whether Officer A was justified in using pepper spray on Ms Z when she returned to the door.

What happened?

What does Ms Z say happened?

- 69. Ms Z says she tentatively opened the door with one hand and handed her mother a towel so that her mother could help Officer A.
- 70. Ms Z told us: “... I knew I was in trouble so I kind of put my arms up to be arrested”. She explained: “I put my arms up to go in peace”. She believes she may have said something to Officer A, like: “Just go on, arrest me then”.
- 71. Ms Z says Officer A then came towards her and sprayed her in the eyes.

What did Ms Z’s parents see?

- 72. Ms Z’s father heard the commotion and came into the room just prior to Ms Z being sprayed. While standing near the sliding door, he heard Officer A telling Ms Z he was arresting her. He recalls seeing Officer A reaching towards Ms Z, then saw him spray her in the face, two or three times.
- 73. Ms Z’s mother recalls taking the towel from Ms Z and hearing Officer A telling Ms Z she was under arrest. She immediately began wrapping Officer A’s injured hand in the towel and did not see Officer A spraying Ms Z with his other hand.

What does Officer A say happened?

74. Officer A's accounts indicate he believed it was Ms Z's mother who fetched the towel and that he was confused about exactly when this occurred. We are satisfied that, unbeknown to Officer A, Ms Z bought the towel to the door and that she handed it to her mother.
75. Officer A explained to us that, upon getting the towel, Ms Z's mother held his right arm and started to wrap his bleeding hand with it. Officer A acknowledges this was well-intentioned.
76. Officer A told us:

"That's when [Ms Z] come back, and I could see her coming and she was waving her arms, she stopped in the doorway and she said: "Come on, fuckin arrest me then." As I said I couldn't contend with her mum as well, so my OC spray is on my left-hand side so I just deployed to keep [Ms Z] under control."

What happened after Ms Z was sprayed?

77. After spraying her, Officer A put Ms Z in handcuffs. Several officers arrived within the next minute and assisted with taking Ms Z into custody.
78. As already discussed, an officer conducted a passive breath test on Ms Z as a matter of standard procedure. The test detected no trace of alcohol.

Should Officer A have warned Ms Z he was going to use the pepper spray?

79. Police 'Oleoresin capsicum spray' policy says that before using pepper spray, *"unless impractical"*, officers must warn the person that if they do not comply with instructions, they will be sprayed. They must give the person a reasonable opportunity to comply before deploying the spray.
80. Officer A says he did not have time to warn Ms Z that he was about to use the pepper spray.
81. We do not accept this, given the circumstances as described above. Officer A should have provided Ms Z with instructions and warned her that she would be sprayed if she did not comply before approaching her to use the spray, as required by policy.

Was the use of the pepper spray justified?

82. In his use of force report, Officer A said he used force because he: *"... needed to act to effect arrest and to also defend myself."*

What are the possible legal justifications for Officer A's use of force in these circumstances?

83. Officer A relied on the following provisions of the Crimes Act 1961 to justify his use of the pepper spray:
- a) Section 39 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.

- b) Section 48 provides that any person is justified in using “reasonable” force in defence of themselves or another.
84. Given the arrest was unlawful, section 39 does not apply. Even if Officer A believed the arrest to be lawful, on his own evidence Ms Z was standing still in the doorway, putting her hands in the air, telling Officer A to arrest her. There is no indication she was resisting arrest at the time Officer A sprayed her.
85. In addition, Officer A could have delayed executing the arrest process by a few minutes. He knew Ms Z was unlikely to go anywhere as she was in her parents’ home, his car was blocking the driveway, and other officers would soon be arriving to assist.
86. Section 48 is applicable as, regardless of the circumstances of the arrest, Officer A would have been entitled to use reasonable force to defend himself had that been necessary.

Was Officer A justified in using pepper spray on Ms Z to defend himself?

87. Under section 48, we must assess Officer A’s actions on both:
- a subjective basis (that is, what he genuinely believed); and
 - an objective basis (what a “reasonable” person would have done).
88. This assessment involves three questions:
- a) What were the circumstances as Officer A believed them to be (a subjective test)?
 - b) Was Officer A’s use of force against Ms Z for the purpose of defending himself (a subjective test)?
 - c) Was Officer A’s use of force against Ms Z reasonable in the circumstances as he believed them to be (an objective test)?

What did Officer A believe the circumstances to be?

89. Officer A says, when Ms Z came downstairs, she stood “static in the door frame”, about one metre away from him. He told us, when Ms Z waved her arms in the air and said, “Come on, fuckin arrest me then”, it was “like a challenge”. He says he believed it meant she was in an aggressive mood.
90. Officer A explained: “I deployed my OC spray ... because I was obviously on my own and it was difficult with just one arm...”.
91. Officer A says, prior to spraying Ms Z:
- he did not know Ms Z and she was unpredictable in her behaviour;
 - he could not rule out the possibility she may have access to weapons;

- he believed: “... I can't have another altercation with her because I would not have been able to handle her” and: “... I was injured, and I certainly didn't want to have another fight with her with one arm.”;
- although he knew other officers were coming to assist, he was still on his own at that point;
- he could not wait for Ms Z to attack him before acting; and
- pepper spray was the best option available to subdue Ms Z and stop her from coming towards him.

92. Officer A says he considered Ms Z to be ‘assaultive’ because:⁹

- when he initially told her she was under arrest at the top of the driveway, she: “resisted arrest very violently, she was thrashing about, she was trying to break my grip”; and
- she had slammed his hand in the door.

93. When asked what Ms Z was doing that he specifically deemed to be ‘assaultive’ when she came to the doorway, Officer A said it was: “Just her manner, just her verbal ... it was almost ... like an invitation to come in and... arrest her.”

94. In summary, Officer A believed Ms Z’s prior actions and current behaviour indicated she may be about to assault him. Given he only had one arm freely available, he thought he would be unable effectively to engage in a physical encounter with Ms Z. He believed he needed to act pre-emptively to stop Ms Z from assaulting him.

Was Officer A’s use of force for the purpose of defending himself?

95. We accept Officer A’s subjective assessment led him to believe Ms Z may pose a risk to him and that he acted to defend himself.

Was Officer A’s use of force against Ms Z reasonable in the circumstances as he believed them to be?

96. While we accept Officer A acted in self-defence, we do not accept that his use of force was reasonable.

97. There were obvious alternatives, most obvious of all moving away from the situation. In short, our assessment is that pepper spraying Ms Z was, objectively speaking, an overreaction to the threat level that Officer A could conceivably perceive he faced. Our conclusion is that Officer A’s use of pepper spray was a disproportionate use of force in the circumstances as Officer A believed them to be.

98. The Solicitor-General’s Prosecution Guidelines set out a range of factors which may be considered when deciding whether a prosecution is in the public interest. Having reviewed

⁹ Police policy defines ‘assaultive’ as being someone who is “intent to cause harm, expressed verbally, though body language/physical action.”

these, we do not believe it would be in the public interest to prosecute Officer A for using the pepper spray on Ms Z.¹⁰

99. The Police Code of Conduct defines excessive use of force as “*serious misconduct*”. In our view, it would have been appropriate for Police to have considered an employment outcome around the use of excessive force.

Overall Conclusion

100. In our view, Officer A overacted when he saw Ms Z make the ‘thumbs down’ gesture at him. His subsequent decision-making was significantly flawed.
101. In addition, regardless of whether or not he believed the vehicle stop to be justified, when speaking with Ms Z, he must have seen that she was clearly distressed and panicking. Officer A’s manner of dealing with her unnecessarily escalated the situation to the point where he used force. His communication with Ms Z was poor and he missed several opportunities to de-escalate the situation.¹¹
102. In our view, it would have been appropriate for Police to have considered disciplinary proceedings in this case.

FINDINGS ON ISSUE 3

Officer A should have warned Ms Z he was about to use the pepper spray, allowing her time to comply with instructions.

Officer A’s use of pepper spray was unlawful and unjustified.

Officer A’s overall manner in dealing with Ms Z was over-reactive. He should have sought to de-escalate the situation. Had he done so, it is unlikely he would have found himself needing to use force.

Recommendation

103. We recommend Police consider making an application pursuant to section 177 of the Criminal Procedure Act 2011 for a retrial and offer no evidence.

¹⁰ <https://www.crownlaw.govt.nz/prosecution-guidelines>

¹¹ Police ‘Use of force’ policy in place at the time of this incident said: “*Tactical communication is Police’s preferred option for resolving incidents where Police action is necessary in response to uncooperative subjects, as it may enable such incidents to be de-escalated, and resolved without the use of force.*”

Police Response

104. Police have a completely contrary view to us on this matter. They accept Officer A's assertion that he stopped Ms Z out of a genuine belief that her actions indicated she may be impaired by either alcohol or drugs. Given their belief, they find the subsequent arrest and uses of force were lawful and justified, and they will not therefore be acting upon our recommendation.
105. We acknowledge the position adopted by Police. However, our view remains unchanged.



Judge Kenneth Johnston KC

Chair
Independent Police Conduct Authority

3 February 2026

IPCA: 23-16359

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
