

FINAL REPORT: IIU concludes investigation into in-custody injury in Portage la Prairie

On August 15, 2017, at 8:50 a.m., the Independent Investigation Unit (IIU) was notified by the Dakota Ojibway Police Service (DOPS) about an incident that occurred on August 12 at approximately 4:45 p.m.

According to the notification (reproduced in part):

At approximately 3:55 p.m., DOPS members were patrolling the community of Long Plain First Nation when they observed a Green Ford F150 turn west bound onto Yellowquill Trail West in a careless manner. The vehicle, travelling at a high rate of speed, was observed to swerve three times from both sides of the road and almost lose control. It eventually turned into a driveway off Yellowquill Trail West. Police activated their emergency equipment as the F150 continued down the driveway and eventually stopped behind the house. A female driver (later identified as the affected person – AP) exited the vehicle and was observed to be unsteady on her feet. When police approached AP, she was observed to have glossy eyes and they detected a strong odour of liquor on her breath. AP was arrested for impaired driving, handcuffed and placed in the police cruiser. Police conducted a Canadian Police Information Centre (CPIC) check which revealed AP to be subject to an undertaking to abstain from consumption of alcohol and to keep the peace and be of good behaviour. An unendorsed warrant of arrest also existed for her arrest on charges of uttering threats and Mischief Under \$5000. Finally, her driver's licence status was noted as subject to a lifetime suspension.

At 4:14 p.m., police departed and transported AP to the Portage la Prairie RCMP detachment. On arrival, police escorted AP into the cell area. At 4:45 p.m., she became uncooperative with an RCMP member when he attempted to remove the handcuffs from her. AP stood up onto a bench in front of her and pulled away from the RCMP member. As a result, the RCMP member pulled AP down from the bench and onto the floor. AP's head came in contact with the floor and she sustained a small laceration to her right forehead. As a result of the laceration, AP was transported to the Portage District General Hospital for treatment.

Although the injuries sustained by AP were not “a serious injury” as defined by IIU regulation 99/2015, based on the nature and circumstances of the allegation included in this notification, the civilian director determined it was in the public interest for the IIU to investigate this complaint. IIU investigators were assigned to this investigation.

The civilian director designated the RCMP member who initially attempted to remove the handcuffs from AP as the subject officer (SO). A DOPS member and an RCMP member were

designated as witness officers (WO1 - 2). AP cooperated with IIU investigators and participated in an interview.

IIU investigators also received and reviewed, among other material:

- A USB thumb drive containing video footage from RCMP Portage la Prairie detachment front and bay entrance and cell area;
- DOPS members' general and supplementary reports;
- CD containing the in-car transmissions during the conveyance of AP;
- RCMP record of proceedings;
- Civilian guard contact information;
- Prisoner report for AP;
- Prisoner logbook for AP;
- Prisoner photo of AP;
- Medical report respecting AP.

AP

IIU investigators interviewed AP at the Women's Correctional Centre in Headingly. AP stated that DOPS members had pulled her vehicle over on Long Plains First Nation and then she was transported to the RCMP detachment in Portage la Prairie. She said she was put in the holding cells due to her arrest for impaired driving. When she arrived at the detachment, she was met by an officer from the RCMP.

AP stated that she suffered her injury at the garage, near a doorway, at the detachment as she was escorted into the cells. She said the RCMP officer (SO) was holding on to her from behind by the handcuffs, when she suddenly felt a 'yank', causing her to fall and hit her head on the ground. AP said she was helped up from the ground, at which point she noticed there was blood where she had been lying.

AP stated she said to the police officer: "Look at what you did." AP claimed SO threw her to the ground and walked away. AP stated that a female RCMP officer helped her to sit up and put something on her head to help stop the bleeding.

AP said she was taken to the hospital where doctors used surgical glue to close the wound on her eyebrow.

AP stated that when this incident occurred, she was not standing on anything but rather she was walking sideways, or backwards, when the police officer yanked her down to the ground.

AP signed a consent for the release of her medical records. These records were received and reviewed by IIU investigators. Under the heading of "Clinical Findings," the following was noted:

AP has a laceration on the right side of the head, no knock out (K/O), or any other injury noted. There is a small laceration on right eyebrow region cleansed and closed with derma bond (surgical glue).

Witness Officers

WO1, a member of DOPS, first came into contact with AP on August 12 when he was doing traffic enforcement. He observed AP operating a motor vehicle on the Yellowquill Trail West and later, after dealing with her, came to the opinion that her ability to drive was impaired by alcohol. After he had detained and handcuffed her, he learned that she was also in breach of bail conditions and was wanted for apprehension on a number of outstanding charges. WO1 transported AP to the Portage la Prairie RCMP detachment, as that is where DOPS conducts breathalyzer tests for impaired drivers.

During her transport to the RCMP detachment, AP was belligerent and uncooperative towards WO1. AP also complained that the handcuffs were too tight on her wrists.

WO1 stated that he pulled his police vehicle over, loosened the handcuffs and relocked them. WO1 said when he arrived at the RCMP detachment in Portage la Prairie, he requested SO to assist him with AP as she would not let him escort her to the cell area.

WO1 and SO walked AP into to the cells. She remained handcuffed when she entered the cell area. As WO1 began filling out paperwork, SO was to perform a search on AP but she again became uncooperative. WO1 stated there was a bench where SO was going to conduct his search of AP. WO1 said AP stepped up onto the bench and, in doing so, she pulled away from SO. SO grabbed AP and pulled her down to the ground, resulting in AP hitting her head on the ground.

WO1 stated that blood immediately flowed from AP's head and onto the floor.

SO radioed for an ambulance to attend the detachment. SO removed the handcuffs from AP, assisted her up from the ground and had her sit on the bench that she climbed onto during the earlier attempted search. SO went to retrieve a first aid kit to get something to help to control the bleeding on AP's eyebrow. WO1 stated that he thought there might have been another RCMP member standing by the doorway during the incident.

WO2 is an RCMP officer and was present at the detachment when AP was brought into the cells area. IIU investigators received and reviewed WO2's handwritten notes. It was decided that following a comparison of the cell area video and WO2's notes, IIU investigators were satisfied that sufficient corroboration existed to forego a formal interview with WO2. According to WO2's notes:

- At 4:45 p.m. WO2 was asked by DOPS to conduct a breathalyzer test on AP;
- He entered the cellblock and noted SO was speaking with a female (AP);
- The female was not cooperative;
- SO stated that he was going to take the handcuffs off of AP if she cooperated;

- AP then stepped up onto a bench;
- SO was trying to help her down when she pushed herself off the bench;
- AP did not hit the ground very hard but her head did strike the concrete floor;
- AP began to bleed;
- SO applied paper towel and pressure to stop the bleeding.

Subject Officer

As outlined under *The Police Services Act*, a subject officer cannot be compelled to provide his notes to IIU investigators nor to attend an interview with them. In this matter, SO agreed to provide his notes to IIU investigators. Two requests were made to SO to attend to an interview with IIU investigators. In response to a first request, an interview with IIU investigators was arranged. However, due to issues arising on an unrelated file, the interview date needed to be changed. SO advised by way of email that he was “...willing to provide a statement but I am not willing to waste a bunch of time driving into Winnipeg for it.” To date, SO has not responded to all subsequent requests to reschedule the interview.

In reviewing SO’s notes, the following information was noted:

- AP was brought into the RCMP detachment in Portage la Prairie by DOPS;
- AP was very uncooperative with the DOPS member and when SO tried to remove the handcuffs from her;
- AP tried to pull away from SO and then stood up on a bench and pushed back;
- SO pulled her down off the bench;
- SO held onto her forearm as she fell back and her head hit the floor;
- Blood appeared on the floor immediately after AP’s head hit the floor;
- SO helped AP sit up on the floor and he applied pressure to a cut over her right eye with a paper towel;
- AP was moved to the bench where she sat waiting for an ambulance.

Cell Area Video Footage

IIU investigators reviewed video footage (no audio recorded) from the RCMP detachment in Portage la Prairie that showed AP from the time of her arrival and through to the injury to her eyebrow. The video represented a clear, unobstructed and detailed recording of the entire incident involving AP and SO from the moment of her arrival through the use of force. IIU investigators were significantly aided by the existence and review of the video.

The video footage shows the following:

- At 4:47 p.m., three people (AP, SO and WO1) are walking through the secure bay entrance into the cells area of the RCMP detachment in Portage la Prairie;
- AP is directed to and sits down on a bench in the cells area;
- AP then stands up, appears to be upset and steps towards WO1;

- WO1 guides AP back to the wooden bench, at which time SO re-enters the cells area;
- AP backs away from both police officers, as they appear to try to talk to her;
- SO takes hold of AP's right forearm and is speaking with her;
- AP is standing in front of a wooden bench, with her back to SO;
- AP appears to be saying something to one of the officers;
- SO takes hold of AP from behind by her handcuffs and appears to attempt to remove them from AP;
- AP steps up onto a wooden bench;
- WO2 appears in a doorway off to the right of AP, SO and WO1;
- While AP is standing on the bench, it appears AP pulls away then pushes back as SO is holding onto her;
- SO then pulls AP down from the bench as he continues to hold onto AP's forearm. AP falls back and lands on the floor.
- It does not appear that SO used any significant force when he pulled AP down from the bench;
- AP hits the floor landing on her right side;
- SO is observed assisting AP to sit up on the floor, while the video shows a dark substance on the floor area where her head struck;
- An unknown person hands what appears to be paper to WO1 who then hands it to SO, who then places it on AP's upper forehead;
- SO helps AP off the floor, applying the paper to her forehead and guides her towards the bench where she sits down;
- No female officers or personnel are seen on the video interacting in any fashion with AP.

Issue and Review

The relevant issue in this matter is whether, at any time, did SO subject AP to unnecessary and excessive force during the course of searching her.

Section 25 (1) of the *Criminal Code of Canada* provides that:

Everyone who is required or authorized by law to do anything in the administration or enforcement of the law

(a) as a private person,

(b) as a peace officer or public officer,

(c) in aid of a peace officer or public officer, or

(d) by virtue of his office, is,

if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.

Any force that is in excess of that which is necessary in the circumstances is not justified and may constitute an assault in law.

Section 265 (1) (a) states:

A person commits an assault when...without the consent of another person, he applies force intentionally to that other person, directly or indirectly

Following a thorough review of this file, a number of conclusions are reached:

- SO was in the lawful execution of his duty as a police officer on August 12 when he and other police officers dealt with AP at the RCMP detachment in Portage la Prairie;
- There were reasonable and probable grounds to arrest AP on an allegation of operating a motor vehicle while impaired by alcohol, and for outstanding warrants and breach of undertaking;
- At the RCMP detachment, AP was uncooperative with officers;
- Without reason, AP stood on a bench as SO began to remove her handcuffs;
- While on the bench, AP pulled away from and then pushed back at SO, who pulled at AP, intending to get her down from the bench;
- When AP stood on the bench, she posed a risk to her own and to SO's well-being (i.e. AP may have fallen, AP was capable of kicking at SO or falling on him purposely);
- The video recording corroborates the evidence of SO and the witness officers concerning AP's actions while in the holding cells;
- The video recording contradicts AP on three critical areas of her recollections:
 - she was not "yanked" to the ground by SO when she entered the cells area;
 - she did stand on the bench before her fall; and
 - no female officer assisted her after falling to the floor.

In the circumstances, I am not satisfied that any reasonable or probable grounds exist to believe that SO subjected AP to any unreasonable conduct or excessive force during any of his dealings with her. In fact, I am satisfied that SO's conduct and use of force was reasonable in the circumstances. SO was justified in getting AP down from the bench. The existence of the detailed video, which recorded the entire incident, was a significant factor in resolving the issues in this investigation.

Accordingly, no charges will be authorized against SO. This investigation is complete and the IIU will close its file.

Final report prepared by:
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Independent Investigation Unit
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