

# ***FINAL REPORT: IIU concludes investigation into injury during arrest in Portage la Prairie***

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On September 21, 2016, at 8:45 a.m., the Independent Investigation Unit (IIU) was notified by the Royal Canadian Mounted Police (RCMP) of an incident that occurred the previous day in Portage la Prairie, Manitoba during which a male (the affected person – AP) allegedly suffered a serious injury during the course of his arrest

According to this notification, on September 20 at 7:40 a.m., a member of the RCMP Portage la Prairie detachment (the Subject Officer – SO) was in a marked police cruiser on general patrol when he observed a Mercury Grand Marquis (the vehicle), later determined to be stolen, driving irregularly. The vehicle had come to a complete stop at a controlled intersection, notwithstanding the traffic light being green at the time.

After the vehicle pulled away from the traffic light, SO activated his emergency lights to initiate a traffic stop. The vehicle did not immediately stop, nor did it speed up. Eventually the vehicle failed to negotiate a turn and ran off the road into a ditch. Three occupants exited the vehicle and began running away. SO called that all three were under arrest but none of the three stopped running in response to this command. SO gave chase on foot and was able to catch up to one of the fleeing individuals, later identified as AP, and grabbed him by his left arm to control him. SO lost his footing in the rough terrain and fell on top of the suspect. The suspect was eventually restrained, handcuffed and escorted to the police cruiser without further incident.

AP complained of feeling sick and that his shoulder was sore. AP was taken to the Portage detachment and examined by paramedics, then was subsequently transported to Portage la Prairie Hospital for x rays and it was determined that AP had sustained a broken right clavicle, which is considered a serious injury under IIU regulation 99/2015. AP was given pain medication, a date for a follow-up appointment and was cleared for incarceration at the detachment. AP was remanded into custody to appear in court at Portage la Prairie on September 21 on a variety of Criminal Code offences.

As this notification involved an allegation of a serious injury, IIU assumed responsibility for the investigation in accordance with section 66(4) of *The Police Services Act* (PSA).

The primary issue for this investigation was whether SO subjected AP to unnecessary and excessive force during the course of his arrest and detention. A team of IIU investigators was deployed to Portage.

The RCMP provided to the IIU materials pertinent to the investigation, including:

- relevant RCMP files;
- photographs of the vehicle occupied by AP and two others;
- prosecutor's Information Sheet and materials concerning AP and the two other vehicle occupants;
- RCMP prisoner log report; and
- a doctor's report on AP's injuries.

In addition, IIU investigators had access to SO's police cruiser and AP's vehicle. They also attended and examined the scene where AP's vehicle went off the road.

## **Interviews**

### **AP:**

AP advised IIU investigators that he occupied the front passenger seat in the stolen vehicle. His two male friends were also in the vehicle. AP said the driver lost control of the vehicle and he hit his right arm on the front passenger window. He confirmed he was wearing the seat belt/shoulder strap, that "it tightened up" and prevented him from being thrown harder. When the vehicle came to a stop in the ditch, he got out and started running away. He stated that the officer was catching up to him so he turned to face him. He confirmed he was standing on logs. He advised he told the officer "I give up" but the officer was at a "full run" and grabbed his left arm. AP did not want the officer to fall on him so he tried to step away but the officer spun him and they both fell to the ground, with the officer landing on top of him. His right shoulder struck a log and he felt his collarbone break. He advised he stopped resisting and was handcuffed by the officer.

AP advised he was taken to hospital and then to the Portage la Prairie RCMP detachment where his two friends were also in custody. The officer who arrested him apologized for falling on him and said he did not mean to do it. When asked if he felt the officer intentionally fell on him, AP stated "*Yeah, uh, not by the looks of it. It looks like he just tackled me.*" He reiterated the officer was at a full run just prior to the tackle.

AP advised that he had not followed up with medical appointments and was uncertain if he would undergo surgery to repair his shoulder which was visibly injured and misaligned.

### **Civilian Witnesses:**

IIU investigators were unable to locate and interview the other two occupants of the vehicle; they are not residing at the addresses stated on their release conditions. IIU investigators attended their most recent residences but no one would answer the door. IIU business cards were left along with a request to contact IIU investigators but no contact was ever made with either individual.

### **SO:**

The IIU civilian director designated SO as the subject officer. No other RCMP officers were designated as witness officers or interviewed by IIU investigators as it was established that none were present during the apprehension and arrest of AP by SO.

Under the *Police Services Act* (PSA) a subject officer cannot be compelled to provide his notes to IIU investigators nor attend an interview with them. In this matter, SO declined an interview and also declined to provide his notes to IIU investigators.

The RCMP investigative file contained a supplemental report regarding the apprehension and arrest of AP, which stated in part:

*“SO exited his truck and told them to stop, they were under arrest. They did not stop. SO began a foot chase. SO was able to catch a male as he was entering the tree line near the rail line. SO grabbed a hold of the male’s left arm as he was running and both the male and SO fell to the ground. SO landed on the male’s left arm. ... SO was able to gain control of the left arm by placing it behind the male’s back. The male then said ‘I’ll stop resisting, I’ll stop resisting!’ SO then told the male to give him his right arm. The male complied and SO was able to place the male...in handcuffs.”*

### **Medical Report:**

The attending emergency room doctor prepared a report in response to a consent form signed by AP. In the report he stated, *"X-ray of the shoulder shows a fracture of the mid shaft of the clavicle with slight displacement and mild shortening. In conclusion, this gentleman has a fractured right clavicle."*

### **Scene Examination and Vehicle Inspection:**

An IIU investigator with training as a traffic accident reconstructionist examined the roadway where the vehicle went off the road and located yaw marks which began in an intersection and trailed southwest until they struck a curb. A ‘yaw mark’ is made by a tire that is still turning but

slipping on the road surface. This suggests the vehicle was not braking prior to going off-road and had failed to negotiate the left turn at the intersection. It is apparent that after striking the curb the driver had begun braking until the vehicle came to a stop approximately four car-lengths into the field. The vehicle did not go airborne.

IIU investigators also examined the vehicle and located fresh loading marks on the front passenger seatbelt assembly. This strongly suggests that the person seated in the front passenger seat was wearing the seatbelt and shoulder strap and was thrown forward by the impact.

A canvass of nearby businesses for video evidence was met with negative results.

IIU investigators also examined the police cruiser driven by SO at the time of the incident. The vehicle had no fresh damage and all emergency equipment was operational.

### **Issues and Conclusions**

The relevant issue in this matter is whether, at any time, SO subjected the affected person (AP) to unnecessary and excessive force in the course of apprehending and arresting him.

Pursuant to section 25 of the PSA:

*The duties of a police officer include*

- (a) preserving the public peace;*
- (b) preventing crime and offences against the laws in force in the municipality;*
- (c) assisting victims of crime;*
- (d) apprehending criminals and others who may lawfully be taken into custody;*
- (e) executing warrants that are to be executed by peace officers, and performing related duties;*
- (f) laying charges and participating in prosecutions;*
- (g) enforcing municipal by-laws; and*
- (h) performing other duties assigned by the police chief.*

Pursuant to Section 76.1(1) and (4) of the *Highway Traffic Act*, a police officer may stop vehicles on a street or highway:

*76.1(1) A peace officer, in the lawful execution of his or her duties and responsibilities, may require the driver of a vehicle to stop, and the driver of the vehicle, when signalled or requested to stop by a peace officer who is readily identifiable as such, shall immediately come to a safe stop and remain stopped until permitted by the peace officer to depart.*

*76.1(4) Without limiting the generality of subsection (1), a peace officer may, at any time when a driver is stopped,*

- (a) require the driver to give his or her name, date of birth and address to the officer;*
- (b) require the driver to produce his or her licence, and the vehicle's insurance certificate and registration card and any other document respecting the vehicle that the peace officer considers necessary;*
- (c) inspect any item produced under clause (b);*
- (d) request information from the driver about whether and to what extent the driver consumed alcohol or drugs before or while driving;*
- (e) require the driver to go through a field sobriety test under section 76.2;*
- (f) request information from the driver about whether and to what extent the driver is experiencing a physical or mental condition that may affect his or her driving ability; and*
- (g) inspect the vehicle's mechanical condition and request information from the driver about it.*

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,*
- (e) 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*

- (a) without the consent of another person, he applies force intentionally to that other person, directly or indirectly*

Based on the medical reports received, I am satisfied that AP did suffer a fractured right clavicle and accordingly did suffer a serious injury as defined by IIU Regulation 99/2015. AP's injuries would constitute bodily harm under the *Criminal Code of Canada*.

I am satisfied that SO was lawfully placed as a peace officer at the time he spotted the vehicle, in which AP was a passenger, come to a stop at a green light. Furthermore, he was in the

lawful execution of his duties when he activated his emergency equipment and subsequently chased AP and the others on foot. I am satisfied that AP was running to evade apprehension by SO. I am satisfied that SO had a clear duty under the *Criminal Code* and common law to take all necessary steps to apprehend AP as soon as possible. I am satisfied SO was in the lawful execution of his duties when he tackled AP to apprehend and arrest him. I am also satisfied that SO's actions in apprehending AP were appropriate in these circumstances.

I am satisfied that SO used force on AP. However, in all of the circumstances, there is no evidence that SO used excessive or unnecessary force, intentionally or otherwise, when he laid hands on and tackled AP. I am satisfied that when SO and AP fell, it was a direct consequence of the foot chase, coupled with AP's sudden stop, and the terrain and obstacles in the area of the apprehension. AP did suffer his serious injury because of the actions of SO but there is no evidence to suggest that it was a foreseeable or intentional consequence of the use of force.

Following due consideration of this matter and a careful, thorough review of the available evidence and material facts obtained in this investigation, I am satisfied the subject officer acted in accordance with the powers conferred on him during the time he was engaged with AP and that the force used was reasonable in the circumstances. In my view, section 25 of the *Criminal Code* is fully applicable to this situation. There are no grounds to justify any charges against the subject officer.

Accordingly, IIU has completed its investigation and this matter is now closed.

**Final report prepared by:**

Zane Tessler, civilian director  
Independent Investigation Unit  
March 17, 2017

*Ref# 2016-025*