

FINAL REPORT: IIU concludes investigation into operation of Sea-Doo by off-duty police officer

On August 4, 2019, the Royal Canadian Mounted Police (RCMP) notified the IIU of an incident that occurred on the Bird River system outlet into Lac Du Bonnet (the lake). According to the notification, which read in part:

“On Saturday, August 3, 2019, at approximately 5:10 p.m., the Lac Du Bonnet RCMP received a telephone call from (the subject officer (SO)), an off duty officer for the Winnipeg Police Services (WPS). SO was reporting that a boat collided with a water tube that he was towing behind his sea-doo, also considered to be a Personal Water Craft (PWC), resulting with one child being injured. SO was the driver of the PWC pulling the tube, with three children on it. SO reported that another boat being driven by another male, drove between his boat and the tube with the children on it. The rope towing the tube became caught on the boat and the tube with the children struck the boat, resulting in one child being injured and taken to Pinawa Hospital, where he received eight stitches to his head.

The RCMP attended the location and spoke with SO who provided them with information about the driver of the boat and pointed out where he resided along the lake. SO verbally recounted what had transpired and indicated that the other male did not appear to be under the influence of alcohol at the time of the incident.

Police spoke with the other male who advised that while boating, he observed a PWC pull across the bay in front of his line of travel and then the PWC stopped. This PWC was a fair distance away from a tube with children in it. The male drove between both the stopped PWC and tube, not thinking the two were tethered together, as he didn't see a tow line connecting them, and then the rope caught his boat. He killed the power to the motor, however, the tube swung around and hit his boat, causing injury to one child. He indicated that the driver of the PWC with the tube attached to it, did not have a spotter on the vessel. The investigator indicated that alcohol did not play a factor in this collision and that neither SO nor the male appeared impaired, while they were interacting with him.

The verbal statement taken from male appears to suggest that SO may be chargeable under section 250 (1) of the Criminal Code. Lac du Bonnet RCMP continue to investigate this incident. Several investigational steps are still required to understand this incident fully...”

According to this notification, SO was alleged to have contravened the *Criminal Code of Canada* boating safety provisions and may have contributed to the injuries sustained by the affected person (AP). The civilian director determined that, pursuant to section 75 of the *Police Services Act* (PSA), it was in the public interest for the IIU to conduct an independent investigation.

Consequently, IIU assumed lead conduct of this matter as it related to the conduct of SO. The RCMP would continue the investigation into the actions of the other boat operator (later referenced as a civilian witness (CW1).

Information obtained by IIU investigators from the RCMP included:

- general reports;
- supplementary reports;
- officers' notes.

SO was the only police officer to be designated by the civilian director in this matter. IIU investigators interviewed three civilian witnesses (CW1 - CW3). AP was eight years old at the time of the accident. Due to his age and circumstances, he was not interviewed but it was confirmed that he sustained a cut to his head as a result of the collision, which required eight stitches to close.

Facts and Circumstances

Civilian Witnesses

CW1 is the driver of the boat. He stated that on August 3rd, around 2:30 p.m., he was coming off the lake and entered the mouth of the Bird River in order to head towards his lodge. He saw two Sea-Doos, two adult males and two children. He also observed a "little floaty thing" (tube) with one of the children in it and said that child was not wearing a life jacket. CW1 acknowledged that one of the Sea-Doos was connected to the tube. He said that Sea-Doo came out from the shore and proceeded in front of his boat. CW1 stated he was travelling about 20 mph in his boat but began to slow down. According to CW1, when the Sea-Doo got out in front of him, it came to a stop. CW1 stated that the tube the child was in was connected to the Sea-Doo by a 60-80 foot long rope. CW1 stated that when the Sea-Doo came to a stop, there was at least a 75 foot opening between it and the tube. CW1 said that he "...didn't have to go around." As CW1 slowed his boat, with the Sea-doo on his left and the tube on his right, he saw something black in the water. CW1 stated that it was the rope and it was approximately "...an inch thick." CW1 believes the front of his boat hit the rope and pulled the tube towards his boat. CW1 stated that "...the guy pulling the tube came over and grabbed the kid. The father of the kid was on the other Sea-Doo and arrived and took that kid to shore." According to CW1, there were only two Sea-Doos, two adults and two kids. The first Sea-Doo was operated by "the cop." The child on the tube was about three years old. The second Sea-Doo had a man and a child. No other people were seen.

CW2 advised he was travelling across the lake, heading towards the mouth of the Bird River on his PWC (also a Sea-Doo). He caught up and passed a boat that had an older man operating it. This boat had its front in the air and the older man was at the back of the boat. CW2 turned towards the mouth of the river and noticed a crash had taken place, so approached to help out. CW2 observed two Sea-Doos and a tube, along with the fishing boat that he had passed moments earlier. He believed the rope that connected one Sea-Doo to the tube was snagged in the propeller of the boat. CW2 stated he saw three children in the vicinity - the injured child that was on the Sea-Doo (not caught up with the boat) and two other children that were on the tube. CW2 did not see the collision and did not know the seating of the children just prior.

CW3 was the sole person on the third Sea-Doo. He was the father of the injured child. He advised that SO was on a Sea-Doo and was towing three children (ages 11, 8 and 3), toward the lake from Bird River. SO stopped the Sea-Doo at the mouth of the river and waited for CW3 to catch up. CW3 saw a boat heading into the river and believes it hit the side of the tube that his son was on. CW3 confirmed he was acting as a spotter and said SO's eldest son was on the towing Sea-Doo, also acting as a spotter. CW3 stated that both adults and all four children were wearing life jackets. CW3 stated that SO took the injured child to shore after the collision. CW3 advised that his Sea-Doo became entangled with the tow rope and could not move.

Subject Officer

Pursuant to the provisions of the PSA, a subject officer cannot be compelled to provide his or her notes regarding an incident nor participate in any interview with IIU investigators. In this case, SO consented to participate in an in-person interview during this investigation.

SO advised he was towing a tube with three children riding in it, (ages 11, 8 and 3 years old), and he had his son on his Sea-Doo acting as a spotter. All the children were trained in the approved hand signals used to communicate with a towing vessel. SO also stated that he had arranged for a second Sea-Doo, driven by the father of some of the children who were on the tube, to follow along and also act as a secondary spotter.

Applicable Law and Conclusion

In notifying the IIU of this incident, the RCMP advised it believed the actions of SO, as described by CW1, were in contravention of section 250 of the *Criminal Code of Canada*. Following receipt of the notification, further analysis of the applicable law was undertaken by IIU. It was subsequently determined that section 250 of the *Criminal Code of Canada* was repealed on December 13, 2018 and accordingly was not in force or effect on August 3, 2019. However, *The Small Vessel Regulation*, SOR 2010/91, enabled by *The Canada Shipping Act*, was directly applicable to the matter under investigation.

Section 1005 of the regulation, entitled "Water Sports" states:

1005 (1) No person shall operate or permit another person to operate a vessel for the purposes of towing a person on the water or in the air

(a) unless a person on board other than the operator is keeping watch on every person being towed and is communicating with the operator of the vessel;

(b) unless there is seating space on the vessel to accommodate every person being towed;

(c) unless every person being towed is wearing a personal flotation device or lifejacket or the vessel carries on board the personal flotation device or lifejacket that would be required under Parts 2, 4 or 5 if the person was on board; or

(d) during periods of restricted visibility or in the period beginning one hour after sunset and ending at sunrise.

(2) Subsection (1) does not apply in respect of a vessel that is operated during formal training, in an official competition or in a skill demonstration if the vessel meets the safety requirements of a governing body respecting that training, competition or demonstration.

Following the completion and review of the IIU investigation, a number of significant facts were determined:

- SO was operating his PWC, towing a number of children on an attached tube on the lake and Bird River;
- A boat, operated by CW1, proceeded to drive between SO's stationary Sea-Doo and the tube;
- CW1 was aware that the tube was attached to SO's Sea-Doo by a rope before he passed between the two objects;
- CW1's assertions about SO and his operation of his Sea-Doo gave rise to the notification to IIU and the subsequent investigation;
- CW1's assertions, as determined by the civilian director following the completion of the IIU investigation, were disconcerting and result in a number of inconsistencies:
 - o CW1 told the RCMP that SO did not have a spotter on his Sea-Doo when the boat hit the tow rope and pulled the tube towards it. Both CW3 and SO advised that a spotter was present and in place on the Sea-Doo;
 - o CW1 stated there were only two Sea-Doos in the vicinity at the time of the collision. The IIU investigation determined there were three Sea-Doos in the vicinity;
 - o CW1 said there were two children in the vicinity, with one on the tube. The investigation determined there were four children involved in this matter, three of whom were on the tube and the fourth on SO's Sea-doo;
 - o CW1 stated that no child wore a life jacket. The investigation determined that all children wore life jackets;
 - o CW1 stated that the father of the injured child took him to shore. The investigation determined that SO took the child to shore as the Sea-Doo operated by CW3 (the father), was caught up with the tow rope and was not able to move.

In conclusion, I am satisfied that the discrepancies between CW1 and the balance of the evidence obtained by IIU investigators was in furtherance of CW1's attempt to deflect responsibility from himself for the accident and consequent injuries to the young child. It is my view that CW1 intended to raise concerns about SO's operation of the Sea-Doo and move attention away from himself.

I am satisfied that, in the final analysis, SO's actions were not in contravention of the existing regulations on towing on water.

It is my understanding that the investigation into CW1's conduct in and responsibility for the accident is still active and is being undertaken by the RCMP. It is unknown whether a prosecution for that matter will arise. That decision will be determined once the RCMP investigation has been concluded and reviewed. This report will be released publicly once the RCMP investigation and any subsequent prosecution has been completed.

In relation to the IIU investigation, there are no grounds to justify any charges against the subject officer. The IIU investigation is now complete and this file is closed.

Final report prepared by:

Zane Tessler, civilian director
Independent Investigation Unit
December 04, 2019
Ref 2019-050