

FINAL REPORT: IIU concludes investigation into death while in RCMP custody in Thompson

On September 14, 2021, the Royal Canadian Mounted Police (RCMP) notified the Independent Investigation Unit (IIU) of a death of a male, later identified as the affected person (AP), following his detention in cells that occurred in the early evening of September 13 in Thompson, Manitoba.

This notification, provided to IIU (edited for clarity), read in part:

“On September 13th, 2021, at approximately 5:44 P.M., the RCMP received a report from a hotel (hotel) located in Thompson, Manitoba. AP was intoxicated and had fallen down in front of the hotel. RCMP members attended and located AP intoxicated and sleeping in the parking lot of the hotel. AP was subsequently arrested under the Intoxicated Persons Detention Act and lodged at the Thompson RCMP detachment at 5:56 P.M..

At approximately 11:12 P.M., AP was transported to the Thompson General Hospital (TGH) after being found unresponsive in his cell by an RCMP member.

On September 14th, 2021, at approximately 9:30 AM, AP passed away at TGH...there were no documented injuries noted to AP upon being lodged.

AP is transient in nature and is well known to the Police. He is routinely lodged at the Thompson Detachment Cells under the Intoxicated Persons Detention Act”

As this matter concerned the death of a person that may have resulted from the actions of a police officer(s), IIU assumed responsibility for this mandatory investigation in accordance with section 66(4) of The Police Services Act (PSA). IIU investigators were assigned to this investigation.

Further, in accordance with section 70(1) of the PSA, the IIU was required to seek the appointment of a civilian monitor, as this matter involved the death of a person. IIU requested a civilian monitor be appointed by the Manitoba Police Commission.

RCMP information, and other information obtained by IIU investigators, included:

- incident occurrence report
- forensic identification reports
- scene photographs
- various video recordings (including hotel surveillance, police cell and vehicle bay)
- prisoner report
- notes and reports from witness officers
- prisoner/cell log sheets

- radio communications audio
- 911 call audio
- autopsy report

Due to the dearth of information at the outset of this investigation as to whether any actions by any RCMP officer contributed, to any degree, to the death of AP, it was decided that no subject officer designation would be made at this stage, pending receipt of more facts and evidence. Three designated witness officers (WO1-3) were interviewed by IIU investigators. IIU investigators interviewed five civilian witnesses (CW1 – 5). Finally, IIU investigators consulted with the province’s Chief Medical Examiner (CME) in furtherance of the review of the autopsy report.

Facts and Circumstances

Scene Examination and Canvass:

IIU investigators attended the RCMP detachment in Thompson, Manitoba, regarding the death of AP while in cells. IIU investigators examined “tank #1”, the area where AP was placed earlier and found unresponsive resulting in his transport to TGH. The cell was found to be secured and vacant. Members of the RCMP Forensic Identification Section had attended earlier to photograph tank #1 and obtain scans and measurements to allow a scene drawing to be done. The cell was noted to be a small concrete room. The only object in the room was a stainless steel toilet and sink.

Civilian Witnesses:

CW1 was working the afternoon shift at the front desk of the hotel when she saw a male laying on the ground, outside the front doors, in the parking lot. CW1 observed this on the hotel’s video surveillance system. CW1 did not see how the male ended up on the ground and assumed that he fell, as his cap was also on the ground a short distance away from him. CW1 stated that the male attempted to stand a few times but was unsuccessful. CW1 called the RCMP for assistance, with members arriving within three or four minutes. CW1 stated that she did recognize the male, knowing him as AP. AP regularly attends to the hotel because he likes to sleep in the vestibule. When AP is found there, CW1 stated that staff will tell him to leave, which he often does, but on occasion they have to call the police to have him removed. The hotel has two sets of front doors: The first set gives access to a vestibule area and the second set of doors gives access to the lobby (these doors are locked). People attending the hotel have to be allowed into the lobby by the front desk staff who can remotely unlock the door. There are cameras on the outside of the hotel with one focused at the front door and the area in front of the door. It was this camera that captured the image of AP laying on the ground.

911 telephone call

IIU investigators received an audio copy of the 911 telephone call by CW1 to RCMP. That telephone call was transcribed, with the following salient exchange:

*Hi there, I am calling from [the hotel]. There is a man, I think [AP], I don’t know his last ... He just fell down in front of the hotel and laid down, like he is really intoxicated
How old is he roughly?
He is 30 years old we basically call for him every single day*

He is 30 years old, 3-0?

Yeah

And he fell where?

In front of the hotel

No weapons on him?

No, nothing, he is just really intoxicated

Not bleeding or anything, he doesn't need an ambulance?

I don't know if needs ambulance

Like he is not bleeding seriously or anything right?

No, no.

CW2 is the supervisor of cell guards at the RCMP detachment. CW2 stated that on September 13, members brought in a male (later identified as AP) because he was intoxicated. CW2 stated that she was working in “*lodging*”, meaning that she does the paperwork to log in or lodge a prisoner. Detainees are observed on video and are to be checked every 15 minutes. AP was placed into tank #1, a holding cell used to allow detainees to sober up. Throughout the remainder of the day shift, regular checks were conducted and video was monitored. AP was laying on the floor in front of the cell door which he usually does. When AP was placed in tank #1, there was another male already present and sleeping. CW2 states that no one entered tank #1 while she was working. There were no issues between AP and the other male. AP was sleeping the entire time, laying on his left side and was breathing. At the conclusion of her shift, CW2 stated that she was relieved by co-workers. They had a briefing and she left the detachment at 7 p.m.. AP was in her care for approximately an hour prior to the evening shift taking over. CW2 stated that she is very familiar with AP as he is brought into the detachment often. CW2 was aware that AP had suffered a head injury, possibly an aneurysm, some months prior. Due to this issue and the treatment that may be required, officers were trying to have him sober up and be available for the necessary treatment. CW2 stated that they kept “*a closer eye on him*” when he was in cells. During her time and dealings with him, CW2 stated that AP “*...seemed like himself, there was nothing unusual about the way he was acting*”.

CW3 is a cell guard at the RCMP detachment and has been there for two years. CW3 stated that he is familiar with AP, who he described as a “*regular*”. AP was brought into the detachment by WO1 and WO2 around 6:00 p.m. on September 13. CW3 stated that AP appeared fine and was responsive as he normally is when he is intoxicated. The police officers assisted AP as he was walked to tank #1. There was another male in the cell at that time. As AP was placed in the cell, he went down on his knees, which is not unusual for him. AP laid on the ground, on his back and over to his left side. During the ensuing 15 minute checks that he conducted throughout his shift, CW3 stated that he could see that AP was breathing, as his arms, stomach and chest were rising and falling. AP never appeared to have difficulties breathing and was not in any compromised position where his airway could be blocked. CW3 stated that he conducted four or five physical checks on AP. Once these checks were completed, he would return to his desk and update the log books. The cell is subject to video surveillance cameras so all detainees can be watched. No one entered the cell from the time AP was lodged and there were no interactions between him and the other male that was in the cell. Both AP and the male were asleep the whole time CW3 was on duty. AP did not present differently to CW3 than any other time he was brought in to the detachment.

CW4 is a cell guard at the RCMP detachment in Thompson and has been so employed for the past three and a half years. CW4 started her shift at 7p.m. on September 13. In accordance with their cell guard protocols, she checked on the prisoners every 15 minutes. There are cameras in the cells and prisoners are constantly under observation that way as well. CW4 stated that she is very familiar with AP, who was already in a cell when she started her shift. AP was described as a “regular” and she sees him “almost every time” she is working. CW4 stated that when she first observed AP on September 13, he was laying on the floor in front of the cell door. This is where AP normally sleeps. CW4 stated that during all of the checks conducted, AP was breathing normally. Guards check on prisoners by looking through a window in the door. If a cell has to be opened that has to be done by an RCMP officer. There was another male in the cell with AP, who had been held for 8 hours while he sobered up and was ready for release. WO3 attended to open the cell and release the other male. AP was laying on the floor in front of the door, so WO3 used his foot to slide him over. Normally, AP would have reacted to this contact but that did not happen this time and he did not move or react. CW4 stated that the guards felt that something was wrong with AP and emergency services (EMS) were contacted. CW4 stated that paramedics arrived a short time later and attended to AP. It was decided that AP would be removed for a detailed assessment. AP was placed on a stretcher for transport. CW4 stated that AP did not appear to be conscious at any point while he was being moved. Following AP’s removal and transport to hospital, CW4 checked the cell and cleaned it (in accordance with protocols). A brownish colored but clear fluid was noted on the ground where AP had been laying.

CW5 is a cell guard at the RCMP detachment in Thompson and has been so employed for approximately two years. CW5 was working the evening shift on September 13, working with CW4. When she began her shift, AP, who was well known to her, was already in a cell. AP was sleeping on the floor of the cell by the door. CW5 stated that she saw him during her routine 15 minute checks and on the video monitors. AP was in the cell with another male prisoner who was sleeping at the opposite side of the cell. CW5 stated that AP was well known to her because he was regularly lodged in cells due to intoxication. AP’s behaviour on this date was similar to every other time he was in custody. CW5 stated that she first realized there was an issue with AP when WO3 went into the cell to release the other prisoner. WO3 tried to get AP to move over so the other prisoner could get through the door. Usually, AP reacts when his sleep is disturbed but this time there was no response. When WO3 could not get AP to respond to any stimulus, he called for EMS. On arrival, EMS attended to AP and transported him to hospital. AP was breathing but he was not conscious. CW5 stated that when she assisted in cleaning the cell, there was some “goop” on the floor where AP’s head had been but it was removed and not examined.

Witness Officers:

WO1 started his field training in Thompson approximately one month prior. WO1 stated that he was working with his “coach”, WO2, when they were dispatched to attend the hotel to deal with an intoxicated male. Very few details were provided in this call for service and no information was given as to how AP ended up on the ground, other than a hotel employee saw him in that state. They had no information that suggested he fell or sustained any injury. On arrival, WO1 stated that a male was laying on the pavement approximately two metres from the hotel door. WO2 recognized the male as AP. WO1 stated that both officers called to AP and identified themselves. It appeared that AP was asleep and heavily intoxicated. WO1 stated that they helped

AP get to his feet and told him they were taking him to cells to sober up. WO1 stated that AP is homeless and the local shelter will not allow him to attend if he is intoxicated. In these circumstances, it was the best option to take him to cells. AP required assistance as they walked to the marked police cruiser. AP was advised that he would be detained under the Intoxicated Persons Detention Act and would be taken to cells. AP laid down across the backseat of the cruiser and they departed for the detachment. On arrival at the detachment, AP was removed from the cruiser. Due to his intoxicated state, he was seated on a bench to be searched and his wet clothing was removed. He was then walked to the cell area and lodged in a cell. Another male was already in that cell when AP was placed. AP was assisted to the ground and the cell door was closed. WO1 stated that he did not observe any injuries on AP.

WO2 is a member of the RCMP and has been posted in Thompson for the last three and a half years. On September 13, she was working with a new recruit, WO1, when a call for service came in near the end of their shift. WO2 stated that the call concerned AP who was at the Hotel in an intoxicated state and was "*bothering people*". WO2 stated that she is well acquainted with AP, having dealt with him many times ("*...more than I can put a number on*") over the previous three and a half years. On this day, AP appeared no different to her than all other times that she has dealt with him and every time it has been because he has been very intoxicated. On arrival at the hotel, AP was outside the hotel and on the ground, he was sleeping, and she could hear him snoring. WO2 stated that she shook him and woke him up. WO2 stated that she asked him if he was okay to which he responded, "*okay, thank you*". WO2 stated that she did not observe any injuries about his person. AP was assisted to his feet and he needed help to walk as he was unsteady. WO2 stated that she advised AP that he was being detained under the Intoxicated Person Detention Act, to which he responded, "*okay, thank you*". AP was placed in the marked police cruiser and transported to the detachment. On arrival, AP was assisted out of the cruiser. He continued to be unsteady on his feet and she braced him to prevent him from falling. AP was taken to and seated on a bench to remove his clothing. He was then walked to the cell area and placed in a cell already occupied by another sleeping male. AP was assisted to the floor and left there to sleep. WO2 stated that did not know how AP came to be on the ground at the hotel. However, it is not uncommon to find intoxicated persons on the ground sleeping so this was not an unusual occurrence. WO2 stated that she learned subsequently, following his transport to hospital, that AP may have fallen earlier but she did not have any of that information while she was dealing with him. WO2 stated that during her initial dealings with AP, he did not display any issues that would have compelled her to call for EMS. Everything seemed routine while dealing with him.

WO3 has been a member of the RCMP for the previous ten years and has been in Thompson for the last two years. On September 13, WO3 began his shift at 8:00 p.m. and was the acting supervisor. WO3 stated that cell checks are conducted at the beginning and end of shifts, and several times in between. On this evening, WO3 stated that he had attended the cell area at the beginning of his shift to conduct a check. WO3 stated that he is also required to release sobered detainees and at this time, he was going to release a male from tank #1. AP was also located in that cell. On entry, AP was laying across the doorway. WO3 stated that his is very familiar with AP as he has spent considerable time in cells lodged under the Intoxicated Persons Detention Act. WO3 stated that he called out to AP to get his attention and to move over. In his experience, AP will usually respond but on this occasion he did not. WO3 stated that he was able to release

the other male and then returned to check on AP's condition. On his return, WO3 stated that he noted no change in AP but heard the sounds of shallow breathing. WO3 stated that he tried to rouse AP without reaction or response. Using his portable radio, WO3 stated that he called dispatch and advised that EMS would be required to attend. On their arrival, EMS checked AP's condition. AP was placed on a stretcher, taken to an ambulance and transported to TGH. WO3 stated that he has dealt with AP many times during his posting. AP is homeless and is found in public places in an intoxicated state.

Video Recordings and Analysis

IIU investigators reviewed the various video recordings obtained and collected from the hotel and in and around different locales at the detachment. The following are description of the events captured by the respective video recordings:

Hotel Video

The video from the hotel shows AP walking up to the front doors at 5:37 p.m. AP appears unsteady on his feet. AP attempts to open the door but stumbles and falls backward onto the paved roadway in front of the hotel. AP appears to strike the back of his head on the pavement. AP lays motionless for a period of time then makes an effort to stand but he is unable to do so. At 5:46 p.m., an RCMP vehicle arrives on scene and stops. Police officers exit the vehicle and are seen assisting AP up. AP appears to be able to walk to the police vehicle on his own but needs to be steadied by the police officers. Police officers assist him getting into the rear of the vehicle and they leave the scene.

Vehicle Video

The WatchGuard system in the police vehicle captured two angles. One camera captured images in front of the vehicle. The second camera captures the rear seat of the vehicle. This camera showed AP laying down on the backseat. He is on his back with his feet up on the seat. On arrival at the detachment, AP is sliding off the seat and out the passenger door with assistance from a police officer.

Vehicle Bay Video (Camera 1 - showing the passenger side of the police vehicle)

This video showed the police vehicle entering the detachment parking bay at 5:45 p.m.. The police officers exit the vehicle and move into the booking area. At 5:46 p.m., WO2 is observed returning to the rear passenger door. WO2 opens the door, leans in, and appears to pull AP forward. AP is sitting on the edge of the rear seat with his legs out of the vehicle as he tries to stand up with WO2 standing beside him. AP starts to fall to his right and WO2 grabs him. WO1 appears and assists in moving AP to the ground. Both police officers assisted AP to his feet and walked him into the booking area.

Vehicle Bay Video (Camera 2 – showing alternate angle of the passenger side of the vehicle)

At 5:45 p.m., the police vehicle enters the bay, the police officers exited and move off camera. At 5:46 p.m., WO2 returns to the rear passenger door, opened it and leans into the rear seat. WO2 assists AP getting out of the vehicle, maintaining control of his right arm. AP loses his balance and falls onto his right side. WO2 was able to slow his fall and guides him to the ground. AP never strikes his head on the floor of the detachment bay. WO1 appears, runs to the police

vehicle to assist. Both police officers help AP to stand up and assisted him in walking to the booking area.

Vehicle Bay Video (shows the driver's side of the vehicle)

This video provided a limited view of AP's removal from the police vehicle. The recording does capture WO2 at the passenger side assisting AP's exit. AP falls but at no time does his head strike the ground.

Booking Area Video (showing the vehicle bay)

This video showed the police vehicle entering the bay. WO2 attends to the rear passenger door and assisted AP in exiting. There is a wall that partially obstructs the recording view however it appears that AP falls. It also appears that his fall is lessened by the actions of WO2 who was standing beside him.

RCMP Booking Area and Cell video

At 5:46 p.m., AP is assisted into the booking area by WO1 and WO2. AP is seated on a bench and a few layers of his clothing are removed with help from the police officers. At 5:49 p.m., AP is assisted up from the bench and walked a short distance to tank #1). Another male is shown in tank 1. At 5:53 p.m., the cell door opens and AP was assisted into the room by the two police officers. AP lowers himself on to the floor, laying on his back and left side in front of the cell door. The cell door is closed. At 10:37 p.m., the cell door is opened and WO3 is in the doorway. AP is laying in front of the doorway. WO3 appears to move AP's lower body with his foot so he can step into the cell. WO3 appeared to be speaking to the other male. WO3 then leaned over AP and appears to check on him. At 10:38 p.m., the other male exits the cell. WO3 continues to check on AP. WO3 exits the cell and the door was closed. Between 10:38 and 10:42 p.m., WO3 enters the cell a few times to continue to check on AP. At 10:47 p.m., EMS arrives on scene and take over dealing with AP. At 10:53 p.m., AP is placed on a stretcher and removed from the cell.

Autopsy Report

An autopsy on AP was conducted on September 16. At the conclusion of the autopsy, the pathologist advised that the preliminary cause of death was determined as a left subdural hemorrhage due to blunt force head injury. IIU investigators received and reviewed the final written autopsy report on October 27, 2022 which noted:

The cause of death for the medical certificate is listed as;

- a) Left subdural hemorrhage - due to or as a consequence of -*
- b) Blunt force head injury - due to or as a consequence of -*
- c) A fall*

It was also noted in the autopsy report that:

- AP had a history of alcohol use disorder with withdrawal seizures;

- AP had a pre-existing “*remote traumatic brain injury with encephalomalacia¹ of the right temporal lobe and a cystic left temporal lobe lesion*”;
- A CT scan done after admission at TGH showed “*a large acute left subdural hematoma*”;
- The autopsy revealed a blunt force head injury and a left side subdural hemorrhage.
- An old subdural hemorrhage was identified, caused by an old brain injury. It also revealed an acute subarachnoid hemorrhage
- Toxicology testing done, using ante-mortem blood, indicated ethanol levels were 373 mg/dL². No other drugs were detected.

Attempts to Obtain TGH Records:

Attempts were made to obtain medical records from TGH pertaining to the over 10 hours of time that AP spent in the emergency department and other wards. A consent to release and obtain that information was required to be signed by AP’s next of kin. AP’s next of kin resided in a remote location in northern Manitoba. IIU investigators reached out to the band office for assistance in locating the next of kin so that the process could be explained. Contact with the next of kin was made on November 16, 2022 and following a detailed discussion, the next of kin agreed to sign the consent form. The necessary documents and paperwork were sent to the band office on November 21 as requested and IIU investigators were advised that the documents would be signed and returned. To date, nothing has been received by IIU investigator despite numerous attempts and phone calls to the band office for updates. Between November 2022 and February 2023, 17 telephone calls have been placed to the band office for assistance and updates without success. TGH records relative to AP’s treatment there have never been received or reviewed by IIU investigators.

Consultation with CME:

Following a review of the autopsy report and other materials, IIU investigators contacted the CME requesting an opinion whether immediate attendance to hospital when AP was located on the ground and outside the hotel, would have possibly saved his life. The CME provided the following opinion:

I’ve reviewed the information you have provided. This individual died as the result of bleeding between his skull and his brain – what we call a subdural hemorrhage. As the amount of bleeding increases, the brain is put under an increasing amount of pressure. The can progress until various parts of the brain start to get squeezed into unnatural areas and compressed by bone (herniation). At this point, survival is highly unlikely.

Subdural bleeding accumulates fairly slowly...It usually takes hours or days before the bleeding becomes life-threatening. During this time, medical intervention...can relieve the pressure on the brain and significantly increase the likelihood of survival. The sooner, the better the odds of a good outcome.

¹ Encephalomalacia is the softening or loss of brain tissue after cerebral infarction, cerebral ischemia, infection, craniocerebral trauma, or other injury. Encephalomalacia is a type of chronic condition secondary to injury of the brain. It is a serious condition with lifelong consequences and residual disability or even death from a terminal coma.

² Blood alcohol concentration levels between 300-400 mg/dL represents potentially fatal alcohol poisoning and a real life-threatening condition

This fellow was a much higher risk of a bad outcome from blunt head trauma for several reasons, though. He had pre-existing blunt head trauma with residual structural changes in the brain. He was extraordinarily intoxicated at the time he fell (blood alcohol level over 380 mg/dL), which makes the effects of any blunt head trauma worse. And he had significant liver disease as the result of his lifestyle, which would predispose to more severe bleeding than usual given the injury scenario.

To answer your question, prompt medical attention may well have allowed [AP] to survive his injuries. But his survival would not have been guaranteed due to the factors I mentioned above. Without knowing that he hit his head, medical staff may have just concluded he was intoxicated and not been triggered to do a scan of his head. That might have delayed diagnosing his subdural hemorrhage until it was too late.

Conclusion:

The circumstances of this incident represents another tragic example of extensive and repetitive alcohol abuse and lifestyle choice.

Relevant Legislation and Applicable Law:

Sections 2 and 3 of *the Intoxicated Persons Detention Act*, C.C.S.M. c. I90 (IPDA):

2(1) Where a peace officer finds in a place to which the public has access a person who is intoxicated, he may take that person into custody.

2(2) Where a peace officer takes a person into custody under subsection (1), if there is a detoxication centre in the community, the peace officer may take the person to the detoxication centre and deliver him into the custody of the person in charge of the detoxication centre.

3(1) Where a person is taken into custody under section 2, the person having custody of him shall release him

(a) on his recovering sufficient capacity to remove himself without danger to himself or others and without causing a nuisance; or

(b) if an application is made sooner by a member of the person's family or by a person who appears to be suitable and capable of taking charge of the person, into the charge of that applicant;

but in any case before the expiry of 24 hours after the person was taken into custody.

Therefore, in Manitoba, under the provisions of the IPDA, where a police officer finds a person who is intoxicated in a public place, he may take that person into custody and process them in accordance with legislation. On September 13, 2021, no designated community detoxication center existed or was approved for Thompson, Manitoba. The only facility capable of providing a safe setting for an intoxicated person was the RCMP detachment.

Following a review of the relevant legal authorities, I am satisfied that a person lawfully detained under authority of the IPDA is under the police charge and custody. I am also satisfied that

police officers are subject to a statutory duty of care to provide an intoxicated person so detained with the necessities of life, which includes the duty to provide necessary medical attention when required.

A failure or refusal to discharge this statutory duty of care may, in the appropriate circumstances, fall within the purview of the Criminal Code of Canada.

In particular, there are two potential offences to consider in this regard:

Duty of persons to provide necessities

215 (1) *Every one is under a legal duty*

(a) as a parent, foster parent, guardian or head of a family, to provide necessities of life for a child under the age of sixteen years;

(b) to provide necessities of life to their spouse or common-law partner; and

(c) to provide necessities of life to a person under his charge if that person

(i) is unable, by reason of detention, age, illness, mental disorder or other cause, to withdraw himself from that charge, and

(ii) is unable to provide himself with necessities of life.

(2) *Every person commits an offence who, being under a legal duty within the meaning of subsection (1), fails without lawful excuse to perform that duty, if*

(a) with respect to a duty imposed by paragraph (1)(a) or (b),

(i) the person to whom the duty is owed is in destitute or necessitous circumstances, or

(ii) the failure to perform the duty endangers the life of the person to whom the duty is owed, or causes or is likely to cause the health of that person to be endangered permanently; or

(b) with respect to a duty imposed by paragraph (1)(c), the failure to perform the duty endangers the life of the person to whom the duty is owed or causes or is likely to cause the health of that person to be injured permanently.

(3) *Every one who commits an offence under subsection (2)*

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years; or

(b) is guilty of an offence punishable on summary conviction.

(emphasis added)

Criminal negligence

219 (1) *Every one is criminally negligent who*

(a) in doing anything, or

(b) in omitting to do anything that it is his duty to do,

shows wanton or reckless disregard for the lives or safety of other persons.

(2) For the purposes of this section, duty means a duty imposed by law.

220 *Every person who by criminal negligence causes death to another person is guilty of an indictable offence and liable*

(a) where a firearm is used in the commission of the offence, to imprisonment for life and to a minimum punishment of imprisonment for a term of four years; and

(b) in any other case, to imprisonment for life.

221 *Every person who by criminal negligence causes bodily harm to another person is guilty of*

(a) an indictable offence and liable to imprisonment for a term of not more than 10 years; or

(b) an offence punishable on summary conviction.

(emphasis added)

The Supreme Court of Canada decision of *R. v. J.F.*, (2008) SCC 60, is instructive in identifying the differing elements of fault and intent necessary to support a prosecution into either of these offences in relation to an alleged breach of statutory duty.

In *J.F.*, Fish J. summarized the differing fault, or *mens rea*, standards of care elements between the offences of failing to provide the necessities of life and criminal negligence:

Proving allegations of failing to provide the necessities of life require the Crown to show that the actions represented a marked departure from the conduct of a reasonably prudent person in the circumstances where it was reasonably foreseeable that the failure to perform that action would lead to a risk to life; and

Proving allegations of criminal negligence requires the Crown to show that the accused's omission represented a marked and substantial departure from the conduct of a reasonably prudent person in the circumstances where the accused either recognized an obvious and serious risk to the life of someone under their charge or gave no thought to that risk.

Accordingly, the fault elements between these offences differ in their escalating level of seriousness, and hence more onerous levels of proof, which is denoted by the language of “marked departure” vs. “marked and substantial departure.”

In this matter, one of the attending police officers had a lengthy history and contact with the intoxicated AP. In fact, the RCMP have regularly and routinely detained him under the authority of the IPDA for being intoxicated, including in situations, where, as here, he was found passed out and laying on the ground. There was nothing apparent in their dealings that would have given any police officer cause or concern to deviate from accepted process and protocols exercised on prior occasions. On September 13, AP did not appear to be in medical distress, he did not show

signs of physical injury and he did not complain about any physical injuries, particularly to his head. There were no indications that AP had any injury that would have compelled them that he needed immediate medical attention. To the contrary, by all measures and review of the available evidence of those at the detachment that evening, this encounter was unremarkable and entirely in line with the numerous other prior occasions where AP has been detained for public intoxication and where police officers had transported him to a cell to recover and sober up. The police officers had no objective reason in the circumstances to transport him to hospital for a medical assessment.

With that said, is a custodial setting in a police detachment, presently the best option available to be utilized in furtherance of a detention under the authority of the IPDA? In this matter, the police were involved in this matter because there was no other designated facility or suitable family member or adult suitable and capable of taking charge of AP. By default, the police assumed the role of keeper and charge over AP while he has an opportunity to sober up. The facility offered for this purpose is the cell area of the detachment, under regular observation and checks. Nevertheless, it is still a custody environment. It is a cell used primarily to house individuals accused of committing crimes and offences. A person found intoxicated in public is detained for their own safety and to be provided a safe environment to sober up. They have not committed a crime. By the same token, I am satisfied that in this situation, and given the existing knowledge and experience of the police service, officers and staff from prior dealings with AP, I am satisfied that on all levels, the police officers met and exercised their statutory duty of care in their dealings with AP. There is no requirement in this matter to designate any police officer as a subject officer.

However, on a higher level and in considering all of the circumstances in this matter, should police be compelled to continue to use their facilities to house and provide a safe environment for an intoxicated person? It appears evident that a police cell environment is not designed to provide the necessary medical oversight that a designated and adequately staffed detoxication center would be able to provide. While outside the mandate of IIU in this investigation, I would leave the question for the continued use of police facilities to provide safe harbouring for intoxicated individuals to be reconsidered and reviewed by the appropriate authorities. There are many facets that need to be considered in this regard including appropriate use of police resources and the requirement to provide adequate medical oversight to people found in this state.

The IIU mandate was to determine whether any police officer, by action or inaction, contributed in any way to the death of AP. Based on the circumstances and in consideration of all of the available information, particularly the eyewitness accounts, video footage and medical opinions and findings, there is nothing to support a conclusion that there is any level of contribution by any police officer to the cause of AP's death, either by action or inaction. There is nothing disclosed in this investigation to suggest that any police officer failed to discharge the statutory duty of care owed to intoxicated persons in their charge. Accordingly, there are no grounds that would justify the designation of any of police officer as a subject officer.

As a result, there is no further need for IIU to continue with this investigation into this tragedy and this matter is now closed.

The IIU investigation is now complete and this file is closed.

Final report prepared by:

Zane Tessler, civilian director
Independent Investigation Unit
April 21, 2023

Ref 2021-0046