

# ***FINAL REPORT: IIU concludes investigation into injury during RCMP arrest in Nelson House***

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On July 29, 2018 the Royal Canadian Mounted Police (RCMP) notified the Independent Investigation Unit of Manitoba (IIU) that, on the previous day, police responded to a complaint of an intoxicated male at a residence in Nelson House. During his arrest, force was required to restrain and control him. The male was placed under arrest and lodged at the Nelson House detachment. He was subsequently taken to the Nelson House nursing station for treatment of a fracture to his right hand.

According to the notification:

Nelson House RCMP responded to a complaint of an intoxicated male who was yelling, banging on doors and threatening self-harm. It was reported that the subject was holding a knife. When officers arrived, the suspect was outside by the front door and asked the officers to shoot him as he did not want to live. The male (later identified as the affected person (AP)) then entered the residence and walked towards the kitchen, while being restrained by his brother. The male then struggled free of his brother, grabbed a knife from the kitchen sink, and yelled for police to shoot him.

One RCMP member reacted and used his defensive baton, striking the suspect once in the hand holding the knife. The suspect dropped the knife and was subsequently arrested under the Mental Health Act (MHA).

AP was transported to the RCMP cells and lodged until sober. Once sober, AP was taken to the Nelson House nursing station for a mental health assessment and examination of his right hand. AP was deemed not to be a threat to himself, but to have sustained a fracture to his hand. AP was taken to the Thompson hospital for a cast to be placed on his injured hand.

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 RCMP member who responded to the original call for service and subsequently struck AP with the baton was designated as the subject officer (SO). Two RCMP members were designated as a witness officers (WO1-WO2).

IIU investigators interviewed AP and four civilian witnesses (CW1 - CW4) who were family members of AP. AP also provided IIU investigators with signed consent to obtain his medical information.

Under the provisions of *The Police Services Act*, 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 provided IIU investigators with copies of his reports and notes. SO agreed to voluntarily participate in an interview with IIU investigators.

IIU investigators received from RCMP, among other items:

- occurrence reports;
- dispatch information;
- copies of three 911 calls;
- RCMP cell block video;
- guard log books;
- admission forms.

IIU investigators also received and reviewed medical reports relating to AP from the Thompson Hospital.

The following facts have been determined:

In the early morning hours of July 28, 2018, Nelson House RCMP received a series of 911 calls, all made by CW1. The first call was received at 12:56 a.m., wherein CW1 requested police to attend her home, as her brother, later identified as AP, had knocked a plate of food out of her hand, was uttering threats and was violent. According to CW1, AP was no longer present as he had left the home when she called police. At 1:01 a.m., CW1 called to advise that AP had returned and was attempting to kick down the door. She requested the police attend as quickly as possible. A male then came on the line and reiterated that they “...*want the police to arrive right away.*” A third call was received at 1:32 a.m. No one was on the line when the call was answered by RCMP. A male could be heard yelling and swearing in the background. A female voice was also heard but was unintelligible. CW1 then came on the line and stated that AP was in the home, had a large kitchen knife and was uttering threats. She identified the male yelling as AP. CW1 then stated the police had arrived and the call was ended.

Two members of the RCMP responded to the complaint. They reported that AP was intoxicated, yelling, banging on doors and threatening self-harm. AP grabbed a knife from the kitchen sink and yelled for police to shoot him. SO struck AP once in the hand, using his baton. AP was taken to the Nelson House nursing station where it was determined he had sustained a fracture to his right hand.

### **AP**

AP had been out drinking prior to his arrest and does not remember anything about the incident as he was intoxicated. AP stated he drank enough to not know what he was doing. AP believed he was in the kitchen, as this is what his brother told him. He said he had a butter knife in his hand, he dropped it and then was struck with a baton. AP stated that he does not remember being struck save that he woke up with an injured hand. AP stated no other force was applied to him.

### **Civilian Witnesses**

CW1 stated that AP was intoxicated and yelling when he arrived home that night. His behavior was scaring children present so CW1 called the RCMP. Two RCMP officers arrived. They knocked on the door and were told to come in as they were expected. AP was in the kitchen and he picked up a butter knife. One of the RCMP officers pulled out his baton and struck AP. CW1 had looked away and did not see where AP was struck.

CW2 told IIU investigators that AP arrived home between 9:00 and 10:00 p.m. AP was upset and yelling. According to CW2, CW4 grabbed at AP and told him to calm down. Two RCMP officers arrived at the home; CW2 does not know who called them or why. The RCMP knocked on the front door and the family called out for the officers to come in. AP then turned around and had a butter knife in his hand as he had been making a sandwich. CW2 stated the RCMP asked AP to drop the knife and then deployed a “Taser.” CW2 did not know which officer used the Taser but it caused AP to fall to the ground. One of the RCMP members then used his baton to hit the knife out of AP’s hand while he lay on the floor. According to CW2, AP yelled that his wrist was broken. CW2 did not see the baton strike AP’s body.

CW3 was sleeping in the living room of her home when she was woken by a commotion. AP was lying on the floor in the kitchen and her other son, CW4, was also there. Two RCMP officers had arrived at the home, but CW3 does not know who called them or why they were called. AP was in the kitchen making a baloney sandwich and he had a butter knife in his hand. According to CW3, “the sergeant” deployed a Taser and hit AP in the mid-chest. He then hit AP on the forearm with his baton. The Taser made AP fall to the ground.

CW4 stated that AP came home between 11:00 p.m. and midnight and described him as “blacked out drunk.” AP asked if he could use CW4’s phone and was refused. AP became angry, threw things, and used both hands to try to punch a hole in the wall. CW4 said he asked CW1 to call the RCMP. Two RCMP officers arrived at the home and AP opened the door to them. According to CW4, AP was about to leave the home but, when the RCMP arrived, he went back into the kitchen. The RCMP stood at the doorway and told AP to calm down. AP swore back at the officers. AP had been making a sandwich and was still holding a butter knife. CW4 took hold of AP in a “full nelson” (a wrestling hold where one person thrusts his arms under the arms of an opponent from behind and clasps his hands behind the opponent's head). AP dropped the knife. AP did not have anything in his hand when this occurred. AP was thrown to the ground and was handcuffed. CW4 did not witness any officer deploy a Taser.

### **Witness Officers**

WO1 had attended to AP’s home with WO2 in response to the first 911 call made by CW1. On arrival, they determined that AP had left the home. WO1 and WO2 looked for AP but did not locate him. WO1 stated he then left to respond to an unrelated matter and did not return to AP’s home again that night. WO1 recalls that SO and WO2 went back to AP’s house when CW1 reported that he had returned. SO and WO2 returned to the detachment with AP in their custody.

According to WO1, AP was very sweaty, his breath smelled like liquor and he appeared to be intoxicated. AP would not respond to any of his questions.

In response to a telephone call to the RCMP, where it was reported that AP was intoxicated, screaming at family members, violent and was in possession of a knife, SO and WO2 attended to this residence. WO2 stated that, immediately on arrival, he could see AP who appeared to be expecting them. WO2 stated that he and SO approached AP and asked him what was going on and why he was acting the way he was. AP stated: “Why don’t you just shoot me,” and “Go ahead, shoot me.” WO2 stated that he and SO walked towards AP who then moved inside the house. WO2 stated that as they entered the home AP went to the kitchen sink. CW4 was pulling at AP’s back, trying to pull him away from the sink. WO2 stated that CW4 was saying “stop,” “don’t go there,” “drop the knife,” and “don’t grab that” as he grappled with AP. According to WO2, SO went to AP’s right side. SO had pulled out his baton. AP’s right fist was clenched on

something and WO2 could not see AP's left hand. When AP raised his right hand SO delivered one strike with his baton, with a quick snap of his wrist, to the top of AP's right hand. WO2 heard something drop into the sink.

### **Subject Officer**

SO was working an evening shift at the Nelson House RCMP detachment. He and WO2 attended AP's home in response to a phone call to the RCMP that reported AP was in the home, was drunk, had a knife, and others wanted him removed.

On arrival, AP was observed standing in an open doorway. SO estimated that AP is approximately 275 lbs and 6 feet 2 inches tall. CW1 called out from a window that AP had a knife and "was crazy." AP turned around and said "*shoot me*" and "*...kill me*". AP then bolted towards the kitchen sink. SO stated he knew that knives are often in a sink and that he was now dealing with a potentially grievous bodily harm scenario. CW4 was trying to calm AP down.

Due to the number of people in the house, SO decided to use his baton instead of his pepper spray. SO went to the right side of AP and saw that he had a knife in his right hand. SO struck AP on the top of his right hand with a single, short strike with the baton. AP dropped the knife and SO took hold of AP. CW3 came over to AP and struck him on the buttocks saying "he was a bad boy."

### **Medical Records**

Medical records from Thompson Hospital from July 28 and August 2, 2018 were reviewed. According to these records, AP had a healed fracture to his fifth metacarpal bone. The discharge summary from the Thompson Hospital documents an "old fracture right 5<sup>th</sup> metacarpal bone, no new fracture." AP was diagnosed on discharge with "right palm soft tissue swelling."

### **Taser Allegation**

CW2 and CW3 stated that a "Taser" (a conductive energy weapon - CEW) was used on AP at the home. IIU investigators determined that no CEW was signed out to either WO2 or SO on the night of the incident as neither are certified to carry a CEW. As well, WO2 and SO stated in their interviews that neither had a CEW when they were at the residence. I am satisfied that no CEW was deployed on AP at the residence during his confrontation with SO and WO2.

### **Conclusion**

Sections 25(1) and 26 of the *Criminal Code of Canada* states:

*25 (1) 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.*

*26 Every one who is authorized by law to use force is criminally responsible for any excess thereof according to the nature and quality of the act that constitutes the excess.*

Section 265 (1)(a) of the *Criminal Code of Canada* 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*

A police officer is entitled to arrest a person he finds committing, or has reasonable grounds to believe has committed, an indictable offence. Police can also arrest anyone to prevent a breach of the public peace. A police officer is authorized to use force in the lawful execution of his duties and as much as is necessary for that intended purpose. Moreover, a police officer is authorized to use force to defend or protect himself from the use or threat of force by another person, provided it is reasonable in all of the circumstances.

Force used that is in excess of what is necessary or reasonable under the circumstances is not justified and may constitute an assault under the *Criminal Code of Canada*.

Where it is determined that reasonable and probable grounds exist to believe a criminal offence has been committed, the IIU civilian director may charge the subject officer(s) accordingly. The determination of whether reasonable and probable grounds exist is based on a careful assessment of all the available evidence. The totality of the circumstances must be considered in the assessment of grounds. The purpose of emphasizing the totality of the circumstances is to avoid concentrating on individual pieces of evidence. Accordingly, consideration of the evidence cannot be piecemeal.

Moreover, determination of whether the necessary reasonable and probable grounds exist must not be based solely on speculation. The absence of evidence on essential elements of the offence means there is an absence of the necessary reasonable and probable grounds. Therefore, in those circumstances, there is no legal support for the laying of a criminal charge. That is how the law is to be applied.

This investigation was undertaken by IIU because AP had sustained an injury during his arrest. The existence of an injury does not presuppose that a criminal offence is alleged to have occurred. The mandate of IIU does not include authorizing criminal charges in the absence of evidence to support that significant decision. It would be wholly inappropriate to authorize the laying of criminal charges in absence of the required reasonable and probable grounds existing to support such authorization.

The laying of a charge solely for the sake of laying a charge is not in keeping with the mandate of this office. This legal analysis and process is not restricted solely to investigations related to police officer conduct but is the very cornerstone of any justice system in a free and democratic society regardless of the matter under consideration.

On review of this investigation, I am satisfied that:

- SO and WO2 were lawfully placed and acting in their capacity as police officers in the execution of their duties during their interactions with AP;
- SO and WO2 were lawfully in the residence during their interactions with AP;

- AP was intoxicated, yelling and swearing;
- It was reported that AP was in possession of a knife and a knife was seen in his hand on the arrival of SO and WO2 to the residence;
- SO applied force on AP to arrest and restrain him. SO delivered a single blow with his baton to AP's hand, which held a knife, for the purpose of nullifying the danger posed by AP. No further force was used on AP;
- No CEW ("Taser") was used.

In this investigation, part of the IIU mandate is to determine whether consequences should flow from SO's actions, in consideration of all known circumstances and information. On careful review of the available evidence and material facts obtained in this investigation, I am not satisfied there are reasonable grounds to believe SO exceeded the ambit of justifiable force during his contact with AP. It is my view that the force used by SO was necessary and in compliance with Section 25 of the *Criminal Code of Canada*.

Accordingly, I am not satisfied that reasonable and probable grounds exist to charge. No charges will be authorized against SO.

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

**Final report prepared by:**  
Zane Tessler, civilian director  
Independent Investigation Unit  
January 23, 2019

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