

# ***FINAL REPORT: IIU concludes investigation into incident regarding alleged police assault in Brandon***

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On March 17, 2016, the Independent Investigation Unit (IIU) was formally notified by the Brandon Police Service (BPS) that a complaint was made by the affected person (AP), alleging that she had been assaulted by a BPS police officer (Subject Officer – SO) on March 16, 2016. According to this notification, AP had initially contacted the BPS to report a series of assaults, on March 12 and 15, 2016, perpetrated by her domestic partner on her. SO attended to AP’s apartment block where she resided, to investigate these allegations. According to AP, during the course this meeting, she was assaulted by SO. A security camera situated in a hallway of the apartment block, captured the encounter, although no sound was recorded.

AP did not suffer a serious injury as defined in IIU regulation 99/2015. The notification does concern a complaint that a police officer had engaged in conduct that may constitute a contravention of the *Criminal Code* (Canada) or any another federal or provincial enactment. IIU assumed jurisdiction over this investigation as it was considered by the civilian director to be in the public interest to do so, primarily, as in these unique circumstances, the allegation of an assault of a domestic violence complainant by a police officer responding to that matter. This decision is permitted by sections 73 and 74 of The Police Services Act. A team of IIU investigators was immediately assigned to this matter.

On March 22, 2016, SO was formally designated as a subject officer. IIU investigators received a CD containing the BPS file material plus a flash drive containing the video which had been copied from the security camera at AP’s apartment building.

Three civilians (including AP) were interviewed by IIU investigators. As outlined under The Police Services Act, a subject officer is not required to provide a statement or notes regarding the incident. SO declined an opportunity to meet with investigators for an interview or voluntarily provide them with a copy of his notes. However, SO, through his counsel, advised that he would be submitting a prepared statement for review. On May 19, 2016, counsel for SO attended the IIU office and delivered a letter containing a photocopy of an undated, typed, two-page statement, purported to signed by SO. The circumstances and content concerning this prepared statement will be discussed in more detail later in this report.

IIU investigators met AP at her apartment building. AP stated that she had called the police to make a complaint of domestic violence. A police officer, SO, attended her residence to continue the investigation. AP further stated they were talking outside of her door and SO was yelling at her about her life and the choices she makes. She asked him why he was yelling at her because she was the one making the complaint and she had a 'shiner' on her face. She stated that he really was not asking questions about the incident but questioning her about why she keeps letting her partner back.

AP stated that she had had enough of the officer at this point and wanted to record the conversation. She had her phone in her hand and told SO that she was going to record the conversation because she thought his tone was wrong and that he was being rude with her. SO then took and threw her phone on the ground. He then pushed her against a door, grabbing her by the jacket and held her for some time. She then pointed to the video camera, telling SO there was a camera, but he said that he did not care.

AP said she has never dealt with this officer before and is not certain how he knew about her situation. She did not record the officer because he grabbed her phone and threw it on the ground. She decided she wanted to leave but did not tell him in so many words that she was going to leave. As she started walking toward the door the officer grabbed her and held her there.

Afterward, she says, he started talking to her in a "nice way", but she told him she was going to make a complaint. She then walked into her landlord's place which is located next to her building and asked her landlord to look for the footage.

AP stated that there was no tearing to her clothing and she did not suffer injuries as a result of the officer's actions, but she was scared. AP says she did not go toward the officer and was not aggressive toward him.

AP said that there was no damage to her phone and it still worked fine after the incident. She stated that the officer had driven her to the BPS office after the incident and there was no discussion in the police vehicle. She was seated in the back seat. She stated that the officer's attitude toward her had changed while at the police office, but she told him she was still making a complaint against him.

IIU investigators met with the apartment building manager at his office. He confirmed that he had provided the security footage to BPS on the day of the incident. He also verified that the time stamp shown on the video is 20 minutes slower than actual time. He further stated that AP had also asked him for a copy of the video because she wanted to post it on her Facebook page. He had refused to give a copy to AP.

On March 29, 2016, IIU investigators interviewed a resident of the apartment building who overheard the encounter between AP and SO. Related to the AP and originally reluctant to speak with IIU investigators, she eventually related that she was home at the time of the encounter between SO and AP but did not look out of her door. She did hear angry voices and realized by the words spoken that the male voice was a police officer, “lecturing” her cousin, AP.

The entire unedited video was viewed by IIU investigators and the events have been summarized in the chart below. Given that the video time stamp and the actual time are at a variance of 20 minutes, both times have been referenced in this chart. IIU investigators viewed the video prior to meeting with AP.

<b>Video Time</b>	<b>Actual Time</b>	<b>Event</b>
13:32:29	13:52:29	Start
13:32:35	13:52:35	AP enters hallway through the door from outdoors, enters her own apartment, #7.
13:32:45	13:52:45	SO enters hallway through the door from outdoors. He stands opposite #7.
13:32:57	13:52:57	AP exits her apartment, now wearing a grey hooded zip-up sweatshirt.
13:33:00	13:53:00	AP moves to SO’s left, stands leaning against the wall, facing the door to outdoors, her back is to the camera.
13:35:37	13:55:37	After some talking back and forth, AP appears to take something out of a front pocket. She looks down in front of herself, apparently at something in her hands, and SO also looks toward the same spot as he continues to talk.
13:36:02	13:56:02	SO reaches out and takes something from AP’s hand. A cell phone is now visible in SO’s hand and he forcefully throws it to the floor behind him, where it bounces against the bottom part of the door behind him.
13:36:04	13:56:04	AP appears to protest and gestures with her right hand toward the camera. SO continues talking and gesturing with his hand.
13:36:10	13:56:10	AP starts to move past SO, she makes only one or two steps, at the doorsill of apartment # 7, when SO puts his right hand on her right shoulder and pushes her back.
13:36:12	13:56:12	AP gestures with her right hand toward the floor where her cell phone had been thrown.
13:36:14	13:56:14	AP tries to move sideways to her left to the door leading to the outside. She gets her left hand on the door when SO places his right hand on her right shoulder and pushes her back against the door of her apartment. Her left hand pushes the outside door open slightly.

13:36:17	13:56:17	AP tries to push the outside door open again with her left hand and SO grabs her grey sweatshirt, near her right shoulder, with his right hand. He holds her, with a straight right arm, against the jamb of her apartment door. AP gestures with her left hand to the floor; the two appear to talk to each other and SO pushes AP back to her original position with her back to the camera.
13:36:25	13:56:25	SO releases AP's sweatshirt. They are now in the positions they were in at 13:33:00 / 13:53:00
13:36:46	13:56:46	SO is talking to AP when a male in white T-shirt walks into view from bottom screen, carrying a garbage bag and walks outside.
13:38:10	13:58:10	Male in white T-shirt re-enters from outside, walks between AP and SO, proceeds out of view down the corridor. SO and AP continue to talk.
13:41:01	14:01:01	AP enters her own apartment, SO waits in the corridor.
13:42:52	14:02:52	AP exits her apartment, now wearing a dark coloured jacket. She bends down and picks up something from the floor then follows SO out through the door to outside.
13:44:58	14:04:58	Video ends.

The civilian male shown in this video was located but declined to be interviewed by IIU investigators.

Reference was made earlier in this report to a prepared statement, purported to be that of SO, and provided to IIU investigators through SO's counsel. This process raises a number of concerns for IIU.

The prepared statement was a photocopy and not an original document.

The prepared statement was purported to be signed by SO – while a photocopied signature appears on the document, there is no witness to that signature. IIU investigators must rely on the letter from counsel as confirmation, notwithstanding the absence of reference that the statement was signed by SO.

The prepared statement is undated – it was provided to IIU in a letter dated May 19, 2016 – when it was prepared, where it was prepared and the circumstances surrounding its creation remains a mystery.

This last comment is of significant importance in that SO, in this prepared statement, makes claims which do not match the video at critical junctures in this incident.

For example, SO states:

*“She pulled out an object and said ‘I’m gonna record this’ and raised the object towards my face. At that time, I was only two feet or so away from (AP), leaving me no distance for safety. I took the object that may have been a weapon, from her hand and dropped it to my right side.”*

The video depicts that when AP took her cell phone from her pocket she held it at approximately waist level in front of her. She was looking down at it and SO also looked down at it as he continued to speak. AP never raised the cell phone. It was more than twenty-two seconds after she took out her cell phone that SO reached over and took the cell phone from her and threw it forcefully to the ground. There is no mistaking his actions as “dropping it”.

SO further asserts, in the prepared statement, that he grabbed her only once, when “...*she was mad that I had taken the object and **she lunged towards my right side and down to the ground**” (emphasis added). The video depicts that AP walked to the right of SO and attempted to go around him. There was nothing in her actions that could be construed as a “lunging”. Moreover, nowhere in the video is the AP seen down on the ground. At all times, she is upright and trying to walk around SO. The video depicts SO pushing AP back with an open hand on her shoulder as she tried to walk past him and exit the hallway.*

SO then states:

*“I immediately grabbed the arm of her jacket or sweater and pulled her back up and repositioned her back to where she had been standing”.*

The video again depicts SO grabbing AP by her right sweatshirt shoulder, pushing her back, with force, and against her apartment door, holding her in place for approximately ten seconds before she was returned to her original position. Again, at no time was AP on the ground or in any position requiring SO to pull her back up. It is evident, from the video that AP was not permitted to leave the hallway on two separate occasions. While AP eventually returned to her original position, the absence of reference to the intervening actions cannot be overlooked.

The discrepancies between SO’s prepared statement and AP’s interview are magnified by the surveillance video.

The investigation has now concluded and all available evidence was provided to the civilian director for his review.

Issue: Should the conduct of the subject officer attract criminal code sanctions?

The definition of assault is found in section 265 of the Criminal Code of Canada (relevant provisions are produced):

265. (1) A person commits an assault when
- (a) without the consent of another person, he applies force intentionally to that other person, directly or indirectly;
  - (b) he attempts or threatens, by an act or a gesture, to apply force to another person, if he has, or causes that other person to believe on reasonable grounds that he has, present ability to effect his purpose;
- (3) For the purposes of this section, no consent is obtained where the complainant submits or does not resist by reason of...
- (d) the exercise of authority.
- (4) Where an accused alleges that he believed that the complainant consented to the conduct that is the subject-matter of the charge, a judge, if satisfied that there is sufficient evidence and that, if believed by the jury, the evidence would constitute a defence, shall instruct the jury, when reviewing all the evidence relating to the determination of the honesty of the accused's belief, to consider the presence or absence of reasonable grounds for that belief.

An exception to conduct that would otherwise be an assault is available to a peace officer, who in the lawful execution of their duty and acting on reasonable grounds uses force. This exception is found in section 25 of the Criminal Code of Canada (relevant provisions are produced):

- 25 (1) Every one 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.
- (2) Where a person is required or authorized by law to execute a process or to carry out a sentence, that person or any person who assists him is, if that person acts in good faith, justified in executing the process or in carrying out the sentence notwithstanding that the process or sentence is defective or that it was issued or imposed without jurisdiction or in excess of jurisdiction.

The impugned conduct in this instance was uncalled and unjustified. The public interest expects peace officers to exercise constraint and control over their emotions and maintain an air of professionalism at all times, particularly in dealing with purported victims of crime.

The absence of serious or any injury should not be determinative whether statutory consequences arise. The absence of significant or excessive force should not be determinative whether statutory consequences arise. A decision whether to authorize charges pursuant to the criminal code should take into account factors, such as whether the consequences of any resulting conviction would be unduly harsh or oppressive (provided it is balanced against the effect on the victim), the likely effect on respect for the rule of law including the necessity of maintaining confidence in the administration of justice, and whether there are effective alternatives within the legal system that can adequately address the matter, these should be considered in lieu of proceeding with criminal charges.

I must also be mindful of existing policy that criminal offences should not “automatically” be prosecuted but should only be prosecuted if that is “required in the public interest”.

Therefore, the paramount consideration is whether it is in the public interest for the criminal justice system to be the appropriate forum to deal with this particular matter.

Giving due consideration to all of the circumstances of this matter, I am satisfied that this is a situation where discretion ought to be exercised and therefore I am not prepared to authorize any charge pursuant to the Criminal Code against SO.

Nevertheless, I am of the view that the circumstances in this instance ought to be dealt with in the appropriate forum mandated to review conduct matters of this kind. AP has options available to her to seek a conduct review into her complaint and she is encouraged to pursue them immediately. BPS may also wish to review IIU’s investigation and determine whether any further internal actions into the referenced conduct are warranted.

In the end, however, I am satisfied that the involvement of IIU is concluded and this investigation is now closed.

**Final report prepared by:**  
Zane Tessler, civilian director  
Independent Investigation Unit  
June 27, 2016