

FINAL REPORT: IIU concludes investigation into injury at Main Street Project

On April 21, 2016, the Independent Investigation Unit of Manitoba (IIU) was formally notified of an incident involving Winnipeg Police Service (WPS) officers, which occurred on March 25, 2016 at the Main Street Project (MSP), 75 Martha Street, in Winnipeg. During this incident, it was alleged that police used force while detaining an individual in cells, resulting in a serious injury as defined by the *Independent Investigations Regulation 99/2015*. WPS was itself notified of the incident on April 11, 2016 but the completed report and materials were not received from Winnipeg Fire Paramedic Service (WFPS) personnel until April 21, 2016. This accounted for the delay in the subsequent notification to IIU.

As this notification involved 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 members of the WPS subjected the affected person (AP) to unnecessary and excessive force from their initial interaction with him, through detention, and while in the care and custody of the police service. A team of IIU investigators was assigned and deployed.

The IIU civilian director designated two members of WPS, who had contact with AP, as a subject officer (SO) and a witness officer (WO). Under the PSA, subject officers cannot be compelled to provide their notes to IIU investigators or to attend an interview with them. In this matter, SO declined an interview but did voluntarily provide his notes and narrative report to IIU investigators. WO, who did not prepare notes, did participate in an interview with IIU investigators.

In addition, the IIU investigators interviewed AP, four MSP workers, two MSP on-site paramedics and two members of WFPS who transported AP to hospital. IIU investigators also received and reviewed the WPS investigative file and materials, medical records relating to AP and four video clips from in and around MSP (including two views of the intake area, the interior of cell number 4 and the exterior entrance) documenting the interaction between the police officers and AP.

The following has been determined:

Facts:

In the early morning hours of March 25, 2016, SO and WO attended an apartment complex on Maryland Street in Winnipeg, responding to a 911 call that an individual was kicking at a resident's door. Upon arrival, the officers found their assistance was no longer required as the issue had resolved itself. As the officers were leaving the complex, they noticed a female was

yelling at a male, later identified as the Affected Person (AP). Police saw her approach AP, then saw him punch her in the head. The officers intervened and AP was taken into custody. AP was noted to be heavily intoxicated. AP and the female were known to each other. The officers discussed with the female the possibility of charges of assault but she told them she was not interested as AP behaves violently only when he drinks. Given AP's condition, police detained him pursuant to section 2(1) of *The Intoxicated Persons Detention Act* (IPDA). Police then transported AP to MSP, a detoxication facility in Winnipeg, without issue.

Shortly after his arrival at the MSP, AP became belligerent and verbally abusive and stared at the police in an apparent attempt to intimidate them. AP was processed and searched by SO. AP was medically examined, assessed and cleared by MSP staff for the police officers to lodge him in a cell. AP was asked to go to the cell area. AP refused this request, continuing to stare and be verbally abusive toward the officers. SO grabbed AP's right arm to escort him to the cell area. AP tensed his arms and then dropped his body weight, resulting in WO grabbing his other arm. The officers physically escorted AP toward cell number 4. SO noted that, due to AP's assaultive and uncooperative behaviour, he feared for his and his partner's safety. The police officers' plan was to push AP into the cell so they could clear the door and get it closed. Once pushed into the cell, AP fell to the ground, then quickly stood up and grabbed hold of the open cell door while SO was pulling and attempting to close it. After a brief struggle with the cell door, SO closed it as AP's right hand was caught between the door and doorjamb. AP immediately pulled his hand from the door. As a result, AP suffered injuries to the fingers of his right hand.

MSP staff were immediately notified and attended to the cell area. They dressed the injury to AP's fingers and called for an ambulance to transport him to hospital for further treatment. AP was taken to the Seven Oaks Hospital by ambulance. Contrary to the initial notification information, AP did not suffer any amputation to his injured fingers but received sutures to repair a laceration and had the nail of the middle finger on his right hand reattached.

Issue:

The relevant issue in this matter is whether, at any time, the subject officer applied excessive or unnecessary force to AP, whether at the time of his arrest or while in the care and custody of the police service.

Relevant Legislation and Applicable Law:

Sections 2 and 3 of *The Intoxicated Persons Detention Act*:

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.

3(2) *Where a person taken into custody under section 2 is in the custody of the person in charge of a detoxication centre, the person in custody may be allowed to remain in, and, with his consent, be cared for in the detoxication centre after the expiry of 24 hours after he was taken into custody.*

Section 25(1) of the *Criminal Code of Canada*:

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.

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

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. Furthermore, in Manitoba, under the provisions of 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.

Police officers are also authorized to use as much force as necessary to achieve arrest, providing they are acting on reasonable grounds as determined by the circumstances.

That authorization extends from initial contact between the police and individual through arrest, transport and custody.

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*.

AP's injuries would constitute bodily harm under the *Criminal Code of Canada*.

Review and Decision:

Following a detailed review of this thorough investigation, the following factors are critical to the analysis of whether the subject officers applied excessive or unnecessary force to AP:

- Police attendance was requested for a disturbance complaint;
- Upon arrival, it was determined the complaint no longer required the police officers' assistance as the issue had resolved itself;
- As the officers were departing, they witnessed AP punching a female in the head;
- The officers spoke to the female who only wanted AP removed and not charged with assault;
- AP was intoxicated in a public place and police officers took him into custody under the IPDA and transported him to MSP. The arrest, detention and transport were reasonable, appropriate and lawful in the circumstances;
- At MSP, AP was belligerent and verbally abusive toward the police in an attempt to intimidate them;
- Permission was given by MSP staff for AP to be placed in this secure facility;
- Due to AP's belligerent actions and officer safety concerns, he was forcibly pushed into cell number 4;
- AP grabbed the cell door with his right hand while SO was trying to close the door, resulting in AP injuring his right hand when his fingers lodged between the door jamb and cell door as it was closing;
- AP was not complying with orders to submit and peacefully enter cell number 4;
- Officers had reasonable grounds to believe they were at risk of violence;
- AP was assessed and treated for his injuries in hospital at the earliest opportunity.

The subject officer applied force to AP to place him inside cell number 4 and to prevent him from using violence against them. In my opinion, the subject officer used necessary force that was reasonable in these circumstances. AP suffered a serious injury to his fingers through the application of force but bears responsibility for placing his hand in a situation where harm could and did result.

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
November 14, 2016