

FINAL REPORT: IIU concludes investigation into serious injuries related to an RCMP arrest in Swan River

On December 1, 2015, the Independent Investigation Unit (IIU) was formally notified by the Royal Canadian Mounted Police (RCMP) of an incident at Swan River, Manitoba, concerning an arrest under the *Mental Health Act*, where police used force to restrain and control an individual that resulted in a serious injury, as defined by IIU regulation 100/2015.

According to this notification, on December 1, 2015, at 12:36 a.m., members of the RCMP Swan River detachment were dispatched to the residence of the Affected Person (AP), pursuant to a *Mental Health Act* (MHA) call. According to information received, a registered psychiatric nurse (Civilian Witness 1 (CW1)) called to advise that she had received a telephone call from a male who told her he was thinking about “going into town to hurt people” and was “angry against the system.” CW1 reported that the caller sounded “drunk,” was “angry at the police” and was “sick of natives.” He admitted to drinking that evening and to taking medication. He also referred to his two year old son being with him. She had obtained the male’s telephone number from her call display, matching that of the AP. RCMP officers obtained background information on AP, confirming that a “history of threats, breaches and disturbances” had occurred at that location.

Three uniformed RCMP officers attended AP’s residence in Swan River and approached the front door. AP opened the door and was on the telephone at the time with a mental health mobile crisis worker. The officers explained to him they had attended due to concerns for his mental health. AP refused them entry but the officers entered his residence and informed AP he was under arrest under the MHA. AP refused to voluntarily go with the officers for a mental health assessment and resisted his arrest. He clenched his fists and said, “You’re not tough enough to take me.” Officers struggled with AP and tried to place handcuffs on him, without success. This struggle began in the kitchen area and led through the residence to an outside porch. At one point AP and an officer were on the ground. AP began to grab at the officer’s service revolver without success. The officers employed leg sweeps, lifts, knee strikes and punches before they were able to subdue AP. AP was successfully handcuffed, brought to his feet and escorted to a police vehicle. The officers returned to the house to locate the young child. The child was found asleep and was taken to a nearby relative for care while AP was in police custody. On arrival at the detachment, AP walked from the vehicle and into a cell. No further altercations occurred thereafter. No other prisoners were in the cell with AP.

During his time in custody, AP asked for medical assistance and complained of feeling unwell. Arrangements were made to take AP to a nearby hospital for examination.

Once at hospital and following an examination, AP was diagnosed with an intra abdominal bleed from blunt trauma, bruising to his right eye and some abrasions. There was no bruising or abrasions noted to his abdomen. AP was transferred by ambulance and admitted to Dauphin Hospital that same day where an abdominal ultra sound was conducted and a physician noted that AP had an “intraparenchymal hepatic laceration with a moderate hemoperitoneum” (liver laceration injury).

As a result of the incident, AP was charged with two offences under the *Criminal Code* and one offence under the *Controlled Drugs and Substances Act*. He was released from police custody on a Promise to Appear and Undertaking.

As this notification involved a serious injury to an individual, IIU assumed responsibility for this investigation in accordance with section 65(1) of the *Police Services Act* (PSA). IIU investigators were deployed to Swan River.

The IIU civilian director designated each of the three officers who attended AP’s residence as a subject officer (referenced as SO1, SO2 and SO3 respectively). Four other RCMP officers were designated by the IIU civilian director as witness officers (referenced as WO1, WO2, WO3 and WO4 respectively).

IIU investigators received and reviewed:

- A thumb drive containing closed circuit television (CCTV) footage from the Swan River detachment;
- One disc containing the initial 911 call;
- An RCMP briefing note;
- Copies of officers’ notes;
- Disc containing recorded statement of SO1;
- RCMP supplementary reports;
- RCMP Occurrence Report history regarding AP (two pages) detailing 34 occurrences between January 1, 2010 and December 1, 2015;
- RCMP radio communications from December 1, 2015;
- RCMP Swan River detachment guard logs;
- RCMP Swan River detachment prisoner log.

As outlined under the PSA, a subject officer is not required to provide a statement or notes regarding the incident.

SO1 did agree to be interviewed by IIU investigators. He also provided IIU investigators with a copy of his notes on the incident and a copy of an interview given to members of the RCMP Serious Crimes Unit.

SO2 also agreed to be interviewed by IIU investigators and provided them with a copy of her notes of the incident.

SO3 did not consent to release his notes to IIU investigators but did agree to be interviewed by IIU investigators.

IIU investigators also interviewed, among others: AP, four designated witness officers and two civilian witnesses (CW1 and CW2).

Interviews:

AP:

On the evening of November 30, 2015, AP was feeling aggrieved and could not sleep as he wanted to complain about his treatment by police when he was previously arrested on October 6, 2015 under the MHA. He wanted to vent about his perception of mistreatment, including: not receiving food or drinks in a timely fashion, lack of heat in a police vehicle, and being denied his medication.

AP said he took his prescribed medications and drank two vodka drinks that evening. AP phoned a mental health worker and spoke for approximately an hour. While he was venting to the mental health worker, the police showed up and said he was under arrest under the MHA.

AP did not believe he directed any threats toward anyone. He first noticed the police while he was speaking with the mental health worker on the telephone; he looked out his window and saw a police car parked on the street in front of his house.

Three or four police officers attended his home and asked if they could enter. AP refused them entry and one male officer told him they were coming in anyway. Police forced their way into his house. He stated, "This was kind of b.s. because here I am talking with the counsellor on the phone. I'm taking every proper step, you know, that I was supposed to do." AP asked police why they were there and was told that he was under arrest under the MHA. AP acknowledged having mental health issues.

AP protested but a police officer grabbed his arms. He resisted because he had his two-year-old son inside the residence. The next thing he was on the ground or on his step in the snow. AP recalled reaching up, trying to hold onto or grab onto somebody and telling them to stop. The police rolled him over onto his stomach and handcuffed his hands behind his back. AP recalled being placed in the police car. AP was in a lot of pain while being transported to the detachment. He continued to experience pain and complained about his sore stomach while in custody.

Subject Officers:

SO1:

SO1 attended AP's residence with SO2 and SO3. SO1 explained that if AP was under the influence of any intoxicant, the 'game plan' was to get him into custody as he would not be able to see a mental health worker in an intoxicated state. As well, police would be able to monitor his condition and make sure he did not harm himself. SO1 had had previous interactions with AP and gave background information on those previous dealings. SO1 also knew AP had mental health issues. Based on his previous contacts with AP, he was satisfied that officers had to act on the information received.

Officer safety issues were considered as it was believed AP was emotionally unstable. SO1 said he was worried that AP may be combative, based on his previous behaviour when he was arrested under the MHA.

AP answered the door and was holding his cell phone. SO1 could see he did not have any weapons. SO2 explained to AP why they had attended his home (MHA reasons). SO1 believed AP was on his cell phone speaking with the Mobile Crisis Centre at the time. SO1 said SO2 explained to AP that they had concerns for him and wanted him to see a doctor. SO1 said SO3 informed AP that he was under arrest under the MHA. SO3 placed a handcuff on AP's left arm. AP's body became tense. SO1 grabbed his other arm to help with the handcuffing. AP said, "You're not tough enough to take me." They led AP out the door. The officers did not want to take him to the ground in the kitchen as they did not want to cause any injuries to AP. They did not want him to bang his head on a kitchen countertop and they did not want him to have the opportunity to hit the officers with something.

SO1 said he and SO3 struggled with AP to remove him from the residence. Once out of the residence, AP was taken to the ground. SO1 could feel AP grabbing his firearm and it felt like it was being removed from its holster. SO1 repeatedly yelled, "Let go of my gun."

Although he did not see it happen, he knew by AP's body movement that SO3 had kned AP. The officers were able to move AP's arms at that point. Both arms were handcuffed. AP stopped resisting but was still very argumentative and being "verbally assaultive." SO1 stated that, during the arrest, he feared grievous bodily harm and death.

Once proper arrangements for child care for the two-year-old found in the residence were made, the officers conveyed AP to the detachment. SO1 explained that the police would request AP be remanded to custody and then AP would receive a mental health assessment and treatment, if necessary.

SO2:

SO2 attended AP's residence in the company of SO1 and SO3. Prior to attending the home, she was aware of the advice that AP was "going to go into town and raise hell, and do harm," that

AP had been drinking, that AP had taken Diazepam and referred to his two-year-old son being with him. SO2 had prior contact and dealings with AP.

On arrival at AP's residence, he was on the telephone. She believed he was speaking with a social worker. SO2 spoke with the person on the phone and advised the party that RCMP were now dealing with the matter. SO3 arrested AP under the MHA. SO2 described AP resisting arrest. SO1 and SO3 grabbed AP's arms. AP resisted the officers placing handcuffs on him. SO2 grabbed his fist but he would not budge. SO1 and SO3 tripped AP, who fell on his stomach then turned on his back. SO2 tried to pull one of his arms behind his back but could not. She yelled, "stop resisting." SO2 heard SO1 say, "stop grabbing my gun" several times. SO2 saw SO3 knee AP's right side. SO2 saw SO3 punch AP in the face. At this point handcuffs were applied and AP stopped resisting. AP was placed into a police vehicle.

SO3:

SO3 was on duty this evening. He heard a call over the dispatch radio of details of AP's threats. SO3 recognized this to be a mental health call. SO3 described AP as having previously been hot-headed, unpredictable and acting sporadically. SO3 met SO1 and SO2 at Swan River detachment and discussed a plan to deal with the matter. The only option available to the three officers that evening was to attend AP's house to respond to the incident. SO2 described attending AP's address and initially being denied entry.

Once entry was gained, SO3 had a conversation with AP. SO3 relayed he had information that AP had said he wanted to hurt people. AP said he had thought about it but was no longer having those same thoughts. SO3 explained he wanted AP to visit a hospital to be assessed for his mental health. AP refused to go with the officers. SO3 informed AP that he would have to arrest him under the MHA if he did not go voluntarily. SO3 was aware that he had the power to arrest AP under the MHA. AP refused to go and swore at the officer. SO3 then arrested AP under the MHA.

He attempted to handcuff him but AP said, "You're not tough enough to take me." SO1 and SO3 physically took AP outside the house. AP looked mad and looked like he was about to go crazy. AP was behaving in an unpredictable manner and police were required to use physical force to control him and to prevent AP from hurting them.

He heard SO1 shout "Get off my gun" around three times. He feared for his and his colleagues' safety as AP was attempting to disarm a police officer. SO3 tripped AP, causing him to fall to the ground. SO3 fell on top of the left side of AP's back. He kned the suspect in the side of the body. He did not care where the knee strike landed at that point in time; he had to stop the threat. AP was not complaining about pain at the time and was not bleeding, but appeared to have a "scrape on his head" from when they fell to the ground. Eventually he was able to handcuff both of AP's wrists.

AP could not be taken to the hospital as he had just fought and was believed to still be too unpredictable. SO3 did not want AP to hurt anyone in hospital so it was decided to take him to

the detachment. He believed AP was intoxicated and the safest place for him was in the detachment.

Witness Officers (designation in order of interviews):

WO1:

WO1 was off duty at the time of AP's arrest but received a telephone call at home from colleagues requesting guidance on some seizures. He was aware that AP had been arrested.

On December 1, WO1 worked a dayshift. A guard told him that AP was complaining of stomach pains and bloating. WO1 investigated AP's illness complaint. WO3 advised AP that police would take him to the hospital. WO1 noted a fresh blackened right eye. No physical altercations occurred between AP and police officers now dealing with him, but WO1 was aware that a confrontation had taken place at the time of AP's arrest. WO1 made arrangements for AP to be taken in custody to hospital for treatment. WO1 was unsure if the medical staff at the hospital were made aware that AP required to be examined for an MHA assessment.

WO2:

WO2 was working out of town, involved in other official RCMP business, when he was notified of the incident involving police officers and a prisoner who was injured. During the two to three minute conversation, WO2 learned there was a physical altercation that ended up on the ground. He learned that, during the course of the altercation, AP attempted to grab an officer's pistol and that SO3 delivered knee strikes to AP.

WO3:

WO3 described his experience concerning arrests under the MHA. He stated that if a subject is intoxicated, the normal practice is to lodge in cells until sober then take him or her to the medical facility for an MHA assessment as medical staff will not assess anyone who is intoxicated.

On December 1, 2015, WO3 was on duty between 7:00 a.m. and 5:00 p.m. with WO1 and WO4. WO1 advised him that AP had to go to the hospital for treatment of severe abdominal pain. AP was cooperative when he was handcuffed by WO3. He escorted AP to hospital with WO4. He remained with AP while he was at hospital. AP was very cooperative with police from the detachment to the hospital until he was told he would be charged with criminal offences, at which time he became uncooperative, was swearing at police and ignored police commands. There was no physical confrontation between WO3, WO4 and AP.

WO4:

WO4 has had previous dealings with AP when he has been sober and when he has been drinking. WO4 described notable differences in AP's behaviour in both circumstances--particularly that he is more calm and reasonable when sober.

On December 1, WO4 worked a dayshift at Swan River detachment. AP was in cells. AP was complaining he was in pain and was holding his stomach. While at hospital, WO4 believed AP's mental health concerns were brought forward to the medical staff.

Civilian Witnesses:

CW1:

CW1 confirmed she is a registered psychiatric nurse at Brandon Centre for Adult Psychiatry. CW1 confirmed she received a telephone call at the psychiatry unit from a male on December 1, 2015 who, at the time, was unknown to her. The male caller told CW1 he was mad at the RCMP and wanted to go out and hurt somebody.

CW1 confirmed she made a telephone call to the RCMP as a result of speaking with the unknown male. She gave the RCMP the telephone number that appeared on her call display when the male called.

911 Telephone Call:

On December 1, 2015, at 12:31 a.m., CW1 made a 911 telephone call to the RCMP Operational Communications Centre to report her recent conversation with AP. The following is a summary of that 911 telephone call:

- CW1 said she “just received a call from someone out of town who said he had been a patient here, wouldn't give his name. He's been drinking, he has a two-year-old in the house alone with him. He's talking about leaving the home and going into town wherever he is, and hurting people.”
- The police operator asked CW1 if she knew his address. CW1 did not but had obtained the caller's telephone number off her call display.
- CW1 said the male caller advised her that “he was angry at the system” and that he was four hours away from Brandon. The male caller advised he had been drinking and had taken his bedtime medication. CW1 said she gave the male caller a telephone number for the Mobile Crisis Unit.

CW2:

CW2 was a guard employed by the RCMP, Swan River detachment on a call-out basis. He recalled he was called in to guard a prisoner (AP) on the night of December 1, 2015. CW2 described his role as a guard and said he was not permitted to have direct contact with prisoners; his job was to monitor the prisoner and alert RCMP officers if there was an issue with the prisoner. He monitored the prisoner on the cell CCTV and made notes of what the prisoner was doing in the cell. The prisoner was very vocal. He did not know if he was intoxicated or on drugs. The prisoner was swearing at him and the RCMP. He was angry and later complained about stomach or chest pain.

CW2 recalled the prisoner being taken from the detachment to go to hospital with police officers. He did see the prisoner with what he described as the beginning of a black eye.

Issues, Assessment and Conclusions:

The relevant issue in this matter is whether, at any time, the subject officers used excessive or unnecessary force on AP at the time of his arrest.

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

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.

Any force in excess of what is necessary is not justified and can constitute an assault. Section 265 (1)(a) states:

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

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

At all material times, the attending RCMP officers were operating under the authority of the MHA, in particular, sections 12(1) and 12(2), which states:

12 (1) A peace officer may take a person into custody and then promptly to a place to be examined involuntarily by a physician if

- (a) the peace officer believes on reasonable grounds that the person
 - (i) has threatened or attempted to cause bodily harm to himself or herself,
 - (ii) has behaved violently towards another person or caused another person to fear bodily harm from him or her, or
 - (iii) has shown a lack of competence to care for himself or herself;

(b) the peace officer is of the opinion that the person is apparently suffering from a mental disorder of a nature that will likely result in serious harm to the person or to another person, or in the person's substantial mental or physical deterioration; and

(c) the urgency of the situation does not allow for an order for an examination under section 11.

12(2) A peace officer may take any reasonable measures when acting under this section or section 9 or 11 or subsection 44(1) or 48(2), including entering any premises to take the person into custody.

I am satisfied that police have the right to enter a residence and to take an individual into custody, pursuant to the powers conferred on them under the MHA (see *R. v. Tereck*, (2008) 228 Man.R. (2d) 260 (CA)).

Following due consideration of all the circumstances of this matter and a careful, thorough review of all evidence and material facts obtained in this investigation, I am satisfied that the subject officers were in the lawful execution of their duties, in accordance with the powers conferred on them pursuant to the MHA, during the time they were in AP's residence. I am satisfied the subject officers had sufficient information, considered both objectively and subjectively, available to them to satisfy that appropriate grounds existed to proceed under the MHA in dealing with AP that night. I am satisfied there were sufficient grounds to arrest AP under the MHA. I am satisfied that the subject officers employed necessary force to minimize and eliminate potential risks and harm to AP and to themselves while at the residence and carrying out the arrest. I am satisfied the subject officers were justified in detaining AP in custody at the detachment until he was sober and processed.

There are no grounds to justify any charges against any of the subject officers.

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

Final report prepared by:

Zane Tessler, civilian director
Independent Investigation Unit
August 24, 2016