

FINAL REPORT: IIU concludes investigation into serious injuries during arrest

On November 13, 2020, the Royal Canadian Mounted Police (RCMP) notified the Independent Investigation Unit (IIU) of serious injuries sustained by a male suspect (later identified as the affected person (AP)) following his arrest by police.

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

“On November 12th, 2020, at 11:28 PM, the Thompson RCMP received a report of a domestic dispute as an unknown male caller reported [AP] and his girlfriend, were arguing in their apartment... This unknown male caller reported hearing a door crashing and was not sure if there was physical fighting or not. CPIC queries by the members determined [AP] has a NCC Order as a result of previous domestic violence incident on October 7th, 2020, in Thompson.

RCMP members attended this apartment and located [AP] and his girlfriend inside a locked bedroom in the apartment. Members observed [AP] opening the door to the bedroom before trying to step back into the bedroom and shutting the door on the members. Police were able to pull [AP] from this room, into the hallway, and then located the girlfriend hiding in a closet. As members were trying to determine what had happened between both parties, [AP] kept trying to leave the apartment and step outside, despite the members telling him on multiple occasions not to leave. [AP] then tried to leave a final time and was arrested by a member. One officer grabbed his left arm and another grabbed his right arm, as an officer reached for his handcuffs and began to handcuff [AP] which led to [AP] pulling away and getting free from the members...[AP] took a step or two forward from the members before being brought down to the floor...as [AP]... was actively resisting and trying to get away. During this struggle, the officer lost his handcuffs...At this time, the officer deployed his conductive energy weapon (CEW) on [AP]’s back ...This CEW deployment incapacitated [AP] and the members were able to gain control of him and take him to the floor where he was handcuffed without further incident... the probes were removed without incident and requested Thompson Fire & Emergency Services (TFES) to attend to assess [AP]. At this time, [AP] was crying, saying he was sorry and that he wanted to kill himself... a cut to [AP]’s head was observed and he had a bloody mouth...TFES transported [AP] to the Thompson General Hospital (TGH) where he was later cleared and released as he was deemed too intoxicated to be assessed by the doctor...On November 13th, 2020, [AP] was brought to the TGH for an assessment. During his medical assessment, [AP] was discovered to have a collapsed lung. Staff at the TGH reported to the escorting member this injury appears to be recent, however, there was no evidence presented which would link this injury to [AP]’s arrest...”

In that notification, information was provided to suggest that AP had sustained a broken wrist, possible broken rib and stomach pain as a result of his encounter with police. As a broken wrist and broken rib are defined as serious injuries under Independent Investigation regulation 99/2015, this matter was a mandatory investigation for which IIU was statutorily required to assume responsibility. A team of IIU investigators was assigned to this investigation.

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

- The RCMP Occurrence Summary
- RCMP Officers' general reports, supplementary reports and notes
- Photographs of AP's injuries
- RCMP in-car and cell video footage
- Audio Recording of the 911 Call to RCMP
- Consent for release of medical reports
- Thompson Fire & Emergency Services (TFES) Paramedic Reports
- Medical reports respecting AP
- An expert medical opinion report

The civilian director designated three RCMP members involved in the arrest of AP as the subject officers (SO1-3). Five additional RCMP members were designated as witness officers (WO1 – WO5). IIU investigators also met with and interviewed AP and two civilian witnesses (CW1 and 2). A potential third civilian witness declined to be interviewed by IIU investigators.

IIU investigators obtained and reviewed video recordings from an RCMP cruiser car and from the cell where AP was lodged following arrival at the Thompson RCMP detachment.

A report from a medical expert concerning the injuries sustained by AP was also obtained and reviewed.

Facts and Circumstances

Affected Person:

AP stated that CW1, his girlfriend, was visiting. The two of them were having drinks and listening to music. AP stated that he had consumed a mickey of vodka, a 12-pack of beer and smoked marijuana that evening and prior to his arrest. During the course of the evening, the two got into an argument. AP stated that he started hitting himself in anger. AP stated that police attended his residence and came inside. AP stated that he told them that everything was ok and no one was fighting. AP stated that he was removed from his bedroom and taken to the porch area by the front door. Although police did not handcuff him, AP stated that he tried to leave the apartment because he did not want to deal with anything or get arrested. AP stated that the officers started to use excessive force on him. One of the officers grabbed his arm and twisted it backwards, causing a great deal of pain. AP states that more police officers entered the apartment and he heard one of them say: "*taser, taser*" and then was "tasered" on his back near the spine. AP stated that the police held him to the ground and placed a knee on his back or lung area. AP stated that this is how he believes his lung was punctured. AP stated that he had not suffered any lung or breathing issues prior to his interaction with police at his apartment. AP stated that he was not aware that his lung was punctured until the next day, when he woke up in

pain and could not breathe. AP stated that he was taken from his cell to Thompson General Hospital (TGH). AP stated that x-rays of his chest were taken and that he was told that he had a punctured lung. AP stated that he was admitted to TGH for surgery to repair the punctured lung.

AP's Medical Records:

TFES Patient Care Report

The TFES report recorded that

"...AP is intoxicated and was breaking things around in the house. RCMP were called and patient then became combative with members who deployed the taser. Patient is noted to be male, 26 years of age, in RCMP custody. Patient is noted to have two 1cm taser probe punctures on spine in centre of back, no active bleeding, some redness, tenderness, and swelling. Patient also has multiple soft tissue injuries to face. Patient explained that they are sad as they can not return home to be with the kids. Patient started breaking things and punching self in the face. Patient has lots of previous self harm scars on body. When patient was tasered, they fell forward possibly hitting face on tv. Patient admits to consuming 26oz ETOH but no drugs. Patient clearly distraught saying multiple times they were trying to hurt self but not others. Patient is transported to TGH for further evaluation"

TGH Medical File

The TGH medical file recorded that:

"Patient brought in with RCMP and EMS, was at home, got into an altercation with friends and they called RCMP. When they got there, patient was punching himself in the face and threatening to hurt himself. Patient was tasered on scene and fell on the TV stand and hurt his face, has 2 puncture wounds to his back along the spine. Complaining of back pain, no headache, no no/vo, no CP, no dizziness, Admits to 26oz ETOH tonight, states that he is having suicide ideation as kids are in Cross Lake and patient unable to go visit them, no plan. Patient noted to have vertical abrasion to left forehead area, swelling, Face, old blood no swelling, bruise upper back between scapula two round red dot - from taser injury...Patient discharged per orders into RCMP custody...No voiced concerns at present time. Patient to return to Emergency Department in AM for MHA assessment by Psychiatry Nurse"

Following AP's return to TGH on November 13 for his assessment, the following diagnosis was made:

"Right-sided pneumothorax (Collapsed lung) due to blunt trauma.

The findings of the Diagnostic Imaging Report from TGH are as follows:

- *Comminuted minimally depressed nasal fracture*
- *Subtle un-displaced fracture involving the maxillary spine*
- *Mild deviation of the nasal septum anteriorly, but definite septal fracture is not appreciated*
- *No septal hematoma is identified*
- *Mild depression of the left zygomatic arch, which may well be on the basis of remote trauma.*

- *No acute mandibular fracture was identified.*
- *Mild Facial soft tissue edema was present.*

Acute mildly depressed nasal fracture

Remote left zygomatic arch fracture

[AP] was admitted into the hospital and a chest drain was placed. [AP] responded very well to management. The chest drain had performed adequately with the pneumothorax completely resolved.

[AP] suffered from an un-displaced nose fracture and zygomatic fracture, which was not managed during his admission”

Civilian Witnesses:

CW1 is AP’s girlfriend. As a result of an unrelated matter, AP was subject to a no contact or communication order in relation to CW1. CW1 attended AP’s residence that evening. During the evening, CW1 stated that police arrived at AP’s apartment, entered the unit and said they wanted to speak with AP. CW1 stated that she and AP were in his bedroom when the police grabbed him and took him to the living room. CW1 stated that AP tried to walk away out of frustration. CW1 stated that the police tasered AP in the back and slammed him to the ground. One of the police put their knee on AP’s ribcage. CW1 stated that AP could not breathe. CW1 stated that there were three male police officers dealing with AP in the living room. CW1 stated that the police were rude and would not listen to her. CW1 stated that she was directed to return to the bedroom but she refused to go. CW1 stated that the police kept AP on the ground for at least ten minutes.

CW2 is a friend of AP and CW1 and was present at the apartment when police arrived in response to a noise complaint. CW2 stated that the police were also going to get CW1 out of the apartment. CW2 stated that AP was sitting on the couch and was not causing any problems. CW2 stated that when AP stood up, the police grabbed him by the arm. CW2 stated that the police threw AP face on to the ground and “pounced” on him. CW2 stated that the police were sitting on AP’s neck, back, and legs. CW2 stated that AP was trying to get up but the police kept saying, “do not resist; stop moving”. CW2 stated that one of the police officers tasered AP while he was on the ground and told him to stop resisting. CW2 stated that the police kept AP on the ground as they sat on him. CW2 stated that the police were overly aggressive with AP for no apparent reason. CW2 stated that AP was screaming in pain when the police were sitting on top of him. CW2 stated that AP did not strike any objects (such as a table, couch or TV) on his way to the ground. CW2 stated that AP was bleeding from the face when he was stood up.

Witness Officers:

WO1 was assigned to transport AP to TGH for a mental health assessment on November 13. WO1 attended to the cell and spoke with AP to advise him of the reasons for attending TGH. Prior to leaving the detachment, WO1 stated that AP advised he was having difficulty breathing. WO1 stated that he told AP he would advise hospital personnel accordingly. Upon arrival at TGH, WO1 stated that a nurse triaged AP. AP was then taken to a private room where the assessment was conducted. WO1 stated that AP was then taken for x-rays to ascertain the cause of his breathing difficulties. When the x-rays showed abnormalities in AP’s chest cavity, he was taken to the emergency department for further assessment. It was determined that AP had

suffered a collapsed lung. WO1 stated that the attending physician believed the injury to be recent in nature but he was unable to ascertain how [AP] might have suffered the collapsed lung. AP was admitted to hospital for treatment for the collapsed lung. WO1 stated that he contacted his supervisor to advise of these developments.

WO2 and WO3 were on duty at the Thompson RCMP detachment when a radio transmission broadcast that an officer had deployed a CEW at a call for service at an apartment. WO2 and WO3 attended to the apartment to provide assistance. An ambulance was also dispatched to this location. On arrival, WO2 stated that he heard sounds of commotion coming from within the apartment. Both WO2 and WO3 made their way inside the apartment and observed three RCMP members already on scene with AP. WO2 noted that there were three other people inside the apartment, including a female, later identified as CW1. WO2 stated that the three RCMP members were on the floor with AP. AP was bleeding from his back, where taser probes had made contact. AP was yelling that he wanted to hurt himself. WO2 stated that AP had a cut on his forehead and there was some blood visible on his nose and lips.

WO3 stated that AP was laying face down on the floor and was handcuffed. AP was flanked by two RCMP members who were trying to calm him down. AP appeared upset, was crying and was continually apologizing. The officers had already removed the taser probes from AP's back. WO3 stated that she lifted AP's shirt to determine the extent of his injuries. WO3 stated that she was a trained paramedic prior to joining the RCMP. There was slight bleeding coming from the wounds. WO3 stated that she was provided with some dressing material that she used to apply light pressure to stop the bleeding. AP repeatedly stated that he wanted to hurt himself and die. AP appeared intoxicated and smelled of liquor. AP had a cut on his forehead and a bloody nose. WO3 stated that AP told her that he hated himself and had repeatedly hit himself. AP may have also hit his head on a coffee table when he went down after being tasered. AP was taken to TGH for assessment and treatment. AP was cleared and returned to the Thompson RCMP detachment where he was placed in a cell for monitoring, as the hospital staff wanted to complete a mental health assessment the following day when he was sober.

WO4 was on duty at the Thompson RCMP detachment when he heard a call for service where an RCMP member had deployed a CEW. WO4 stated that he and WO5 attended the apartment to assist. On arrival, it was noted that several other units were already on scene. WO4 stated that when he entered the apartment, he saw AP was already in custody. TFES also arrived and transported AP to TGH. WO4 stated that he and WO5 also attended TGH. At the hospital, AP received treatment for his injuries and was cleared to return to RCMP custody. WO4 stated that the attending physician asked the police to return AP to hospital, after he was sober, in order to be assessed for his mental health concerns.

WO5 added that while waiting for TFES to arrive and treat AP for his taser (probe) injuries, he apologised to police, indicating that he was sorry, saying that he could not control himself.

Subject Officers:

Pursuant to the provisions of the Police Services Act (PSA), a subject officer cannot be compelled to provide his or her notes regarding an incident nor participate in any interview with IIU investigators. It should be noted that SO1 and SO2 are male police officers while SO3 is a female police officer.

In this case, SO1 declined to meet with IIU investigators for an interview to discuss his involvement in the incident involving the arrest of AP. SO1 did provide IIU investigators with copies of his notes and supplementary reports.

The following is SO1's supplementary report in its entirety:

At 2332, Thompson RCMP received a report that a male was fighting with his girlfriend at an apartment.

At 2342, SO1, SO2 and SO3 arrived at the apartment and were invited inside by an adult male. This adult male advised that [AP] was fighting in the back bedroom and that he wanted him out. SO2 knocked on the bedroom door and a male opened the door before quickly trying to step back into the room and shut the door on members. SO2 quickly pulled the male out of the room and into the hallway towards SO1 and SO3. SO1 and SO2 then cleared the bedroom.

Once out in the hallway, the male immediately began walking to the main door of the apartment, being told repeatedly to stop by SO3. Despite being told to stop, the male continued walking towards the main door and stepped outside. Once outside, the male stopped and spoke with SO1 and SO3 who had just caught up. The male identified himself as [AP]. When asked by SO3 about what had taken place, [AP] indicated that no assault had taken place and that the red marks on his face were from him hitting himself and his face on the wall because he was angry with himself. Although it was -30 outside and [AP] was obviously not dressed for the weather (only wearing a shirt, sweatpants and socks - no shoes), SO1 believed [AP] was so keen to get outside so he could potentially flee from police. SO1 directed [AP] to come back inside the residence and sit on the couch in the living room while members investigated the assault complaint. [AP] was hesitant to do so, but entered back into the apartment and sat down on the couch without incident.

While speaking with [AP], SO1 noted him to smell strongly of alcohol and [AP] admitted to drinking a "26".

With [AP] sitting on the couch in the presence of SO3, SO1 returned to the bedroom to check on SO2 and found him speaking with a female who he indicated had been hiding in a closet. After a few moments, SO1 returned back to the living room area with [AP] and SO3.

As SO1 was entering back into the living room, [AP] got up and began walking towards the main door to the apartment. SO1 told [AP] to sit back down on the couch while members investigated the assault complaint and explained that it would not take much longer. [AP] was once again hesitant to sit back down but did so without incident. After a few seconds, [AP] got up once again and began walking towards the main door to the apartment before being told by SO1 yet again to sit down on the couch. SO1 explained to [AP] that he had the choice to sit on the couch on his own or if not he would be placed in handcuffs for his safety and members safety. [AP] then asked SO1 if he was going to jail to which SO1 stated that he did not know as members were still trying to figure out what had taken place.

After a few seconds, [AP] got up once again and began walking towards the main door to the apartment for what was now at least the fourth time. Having already told [AP] several times to sit on the couch as members investigated the assault complaint, SO1 believed that [AP]'s repeated desire to get to the main door of the apartment was so he could flee from police. At this time, SO1 told [AP] that he was detained and grabbed him by the left arm while SO3 grabbed

him by the right arm. SO1 reached for his handcuffs, had them, and began to handcuff [AP] from behind. Just as SO1 was about to apply the handcuffs, [AP] suddenly pulled away from both SO1 and SO3. [AP] was able to get free and took a step forward before turning around to face SO1 slightly. SO1 had already stepped forward, preparing to grab [AP] and grabbed him by the shoulders and took him down to the floor with SO1 who was falling down. Although not elegant, it was effective at getting [AP] onto the floor. In the process of taking [AP] down, SO1 lost his handcuffs that had been in his right hand. These handcuffs were now on the floor of the living room only about a foot away from [AP] and could easily be used as a weapon of opportunity.

Once on the floor, [AP] was actively resisting and doing anything he possibly could to get away. SO1 tried to keep [AP] pinned on the floor and gain control of his left arm while SO3 tried to gain control of his right arm, but [AP] managed to roll onto his left side. Hearing the commotion in the next room, SO2 came to assist and joined in the fight to gain control of [AP] who was doing anything he could to get free of SO1 and SO3. As SO2 became involved, [AP] was able to sit up slightly, forcing SO1 out of the fight as SO2 and SO3 struggled to gain control of his arms.

SO1 quickly assessed the situation and mentally noted the following:

- The fight as occurring on the floor of a small living room
- Less than half a foot away was a large glass TV stand
- Surrounded by a couch on two sides less than two feet away
- Handcuffs loose on the floor about a foot away
- Other family members present, including children
- [AP]’s very energetic and erratic behaviour and doing anything he could to get free of members

SO1 believed, based on the totality of the situation that should the fight continue any longer, there was a high risk of imminent bodily harm to [AP], SO2, SO3 or himself. SO1 drew his CEW but was initially unable to deploy it due to only having [AP]’s left side as a target to deploy at. A split second later, and in the course of the fight to gain control of [AP], he was spun around giving SO1 his entire backside as a target to deploy at. SO1 yelled "taser" and deployed the CEW. SO1 was initially unsure if the CEW probes had connected with [AP] as the probes could not be seen and [AP] was wearing two hoodies. However, [AP] immediately tensed up, allowing SO2 and SO3 to gain control of [AP] and take him to the floor. Once on the floor, SO1 instructed [AP] not to move or he would be tased again. [AP] was cooperative and secured in handcuffs without further incident.

After [AP] was secured in handcuffs, SO1 advised over the radio that backup was needed and that a CEW had been deployed. SO1 checked to make sure SO2 and SO3 were not injured, which they were not.

SO1’s attention then turned to [AP] who was yelling that he had been shot. SO1 advised [AP] that he had been tased, not shot and that the effects were only temporary. As it was unknown where the CEW probes had connected with [AP], SO1, SO2 and SO3 began following the deployment wires and found [AP] chewing on a bunch of the wire. The wire was removed from his mouth. After removing the wires that [AP] was chewing on, SO1 eventually located the CEW probes in the middle of the [AP]’s back, right along his spine. SO1 removed the probes from [AP] without incident. Given the location right along [AP]’s spine and due to a fair amount of blood coming from the wound, SO1 requested TFES attend to assess [AP]. [AP] had no other complaints. WO2 and WO3 arrived to assist, followed by WO4 and WO5 not long after.

While waiting on TFES, [AP] began crying and saying he was sorry and then yelling that he wanted to kill himself. It was also discovered at this time that [AP] had a cut on his head and a bloody mouth. The cut on [AP]’s head was believed to have come from him hitting his head on the floor or the glass TV stand. No strikes/punches were used by SO1 or other members to the best of SO1’s knowledge.

TFES attended and transported [AP] to TGH for assessment. SO3 accompanied [AP] to Thompson General Hospital.

SO2 declined to provide IIU investigators with his notes or reports and declined to meet with them for an interview.

SO3 declined to provide IIU investigators with his notes or reports and declined to meet with them for an interview.

Cell Video – RCMP Thompson Detachment

IIU investigators reviewed the video footage from Thompson RCMP detachment cell area from the point in time when AP first arrived after being cleared from the hospital to the next morning when WO1 returned AP to the hospital for mental health assessment. Three RCMP members can be seen escorting AP into the cell and remain inside in close proximity while his clothing is removed one article at a time. AP was provided with a smock due to concerns for his well-being. A short time later, AP is observed to fall asleep on a cement bench.

Once awake the next morning, AP can be observed to hold the right side of his stomach and he appears to be in pain. AP can be observed to attempt and eat some food without any success, as he appears to be in pain. AP is observed to walk over to the toilet and attempt to vomit into the bowl. AP can be seen jumping onto the cement bench and making motions with his hands at the camera in hopes of getting someone’s attention.

A uniform member (believed to be WO1) walks inside the cell and AP appears to be speaking with him. A short time later, both WO1 and AP walk out of the cell to depart for the hospital.

There were no observable physical altercations between any police officer and AP from the time he was lodged in the cell and then taken out the next morning by WO1.

Expert Opinion Report

An expert medical opinion was sought and obtained to assist in determining how and when AP may have suffered a punctured lung. IIU investigators provided a synopsis of the incident that lead to a physical encounter between AP and the three subject officers. Additionally, IIU investigators provided AP’s complete health record reports received from TGH for his review.

IIU investigators requested that the opinion address the following questions:

- *Would it be possible that the subject had a punctured lung prior to his interaction with Police?*
- *Can a person have a punctured lung and not feel the effects for days?*
- *How much force is normally required to impose this type of injury?*
- *Is this injury consistent with the type of force applied by the police?*

The following is an excerpt of the expert opinion report:

A punctured or ruptured lung can occur as the result of a penetrating injury of the chest, a rib fracture with subsequent puncture of the lung by sharp broken bone, or a sudden and powerful compression of the chest wall in the absence of rib fractures. Rarely, a pneumothorax (abnormal collection of air in the chest due to lung or airway breach) can occur without any known triggering injury (spontaneous pneumothorax).

The effects of the pneumothorax can appear after a variable period of time after it starts to accumulate, depending on the size of the lung injury and the rate of escape of air from the lung into the chest cavity. If the perforation of the lung is very small, it may be a considerable period of time before the pneumothorax becomes symptomatic, if symptoms ever do appear.

Without knowing how large the lung injury was in this case, I can't opine as to how long before the subject became symptomatic the injury occurred.

Given that there was no significant penetrating injury of the chest (nothing larger than the taser probes), and given that no rib fractures were identified on x-ray, it seems that the lung puncture and pneumothorax was most likely the result of a sudden and powerful compression of the chest wall. Given the description of the encounter with police, it seems most likely that this would have occurred when the subject was taken down with an officer's weight on top of him.

I can not say with certainty that the lung injury did not occur before the encounter with police.

Conclusion

This investigation must consider whether the actions of any or all of the police officers who were involved with AP during the evening of November 12, either at his residence, during his transport to the detachment, or while detained in the cell, caused, or in any way contributed, through action or inaction, to his collapsed lung, and if so, should criminal code consequences flow therefrom.

Based on the various witness accounts, the video footage recovered and reviewed, and the medical information (including the TGH records and expert opinion obtained), the following determinations can be made:

- At all material times, the subject officers were in the lawful execution of their duties.
- Police attended AP's residence in respect to a call for service and found AP in violation of an existing no contact or communication order in respect to CW1 who was also present. Police were authorized by law to effect the arrest and detention of AP in these circumstances. AP was advised that he was under arrest and would be handcuffed;
- AP was wilfully resisting all police officers attempts to effect his arrest and detention;
- AP made at least four attempts to leave the apartment in hopes of evading police and arrest.
- When police attempted to handcuff AP, his resistance to his arrest increased, resulting in a physical altercation and all parties falling to the floor.

- Police attempted to pin AP to the ground to place handcuffs on him. AP continued to actively resist all police attempts. As a result of an assessment of this situation, one of the police officers drew his CEW and deployed it with the intention to incapacitate AP and bring an end to the physical altercation.
- AP was transported to TGH for further assessment, with the primary concern being his mental health status based on numerous comments of self-harm.
- AP was assessed at TGH. The original assessment concerned apparent injuries to his face and back. Due to his state of intoxication, AP was directed to return the following day for a mental health assessment. AP was cleared to return to RCMP custody and detained in a cell.
- There was no physical interaction between police and AP during transport to the hospital and to the detachment nor while AP was in RCMP custody. AP complained of breathing issues the following morning prior to his transport back to TGH;
- AP was subsequently diagnosed with a collapsed lung. There was no finding of broken or cracked ribs. The injury was described as fresh and of recent origin. AP was admitted to hospital for treatment for the collapsed lung.
- Based on the findings offered, the expert opinion report offered the following advice:
“Given that there was no significant penetrating injury of the chest (nothing larger than the taser probes), and given that no rib fractures were identified on x-ray, it seems that the lung puncture and pneumothorax was most likely the result of a sudden and powerful compression of the chest wall. Given the description of the encounter with police, it seems most likely that this would have occurred when the subject was taken down with an officer’s weight on top of him”

Subsection 25(1), section 26 and subsection 265(1) (a) of the *Criminal Code of Canada* are relevant to this matter:

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.

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.*

265 (1) (a) *A person commits an assault when...without the consent of another person, he applies force intentionally to that other person, directly or indirectly*

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

Police may be required to use force and various levels of interventions in their law enforcement role. Section 25 of the *Criminal Code of Canada* establishes protections from liability for a police officer, who, in the course of enforcing the law, finds it necessary to use force. The facts, circumstances and assessments must be considered in their entirety to determine whether the use of force, the method(s) employed and the degree of force used were necessary and justified in law. The nature and severity of the injury is not solely determinative whether the force used was or was not excessive in these circumstances.

Based on the foregoing, I am satisfied that SO1, SO2 and SO3's use of force (including the deployment of the CEW) to restrain and detain AP was authorized, reasonable and justified in law. Based on the available medical information and opinion offered, I am satisfied that AP's injury to his lung was an unintended consequence arising from the application of force as described above. There was no further or excessive force used on AP once he was restrained. The reaction by police once advised of AP's breathing issues the following morning were also reasonable in the circumstances. The delayed effects of AP's lung injury is not in itself unusual or concerning. As the expert opinion stated:

"The effects of the pneumothorax can appear after a variable period of time after it starts to accumulate, depending on the size of the lung injury and the rate of escape of air from the lung into the chest cavity. If the perforation of the lung is very small, it may be a considerable period of time before the pneumothorax becomes symptomatic, if symptoms ever do appear"

In conclusion, I am not satisfied that any reasonable grounds exist to justify the laying of any criminal code or other offence against any or all of the subject officers. There is no further requirement or need by IIU to continue with this investigation.

The IIU investigation is complete and this file is closed.

Final report prepared by:

Zane Tessler, civilian director
Independent Investigation Unit
July 19, 2021

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