



**IN THE MATTER OF AN INVESTIGATION INTO AN ALLEGATION OF
EXCESSIVE FORCE USED BY RCMP**

**FINAL REPORT OF THE CIVILIAN DIRECTOR
OF THE INDEPENDENT INVESTIGATION UNIT**

IIU File Number:	2017-0055
Final decision made by:	Zane Tessler, Civilian Director
Report prepared by:	Roxanne M. Gagné, Civilian Director
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Introduction

On September 27, 2017, the Royal Canadian Mounted Police (RCMP) notified the Independent Investigation Unit (IIU) of an incident.

The written notification disclosed the following information (excerpt):

September 26, 2017, at the conclusion of an RCMP Code of Conduct meeting between an RCMP member and WO1, the member inquired if there had been any further inappropriate behaviour at the Shamattawa Detachment than what had already been reported and discussed?

WO1 disclosed that on more than one occasion since she began working at the Shamattawa Detachment in 2017, she has observed Police Officer1 (PO1) use unnecessary force during the course of his duties. She also disclosed that Police Officer2 (PO2) would cover up the excessive use of force by PO1.

No other details were disclosed or pursued, pending IIU notification.

As these allegations are considered discretionary matters under the provisions of *The Police Services Act* (PSA), Civilian Director Zane Tessler determined that it was in the public interest for an independent investigation to be conducted pursuant to s. 75 of the PSA. IIU investigators were assigned to this investigation.

At the time of this incident, the civilian director did not designate any subject officers. IIU investigators interviewed two witness officers (WO1-2).

Agency disclosure was minimal. IIU investigators received a Computer Aided Dispatch (CAD) event report and an Occurrence Summary.

Background and circumstances

WO1 provided information regarding an incident that occurred on April 4, 2017. She stated that WO1 and PO1 attended to an address on Caribou Street in Shamattawa on April 4, 2017, in response to a suicidal complaint (AP1). They attended and arrested AP1 for causing a disturbance. WO1 stated that when she and PO1 attempted to put AP1 into the police vehicle, he resisted and the officers used force to get AP1 into the vehicle. AP1 was punching and kicking. WO1 states that given AP1 was fighting the officers, the force required to put him into the vehicle was necessary. PO1, WO1 and AP1 returned to the detachment. She stated that as the three of them were walking up the stairs into the cell area, PO1 threw AP1 to the ground. AP1 was lodged in cells overnight and WO2 took AP1 to the nursing station the next morning.

WO1 did not take any contemporaneous notes on the file. The notes regarding this incident made by WO1, documents PO1 striking the AP in the face with his elbow while putting AP1 in the police vehicle, and stated that PO1 pushed AP1 upstairs, and AP1 fell to the ground.

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The CAD report obtained by IIU investigators confirms that on April 4, 2017, it was reported that AP1 was intoxicated, yelling and threatening suicide at a residence in Shamattawa. Members attended and located him causing a disturbance. He was taken into custody, lodged until sober and was taken to the nursing station for further assessment.

The video from the detachment had not been retained; therefore, it was unavailable to IIU investigators.

There were no reports that speak to any physical contact between PO1, WO1 and AP1. No Subject Behaviour Officer Response Report (SBOR) was completed on this file.

The dispatch information shows the 911 call was received at 11:52 p.m., WO1 and PO1 arrived at 12:05 a.m., and cleared the location at 12:10 a.m.

On June 17, 2017, WO2 and PO1 were working on call in Shamattawa. A member of the community called in to report that a female (AP2) wanted to commit suicide. PO1 and WO2 met at the detachment and got into a marked police truck. PO1 drove them towards the location AP2 was last known to have been.

They located a truck driving erratically at about 60 - 70 km/h on the gravel road, driving directly towards the police vehicle. PO1 pulled the police truck across the road in front of the vehicle and stopped sideways on the roadway with the passenger side of the truck facing the oncoming vehicle. The vehicle left the roadway and drove around the police truck. As the vehicle drove around them, WO2 could clearly see the driver, who he recognized as AP2.

PO1 turned on his emergency lights and began to pursue the vehicle. As he tried to catch up to AP2's vehicle, he lost control of the back end of the police truck. PO1 was driving at speeds up to 70 to 80 Km/h.

WO2 stated that there was no need to pursue AP2. The community is small, and they had information as to where she was probably going. WO2 told PO1 to shut the lights off and slow down. When PO1 did not do either of these things, WO2 reached over and turned the emergency lights off. PO1 slowed down by about 10 km/h. They followed AP2 to the cemetery where they located her laying on a grave crying.

PO1 told AP2 she was under arrest, and attempted to lift up AP2 from the ground. AP2 was trying to get back down to the ground. WO2 described AP2 as actively resistant at this point, and stated that PO1 was getting upset because AP2 wasn't listening.

WO2 stated that he believed that the risk of injury to AP2 would be less with his assistance. WO2 now had grounds to arrest AP2 under the *Mental Health Act*, given her driving and the phone calls reporting that she wanted to harm herself. Therefore, WO2 went over to AP2 and grabbed her other arm. Together WO2 and PO1 brought her to the police truck.

WO2 moved out of the way so that AP2 could be put into the backseat of the truck. AP2 pushed against the frame of the truck. Because of this, PO1 could not get her into the truck. PO1 tried to pick her up and put her into the truck, but when he was unsuccessful, PO1 said “you’re going to get it” and then opened his OC spray holder. WO2 believed that PO1 intended to use his pepper spray on AP2. WO2 grabbed PO1’s arm and told him to “stop”, and to “go away” as he “had this.” PO1 took a big breath and walked a few feet away, leaving WO2 and AP2 at the side of the police truck.

WO2 spoke with AP2 and she got into the back of the police vehicle of her own volition. WO2, PO1 and AP2 then drove to the nursing station in Shamattawa. While at the nursing station AP2 told WO2 her wrist was sore, and that her wrist had not been sore prior to her interaction with police. AP2 was released from the nursing station following a mental health assessment. No treatment required for AP2’s wrist.

WO1

On October 3, 2017, a video statement was obtained from WO1. WO1 had heard about the interaction between PO1, WO2 and AP2 from WO2, and recounted the conversation to IIU investigators. She stated that WO2 told her that an incident occurred on June 17, 2017, between PO1 and AP2. WO2 and PO1 were working that night, and they responded to the call for service; AP2 was upset and there was concern she would self-harm.

PO1 drove through the community at 70-90 km/h, and WO2 told him to slow down. They followed AP2 into the cemetery where she was laying on her sister’ grave. PO1 grabbed her and tried to push her into the police truck. She put her feet up and PO1 took out his pepper spray. WO2 stood between PO1 and AP2, as PO1 was going to unnecessarily pepper spray her. AP2’s arm was injured in the interaction with PO1.

PO1 told WO1 that he had a good interaction with AP2, and that he and WO2 had a miscommunication. PO1 had gone to grab AP2’s arm, and WO2 had pushed him out of the way. PO1 told WO1 he had not touched AP2.

WO1, follow-up interview

On March 9, 2018, a subsequent video interview was obtained from WO1, to specifically address the allegations as stated in the Part 7 from the RCMP, which read: *“WO1 disclosed that on more than one occasion since she began working at the Shamattawa Detachment in 2017, she has observed PO1 use unnecessary force during the course of his duties. She also disclosed that PO2 would cover up the excessive use of force by PO1.”*

She stated that she was aware of two incidents. The first incident WO1 did not witness herself. WO2 had spoken to WO1 about an incident in the graveyard. WO1 recounted her knowledge of this incident in a prior interview with the IIU. This incident had been reported to a supervisor; therefore, it did not raise concerns about PO2 covering up for PO1.

The second incident that WO1 reported, regarding unnecessary use of force, was an incident involving AP1 who was arrested following a mischief call, and was brought to the detachment. PO1 and WO1 had to use force to get AP1 into the police vehicle. WO1 clarified that this force was warranted in the circumstances. WO1 stated PO1 threw AP1 onto the ground as the three of them walked up the steps into cell area of the detachment. This was in March or April of 2017. The call for service was at an address on Caribou Street. This was the same incident where PO1 elbowed WO1 in the face. WO1 had spoken to PO2 regarding this incident and PO2 had a meeting with WO1 and PO1 to discuss the report.

WO1 could not identify any other incidents where she witnessed unnecessary use of force by PO1. WO1 clarified in her statement that she has previously disclosed all the incidents involving PO2 covering up for PO1.

WO1 stated that she thinks the RCMP took her initial disclosure out of context about multiple incidents of excessive force.

WO2

On November 22, 2017, a video statement was obtained from WO2. He stated that he was working on June 17, 2017, with PO1 in Shamattawa. WO2 and PO1 do not regularly work together, and this block of shifts was the first time they had worked together for a full week. WO2 was in full RCMP uniform, and was equipped with OC spray, (also known as pepper spray), baton, Taser, and a pistol.

PO1 was similarly dressed in full uniform with police markings. PO1 may not have had a RCMP issued shirt on, but he was wearing a RCMP issued vest bearing the word "Police." PO1 was equipped with OC spray, baton, Taser, and a pistol.

WO2 and PO1 had been called out to a *Mental Health Act* (MHA) call. AP2 wanted to harm herself. PO1 and WO2 responded to this dispatch, they were the only RCMP working in the community at that time.

WO2 had interacted with AP2 before on past calls. She had called the police on her brothers who were drinking, and previous *MHA* calls where AP2 had wanted to self-harm. These interactions had a positive tone to their resolution.

PO1 and WO2 met at the detachment, got into a marked police truck, and PO1 drove to the last location AP2 had been seen.

PO1 and WO2 saw AP2's vehicle. She was driving at about 60 - 70 km/h on the gravel road, driving directly towards the police vehicle. PO1 stated that he was going to stop her at this location and pulled in the police truck across the road in front of AP2. He was stopped sideways on the roadway with the passenger side of the truck facing AP2's vehicle. WO2 expressed his lack of comfort with this tactic and positioning. She left the roadway and drove around the police truck.

PO1 became angry and began to chase her. PO1 turned on the police lights. He lost control of the back end of the police truck as he tried to catch up to her vehicle. PO1 was driving at speeds up to 70 - 80 km/h. WO2 told PO1 that they could find her; there was no need to pursue her and he needed to shut the lights down and slow down.

WO2 reached over and turned the police lights off. PO1 slowed down by approximately 10 km/h. They followed AP2 to the cemetery, never losing sight of the vehicle.

PO1 and WO2 arrived at the cemetery, which is approximately 2 km from town, and she was laying on a grave crying hysterically. They announced themselves as police but it was possible that she did not hear this. PO1 told her she was under arrest, but WO2 was uncertain what reason PO1 gave for her arrest.

PO1 then attempted to lift her up, but she kept trying to get back down to the ground. She was actively resistant at this point. PO1 was getting upset because she wasn't listening. WO2 could see that she was not armed. WO2 stated that he was concerned that she would likely get hurt. He assisted in bringing her to the police truck, as he felt her risk of injury would be less with his assistance to PO1. WO2 had grounds to arrest her under the *MHA*, her driving and the phone calls reporting that she wanted to harm herself.

PO1 was pushing her into the truck, she was fighting PO1. He tried to pick her up and throw her into the truck, and when he was unsuccessful, PO1 said "you're going to get it," and then opened his OC spray holder. WO2 grabbed PO1 arm and told him to "stop," and to "go away," as he "had this." PO1 stepped back, took a big breath and stormed away. WO2 believed that PO1 would have pepper sprayed and hit AP2, if WO2 had not intervened.

WO2 spoke to AP2, calmed her down, and she went into the police truck with no issues. WO2 spoke to PO1 who said he was ok, and they drove to the nursing station without incident and waited with AP2 to have a mental health examination. AP1 said her wrist was sore, and when questioned by WO2 she stated the injury had just happened. WO2 believes that he saw one of her wrists hit the doorframe of the truck. After about an hour at the nursing station, PO1 went to talk with her. His demeanor had changed at this point, and he was calm.

At a later date when WO2 was working with WO1. She recounted the incident to WO2 based on her understanding from PO1. WO2 felt the description was wrong, he told WO1 this and then brought the incident up a senior officer.

WO2 had made notes contemporaneously, and then made further follow up notes.

Applicable Law:

Sections 25 (1), (3), (4) and Section 26 of the Criminal Code of Canada are applicable to this analysis:

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

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(b) as a peace officer or public officer

(c) in aid of a peace officer or public officer

(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.

(3) Subject to subsections (4) and (5), a person is not justified for the purposes of subsection (1) in using force that is intended or is likely to cause death or grievous bodily harm unless the person believes on reasonable grounds that it is necessary for the self preservation of the person or the preservation of any one under that person's protection from death or grievous bodily harm.

(4) A peace officer, and every person lawfully assisting the peace officer, is justified in using force that is intended or is likely to cause death or grievous bodily harm to a person to be arrested, if

(a) the peace officer is proceeding lawfully to arrest, with or without warrant, the person to be arrested

(b) the offence for which the person is to be arrested is one for which that person may be arrested without warrant

(c) the person to be arrested takes flight to avoid arrest

(d) the peace officer or other person using the force believes on reasonable grounds that the force is necessary for the purpose of protecting the peace officer, the person lawfully assisting the peace officer or any other person from imminent or future death or grievous bodily harm

(e) the flight cannot be prevented by reasonable means in a less violent manner

26. Everyone 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.

Also see *R. v. Power*, 476 Sask. R. 91 (CA), where (at para. 35), the court notes:

“On the basis of the foregoing, a determination of whether force is reasonable in all the circumstances involves consideration of three factors. First, a court must focus on an accused's subjective perception of the degree of violence of the assault or the threatened assault against him or her. Second, a court must assess whether the accused's belief is reasonable on the basis of the situation as he or she perceives it. Third, the accused's response of force must be no more than necessary in the circumstances. This needs to be assessed using an objective test only, i.e. was the force reasonable given the nature and quality of the threat, the force used in response to it, and the characteristics of the parties involved in terms of size, strength, gender, age and other immutable characteristics.”

Conclusion

WO1 provided conflicting information in multiple interviews regarding the use of force by PO1. Further, she stated that AP1 was resisting being taken into custody and that the force used by PO1 was necessary. The evidence suggests that WO2 was involved in dealing with AP2, and intervened in the actions of PO1, which prevented a potential escalation of use of force by PO1. The investigation did not produce any evidence of PO2 covering up any of the actions of PO1. WO1 also stated that the incident involving PO2 and AP1 was not covered up and had been reported. Lastly, WO1 stated that she thought the RCMP took out of context her initial disclosure about the multiple incidents of excessive use of force.

The IIU's mandate is to consider whether the officer's actions in using force were justified. Civilian Director Zane Tessler, assigned to this matter at the time, gave due consideration to all the circumstances and did a thorough review of all evidence and material facts obtained in this investigation, and determined that the officer's actions were reasonable and no criminal charges would be laid against the subject officers.

The IIU investigation is now completed and this matter is now closed.