



**IN THE MATTER OF AN INVESTIGATION INTO A PERJURY ALLEGATION OF A
BPS OFFICER AT TRIAL IN JANUARY 2021**

FINAL REPORT OF THE CIVILIAN DIRECTOR
OF THE INDEPENDENT INVESTIGATION UNIT

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IIU File Number:	2021-0019
Date of Release :	July 10, 2023

Introduction:

On June 4, 2021, Brandon Police Service (BPS) notified the Independent Investigation Unit (IIU) of a complaint received by the service on June 3, 2021, about a police officer's testimony given at a provincial court proceeding in Brandon, Manitoba, in January 2021.

The written notification disclosed the following information:

On June 3, 2021, the affected person (AP) contacted BPS and left a message in which he alleged that a police officer committed perjury during his criminal trial in January of 2021. The AP was calling from Milner Ridge Correctional Center, alleging in his message that he had a copy of an email between the police officer and the Crown Attorney from before his trial in which the (police officer) indicates information different to that which she testified to during the trial.

The allegation of perjury is a prescribed offence under IIU regulation 99/2015 and constitutes a mandatory investigation for IIU under the *Police Services Act* (PSA). IIU investigators were assigned to this matter.

IIU investigators obtained and received the following information, among other items:

- Incident report
- Charges against the AP
- Court brief and bail brief of the AP
- Investigator's Report
- Occurrence Summary
- Officers notes
- Booking logs
- Supplementary reports
- Witness statements
- Video interview of the AP
- Video interview of the AP's sister
- Transcribed booking log sheets of the AP and AP's sister
- Email dated January 7, 2021, sent from the police officer to the Crown Attorney re: AP
- Transcript of the proceedings, Brandon Provincial Court, January 2021 and February 2022.

At the outset and up until the completion of the investigation, the civilian director, Zane Tessler, did not designate a subject officer or any witness officers.

IIU investigators did not interview the police officer, and IIU investigators did not interview any other witnesses.

Facts and Circumstances:

Affected Person (AP):

On June 24, 2021, IIU investigators attended Milner Ridge Correctional Institution and met with the AP. He provided a statement detailing his concerns.

He had been arrested for forcible confinement and sexual assault in July 2020. One of the main witnesses was identified as the AP's sister. The trial began in January 2021 and adjourned when the AP fired his lawyer.

Through the course of the interview, the AP identified two issues. He stated that he was interviewed twice on the same day by a police officer. The first interview was video recorded. The police officer then interviewed his sister. Following that, the AP returned to the same interview room and was questioned regarding a sexual assault allegation made against him. He claims that this interview was not audio or video recorded. The AP stated that when the police officer was questioned at trial about this, she provided a number of excuses as to why a recording was not obtained. The AP felt that she was being dishonest in the answers she provided.

The AP stated that the second area of concern was an email thread that he had received from his lawyer. The email communication was between the Crown Attorney and the police officer. He claims that in this email, the police officer indicated that he (AP) neither confirmed nor denied that he had sexual contact with a named woman (NW). When the police officer testified, she stated that he denied having sexual contact with the NW. The AP advised that he had a copy of the transcript in which the police officer made this statement. As a result of the conflicting information that she provided at trial, the AP believed that the officer committed perjury. The AP was concerned about what the police officer said during her testimony, referring to page 180 of the court transcript, particularly on line 16.

On August 19, 2021, IIU investigator received a call from the AP stating that he was also upset about the officer's answer in Court, which was documented on page 179 of the transcript and essentially all of her testimony. He indicated during the conversation that he was upset about biased police officers, about what the officer said in her emails and what she said in Court.

The AP advised that he never represented himself as the police officer claimed and did not speak with a lawyer in custody because they would not let him. He had a second conversation with the police officer at his request because he wanted to tell her again that he didn't do anything. When asked what type of questions the police officer asked during the "second interview," he said he did not want to provide any information about that.

Report written by the police officer regarding the Forcible Confinement incident:

The police officer created a report outlining her involvement in the forcible confinement incident on July 30, 2020. A portion of her report, cited below, outlines her participation with the arrested individuals while they were at the Brandon police station. She noted:

- The male taken into custody was identified as the AP.
- One of the females involved was identified as the AP's sister.
- They were interviewed the following day (July 31, 2020).
- The AP stated that the allegations were false, and he refused to provide any details. He added that the individuals involved were unreliable because they were on drugs.
- The AP's sister indicated that all the parties involved were already at her house when she got home. At one point, the NW was sitting on AP's lap, and she thought that they had gone upstairs to have sex.
- After both interviews were concluded, the police officer received a call from a social worker at the hospital advising her that the NW had disclosed that the AP had sexually assaulted her.
- As a result of this new information, the police officer returned to the hospital, spoke with the NW, and obtained further details regarding the incident.
- The following week the police officer consulted with the Crown's office regarding the sexual assault charge. She then requested that members of the Winnipeg Police Service (WPS) attend the Remand Centre and advise the AP of the additional charge of sexual assault with a weapon.

The Email:

On June 30, 2021, IIU investigator spoke with the Crown Attorney over the phone to obtain a copy of the email that was the source of the AP's complaint. The Crown Attorney said he had a copy of the email and did not understand the AP's objection. However, he had several issues throughout the trial, and the AP caused numerous delays. Throughout the proceedings, the AP had fired his lawyer, attempted to represent himself and asked for a mistrial.

The Crown Attorney forwarded the email in question to IIU investigator. The email was initially sent to Defence Counsel on January 7, 2021, in response to the following question:

"...He believes there is a further short statement that he made to the (police officer) that is not on video. She asks him about the (AP sister's) comments that he had sex with (NW). This was before (NW's) second statement was given. The (police officer's) notes do not contain this, so I am not sure it exists. Is there a second brief statement?"

That same morning Defence Counsel forwarded the email to the police officer, and she provided the following response:

"...We did have a brief conversation that same day. (The AP) was insistent upon talking to the Crown about being remanded in custody and whatnot, so he was moved back to the interview room and given the chance to talk with (a lawyer), who was dealing with the matters that day. After their conversation, (the AP) continued pleading his case with me in much the same fashion as during his recorded statement. He didn't say anything new to my recollection – he was trying to convince me that this was all BS caused by a bunch of drug users and none of it had happened. I soon cut him off and told him I needed to get on with the investigation and I put him back in his cell.

At one point, I do believe I made mention that even his sister stated he was fooling around sexually with (NW), so it wasn't so easy to dismiss the allegations against him. He didn't really deny or confirm that statement, he just insisted that his sister was so far gone on drugs that her statements weren't reliable. I can only guess that I didn't make additional notes on this conversation because it was brief and I didn't think anything new was said that wasn't said in his interview.

This interview room is not recording at all times, as it is the room arrestee's use to speak to their lawyers. And I didn't start the recording because I only intended to let (AP) speak with (lawyer) and then return him to his cell." (emphasis added)

Transcript of proceedings, January 2021, Brandon Provincial Court – R. v. (AP):

The trial began in January 2021, and resumed briefly the next day but did not continue because the AP fired his lawyer.

The police officer testified in direct and cross-examination. She testified that she became involved in investigating a forcible confinement incident on July 30, 2020. She interviewed the victim and the two accused (the AP and his sister).

A timeline of events was detailed in her testimony as follows:

- Her first contact with the involved parties was with the victim on July 30, 2020, where she obtained information on what occurred.
- Police took the persons involved into custody.
- The following morning, she interviewed the AP on video regarding his involvement in the forcible confinement. The AP denied that the NW had been held against her will, and he said that everyone at the house was doing drugs except him, so their information could not be trusted.
- Following the interview's conclusion, the police officer interviewed the AP's sister on video. She said that everyone was hanging out at her place. The NW was sitting on the AP's lap, and she believed they went upstairs to have sex. At this time, the police officer became aware of sexual contact between the AP and the NW. Following the interview, AP's sister was returned to her cell.

- The AP was then escorted into an interview room to call the Crown Attorney regarding a bail application because he was representing himself.
- After the AP concluded the call, the police officer went to remove the AP from the interview room to return him to his cell. Still, he wanted to discuss a few things because he was worried about not getting bail and being in custody over the weekend. During this interaction, she told him that even his sister had told her he had sex with the NW. She stated that she made this statement to him to show him that she could not discount everything that happened based on his say-so. (this conversation was not recorded).
- The AP was returned to his cell.
- Around noon on this date, she received a call from a social worker at the hospital, and she was advised that the NW had disclosed that the AP had sexually assaulted her.
- She attended the hospital to speak with the NW to hear the allegations firsthand (no formal statement was taken).
- NW spoke with the Crown Attorney the following week regarding the sexual assault allegation, and the Crown determined the AP would be charged.

The "Second Interview":

The AP indicated that he felt that the police officer committed perjury by lying about why the second interview was not videotaped. He pointed out that he thought the issue was detailed on page 180, line 16 of the transcript. The AP stated that he felt that the police officer was lying in this statement because it was the same room he and his sister had been interviewed in and he knew the interviews were recorded.

It should be noted, however, that the sentence at line 16 is part of a page-long answer that the police officer provided in response to a question posed by defence counsel. He asked the following:

"I understand that at some point while he was in the recording room, you did go back and question him off camera about a sexual assault?"

The officer's answer is as follows:

*"After I spoke with (AP) and (AP's sister), (AP) was back in his cell...He insisted on talking to the Crown; he wanted to discuss the remand hearing and making bail... he was self-representing, and we allowed him that opportunity.
...I took him into one of the interview rooms and he had a phone conversation with Crown Attorney... I then tried to tell (AP) he needs to go back to his cell, he wanted to keep talking to me. I didn't record it because this is a room that's not recorded, and I never intended to keep talking to him. I tried to keep urging him – not physically, but I tried to keep urging him, like, we need to get back to your cell, I need to get this paperwork done for this bail hearing to even happen, and he wanted to just keep pleading*

the same case... So at one point I think I said to him even your sister told me that you and NW were having sexual relations, so obviously something went on here. I can't just assume that this is all bullshit...

So I didn't directly ask him much about it. I made the statement to try and reinforce to him that I can't just dismiss this all. Even your sister is telling me things that you didn't tell me. I have to investigate this. So it was a quick five or ten minutes at most...we finally just physically had to put him back in his cell."

Most of the questions seemed to center around the "second interview" and how much information she had regarding the sexual component of this case at that time. It was clear that this conversation with the AP occurred before the victim made any sexual assault allegations.

On page 181 of the transcript, the police officer stated:

"...I wasn't trying to allege that he had assaulted -- sexually assaulted (NW) at that point. I believe when I had the interview with (AP) he kind of, tried to deny anything -- anything intimate with (NW)... So when I learned from (AP's sister) that there was some intimate relations, that's what I was trying to say to him, is there's obviously more to this that you're not telling me, I need to finish this investigation, I can't sit here and argue this with you." (emphasis added)

The above is the only reference where she indicates the AP denied sexual contact with the NW. The police officer is referring to the video statement obtained from the AP before there was any information regarding sexual contact between them. This was part of a broader response in which she indicated that the AP denied that anything occurred inside the house,

The police officer was not asked direct questions regarding the sexual assault component of this case because she never interviewed the AP regarding the allegation. She did not speak with him after the NW made the allegation.

Transcript of proceedings, February 2022, Brandon Provincial Court - R. v. (AP):

On February 2022, the AP was acquitted of the charges. The IIU investigators obtained and reviewed a copy of the transcript of the reasons for decision of the presiding judge to determine if the testimony provided by the police officer played a role in the judge's decision to acquit the AP. Her Honour details the delays in the court process and her concerns:

"All the time wasted on arguments about the police investigation, about (police officer) handling of the matter, I hope you realize today it had zero effect or influence on my decision. I told you and told you and told you and you would not listen. You were completely off track in pursuing that and it wasted court time."

The judge reviewed witness testimonies and made findings about those she deemed credible and those she did not. She did not specifically address the testimony of the police officer in question, but she makes the following comment:

*"With respect to other Crown witnesses, I have no concerns with respect to the credibility of the neighbour or the officers who testified. They gave straightforward evidence that seemed reliable, and their evidence was not shaken in any material respect during cross-examination.
I start with the first question. Do I believe the accused? I do not believe (AP's) version of events..."*

Interview room – booking logs:

A review of the timelines of the booking logs demonstrates that both the AP and his sister were interviewed on video the following day (July 31) by the police officer. The AP's interview was conducted at 7:53 a.m. After the interview, he was returned to his cell at 8:28 a.m. At 8:35 a.m., the AP's sister was placed in the interview room to contact a lawyer and the video recording equipment was turned off. She was returned to her cell at 8:57 a.m. At 9 a.m., the AP was allowed to use the interview room to contact a lawyer; the video recording equipment was still off. At 9:24 a.m., the police officer spoke with the AP in the room for six minutes (interactions not recorded). The AP was escorted back to his cell 15 minutes later. At 9:55 a.m., the police officer met with NW, and a video statement was obtained.

Conclusion:

Sections 131 to 134 of the *Criminal Code of Canada* state:

131 (1) Subject to subsection (3), every one commits perjury who, with intent to mislead, makes before a person who is authorized by law to permit it to be made before him a false statement under oath or solemn affirmation, by affidavit, solemn declaration or deposition or orally, knowing that the statement is false.

(1.1) Subject to subsection (3), every person who gives evidence under subsection 46(2) of the Canada Evidence Act, or gives evidence or a statement pursuant to an order made under section 22.2 of the Mutual Legal Assistance in Criminal Matters Act, commits perjury who, with intent to mislead, makes a false statement knowing that it is false, whether or not the false statement was made under oath or solemn affirmation in accordance with subsection (1), so long as the false statement was made in accordance with any formalities required by the law of the place outside Canada in which the person is virtually present or heard.

(2) Subsection (1) applies, whether or not a statement referred to in that subsection is made in a judicial proceeding.

(3) Subsections (1) and (1.1) do not apply to a statement referred to in either of those subsections that is made by a person who is not specially permitted, authorized or required by law to make that statement.

132 Every one who commits perjury is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

133 No person shall be convicted of an offence under section 132 on the evidence of only one witness unless the evidence of that witness is corroborated in a material particular by evidence that implicates the accused.

134 (1) Subject to subsection (2), every one who, not being specially permitted, authorized or required by law to make a statement under oath or solemn affirmation, makes such a statement, by affidavit, solemn declaration or deposition or orally before a person who is authorized by law to permit it to be made before him, knowing that the statement is false, is guilty of an offence punishable on summary conviction.

(2) Subsection (1) does not apply to a statement referred to in that subsection that is made in the course of a criminal investigation.

Where it is determined that reasonable and probable grounds exist to believe a criminal offence has been committed, the IIU civilian director may charge the subject officer accordingly. The determination of whether reasonable and probable grounds exist is based on a careful assessment of all the available evidence. The totality of the circumstances must be considered in the assessment of grounds. The purpose of emphasizing the totality of the circumstances is to avoid concentrating on individual pieces of evidence. Accordingly, consideration of the evidence cannot be piecemeal.

Furthermore, the determination of whether the necessary reasonable and probable grounds exist must not be based solely on speculation. The absence of evidence on essential elements of the offence means there is an absence of the necessary reasonable and probable grounds. Therefore, in those circumstances, there is no legal support for the laying of a criminal charge.

The elements of the offence of perjury are as follows:

1. The testimony was false;
2. The witness knew the testimony was false;
3. The witness had the intent to mislead the Court.

The IIU undertook this investigation because a criminal offence is alleged to have occurred. The mandate of IIU does not include authorizing criminal charges in the absence of evidence to support that decision. Actual misleading of the Court is not an essential element of the offence. Carelessness or recklessness in giving testimony--without the intent to mislead and give false

evidence--does not amount to the offence of perjury. In this case, the police officer may have been imprecise in her testimony but there is no evidence that she intended to mislead the court.

Given the totality of the circumstances, there are no reasonable grounds to believe that an offence of perjury has been committed. Accordingly, no charges will be laid, and this investigation is now completed and closed.