



**IN THE MATTER OF AN INVESTIGATION INTO AN INCIDENT INVOLVING AN
OFF-DUTY WINNIPEG POLICE SERVICE MEMBER**

FINAL REPORT OF THE CIVILIAN DIRECTOR
OF THE INDEPENDENT INVESTIGATION UNIT

Civilian Director:	Roxanne M. Gagné
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Introduction

On May 23, 2024, the Winnipeg Police Service (WPS) and the Royal Canadian Mounted Police (RCMP) notified the Independent Investigation Unit of Manitoba (IIU) of an incident regarding an off-duty WPS member.

The written notification disclosed the following information:

“On Tuesday, May 21, 2024 at approximately 2010hrs, the Whitemouth RCMP Detachment received two separate calls for service for erratic driving. A suspect vehicle description was provided with damage being reported on the vehicle, believed to have been caused by the driving behavior. A RCMP member who was on patrol located the vehicle on Highway 44 in the municipality of Reenie [sic]. A traffic stop was conducted and a Mandatory Alcohol Screening was utilized with the driver initially not making a proper effort to provide a sample.

During the Immediate Roadside Prohibition (IRP) process the driver had identified himself as an off-duty Winnipeg Police officer, the off-duty officer subsequently provided a suitable sample in an Approved Screening Device (ASD), providing a sample which resulted in a "fail" reading.

When the RCMP officer continued with the IRP process, the off-duty officer declined to provide second sample, a second officer attended the scene, and assisted with the process. The off-duty officer was then served appropriate IRP Driving Disqualification and Seizure forms and was subsequently released to his spouse.”

The investigation was essentially completed prior to the IIU being notified of the matter. The civilian director deemed it was in the public interest to investigate and assume responsibility of the matter in accordance with Section 75(1) of The Police Services Act (PSA). The civilian director did not formally designate a subject officer (SO), however, for the sake of clarity in this final report, reference will be made to the driver of the vehicle as a “subject officer.”

IIU investigators obtained the following information:

- Computer automated dispatch (CAD) events
- General report of WO1
- Involvement list
- WO1’s notes
- WO2’s notes
- Notice of order and suspension
- Notice of seizure and impoundment
- Telecoms communication audio
- Vehicle photos
- Police watchguard video

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Facts and Circumstances

Witness Officer – WO1

On May 27, 2024, IIU investigators obtained a copy of WO1's report in this matter. WO1 is a RCMP member and was the lead investigator in this incident. WO1 reported that while patrolling Provincial Trunk Highway (PTH) 44 from the Whitemouth area at Zimmerman Road, in the Rural Municipality of Whitemouth, a silver pickup truck crossed the middle line while WO1 was facing the truck. WO1 noted damage to the fender on the passenger side of the vehicle. WO1 activated the emergency lights and conducted a roadside stop. WO1 approached the driver, who was already holding his driver's licence out to provide it to WO1. WO1 made a mandatory alcohol screening (MAS) demand. WO1 requested that the driver turn the vehicle off, which he did. WO1 explained how to provide a breath sample.

The initial attempt at breathing into the approved screening device (ASD) resulted in an insufficient breath, which WO1 diagnosed as being due to the driver putting his tongue in front of the straw hole, thereby not allowing air to get through. WO1 advised the driver that if he were to stop doing this, it would work better. WO1 further advised him that if he refused, the charge would be the same as failing to do so. The driver sat facing forward when WO1 advised him to blow into the straw. WO1 stated that the driver was passive resistant at that time. After a bit of conversation, WO1 asked him if he was refusing. The driver advised that he was a WPS member and complained of personal issues. WO1 advised that if he were to fail that he would get a three-day suspension. The driver blew into the straw and the ASD returned a "fail" reading. WO1 seized his Manitoba driver's licence.

WO1 advised him that he could wait in his vehicle while WO1 did paperwork. WO1 took the keys to his truck and also took his licence. WO1 noted that the subject officer (SO) matched the driver's licence photo.

WO2 arrived on scene and WO1 filled her in on what had transpired up to this point.

After speaking with WO2, WO1 went back briefly to speak with SO and ensured that he wasn't suffering from a mental health issue, which SO denied. Police asked if he needed to speak with a doctor, and he advised that he did not. WO2 advised him why he was detained and brought him to the back of marked police vehicle. While walking to the vehicle, he could not walk in a straight line on asphalt. WO1 went to her police vehicle. She spoke with SO's wife, to request her to meet them so that SO could go home with someone. WO1 then began paperwork and realized that she had been incorrect; her memory of the three-day prohibition on driving was related to a "warn," but SO had blown a "fail." As soon as WO1 learned of her error, she advised SO of same and of the correct prohibition period (90 days). SO became upset, stating that WO1 had done it on purpose. He became argumentative with WO1, demanding that WO1 stick to the erroneous prohibition.

WO1 completed the paperwork and provided it to SO at 9 p.m. SO was released to his wife, and his vehicle was impounded.

WO2 took photos of the damage on the vehicle.

On May 23, 2024, WO1 reviewed the file and email sent by Manitoba Public Insurance (MPI), which advised that an updated impaired form should be completed as there is dual ownership of the vehicle. WO1 then made additional notes in an Addendum. WO1 failed to note (in the notebook taken at time of event) that immediately after the first test, a second ASD test was offered and declined by SO, time noted to be 8:37 p.m. WO1 also noted that the notes made at that time, related to SO's physical symptoms of intoxication which included: his words were slurred, he was stumbling, and his eyes were not focused when speaking with WO1. WO1 also noted that at 9:19 p.m. SO was provided paper copies of documentation from the immediate roadside prohibition (IRP) and vehicle impoundment.

Other evidence

Notice of Order and Suspension & Notice of Seizure and Impoundment of Vehicle

He was issued a driving prohibition of 90 days and a \$700 penalty. His vehicle was impounded for 30 days.

Crown Opinion

Given the circumstances of this case, including that there was damage to the vehicle and the SO refused to provide a second breath sample, the civilian director requested that the matter be reviewed by the Manitoba Prosecution Service (MPS) for a Crown opinion as to whether criminal charges should be laid in this case.

On September 24, 2024, the IIU received the Crown's opinion that it is not recommending any criminal charges against the subject officer.

Manitoba Prosecution Service (MPS) has reviewed the IIU investigation of Officer (SO). While it is always in the public interest to hold police officers accountable, there must also be a reasonable likelihood of conviction for MPS to prosecute a matter. After a thorough examination of all of the facts, the Crown is of the view that charges are not warranted as against the officer in this case.

After considering the heightened public interest, the Crown has determined that Criminal Code charges against the accused will not be pursued. The arresting RCMP officer exercised discretion, consistent with discretion exercised in relation to other impaired drivers who were given Immediate Roadside Prohibitions (IRP). Given the passage of time, the accused has now been penalized in accordance with the IRP regime.

Conclusion

The RCMP conducted a traffic stop on an impaired driver (SO). The driver failed the roadside alcohol screening device and refused to provide a second breath sample. The driver identified himself as a WPS officer. The RCMP assessed the driver to be eligible for the roadside prohibition program (IRP regime).

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Following due consideration of all the circumstances of this matter, including MPS's opinion that they would not recommend any criminal charges against the subject officer and that the IRP regime was an appropriate measure to deal with the matter, no charges will be laid in this matter.

This investigation is now completed and the matter is now closed.