

# ***FINAL REPORT: IIU concludes investigation into injuries from “less lethal” weapons used by Thompson RCMP***

---

On October 17, 2018, at 2:53 p.m., the Royal Canadian Mounted Police (RCMP) notified the Independent Investigation Unit of Manitoba (IIU) of a confrontation between officers and an armed male (later identified as the affected person (AP)) in Thompson, Manitoba. A low velocity Extended Range Impact Weapon (ERIW) and a Conductive Energy Weapon (CEW) were both deployed, resulting in injuries to AP.

According to this notification, in part:

On Wednesday, October 17, 2018 at 1:13 p.m., Thompson detachment and Manitoba North District members responded to a call for service regarding a suicidal and barricaded adult male [AP]. AP was allegedly in possession of a knife. Due to public safety concerns, a decision was made to deploy a “less lethal use of force” option (40 mm low velocity Extended Range Impact Weapon). A single 40 mm impact round was deployed, without effective results. A member then deployed the Conducted Energy Weapon (CEW - Taser), striking AP, resulting in him crumpling to the ground. Members were able to safely control and arrest AP without further incident. AP was transported to Thompson General Hospital (TGH) to receive immediate medical treatment. AP was examined by a medical practitioner and later released to his cousin, with a safety plan.

The IIU civilian director determined that the ERIW was a firearm for purposes under the *Police Services Act* (PSA). The ERIW is a less-lethal use of force option that fires a 40-millimeter foam-tipped projectile. Any injury resulting from its use would constitute a serious injury pursuant to IIU regulation 99/2015. AP suffered a small abrasion to his left thigh as a result of the ERIW projectile. Accordingly, the IIU was mandated under the PSA to investigate the conduct of the RCMP officers. A team of IIU investigators was assigned to this matter.

IIU investigators received from RCMP, among other items:

- RCMP file;
- occurrence reports and supplementary reports;
- officers’ notes;
- scene and knife photographs;
- 911 call recordings;
- witness statements;
- RCMP in-car dash camera video recording.

IIU investigators also received and reviewed medical records from TGH.

Following a review of the material received, it was determined that two RCMP members should be designated as subject officers (SO1 and SO2). Four RCMP members were designated as witness officers (WO1-WO4). AP was interviewed by IIU investigators, as were four civilian witnesses (CW1-CW4).

Under the provisions of the PSA, a subject officer cannot be compelled to provide his or her notes regarding an incident nor participate in any interview with IIU investigators. In this case, SO1, a supervisor and member who deployed the CEW, consented to the release of his notes and volunteered to be interviewed by IIU investigators. SO2, who deployed the ERIW, declined to be interviewed by IIU investigators but did supply them with a copy of his notes.

The following facts and circumstances have been determined:

On October 17, 2018 at 1:13 p.m., members from Thompson RCMP were dispatched to a call regarding a suicidal and barricaded male who was in possession of a knife. Police were also advised that the male suffers from mental health issues.

Police officers located and contained the male (later identified as AP) in a parking lot. AP held a knife against his own throat at one point and was yelling at police to shoot him as he wanted to die. A number of police officers had their service firearms drawn. SO2 had a "less-lethal" use of force option in his possession, an ERIW, from which he fired a projectile that struck AP's left thigh. AP remained standing and was then stunned with a CEW, deployed by SO1, which caused him to fall to the ground. AP was quickly restrained and handcuffed.

AP was conveyed to TGH where he was treated for a small laceration to his left thigh (believed to have been caused by the ERIW projectile) and a lacerated right wrist (believed to have been self-inflicted as observed during the police confrontation with AP). AP was not charged with any Criminal Code offences as police determined this to be a *Mental Health Act* (MHA) incident. He was treated and released from hospital the same day.

### **Affected Person**

AP advised that on the day of the incident, he was "off his meds" and does not remember much of what occurred. AP explained that he had been on several medications but had stopped taking them about a month before the incident. He does not remember leaving his house on the day of the incident nor does he remember having a knife in his possession. He thinks he was "tasered" twice by police and does not remember being shot by the "bean-bag gun," stating that someone later told him what happened. He does not remember going to the hospital and he does not remember much of the confrontation with the police. However, AP wanted to kill himself stating: "Oh yeah, I was gonna kill myself for sure." AP recalls being on the ground, in handcuffs, and seeing blood. AP believes the blood was from his injured right wrist, which he says he cut with his knife.

### **Civilian Witnesses**

CW1 advised IIU investigators that AP lives with her and her husband. CW1 recalls that on the day in question, AP was rummaging through their dishwasher. AP grabbed a knife from the kitchen and ran downstairs. CW1 called the RCMP, believing that AP was going to hurt himself, and advised he may have cut his own wrist. AP ran out of the house. CW1 and her husband, CW2, left the house to try to locate AP. CW1 saw a police car drive in behind a strip mall across the street from her residence. When she got closer, she saw AP on the ground and in handcuffs.

CW2 related that he was asleep when CW1 woke him and told him that AP had run out of the house without shoes, was carrying a knife, and had cut himself. He ran outside and saw AP running down the alley behind a nearby strip mall. CW2 gave chase and by the time he got to the end of the strip mall, AP had been confronted by the RCMP. CW2 saw that AP had a knife in his hand and was cutting himself. The police had their guns drawn. He stated that "gunshots went off and everything" and that he tried telling police that AP was "highly anti-depressed." He said AP was tackled by the officers.

CW3 was driving to work at approximately 1:00 to 1:30 p.m. on the day of this incident. She saw a commotion at a strip mall involving police officers and a man with a "big machete or a long knife." CW3 thought the male looked aggressive, waving his hands around and, at one point, holding the knife towards his own neck. She drove off and parked her car at work.

CW4 was at work, looking out a window on the building's second floor. At approximately 1:20 p.m., he saw "cop vehicles" in the parking lot outside his office building. He said officers had something in their hands but he couldn't tell what they were holding. The police were moving towards a male.

### **Witness Officers**

WO1 was at the Thompson RCMP detachment when, at 1:15 p.m., a call came over the radio regarding a male with a knife. According to the call, the male was not wearing shoes and suffered from mental health issues. WO1 responded and located the male in a strip mall parking lot. WO1 related that the male was in possession of a large kitchen knife and he ordered him to drop it. The male did not drop it and instead began to cut his own wrist with the knife. WO2 then arrived on scene and started to talk to the male. The male appeared unstable as he continued to cut his wrists. He was not listening to WO2's directions and seemed distracted. Additional police officers started to arrive on scene. The male then put the knife to his neck. WO1 said they feared the male would cause his own death so police officers moved towards the male. WO1 heard a bang from an "impact weapon." A few seconds later, a CEW was deployed and the male fell to the ground. Police officers ran to the man and put handcuffs on him.

WO2 related that she was at the Court office when a call was broadcast regarding a suicidal male, identified as AP, at his residence. WO2 was familiar with AP through prior dealings with him. WO2 attended the location in her marked police vehicle. SO2 advised over the radio that he would be bringing the ERIW to the call. WO1 broadcast over the radio that he was in contact with AP. Arriving on scene, WO2 saw AP, who was barefoot, dressed in black and holding a knife to his wrist. WO2 could see blood at the wrist and assumed that AP had cut himself. AP stated, "I'm done, this is it." WO2 believed AP was going to end his life. Additional RCMP members had arrived on scene. AP put the knife to his neck, at which point SO2 fired the ERIW. This caused AP to bring the knife down. SO1 deployed his CEW and AP dropped the knife as he fell to the ground, whereupon he was handcuffed by police.

WO3 was on duty and operating a marked police car when, at 1:15 pm, he received a call regarding AP--known to have a mental health history and erratic behavior--in possession of a large kitchen knife. WO3 heard WO1 broadcast that he was in contact with AP. With WO4, he attended the location. Among other RCMP members who also arrived at the scene, SO2 had an impact weapon, also referred to as a "bean bag gun". AP was highly agitated, and erratic. He had cut his wrist and put the knife to his own throat. SO2 called out, "impact, impact, impact,"

alerting other officers that the impact weapon was being deployed. A projectile struck AP's left thigh, causing him to jump. SO1 moved in and deployed his CEW. It was effective, allowing police officers to move in, gain control of AP, secure the knife and apply handcuffs. No further force was used beyond what was needed to control AP and prevent him from harming himself further.

WO4 was in the Thompson RCMP detachment when a call was broadcast on the police radio concerning "a man with a knife, self-harming." WO4 responded to the call along with WO3. The vehicle they drove was equipped with in-car video recording equipment. When they arrived at the location, WO4 could see AP cutting his own wrist with a knife. WO4 could not recall if there was any verbal notification but said SO2 deployed a less lethal weapon and hit AP's leg. The discharge did not sound like a normal round--it was more of a thump--and then he saw AP's leg go up. This distracted AP and caused him to drop the knife off his neck and gave police the opportunity to move in to safely end the threat. SO1 deployed his CEW, striking AP and causing him to fall to the ground and roll to the right onto his stomach. The knife fell out of his hand. WO4 feels that the deployment of the impact gun was a success.

### **Subject Officers**

SO1 voluntarily agreed to attend the IIU offices for an interview with investigators. SO1 was working in the Thompson RCMP detachment in a supervisory capacity when he heard a call on the police radio regarding a male in possession of a knife, who was manic and taking antidepressants. He decided to attend the call due to its serious nature and his experience as an incident commander and Emergency Response Team member. Additional information was broadcast on the radio: that the male left the residence on foot, was still in possession of the knife, was not wearing any shoes, and was a known risk for "suicide by cop."

SO1 and SO2 traveled together to the location. The subject male had been identified as AP. On arrival, SO1 saw WO1 had his pistol drawn. SO1 and SO2 approached AP from the side. AP was distraught, emotional, and was yelling "shoot me, shoot me." He had a large cooking knife and held it to his neck. He also had a gash on his right wrist. SO2 was armed with the ERIW and was about 60 feet from AP. SO1 had his CEW drawn. SO1 advised AP that he was being detained under the *Mental Health Act*. AP was backing away, saying: "Shoot me, Shoot me." SO1 decided that AP could not be allowed to leave the area with the knife. He instructed SO2 to "launch it, launch it," referring to the ERIW. The impact weapon projectile struck AP's left thigh, causing him to "stammer" to the right a bit. SO1 deployed his Taser and the probes hit AP's wrist and pectoral area. AP fell to the ground. AP then told the police they should have killed him. SO1 had hoped the ERIW would have a greater impact on the male and expected him to double over or be winded from the impact.

When asked why he wanted to contain the male, SO1 stated he was concerned that if AP had broken containment, he would have done something to cause police to shoot him. He was concerned that the male may have harmed himself or harmed members of the public.

SO2 did not volunteer to be interviewed by IIU investigators. His notes, however, indicate that he became aware of a call for service regarding a male armed with a butcher knife, who had cut himself and had MHA issues. SO2 was "in plain clothes" and responded to the call in company of SO1. He was in possession of an impact weapon. He and SO1 arrived at AP's location. As he exited the vehicle and was approximately 25 yards away from AP, he loudly announced: "Impact

weapon on scene." He saw that AP was bleeding and was yelling at police officers. AP was pacing back and forth and had placed the knife against his neck.

SO2 notes state that he was able to target the AP's "left quad", that he yelled "impact, impact, impact" and that he fired a round from the ERIW, striking AP's left quad. SO2 noted that this caused AP to yell and jump a few feet but he did not drop the knife. As SO2 reloaded the ERIW and walked towards AP, he saw SO1 move closer to AP and "Taser" him. AP fell to the ground and other police officers were able to control him, secure the knife and place handcuffs on AP. He noted that AP was bleeding on his arms, was yelling and struggling with police.

### **Police In-Car Dash Camera:**

IIU investigators received a DVD of a video recording of this incident. The video was recorded from the in-car dash camera mounted in the RCMP police vehicle operated by WO3 and WO4. The video is from a forward-facing camera (through the windshield) from within a police vehicle.

The video begins while the vehicle is stationary in the Thompson RCMP detachment parking lot.

At 00:20 (recording for 20 seconds) the vehicle begins moving out of the parking lot and turns right onto a public road. The siren can be heard intermittently although the audio quality is very poor.

At 01:16, the vehicle stops in a parking lot. Two other police cars and police officers are already in the parking lot. AP is standing in a corner of the parking lot (in front of and to the right of the dash cam).

At 01:22, WO3 and WO4 walk into camera view in front of the police car.

At 01:36, another police officer enters camera view from an open area to the right. This officer appears to look over his right shoulder and gesture to another police officer partly obscured from view by a snow bank. AP appears to be holding something in his left hand (possibly a knife). He appears to place the item against his right wrist (possibly cutting himself). AP is then seen holding this item at his own throat.

At 01:47, the sound of the ERIW can be heard as it is discharged. AP appears to flinch, however he remains standing. SO2 walks into view on the right side, from behind a snow bank, carrying a barreled weapon (believed to be the ERIW).

At 01:54, AP falls to the ground (likely from the CEW). Police officers quickly move in and take control of AP on the ground.

At 06:35, an ambulance arrives on scene.

At 07:57, AP is up on his feet and is escorted behind the ambulance and out of view.

At 11:50, police officers are dispersing from the scene.

### **AP's Medical Records**

AP provided his authorization for IIU investigators to obtain his personal health records regarding this incident.

The authorization was provided to TGH. Those records (dated October 17, 2018) are summarized as follows:

*AP was "tased" at 1310 hrs - bean bagged in left leg - superficial laceration to lateral left knee and redness surrounding wound. Indicates that the AP "has been binging on cocaine and EtOH (ethyl alcohol) for the last few days/week."*

*Reason for self-harm: "I wanted to feel something." AP reportedly dumped out his pills into the toilet. Becomes tearful; is happy he's alive "as long as I get the help I need." AP had a 4-centimeter right wrist laceration, partially lacerated wrist flexor tendon. The wound was cleansed and repaired with staples. AP was noted as being calm and cooperative in hospital, smiling.*

### **RCMP "Less Lethal" Policy**

The ERIW is currently a pilot project running until May 31, 2019. Due to the fact the ERIW is only a "pilot project" for one year, there was no policy developed for its temporary use, other than the members have to be properly trained in its use before they may deploy it. SO2 was properly trained in its use.

### **Conclusion**

Sections 25(1) and 26 of the *Criminal Code of Canada* states:

*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.*

*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.*

Section 265 (1) (a) of the *Criminal Code of Canada* states:

*A person commits an assault when...*

- (a) without the consent of another person, he applies force intentionally to that other person, directly or indirectly*

I am satisfied that at all material times, the RCMP officers were operating under the authority of the MHA, in particular, sections 12(1) and 12(2), which state:

*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.*

A police officer is entitled to arrest anyone to prevent a breach of the public peace. A police officer is authorized to use force in the lawful execution of his duties and as much as is necessary for that intended purpose. Moreover, a police officer is authorized to use force to defend or protect himself from the use or threat of force by another person, provided it is reasonable in all of the circumstances.

Force used that is in excess of what is necessary or reasonable under the circumstances is not justified and may constitute an assault under the *Criminal Code of Canada*.

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(s) 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.

Moreover, 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. That is how the law is to be applied.

This investigation was undertaken by IIU because AP had sustained an injury during his arrest. The existence of an injury does not presuppose that a criminal offence has occurred. The mandate of IIU does not include authorizing criminal charges in the absence of evidence to support that significant decision. It would be wholly inappropriate to authorize the laying of criminal charges in absence of the required reasonable and probable grounds support such authorization.

The laying of a charge solely for the sake of laying a charge is not in keeping with the mandate of this office. This legal analysis and process is not restricted solely to investigations related to police officer conduct but is the very cornerstone of any justice system in a free and democratic society regardless of the matter under consideration.

On review of this investigation, I am satisfied that:

- SO1 and SO2 were lawfully placed and acting in their capacities as police officers in the execution of their duties during their interactions with AP;
- AP was suffering from mental health issues, was depressed and suicidal;
- AP was in possession of a knife and was causing significant harm to himself with it;
- AP was likely to cause lethal harm to himself or others if he broke out of police containment;
- SO1 and SO2 applied force on AP to restrain him, disarm him and prevent further harm;
- “Less lethal force” options were employed and were successful.

In this investigation, part of the IIU mandate is to determine whether consequences should flow from the SOs’ actions in consideration of all the circumstances and information known at the time. On careful review of the available evidence and material facts obtained in this investigation, I am not satisfied there are reasonable grounds to believe that either SO1 or SO2 exceeded the ambit of justifiable force during his contact with AP. In summary, a less lethal force option was used to de-escalate a potentially fatal situation. The police chose not to employ lethal options in dealing with AP. AP did not take any observable aggressive steps towards police. AP received a minor injury which prevented him from further harming himself or any member of the public and which ended this situation peacefully.

It is my view that the force used by SO1 and SO2 was necessary and in compliance with Section 25 of the *Criminal Code of Canada*.

Accordingly, I am not satisfied that reasonable and probable grounds exist to charge. No charges will be authorized against either SO1 or SO2.

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

**Final report prepared by:**  
Zane Tessler, civilian director  
Independent Investigation Unit  
January 24, 2019

*Ref #2018-0053*