

FINAL REPORT: IIU concludes investigation into possible criminal conduct by Brandon police officer

On December 7, 2018, Brandon Police Service (BPS) contacted the IIU to advise that as a result of circumstances arising from an assault allegation at a local establishment on November 22, 2014, one of its members may have committed the Criminal Code offence of public mischief. A formal written notification was forwarded to IIU on December 18, 2018 and a subsequent review of file materials outlined the following facts:

- On November 22, 2014, BPS responded to a call for service at a local establishment regarding two males detained by security in respect to an assault on the premises.
- Three members of BPS arrived on scene (BP1-BP3) and took custody of the two males.
- A short time later, a fourth BPS member (BP4) arrived on scene. BP4 was off-duty at the time and was related to both of the males. BP4 was visibly upset and interacted with police and staff.
- BP4 released both of the males from custody and departed the establishment with them.
- Subsequently, one of the males alleged that, while handcuffed, he was assaulted by BP1.
- As a result of this criminal complaint, the then-chief of BPS requested that an independent investigation of the incident be undertaken. On January 19, 2015, Winnipeg Police Service (WPS) was tasked with this investigation and assigned two members to this matter.
- However, the investigation into the alleged assault by BP1 morphed into an investigation into the conduct of BP4 following his arrival at the establishment.
- Interviews of BP1 through BP4 occurred between March and May 2015.
- On January 13, 2016, the completed WPS investigative file was forwarded to Manitoba Prosecution Service (MPS) with a request for a crown opinion on whether any offences were warranted against BP4.
- On July 8, 2016, MPS authorized charges proceed against BP4 for attempting to obstruct justice and obstructing a police officer.
- A trial date into these charges against BP4 was set for November 20, 2017 in Provincial Court in Brandon. Prior to that date, the assigned prosecutor, in preparation for trial, reviewed the file and met with witnesses, in particular BP1. The prosecutor determined that:
 - the accounts and recollections provided by BP1 were contradictory and lacked credibility;

- the accounts and recollections by other BPS members were vague and were contrary to those of BP1; and
 - surveillance video at the establishment disproved recollections by BP1.
- The assigned prosecutor determined there was no reasonable likelihood of conviction to proceed to trial and directed stays of proceedings on all charges against BP4.
 - Subsequently, BPS conducted an internal review of the circumstances of November 22, 2014. This review focussed on BP1's recollections and statements concerning the circumstances of that evening. It was determined that BP1 was inaccurate and possibly intentionally misleading, thereby causing WPS to initiate a criminal investigation into the actions of BP4. If this is correct, then a criminal act of public mischief may have been committed by BP1, a police officer, and therefore should be subject to a notification to IIU.

As this matter did not involve an allegation of a prescribed offence, as defined by regulation, but rather a Criminal Code allegation, in accordance with section 73(1) of *The Police Services Act (PSA)*, the civilian director was required to determine whether it was in the public interest for IIU to assume responsibility for this incident and conduct an independent investigation. IIU investigators were assigned to this matter.

The first step undertaken was to determine whether a factual foundation existed to support an investigation into an allegation of public mischief or some similar offence.

Section 140 (1) of the Criminal Code of Canada states:

Everyone commits public mischief who, with intent to mislead, causes a peace officer to enter on or continue an investigation by

- (a) making a false statement that accuses some other person of having committed an offence;
- (b) doing anything intended to cause some other person to be suspected of having committed an offence that the other person has not committed, or to divert suspicion from himself;
- (c) reporting that an offence has been committed when it has not been committed; or
- (d) reporting or in any other way making it known or causing it to be made known that he or some other person has died when he or that other person has not died.

The Part 7 notification suggested that BP1's comments about the conduct and behaviour of BP4 'may have misled WPS investigators and caused them to enter into an investigation' which resulted in MPS authorizing charges of attempt to obstruct justice and obstruct peace officer.

Furthermore, the suggestion that BP1 may have committed public mischief appears to be based on two events that were more recent to the actual incident of November 22, 2014.

1. Subsequent to the stays of proceedings entered respecting BP4's charges, BPS was conducting an internal review. On December 17, 2017, BP1 was asked if he saw BP4 'pull out his badge' to which he responded:

‘Thinking back I don’t think I can personally say I saw him pull it out. It may be things I had heard in passing that had happened but I would have to say that I can’t recall personally seeing that happen.’

BP1 was asked if BP4 specifically referred to himself as a police officer and responded by saying, *‘not that I heard.’*

2. According to the Part 7, the crown prosecutor assigned to the trial (trial crown--TC), in preparation for trial, found that there was insufficient evidence to proceed with the case and the charges were stayed in court. TC advised BPS management that she decided to enter the stays of proceedings because:
 - accounts of the incident provided by BP1 were contradictory and he was not a credible witness;
 - accounts offered by other BPS members at the scene were vague and/or did not support the allegations of BP1;
 - the surveillance video from the establishment did not support, and in certain aspects disproved, the allegations that were made by BP1; and
 - BP1 reviewed the surveillance video from the establishment with TC, following which his recollection of the events that night changed and/or became unclear.

IIU investigators obtained and reviewed the complete WPS investigative file and BP1’s interview from the BPS internal review. In addition, IIU investigators spoke with TC.

A full review of the investigative files was conducted to determine if evidence existed to support the allegation that BP1 intended to mislead and cause the WPS investigators to enter into or continue with an investigation. The following facts were determined:

On January 19, 2015, Winnipeg Police Service (WPS) was tasked with this investigation of assault allegedly committed by BP1 and assigned two of its members to the matter. Interviews with four BPS members (BP1-BP4) were conducted between March and May 2015 on the following schedule:

March 3, 2015 – BP2

March 31, 2015 – BP3

May 4, 2015 – BP4

May 12, 2015 – BP1

BP2 could not say who released the detained males from a van but he did witness BP4 threaten security staff with legal action. He said that BP4’s actions made it *‘awkward’* for other officers at the scene.

BP3 was asked early in his interview to describe the behaviour of BP4. He said there was shouting between BP4 and security. He believed the security staff knew BP4 was a police officer. BP3 stated that BP4 was upset when he arrived at the establishment. BP3 did not know who removed the males from the rear of the van or who allowed him to be turned over to BP4. BP4 took the male from custody. BP3 stated he would not have allowed that to happen. According to BP3, BP4 threatened security staff with slower police response times and legal action. BP3 described BP4’s demeanor as irate and angry toward both police and security

staff. BP3 believed BP4 took charge of the situation. When asked if BP4 impeded his investigation, BP3 responded, 'yes and no' and that he believed he himself bore some responsibility for allowing the situation to happen.

The line of questioning in those two interviews suggested WPS investigators were exploring or probing the conduct and behaviour of BP4 and had already decided to enter into an obstruction investigation prior to any statements or comments by BP1 to them.

BP4 acknowledged to WPS investigators that he attended the establishment on hearing of the incident. He asked BP3 whether the male had been arrested or detained for anything. According to BP4, BP3 reportedly replied he had not. BP4 stated he asked BP3 'is he good to go?' to which BP3 replied in the affirmative. BP4 stated he opened the rear door to the police van and released the male. BP4 stated that he removed the handcuffs as well. BP4 acknowledged that he confronted security staff in the parking lot and threatened a lawsuit and reduced police service to their establishment.

During the course of this interview, WPS investigators made accusatory comments in relation to BP4's behaviour and conduct during the incident. BP4 responded by trying to defend his actions.

This line of questioning strongly suggests that WPS investigators were already exploring or probing BP4's conduct and behaviour prior to speaking with BP1. Moreover, the questioning of BP4 did not concentrate on the assault allegation against BP1 but was focussing on BP4's conduct that evening.

BP1 voluntarily attended his cautioned interview (that was video recorded) with WPS investigators. He was reminded of his jeopardy in relation to the assault allegation. He produced a written statement that was read into the record by one of the WPS investigators. In that statement, BP1 documented that BP4 arrived at the scene off duty. BP4 aggressively approached BP1 and asked where the male was located. BP4 went to the police van and, without authority, removed him from the van. BP1 denied the assault allegation but BP4's behavior that night was discussed and, at various times, became the main subject matter.

BP1 said the way in which BP4 conducted himself was 'beyond belief,' and stated:

'...He is flashing his badge, making sure they all know he's a police officer. Again, this is all very dynamic, making comments to the fact that this is going to affect our response times to any calls coming here. He comes back to the van and lets (one of the male) out without any authorization.'

BP1 was asked if BP4 impeded or obstructed the investigation to which BP1 responded he did because BP4 took the males out of police custody while considered a suspect in an assault at the establishment:

- He took (the male) out of police custody before he could be arrested or charged and cautioned.
- The males were suspects in an assault on a security member at that time.

WPS investigators told BP1 that the subject of BP4's interference in the investigation was raised during interviews with other members of BPS and with BP4 directly. BP1 stated that:

'He should have left his badge in his back pocket.'

BP1 further stated that security knew BP4 was a police officer *‘because he flashed his badge.’*

It should be noted that the WPS investigators never asked BP1 to clarify whether he actually saw BP4 produce his badge or if this was police jargon being used.

BP1 said that security staff knew BP4 was a BPS member because he threatened them with delayed response in the future.

The line of questioning of BP1 during his interview did not concentrate on the allegation of assault but alternated with other unrelated incidents, police processes and the conduct of BP4 that evening.

WPS investigators compiled a 54-page narrative containing all the investigative steps undertaken in this investigation. That report included the above information. WPS investigators concluded that no evidence was found that BP1 had assaulted the male.

A 12-page summary was also prepared, which focussed on BP4’s behaviour that evening. The report states in part:

- ‘The following is a summary of BP4’s involvement in this investigation taken from all witness accounts and interviews conducted by WPS investigators’;
- ‘According to the police and civilian witness accounts, BP4 arrived on scene and appeared to take control of many aspects of the incident, including allegations that he:
 - berated the security staff;
 - threatened legal action against the staff;
 - threatened that BPS would negatively respond to incidents at the venue;
 - attended to the police vehicle and released (the males) from custody;
 - displayed his police identification to hotel staff.
- ‘There is however some discrepancy amongst the BPS officers interviewed, as to the level of interference BP4 exerted at the scene. Some felt it was minimal while others described it as very influential.’

The summary concluded that BP4’s actions interfered with the call for service at the establishment and, in particular, ‘he facilitated (the males) release from custody’, ‘berated staff’ and ‘intimidated his on-duty subordinates.’

Other than the reference to ‘displayed his police identification to hotel staff’ (which is only stated by BP1), the remaining concerns are all mentioned by other police officers and BP4 himself.

The only logical conclusion that results is that WPS investigators entered into an investigation into the conduct of BP4 prior to BP1’s statements made during his interview. The WPS investigators began probing the conduct of BP4 by questioning police witnesses and BP4 himself before they met and spoke with BP1.

IIU investigators spoke with TC on March 27, 2019. TC advised that the charges against BP4 were stayed because of an all round lack of evidence in the prosecution case. TC believed BP1 had not acted vindictively towards BP4. TC stated that BP1 was not a credible witness as he had no notes or reports on the original incident. In fact, TC stated that no BPS officer had made notes or reports about BP4’s conduct and behaviour at the establishment. During the interview with BP1, TC learned that BP4 was not physically showing his badge to hotel staff but rather was at

the scene as a police officer and ‘...was being a cop.’ TC stated that following a detailed review of the entire file, she decided to stay the charges against BP4 as there was no reasonable likelihood of a conviction.

Conclusion

The Part 7 notification concerned whether BP1 committed a public mischief by making statements that were intended to mislead the WPS investigators into commencing or continuing with an investigation into the conduct of BP4. As documented above, it is clearly established that the WPS investigators initiated an investigation into the conduct or behaviour of BP4 long before BP1 was interviewed. The WPS investigators were initially engaged to investigate the allegation of assault against BP1. Within six weeks of commencing their investigation, the WPS investigators were focussed on BP4’s conduct and obstruction of the BPS investigation into the originating incident on November 22, 2014. BP1’s statements were not, in my estimation, the primary factor for the WPS investigators. Furthermore, nothing in the WPS or BPS investigation files discloses anything that would suggest BP1 intended to mislead any investigator.

Given the nature of the allegation in this matter, more is required for a sufficient factual foundation to be established. The mandate of IIU to continue to investigate BP1, in my opinion, has not been established. There is an absence of cogent, trustworthy and sufficient evidence to proceed further with an investigation into any Criminal Code offence related to BP1.

Accordingly, this matter is now closed.

Final report prepared by:

Zane Tessler, civilian director
Independent Investigation Unit
July 23, 2019

Ref 2018-070