



# MEDIA STATEMENT

## CRIMINAL JUSTICE BRANCH

October 28, 2016

16-25

### **No Charges Approved in IIO Investigation Involving Police Service Dog**

**Victoria** - The Criminal Justice Branch, Ministry of Justice (CJB) announced today that no charges have been approved against three RCMP officers involved in an arrest involving the use of a police service dog (PSD) that occurred on July 30, 2014 in Nanaimo. In the course of the arrest the PSD engaged the suspect causing injury. The incident was investigated by the Independent Investigations Office (IIO), which subsequently submitted a Report to Crown Counsel to CJB.

Following an investigation, where the Chief Civilian Director of the IIO determines that an officer or officers may have committed an offence, the IIO submits a report to CJB. The Chief Civilian Director does not make a recommendation on whether charges should be approved or what charges CJB should consider.

CJB has concluded, based on the available evidence, that there is no substantial likelihood that the officers would be convicted of any offences arising from the circumstances. A Clear Statement explaining these decisions in greater detail is attached to this Media Statement.

In order to maintain confidence in the integrity of the criminal justice system, a Clear Statement explaining the reasons for not approving charges is made public by CJB in cases where the IIO has investigated a police officer and forwarded a report to CJB for charge assessment.

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***Courageous, Fair and Efficient – A Prosecution Service that has the Confidence of the Public.***

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## **Clear Statement**

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### **Summary of Decision**

On July 30, 2014 a male suspect was arrested, with the assistance of a police service dog (PSD), by three members of the Nanaimo detachment of the RCMP. The police had been looking for the suspect for several months, as he had outstanding arrest warrants for evading police, causing a police pursuit, theft, failing to appear and failing to comply with a court order. The suspect was known to police for having a lengthy criminal record, a history of violence, and for being confrontational and anti-authority.

As a result of the dog bite, the suspect suffered what was described as a “*considerable*” wound, including a 10 cm triangular skin tear to the front right thigh, which tore through fat, but not muscle, and puncture wounds to the back of the right thigh requiring 27 stitches. The suspect was formally arrested and transported via ambulance to Nanaimo General Hospital for assessment and treatment before being placed in police cells.

This statement contains a summary of the evidence gathered during the IIO investigations, and the applicable legal principles. The summaries are provided to assist the public in understanding the decision of CJB not to approve charges against the police officers who were involved. They do not detail all of the evidence considered, or discuss all relevant facts, case law or legal principles.

The charge assessment that is addressed in this statement was conducted by a senior Crown Counsel with no prior or current connection with the officers under investigation.

### **Charge Assessment and the Criminal Standard of Proof**

The Charge Assessment Guidelines applied by the Criminal Justice Branch in reviewing all Reports to Crown Counsel are established in Branch policy and are available online at:

<http://www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/prosecution-service/crown-counsel-policy-manual/cha-1-charge-assessment-guidelines.pdf>

In making a charge assessment, Crown Counsel must review the evidence gathered by investigators in light of the legal elements of any offence that may have been committed. Crown Counsel must also remain aware of the presumption of innocence, the prosecution’s burden of proof beyond a reasonable doubt and the fact that under Canadian criminal law, a reasonable doubt can arise from the evidence, the absence of evidence, inconsistencies in the evidence or the credibility or reliability of one or more of the witnesses. The person accused of a crime does not have to prove that he or she did not commit the crime. Rather, the Crown bears the burden of proof from beginning to end. When assessing the strength of the case the Crown must also consider the likelihood that viable defences will succeed.

The burden of proof applies to issues of credibility. A criminal trial is not a simple credibility contest between witnesses for the Crown and witnesses for the defence. If the accused testifies, he is entitled to be acquitted in any or all of the following circumstances: the trier of fact accepts his evidence; his evidence raises a reasonable doubt; the trier of fact does not know whom to believe; or, even if the trier of fact does not accept the accused’s evidence, there remains a reasonable doubt on the totality of the evidence.

## **Potential Charges**

The potential charges that were considered in this assessment are:

- Assault Causing Bodily Harm contrary to s. 267(b) of the *Criminal Code*.
- Assault with a Weapon contrary to s. 267 (a) of the *Criminal Code*.
- Assault contrary to s. 266 of the *Criminal Code*.

Assault is defined in the *Criminal Code* as the intentional application of force to another person without that person's consent. Bodily harm is harm that is more than "trifling or transient". The weapon contemplated in this assessment is the Police Service Dog.

## **Relevant Law**

Under section 25 of the *Criminal Code*, a peace officer is justified in using as much force as is necessary to effect an arrest, provided that the officer acts on reasonable grounds. However, section 26 of the *Criminal Code* provides for criminal liability when the force used is excessive.

Case law interpreting these sections has recognized that police officers may need to resort to force in order to execute their duties, but the Supreme Court of Canada has held that courts must guard against the illegitimate use of power by the police against members of our society, given its grave consequences.

Police do not have an unlimited power to inflict harm on a person. The allowable degree of force remains constrained by the principles of proportionality, necessity, and reasonableness. What is proportionate, necessary and reasonable within the meaning of the law will depend on the totality of the circumstances and is assessed from the point of view of the officer, recognizing the characteristically dynamic nature of police interactions with citizens.

Police may be required to act quickly in volatile and rapidly changing situations, and are not held to a standard of perfection and are not required to precisely measure the amount of force that they use. Police are not required to use only the least amount of force which might successfully achieve their objective. A legally acceptable use of force is one which is not gratuitous, and which is delivered in a measured fashion.

The use of a Police Service Dog (PSD) can constitute a lawful use of force, however, directing a dog to attack with the intention of inflicting harm on a suspect has been found by a court to be sufficient to establish an assault with a weapon.

## **The Circumstances Surrounding the Incident**

On July 30, 2014 a male suspect was arrested, with the assistance of a police service dog (PSD), by three members of the Nanaimo detachment of the RCMP. The police had been looking for the suspect for several months, as he had outstanding arrest warrants for evading police, causing a police pursuit, theft, failing to appear and failing to comply with a court order. The suspect was known to police for having a lengthy criminal record, a history of violence, and for being confrontational and anti-authority. The suspect is a large man and very strong.

On the morning of July 30, 2014, the police were advised the suspect was the passenger in a particular truck, and possibly in possession of a rifle and a handgun. The three officers, who were the subject of the IIO investigation, followed the truck in separate vehicles and initiated a vehicle stop.

Cst A and Cst B exited their police vehicles and approached the pick-up. Cst B went to the driver's door and arrested the driver without incident. Cst A went to the passenger door and recognized the suspect from previous dealings with him. Cst A attempted to arrest the suspect

and extricate him from the truck, grabbing his arm through the passenger side window. Cst A's police report indicates he was fearful of the suspect producing a weapon or attempting to evade or fight the police. Cst A's report indicates the suspect refused to place his left hand behind his back, and reached for the driver's side door, and pulled away. Cst A struck the suspect and the suspect attempted to strike back. The suspect moved towards the driver's side door in an attempt to escape but was met by Cst B, who attempted to subdue him. The suspect and the two constables then became involved in a significant physical struggle and the altercation moved towards the rear of the vehicle on the driver's side. The officers' reports state that the suspect was ordered to the ground, but he refused to comply and was struggling, swinging his arms and yelling at police.

IIO Investigators obtained a video, taken by a civilian, which depicted the struggle involving the suspect and Cst A and Cst B as it was underway near the rear of the pick-up truck. The video shows Cst B holding the suspect in a head or neck hold against the rear driver's side of the truck, while Cst A punches him several times in the back and sides. The officers are unable to get the suspect to the ground or handcuff him.

At this point, the PSD, being handled by Cst C, can be seen making contact with the suspect's right leg and the suspect immediately falls to the ground, initially landing on his back. Cst A then kicks the suspect, causing him to turn onto his stomach. The video shows the PSD maintain his hold on the suspect's leg, while Cst A and Cst B struggle with the suspect for about 30 seconds to try to handcuff the suspect. It is clear from the video that the PSD releases his grip on the suspect's leg as soon as Cst C makes the release command, which happens a short time after the suspect is placed in handcuffs. In total the PSD has a hold of the suspect's leg for approximately 46 seconds.

The video clearly shows that the suspect resists being handcuffed. At first he keeps his arms in front of him. Then, once he is taken to the ground, he appears to keep struggling. He does not appear to punch or kick the officers and has no weapons; but he does continue to struggle; and the officers are obliged to struggle quite considerably with him before they are able to gain sufficient control of both his arms to place handcuffs on his wrists.

A fourth RCMP officer arrived on scene after the PSD was deployed. She heard all three Constables struggling to handcuff the suspect, telling the suspect to put his hands behind his back so he could be handcuffed. The suspect yelled "*the dog's got me; it hurts, it hurts, the dog's got me*". She observed Cst C pull the PSD off the suspect once the suspect was handcuffed.

The driver of the truck provided a statement to investigators which was inconsistent in a number of significant and material respects with other available evidence, including the video.

The suspect provided two statements to IIO investigators. He stated he did not resist arrest, but was resisting being beaten by the police. He acknowledged he was trying to "get away" after Cst A punched him. He stated he could hear the dog trainer saying "good boy, get him, get him, good boy" and that he was dragged by the PSD.

As a result of the dog bite, the suspect suffered what was described as a "*considerable*" wound, including a 10 cm triangular skin tear to the front right thigh, which tore through fat, but not muscle, and puncture wounds to the back of the right thigh requiring 27 stitches. The suspect was formally arrested and transported via ambulance to Nanaimo General Hospital for assessment and treatment before being placed in police cells.

In relation to the specific incident giving rise to this IIO file, the suspect in this case subsequently pled guilty to wilfully resisting or obstructing a peace officer in the execution of his duty and received a custodial sentence.

### **Application of the Law to the Circumstances of the Case**

There is no issue that the suspect had outstanding warrants and that the officers had reasonable and lawful grounds to arrest him. Before the vehicle stop, each of the officers had information that gave them reasonable grounds to believe the suspect might be armed and that he posed an escape risk. When they first saw him, the suspect was wearing a hat and a bandanna, apparently to hide or mask his face. After the vehicle stop, each of the subject officers describes the suspect as actively resistant, flailing, and then attempting to escape arrest through the driver's side of the pick-up truck.

Apart from the issue of justification, it is clear from the available evidence that the legal elements of the offences under consideration could be established. The police concede and the video confirms that the officers directly applied force to the suspect without his consent. The application of the force caused Bodily harm and that harm was inflicted through the agency of the Police Service Dog (the potential weapon). The real issue is whether the legal justification or defence provided by s. 25 of the *Criminal Code* applies to the actions of the officers in these circumstances.

Each of the subject officers was acting in the course of his duty. Each was authorized, indeed required, to arrest the suspect and was legally justified in using as much force as reasonably necessary to effect the arrest. The suspect had a history of eluding and evading arrest and the officers had grounds to believe he might pose an immediate danger to them.

The use of physical restraint and force, including hand and foot strikes to gain compliance, falls within the range of reasonable force options available to police who are faced with an arrestee who is attempting to resist or escape a lawful arrest. So long as the force the police were using was reasonably necessary to effect the arrest and proportional to the degree of resistance the suspect presented, the police officers in this case would be entitled to the protection of section 25 of the *Criminal Code*. This is true even if the degree of force they used was not the least possible force that could have been used in the circumstances to achieve the desired result. As previously stated, if the use of force is justified, the police are not held to a standard of perfection and are not required to measure the force they use with exactitude.

The RCMP conducted an internal review of the deployment of the PSD in this case. Two senior officers reviewed the video and both were of the view that the initial deployment of the PSD was appropriate in the circumstances. The suspect needed to be handcuffed and brought under control, and hand and foot strikes were proving ineffective. The two senior officers differed, however, on whether the dog should have been removed prior to the suspect being handcuffed.

The IIO then retained an expert in the training of police dog handlers to provide an expert opinion concerning the deployment of police service dogs in the apprehension of a suspect. An RCMP officer who is employed as a trainer with the Police Dog Service Training Centre, was asked to provide the expert opinion. His report states that a dog handler is required by the RCMP training standards to ensure the situation is safe and under control before removing the PSD. Moreover, handcuffing is required for officer and public safety, even where a suspect is cooperative. It was his opinion that Cst. C acted in accordance with his training as a dog handler, and with RCMP policy.

In these circumstances, Crown counsel has concluded there is no substantial likelihood that any of the three subject officers would be convicted of any offence as a result of their interaction with the suspect on July 30, 2014. For this reason, no criminal charges against the officers have been approved.

## **MATERIALS REVIEWED**

In making the charge assessment decision in this matter the following materials to the extent necessary to conduct a proper charge assessment:

- Incident Synopsis
- Summaries and Transcripts of Statements of independent witnesses
- Summaries and Transcripts of Statements of the suspect
- PRIME reports of subject officers
- Summary and Transcript of Statements of the witness officer
- General Occurrence and Task Action Reports
- Use of Force Reports
- RCMP Operational Manuals – IMIM and Police Service Dogs
- Medical Records of suspect
- Photographs and Scene Descriptions
- Video recording of portion of arrest of the suspect