



**PUBLIC REPORT OF THE
CHIEF CIVILIAN DIRECTOR**

**Regarding injuries suffered by a male while being taken into the
custody of the Vancouver Police Department on 2016 March 16**

IIO 2016-052

INTRODUCTION

The Independent Investigations Office (IIO) is responsible for conducting investigations into all officer-related incidents which result in death or “*serious harm*” (as defined in Part 11 of the *Police Act*) within the province of British Columbia. The Chief Civilian Director (CCD) of the IIO is required to review all investigations upon their conclusion, in order to determine whether he considers “*that an officer may have committed an offence under any enactment, including an enactment of Canada or another province*” (see s.38.11 of *the Police Act*). If the CCD concludes that an officer may have committed an offence, he is required to report the matter to Crown counsel. If the CCD does not make a report to Crown counsel, he is permitted by s.38.121 of the *Police Act* to publicly report the reasoning underlying his decision.

In this public report, the CCD includes a summary of circumstances that led to the IIO investigating and a summary of the findings of the investigation.

This is a public report related to an investigation involving a male who suffered serious injuries while he was being taken into custody by the Vancouver Police Department. Police received a 911 call from a female stating her ex-boyfriend (the affected person) was outside her residence in breach of an Order that he not contact her. Police responded and the affected person fled and hid. He was found shortly after by a police service dog and sustained a dog bite. He was taken to Vancouver General Hospital by Emergency Medical Services (EMS).

Pursuant to s.38.11 of *the Police Act*, RSBC 1996 Chapter 367, the CCD has reviewed the concluded investigation. The CCD does not consider that any officer may have committed an offence under any enactment and will not be making a report to Crown Counsel.

In this public report, the CCD is only permitted to disclose personal information about an officer, an affected person, a witness, or any other person who may have been involved if the public interest in disclosure outweighs the privacy interests of the person. Prior to disclosing any personal information, the CCD is required, if practicable, to notify the

person to whom the information relates, and further, to notify and consider any comments provided by the Information and Privacy Commissioner (s.38.121(5) of the *Police Act*). The CCD has considered the advice provided by the Information and Privacy Commissioner. In this report, the CCD will not be using the name of the affected person or the name of any other person involved in this matter.

NOTIFICATION AND JURISDICTION DECISION

The incident began on 2016 March 16 when the Vancouver Police Department (VPD) received a complaint from a female (Civilian Witness 1) that her ex-boyfriend (the affected person) was outside her residence in breach of a condition of a judicial interim release that bound him not to contact her.

When police arrived the affected person fled. Within a few minutes he hid in a small shelter outside the back basement entryway of a house located two blocks away. He remained there until he was detected and bitten by a police service dog under the control of an officer who is the subject of this investigation.

The Independent Investigations Office (IIO) was notified of this incident by the VPD and the Office of the Police Complaint Commissioner at 1000 hours on 2016 March 18. The IIO initiated an investigation as the affected person's injuries appeared to fall within the definition of "serious harm" as defined in the *Police Act*.

ISSUE

The issue to be considered in this case is whether the police dog handler (the subject officer) may have committed an offence by failing to act in a manner consistent with his training and police policy in relation to police service dogs, thereby committing the offence of assault with a weapon or assault causing bodily harm.

EVIDENCE CONSIDERED

Evidence examined in this investigation included statements made by the affected person, civilian witnesses and a witness officer. Photographic, medical evidence and police dog policies were also assessed.

TIMELINE

2016 MARCH 16	EVENT
0741 hrs	Civilian Witness 1 (CW1) advised VPD the affected person was outside her residence contrary to a no contact order and had been there for an hour.
0743 hrs	VPD officers dispatched and arrive at and set up around CW1's residence.
0757 hrs	CW1 reports she can see the police have arrived and the affected person is running away from them.
0807 hrs	The Subject Officer (SO) attends and starts tracking with his police service dog.
0810 hrs	The SO indicates the affected person is in custody.
08:10:58 hrs	VPD officers request EHS for dog bite injuries.
0827 hrs	EHS arrives on scene.
0836 hrs	EHS departs scene to VGH.
2016 MARCH 18, 1000 hrs	IIO received notification from VPD.

AFFECTED PERSON

The affected person was interviewed by IIO investigators and provided a statement for this investigation. He told the IIO he attended CW1's residence and wanted her to come outside while he waited. He said he believed CW1 telephoned the police because he was in breach of a condition of his bail Order by being there.

The affected person said he heard a dog barking in the area and saw a police officer in the alley. He said when he saw the officer he, "...*jumped over the fence and ran away.*" He said he eventually hid outside the rear entrance to a basement suite under some carpet.

The affected person said that after about 10 to 20 minutes he heard dogs barking and a dog and a police officer [the SO] came near to where he was hiding. He said:

...and then one of the dogs, I think he smelled my scent, and he dragged one of the cops. The cops had the dog on the leash, and then the dog came with, with the officer downstairs and then he sniffed around, and then he looked at me, and then the dog barked.

The affected person said he told the SO:

...and then I'm like "I'm right here, I'm right here", right? Because I knew I was, I was done, because once the dog barked, I knew he was going to bite me. So I was like, I'm not going; I'm not going to go fight the dog or anything. So I was like, "I'm right here."

The affected person said the police dog bit his arm and the officer told him to get to the ground. The affected person said:

...the officer told me to 'get on the ground, get on the ground,' and I advised the cop I was already on the ground, couldn't go anywhere, right? And then the dog -

*- and then the -- I think the -- dog couldn't get a good grip, so then the officer let go of the leash, and the dog ran out of his thing and like he just -- he went for my face. He turned his -- I could like see a vivid picture of him, he turned his head, he went for my mouth, and he f***** he ripped, he ripped my skin off, and I could like feel like his titanium teeth in my, in my face, and then the cop kept saying 'Let go, get on the ground, get on the ground'.*

The affected person said he felt the dog bit him for 10 to 20 seconds. He said, "...after a while I think the dog let go, or he pulled the dog really hard, and he let go."

The affected person said two officers dragged him across the concrete and threw him on the grass. He said 10 to 12 police officers surrounded him as he was lying on the grass. He said he lay there for 10 to 15 minutes before an ambulance arrived and he was medically treated.

The affected person was taken to Vancouver General Hospital where he was treated for his injuries. According to medical records, the affected person sustained:

"...multiple facial lacerations which are quite superficial and one which is partial thickness. These are secondary to dog bites from a police dog. There does not appear to be any evidence of parotid duct injury at this time as we are able to express clear saliva and the duct opening appears to be unaffected."

CIVILIAN WITNESSES

Civilian Witness 1 (CW1)

CW1 told the IIO the affected person had previously been her boyfriend. She said the night before she had told him, "...I don't want to see you. Like don't be here. Go away and leave me alone." She said that the affected person had previously been violent to her and he was subject to an Order not to contact her.

CW1 said she woke up at about 0600 hours and the affected person was outside knocking on her window. She said she told him to leave but he continued to knock on the window, so she called the police.

CW1 said she told police the affected person was outside her window and that he had a no contact order. She said police arrived in about 30 minutes and when they did the affected person jumped the fence and ran away.

CW1 told the IIO that was the last time she saw the affected person.

First Responder Witness

The Emergency Health Services (EHS) crew report indicates paramedics arrived to the affected person's location at 0827 hours, departed at 0836 hours, and arrived at the VGH at 0858 hours. They did not witness the interaction between the affected person and police.

OFFICERS

The IIO uses the term witness officers and subject officers to distinguish between officers who witnessed the incident as opposed to officers who are the subject of the IIO investigation over their direct involvement, which may have caused the serious harm or death.

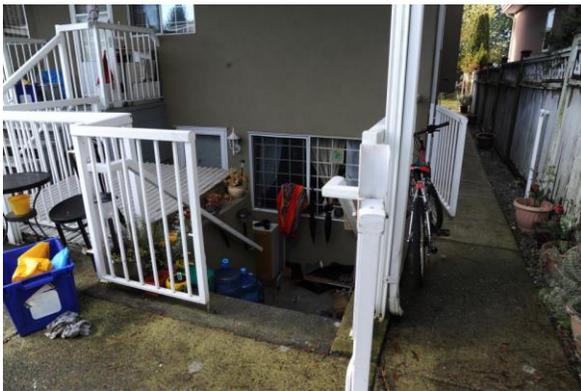
Witness Officer 1 (WO1)

WO1 told the IIO he made no notes regarding the incident. He said he drove to the area with the subject officer (SO) and the police service dog to search for the affected person. He said they stopped in an alley, got out of their car and the SO began to track with his police dog.

WO1 saw a second dog handler and his dog back-tracking to where the affected person had been. He said he was about 10 to 20 feet from the SO, who had his dog on a 20

foot leash. Approximately three or four houses in, the dog cut into the backyard of a house.

WO1 said he saw a set of stairs that went down to what he believed was the basement entrance of the house. He said he saw the dog heading down the stairs and the SO at the top or part way down the stairs. He said the dog was on the lead and was quite a bit ahead of the SO and had free access to go down the stairs.



Top of the stairs - note the large corrugated roof. The affected person was found below the roof.



Area under the roof where the affected person was hiding.

He said the dog went down the stairs and someone screamed. He said the SO gave commands of “*show me your hands*” and “*get out.*” WO1 told the IIO he could not recall exactly what the SO did at that point.

WO1 said other patrol members went down the stairs and brought the affected person up the stairs into the open area. He said the SO and his dog were at the top of the stairs. WO1 told the IIO he could not recall how the affected person was brought up the stairs or whether he was handcuffed when he came up the stairs. He told the IIO he definitely saw the affected person in handcuffs when he was lying on the ground.

WO1 said he stayed in the back yard for approximately 20 minutes until the ambulance arrived. He said the affected person remained handcuffed lying on the grass. He said he

departed shortly after the ambulance arrived and did not see the affected person being taken to the ambulance.

Subject Officer (SO)

The subject officer declined to provide a statement to the IIO as is his right pursuant to the *Charter of Rights and Freedoms*.

POLICY

The policy below is the VPD's policy on the use of police service dogs, it closely mirror the Provincial Standards, which is also included below:

1.13.1. Use of Police Service Dogs

POLICY (Effective: 2015.09.01)

Police service dogs are an important policing tool that can be used for a variety of tasks.

Police service dogs are also considered intermediate weapons in the context of use of force and, as such, dog handlers are responsible and accountable for deploying police service dogs in a manner, which facilitates the effective execution of police duties while reasonably safeguarding the public and police members.

The use of a police service dog must be proportionate to the level of risk posed to the officer, the suspect, and the public. Ultimately the use of a police service dog as a means of force lies with the dog handler. The dog handler makes decisions within the framework of law, training and policies of the Vancouver Police Department, and the requirements of the B.C. Provincial Policing Standards.

Provincial Standards for Police Service Dogs

Police Service Dogs may be deployed in the exercise of all regular police duties including:

Tracking or searching for persons who may have committed, or be about to commit, an offence;

Apprehending persons by police dog bite or display;

Bite: A police service dog's use of mouth and teeth to grab or hold a person's body or clothes. This does not include bites that occur during training on training equipment, such as padded sleeve or suit.

Deployment: Having a police service dog performing an operational task such as tracking or searching for an arrestable person, apprehending persons by police dog bite, locating missing persons, or searching for evidence. This does not include having a police service dog present at an incident only as a precaution when the dog is not used in any way.

Exigent circumstances: (As defined by Provincial Policing Standards for the purposes of this policy)

Circumstances where a delay in taking action would result in danger to human life or safety or where action is necessary to prevent the continuation of an offence which threatens human life or safety.

Physical contact causing injury: Actual physical contact between a police service dog and a person, other than a dog bite, resulting in an injury that interferes with the health or comfort of the person and is more than merely transient or trifling in nature.

PROCEDURE

Searches and Apprehension

Where a police service dog is to be applied in a search, the dog should be the first to cover the area. To facilitate this, attending members should contain the area or building and await the arrival of the dog handler and dog.

Warnings prior to search

Before releasing a police service dog from physical control into a building or confined space to locate a suspect, the police dog handler shall first call a loud verbal warning that the police are present, that the building will be searched by a police service dog, and that anyone present should identify themselves immediately and comply with police instructions or they may be bitten. The police dog handler will then give persons in the building a reasonable opportunity to exit the building before releasing the police service dog. The warning should be repeated as often as reasonably necessary to alert persons who may be on the premises.

A loud verbal warning may be omitted when there are exigent circumstances.

Warnings prior to a bite

Police dog handlers must give a loud verbal warning prior to permitting their police service dog to bite, unless such a warning would be impractical or place anyone, including the police handler dog team, at risk of bodily harm.

The purpose of this warning is to identify the police dog handler as a police officer with a police service dog, and advise the person they may be bitten if they do not comply with police instructions.

LAW

Culpability for an officer's use of force is governed by the following provisions set out in the *Criminal Code of Canada*:

1. A police officer acting as required or authorized by law “*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.*” (section 25(1)).
2. Any police officer who uses force “*is criminally responsible for any excess thereof according to the nature and quality of the act that constitutes the excess.*” (section 26).

In an evaluation of the reasonableness of an officer's use of force, the following application of the law is required:

The Supreme Court of Canada in *R. v. Nasogaluak*, 2010 SCC 6 held that:

[32] ... police officers do not have an unlimited power to inflict harm on a person in the course of their duties. While, at times, the police may have to resort to force in order to complete an arrest or prevent an offender from escaping police custody, the allowable degree of force to be used remains constrained by the principles of proportionality, necessity and reasonableness. Courts must guard against the illegitimate use of power by the police against members of our society, given its grave consequences.

However, the Court went on to say that:

[35] Police actions should not be judged against a standard of perfection. It must be remembered that the police engage in dangerous and demanding work and often have to react quickly to emergencies. Their actions should be judged in

light of these exigent circumstances. As Anderson J.A. explained in R. v. Bottrell (1981), 1981 CanLII 339 (BC CA), 60 C.C.C. (2d) 211 (B.C.C.A.):

In determining whether the amount of force used by the officer was necessary the jury must have regard to the circumstances as they existed at the time the force was used. They should have been directed that the appellant could not be expected to measure the force used with exactitude. [p. 218]

The allowable degree of force to be used remains constrained by the principles of 'proportionality, necessity and reasonableness' (*Nasogaluak*).

ANALYSIS

CW1 told the affected person the day before he was bitten that she did not want to see him and that he should, "*go away and leave me alone.*" When the affected person attended at CW1's residence not only was he ignoring her wishes he knew he was in breach of his bail order requiring him to forego contact with her because he was alleged to have been violent to her. He was arrestable for that breach.

When police attended he fled and took refuge in a small shelter just a few feet outside of someone's door. He hid under a carpet. Within less than four minutes the SO's dog located and apprehended him.

Police Policy requires that the use of a police service dog must be proportional to the level of risk posed to the officer, the suspect, and the public. Provincial standards permit and authorize the use of dogs for tracking or searching for persons who may have committed, or be about to commit, an offence and for the apprehension of persons by police dog bite or display.

CW1 contacted police to assist her when the affected person would not leave her alone.

Police are authorised and required to protect the public. The use of reasonable force is permitted by s. 25 of the Criminal Code. When the SO's dog went down the stairs to where the affected person was hiding the SO had not released his dog from physical control. The dog was on a 20 foot lead which would allow the dog to go from the top of the stairs to under the corrugated roof.

The dog was following a track and there was no way for the SO to know whether the affected person had entered the basement suite or was hiding or had armed himself.

The affected person's perception of the events while being appended by a bite notwithstanding, the bite, by his own reckoning, was released in 10 to 20 seconds. This period of time would be consistent with the time it would take the SO to follow his dog down the stairs, perceive what was happening and remove the dog.

The affected person did not stop for the police. He did not call out to the police when he heard the dogs. Only when confronted in his place of hiding did he call out. The witness officer said he heard a scream. The affected person said he told the SO he was "*right here*" and that when he was told by the SO, "*to get on the ground, get on the ground*" he said he "*...advised the cop I was already on the ground, couldn't go anywhere.*"

The affected person said the, "*...and then the dog -- and then the -- I think the -- dog couldn't get a good grip, so then the officer let go of the lead...*" at which point the dog got a better grip. This suggests that the affected person was already in the grip of the police dog which then repositioned itself to get a better grip. Viewing the photographs above and considering the lead was 20 feet in length it is apparent that the dog was not released but rather was continuing to apprehend the affected person by getting a better grip.

While it is unfortunate that the affected person suffered the injuries he did he had to have known the risks he was taking in running away from the police. The police dog did what the provincial standards allow a police dog to do while under the control of its

handler. The SO cannot be said to have acted in a manner or used a degree of force that exceeded that allowable degree of force or that he was not constrained by the principles of 'proportionality, necessity and reasonableness.'

Decision of the Chief Civilian Director

Based on all of the evidence collected during the course of this IIO investigation and the law as it applies, I do not consider that any police officer may have committed an offence under any enactment and therefore the matter will not be referred to Crown Counsel for consideration of charges.

Clint Sadlemyer, Q.C.
Legal Counsel

2017 September 11

Date of Decision

Albert Phipps,
Chief Civilian Director

2017 September 11

Date of Decision