



PUBLIC REPORT OF THE

CHIEF CIVILIAN DIRECTOR

Regarding the October 18, 2013 serious  
injury of an adult male involving the RCMP  
in Surrey, British Columbia

IIO 2013-000057

## **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. As the Chief Civilian Director of the IIO (CCD), I am required to review all investigations upon their conclusion, in order to determine whether I “consider 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 I conclude that an officer may have committed an offence, I am required to report the matter to Crown Counsel. If I do not make a report to Crown Counsel, I am permitted by s.38.121 of the *Police Act* to publicly report the reasoning underlying my decision.

In my public report, I may include a summary of circumstances that led to the IIO asserting jurisdiction; a description of the resources that the IIO deployed; a statement indicating that the IIO, after concluding the investigation, has reported the matter to Crown Counsel; or a summary of the results of the investigation if the matter has not been reported to Crown Counsel.

This is a public report related to the investigation into the serious injury of an adult male that occurred on October 18, 2013, in Surrey. The affected person sustained a serious injury to his leg following an incident with the Surrey RCMP.

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

In my public report, I am 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, I am required, if practicable, to notify the person to whom the information relates, and further, notify and consider any comments provided by the Information and Privacy Commissioner (s.38.121(5) of the *Police Act*).

In this case, I have considered the advice provided by the Information and Privacy Commissioner. I will not be disclosing names of any persons involved.

The affected person was 26 years old at the time of his injury.

## **NOTIFICATION AND JURISDICTION DECISION**

On October 18, 2013, Surrey RCMP responded to an abandoned 911 call and subsequently employed a police service dog to track the affected person to a community garden. During an encounter between the dog and the affected person, the affected person sustained an injury to his left leg that required surgical intervention. The IIO asserted jurisdiction after it was determined the affected person’s injuries met the statutory definition of “serious harm”.

## **EVIDENCE CONSIDERED**

IIO investigators interviewed four witness officers and four civilian witnesses. Police radio and dispatch communications were obtained. The scene of the injury was examined and video evidence from the scene acquired and reviewed.

## **GENERAL TIMELINE (Police Reports, Communications and Video)**

**Police radio and dispatch records** show that at 9:49 p.m. an abandoned 911 call was received from a Surrey residence. An RCMP officer arrived at the residence at 9:55 p.m. At 10:05 p.m. it was reported that an adult male (the affected person) had run out of the balcony door of the residence. At 10:07 further reports were broadcast with a description of the affected person's clothing, his direction of travel, and advising that the affected person was in possession of the female resident's phone.

At 10:12 p.m., the Subject Officer (SO) reported that his police service dog (PSD) was beginning to track the affected person. GPS tracking of the female's phone was also undertaken.

A **Closed Circuit TV (CCTV)** was present near the scene of the incident, a community garden at Surrey Village, though the injury occurred inside the garden walls and was not visible on tape. CCTV review shows an adult male matching the description of the affected person running to the community garden at 11:03 p.m. A police dog and an officer matching the description of the SO are seen walking to the community garden at 11:15 p.m. Between 11:18 p.m. and 11:20 p.m. four police officers were seen going to the community garden.

At 11:20 p.m., the SO reported the affected person was in custody and requested emergency medical services for a dog bite to the affected person's lower left leg and calf. CCTV footage shows the SO and his dog leaving the community garden at 11:20 p.m. The SO and another officer returned to the community garden at 11:29 p.m. for 18 minutes. Emergency medical services can be seen entering the garden at 11:39 p.m. and leaving with the affected person at 12:09 a.m.

## **AFFECTED PERSON**

The affected person declined to provide a formal statement to the IIO, although he did tell an IIO investigator who saw him in hospital on October 20<sup>th</sup> that the PSD bit him and wouldn't let go. He further stated that the SO had to pry the dog's jaws open.

## **SUBJECT OFFICER**

The subject officer declined to make a voluntary statement or allow IIO investigators to review any reports he was required to make by the RCMP relating to the incident.

Both the affected person and subject officer had the right to decline to provide a statement to the IIO under the *Charter of Rights and Freedoms*.

## WITNESS OFFICERS

**Witness Officer 1** (WO1) was assigned to assist in locating the affected person after he left the residence. WO1 saw an adult male matching the affected person's description run into a residential back yard near the Surrey Village residential complex, and maintained this position. WO1 later heard male voices yelling. At approximately 11:30 p.m., WO1 was updated that the SO had made contact with the affected person in the community garden and ran to that location. Upon his arrival, WO1 heard a dog barking and saw the SO in the corner of the garden, the PSD on a leash and within arm's length of the SO. The affected person was lying on his back about five feet away, with his legs extended towards the SO. WO1 handcuffed the affected person and noted his left leg had puncture wounds and was covered in blood and dirt. An ambulance was called and arrived approximately 15 minutes later.

**Witness Officer 2** (WO2) described his role as on-foot back up for the SO. They were supplied a description of the affected person and began tracking him. WO2 stated that the PSD was on leash the entire time the SO and WO2 were together. WO2 and the SO were on 98 Avenue when they heard WO1 broadcast that the affected person had run southbound from 98A Avenue through some yards. As the affected person did not appear on 98 Avenue, the SO told WO2 to remain on 98 Avenue while he and the PSD went to search on 98A Avenue. WO2 later heard the SO yell "Stop, police... stop fighting with my dog" and moved to the community garden.

Upon his arrival, WO2 asked the SO what had occurred. The SO told him the PSD had picked up the affected person's scent and had led the SO to the community garden fence. The SO had found the affected person hiding in the southwest corner of the garden. When the affected person saw the dog, he jumped out and tried to jump to the side, but the dog grabbed the affected person to prevent him from leaving. The affected person then tried to jump over the southwest railing and take the dog with him, but the PSD pulled the affected person down. The affected person tried to lift his leg over the railing, but the dog prevented this action. Eventually the affected person gave up and laid on the ground, at which point the dog released him.

WO2 advised that he had attempted to assess the affected person's injuries but the affected person was upset and would not allow this. WO2 reported that as the affected person was being placed in the ambulance he was yelling that they "shouldn't have put the dog on him". WO2 reported telling the affected person that if he had jumped he may have been seriously injured or killed, to which the affected person responded that he knew how to jump off things, as he had previously broken his heel fleeing from police, "so this wouldn't have been any different".

**Witness Officer 3** (WO3) and his training officer were assisting with containment during the search and heard the broadcast regarding the affected person being in custody at the community garden. When WO3 arrived at the garden, the affected person was lying on his side on the ground, in handcuffs. As instructed by his training officer, WO3 advised the affected person of his Charter rights, and then asked WO2 what had occurred. WO3 stated WO2 told him the affected person had tried to jump over the south railing and the PSD had pulled him back. WO3 believed the PSD had saved the affected person's life, because had the affected person jumped he would have been seriously hurt.

WO3 stated the SO came into the garden with a flashlight to look at the affected person's injuries, and as it was clear this angered the affected person, the SO moved away. On instruction of the SO, WO3

took photographs of the affected person's injuries after the wounds were cleaned, but before they were stitched.

WO3 stated an ambulance arrived at 11:41 p.m. WO3 rode in the ambulance and heard the paramedic keep asking the affected person how much alcohol he had consumed that night. The affected person denied consumption, but WO3 believed he had, because of the affected person's behaviour and the smell of alcohol. The affected person told WO3 that police were wasting their time, because charges against him would not stick and he would be out soon.

**Witness Officer 4 (WO4)** had attended the Surrey residence twice prior to this incident. Upon his arrival at the residence, WO4 went to the back door while two other officers attended the front door. When WO4 was at the east side of the building and about 20 metres away, he saw the affected person exit the back patio door and run west. WO4 yelled "Stop, police" a few times then broadcast the affected person's flight on his radio. He then heard a broadcast that the affected person was arrestable for several offences. One of the officers from the front door called for the services of a PSD.

## **CIVILIAN WITNESSES**

A neighborhood canvas was conducted and numerous witnesses identified and interviewed. None of the witnesses saw the contact between the affected person and the PSD as the inside of the community garden was obscured from their line of sight.

**Civilian Witness 1 (CW1)** stated that at approximately 11:30 p.m. she saw a male hop the fence into the community garden, but could not see where he went due to darkness. About 10 minutes later CW1 saw a police officer and dog, told the officer where the male went, and pointed towards the garden.

**Civilian Witness 2 (CW2)** heard voices and went to her balcony, from which she observed a police officer climb the locked community garden gate. The officer then picked up a leash from the ground and CW2 saw a dog already in the garden, about 4-5 feet ahead of the officer. The officer and the dog then proceeded through the garden and went out of view. CW2 subsequently heard the officer say to "come out or he would let the dog go", and then heard "wrestling in the corner" of the garden. Subsequently, CW2 heard a man scream "Get him off, get him off", and the officer tell the man three or four times to crawl out from his location. Each time the man responded that he could not move and his leg was hurting. Finally, the man crawled out and CW2 could see him. CW2 described the man as quite upset, belligerent, and refusing to move until he had medical assistance.

**Civilian Witness 3 (CW3)** was a security guard for Surrey Village and had received a call from property management advising that a man being pursued by police had hopped the fence to the community garden. CW3 asked the property manager to meet him and provide him with a key, but prior to this he saw a police officer and dog scale the locked gate almost simultaneously and enter the garden. Shortly after, CW3 heard "a wailing sound or a moaning sound...like a shriek of pain", but he did not hear the officer speak to the male.

**Civilian Witness 4 (CW4)** was in bed at approximately 11:00 p.m. when she heard sirens, went to her balcony, and saw a police officer running toward the community garden. She heard the officer shout "Where did he go?" and saw residents point at the community garden. She believed the officer opened the gate and entered the garden. CW4 subsequently heard the officer say "Put your hands in the air,

hands in the air, hands in the air". Approximately 30 seconds later a male screamed "Ow, my leg", then state he was not resisting. CW4 did not hear what the police officer said, but the man said his leg was hurting.

**Unidentified Witness:** The IIO received a call from a person who refused to identify himself but stated he had seen some of the incident. The caller stated he was home that night and heard noises, so went to his balcony and saw a police officer and a dog. He watched for about half an hour and saw about nine police officers. When asked if he saw or heard anything the police said or did that was of concern he stated the police had not done anything wrong. He further claimed to have videotaped the incident on his cell phone, but declined to provide the video to the IIO.

## SCENE EXAMINATION

The community garden at Surrey Village is located on the 3<sup>rd</sup> floor above a parkade entrance. The railing identified as the one that the affected person attempted to jump is 26.25 feet (approximately 8 metres) above the parkade driveway. The southwest corner of the community garden contains bushes.

## ANALYSIS

The general issue during any IIO investigation is whether a person suffered death or "serious harm" as a result of the actions of an officer and, if so, how and why. If I consider an officer may have committed an offence, then I must forward a report to Crown Counsel. The legal issue to be considered in this case was whether the subject officer reasonably deployed and controlled his PSD who, in turn, engaged and injured the affected person. If the injuries to the affected person were the result of an unreasonable use of a PSD, the SO could be liable for the offense of assault, assault causing bodily harm or aggravated assault. Culpability for an officer's use of force is governed by the following *Criminal Code* provisions:

1. 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).
2. 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)).

Although the affected person and subject officer declined to provide statements to the IIO, statements made to another person can be used in determining whether there is reason to believe the SO may have committed a criminal offence.

According to WO2, the affected person yelled that police shouldn't have put the dog on him. In addition, WO2 asserted the affected person acknowledged he "knew how to jump off things", which corroborates the SO's assertion the affected person had attempted to escape by jumping over the railing.

WO2 stated he heard the SO yell "Stop, police. . .stop fighting with my dog." He also stated he asked the SO what had happened and was told the affected person had refused to submit to arrest, attempted to

escape by jumping over a railing, and was pulled back by the PSD. WO3 stated the SO provided a similar account to him.

The subject officer told WO2 the affected person hid in the garden, which appears to be supported by video, suggesting the affected person was in the garden for approximately 12 minutes before the SO arrived. CW2 heard the SO direct the affected person to “come out or he would let the dog go.” Another civilian witness heard the SO say “Put your hands in the air, hands in the air, hands in the air.”

As such, there is evidence to support the conclusion that the affected person was hiding in the south-west corner of the garden. Photographs confirm bushes in that corner which, in combination with the darkness, would have obscured the SO’s view of the affected person’s hands and any weapons he may have carried.

The affected person was being sought for serious violations that warranted the use and deployment of a police service dog. Police communications corroborate that the affected person was actively evading arrest at the time he was confronted by the SO and his dog.

According to the SO’s comments to other officers, the affected person refused to surrender and attempted to climb over a wall to escape. Given this, the SO would not have had many options to take the affected person into custody. Allowing him to escape could have endangered the female resident of the home and allowed the affected person to escape responsibility for a potentially serious offence. Had the SO attempted to grapple with the affected person alone in the dark, the tactic would have been dangerous for both him and the affected person, and may have resulted in a need to use deadly force.

It is impossible to determine whether the SO was aware of the dangerous drop from the wall over which the affected person was attempting to escape, however it appears the use of the PSD to take the affected person into custody may have saved the affected person from even more serious harm.

As such, although the affected person claimed the PSD should not have been deployed, such conclusion does not appear to be reasonable. Therefore, the only evidence that the subject officer may have used inappropriate force came in the form of an allegation from the affected person to an IIO investigator that the PSD had to be pried off his leg. Such an allegation would only suggest a criminal act if the SO had negligently or maliciously allowed his PSD to continue to bite even after the SO had a reasonable belief that the affected person had the intention of complying with lawful commands.

Given that video evidence showed that responding officers were only three minutes behind the SO and his dog, and the first officer arriving stated the dog was no longer engaged with the affected person, there does not appear to have been much time for the initial contact, attempted escape, and subsequent apprehension. In addition, according to CW2, she heard the affected person yelling “Get him off, get him off” and the SO ordering the affected person to crawl out from his location “three or four times.” The affected person’s apparent refusal or inability to come to a place where the SO felt safe taking him into custody could have accounted for any delay in the SO’s efforts to require his dog to release his bite.

Given the totality of the circumstances, the affected person’s suggestion that the PSD may have held him for too long does not give me reason to believe the SO may have committed an offence.

## **DECISION**

Based on the evidence obtained during the course of this IIO investigation, I do not consider the subject officer may have committed an offence in relation to his PSD's actions in stopping the affected person from evading arrest. As such, the IIO file will not be referred to Crown Counsel for consideration of possible charges. If further information were to come to my attention, I would be willing to reconsider this decision.

Prepared for release 12th day of February, 2014 by

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Chief Civilian Director  
Independent Investigations Office of BC