



**IN THE MATTER OF THE INJURY OF A MALE
WHILE BEING ARRESTED BY MEMBERS OF THE RCMP
AT ENDERBY, BRITISH COLUMBIA
ON NOVEMBER 11, 2021**

**DECISION OF THE CHIEF CIVILIAN DIRECTOR
OF THE INDEPENDENT INVESTIGATIONS OFFICE**

Chief Civilian Director:	Ronald J. MacDonald, KC
IIO File Number:	2021-312
<u>Date of Release:</u>	<u>February 24, 2023</u>

THIS PAGE INTENTIONALLY LEFT BLANK

INTRODUCTION

On the morning of November 11, 2021, RCMP members were investigating complaints of a suspicious van and a stolen licence plate. They found the van with the stolen plate attached at a rural residence outside Enderby. The Affected Person ('AP') was arrested at the scene with the assistance of a Police Service Dog ('PSD'). AP was injured in the arrest, so the Independent Investigations Office ('IIO') was notified and commenced an investigation. The narrative that follows is based on evidence collected and analyzed during the investigation, including the following:

- statements of AP, one other civilian witness and two witness police officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- audio recordings of police radio communications;
- PSD training records; and
- medical evidence.

The IIO does not compel officers who are the subject of an investigation to submit their notes, reports and data. In this case, the Subject Officer did not provide any account to the IIO.

NARRATIVE

AP told IIO investigators that on November 11, 2021, he was

...walking back from my friend's house to go to Tim Horton's, and all of a sudden a police dog attacked me. And what made me mad was three officers watched this dog chew my arm for, like, half an hour or 45 minutes. That's all I have to say ... well, they were punching me. They just beat the shit out of me".

On the day in question, RCMP members were investigating a complaint that a male had been seen stealing a licence plate and attaching it to a suspicious minivan. The van had subsequently been seen by police being driven on the highway at about 160 km/h. Shortly after noon, Witness Officer 1 ('WO1') located the van parked beside a home on a rural property near Enderby. He requested assistance from the Subject Officer ('SO') with his Police Service Dog ('PSD').

Shortly after his arrival on the property, WO1 was approached by the occupants, Civilian Witness 1 ('CW1') and another individual, who asked what the officer was doing there.

WO1 asked them to go back inside, so as not to contaminate any scent trail. When asked by WO1, CW1 denied knowing anything about the minivan, or that anyone associated with it was in his home.

At 12:57 p.m., WO2 was asked to attend and to watch the van while WO1 covered SO as his dog tracked. WO2 responded that he would “be there in five”.

SO set his PSD tracking along the side of the residence. As it reached the back corner, the dog pulled on its leash and SO called that a male (AP) was coming from the back around the other side of the home. WO1 told IIO investigators that by the time he had gone around the building and was approaching the front, he saw AP walking “swiftly” away from SO and WO2, despite being told he was under arrest and to get on the ground. WO1 described hearing SO yelling at AP to stop and then releasing the dog, which bit AP’s left forearm and pulled him until he fell over backwards.

WO2 told investigators that AP’s clothing matched the description of the male who had earlier been seen stealing the licence plate, and concluded he was arrestable. As AP moved quickly away from the officers towards an adjacent field, WO2 said, he saw the PSD pull AP to the ground, holding him by his left arm.

CW1 confirmed that he heard SO telling AP to stop before he closed the door and did not see anything more of the confrontation. CW1 said that the next time he saw AP, shortly afterwards, he was bleeding and the officers were attending to his injury.

The witness officers described AP struggling with significant strength, both against the dog and against the officers. The PSD was gripping AP’s left arm and WO2 was having difficulty controlling his right arm. WO1 said he initially placed his knee on AP’s back, but then transitioned into a “full mount”, lying on his back and applying a head lock to counter AP’s attempts to get up.

WO1 told the IIO that AP then gave up and stopped resisting. The officers removed the PSD and placed AP into handcuffs. WO1 also said that when the dog was taken from AP’s left arm there was some difficulty controlling the arm, and SO delivered “a few, probably two to three closed fist strikes to the side of [AP’s] head”.

At 1:02 p.m., a member radioed that police had “one in custody”, and two minutes after that, an ambulance was called for a dog bite patient.

CW1 subsequently admitted that AP had been in his residence when police arrived. The minivan was found to have been stolen, and a significant number of make-shift weapons were discovered inside it.

AP was diagnosed with a broken left arm, which also suffered a substantial laceration from the dog bite. He had a laceration on his right forehead, requiring stitches, as well as bruises and abrasions on his face and fractures of his right sinus and a nasal bone. Medical records indicate that AP was yelling, swearing and uncooperative during admission to hospital.

He had been arrested on a different matter, three days earlier, and at that time had been photographed with a significant laceration on his right forehead, abrasions on his right cheek and the back of his head, a cut on the right side of his upper lip and bruising around his right eye and nose.

LEGAL ISSUES AND CONCLUSION

The Independent Investigations Office of British Columbia has been given the task of investigating any incident that occurs in the province, in which an Affected Person has died or suffered serious physical harm and there appears to be a connection to the actions (or sometimes inaction) of police. The aim is to provide assurance to the public that when the investigation is complete they can trust the IIO's conclusions, because the investigation was conducted by an independent, unbiased, civilian-led agency.

In the majority of cases, those conclusions are presented in a public report such as this one, which completes the IIO's mandate by explaining to the public what happened in the incident and how the Affected Person came to suffer harm. Such reports are generally intended to enhance public confidence in the police and in the justice system as a whole through a transparent and impartial evaluation of the incident and the police role in it.

In a smaller number of cases, the evidence gathered may give the Chief Civilian Director reasonable grounds to believe that an officer has committed an offence in connection with the incident. In such a case, the *Police Act* gives the CCD authority to refer the file to Crown counsel for consideration of charges.

In a case such as this one, involving the use of force by officers, one of the threads of the IIO investigation will be the gathering of evidence about potential justifications for that use of force. The CCD will then apply legal tests such as necessity, proportionality and reasonableness to reach conclusions as to whether officers' actions were lawful, or whether an officer may have committed the offence of assault.

There is a bald allegation from AP that three officers essentially attacked him while he was innocently going about his business, let a police dog chew on his arm for as long as 45 minutes and then severely beat him. The difficulty with that allegation, though, is that

it is contradicted by all other available evidence. Significantly, it does not seem to correspond to the account given by CW1, who is apparently AP's friend.

A solid body of evidence establishes that the responding officers did not simply set a dog on AP for no reason while he was going for coffee. They had grounds to arrest AP, who matched the description of the suspect they were seeking, for theft, possession of stolen property and dangerous driving. The evidence as a whole establishes that he was non-compliant and that he failed to stop for SO when ordered to do so. That failure made the use of the PSD to apprehend him a use of force within the justifiable range.

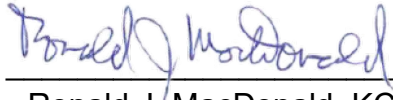
In particular, the use was consistent with the British Columbia Provincial Policing Standards. Under section 1.4 in relation to Police Service Dogs, police are permitted to allow a dog to bite when a person is "fleeing or hiding and there are reasonable grounds for their immediate apprehension by a police dog bite." When making the decision to use the dog, SO was required to consider a variety of other factors, including the risk to others if AP was not apprehended and the risk to AP if the dog was used.

Overall, this was not just a property crime case which might suggest this level of force was not called for. Rather, AP had stolen a vehicle, was creating risk to the public by driving dangerously, was clearly unwilling to stop for police when told to do so, and had a recent history of arrest for other offences. In addition, he was warned to stop by police and did not, and it would have been obvious that they had a dog present. In those circumstances, it was reasonable for the dog to be used to prevent AP from escaping.

The evidence, notwithstanding AP's own account, also establishes on a balance of probabilities that AP continued to be non-compliant, and in fact combative, while the officers were trying to control him on the ground. In those circumstances, a somewhat elevated level of force was necessary and proportionate. The medical evidence indicates that AP continued to be belligerent at the hospital, and also that he was suffering from pre-existing facial injuries. It appears, in fact, that blows struck by SO during the arrest on November 11 did not contribute significantly to those injuries.

Police dispatch channel recordings, as noted above, demonstrate that the entire incident, from the start of the track by the PSD to the handcuffing of AP, lasted only a very few minutes.

In conclusion, SO did not use unreasonable or excessive force, either in the use of the PSD or directly by his own blows to AP's head. Accordingly, as the Chief Civilian Director of the IIO, I do not consider that there are reasonable grounds to believe that an officer may have committed an offence under any enactment and therefore the matter will not be referred to Crown counsel for consideration of charges.



Ronald J. MacDonald, KC
Chief Civilian Director

February 23, 2023

Date of Release