



MEDIA STATEMENT

CRIMINAL JUSTICE BRANCH

August 14, 2013

13-24

No Charge Approved in Use of Force Involving Police Dog

Victoria - The Criminal Justice Branch of the Ministry of Justice, British Columbia's prosecution service, announced today that the Branch has not approved any criminal charges against a member of the R.C.M.P. Police Service Dog Unit in connection with the arrest of a male suspect in North Vancouver on December 13, 2012.

Crown counsel has thoroughly reviewed the investigative report that was submitted by the Independent Investigations Office in relation to the matter, and concluded that there is no substantial likelihood of any convictions relating to the use of force, or injury suffered by the suspect when he was apprehended with the assistance of a police service dog. A conviction for assault or assault causing bodily harm would require proving, beyond a reasonable doubt, that deploying the police service dog constituted excessive force in the course of the arrest.

A Clear Statement explaining the Branch's charge assessment is attached to this Media Statement. In keeping with the recommendation of Commissioner Stephen Owen, QC following the Discretion to Prosecute Inquiry (1990), a Clear Statement of the reasons for not prosecuting is sometimes made public by the Branch in high profile cases where the criminal investigation has become publicly known, so as to maintain confidence in the integrity of the system.

Media Contact: Neil MacKenzie
Communications Counsel
Criminal Justice Branch
(250) 387-5169

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<http://www.ag.gov.bc.ca/prosecution-service/>

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www.justicebc.ca/en/cjis/index.html

Branch Vision

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

Office of the
Assistant Deputy Attorney General
Criminal Justice Branch
Ministry of Justice

Mailing Address:
PO Box 9276 Stn Prov Govt
Victoria, BC V8W 9J7

Office Location:
9th Floor, 1001 Douglas Street
Victoria, BC V8W 9J7
Telephone: (250) 387-3840
Fax: (250) 387-0090

Summary of Charge Assessment

On June 27, 2013 the Independent Investigations Office (the IIO) submitted a Report to Crown Counsel with respect to an incident in North Vancouver on December 13, 2012. Pursuant to section 38.11 of the *Police Act*, a Report to Crown Counsel is submitted to the Criminal Justice Branch (the Branch) by the IIO when the Chief Civilian Director considers that an officer may have committed an offence under any enactment. The Chief Civilian Director did not make a recommendation on whether charges should be approved or what charges he believed Crown counsel might consider. Crown counsel maintains full jurisdiction over the charge assessment and charge approval process pursuant to the *Crown Counsel Act* and Branch policies.

After a thorough review of evidence submitted by the IIO, the Branch has concluded that the available evidence does not provide a substantial likelihood of conviction for any criminal offence against the police service dog handler involved in the arrest of a suspect in North Vancouver on December 13, 2012. As a result no charge has been approved against the officer.

The Branch applies a two part test to determine whether criminal charges should be approved and a prosecution initiated:

1. there must be a substantial likelihood of conviction based on the evidence gathered by the investigating agency; and
2. a prosecution must be required in the public interest.

Under Branch policy, a substantial likelihood of conviction exists where Crown counsel is satisfied there is a strong, solid case of substance to present to the court. To reach this conclusion, a prosecutor will consider whether the evidence gathered by the investigating agency is likely to be admissible in court; the weight that would likely be given to the admissible evidence by a judge or a jury; and the likelihood that viable, not speculative defences will succeed.

In making a charge decision, Crown counsel must assess the evidence gathered by investigators in light of the legal elements of any criminal 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, from beginning to end, the Crown bears the burden of proving beyond a reasonable doubt that an offence has been committed.

The available evidence in this case establishes that force was used by police in the arrest of a suspect who had fled from the scene of the offence that was being investigated. In particular, the use of a police service dog to track and locate the suspect resulted in a significant injury to the suspect during the course of his apprehension. In the circumstances of the incident,

however, the prosecution would not be able to prove that the force was excessive and therefore unlawful.

In conducting this charge assessment, Crown counsel took into account evidence from the suspect who was arrested, as well as the evidence of a number of civilians and police officers relating to the circumstances surrounding the arrest. Crown counsel also reviewed police notes and documentation, photographs, descriptions of the scene, medical records in relation to the injury suffered by the complainant, and evidence in relation to the use of force by police, in particular regarding the appropriate use and control of police service dogs.

The charge assessment was conducted by senior Crown counsel who does not work in the same region as the police officer.

The Law on the Application of Force by Police Officers

The intentional application of force to another person, without the consent of that person, may constitute an assault under the *Criminal Code*. A peace officer who is acting within the course of his or her duties, however, is granted authority under the *Criminal Code* to apply force which is reasonable and necessary in the circumstances. Section 25(1) of the *Criminal Code* states that peace officers, when acting on reasonable grounds, are justified in “using as much force as is necessary” for doing what they are “required or authorized to do” in the enforcement of the law.

To prove a criminal assault by a police officer in the course of his or her duties, the Crown must be able to establish beyond a reasonable doubt that in the context of the case as a whole the force was disproportionate, unnecessary and unreasonable. The fact that an injury has resulted from a use of force by police does not in and of itself establish that the force was disproportionate or unreasonable. A use of force by police may be lawful even in circumstances where an injury is caused by or during that application of force. Despite this, police do not have an unlimited power to inflict harm on a person. The Supreme Court of Canada has clearly established that 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 are not held to a standard of perfection and are not required to measure with nicety the force that they use. A legally acceptable use of force is one which is not gratuitous, and which is delivered in a measured fashion.

The Investigation and Circumstances Surrounding the Incident

On December 13, 2012, shortly after 2 p.m. a North Vancouver RCMP officer responded to an alleged fraud incident in progress at a Scotiabank branch on Lonsdale Avenue in North Vancouver. As the officer entered the bank, the male subject of the complaint was observed walking to the exit. When the officer tried to speak with him the male suspect fled on foot. A brief foot chase occurred and the officer lost sight of the suspect. Containment of the area was requested and Police Dog Services (PDS) was notified.

The dog handler, who is also a member of the RCMP, arrived with his dog a short time later. The police services dog was deployed by the handler to assist in locating the suspect. Using the dog, which was on a leash and under the control of the dog handler at the time, a track was located and followed. The track led into the front yard area of an apartment building, where the dog immediately entered a thick clump of bush and made contact with the male suspect who was concealed within the bushes. Due to the location of the suspect concealed under a thick bush, police had some difficulty separating the dog and the suspect.

It is unclear precisely how long it took to secure the suspect, who was struggling against both the dog and the officers who were attempting to handcuff him, as estimates range from 10 seconds to several minutes. The evidence does, however, support a conclusion that from the time the police dog first made contact with the suspect, the dog handler and other police officers actively sought to remove the dog from the suspect and/or restrain the suspect.

The suspect was arrested and once he was in custody police noted that he was bleeding heavily from the right upper thigh area as a result of being bitten by the police dog. Although the suspect believes that the dog lunged at him and bit him repeatedly, the bulk of the available evidence supports a conclusion that the dog bit him once in the upper leg area and then held on. The suspect suffered a significant tearing injury, but did not appear to have multiple punctures.

The individual taken into custody was the same male who had fled from the bank.

RCMP dog handlers customarily use a 20 foot leash. The available evidence does not establish that the use of the dog in this incident was outside of normal RCMP training and standards for competent dog handling. It appears that the police services dog engaged the suspect on its own volition without command of the dog handler. The dog handler forthwith took steps to separate the suspect from the police services dog, while the officers assisting him sought to restrain the suspect. Notwithstanding the significant injury to the suspect, the evidence is not capable of establishing that deploying the dog constituted an unreasonable and excessive use of force in this incident. There is therefore no substantial likelihood that the officer responsible for handling the dog would be convicted of any criminal offence.

Given that the available evidence does not establish that the force used in arresting the suspect with the assistance of a police services dog was excessive in the circumstances facing the officers, no criminal charges are approved against the officer responsible for control of the dog.