



# MEDIA STATEMENT

## CRIMINAL JUSTICE BRANCH

July 3, 2014

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### **No Charges Approved in IIO Investigations Involving Police Service Dogs**

**Victoria** – The Criminal Justice Branch (CJB), Ministry of Justice, announced today that no charges have been approved in relation to separate incidents involving the use of police service dogs (PSD's) in the arrest of suspects on November 18, 2013 in Surrey and on December 19, 2013 in Victoria. Each incident was investigated by the Independent Investigations Office (IIO). The IIO submitted investigative reports to CJB on May 7, 2014 and April 7, 2014, respectively.

Following an investigation, where the Chief Civilian Director of the IIO determines that an officer 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. In deciding whether to initiate a prosecution CJB must assess whether the available evidence provides a substantial likelihood of conviction and, if so, whether a prosecution is required in the public interest. Before entering a conviction for an offence, a judge or jury must be satisfied that guilt of the accused has been proved beyond a reasonable doubt.

In these cases, CJB has concluded there is no substantial likelihood that the officers who were controlling the PSD's, and who were the subject of the IIO investigations, would be convicted of any offences arising from the circumstances. 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 the Branch.

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

To learn more about B.C.'s criminal justice system visit the British Columbia Prosecution Service website at: <http://www.ag.gov.bc.ca/prosecution-service/>

or Justice B.C. : [www.justicebc.ca/en/cjis/index.html](http://www.justicebc.ca/en/cjis/index.html)

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### ***Branch Vision***

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

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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:*  
9<sup>th</sup> Floor, 1001 Douglas Street  
Victoria, BC V8W 9J7  
Telephone: (250) 387-3840  
Fax: (250) 387-0090

### **Clear Statement**

This statement contains summaries 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 officers who were involved. They do not detail all of the evidence considered, or discuss all relevant facts, case law or legal principles.

Each of the charge assessments that are addressed in this statement was conducted by a senior prosecutor with no prior or current connection with the officer under investigation.

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

CJB applies a two part test to determine whether charges should be approved and a prosecution initiated. The reviewing prosecutor must examine the available evidence and assess (a) whether there is a substantial likelihood of conviction based on the evidence gathered by the investigating agency; and (b) if so, whether a prosecution is required in the public interest.

Under CJB policy, a substantial likelihood of conviction exists when 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 at a trial; and the likelihood that viable, not speculative, defences will succeed.

In making a charge assessment, a reviewing prosecutor must assess the evidence gathered by investigators in light of the legal elements of the offence that is alleged to 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 an offence does not have to prove that he or she did not commit the offence. Rather, the Crown bears the burden of proof from beginning to end.

### **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 he acts on reasonable and probable grounds. However section 26 of the *Criminal Code* provides for criminal liability when excessive force is used. For example, directing a dog to attack with the intention of inflicting harm has previously been found by a court to be sufficient to establish an assault with a weapon.

Prior court decisions have also made it clear, however, that police actions regarding use of force should not be judged against a standard of perfection. Police may be required to act quickly in volatile and rapidly changing situations, and are not expected to measure the amount of force used with exactitude, nor are they 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 Surrey Incident

On November 18, 2013, an individual stole a box of cookware from a Wal-Mart store in Surrey. According to the available evidence, this was observed by a store loss prevention officer (LPO), who located the suspect outside the store a short distance away, and advised him he was under arrest for theft. The suspect dropped the box and tried to flee, however the LPO caught up with him near the back of the store and attempted to put handcuffs on him. A struggle ensued and the two men went to the ground, initially with the LPO on top of the suspect. The LPO lost his balance, however, and fell and hit the back of his head on the pavement. The suspect then got on top of him and struck the LPO in the throat. The LPO had trouble breathing, and struck the suspect in the face. The suspect then fled north to a wooded area behind the store.

Officers were dispatched shortly afterwards and on arrival observed the LPO who was having trouble breathing and appeared to have suffered a concussion. An RCMP dog handler attended the scene, along with other officers who were also dispatched to locate the suspect. The dog handler and his police service dog (PSD) tracked in an effort to locate the suspect.

The suspect provided a statement to IIO investigators. According to his evidence, he had been with two companions earlier and had agreed to shoplift something from Wal-Mart for one of them, in partial compensation for having accidentally broken the person's phone. After the incident at Wal-Mart he sat under a tree in a wooded area behind the store and was smoking. He said he was hiding from his two earlier companions. He had been sitting there for about 20 minutes when, without warning, a dog bit his leg and pulled him. At this time he saw a police officer nearby.

The suspect described the event several times for investigators and the details provided were somewhat inconsistent. He told investigators that upon being bitten he stated: *'What do you want?'* and the officer responded: *'RCMP. What's in your hand?'* The suspect replied: *'Buddy, nothing. I have nothing. I have nothing. What did I do wrong?'* The officer 'kept on letting it go' and told him not to call him buddy. The dog bit the suspect three times in the same area and pulled him about a foot before it finally released. He did not state how the incident ended but did state that it lasted only seconds. He also stated there were no other persons present during this incident.

The dog handler declined to provide a statement to IIO investigators, however at the time the suspect was arrested he spoke to another officer who arrived to assist him. When the second officer arrived at the scene he observed the suspect lying face down on the grass and the dog handler with the PSD on a leash about four metres away.

The second officer did not observe an injury on the suspect, however the dog handler told him that the PSD had bitten the suspect and he told the second officer to contact EHS. The dog handler said that the suspect had fought with the PSD. The suspect stated that he did not know they were police, and that he had been in the bushes because it was cold and rainy. The dog handler then stated that he had said several times that he was the police and to come out of the bushes. When the second officer spoke with the dog handler later at the Detachment the dog handler told him that safety was a concern because the suspect had fought with the LPO and the PSD.

In his statement to the IIO investigators the suspect denied assaulting the LPO or going to the ground, stating that they simply pushed each other. These statements are in contradiction to the statements from the LPO and from another civilian witness, and cannot be reconciled with the injuries suffered by the LPO.

The suspect also initially denied the theft to the arresting officers.

Police call summary records indicate that 59 seconds elapsed from the time the dog handler reported being in pursuit of the suspect until the time the second officer arrived at the scene where the suspect had been apprehended.

The suspect suffered a significant injury to his upper left leg as a result of the dog bites.

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

After a careful analysis of the available evidence, and taking into account factors relating to the consistency, credibility or reliability of the suspect who was arrested, CJB has concluded that there is not a substantial likelihood that the dog handler involved in this incident would be convicted of any criminal offence with respect to the injury suffered by the suspect, and therefore no charges have been approved.

On the available evidence, the officer was tracking a suspect whom he believed had committed a theft and a serious assault on a Loss Prevention Officer. There is no evidence that the officer directed the PSD to attack the suspect. The suspect is only able to state that the dog bit his leg three times and pulled him a short distance.

Although the suspect states that the officer did not immediately call the PSD off, the time frame was very brief. According to the suspect, the contact lasted only seconds and the police call summary log confirms a narrow time frame. Furthermore, on the evidence of the suspect the officer repeatedly asked what he had in his hands.

Based on all the evidence, it would not be possible to prove that the officer's handling of the PSD was for any purpose other than to protect his own safety in carrying out a lawful arrest, or that it was more than was necessary to ensure the suspect was not a threat. Although the injury to the suspect was serious, there is nothing to indicate that the officer was aware the PSD was inflicting serious injury at the time and a police officer is not required to carefully measure the exact amount of force employed or use the least amount of force required.

CJB has concluded that the available evidence does not establish that the force applied in utilizing the PSD to effect the arrest was excessive in the circumstances. As a result there is no substantial likelihood of conviction, and therefore no charges have been approved.

The charge assessment in this case took into account the following material:

- Report to Crown Counsel Executive Summary and Detailed Narrative
- Statement of injured suspect
- Statements of civilian witnesses
- Summaries and Transcripts of Statements of police witnesses
- Police officers' notes, Prime reports and "will says"
- RCMP Report and Narrative
- RCMP Call Records and Detailed Summary
- Records from Emergency Health Services and Surrey Memorial Hospital
- Photographs, maps and satellite imagery

### **The Victoria Incident**

The officer who was the subject of the IIO investigation is a member of the Victoria Police Department (VicPD) canine unit. On December 19, 2013, the officer and his PSD were involved in the apprehension of a suspect who had been seen earlier in the day operating a stolen vehicle in a dangerous and erratic fashion.

According to the available evidence, the stolen vehicle was located by police later in the day, at which point it was unattended. The suspect was known to the officer and has a history of attempting to flee from police. At the time of the incident, there was an outstanding warrant for his arrest. The uniformed dog handler and several other plain-clothes members of VicPD established surveillance, intending to apprehend the suspect before he re-entered the vehicle. The officer had his PSD with him on a retractable leash.

All of the police officers involved, including the officer who was the subject of the investigation, provided statements that were consistent in describing the events surrounding the arrest of the suspect.

When the suspect eventually returned to the car, in company of a female, the officer yelled that they were police and to get on the ground. The suspect ignored instructions and ran for the driver's door of the stolen vehicle. It appeared to police that the female was also going to run so an officer grabbed her, took her to the ground and arrested her.

There is available evidence from police witnesses that the suspect was grabbing at something in his pocket. Another officer in attendance took out her firearm as she was concerned the suspect may have been reaching for a weapon. The dog handler continued to yell instructions to the suspect to show his hands and get on the ground or he would release the PSD. The suspect ignored instructions and was emptying his pockets. The suspect began backing up, giving the appearance that he was going to flee.

The dog handler gave the PSD the command to apprehend the suspect and released the leash to its full 18 foot length. The PSD went towards the suspect, and as the dog got close, the suspect pulled his arms towards his face and ducked. The PSD jumped up and quickly came back down on all fours. The PSD then took hold of the suspect's lower left leg and foot. The officer pulled on the leash which caused the dog to move back and brought the suspect to the ground. The officer then pulled the dog away from the suspect.

Police dogs are trained to grab arms and legs, and not to bite the face. On the evidence of the police officers involved in the arrest it appears that the dog incidentally contacted the suspect's face, as his arms were in that area when the contact occurred. The Suspect suffered a three to five inch cut to his left temple and cuts to his lips, and received more than 20 stitches to his head. There were no significant injuries to his leg.

The suspect gave statements that provide a different description of the circumstances of the arrest. According to the suspect he and the female he was with were walking towards a location where he was going to be picked up when he saw a person with a ball hat and hoodie walking towards him. Concerned, he started to walk away at which point police officers came out of the bushes and shouted at him to put his hands up. He did so, and a police dog then jumped up and bit him in the face. He says that the dog pulled him down by the face and officers pushed him to the ground where he was handcuffed. The officers then kicked him in the face multiple times, and told him to shut up when he complained that he was injured. He states that the injury to his temple was caused by the officers kicking him.

He states that he was immediately co-operative with police and put his hand up when requested to do so. He was told by police afterwards that he should not have put up his hands with a police dog coming after him, and he responded that he was just following instructions.

Hospital records indicate that he acknowledged consuming "5 rails of cocaine" that evening.

The suspect's female companion provided a description of the arrest that was inconsistent with both how police described events and with how the suspect described events. She stated that she and the suspect had left a residential complex and as they stepped onto the street they

were approached by at least 3 men in plain-clothes. At first they froze and she asked the suspect who these people were. They took a couple more steps at which point one of the men grabbed her, put her on the ground and handcuffed her. At the same time two men tackled the suspect, brought him to the ground and handcuffed him. It was only at that point that “30 cops jumped out of the bushes.” One officer had a dog and went after the suspect. She did not see what happened but describes hearing the men clapping, cheering and yelling while the dog was barking.

CJB has concluded that the inconsistencies between their respective accounts raise significant concerns with respect to the credibility and reliability of these two witnesses. There were no other civilian eye-witnesses to the actual apprehension and arrest of the suspect.

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

After a thorough review of the available evidence provided by the IIO, CJB has concluded that the evidence is not capable of establishing that excessive force was used by the officer in utilizing the PSD to apprehend the suspect. The officer was pursuing a lawful purpose in seeking to arrest a suspect who had a warrant outstanding, and who had earlier been witnessed driving a stolen vehicle erratically and dangerously in traffic. The officers involved in his apprehension had well founded concerns that he might attempt to flee and thereby be a danger to the public.

On the evidence of the police involved, the officer was in control of the police dog at all times and only gave the apprehension command after the suspect ignored repeated police directions and warnings. Moreover, the actual contact made by the police dog was very brief and only for the purpose of taking the suspect to the ground. There is evidence which indicates that the injury was an unfortunate but unintended consequence of the suspect's reaction in bringing his hands towards his face as the police dog was approaching him.

After reviewing the entirety of the investigative file, CJB has concluded that the available evidence does not provide a sufficient basis for proving that the officer's actions in releasing the police dog were an excessive use of force. As a result, there is no substantial likelihood that the officer would be convicted of any criminal offence in relation to the arrest. As the first branch of the charge assessment test has not been met, no charge will be approved with respect to this incident.

The charge assessment in this case took into account the following material:

- Report to Crown Counsel Narrative
- Witness statements
- Investigation records, police notes and reports
- Photographs and maps of scene
- Medical Reports