



MEDIA STATEMENT

CRIMINAL JUSTICE BRANCH

January 14, 2015

15-02

No Charges Approved in IIO Investigations Involving Police Service Dogs

Victoria – The Criminal Justice Branch, Ministry of Justice (CJB) announced today that no charges have been approved against police officers involved in incidents that occurred on October 7, 2013 in Vancouver and on January 31, 2014 in Courtenay, both of which involved the use of a police service dog (PSD) in the arrest of suspects. Each incident was investigated by the Independent Investigations Office (IIO), which subsequently submitted Reports to Crown Counsel to CJB.

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 each of these cases, CJB has concluded based on the available evidence that there is no substantial likelihood that the officers who were handling the PSD's would be convicted of any offences arising from the circumstances. A Clear Statement explaining these decisions in greater detail is attached to this Media Statement. With respect to the Courtenay matter, CJB is limited in the information that it can disclose at present about this particular case. There are criminal charges against an individual arising out of the same incident that will be proceeding to court and it is important to safeguard the fairness of that process.

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 CJB for charge assessment.

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or Justice B.C.: www.justicebc.ca/en/cjis/index.html

Branch Vision

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Clear Statement

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This statement contains a summary 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 police officers who were involved. They do not detail all of the evidence considered, or discuss all relevant facts, case law or legal principles. The charge assessments that are addressed in this statement were conducted by senior Crown Counsel with no prior or current connection with the officers under investigation.

Charge Assessment and the Criminal Standard of Proof

The Charge Assessment Guidelines applied by the Criminal Justice Branch in reviewing all Reports to Crown Counsel are established in Branch policy and are available online at:

http://www.ag.gov.bc.ca/prosecution-service/policy-man/pdf/CHA1_ChargeAssessmentGuidelines.pdf

In making a charge assessment, Crown Counsel must review the evidence gathered by investigators in light of the legal elements of any 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, the Crown bears the burden of proof from beginning to end.

The burden of proof applies to issues of credibility. A criminal trial is not a simple credibility contest between witnesses for the Crown and witnesses for the defence. If the accused testifies, he is entitled to be acquitted in any or all of the following circumstances: the trier of fact accepts his evidence; his evidence raises a reasonable doubt; the trier of fact does not know whom to believe; or, even if the trier of fact does not accept the accused's evidence, there remains a reasonable doubt on the totality of the evidence.

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 that the officer acts on reasonable grounds. However, section 26 of the *Criminal Code* provides for criminal liability when the force used is excessive.

Case law interpreting these sections has recognized that police officers may need to resort to force in order to execute their duties, but the Supreme Court of Canada has held that courts must guard against the illegitimate use of power by the police against members of our society, given its grave consequences.

Police do not have an unlimited power to inflict harm on a person. 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 may be required to act quickly in volatile and rapidly changing situations, and are not held to a standard of perfection and are not required to precisely measure the amount of force that they use. Police are not 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 use of a Police Service Dog (PSD) can constitute a lawful use of force, however, directing a dog to attack with the intention of inflicting harm on a suspect has been found by a court to be sufficient to establish an assault with a weapon.

The Circumstances Surrounding the Vancouver Incident

On October 7, 2013 a male suspect was arrested, with the assistance of a PSD, by a member of the Vancouver Police Department (VPD). During the arrest the suspect suffered bite injuries, which led to the IIO investigation. At around 6:00 p.m. on the date in question, the suspect allegedly smashed his girlfriend's cell phone and assaulted her. He is also alleged to have then threatened her and another female friend who was at the residence where the incident occurred, and to have swung a meat cleaver and a knife. He also is alleged to have stated he did not care about his own life. Approximately forty minutes later, the friend managed to convince the suspect to let her go outside to her car. After leaving the residence, the friend contacted VPD and reported the incident. The suspect's girlfriend subsequently managed to escape to a neighbour's, from where she observed the suspect drive away.

The officer who was the subject of the IIO investigation attended a location near the known residence of the suspect, in company of his PSD, and maintained a lookout. The officer was aware of the circumstances of the incident. The officer was also aware of the suspect's background: that he was considered violent and an escape risk, was prohibited from possessing weapons and had recently been charged with dangerous driving.

At 7:45 p.m. the suspect's vehicle passed the officer's vehicle, and the officer followed and stopped approximately 30 feet behind the suspect. The suspect exited his vehicle, and the officer exited his vehicle with his PSD. The officer announced himself, and told the suspect he was under arrest and to get down on the ground or the dog would be sent. The officer warned him a second time, but the suspect did not comply.

The officer then directed his PSD to apprehend the suspect. The PSD bit the suspect on the left thigh. The suspect lifted the dog and punched its head. The officer struck the suspect on the back of his head, sending him to the ground. The officer got on top of the suspect, who was fighting and resisting arrest. The PSD bit the suspect's right arm while the officer grabbed his left arm. Other officers began arriving on scene less than a minute later, at which point the suspect stopped resisting and was handcuffed. That evening and night, the suspect underwent surgery at VGH to repair the damage from the dog bites. The suspect recovered from surgery and was discharged from hospital on October 15, 2013.

The officer explained to investigators that he released the PSD for the following reasons:

- The suspect was not going to give up as he did not comply with police directions;
- As the suspect stated that he was not afraid to die, he might produce a weapon and the situation could escalate to a 'lethal force scenario';
- The risk of the suspect re-entering his vehicle, accessing possible weapons, or fleeing, and the potential danger to the public from a vehicular pursuit;
- Should the suspect successfully flee and evade police, the potential ongoing danger to the victims, the suspect was a risk for harming himself, and the potential difficulty in locating the suspect again;
- The officer considered other use of force options such as a baton, OC spray, or his firearm, and concluded the PSD was the most effective option in these circumstances.

The suspect stated to IIO investigators that there had been a “little argument”, and there had not been any violence. He stated the police only said “don’t move” before sending the dog to attack him. The officer then encouraged the dog by saying “Blood. Get him. Good boy, blood.” The officer then taunted the suspect with racial insults. The suspect stated he was discharged from hospital on the second day after his surgery, while hospital records show he remained in hospital for eight days after surgery. The suspect stated he is 5’11”, weighing 260 pounds, has worked out since he was young, and is “intimidating”.

The statements of the other civilian witnesses and police officers, and the VGH medical records, were consistent with the officer’s statement and inconsistent with the statement of the suspect.

The suspect in this case subsequently was convicted of two charges of assault with a weapon and one charge of driving while prohibited arising from the incident, and received a custodial sentence.

Application of the Law to the Circumstances of the Vancouver Case

The subsequent conviction of the suspect is not determinative of whether the use of force in his apprehension was lawful. As a peace officer, the officer was authorized to arrest the suspect without a warrant. The officer was acting within the course of his lawful duty in locating and arresting a suspect who had allegedly just committed an assault and unlawful confinement of two women, who had threatened the victims with death while in the possession of weapons, who stated he did not care if he lived or died, who was known by the officer to have a history of violence and an outstanding charge of dangerous driving.

There is available evidence that the suspect was non-compliant with the officer’s commands and posed an ongoing risk to the complainants who had contacted the police, and to the public generally, if he managed to escape capture. There is no reliable evidence that the officer or the PSD used excessive, unreasonable or inappropriate force. The suspect’s version of events is not credible, and is contradicted by all other sources of evidence. A court could reasonably rely on the version of events provided by the officer, and in those circumstances would not convict the officer of any offence.

Based on the available evidence, the officer was acting in the lawful execution of his duties and the force he used in deploying the PSD was justified in the circumstances. Given that the available evidence does not establish that the force used was excessive in the circumstances, and therefore unlawful, there is no substantial likelihood of conviction. As a result, no criminal charges are approved against the officer responsible for control of the PSD.

The Circumstances Surrounding the Courtenay Incident

On January 31, 2014 a member of the Courtenay detachment of the RCMP arrested a suspect in a domestic violence complaint, with the assistance of a PSD. The suspect suffered significant bite injuries to his right arm. CJB has decided to not approve criminal charges against the Courtenay officer who handled the PSD in that incident, however, various charges have been approved against the suspect. As the latter case is now before the court and arises out of the same set of circumstances, the Branch is limited in the information that it can make public at this time.

What can be said, based on the material submitted to CJB is that on January 31, 2014, at around 12:30 p.m., Courtenay RCMP responded to a domestic assault call, where the suspect had fled in a vehicle. The suspect is alleged to have driven in a dangerous manner, failed to stop for police, and then abandoned the vehicle he was driving and fled on foot.

The officer who was the subject of the IIO investigation attended the scene with his PSD and tracked the suspect on a trail through rugged terrain. In apprehending the suspect, the PSD bit the suspect on his right upper arm. Other officers attended the scene, and while being walked out of the woods, the suspect collapsed. An ambulance was called and the suspect was taken to hospital for treatment.

After a thorough review of the investigative file, Crown counsel has concluded in this case that there is no substantial likelihood of proving, beyond a reasonable doubt, that the officer used excessive force within the meaning of the Criminal Code. Unlawful or excessive force is an essential legal element that the prosecution would have to prove to obtain a criminal conviction for assault. As such, no criminal charges against the officer responsible for control of the PSD have been approved.