

FINAL REPORT: IIU concludes investigation into dog bite during arrest in Portage la Prairie

On November 17, 2016, at 9:20 a.m., the RCMP notified the Independent Investigation Unit (IIU) of an incident relating to a search, foot chase and apprehension of a male suspect at Portage la Prairie. A police service dog (PSD) had physically engaged with this male. As a result, the male suffered an injury to his leg, requiring hospitalization and subsequent surgery.

According to this notification, on November 16 at 11:37 p.m., members of the RCMP, Portage la Prairie detachment, responded to a weapons complaint involving a machete. On arrival at the scene, near 3rd Street NE in Portage la Prairie, the officers located three male suspects. One of the males fled on bicycle and then on foot. An RCMP PSD handler and dog were called in to track the fleeing male suspect. The fleeing male was located and advised that he was under arrest. The male attempted to evade police again. The PSD physically engaged the male. As a result, the male (the affected person – AP) received an injury to his left leg requiring hospitalization and subsequent surgery--a “serious injury” as defined by IIU regulation 100/2015.

As this notification involved a serious injury and an admission to hospital, IIU assumed responsibility for the investigation in accordance with section 65(1) of the *Police Services Act* (PSA). The primary issue for this investigation was whether members of the RCMP subjected AP to unnecessary and excessive force from their initial interaction with him, through arrest, and in deploying the PSD. IIU investigators attended to Portage la Prairie.

The IIU civilian director designated the PSD handler as the subject officer (SO). Six members of the RCMP Portage la Prairie detachment were designated as witness officers (WO1 – 6). IIU investigators also identified and conducted interviews with four civilian witnesses (CW1-4). AP refused to be interviewed by IIU investigators.

As outlined under the PSA, a subject officer cannot be compelled to provide his notes to IIU investigators or to attend an interview with them. In this matter, SO agreed to provide his notes and report to IIU investigators but declined to be interviewed.

IIU investigators also received and reviewed:

- a complete file package from RCMP including officers’ notes and reports;
- medical reports respecting AP;
- all radio transmission recordings;
- RCMP PSD policies;
- training records respecting SO and PSD.

The following facts have been determined:

On November 16, 2016 at 11:37 p.m., the RCMP telecommunications center received a 911 call from CW1 who reported that a male armed with a machete had chased and hit him with it. CW1

had an injury that required medical attention. CW1 said the male was with two other persons. Two of the persons were on bicycles near a church on 3rd Street NE in Portage la Prairie.

Members of the RCMP Portage la Prairie detachment attended to this location. WO1 located CW1 and confirmed he had sustained a serious injury to his hand. CW1 advised that all three persons had participated in the assault and that a knife was used as well. WO1 recovered a machete but the knife and three suspects were still outstanding.

A search of the area began. WO2 and WO3 observed three people in the vicinity--two of them on bicycles. These officers, in a marked police vehicle, attempted to stop the three subjects. A male (later identified as AP) suddenly bolted, travelling northbound on a bicycle. WO3 arrested the two other suspects (later identified as CW2 and CW3). WO2, now joined by WO4 and WO5, pursued AP. AP's bicycle was located in a yard. The officers set up containment of the area and requested the assistance of a PSD and handler.

At 12:15 a.m. (now November 17), SO, with the PSD, arrived on scene. SO was advised that the male on foot may be armed. SO and the PSD in a "tracking harness" began a "track" for AP (attempting to identify and follow a trail of scent to locate a human leading to or from this scene). Due to the severity of the incident and the potential high-risk situation, SO requested WO2 to accompany him for officer safety and back up purposes during the "track."

Within moments, AP emerged from a yard and ran away from the officers. Both officers yelled, "*Police. Stop, you are under arrest.*" AP was pursued to a nearby backyard where he began to climb a wooden fence. SO released PSD to apprehend AP in order to prevent an escape.

The PSD engaged and bit AP's lower left leg. AP was unable to make it over the fence. At that time, one of the PSD's legs became entangled in the pickets of the fence. The PSD cried out in pain and released his hold, resulting in the PSD and AP falling to the ground on opposite sides of the fence. AP got up and started to run across the other yard. SO yelled at AP to stop, but he did not comply. SO lifted the PSD over the fence and released the animal. The PSD again engaged and bit AP on the upper left thigh. AP started to punch the PSD. SO yelled at AP to "*...stop hitting my dog.*"

SO and WO2 were able to break through the fence and ran to AP. SO pushed AP over and onto his stomach. AP pulled his hands underneath his body and refused to comply with commands to "*give me your hands.*" SO was concerned that AP may have a knife or machete. SO straddled AP's back and was able to pull his hands from underneath him to behind his back. The PSD was "outed from his hold" (to release his grip on AP) and AP was handcuffed and removed from the area.

SO directed WO2 to take AP for medical treatment on his leg. WO6 attended and assisted in searching AP at the Portage la Prairie Hospital. AP was admitted to hospital with lacerations to the upper and lower parts of his left leg. He required emergency surgery to treat the injuries.

A review of the medical records confirmed that AP arrived at the Portage la Prairie hospital at 12:30 a.m. on November 17. He had:

- lacerations to his left lower leg to the depth of his tibia;
- punctures on both lower left leg and right thigh;
- small laceration to right cheek.

The wounds were cleaned, stitched, and dressed. A tetanus shot and antibiotics were administered. AP was discharged from hospital on November 18.

IIU reviewed the RCMP PSD handling policies. In the event of a dog bite, a handler must, among other obligations, articulate his actions in a Police Dog Services report. In this case, the SO provided his Police Dog Services report, which detailed his risk assessment and actions and that of the PSD. All other requirements were met and performed by SO. After a full review, I am satisfied that SO's use of the PSD was in keeping with the relevant RCMP PSD policy. Finally, IIU investigators confirmed that on June 7, 2016, SO and the PSD had successfully completed and passed annual qualifications as mandated by the RCMP.

Issues, Assessment and Conclusions:

The relevant issue in this matter is whether, at any time, SO used excessive or unnecessary force on AP at the time of his arrest. In particular, was the deployment of the PSD appropriate or excessive in these circumstances.

Subsection 25(1), section 26 and subsection 265(1) (a) of the *Criminal Code of Canada* are relevant to this analysis:

25 (1) Every one who is required or authorized by law to do anything in the administration or enforcement of the law

(a) as a private person,

(b) as a peace officer or public officer,

(c) in aid of a peace officer or public officer, or

(d) by virtue of his office,

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.

26 Every one who is authorized by law to use force is criminally responsible for any excess thereof according to the nature and quality of the act that constitutes the excess.

265 (1)(a) A person commits an assault when...without the consent of another person, he applies force intentionally to that other person, directly or indirectly

AP's injuries constitute bodily harm under the *Criminal Code of Canada*.

Police may be required to use force and various levels of interventions in their law enforcement role. While the authorizations outlined in Section 25 of the *Criminal Code of Canada* established protections from liability for a police officer, who, in the course of enforcing the law, finds it necessary to use force, the particular facts and circumstances, training and assessments must be appropriately considered to determine whether that use, the method(s) employed and the degree were justified.

The available intervention options may be considered individually or in combination. The type and use of intervention methods and tools is a dynamic process. This allows appropriate decisions to be made and assessed in light of the requirements of the specific circumstances

mandate. The dynamic nature of the choice and implementation requires continual evaluation by the police officer and recognition that the particular strategy may change at any stage.

A PSD is an intervention method. It is a use of force tool to be used by a police officer as circumstances dictate. Proper training, control, assessment of the situation and consideration of all other forms of reasonable options are factors to be reviewed to determine appropriateness and authorization.

In these circumstances, SO was in the lawful execution of his duties when he became involved in tracking and locating AP. He was aware that a weapon was alleged to have been used and had not yet been recovered. He was aware that this was a high-risk situation. When AP was located, he was not prepared to surrender to police or comply with their direction to stop. SO's decision to deploy and engage the PSD was appropriate in all of the circumstances. It is evident that AP was intent on avoiding capture. He would continue to flee from police unless properly restrained.

Once AP was subdued by the PSD and on the ground, SO's use of force to handcuff AP was controlled, measured and appropriate for the circumstances.

Once AP was subdued, handcuffed and in police custody, he was transported to hospital for appropriate medical treatment for his injuries.

I am satisfied that SO's use of the PSD was in keeping with the relevant RCMP PSD policy.

Therefore, I am not satisfied that any reasonable and probable grounds exist in these circumstances to justify the laying of any criminal code or other offence against SO.

This matter is now completed and the IIU will close its investigation.

Final report prepared by:
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Independent Investigation Unit
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