

FINAL REPORT: IIU concludes investigation into serious injury during arrest by RCMP in Sandy Bay

On August 13, 2020, the Royal Canadian Mounted Police (RCMP) notified the IIU of an incident on Sandy Bay First Nation where two individuals were transported to hospital after both were bitten by a police service dog utilized during an execution of a search warrant, causing injuries that may require surgical repair.

The salient portion of the written notification read as follows:

- *“On August 13, 2020, RCMP received information that a male suspect was trafficking methamphetamine from a camper located in Sandy Bay First Nation. The suspect was believed to have armed guards outside of the residence and inside of the camper. Due to the suspect being located on Sandy Bay First Nation (SBFN), the RCMP notified Manitoba First Nations Police (MFNP) who obtained a search warrant.*
- *RCMP Emergency Response Team (ERT) was engaged to assist based on the risk associated to the warrant execution. This included a member of RCMP Police Dog Services (PDS) and his police service dog (PSD).*
- *Four individuals ran from the area upon ERT arrival, two of which were taken into custody by PDS. A female and a male (the affected persons (AP1 and AP2) were bitten by PSD and injured as a result. Both subjects were taken to the Portage Hospital and are being treated for injuries. AP1, the female, had significant injuries from the dog bite and will require surgery.*
- *Another male, who fled from the residence, was carrying a firearm and wearing a bulletproof vest. An additional firearm was located within the residence as a result of the search warrant.*
- *Seven individuals are in custody and facing CDSA charges. The search warrant for the residence has been completed, however, the property remains secured pending further investigation”*

The lacerations caused by the dog bites and hospitalization of AP1, both meet the definition of a serious injury as defined in IIU regulation 99/2015. As a result, IIU assumed responsibility for this mandatory investigation in accordance with section 66 of *The Police Services Act* (PSA). A team of IIU investigators was assigned to this investigation.

The IIU civilian director designated the RCMP dog handler as the subject officer (SO). Eight other RCMP members were designated as witness officers (WO1 – 8). IIU investigators met with and interviewed AP1. IIU investigators have been unable to locate or interview AP2. IIU investigators identified six potential civilian witnesses. However, a civilian witness declined to

be interviewed, IIU investigators have never located two others and two more did not witness the interactions between PSD and either affected person. IIU investigators did meet with and interview a civilian witness (CW) who had information relevant to this investigation.

RCMP information obtained by IIU investigators included:

- RCMP General and Supplementary Reports;
- RCMP officers' notes and narrative reports;
- MFNP officers' notes and narrative reports;
- Scene photos and video;
- RCMP Drone video of execution of warrant and arrests;
- Photographs of AP1's injuries;
- AP1 medical reports;
- RCMP radio transmissions;
- RCMP Police Dog policy;
- Dog Handler training manual;
- Police Dog and the Incident Management/Intervention Mode; and
- Copy of SO yearly validation certificate

Facts and Circumstances

Affected Persons:

AP1 states that at 6:15 a.m., she arrived alone at the camper. AP1 states that as she approached the camper door, she saw police approaching. AP1 states that she did not go inside the camper, but instead ran approximately 100 feet away and laid face down on the ground in tall grass. AP1 states that she could hear smashing sounds, similar to a battering ram hitting the door. AP1 states that she then heard the sounds of dogs in the area so she did not move. AP1 states that as police came through the bush towards her, she continued to lay still and did not want to struggle with them. AP1 states that a police dog bit her on the shoulder and the leg. AP1 states that there was a police officer in a brown "suit" and helmet present. AP1 states that someone pushed the police dog's head into her body and the dog was chewing at her. AP1 states that she was arrested, handcuffed and walked to an armoured police vehicle. AP1 states she was not taken to the hospital until after 9:00 a.m. AP1 states that her friend, AP2, was also arrested and was bitten by the dog. AP1 believes that there was more than one dog involved.

AP2 was treated at Portage General Hospital for a dog bite. AP2 was discharged and turned over to the police. IIU investigators attempted to locate and interview AP2 without success.

Medical report concerning AP1:

IIU investigators received and reviewed AP's medical report. The report disclosed that AP1 was admitted to Hospital on August 13 as she sustained a severe wound to her left leg caused by PSD's bite. The injuries were described as large bite wounds to AP1's lower left leg, both medially and laterally. AP1 had surgery in the form of a skin graft followed by rehabilitation and pain control.

Civilian Witness:

CW states that she was at the camper to fix a fence on the property. CW states that she met people there, drank with them and spent the night. In the morning, CW states she went outside

and saw flashing lights, initially believing they were from an ambulance. CW states that she soon realized that police were present on the property. CW states that she was ordered to get on her knees. CW states that she saw police carrying a number of people out of the bush. CW states that she did not know AP1 personally but did believe two ERT officers carried her from the bush. CW states that there was something wrong with AP1's leg, having something to do with being bit by a dog. CW states that there were many police officers around the camper and property.

Witness Officers:

WO1 is a member of the RCMP and was the Critical Incident Commander (CIC) in charge of the operations concerning the execution of a search warrant at the residence and camper on SBFN. WO1 states that based on a risk assessment done by the investigators, it was believed that armed guards protected the illicit drug operations. It was decided that ERT be part of this operation. WO1 states that the police teams arrived on scene just before 6:00 a.m. It was determined that ERT and PDS would proceed to the rear of the location so they could come in under the cover of the bush. The RCMP Tactical Armored Vehicle (TAV) would approach from the front. WO1 states that there were five or six individuals, in and around the camper, who fled into the bush. WO1 states that he was advised, within minutes of arrival, that PDS had apprehended two individuals and both had sustained dog bites.

WO2 is a member of MFNP. WO2 states that AP1 was a subject of a drug investigation for some time. WO2 states that based on information received, he applied for a search warrant on the residence and camper. MFNP had requested assistance from the RCMP ERT in relation to the execution of the search warrant. ERT were the first unit to attend to the camper. Once entry was completed and the scene secured, MFNP was contacted and took control. WO2 states that he heard radio broadcasts that a number of people had fled on police arrival and some were located by PDS, including AP1 and AP2. WO2 states that AP1 sustained a dog bite to her left knee and "*there was some tissue and fatty parts of the insides visible with no physical blood*". WO2 states that his interaction with AP2 was brief and he did not see his injury because it was already bandaged.

WO3 is a member of ERT. On the day in question, WO3 states that ERT attended to the back of the residence. The RCMP TAV arrived on scene, with its lights and sirens activated, and announced, "*Police, search warrant, you're under arrest*". WO3 states that a police drone was in the air and had identified five to seven people in front of the residence. WO3 states that his assignment was to deploy gas in order to force anyone hiding inside to evacuate. WO3 states that he heard over the police radio that there were people running from the camper. WO3 states he was with SO as they were moving towards the residence, from the rear, when he noticed a black shotgun (approximately six to eight feet from him) laying on the ground. A male, wearing body armour (and later identified as one of the suspects in the trafficking investigation) was attempting to hide in a ditch and was arrested by WO3. WO3 states that in the meantime, SO had gone somewhere and was out of sight. WO3 states that he heard yelling and screaming coming from the bush line. WO3 states that he secured his male suspect and made his way to the bush. WO3 states that on his arrival, AP2 was now in police custody and handcuffed. WO3 states that AP2 had received a dog bite but he did not see how that happened. WO3 states that he returned to the camper and deployed gas into it. WO3 states that he moved back to the bush line at which point he heard more screaming. WO3 states that he located SO and saw that the PSD was biting AP1's leg. WO3 states that AP1 was pulling her legs away but was not fighting or punching the dog. WO3 states that SO told AP1 to stop moving and that once she was handcuffed, the dog would

be removed. An EMT was called to assist with treatment of AP1's wounds. WO3 states that at all times he was with or saw SO, the PSD was on the leash and in complete control.

WO4 is a member of the RCMP, who is also a trained medic and assists ERT. On the morning of this incident, he attended SBFN and arrived on scene at the Camper, with other members of ERT. WO4 states that he heard over the police radio that people ran from the Camper and, shortly afterwards, he heard someone say "*medic up*" and requested to go to the TAV. On attendance, he was directed to treat AP2, who had been bitten on his right arm. As he began to check AP2's injury, WO4 states that he was directed to go to the bush line and deal with AP1.

WO5 is a member of the RCMP. WO5 states that during this operation, his role was to attend to the camper located on the property. He was the "*cover man*" of the gas deployment team, a group of four that went to deploy gas into the camper. WO5 states that he was the primary medic on the team. As a PSD and handler were assigned with them, he was responsible for attending to any injuries. WO5 states that when AP1 and AP2 were each apprehended by PSD, they were roughly 15-20 meters from each other. WO5 states that he did not see when the PSD deployment occurred or the contact with AP1 or AP2. WO5 states that he and WO6 were searching as they travelled through the bush. WO5 states that when they came upon AP1, PSD still had a hold on him. WO5 saw and heard SO give the verbal command "*OUT!*" to PSD to release his hold on AP2. WO5 states that while assessing AP2's injuries, he heard someone say, "*Stop fighting my dog, stop fighting my dog*" followed by, "*Stop fighting, stop fighting*". WO5 states that he took AP1 to other ERT members and went to the other scene where AP1 was located. On arrival, WO5 states that he observed PSD standing over AP1. WO5 states that PSD did not have a hold on her and SO had full control of the dog. WO5 states that he began to assess her injury. WO5 states that he thought it was a bad bite and the wound was serious. There was evidence of soft tissue damage. WO5 states that AP2's wound was typical of what he had seen before. WO5 states that AP1's wound was not typical. WO5 states that he has been bitten by a PSD in training. WO5 states that he tried to get away from the dog, which is difficult as they essentially just continue to hold.

WO6 is a member of RCMP and was involved in duties related to ERT as an assist to MFNP execution of a search warrant. During an early morning pre-search briefing, WO6 states that all members were advised about the target locations and the surrounding bush line. A plan was made to execute the warrant early in the morning. However, WO6 states that upon execution of the plan, something caused everyone in the vicinity to run from the property. The police did the best they could to contain everyone and get them into custody. WO6 states that he heard SO saying, "*Stop hitting my dog, stop hitting my dog*" and could tell that the PSD was fighting with someone. WO6 states that he went inside the bush line to assist SO. WO6 states he observed PSD had control of AP2's right tricep and he assisted with placing him in handcuffs. WO6 states that while they were securing AP2, SO left as the PSD had picked up a scent. WO6 states that when he heard the sounds of PSD fighting someone else, he left to help take that person, later identified as AP1, into custody. WO6 states that he did not get a complete view of AP1's injury though he knew she was bitten on her left leg. WO6 states that he recalls her saying "*Aw my leg*" and "*I just got here, feel the quad, its warm*".

WO7 is a member of the RCMP and on this day was the leader of ERT. WO7 states that they were requested to assist MFNP with a Search Warrant to be executed in SBFN. ERT were briefed on information collected during a reconnaissance of the area. An RCMP drone captured pictures of the location for ERT to provide situational awareness. WO7 states that AP1 was

among the primary targets of this operation. It was expected that there would be other people present at the residence and camper. WO7 states that from the available information it was indicated there were male subjects on the property who may be armed. WO7 states that it was planned to execute the warrant at 6:00 a.m. Both a PDS unit, Drone Unit and TAV were part of this operation. As the various units moved into position around the residence, camper and property, WO7 states that he heard police radio broadcasts that some of the suspects were in apprehended, and in particular, SO had a male in custody. WO7 states that all these people were turned over to their arrest teams. WO7 states that shortly afterwards, he heard that SO had another person in custody. WO7 states that he was aware that SO apprehended two people that were later identified as AP1 and AP2 and that both were bitten by PSD.

WO8 is a member of MFNP. WO8 states that he had information to believe that methamphetamine and crack cocaine were being sold from a camper in SBFN. WO8 states that it was also believed that there were armed guards in and around the camper. WO8 states that he was aware that a search warrant was obtained and that ERT was requested to assist in the execution of the warrant. WO8 states that he heard over the police radio that ERT had arrived at the camper, that at least four people fled on foot and that the PDS were in pursuit. WO8 states that he heard over the police radio that police dogs bit two people.

Subject Officer:

Pursuant to the provisions of the PSA, a subject officer cannot be compelled to provide his or her notes regarding an incident nor participate in any interview with IIU investigators. In this case, SO declined to attend for an interview and declined to provide his notes. SO, however, did provide IIU investigators with a written statement.

According to the written statement, SO, a member of the RCMP PDS was working with a PSD. At 5:00 a.m. on August 13, SO arrives at the RCMP Detachment to participate in a planned ERT led search warrant operation on a residence located in SBFN. On arrival at SBFN, SO wrote that he approached the residence from the rear with several other ERT members. A dense bush surrounded the residence and made it difficult to see through. SO wrote that he heard over the police radio that two people were outside the residence near the camper and that a number of other people had taken off on foot. Based on the information received during the earlier briefings, SO wrote that he feared that some suspects may be armed and were at unknown locations in the bush. SO wrote that he had concerns for the safety of himself and the lives of fellow officers on scene.

SO wrote that as he was searching around the bush, his PSD began to react to persons potentially in the vicinity. SO wrote that he continued through the thick bush with the PSD at the end of a 30-foot leash. Then, SO observes AP2 in front of PSD, swinging a large stick at the dog. SO wrote that he advised AP2 that he was under arrest. AP2 continued to swing the stick at PSD. SO released the PSD to apprehend AP2. The PSD latched on to AP2's right arm. AP2 reacted by resisting and fighting with the dog. SO ordered AP2 to get on the ground and stop resisting. In order to gain control of AP2, SO wrote that he grabbed AP2 and delivered several closed fist strikes to his head and stomach, which got him under control. SO wrote that the PSD continued biting and holding onto AP2. SO wrote that when a suspect fights with the dog, it encourages the dog to fight back but if the suspect follows directions, there is minimal damage. SO wrote that he told AP2 to not move and calm down. SO wrote that he waited for other ERT members to arrive

and assist him getting control of AP2. Once ERT members arrived and placed AP2 under control, SO commanded his PSD to disengage from AP2.

SO wrote that he was advised that a male was located in the bush, wearing body armour and had a loaded shotgun. SO wrote that he tracked back towards the residence to link up with ERT and look for other suspects. As SO proceeded through the bush, he wrote that his PSD began pulling hard, an indication that persons were in the vicinity. The PSD was still on the 30-foot leash. SO wrote that they came upon AP1, who was hiding in the bush as she was lying on her stomach. SO wrote that, based on information, he suspected that AP1 was armed and needed to be apprehended before she could escape or attack. SO wrote that his PSD apprehended by latching onto her lower back leg. SO wrote that AP1 tried to fend off the dog, which resulted in the dog biting harder and causing more injury. When AP1 brought her hands from underneath her, SO was satisfied that she was holding any weapons. SO told AP1 to quit fighting the dog and to lay on her stomach, which she did. SO wrote that he called for assistance from ERT members.

Drone Video Footage:

IIU investigators received and reviewed RCMP drone video recordings made during search activities of the residence. The videos contained aerial views of residence and camper, the arrival of the ERT and shows people fleeing following police arrival. The video recordings also showed internal and external search of the residence and camper as well as the PDS conducting search tasks in the bush areas. None of the video recording captured the apprehensions and the dog bite events of AP1 and AP2. At all times, it is observed that SO had complete control of his PSD during the searches of the bush. The dog was tethered to a long leash at all times.

RCMP Police Service Dog Policy, Dog Handler's Guide and Incident Management:

IIU investigators received and reviewed RCMP Police Service Dog policies and a dog handler's guide, with specific referenced to chapters on apprehension and tracking. A police dog is considered an intermediate weapon. As in cases of deployment of other intermediate weapons, such as conductive electronic weapons, an officer may provide verbal warnings before deploying it.

It was noted that SO followed the policies and procedures outlined in relation to the actions undertaken in the particular terrain encountered in SBFN. SO had deployed the PSD on a long leash, knowing there was a possibility of armed suspects hiding in the dense bush. SO correctly interpreted the dog's reactions and allowed it to deviate from a straight line and locate persons hiding. In his dealings with AP2, SO ordered him to drop his weapon, the long stick. SO warned AP2 that he would release the dog if AP2 did not comply with demands. When AP2 swung the stick at the dog, SO deployed PSD. SO instructed AP2 to remain calm and not fight the dog, explaining that the dog would not injure him further if he complied. SO commanded PSD to release AP2 once he was securely in custody.

PSD located AP1, lying face down on the ground in deep brush. The dog reacted as it is trained to do and bit AP1. SO instructed AP1 not to fight, as the dog would cause more injury if she resisted. However, AP1 attempted to pull her leg away, causing the dog to fight back. Once AP1 stopped resisting and SO was satisfied she did not pose any safety risk, he gave the PSD a command to release and apprehended AP1.

Conclusion:

The relevant issue in this matter is whether, at any time, SO used excessive or unnecessary force on AP1 and AP2 at the times of their 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*

AP1 and AP2'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. Section 25 of the *Criminal Code of Canada* establishes protections from liability for a police officer, who, in the course of enforcing the law, finds it necessary to use force. The facts and circumstances, coupled with training and assessments must be considered in their entirety to determine whether the use of force, the method(s) employed and the degree of force used were necessary and justified in law.

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. 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 tool and use of force method. 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 was participating in the execution of a search warrant and the apprehension of suspects;
- The use of the PSD is an appropriate tool to locate and apprehend suspects;
- Information was known to SO (and others) that weapons may be present on scene and that individuals may be armed;

- Actual weapons (i.e. a shotgun), body armour and drugs were located in and around the property, confirming the information received;
- The PSD was under complete control throughout the search;
- AP1 was a specific target for apprehension and arrest;
- AP2 was in possession of a weapon when he was confronted by PSD;
- Verbal warnings were given in advance of the release of the PSD;
- SO issued a release command once AP1 and AP2, respectfully, stopped resisting;
- SO's decision to deploy and engage the PSD was appropriate in all of the circumstances;
- When AP2 was subdued by the PSD and on the ground, the use of force to gain control of AP2, through punches to the head and stomach, was measured and appropriate for the circumstances;
- Both AP1 and AP2 were treated for the respective injuries.

I am satisfied that SO's use of the PSD in each instance, was in keeping with the relevant RCMP PSD policy and training. I am satisfied that SO's use of the PSD was appropriate, measured and justified in these circumstances.

I am not satisfied that any reasonable 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:

Zane Tessler, civilian director
Independent Investigation Unit
February 24, 2021

Ref #2020-0038