

*June 26, 2019*

## **No charges in Lethbridge case involving death of deer**

On Jan. 8, 2019, ASIRT was directed to investigate the circumstances surrounding an incident that occurred on Jan. 5, 2019 involving an LPS officer who used a marked police vehicle to repeatedly drive and reverse over an injured deer, ultimately killing it. The investigation is complete.

When the incident arose, there was consideration as to whether the matter should fall under the jurisdiction of the Alberta Fish and Wildlife Enforcement Branch (FWEB), and whether the Alberta Society for the Prevention of Cruelty to Animals (Alberta SPCA) should be involved. As the nature of the investigation involved the reasonable handling of wildlife calls, something generally falling within the parameters and expertise of the FWEB, a senior experienced FWEB peace officer was included as part of the investigative team. This officer's involvement was invaluable and ASIRT is grateful for the assistance provided by FWEB in this case.

ASIRT also engaged the Alberta SPCA, an organization dedicated to the welfare of animals that encourages the humane treatment of animals through enforcement of animal protection legislation and through education programs, in a community liaison role. The Alberta SPCA was given full access to the ASIRT investigation. Encouraged to ask questions and make recommendations regarding additional investigative steps or observed gaps, the Alberta SPCA was satisfied that there had been a full and fair, objective investigation by ASIRT. As with FWEB, ASIRT would like to acknowledge the involvement of the Alberta SPCA and is grateful for the added level of independent oversight provided by their participation.

As with every case, the investigation and the determinations made were unbiased and objective. All decisions needed to be principled, based on a dispassionate, fair consideration of the evidence and not based on emotion, sympathy, public pressures or prejudice.

ASIRT's investigation was comprehensive and thorough, conducted using best investigative practices, and in accordance with the principles of Major Case Management (MCM). During the course of ASIRT's investigation, evidence was gathered, including interviews with police and civilian witnesses. Radio communications recordings, computer-aided dispatch (CAD) records, training materials and relevant department policies were all reviewed and/or seized. The cellphone video was secured and reviewed. The involved officer, although not required to do so, provided a full statement and access to notes and his general occurrence report. Lastly, a firearms expert was asked to examine the investigation in its entirety with a view to obtaining an independent, objective opinion on the risks and benefits of using a firearm in the circumstances of this case.

In this release, an act to either accelerate or cause the death of an injured animal to alleviate its continued suffering will be referred to as euthanasia, or actions taken to euthanize. These terms are universally understood and, as such, communicate this meaning. They are not intended to diminish the seriousness of action taken, nor are they intended to convey reasonableness to any particular method or positive act.

ASIRT's investigation involved consideration of the *Criminal Code*, the *Wildlife Act* and the *Animal Protection Act*. As some of the possible offences had a six-month limitation period, the investigation had to be prioritized to ensure no loss of jurisdiction.

### *The Circumstances Surrounding the Death of the Deer*

On Jan. 5, 2019, at approximately 10:12 p.m., the LPS received a call of an injured deer on Scenic Drive and 16 Avenue S. The caller advised that the deer was in the northbound lane, was "quite injured" and might need to be "put down." At 10:16 p.m., another caller reported the presence of the injured deer and noted that it "looks broke." The deer was described as dying on the road.

It had been an extremely busy night. When the call first came in, there was no one available to take the call and it went on the board. The first officer available was dispatched and arrived on scene at approximately 10:24 p.m. The officer was working alone that night, in full uniform, and was operating a marked LPS tactically equipped Dodge Ram 4x4 truck, with a secure metal lockbox safely storing tactical team weapons, ammunition and equipment. The officer had his standard use of force equipment including baton, pepper spray and tactical knife. In terms of firearms, in addition to his service pistol, the officer had access to a Heckler & Koch MP5 gun, a Remington 870 12 Gauge breaching shotgun and an Arwen "less-lethal" launcher. The officer first attempted to determine if the driver of the vehicle that had been involved in the collision with the deer was still on scene or needed assistance. His attention then turned to the deer.

The deer was described as a female juvenile mule deer, weighing approximately 60 to 70 pounds, with evident significant injury to the hindquarters and/or rear legs, which appeared to no longer function. While the deer was able to get up onto its front legs, it appeared weak and lacking in the strength to drag itself even a short distance. The officer believed that the deer was critically injured. He made the determination, consistent with policy, that the animal should be euthanized.

The officer considered all of his available use of force options, including the available firearm and ammunition options. With respect to any of the firearm options, the officer decided that the risk of a possible ricochet was too great, given nearby homes, apartments and vehicles driving in the area. He considered attempting to drag the deer to another location where he could safely use a firearm but felt this carried its own challenges, when what he wanted was to euthanize the deer as quickly and humanely as possible. This left him with the options of his baton (or a similar weapon such as a tire iron), his tactical knife and the use of the police vehicle. With respect to the police vehicle, he believed that if he drove the heavy vehicle over a vulnerable, critical part of the deer's anatomy, causing a crushing injury, death would be virtually instantaneous. Unlike some of the other available use of force equipment, such as the tactical knife, there was nothing in policy stating that a vehicle could not be used. Aware of the provision of the *Wildlife Act* that prohibited killing wildlife with a vehicle, he noted that this provision was part of a regulatory regime meant to govern hunting. This situation had nothing to do with hunting and everything to do with the lawful execution of his duties as a police officer. Having given it very careful thought, the officer decided to proceed with the use of the police vehicle.

When the officer drove over the deer, he felt the vehicle move up and drop, as if it had proceeded over the deer so he reversed back over, believing that the deer would now be dead. He was shocked when he saw the deer was still alive and moving around. It was clear that he had missed the head but felt that the vehicle would have had to have caused crushing injuries to the deer so he felt that death should still be imminent. It was not. Feeling compelled to finish it, and with the firearm still not being a viable option, he continued to use the vehicle until the deer died. Once the deer was dead, the officer moved it from the roadway onto the cement median. As per protocol, he contacted dispatch to ensure that arrangements were made for city workers to come remove the carcass.

### *Availability of FWEB*

There was no attempt to contact FWEB on the date in question. That having been said, the officer would have been aware of the general availability of FWEB officers and the existence of a Memorandum of Understanding between LPS and FWEB. At the time, one of the two FWEB peace officers assigned to the Lethbridge area was on annual leave and the other officer had already worked that day. The FWEB peace officer on call would have been out of Cardston, Alberta, approximately 80 kilometres distance from Lethbridge. If one assumed immediate availability, it would have taken anywhere from approximately 57 minutes or longer to respond.

### *The Video*

The now-infamous video was, in fact, a cellphone video recorded by a bystander who had initially seen the collision between the civilian vehicle and the deer and who had returned to the scene. The video is approximately 14 minutes, 47 seconds in length. The woman who took the video advised that it was not a complete record of the events. The quality of the video is reasonably good in the circumstances, being mindful, of course, that this is an amateur cellphone video taken at night.

The video shows the police vehicle being driven repeatedly over the deer. The first instance occurs at approximately the 22-second mark, when the police vehicle drives over the deer, front wheels only and then reverses back over the deer. After another approximately nine minutes, the police vehicle drives forward over the deer with both the front and rear wheels and then reverses back over it. Almost immediately, the police vehicle is, again, driven forward until it appears to stop on top of the deer, where it remains for a little less than one minute before it reverses back off the deer. Shortly after the 11-minute mark, the officer can be seen to exit the police and move the now dead deer off the roadway before driving away from the scene.

While in some instances it is very easy to see that the wheels made contact and ran over the deer, the truck visibly rising and coming down as it progresses over the deer, on several of the attempts, there is no discernible movement of the truck as it proceeded in one direction or the other. It need not be conclusively determined, however, as it is readily apparent that the vehicle did make contact and run over the injured deer repeatedly. That these actions caused the deer additional pain and injury, and ultimately, its death, is a given.

While the events reflected in the video can be clinically recounted, the emotional impact of the video cannot be understated. It was, and remains, profoundly distressing and heartbreaking to watch. It is unforgettable and impossible to unsee.

### *The Availability of Veterinary Assistance*

At the time of this incident, there was no established protocol or practice requiring, authorizing or facilitating an opportunity for a Lethbridge police officer to access veterinary services to euthanize wildlife. Any person can usually access emergency veterinary medical care for animals in any reasonably sized community in this province and Lethbridge is no exception. In theory, a police officer could contact a veterinarian for advice and/or to request assistance to euthanize an injured animal. While available in theory, the practical reality of trying to find and speak to a veterinarian from the side of the road at 10:24 p.m. on any given night presented challenges.

Additionally, trying to sort issues such as the availability of an out-call to a scene, potential liability should a veterinarian be injured, and who should bear the costs also present challenges that are best sorted out ahead of any particular event. It is not quite as easy as it sounds. What is critical for the purposes of this case, however, is that there was nothing in place on Jan. 5, 2019.

Looking at the evidence as a whole, there are certain facts that should be considered as established and the foundation for any examination of the conduct of the officer and whether it does, in law, constitute an offence.

- As a result of a collision with a civilian vehicle, the young deer had been left seriously injured, having obvious trauma to its hindquarters and/or rear legs. Both rear legs were no longer functioning.
- As a result of its injuries and incapacitation, the deer was in pain, suffering and in distress.
- The injuries were such that the deer was going to need to be euthanized. This outcome would have been the same regardless of whether it was an LPS officer or a FWEB officer involved.
- As sweet-looking and vulnerable as it might appear, this deer is wildlife, the critical component of that being "wild." It was capable of causing serious injury, particularly with its front hooves. This danger is magnified when an animal is injured and/or stressed. One can expect that if it felt threatened, it would defend itself. As such, it was reasonable and necessary to maintain a certain safe distance from the animal.
- It was not open to the officer to do nothing. Even if the officer's decision was not to euthanize the injured deer, he still had a responsibility to manage the situation. The animal's presence on the road presented a hazard. It could not be left on the roadway.
- By its very nature, the use of any police officer's use of force tool to intervene and cause or accelerate the death of the injured animal will necessarily cause additional pain, suffering and/or injury to the animal, unless death is instantaneous.

Additional context should be considered as the various options are canvassed. None of the options are fail-proof. Dealing with a non-sedated injured animal and attempting to deliver a lethal shot, blow or wound is fraught with the potential for error. The slightest movement on the part of the animal changes the course and trajectory of any blow. What works in theory can go off course in reality.

In this case, as in most cases, the police officer did not have animal tranquilizers available. While this is a tool available to FWEB officers, it is not standard law enforcement equipment.

Following the release of the polarizing video, people -- including experienced police officers -- were very quick to judge the two fundamental aspects of the officer's actions, the first being the decision not to use a firearm and the second being that the use of the police vehicle was a suitable alternate. It is necessary to examine both of these decisions to determine whether those decisions, and the resulting conduct, was criminal.

The use of the firearm is obviously, by a considerable margin, the preferred, most advantageous and reliable tool and, in general, would and should be the first choice as the most humane way to quickly end the continuing pain, suffering and distress of an injured animal. One must always be mindful, however, that firearms are exceptionally dangerous weapons. It is for this reason that it is generally an offence to discharge a firearm within city limits. While this does not apply to law enforcement engaged in the lawful execution of their duties, it is a recognition that there are inherent dangers associated with the discharge of firearms in populated areas.

In this case, the officer was able to articulate extensive reasons why the use of any of the firearms/ammunition in his possession would have been ill-advised and, in some cases, contrary to LPS policy.

Following the release of the video, there was rampant speculation as to why the officer did not use a firearm. One prevailing theory was that the use of the firearm would have required him to file reports and the “paperwork” involved would have been too onerous. A second, completely speculative theory was that the subject officer simply wanted to cause the animal additional suffering. Regardless of the theory, the substance seemed to be that the officer made the decision motivated by factors other than the best interests of the public and the most merciful approach to euthanizing the injured deer.

The evidence obtained in this investigation would appear to dispel these theories. The decision not to use a firearm did not release the subject officer from his duties to make notes and file a report, both of which were done on Jan. 5, 2019, in compliance with policy and *before* the matter became public. Evidence that the subject officer had previously responded to injured deer calls and had used a firearm to euthanize an animal demonstrated that this was not about either a general inability or unwillingness to use a firearm. The officer was also able to articulate well the many concerns he had regarding the safety of using any of the firearms and/or ammunition in his possession to kill the deer.

It was clearly the officer’s subjective belief that exercising reasonable care required the elimination of the use of a firearm. Whether the firearm was an appropriate tool was very much a judgment call. In these circumstances, the officer’s perception and belief need not be the only possible view, it just needed to be reasonable.

An firearms expert reviewing the investigation in its entirety concluded that the use of a firearm in the environment the officer encountered on Jan. 5, 2019, gave rise to the risk of a ricochet through a missed shot or, more likely, overpenetration of the deer. The smaller size of the juvenile deer significantly increased the opportunity for any calibre firearm to overpenetrate and exit the animal. Further, the various ammunition types “had the potential, following a ricochet, to cause harm to persons in the area, be they outside, in a vehicle or within a structure.” The risk of ricochet combined with the proximity of persons in and around the incident area created unreasonable risk to public safety. The only way to have reasonably mitigated the identified risk of ricochet would have involved moving the deer to a more suitable location that would allow for the safe discharge of a firearm. This would have been difficult to do safely and would have involved dragging the injured animal to a safer, more secluded location. This would have, of necessity, caused additional pain and suffering to the deer.

Based on the above, the decision of the subject officer not to use a firearm was both subjectively and objectively reasonable.

#### *The Decision to Resort to the Police Vehicle*

Having made the determination that the deer needed to be euthanized, of the remaining available tools capable of causing or accelerating the death of the injured deer, none of them were particularly palatable, nor were they necessarily guaranteed to cause a swift death. The remaining options fell into essentially two categories: those capable of causing blunt force trauma and those capable of causing penetrating wounds.

With respect to the baton, tactical knife and/or tire iron, they would have required the officer to get into much closer proximity to the deer, placing the officer’s personal safety at risk. Notwithstanding

its small stature, the front legs and the razor sharp hooves of a deer are capable of causing significant injury. Furthermore, even though it was in a weakened state, the deer was still fighting.

If the video of the police vehicle running over the deer was distressing, a video of a death caused by blunt force trauma or stabbing would only have been an unimaginable horror, as the results would have been much more visual and visceral.

It is always easy to be critical of an officer's use of force with the benefit of hindsight. In this case, with the benefit of hindsight, it was immediately apparent that the use of the police vehicle did not work well nor as intended. The law is clear, however, that an officer's conduct should be assessed based on the circumstances as they were known at the time and not through the lens of hindsight.

In assessing the reasonableness of the subject officer's decision to use the police vehicle, a number of things are clear. The officer carefully considered all his options. The evidence would suggest that at all times he was acting in good faith trying to make the best decision for the situation, which included a desire to dispatch the deer and end its suffering, not extend it.

Unexpected or unintended consequences do not necessarily make the original decision unreasonable. Of the identified remaining options available to the officer to use to euthanize the deer, without the benefit of hindsight, the police vehicle may have been the best in a pool of bad choices. Even with the benefit of hindsight, as difficult as it was to watch, it is hard to believe that the use of the police vehicle was worse than having to watch the officer attempt to beat the deer to death with a baton or tire iron, or cut the throat or stab to death the deer. Taking emotion out of the equation, the officer was able to put the deer out of its misery within approximately 15 minutes.

The one factor that weighed against the reasonableness of the decision to use the police vehicle is the *Wildlife Act* statutory prohibition against using a vehicle to kill wildlife. This factor was not, however, determinative.

Any assessment of reasonableness should also recognize that the animal could have been permitted to die naturally. It was not, however, an option for the officer to simply, having decided not to euthanize the animal, leave the scene. In addition to it appearing callous to simply leave the deer, suffering and in distress, vulnerable to being struck again, the presence of the deer on the roadway was a hazard and a distraction to drivers. It would have been an option, however, to block off the portion of the roadway and allow nature to take its course. If the deer was going to die, it would do so.

There are and were a number of reasons why this would have been an unreasonable choice. Firstly, it seems particularly callous to allow this beautiful young animal, a living creature, injured and in obvious distress, to continue to suffer for an indeterminate period of time. It could have been minutes but it could have been hours. The deer would also have undoubtedly continued to struggle, as it had been before the officer arrived. Secondly, this seemingly "natural" solution would be resource intensive. Applying a practical lens, the deer's presence on the roadway presented a hazard that would have required scene management for an indeterminate period of time, including arrangements to set up barricades or block portions of the roadway with police vehicles, and the redirection or management of traffic. This must also be considered in the context of any extremely busy night where calls for service were already stacking up.

As indicated, the use of the police vehicle to kill wildlife could constitute an offence under the *Wildlife Act*. The full investigation was forwarded to the Alberta Crown Prosecution Service. While nothing was done to limit their review, it was made clear that, in my opinion, there were no reasonable grounds to believe that the officer had committed an offence under *Criminal Code*. Additionally, the Crown was advised that it was my opinion that the *Animal Protection Act* was not engaged. As there was evidence that the officer had used his motor vehicle to kill wildlife, however, there was evidence capable of providing reasonable grounds to believe an offence was committed. It should be noted, however, that the purpose behind this offence was not aimed at the conduct that occurred in this case. A review of cases where this offence has been charged would suggest that it has generally been in the context of a person or persons chasing, harassing or running down otherwise healthy wildlife in an obvious attempt to cause distress or harm for their own personal amusement. The policy behind the provision has been to penalize this type of behaviour but to also prevent those engaged in recreational hunting in this province from using a vehicle for that pursuit.

Having received the Crown opinion, it was their conclusion that there was no reasonable likelihood of conviction for an offence under s. 33.1 of the *Wildlife Act*, nor was it in the public interest. While not asked to do so, the Crown noted that it agreed with my assessment that there were no reasonable grounds to believe an offence had been committed under either the *Criminal Code* or the *Animal Protection Act*.

## **Conclusions**

When the officer responded to the call, it was apparent that the animal was suffering and that both policy and common sense required that the officer euthanize the deer to end its continued suffering.

The officer clearly considered the potential benefits of using one of the firearms and the potential risks associated with each. Having recognized the objectively real risk of ricochet given the placement of the deer, the lack of a safe backdrop, the immediate proximity of homes, apartments, high traffic and the public, and an inability to safely ameliorate the risk, the subject officer made the correct decision not to use a firearm, notwithstanding its obvious benefits. The officer's decision to prioritize the very real risk of potential injury to a person over the deer will always be the correct one.

While others, including other police officers, might have felt that they could have safely used a firearm in the circumstances, one need only look to Ontario to find a similar event where the opposite decision was made with almost catastrophic consequences. On Nov. 9, 2015, York Regional Police responded to a call for service involving an injured deer. The decision was made to euthanize the injured and suffering deer, and after discussion, the decision was made to use a firearm. People in the vicinity were moved to what was believed to be a safe distance away and the roadway was temporarily blocked to prevent traffic through the area. Even with these safeguards, when an officer shot the deer, the bullet went through the deer, ricocheted off the cement sidewalk and struck a 78-year-old man in the head, lodging between the skin and the skull above one of his ears. It was nothing short of miraculous that the man had not been killed.<sup>i</sup>

The subject officer exercised the same careful consideration of his available remaining options. He considered possible legal impediments, factored in LPS policy and made a principled decision based on careful consideration of his training and experience. The test is not whether all officers in a similar position would have reached the same conclusion, but whether the conclusion reached was reasonable. It was not the officer's intent to cause additional unnecessary suffering. Short of an instantaneous death, however, it was inescapable that additional pain and/or suffering might occur until death transpired, regardless of the method chosen.

With the benefit of hindsight, it is obvious that the decision to kill the deer using the police vehicle was problematic. It did not work as the officer had intended. The deer's ability to move and the inability of the officer to clearly see where the vehicle tires were in relation to the critical organs of the deer, frustrated the attempts to cause fatal injury. That having been said, no method is or was perfect and complications or problems occur. That did not render the officer's conduct criminal or unreasonable.

Having carefully reviewed the investigation and the Crown opinion, I have made the determination that the officer will not be charged with any offences.

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Executive director, ASIRT

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**Media inquiries may be directed to:**  
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<sup>i</sup> SIU Case Number: 15-OFI-262 [https://www.siu.on.ca/en/news\\_template.php?nrid=2772](https://www.siu.on.ca/en/news_template.php?nrid=2772)