



# MEDIA STATEMENT

## CRIMINAL JUSTICE BRANCH

April 5, 2013

13-06

### **No Charge Approved in Allegation of Excessive Force by Police in Creston**

**Victoria** - The Criminal Justice Branch of the Ministry of Justice announced today that following a careful analysis of all available evidence, the Branch has decided not to approve a criminal charge against a member of the Creston detachment of the R.C.M.P. in connection with an allegation of excessive force used on October 6, 2012.

Crown counsel has thoroughly reviewed all available evidence that was submitted by both the Independent Investigations Office (IIO) and the Delta Police Department in relation to this matter, and concluded that there is no substantial likelihood of conviction for assault by the officer. A conviction for assault would require proving, beyond a reasonable doubt, that the officer used excessive force within the meaning of the Criminal Code.

A Clear Statement explaining the Branch's charge assessment is attached to this Media Statement. In keeping with the recommendation of Commissioner Stephen Owen, QC following the Discretion to Prosecute Inquiry (1990), a Clear Statement of the reasons for not prosecuting is sometimes made public by the Branch in high profile cases where the criminal investigation has become publicly known, so as to maintain confidence in the integrity of the system.

The Branch is limited in the information that it can presently disclose about this particular case. There will be criminal charges for other individuals arising out of the same incident that will be proceeding to court and it is important to safeguard the fairness of that process.

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## Clear Statement

### Summary of Charge Assessment

After a thorough review of evidence provided to the Criminal Justice Branch (the Branch) by the Independent Investigations Office (the IIO) and the Delta Police Department, the Branch has concluded that the available evidence does not support a substantial likelihood of conviction for a criminal offence against a member of the Creston R.C.M.P. who is alleged to have used excessive force on October 6, 2012.

As such, no criminal charges against this officer will be approved.

The Branch applies a two part test to determine whether criminal charges should be approved and a prosecution initiated:

1. there must be a substantial likelihood of conviction based on the evidence gathered by the investigating agency; and
2. a prosecution must be required in the public interest.

Under Branch policy, a substantial likelihood of conviction exists where Crown counsel is satisfied 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 by a judge or a jury; and the likelihood that viable, not speculative defences will succeed.

In making a charge decision, Crown counsel must assess the evidence gathered by investigators in light of the legal elements of the criminal offence that is said 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 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.

Based on the material that was submitted to the Branch in this case, Crown counsel has concluded that while the available evidence shows that the police officer in question used force against a male civilian, the prosecution would not be able to prove that the force was excessive and therefore unlawful. Section 25(1) of the Criminal Code states that peace officers, when acting on reasonable grounds, are justified in "using as much force as is necessary" for doing what they are "required or authorized to do" in the enforcement of the law. To prove a criminal assault by a police officer in the course of his or her duties, the Crown must be able to establish beyond a reasonable doubt that in the context of the case as a whole, the force was disproportionate, unnecessary and unreasonable.

In making this charge assessment, Crown counsel took into account evidence from a number of civilian witnesses, two police officers, a CCTV video, and medical evidence about the severity of the injuries sustained by the civilian. The charge assessment was conducted by senior Crown counsel who does not work in the same region as the police officer. Investigative files prepared by both the IIO and the Delta Police Department were considered. The IIO investigated the allegation of excessive force against the police officer. The Delta Police Department investigated allegations of obstructing a police officer as against the male civilian and an associate. Because both of the investigative files contained material relevant to the incident in question, they were reviewed by Crown counsel together so as to ensure that the entirety of the available evidence was considered and analyzed.

### **The Investigation and Circumstances Surrounding the Incident**

As noted, the Branch has decided to not approve criminal charges against the police officer. However, charges of obstructing a police officer have been approved against two civilians. As the latter cases are now before the court and arise 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 the Branch, is that the use of excessive force was alleged to have taken place in a bar in Creston on October 6, 2012. At approximately 1:00 a.m., Creston R.C.M.P. attended a local bar in response to a complaint regarding an adult female. While police were in the process of arresting the female for obstructing a police officer, an adult male intervened and a physical altercation ensued. In the course of the police arresting the male, the latter sustained serious injuries to his face and jaw. He was transported to a medical facility and was provided with medical care.

On March 26, 2013, the IIO submitted a Report to Crown Counsel to the Branch with respect to this incident, pursuant to s. 38.11 of the Police Act. A Report to Crown Counsel is submitted by the IIO when the Chief Civilian Director considers that an officer "may" have committed an offence under any enactment. The Chief Civilian Director did not make a recommendation on whether charges should be approved or what charges he believed Crown counsel might consider. Crown counsel maintains full jurisdiction over the charge assessment and charge approval process pursuant to the Crown Counsel Act and Criminal Justice Branch Policies.

### **The Law on the Application of Force by Police Officers**

The intentional application of force to another person, without the consent of that person, may constitute an assault under the Criminal Code. A peace officer who is acting within the course of his or her duties, however, is granted authority under the Code to apply force which is reasonable and necessary in the circumstances. Despite this, police do not have an unlimited power to inflict harm on a person. The Supreme Court of Canada has clearly established that 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 are not held to a standard of perfection and are not required to measure with nicety the force that they use. A legally acceptable use of force is one which is not gratuitous, and which is delivered in a measured fashion.

After a thorough review of both investigative files, including statements provided by various witnesses, police, video and medical evidence, 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. As such, a criminal charge against the officer has not been approved. Unlawful or excessive force is an essential legal element that the prosecution would have to prove to obtain a criminal conviction for assault.