



# MEDIA STATEMENT

## CRIMINAL JUSTICE BRANCH

January 29, 2014

14-03

### No Charges Approved in Three IIO Investigations

**Victoria** – The Criminal Justice Branch (CJB), Ministry of Justice, announced today that no charges have been approved in 3 separate incidents which occurred in the summer of 2013, and were investigated by the Independent Investigations Office (IIO). The incidents took place in Chilliwack, Prince George and Vancouver respectively. The IIO submitted its Reports to Crown Counsel to CJB in December 2013.

Following an investigation, where the Chief Civilian Director of the IIO determines that an officer may have committed an offence, the IIO submits the file to CJB. The Chief Civilian Director does not make a recommendation on whether charges should be approved or what charges CJB should consider.

In deciding whether to initiate a prosecution CJB must assess whether the available evidence provides a substantial likelihood of conviction and, if so, that a prosecution is required in the public interest. Before convicting an accused a judge or jury must be satisfied that guilt of the accused has been proven beyond a reasonable doubt.

In each of these 3 cases, CJB has concluded there is no substantial likelihood that the police officer(s) who were subject to investigation would be convicted of any offences arising from the circumstances.

In keeping with the recommendation of Commissioner Stephen Owen, QC following the Discretion to Prosecute Inquiry (1990), a Clear Statement explaining the charge assessment in each case is attached to this Media Statement. As the charge assessments were finalized close in time, CJB decided to release one Statement that addresses all 3 cases. In order to maintain confidence in the integrity of the criminal justice system, a Clear Statement of the reasons for not prosecuting is sometimes made public by the Branch in cases where the investigation has become publicly known.

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<http://www.ag.gov.bc.ca/prosecution-service/>

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***Courageous, Fair and Efficient – A Prosecution Service that has the Confidence of the Public.***

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### **No Charges Approved in IIO Investigations**

Following a careful review of material provided by the Independent Investigations Office (IIO) on three separate matters, the Criminal Justice Branch (CJB) has concluded that the available evidence does not support a substantial likelihood of conviction for any offences. As such, no charges will be approved against the police officers involved in these incidents.

The investigations arose in the summer of 2013 in relation to investigations that took place in Chilliwack, Prince George and Vancouver respectively.

The IIO will submit a file to CJB following an investigation when the Chief Civilian Director of the IIO determines that an officer may have committed an offence. The Chief Civilian Director does not make a recommendation on whether charges should be approved or what charges CJB should consider.

CJB 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 CJB 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.

Crown Counsel must assess the evidence in light of the legal elements of any criminal or provincial, regulatory offence that is alleged 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.

A criminal trial is not a credibility contest between witnesses for the Crown and witnesses for the defence. The Crown must prove each element of the alleged offence beyond a reasonable doubt. If an accused person testifies, he or she is entitled to an acquittal where:

- The trial judge believes the evidence of the accused;
- The judge concludes that the evidence of the accused raises a reasonable doubt;
- The judge does not know whose evidence to believe; or
- The judge concludes there is a reasonable doubt on the totality of the evidence, even if the judge does not believe the evidence of the accused.

This Clear Statement contains summaries of the three IIO investigations, which are provided to assist in understanding the reasons for the decision that was made by CJB in each of the cases. The summaries do not detail all of the evidence considered by Crown Counsel, or discuss all relevant facts, case law or legal principles.

### **The Chilliwack Incident**

On December 4, 2013, the IIO submitted a Report to Crown Counsel (RTCC) in relation to an incident in Chilliwack that occurred on August 14, 2013. A male who was being taken into custody by police sustained a significant injury to his jaw.

The male faces charges arising from the incident, which are currently before the court. As a result, CJB will provide only limited detail on the alleged circumstances to protect the integrity of the criminal trial process.

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 the early morning of August 14, 2013, RCMP officers responded to a complaint of a male with a knife at a hotel in Chilliwack. It is alleged that this male produced a knife and menaced an employee at the hotel desk, then became involved in a confrontation with a guest who attempted to intervene. Hotel security video evidence is available for this time frame.

Police were dispatched to the scene and 4 units responded. While police were en route, they were advised that the suspect had left the hotel, and when police arrived in the vicinity, they encountered two security company employees running in the direction that the suspect had been seen travelling.

One of the first two police officers to arrive reportedly saw the suspect, who was holding a knife down against his leg at the time, approach and strike the driver’s door and windshield of a truck which was stopped for a traffic signal. It is uncertain whether the truck was actually struck with the knife. When the two officers in the first unit got out of their vehicle, the suspect advanced on them, still carrying the knife. One officer drew his Taser and ordered the suspect to drop the knife.

The available evidence shows that the suspect was repeatedly ordered to drop the knife but did not do so. He continued to advance on police, holding the knife in a threatening manner. As the confrontation with police continued, the Taser was fired 3 times, but it was only on the third discharge that the suspect dropped to the ground. During the course of the confrontation, the second officer drew his service firearm and pointed it at the suspect.

At the time of the final Taser deployment, a civilian witness believes the knife flew out of the suspect's hand, however the two police officers indicate that he continued to hold the knife in his hand while on the ground. The officer who had discharged the Taser dropped onto the suspect, and was able to secure the knife and throw it some distance away. The second officer dropped onto the suspect's legs, to assist in restraining him. At this point, a third officer approached quickly and struck the suspect twice while yelling to drop the knife. The officer who had thrown the knife then pointed to the knife on the road. The suspect was not struck again.

The third officer had observed the conduct of the suspect during the confrontation with the other two police officers, and struck the suspect twice in the shoulder/head area in order to assist them in restraining him before the effect of the Taser wore off.

The available medical evidence indicates that the suspect had a pre-existing untreated broken jaw, suffered some time in the few days prior to the incident on August 14, 2013. This injury was apparently aggravated in the confrontation with police.

As noted previously, a peace officer who is acting within the course of his or her duties is granted authority under Section 25(1) of the *Criminal Code* to apply force which is reasonable and necessary in the circumstances.

To prove a criminal assault, the Crown must be able to establish that in the context of the case as a whole, the force was disproportionate, unnecessary and unreasonable. The fact that an injury has resulted does not necessarily establish that the force was disproportionate or unreasonable. A use of force may be lawful even in circumstances where an injury occurs. 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 may be required to act quickly in volatile and rapidly changing situations. Officers are not held to a standard of perfection, and are not required to measure the force that they use with precision. A legally acceptable use of force is one which is not gratuitous, and which is delivered in a measured fashion.

Crown Counsel has concluded on the totality of the available evidence in this case, that the use of the Taser against the suspect cannot be shown to have been excessive and therefore unlawful. The suspect was brandishing a knife and refusing to drop it, creating a risk of harm to the public, the responding officers and to the suspect himself. The first two deployments of the Taser were not effective, requiring a third application, which then facilitated the disarming of the suspect. On the available evidence, the Crown would not be able to establish that the use of the Taser was more than a justified and measured use of force.

The blows struck by the third officer also cannot be shown to be clearly excessive. This officer had observed the conduct and the demeanour of the suspect, but had not noted that he was disarmed prior to the blows being struck. On the available evidence, it cannot be established

beyond a reasonable doubt that in striking the suspect, the officer went beyond a use of force which was justified and reasonable in the circumstances, as perceived by the officer.

An additional complicating factor is the difficulty in establishing the extent to which the use of force by police contributed to or caused bodily harm to the suspect, due to the presence of the relatively recent, pre-existing injury to his jaw.

As there is insufficient evidence to establish an excessive and therefore unlawful use of force by the officers involved, there is no substantial likelihood of conviction for assault-related charges. As a result, no charges have been approved.

In completing the charge assessment in this case, the material reviewed by CJB included:

- The anticipated evidence from the injured individual.
- The anticipated evidence from a number of civilian witnesses, private security company employees and police officers.
- A video recording showing the conduct of the male prior to his contact with police.
- Medical evidence relating to the injury sustained by the male who was arrested.

The charge assessment was conducted by senior Crown Counsel who does not work in the same region as the police officers.

### **The Prince George Incident**

On December 4, 2013, the IIO submitted a RTCC in relation to an incident in Prince George on August 11, 2013, in which a police vehicle collided with an all terrain vehicle (ATV), resulting in serious injuries to a passenger on the ATV.

At approximately 3:00 a.m., an on-duty RCMP officer in the vicinity of the intersection of Highway 97 and Northwood Pulp Mill Road noted an ATV reportedly being driven in a manner contrary to the *Motor Vehicle Act*. The officer attempted to stop the ATV; however, the driver failed to stop. A short time later a collision occurred between the police vehicle and the ATV, which went off the road and landed down an embankment. The ATV driver sustained minor injuries. A passenger sustained serious injuries.

There is conflicting evidence as to how the collision occurred. The police officer attributed responsibility for the collision to the driver of the ATV. The anticipated evidence of the officer comes from his notes of the incident, information provided through his legal counsel, and the officer's statements to radio dispatch during the incident and to another RCMP officer following the collision.

The driver of the ATV declined to provide a statement. The passenger on the ATV provided a statement in which he attributed responsibility for the collision to the police officer.

The available evidence from the officer indicates that he was driving south on Highway 97 (the John Hart Highway) when he saw headlights coming out of the weigh-scales in the wrong direction. He noted that a side by side ATV cut directly in front of him. The officer activated the

emergency lights on his vehicle and turned around. The ATV did not pull over, but proceeded eastbound on Northwood Pulp Mill Road. The officer used his loudspeaker to direct the ATV to pull over, however it did not stop. The officer turned off his emergency lights and did not pursue the ATV; however, he continued to observe and follow it.

The officer recorded in his notes that he saw oncoming headlights and feared that the ATV would collide with the oncoming vehicle as the ATV was swerving all over the road making no attempt to get off road. The officer recorded that he believed there was potential for a serious accident and that he should follow the ATV at a distance, not in pursuit. The officer also recorded that he believed there was a need to warn oncoming motorists of potential danger. The available evidence indicates that the officer decided to pass the ATV in order to go further down Northwood Pulp Mill Road and block off traffic coming in the other direction.

When the ATV pulled back into the right (eastbound) lane, the officer sped up and was driving in the left lane (westbound) close to fog line, to give the ATV as much room as possible. The officer noted that the driver of the ATV saw him. A collision occurred which the officer attributed to the ATV driver deliberately ramming the police vehicle. Following the collision, the ATV fishtailed and went into the right hand ditch, down an embankment. In speaking to another officer at the scene following the collision, the officer driving the police vehicle said that he felt the ATV was trying to run him off the road.

Other available evidence from the officer indicates that he repeated the command "Vehicle Pull Over" using his loudspeakers several times, and that he did not turn off his vehicle's headlights at any material time.

The evidence of the passenger on the ATV attributes blame for the collision to the officer driving the police car. The ATV passenger's evidence indicates that after dinner and socializing with an acquaintance, the two went out on an ATV at about 11 pm, with the other person driving. They had to stop a number of times due to the vehicle overheating. They were proceeding on a trail behind the Hart Highway weigh-scales when the driver wanted to cross the road to get to a restaurant in the area. As they started across the road the police lights came on and the police car made a U-turn. The driver of the ATV kept going.

The passenger described having a blank in his memory for some of what followed. However, he remembers the police car being behind the ATV, which was in its proper lane on Northwood Pulp Mill Road. According to the ATV passenger, the officer tried to pull in between the ATV and the ditch on the road. He heard the police officer say something on his "radio or whatever", but could not understand what he was saying, as the ATV was quite loud. (This was presumably the officer speaking over the police vehicle loudspeaker.) The police car then went back behind them, and the ATV driver continued with the officer still following them along Northwood Pulp Mill Road.

According to the passenger, the police officer then shut off all of his lights, both emergency lights and headlights. There were no lights on the road so the passenger could not see the officer behind them at all. He asked the ATV driver several times what he was doing but the driver did not respond, and may not have heard him because the ATV was loud.

They kept going and were travelling at about 48 km/h. Both the passenger and driver were looking back. When they looked ahead of themselves again, they had kind of swerved onto the other side of the road (while looking behind them). All of a sudden all of the lights on the police car came back on, and they could not see him behind them. The police vehicle was behind them to the left.

At this point they were in the wrong lane and the ATV driver started turning away to go back into the proper lane. According to the passenger, the police car swerved toward them and hit them just about at the yellow line.

The evidence of the passenger is that he had 3 or 4 beer while on the ATV after leaving the residence until about an hour before the collision. He indicated that the driver had been drinking alcoholic beverage at the residence and while on the ATV, but he did not know how much the driver had to drink.

An expert report from a forensic collision analyst concluded there was insufficient evidence to determine the speed of the ATV or the speed of the police vehicle; however, the area of impact was consistent with being in the westbound lane of Northwood Pulp Mill Road.

The GPS data for the police vehicle indicates that it was in motion at various rates of speed for the entirety of its route on Northwood Pulp Mill Road. A vehicle inspection confirmed that it is impossible for the headlights to be turned off on the police vehicle unless it comes to a full stop.

In assessing this case, CJB considered the offences of "Dangerous Operation of a Motor Vehicle", contrary the *Criminal Code*, and "Driving Without Due Care and Attention" under the provincial *Motor Vehicle Act*.

To obtain a conviction for dangerous operation of a motor vehicle, the Crown must prove (among other things) that the driving was a marked departure from the standard of care that a reasonable person would observe in all of the circumstances. The analysis of fault under the *Criminal Code* requires full consideration of two questions:

1. In light of all of the relevant evidence, would a reasonable person have foreseen the risk and taken steps to avoid it if possible; and
2. Was the failure to foresee the risk and take steps to avoid it, if possible, a marked departure from the standard of care expected of a reasonable person in the accused's circumstances?

Driving without due care and attention under provincial legislation is proven when the Crown can establish that the accused was not paying appropriate or sufficient attention to his or her driving in all of the circumstances. Proof of momentary inattention or carelessness is sufficient to sustain a conviction for this offence. To make out the offence, the Crown must prove that the driving was improper, in the sense that in all the surrounding circumstances, it departed from the accustomed sober behaviour of a reasonable person. It is not a standard of perfection, however. A person's driving must only be objectively reasonable having regard to all the circumstances.

On the basis of the available evidence, Crown Counsel concluded it is not possible to prove beyond a reasonable doubt that the police officer's driving was demonstrably dangerous, or that it demonstrated inattention, carelessness and/or a lack of due regard for safety. There is no substantial likelihood of conviction for either *Criminal Code* or *Motor Vehicle Act* offences.

The evidence is capable of establishing that the police vehicle and the ATV collided in the oncoming westbound lane of Northwood Pulp Mill Road while both vehicles were travelling

eastbound. The only direct evidence of the specific events that led to the collision comes from the passenger of the ATV, and the officer driving the police vehicle. Their versions differ as to who was responsible for the collision, and there is no reason to accept the evidence of the passenger over that of the officer involved. In addition, there are some reasons to discount the evidence of the passenger. He acknowledged a gap in his memory at the beginning of the sequence of events after the police vehicle began following the ATV; he had consumed liquor over the course of the evening; and he provided a description of the police vehicle turning off all of its lights until suddenly appearing a short distance behind the ATV, even though a vehicle inspection confirms that it would have been impossible for the officer to turn off the headlights unless his vehicle was stopped.

On the other hand, if a judge or jury accepted the officer's description of the collision, the erratic driving of the ATV was the sole cause of the incident. In such a case, the officer would not be found guilty of any offence. CJB has also concluded that even if the evidence of the officer were not accepted, given the issues with the evidence of the passenger, the version of events provided by the officer is capable of raising a reasonable doubt about how the collision occurred. This also would require that the officer be acquitted on any possible charge that might be laid in connection with the circumstances of this case.

Accordingly, no charges have been approved against the officer who was the subject of the IIO investigation.

In completing the charge assessment in this case, the material reviewed by CJB included:

- The anticipated evidence of police and civilian witnesses, including the injured person and the officer subject to investigation.
- Investigation Record Book Entries and Notes.
- Police notes and statements, including the notes of the officer subject to investigation.
- Scene Descriptions.
- Forensic Collision Analyst Investigation Report.
- Exhibits.
- Photographs, Videos and Audio Recordings.
- RCMP Operations Manual Extracts.

The charge assessment was conducted by senior Crown Counsel who does not work in the same region as the police officer.

### **The Vancouver Incident**

On December 12, 2013, the IIO submitted a RTCC in relation to an incident in Vancouver on July 15, 2013, in which an individual who was running away from police suffered a significant injury to his leg.

There is some disagreement between the evidence of the injured male and police witnesses, and in particular with the evidence of the officer who was the subject of the investigation with respect to how the male was injured.

Shortly after 11:15 p.m., members of Vancouver Police Department (VPD) responded to the area of the 800 block of Denman Street in response to a call from a business owner who was chasing a man who had allegedly been damaging his property. The owner heard a loud noise

outside his business and when he and an employee went outside, they noted a sign owned by the business lying on the ground and a male running away. They replaced the sign, however, about 10 minutes later they heard the same noise and when they went outside the sign was again knocked down and the same individual was running south on Denman Street. The employee pursued the individual, engaged in a brief confrontation, but the male again fled. The employee returned to the business and police were called.

A physical description of the individual was broadcast by police, and one of the officers responding located an individual matching the description in the 900 block of Denman Street. This officer pulled an unmarked police vehicle alongside the individual. The officer, who was in full uniform, attempted to engage the male in conversation. According to the officer, the individual stated that he had nothing to say and did not want to talk to the officer. The officer told him that there had been a police incident and he needed to talk to him, as he had been described in a crime that had occurred. As the officer began exiting his vehicle, the individual began to run quite fast straight south on Denman. The officer broadcast his location and the direction of travel over police radio.

Another officer in a nearby police vehicle heard the broadcast and saw the male running towards him, on the east sidewalk of Denman Street. He activated his emergency lights, and attempted to stop the male as he crossed Comox Street. The male did not stop, and continued to run south on Denman. The officer made a u-turn in his police car, and went after the male, who was crossing Denman to the west side.

The male ran westbound into a lane, at which point the officer lost visual contact. He turned into the lane, and saw the male turn left, south bound in the west lane off Denman toward a parking lot behind the 1100 block. The officer turned into the lane and saw the male on top of a construction fence. He brought his patrol car to an abrupt stop as he came up to the fence, which was preventing the officer from proceeding further by vehicle. The vehicle contacted the fence, which the officer attributed as likely due to loose gravel in the lot. The male came off the fence and landed on the ground. At this point, the officer got out of his vehicle to go over the fence and continue to pursue the suspect on foot.

The male got up off the ground and ran a few steps into the lot then collapsed onto the ground and began to yell. The officer yelled at the suspect to stay where he was, and not move. He then broadcast their location to other units. Multiple patrol units arrived on scene. A leg injury was noted as the male was taken into custody and Emergency Health Services (EHS) were called. EHS treated and transported the suspect.

In his statement to investigators, the male advised he was walking up Denman Street and was approached by a police officer, who pulled over on the side and asked if he could talk to him for a second. The male said that he told the officer he did not have anything to say and was not doing anything wrong. According to the male, the officer then said he was going to put him in handcuffs. The male then asked the officer "For what?" He repeated that he was not talking to the officer, and walked away and left. He saw five police cars all with lights coming and so he took off. He was climbing over top of a fence to get to his buddy's car, when the police car smashed through the fence and launched him 20 feet through the air. He had pushed himself up and his legs were dangling down when the car came straight through. He did three rolls forward into the field. His leg was injured as a result of all of this.

The male indicated he had consumed about six or even ounces of alcohol, having had a few drinks with dinner. He advised he was not heavily intoxicated, and that he did not have any drugs in his system.

While the available evidence supports a conclusion that the vehicle driven by the officer did strike the fence while the male was on it, causing him to fall to the ground and suffer significant injuries, the officer was clearly engaged in the execution of his duties as a peace officer when this incident occurred. He was pursuing someone he reasonably believed had committed a criminal offence and who had fled from another officer who tried to speak to him.

The only direct evidence of the specific events that led to the injuries comes from the injured male and the officer driving the police vehicle. Depending on which version a judge or jury accepted, the officer's conduct was either an intentional ramming of the fence intending or at least reasonably expecting that it would cause the male to fall off, or it was an inadvertent contact with the fence as a result of making a sudden stop on a gravel surface.

Given the conflicting evidence, it would not be possible for the Crown to prove beyond a reasonable doubt that the officer intentionally drove his vehicle into the fence, thereby using force that was disproportionate, unreasonable, or unnecessary in all the circumstances, or that he was guilty of committing the offence of "Dangerous Operation of a Motor Vehicle" under the *Criminal Code*.

If a judge or jury were to accept the officer's account of what took place, he would be acquitted of any possible charges that might be considered in the circumstances. Even if the evidence of the officer raised a reasonable doubt as to whether he intentionally, unreasonably, or carelessly struck the fence with his vehicle, he would be entitled to an acquittal on any of the possible charges that might arise from the circumstances.

As the officer's account of what took place is reasonably capable of belief, and given the onus of proof on the Crown, including with respect to issues of credibility, there is no substantial likelihood that the officer would be convicted of any offence relating to his pursuit of the male and his striking of the fence with the police vehicle. As a result, no charges have been approved.

In completing the charge assessment in this case, the material reviewed by CJB included:

- Executive Summary and Detailed Narrative.
- Summaries and Transcripts of Statements of civilian witnesses.
- Notes of VPD Officers and IIO investigators.
- General Occurrence and Task Action Reports.
- Medical Records of the injured male.
- Photographs and Scene Descriptions / Diagrams.
- Engineering and GPS Data Reports.

The charge assessment was conducted by senior Crown Counsel who does not work in the same region as the police officer.