



# MEDIA STATEMENT

## CRIMINAL JUSTICE BRANCH

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15-05

### **No Charges Approved in IIO Investigation of Maple Ridge Arrest**

**Victoria** – The Criminal Justice Branch (CJB), Ministry of Justice, announced today that no charges have been approved against members of the Ridge Meadows Royal Canadian Mounted Police (RCMP) detachment in connection with an arrest on February 13, 2014. Subsequent to his arrest, an adult male complained of having sustained an injury to his right arm. The matter was investigated by the Independent Investigations Office (IIO), which subsequently submitted a Report to Crown Counsel to CJB.

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

In this case CJB has concluded based on the available evidence that there is no substantial likelihood that the officers subject to investigation would be convicted of any offences arising from the circumstances. A Clear Statement explaining the decision in greater detail is attached to this Media Statement.

In order to maintain confidence in the integrity of the criminal justice system, a Clear Statement explaining the reasons for not approving charges is made public by CJB in cases where the IIO has investigated the conduct of police officers and forwarded a report to CJB for charge assessment.

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[www.ag.gov.bc.ca/prosecution-service/](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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**Summary**

On February 13, 2014, a member of the RCMP conducting a traffic stop in Maple Ridge was in the process of issuing a roadside suspension when the driver fled the scene on foot. The officer pursued him, and was joined in the pursuit by two other officers who assisted in locating and apprehending the driver roughly 250 metres from the location of the original stop. Upon arrival at the police detachment the driver complained of pain to his right arm. He was taken to hospital where he was diagnosed as having an injury to the right bicep, later confirmed to be a tear of the bicep muscle.

Following a thorough review of the Report to Crown Counsel submitted by the IIO, CJB has concluded that the available evidence is not capable of establishing that any of the officers involved in the arrest and apprehension used an excessive, and therefore unlawful, degree of force. In addition, the evidence is not sufficient to prove that the injury sustained by the driver was a result of the application of force by police. As such, the available evidence does meet CJB's charge assessment standard for initiating a prosecution, and no charges have been approved against these officers.

This Statement contains summaries of the evidence gathered during the IIO investigation, and the applicable legal principles. The summaries are provided to assist the public in understanding the decision of CJB not to approve charges against the officers who the Civilian Director concluded may have committed an offence. They do not detail all of the evidence considered, or discuss all relevant facts, case law or legal principles.

The charge assessment in this matter was conducted by a senior Crown Counsel who is located in a different area of the province than the officer under investigation, and who has no prior or current connection with the officer.

**Charge Assessment and the Criminal Standard of Proof**

The Charge Assessment Guidelines applied by the Criminal Justice Branch in reviewing all Reports to Crown Counsel are established in Branch policy and are available online at:

[http://www.ag.gov.bc.ca/prosecution-service/policy-man/pdf/CHA1\\_ChargeAssessmentGuidelines.pdf](http://www.ag.gov.bc.ca/prosecution-service/policy-man/pdf/CHA1_ChargeAssessmentGuidelines.pdf)

In making a charge assessment, Crown Counsel must review the evidence gathered by investigators in light of the legal elements of any offence that may 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 an offence does not have to prove that he or she did not commit the offence. Rather, the Crown bears the burden of proof from beginning to end.

A criminal trial is not a simple credibility contest between witnesses for the Crown and witnesses for the defence. If an accused person testifies and denies an offence, he is entitled to be acquitted in any or all of the following circumstances: if the judge or jury accepts his evidence; if the judge or jury finds that his evidence raises a reasonable doubt; if the judge or jury does not know whom to believe; or, even if the judge or jury does not accept the evidence of the accused, nonetheless finds that there is a reasonable doubt in favour of an acquittal on the totality of the evidence.

## **Relevant Law**

Under section 25 of the *Criminal Code*, a peace officer is justified in using as much force as is necessary to effect an arrest, provided that the officer acts on reasonable grounds. However, section 26 of the *Criminal Code* provides for criminal liability when the force used is excessive.

Case law interpreting these sections has recognized that police officers may need to resort to force in order to execute their duties, but the Supreme Court of Canada has held that courts must guard against the illegitimate use of power by the police against members of our society, given its grave consequences.

Police do not have an unlimited power to inflict harm on a person. 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, and are not held to a standard of perfection and are not required to precisely measure the amount of force that they use. Police are not required to use only the least amount of force which might successfully achieve their objective. A legally acceptable use of force is one which is not gratuitous, and which is delivered in a measured fashion.

## **Summary of relevant evidence**

### **Complainant's Evidence**

According to the injured driver, he had been pulled over for speeding. He initially tried to walk away, but was stopped by an RCMP officer. The driver told IIO investigators that due to the location he had stopped in he didn't want a scene, so he "*bailed*" and "*took off running*." He said that police chased him and tackled him to the ground in what he described as "*a good football tackle*". When officers were handcuffing him they put him into a creek. He also stated that police threw him to the ground and told him "*This is what you get for taking off*."

The driver said he ran less than  $\frac{1}{4}$  of a mile and confirmed that he did jump over a fence. He clarified that when police tackled him to the ground they laid him in a creek, face first and handcuffed him. Police told him to get up but he required their assistance to do so. He advised the IIO that as he was being walked out of the creek bed the police "*started torqueing on my arm and threw me into the ground once*".

He also said that he "*wasn't totally resisting*" being taken into custody. He stated that he did not feel any pain before his arm was torqued and did not do anything to torque his arm when he was running away. He described jumping a wire fence, saying it was easy, however, he also said he "*basically fell over it*". When he got to the police station and the handcuffs were removed he realized there was something "*seriously wrong*" with his arm, and an ambulance was called for him.

In a later interview he described the extent of the injury and difficulties it was causing him. At that time, he said the injury did not occur as a result of jumping a fence. He also said he did not receive the injury while running, as he would have felt the injury if he had. He again described police as having pushed him down and torqued his arm.

### Medical Evidence

The driver consented to the IIO obtaining his medical records in relation to the incident. His hospital records indicated that he had sustained a torn right bicep. A nurse who assessed him completed a triage assessment which described that he was jumping a fence and pulled his right arm, while running from police. The nurse who completed the assessment confirmed to the IIO that she remembered the case and that the information regarding the origin of the injury came directly from the patient. She specifically remembered him saying that he was running from police and caught his arm while jumping a fence.

### Civilian Evidence

A civilian witness who lived near the location of the arrest told the IIO that she was looking out her kitchen window when she heard yelling that she believes was the police yelling for someone to stop, although she could not remember what words were being yelled.

She saw a male running down a path and the police were behind him, but not "*super close*" behind. The male went into the creek, which she stated is very slippery and the male "*hit the deck*". She later clarified that she thought the male fell down when he went into the creek and that this occurred before the police caught up to him. The police got to the male "*pretty quick*". She believes that at the time the male fell down he was not as visible. She saw two officers at that point, and later on a third officer arrived. She could not remember what the third officer did, but she thought he arrived after it was mostly all done. The other officers already had hold of the male and the third officer also went down into the creek.

This witness said that the police were trying to cuff or zap strap the male, he was struggling and the police were trying to get him to hold still. She said it took the police a while to get the male to cooperate, and she also described that the male and the police wrestled in the creek. She described two officers hunched over the male who was struggling, but she could not say what they were doing other than trying to get him handcuffed.

When the male was being taken out of the creek he was walking normally and was not struggling anymore. When asked if she saw the male go over a fence she said she could not see the fence from her residence. She thought the whole incident took ten or fifteen minutes and most of that time was spent struggling in the creek.

### Police Officer Evidence

The officer who pulled over the driver (the first officer) was also the first to reach him at the point of arrest in the creek.

The evidence of the second officer who arrived at the point of arrest in the creek indicates that he had arrived at the location of the traffic stop to assist the first officer who was dealing with the driver. Following some initial contact and communication with the officers who were already there, he walked back toward his police vehicle. He then heard someone yelling, but he could not hear what it was. He turned in the direction of the yelling to see the first officer still standing beside his vehicle and the driver sprinting quickly away. The first and second officers, as well as a third attending officer, all initially pursued the fleeing male for a short distance in their separate police vehicles. As the second officer was parking his vehicle he noted the first officer running past the vehicle and through a wooden gate to a heavily wooded area next to an apartment building.

He followed on foot through the same gate approximately 30 seconds later but could not see the first officer in the wooded area. Approximately 50 yards into the wooded area, he saw the first

officer and the driver who appeared to be struggling with each other in the creek at the bottom of a gully.

On reaching the pair, he noted that the driver was in a semi-prone position in the water. He assisted in turning the driver and then handcuffing him. The driver was not compliant, was very tense/passive resistant, and would not let officers handcuff him. He was told to stop resisting and they then put the handcuff on his right wrist. The driver's left hand was under his body and he did not take it out when told to do so. While the second officer on the scene gripped the wrist of the driver, the first officer placed the handcuff on his left wrist. At this point the second officer was standing in the middle of the stream, and when he stood all the way up he slipped backwards on the slimy rocks.

The first officer turned custody of the driver over to the third officer who had arrived by that time, and who was assisted for a short time by a fourth officer who had also attended. These two officers took the driver back to the roadway, and he was subsequently transported to the Ridge Meadows Detachment.

### **Application of the Law to the Facts**

CJB has concluded that the available evidence is capable of establishing beyond a reasonable doubt that the first and second officers who arrived at the point of arrest in the creek used force against the driver. The evidence is also sufficient to establish that they did so in the course of their duties as police officers. There is not sufficient evidence to prove that the third officer to arrive, who took the driver into custody following his apprehension and arrest by the other two officers, applied anything but minimal force associated with returning the driver to a police vehicle and thereafter to the Ridge Meadows RCMP Detachment.

The only evidence that any officers may have used excessive force in arresting the driver comes from the complainant. The driver's account to the IIO attributes his injury to the conduct of police, although he said that he did not feel the injury at the time it occurred, and did not realize how bad it was until the handcuffs were removed and he experienced intense pain.

The evidence of the second officer describes a routine apprehension of a suspect who was somewhat resistant to being handcuffed. The only independent witness to the incident provided an account which is consistent with this officer's version of events and not supportive of the driver's account of being thrown to the ground with excessive force. She observed that the police were trying to cuff or zap strap the male, the male was struggling and the police were trying to get him to hold still. She also described that the male and the police wrestled in the creek. When the male was being taken out of the creek he was walking normally and was not struggling anymore.

Further casting doubt on the driver's assertion of excessive force is his statement, made to the attending nurse when he was brought to the hospital, that he was running from police and caught his arm while jumping a fence.

Given that a non-culpable version of events, based upon the preponderance of evidence, is reasonably capable of belief, and the onus of proof on the Crown, including with respect to issues of credibility, there is no substantial likelihood that the officers who were subject of the IIO investigation would be convicted of any criminal offence relating to their interactions with the driver during his arrest.

In the circumstances of this case CJB has concluded that it cannot be proven beyond a reasonable doubt that excessive force was used by any officer involved in arresting the driver. It is also not possible to prove that any use of force by police resulted in bodily harm to him. As the available evidence does not establish an unlawful use of force by police, no charges have been approved.

In completing the charge assessment in this matter, Crown Counsel considered the following materials;

- Report to Crown Counsel Executive Summary and Detailed Narrative;
- Available police notes and statements;
- Summary and transcript of injured driver's statements;
- Medical records of injured driver;
- Summaries and transcript of civilian witness statement;
- Notes and/or summaries of anticipated evidence of IIO investigators;
- General Occurrence and Task Action Reports;
- Photographs.