



# MEDIA STATEMENT

## CRIMINAL JUSTICE BRANCH

June 15, 2015

15-11

### **No Charges Approved in IIO Investigation of Arrest near Chilliwack**

**Victoria** – The Criminal Justice Branch, Ministry of Justice (CJB) announced today that no charges have been approved against two police officers in relation to their use of force in arresting a suspect on February 16, 2014 near Chilliwack. The incident 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 would be convicted of any offences arising from the circumstances. A Clear Statement explaining these decisions 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.

Media Contact: Gordon Comer  
A/Communications Counsel  
Criminal Justice Branch  
(604) 660-3282

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

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Office of the  
Assistant Deputy Attorney General  
Criminal Justice Branch  
Ministry of Justice

*Mailing Address:*  
PO Box 9276 Stn Prov Govt  
Victoria, BC V8W 9J7

*Office Location:*  
9<sup>th</sup> Floor, 1001 Douglas Street  
Victoria, BC V8W 9J7  
Telephone: (250) 387-3840  
Fax: (250) 387-0090

### **Summary of Decision**

On February 16, 2014 at approximately 10:30 p.m. Chilliwack RCMP were advised of a two vehicle head-on collision near Sweltzer Creek Road outside of Chilliwack. Three occupants of one vehicle had left the scene. A Police Service Dog handler subsequently located the three persons approximately a kilometer from the accident scene and attempted to arrest them. One of the three became involved in a physical confrontation with this officer and another RCMP officer who had arrived a short time later. This individual was later assessed and received medical treatment for serious injuries to his face. On June 25, 2014 the individual (the Complainant) submitted a complaint in relation to the incident to the office of the Police Complaints Commissioner. The complaint was referred to the Independent Investigation Office (IIO) which conducted an investigation and subsequently submitted a Report to Crown Counsel (RCC) to the Criminal Justice Branch (CJB).

After a thorough review of the RCC, CJB has concluded that the available evidence is not sufficient to establish beyond a reasonable doubt that any force used by the officers was excessive in the circumstances. The evidence is also not sufficient to establish beyond a reasonable doubt that the injuries sustained by the Complainant were the result of the use of force by the officers. As a result no charges have been approved in the case.

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 Chief 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 officers under investigation, and who has no prior or current connection with these officers.

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

The Charge Assessment Guidelines applied by the Criminal Justice Branch in reviewing all RCCs 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.

### **Applicable 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**

On the late evening of February 16, 2014 the Complainant was in the rear seat on the passenger side of a vehicle travelling on Vedder Mountain Road near Chilliwack. He was with two other individuals, one male and one female. The female was driving. All three had been drinking and there was liquor in the vehicle. At approximately 10:30 p.m. the female driver swerved into an oncoming pickup truck. The collision was significant, causing extensive damage to both vehicles. According to health care records, the Complainant told medical personnel that he was not wearing a seatbelt and his knees and face struck the seat in front of him.

After the accident, the driver of the other vehicle (the "Second Driver") was met by one of the males from the vehicle in which the Complainant was riding. Based on the Second Driver's description, this male is believed to be the Complainant. He was described as bleeding from his face. The Second Driver said that this person was irate and wanted to fight. The Second Driver quickly found his cell phone and called for assistance. The male returned to the other vehicle and left the scene, along with the other two occupants, walking up Sweltzer Creek Road.

Several officers attended the scene and attempted to locate the trio. One of the responding officers (Officer 1) came upon the Complainant walking alone. He stopped and briefly spoke with him, noting that the Complainant was carrying a black pouch and had '*a little trickle of blood under his nose*'. The Complainant stated he was just heading home.

Another officer (Officer 2) next drove by the Complainant who was still walking alone. She initially passed him but turned her vehicle around and questioned him about the collision. The Complainant stood outside on the passenger's side of the police vehicle and the officer turned on her alley light. Although the officer had a difficult time seeing, she noticed blood on the

Complainant's teeth. The Complainant initially identified himself with a false name, but shortly after he told Officer 2 that he had '*lied*' and provided his correct name. Officer 2 asked him about the collision and he told the officer that he had seen the vehicles by the road but walked past. The officer allowed him to leave and drove to Officer 1's location where she ran various computer checks on the vehicle involved in the collision.

At about the same time, a Police Service Dog (PSD) handler (Officer 3) attended the accident scene, where he deployed his PSD in an effort to locate the persons who had left the scene. At approximately 11:25 p.m. Officer 3 came upon three people walking on the roadway approximately one kilometer from the accident scene.

### **The Complainant's Evidence**

The Complainant states that he had been drinking and was not injured at all in the motor vehicle collision. He told IIO investigators that he left the scene of the accident with his two companions and while they were walking up Sweltzer Creek Road a police vehicle approached. (This would have been Officer 2.) The Complainant stayed on the road but his two friends hid. He recalls Officer 2 asking if he knew anything about the accident. He admits that he lied to the officer and told her he did not.

According to the Complainant he and his friends continued walking along the road and about ten minutes later Officer 3 approached them from behind on foot. Officer 3 had a dog on a leash and ordered them to get down. The complainant states his friends went on the ground and he was about to get down but the officer began goading them with the dog, telling the dog to "*get them*". He asked the officer what was going on but he states that the officer only continued to goad them with the dog.

He told investigators that words were exchanged and he called the officer a "*Nazi*". He spat at the officer and threw a laptop bag he was carrying over the officer's head. As a result, the dog jumped at him and bit his arm. The Complainant states he punched and kicked at the dog to keep it away.

At this point, Officer 2 arrived on scene in her police vehicle. The Complainant says that Officer 3 grabbed him and threw him face down to the ground, kicked him twice on the left side of his face and stomped on the back of his head. Officer 2 then approached and kicked him on the right side in the ribs, saying "*you fucking lied to me*". Both officers then picked him off the ground, handcuffed him and put him in a police vehicle. He was then taken to the hospital.

The Complainant submitted a complaint to the Office of the Police Complaint Commissioner on June 25, 2014 via email. The complaint mentions Officer 3 by name, but makes no mention of Officer 2 or the assault by her that he later alleged.

The complaint was forwarded to the IIO on July 15, 2014.

### **Officer 3's Evidence**

Officer 3 told IIO investigators that as he approached the trio on the roadway, he could see that there were two males and one female. The Complainant had a considerable amount of blood on his face. Officer 3 believed them to be intoxicated because of their exaggerated gestures and loud voices. Given the track and that the three fit the description of the persons who left the scene of the accident, Officer 3 told IIO investigators that he had grounds to arrest for the offence of failing to remain at an accident scene under the *Criminal Code* and *Motor Vehicle Act*, and assault of the other driver.

Officer 3 states he announced "*It's the police. Stop. You're all under arrest.*" The three immediately complied and got on the ground. The PSD was in an excited state and began barking, but the officer controlled him with a leash.

At this point, the Complainant got up and began to run away. Officer 3 states he yelled at him: "*Look, you're under arrest. If you continue to run I am going to send my dog*". The Complainant returned and knelt down with the other two, and Officer 3 then radioed for assistance.

According to Officer 3 the Complainant stood up again and became belligerent, stating that they had done nothing wrong. He demanded that the officer leave immediately. He continued to make demands and approached the officer quickly, in an aggressive manner, coming to within three feet of him. The Complainant then attempted to kick the dog and the PSD reacted by biting his right arm.

As this was happening, the female stood up and approached the officer, pushing him and telling him to "*Get the hell out of here*". The PSD then turned its attention to her. Officer 3 pulled hard on the dog's leash to keep him back. With his free hand he pushed the female backwards. She tripped on her other male companion, who was behind her, and fell to the ground hard.

Next, Officer 3 recalls the Complainant throwing something at him and spitting. He states that the Complainant's mouth was covered in blood and he spat this "*huge blood thing*" which struck the officer near the neck or upper shoulder area.

At this point, Officer 2 arrived in her police vehicle. She quickly exited and grabbed onto the Complainant's arm but he resisted. Officer 3 decided to go to her aid. He let go of the PSD's leash and commanded it to stay.

He grabbed the Complainant's other arm, then tripped and pushed the Complainant to the ground. He states he did this to prevent a further assault on himself or Officer 2. The Complainant fell face down on the ground with his hands underneath him. Officer 3 was on the Complainant's back, using his weight to hold him down, and ordered him to put his hands behind his back, however, the Complainant resisted. Officer 3 told investigators he was very concerned that the PSD was excited and may attack someone. He felt it was imperative that he regain control of the PSD. The Complainant was refusing to put his hands behind his back so Officer 3 says he struck him with a closed fist as hard as he could on the right shoulder. Immediately, his arms came out and the officers quickly cuffed him. From that point on he did not resist.

Although the Complainant had a bloody face when he first encountered him, Officer 3 noticed additional scratches on his face when he came up off the ground.

### **Officer 2's Evidence**

At 11:16 p.m. Officer 2 heard Officer 3's radio broadcast that he had "*three in custody at the gravel pit*". It was approximately a kilometer away and took her only a minute or so to drive. As she approached, she saw one male kneeling and a female sitting on the ground. The Complainant was standing and appearing to lunge at Officer 3 who had a PSD. Just as she opened her car door to step from the vehicle, she states she saw the Complainant kick at the police dog and then a "*big wad of bloody spit*" go flying towards Officer 3.

Officer 2 ran up behind the Complainant, grabbed his arm, told him to stop and said that he was "*under arrest for assault Peace Officer*". Officer 2 states that the complainant initially relaxed and she turned him towards her police vehicle. As they got close to the vehicle, she stated: "*You fucking lied to me*", a comment she later explained was not aggressive but rather a result

of her being offended that he would mislead her. The Complainant then started to resist and push away from the vehicle. Officer 2 pulled her handcuffs out and had hold of his left arm. Officer 3 left his dog and grabbed the Complainant's right arm. According to Officer 2, the two officers took the Complainant to the ground face down and were on top of his back.

Once on the ground, he struggled and resisted being cuffed. He pushed up against the officers and tried to stand up. According to Officer 2, Officer 3 was near the Complainant's head on his left and she was on his right side. She managed to get one cuff on. Officer 3 then struck the Complainant with a closed fist three times in quick succession to the left side of the face. As a result, she was able to put the other cuff on the Complainant.

At this point, Officer 1 arrived at the scene and assisted, taking physical control of the Complainant. Later, Officer 2 observed the Complainant in the ambulance. It was the first time she saw him in a well-lit area, and she told investigators she was not expecting to see so much blood on his face. She also told investigators that Officer 3's strikes were not forceful enough to cause the injury she observed. She felt some of the scrapes to his face were the result of being face down on the gravel roadway.

### **Officer 1's Evidence**

Officer 1 told investigators that when he arrived at the scene, Officer 2 had the Complainant up against the back of the police car and Officer 3 was 20 to 30 feet away dealing with the PSD. Officer 1 then took control of the Complainant and also assisted in arresting the other two.

When he took custody of the Complainant, he noted that there was more blood under his nose and his cheek was now swollen.

### **The Complainant's Companions**

Neither of the Complainant's two companions cooperated with the IIO investigation. Despite multiple attempts by investigators to obtain statements from them, no statements were obtained.

### **Injuries to the Complainant**

The Complainant suffered significant injury to the left side of his face, including fractures and a laceration to his lip. The doctor who assessed him in emergency stated the injuries would have been caused by a solid object, and not from the impact on the padded rear of a car seat. This type of injury often arises in sports from contact with a hard ball or bat, and could result from either from a blow to the side or directly in front of the face.

The available evidence does not indicate that the doctor examined the vehicle in question, or was aware of the severity of the collision. The available evidence also does not establish whether the Complainant's face struck a padded or a hard surface in the accident.

The paramedic who examined the Complainant at the scene, told IIO investigators that the Complainant had attributed the facial injuries to the altercation with police. However, the paramedic told police that he has seen similar injuries in both assaults and car accidents.

### **Application of the Law to the Circumstances**

In completing this charge assessment the Crown considered possible charges of Assault Causing Bodily Harm contrary to section 267(b) of the *Criminal Code*; or Assault contrary to section 266 of the *Criminal Code*.

The Complainant's account of the incident describes an assault, or potentially an assault causing bodily harm. Although the officers may have been acting on reasonable grounds and were justified in using force to effect an arrest, on the Complainant's evidence the force used was excessive and unjustified. In particular, once he was on the ground there was no apparent lawful justification for Officer 3 allegedly kicking him in the face and stomping on the back of his head, or for Officer 2 allegedly kicking him in the ribs. The use of such force would be excessive and if the Complainant's evidence was accepted, apparently malicious.

However, Officers 2 and 3 both provide exculpatory versions of the incident. Based on the officers' descriptions, force was used on reasonable grounds and limited to meet the exigent circumstances. Officer 3 explained how it was necessary to assist Officer 2 in arresting the Complainant and to act quickly to regain control of his PSD which was a threat to others. This justification is consistent with Officer 2's account. Moreover, the officers deny kicking the accused in the manner he describes.

Given this conflict in the evidence, the issue of credibility is central. If the exculpatory evidence of an accused is believed then an accused must be acquitted. Even if the evidence of an accused is not believed, a court must consider whether the evidence still raises a reasonable doubt.

Both officers provide substantially consistent and confirming accounts of the incident. The officers differ on only one significant point: the number and location of strike(s) by Officer 3. Crown Counsel has concluded that even if the evidence of the officers was not believed, and despite this inconsistency in their evidence, the evidence of the officers is none the less capable of creating a reasonable doubt as to whether an assault or an assault causing bodily harm occurred.

On the available evidence, the Complainant's facial injury does not necessarily corroborate any of the versions of the incident. It does not establish definitively whether the injury was caused by the accident; by being thrown to the ground; or by being struck or kicked in the face. In these circumstances, this evidence is neutral since it is consistent with both the inculpatory and exculpatory versions of the event.

It is significant that the Complainant stated he was not injured at all in the collision, as this statement conflicts with every witness who observed him after the collision and before the arrest and observed blood in the area of his nose and mouth.

The Complainant was involved in a serious motor vehicle accident in which he was unbelted and his face struck the seat in front of him. Witnesses who encountered him after the accident, including the Second Driver and Officer 1 (who was not involved in the altercation) described him as bleeding from the nose or mouth. While he stated he was not injured in the collision, this evidence indicates otherwise.

He may have been further injured by the act of being taken to the ground. All parties agree that he was taken face down to the ground and received some injury to his face as a result. The Crown has concluded that on the whole of the evidence it is not possible to prove when the Complainant received the fractures to his facial bones.

While there is disagreement between the Officers 2 and 3 on the strike(s), the Crown must take into account the context and perspective of the officers, as well as the fact that the incident unfolded very quickly and that the officers were responding to the demands of the moment.

The Branch has concluded that a number of aspects of the evidence relating to the Complainant's version of events create a reasonable doubt as to whether the circumstances involve criminal conduct on the part of the officers.

- The specific allegations of excessive force are not confirmed or corroborated by any other witness or evidence. The only other witnesses to provide statements absolutely disagree with the allegation of kicking and stomping. The allegation of an assault by kicking is not confirmed by any other evidence.
- The Complainant is contradicted by the observations of other witnesses. Despite his statement that he was not injured in the motor vehicle collision, as described above, the Complainant clearly did suffer injuries to his face in the collision.
- The Complainant's statement to IIO investigators is inconsistent with his original complaint to the OPCC, in that he did not mention the alleged assault by Officer 2 in his original complaint.
- The Complainant left the scene of an accident to avoid apprehension and lied to two police officers about his identity and knowledge of the collision.
- The Complainant had been drinking and was aggressive with the Second Driver and Officer 3. On his own evidence he acknowledges spitting at the officer and throwing a bag over top of the officer's head.
- The Complainant delayed four months in coming forward with the complaint of an alleged assault. On the evidence available to Crown Counsel there is no explanation for this delay.
- While there is a contradiction in their evidence, neither officer's evidence bolsters or confirms the evidence of the Complainant.

Taking into account all of the available evidence, Crown Counsel has concluded that there is a reasonable doubt that the events occurred as described by the Complainant. The evidence does not provide a substantial likelihood of proving beyond a reasonable doubt that either officer committed either an assault or an assault causing bodily harm. As a result no charges have been approved against the officers involved in the altercation with the Complainant.

### **MATERIALS REVIEWED**

In completing the charge assessment Crown Counsel considered the complete investigative report, including the following materials:

- Executive Summary and Detailed Narrative.
- Summaries, recordings and transcripts of statements from the Complainant, officers involved and civilian witnesses.
- Police officers' notes, Prime reports and "will says."
- Video re-enactment by the Complainant.
- Photographs.
- Medical reports and records.