



MEDIA STATEMENT

CRIMINAL JUSTICE BRANCH

November 18, 2016

16-26

No charges for Surrey RCMP officers involved in arrest

Victoria - The Criminal Justice Branch (CJB), Ministry of Justice, announced today that no charges have been approved against 3 members of the Surrey RCMP involved in an arrest on February 28, 2015. In the course of removing the suspect from the scene of the arrest the suspect became resistant and was physically restrained. During this process the suspect suffered injuries including a broken hip. The incident was investigated by the Independent Investigations Office (IIO), which subsequently submitted a Report to Crown Counsel (RCC) for review by the 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 the CJB. The Chief Civilian Director does not make a recommendation on whether charges should be approved.

In this case the CJB has concluded that the available evidence does not meet the CJB's charge assessment standard for approval of any charges in connection with the incident. The CJB would not be able to prove, beyond a reasonable doubt, that any of the officers committed a criminal offence or used excessive force in the administration or enforcement of the law. A Clear Statement explaining the decision in more detail is attached to this Media Statement and can also be found online at:

<http://www2.gov.bc.ca/gov/content/justice/criminal-justice/bc-prosecution-service/media-statements>

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 the CJB in cases where the IIO has investigated the conduct of police officers and forwarded a report for charge assessment.

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Branch Vision

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Clear Statement

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Summary of Decision

On February 28, 2015, Surrey RCMP officers responded to a 911 complaint from a landlord about a tenant who was “trashing” the suite downstairs. Three officers responded to the call and attended at a basement suite in Surrey.

The scene when they arrived was described as chaotic. The suspect, a large adult male, was screaming and swearing, yelling at the officers that he wanted to be left alone. He appeared to be under the influence of some form of intoxicant. The room was a shambles with broken glass and furniture littering the floor. The suspect was noted to be bleeding and sweating and was unclothed. After some initial difficulties the suspect became more compliant and agreed to leave the residence.

As he was about to enter the ambulance he changed in attitude and demeanour. He began pushing and shoving at the officers to the point where he needed to be taken to the ground so that the officers could restrain his feet. In the course of this the suspect sustained injuries to his nose and hip although the latter injury was not immediately obvious. Later it was determined that the suspect had suffered an injury to his right hip that would require surgery.

This statement contains summaries of the evidence gathered during the IIO investigations 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 police officers who were involved. They do not detail all of the evidence considered or discuss all relevant facts, case law, or legal principles.

The charge assessment that is addressed in this statement was conducted by a Crown Counsel with no prior or current connection with the officers under investigation.

Charge Assessment and the Criminal Standard of Proof

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

www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/prosecution-service/crown-counsel-policy-manual/cha-1-charge-assessment-guidelines.pdf

Briefly put, in discharging the charge assessment responsibility, Crown Counsel must fairly, independently, and objectively examine the available evidence in light of the legal elements of any offence that may have been committed in order to determine:

1. whether there is a substantial likelihood of conviction; and, if so,
2. whether a prosecution is required in the public interest.

A substantial likelihood of conviction exists where Crown Counsel is satisfied there is a strong, solid case of substance to present to the Court. When assessing the strength of the case the Crown must also consider the likelihood that viable defences will succeed.

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.

The burden of proof applies to issues of credibility. A criminal trial is not a simple credibility contest between witnesses for the Crown and witnesses for the defence. If the accused testifies, he is entitled to be acquitted in any or all of the following circumstances: the trier of fact accepts his evidence; his evidence raises a reasonable doubt; the trier of fact does not know whom to believe; or, even if the trier of fact does not accept the accused's evidence, there remains a reasonable doubt on the totality of the evidence.

Potential Charges

The potential charges that were considered in this assessment are:

- Assault Causing Bodily Harm contrary to s. 267(b) of the *Criminal Code*.
- Assault contrary to s. 266 of the *Criminal Code*.

Assault is defined in the *Criminal Code* as the intentional application of force to another person without that person's consent. Bodily harm is harm that is more than "trifling or transient".

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. They are not held to a standard of perfection and are not required to precisely measure the amount of force 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.

The Circumstances Surrounding the Incident

At approximately 0717 hours on February 28, 2015, Surrey RCMP officers responded to a 911 complaint from a landlord about a tenant who was "trashing" the basement suite downstairs. The report was that the tenant was yelling and screaming, bleeding, and had broken a window.

The first officers to arrive on scene entered the basement suite and located the suspect seated in a bedroom. The two constables attempted to speak with the suspect inside the residence. The suspect was already upset when the police arrived: he was yelling and screaming, sweating, saying he wanted to be left alone, bleeding, and without clothing. The bedroom was chaotic. A window was broken. Broken glass littered the floor, along with upturned and damaged household items, including a crib. Blood was smeared on the walls and floor. While

the police were explaining their presence, the suspect began waving his arms around and yelling at the officers. The officers observed the suspect pick up a piece of wood, stand up, and begin walking towards the police.

An officer produced his OC (pepper) spray and pointed it at the suspect. The suspect immediately dropped the wood and sat back down. Other officers and paramedics arrived shortly thereafter and the suspect was apprehended under s. 28 of the Mental Health Act as he was a danger to himself and others.

After handcuffing the suspect he was taken without significant incident from his residence to the awaiting ambulance. He continued to yell and scream, and at one point tried to move toward the landlord, but generally he complied with police directions. At the door of the ambulance, the suspect's demeanour and willingness to comply suddenly changed. He refused to enter the vehicle, and began pushing and shoving away from the officers. They took the suspect to the ground, where further restraints were applied to his ankles which were then tethered to his waist.

The suspect struggled with the officers throughout the process. The officers and a paramedic then secured the suspect on a stretcher. The suspect suffered cuts to the bridge of his nose and forehead, and a broken femoral head during the restraining at the ambulance.

The BC Ambulance paramedics transported the suspect to Surrey Memorial Hospital under police escort. The suspect was admitted to hospital for assessment under the Mental Health Act. At the time of admission to the Surrey Memorial Hospital, the RCMP advised the hospital staff of the reason for apprehension and the cuts to his arms, nose and forehead. Based upon the hospital records, it appears that neither the paramedics nor police were aware of the broken femoral head.

During the suspect's admission to Surrey Memorial Hospital, the suspect informed the hospital staff that he was experiencing pain in his right leg. The hospital staff discovered the broken right femoral head. Three days later a surgical team repaired it.

Three months later Surrey RCMP officers attended a residence on an unrelated matter and spoke with the suspect. He told the officers that on February 28, 2015, the police had arrested him and in doing so broke his femur. The incident was referred to the IIO for investigation on the same date.

Evidence Summary

Reports provided by the subject officers, the suspect, civilians and medical personnel are, with some minor variations, largely consistent and provide an accurate review of the incident. By all accounts the suspect had engaged in dangerous, potentially self-destructive behavior prior to the attendance of the police. Under the Mental Health Act police officers are permitted to apprehend a person if the officers believe that the person is a danger to him/herself or others for purposes of an involuntary admission to a hospital. The apprehension of the suspect was appropriate and fairly uneventful until he got to the ambulance. At that point the suspect became violently resistant, struggling to break away from the officers and had to be restrained.

The police took the suspect to the ground. It took three officers to restrain him. They had to anchor his legs to his waist before they were able to secure him onto an ambulance stretcher. Only then could he be transported to the hospital. In the process of taking the suspect to the ground he suffered injuries to his face. None of the officers struck, punched or kicked the suspect during this process. At some point the suspect suffered a fracture to his hip; though it is not possible to determine precisely how or when that happened.

Application of the Law to the Circumstances of the Case

It is clear from the available evidence that there was evidence that could establish the legal elements of the offences under consideration. The evidence of all present confirms that the officers directly applied force to the suspect without his consent. The application of the force caused Bodily harm. The real issue is whether the provisions of s. 25 of the Criminal Code provide a legal justification for the actions of the officers in these circumstances.

There is no issue that the police were acting in the course of their duties as peace officers when they apprehended the suspect. Each was authorized to arrest the suspect and was legally justified in using as much force as reasonably necessary to effect the arrest. The issue from a charge assessment standpoint is whether the force used in arresting the suspect and placing him in the ambulance was excessive under all the circumstances.

The use of physical restraint and force to gain compliance with police directions falls within the range of reasonable force options available to police who are faced with an arrestee who is attempting to resist a lawful arrest. So long as the force the police were using was reasonably necessary to effect the arrest and proportional to the degree of resistance the suspect presented, the police officers in this case would be entitled to the protection of section 25 of the Criminal Code. This is true even if the degree of force they used was not the least possible force that could have been used in the circumstances to achieve the desired result. As previously stated, if the use of force is justified, the police are not held to a standard of perfection and are not required to measure the force they use with exactitude.

As a result of the incident, the suspect came away with two types of injuries. He suffered cuts to his nose and forehead, apparently after his head hit the ground; and, he suffered a broken femoral head. Based on all the evidence, the Crown would be able to prove that the suspect's femur was broken as a result of his struggle with and restraint by the Subject Officers. But that would not necessarily support a conclusion that the conduct of the Subject Officers was unreasonable in the circumstances.

The force used to gain control of the suspect was objectively reasonable in the circumstances, given his persistent resistance, his escalation of the intensity of resistance, his size, and his ability to thwart the Subject Officers.

In the circumstances, the officers involved in the interaction with the suspect on February 28, 2015, would be entitled to the protection of section 25 of the Criminal Code. As a consequence there is no substantial likelihood that any of them would be convicted of any offence. For this reason no charges against the officers have been approved.

Materials Reviewed

In coming to the charge assessment decision in this matter the following materials were reviewed:

- Incident Synopsis, Report to Crown Counsel ("RTCC")
- Civilian and Police Witnesses' Statements (Summaries and Transcripts)
- Police officers' and IIO Investigators' Notes and WillSays
- RCMP Call Reports (CAD) and 911 Call
- Facebook video capturing part of the Incident
- PRIME Reports re suspect
- General Occurrence and Task Action Reports
- Photographs taken by RCMP and IIO
- Medical Records of suspect

- Operation Manual 17.6 Restraining Devices
- Email communications between IIO and RCMP
- Subject Officers' Occurrence Reports