



MEDIA STATEMENT

CRIMINAL JUSTICE BRANCH

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No Charges Approved in Two IIO Investigations

Victoria – The Criminal Justice Branch (CJB), Ministry of Justice, announced today that no charges have been approved against police officers involved in two incidents which occurred in April and in August of 2013, and were investigated by the Independent Investigations Office (IIO). The incidents took place in Vancouver and Williams Lake respectively. The IIO submitted its Reports to Crown Counsel to CJB in December 2013 and February 2014.

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 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. 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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Vancouver and Williams Lake IIO Investigations

In the early morning hours of April 12, 2013, three members of the Vancouver Police Department (VPD) were involved in arresting a suspect after responding to a report of a break and enter. The suspect was located by one officer with the assistance of his Police Service Dog (PSD) a short distance from the location of the break-in. During the arrest, the suspect placed the PSD in a choke hold with his legs. In the ensuing struggle, police used physical force against the suspect, including kicks, knee strikes and baton blows. The suspect suffered a fracture to his orbital bone and a broken bone in his shoulder, as well as dog bites to his arm and leg. After reviewing the whole of the available evidence, the Criminal Justice Branch has concluded that there is not a substantial likelihood of conviction on any charges against the officers involved. Accordingly, no criminal charges have been approved against police.

On August 17, 2013, a male was arrested by members of the Royal Canadian Mounted Police (RCMP) at a residence in Williams Lake. Police were investigating a complaint about a fight between two males in a local bar. One of the males was reportedly armed with a handgun. Police were also investigating a complaint of a disturbance at the residence where the arrest occurred. The male who was arrested was alleged to have been involved in both incidents. This individual later complained of suffering a jaw injury as a result of the use of force by a police officer who was involved in the arrest, transported the accused to the RCMP detachment and dealt with him in cells. After reviewing the whole of the available evidence, the Criminal Justice Branch has concluded that there is not a substantial likelihood of conviction against the officer for any offence related to the force applied to the complainant. Accordingly, no criminal charges have been approved against police.

In each of these cases the charge assessment review was conducted by a senior Crown Counsel who has no prior or current connection with the police officers involved; and who is located in different area of the province than that in which they are employed.

Charge Assessment and Standard of Proof

The Criminal Justice Branch (the Branch) applies a two part test to determine whether criminal charges should be approved and a prosecution initiated: (a) there must be a substantial likelihood of conviction based on the evidence gathered by the investigating agency; and (b) a prosecution must be required in the public interest.

Under Branch policy, a substantial likelihood of conviction exists when 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 at a trial; and the likelihood that viable, not speculative defences will succeed.

In making a charge assessment, Crown Counsel must assess the evidence gathered by investigators in light of the legal elements of the criminal 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 and denies the offence, he or she is entitled to an acquittal where:

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

The Use of Force by Peace Officers

As the Branch has noted in prior Clear Statements, 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. A peace officer who is acting within the course of his or her duties has authority under the *Criminal Code* to apply force which is reasonable and necessary in the circumstances. The *Code* further provides that an officer who is authorized by law to use force is criminally responsible for any excess in that use of force, according to the nature and quality of the act that constitutes the excess.

To prove a criminal assault by a police officer in the course of duty, 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. 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. A legally acceptable use of force is one which is not gratuitous and which is delivered in a measured fashion, however peace officers are not held to a standard of perfection, and are not required to measure the force that they use with precision. The decision to use a certain level or type of force should not be taken from revenge, anger, or malice, but should be capable of being characterized as an application of situational force designed to dissolve a potential risk.

The Incidents Under Investigation

This Clear Statement contains summaries of the evidence gathered during the Vancouver and Williams Lake IIO investigations. The summaries are provided to assist the public in understanding the decision of the Branch not to approve charges against the officers who were involved. The summaries do not detail all of the evidence considered by Crown Counsel, or discuss all relevant facts, case law or legal principles.

Summary of the Vancouver Investigation

At approximately 4:20 am on April 12, 2013, VPD received a report of a break and enter at a business on Nelson Street in Vancouver. A police dog handler and his PSD responded and tracked from the break-in scene, while other officers took containment positions. The PSD followed a trail into Helmcken Park, where the dog veered suddenly into the bushes, alerting the

officer to the presence of the suspect. There are differences in the available evidence as to how the PSD engaged with the suspect and what directions were given to him by police.

The complainant, in describing what took place, states that he was hiding because he heard a police vehicle approaching. He says he lay down in the bushes in an attempt to avoid being caught by police. He heard no commands for him to come out of the bushes. The suspect states that an officer and a dog were ten feet away from him, and that the dog handler intentionally let the PSD attack him as he was in the process of giving himself up to the officer. He tried to kick the dog away and that was when they pulled out the baton. He acknowledges that he tried to put the dog in a headlock choking it out, as he was using his feet to protect himself.

The complainant estimates there were 3 to 5 officers involved and he was hit multiple times with a baton, including blows to his face and body. He estimates being hit 10 or 20 times, 4 or 5 of which were to his face. He thought two officers had batons and that both were using them on him during the incident.

According to the evidence of the dog handler, after following a track for some distance they were in the vicinity of a perimeter fence/cedar hedge line when the dog engaged a suspect who was sitting in the bushes. The PSD was on a 20 foot tracking leash; however, when tracking, the length of the leash deployed is constantly changing due to a number of factors. The dog handler cannot say how much leash the dog had at any given point on the track.

The dog handler states that he was not aware of anyone in the bushes until the dog had engaged with the person. Had he been aware beforehand, he would have stood off and given instructions for them to come out. When the PSD engaged the individual, the dog handler moved up his tracking leash and instructed the individual to come out.

The PSD attempted to pull the suspect out of the cedar hedge, which the dog handler indicates is consistent with its training. The individual took hold of the cedar hedge to prevent being pulled clear. The dog handler gave verbal commands to come out, and pulled on the dog leash to assist the PSD in pulling the subject clear of the hedge. The suspect was pulled from the hedge; however, using his legs he took the PSD around the neck and shoulders and twisted himself, applying pressure to the neck of the dog in a move that was effectively a choke hold.

There were no sounds coming from the dog and the handler feared for its safety, believing it was being choked. In the ensuing struggle the dog handler delivered two knee strikes as hard as he could to the left buttock/upper thigh of the suspect, without effect.

Two other officers ran into the scene and he told them that the individual was choking his dog. One of these officers kicked the suspect twice in the midsection without effect and so he used his baton and struck the suspect twice on his legs, after which the police dog was able to break free of the leg lock.

The other assisting officer who arrived, believing that the suspect was trying to either kill or seriously harm the PSD, also used his baton to strike the suspect, aiming at his upper right arm and bicep area. He struck the individual four to six times more times before he released the dog. The officer states that he shouted for the person to let go of the PSD and when there was no compliance, he re-evaluated the situation before striking again. During this course of action, he and the dog handler continually shouted instructions to the suspect to release the police dog.

After the dog was released, the suspect was controlled and arrested. He was taken to hospital for treatment of his injuries.

A civilian witness living in the area was awoken by loud screams that she initially thought were a male and female struggling. Very soon after that she saw three or four police officers rushing to

the bushes. The officers gathered around and bent over towards the area and it seemed like they were pulling the strugglers apart. The witness heard one of the police officers yell "*get off of her, do it now*", and then start beating a person. The witness was unable to see the person, but saw one of the officers start beating a person 3 or 4 times with an object. The witness only realized it was a dog involved in the struggle, and not a female, when the witness saw the dog pulled out of the struggle.

The object used to hit the person was described as a black stick about a foot and a half long and about an inch in diameter. While not 100% certain, the witness believed that the dog was pulled away after the stick swinging. The witness also stated the officers used fists. This was based on the different noises made by the blows. The witness believes the sequence was two hits with the stick, then fists, then one or two more hits with the stick. The witness believed there were at least four officers and there could have been five.

Conclusion on the Vancouver Investigation

There is available evidence to support a conclusion that physical force was used against the complainant by all three officers. There is evidence from the various police witnesses acknowledging that the dog handler delivered two knee strikes to the left buttock/upper thigh of the complainant; that one of the other officers kicked the complainant twice in the midsection and struck his legs twice with a baton; and that the third officer struck him multiple times in the area of his right upper arm while the complainant was struggling and had the PSD in a hold with his legs. The baton strikes by the third officer were the likely cause of the injuries suffered in the incident— a fractured orbital bone and broken bone in his shoulder.

The evidence supports a conclusion that all three officers were engaged in the execution of their duties as peace officers when this incident occurred. They were investigating in the immediate aftermath of a reported break-in, and were engaged with a suspect they reasonably believed had committed a criminal offence, and who they believed was endangering the PSD which had located him after following a trail from the scene of the alleged offence.

The only direct evidence of the specific events that led to the complainant's interaction with the PSD comes from the complainant and the dog handler. Their versions are markedly different. The complainant essentially says that he was surrendering when he realized the police had a police dog, and that the dog handler purposely had the PSD attack him. In contrast, the dog handler says that he did not realize that the individual was in the bushes until the PSD took hold of him. He indicates that the individual immediately resisted the PSD, placed his legs around it in a choke hold and ignored repeated requests to come out and let go of the dog.

There is a significant body of evidence, including his own, indicating that the complainant placed his legs around the neck of the PSD and was attempting to choke it.

On the available evidence, Crown Counsel has concluded it is not possible to establish that the conduct of the dog handler in utilizing the PSD was an unreasonable use of force or an intentional infliction of harm, as opposed to a responsible use of the PSD in apprehending a person he reasonably believed had committed a criminal offence.

The available evidence is also not sufficient to establish that the blows struck by the two other officers who arrived on the scene were unnecessary, excessive or gratuitous as they attempted to extricate the PSD from the suspect's choke hold. The evidence from the civilian witness supports the police account that once the dog was freed the individual was not struck any additional times. The evidence supports a conclusion that this was a measured use of force which could be characterized as an application of situational force designed to dissolve a potential risk.

On the whole of the evidence, the description of events provided by the police officers, as significantly corroborated by the civilian witness, is capable of raising a reasonable doubt that the degree of force used by each of the officers involved was unreasonable, excessive or unlawful. As a result, the Branch has concluded there is no substantial likelihood that any of the officers would be convicted of any criminal offence relating to their apprehension and arrest of the complainant, and their use of force against him.

The charge assessment in this case included consideration of the following material:

- Report to Crown Counsel;
- Statement of the complainant;
- Statements of the officers subject to investigation;
- Statements of other police and civilian witnesses;
- Evidence of the case investigators;
- Medical records of the complainant; and
- Photographs and scene descriptions/diagrams

Summary of the Williams Lake Investigation

The complainant in this matter is facing a charge of assaulting a peace officer as a result of his alleged conduct in the course of the incident that was subject to the IIO investigation. His matter remains before the court and as a result, the amount of information which the Branch can properly release at this time is limited.

On August 17, 2013, the complainant and a companion arrived at a bar in Williams Lake as it was closing and people were gathering in the parking lot. There is evidence indicating that the complainant became involved in a physical altercation with another male at that location. It was reported to police that one of the persons involved in the altercation had a handgun.

The complainant was later arrested at a residence in Williams Lake after police attended in response to a complaint of a disturbance at the residence. The officer who is the subject of the IIO investigation transported the complainant to the Williams Lake RCMP detachment, following the arrest.

There is conflicting evidence as to the nature of the interaction between the officer and the complainant. There is available evidence that a physical altercation occurred between them, beginning in the secure vehicle bay at the detachment and continuing into the cell block area. Some of the incident was captured on video surveillance.

The complainant was lodged in cells following the altercation and was released later the same day. On August 25, 2013, he sought medical attention and was diagnosed with a fracture of his jaw, for which he later underwent surgery.

The available evidence in this case is capable of establishing that the officer involved did use force against the complainant, both in the secure vehicle bay and in the booking area of the Williams Lake RCMP Detachment. There is also evidence that the complainant was acting aggressively toward the police officer in the RCMP detachment. The Crown has concluded that the evidence is not sufficient to prove beyond a reasonable doubt that that the officer's actions amounted to an excessive, unreasonable or unlawful use of force. On the evidence as a whole, once considered in light of the governing legal principles, the Branch has determined there is no substantial likelihood of conviction against the officer and no charge has been approved.

The charge assessment in this case included consideration of the following material:

- Report to Crown Counsel;
- Statement of the complainant;
- Statement of the officer subject to investigation;
- Statements of other police and civilian witnesses;
- Evidence of the case investigators;
- Medical records of the complainant; and
- Photographs and video, including video recordings from the R.C.M.P. Williams Lake detachment secure vehicle bay and cell block booking area.