



MEDIA STATEMENT

CRIMINAL JUSTICE BRANCH

October 17, 2014

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No Charges Approved in IIO Investigation on Princeton Incident

Victoria – The Criminal Justice Branch (CJB), Ministry of Justice, announced today that no charges have been approved against two members of the Princeton Royal Canadian Mounted Police (RCMP) in relation to an allegation of excessive force on March 22, 2014. The matter was investigated by the Independent Investigations Office (IIO).

Where the Chief Civilian Director of the IIO is satisfied that an officer may have committed an offence, the IIO submits a Report to Crown Counsel to the 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, whether a prosecution is required in the public interest.

CJB has concluded, on the available evidence, that there is no substantial likelihood that the officers who were the subject of the IIO investigation would be convicted of any offences. This decision is explained in greater detail in the attached Clear 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 a police officer and forwarded a Report to Crown Counsel.

The Branch is limited in the information that it can presently disclose about this particular case. There are criminal charges against an individual arising out of the same incident that will be proceeding to court, and it is important to safeguard the fairness of that process.

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Branch Vision

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

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Clear Statement

After a thorough review of evidence provided to the Criminal Justice Branch (CJB) by the Independent Investigations Office (the IIO), the Branch has concluded that the available evidence does not support a substantial likelihood of conviction for a criminal offence against two members of the Princeton RCMP who are alleged to have used excessive force on March 22, 2014.

As such, no criminal charges against these officers will be approved.

The charge assessment 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

CJB applies a two part test to determine whether criminal charges should be approved and a prosecution initiated. Crown counsel must examine the available evidence and assess: (a) whether there is a substantial likelihood of conviction based on the evidence gathered by the investigating agency; and (b) if so, whether a prosecution is required in the public interest.

Under CJB policy, a substantial likelihood of conviction exists when there is a strong, solid case of substance to present to the court. To reach this conclusion, Crown Counsel 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 required legal elements of the 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 or she is entitled to be acquitted in any or all of the following circumstances: if the judge or jury accepts the evidence; if the judge or jury finds that the 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, it nonetheless finds that there is a reasonable doubt in favour of an acquittal on the totality of the evidence.

Relevant Law

Section 25(1) of the *Criminal Code* provides that a peace officer, who acts on "reasonable grounds", is "justified in doing what he is required or authorized to do and in using as much force as necessary for that purpose." Section 26 of the *Code* provides that an officer "who is authorized by law to use force is criminally responsible for any excess thereof according to the nature and quality of the act that constitutes the excess."

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.

Police 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.

The Investigation and Circumstances Surrounding the Incident

CJB has decided to not approve criminal charges against the police officers who were the subject of the IIO investigation. However, a charge of assaulting a police officer has been approved against the civilian driver involved in this incident. As the latter case is now before the court, and arises out of the same set of circumstances, the CJB is limited in the information that it can make public at this time.

What can be said, based on the material submitted to CJB, is that the alleged use of excessive force took place at approximately 3:00 a.m. on March 22, 2014, in a school parking lot in Princeton. A member of the RCMP attended to investigate the presence of a pickup truck with its engine running. The member initiated an impaired driving investigation, and a second member attended. While detained for the purpose of the investigation, a physical altercation ensued between the driver and police. The driver was arrested. After being placed in the back seat of the police cruiser, the driver fell unconscious and was taken to hospital where he received medical care. The driver was released from hospital at about 1:00 p.m. the same day, and did not require further medical treatment. The only other witness to the incident was a female passenger in the pickup truck.

The officers involved in the incident provided an explanation for the force used which Crown counsel has concluded is reasonably capable of belief in all of the circumstances. In addition, Crown counsel has concluded, based on the available evidence, that there are concerns with respect to the weight that can reasonably be given to the statements of the driver and the passenger in the vehicle. In prosecuting an offence based on an allegation of excessive force, the CJB would need to rely on the evidence of these individuals.

After a thorough review of the investigative file, including witness statements, police reports, photographic and medical evidence, Crown counsel has determined that there is no substantial likelihood of proving, beyond a reasonable doubt, that either officer used excessive force within the meaning of the Criminal Code. In the circumstances of the case, unlawful or excessive force is an essential element that the prosecution would have to prove to obtain a criminal conviction for assault. As a result, no criminal charges against the officers have been approved.