



# MEDIA STATEMENT

## CRIMINAL JUSTICE BRANCH

November 7, 2014

14-25

### **No Charges Approved in IIO Investigations in Surrey and Penticton**

**Victoria** – The Criminal Justice Branch, Ministry of Justice (CJB) announced today that no charges have been approved for incidents that occurred on December 28, 2013 in Surrey and April 14, 2014 in Penticton, both of which involved the use of force by police officers. Each incident was investigated by the Independent Investigations Office (IIO), which subsequently submitted investigative reports to CJB.

The incident in Surrey involved the use of a Police Service Dog in the arrest of a suspect by a member of the New Westminster Police Department. The incident in Penticton involved the use of force by a member of the RCMP against a female who later complained of an arm injury after having been taken into custody by police.

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 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 entering a conviction for an offence, a judge or jury must be satisfied that guilt of the accused has been proved beyond a reasonable doubt.

In each of these cases, CJB has concluded there is no substantial likelihood that the officer who was the subject of the IIO investigation would be convicted of any offences arising from the circumstances. A Clear Statement explaining each of 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 a police officer and forwarded a report to CJB for charge assessment.

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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

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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 assessments that are addressed in this statement were conducted by senior Crown Counsel with no prior or current connection with the officers under investigation.

### Charge Assessment and Standard of Proof

CJB applies a two part test to determine whether charges should be approved and a prosecution initiated. The reviewing 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 legal elements of the 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 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.

### 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.

The use of a Police Service Dog can constitute a lawful use of force, however, directing a dog to attack with the intention of inflicting harm on a suspect has been found by a court to be sufficient to establish an assault with a weapon.

### **The Circumstances Surrounding the Surrey Investigation**

On December 28, 2013, shortly after 5:00 a.m., Surrey RCMP were advised that a male suspect had stolen property, including a vehicle, from the residence of a relative. The suspect was reported to have a knife, was believed to be on drugs, and was possibly experiencing mental health issues. A police officer nearby located the vehicle and attempted to stop it, but it sped away at high speeds. The officer discontinued the pursuit for safety reasons. He located the vehicle a short time later in a residential neighbourhood, where it had hit parked cars and crashed into a tree. The vehicle was unoccupied and two knives were found in the driver's seat area. The officer requested a Police Dog Service member to attend the scene and assist in locating the driver. A second officer arrived shortly on scene.

An officer with his Police Service Dog (PSD) subsequently arrived and a track was initiated at approximately 5:39 a.m. The suspect was quickly located hiding in some bushes. The officer with the PSD reports that the suspect was on his stomach and his hands were not visible. Commands were given repeatedly to the suspect to show his hands, but he did not respond to the commands. Concerned that the suspect was armed, the officer released the PSD which grabbed onto the suspect's arm and brought him out of the bushes, where he was arrested and handcuffed.

As the suspect was being led to the police vehicle, the PSD's leash broke and the dog engaged with the suspect, biting him a second time. The suspect fell to the ground. The officer immediately removed the PSD and secured it in his police vehicle. BC Ambulance was called to attend to the suspect's injuries, and he was taken to the hospital where he received stitches on his upper left arm for the first bite. He suffered minor puncture wounds which did not require stitches as a result of the second contact.

Another police officer who arrived on scene shortly after the arrest confirmed that the leash broke, and that the officer subject to investigation then pulled the dog off the suspect. The available evidence includes photographs of the broken leash.

A civilian witness who resides near the crash scene heard the crash and saw police arrive. He saw the male suspect being escorted in handcuffs and saw the PSD break loose from its handler. The PSD was on the suspect in two lunges, but the dog handler immediately removed the PSD and carried it away.

The suspect provided a statement to investigators wherein he stated that when police first arrived on scene he was kneeling in the bushes and had his hands up in the air. He told the police, "you got me," and the police released the dog on him. The suspect stated that the dog handler let the dog gnaw on him for 3-4 minutes, and encouraged the dog. As he was walking to the back of the car, the police released the dog on him again, saying that he was trying to run.

The suspect stated there were about 10 police officers in the area, if not more. The suspect alleged that the police tried to let him bleed out and pass out. The suspect also stated that there were ambulance attendants on the scene, but the police called new ambulances to the scene. He was taken to the hospital.

In a second statement to investigators, the suspect said that at the time of the incident he was coming down from a drug-induced psychosis.

### **Application of the Law to the Circumstances in this Case**

As a peace officer, the officer was authorized to arrest the suspect without a warrant. The officer was called in to assist with a high risk incident: locating a suspect who was allegedly involved in a violent crime, who fled from the police in a manner dangerous to the public, who was believed to be impaired by drugs, who potentially had mental health issues, and who was possibly still armed with weapons. There was a risk of harm to police and others.

On the available evidence, the deployment of the PSD to apprehend the suspect, who was hiding in the bushes and not responding to police commands, was reasonable in all the circumstances. There is evidence that it was unsafe for an officer to go into the bushes to retrieve and arrest the suspect. There is no reliable evidence that the officer's deployment of the PSD involved excessive, unreasonable or inappropriate force. The suspect's recollection of events is unreliable, and is contradicted by all police and civilian statements. The available evidence supports a conclusion that the officer and the PSD acted in accordance with their training.

The evidence indicates that the leash attached to the PSD broke while the suspect was handcuffed and in police custody. Unfortunately, the dog made contact with the suspect a second time, but not in response to a command by the officer. This second contact resulted in minor injuries that did not require stitches.

Based on the available evidence, the officer was acting in the lawful execution of his duties and the force he used in deploying the PSD cannot be shown to be unjustified, or an excessive use of force in the circumstances.

As an excessive or unjustified use of force cannot be proved by the Crown, there is no substantial likelihood that the officer involved would be convicted of any assault related offences as a result of the deployment of the PSD during the arrest. As such, no charge has been approved against the officer in question.

### **Materials Reviewed by Crown Counsel**

- IIO Investigative Report
- Detailed Narrative
- Statement of Affected Person (the Suspect)
- Statements of Witness Officers
- Statement Summary of Civilian Witness
- Summary of Hospital Records
- Radio Transmissions
- Subject Officer Training Records
- Scene Examination Report
- Maps of area
- Photographs of scene, leash and injuries
- Prime Reports including civilian and officer statements

### **The Circumstances Surrounding the Penticton Investigation**

On April 8, 2014 at approximately 2:15 p.m., the individual whose complaint led to the IIO investigation attended the Penticton Public Library on Main Street. She demanded that the security guard, as well as another man who was present, telephone a utility company on her behalf. When she was told no, she became verbally abusive toward them; however, she then left the Library and went to a nearby crosswalk on Main Street. The complainant was making use of a walker, and while waiting for the light to change she fell down.

The officer who became the subject of the IIO investigation coincidentally drove up just after she fell, and he assisted the complainant to her feet and helped her cross the road. This officer is a retired individual, employed as a Reserve Constable with the RCMP. The Library security guard observed the officer providing this assistance to the complainant.

About one hour later, the complainant returned to the Library and caused a disturbance, swearing at staff members and banging her fists on the Library counter. The complainant allegedly assaulted a member of the Library staff by hitting her on the shoulder and on the face. As a result she was escorted out of the Library by security staff, and the police were called.

The officer who had dealt with her earlier responded to the assault call and saw the complainant on Fairview Road, close to the Library. The officer offered to take her home, but the complainant refused to cooperate or answer his questions about where she lived and who she was. The officer warned the complainant that he would have to arrest her for public intoxication and that she would be taken to jail to sober up.

The complainant remained uncooperative and belligerent with the officer, who then arrested her for public intoxication. The officer picked her up underneath her arms to escort her into the police car. He was putting her in the back seat when she struck the officer in the face with the back of her hand. It was not a significant blow; however, the officer took hold of her arm, just below the elbow in order to restrain her. According to the officer the complainant said "let go of my arm, you're hurting me"; however, the officer did not let go immediately, in order to prevent her from hitting him again. The complainant then got into the back seat of the police cruiser.

On the journey back to the RCMP detachment the complainant, who was not handcuffed at any time, was banging her fists on the plexi-glass screen and swearing. Upon arrival at the RCMP station she was physically resistant to police. During the booking process, the reserve officer noticed the complainant's right wrist was swollen and advised the watch commander and guard.

After the booking process, the complainant was lodged in cells until shortly before midnight, at which time police concluded she was sober enough to be released.

On April 15, 2014 the complainant was diagnosed as having a broken right wrist. The next day she complained that she had received her injury during the arrest and detention on April 8, 2014.

Police and civilian witnesses are consistent in their description of the complainant as intoxicated and belligerent on the date in question. The complainant acknowledges that her memory of the events of the day is not clear, and that she had been consuming liquor. She indicated to IIO investigators that she probably did initially resist arrest, but attributes her hitting the officer to being in pain because the officer had pulled on her arm to try and get her into the police car.

### **Application of the Law to the Circumstances In This Case**

Crown counsel has concluded that on the available evidence it is impossible to determine when and how the complainant's wrist was broken. It is impossible to say with certainty whether her wrist was fractured at the time the officer held her arm and she felt pain; at some earlier point in time, such as when she fell on the street outside the library, or struck the librarian, or banged her fist on the library counter; or at some later time such as when struck the plexi-glass barrier in the police car or was resistant to police the detachment.

Even if the complainant felt pain when the officer grabbed onto her arm, this action cannot be shown to be more than a measured response to her striking him.

The officer's version of events is supported in various aspects by all other witnesses who observed his interactions with the complainant. There is no evidence to establish that at any time during his interactions with the complainant the officer applied anything more than minimal force to prevent further assaults, or to assist in conveying her to the detachment and into cells following her arrest.

After a thorough review of the investigative file, Crown counsel has concluded that there is no substantial likelihood of proving, beyond a reasonable doubt, that the officer used excessive force in his dealings with the complainant. Unlawful or excessive force is an essential legal element that the prosecution would have to prove to obtain a criminal conviction for assault. As such, no criminal charges against the officer have been approved.

#### **Materials Reviewed by Crown Counsel**

- Executive Summary and Detailed Narrative
- Summary and statement of the officer subject to investigation
- Summary and transcript of the statement of the complainant
- Summaries and transcripts of the statements of civilian witnesses
- Summaries and transcripts of other RCMP officers
- Notes and/or summaries of anticipated evidence of IIO investigators
- General Occurrence and Task Action Reports
- Medical records of the complainant
- Photographs and videos.