



# MEDIA STATEMENT

## CRIMINAL JUSTICE BRANCH

January 30, 2017

17-01

### **No Charges Approved for Mental Health Apprehension by Nanaimo RCMP Officers**

**Victoria** - The Criminal Justice Branch (CJB), Ministry of Justice, announced today that no charges have been approved against two members of the Nanaimo RCMP involved in an apprehension under the *Mental Health Act* on November 3, 2015. In the course of detaining the subject for transport to hospital, the subject became resistant and was physically restrained. During this process the subject suffered a broken arm. 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. The CJB would not be able to prove, beyond a reasonable doubt, that either of the officers committed a criminal offence or used excessive force in the administration or enforcement of the law. No charges have been approved. A Clear Statement explaining the decision in more 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 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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## **Clear Statement**

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### **Synopsis**

Shortly after midnight on November 3, 2015, Nanaimo RCMP responded to a 911 referral from an online crisis center chat line representative. According to the representative, a man had disclosed that he was thinking about killing himself, he had a knife in front of him, he wanted to cut his wrists and bleed to death, and he was writing a suicide note. The man then disconnected from the chat.

The RCMP were able to determine that the subject lived in a residence in Nanaimo. He shared the ground floor of the residence with a roommate.

An RCMP officer (Officer A) was dispatched to the subject's residence with information noted above. Officer A was also notified that the subject had been flagged on the police database for previous violent behaviour. A second officer (Officer B) was on duty patrolling nearby and offered to assist Officer A. Both officers arrived at the subject's residence shortly after 1:00 a.m. They knocked at the main entrance on the ground level. The police were granted access to the residence by the roommate who showed the officers to the subject's room. The roommate also informed the officers that the subject had been using crystal meth and described how he had recently been acting in a paranoid manner.

The officers knocked on the subject's bedroom and the subject opened the door. Officer A observed that both of the subject's wrists were cut and bleeding. At this point the officers determined that the subject would be apprehended pursuant to their authority under the Mental Health Act and transported to the hospital for treatment. The subject was advised of this by the officers. When the subject resisted the officer's efforts he was physically restrained. During this process the subject suffered a broken arm. At that point, the officers called for an ambulance. The subject was detained for 48 hours under the Mental Health Act and received treatment for a fracture to his upper arm.

The incident was subsequently investigated by the Independent Investigations Office (IIO). Statements were obtained from the subject, the investigating officers, the occupants of the residence and the ambulance attendants. Medical Records were also obtained. Scene investigation revealed the presence of a machete, razor blade and scissors in the subject's room.

### **Evidence of Subject**

The subject recalled the interaction with the police from the point at which he first opened his bedroom door. The officers who attended told him that he had to go to the hospital. He said he did not want to go to the hospital. He then asked if he could get his jacket and turned and pointed towards his bed where his jacket was lying. One of the officers grabbed his arm and as he turned back to face them one punched him on the nose. The other punched him on the side of his face. The officers grabbed his arms and he went down to the floor. While he was on the floor, one officer twisted his arm harder. He kept telling the police officers that they "can't do that with [his] arm" because it was "busted." At some point while he was on the ground, his arm broke. He heard and felt a big snap.

The subject stated he had used crystal meth but not for 15 days prior to the incident and had not taken any drugs that evening. He cut his wrists with his Swiss Army knife because his roommates had been giving him problems. He stated that he was fully cooperative with the police when they arrived. He asked them if he could get his jacket and that is when the altercation happened. He was not refusing or fighting back. He was not trying to grab anything to use on them. The machete on his floor was a collector's edition and was extremely dull.

The officers did not tell him that he was under arrest, that he was being detained or apprehended, or mention anything to do with the Mental Health Act at any time during the interaction. The only thing communicated to him along those lines was he that needed to go to the hospital with them.

### **Evidence of Officers**

After being shown to the subject's bedroom, Officer A knocked on his bedroom door and asked him if he was okay. The subject opened the door slightly and responded that he was fine. Officer A advised the subject that they were there to check on him as they had received information he may have harmed himself. Officer A observed that both of the subject's wrists were cut and bleeding freely. When Officer A enquired about the cuts to his wrists, the subject told him that it was none of his business and that he was fine. The officer determined that the subject was an immediate danger to himself and advised that he was being apprehended under the *Mental Health Act* and that they were taking him to the hospital.

The attending officers stated that after the subject was advised of the officer's intentions the response of the subject was to back away and attempt to close the bedroom door. Officer A stated that when he tried to take the subject by the wrist the subject got angry, grunted and pulled away "hard" saying he wasn't going to the hospital. In an attempt to gain control of the subject Officer A struck the subject with a closed fist. Officer B also struck the subject with his fist and the two officers wrestled the subject to the floor.

Officer A put the subject's right arm behind his back while Officer B attempted to gain control of the subject's left arm. Both officers feared that the subject was attempting to obtain a weapon and presented a risk to himself and to others. After the altercation, Officer B noted a large machete on the bedroom floor near where the subject's left arm had been reaching while he was on the ground. A machete, scissors and a razor blade were later discovered to have been within arm's reach of the subject during the altercation. During the course of the struggle the subject's right arm was broken.

### **Medical evidence**

The doctor who treated the fracture noted that the arm had previously been broken and repaired with surgery. The psychiatrist who dealt with the subject found the subject was likely suffering from substance-induced psychosis from the crystal methamphetamine use.

### **Potential Charges**

The potential charges against the officers 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".

The charge assessment was conducted by a Crown Counsel with no prior or current connection with the officers who were the subject of the IIO 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](http://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.

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. When assessing the strength of the case the Crown must also consider the likelihood that viable defences will succeed.

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.

### **Relevant Law**

Pursuant to section 28 of the *Mental Health Act* ("MHA") "a police officer or constable may apprehend and immediately take a person to a physician for examination if satisfied from personal observations, or information received, that the person (a) is acting in a manner likely to endanger that person's own safety or the safety of others, and (b) is apparently a person with a mental disorder." "Person with a mental disorder" is defined under section 1 of the MHA, as "a person who has a disorder of the mind that requires treatment and seriously impairs the person's ability (a) to react appropriately to the person's environment, or (b) to associate with others."

Under section 25 of the *Criminal Code*, a peace officer is justified in using as much force as is necessary to carry out the duty which the officer is required or authorized by law to perform, 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. Nor are they 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.

### **Application of the Law to the Evidence**

The focus of the charge assessment analysis is on whether the officers had reasonable grounds to apprehend the subject and if so, whether the force used in effecting his apprehension was excessive.

Based on the information provided by witnesses the police had reason to believe that the subject was using crystal meth and that he had recently been displaying erratic and paranoid behaviour. Officer A was also informed by dispatch that the police database indicated the subject had some history of violent behaviour.

Prior to attending the scene, the officers were advised that the subject had a knife, that he wanted to cut his wrists, and that he was writing a suicide note. After initial interaction with the subject, the officers observed that the subject indeed had cuts to his wrists. Based on all the circumstances the officers had reasonable grounds to believe the subject was a danger to himself and therefore had authority to apprehend him under the MHA.

With respect to the force used to apprehend the subject, both officers expressed concern about a potential sharp weapon in the subject's bedroom given the cuts to his wrists. If the subject re-entered his room, the officers felt he would be at risk of harming himself or the officers. The officers also noted that the subject was much larger than them. Officer A felt they were in danger of facing a lethal confrontation.

During their initial interaction with the subject, the officers noted he was reluctant to open the door to his room. The subject acknowledged that he initially said he did not want to go to the hospital. He also acknowledged turning away from the officers after being told he had to go to the hospital, though he says this was only because he wanted to get his jacket.

Based on this information, the initial application of force to the subject was justified in order to take physical control of him and to prevent him from re-entering his room. For these same reasons, the officers were justified in applying force to restrain the subject's arms once he was on the ground. The only remaining issue is whether the force used by Officer A to restrain the subject's right arm was excessive.

The fact that the subject's arm was broken during his apprehension is not determinative of whether the force was excessive. The only evidence about the arm hold is the two competing versions of events offered by the subject and the officers. Specifically, the subject states that officer A twisted his arm in an excessive manner which caused his arm to break. He further states that he was not resisting the officers.

For their part the officers state that the subject resisted and that the arm hold was appropriate and measured. Both officers indicated they were surprised by the resultant fracture.

On this point the officers' evidence is consistent and reasonably capable of belief. Their evidence would likely be accepted regarding the nature and extent of Officer A's use of force to restrain the subject's arm. At the very least it would raise a reasonable doubt as to whether the force used was excessive.

Ultimately, officers are not held to a standard of perfection. Both officers were acting in good faith in apprehending the subject to take him to the hospital for medical attention. Once they arrived at the scene and began interacting with the subject, the officers developed legitimate concerns for their own safety as well as for the safety and well-being of the subject. In light of

these concerns, and the subject's perceived and actual resistance, the officers were entitled to use as much force as was reasonably necessary to apprehend the subject.

The available evidence is not capable of demonstrating that the force used by either officer was disproportionate or excessive in the circumstances. Accordingly, the officers' conduct would be justified under s. 25 of the *Code*, providing both officers with a complete defence to a charge of assault causing bodily harm under s. 267 of the *Code* and the included offence of assault.

### **Conclusion**

There is no substantial likelihood of conviction with respect to a charge of assault causing bodily harm or the included offence of assault against either of the two attending officers and no charges have been approved.

### **Material Reviewed**

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

- Executive summary and detailed narrative;
- Summaries and transcripts of statements of the subject, and of civilian and EHS witnesses.
- Written Statements of the attending officers;
- Medical records of the subject dated November 3 to November 6, 2015;
- RCMP scene photographs and photographs of the subject; and,
- IIO investigator notes and task action reports.