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17-19

No Charges Approved following arrest by Prince George RCMP Officer

Victoria – The BC Prosecution Service (BCPS) announced today that no charges have been approved against a member of the Prince George RCMP involved in an arrest of an individual on July 11, 2015. In the course of the arrest, the suspect suffered a fracture of his left leg. The incident was investigated by the Independent Investigations Office (IIO), which subsequently submitted a Report to Crown Counsel (RCC) for review by the BCPS.

Following an investigation where the Chief Civilian Director of the IIO determines that an officer or officers may have committed an offence, the IIO submits a report to the BCPS. The Chief Civilian Director does not make a recommendation on whether charges should be approved.

In this case, the BCPS has concluded that the available evidence does not meet the BCPS's charge assessment standard. The BCPS would not be able to prove, beyond a reasonable doubt, that the officer 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 BCPS 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

Summary of Decision

At approximately 9 p.m. on July 11, 2015, the subject officer was in uniform and on bicycle patrol with another member of the Prince George RCMP. The two officers noticed individuals coming out of a treed area along Patricia Boulevard where people are known to gather to drink. As the officers approached, they heard yelling and observed one male (the suspect) leaving the area. The officers approached the area to determine whether individuals were consuming alcohol or whether there was an altercation. There, they noticed a scattering of empty beer cans amongst a group of people. They also noticed two intoxicated individuals who they had dealt with earlier that night and another man so intoxicated that he was incapable of saying his name. The subject officer's partner (officer B) decided to arrest these three people for being intoxicated in a public place.

At this point yelling could be heard coming from the suspect on the street. The group advised the officers that this was a male who had been previously causing problems. Officer B observed the suspect staggering in the middle of Patricia Boulevard. He was concerned that this person was going to be hit by a car in the street or start a fight or altercation with the group with whom he was speaking. Officer B asked the subject officer to investigate and the subject officer rode his bicycle over to the suspect.

The suspect was told to stop by the subject officer but he ignored the demand and walked away from the officer. When the subject officer attempted to arrest the suspect he became resistant. The subject officer used force to overcome the resistance and the suspect was taken to the ground and restrained. During the arrest, the suspect suffered a tibial plateau fracture to his left leg which required surgery.

As a result of the injury to the suspect, the IIO conducted an investigation and subsequently submitted a Report to Crown Counsel. Following a thorough review of the available evidence, the BC Prosecution Service has concluded that the evidence does not support approving any charges against the police. As a result no charges have been approved.

The charge assessment was conducted by a Crown Counsel with no prior or current connection with the officer who was subject of the IIO investigation.

This Clear Statement contains a summary of the evidence gathered during the IIO investigation and the applicable legal principles. These are provided to assist in understanding BCPS's decision not to approve charges against the officers involved in the incident. Not all of the relevant evidence, facts, case law, or legal principles are discussed.

Charge Assessment and the Criminal Standard of Proof

The Charge Assessment Guidelines applied by the BCPS 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.

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.

Potential Charge

The potential charge against the officer that that was considered in this case was assault causing bodily harm, contrary to s.267(b) 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". It is apparent on the evidence that the officer applied force to the suspect without the suspect's consent and that the application of force caused bodily harm. The officer may be criminally liable for committing this offence in the absence of any viable defence or justification.

Relevant Law

Section 74(2) of the *Liquor Control and Licensing Act* ("LCLA") reads:

A peace officer may arrest, without a warrant, a person who is intoxicated in a public place.

The term "intoxicated" is not defined in the LCLA. Courts have consistently defined "intoxicated" as meaning "apparently intoxicated" to the extent that the person is either a danger to him or herself, or others, or is causing a disturbance.

The arrest provision of the LCLA is similar to section 495(1)(b) of the *Criminal Code* – the provision that permits an officer to arrest, without a warrant, a person he/she finds committing an offence. The Courts have concluded an officer must have "reasonable grounds to believe that the person to be arrested is apparently in the process of committing a crime in his or her presence" for the arrest to be lawful.

Accordingly, the arresting officer must subjectively believe that an offence is apparently being committed and there must be an objective basis for that conclusion. In other words, it must be apparent to a reasonable person placed in the circumstances of the officer at the time. This requires an objective assessment of the totality of the evidence available to the officer at the time of the arrest and may be based on reasonable inferences available to the officer.

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.

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. Reasonableness must be assessed based on the information available to the officer before acting, and based on a consideration of the nature of the power exercised and the context within which it was exercised.

Assessing whether a particular amount of force used by an officer was necessary, the judge or jury must have regard to the circumstances as they existed at the time the force was used, recognizing that an officer cannot be expected to measure the force used with exactitude. A legally acceptable use of force is one which is not gratuitous, and which is delivered in a measured fashion.

Evidence of Suspect

The suspect was interviewed by IIO investigators after the incident and provided a statement.

He told the investigators that he was approached by the police as he was walking by the library. He said he didn't know why the police asked what he was doing, so he ignored them and continued walking. He stated, "I wasn't drinking or anything". He said the officer asked him his name and denied that he resisted arrest. However, he said that he started to walk away and that was when "one of them...threw me down." He claimed that one of the officers jumped on him and straddled him causing the injury to his leg.

When asked whether there was only one officer present, he answered, "I guess so." He admitted that he heard "police stop" but was unclear what happened after that.

The suspect told the investigators that once he was on the ground, the officer laid on top of him for a while. He denied that the officer put handcuffs or restraints on him.

When asked to describe the officer who caused the injury to his leg, he provided a description which was not consistent with that of the suspect officer.

The investigators asked the suspect about whether he had been drinking at the time. He denied having had anything to drink the entire day, but said that he had smoked "some weed" and suggested that perhaps that was why he could not remember much of the incident.

Evidence of Officer B

Officer B told the investigators that he and the subject officer were on bike patrol, which was implemented in the summer months as a crime reduction strategy, aimed at combatting people using drugs and alcohol in the downtown area.

He and the subject officer were riding their bikes along Patricia Boulevard when he noticed a number of people coming in and out of the tree line. As he approached, he heard yelling. He saw the suspect start to leave the treed area. He recognized him from previous dealings.

As the officer continued to talk to the individuals in the treed area, he could hear the suspect yelling and screaming on the road. The suspect's screaming was agitating the people that he was talking to, so he told the subject officer that he should go talk to the suspect and see what was going on. He further said that if the suspect was drunk and causing a problem, then he could arrest him, but it was up to him.

Officer B arrested three of the six individuals for being intoxicated in public. As he brought one individual to a police car that arrived at the scene, he saw the subject officer approximately 100 metres away standing over the suspect, who was handcuffed on the ground. The suspect was yelling, so this officer went to the subject officer to see if he needed assistance. The subject officer told him that the suspect resisted arrest, so he had to sweep his leg out. The two officers attempted to move the suspect to the grassy area where he could wait for the police vehicle. Together they lifted him to his feet. When the suspect attempted to put weight on his leg he started yelling about his leg hurting, so they placed him back on the ground. He was placed in the recovery position to wait for the ambulance to arrive.

When asked about the use of a leg sweep to gain control over an arrestee, officer B said that a leg sweep was common practice for him and was a tool used to get people to the ground where "they're safer and manageable."

Medical Evidence

One of the firefighters who was the first on scene to treat the suspect for his injuries told investigators that the suspect was "very vocal and drunk, he was hard to deal with as a patient".

Paramedics who transported the suspect to hospital said he was combative and uncooperative in the ambulance and noted he smelled strongly of alcohol, was slurring words and making poor eye contact. He denied drinking or taking drugs that day.

A medical report prepared for the physician who treated the suspect when he arrived at the hospital indicated that the suspect could not recall all the details of the event. He told doctors that at approximately 10 p.m., he had a few beers and was walking home, and at this point, there was an altercation with a police officer.

Civilian Witnesses

Two of the other individuals who officers dealt with at the scene were interviewed by IIO investigators. Neither witness offered much evidence about the incident. One was too intoxicated and the other was dealing with Officer B at the time of the incident. However, both witnesses indicated they were drinking with the suspect prior to the police attendance.

Use of Force Report

In the course of the IIO investigation, a use of force report was obtained from a qualified expert in this area. In his report, the expert assumed that the arrest of the suspect was lawful and that the suspect resisted attempts to conduct an arrest. In the circumstances, empty hand control tactics, such as a leg sweep and half mount, were appropriate. He concluded that the use of force was in compliance with statute law, RCMP policies and use of force training, and further opined that the force used during the arrest of the suspect was lawful, appropriate, proportionate and reasonable, given the totality of the circumstances.

Application of the Law to the Evidence

In order for the use of force to be justified, the arrest must be lawful. The first issue to resolve in this case is whether reasonable grounds existed to support the conclusion that the suspect was lawfully arrested for intoxication in a public place. And secondly, if the grounds for arrest exist, was the use of force to arrest the suspect reasonable or excessive within the meaning of the Criminal Code.

While the subject officer did not provide a statement to the IIO investigators, he wrote a police statement about the investigation that resulted in the suspect's arrest. The subject officer also made comments to the medical professionals and fellow officers upon their arrival at the scene that suggested that he arrested the suspect for intoxication in a public place.

The police statement confirmed that the subject officer heard the suspect yelling at a female as he walked away from the treed area. As the officer rode his bike towards the suspect, he observed him stumbling across the road and having difficulties walking. He concluded that the suspect was intoxicated in public and proceeded to effect his arrest.

The subject officer was entitled to arrest the suspect for intoxication in a public place, pursuant to the *LCLA*, if the suspect was apparently intoxicated to the point where he was a danger to himself or others, or causing a disturbance.

Based on the subject officer's comments to others and his police statement, the officer had subjective grounds to believe the suspect was apparently intoxicated. The real inquiry is whether there was an objective basis for that conclusion. The following information would have been apparent to the subject officer at the time of the arrest and supports the objective grounds for the arrest:

- the officers attended an area known to be one in which individuals consume alcohol, away from the view of the police or public;
- empty beer cans were scattered on the ground amongst the individuals in the area;
- three individuals in the area were severely intoxicated;
- the suspect was observed leaving the area and was shouting and causing the individuals in the area to become agitated;
- officer B had concerns about the suspect's behaviour and directed the subject officer to investigate further. He suggested the subject officer arrest the suspect, if he thought it was appropriate; and
- the subject officer observed the suspect stumbling across the road and having difficulties walking.

Based on the foregoing, the evidence supports a conclusion that the suspect was intoxicated to the extent that he was a danger to himself and was causing a disturbance. Objectively, there were sufficient grounds to arrest the suspect for being intoxicated in a public place.

The subject officer was entitled to use as much force as reasonably necessary to effect the arrest. The suspect admitted that he did not stop when he heard him say, "Stop, police." Based on the suspect's evidence and the subject officer's comments to another officer that there was a bit of a struggle when he attempted to arrest the suspect, the use of force including the use of the leg sweep and half mount to arrest the suspect were reasonable and appropriate.

While the suspect denied resisting arrest, his evidence regarding the events is problematic for a number of reasons. He admitted his memory was poor and his recollection is contradicted in essential areas by other independent sources.

On the night in question, he could not tell the medical personnel what had happened to him. Speaking with investigators, he could not articulate what happened between him and the officer and got frustrated when pushed for specifics. Although he specifically denied having consumed alcohol that evening or that he was drunk that evidence is directly contradicted by other evidence, namely,

- the civilian witnesses, who claimed the suspect was drinking with them;
- the first responders and doctors who attended to his injuries;
- his own self reporting to the doctors later that evening; and
- the evidence of officer B who made general observations of the suspect's behaviour.

Although it is clear the suspect suffered a broken bone during the arrest, it is not clear how the injury occurred. Nor is it determinative of whether the force used was excessive. The use of force expert advises that the technique employed was appropriate, proportionate and reasonable. That opinion, coupled with the circumstances that presented to the subject officer, would be sufficient to raise a reasonable doubt as to whether the use of force was excessive.

Conclusion

There is sufficient evidence to support a finding that the suspect's arrest for intoxication in a public place was lawful and that the subject officer's use of force was reasonable in the circumstances. Although the evidence would establish that the officer applied force to the suspect without his permission and thereby caused bodily harm, the evidence would also tend to support the conclusion that his actions were legally justified under the Criminal Code or at least that there is a reasonable doubt in that regard.. As a result there is no substantial likelihood of conviction for assault causing bodily harm against the subject officer.

Materials Reviewed

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

- Executive summary and detailed narrative;
- Summaries and transcripts of police and civilian witness statements
Medical records of suspect and the medical opinion of attending physician
- RCMP scene photographs and photographs of suspect's injuries,
- IIO investigator notes and task action reports, and
- Expert Use of Force Opinion Report