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## No charges approved following arrest by Prince George RCMP dog handler

**Victoria** – The BC Prosecution Service (BCPS) announced today that no charges have been approved against a member of the Prince George RCMP involved in the arrest of a suspect on September 8, 2015. During the pursuit of the suspect the officer deployed a police service dog (PSD). In the course of the arrest the suspect suffered serious injuries.

The case was investigated by the Independent Investigation Office (IIO) which subsequently submitted a Report to Crown Counsel (RCC).

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.

In this case the BCPS has concluded that the available evidence does not meet the charge assessment standard for approval of any charges against the police officer in connection with the incident.

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**

On September 8, 2015, the Prince George RCMP were conducting covert surveillance on a stolen Ford F-250 pickup truck (the "F-250") driven by the suspect. When the police attempted to stop the F-250, the suspect reportedly tried to flee in the vehicle but was unsuccessful. The suspect and the two other vehicle occupants attempted to flee the scene on foot. The subject officer, along with his PSD, pursued the suspect through a rural property.

As the suspect neared a highway bordering the property, the subject officer released the PSD, who bit and took hold of the suspect's leg to prevent him from escaping. According to the subject officer, the suspect continued to resist by fighting the PSD. The subject officer reported that he delivered one punch and two elbow strikes to the suspect's face to subdue him and gain compliance with arrest directions. The suspect denies being punched or elbowed and alleges that the subject officer kicked him in the face four to six times. The suspect sustained serious facial injuries, including facial fractures and a displaced jaw which required surgery to repair. The suspect's treating physicians advised the IIO that the suspect's injuries could have been caused either by stunning strikes (hand or elbow) or by kicks. No police or civilian witnesses observed the incident.

As a result of the injury to the suspect, the IIO conducted an investigation and subsequently submitted an RCC. 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 subject officer.

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

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 officer 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 BCPS policy and are available online at:

[www.gov.bc.ca/charge-assessment-guidelines](http://www.gov.bc.ca/charge-assessment-guidelines)

In determining whether a prosecution will be initiated, Crown Counsel must independently, objectively, and fairly measure all the available evidence against a two-part test:

1. whether there is a substantial likelihood of conviction; and, if so,
2. whether the public interest requires a prosecution.

Under BCPS 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 and available in court; the objective reliability of the admissible evidence; and whether there are viable defences or other legal or constitutional impediments to the prosecution that remove any substantial likelihood of conviction.

## **Potential Charges**

The potential charges considered in this case were assault with a weapon contrary to s. 267(a) and assault causing bodily harm contrary to s. 267(b), both of the *Criminal Code*.

Assault is defined in the *Criminal Code* as the intentional application of force to another person without the person's consent. Bodily harm is harm that is more than "trifling or transient". Courts have concluded that directing a dog to attack another person may constitute assault with a weapon.

## **Legal Justification**

Section 25(1) of the *Criminal Code* provides that a peace officer, acting in the course of his lawful duties and 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 *Criminal 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."

The Crown bears the onus of proving beyond reasonable doubt that the justification provisions are not applicable.

In assessing whether a particular amount of force used by an officer was necessary within the meaning of the *Criminal Code*, the trier of fact 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 precision.

The reasonableness of the peace officer's belief must be assessed on an objective standard but one that also "takes into account the particular circumstances and human frailties of the accused". In applying the standard of reasonableness, "a certain amount of latitude is permitted to police officers who are under a duty to act and must often react in difficult and exigent circumstances".

Notwithstanding the deference afforded to police officers in the exercise of force in exigent circumstances, the law still requires that the use of force not be excessive. Case law interpreting these sections recognizes that police officers may need to resort to force in order to execute their duties but also that courts must guard against the illegitimate use of power by the police against members of our society, given its grave consequences. The degree of force that a police officer may use is constrained by the principles of proportionality, necessity, and reasonableness.

## **Summary of Evidence**

### *Evidence of Officer A*

On September 8, 2015, members of the Prince George RCMP Crime Reduction Team, including the subject officer and officer A, were conducting covert surveillance on a F-250 to investigate a reported vehicle theft.

At approximately 4:56 p.m., officer A observed the F-250 depart from its location. Officer A followed the F-250 for approximately 15 minutes to a BC Rail industrial site. At this point, officer A identified the suspect driver whom he had dealt with in the past. Officer A broadcast over the police radio that he had identified the suspect and that there was at least one other unidentified person in the vehicle.

Officer A continued to follow the F-250 south along the highway and into a rural area in Prince George. Eventually, the F-250 pulled into a private residence and backed up against

a metal entrance gate on the property driveway. Officer A drove his vehicle in front of the F-250, positioned bumper to bumper, to block it. He activated his emergency lights and police siren.

Officer A noted the suspect's reaction at this point to be "bug-eyed", stating his eyes were "huge". He thought either the suspect was surprised or he had consumed drugs. Officer A observed another male in the front passenger seat. Officer A heard the F-250's engine rev and the suspect backed through the gate and onto the property. At this point, officer A was concerned that the suspect would drive around his vehicle and into the residence on the property in order to escape. Officer A followed the suspect vehicle onto the property and repeated his efforts to block the vehicle.

#### *Evidence of subject officer*

The subject officer, accompanied by the PSD, approached the area from the opposite direction and pulled into a neighboring driveway to avoid detection as the suspect drove onto the private property. The subject officer saw officer A's vehicle approach the F-250 to block it. The subject officer observed the F-250's tires spinning as it pressed against the front of officer A's truck.

The subject officer recognized the suspect and was aware that the suspect had multiple convictions for property crime offences, including vehicle thefts, as well as a conviction for flight from police. The subject officer also knew that the suspect had previously used dangerous, desperate and violent means to avoid arrest while engaged in criminal activity. The subject officer was concerned that the suspect was determined to escape and that while driving the F-250, the suspect posed a risk of grievous bodily harm or death to police officers and others in his path.

Accordingly, the subject officer accelerated and drove into the rear passenger side of the F-250 to disable the rear axle or tire. The subject officer leaned out his car window, made eye contact with the suspect, identified himself as a police officer, and told the suspect to "stop" and that he was "under arrest".

Both officers exited their vehicles to arrest the occupants of the F-250. The suspect, however, continued his attempts to flee in the vehicle. The subject officer heard the suspect rev the engine and the suspect appeared to be struggling with the gear shift. The subject officer described the suspect as "wide-eyed" and "frantically" attempting to get the vehicle moving again. When the suspect was not able to move the vehicle, he and the passengers

exited the vehicle to flee on foot. Officer A pursued the passengers while the subject officer and the PSD began to track the suspect.

The subject officer tracked the suspect through the property and observed him by a fence that paralleled the Highway. The subject officer attempted to use his radio to call for backup to his location but there was no response.

When the subject officer was approximately 100 feet away from the suspect, the subject officer announced, "...*Stop running you are under arrest, stop or I'll send the dog.*" The suspect made eye contact with the subject officer and the subject officer felt the suspect was either "*high or in a state of panic.*" The suspect attempted to crawl under the fence towards the Highway. At that point the subject officer decided to deploy the PSD to apprehend the suspect.

From his report it appears the subject officer based his decision to deploy the PSD on the basis that a) in his perceived state of desperation the suspect may actually flee straight onto the road without any regard for oncoming traffic, b) if someone did stop, his desperation would put a member of the public in a position of vulnerability to a carjacking, and c) the fact that there are numerous residences along the highway which could represent hostage or carjacking opportunities.

Within seconds the PSD took hold of the suspect's left lower leg. The subject officer climbed over the fence to the other side and observed the suspect with a firm grip on the ears and scalp of the PSD in what appeared to be an attempt to free himself from the bite. The subject officer again told the suspect that he was under arrest and to let go of the dog. The suspect appeared to ignore the commands. The subject officer was concerned that, if the suspect was able to defeat the PSD, the risk to attempt to arrest him alone was significant.

To gain compliance of the suspect, the subject officer utilized a stun strike to the side of the suspect's head in an effort to distract him and allow the PSD to get control of him. The stun strike had no effect. Not wanting to injure his dominant hand which recently had surgery to repair, the subject officer used two more elbow strikes to the face of the suspect. The strikes appeared to disorient the suspect and, at this point, the suspect let go of the PSD and stopped resisting the subject officer's attempts to apprehend him. The subject officer informed the suspect of his arrest and to roll onto his stomach with his hands visible and instructed the PSD to release his grip, which he did immediately.

### *Evidence of Suspect*

The suspect provided a statement to the IIO approximately two weeks after the incident. According to the suspect, he had been asked by the two other people who were in the vehicle that day to drive them "to the country". The suspect recognized officer A as a police officer while driving near a BC Rail industrial site. He recalls the incident started while he was parked in a residential driveway. He pulled into the driveway and saw the police vehicle he observed earlier at the BC Rail site approach and block him. A second vehicle – which he assumed must have been another police vehicle – started to "ram" his vehicle.

The suspect told the investigators that the police officers got out of their vehicles and drew their handguns. They told the suspect and the passengers to stop. Although the suspect stated "we weren't going anywhere". The suspect and the passengers got out of the vehicle and fled on foot.

According to the suspect, he jumped over a barbed wire fence onto a private property, and continued running towards the highway. The suspect approached the property border which was enclosed by a fence. He attempted to crawl through a gap in the fence. The suspect described his position as "half lying down". The RCMP dog caught him, biting his ankle. The suspect tried to grab the dog to stop the dog from biting him.

The suspect recalls the officer repeatedly questioning him about stolen merchandise and, in response, repeatedly denying that he stole anything. During the questioning, he was "booted" in the face multiple times – four times "for sure." The suspect felt the officer kick him using the heel and the front of his boot.

The suspect does not recall how the interaction ended. He recalls being put in the back of a police car at some point but recalls very little detail otherwise.

### *Medical Evidence*

The suspect was assessed at the detachment by Emergency Health Services and then transported by ambulance to hospital. He was observed to have multiple facial fractures including to his right orbital bone, nose, and his jaw, which was displaced. His right calf had multiple puncture wounds from the dog bite but no stitches were required. The suspect had surgery to repair his cheekbone and his jaw. His jaw was wired shut following the surgery for approximately eight weeks.

According to the treating physicians, the suspect's injuries were caused by blunt force trauma. The injuries could have been caused by kicks, punches or elbow strikes.

#### *Use of Force Expert*

An IIO use of force expert assessed the actions of the subject officer in this case. Prior to his retirement from the RCMP, the expert worked as a use of force instructor for nearly 20 years. In his report, the investigator considered whether the subject officer's use of force in arresting the suspect was consistent with RCMP policy and training in all of the circumstances. The investigator concluded that the officer's actions in delivering the described 'stunning blows' with a closed fist and elbow strikes during the arrest of the suspect are within the acceptable standards as set out in his RCMP Course Training Standards, RCMP Policy, and Statute Law.

#### **Analysis**

Whether the force used by the subject officer to apprehend the suspect was justified requires consideration of whether the force was necessary, reasonable and proportionate to the risk of harm the suspect posed to the public (including the officers). There is no issue that the suspect was arrestable for a number of serious offences, including possession of stolen property and flight from police.

The force used by the subject officer against the suspect includes the deployment of the PSD and the stunning strikes, either delivered by fist and elbow, according to the subject officer, or by kicks, according to the suspect.

The subject officer's police report summarized his actions and articulated his perception of the serious threat posed by the suspect in the circumstances and the objective factors he considered in his analysis, including the suspect's criminal history. Officer A gave a similar account and characterization of the threat posed by the suspect, which corroborates the evidence of the subject officer.

The officers treated this event as a high risk situation and approached it on the basis that, if allowed to escape, the suspect (and his associates) posed a high risk to public safety. There is nothing in the evidence capable of establishing that the officer's approach, with the benefit of their experience as police officers and their knowledge of the suspects' criminal histories, was unreasonable in the circumstances.



With respect to the use of the PSD, the subject officer was compliant with the Provincial Standards and RCMP policy regarding use of PSDs. Specifically, the subject officer's use of his PSD was consistent with the requirements that "*[t]he person is fleeing or hiding and there are reasonable grounds for their immediate apprehension by a police dog bite.*"

On balance, in light of the subject officer's high risk assessment, the use of the PSD to apprehend the suspect was not unreasonable or disproportionate to the risk posed by letting the suspect go free.

The next issue is whether the stunning strikes delivered by the subject officer to the suspect are justified under s. 25 of the *Criminal Code*. According to the subject officer, the suspect was still actively resisting arrest after the PSD took hold of his leg. The subject officer says the suspect was trying to fight off the PSD. The suspect says he grabbed the dog to stop it from biting him. In this case, there is no clear evidence from the suspect that he communicated any intention to comply with the subject officer's direction. Accordingly, the subject officer's perception that the suspect continued to be non-compliant was not unreasonable in all the circumstances.

As noted in the Use of Force opinion, use of stunning blows by way of hand and elbow strikes to facilitate the suspect's arrest falls within the appropriate range of force response options in situations where a subject is actively resisting arrest. If the stunning blows occurred by way of kicks to the suspect's face, concerns would be raised about the reasonableness and proportionality of the force used by the subject officer.

Accordingly, Crown Counsel considered the evidence regarding whether the delivery of those strikes was by foot or by hand and elbow.

The medical evidence from the suspect's doctors was that the suspect's injuries were consistent with both options. Although the suspect's evidence on this point is firm, the strength of his evidence on this point is attenuated by the credibility issues set out below.

The suspect's suggestion that he was not trying to flee from the police by vehicle is problematic, given he got out of the vehicle and ran away on foot as soon as the vehicle was immobilized. The suspect's conviction for possession of stolen property in relation to this matter, in light of his previous denials to the IIO and to the subject officer that the vehicle was stolen, is also problematic. The suspect's general credibility is also an issue in light of his prior conviction for flight from police and numerous theft convictions.

The subject officer's evidence regarding the nature of the strikes would at least raise a reasonable doubt. Based on this, in conjunction with anticipated credibility issues in regards to the suspect's evidence, the evidence is not capable of establishing that the kicking alleged by the suspect occurred beyond a reasonable doubt.

There is no substantial likelihood of conviction against the subject officer for any offence in relation to this incident. No charges are approved.

### **Materials Reviewed**

In making the charge assessment decision in this matter I have reviewed the following materials to the extent necessary to conduct a proper charge assessment:

- Executive summary and detailed narrative;
- Summaries of police witness statements;
- RCMP RCC;
- Subject Officer PRIME report and written responses to IIO follow up questions;
- Transcripts of IIO interviews of the suspect and officer A;
- Use of force opinion report;
- RCMP Policies and Provincial Standards relating to use of police service dogs;
- Criminal records of the suspects,
- Scene photographs.