Media Statement

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BC Prosecution Service announces no charges following incident involving RCMP BC Highway Patrol officer

Victoria – The BC Prosecution Service (BCPS) announced today that no charges have been approved against a member of the RCMP's BC Highway Patrol who was involved in an incident in Kelowna on September 21, 2024.

The incident was investigated by the Kelowna RCMP's Serious Crimes Unit who recommended a charge of assault with a weapon against the Subject Officer.

In this case, the BCPS has concluded that the available evidence does not meet the charge assessment standard. There is no substantial likelihood of conviction for any criminal offence in relation to the incident. As a result, no charges have been approved.

A Clear Statement explaining the reasons for not approving charges is made public by the BCPS when the Head of the BC Prosecution Service (the Assistant Deputy Attorney General) concludes it would be in the public interest to do so.

Media Contact: Damienne Darby
Communications Counsel
bcpsmedia@gov.bc.ca
236.468.3832

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Clear Statement

Overview

In the evening of September 21, 2024, a member of the RCMP's BC Highway Patrol (the Witness Officer or WO) conducted a traffic stop of two motorcyclists, the Affected Person (AP) and another person (W1). During the traffic stop, the WO radioed for backup and another RCMP member, the Subject Officer (SO), attended at the scene and proceeded to arrest the AP. During the arrest, the SO pushed the AP to the ground, kicked him in the leg, and struck him once with their police-issued baton. The AP did not suffer any serious injuries.

This Clear Statement provides a summary of the evidence gathered during the investigation and the applicable legal principles. This is provided to assist in understanding the BCPS's decision not to approve charges against the SO. Not all the relevant evidence, facts, case law, nor legal principles are discussed. The charge assessment was conducted by Crown Counsel with no prior or current connection to the SO.

Charge Assessment

The charge assessment guidelines that are applied by the BCPS in reviewing all Reports to Crown Counsel are established in BCPS policy and are available at:

www.gov.bc.ca/charge-assessment-guidelines

BCPS guidelines for assessing allegations against officers are also established in policy and are available at:

www.gov.bc.ca/allegations-against-peace-officers

The BCPS applies a two-part test to determine whether charges will be approved, and a prosecution initiated. Crown Counsel must independently, objectively, and fairly measure all available evidence to determine:

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 what evidence is likely to be admissible and available at trial; the objective reliability of the admissible evidence; and the likelihood that viable, not speculative, defences will succeed.

If the Crown Counsel is satisfied that the evidentiary test is met, Crown Counsel must then determine whether the public interest requires a prosecution. The charge assessment policy sets out a non-exhaustive list of public interest factors to be considered, both for and against a prosecution.

Charges considered

The potential charges considered against the SO in this case were assault with a weapon and simple assault.

Timeframe for assessment

Some initial material was submitted by the Kelowna RCMP Serious Crimes Unit (SCU) to the BCPS for charge assessment in June 2025. The necessary supplemental material was submitted in September and December 2025. The charge assessment was completed in February 2026.

Relevant law

Assault

To prove an assault, the Crown must establish a person intentionally applied, threatened, or attempted to apply force to another person, directly or indirectly, without their consent and that in committing the assault the person carried, used, or threatened to use a weapon.

Legal defences

Section 25(1) of the *Criminal Code* provides that a peace officer who acts, in the course of their lawful duties, on "reasonable grounds" is "justified in doing what [they are] 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."

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 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 officer. In applying the standard, the Supreme Court of Canada has ruled that, "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" (*R v Asante-Mensah*, 2003 SCC 38, at para 73). In these

dynamic situations, police are not expected to measure the force used precisely and are not required to use the least amount of force that may achieve their objective. Whether an officer's use of force complied with their police training is one factor a court can consider in assessing its reasonableness (*R v Deslauriers*, 2020 QCCA 484, at para 122).

Despite the deference afforded to officers in the application of force, the law still requires that their use of force not be excessive. An officer's use of force is constrained by principles of proportionality, necessity, and reasonableness.

One of the issues in this case is whether the force used by the SO was necessary, reasonable, and proportionate in the circumstances. In a prosecution, the onus is on the Crown to prove that the legal defences provided under the *Criminal Code* to peace officers acting in the course of their duties have not been established.

Summary of evidence

On September 21, 2024, the AP and a friend (W1) were riding their motorcycles in Kelowna. At approximately 8:38 p.m., near the intersection of Commercial Drive and Lansdowne Place, the WO conducted a traffic stop of the AP and W1 for an observed *Motor Vehicle Act* offence (W1's motorcycle had unauthorized lamps) and to check both for sobriety. WO requested the SO's attendance as backup on two occasions: the first was for routine backup. The second request, at approximately 8:40 p.m., was for the SO to "make it quick." During that second request, the SO heard "what appeared to be a struggle ensuing over the radio." The SO, who was in a police vehicle, subsequently attended the scene at a high rate of speed with lights and sirens activated.

Upon arrival, the SO saw and heard the WO shout at the AP to "get back." The approximate height of the AP was 193 cm (6'4") and his approximate weight was 129 kg (285 pounds). The SO exited their vehicle at approximately 8:43 p.m., extended their police-issued baton, and yelled at the AP to "get the fuck on the curb, sit down on the curb now, sit down on the fucking curb now."

The AP did not immediately sit down, telling the SO that he was not in trouble (as the WO had previously told him he was free to go). The instruction to sit down was given five times, over approximately 20 seconds, before the AP took any steps to sit down. At this point, the SO, and then the WO, pushed the AP to the ground. The SO stated that this was done because they believed the AP was intentionally delaying compliance with simple commands to buy time to plan an attack, a tactic the SO reported having observed numerous times as a police officer.

The push caused the AP to land on their back. The SO then ordered them to roll over. While the AP was either rolling over or already prone, the SO yelled at them to show their hands, then

kicked the AP and struck their upper right leg with their baton. The SO stated that they did so out of fear that the AP was reaching for a weapon. According to both the SO and the WO, the AP's hands were at their front and toward their waistband before the kick and the baton strike.

The SO then handcuffed the AP and informed them that they were under arrest for obstruction and resisting arrest. Just over a minute passed from the SO's baton deployment to the AP being handcuffed. Less than a minute later, at 8:44 p.m., the AP was uncuffed and released at the scene without process. The AP did not suffer any serious injuries.

Expert evidence

For the purposes of the investigation, the Kelowna RCMP's SCU engaged an internal use of force expert (RCMP expert) to provide evidence about topics including police policy, training, and practice, and whether the SO's actions in this case complied with them.

The RCMP expert identified the following factors, present in this case, that officers are trained in, and that can contribute to an elevated risk assessment:

- a request for backup in an impaired investigation is rare and would be taken very seriously by responding officers
- the "emergency" classification of the WO's call for assistance would indicate to the average officer that a significant event had already occurred, requiring immediate action
- the AP's physical size would have made the SO "acutely aware" of the risks of engaging in a ground fight
- a motorcycle helmet can be used as a weapon
- the waistband is a common location for weapons, and officers are trained to treat concealed hands as a potential lethal threat

The RCMP expert also provided evidence about training RCMP officers receive in respect of each use of force tactic employed by the SO. In the RCMP expert's opinion, the SO's initial push would be classified as a physical control soft technique. Officers are trained that this use of force technique may be appropriate in response to a subject displaying behavior ranging from passively to actively resistant. The SO's kick was consistent with a distraction strike or push intended to move the SO from his side onto his stomach. This use of force would be classified as a low-end physical control hard technique. Officers are trained that this use of force technique may be appropriate in response to a subject displaying behavior ranging from actively resistant to assaultive. The SO's baton strikes were impact strikes intended to gain control of a subject. Officers are trained that a baton, classified as an intermediate weapon, may be appropriate to

respond to a subject who is displaying, or has displayed, assaultive behavior. The RCMP expert also opined that the way the SO deployed their baton was "technically correct" with respect to mechanics and target selection.

The RCMP expert identified other general training principles applicable to the facts of this case. He stated officers are trained:

- to avoid direct physical engagement with individuals who significantly outweigh them
- to effect arrest as soon as practical prior to applying force beyond physical control techniques
- to use clear commands prior to physical intervention

The RCMP expert's opinion was that, based on these principles and the totality of the circumstances, the SO acted contrary to RCMP policy and training when they used force against the SO before telling him he was under arrest.

Analysis

The evidence clearly establishes that the SO applied force to the AP in the course of effecting an arrest of the AP, during which they pushed the AP to the ground, kicked him, and struck him once with a baton. The elements of the offences of assault and assault with a weapon are established. The only live issue in this case is the application of a defence under section 25 of the *Criminal Code*.

In applying the section 25 defence, a trier of fact must conclude:

- the officer was required or authorised by law to perform an action in the course of their duties (in this case, effect an arrest of the AP)
- the officer acted on reasonable grounds in performing that action
- the force used by the officer in their performance of that duty was objectively necessary, reasonable, and proportionate (i.e. the force used was not excessive)

Regarding the first and second factors, the evidence at a trial would clearly show that the SO was acting in the course of their police duties.

Before arriving on scene, the SO knew that the WO had conducted a traffic stop and had initially requested routine backup, which quickly escalated to a more urgent request. Upon arrival, the SO observed the WO dealing with W1 and the SO and heard the WO yell at the SO to "back off". The SO then ordered the AP to sit down five times, and the AP did not start complying for approximately 20 seconds. It is reasonable for an officer in these circumstances to conclude that

the AP had defied a lawful request and thereby impeded, hindered, or frustrated the SO's efforts to create a safe perimeter around the WO while he dealt with W1. On the available evidence, a trier of fact would likely conclude that reasonable grounds existed for the SO to believe that the AP was arrestable for the offence of obstructing a police officer.

Having established that the SO had reasonable grounds to conclude that the AP was arrestable for obstructing a police officer, the question is whether the force used by the SO to effect the arrest of the AP was objectively necessary, reasonable and proportionate in the circumstances.

The SO did not advise the AP that he was under arrest for obstruction before using force to effect the arrest. In the RCMP expert's opinion, no exigency justified the SO's omission and therefore the SO acted contrary to RCMP policy and training. However, based on the available evidence – particularly the SO's explanation of their safety concerns and the dynamic and initially high-risk situation they encountered – a court would likely conclude that the SO's belief that the AP was uncooperative and posed a safety risk was objectively reasonable. On that basis, a court would likely conclude that although the SO may not have followed policy or training, their decision to use force before advising the AP of the arrest was justified in the circumstances.

Regarding the initial push of the AP, the available evidence establishes that this is a low-end soft control technique, appropriate for subjects who are passively or actively resistant. A trier of fact would have little difficulty accepting on the available evidence that a reasonable officer in the SO's position would have perceived the AP to be passively resistant, especially given their failure to comply with repeated orders to sit down and his delayed compliance thereafter.

The available evidence establishes that the SO's kick is a low-end hard control hard technique, appropriate for subjects who are assaultive or actively resistant. Given the totality of the circumstances, particularly that the AP's hands were at or around his waistband prior to the kick, a trier of fact would likely conclude that the kick was an appropriate response to a perceived impending assault or an attempt to access a weapon.

The SO's baton strike is a resort to an intermediate weapon intended for impact strikes to control a subject, appropriate for subjects who are, or have been, assaultive. Like the kick, given the totality of the circumstances, a trier of fact would likely conclude that the baton strike was an appropriate response to a perceived impending assault or an attempt to access a weapon.

The available evidence does not establish that the SO employed force against the AP beyond that which was reasonable, necessary, or proportionate for purposes of safely arresting the AP. As a result, the Crown would be unable to disprove a defence under section 25(1) of the *Criminal Code*.

Conclusion

No charges have been approved in relation to the SO's involvement in this incident.