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BC Prosecution Service announces no charges following incident involving Chilliwack RCMP officer

Victoria – The BC Prosecution Service (BCPS) announced today that no charges have been approved against a Chilliwack RCMP officer who was involved in an incident in Agassiz on September 4, 2022.

The incident was investigated by Langley RCMP, who recommended charges of assault with a weapon and assault causing bodily harm 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.

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To learn more about BC's criminal justice system, visit the British Columbia Prosecution Service website at: gov.bc.ca/prosecutionservice or follow [@bcprosecution](https://twitter.com/bcprosecution).

Clear Statement

Overview

On September 4, 2022, a member of the Agassiz RCMP (Witness Officer or WO1) responded to a report of a possible impaired driver (the Affected Person or AP). After the AP failed two roadside screening tests, WO1 attempted to arrest him, but the AP resisted and fled. WO1 pursued the AP and, following a brief foot pursuit, took the AP to the ground. The AP's efforts to resist arrest continued and WO1 requested immediate police backup. A second Agassiz officer, Witness Officer 2 (WO2), arrived and assisted WO1 in securing the AP into handcuffs and then into their police vehicle. During this struggle, the AP kicked WO2 in the head.

Four additional police officers from the RCMP Chilliwack detachment, including the Subject Officer (SO), arrived soon after. Due to concerns about the AP's mental health, including suicidal statements, officers decided to transport him to Chilliwack cells, which was better resourced to manage this type of situation. The AP resisted throughout the process. During initial efforts to move the AP, carried out by Witness Officer 3 (WO3) and Witness Officer 4 (WO4), the AP went limp and then actively fought, kicking WO4 in the head, and falling to the ground. During the prolonged 10-15-minute struggle that followed, the AP braced himself, kicked at officers, and repeatedly tried to escape the vehicle. Multiple techniques used by these officers to gain control of the AP proved ineffective.

Several minutes into this struggle, the SO deployed oleoresin capsicum spray (OC spray, also known as pepper spray) without effect and delivered strikes. The apparent goal of these acts was to gain compliance. The AP continued to resist. Following a warning, the SO deployed a taser, after which the officers were able to secure the AP into the Chilliwack police vehicle. During the incident, the AP sustained minor cuts and bruises to his body, as well as a laceration to his head. Two officers, WO2 and WO3 sustained minor injuries.

This Clear Statement provides a summary of the evidence gathered during the investigation and the applicable legal principles. These are 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

A charge of assault causing bodily harm and two counts of assault with a weapon were recommended by the investigative agency.

Timeframe for assessment

An initial Report to Crown Counsel was forwarded in June 2024. Supplemental materials were forwarded in December 2025. The charge assessment was completed in June 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.

Assault causing bodily harm requires proof that the assault caused harm that was more than trifling or transient. The required intent is simply the intent to commit the assault. The Crown

must prove beyond a reasonable doubt that the assault was a significant contributing cause of the injury.

To prove assault with a weapon, the Crown must prove a person intentionally applied, attempted to apply, or threatened to apply force to another person using a weapon, without their consent.

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 the force used was necessary, the trier of fact must consider the circumstances as they existed at the time, recognizing that officers cannot be expected to measure force with precision.

The reasonableness of the officer's belief is assessed objectively, while accounting for the officer's circumstances and human frailties. 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). 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 to achieve their objective.

Whether an officer's use of force complied with their training is one factor a court can consider in assessing its reasonableness (*R v Deslauriers*, 2020 QCCA 484).

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

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 4, 2022, a member of the Agassiz RCMP, WO1, responded to a BC Ambulance report of a possible impaired driver on Highway 9. WO1 located the AP with paramedics near Rosedale Ferry Road and conducted an impaired driving investigation. After the AP failed two

roadside screening tests, WO1 attempted to arrest him. The AP resisted and WO1 was only able to secure one wrist in handcuffs before the AP fled. WO1 pursued the AP on foot and tackled him to the ground, then, as the AP's two friends approached, made two urgent calls for immediate backup. Responding officers initiated an "officer in trouble" call and units from both Agassiz and Chilliwack responded with lights and sirens activated. While waiting for backup, an ambulance attendant assisted WO1 in restraining the AP.

WO2, the other Agassiz general patrol member on shift that evening, was the first to arrive. On arrival, WO2 used several soft tissue strikes, consistent with strikes used by police to distract a suspect. WO1 and WO2 were eventually able to handcuff and secure the AP in a police vehicle. WO2 stated that during this struggle the AP kicked them in the head and right leg. Both WO1 and WO2 stated that the AP resisted being placed into the vehicle, and once inside, actively tried to prevent them from closing the doors by repeatedly kicking the door or bracing himself against the vehicle's doorframe. Cell phone video taken of these events and the AP's own statement confirm that the AP actively resisted arrest.

The SO and three additional Chilliwack officers arrived soon after the AP was secured. Due to concerns about the AP's mental health, including suicidal statements, the SO and a supervising officer present at the scene decided it was necessary to transport the AP to Chilliwack cells, as Agassiz did not have the necessary number of guards on duty to monitor a person in this condition. A decision was also made to transport the AP to the detachment in a Chilliwack RCMP vehicle to avoid removing the Agassiz patrol unit from service. As there were only two Agassiz patrol units working, removing one of them could have created officer safety issues.

Four officers were involved in moving the AP into the Chilliwack vehicle: the SO, WO2, WO3 and WO4. Initial efforts to move the AP, carried out by WO3 and WO4, were met with instant resistance that quickly escalated to include assaultive behaviour. These officers stated that the AP first went limp and then, despite being handcuffed behind his back, started to fight and flail. In response, the officers attempted to carry the AP to the second vehicle. While being carried, the AP kicked WO4 in the head causing both officers to lose their grip and the AP to fall and strike his head on the pavement, causing a minor abrasion.

WO2 and the SO then moved to assist WO3 and WO4, and together they tried to carry the AP to the Chilliwack police vehicle. Once at the vehicle door, the AP braced himself, kicked at officers, and repeatedly tried to escape, including launching himself out the opposite door, where another officer was located to assist in pulling him inside. Witnesses, including paramedics, consistently describe a prolonged (10–15 minute) struggle during which the AP continuously resisted and assaulted officers. WO2 reported the AP kicked them in the head and arm and WO3 reported the AP kicked them in the groin area. At one point during the AP's efforts to escape

through the other side of the vehicle the AP fell to the ground. The AP later reported that this fall caused an injury to his head.

WO2, WO3, and WO4 stated that during the struggle at the Chilliwack vehicle, each employed various physical control tactics in their efforts to secure the AP within it. This included pain compliance through pressure points by WO4, distractionary knee strikes by WO3, and empty hand control tactics by WO2. These efforts were unsuccessful in achieving control of the AP.

The witness officers stated that during this struggle they observed the SO deploying their OC spray, delivering several strikes to the AP's head, and deploying a taser. Each witness officer said that it was only after the SO's final taser deployment that officers were able to secure the AP inside the Chilliwack vehicle. This evidence is confirmed by paramedics at the scene.

The OC spray deployment occurred after officers had been struggling with the AP for more than five minutes and after the AP's aggression escalated. The officers stated they heard the SO provide a verbal warning and that they noticed the odour of OC spray in the vehicle after this. WO4, the only officer to see the actual deployment, stated the SO deployed the OC spray into the police vehicle while the AP continued to violently resist police efforts to close the vehicle doors and continued to kick at police. The witness officers stated the OC spray had little effect and the AP continued kicking and attempting to headbutt officers after its use. Although the AP reported eye irritation, hospital observations noted no visible effects.

After the OC spray deployment, witness officers report seeing the SO delivered two or three strikes to the AP's head. WO3 said that during the strikes the AP was kicking at police in an apparent effort to escape the backseat and that, simultaneous to the strikes by the SO, they delivered knee strikes to the AP's buttocks.

The witness officers stated that after the AP was on the ground outside of the vehicle his resisting and assaultive behaviour continued. The SO warned the AP that a taser would be used if he did not comply. They reported seeing the SO then deploy their taser multiple times, first in contact (stun) mode without effect, and then in prong (probe/three-point) mode. They report that it was only after the last deployment that officers were able to secure the AP in the vehicle. Paramedics recall hearing taser warnings and deployment sounds. The AP reported that he was tasered while on the ground and that it caused him to convulse. All evidence indicates the AP was secured in the Chilliwack vehicle following the taser deployment.

Injuries sustained by the AP during the incident included cuts and bruises to his body and head as well as a laceration to his head that required gluing. The AP acknowledged being under the influence of drugs and alcohol and hospital records confirm this. The AP also acknowledged that he resisted arrest. The AP denied that he engaged in any assaultive behaviour, a claim that is contradicted by the evidence of witness officers and paramedics.

WO2 and WO4 sustained minor injuries during the struggle: WO2 sustained bruising and scratches on his arms and legs, as well as swelling and redness under his eye and temple area; WO4 sustained bruising on his arms.

Expert evidence

An RCMP use-of-force expert provided an opinion regarding RCMP officer training in the Incident Management/Intervention Model (IMIM). The IMIM describes appropriate and reasonable officer responses based upon a subject's behaviours. The model classifies subject behaviour into five categories: cooperative, passively resistant, actively resistant, assaultive, or posing a risk of grievous bodily harm or death and sets out use of force options that may be appropriate in response to each category of behaviour. The model provides officers with a reference for articulating their decision making with respect to use of force and recognizes that the officer is involved in a continuous risk assessment.

Applying the principles of the IMIM model, the expert characterized the AP's behaviour as both actively resistant and assaultive. Active resistance involves non-assaultive actions used to resist lawful direction (e.g., fleeing), and may justify soft or hard control techniques or, in certain circumstances, intermediate weapons. Intermediate weapons include OC spray and tasers. Assaultive behaviour involves the use of force (e.g., kicking or punching) or attempted force, and may justify the use of soft or hard physical control techniques or intermediate weapons. The expert described the situation faced by officers in this case as "fairly unique" and one that is not specifically addressed in RCMP training, as handcuffed individuals do not typically display the level of violence or agility described in this case.

The expert explained that tasers can be deployed in three modes: stun mode, prong (probe) mode, or three-point mode. In three-point mode the two prongs are deployed concurrently with stun mode. Current RCMP training focuses on deployment in prong mode only and does not include instruction on stun mode or three-point mode. The reason for this is that neuromuscular incapacitation (NMI), rather than pain compliance, can only be achieved when the taser prongs successfully contact a subject at least 30 centimetres (12 inches) apart. NMI is the main goal of a taser deployment because it temporarily disables large muscle groups, making it very hard for a subject to continue to be assaultive. The expert explained that while use of a taser in stun mode is not specifically part of current training, it is not expressly prohibited, and there are instances, including in close quarter situations, where such deployments may be appropriate.

Analysis

The available evidence establishes that the SO's strikes to the AP's head meet the elements of simple assault. There is insufficient evidence to establish that these strikes caused any injury. The

SO's use of OC spray and the taser meet the elements of assault with a weapon. The only remaining issue in this case is the application of a defence under section 25 of the *Criminal Code*.

Section 25 provides a complete defence to force used by a police officer when that officer:

- acted in the course of their duties
- acted on reasonable grounds
- used force that was objectively necessary, reasonable, and proportionate

The SO was clearly acting in the course of their duties. The AP was initially detained for impaired driving, then after failing two ASD tests, he was told he was under arrest and then attempted to flee. He was finally arrested following a prolonged struggle during which he kicked WO2 in the leg and head. At the time the AP was handcuffed and secured in the Agassiz vehicle, there were ample grounds to arrest him for impaired driving, assaulting a peace officer, and obstruction.

The SO's use of force occurred during the attempt to move the AP to a second police vehicle. A lawful arrest is a continuing process. Police officers may use as much force as necessary to complete the arrest and maintain custody.

The evidence supports the reasonableness of the SO's belief that some force was necessary to complete the arrest. This evidence includes:

- The AP's behaviour ranged from actively resistant to assaultive. Despite being handcuffed, he kicked and struck officers and, over a continuous 10-15-minute period, attempted to escape lawful custody.
- Multiple witnesses, including officers, paramedics, and the AP himself, confirm sustained resistant and assaultive behaviour. While the AP states he was not assaultive, the available evidence from all other witnesses establishes this claim as untrue.
- The AP posed an ongoing risk of injury to officers during a prolonged struggle in which he and two witness officers were injured.
- The use-of-force expert classified the AP's conduct as actively resistant and assaultive.

The available evidence shows that officers initially attempted to gain compliance with verbal commands and soft and hard physical control techniques, but the AP resisted and kicked two officers in the head. It shows that the SO deployed OC spray following about five minutes of unsuccessful attempts by four police officers to control the assaultive, handcuffed AP and shows that this deployment was directed at the AP in the back of the police vehicle as he continued to demonstrate assaultive behaviour that posed a safety risk to both police and the AP. The expert

evidence would be that RCMP officers are trained that resort to OC spray may be an appropriate response to a subject exhibiting assaultive behaviour.

The expert evidence is that officers are trained that deployments of OC spray into confined spaces, like into the back of a police vehicle, should be avoided. Although the SO did deploy their OC spray into a confined space, a trier of fact is unlikely to conclude that this error in judgment is sufficient to negate a section 25 defence.

The available evidence shows that shortly after the OC spray deployment the SO delivered multiple strikes to the AP's head and that, when delivered, the AP continued to fight with police to escape the back of the police vehicle. The evidence does not establish where on the AP's head the SO's strikes made contact or the force of these strikes. There is no evidence that the AP's injuries were caused by these strikes. The expert evidence would be that RCMP officers are trained that resort to distraction strikes may be an appropriate response to a subject exhibiting resistant or assaultive behaviour.

The expert evidence would be that RCMP officers are trained that a taser may be an appropriate response to a subject in these circumstances. After the other force options were ineffective, the available evidence shows the SO provided a clear warning the taser would be deployed if the SO did not comply. The SO then deployed their taser, first in stun mode, and then in prong/three-point mode. The expert evidence is that RCMP officers are trained to deploy their tasers in prong mode because it is only in this mode when subject compliance can be achieved through NMI, as opposed to pain. The expert evidence is that RCMP training does not prohibit use of a taser in stun mode and that a deployment in this mode may be appropriate in some limited circumstances.

The available evidence is that when the SO initially deployed their taser in stun mode, the AP was on the ground outside the open vehicle door very close to the SO and WO3. Had the SO deployed in prong mode from this location, the required 30 centimetres prong spread necessary to achieve NMI would not be possible. The available evidence suggests that, given WO3 proximity to the AP, a move by the SO to create the necessary distance for a successful prong deployment posed a risk of loss of hands-on control of the AP or that the prongs would instead strike WO3. In these unique circumstances, the Crown cannot establish that the SO's decision to deploy their taser in stun mode was unreasonable.

A viable section 25 defence arises on the record that the available evidence does not refute.

Conclusion

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