



Prosecution Service **Media Statement**

July 2, 2026

26-20

BC Prosecution Service announces no charges in use of force by Abbotsford Police Department officer

Victoria – The BC Prosecution Service (BCPS) announced today that no charges have been approved against an officer from the Abbotsford Police Department involved in a non-fatal use of force on July 31, 2023.

Because of the serious nature of the injuries, the incident was investigated by the Independent Investigations Office (IIO). The Chief Civilian Director of the IIO determined that there were reasonable grounds to believe the officer may have committed offences and submitted a report to the BCPS (IIO file #2023-223).

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 in relation to any criminal offences involving the officer. As a result, no charges have been approved.

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 when the IIO has investigated the conduct of police officers and forwarded a report for charge assessment. A Clear Statement explaining the decision in more detail is attached to this Media Statement.

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Clear Statement

Overview

On July 31, 2023, just before 7:30 p.m., the Subject Officer (SO), a police officer with the Abbotsford Police Department (APD), was driving northbound on Clearbrook Road in Abbotsford, B.C. when they saw an older male, the Affected Person (AP), walking on the sidewalk wearing pajama bottoms and a t-shirt. The SO believed that the AP had exposed his penis and committed an indecent act. The SO activated the emergency equipment in their unmarked police vehicle, then pulled over and exited the vehicle. The SO confronted the AP to arrest him. The AP looked back and began turning away. The SO guided the AP several steps over to a grassy area, then took him to the ground to effect an arrest. A struggle ensued, during which the SO employed a vascular neck restraint (VNR) and struck the AP with their hand.

Additional officers arrived and assisted the SO in controlling and handcuffing the AP, who continued to be resistive. The AP was brought to a police vehicle and taken to the ground a second time. The SO then deployed OC spray (pepper spray) and the AP was controlled and brought to the police station. Initially, officers did not suspect the AP had suffered a serious injury. However, after the AP complained of throat pain and was taken to the hospital, it was determined that he had suffered a fractured larynx. He was discharged from hospital after several days of monitoring.

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 to not 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 nor 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 police 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 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 charge considered in this case was aggravated assault.

Timeframe for assessment

The IIO first submitted a Report to Crown Counsel to BCPS in October 2024. The charge assessment was finalized in June 2026.

Relevant Law

Aggravated assault

To establish the offence of assault, the Crown must prove that a person intentionally applied, attempted to apply, or threatened to apply force to another person, directly or indirectly, without their consent. Aggravated assault is proven when the force used wounds, maims, disfigures, or endangers the victim's life, and when that risk was reasonably foreseeable.

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 he is required or authorized to do and in using as much force as is necessary for that purpose."

Section 26 of the *Criminal Code* provides that "Every one 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). 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.

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

In a prosecution, the onus is on the Crown to prove beyond a reasonable doubt that the legal defences provided under the *Criminal Code* to police officers acting in the course of their duties have not been established.

Summary of Evidence

On July 31, 2023, at approximately 7:30 p.m., the SO was operating an unmarked police vehicle driving northbound on Clearbrook Road in Abbotsford. The AP was walking northbound on the sidewalk of Clearbrook Road, returning to his daughter's home after visiting a nearby liquor store. The AP was wearing pajama pants and a T-shirt. The SO reported observing the AP expose his penis and masturbate while walking on the sidewalk.

The AP denies exposing himself or otherwise engaging in an indecent act. He states that just prior to hearing the siren he was attempting to tuck in the drawstring of his pajama pants. There is no independent evidence available to resolve this discrepancy as the available CCTV evidence does not capture the AP at this time.

Upon observing the alleged indecent act, the SO activated their emergency lights, pulled over, and exited the vehicle to arrest the AP. The available CCTV footage is from a building across the street. The footage is grainy and partially obscured by the building itself, vehicles, trees, and other participants in the incident. Due to these limitations, the footage only assists in providing an overview of the general movements of the parties involved.

The video footage shows the SO's unmarked police vehicle coming into view as it approaches Mount Waddington Avenue from Clearbrook Road. The emergency lights are activated, and the vehicle comes to a stop. The AP then comes into view, walking along the sidewalk. The SO approaches the AP and appears to speak with him for approximately three seconds. The AP looks back, partially turns, and possibly takes a step backward. The SO places one or two hands on the AP and guides him several steps over to a grassy area. The SO appears to attempt to put

the AP's arm behind his back. The AP appears to resist and the SO takes him to the ground. During this part of the incident, dispatch records confirm the SO radioed for backup.

The video footage shows the SO kneeling on or over the AP for about eight seconds. The AP then attempts to move away from the SO, resulting in a struggle. After about five seconds, the AP is in a seated position on the ground, with the SO kneeling behind him and with their arm wrapped around him. The AP and the SO then slowly descend to the ground. They remain there for several seconds before the SO lifts the AP up to a seated position, keeping an arm wrapped around him. While in this position, the struggle continued, with the AP reaching for the SO's arm, and the SO taking the AP to the ground again.

Once the AP is on the ground, the video footage shows the SO attempting to handcuff and control the AP, while the AP continues to resist. The SO then strikes the AP with his hand, likely in the torso area. After further resistance by the AP, the SO can be seen kneeling over him again.

Two additional officers arrived in separate police vehicles and ran to assist. The video shows the officers struggling with the AP before gaining control and escorting him to a nearby police vehicle. At the vehicle, the AP can be seen pushing back against officers, following which he was slowly taken to the ground again.

The SO then deployed OC spray at the AP. The video does not permit a determination of precisely when or where the SO deployed OC spray. The AP did not resist further. About 90 seconds later, two additional officers arrived on scene and assisted in placing the AP in a police vehicle. The AP was then transported to the police station.

At the police station, the AP complained of throat pain and was taken to the hospital where he was diagnosed with a fractured larynx. The AP was intubated and spent several days in hospital before being discharged.

The SO prepared reports and police notes before they were aware the AP had sustained a serious injury or that there would be an investigation by the IIO. The SO described applying a VNR, causing the AP to lose consciousness for 10 seconds. They also reported delivering two strikes and deploying OC spray.

The AP was interviewed and attributed his injuries to the SO kneeling on his neck; he did not report the VNR, strikes, or deployment of OC spray.

A civilian witness observed part of the incident from a nearby apartment building. He reported seeing a physical altercation between the SO and the AP in which the SO was attempting to restrain the AP, and the AP was assaultive and actively resisting. However, the witness did not report observing a neck restraint or the deployment of OC spray.

Police Policy

APD training on the use of force includes reference to the *National Use of Force Framework* (NUFF). The NUFF promotes critical assessment of each situation and assists officers to understand the appropriate use of a variety of force options.

The NUFF classifies hand strikes and VNRs as examples of hard physical control techniques. These techniques are used to impede a person's behaviour or to allow application of another control technique. They have a higher probability of causing injury than soft physical control techniques. Such tactics may be appropriate when completing the arrest of a subject displaying actively resistant or assaultive behaviour.

OC spray is considered an intermediate weapon, meaning a weapon whose normal use is not intended or likely to cause serious injury or death. As with hard physical control techniques, the NUFF states that OC spray may be an appropriate response to a subject displaying behaviour ranging from actively resistant to assaultive.

Pursuant to APD policy, officers are permitted to use the VNR in circumstances other than those in which there are reasonable grounds to believe lethal force is justified, provided they are properly trained and demonstrate proficiency in its application. APD officers must requalify every year to use the VNR. Similarly, APD policy only permits the use of OC spray by officers who have successfully completed the relevant training course. On the date of the incident, the SO had completed the necessary OC training and was properly qualified in the use of the VNR.

Analysis

The AP and the SO presented different versions of the events in question in their statements. In these circumstances Crown Counsel must assess the totality of the available evidence to determine the objective reliability of the SO and AP's evidence.

The SO prepared reports and police notes describing a VNR, OC spray deployment, and hand strikes in response to an individual who was assaultive and actively resisting arrest. The AP, by contrast, attributed his injuries to the SO kneeling on his neck, and did not mention the VNR, strikes, or OC spray. The civilian witness who observed part of the incident did not report the VNR or OC spray, but his account generally supports the conclusion that the AP was resisting arrest, and the SO attempted to restrain him. The only objective evidence regarding the VNR and the OC spray deployment is the CCTV video. However, it is of limited evidentiary value due to its low quality and the obstructions.

The evidence shows that the SO intentionally applied force to the AP in their attempt to arrest and take him into custody by taking him to the ground, applying a VNR, striking him, and deploying OC spray. The AP did not consent to this force. Accordingly, the elements of the

offence of assault are established and the question turns to the applicability of the section 25 defence set out in 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, at all times, acting in the course of their police duties. With respect to the grounds for arrest, the SO says they observed the AP with his penis exposed and masturbating. The AP denies this, but even if a trier of fact accepts the AP's evidence that he was only attempting to tuck in the drawstring of his pajama pants, they would likely accept the SO's evidence that they believed they observed the AP committing an indecent act and conclude that their belief was objectively reasonable in the circumstances. As such, a trier of fact is likely to conclude the SO had reasonable grounds to arrest the AP.

Assuming the arrest was lawful, the SO was justified in using force that was reasonable, necessary, and proportionate in the circumstances to complete the arrest. Although the AP was injured as a result of the force used by the SO, on the available evidence, there is no substantial likelihood of establishing that the force used was more than necessary to take control of the AP as quickly as possible. Police are trained that strikes, the VNR, and OC spray, may be appropriate responses to a subject engaging in resistant and assaultive behaviour during a lawful arrest.

The SO maintains the AP was actively resistant and assaultive during the arrest. The SO resorted to using strikes and a VNR after a struggle with the AP. The SO says they repeatedly demanded that the AP stop fighting and resisting, which is supported by the evidence of the independent civilian witness. At the time the SO employed the strikes and VNR they were alone with the AP but had called for assistance. The AP continued to resist until after the arrival of two additional officers on scene, when the AP was then brought under control and moved to a police vehicle. Evidence from both witness officers and the video confirms that the AP's efforts to resist arrest resumed during the timeframe the SO deployed the OC spray.

There is no substantial likelihood of establishing that the force used by the SO during the arrest of the AP was unreasonable, unnecessary, or disproportionate. Therefore, there is no substantial likelihood of the Crown rebutting the section 25 defence at a trial.

Conclusion

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