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23-18

No charges approved following incident involving 100 Mile House RCMP Officer

Victoria – The BC Prosecution Service (BCPS) announced today that no charges have been approved against a member of the RCMP involved in the arrest of an Indigenous individual who fled from police after allegations of dangerous driving on October 25, 2020, near 100 Mile House. The circumstances of the arrest came to the attention of the Director of Police Services who referred the matter to the Independent Investigations Office (IIO) for investigation.

Following the investigation, the Chief Civilian Director of the IIO determined that there were reasonable grounds to believe the officer may have committed an assault and submitted a report to the BCPS (IIO file #2020-285).

In this case, the BCPS has concluded that the available evidence does not meet the BCPS charge assessment standard. The BCPS is not able to prove, beyond a reasonable doubt, that the officer committed any offence in relation to the incident. As a result, 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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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) on Twitter.

Clear Statement

Factual Overview

On the morning of October 25, 2020, Clinton RCMP received a report from a civilian advising that a silver Chevrolet pickup truck was driving very erratically and had passed four vehicles on a blind corner on Highway 97 near Clinton, narrowly missing an oncoming vehicle.

At 9:22 am a 100 Mile House RCMP officer located the pickup and attempted to pull it over using emergency lights and siren but the vehicle fled heading northbound on Hwy 97 in the direction of Williams Lake. Shortly thereafter, another 100 Mile House RCMP officer attempted a second traffic stop using emergency lights but was also unsuccessful and the vehicle fled again. Neither officer attempted to pursue the fleeing pickup.

Although responding officers had no information about the identity of the current driver, they were advised that the pickup was registered to an individual who was "associated to" the "drug culture". Officers were also informed that ten days before this incident, Kamloops RCMP had searched the pickup and seized a loaded .22 calibre handgun, a knife, and a mask.

The pickup was then spotted by another officer, Witness Officer 1 (WO 1) on Hwy 97 near Maze Lake Road. WO 1 followed at a distance, as the pickup approached Amarillo Rd in 150 Mile House, where the officer who is the subject of the investigation (the "Subject Officer" or "SO") had set up a check stop and was standing outside his police vehicle. After stopping briefly in the line of stopped traffic, the driver of the pickup (the "Affected Person" or "AP") pulled out and began to drive around the check stop, accelerating in the direction of the SO, who was standing in the roadway. The SO drew his firearm and pointed it at the pickup, which sped past the SO, passing very close to the SO.

The pickup was followed by WO 1 who witnessed it driving dangerously with little apparent regard for other vehicles or police. The SO also returned to his vehicle and pursued the fleeing pickup. Less than one kilometre away from the failed check stop, another witness officer (WO 2) had deployed a spike belt which successfully deflated the two driver's side tires of the pickup. The driver continued to flee driving on two rims. Three more spike belts were deployed with the last belt successfully deflating the two passenger side tires. The final belt had been set up by the SO who had travelled ahead of the AP to the point where the belt was deployed.

Pursuing the AP at this point in their police vehicles were WO 1 and WO 2. After hitting the last spike belt the AP continued driving, until driving out of the northbound lane, crossing the median and two southbound lanes before getting stuck on the shoulder embankment of the south

bound lanes on Hwy 97. At this point, the AP exited the pickup and ran down the steep highway embankment away from the RCMP and their vehicles.

These latter stages of the pursuit were observed and recorded by the dash camera of WO 1's vehicle as well as a number of civilians using cell phone cameras.

Upon arriving at the scene, WO 2 exited his vehicle and quickly followed down the embankment after the AP. As WO 2 approached, the AP dropped to his knees facing away from the highway. WO 2 then pushed the AP face down onto the ground. The AP did not appear to have anything in his hands at this point. As WO 2 took control of the AP and attempted to apply handcuffs, the AP tucked both hands under his body and out of sight. Despite commands to put his arms out WO 2 noted that the AP continued to resist efforts by WO 2 to control his arms.

Within seconds of WO 2 taking the AP to the ground the SO ran down the embankment and joined in the effort to restrain the AP. At this point WO 2 did not have control of the AP's arms and the AP had not complied with directions to move his arms to his sides. After running to the scene, the SO stamped once forcefully on the AP's back and hip area. A few seconds after that the SO briefly stepped or pushed on the AP with his foot to the head area. He then struck the AP with a closed fist four times in the left upper body and back area. WO 2 had control of the AP's right arm at this point. With the SO's assistance WO 2 was able to apply handcuffs to the AP and he was stood up and walked back up the embankment. He was placed in a police vehicle and taken to the local police detachment.

The AP refused medical assistance both at the scene and at the police detachment. The AP was charged with Dangerous Operation of Motor Vehicle, Flight from Police, Willfully Obstructing a Peace Officer, and Prohibited Driving. Although he later complained of injuries, including bruising and swelling, suffered during the arrest, these injuries are not apparent in photos taken at the time. The AP was assessed at the Cariboo Memorial Hospital the day after his arrest and the resulting medical report made no mention of the bruising and swelling.

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 officer involved in the incident. Not all the relevant evidence, facts, case law, or legal principles are included in the discussion that follows.

The charge assessment was conducted by Crown Counsel with no prior or current connection to any of the officers who were involved in the incident.

Charge Assessment and the Standard of Proof

The charge assessment guidelines that are applied by the BCPS in reviewing all RCCs are established in policy and are available at:

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

BCPS guidelines for assessing allegations against Peace 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 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.

The reference to “likelihood” requires, at a minimum, that a conviction according to law is more likely than an acquittal. In this context, “substantial” refers not only to the probability of conviction but also to the objective strength or solidity of the evidence. A substantial likelihood of conviction exists if Crown Counsel is satisfied there is a strong and solid case of substance to present to the court.

In determining whether this test is satisfied, Crown Counsel must consider what material evidence is likely to be admissible and available at a trial; 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 a conviction.

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 both for and against a prosecution for Crown Counsel to consider.

Potential Charge

The potential charge considered against the SO in this case was assault contrary to section 266 of the *Criminal Code*. To prove an assault, the Crown must establish the SO intentionally applied, threatened, or attempted to apply force to another person without that person’s consent.

The specific assault charge recommended by the IIO in this case is related to the blows struck by the SO during the arrest.

The evidence establishes that the arrest in this case involved the intentional application of force to the AP without their permission. The issue on charge assessment is whether that use of force was reasonable and legally justified.

Legal Justification

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." This is limited by section 25(3) which provides that an officer will only be justified in using force likely or intended to cause grievous bodily harm or death where they subjectively and reasonably believed that it was necessary to protect themselves or another from grievous bodily harm or death.

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 of the *Criminal Code* are not applicable.

In assessing whether a particular application of force by an officer was necessary within the meaning of the *Criminal Code*, the trier of fact must consider 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 take into account the "particular circumstances and human frailties" of the officer. In applying the standard, "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 to a nicety and are not required to use the least amount of force that may achieve their objective.

Despite the deference it affords 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.

The issue is whether the force used by the SO in this case was necessary, reasonable, and proportionate in the circumstances.

Summary of Evidence

Police witnesses

WO 1

This officer located the pickup on Hwy 97 and followed to the check stop set up by the SO. He was aware that the pickup had been stopped in Kamloops the previous week and that a loaded handgun had been found inside.

He observed the AP driving away from the check stop, accelerating extremely quickly and driving towards the SO, missing the SO by a foot or two. The check stop events and much of his pursuit was captured by his dash camera video. WO 1 pursued the AP as he approached the spike belts with the AP attaining speeds of 150 km/hr. He observed the effects of the spike belts and stopped on the roadside when the AP fled his vehicle. WO 1 maintained his position on the roadside and was not involved in physically arresting or restraining the AP.

WO 2

WO 2 was the officer who directed other officers to intercept the AP's vehicle. He also participated in pursuit of the vehicle and the final apprehension of the AP. During the highway pursuit WO 2 estimated the speed of the AP's vehicle at between 160 and 180 kms/hr.

When the AP fled his stranded vehicle WO 2 was the first officer to pursue the AP down the embankment. The AP was directed both by the SO and WO 2 to get on the ground and put his arms out. The AP knelt and the WO 2 took the AP to the ground. During this the AP tucked his arms into his sides and partially under himself. In a statement to the investigators WO 2 related that the AP had tucked his right arm under his chest and WO 2 could not see the left arm. He was concerned that the AP might be accessing a weapon like a knife. He was concerned for his safety and was struggling to gain control of the right arm when the SO arrived to assist with the arrest.

WO 2 saw the SO strike the AP with his foot in a stomping motion and then deliver four or five closed fist strikes to the AP while pulling on the AP's arm. With the SO's assistance WO 2 was able to get both AP arms handcuffed.

Video evidence

Cell phone video recordings from civilians at the scene and from the dash mounted watch-guard video in the police vehicles depict most of the arrest and restraint of the AP. The video shows the AP going down the embankment and stopping, then going to his knees. It shows WO 2 taking the AP to the ground face down and the SO running to assist. The SO can be seen stomping once on the back of the AP, pushing down on the head area of the AP and then administering four closed fist strikes to the side of the AP before he is finally handcuffed and taken up to the police vehicle.

The videos do not clearly show the position of the AP's arms during the arrest. The AP's hands appear to be empty when he first drops to his knees. After that, the video does not show where his hands go. One civilian witness says she saw the AP put his hands in his pockets. She described the police as struggling with the AP before they were able to get his hands behind his back.

Written statement of SO

In a written statement the SO described the stop at the roadside and his subsequent involvement in the pursuit and arrest of the AP. His description includes his acknowledgment that he drew his firearm and pointed it at the AP's vehicle as it accelerated out of the check stop line and in the direction of the SO.

The SO also described his actions after the AP exited his stranded vehicle and fled down the embankment. Upon his arrival at the bottom of the embankment, the AP was not complying with police verbal commands and contrary to those commands, had placed his left hand into his hoodie's front pocket and had his arm underneath his body.

Statement of AP

The AP provided a statement to investigators that is consistent in many respects with the police and video evidence. His statement differs, however, when describing his level of compliance at the roadside. He says he immediately lay down on the ground and put his hands behind his back. This is not borne out by the video, which shows him being taken to the ground by WO 2 and shows a brief struggle as the officers try to gain control of his arms. It is also different with respect to his injuries. The description of a swollen face and bruising to the side of his body are not reflected in the photos taken at the detachment or in the assessments by the paramedic and physician. At the time, the IIO did not deem the injuries sufficiently serious to warrant an IIO investigation, launching the investigation only after they were directed to do so, pursuant to section 44 of the *Police Act*.

Analysis

The specific assault charges recommended by the IIO are related to the blows struck by the SO. The evidence establishes that the arrest in this case involved the intentional application of force to the AP without their permission. This meets the definition of an assault.

The real issue is whether the use of force to apprehend the AP was reasonable or excessive within the meaning of the *Criminal Code*. As noted above the application of section 25 of the *Criminal Code* provides a potential legal justification for the SO to the offence of assault.

It is important to emphasize that neither the law, nor police standards or training, deem any particular manner or mode of applying force to be excessive or unlawful. All depends upon the circumstances in which the force was used and, specifically; the threat which the officer subjectively perceived; the reasonableness of that perception; and the reasonableness of the force the officer used in response.

The law does not require that an officer use the minimum possible force necessary in order to qualify for the protection afforded by the legal justification provisions of the *Criminal Code*, only that the force used was within a reasonable range of force options. The law does not require an officer to judge necessary force with exactitude. Given the dynamic nature of the situation, considerable latitude is given to officers exercising judgment as to whether the force used was objectively excessive.

The evidence of the officers here indicates that, despite initial compliance, the AP was actively resisting officers' attempts to handcuff him at the point at which the SO administered the blows. As such, the Crown would bear the burden of proving that the SO was not legally justified in using force or that he exceeded what was reasonable in the circumstances. The available evidence does not provide a basis to do so. The circumstances that the court would consider in this case in assessing the reasonableness of the response would include:

- that the same pickup had been searched by police 10 days prior and a loaded handgun, mask, and knife had been seized from it
- the reckless, high speed, and dangerous driving of the AP during the protracted highway pursuit, which continued even after four tires had been successfully spiked, reflecting a high degree of desperation and willingness to endanger himself and the public
- the manner of driving exhibited as the AP fled the check stop further reflecting a willingness to endanger the safety of officers and members of the public

- the fact that the AP had tucked one or both arms under his body, contrary to police commands and was resisting police efforts to handcuff him
- the concerns expressed by one officer that the AP might have a weapon

Although the force used by the SO was significant, the court would also assess the degree of force exerted by the SO. In this case the minimal nature of the injuries would be a factor the court could consider in assessing the objective reasonableness and proportionality of the force used by the SO.

The Crown cannot prove that the SO's actions were an unreasonable response to the AP's actively resisting arrest. Accordingly, there is no substantial likelihood of conviction on a charge of assault.

Conclusion

The Crown would not be able to prove, beyond a reasonable doubt, that the force used in this arrest was unreasonable or disproportionate to the risk. Accordingly, there is no substantial likelihood of conviction and no charges have been approved.