



# MEDIA STATEMENT

## CRIMINAL JUSTICE BRANCH

February 9, 2017

17-02

### **No Charges Approved in Vancouver Police Shooting**

**Victoria** - The Criminal Justice Branch (CJB), Ministry of Justice, announced today that no charges have been approved against two members of the Vancouver Police Department involved in a shooting incident that occurred on November 22, 2014 at the intersection of 41<sup>st</sup> Avenue and Knight Street in Vancouver BC. The individual involved in the incident died as a result of the injuries suffered in the shooting. The incident was investigated by the Independent Investigations Office (IIO) which subsequently submitted a Report to Crown Counsel to CJB.

Following an investigation, where the Chief Civilian Director of the IIO determines that an officer may have committed an offence, the IIO submits a report to the CJB. The Chief Civilian Director does not make a recommendation on whether charges should be approved.

In this case the CJB has concluded that the available evidence does not meet the CJB's charge assessment standard for approval of any charges 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 CJB in cases where the IIO has investigated the conduct of police officers and forwarded a report for charge assessment. A Clear Statement explaining this decision is attached to this Media Statement.

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[www.gov.bc.ca/prosecutionservice](http://www.gov.bc.ca/prosecutionservice)

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**Summary**

Shortly before 5:00 pm on November 22, 2014, a 911 caller reported that a man was waving a 2x4 and yelling on the corner of 41<sup>st</sup> Avenue and Knight Street in Vancouver. The civilian caller reported “a crazy guy standing at the corner of 41<sup>st</sup> and Knight with a big stick...a 2x4.” The caller initially reported that the man was “carrying the 2x4 around, threatening people” but subsequently clarified that the man had not threatened anyone with it “yet”, but people were walking around and he was “screaming and hollering.”

At 4:48 PM, two Vancouver Police Department (VPD) officers were dispatched to the scene. They had a civilian “ride-along” with them in their police cruiser. The driver parked the police cruiser on the northwest corner of the intersection, partially blocking the middle and right southbound lanes on Knight Street. Traffic was heavy in the area and vehicles continued to move through the intersection and around the police cruiser.

Shortly after the officers arrived at the scene, the suspect pointed the 2x4 at them in an apparently threatening manner. Officer A retrieved a beanbag shotgun from the trunk of the police cruiser. The suspect was standing at the opposite corner of the intersection, holding the 2x4. Officer A and Officer B approached the suspect, travelling about halfway across the intersection and stopping at the median. At the same time, the suspect began moving towards the officers. The officers yelled repeatedly at the suspect to drop the 2x4. The suspect did not comply. As the gap between the officers and the suspect narrowed, Officer A fired several beanbag rounds at the suspect, striking him around his mid-section. The suspect was undeterred by the beanbag shots and the officers’ verbal commands and continued to advance with the 2x4. Officer B fired three rounds from his pistol at the suspect. Estimates varied but the suspect may have come within as little as three to four feet or as much six to eight feet of the officers before Officer B fired at him. At least two of those shots struck the suspect on his torso, causing him to fall to the ground. Officer B immediately called for an ambulance. The officers approached the suspect and handcuffed him. Emergency Health Services (EHS) arrived and transported the suspect to the hospital by ambulance. The suspect succumbed to his injuries during surgery later that evening.

This statement contains summaries of the evidence gathered during the IIO investigation and the applicable legal principles. The summaries are provided to assist the public in understanding the decision of CJB not to approve charges against the police officers who were involved. They do not detail all of the evidence considered or discuss all the relevant facts, case law, or legal principles.

The charge assessment that is addressed in this statement was conducted by Crown Counsel with no prior or current connection with the officers under investigation, including a senior Crown Counsel.

**Charge Assessment and the Criminal Standard of Proof**

The Charge Assessment Guidelines applied by the CJB in reviewing all Reports to Crown Counsel are established in Branch policy and are available online at:

[www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/prosecution-service/crown-counsel-policy-manual/cha-1-charge-assessment-guidelines.pdf](http://www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/prosecution-service/crown-counsel-policy-manual/cha-1-charge-assessment-guidelines.pdf)

In making a charge assessment, Crown Counsel must review the evidence gathered by investigators in light of the legal elements of any offence that may have been committed. Crown

Counsel must also remain aware of the presumption of innocence, the prosecution's burden of proof beyond a reasonable doubt and the fact that under Canadian criminal law, a reasonable doubt can arise from the evidence, the absence of evidence, inconsistencies in the evidence or the credibility or reliability of one or more of the witnesses. The person accused of an offence does not have to prove that he or she did not commit the offence. Rather, the Crown bears the burden of proof from beginning to end.

### **Potential Charges**

The Independent Investigations Office (IIO) referred this matter to Crown on the basis that Officer B and/or Officer A may have committed the offence of manslaughter contrary to s. 236 of the *Criminal Code*. In addition to that offence, the Branch also considered whether murder under section 235 of the *Criminal Code* or assault with a weapon or assault causing bodily harm under section 267 of the *Criminal Code* would apply based on the evidence.

### **Relevant Law**

Section 25(1) of the *Criminal Code* provides that a peace officer is justified in doing what he is required or authorized to do and in using as much force as necessary as long as he acts on reasonable grounds. Section 25(3) of the *Criminal Code* provides that a peace officer is not justified in using force that is intended or is likely to cause death or grievous bodily harm unless the officer believes on reasonable grounds that it is necessary for the self-preservation of the officer or anyone under that officer's protection from death or grievous bodily harm.

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."

Case law interpreting these sections recognizes that police officers may need to resort to force in order to execute their duties but the Supreme Court of Canada has held 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.

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 exactitude.

For the use of lethal force by a peace officer to be justified, the peace officer must have a subjective belief that lethal force is necessary to protect the peace officer or anyone under his protection from death or grievous bodily harm and the police officer's subjective belief must be objectively reasonable. 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". The trier of fact must place himself in the shoes of the police officer and take into account considerations unique to the individual but also to independently assess the conduct through the lens of a reasonable person.

Self-defence under section 34 of the *Criminal Code* may also be relied upon by police officers

as a complete defence where:

- a) they believe on reasonable grounds that force is being used against them or another person or that a threat of force is being made against them or another person;
- b) the act that constitutes the offence is committed for the purpose of defending or protecting themselves or the other person from that use or threat of force; and
- c) the act committed is reasonable in the circumstances.

If charged with a criminal offence based on an allegation of excessive force, a police officer does not bear a legal or evidentiary burden to prove that *Criminal Code's* justification or self-defence provisions apply. Rather, the Crown must prove beyond a reasonable doubt that the relevant justification provision is not applicable.

### **Witness Evidence**

A number of witnesses to the incident were identified and interviewed, including a number of witnesses who made direct observations of the police and the suspect. The evidence includes a video recording which depicts events just prior to the shooting, though not the shooting itself.

Much of the evidence leading up to the event is non-controversial, and is corroborated by dispatch records, the video recording, and the witness statements.

Several witnesses observed the suspect in the moments before the police arrived. Their observations included:

- The suspect was carrying a 2x4 over his shoulder and “swinging” it from left to right. The suspect was angry and swearing.
- A witness asked the suspect if he was okay. The suspect was mostly non-communicative, other than to tell the witness to “go away” or “get lost”.
- Another witness observed that the suspect was yelling at cars. This witness observed him holding the stick vertically and pounding it on the ground. He also saw him hit a lamp post (once) and chain-link fence (several times) with the 2x4.
- Another witness described the suspect rubbing the 2x4 along the chain-link fence at the corner of the intersection, speaking loudly.
- A further witness saw and heard the suspect “ranting and raving” in the alley behind a donut shop. This witness later observed the suspect standing near the corner of the intersection waving the 2x4 he had picked up.

Once the police were on the scene witnesses observed the suspect interact with the police.

- One witness saw the suspect move the 2x4 underneath his arm and point it at the police officers, the suspect swung the 2x4 back and forth as if he was aiming a rifle, side-to-side and up-and-down, directed towards the police. The witness heard someone say loudly, “Put it down, put it down.” The suspect had moved about ten feet into the intersection. The suspect and the officers were about six to eight feet apart when gunfire erupted.
- Another witness saw the officers move towards the suspect and the suspect also move towards the officers, at a walking pace. As he walked towards the officers, he was screaming at them, “Come here. Come here.” The officer with the shotgun told the suspect to put the stick down, yelling to him three times to “Put it down.” By the third time, they were really close and the officer with the beanbag shotgun shot the suspect.
- Another witness was waiting at a nearby bus stop. He saw the officers approach the suspect and tell him to put down the “stick.” The suspect did not put it down. He kept moving towards the officers and then they opened fire. Prior to the shooting, the suspect

was not moving very quickly towards the officers, he had the stick raised, with two hands on it, like holding a bat. After the first two shots, the suspect seemed to have sped up a bit, progressing from a slow walk to a normal walk. He did not seem to be affected by the first two shots.

- Another witness saw the suspect start to walk across the intersection towards the officer “in a menacing manner with the stick above his head.” The suspect moved a little faster than a normal walk; he was making long strides towards the officer. He looked like he was going to hit the officer – two more fast steps and he would have hit him. The suspect was moving towards the officer when he was shot. He did not hear the officer say anything before he fired the rifle.

Statements were also obtained from drivers using the roadway.

- One driver observed a man standing at the opposite side of the intersection, holding a board. She saw one person from the police car go to the trunk of the vehicle and pull out a long gun. The people from the car then moved from the car across the crosswalk. The man with the board stepped off the curb and started walking straight ahead along the crosswalk towards them. The officer with the long gun began shooting at him, she saw the suspect get hit but he kept moving, taking two or three more steps. She did not see the other shooter clearly, but she saw when the suspect was subsequently hit the suspect did a quarter-turn and dropped to the ground. She estimates the suspect and the police were about 11 feet apart when the first set of shots was fired.
- Another driver saw two police officers; one of them with a long gun. The officers walked behind his van. He heard a loud sound and saw the suspect moving towards the police officers in a “fast walk.” The suspect was holding the 2x4 horizontally like a gun, with his right hand by his hip and his left hand forward, pointed towards the police. The police man with the long gun shot twice, but the suspect kept coming. The witness saw the police officer move back a little bit. The other police officer shot once or twice, and the suspect fell down.
- A cab driver saw a police car parked on the other side of the intersection. He observed the suspect walk along the crosswalk in front of his cab carrying what he believed to be a wrapped pool cue. The police officers got out of the car and one took out a rifle from the trunk. They started walking across the street towards the suspect, stopping near the median. One officer had the rifle and the other officer had a gun as well. They yelled to the guy, “*Drop it. Drop it right now...*” or words to that effect. The suspect pointed the pool cue at the police and headed towards them, holding the pool cue as if he was going to shoot someone. He moved slowly and deliberately, the police fired three shots at him, and the suspect dropped to the ground within the crosswalk.
- A fourth driver was southbound behind the police car. She observed the suspect waving a 2x4. The suspect held the 2x4 in both hands with the majority of the 2x4 held in front of his body. He was waving it side-to-side. She saw the officers approaching him. They had weapons drawn and were pointing them at him. The suspect was not backing down. He was even waving the 2x4 more aggressively than when she initially saw him. When she heard the shots, the suspect was pretty close to the police officer, about three or four feet away.

When the civilian “ride-along” who accompanied the officers that afternoon first saw the suspect, the suspect pointed at the officers with the 2x4 and motioned to them to come over. He was waving the 2x4 around and threatening the police. Officer A and B started moving towards the suspect, telling him to drop his weapon and not to come any closer. They shouted, “Drop your weapon,” multiple times. The civilian described the suspect’s movement towards the officers as a fast run or sprint. The civilian could not specifically recall how the suspect was holding the 2x4; but believes he was holding it with two hands getting ready to swing it; and that he had raised it up.

When the suspect was within ten feet of Officer A, Officer A fired five or six beanbag rounds, striking the suspect in the chest area. The civilian had a clear view of the suspect and the two officers. The suspect kept coming towards Officer A despite being hit with the beanbags. The civilian heard three shots fired by Officer B. The suspect went down where he was shot.

The British Columbia Ambulance Service patient care report notes that EHS arrived at 16:58 hrs and departed the scene at 17:06 hrs, arriving at the hospital at 17:18 hrs. The suspect was pronounced dead during surgery at 19:37 hrs.

### **Evidence of Officer B**

Officer B recalls being dispatched in response to a report of a disturbed or distraught male yelling and swinging around a 2x4. Officer B explains that he was aware that the suspect had not threatened anyone, but felt that the situation could change quickly. He noted the 2x4 could be used as an improvised, potentially lethal weapon and that it was possible the man was mentally ill or under the influence of drugs. Given the unpredictable nature of the suspect, Officer B felt he could suddenly attack a civilian at any time.

Officer B parked on the northwest corner of the intersection, blocking the curb and middle lanes in order to stop as much traffic as possible. Officer B eventually observed the suspect standing on the northeast corner of the intersection. The suspect looked combative. He almost instantly extended and pointed the 2x4 at Officer B using both hands, and then slung it over his shoulder in the same manner someone would hold a baseball bat.

At this point, Officer A retrieved the beanbag shot gun. Officer B continued to assess the situation from beside the police cruiser. Officer B could only get intermittent glimpses of the suspect because of the heavy traffic passing by. Officer A walked towards the median separating the north and southbound lanes. Officer B also moved towards the median at that moment for several reasons, including providing lethal over-watch (cover) to Officer A.

Officer B moved eastbound towards the suspect while yelling as loudly as he could, "Police, drop the board!" at least three times. He moved towards the median, and then started moving to his right in order to create separation from Officer A and the suspect, who was advancing towards them. Officer B was also focused on stopping northbound traffic, which was still moving quickly in all three lanes. He raised his left hand in a stopping motion. He feared that Officer A or the suspect was going to get hit by a car. He heard Officer A fire multiple rounds from his shotgun at the suspect, the shots were not effective in stopping the suspect's advance.

Officer B described his observations at this moment as follows:

I believed the suspect had now taken several beanbag rounds but persisted in his advance. I observed:

- The subject's facial expression was that of anger and determination; I believed he was goal-oriented to attack Officer A.
- The subject had suddenly increased his pace and was attempting to move within striking distance of Officer A (I believe he was likely close enough already to reach Officer A with the 2x4, however, he appeared to be trying to get closer so as to deliver a more powerful impact).
- He had raised the 2x4 up and held it in a manner similar to an axe when chopping wood.
- Officer A was now backing up to get away from the male.
- Officer A was discharging his shotgun but was not having any effect on the subject.
- Officer A was running out of room to back up; I feared that he may trip backwards, and then would be backing up or falling in southbound traffic (I was not aware if southbound traffic was moving or not at this point).
- I was concerned that if we backed up farther, that may expose civilians in the area.

At this point, Officer B says he feared Officer A was at immediate risk of grievous bodily harm or death, and he fired his pistol at the suspect's center of mass. He continued firing until the suspect was no longer a threat. He was not sure if the first two rounds had missed as he did not see any change in the suspect's behaviour until the last round was fired.

Officer B immediately called for EHS over the radio. He and Officer A went over to the suspect and ordered him to roll onto his stomach so he could handcuff him. Officer B knelt by the suspect and attempted to keep him conscious/talking. The suspect was speaking to himself quietly and Officer B could not understand him or tell if he was speaking English. The suspect stated he did this because of his family. He also muttered "kill me" or "just kill me" on two occasions.

After EHS arrived, Officer B went to a nearby fire truck and counted the rounds left in his pistol. He confirmed he still had nine rounds in the magazine and one round in the chamber, indicating he had fired three rounds. He provided this information to EHS.

### **History**

The suspect had a reported history of mental illness dating back to 1988. According to hospital records referenced in the autopsy report the suspect had been hospitalized on more than one occasion for auditory hallucinations telling him to kill himself. In 1999, he was diagnosed with schizophrenia or schizoaffective disorder.

The suspect's sister saw him on the day of the incident, while she was visiting their mother. The suspect was "talking lots and was angry." He said he wanted to die, but he had said things like that before. The suspect would yell sometimes, but he was never violent.

### **Autopsy**

The suspect's autopsy was conducted on November 24, 2014. The cause of death was gunshot wounds to the torso. The pathologist confirmed the suspect sustained two gunshot wounds to his chest / upper abdomen, which were associated with injury to the liver, stomach and possibly also the spleen.

The pathologist observed two grazed and bruised areas of skin in the abdominal and hip area, which were found to be consistent with injuries caused by impact of shotgun beanbag rounds. There was no significant internal injury identified in association with those injuries.

### **Expert Evidence – Use of Force Report**

Investigators obtained a Use of Force Opinion report from an expert in this area. The report addresses the use of the "less lethal" beanbag shotgun by Officer A and the deadly force used by Officer B in their interaction with the suspect.

The expert retained by the IIO is a retired VPD Sgt. with 28 years of policing experience. He was previously employed as an instructor in the Force Response Options Training Unit at the VPD. He is now working as a use of force instructor at the Justice Institute of British Columbia and has previously been qualified in court as an expert in British Columbia, including in the area of police use of force tactics and training.

The expert notes that information received after the incident regarding the suspect's mental/emotional state suggests he was agitated with expressed suicidal ideations. The expert opines that the suspect's behaviour appeared to be one of goal-oriented desperation, "and by many descriptions, likely police-assisted suicidal behaviour."

In his report, the expert explains that there is a significant documented failure rate with some intermediate weapons systems, including the beanbag shotgun, on three types of individuals: “Goal-oriented subjects; persons under the influence of drugs and/or persons suffering from mental illness.” With some subjects the force option tools don’t have the desired effect of distraction or incapacitation. The expert further explains that “this is also why officers are trained to have lethal over-watch for the less lethal operator should the threat not be neutralized and/or the potential for serious injury is still present.”

The expert concluded that the force used by both officers in these circumstances was appropriate. His conclusion reads in part:

Given all the information gathered in this incident, it appears that both of the officers acted appropriately from the outset as they were trained. The officers located and observed [the suspect’s] behavior from a distance, prepared to use less lethal options and attempted to begin a conversation to begin de-escalation and crisis intervention tactics. However, the actions and forward movement of the suspect precipitated the deployment of the beanbag rounds which were described...to have little or no effect. The firearm was used after that when the officer believed that the suspect would continue his attack and had still had the means, opportunity, and intent to cause grievous bodily harm or death. The officers also performed proper de-escalation, follow-up and documentation protocols.

According to the expert, from a “rifle position” a 2x4 could be moved quickly by way of a pendulum-type swing into a subject, knocking the subject off their feet. If the 2x4 was targeted towards a vulnerable or delicate area of the body such as the throat, orbital bone, or occipital bone, grievous bodily harm or death could result. An individual’s ability to manipulate the 2x4 as a weapon will depend on many factors, including the individual’s size, the size of the 2x4, how the 2x4 is held, and the individual’s state of mind. In this case, the potential lethality of the 2x4 must be considered in light of the suspect’s goal-oriented behaviour.

### **Video Evidence**

Portions of the incident, including some of the actions of the officers, were captured on a camcorder being used by a passenger in a tow truck stopped several vehicles away from the intersection where the incident occurred. Although the actual shooting is not captured by the recording, it does corroborate the movement of the officers, both towards and retreating from the suspect and the chronology of the incident as related by the witnesses.

### **Application of the Law to the Facts**

*Was the force used by the officers against the suspect legally justified under section 25 and/or section 34 of the Criminal Code?*

Officer B has asserted his subjective belief that lethal force was necessary to protect Officer A from immediate risk of grievous bodily harm or death. Assuming his subjective belief is accepted, Officer B’s conduct would be justified under section 25 and/or 34 of the *Criminal Code* if his belief is found to be objectively reasonable in all of the circumstances.

The key evidence relevant to the officers’ use of force in this case is set out below. In assessing the reasonableness of the officers’ actions, it is necessary to consider the independent witnesses’ observations of the suspect’s conduct immediately prior to the shooting, in particular, the manner in which the suspect approached the officers.

The situation between the officers and the suspect unfolded rapidly and the circumstances were dynamic. According to the dispatch records, the police first arrived at 16:50:56. At 16:52:10, Officer

B advised that shots had been fired and requested EHS attendance. There was heavy traffic and many civilians were present in the area, including pedestrians waiting at a bus stop nearby.

Before the police arrived at the scene, there is no evidence suggesting that the suspect directly threatened any of the civilian bystanders. There is evidence from the civilian witnesses suggesting they were apprehensive about the suspect given his unusual behavior.

Their description of the suspect's behaviour as initially non-threatening is in stark contrast to his behaviour after the police arrived on scene. The witnesses were fairly consistent in their evidence regarding the suspect's abrupt change in behaviour as depicted by his focused attention on the police after they arrived on scene, which includes pointing the 2x4 at them in a threatening manner and moving toward them.

While there are some inconsistencies amongst the witnesses regarding the suspect's speed and the positioning of the 2x4 once the suspect started to move towards the officers, generally the witnesses do not materially contradict the anticipated evidence of the officers. The civilian witnesses' evidence supports Officer B's description of events in several material respects, including: that the suspect made a threatening gesture towards the police with the 2x4 almost as soon as they arrived; that not only did the suspect continue to advance towards Officer A after being shot with the beanbag rounds, but he also picked up his pace; and that the beanbag rounds and the commands to drop the 2x4 did not seem to have any effect on the suspect. Two witnesses stated that it looked like the suspect was moving towards Officer A with the intention of hitting him. The relatively minor discrepancies amongst the witnesses on these issues are not surprising, given the different vantage points and how quickly the incident unfolded. In terms of resolving any inconsistencies, it is important to keep in mind that the benefit of any doubt with respect to what occurred would go to the officers.

The expert opinion evidence in this case is that the officers acted appropriately and in accordance with their training throughout the incident. The officers' perception of risk "seemed appropriate given the limited information and situation as it rapidly unfolded in front of them."

The expert notes "the potential for the suspect to pursue and attack the members (or someone else) or put others at risk from vehicular traffic is plausible therefore total disengagement was not a viable option in this incident."

According to Officer B, his decision to move towards the suspect was based on several factors, including that there were nearby pedestrians potentially at risk and that the officers could not effectively communicate with the suspect from their current position because of the traffic.

In assessing the evidence, the Crown considered whether another potential course of action was available to the officers in this case, namely: to wait for more police officers to arrive before engaging the suspect. Although the suspect's attention seemed to be focused on the officers at this point, it was reasonable for the officers to perceive the situation as unpredictable, and to believe that the suspect's attention could suddenly be re-directed to nearby civilians in an aggressive manner. Accordingly, the officers' decision to move closer to the suspect rather than waiting for more back up to arrive was a course of action that was at least objectively reasonable in the circumstances, based on the information available to the officers and their legitimate concerns about public safety.

Before Officer A shot the suspect with the beanbag shotgun, the officers tried unsuccessfully to gain control of the suspect and the situation through verbal commands to drop the 2x4. According to the VPD's less lethal shotgun student manual, less lethal technology is appropriate "to de-escalate a dangerous or potentially deadly situation, to control, detain, or arrest a resistive subject and to protect officers and others from harm." The primary objective of intermediate weapons such as the bean bag shotgun is to "create temporary motor dysfunction

of a resistive subject in order to gain control.” In the circumstances, Officer A’s use of the beanbag shotgun was reasonable and in accordance with his training.

The evidence also supports the conclusion that Officer B’s use of his firearm against the suspect was in accordance with his training to provide lethal “over-watch”. Officer A’s attempts to stun the suspect and to protect himself by using the beanbag shotgun were not effective. The suspect continued to advance towards Officer A with the 2x4. The civilian “ride along” who was likely in the best position of all the civilian witnesses to observe the incident given his proximity to the officers, stated that it looked like the suspect was “charging” at [Officer A] “with the intention of hurting (him).”

Based on all the evidence, the Crown determined that Officer B’s stated subjective belief, that he needed to discharge his firearm to protect Officer A from death or grievous bodily harm, was objectively reasonable. Therefore, the Crown concluded that the evidence supported an application of the legal justification under section 25 or the defence of self-defence under section 34 of the *Criminal Code*, or both, to the actions of both officers.

### **Conclusion**

At a trial, the available evidence would likely establish that Officer A’s deployment of the beanbag shotgun against the suspect was a reasonable and not excessive use of force. Officer B’s subsequent discharge of his firearm, based on Officer B’s subjective belief that it was necessary to protect Officer A from the risk of death or grievous bodily harm, was objectively reasonable in all the circumstances. Accordingly, the legal justification under section 25 or the defence of self-defence under section 34 of the *Criminal Code*, or both, would have the legal effect of justifying or excusing the force used by both officers against the suspect.

### **Decision**

There is no substantial likelihood of conviction with respect to the offences of murder, manslaughter, or any other potential charges relating to the police use of force in this incident, such as charges assault with a weapon or assault causing bodily harm.

Accordingly, no charges have been approved with respect to this incident.

### **MATERIALS REVIEWED**

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

- Executive Summary and Detailed Narrative
- Summaries and Transcripts of Witness Statements
- Written Statement of Officer B
- IIO Investigator Notes and Task Action Reports;
- General Occurrence Reports and Notes of Witness officers;
- Autopsy Report of the suspect;
- Video Recordings, Photographs and Scene Descriptions / Diagrams;
- Expert Use of Force Opinion Report and *Curriculum Vitae* of Sgt. (Ret’d) Milligan;
- VPD Less Lethal Shotgun Operator’s Course – Student Manual 2012; and,
- VPD policy – use of intermediate weapons.