



# MEDIA STATEMENT

## CRIMINAL JUSTICE BRANCH

July 22, 2013

13-19

### **No Charge Approved in Use of Force by Police in Port Alberni**

**Victoria** - The Criminal Justice Branch of the Ministry of Justice announced today that following a careful analysis of all available evidence, the Branch has decided not to approve any criminal charges against members of the Port Alberni detachment of the R.C.M.P. in connection with the arrest of a female on February 15, 2013.

Crown counsel has thoroughly reviewed the investigative report that was submitted by the Independent Investigations Office in relation to the matter, and concluded that there is no substantial likelihood of any assault related convictions. A conviction for assault or assault causing bodily harm would require proving, beyond a reasonable doubt, that the officers had used excessive force in the course of the arrest.

A Clear Statement explaining the Branch's charge assessment is attached to this Media Statement. In keeping with the recommendation of Commissioner Stephen Owen, QC following the Discretion to Prosecute Inquiry (1990), a Clear Statement of the reasons for not prosecuting is sometimes made public by the Branch in high profile cases where the criminal investigation has become publicly known, so as to maintain confidence in the integrity of the system.

The Branch is limited in the information that it can presently disclose about this particular case. The female arrested is facing criminal charges arising out of the same incident and it is important to safeguard the fairness of that ongoing matter.

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#### ***Branch Vision***

***Courageous, Fair and Efficient – A Prosecution Service that has the Confidence of the Public.***

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## **Clear Statement**

### **Summary of Charge Assessment**

After a thorough review of evidence provided to the Criminal Justice Branch (the Branch) by the Independent Investigations Office (the IIO), the Branch has concluded that the available evidence does not support a substantial likelihood of conviction for any criminal offence against members of the Port Alberni detachment of the R.C.M.P. in relation to their use of force in arresting a female in Port Alberni on February 15, 2013. As such, no criminal charges will be approved against the officers involved.

The Branch applies a two part test to determine whether criminal charges should be approved and a prosecution initiated:

1. there must be a substantial likelihood of conviction based on the evidence gathered by the investigating agency; and
2. a prosecution must be required in the public interest.

Under Branch policy, a substantial likelihood of conviction exists where 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 whether the evidence gathered by the investigating agency is likely to be admissible in court; the weight that would likely be given to the admissible evidence by a judge or a jury; and the likelihood that viable, not speculative defences will succeed.

In making a charge decision, Crown counsel must assess the evidence gathered by investigators in light of the legal elements of the criminal offence that is said to 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 a crime does not have to prove that he or she did not commit the crime. Rather, from beginning to end, the Crown bears the burden of proving beyond a reasonable doubt that an offence has been committed.

Based on the material that was submitted to the Branch in this case, Crown counsel has concluded that while the available evidence shows that the police officers in question used force against a female civilian in the course of arresting her, the prosecution would not be able to prove that the force was excessive and therefore unlawful. Section 25(1) of the Criminal Code states that peace officers, when acting on reasonable grounds, are justified in "using as much force as is necessary" for doing what they are "required or authorized to do" in the enforcement of the law. To prove a criminal assault by a police officer in the course of his or her duties, the Crown must be able to establish beyond a

reasonable doubt that in the context of the case as a whole, the force was disproportionate, unnecessary and unreasonable.

In conducting this charge assessment, Crown counsel took into account evidence from the female who was arrested, as well as the statements of a number of civilian witnesses who observed the arrest or portions of the circumstances leading up, including or following the arrest. Crown counsel also reviewed statements of the two officers involved in the arrest, police notes and documentation relating to the incident, photographs, descriptions of the scene, and medical records in relation to the injury suffered by the complainant.

The charge assessment was conducted by senior Crown counsel who does not work in the same region as the police officer.

### **The Investigation and Circumstances Surrounding the Incident**

Although the Branch has decided to not approve criminal charges against the police officers, two charges of assaulting a peace officer and one charge of obstructing police officers have been approved against the female civilian who was arrested. As that case is now before the court the Branch is limited in the information that can be made public at this time in relation to the circumstances.

The evidence reviewed by the Branch discloses that the use of force took place at approximately 11:00 a.m. on February 15, after police were dispatched to a complaint of a female causing a disturbance at a government office in Port Alberni. Police located the female believed to be associated to the disturbance near the office in question. While police were in the process of arresting the female a physical altercation took place during which the female suffered a broken knee.

The IIO submitted a Report to Crown Counsel to the Branch with respect to this incident, pursuant to s. 38.11 of the Police Act. A Report to Crown Counsel is submitted by the IIO when the Chief Civilian Director considers that an officer may have committed an offence under any enactment. The Chief Civilian Director did not make a recommendation on whether charges should be approved or what charges he believed Crown counsel might consider. Crown counsel maintains full jurisdiction over the charge assessment and charge approval process pursuant to the Crown Counsel Act and Criminal Justice Branch Policies.

### **The Law on the Application of Force by Police Officers**

The intentional application of force to another person, without the consent of that person, may constitute an assault under the *Criminal Code*. A peace officer who is

acting within the course of his or her duties, however, is granted authority under the *Criminal Code* to apply force which is reasonable and necessary in the circumstances. A use of force by police may be lawful even in circumstances where an injury is caused by or during that application of force. Despite this, police do not have an unlimited power to inflict harm on a person. The Supreme Court of Canada has clearly established that the allowable degree of force remains constrained by the principles of proportionality, necessity and reasonableness.

What is proportionate, necessary and reasonable within the meaning of the law will depend on the totality of the circumstances and is assessed from the point of view of the officer, recognizing the characteristically dynamic nature of police interactions with citizens. Police are not held to a standard of perfection and are not required to measure with nicety the force that they use. A legally acceptable use of force is one which is not gratuitous, and which is delivered in a measured fashion.

In this case the available evidence does not establish that the injury was caused intentionally by police, as opposed to having occurred incidentally during the physical altercation while police were taking the female into custody. After a thorough review of the evidence Crown counsel has concluded that there is no substantial likelihood of proving, beyond a reasonable doubt, that the force used by the officers in this case was excessive in relation the circumstances with which the officers were dealing. Unlawful or excessive force is an essential legal element that the prosecution would have to prove to obtain a criminal conviction for assault or assault causing bodily harm in this case. As unlawful or excessive use of force cannot be proven, no criminal charges are approved against the officers.