



# MEDIA STATEMENT

## CRIMINAL JUSTICE BRANCH

November 25, 2015

15-26

### **No Charges Approved in Yaletown/Science World Shooting Incident**

**Victoria** - The Criminal Justice Branch (CJB), Ministry of Justice, announced today that no charges have been approved against any police officers involved in an incident in Vancouver on June 10, 2014 in which a suspect was shot during an exchange of gunfire with members of the Vancouver Police Department. As a result of the gunshot wounds to the suspect, the Independent Investigations Office (IIO) conducted an investigation relating to the conduct of police. A Report to Crown Counsel was subsequently submitted to CJB in relation to the matter by the Acting Chief Civilian Director.

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 CJB. The Chief Civilian Director does not make a recommendation on whether charges should be approved.

In this case CJB has concluded that the available evidence does not meet CJB's charge assessment standard for approval of any charges against police arising from the circumstances. A short Clear Statement relating to the decision is attached to this Media Statement. Given ongoing legal proceedings involving the suspect, CJB is limited in the information that can be released at this time

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 CJB in cases where the IIO has investigated the conduct of police officers and forwarded a report to CJB for charge assessment.

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To learn more about B.C.'s criminal justice system visit the British Columbia Prosecution Service website at: <http://www.aq.gov.bc.ca/prosecution-service/>

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

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## **Summary of Charge Assessment Decision**

On June 10, 2014, members of the Vancouver Police Department arrived in the vicinity of a business on Davie Street in the Yaletown neighbourhood of Vancouver just as a male suspect allegedly shot another individual, resulting in serious injury to that person.

The male suspect fled the area on a bicycle. He was followed by police to the vicinity of Science World. An exchange of gunfire occurred at both locations between the suspect and members of the Vancouver Police Department, in the course of which the suspect sustained at least seven gunshot wounds.

Various officers involved fired numerous rounds of ammunition before the incident was brought under control. A large number of the bullets fired from police firearms did not hit their intended target. Several bullets struck a business in Yaletown, and others struck a fast food restaurant outlet in the Science World building.

The suspect who was wounded in the incident is currently facing numerous charges arising from the alleged circumstances, including multiple counts of attempted murder, as well offences alleging the unlawful use of a firearm. In order to protect the fairness and integrity of that prosecution, CJB is limited in the information which can properly be released at this time. Once those legal proceedings have concluded, CJB will review whether it is in the public interest to release a more detailed Clear Statement with respect to the officers subject to the IIO investigation.

After a careful review of the available evidence CJB has concluded that there is no basis to approve charges against any police officers involved in the incident.

The charge assessment was conducted by a senior prosecutor with no prior or current connection to any of the officers who were subject to the IIO investigation.

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

The Charge Assessment Guidelines applied by the Criminal Justice Branch in reviewing all Reports to Crown Counsel (RCC's) are established in Branch policy and are available online at:

[http://www.ag.gov.bc.ca/prosecution-service/policy-man/pdf/CHA1\\_ChargeAssessmentGuidelines.pdf](http://www.ag.gov.bc.ca/prosecution-service/policy-man/pdf/CHA1_ChargeAssessmentGuidelines.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.

## **Applicable Law**

Under section 25 of the *Criminal Code*, a peace officer is justified in using as much force as is necessary to effect an arrest, provided that the officer acts on reasonable grounds. Under section 25(3) a police officer is justified in using lethal force if he or she believes on reasonable grounds that it is necessary for his or her "self-preservation...or the preservation of any one under [his or her] protection from death or grievous bodily harm" .

Section 26 of the *Criminal Code* provides for criminal liability when the force used is excessive.

Case law interpreting these sections has recognized 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.

Police do not have an unlimited power to inflict harm on a person. 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 may be required to act quickly in volatile and rapidly changing situations, and are not held to a standard of perfection and are not required to precisely measure the amount of force that they use. This is particularly the case where an attack is so serious that it puts someone in immediate peril and immediate defensive action may be necessary. Police are not required to use only the least amount of force which might successfully achieve their objective. A legally acceptable use of force is one which is not gratuitous, and which is delivered in a measured fashion.

The legal justification provided to police officers under s. 25 of the *Criminal Code* has been interpreted by the Courts in a manner that allows police considerable latitude in making split-second decisions about the use of force.

### **Analysis and Conclusion**

Based on the available evidence, there is no evidentiary foundation from which to prove that any of the officers involved in the situation on June 10, 2014 were unjustified in using the force that they did.

In conducting this charge assessment, CJB focussed in particular on potential charges for careless use of a firearm, contrary to section 86 of the *Criminal Code*. This analysis took into account the potential for collateral injury from gunfire in an urban setting and close proximity to a highly popular tourist attraction. To obtain a conviction for this offence the Crown would need to prove that an officer's conduct constituted a marked departure from the standard of care of a reasonably prudent police officer in the circumstances that existed.

CJB has concluded the available evidence does not establish that any of the officers discharged their firearms in a manner that would meet the test for an offence under section 86, notwithstanding the urban environment. The available evidence does not establish that the actions taken by police were objectively unreasonable. The Crown could not prove beyond a reasonable doubt that the requisite legal elements of the offence were met, specifically, that the actions of the officers constituted a marked departure from the standard expected of a reasonably prudent officer in all the circumstances, or that any of the officers failed to take reasonable precautions in discharging their firearms.

The Branch standard for approval of charges has not been met, and therefore no charges have been approved against any officers involved in the incident.

**Material Reviewed**

The following material was considered by CJB in this charge assessment:

- Investigative Report and Supplemental Report to the Chief Civilian Director
- Summaries and transcripts of statements of police officers subject to investigation
- Summaries and transcripts of statement of the injured suspect
- PRIME report
- Summaries and transcripts of statements of all civilian witnesses and all other police witnesses
- General Occurrence and Task Action Reports
- Investigator and Officer notes
- Use of Force Report and Follow-up Report
- Firearms Examination Report
- Transcript of Radio Calls
- VPD IDENT Materials
- Medical Records of the injured suspect
- Photographs and Scene Descriptions
- Various video recordings of and relating to the incidents in question