



MEDIA STATEMENT

CRIMINAL JUSTICE BRANCH

September 18, 2015

15-17

No Charges Approved in IIO Investigations of Kamloops and Vancouver Arrests

Victoria – The Criminal Justice Branch (CJB), Ministry of Justice, announced today that no charges have been approved in relation to the circumstances surrounding the arrests of individuals in Kamloops and Vancouver in September and October 2014. The separate incidents were investigated by the Independent Investigations Office (IIO), which subsequently submitted Reports 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 CJB. The Chief Civilian Director does not make a recommendation on whether charges should be approved.

In each of these cases CJB has concluded that the available evidence is not capable of proving that the officers who were subject to investigation applied excessive force to the individuals being arrested, and there is therefore no basis to charge either of the officers. A Clear Statement explaining these decisions in greater 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 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.ag.gov.bc.ca/prosecution-service/>

Branch Vision

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Clear Statement

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This Clear Statement contains summaries of the evidence gathered during the IIO investigations, and the applicable legal principles. The summaries are provided to assist in understanding CJB's decision not to approve charges against the officers involved in these incidents. They do not detail all of the evidence considered, or discuss all relevant facts, case law or legal principles.

The charge assessments were conducted by senior Crown Counsel, with no prior or current connection with the officers who were subject of the IIO investigations.

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:

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.

Relevant Law

Under section 25(1) of the *Criminal Code*, a police officer is justified in using force to effect a lawful arrest, provided the officer acts on reasonable and probable grounds and uses only as much force as reasonably necessary in the circumstances.

Section 26 of the *Criminal Code* limits the amount of force that may be used. It provides that an officer is criminally responsible where 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. 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 Decision in the Kamloops Investigation

On September 10, 2014 two uniformed members of the Kamloops RCMP were attempting to arrest an adult male ("the complainant") on an outstanding warrant at a residence in Kamloops. The complainant fled on foot through several residential yards, jumping the fences in between. The police officers pursued him. On the last fence he crossed the complainant dove over head first. He landed on his head, injuring his neck and causing immediate paralysis. The first officer pursuing him went over the same fence. The top rail collapsed under the officer, causing him to land nearby. Within seconds this officer rolled the male over and cuffed his hands behind his back.

The available evidence is not capable of establishing that any other force was applied by the officers involved, and there is evidence available that they tried to keep the complainant still once he told them his neck may be injured. The evidence also is not sufficient to establish that at the time the officer handcuffed the complainant he realized that the complainant had been injured going over the fence. As a result of his complaints about his condition an ambulance was called and he was removed from the scene by paramedics.

The CJB has concluded that it cannot be proven that the use of force by the officer in handcuffing the complainant was an excessive use of force in the circumstances. As a result no criminal charge has been approved.

The Complainant's Statements

The complainant's statements do not provide a clear, detailed recollection of how or when police touched him.

In his initial statement the complainant told IIO investigators that he did not realize it was the police pursuing him when he first ran away. Just before he jumped the last fence he heard "*Hey, stop. It's the RCMP.*" He told IIO investigators that he injured himself jumping the last fence. The police officer was on him in seconds and moved him. He told the officer that he couldn't feel his body or breathe and the officer rolled him on his side but did not touch him after that.

In a second statement to IIO investigators the male stated that he ran because someone came "*barrelling through the compound*". He stated that he has had problems with "*different co-workers and stuff like that*" and that there had been attempts on his life. As a result his reaction was to run. As he jumped over the last fence, he hit the top rail, did not get his hands out and his head struck the ground with an instantaneous feeling of weightlessness. He stated that the police touched him immediately and were "*pretty rough*" with him. Although he states that the way the police officers dealt with him was "*way over the top*" and they grabbed him and tossed him around, he also described his memory as "*shot*" since the incident and said his recollection is "*pretty hazy*". The complainant does not provide any clear account of precisely what the police did, stating that "*that's the main thing I want to know...what exactly they did to me.*"

Medical Evidence

The paramedic report indicates that the complainant stated he landed on his head and had severe neck pain with no feeling below the nipple line. The paramedics noted that when they attended he was lying on his side with his hands cuffed behind his back.

The medical specialist who examined the complainant on the date of the incident wrote that the complainant told him he lost consciousness for a few seconds after he landed on his head and

immediately noticed he could not move his arms or legs. This doctor diagnosed compression of the spinal cord caused by a herniated disc at C3-C4. The available medical records also indicate that the complainant had used a narcotic on the date in question.

Police Officers' Evidence

The evidence available from the officer who handcuffed the complainant indicates that after the top board on the fence broke, and the officer fell on the grass, the complainant was lying on his back beside the officer. The officer confirmed his identity, as the complainant told the officer his name. The officer arrested him, turned him onto his stomach and handcuffed him. He complained of neck pain/injury from his fall and Emergency Health Services (EHS) was requested to attend on a "Code 3" basis. (Code 3 indicates "Emergency - *lights and sirens.*") The officer remained with the complainant until EHS arrived. The complainant was instructed to remain still and wait for the ambulance in case he did have a neck injury.

The evidence of the second officer who attended is that he was running down the alley parallel to the complainant when he observed him jump over the fence head first. He could see that the complainant was down and he went to the rear gate of the yard. He could not get through the gate, so he went back and climbed over the same portion of fence the complainant and the first officer had gone over. By the time he entered the yard, the complainant was in handcuffs and on his side. He recalls the complainant first saying he was having trouble breathing and then stating that he had neck pain. EHS was called and the officers did not touch him, although the officer might have moved the complainant's leg at his request.

A third officer to arrive on the scene found the complainant handcuffed and laying on his side. The complainant repeatedly asked for the officers to sit him up. Concerned that his neck may be injured, the officers refused and told him to stay still.

Two of the three officers attending stated that they did not know at the time whether the complainant was actually injured. One officer noted that some suspects feign injury in order to gain an advantage, and police officers must be cautious.

Analysis

In reviewing this matter the CJB focussed in particular on potential offences of Assault and Assault Causing Bodily Harm.

The available evidence supports a conclusion that the officer who handcuffed the complainant acted on reasonable grounds and lawfully arrested him pursuant to the outstanding warrant.

It is also apparent from the available evidence that the injury to the complainant's neck was the result of his jumping over the fence and landing on his head.

The central issue addressed by CJB in conducting the charge assessment was whether the force used by the first officer in rolling the complainant over and handcuffing his arms behind his back was excessive.

The complainant fled from the police by running through private yards and jumping over fences. If he had not been injured, the minimal force used to restrain him after he had fallen cannot reasonably be said to be excessive.

Unfortunately, the complainant was injured in the incident, but there is no available medical evidence establishing that the injury was aggravated by the actions of the police officer. In fact, the evidence suggests otherwise since the complainant stated that the pain and loss of feeling was immediate.

The evidence of the two officers who attended to arrest the complainant indicates that he first mentioned a possible injury after he had been handcuffed. Given a number of factors, CJB has concluded that the complainant's recollection that he told the officer his neck was hurt before the officer moved him is not sufficiently reliable to prove that the officer was in fact aware of the injury when he applied the handcuffs. These factors include the evidence that the complainant lost consciousness briefly, that he described his recollection as "*pretty hazy*" and that medical reports indicate he had used a narcotic on the day of the incident.

In any event, the Branch has concluded that even if the officer were aware that the complainant had possibly been injured from the fall, the degree of force used in handcuffing the complainant was not clearly unreasonable in the circumstances. The officer could not have known the extent of the injury in the seconds after the complainant's fall, or that his actions in moving the complainant might be problematic. Moreover, once the officers were made aware of a potential spinal injury they took appropriate precautions. As noted, there is no evidence establishing that the actions of the officer caused or aggravated any injury to the complainant.

In these circumstances, CJB has concluded that it cannot be proven that the officer used excessive and therefore unlawful force in the arrest of the complainant. As a result no charge has been approved.

Material Reviewed

The charge assessment in this matter included consideration of the following materials:

- Report To Crown Counsel Executive Summary and Detailed Narrative.
- Summaries, recordings and transcripts of statements from the Complainant, officers involved and civilian witnesses.
- Police officer's notes, Prime reports and "will says".
- Photographs.
- Medical reports and records.

Decision in the Vancouver Investigation

On October 7, 2014 an adult male ("the complainant") sustained injuries to his face and elbow and a fracture of a bone in his leg, when he fell from a bicycle he was riding. At the time of his fall, he was being pursued by two members of the Vancouver Police Department, who were following him in a marked police vehicle. The complainant alleges that the police vehicle pursuing him made contact with the bicycle he was riding, thereby causing his fall and his injuries. The two officers in the vehicle say that it never made contact with the bicycle, and attribute the fall to the cyclist's own erratic riding.

The complainant's account of events changed over time and is not supported by the physical evidence. There is also evidence available indicating that he was under the influence of a narcotic at the time of his fall. CJB has concluded that the available evidence is not capable of establishing that the officer driving the pursuing police vehicle used it to intentionally apply force to the complaint, or even that any contact occurred between the bicycle and the police vehicle. As a result an excessive use of force cannot be proven, and there is no basis on which to charge the officer driving the vehicle with any offence.

The Complainant's Evidence

The complainant was initially unwilling or unable to speak to the IIO investigators when they first approached him approximately 14 hours after the incident. They approached him again two days later. Although he was still hesitant to provide a full statement, he did provide a written consent for release of his medical records and spoke briefly to the investigators.

IIO investigators concluded that they would return to take a full statement from him later, and advised him of that. In the course of the second of initial interactions with the IIO investigators, he alleged that the police officers had been pursuing him and had tried to run over him with their car. He said they made several attempts to hit him and eventually that was what happened, stating that they ran over him and broke his knee and that he wanted to sue them.

The complainant provided a full statement to the IIO investigators eleven days after the incident. He refused to disclose anything about what he had been doing before his interaction with the police officers who allegedly caused his injuries. In his statement he recounts riding on a bicycle past a police vehicle and being asked by a female officer in the vehicle to stop. He slowed down and asked her why, saying "*I didn't do anything wrong, why do you want to talk to me?*" Because the police vehicle pulled up on the curb behind him, he says he became scared the police car would hit him if he stopped, so he took off.

He then described swerving back and forth across the road, with the police vehicle still in pursuit and crossing up and over the median. He states that the police vehicle followed him up onto the sidewalk, driving on the grass, mounting a tall median (which he believed would have caused damage to the undercarriage), and eventually making contact with him and the bicycle after he veered back into the middle of the road.

The complainant told IIO investigators "*I was laying on the ground bleeding unconscious -- because I don't remember how I got bounced to the middle of the median. So I was obviously unconscious at some point there.*" He also stated "*after I got knocked down I was, I was unconscious, for sure, for a little bit*" and further that he was handcuffed "*for the next three hours while I was in and out of consciousness from getting hit on the head.*"

Medical Evidence

The hospital records for the complainant were obtained by the IIO, and contain what can be assumed to be information provided by him about the incident and his injuries.

The hospital Emergency Department Admitting Record, notes "*apprehended by VPD, fell onto (R) side off bicycle. Does not remember mechanism of fall.*" The record also contains a note indicating that the complainant had used a narcotic "*last night*". This is in conflict with the complainant's B.C. Ambulance Service Patient Care Report and the Emergency Nursing Assessment, both of which indicate that the complainant initially denied using any drugs.

Another document from the medical file states "*Tackled off bike – hit the ground with VPD.*" An orthopedic Consult Report on file states "*...seen in the emergency department by the orthopedic service the morning of October 7th after being apprehended by the Vancouver police department at approximately 4:00 this morning, which resulted in him falling onto his right side off of a bicycle. He does not quite remember the mechanism of the fall, however, he denies loss of consciousness or headache.*"

Police Officers' Evidence

The evidence of the two officers in the police vehicle is that they were involved in a stolen vehicle investigation a short time after 4:00 in the morning. They were advised that the driver and passenger had abandoned the vehicle in question and fled. They were provided with a description of the driver. Approximately 9 minutes after the stolen vehicle was located the complainant was seen riding a bicycle approximately 1 kilometer from where the vehicle had been found. He matched the description which had been broadcast of the driver of the stolen vehicle.

The officer who was a passenger in the police vehicle called out to the complainant to stop. He did so, but then said “*why*” and took off. The officer driving activated his siren and followed the suspect as he rode the bicycle erratically, weaving from the street to the sidewalk and up onto the median and into oncoming lanes then back over the median and across several lanes. At one point the suspect turned, apparently to see how close police were to him as he attempted to again make his way over the median. As he did so he hit the steep curb of the median and fell from the bike. He got up quickly and attempted to run. The officer who had been driving ran after him, and apprehended him on the median.

Physical Evidence

A physical examination of the police vehicle conducted by the IIO investigators, as well as photographs of the vehicle included as part of the investigative file, indicate that it had no damage to the fenders or bumper consistent with colliding with a person or bicycle, nor did it have any damage to the undercarriage consistent with riding up onto sidewalks or over tall medians.

Photographs of the bicycle the complainant was riding at the time confirm that it had no damage consistent with being struck or run over by a motor vehicle.

Analysis

If the evidence of the complainant were accepted by a Court it would establish that the officer driving the police vehicle either ran him down or knocked him down using a police vehicle. Such conduct could, though would not necessarily, constitute excessive force and the officer might therefore be criminally liable for assault with a weapon (the police vehicle) or assault causing bodily harm. CJB has concluded, however, that there would be significant weaknesses inherent in any prosecution dependent on the testimony of the complainant.

There are inconsistencies in the complainant’s recounting of the relevant events over time. Initially, he apparently told the paramedics, nurses or doctors who treated him that he could not actually recall how he fell. He later provided IIO investigators significant detail of a scenario in which the driver of the police vehicle intentionally ran him down, or at least made contact with the bicycle he was riding, causing him to fall and suffer injury.

Initially, he told the IIO investigators the police “*ran me over and they broke my knee. ... And I want to sue them.*” Later he told them that the driver of the police vehicle “*made contact with me.*”

The complainant repeatedly told the IIO investigators that after or as a result of the police cruiser knocking him down he was struck unconscious. This is directly contrary to what he had told the medical staff who treated him immediately after the incident, when he denied losing consciousness.

The complainant provided conflicting statements to medical authorities as to whether he had used a narcotic. His interaction with IIO investigators strongly suggests that he was in fact under the influence of a narcotic at the time of the incident.

In addition, the physical evidence does not support the complainant’s description of events. The alleged manner of driving of the police vehicle (over curbs and high medians) and the interaction between the police vehicle and the bicycle as he describes it to the IIO, would suggest that some or perhaps even significant damage would have been visible on either the police car or the bicycle or both; but there was no such damage to either.

CJB has concluded that in view of these factors, as well as other relevant background circumstances, the evidence of the complainant as to what allegedly occurred could be given little, if any, weight by a trier of fact. CJB has concluded that it cannot be proven that the officer used his police vehicle to apply any force to the complainant, and therefore it is not necessary to address the question of whether such force might have been excessive in the circumstance. As a result the available evidence does not provide a substantial likelihood of conviction, and no charge has been approved against the officer who was driving the police vehicle.

Material Reviewed

The charge assessment in this matter included consideration of the following materials:

- Executive Summary and Detailed Narrative.
- Summaries, recordings and transcripts of statements from the complainant, officers involved and civilian witnesses.
- Police officers' and IIO investigators' notes, Prime reports, and "will says".
- Photographs.
- Medical reports and records.