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## BC Prosecution Service announces no charges in Grand Forks RCMP non-fatal shooting

**Victoria** – The BC Prosecution Service (BCPS) announced today that no charges have been approved against a member of the Grand Forks RCMP involved in a non-fatal police shooting in connection with the arrest of a suspected impaired driver near Grand Forks on May 18, 2018.

Because of the serious nature of the injuries suffered by the suspect, the incident was investigated by the Independent Investigations Office (IIO). Following the investigation, the Chief Civilian Director of the IIO determined that there were reasonable grounds to believe the officer may have committed offences and submitted a report to the BCPS (IIO file #2018-056).

In this case, the BCPS has concluded that the available evidence does not meet the BCPS's charge assessment standard. Based on the available evidence, the BCPS is not able to prove, beyond 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 is attached to this Media Statement.

In order to maintain confidence in the integrity of the criminal justice system, the BCPS will issue a Clear Statement explaining the reasons for not approving charges where the potential effect of the officer's conduct could negatively impact public confidence in the administration of justice.

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## Clear Statement

### Executive Summary

On May 10, 2018 the Grand Forks, BC area was in a state of emergency and was being evacuated due to flooding. The suspect was assisting with the sandbagging and flood relief efforts in the area.

At approximately 10:30 hours a civilian called 911 reporting that the suspect, a person known to the civilian, was driving a white pickup truck with a trailer and was "all over the road". Accordingly, the dispatcher reported that the male was possibly impaired and driving a pickup truck with a trailer. Police patrols were unable to locate the truck or the driver.

At 14:30 hours a Conservation Officer reported the same individual was driving around town drunk. The Conservation Officer described the white pickup truck and said the suspect was dangerous as he was driving way too fast. He said that the suspect had just left the sandbagging area at the airport.

At 15:20 hours two RCMP officers in a marked police vehicle saw a white dodge pickup that matched the description. They executed a traffic stop and stopped behind the pickup truck. The suspect drove away when one of the officers approached the suspect's truck. The two officers were able to subsequently locate the suspect in another area of town where they radioed for assistance and attempted to detain him.

Three other officers attended the scene in three separate police vehicles, including the officer who was the subject of the IIO investigation (the Subject Officer or SO). The police vehicles attempted to box in the suspect's truck, during which the suspect proceeded to ram his truck against the police vehicles and tried to avoid police control. The SO positioned his vehicle nose to nose with the suspect's vehicle and exited his vehicle to make an arrest. When the suspect accelerated his vehicle towards the SO and his vehicle, the SO fired his police firearm four times into the cab of the suspect's truck striking the suspect in the shoulder and torso. He was taken by ambulance to a nearby hospital where he later recovered. He was later charged with assault with a weapon (the vehicle), impaired and dangerous driving, and flight from police.

Because of the seriousness of the suspect's injuries, the Independent Investigations Office (IIO) investigated the actions of the SO. At the conclusion of the investigation, the IIO submitted a Report to Crown Counsel (RCC) to the BC Prosecution Service (BCPS).

Following a thorough review, the BCPS has concluded that the available evidence does not support charges against the SO. The charge assessment was conducted by a Crown Counsel with no prior or current connection to the SO.

This Clear Statement summarizes the evidence gathered during the IIO 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 of the relevant evidence, facts, case law, or legal principles are discussed.

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

The standard of proof in a criminal case requires that each essential element of the offence be proven beyond reasonable doubt.

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](http://www.gov.bc.ca/charge-assessment-guidelines)

BCPS guidelines for assessing allegations against Peace Officers are also established in policy and are available at:

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

The BCPS applies a two-part test to determine whether criminal 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.

## Potential Charges

The charges recommended by the IIO and considered by the BCPS in this case were attempted murder, aggravated assault, assault with a weapon, discharging a firearm with intent, and reckless discharge of a firearm.

### Relevant Law

#### Attempted murder

For a conviction for attempted murder, the Crown must prove beyond a reasonable doubt that the accused specifically intended to commit murder and did something for the purpose of carrying out their intention.

#### Aggravated Assault/Assault with a weapon

To prove any assault requires the Crown to prove the accused intended to apply force to a person without that person's consent.

To make out aggravated assault, the force used must cause wounding, maiming, or endangerment of life, and the risk of that result must have been reasonably foreseeable.

#### Discharge of a firearm with intent/reckless discharge of firearm

Section 244 of the *Criminal Code* makes it an offence to discharge a firearm at a person with intent to wound, maim, disfigure, or endanger the life of any person. To prove this offence, the Crown must prove that the shot was fired in the direction of the victim (not necessarily directly at the victim) and that the shooter intended to wound, maim, disfigure, or endanger the victim's life. Section 244.2 of the *Criminal Code* makes it an offence to discharge a firearm being reckless as to the life or safety of another person.

There is no issue that the actions of the SO could satisfy the legal definition for some or all of the offences listed above, unless the officer is entitled to the protection afforded persons enforcing the law provided by section 25 of the *Criminal Code* or is acting in self-defence.

### 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 defence 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 are not applicable.

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 precision.

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, “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.”

Notwithstanding the deference afforded to police officers in the exercise of force in exigent circumstances, the law still requires that the use of force not be excessive. Case law interpreting these sections recognizes that police officers may need to resort to force in order to execute their duties but also 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.

### **Self-defence**

Section 34(1) of the *Criminal Code* provides that a person is not guilty of an offence if:

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

The legal onus rests on the Crown to prove beyond a reasonable doubt that the defence of self-defence does not apply.

## Summary of evidence

### Witness Officers

Constable 1 (Cst 1) was working as a general duty officer handling calls from the Grand Forks RCMP detachment area. He was advised by the SO, who was the senior officer that day, that the area was in a state of emergency and that there were going to be evacuations in the area due to flooding.

At approximately 10:00 or 11:00 hours Cst 1 received a call from a citizen who was familiar with the suspect and was concerned that he was driving while impaired. Cst 1 had previously investigated the suspect for an impaired driving offence. He was also aware that the suspect made comments to the police that the next time he was pulled over he would not stop for the police. Police patrols were unable to locate the suspect.

At approximately 14:45 hours the RCMP received another call advising that the suspect was sandbagging near the airport and had driven erratically away from the scene. Cst 1 and Cst 2 attended the area to see if they could find the suspect. Cst 2 was driving and Cst 1 was a passenger in their police vehicle. Csts 3 and 4 were also advised of the call and were on the lookout for the suspect. A Conservation Officer also advised police that the suspect was driving dangerously in near the sandbagging area. He told police that others had suspected that the suspect was drunk, as he was slurring his words.

At 15:20 hours Cst 1 and Cst 2 saw the suspect's pickup truck pulling a flatbed trailer. It was near the police detachment. Upon identifying the truck, Cst 2 activated the emergency lights and pulled in behind the suspect's vehicle.

The suspect pulled over to the side of the road and stopped his truck. Cst 1 got out of the police vehicle and approached the driver. He recognized the suspect. As he got to the driver's side, the suspect revved the engine and started to move forward. Cst 1 moved to the truck knocking on the back of the truck bed saying "stop, stop". The suspect drove away. By the time Cst 1 returned to the vehicle the suspect was out of sight.

Cst 1 and Cst 2 continued to look for the suspect's truck, eventually locating it on a one-way street. Cst 2 parked the police vehicle to block the street with police lights on. The suspect started loudly revving his engine. Cst 1 repeatedly called to the suspect to turn off the vehicle, to which the suspect replied, "You want to do this with me? Do you want to do this with me?" and later "I only got one chance at life and you're at the end of the rainbow." The suspect continued to race his engine and began to lurch his truck forward, alternately lurching and braking.

Soon thereafter, Cst 3 approached in his RCMP pickup truck. Cst 3 maneuvered his vehicle head on to the suspect vehicle to block its forward advance. Cst. 3 reported that he considered the risk to the public and the risk to the other members to be high if the suspect were to drive away. Cst 1 saw the suspect and Cst 3's vehicles come together front end to front end. He saw the suspect applying the gas trying to push Cst 3's truck backwards while Cst 3 continued to drive forward.

Cst 4 arrived on scene in her vehicle and approached the suspect's vehicle from the rear. Her vehicle was struck by the suspect's vehicle before she was able to maneuver her vehicle behind the trailer. Cst 4 immediately found herself and her vehicle being pushed backwards by the suspect's vehicle, which was being forcibly pushed backwards by Cst 3's truck.

The suspect rammed his vehicle into Cst 3's truck 2 or 3 times before the suspect turned his vehicle perpendicular to that of Cst 3. Cst 3 then drove into the driver's side of the suspect's vehicle to try to keep him from leaving the scene.

At this point Cst 4 observed the SO arrive in his police vehicle with emergency lights on. The SO stopped his police vehicle in front of the suspect's vehicle. Cst 1 exited Cst 2's vehicle to arrest the suspect. As he approached the truck, he heard the suspect still revving his engine.

Cst 1 observed the SO get out of his vehicle and stand behind the open driver's door with his sidearm drawn in a shooting stance. Cst 1 saw the suspect's vehicle move forward, pushing against the SO's front bumper causing the SO's vehicle to start moving backwards towards the SO. The SO was standing somewhere in the area of the driver's door of his police vehicle. The SO's vehicle was moving a second before the SO shot at the suspect. Cst 1 saw the suspect slump over in the driver's seat and heard the revving of the engine stop.

Cst 1 approached the passenger side of the suspect's truck and smelled the odour of liquor. Inside the truck he saw three liquor bottles with clear liquid in them. He and Cst 3 removed the suspect from the truck.

Cst 1 stated that he could see the SO's vehicle moving backwards and was thinking, if the SO doesn't do something he will be run over by his own car, and then the suspect would probably run over him afterwards. Cst 1 was concerned that the SO was going to die or suffer significant injury.

Cst 1 further noted that given the angle of the suspect's truck relative to the SO's vehicle, it was likely that the SO's vehicle would be spun towards the SO by the force of the suspect's vehicle, causing it to strike the SO with the driver's side of the SO's vehicle. If it were to spin in that manner, Cst 1 was concerned that the SO would be pinned under the vehicle and it would run over him, followed by the suspect's vehicle. They noted the SO had only "split seconds ... to even move."

## Subject Officer (SO)

The subject officer did not provide a statement, nor is he required by law to do so. To some extent, the version of events he would likely give can be inferred from the circumstances of working in a small, eight-member local RCMP detachment. The suspect was well known to the police in Grand Forks. He had a history of violent, alcohol influenced negative interactions both with the police and the public. As a senior officer in the Grand Forks detachment, the SO would undoubtedly have been familiar with the suspect's history.

In addition, the SO stated in a radio transmission made shortly after the incident that he thought (the suspect) was "about to kill about three of us."

## Civilian Witnesses

There were several civilian witnesses to the shooting; however, given the rapid unfolding of events their recollection is imperfect. Most witnesses heard the shots fired but were unable to identify which officer used a firearm and where the officer was located relative to the vehicles at the time of the shooting. Some witnesses provided evidence of the suspect's behaviour prior to the shooting. One witness offered that they felt the suspect's "actions were endangering the members of the RCMP." Another said they believed the driver was going to run people over. However, most of the observations relate to the initial ramming of the police truck by the suspect's vehicle with very little evidence provided in relation to the seconds leading up to the shooting.

One of the witnesses provided cell phone video of the incident. That video was taken from a distance of about 20 meters. It was shaky and out of focus and does not clearly show the exact location of the SO in relation to the suspect's vehicle and his own police vehicle. Despite protracted efforts on the part of Crown Counsel and the IIO to work through the implications of this evidence, and the weight that could be afforded to it in the charge assessment process, Crown Counsel concluded that the video was unhelpful in determining the level of risk the SO would have perceived before firing his pistol at the suspect.

## Evidence of Suspect

The suspect gave several statements after the incident. These statements offered little evidence of what occurred, preferring instead to give a self-serving narrative of events that was at times off topic or non-responsive to the questions posed, or amounted to guesses or speculation. The suspect admitted to striking the RCMP officer's vehicles with his truck because he was "pissed off and frustrated" that the RCMP were trying to stop him from helping people. He described himself as a "bulldozer" and said that there was no stopping him.



## Use of Force Policy

The RCMP policy relating to discharging a firearm at a motor vehicle (OM 4.7) states that an officer is not permitted to discharge a firearm at a motor vehicle or any of its occupants unless the officer has reasonable grounds to believe it is necessary to protect any person, including themselves from grievous bodily harm. The policy further states that officers may only discharge a firearm at a person in a motor vehicle if:

- it is being deliberately used as a weapon,
- there are reasonable grounds to believe it necessary to protect any person, including yourself from death or grievous bodily harm, and
- when there are no reasonable means of escape open to the person, including yourself, being imminently threatened.

## Application of the Law to the Evidence

Applying the law to the facts in this case, there is no doubt that the Subject Officer intentionally fired a gun at the suspect in circumstances where an intent to cause the suspect's death could be readily inferred.

The Subject Officer was on duty and acting in the course of his duties in dealing with a case of impaired or dangerous driving. Once the Subject Officer used force to try to stop the suspect, subsection 25(4) must be considered.

If the Subject Officer reasonably believed that the suspect was about to apply force to by driving into them, subsection 34(1) could apply to justify the force used by the Subject Officer.

It is likely that either section 25 or section 34 would apply to provide a full justification to charges involving the intentional use of force in these circumstances. Given the available evidence, it is unlikely that the Crown would be able to meet its legal onus of proving beyond a reasonable doubt that these legal justifications do not apply.

While the Subject Officer did not provide a statement, it is reasonable to assume the Subject Officer would assert a belief that using potentially lethal force was necessary for self-preservation after they were outside the police vehicle and the suspect's vehicle was rapidly moving toward them and the SO's vehicle.

While the evidence is inconclusive regarding the exact location of the SO in the seconds before they discharged their firearm, in assessing the reasonableness of the SO's concern the court would consider evidence that:

- the suspect was impaired and driving aggressively to the point that he was repeatedly ramming police vehicles
- civilian and police witnesses felt he was a danger to the police and the public
- police witnesses believed the SO was at risk of being hit by their own vehicle, given the force applied to the SO's car and the possibility the car may rotate into the SO
- the suspect's history of anti-police behavior
- the suspect's admitted belligerence to the police on the day in question
- the suspect presented as a volatile, aggressive person who had not listened to police commands and used his vehicle as a weapon

The Crown is unable to rule out the possibility that the SO was at risk of being hit by his own vehicle and suffering grievous bodily harm as a result, or that the SO reasonably believed such a risk existed. In other words, it is likely that a Court would conclude that such a belief in all the circumstances was objectively reasonable.

## **Conclusion**

Without clear evidence that the SO either did not objectively fear for his life and safety or that he had a reasonable means of escape, the Crown cannot disprove the justification provisions under sections 25 or 34 of the *Criminal Code*. Therefore, there is no substantial likelihood that the Subject Officer would be convicted of any of the suggested offences and no charges will be approved.