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**BC Prosecution Service announces no charges in use of force  
by Kamloops RCMP officers**

**Victoria** – The BC Prosecution Service (BCPS) announced today that no charges have been approved against three officers from the Kamloops RCMP detachment involved in a non-fatal use of force on June 23, 2020.

Because of the serious nature of the injuries, 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 officers may have committed offences and submitted a report to the BCPS (IIO file #2020-138).

In this case, the BCPS has concluded that the available evidence does not meet the BCPS's charge assessment standard. The BCPS is not able to prove, beyond a reasonable doubt, that the officers committed any offence in relation to the incident. As a result, no charges have been approved. A Clear Statement explaining the decision in more 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 the BCPS in cases where the IIO has investigated the conduct of police officers and forwarded a report for charge assessment.

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To learn more about BC's criminal justice system, visit the [British Columbia Prosecution Service website at: gov.bc.ca/prosecutionservice](https://www.gov.bc.ca/prosecutionservice) or follow [@bcprosecution](https://twitter.com/bcprosecution).

## Clear Statement

### Overview

On June 5, 2020, Kamloops RCMP received an anonymous call alleging that a person was being confined at a particular residence (the Residence). The caller provided the first names of the victim and two alleged suspects, and further stated that there were firearms present in the Residence. When the police attended, the two residents were compliant. The police searched the Residence for the potential victim but did not locate any other occupants. However, during the search, the police located and seized multiple firearms and other weapons. Six officers were involved in this investigation, including Subject Officer 1 (SO1), Subject Officer 2 (SO2), and Subject Officer 3 (SO3).

Eighteen days later, on June 23, 2020, the Kamloops RCMP received an anonymous call reporting an incident of intimate partner violence involving a firearm occurring at a residence. The caller could not provide a precise street address of the house, but said it was near the corner of two named streets and provided a description of two vehicles in the front driveway.

Two officers arrived on scene and concluded that the house referred to by the caller may have been the same one associated to the June 5th weapons seizure, which was four houses to the east of the intersection. They attended at the Residence and observed two vehicles matching the description the caller had provided. The officers considered this to be a high-risk call. Four additional officers were dispatched to assist, including SO1, SO2, and SO3. SO1 attended with a less-lethal extended range impact weapon (ERIW). SO2 attended with a police service dog (PSD). SO3 attended and directed the arrest plan.

Audio/video footage from four sources captured the police attendance at the Residence. The officers knocked at the front door, advised the residents they were under arrest, and made repeated commands for them to exit the Residence. After the fifth such command, the female resident exited the Residence and was taken into custody without incident. She advised police that her partner, (the Affected Person or AP), was still inside. The police called out to the AP by his name, advising that he was under arrest, and ordering him to exit the Residence.

The officers attempted to breach the front door multiple times but were unsuccessful. The officers again called the AP by his name and directed him to come out of the Residence with his hands up. Approximately five seconds later, the AP exited through the front door with his arms at his sides. The officers directed the AP to put his hands up multiple times and to get on the ground. The AP did not comply with those instructions and continued to walk forward onto the front lawn towards the officers with his arms by his side and the officers backing away from him. The AP then stopped walking forward and stood on the lawn for approximately seven seconds with his hands

by his side or held out at a low angle from his body. Police commands of “hands up do it now” continued without compliance.

SO1 fired the ERIW at the AP and SO2 released the PSD, which bit the AP on the left leg, causing him to fall to the ground. The AP was handcuffed, arrested, placed into a police vehicle, and later transported to hospital by ambulance. The AP suffered serious injuries arising out of his arrest.

This Clear Statement provides a summary of the evidence gathered during the investigation and the applicable legal principles. These are provided to assist in understanding the BCPS’s decision to not approve charges against the SOs. Not all the relevant evidence, facts, case law, nor legal principles are discussed. The charge assessment was conducted by Crown Counsel with no prior or current connection to the SOs.

### **Charge Assessment**

The Charge Assessment Guidelines that are applied by the BCPS in reviewing all Reports to Crown Counsel are established in BCPS 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 police officers are also established in policy and are available at:

[www.gov.bc.ca/allegations-against-peace-officers](http://www.gov.bc.ca/allegations-against-peace-officers)

The BCPS applies a two-part test to determine whether charges will be approved, and a prosecution initiated. Crown Counsel must independently, objectively, and fairly measure all available evidence to determine:

1. whether there is a substantial likelihood of conviction; and, if so,
2. whether the public interest requires a prosecution.

Under BCPS policy, a substantial likelihood of conviction exists when 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 what evidence is likely to be admissible and available at trial; the objective reliability of the admissible evidence; and the likelihood that viable, not speculative, defences will succeed.

If the Crown Counsel is satisfied that the evidentiary test is met, Crown Counsel must then determine whether the public interest requires a prosecution. The charge assessment policy sets out a non-exhaustive list of public interest factors to be considered, both for and against a prosecution.

## Charges considered

The potential charges considered in this case were assault with a weapon and assault causing bodily harm.

## Timeframe for assessment

The IIO first submitted a Report to Crown Counsel in October 2021; however, further relevant materials were required to complete the charge assessment. The follow-up materials were received in August and October 2022. The review by Crown was delayed by factors including factual complexity, legal complexity, and technical issues arising out of the CCTV evidence.

## Relevant law

To prove an assault, the Crown must establish a person intentionally applied, threatened, or attempted to apply force to another person, directly or indirectly, without their consent. The required intent is to cause harm to the victim. Assault causing bodily harm requires proof of harm that is more than trifling or transient. The intent required is the intent to assault plus an objective foresight of bodily harm.

## Legal defences

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) of the *Criminal Code*, which provides that an officer will only be justified in using force likely or intended to cause grievous bodily harm or death when they subjectively and reasonably believe that it is 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."

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 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 officer. In

applying the standard, the Supreme Court of Canada has ruled that, "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" (*R v Asante-Mensah*). In these dynamic situations police are not expected to measure the force used precisely and are not required to use the least amount of force that may achieve their objective.

Despite the deference afforded to police officers in the application of force in exigent circumstances, the law still requires that the use of force not be excessive. Police use of force is constrained by principles of proportionality, necessity, and reasonableness.

The primary issue in this case is whether the force used by the SOs was necessary, reasonable, and proportionate in the circumstances. In a prosecution, the onus would be on the Crown to prove beyond a reasonable doubt that the legal defences provided under the *Criminal Code* to police officers acting in the course of their duties have not been established.

### **Summary of evidence**

On June 5, 2020, Kamloops RCMP received an anonymous call regarding a person being forcibly confined at a residence (the Residence). The caller provided a street address. The first names of the victim and two suspects, and further stated that there were firearms in the Residence. Police database checks indicated previous police contact with the two upstairs tenants as well as the basement tenant at the Residence. One of the tenants' first names matched one of the names provided by the caller.

Police attended the Residence and called out to the upstairs suite. The male resident exited without issue, followed by the female resident. When the police asked if they knew anyone by the name the caller had given for the victim, the female resident said she knew someone with that name who was "involved in the drug world."

The police searched the suite for the potential victim but did not locate anyone else in the residence. During the search, the police located and seized 17 firearms stored unlawfully, one of which was loaded, along with seven pellet firearms and prohibited weapons including brass knuckles and a taser baton. Police also observed what appeared to be a bullet hole in a ceiling. Six officers were involved in this investigation, including SO1, SO2, and SO3.

Eighteen days later, on June 23, 2020, shortly before 10 pm, an unknown caller reported to a 911 dispatcher that they had "just seen a big domestic" outside a corner house at the intersection of two streets, involving a male swinging a handgun at a female and saying he was going to shoot her "or something like that." The caller then stated the male and female ran into the backyard or downstairs. The caller could not provide the colour of the house but stated that there were two

vehicles in the front driveway: a grey Dodge pickup truck with no bumper and a mini-van, perhaps gold-coloured. The caller provided a name but stated they wished to remain anonymous. (It was later determined that the name provided was not their real name.)

Within minutes two officers arrived at the intersection that had been provided by the caller. They did not see any vehicles matching the caller's description at the house on the corner, but they were familiar with a house four houses to the east of this intersection, where there was a sharp crook in the road (that one officer commented "almost feels like it's a corner lot"). They recalled attending at this Residence from a prior dispatch on June 5. They attended at the Residence and observed a grey Dodge truck missing its front bumper and a gold minivan in the front driveway.

The officers concluded this was the residence referred to by the 911 caller. Police radio transcripts reflect the officers developing a strategy to contain, clear the basement suite, and to breach the door if the upstairs residents failed to respond, followed by arrest. They considered this to be a high-risk call. They first met with the downstairs tenant, who reported not hearing or seeing anything of concern. The tenant's partner then emerged from the backyard and also reported not hearing or seeing anything of concern.

Four additional officers were dispatched to assist, including SO1, SO2, and SO3. The officers knocked at the front door of the residence at approximately 10:09 pm. Although there was no response, the officers observed what appeared to be movement on the stairwell and in the top unit. The police made repeated announcements by yelling and 'loudhailers' directing the occupants that they were under arrest and to exit the residence. One officer attempted to call the 911 caller's telephone to obtain further information but got no answer.

Audio/video footage from four sources captured the police attendance at the Residence: Dashcam footage from two of the police vehicles, the doorway camera of the Residence, and a neighbour's cell phone camera.

At 10:21 pm, the female resident opened a window and yelled at the officers. They directed her to exit the residence, but she did not initially comply. At approximately 10:25 pm the female resident exited the residence from the front door and appeared to deliberately lock the electronic lock behind her, causing the police some concern. She was cooperative and taken into custody. She advised police that her partner (the AP) was inside. The police continued to call out to him by name, advising that he was under arrest and ordering him to exit the Residence.

The officers noted over the radio that the AP appeared to be in the same room from which firearms had been seized during the prior police attendance on June 5. The officers continued giving verbal directions for any remaining occupants to exit and that they were under arrest. Police spotlights were aimed at the front of the residence. SO1 was present with a less-lethal

extended range impact weapon (ERIW). SO2 was present with a PSD. SO3 was present and directed the arrest plan.

At approximately 10:45 p.m. the officers attempted to breach the front door multiple times with a sledgehammer but were unsuccessful. The officers then announced, "RCMP police. Come out the front door with your hands up". They called the AP by his first name and directed him to "Come on outside with your hands up."

Approximately five seconds later, the AP exited through the front door with his arms at his sides. An officer said, "Hands where we can see them", then "Hands up, do it now" three times, then "Hands up, hands above your head". The AP did not comply with those instructions and instead continued to walk forward for approximately six seconds with his arms by his side toward the officers as the officers backed away from him. The AP then stopped walking forward and stood on the lawn for approximately seven seconds with his hands by his side or held out at a low angle from his body. Police commands of "hands up do it now" continued without compliance.

A male voice, likely SO3, can be heard on the police dashcam video/audio saying, "tag him, tag him in the leg, tag him in the leg" after the multiple commands for the AP to put his "hands up" were not complied with. Approximately thirteen seconds after the AP had exited the Residence, SO1 fired the ERIW at the AP from a distance of about 2.5 metres, striking him in the thumb. The AP remained standing after being struck by the projectile. Almost simultaneously, the PSD lunged forward and bit the AP on the left leg. The AP then fell to the ground.

Multiple police officers assisted in handcuffing the AP while he was on the ground and the PSD was removed. The AP was arrested, placed into a police vehicle and later to an ambulance for transport to hospital.

The AP suffered a three-centimetre laceration on his right hand, a five-centimetre laceration on his left knee, three lacerations on his left calf, and a puncture wound on his left shin. His right hand also had a mildly displaced comminuted fracture. He received a thumb splint, antibiotics, and outpatient care for wound care and removal of sutures.

## **Police policy**

### **General Use of Force**

Provincial policing standards, created pursuant to the *Police Act*, outline that any force used must be necessary, reasonable, and proportionate, and that higher levels of force may only be used in response to higher levels of resistance/threat from the suspect.

## Extended Range Impact Weapon

The ERIW used in this incident is described in the RCMP Operational Manual as a “less lethal intervention option” to be used in accordance with the Incident Management Intervention Model.

The ERIW is considered an intermediate weapon that must only be used when a subject is causing bodily harm, or the officer believes on reasonable grounds, that the subject will imminently cause bodily harm as determined by the officer’s assessment of the totality of the circumstances. Intermediate weapons can only be used against actively resistant subjects.

The ERIW training materials set out a minimum acceptable distance of 1.5 metres from the weapon to its target. The materials identify a suspect’s thighs as an “optimal target”, whereas arms and hands are associated with a greater risk of harm.

## Police Service Dogs

PSDs are a form of intermediate weapon. The *Provincial Policing Standards for Police Service Dogs* (BCPPS 1.4 – Police Service Dogs), sets out the following relevant principles:

- Police service dogs are important policing tools and can be used for a variety of tasks, including searching, locating, and apprehending suspects.
- Police service dogs are intermediate weapons and can bite. One of the tasks of police dogs is to apprehend suspects by biting. Police service dogs can bite either on command, or automatically in certain situations commensurate with their training, or sometimes even accidentally.
- The use of a police service dog, as with all other force options, must be proportional to the level of risk posed to the officer, the suspect, and the community as a whole. The need to locate or apprehend someone must always be balanced with the potential for a police dog bite and its likely resulting injury.

BCPPS 1.4.2 also requires that PSD handlers give a loud verbal warning prior to permitting their dog to bite, unless such a warning would be impractical or place anyone, including the police handler-dog team, at risk of bodily harm. In addition, officers must ensure that their PSD releases a bite as soon as reasonably possible.

## Analysis

The IIO referred charges of assault with a weapon and/or assault causing bodily harm in relation to the actions of SO1, SO2, and SO3.



The evidence shows that there was an elevated risk to the AP from the use of the ERIW and the PSD, but the evidence does not support an inference that death or grievous bodily harm was either the likely or intended result of the force used by any of the SOs. Therefore, the test to be applied regarding a potential defence for each SO is found in section 25(1) of the *Criminal Code*. The factors to be considered are:

- whether the SO was acting in the course of their duties
- whether the SO, on reasonable grounds, perceived a risk to the officers or others
- whether the force used by the SO in response to the risk was objectively necessary, reasonable, and proportionate

When, as in this case, the evidence is sufficient to raise an "air of reality" regarding the defence, the Crown must disprove one of these factors beyond a reasonable doubt.

Regarding the first factor, the SOs were clearly acting in the course of their duties during their involvement with the AP.

Regarding the second and third factors, the officers were responding to a 911 call purportedly involving a potentially life-threatening situation. In these circumstances the officers had a common law duty to investigate. This would include detaining individuals while a search of the Residence was being conducted and clearing the location of all occupants. Any questions relating to the 911 caller's identity or the veracity of the allegations as the events were unfolding would not relieve the officers of the duty to clear the Residence.

The AP was not initially compliant with commands to exit the Residence and then was not compliant with commands to put his hands up and to get on the ground. The SOs were aware that multiple weapons, including firearms, had been seized from the Residence less than three weeks before. In these circumstances, the SOs' belief there was a risk to themselves, or others, was reasonable.

Multiple responding officers assessed the situation at the Residence as high risk. These subjective assessments are supported by the recent 911 call involving a firearm, recent seizure of multiple firearms and weapons from the Residence, and the refusal of the AP to comply with repeated commands to exit. Once the AP exited the Residence, he disregarded a series of loud police commands to raise his hands and go to the ground. Instead, his hands remained low, and he continued to walk toward the officers for approximately six seconds, rather than get on the ground.

The AP's recent weapons history was known to the officers at the time they were dealing with him. The AP posed a significant potential risk to officer and community safety.

The level of threat could be seen as diminishing when the AP stopped advancing towards the officers. However, in the context of the unresolved 911 call, the recent weapons history at the Residence, the AP's delay in exiting, and his continued non-compliance with repeated police commands to raise his hands, the evidence would support a reasonable belief by SO1 and SO2 that the situation was high-risk and dynamic.

#### Use of the Extended Range Impact Weapon (SO1)

SO1 was stationed adjacent to the front door of the Residence when the AP exited out that door. The audio/video evidence indicates that another officer (likely SO3) yelled "tag him, tag him in the leg, tag him in the leg". Two seconds later SO1 fired the ERIW (which was a total of thirteen seconds after the AP had exited the Residence). The ERIW projectile hit the AP in the right hand, which was down at the level of his right thigh. The evidence is consistent with SO1's assertion of aiming the weapon at the AP's thighs, as recommended in the training materials, rather than a deliberate attempt to aim at his hand.

There is no substantial likelihood of conviction for this offence. In the context of the risk factors set out above, the Crown would be unable prove beyond a reasonable doubt that SO1's single-shot deployment of the ERIW was objectively disproportionate, unnecessary, or unreasonable, such that the defence set out in section 25(1) of the *Criminal Code* could be displaced.

#### Use of the Police Service Dog (SO2)

The AP remained standing after being struck by the ERIW sponge projectile. Almost immediately, SO2 deployed the PSD. The PSD lunged towards the AP and bit the AP on his left leg and the other officers moved in to arrest and handcuff the AP. The video evidence shows that SO2 had the PSD on a leash throughout the dog's involvement.

The policing standards require that a verbal warning be given before deploying a PSD unless such a warning is impractical. There is no evidence that SO2 gave such a warning. Compliance (or non-compliance) with police policies is a relevant but not determinative factor in assessing whether the use of force in a particular set of circumstances is reasonable, proportionate, or necessary. In this case, it could be concluded that in the circumstances it was impractical for SO2 to give the warning. The audio/video evidence confirms that the PSD was visible and barking and howling loudly prior to his involvement with the AP.

The level of threat could be seen as diminishing when the AP stopped advancing towards the officers. However, in the context of the unresolved 911 call, the recent weapons history at the Residence, the AP's delay in exiting, and his continued non-compliance with repeated police commands, the evidence would support a belief by SO2 that the situation remained high-risk

and dynamic and that the use of intermediate force was necessary. Given those factors, the Crown would be unable to prove beyond a reasonable doubt that SO2's deployment of the PSD was objectively disproportionate, unnecessary, or unreasonable, such that the legal defence provided in section 25(1) of the *Criminal Code* would be displaced.

#### Oversight of the arrest plan (SO3)

Abetting under *Criminal Code* section 21(1)(c) requires that the party say or do something to encourage the principal to commit the predicate offence and that the party intended to provide such encouragement.

SO3 did not personally exert force in any form on the AP. The IIO referral suggested that SO3, as the supervisor of the attending officers and the officer who devised the arrest plan, was liable as an abettor in any assaultive offences committed by SO1 and SO2.

Since the evidence does not establish a substantial likelihood of proving either SO1 or SO2 committed the offence of assault, assault causing bodily harm or assault with a weapon, beyond a reasonable doubt, there is no need to further examine SO3's conduct as a possible aider/abettor.

#### Conclusion

No charges have been approved in relation to the SOs' involvement in this incident.