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26-11

## **BC Prosecution Service announces no charges approved in non-fatal shooting by North Cowichan/Duncan RCMP officer**

**Victoria** – The BC Prosecution Service (BCPS) announced today that no charges have been approved against a member of the North Cowichan/Duncan RCMP detachment involved in a non-fatal shooting on March 28, 2023.

The Independent Investigations Office (IIO) conducted an 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 #2023-087).

In this case, the BCPS has concluded that the available evidence does not meet the BCPS's charge assessment standard. There is no substantial likelihood of conviction for any criminal offence in relation to the incident. As a result, no charges have been approved.

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 when the IIO has investigated the conduct of police officers and forwarded a report for charge assessment.

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## **Clear Statement**

### **Overview**

On the evening of March 28, 2023, the North Cowichan/Duncan RCMP responded to a 911 call reporting that a skid steer (Bobcat) was being driven on a residential street by a man wearing hospital pajamas. The 911 caller reported that the man (the Affected Person, or AP) was wearing a hospital bracelet, was bandaged, appeared unwell, and was having difficulty operating the Bobcat. On attendance, police observations of the AP corroborated this report.

The subject officer (SO) and four other witness officers responded to this call and attempted to stop the Bobcat, engaging in an eight-minute, low-speed pursuit. Despite repeated police direction, the AP did not stop. The SO and another witness officer made several unsuccessful attempts to disable the Bobcat by blocking or ramming it with their police vehicles. These efforts rendered the SO's police vehicle inoperable and did not cause the AP to stop the Bobcat.

The AP continued through residential streets and then drove the Bobcat through two chain-link fences at Evans Park, a public sports complex, entering a baseball diamond. The SO exited a police vehicle armed with a Carbine C8 rifle and followed the Bobcat on foot. As the SO approached from behind, the AP reversed the Bobcat toward the SO, then quickly turned the Bobcat around to face the SO with the bucket raised and fencing material hanging from it.

At that point, the SO fired one shot at the cab of the Bobcat, followed by four additional shots in quick succession as the Bobcat moved forward. The Bobcat then struck a parked police vehicle and came to a stop. The AP was removed from the Bobcat and transported to hospital with two gunshot wounds to the head and other less serious injuries. The AP survived but sustained serious, life-altering injuries.

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 not to approve charges against the SO. 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 SO.

### **Charge Assessment**

The charge assessment guidelines 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 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 IIO referred a file to Crown Counsel in relation to the SO. Crown Counsel considered the charges of criminal negligence causing bodily harm (section 221), aggravated assault (section 268(1)), and assault with a weapon (section 267(a)) of the *Criminal Code*.

### **Timeframe for Assessment**

The IIO first submitted this file for charge assessment on May 19, 2025. The charge assessment was finalized in May 2026. The timeline for charge assessment included a parallel charge assessment being conducted in relation to the conduct of the AP. No charges were approved against the AP.

### **Relevant Law**

#### **Criminal negligence causing bodily harm**

Offences involving criminal negligence require the Crown to prove that the accused engaged in conduct demonstrating a wanton or reckless disregard for the safety of others. Such disregard is established where the conduct represents a marked and substantial departure from what a reasonable person would do in the circumstances. Where the conduct meets this standard, the Crown must then prove that the bodily harm that resulted from that conduct fell well within the

reasonably foreseeable risk of harm created by the accused's criminally negligent act of omission or commission (*R v Nette*, 2001 ACC 78). Bodily harm refers to harm that is more than merely transient or trifling.

### Aggravated assault

To establish the offence of assault, Crown Counsel must prove that a person intentionally applied, attempted to apply, or threatened to apply force to another person, with or without a weapon, without that person's consent. Aggravated assault is proven when the force used wounds, maims, disfigures, or endangers the victim's life, and when that risk was reasonably foreseeable.

### Assault with a weapon

The offence of assault with a weapon requires the Crown to prove that a person intentionally applied, attempted to apply, or threatened to apply force to another person using a weapon, without that person's consent.

### 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." The defence is limited by section 25(3), which provides that an officer is not justified in using force likely or intended to cause death or grievous bodily harm unless the person believes on reasonable grounds that it is necessary for the self-preservation of the person, or another person under their protection, from death or grievous bodily harm.

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.

When a court considers a defence under section 25(3), the court must determine whether it was objectively reasonable for the officer to believe that the force used was necessary to protect themselves or another person from an attack in which grievous bodily harm or death could occur. The force used must, from an objective standard, be both necessary and proportionate. This assessment takes into account the particular circumstances and human frailties of the officer.

In applying the standard, the Supreme Court of Canada has said 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*, 2003 SCC 38). 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 necessity, reasonableness, and proportionality.

In a prosecution, the onus is on the Crown to prove that the legal defences provided under the *Criminal Code* to police officers acting in the course of their duties are not made out.

### **Summary of Evidence**

In the afternoon of March 28, 2023, the AP was involved in a single-vehicle collision in Chemainus, striking a utility pole. He was taken to hospital and treated for injuries. Shortly after being discharged, the AP stole a small Bobcat from a residential construction site in Duncan.

The Bobcat is a piece of heavy equipment weighing approximately 3,800 kg (or 8,500 lbs), intended for use on construction sites, not public roadways. It is equipped with heavy-duty rubber tracks and an overhead lift bucket. The operator sits in an enclosed cab with glass windows on all sides and metal safety panels on two sides.

Shortly after 9 p.m., a couple observed the AP, still wearing hospital clothing, operating the Bobcat on a residential street in Duncan. One of them approached the Bobcat and noted that the AP appeared "bandaged up and not well," seemed intoxicated, and was having difficulty driving the Bobcat. As the AP drove away, they called 911, and this information was then relayed to members of the North Cowichan/Duncan RCMP.

The SO, acting Watch Commander that evening, responded along with four other officers in separate marked RCMP vehicles. All police vehicles involved, except the SO's, were equipped with Watchguard video, which captured all movements of the police vehicles and the Bobcat throughout the incident.

An eight-minute, low-speed pursuit followed beginning on Somenos Road and ending in Evans Park, a large public sports complex. Vehicle data shows police speeds did not exceed 15 km/h and generally ranged between eight and ten km/h. Emergency lights and sirens were activated throughout, and video confirms the presence of civilian vehicles and pedestrians in the area.

The SO first located the AP driving the Bobcat northbound along the right shoulder of Somenos Road at approximately 9:22 p.m. Witness Officer 1 (WO1) arrived shortly thereafter. Watchguard video shows the SO following the Bobcat with emergency lights and sirens activated. When the AP failed to comply with police directions, the SO attempted to block its path by positioning

their vehicle across the northbound lane and shoulder. The AP immediately reversed into the southbound lane, turned around, and began driving southbound.

Witness Officer 2 (WO2) arrived from the north at the intersection of Somenos Road and Hawkes Boulevard and attempted to block the Bobcat by pulling into the southbound lane. The AP responded by turning right onto Hawkes Boulevard. Watchguard audio captures the SO repeatedly instructing the AP over the loudspeaker to pull over and stop. The AP did not comply and continued westbound on Hawkes Boulevard.

WO1 was the only officer equipped with a police-issued truck. With the SO's approval, WO1 attempted a box-and-pin manoeuvre. WO1 passed the Bobcat, turned around, and drove back towards it. As WO1 approached, the Bobcat's bucket was raised to the height of the truck's windshield. WO1 broadcast that it was unsafe to make contact due to the raised bucket. The AP continued to drive towards WO1, then both vehicles manoeuvred to avoid a head-on collision.

The pursuit continued west on Hawkes Boulevard. At the intersection with Parkside Place, the AP turned left, followed by WO1 and the SO, while WO2 continued on Hawkes Boulevard. The police again used the loudhailer to advise the AP he was under arrest and ordered him to stop three more times, without success.

On Parkside Place, WO1's vehicle struck the rear left side of the Bobcat twice, causing it to jolt but not altering the AP's driving. WO1 radioed that the police truck was having "no impact whatsoever." Shortly thereafter, both WO1 and the SO struck the rear of the Bobcat again. Following this collision, the SO reported over the radio that they were okay, but their vehicle was rendered inoperable. The SO exited the police vehicle and continued on foot.

As the AP continued along Parkside Place, which curves south, WO2 and WO3 encountered the Bobcat head-on, along with a civilian vehicle that pulled over. The two police vehicles attempted to block the Bobcat, but the AP manoeuvred around them. WO1 again struck the Bobcat from the rear, without effect. The AP continued toward the civilian vehicle, then veered around it.

Watchguard audio captured WO3 yelling commands for the AP to stop. WO3 explained in their statement that upon arrival at Parkside Place, they observed the Bobcat approaching with its bucket raised. WO3 exited their vehicle and took cover. Believing the Bobcat posed an imminent risk of serious harm or death, WO3 unholstered their firearm and adopted a high-ready position while continuing to issue commands. Watchguard video confirms the AP did not stop but instead turned left onto Glacier Street.

As this was taking place, WO1 continued to follow the Bobcat on Parkside Place, striking it twice more. In response, the AP turned the Bobcat left onto Glacier Street and WO1 stated over the police radio, "I've struck him multiple times, and it just does not stop him." WO1 followed the

Bobcat onto Glacier Street, striking and pushing it for several seconds. Around this time, WO4 arrived and joined the pursuit. WO1 then veered the police truck left and then sharply right, colliding hard with the rear left side of the Bobcat. In response, the AP continued driving forward while raising the bucket to mid-position before turning northbound back onto Somenos Road.

On Somenos Road, WO2 attempted to block the Bobcat. In response, the AP drove the Bobcat up onto the sidewalk, passed a parked civilian vehicle, returned to the roadway, manoeuvred around WO2's vehicle, and continued towards Evans Park. WO1 struck the Bobcat three additional times as it approached the entrance to the parking lot, with the final impact lifting the right-side wheels of WO1's vehicle off the ground.

In the Evans Park parking lot, WO1, WO2, and WO4 attempted to box the Bobcat against a fence separating the parking lot from the pedestrian area. Instead, the AP drove through the chain-link fence onto a concrete pathway toward a baseball diamond, then through a second chain-link fence onto the baseball diamond. Fence material became entangled in the Bobcat's bucket. WO2 and WO4 stopped their vehicles near a small building by the baseball diamond.

Around this time, and a short distance away, the SO arrived on foot and entered WO3's vehicle. The SO requested WO3's Carbine C8 rifle (Carbine). WO1 and WO3 then drove in tandem toward the baseball diamond as the Bobcat continued across the field, still dragging fencing material from its bucket. Once at the baseball diamond, WO1 and WO3 stopped their vehicles.

Once in this location, the SO exited WO3's vehicle with the Carbine and ran through the broken fence toward the Bobcat, which was driving away from their location. The SO was holding the Carbine pointed upward at this time. The AP then suddenly reversed the Bobcat toward the SO. The SO then pointed the Carbine at the moving Bobcat. The AP continued reversing toward the SO, then abruptly changed direction by 180 degrees to face the SO.

Watchguard video shows that once the Bobcat was facing the SO, it tipped forward slightly. At this moment, the SO discharged one round. In proximity to this shot, Watchguard video shows the Bobcat moved forwards towards the SO and the other officers located behind them. As this occurred, the SO fired four additional rounds while backing away. The Bobcat came to a stop after colliding with the passenger side of WO2's parked vehicle. WO2 then exited their vehicle.

The police officers notified Emergency Health Services, and the AP was transported to hospital. The AP was treated and found to have two gunshot wounds to the head, a bullet fragment in his left lower lung, an open fracture of his left patella, and a laceration to his right knee.

The evidence of the four witness officers was consistent with the video evidence. WO2 and WO4, positioned to rear and left of the SO, described seeing or hearing the SO's firearm deploy as the Bobcat moved towards them. WO1 and WO3, positioned behind the SO, said they saw the SO

run towards the Bobcat and then saw the Bobcat turn around and start driving towards police. Both stated their belief that the Bobcat was going to run over or crush the SO. Further, WO3 stated their belief that if the AP tipped the Bobcat's bucket, that the fencing debris it was holding would have fallen on the SO. WO3 recalled that when the Bobcat turned towards the SO, WO3 was in front of their police car, only 4.5 metres (or 15 feet) behind the SO. WO3 stated that at this time they had their firearm out and pointed at the AP.

### Expert evidence

The IIO engaged a police use of force expert who provided opinion evidence about whether police actions were consistent with RCMP policy and training in relation to two events: the collective police pursuit of the Bobcat and the SO's application of lethal force.

In respect of event one, the expert provided evidence about RCMP training and policy governing police pursuits of fleeing vehicles. The expert opined that the decision to engage in a pursuit was contrary to RCMP policy because the offences under investigation (theft of the Bobcat, impaired driving, and flight from police) are not offences that justify a pursuit. The expert acknowledged that, apart from general principles in the Incident Management Intervention Model (IMIM), RCMP officers do not receive training in managing or containing heavy equipment vehicles like a Bobcat.

In respect of both events, the expert provided evidence about the general IMIM principles, including an explanation regarding the training RCMP members receive on risk assessment and tactical decision making.

For event one, the expert opined that the decision by the SO and WO1 to engage in a pursuit and to use their vehicles as weapons of opportunity during that pursuit reflected a flawed risk assessment. The expert opined that, once it was apparent the AP was going to continue to evade police direction, police should have discontinued the pursuit and considered alternative means of apprehension.

For event two, the expert noted that the Bobcat was obviously capable of causing significant damage to police cars and structures and grievous bodily harm or death to people. In the expert's opinion, the SO's decision to leave the cover of the police vehicles and position themselves near the Bobcat, reflected a flawed risk assessment. The consequence of which placed the SO in a vulnerable position where they could have been assaulted or killed if the AP chose to do so.

### Analysis

#### Criminal negligence – participation in the pursuit

The SO initially used police presence, lights/sirens, and communication to try and pull over the Bobcat. The SO's subsequent actions in following the Bobcat met the technical definition of a pursuit. As confirmed by the expert, the offences for which the AP was arrestable do not meet

the requirements to engage in a pursuit under RCMP policy and, as such, the decision to pursue did not align with RCMP training or policy.

As part of the pursuit, the SO, on a single occasion, used their vehicle to ram the back of the Bobcat. The evidence available at a trial would not support that this action put the AP at risk of harm. The Bobcat was not moved off course nor damaged by the SO's actions.

On the available evidence, while alternative tactics were available, a trier of fact is unlikely to conclude that the SO's involvement in the pursuit of the Bobcat, and single attempt to ram it, amounted to a marked and substantial departure from the standard of care expected of a reasonable police officer. Not every breach of regulation or policy meets the high threshold required to prove a criminal offence.

Factors that would weigh against a finding of criminal negligence at trial include the lack of police training in the context of heavy equipment vehicles, the low speeds at which the pursuit was conducted, and the fact that the SO did not drive through traffic control devices without stopping or otherwise drive in a manner that increased the risk to road users.

The charge approval standard for criminal negligence arising from the SO's participation in the pursuit is not met.

#### [Criminal negligence - approaching the Bobcat](#)

At a trial, a trier of fact would be required to determine whether the SO's decision to approach the Bobcat constituted a marked and substantial departure from that of a reasonable police officer, not whether the SO made the best possible decision in the circumstances. Police decisions are often made in rapidly evolving circumstances based on incomplete or changing information.

Once inside Evans Park, the AP continued to pose a significant risk to public safety. As noted by the expert, the Bobcat was a large, stable, and highly manoeuvrable piece of heavy equipment, fitted with a hydraulic bucket and capable of causing serious injury, extensive damage to property, and death or grievous bodily harm to any person in its path.

Video evidence shows that when the SO approached with the Carbine, the Bobcat was initially moving away toward an open baseball field after breaching two chain-link fences. The Bobcat then unexpectedly turned 180 degrees to face the officers, including the SO, who was approximately nine metres (or thirty feet) away. Given the AP's consistent efforts to evade but not challenge police, a trier of fact is unlikely to find that the SO should have anticipated that the AP would suddenly reverse direction and move towards them or that moving into that position made a shooting likely.

On the available evidence, and in these unique circumstances, even accepting the expert's opinion that the SO's decision to approach the Bobcat reflected a flawed risk assessment, a trier

of fact is unlikely to find this decision amounted to a marked and substantial departure from the standard expected of a reasonable police officer in the circumstances.

### Aggravated assault and assault with a weapon

The SO deliberately discharged the Carbine with the intent to at least wound the AP. Accordingly, the elements of the offences of assault with a weapon and aggravated assault are established. The central issue is the applicability of the section 25 defence set out in the *Criminal Code*.

Section 25 provides a complete defence to force used by a police officer when that officer:

- acted in the course of their duties
- acted on reasonable grounds
- used force that was objectively necessary, reasonable, and proportionate

In addition, when force intended or likely to cause death or grievous bodily harm is used, section 25(3) requires that the officer's belief that such force was necessary to protect themselves or others be objectively reasonable.

On the available evidence, a trier of fact would conclude that the SO was, at all times, acting in the course of lawful police duties. Reasonable grounds existed to arrest the AP for several indictable offences, including possession of stolen property, flight from police, dangerous driving, mischief, and impaired operation.

A trier of fact would also conclude that it was reasonable for the police to resort to some level of force to effect the arrest. The AP's conduct demonstrated sustained and deliberate non-compliance throughout the eight-minute pursuit from Somenos Road to Evans Park: He ignored repeated police commands, drove at WO1 before veering around during WO1's attempt to box and pin the Bobcat, continued to actively evade arrest despite being rammed multiple times by two different police vehicles, drove onto a sidewalk, breached two fences, and entered a public park. The AP's operation of the Bobcat both before and after entering Evans Park posed an obvious risk to police and public safety.

The facts set out above in the criminal negligence analysis apply equally to these offences. As discussed, a trier of fact is unlikely to find that the SO, upon deciding to approach the Bobcat with the Carbine, should have anticipated that the AP would suddenly reverse direction and move toward them, nor that the SO should have known a shooting was likely when they made that decision. Even if a trier of fact accepted the expert's opinion that the SO's decision to leave cover and approach the then fleeing Bobcat reflected a flawed risk assessment, they are nonetheless unlikely to conclude that this error disentitled the SO from justifying their resort to lethal force pursuant to section 25(3).

The evidence available at a trial would establish that, if used as a weapon, the Bobcat had the means to cause death or grievous bodily harm. Once the Bobcat was unexpectedly turned to face the SO, who was approximately nine metres away, a trier of fact is unlikely to find that a belief by the SO that the Bobcat posed this risk of harm was objectively unreasonable. As a result, the Crown would be unable to establish that the SO's first shot at the AP was unnecessary to protect themselves. After this shot, the Bobcat moved forward towards police. Again, a trier of fact is unlikely to find that a belief by the SO that the approaching Bobcat posed this risk to officers was objectively unreasonable. There is no substantial likelihood of establishing that the SO's remaining Carbine shots were unreasonable, unnecessary, or disproportionate in the circumstances to protect officers from a risk of harm.

The Crown would be unable to rebut the section 25(3) defence at a trial, and therefore there is no substantial likelihood of conviction on any of the proposed charges.

### **Conclusion**

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