

Clear Statement – No Charges Against the R.C.M.P. in a Terrace Case

Summary

The Criminal Justice Branch, Ministry of Justice, has declined to approve criminal charges against any member of the R.C.M.P. in connection with an April 21, 2012 incident involving Robert Wright in the Terrace R.C.M.P. detachment cell block. This incident has received considerable media attention and the Branch considers it in the public interest to explain its decision for declining to initiate a criminal prosecution.

The Branch has thoroughly reviewed an investigative report prepared by the New Westminster Police Department on this matter, and has concluded that there is not a substantial likelihood of any conviction for a criminal charge. The available evidence does not establish that the force used by police in the incident went beyond what is legally permissible under the *Criminal Code*. Under Canadian criminal law, where a police officer's use of force is lawful, the officer cannot be held criminally culpable for injury or even death which may result from that use of force.

In accordance with the Branch's charge assessment guidelines, a criminal prosecution cannot be initiated unless the Crown is satisfied that there is a substantial likelihood of conviction on the available evidence, and that a prosecution is required in the public interest. This charge assessment standard respects the presumption of innocence that is constitutionally guaranteed under the Canadian Charter of Rights and Freedoms and applies to all citizens.

The charge assessment decision by the Branch was made following a careful and independent review of the investigative file by a Deputy Regional Crown Counsel in a region of the province that was not the one in which the police officer who was involved in the incident is or has been employed. This step was taken by the Branch to ensure that the charge assessment decision was free of conflict, or the appearance of conflict based on a working relationship with the police detachment in question.

The investigative material reviewed by the Criminal Justice Branch included:

- video and audio recordings of Mr. Wright's dealings with police;
- the evidence of the police officers who interacted with him;
- the evidence of a "Use of Force" expert; and
- medical evidence about Mr. Wright's injuries and their possible cause.

In assessing whether there was a substantial likelihood of conviction, Deputy Regional Crown Counsel also reviewed the *Criminal Code* provisions relating to the use of force by police officers, as well as judicial determinations that have been made in previous cases involving allegations of excessive force by police officers. A charge assessment decision made by the Crown will take into consideration the governing law. Doing so is necessary to fully appreciate the legal elements of the proposed offences, what the Crown would have to prove beyond a reasonable doubt to sustain a conviction if a prosecution was initiated, and the factors for consideration that a court would likely take into account in determining how much weight to assign to a particular piece of evidence and/or its cumulative impact.

Circumstances of the Case

According to the evidence provided to the Criminal Justice Branch by police, sometime after 6:00 pm on April 21, 2012 police were advised to watch for a possible impaired driver on the south side of Terrace. Police were led to believe that the driver may have intended to harm himself or police by driving his vehicle into either a pole or a police car.

Police located the vehicle, which was being driven by Robert Wright, and pulled it over. When interacting with Mr. Wright, police noted symptoms which led the investigating officer to conclude that he was impaired. The officer arrested him for impaired driving and read him a demand that he provide a breath sample. For the majority of the time at the scene, Mr. Wright yelled and swore at the officer. However, the officer remained calm despite Mr. Wright's demeanour.

The evidence reveals that Mr. Wright was angry and aggressive toward police and resisted attempts to handcuff him. In the ensuing struggle, he was taken to the ground by police. When he went down he struck the back of his head against the rear of the vehicle. Mr. Wright continued to struggle but eventually the officers were able to handcuff him and they then transported him to the Terrace R.C.M.P. Detachment. This incident was video and audio recorded, although the portion in which Mr. Wright was taken to the ground to be handcuffed is obscured. The evidence does not support a substantial likelihood of conviction on any criminal charges in relation to this aspect of the police interaction with Mr. Wright.

Events at the Detachment were also captured on video and audio recording. When the investigating officer arrived at the Detachment, Mr. Wright initially refused to get out of the police car. The police removed him from the vehicle and led him to a cell containing a concrete bench and a metal toilet. Mr. Wright was instructed to kneel on the bench (thereby facing the back wall) and cross his feet. Three officers stood near him and the officers began to search him. Mr. Wright's hands were handcuffed behind him at this time.

Mr. Wright uncrossed his feet. An officer re-crossed them and told him to calm down. Mr. Wright then became angered again, turned his face and yelled at the investigating officer. Mr. Wright then abruptly tried to stand up off the bench which led the investigating officer to believe that Mr. Wright was going to engage in a physical confrontation with him.

As a result of Mr. Wright's actions, another of the officers pulled Mr. Wright to the right and took him to the ground. When this occurred Wright struck the right side of his head, hitting either the floor, the concrete bench or the toilet, and suffering a cut on his head.

Emergency Health Services took Mr. Wright to the hospital where he received stitches to close the cut. Mr. Wright later made two more trips to the hospital because his condition at the Detachment deteriorated. This deterioration was ultimately linked to bleeding of his brain; however, on the available evidence, the bleeding cannot be medically shown to be due to the physical altercations between Mr. Wright and police.

A neurosurgeon who treated Mr. Wright was unable to conclude that the trauma that Mr. Wright suffered caused the bleeding in his brain. The bleeding was on the left side and there was nothing in the area to suggest that he had suffered trauma on that side of his head. As a result, the Doctor concluded it was likely that the bleeding was caused by a medical condition.

The Law And Its Application To The Facts

Police officers acting in the course of their duties are lawfully permitted to use force; however, such force must be proportional, necessary and reasonable.

Section 25 of the *Criminal Code* provides certain legal protections to police officers acting in enforcement of the law. The section provides, in part, that:

(1) Every one who is required or authorized by law to do anything in the administration or enforcement of the law

(b) as a peace officer or public officer,

is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.

Section 26 of the *Criminal Code* places limits on the use of force. If an officer uses too much force, he or she is criminally responsible for the excess:

26. Every one 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 Supreme Court of Canada has ruled that the allowable degree of force is limited by the principles of proportionality, necessity and reasonableness. Courts must guard against the illegitimate use of power by the police against members of society, given its grave consequences.

Other court decisions have established that what is reasonable, necessary, and proportional will depend on the totality of the circumstances. What was reasonable in the circumstances takes into account the whole of the information that may have been known to the officer at the time, the extent of his or her interaction with the person in question, the officer's training, experience and any direction or orders that may have been provided to the officer from a supervisor or otherwise. It is a contextual analysis, with each case being unique to its own set of facts. The contextual approach also requires a court to take into account the characteristically dynamic nature of police interactions with citizens. An officer's decision on the use of force must often be made quickly in volatile and rapidly changing situations.

The law does not hold police to a standard of perfection. While any force used must be measured, the police are not required to weigh with precision the amount of force they use. What is reasonable, proportional, and necessary is a use of force which is not gratuitous. It is a use of force taken neither from revenge, anger or malice but one characterized as an application of situational force designed to dissolve a potential risk to the officer's personal safety or achieve some other legitimate purpose.

In the circumstances of this case, a substantial likelihood of conviction would only exist if the prosecution could demonstrate either that there were no grounds to apply force, or that the force used was excessive. The Crown has concluded that the available evidence supports grounds for the use of force. Mr. Wright was under arrest and his behaviour had been resistant, belligerent and uncooperative. The officers in cells were trying to search him and attempting to keep him under control when he stood up. All three officers in his immediate vicinity at the time believed his action was intended in some way to engage in a physical confrontation or instigate something. In the circumstances, police were entitled to use force to prevent that from happening.

The Crown has concluded, based on the evidence as a whole, that it is not possible to prove to the necessary criminal standard that the force used was excessive in the circumstances. It can properly be characterized as an application of situational force designed to dissolve a potential risk.

In their interaction with Mr. Wright, police remained calm and patient. The circumstances do not support a conclusion that the force was applied out of anger, malice or retribution. It was not applied gratuitously, but rather in response to a perceived threat. The use of force was situational, of brief duration and it ended when the officer had achieved his purpose. Once Mr. Wright was down and under control, no officer applied any other force.

While Mr. Wright unfortunately sustained bodily harm in the form of a cut above his right ear, this fact does not establish that the force used was excessive. Where the force used is otherwise lawful and proportionate, the fact that an injury resulted from the interaction with police does not transform the use of force into an unlawful act.

Although it was the opinion of a neurosurgeon that Mr. Wright's more serious brain injury was not a result of trauma occurring in his dealing with police, even if it had been the result of police action, it would not render those actions unlawful in the circumstances of this case.

Given that the Crown cannot prove that the force used by police in dealing with Mr. Wright was either unnecessary or excessive, there is no substantial likelihood of conviction on any offence in these circumstances.