# MEDIA STATEMENT
## CRIMINAL JUSTICE BRANCH

May 26, 2014 14-11

**No Charges Approved in IIO Investigation**

**Victoria** – The Criminal Justice Branch (CJB), Ministry of Justice, announced today that no charges have been approved against a Langley RCMP officer with respect to an incident which was investigated by the Independent Investigations Office (IIO). The incident took place in Langley on September 22, 2013, and involved the officer directing a civilian to cease performing CPR on a man who had experienced a medical event while driving. The IIO submitted its Report to Crown Counsel to CJB on February 3, 2014 for consideration of charges under s. 262 of the *Criminal Code*: Impeding an attempt to save life.

Following an investigation, where the Chief Civilian Director of the IIO determines that an officer may have committed an offence, the IIO submits the file to CJB. The Chief Civilian Director does not make a recommendation on whether charges should be approved or what charges CJB should consider. In deciding whether to initiate a prosecution CJB must assess whether the available evidence provides a substantial likelihood of conviction and, if so, that a prosecution is required in the public interest. Before entering a conviction for an offence, a judge or jury must be satisfied that guilt of the accused has been proved beyond a reasonable doubt.

In this case, CJB has concluded there is no substantial likelihood that the police officer who was subject to investigation would be convicted of any potential offence arising from the circumstances. In keeping with the recommendation of Commissioner Stephen Owen, Q.C. following the Discretion to Prosecute Inquiry (1990), a Clear Statement explaining the charge assessment is attached to this Media Statement. In order to maintain confidence in the integrity of the criminal justice system, a Clear Statement of the reasons for not prosecuting is sometimes made public by the Branch in cases where the investigation has become publicly known.

Media Contact: Samantha Hulme
A/Communications Counsel
Criminal Justice Branch
(250) 387-5169

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Office of the
Assistant Deputy Attorney General
Criminal Justice Branch
Ministry of Justice

*Mailing Address:*
PO Box 9276 Stn Prov Govt
Victoria, BC V8W 9J7

*Office Location:*
9th Floor, 1001 Douglas Street
Victoria, BC V8W 9J7
Telephone: (250) 387-3840
Fax: (250) 387-0090

# Clear Statement

## Summary of Charge Assessment

After a thorough review of evidence provided to the Criminal Justice Branch (the Branch) by the Independent Investigations Office (the IIO), the Branch has concluded that the available evidence does not support a substantial likelihood of conviction for any criminal offence against the officer arising out of his direction to a civilian to cease providing CPR on September 22, 2013. As such, no criminal charges will be approved.

This Clear Statement contains a summary of the evidence gathered during the IIO investigation. The summary is provided to assist the public in understanding the decision of the Branch not to approve charges against the officer who was involved. The summary does not detail all of the evidence considered by Crown Counsel, or discuss all relevant facts, case law or legal principles.

## Charge Assessment and Standard of Proof

The charge assessment was conducted by a senior Crown Counsel who has no prior or current connection with the police officer under investigation and who is located in a different area of the province than that in which the officer is employed.

The Branch applies a two part test to determine whether criminal charges should be approved and a prosecution initiated: (a) there must be a substantial likelihood of conviction based on the evidence gathered by the investigating agency; and (b) a prosecution must be required in the public interest.

Under Branch 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 whether the evidence gathered by the investigating agency is likely to be admissible in court; the weight that would likely be given to the admissible evidence at a trial; and the likelihood that viable, not speculative defences will succeed.

In making a charge assessment, Crown Counsel must assess the evidence gathered by investigators in light of the legal elements of the criminal offence that is alleged to 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 a crime does not have to prove that he or she did not commit the crime. Rather, the Crown bears the burden of proof from beginning to end.

The charge assessment in this case took into account the following material:

- Report to Crown Counsel;
- Statements of the officer subject to investigation;
- Statements of police and civilian witnesses;
- Investigation records, police notes and reports;
- Fire department reports;
- Photographs;
- Training records of the officer; and
- First aid instruction materials.

In deciding whether a charge should be approved, Crown Counsel focused on the *Criminal Code* offence of "Impeding an attempt to save life", contrary to Section 262(b). To sustain a conviction for this offence, the Crown would have to prove that the officer, without reasonable cause, prevented or impeded, or attempted to prevent or impede, another person who was attempting to save a life.

**The Circumstances Surrounding the Incident**

Shortly after 3 p.m. on September 22, 2013, an adult male driver experienced a medical event and subsequently crashed his vehicle into a building on 204th Street in Langley.

Civilians found the driver hunched over the steering wheel with labored breathing. He was attended to by civilian witnesses who, at the direction of the BC Ambulance Service (BCAS) emergency operator, removed him from the vehicle.

At approximately 3:15 p.m., a civilian witness began to administer Cardio Pulmonary Resuscitation (CPR). He did so based on his own training as a Level 2 First Aid attendant and on the directions of the BCAS emergency operator to continue until help arrived.

Shortly after the civilian began to perform CPR, a Langley RCMP officer arrived on the scene, checked the driver's neck for a pulse and assessed the driver's breathing by placing his hand over the driver's face. The available evidence indicates that the driver appeared to be breathing at the time the officer attended to him. The officer instructed the civilian to stop performing CPR, and there was a disagreement between the officer and civilian as to whether CPR should be stopped.

The available evidence indicates that the driver was without medical intervention for a period of approximately 20 to 90 seconds until firefighters arrived at his side. Firefighters commenced doing CPR on the driver immediately upon attending the scene, as they determined he did not have a pulse.

The driver passed away in hospital at 4:41 pm, after numerous medical interventions by firefighters and ambulance paramedics at the scene, and medical professionals in hospital.

A civilian complained to the RCMP about the incident, and the RCMP referred the matter to the IIO.

The available evidence indicates that the officer believed the driver was breathing, based on his assessment of the patient's vital signs, and that the officer believed firefighters were arriving at scene and should take over patient care from the civilian.

The officer completed a two day course in Standard First Aid and CPR Training in 2007. This course instructs that CPR should be continued until:

- an AED is applied;
- the casualty begins to respond;
- another first aider takes over;
- medical help takes over; or
- the first aider is exhausted and cannot continue.

**The Application of the Law to the Circumstances in this Case**

The available evidence is capable of establishing that the officer impeded or attempted to prevent the civilian from continuing his efforts to administer CPR to the driver. However, this is not the end of the enquiry for the purpose of charge assessment. The question remains

whether, on the available evidence, the Crown could prove that the officer did not have "reasonable cause" to prevent or impede the civilian from continuing with CPR. To acquit on the basis of "reasonable cause", a judge or jury would only need to have a reasonable doubt about whether "reasonable cause" existed. The officer would not have to prove, on the evidence, that it *did* exist.

The available evidence indicates that the officer believed the driver was breathing and that first responders were arriving on scene when he instructed the civilian to stop CPR. As the driver was believed to be breathing, the officer may have understood him to be "beginning to respond" which, from the officer's training, is a basis for discontinuing CPR.

## Conclusion

After reviewing the entirety of the investigative file, Crown Counsel has concluded that the available evidence does not provide a sufficient basis for proving that the officer did not have reasonable cause for directing that CPR to be discontinued. In the circumstances, there is no substantial likelihood that the officer would be convicted of the offence under s. 262(b) of the *Criminal Code*. As the first branch of the charge assessment test has not been met, no charge will be approved with respect to this incident.