



MEDIA STATEMENT

CRIMINAL JUSTICE BRANCH

March 25, 2015

15-06

No Charge Approved in Collision Between Motorcycle and VPD Vehicle

Victoria – The Criminal Justice Branch, Ministry of Justice (CJB) announced today that no charge has been approved against a member of the Vancouver Police Department (VPD) involved in an incident on August 8, 2014 in which a male sustained a broken arm when his motorcycle collided with a police car. The incident was investigated by the Independent Investigations Office (IIO), which subsequently submitted a Report to Crown Counsel to CJB.

Following an investigation, where the Chief Civilian Director of the IIO determines that an officer may have committed an offence, the IIO submits a report to CJB. The Chief Civilian Director does not make a recommendation on whether charges should be approved or what charges CJB should consider.

In this case CJB has concluded based on the available evidence that there is no substantial likelihood that the officer subject to investigation would be convicted of any offences arising from the circumstances. A Clear Statement explaining the decision in greater 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 CJB in cases where the IIO has investigated a police officer and forwarded a report to CJB for charge assessment.

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www.aq.gov.bc.ca/prosecution-service/

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Summary

On August 8, 2014, a member of the Vancouver Police Department (VPD) in a marked police vehicle turning left off Hastings Street collided with a motorcycle travelling in the opposite direction. The motorcyclist suffered a broken left arm. There is conflicting evidence as to the status of the traffic signal light at the time of the collision, and the speed at which the motorcycle was travelling, although neither of the vehicles involved was traveling at a high rate of speed. The Criminal Justice Branch (CJB) has concluded that there is no substantial likelihood that the officer driving the police vehicle would be convicted of any offence as a result of this incident. Accordingly, no charge has been approved against the officer. In reviewing this case the Branch focussed in particular on the potential offence of 'Failing to Yield Right of Way on Making a Left Turn', contrary to section 174 of the Motor Vehicle Act (MVA).

This statement contains a summary of the evidence gathered during the IIO investigation, and the applicable legal principles. The summary is provided to assist the public in understanding the decision of CJB not to approve any charge against the police officer involved. It does not detail all of the evidence considered, or discuss all relevant facts, case law or legal principles. The charge assessment was conducted by a senior Crown Counsel in another area of the province, with no prior or current connection with the officer under investigation.

Charge Assessment and the Criminal Standard of Proof

The Charge Assessment Guidelines applied by the Criminal Justice Branch in reviewing all Reports to Crown Counsel are established in Branch policy and are available online at:

http://www.ag.gov.bc.ca/prosecution-service/policy-man/pdf/CHA1_ChargeAssessmentGuidelines.pdf

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

Applicable Law

Section 174 of the *MVA* states:

Yielding right of way on left turn

174 When a vehicle is in an intersection and its driver intends to turn left, the driver must yield the right of way to traffic approaching from the opposite direction that is in the intersection or so close as to constitute an immediate hazard, but having yielded and given a signal as required by sections 171 and 172, the driver may turn the vehicle to the left, and traffic approaching the intersection from the opposite direction must yield the right of way to the vehicle making the left turn.

Summary of relevant evidence

The injured motorcycle operator reported that he was heading west on Hastings Street approaching Main Street. As he was approaching the intersection of Hastings and Main, he noticed the police car waiting to turn left from the opposite direction. The light was green. When he was 2 meters from the intersection and the signal for pedestrians indicated 4 seconds, he decided it was safe to proceed. As he was driving through the intersection the police car turned left and he drove into the right passenger door. It was a low speed collision and he estimated he was going 30 km/h.

The evidence of an officer riding as a passenger in the police vehicle (the second officer) is that they were traveling east on Hastings Street approaching Main Street. The light on Hastings at Main was green as they approached the intersection. The officer driving slowed or stopped the police vehicle on Hastings prior to the crosswalk before Main Street, as there was traffic coming towards them on Hastings, travelling straight through the intersection.

A westbound van facing them had its left turn signal on and appeared to be waiting to turn from Hastings to go southbound onto Main. At this time, the second officer observed the traffic light for eastbound traffic on Hastings turn from green to yellow and the westbound van facing them proceeded into the intersection to make the left turn. The next westbound lane on Hastings did not have any traffic in it and there was a BC Transit bus which appeared to be stopped in the third lane. The officer driving started to make a left hand turn at a slow rate of speed to go northbound on Main Street. As their police vehicle was turning the second officer heard an exclamation from the driver. He looked at the officer driving, who appeared to be looking east. The second officer then looked east and observed a black motorcycle entering the intersection towards them. He estimates the speed of the motorcycle at about 50 km/h when he first saw it approaching. It appeared to be braking, and he estimates it was travelling about 30 km/h when it struck the police vehicle.

The evidence of uninvolved witnesses is conflicting. One reports that the light for traffic travelling east or west on Hastings Street was green at the time of the collision, however two other civilian witnesses report that the police vehicle was turning on a yellow light when the collision occurred.

Video evidence from a bus nearby indicates that the light turned yellow before the motorcycle entered the intersection, and the collision in the intersection occurred 1.73 seconds after the light changed. The light changed to red 1.67 seconds after the collision. Calculations made from the video evidence suggest the motorcycle was travelling somewhat over the 30 km/h speed limit in the block prior to the collision, averaging a speed slightly under 40km/h. The motorcycle operator was not issued any violation ticket in relation to the incident.

Conclusions

Based on a review of all the available evidence CJB has concluded that it cannot be proven beyond a reasonable doubt that in the circumstances of this case the officer driving the police vehicle committed the *MVA* offence under consideration. Two civilian witnesses, the second officer riding in the police vehicle, and available video evidence all support a conclusion that the light was yellow when the officer driving began her left hand turn onto Main Street. A van in the left hand turn lane facing the police vehicle may have obscured the vision of both the officer driving and the injured motorcyclist.

The officer was well into making the left hand turn when the motorcycle, which had been exceeding the speed limit somewhat, collided with the police vehicle. The evidence does not establish that the officer's driving fell below the standard required of drivers under the *MVA*. In these circumstances, there is not a substantial likelihood that the officer would be convicted of

'Failing to Yield the Right of Way on Making a Left Turn'. As a result no charge has been approved against the officer.

Materials Reviewed

In completing the charge assessment in this matter, CJB reviewed the following materials:

- Report to Crown Counsel, including Incident Synopsis and Evidence Summary
- Interview Narrative and Transcript of injured motorcycle operator
- IIO Investigator Notes and "Will Says"
- Police Notes and Statements,
- Summaries of Interviews of civilian
- Task Action Reports
- Reports concerning Traffic Collision and Video Analysis
- Scene Examination Documentation
- Photographs, Videos and Audio Recordings