



# MEDIA STATEMENT

## CRIMINAL JUSTICE BRANCH

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14-14

### **No Charges Approved in IIO Investigations into Collisions Involving Police Vehicles**

**Victoria** – The Criminal Justice Branch (CJB), Ministry of Justice, announced today that no charges have been approved against the police officers involved in two, on duty motor vehicle collisions which occurred in Langley on June 23, 2013 and in Vancouver on November 14, 2013. In each case a civilian involved received serious injuries.

Both investigations were conducted by the Independent Investigations Office (IIO). The incident which occurred in June 2013 involved a collision at 200<sup>th</sup> Street and Brydon Crescent between a civilian vehicle and a vehicle driven by a member of the RCMP. The incident which took place in November 2013 involved a collision between a Vancouver Police Department officer's vehicle and a female pedestrian who was crossing East 2<sup>nd</sup> Avenue in Vancouver.

Following an investigation, where the Chief Civilian Director of the IIO determines that an officer may have committed an offence, the IIO submits a 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, whether 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 proven beyond a reasonable doubt.

In each of these cases 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.

Where the IIO has forwarded an investigative report and CJB does not approve charges a Clear Statement explaining the decision is released by CJB, in order to maintain public confidence in the integrity of the criminal justice system.

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### ***Branch Vision***

***Courageous, Fair and Efficient – A Prosecution Service that has the Confidence of the Public.***

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## **Clear Statement**

This statement contains summaries of the evidence gathered during the IIO investigations and the applicable legal principles. The summaries are provided to assist the public in understanding the decision of CJB not to approve charges against the officers who were involved. They do not detail all of the evidence considered, or discuss all relevant facts, case law or legal principles.

## **Charge Assessment and Standard of Proof**

CJB applies a two part test to determine whether 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 CJB 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, Crown Counsel 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 reaching a charge assessment decision, Crown Counsel must assess the evidence gathered by investigators in light of the legal elements of any potential 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.

After a thorough review of the investigative material provided by the IIO in these two cases, CJB has concluded that the available evidence does not support a substantial likelihood of conviction for any offence. As such, no charges have been approved.

## **The Langley Investigation**

On June 23, 2013 around 2:00 a.m., the officer who was the subject of the IIO investigation was among a group of police officers in separate vehicles who were responding to a Break and Enter that was in progress in the 4800 block of 200A Street, Langley. The caller reported that two men were in a neighbour's backyard, and that one of the men had entered the house.

According to the available evidence, the officer was driving an unmarked police car southbound on 200<sup>th</sup> Street with his emergency lights activated, but not his siren. He was driving just behind two other police vehicles and in front of a fourth police vehicle. Traffic was light at the time, and the weather was clear and dry. All the police vehicles had their emergency lights activated, but not their sirens. The officers indicated that they had not operated their sirens (except as necessary to clear intersections) as that might cause the suspects to flee and be at large in a residential neighbourhood.

The speed of the officer's cruiser ranged from 44 km/h to 119 km/h as he travelled from north of 56<sup>th</sup> Avenue to the scene of the collision at Brydon Crescent. The other police vehicles travelling southbound along 200<sup>th</sup> Street posted speeds that were similar to and sometimes faster than the officer's cruiser. A civilian witness standing just south of the crash site noted that

the police vehicles were driving quickly, but were not driving in an unsafe manner or at a dangerous speed.

Brydon Crescent ends in a “T” intersection at 200<sup>th</sup> Street. Traffic on 200<sup>th</sup> street has the right of way as there is a stop sign on Brydon Crescent at 200<sup>th</sup>. There are trees at the northwest corner of the intersection that make it difficult for the driver of a vehicle arriving at that stop sign to see southbound traffic on 200<sup>th</sup>, and also make it difficult for southbound traffic to see whether or not there is a vehicle on Brydon Crescent.

The officer’s southbound cruiser collided with a civilian vehicle that pulled out, eastbound, from Brydon Crescent onto 200<sup>th</sup> Street and into the path of his vehicle. The officer’s police cruiser was travelling at 85 km/h when it collided with the civilian vehicle. The driver of the civilian vehicle was seriously injured.

The Collision Reconstruction Report indicates that at any speed over the posted 50 km/h limit in the area the officer could not have avoided the collision.

### **Relevant Legislation**

Section 122(1)(a) of the *Motor Vehicle Act* and the related *B.C. Emergency Driving Regulations* give drivers of emergency vehicles the right to exceed the speed limit in certain situations. Pursuant to section 4 of the regulations, and RCMP policy, the use of lights and sirens is normally required. However, under section 4 the use of emergency equipment is not required if the member is responding to an incident and has reasonable grounds to believe an offence has been, is being, or is about to be committed and the risk of harm to the public entailed in operating emergency equipment outweighs the risk of harm to the public in not operating it. In addition, a peace officer engaged in the lawful execution of his or her duty may exceed the speed limit without operating an emergency siren, or an emergency light and siren in certain other circumstances, if the officer has reasonable grounds to believe that it is safe to do so.

### **Application of the Law to the Circumstances of the Langley Case**

The available evidence is that the officer was operating his vehicle at a speed greater than the posted speed limit and had not activated his siren. There is no other evidence of improper operation of the police vehicle.

Both legislation and RCMP policy recognize that police officers are occasionally required to exceed posted speed limits, without using sirens, in order to carry out their duty to protect the public. This incident could reasonably be described as being one of those occasions.

Responding officers are expected to undertake a risk assessment before engaging in this type of response. The fact that an accident results does not, in of itself, mean that the risk assessment was wrongly applied. In these circumstances the officer had no reason to expect that a vehicle would pull out from a stop sign and into his path, even in the absence of a siren. His vehicle was clearly visible and he had the right of way. While his speed obviously prevented him from avoiding the collision, there were compelling reasons for him to be travelling at that speed in the execution of his duties. Accordingly, there is not a substantial likelihood of the officer being convicted of an offence in relation to his operation of his motor vehicle.

After reviewing the entirety of the investigative file, CJB has concluded that the available evidence does not support the conclusion that it was unreasonable in the circumstances for the officer to decide to exceed the speed limit and/or not operate his siren. There is no substantial likelihood that the officer would be convicted of any driving offence under either the *Motor Vehicle Act* or 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.

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

- Report to Crown Counsel Narrative
- Civilian witness statements
- Evidence of other police officers responding
- Investigation records, police notes and reports
- Collision Reconstruction Report
- Photographs and maps of scene

The review was conducted by a senior Crown Counsel who has no prior or current connection with the police officer under investigation.

### **The Vancouver Investigation**

On November 14, 2013, at around 11:41 a.m., a female pedestrian was crossing East 2<sup>nd</sup> Avenue at Scotia Street in Vancouver, when she collided with a pickup truck, which was travelling westbound on East 2<sup>nd</sup> Avenue. The truck was being driven by an on duty member of the Vancouver Police Department (VPD).

There are four travel lanes and two parking lanes at this location, with no marked crosswalk or traffic lights. Traffic on East 2<sup>nd</sup> Ave. has the right of way at this intersection. There is a bend in East 2<sup>nd</sup> Ave. between Scotia and Thornton Streets which restricts visibility of oncoming westbound traffic. There were vehicles parked in the curb lane which further restricted visibility. The maximum allowable speed on East 2<sup>nd</sup> Ave. is 50 km/h. The available evidence indicates that the officer was not distracted while operating the vehicle.

The available evidence indicates that neither the pedestrian nor the officer saw each other before the pedestrian, who was travelling southbound, stepped out onto the street and began to cross East 2<sup>nd</sup>. When she saw the pickup truck travelling towards her she then jogged or ran further into the intersection, in an effort to avoid the approaching vehicle. On seeing the pedestrian, the officer swerved into the centre lane in an attempt to avoid hitting her, but was unsuccessful and she made contact with the passenger side of his vehicle, suffering significant injuries. The officer parked the truck and ran back to assist the pedestrian.

The airbag module in the officer's vehicle provides up to 5 seconds of pre-crash data, and it reports that the maximum speed of the pickup truck for the five seconds before the crash was 29 km/h. Taking into account the time which the pedestrian would have been visible and the speed of the vehicle, accident reconstruction evidence indicates that the driver of the vehicle did not have enough time to safely stop before the collision occurred.

### **The Law & Application to the Circumstances in the Vancouver Case**

In deciding whether a charge should be approved, CJB focused on the *Motor Vehicle Act* offence of "Failing to yield to a pedestrian", contrary to Section 179(1). To obtain a conviction for this offence it would be necessary for the Crown to prove that the officer was driving unreasonably when measured against an objective standard of care required of a reasonable driver in the circumstances. There must be evidence to establish an absence of sufficient due care to matters that reasonably ought to have been in his mind while operating his vehicle at the particular place and time of the collision.

The available evidence does not indicate unreasonable driving or an absence of due care on the part of the officer. The evidence does not establish that the officer was speeding or driving erratically. There is some evidence of obstructions or impediments which would have affected his ability to see the pedestrian immediately prior to her stepping onto the road.

After reviewing the entirety of the investigative file, CJB has concluded that the available evidence does not provide a substantial likelihood that the officer would be convicted of the offence of “Failing to yield to a pedestrian”, contrary to Section 179(1) of the *Motor Vehicle Act*. As the first branch of the charge assessment test has not been met, no charge will be approved with respect to this incident.

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

- Report to Crown Counsel Narrative
- Statement of the officer subject to investigation
- Statement of the injured pedestrian
- Statements of civilian witnesses
- Investigation records, police notes and reports
- Scene examination and collision reconstruction reports
- Photographs
- Maps

The charge assessment was conducted by a senior Crown Counsel who has no prior or current connection with the police officer under investigation.