



MEDIA STATEMENT

CRIMINAL JUSTICE BRANCH

February 4, 2015

15-03

No Charges Approved in IIO Investigations Into Motorcycle Accident

Victoria – The Criminal Justice Branch, Ministry of Justice (CJB) announced today that no charges have been approved against a member of the R.C.M.P. involved in an incident on May 31, 2014 in which the operator of a motorcycle suffered leg injuries when he lost control of his vehicle and crashed. 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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or Justice B.C.: www.justicebc.ca/en/cjis/index.html

Branch Vision

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Clear Statement

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Summary

On May 31, 2014, a member of the Ridge Meadows Detachment of the RCMP was driving a marked police vehicle westbound on Highway #7 in the Fraser Valley and following a large group of motorcyclists, some of whom she had observed committing motor vehicle offences. Approximately 4 kilometers east of Deroche, the officer activated the police emergency equipment on her vehicle, in order to pull over the offending motorcycles.

In the course of the incident, a motorcyclist travelling in the opposite direction lost control of his motorcycle as vehicles in front of him slowed in response to the police emergency equipment. He and a female passenger were dislodged from the motorcycle, which continued sliding forward until it contacted a minivan that the motorcyclist had been following. The motorcyclist suffered fractures to his leg and shoulder, while the passenger sustained a minor abrasion injury.

There is conflicting evidence concerning whether or not the officer's vehicle was within her own lane of travel or straddling the centre line, and about the manner in which the oncoming traffic stopped or slowed down immediately prior to the accident. Following a thorough review of the available evidence, CJB has concluded that there is no substantial likelihood that the police officer would be convicted of any offence as a result of the incident. Accordingly, no charges have been approved against the officer by CJB.

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 charges 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 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 burden of proof applies to issues of credibility. A criminal trial is not a simple credibility contest between witnesses for the Crown and witnesses for the defence. If the accused testifies, the accused is entitled to be acquitted in any or all of the following circumstances: the trier of fact accepts the evidence of the accused; the evidence of the accused raises a reasonable doubt; the trier of fact does not know whom to believe; or, even if the trier of fact does not accept the accused's evidence, there remains a reasonable doubt on the totality of the evidence.

Relevant Law

In reviewing this case the Branch focussed in particular on potential offences of Driving Without Due Care and Attention, contrary to section 144(1) of the provincial *Motor Vehicle Act (MVA)* and Failing to Confine Vehicle to Right, contrary to section 150(1) of the *MVA*.

"Driving without Due Care and Attention" is proven when the Crown can establish that the accused was not paying appropriate or sufficient attention to his or her driving in all of the circumstances. Proof of momentary inattention or carelessness is sufficient to sustain a conviction for this offence. To make out the offence the Crown must prove that the driving in question was improper, in the sense that in all the surrounding circumstances it departed from the accustomed, sober behaviour of a reasonable person. A lack of due care and attention can be inferred from the objective indicator of the manner of driving. It is not a standard of perfection, however. A person's driving must only be objectively reasonable, having regard to all the circumstances.

Section 150(1) of the *MVA* requires that a driver must confine the course of a vehicle to the right hand half of the roadway.

Police officers are protected under section 122 of the *MVA* and the related *Emergency Vehicle Driving Regulation* from liability for *MVA* violations in certain circumstances, when they activate their emergency lights and siren.

Summary of relevant evidence

The evidence of the officer subject to the IIO investigation is that on Sunday, May 31, 2014 she was assigned responsibility for traffic enforcement, including conducting traffic stops and ticketing for any safety infractions, in relation to a group of motorcyclists involved in an event in the Fraser Valley. The officer was working in full uniform and operating a marked police vehicle. At approximately 2:30 p.m. she began following a group of 30 to 40 motorcyclists on Highway 7 approximately 4 kilometers east of Deroche. In the course of following this group the officer noted a portion of the group of motorcyclists "swarm" another vehicle by splitting in two and proceeding into a blind corner on both sides of the vehicle, with some going into the oncoming traffic lane on the double solid line of the corner. According to the officer, at this time 6 to 8 of the motorcycle riders slowed, in an apparent effort to hold her back. As a result of what she had observed the officer radioed that she was going to effect a roadside stop.

She turned on her lights and siren and observed traffic in the oncoming lane begin to yield to her by slowing and pulling over. The front of the motorcycle group that she was following accelerated and some went into the oncoming lane. A number of motor vehicles, including a motorcycle, were coming towards the officer in the oncoming lane. From the officer's vantage point it appeared that the operator of the oncoming motorcycle tried to go around a vehicle in

front of him and pass into oncoming traffic, but had no place to go due to the large group of other motorcycles on the highway travelling towards him.

She observed the motorcycle brake, and then go down on its side. As a result she made a U-turn and came back to the accident scene. According to the officer, her police vehicle had remained within its own lane of travel during the course of these events. She also noted that the other 3 vehicles ahead of the motorcycle approaching her did yield without problem.

The injured motorcycle operator told investigators that he and his passenger were riding eastbound towards Harrison Hot Springs. He was travelling on a straight stretch and believed he was about two to three car lengths away from the vehicle in front of him. The speed limit was 80 km/h and he did not believe he was speeding. Just prior to the collision he could see a large motorcycle procession coming towards him. He believed that the problem he encountered was caused by what he believed was an unmarked police vehicle and a tow truck, which he noted as parked on either side of the highway. As the motorcycles in the oncoming group were getting closer he noticed that there was a police vehicle behind with its lights on but no siren, causing him to wonder whether it was procession involving a police escort.

As he got closer to the spot where the other vehicles were pulled over he stated that all of a sudden it was complete chaos with brake lights, and oncoming motorcycles "ripping by", including in his lane. He had to hit the brakes and take evasive maneuvers. His motorcycle went down and then slid and hit the minivan in front of him. The oncoming motorcyclists continued on without stopping.

He believed the police officer trying to pull over the motorcycles was only one contributing factor to the collision. He believed what he identified as the unmarked police vehicle and the tow truck on the side of the road were part of a police roadblock that was in the process of setting up, and that it was more than one officer who caused the accident. In fact, there was no police roadblock being established at the time.

A vehicle driver who was also travelling eastbound told investigators that he saw a group of motorcycles coming towards him in the oncoming westbound lane and they were being followed by a marked police vehicle with lights and siren activated. The driver thought the motorcycles were trying to evade the police officer. He described the police vehicle as basically driving dead centre of the roadway.

The vehicle directly in front of him suddenly slammed on its brakes and pulled over to the right side of the roadway. This caused him to brake hard and he pulled to the right off the roadway to avoid hitting the vehicle in front of him. At this time, the motorcycles had already passed him and the police vehicle was right beside him. He thought he would have collided with the vehicle that was in front of him, and might have clipped the side mirror of the police vehicle, if he had not pulled off the roadway. He looked in his rear view mirror and saw that the vehicles that were following him had pulled off the roadway completely as well. He saw the motorcycle that had been following the minivan go down.

This witness felt the officer had been driving dangerously in travelling down the center of the road and that she was closer behind the motorcycles than she should have been.

The driver of the minivan that was struck by the motorcycle said that he saw the group of motorcycles and the police vehicle behind the group with its siren and lights on. He pulled over as required. There were two cars in front of him and a motorcycle behind him that had been following him for about five or six kilometers. As soon as he stopped for the police car he checked his rear view mirror and saw the motorcycle sliding. The motorcycle and riders went down and the motorcycle eventually slid into the back of the van.

Prior to the accident he was maintaining a speed of 70 to 75 km/h. He stated that there were 20 to 30 motorcycles coming and all were in their designated lane, with the police officer half way in the oncoming lane. The officer's driving did not cause him concern as she appeared to be trying to pull over someone doing something illegal. He did not see anything in the officer's driving that he would consider a problem. He also did not take any issue with the way in which the motorcycles were driving, and did not see any of them in the oncoming lane at any time.

The evidence of the front seat passenger in the minivan is that he noticed there were many motorcycles traveling on the roadway, in a line of vehicles. He also had noticed in the rear-view passenger side mirror a motorcycle which had been following their van for approximately 10 to 12 minutes. He estimated it was approximately 4 to 5 car lengths behind them, and it was moving from side to side on the roadway. He noticed approximately 20 to 25 motorcycles coming towards them approximately one-half kilometer away, and a police vehicle with its emergency lights on maybe 2 to 3 car lengths behind the motorcycles. According to this witness, both the approaching motorcycles and police vehicle were in their proper lane of the roadway and he saw the emergency lights were on, but did not hear the siren. The vehicles traveling in front of the van started to pull over to the side of the roadway and his son, who was driving, also began slowing down yielding to the emergency vehicle.

His son brought the van to a stop partly on the roadway and partly on the side of the road. The minivan was stopped when he felt a bang at the rear of their van. After he and his son got out of the minivan and went back to see what had happened he saw a man lying on the road who appeared to be in pain and a woman who appeared to have some injury to her arm. He also saw a motorcycle lying on its left hand side.

He stated that he did not see anything to lead him to believe the accident had anything to do with the police officer. He felt it was a result of the motorcycle tailgating their van.

Conclusions

As is summarized, there are varying and somewhat conflicting accounts of the circumstances of this incident. This is not uncommon when dealing with eyewitness evidence, as vantage points and perceptions may vary. In addition, witnesses may be honestly mistaken about potentially significant aspects of their memory of events. Based on a careful review of all the available evidence submitted, CJB has concluded that it cannot be proven beyond a reasonable doubt that the officer committed either of the two *MVA* offences under consideration.

The evidence is capable of establishing that the officer was in a marked police vehicle following a large group of motorcyclists westbound on Highway #7 and that she had observed some of them committing *MVA* offences. Two witnesses in oncoming vehicles confirm the officer's evidence that she turned on the police emergency lights and siren of her vehicle. Oncoming

vehicles in the eastbound lane began to yield to the police vehicle by slowing down and pulling over to the shoulder. It is apparent from the statements of two witnesses that they believe the officer at some point straddled the centre line as she followed the motorcycles, however, one of these witnesses had no concerns about the safety of the officer's manner of driving.

The officer maintains she confined her own vehicle to the right hand lane, and her evidence in that regard is supported by another civilian witness. The injured motorcyclist believes that it was the motorcyclists the officer was following who were in the oncoming lane, which combined with the configuration of vehicles on and at the side of the roadway to cause the accident.

Apart from the allegation that the officer's vehicle briefly straddled the centre line there is no basis in the evidence for concluding that her driving fell below the standard required of drivers under the *MVA*. The officer asserts that she kept her vehicle in its designated lane throughout, which is supported by the independent evidence of at least one of the civilian witnesses. While two witnesses provide a contrary version of events, there is no principled basis for preferring one version over the other. Faced with two contrary versions of events that are equally worthy of belief, the Crown would be unable to satisfy its burden of proof beyond a reasonable doubt in establishing either that the officer failed to confine her vehicle to the right, or that she drove without due care and attention.

In the circumstances, the evidence that the officer had activated the police vehicle's emergency lights and siren might also provide a basis under the relevant provisions of the *MVA* and related regulations to exempt the officer from liability. However, given that the Branch has concluded that it is not possible to prove beyond a reasonable doubt that the officer drove her vehicle in a manner that otherwise contravened the *MVA*, it is not necessary to determine whether the exemption is available in this case.

As the Branch has concluded that the circumstances of the case do not meet the standard established under Branch policy for proceeding with a prosecution, no charges have been approved.

MATERIALS REVIEWED

In making the charge assessment in this matter the Branch considered the following materials:

- Report to Crown Counsel, including Executive Summary, Affected Person and Subject Officer's Information;
- Notes and summaries of anticipated evidence of investigators;
- Police notes and statements, including notes of the officer subject to investigation;
- Summaries of interviews and transcripts of interviews of civilian witnesses
- General Occurrence Reports
- Task Action Reports and Correspondence
- Map and MDT GPS Mapping Report Traffic Collision Investigation Report
- Exhibits
- Scene examination documentation
- Photographs, Videos and Audio Recordings