



**IN THE MATTER OF THE SERIOUS INJURY OF A MALE
ARISING FROM A *MOTOR VEHICLE ACT* INFRACTION
COMMITTED BY A MEMBER OF THE SAANICH
POLICE DEPARTMENT IN THE
THE CITY OF SAANICH, BRITISH COLUMBIA
ON APRIL 23, 2018**

**DECISION OF THE CHIEF CIVILIAN DIRECTOR
OF THE INDEPENDENT INVESTIGATIONS OFFICE**

Chief Civilian Director:	Ronald J. MacDonald, Q.C.
General Counsel:	Clinton J. Sadlemyer, Q.C.
IIO File Number:	2018 - 047
Date of Release:	October 3, 2018

THIS PAGE INTENTIONALLY LEFT BLANK

Facts

On April 23, 2018, at approximately 3:45 p.m., the Affected Person (AP) was riding his bicycle in the City of Saanich. As AP approached the green light at a controlled intersection, Officer 1, who was off duty, in a personal vehicle and travelling in the same direction as AP, turned right onto the intersecting roadway just ahead of AP and cut him off. AP applied his brakes and avoided colliding with Officer 1's vehicle; however, in the course of avoiding the vehicle AP was thrown from the bicycle and suffered a broken collar bone.

The Independent Investigations Office (IIO) was notified on April 26, 2018. The IIO commenced its investigation as the injury to AP was within the definition of "serious harm" as defined in the *Police Act* and an officer was involved.

Evidence collected by police and reviewed by the IIO included the following:

- 1) Statement of AP;
- 2) Statements of Civilian Witnesses (CW) 2, 3 and 4; and
- 3) Statements of Officers 1, 2 and 3.

The IIO also interviewed three civilian witnesses including CW 1.

Pursuant to section 17.4 of the Memorandum of Understanding between the IIO and BC Police Agencies, and consistent with the *Canadian Charter of Rights and Freedoms*, officers who are the subject of an investigation are not compelled to provide a statement, nor submit their notes, reports and data. Officer 1 did not provide a statement, notes, reports or data to the IIO.

AP was interviewed by the police. He said he was riding his bicycle in the bike lane and as he approached the intersection a vehicle (Officer 1's private vehicle) was close in front of him. AP said the vehicle made a sudden right turn in front of him without using a turn signal so he braked hard and lost control. He said he did not make contact with the vehicle but was thrown from his bicycle.

AP said he was taken to hospital by ambulance where he was released pending surgery which he subsequently underwent to repair his broken right clavicle.

CW 1 spoke with an IIO investigator. CW 1 was also riding a bicycle and saw Officer 1 turn in front of AP. CW 1 said it was not an "impactful collision" and believed that Officer 1 did not notice and did not seem to be trying to flee. CW 1 followed and caught up with Officer 1 and advised him that he needed to stop and go back. CW 1 told the IIO that Officer 1 immediately returned to the scene.

CW 2 was interviewed by police and said that while stopped at the light on the cross street for a red light a cyclist (AP) came into view. CW 2 said Officer 1's vehicle turned

right in front of AP causing AP to fall, although CW 2 did not see AP strike Officer 1's vehicle.

CW 3 was also interviewed by police. CW 3 was travelling in the opposite direction of AP and Officer 1 and stopped while waiting to turn left onto the same street where Officer 1 turned right.

CW 3 saw AP in the bicycle lane "*not travelling at any great speed.*" CW 3 said AP braked so hard his rear wheel came off the pavement. CW 3 believed that contact was made with the cyclist near the rear of the vehicle, which caused the cyclist to flip over the bike in the air.

CW 4 gave a statement to police. CW 4 was a passenger in CW 3's vehicle. CW 4 saw AP riding towards a green light at the intersection, in the bike lane. CW 4 said that as AP approached the intersection, a vehicle (Officer 1) turned right and cut AP off which then caused him to fly off his bike into the air and land on his right shoulder. CW 4 said Officer 1 continued on and actually left the scene but came back after someone else on a bike rode after him yelling to come back.

Officer 2 attended the scene and spoke with the witnesses and Officer 1. Officer 1 told Officer 2 he had made a right turn but did not feel any contact from the bicyclist and was not initially aware there had been a motor vehicle incident.

Officer 2 reported that he found no damage to Officer 1's personal vehicle; however, he issued Officer 1 a violation ticket for an improper right turn.

Officer 3 said that Officer 1 told him that upon receiving the violation ticket he (Officer 1) went down to the "*Motor Vehicle Branch*" and paid it immediately as he agreed with the ticket.

The IIO has confirmed that Officer 1 paid the violation ticket which carried an \$84 fine and that three demerit points have been registered against his driving licence.

Relevant Legal Issues and Conclusion

The purpose of any IIO investigation is to determine whether an officer, through an action or inaction, may have committed any offence in relation to the incident that led to the injury to AP.

In this case, by the time it became apparent that AP's injury fell within the definition of serious harm, thereby mandating an IIO investigation. Officer 1 had already accepted responsibility for violating the *Motor Vehicle Act* by paying the violation ticket.

The violation for which Officer 2 issued a ticket to Officer 1 under the *Motor Vehicle Act* includes, as a penalty, three demerit points on conviction. Other offences that could

have been charged include the failure to yield to a vehicle or the failure to give an appropriate signal prior to turning. Both of these only prescribe two demerit points on conviction. Because of the serious consequences to AP, Officer 2 appropriately issued a three demerit point ticket.

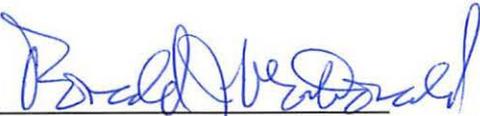
Following a review of all the circumstances of this incident, it is clear that Officer 1 made a driving error that led to AP's injury. That error was a momentary one, and as such does not constitute a criminal offence. While he did drive away from the scene, he stated to person's present that he did not realize his actions led to the cyclist falling from the bike. Given how the incident occurred, including that there was no contact between the bicycle and the vehicle, there is no reason to doubt Officer 1.

However, the error made by Officer 1 does constitute a failure to exercise the degree of care required by the Motor Vehicle Act. Thus, in the normal course of events this matter would have been reported to Crown Counsel to make an assessment regarding prosecution. There are several offences that could have been considered. However, in this case Officer 1 was already ticketed for an unsafe turn prior the IIO's involvement. That was a reasonable charge in the circumstances, and the officer immediately took responsibility, paid the fine and accepted three demerit points to his driving licence. It would therefore not be appropriate to ask Crown Counsel to reconsider the matter. Accordingly, as the Chief Civilian Director of the IIO, I will not refer this matter to Crown Counsel.



Clinton J. Sadlemyer, Q.C.
General Counsel

October 3, 2018
Date of Release



Ronald J. MacDonald, Q.C.
Chief Civilian Director

October 3, 2018
Date of Release