



# MEDIA STATEMENT

## CRIMINAL JUSTICE BRANCH

May 27, 2013

13-12

### **No Charge Approved in IIO investigation of Campbell River Motorcycle Crash**

**Victoria** – The Criminal Justice Branch (the Branch) has received an investigative file from the Independent Investigations Office (the IIO) in relation to an incident on December 2, 2012 in which a male operating a motorcycle in Campbell River was injured after losing control of the motorcycle and sliding into a police vehicle. After a thorough review of the material provided by the IIO, the Branch has concluded that the available evidence does not support a substantial likelihood of conviction for either a criminal offence or an offence under the British Columbia *Motor Vehicle Act* against the R.C.M.P. officer who was operating the police vehicle.

As such, no charges will be approved against this officer.

A Clear Statement explaining the Branch's charge assessment is attached to this Media Statement. In keeping with the recommendation of Commissioner Stephen Owen, QC following the Discretion to Prosecute Inquiry (1990), a Clear Statement of the reasons for not prosecuting is sometimes made public by the Branch in high profile cases where the criminal investigation has become publicly known, so as to maintain confidence in the integrity of the 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

### Summary of Charge Assessment

The Criminal Justice Branch (the Branch) has received an investigative file from the Independent Investigations Office (the IIO) in relation to an incident on December 2, 2012 in which a male operating a motorcycle in Campbell River was injured after losing control of the motorcycle and sliding into a police vehicle. After a thorough review of the material provided by the IIO, the Branch has concluded that the available evidence does not support a substantial likelihood of conviction for either a criminal offence or an offence under the British Columbia *Motor Vehicle Act* against the R.C.M.P. officer who was operating the police vehicle.

The Branch applies a two part test to determine whether charges should be approved and a prosecution initiated:

1. there must be a substantial likelihood of conviction based on the evidence gathered by the investigating agency; and
2. a prosecution must be required in the public interest.

Under Branch policy, a substantial likelihood of conviction exists where 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 by a judge or a jury; and the likelihood that viable, not speculative defences will succeed.

In making a charge decision, Crown counsel must assess the evidence gathered by investigators in light of the legal elements of the offence that is said 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 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.

For the purpose of charge assessment in this case, Crown counsel considered the offences of Dangerous Operation of a Motor Vehicle Causing Bodily Harm contrary to section 249(3) of the *Criminal Code*, and Driving without Due Care and Attention under the provincial *Motor Vehicle Act*.

To sustain a conviction for Dangerous Operation of a Motor Vehicle, the Crown must prove that the vehicle was operated in a dangerous manner and that it amounted to a marked departure from the standard of care that a reasonable person would observe in all of the circumstances. The *mens rea* or fault analysis for the *Criminal Code* offence requires full consideration of two questions:

1. In light of all of the relevant evidence, would a reasonable person have foreseen the risk and taken steps to avoid it if possible?
2. Was the failure to foresee the risk and take steps to avoid it, if possible, a marked departure from the standard of care expected of a reasonable person in the accused's circumstances?

Driving without Due Care and Attention, under the provincial Motor Vehicle Act, 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.

Police who respond to emergency calls are protected from liability for motor vehicle violations under the *Motor Vehicle Act* when they activate their emergency lights and siren. Section 122 of the *Act* exempts operators of emergency vehicles from liability for excessive speeding, disregarding traffic rules and traffic control devices including red traffic control signals and stopping and standing, provided that they drive with due regard for safety, having regard to all the circumstances of the case, including the nature, condition and use of the highway, the amount of traffic that is on, or might reasonably be expected to be on, the highway and the nature of the use being made of the emergency vehicle at the time.

In this case, the material provided by the IIO shows that the operator of a motorcycle lost control and crashed after a vehicle driven by the police officer in question stopped in a position that was straddling the lane of travel of the oncoming motorcycle. At the time of the incident, the police officer was responding to a report or reports of the motorcyclist travelling at high rates of speed and not stopping for a previous police vehicle. Based on the whole of the material that was reviewed, Crown counsel concluded that while another officer might have chosen a different course of action, the Crown cannot prove beyond a reasonable doubt that the particular choice made by this officer and his driving conduct meets the test for Dangerous Driving under the *Criminal Code*, or that it provides a sufficient basis for a charge under the *Motor Vehicle Act*. As a result, no charges have been approved against the officer.

The evidence that Crown counsel took into account in reaching this decision included:

1. statements from civilian witnesses and police officers (including the officer subject to the investigation);
2. police officers' notes;
3. a collision analyst's report;

4. maps, photos and videos;
5. medical and hospital records; and
6. investigators' notes.

The charge assessment was conducted by senior Crown counsel who does not work in the same region as the police officer. The IIO investigation focussed on the driving behaviour of the officer. The conduct of the motorcyclist was investigated by the Campbell River R.C.M.P. A charge assessment based on the latter investigation has also been conducted by Crown counsel and charges have been approved for the offences of Dangerous Driving, Care and Control of a Vehicle While Impaired, Driving While Over.08 and Breach of Undertaking or Recognizance.

### **The Investigation and Circumstances Surrounding the Incident**

The Branch has decided to not approve any charges against the police officer; however, as noted, a number of driving related charges have been approved against the operator of the motorcycle. As these latter charges are now before the court and arise out of the same set of circumstances, the Branch is limited in the information that it can make public at this time.

What can be said is that a Campbell River R.C.M.P. officer was responding to a report or reports of a motorcycle travelling at a high rate of speed. He was operating a marked police vehicle travelling eastbound on Evergreen Road with the police emergency lights activated. The motorcycle was travelling toward this officer. The posted speed limit on Evergreen Road is 50 kilometres per hour. At one point on Evergreen, the officer reported that he obtained a radar speed reading for the approaching motorcycle of 124 kilometres per hour.

It is the evidence of the officer that due to the speed of the motorcycle and the manner in which it was being driven, he feared that the motorcycle was going to collide with his police vehicle. The officer stated that he thought the operator of the motorcycle was "playing chicken" with him.

The officer has stated that he stopped his vehicle very close to or slightly over the centre line of Evergreen Road. He decided to move his vehicle completely off the road to avoid a collision and he believed that driving into a driveway on the left hand side of the road was the only available option to get completely off the roadway. The officer immediately began manoeuvring his police car towards the driveway. However, in the process of doing that he believed the motorcycle had swerved to the far north side of Evergreen close to the shoulder. He brought the police car to an abrupt halt, startled by the sudden change in course. The police car was now stopped at an angle straddling the oncoming (westbound) lane, in front of the driveway. It is not clear from the available evidence how far the motorcycle was from the police vehicle at the point that the officer moved into the oncoming lane.

The motorcycle is said to have left the paved road surface and drove onto a gravel shoulder, in what appeared to be an attempt to go past the marked police vehicle that was straddling the westbound lane. At that point, the rider of the motorcycle apparently lost control and dropped the bike onto its left side. The motorcycle skidded into the north ditch while the rider slid into, and under the front right side of the marked police vehicle. As a result of striking the police vehicle, the male rider, who was not wearing a helmet, suffered significant injuries.

Three civilian witnesses viewed the final stages of the incident and according to the available evidence, were about 400 metres away from where the accident occurred. Two of these witnesses report seeing the officer's vehicle going into the other lane, and one described it as "the motorcycle being cut off by the cop." This witness also referred to the two vehicles as "kinda playing chicken and then the cop slowed down and stopped in the middle of the road." The evidence of these witnesses provides corroboration for some important aspects of the officer's description of the manner in which the motorcycle was being operated.

On the available evidence it is not possible to determine how fast the motorcycle was travelling when the officer first initiated a left turn to enter the driveway on the other side of the road, or how far the motorcycle was from the police vehicle when the officer stopped in the oncoming lane. Similarly, it is not possible to determine the speed of the motorcycle or its distance from the police cruiser at the point that it went onto the shoulder of the roadway, or the time and distance it travelled before going onto its side.

Based on the investigative file as a whole, Crown counsel has concluded it is not possible to prove that the officer's conduct in straddling the oncoming lane factually contributed to the loss of control by the operator of the motorcycle, and if so, that it constituted a marked departure from what one would reasonably expect in the circumstances, or demonstrated a lack of due care and attention within the meaning of the provincial *Motor Vehicle Act*. Had the operator not lost control of his motorcycle on either the asphalt or gravel portion of the shoulder, it appears from the evidence that there was room to travel around the stopped police vehicle on either side.

The officer provided an explanation for his actions and important aspects of his explanation are confirmed by other evidence. The Crown is unable to disprove his account of what led to his stopping the police vehicle in such a manner that it was straddling the oncoming lane.

The civilian witnesses confirm that the police vehicle's emergency lights were activated and therefore would have been visible to the operator of the motorcycle.

The evidence of the officer indicates that he believed the motorcyclist was on a collision course with his police vehicle, which he says was very close to or slightly over the yellow line before he moved it. Some of the observations of the civilian witnesses provide support for the officer having this perception.

According to the evidence, the officer assessed risk and while another officer might have chosen a different course of action, the officer's evidence is that he believed he was taking evasive action to avoid a collision by turning into a driveway on the other side of the road. As he began to do so he was startled by the motorcyclist swerving into the far side of the oncoming lane and therefore brought his vehicle to a sudden halt.

As noted earlier, in completing a charge assessment, 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 by a judge or a jury; and the likelihood that viable, not speculative defences will succeed.

Crown counsel has concluded that the officer's evidence is capable of raising a reasonable doubt that his actions were a marked departure from the standard of care expected of a reasonable person in the circumstances. His evidence is also capable of raising a reasonable doubt that he was driving without due care and attention. Taking his evidence into account, along with the whole of the circumstances, it is not possible to prove that he was not paying appropriate or sufficient attention to his driving.

Taken as a whole, the available evidence does not provide a substantial likelihood of conviction for an offence under either the *Criminal Code* or the *Motor Vehicle Act* and therefore no charges have been approved against the officer.