



PUBLIC REPORT OF THE

CHIEF CIVILIAN DIRECTOR

Regarding the serious injury of an adult male  
on September 10, 2015 involving an officer of  
the Victoria Police Department

IIO 2015-000127

## INTRODUCTION

The Independent Investigations Office (IIO) is responsible for conducting investigations into all officer-related incidents which result in death or “serious harm” (as defined in Part 11 of the Police Act) within the province of British Columbia. The Chief Civilian Director (CCD) of the IIO is required to review all investigations upon their conclusion, in order to determine whether he considers “that an officer may have committed an offence under any enactment, including an enactment of Canada or another province” (see s.38.11 of the Police Act). If the CCD concludes that an officer may have committed an offence, he is required to report the matter to the Criminal Justice Branch. If the CCD does not make a report to the Criminal Justice Branch, he is permitted by s.38.121 of the Police Act to publicly report the reasoning underlying his decision.

In this public report, the CCD may include a summary of circumstances that led to the IIO sustaining jurisdiction; a description of the resources that the IIO deployed; a statement indicating that the IIO, after concluding the investigation, has reported the matter to the Criminal Justice Branch; or a summary of the results of the investigation if the matter has not been reported to the Criminal Justice Branch.

**This is a public report related to an investigation into the serious injury of an adult male on September 10, 2015, as a result of a motor vehicle incident in Victoria. At approximately 11:50 a.m. the male pedestrian (affected person) was struck by a vehicle driven by an off duty police officer of the Victoria Police Department. The affected person suffered serious injuries as a result of the collision.**

Pursuant to s.38.11 of the Police Act, RSBC 1996 Chapter 367, the CCD has reviewed the concluded investigation. The CCD does not consider that any officer may have committed an offence under any enactment and will not be making a report to the Criminal Justice Branch.

In this public report, he is only permitted to disclose personal information about an officer, an affected person, a witness, or any other person who may have been involved if the public interest in disclosure outweighs the privacy interests of the person. Prior to disclosing any personal information, the CCD is required, if practicable, to notify the person to whom the information relates, and further, to notify and consider any comments provided by the Information and Privacy Commissioner (s.38.121(5) of the Police Act). In this case, the CCD has considered the advice provided by the Information and Privacy Commissioner. In this report, the CCD will not be using the name of the affected person or of any other person involved in this matter.

## **NOTIFICATION AND JURISDICTION DECISION**

On September 10, 2015 at approximately 11:50 a.m. an off duty officer with the Victoria Police Department struck a pedestrian near the exit of a parking lot. The subject officer was leaving the parking lot and after waiting for traffic to permit, she commenced a left turn onto Caledonia Ave. Prior to crossing the centre line she struck the affected person with the left front area of her vehicle. The affected person suffered a number of fractures.

The IIO was notified and sustained jurisdiction as the affected person's injuries fell within the established definition of "serious harm" as defined in the Police Act.

## **INVESTIGATIVE EVIDENCE CONSIDERED**

Evidence examined included a voluntary written statement made by the subject officer, interviews with the affected person and statements of three civilian witnesses to the collision.

Maps and photos of the scene as well as medical records related to the affected person were also considered.

## **AFFECTED PERSON**

IIO investigators interviewed the affected person the day after the incident.

The affected person told IIO investigators that he parked his car across from the police station on Caledonia Ave. He said he was wearing bright clothes and the weather was good. He added the street was "fairly busy" but there were breaks and he waited for an opportunity to cross. When he saw one, he crossed the street but did not see the (vehicle) coming out of the driveway until it was too late. He said that he was: "not quite running but rapidly going across the street". He also told IIO investigators that: "the crosswalks are quite a ways away" from where he crossed.

The affected person said that the vehicle struck him and he fell down. He described that he saw the vehicle out of the corner of his eye and tried to swivel out of the way. He believed that the front corner of the vehicle's bumper struck him. He told investigators that the driver of the vehicle ran to him to assist.

The affected person said he could only see the front part of the vehicle and could not see the driver. He said the vehicle was coming out of the parking lot and heading into the eastbound lane on Caledonia in what he described as a "normal maneuver out of the parking lot"; he also said that the vehicle may have been accelerating but it was not speeding.

The affected person acknowledged that he was jaywalking.

## **SUBJECT OFFICER**

The subject officer provided a voluntary written statement to IIO investigators. Excerpts from her written statement are below:

“Thursday, September 10, 2015, was a dry, clear, and sunny morning. At approximately 11:50am I was off duty, not rushing and not agitated, driving my personal vehicle... at that time I was monitoring traffic in order to exit the parking lot in the 800 block of Caledonia Avenue between Save On Foods Centre and the Victoria Police Station by making a lawful left hand turn, eastbound onto Caledonia Avenue.

“I monitored for vehicles, cyclists and pedestrians. I waited for at least one cycle of lights at both Quadra/Caledonia and Blanshard/Caledonia until I was satisfied it was safe to proceed. I drove forward in a measured manner, making the left turn and continuing to check left and right for oncoming traffic. As I was turning eastbound I heard a bump and saw a blur of something strike my vehicle around the front driver's side corner.

“I looked and saw a man lying on the road and ran over to assist. I asked if he was okay and he said his leg hurt. Other people came over and someone was already calling 911. I tried to make the male comfortable and held his head, asking if anything else hurt to which he responded no.

“I later learned (do not recall from whom) the male had been crossing from the far (south) side of Caledonia Avenue. I did not see the male prior to impact but if he did cross from the opposite side of the road then my view of him would have been blocked by the windshield pillar of my vehicle, the cars parked on the opposite side of the road, the fact that he was exiting a shaded area, or a combination of these factors. I also did not anticipate that a pedestrian might cross unlawfully at the time of my turn.”

## **CIVILIAN WITNESS**

Two civilian witnesses who observed the collision were interviewed by IIO investigators the day after the collision. A third civilian witness provided a written statement to the police, which was subsequently obtained by IIO investigators.

### **Civilian Witness 1 (CW1)**

CW1 told IIO investigators that he was approximately 25 feet from Caledonia Ave. when he heard a noise which made him look up. He said that he saw a (vehicle) turning left with an abrupt acceleration as the vehicle pulled away and made the left turn. He saw a man close to the vehicle and as the vehicle made the left turn it collided with the man crossing the street, hitting him with the left side of the vehicle. CW1 said, “it was quite a forceful impact.” He stated that the man was extremely close to the vehicle and on impact, he twisted in midair before landing on his side. He then saw the vehicle pull over to the side of the street.

CW1 said he went over to the man and found he was conscious and breathing. He said he called 911 and that other pedestrians and a police officer came to assist. CW1 stated he did not see the pedestrian or the driver of the vehicle prior to the crash.

CW1 stated the man was very close to the vehicle and it appeared that he was jaywalking across Caledonia Ave.

## **Civilian Witness 2**

CW2 told IIO investigators that he was driving east on Caledonia when he observed a male, about 10 car lengths ahead, starting to cross the street. A vehicle was turning left out of the Save on Foods Memorial Centre parking lot. He said the vehicle was very close to the male when he was about 10 feet from the curb on the north side of Caledonia.

CW2 stated that the affected person was jaywalking and moving at a moderate pace and had sufficient time to cross the street. He said that he saw the man disappear on the driver's side of the vehicle and then heard him scream. CW2 said that the driver of the vehicle "turned too sharp left and hit him with her front driver's side." He also described the way the vehicle came out of the driveway as rushed.

CW2 said he was able to see the vehicle driver check left and right before turning but is not sure where the blind spot for that vehicle would be.

CW2 said the driver of the vehicle did not appear to have anything in her hands.

## **Civilian Witness 3**

CW3 provided a written statement to police which was obtained by IIO investigators. Below is a summary of the account.

CW3 noticed the vehicle waiting to leave the parking lot. "There was plenty of time for this (vehicle) to clear my lane in front of me."

CW3 noticed a man was crossing hurriedly from the south side where there was dark shade and parked cars.

"Finally he did see the (vehicle) and started to run, but the vehicle was increasing its turn and closed up on him quickly," CW3 wrote.

## ISSUES

The general issue in any IIO investigation is whether a person suffered death or serious harm as a result of the actions of an officer, and if so, how and why. If the CCD considers that an officer may have committed an offence, then he must forward a report to the Criminal Justice Branch.

## ANALYSIS

The statements of all involved parties are basically consistent. The affected person told IIO investigators that “the crosswalks are quite a ways away” and that he “was jaywalking” across Caledonia Ave. He also said that the subject officer appeared to be doing a “normal maneuver out of the parking lot.”

CW3 was in the clearest and closest position to view the collision. His description is that:

“It was very bright sunlight that this vehicle was coming out of. The (vehicle) came out of the driveway and then turned left to take the eastbound lane. As I watched, a man was crossing hurriedly from the south side where there was dark shade and parked cars. He seemed to be watching for traffic both ways on Caledonia and seemed unaware of the (vehicle) coming out of the further drive and turning left, right into him.”

CW1 was walking toward Caledonia Ave. and said he was about 25 feet away when he heard a sound that he described as an abrupt acceleration as the vehicle pulled away and made the left turn. He stated that the man was extremely close to the vehicle and on impact twisted in midair before landing on his side.

CW2 was able to see the driver check left and right before she turned. At the time that she looked left CW2 recalled the pedestrian being at or just past the centre line. CW2 said the driver did not appear to have anything in her hands.

CW2 is of the view that “The pedestrian was jaywalking and the lady driving the (vehicle) was rushing to turn left out of the parking lot onto Caledonia.”

Finally the statement of the subject officer concludes with:

“I did not see the male prior to impact but if he did cross from the opposite side of the road then my view of him would have been blocked by the windshield pillar of my vehicle, the cars parked on the opposite side of the road, the fact that he was exiting a shaded area, or a combination of these factors. I also did not anticipate that a pedestrian might cross unlawfully at the time of my turn.”

The criminal offence of dangerous driving requires a marked departure from the standard of care of a reasonably prudent driver (*R. v. Beatty*, [2008] 1 S.C.R. 49).

In order to support a violation of s. 144(1)(a) of the Motor Vehicle Act, it must be established that the subject officer’s driving, in consideration of “all the surrounding circumstances,

depart[ed] from the accustomed sober behaviour of a reasonable man...” (See R. v. Funk, 2005 BCSC 1873.)

All the evidence is consistent that the affected person was crossing from the north side of Caledonia Avenue in the middle of the block. The photograph does not reveal a crosswalk and the affected person admitted that he was jaywalking.

S.179(2) of the Motor Vehicle Act reads:

A pedestrian must not leave a curb or other place of safety and walk or run into the path of a vehicle that is so close it is impracticable for the driver to yield the right of way.

S.180 of the Motor Vehicle Act requires that:

When a pedestrian is crossing a highway at a point not in a crosswalk, the pedestrian must yield the right of way to a vehicle.

R.S.B.C. 1996, c. 318, s. 180

Both sections are subject to s. 181 which sets out the duty of a driver:

Despite sections 178, 179 and 180, a driver of a vehicle must

(a) exercise due care to avoid colliding with a pedestrian who is on the highway.

The affected person said he was moving “rapidly” across the street which was consistent with the evidence of the witnesses. He was in the shade moving towards a vehicle that was facing straight into the sun and put himself in a blind spot, the result of the driver’s side pillar in the vehicle, all of which suggest that the affected person put himself in the position that resulted in his being injured.

Here the evidence is that the subject officer acted with caution by waiting, looking both ways prior to making her left turn. She was apparently not distracted by an electronic device as witness evidence was that there was nothing in her hands. She was making a legal left turn across a single lane of traffic and even in the view of the affected person was making a “normal maneuver out of the parking lot.” Her evidence is that she didn’t see him.

The subject officer is entitled to the presumption that a person will not “walk or run into the path of a vehicle that is so close it is impracticable for the driver to yield the right of way.” The evidence is that this is what the affected person did.

## **CONCLUSION AND DECISION**

Based on the evidence, I do not consider that the subject officer may have committed an offence in relation to the collision that resulted in the injury to the affected person. Therefore, the IIO will not submit a report to the Criminal Justice Branch and will take no further action in relation to this case.

**Richard Rosenthal**  
**Chief Civilian Director**

November 24, 2015