



January 15, 2020

20-01

No Charges Approved Following Collision Involving Langley RCMP Officer

Victoria - The BC Prosecution Service (BCPS) announced today that no charges have been approved against a member of the Langley RCMP in relation to a June 21, 2017, collision between an RCMP vehicle and a motorcycle which resulted in serious injuries to the operator of the motorcycle.

The incident was investigated by the Independent Investigations Office (IIO). Following the investigation, the Chief Civilian Director of the IIO determined that there were reasonable grounds to believe the officer may have committed offences and submitted a report to the BCPS.

In this case, the BCPS has concluded that the available evidence does not meet the BCPS's charge assessment standard. The BCPS is not able to prove, beyond a reasonable doubt, that the officer committed a criminal offence in relation to the collision. As a result, no charges have been approved. A [Clear Statement](#) explaining the decision in more 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 the BCPS in cases where the IIO has investigated the conduct of police officers and forwarded a report for charge assessment.

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Clear Statement

Summary of Decision

On the evening of June 21, 2017, the subject officer (SO) was on duty and driving a police vehicle. The SO heard over the radio that two speeding motorcycles had failed to stop when another officer tried to pull them over. The two motorcycles were seen approaching and the SO positioned their vehicle facing them in the middle of the road, with flashing lights on.

The first motorcycle did not stop and passed to the SO's left. Before the second motorcycle could pass as well, the SO swung their vehicle to the left blocking most of the oncoming lane. As a result, the second motorcycle went off the road, causing the driver to lose control, drive into the ditch, and hit a culvert. The driver of the motorcycle (the suspect) sustained multiple serious injuries from the incident.

Because of the seriousness of the suspect's injuries, the Independent Investigations Office ("IIO") investigated the actions of the SO. At the conclusion of the investigation, the IIO submitted a Report to Crown Counsel to the BC Prosecution Service ("BCPS"). Following a thorough review, the BCPS has concluded that the available evidence does not support approving any charges against the SO. As a result, no charges have been approved.

The charge assessment was conducted by a Crown Counsel with no prior or current connection to the Subject Officer.

This Clear Statement provides a summary of the evidence gathered during the IIO investigation and the applicable legal principles. These are provided to assist in understanding the BCPS's decision not to approve charges against the officer involved in the incident. Not all the relevant evidence, facts, case law, or legal principles are discussed.

Charge Assessment and the Criminal Standard of Proof

The Charge Assessment Guidelines that are applied by the BCPS in reviewing all RCCs are established in BCPS policy and are available at:

www.gov.bc.ca/charge-assessment-guidelines

The BCPS applies a two-part test to determine whether criminal charges will be approved, and a prosecution initiated:

- there must be a substantial likelihood of conviction based on the evidence gathered by the investigating agency; and,
- the public interest requires a prosecution.

Under BCPS 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, a prosecutor will consider what evidence is likely to be admissible and available at trial; the objective reliability of the admissible evidence; and whether there are viable defences or other legal or constitutional impediments to the prosecution that remove any substantial likelihood of conviction.

In making a charge assessment, Crown Counsel must consider 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, absence of evidence, or inconsistencies in the evidence. The person accused of an offence does not have to prove that they did not commit the offence. Rather, the Crown bears the burden of proof from beginning to end.

Potential charges

The potential charges that were considered in this case were dangerous driving (section 249 of the *Criminal Code*), assault with a weapon or causing bodily harm (section 267 of the *Code*) and aggravated assault (section 269 of the *Code*).

Relevant Law

Dangerous Driving

The elements of the offence of dangerous driving are set out in section 249(1) of the *Criminal Code*:

Everyone commits an offence who operates a motor vehicle in a manner that is dangerous to the public, having regard to all the circumstances, including the nature, condition and use of the place at which the motor vehicle is being operated and the amount of traffic that at the time is or might reasonably be expected to be at that place

Determining whether driving meets the criminal standard requires a determination of whether the available evidence establishes that the person's driving was objectively dangerous to the public in light of all the circumstances. Additionally, the available and admissible evidence must demonstrate that the person's mental state rose to the level of a marked departure from the standard of care expected of a reasonable driver in the same situation. A momentary lapse of attention is not enough to make out the mental element of the offence.

The requisite mental state can be inferred either by direct evidence of the driver's intentions or from evidence of a driving pattern that constitutes a marked departure from what would be expected of a reasonably prudent person in the circumstances.

Assault with a weapon/aggravated assault

To establish an assault the Crown must prove the accused intended or attempted to apply force to the victim, directly or indirectly, without the victim's consent. The courts have accepted on several occasions that a motor vehicle can be considered a weapon under section 2 of the *Criminal Code*, provided it is intended by the accused to be used as such.

To make out aggravated assault, the force used must wound, maim, or endanger the life of the victim, and the risk of that result must have been reasonably foreseeable.

Circumstances of the Incident

On the evening of June 21, 2017, an officer (Officer A) with the Langley RCMP was on duty and conducting speed enforcement at 16 Avenue and 227 Street in Langley, BC. Officer A was in uniform and riding a marked RCMP motorcycle. At about 9:00 pm, they were dealing with a stopped vehicle, when they heard a loud sound which they recognized as that of several motorcycles approaching. Officer A observed two motorcycles approaching at a very high rate of speed, which they estimated was 140 km/h. The speed limit was 60 km/h. They stepped onto the highway and signaled to the motorcyclists to pull over. Both motorcycles slowed down as they approached but did not stop and instead drove away.

Officer A immediately called dispatch on their police radio and reported the incident. As they did so, they could hear the motorcycles accelerating and then decelerating as if to turn. They advised dispatch of the motorcycle's direction of travel.

The SO was driving alone in a police vehicle, southbound on 224th Street, which is a rural, two lane paved road. The road is flanked with two narrow gravel shoulders. There is a ditch on the east side of the road, and grass and plants are present on the shoulder and in the ditch.

The SO's vehicle was equipped with a dashboard camera which was operational during the events. The video from the dashboard camera shows that the weather was clear and the sun was still high enough to provide good light. Traffic was sparse. The video shows the two motorcycles approaching the SO's vehicle, travelling northbound, with their headlights on.

As the two motorcycles approached, the SO turned on the emergency lights, which in turn activated the microphone in the police vehicle. The sound of the motorcycle engines can be heard in the audio. The SO positioned the police vehicle facing south, in the center of 224th Street, centered on and parallel with the center yellow line, and partially blocking the oncoming lane. The first motorcycle approached at speed, slowed down briefly in front of the SO's vehicle, then sped up to pass the SO's vehicle on the left-hand side. The second motorcycle was approximately two seconds behind the first. As the second motorcycle approached at speed, the SO swung the police vehicle to the left, positioning it diagonally across the oncoming lane. The motorcycle can be seen in the video crossing in front of the police vehicle toward the driver's left. The video shows a puff of dust to the far left and a sound can be heard, consistent with the motorcycle leaving the pavement and travelling onto the shoulder.

The dashboard camera is positioned in the center of the vehicle. From that perspective, both motorcycles can be seen approaching, with headlights on. As the first motorcycle slows down, it blocks the second motorcycle from view very briefly.

An RCMP accident reconstructionist attended the scene later that evening. Their report shows:

1. When the SO initially positioned the police vehicle across the oncoming lane, there was one metre of pavement between the front of the vehicle and the gravel shoulder;
2. The suspect's motorcycle left the pavement a little more than a metre before the front of the police vehicle, as shown by markings in the gravel; and,
3. Marks on the ground, motorcycle parts, and other debris near the culvert, as well as the final location of the suspect and the motorcycle, reveal that the suspect's motorcycle went into the ditch, hit the culvert, and then the suspect and the motorcycle were vaulted through the air approximately 23 and 28 metres, respectively.

After the suspect's motorcycle went out of view of the dashboard camera, the video shows that the SO turned their vehicle around, drove northward and stopped where a motorcycle wheel can be seen in the ditch. The SO got out of the vehicle and walked across the front. As they did so, the SO could be heard on the radio calling for an ambulance and other officers.

Other officers in the vicinity heard the call on the radio and arrived on scene almost immediately. Shortly after the arrival of the other officers, emergency medical personnel arrived and the suspect was transported by air ambulance to a nearby hospital.

As a result of the incident the suspect suffered two leg fractures, a fractured pelvis, a fractured wrist, ligament damage in the knee, a contusion in the lung, injuries to the kidney and liver, and lacerations to the head.

The suspect told investigators that they made contact with the police vehicle, which "smashed" into them. This is not consistent with the facts as they are shown in the dash cam video or reflected in the evidence gathered at the scene by the accident reconstructionist.

Evidence of Subject Officer

The SO spoke to another officer at the scene about the incident. The SO had been driving to meet the first officer when the motorcycles came into view. After the first one passed, the SO thought that they should turn and get the plate, so they moved the car forward, forgetting about the second motorcycle.

Expert Opinion Evidence

On a prosecution for dangerous driving of an officer who is on duty and purporting to exercise emergency vehicle privileges, the court may require some assistance to determine the standard of care expected of the officer. Training and policy can be very helpful in informing that inquiry but will not necessarily determine the standard. In prosecutions of police officers, the courts have found that failure to follow a policy is not conclusive in determining whether the officer's actions were reasonable. A properly qualified witness is required to provide the court with evidence, based

on experience and knowledge, as to how the policies and training inform the duty of care of a reasonable police officer in the circumstances faced by the SO.

In this case, the IIO engaged the services of a senior traffic officer from another jurisdiction to review the conduct of the SO. That officer reviewed all the available evidence including the dash cam video, the evidence of the accident reconstructionist, and the statement of the SO. They also reviewed the applicable *Motor Vehicle Act* (MVA) provisions, Emergency Vehicle Driving Regulations (BC) (EVDR), along with the relevant RCMP policies regarding police roadblocks and police pursuit.

The expert took no issue with the SO's decision to position their police vehicle along the centre line of the roadway. While they found that this action contravened section 151(b) of the MVA, which required the SO to stay on their side the road, the expert identified that this was an acceptable use of emergency driving privileges outlined in the MVA and EVDR. Taking this step to stop the oncoming vehicles was appropriate given the condition of the roadway and lack of other traffic. This, in their view, met the standard of care.

In respect of the SO's action in moving the police vehicle to the left, thereby partially blocking the roadway in front of the suspect, the expert found, "an intentional action to position the patrol car fully in the path of an oncoming high-speed motorcycle is dangerous and risky not only to the motorcycle operator but also potentially to the patrol unit operator".

The expert expressed concern that the SO would place themselves in a potentially life-threatening position of having a motorcycle at high speed collide with full frontal impact with the patrol unit with the likelihood of serious harm to the police unit operator, the motorcycle operator or both.

After considering the SO's statement at the scene, however, the expert offered the following comments, based on their knowledge and experience:

- The SO's attention would have been focused on the first motorcycle as it approached.
- This focus "could very possibly" have prevented them from realizing that the vehicle re-positioning would result in dire consequences for the second motorcyclist.
- The SO's decision was likely a "split second decision that officers are faced with on very rapidly changing circumstances where numerous factors are unable to be properly assessed in a very small timeframe available".

If the expert was called at a trial, by the Crown or the defence, a court would likely give their evidence some weight. In particular:

- that the pattern of driving prior to the movement to the left was within the standards of a reasonably prudent police officer; and,

- that an officer in the SO's position would have had to react to the first motorcyclist's potentially dangerous actions and then assess the positioning of the suspect's motorcycle within a very short time frame.

Analysis

The key issue in this case is whether there is sufficient reliable, credible, and admissible evidence to establish a substantial likelihood of conviction for the offences of dangerous driving, and/or assault.

There is no direct evidence of the SO's intention when they undertook to move their vehicle to the left in the face of the oncoming motorcycle. The statement of the SO to the other officer at the scene that they were turning the vehicle to obtain the license of the first motorcycle is arguably inadmissible, but it gives some insight into the possible defence.

If the movement was a deliberate attempt to intercept the second motorcycle or to force it off the road there is little doubt that the offence of dangerous driving would be made out. The offences of assault with a weapon and aggravated assault might also be made out, as such a move would amount to an attempt to apply force to another without their consent which resulted in serious injuries.

If one accepts the SO's statement to the other officer at the scene that the SO forgot about the second motorcycle when they turned to get the license plate of the first motorcycle, this evidence would be consistent with a momentary lapse in attention and would provide an innocent explanation for the SO's actions. The opinion of the expert also gives some support for this view of the evidence.

The question is whether the act of executing this maneuver in light of the circumstances known to the officer is such a marked departure from the standard demanded of a police officer under these circumstances that the driving is dangerous as defined in the *Criminal Code*. In answering this question the assessing Crown had to balance the heightened duty of care owed by the officer when undertaking to stop the motorcycles and the inherent dangerousness of the maneuver itself against the officer's driving immediately preceding the maneuver, the opinions of the expert, and the dynamic nature of events when the SO made the decision to turn the police vehicle.

As previously noted a momentary lapse of attention does not generally constitute dangerous driving. BC courts have recently characterized the test in these terms, "the driving must be so dangerous as to take it outside of the realm of mere negligence, momentary inattention, or an understandable misjudgment."

In the judgment of the charge assessment Crown, the act was sufficiently brief and the circumstances sufficiently dynamic and dangerous that a court would be likely to characterize the SO's action as an understandable misjudgment or momentary lapse which does not give rise to criminal liability.

Circumstances that the assessing Crown concluded the court would consider would include:

- that the SO's driving was reasonable up to the point when they moved their vehicle to the left
- that the incident took place in a very brief period of time
- the actions of the first motorcycle were sufficiently dangerous and unpredictable as to occupy the SO's attention
- the second motorcycle followed the first very quickly
- the expert's anticipated evidence that the SO's decision was made in rapidly changing circumstances where numerous factors were present
- the SO's anticipated evidence that the decision reflects momentary inattention rather than a deliberate attempt to block the second motorcycle

In all the circumstances, the assessing Crown concluded that a court would likely have a reasonable doubt as to whether the conduct of the SO amounts to dangerous driving. As such the considered opinion of the charge assessment Crown Counsel was that the charge assessment standard of "substantial likelihood of conviction" was not met.

Conclusion

The available evidence is not capable of supporting the conclusion that there is a substantial likelihood of conviction on the charges of dangerous driving, assault with a weapon, or aggravated assault. No charges have been approved in relation to this incident.

Materials Reviewed

In making the charge assessment decision the following materials were reviewed:

- the Investigative Report dated April 10, 2018,
- the police file,
- video from a dashboard camera,
- a collision reconstruction report,
- witness interviews,
- investigator notes,
- radio transmission records,
- a list of training taken by the officer,
- relevant police training materials,
- medical records, and
- photographs.

Supplemental materials reviewed included expert reports, investigator notes, additional medical records, and policies on driving, roadblocks and police pursuits.