



**IN THE MATTER OF
A FATAL SINGLE VEHICLE COLLISION IN
THE CITY OF KELOWNA, BRITISH
COLUMBIA ON JUNE 20, 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 – 073

Date of Release:

January 24, 2019

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Facts

On June 20, 2018, at approximately 3:00 a.m., four people were in a vehicle in Kelowna that was being driven in a manner that came to the attention of Officer 1. The driver became aware of police attention, accelerated away and collided with a cement wall causing serious injury to all four Affected Persons (AP 1, 2, 3 and 4.) AP 1 subsequently died from his injuries.

The Independent Investigations Office (IIO) was notified by the RCMP at approximately 5:00 a.m. The IIO commenced an investigation as all four APs were seriously injured (AP 1 died) and an officer was involved.

Evidence collected during the investigation included the following:

- 1) Statements of three Affected Persons (AP 2, 3 and 4);
- 2) Statements of three civilians, including Civilian Witness 1 (CW 1);
- 3) Statements of Officer 1 and Officer 2;
- 4) Mobile Work Station (MWS) data from the vehicles of Officer 1 and 2; and
- 5) Medical records.

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 or data. In this case, however, the Subject Officer, Officer 1, provided a written statement to the IIO.

Officer 1 reported he was driving east on Hwy 33 in Kelowna (an urban street with a maximum speed limit of 50 km/h) when he saw a car (the Car) approximately one block away from his location. The Car turned suddenly westbound onto Hwy 33 heading in Officer 1's direction and struck the median as it turned. The Car continued towards him and passed at a high rate of speed which he estimated to be over 80km/h.

Officer 1 said that he approached the intersection where the Car had turned onto Hwy 33 and activated his emergency lights prior to making a U-turn. Officer 1 reported the Car was already as far as 300 metres west of him and was driving down the middle of the road in the mutual turning lane and crossing into the oncoming (eastbound) lanes.

Officer 1 saw oncoming traffic in the distance and again activated his lights and seconds later his siren:

...hoping the police lights would catch the eye of the oncoming motorists and notice both the police vehicle but more importantly the erratically driven [Car].

Officer 1 reported that the Car went back and forth across Hwy 33 at over 110km/h and eventually veered to the left, over the curb and collided with a concrete fence, causing the Car to spin. Officer 1 reported seeing people and debris being thrown from the Car and he was concerned the Car had collided with the oncoming vehicles. Officer 1

estimated the Car had been travelling at over 130 km/h and reported he was approximately one block away when the Car came to rest in the centre of the roadway.

Officer 1 called in the MVI and asked for assistance. He reported he parked his vehicle across the roadway to *"protect the scene"* and checked on the occupants of the Car that had been ejected.

Officer 1 noted that the Car had not collided with the oncoming vehicle which was still facing eastbound but was stopped in the westbound lane against the curb. Officer 1 reported that Officer 2 arrived and began to assist. EHS arrived and assisted the APs in the order of the severity of their injuries.

CW 1 told the IIO that he was driving east along Hwy 33 and saw a police car with its emergency lights on. CW 1 estimated it was about 300 metres away. CW 1 said that seconds later he saw the Car coming in his direction at about 80 to 110 km/h and the police car was about ten seconds or a *"quarter of a mile"* (402 metres) behind it.

CW 1 told the IIO that as the Car approached him, it swerved into his lane and he had to swerve to the opposite side of the road to avoid it. CW 1 said the Car passed him and collided with the wall.

CW 1 said he pulled over and about 15 to 20 seconds later the police car (Officer 1) arrived and shortly after that another officer (Officer 2). Soon other officers arrived.

CW 1 told police that he *"swerved just in time or else we would've probably [had a] head on collision."*

AP 2 spoke with the IIO and said she was the owner of the Car. AP 2 said she was sleeping in the front passenger seat while travelling with three friends and was awoken when the driver said *"...the cops are behind us."*

AP 2 said she felt confused about why they were running from the police and when she looked behind them she saw a police vehicle with the emergency lights on that was *"pretty far behind us"* and estimated the distance as *"100 yards"* (91 metres).

AP 2 said that when she looked forward she saw headlights coming from the front (CW 1) and the Car swerved. AP 2 said her next memory was waking up on the sidewalk in a lot of pain.

AP 3 told the police he recalls very little other than being in a car that was spinning out of control. AP 4 told police he has no recollection of the incident.

Officer 2 said he was parked at a business on Hwy 33 doing paperwork and was facing east when he saw the Car travelling west at about 130 - 150 km/h. Officer 2 told the IIO that several seconds later Officer 1 went by him in the same direction with his (Officer 1's) lights and siren activated. Officer 2 followed Officer 1 to the scene of the collision about 300 metres to the west and noted the presence of Officer 1, CW 1 and the APs.

Data retrieved from the Officers' MWS is consistent with their statements and the statements of CW 1. Officer 1's MWS shows that the total time from when he began to follow the Car to when the Car collided with the wall was approximately 30 seconds. At one point while he attempted to keep up with the Car, Officer 1's speed was 146 km/h. He began a relatively gradual reduction in speed from that point on for 12 seconds prior to stopping at the scene. Given the time of night, there was very little traffic on the roadway. CW 1's vehicle was the only other vehicle seen.

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 an offence in relation to the incident that led to the death or injury of an Affected Person.

Provisions of the *Motor Vehicle Act* and the *Emergency Vehicle Regulation* (EVO) allow police to make U-turns at traffic lights and to exceed the speed limit when their duties require.

In this case, Officer 1 activated his lights and made a U-turn in accordance with the EVO. MWS data also shows that he exceeded the speed limit and Officer 1 explained that he activated his lights and siren, again in compliance with the EVO, when he saw the Car cross into the oncoming lane. At that point he noted the oncoming car driven by CW 1, and was concerned about the safety of persons in that vehicle. He followed at the high speed in the hope his lights and siren would alert the oncoming car to the risk being posed by the Car. As it turns out, his actions proved successful as it was the emergency lights of the police vehicle that initially alerted CW 1, and that appears to have helped prevent a head on collision between the Car and CW 1's vehicle. Thus, while in some cases this pursuit might have been discontinued earlier, in this situation based on the evidence Officer 1 did exactly what he needed to do in order to protect the life of a third party. His actions were reasonable and appropriate.

Officer 1 acted as required by his duties and in accordance with the law. The evidence collected does not provide grounds to consider any charges against any officer.

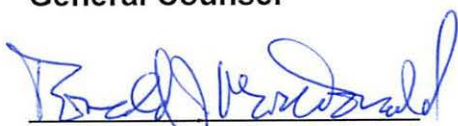
Accordingly, as the Chief Civilian Director of the IIO, I do not consider that an officer may have committed an offence under any enactment and therefore the matter will not be referred to Crown counsel for consideration of charges.



Clinton J. Sadlemyer, Q.C.
General Counsel

January 24, 2019

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Chief Civilian Director

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