



**IN THE MATTER OF THE SERIOUS INJURY OF A MALE  
DURING A MOTOR VEHICLE INCIDENT WITH  
MEMBERS OF THE RCMP IN  
THE CITY OF BURNABY, BRITISH COLUMBIA  
ON OCTOBER 31, 2017**

**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:

2017 - 137

Date of Release:

October 31, 2018

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## Facts

On October 31, 2017, at approximately 11:30 p.m., the Affected Person (AP) was driving a white van (the Van) eastbound when it was involved in a collision with a northbound marked RCMP pickup truck driven by Officer 1 (the Pickup). The collision occurred at the intersection of MacPherson Avenue and Dorset Street. Following the collision, the Van collided with an empty parked vehicle and rolled 540 degrees, coming to a rest on its roof.

Officer 2 was following behind AP when the collision occurred. As a result of the collision, AP was ejected from the Van and suffered fractures to his ribs, shoulder blade, collarbone, and nose, as well as lacerations and abrasions.

The Independent Investigations Office (IIO) was notified by the RCMP at 11:46 p.m. The IIO commenced its investigation as the injury to AP was within the definition of “*serious harm*” as defined in *the Police Act* and officers were involved.

Evidence collected during the investigation included the following:

- 1) Statements of AP and Civilian Witness 1 (CW 1);
- 2) Statements of Officers 1, 3, 4 and 5;
- 3) Recordings of police radio communication;
- 4) CCTV from nearby business premises;
- 5) Crash data from the Van;
- 6) Crash data from the Pickup driven by Officer 1;
- 7) GPS data captured by a mobile workstation in the vehicle driven by Officer 2;
- 8) Emergency Health Services (EHS) records; and
- 9) 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 and data. In this case, however, one Subject Officer (Officer 1) provided a written statement to the IIO; the other Subject Officer (Officer 2) did not provide a statement.

AP told the IIO he could not recall anything about the collision.

On October 31, 2017 at approximately 11:00 p.m., Officer 3 was patrolling in an unmarked police vehicle and approached the Van which was stationary in a parking lot. Officer 3 switched on the police vehicle’s emergency lights and the Van drove over grass, a sidewalk, and then onto the roadway and accelerated away. Officer 3 did not observe the licence plate and did not pursue as there was “*no imminent danger...*” to justify a pursuit. Officer 3 reported the incident as a failure to stop along with the Van’s description and location last seen.

Approximately one half hour later Officer 2 reported seeing the Van and broadcast its location and direction. Officer 3 again reported seeing the Van, which he told the IIO drove off at “*a high rate of speed.*” Officer 2 again reported he had seen the Van and gave its location and direction.

Just before the collision, CW 1 was driving north on MacPherson Ave. and pulled over and stopped when flashing police lights approached from behind. CW 1 said a police vehicle (the Pickup driven by Officer 1 and with passengers, Officers 4, 5 and 6, on board) caught up and passed without slowing. CW 1 did not see brake lights as the Pickup passed nor was the siren on. CW 1 said the Pickup was in the northbound lane as it passed but toward the center of the road.

CW 1 told the IIO the Van appeared but was unsure from which direction as CW 1 was looking at the Pickup. CW 1 said the Pickup struck the Van on the back part and the Van was, “*spinning, flopping and flopping over.*” The Pickup “*spinned, not flipped*” and “*actually [made] a ‘U’ turn.*”

Vehicles driving north and south on MacPherson have the right of way at this intersection. Vehicles on Dorset St. have stop signs.

Event data recorders in the Pickup and the Van had the ability to capture and store crash information when a significant collision occurs, usually meaning the air bags are deployed. Those recorders will also capture data when there is a sudden deceleration detected by crash sensors which is not significant enough to deploy the airbags. A report with crash data is available when deployment and non-deployments are recorded.

Crash data captured by the Van’s event data recorder revealed the throttle pedal was fully-depressed (100 percent) during the five seconds leading to a non-deployment event and its speed increased from 54 to 78 km/h during that same period. The data did not capture whether the Van’s brakes were applied during those five seconds.

Although no CCTV was located that shows the collision, there was video of the Van from a rear angle as it entered the intersection eastbound. The Van did not stop nor appear to slow at the stop line. That video does not show the brake lights being illuminated. The unmarked police vehicle driven by Officer 2 is also shown shortly after stopping at the intersection. The brake lights are very clearly seen to be illuminated.

Other CCTV, several metres to the east of the intersection, shows the Van rolling on its roof into the frame of the video and continuing to roll completely over before coming to a rest, again on its roof. AP can be seen being ejected from the Van prior to it stopping.

Crash data captured by the Pickup’s event data recorder revealed the throttle pedal was initially fully-depressed (100 percent at 5 seconds before deployment event) but gradually reduced to zero percent at one second before a deployment event. During the same period of time its speed increased from 59 to 80 km/h.

GPS data was used to plot the route, direction and speed of Officer 2's vehicle for approximately two minutes prior to arrival at the location of the collision.

As Officer 2 drove to the area where the Van had been reportedly seen, the GPS data indicates his top speed was 115.5 km/h. During the 30 seconds prior to the collision, GPS data from Officer 2's vehicle shows a maximum speed of 63.4 km/h.

Officer 4 told the IIO that Officer 1 was driving the Pickup and Officers 4, 5 and 6 were passengers. Officer 4 was seated behind Officer 1. Officer 4 said Officer 3's transmission about the Van came over the Pickup's police radio and they decided they would attend the area and join the search for the Van.

Officer 4 and 5 heard the transmissions about the Van and that it was near their location. They confirmed Officer 1 heading north of MacPherson in an attempt to locate the Van. He activated the pickup's emergency lights to pass a slow moving vehicle approximately one block south of where the collision occurred.

Officer 4 did not see the Van before the collision. Officer 5 only saw a "flash of white" and then the collision occurred. He said there was not time for braking.

Officer 1 provided a statement to the IIO through his lawyer. Officer 1 said he was driving the Pickup with Officers 4, 5 and 6 on board on their way back to the detachment. Officer 1 said he heard the Van had been seen in the area. He reported that as he was driving north, the Van failed to stop at the cross street and collided with the Pickup he was driving. Officer 1 said he did not see the Van prior to the collision.

### **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.

More specifically, the issue to be considered in this case is whether Officer 1 or Officer 2 may have breached the *Motor Vehicle Act* by exceeding the speed limit during their attempts to locate AP and the Van.

Both Officers 1 and 2 did exceed the speed limit in their attempts to locate AP and the Van and, with the exception of Officer 1 using his emergency lights when passing CW 1, there is no evidence that they operated their emergency lights or siren while they did so.

The *Motor Vehicle Act* and regulations permit a peace officer to exceed the speed limit without using their lights or siren if they are engaged in the lawful execution of their duty, and they have reasonable grounds to believe they can do so safely. When doing so they have to consider the following factors:

- the nature and circumstances of the suspected offence or incident;

- the risk of harm posed by the distance, speed or length of time required or likely to be required to exercise the privileges;
- the nature, condition and use of the highway;
- the volume and nature of pedestrian or vehicular traffic that is, or might reasonably be expected to be, in the area; and
- the nature of the use being made of the emergency vehicle at the time.

In this case, AP twice failed to stop for police. He drove recklessly at one point when he drove over grass and a curb to escape. Officers 1 and 2 were engaged in the lawful execution of their duty as they searched for the van. The actions of Officers 1 and 2 took place over approximately two minutes. They were in an urban setting which is primarily commercial establishments at almost midnight. CCTV of the streets at or near the collision site showed very light traffic. The roads were dry. While the speeds were over the speed limit, they were not dangerously so.

In the end, the collision was not caused by the actions of either officer. Rather, it occurred when AP failed to stop at a stop sign just as Officer 1 was entering the intersection. As noted, Officer 1 had taken his foot off the accelerator as the Pickup approached the intersection. He was on a through road with the right of way travelling at almost the exact same speed as AP. Had AP stopped as the law provides, no collision would have occurred.

Officer 2 was behind AP; however, he stopped at the stop sign notwithstanding that he too had previously been exceeding the speed limit.

There is no evidence that either Officer 1 or Officer 2 is responsible for the injury to AP. All available evidence indicates that AP's injury is the result of his failure to stop at a stop sign while attempting to evade the police.

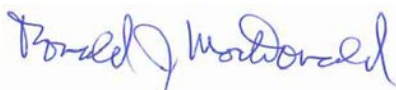
Both Officers 1 and 2 acted as required by their duties and in accordance with the law. The evidence collected does not provide grounds to consider any charges against any officer.

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**

October 31, 2018  
**Date of Release**



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

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