



PUBLIC REPORT OF THE  
CHIEF CIVILIAN DIRECTOR

Regarding the serious injury to an adult  
female as a result of an MVI involving an  
officer from the  
Victoria Police Department on  
May 5, 2013 in the city of Victoria,  
British Columbia

IIO 2013-000025

## 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. As the Chief Civilian Director of the IIO (CCD), I am required to review all investigations upon their conclusion, in order to determine whether I “consider 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 I conclude that an officer may have committed an offence, I am required to report the matter to Crown counsel. If I do not make a report to Crown counsel, I am permitted by s.38.121 of the *Police Act* to publicly report the reasoning underlying my decision.

In my public report, I may include a summary of circumstances that led to the IIO asserting 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 Crown counsel; or a summary of the results of the investigation if the matter has not been reported to Crown.

This is a public report related to the investigation into the injury of an adult female that occurred on May 5, 2013, in the city of Victoria. The affected person sustained a serious injury to her leg as a result of a collision between herself (on a motorcycle) and an officer employed by the Victoria Police Department (in an unmarked police vehicle).

Pursuant to s.38.11 of the *Police Act*, RSBC 1996 Chapter 367, I have reviewed the concluded investigation. I do not consider that any officer may have committed an offence under any enactment and will not be making a report to Crown counsel.

In my public report, I am 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, I am required, if practicable, to notify the person to whom the information relates, and further, notify and consider any comments provided by the Information and Privacy Commissioner (s.38.121(5) of the *Police Act*).

In this case, I have considered the advice provided by the Information and Privacy Commissioner. In this report, I will not be using the name of the affected person or of any other person involved in this matter.

At the time of the incident, the affected person was 37 years old.

## **NOTIFICATION AND JURISDICTION DECISION**

On May 5, 2013, the affected person was travelling southbound on Government Street, through a controlled intersection, when her motorcycle struck an unmarked police vehicle operated by the subject officer. As a result of the collision, the affected person sustained a broken femur and tibia, requiring surgical intervention.

The IIO asserted jurisdiction as it appeared that the affected person's injuries fell within the definition of "serious harm" in the *Police Act*, which includes injuries that result in "a substantial loss or impairment of mobility of the body as a whole or the function of any limb or organ."

## **INVESTIGATIVE EVIDENCE CONSIDERED**

Interviews were conducted with the affected person, civilian witnesses and a witness officer who was present during the collision. GPS information was obtained as well as a comprehensive collision analysis report.

The subject officer provided a voluntary statement.

### **The Affected Person**

The affected person provided a statement to the Victoria Police Department on June 5, 2013. She stated she thought the traffic signal was green when she went through the intersection.

She was subsequently interviewed by IIO investigators on July 13, 2013. She stated that she had "looked up and there was a green light and then I got closer so I looked up again and I didn't see anything different. Like I don't remember exactly seeing a green light. But I don't remember seeing a red light either...I'm pretty sure I thought I still had the same green light."

The affected person recalled that after the collision, a woman told her that she had run the red light although the woman's statement had not made any sense to her.

### **Civilian Witnesses**

Two civilian witnesses were interviewed by the Victoria Police Department on May 6, 2013. Witness 1 stated he was driving southbound on Government Street prior to the collision. He and his passenger were initially behind the motorcycle but pulled slightly ahead into the right turn lane and stopped for the red light. He saw the affected person "just proceed straight through. I honked the horn trying to get her attention, but it was too late." The witness stated he was waiting for the light to change before making his right turn.

His passenger was also interviewed by the Victoria Police Department. She stated the light was red when the affected person drove through the intersection and acknowledged hearing the driver of the vehicle she was in honking the horn as a warning. She advised she was the woman

who provided care to the affected person immediately after the collision and had told her she had run the red light.

A third witness was interviewed by the Victoria Police Department on May 7, 2013. He stated he was travelling southbound on Government Street about 150-200 feet behind the motorcycle prior to the collision. He saw the traffic signal turn yellow and he slowed. He stated he saw the motorcycle and that it was “past the point of no return for the light.” He saw the motorcycle enter the intersection and collide with the police vehicle. He saw a vehicle beside him whose driver “honked at her [the motorcycle operator]. He stated this was the exact moment the police vehicle “t-boned” the motorcycle. He believed the police officer pre-judged the light and this combined with the motorcycle being “past the point of return”, resulted in the collision.

### **Subject Officer**

The subject officer was interviewed by the Victoria Police Department on May 28, 2013. According to the subject officer, the light was green when he approached the intersection. He stated he saw a vehicle stopped for the red light southbound on Government Street. He stated he was driving at the speed limit at the time of the collision. He recalled he “slammed the brakes “on and spun the wheel to the right when he saw the motorcycle enter the intersection.

### **Witness Officer**

The witness officer was the passenger in the police vehicle. He was also interviewed by the Victoria Police Department on May 28, 2013. He stated that at the time of the collision, he was typing on the vehicle’s mobile data terminal. As such, he did not notice the traffic signal.

### **Collision Analysis**

The analysis was unable to determine the pre-collision speeds of either the motorcycle or the police vehicle. As well, the event data recorder in the police vehicle did not record the collision.

Both vehicles were inspected and no defects were found to be contributing factors. The weather was clear and dry; there was no evidence to suggest that either operator was impaired.

GPS data from the police vehicle was obtained and reviewed by IIO investigators. The data indicated that eight seconds before the collision, the police vehicle was travelling at approximately 41.5 kilometres per hour, below the posted speed of 50 KPH. The data confirmed that the collision occurred at 8:30 p.m. at the intersection of Government Street and Chatham Street in Victoria. The motorcycle was travelling southbound on Government; the police vehicle was eastbound on Chatham Street.

## ISSUES

The general issue in any IIO investigation is whether or not there is evidence that a police officer may have committed an offence under any enactment. In this case, I have specifically considered potential offences under the *Criminal Code* as well as the *Motor Vehicle Act*.

### ***Criminal Code***

Section 249 (1) of the *Criminal Code* considers dangerous driving: “Everyone commits an offence who operates (a) 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.”

### ***Motor Vehicle Act***

In this case, I also considered specifically whether the subject officer may have violated Section 144(1) of the *Motor Vehicle Act* which provides: “A person must not drive a motor vehicle on a highway (a) without due care and attention, (b) without reasonable consideration for other persons using the highway, or (c) at a speed that is excessive relative to the road, traffic, visibility or weather conditions.”

## REASONS

### **Considering *Criminal Code* Offence- s. 249 Dangerous Driving**

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 SCR 49.) Even an objectively dangerous act may not result in a conviction if the evidence suggests only a momentary lack of attention. (*R. v. Roy*, [2012] 2 SCR 60.) Not only must the driving act be considered dangerous but the person’s state of mind must reflect an element that exceeds negligence to one of criminality.

The subject officer and the affected person each believed that they entered the intersection on a green light. One of the witnesses thought the affected person went through the intersection on a yellow light and that the subject officer “pre-judged” the green light. Other witnesses said the light was red for the affected person and recalled honking to try to get her attention.

Even accepting the affected person’s version that the subject officer drove into the intersection on a red light, I would find no evidence of more than momentary inattention and no evidence to support the notion of criminality. As such, I do not consider that the subject officer may have committed an offence under s.249 of the *Criminal Code*.

## **Considering *Motor Vehicle Act* Offences – s. 144 (1) Driving without Due Care**

In order to support a violation of s.144 (1), 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..." (*R. v. Funk*, 2005 BCSC 1873.)

While the affected person thought she entered the intersection on a green light, she expressed some uncertainty. From well behind her, a witness formed the impression that the affected person passed the "point of no return" as the light went yellow. His vantage point however, offered a poor opportunity to judge whether the light was yellow or red as the motorcycle crossed into the intersection. The witness thought (incorrectly), that the police vehicle "t-boned" the motorcycle when in fact, the collision analyst established that it was the motorcycle that hit the police vehicle.

Other witnesses described having stopped for the red light before the motorcycle entered the intersection. The witness had sufficient time to realize the risk of collision and reacted by honking his horn. That would not have occurred unless the light had changed.

The collision analyst found that the traffic signals functioned normally.

GPS data established that the subject officer was not speeding at the time of the collision. Based on the evidence I have reviewed, I believe the subject officer had the right of way when he entered the intersection.

### **DECISION**

Based on the evidence obtained during the course of this IIO investigation, I do not consider that an officer may have committed an offence and therefore the IIO will take no further action.

Prepared for Public Release this 12th day of September, 2013

Richard A. Rosenthal  
Chief Civilian Director  
Independent Investigations Office of BC