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20-11

## No charges approved following motor vehicle accident involving Langley RCMP officer

**Victoria** – The BC Prosecution Service (BCPS) announced today that no charges have been approved against a Langley RCMP officer involved in an off-duty motor vehicle collision in the Township of Langley on July 1, 2019. The collision involved a motorcyclist who sustained serious injuries.

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 (IIO file 2019-116).

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 any offence in relation to the incident. 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

On July 1, 2019, at approximately 2:30 in the afternoon, the subject officer (SO) was off duty and driving their own vehicle. The officer was exiting a fast food restaurant on 56<sup>th</sup> Avenue in Langley and intended to travel to the left. The concrete median in the four-lane highway did not permit left turns but allowed for U-turns at intervals. The SO turned right onto 56<sup>th</sup> Ave. and changed lanes almost immediately, slowing to perform a U-turn at the first opportunity. As the SO slowed and began a left turn around the median, the SO was struck from behind in the left driver's side rear quarter panel by the affected person (AP) who was driving a motorcycle.

Following the impact, the motorcycle landed on its side. The AP landed on the ground a short distance away. The SO immediately pulled over and ran to the AP. Bystanders also assisted the AP, who was initially unconscious, but soon regained consciousness. The AP sustained a traumatic head injury with minor brain bleeding and a fracture to the right wrist. Treatment involved hospitalization for two weeks.

Because of the seriousness of the AP'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 SO.

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

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](http://www.gov.bc.ca/charge-assessment-guidelines)

The BCPS applies a two-part test to determine whether 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 charges considered in this case were *Motor Vehicle Act* offences. They included careless driving/driving without due care and attention (section 144), unsafe lane change (section 151(a)) and prohibited reverse turn (sections 168(a) and (b)).

- ***Careless Driving***

Section 144 of the *Motor Vehicle Act* provides, in part, as follows:

*Careless driving prohibited*

144(1) 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,

- ***Unsafe lane change***

Section 151 of the *Motor Vehicle Act* provides, in part, as follows:

*Driving on laned roadway*

151 A driver who is driving a vehicle on a laned roadway

- (a) must not drive it from one lane to another when a broken line only exists between the lanes, unless the driver has ascertained that movement can be made with safety and will in no way affect the travel of another vehicle,

- **Reverse turn in the Township of Langley**

Section 168 of the *Motor Vehicle Act (MVA)* applies except where there is a municipal bylaw that regulates reverse turns:

Reverse turn

168 **Except as provided by the bylaws of a municipality** or the laws of a treaty first nation, a driver must not turn a vehicle so as to proceed in the opposite direction

- (a) unless the driver can do so without interfering with other traffic,....

Langley's bylaws permit reverse turns (U-turns) in a business district, like the one where the accident occurred, where the turn can be done without "interfering with other traffic".

### Scene and Conditions

At the location of the incident, 56 Avenue is a four-lane road that runs east and west. The incident occurred about 100 metres to the east of 264 Street, and just north of Highway 1. There is a concrete median in front of the restaurant's driveway, which prevents left turns. To the east of the median is a painted yellow median, continuing the separation of lanes. Conditions were dry, bright, hot and partly cloudy. Visibility was good. There are no obstructions blocking visibility for drivers exiting from the restaurant's driveway looking to the left preparing to turn right onto 56 Avenue.

To the west of the collision scene, for eastbound traffic, is a sign that states "Entering Langley Township Maximum 50 km/h unless otherwise posted". There is a 60 km/h speed limit sign east of the collision scene for eastbound traffic through the area of the collision.

### Evidence

The area of the accident is monitored by several closed-circuit television cameras operated by the various businesses in the area. The evidence gathered from these cameras allows an accurate analysis of the actions of the two vehicles in the seconds leading up to the accident. This evidence is consistent with the statements provided by witnesses and comments made at the scene by the SO. In addition, the videos were analyzed by a collision reconstruction expert who prepared a report for the IIO.

### CCTV Videos

The videos show the SO stopping before entering 56 Avenue and yielding to a passing eastbound motorist. Turning right they began rolling onto 56 Avenue. Contemporaneously, a

westbound car passed by as the SO entered the roadway. They immediately merged into the right lane, moved into the left lane, and began rounding the median to turn westbound.

The SO was travelling at a low speed, having just entered 56 Avenue from a stopped position in the restaurant's driveway.

### **Collision Reconstruction and Video Analysis Evidence**

An expert collision reconstructionist utilized the video evidence and summarized it in their report. In sum:

- The AP was travelling at an average speed of 76 km/h during the segment of travel in the video frames captured by the CCTV of the adjacent gas station. This segment of travel was while the AP was braking, so they likely had been travelling at a speed faster than that at the onset of braking.
- The SO's SUV would have easily been visible to the AP as the AP rounded the corner, and likewise, the SO's left turn indicator for the lane change, assuming it was activated.
- The SO pulled onto 56 Avenue from the restaurant's driveway five seconds before the AP passed the same point.
- The motorcycle's skid mark veered slightly northward, towards the centre line and median. At the point of impact, the SUV had nearly completed the U-turn, and at least half of the left lane was unobstructed by the SUV and three quarters of the eastbound roadway of 56 Avenue was unobstructed.
- The AP could have steered to the right around the SUV, clearing at least half its width, at any speed between 50km/h and 76 km/h; in fact, they did the opposite, steering to the left, which was the direction of travel of the SUV.

Based on video analysis, the expert estimated that the motorcycle was travelling at an average speed of 76 km/h during the portion of video analysed, which was while braking. The actual speed must have been higher than that, as 76 km/h is an average speed while braking. It is unlikely that the AP was visible to the SO when the SO pulled onto 56 Avenue as the AP had not yet rounded the corner.

At the point of impact, only half of the left lane was blocked by the SO's SUV. Likewise, the AP's speed was more than 76 km/h when they started applying their brake. The speed limit was 60 km/h at this point.

### **Evidence of the SO**

The SO made spontaneous utterances to investigators following the collision. The officer stated that they:

- made a right turn onto 56<sup>th</sup>

- signaled a lane change and quickly moved over
- made a U-turn at the end of the median
- felt a bump and thought they had run over the median
- looked back, saw the motorcycle, stopped and ran to it

## **CHARGE ASSESSMENT ANALYSIS**

All the recommended charges include an element of negligence. A motorist may be found to be negligent if they operate their vehicle without due consideration for other users of the highway. Nothing in the evidence indicates the SO drove their vehicle without appropriate care in this case. On a fair reading of the evidence it appears that the SO appropriately entered the eastbound lane of travel, made a deliberate lane change to the inside lane before commencing a legal reverse turn. The evidence also suggests the appropriate turn signal was activated. The evidence indicates that the AP was speeding as they approached SO's vehicle and was very likely out of sight of the SO when the SO commenced their turn.

### **Unsafe lane change**

The evidence indicates the SO yielded to traffic in the roadway before entering 56 Avenue. When they entered the roadway, no vehicles would have been in either of the eastbound lanes, as the AP had yet to round the corner, and no following vehicles are captured on the CCTV images contemporaneous to the collision. The SO immediately made the lane change. A court would likely accept that they signaled the lane change, consistent with their spontaneous utterance. There is no evidence to the contrary.

For these reasons, there is not a substantial likelihood of conviction for this offence. The AP's eastbound path of travel, despite the collision, was unobstructed.

### **U-Turn/ Reverse turn in the Township of Langley**

As previously noted, a U-turn/reverse turn is permissible at the location (Langley) of the collision, where it can be done without "interfering with other traffic". The SO had nearly completed the U-turn at the point of collision. Three quarters of the eastbound roadway was unobstructed. The SO could not have seen the AP before entering the roadway, and the AP may well have been in the right lane at the start of the U-turn. There is no evidence that executing a reverse turn at the point at which the SO commenced it would interfere with other traffic. There is not a substantial likelihood of conviction for this offence.

### **Careless Driving**

The SO paused before entering 56 Avenue, yielding to a car travelling eastbound. The roadway was then clear for him to perform the lane change and the U-turn. A court would likely conclude the SO signaled prior to changing into the left lane. At the point of impact, the SO had cleared

most of the eastbound roadway without incident. Had the AP been travelling at the speed limit at the point of collision, it likely would not have occurred.

The SO was required to be on the lookout for the unexpected. However, the SO could not reasonably have expected the driving pattern evidenced by the AP in this case, particularly as the roadway appeared to be clear of traffic when the SO entered the roadway from the restaurant driveway.

Having met the standard of care required of the SO there is not a substantial likelihood of conviction for this offence.

### **Conclusion**

As there is no likelihood of a conviction for any offence no charges have been approved.