



**IN THE MATTER OF THE SERIOUS INJURY OF A MALE
IN A TRAFFIC ACCIDENT INVOLVING A MEMBER OF THE RCMP
IN THE CITY OF KELOWNA, BRITISH COLUMBIA
ON MAY 25, 2019**

**DECISION OF THE CHIEF CIVILIAN DIRECTOR
OF THE INDEPENDENT INVESTIGATIONS OFFICE**

Chief Civilian Director:

Ronald J. MacDonald, Q.C.

IIO File Number:

2019-100

Date of Release:

September 20, 2019

THIS PAGE INTENTIONALLY LEFT BLANK

Introduction

In the early morning hours of May 25, 2019, in Kelowna, B.C., the Subject Officer (“SO”) was driving his personal vehicle home at the end of a duty shift when his vehicle was in a collision with the Affected Person (“AP”), who was riding a bicycle. AP was seriously injured, and because of the connection with the actions of a police officer, the Independent Investigations Office (IIO) was notified and commenced an investigation.

The narrative that follows is based on evidence collected and analyzed during the investigation, including the following:

- statements of AP and two other civilian witnesses;
- statements of two paramedics;
- statements of one police Witness Officer (“WO”);
- police Computer-Aided Dispatch (“CAD”) and Police Records Information Management Environment (“PRIME”) records;
- scene examination and accident reconstruction;
- mechanical inspection report on SO’s vehicle;
- recordings of police radio transmissions;
- phone records for an RCMP-issued cell phone; and
- medical records.

Pursuant to section 17.4 of the Memorandum of Understanding between the IIO and BC Police Agencies, officers who are the subject of an investigation are not compelled to provide evidence to the IIO. In this case, SO declined to do so.

Narrative

At 3:30 a.m. on May 25, 2019, in Kelowna, B.C., SO had just completed a shift of duty and was driving home, alone, in his own vehicle. The road at that point is a six-lane divided highway, but traffic at that hour of the morning was very light. The road surface was dry and in good condition. It was dark and, while there is street lighting in the area, the side of the road is heavily shadowed by the foliage of large trees.

Civilian Witness 1 (“CW1”) was driving behind SO. Both vehicles were driving eastbound in the curb lane. CW1 told investigators that both vehicles were travelling at about 60-65 km/h when he saw SO’s vehicle suddenly swerve to the left, halfway out of its lane. At the same time, he said, he saw something “fly off” the right side of SO’s vehicle, and SO then immediately pulled over to the curb and stopped.

As CW1 swerved left, himself, to avoid SO’s stopped car, he saw a body on the roadway in the middle of the curb lane. He pulled over, and he and SO both went back to check on the person lying in the road (AP). CW1 said he heard SO say, “He came out of

nowhere.” CW1 called 911 because SO said that his phone was not working. The two men looked after AP until paramedics attended.

CW1 said that he saw a bicycle lying on the grass boulevard on the south side of the road, and described AP as wearing a black hoodie.

On-duty RCMP members, firefighters and paramedics attended at the scene. One of the paramedics, Professional Witness 1 (“PW1”) told investigators that while AP was being transported by ambulance he recovered consciousness and paramedics were able to speak with him and obtain his identification details. PW1 said that AP told them he had used heroin earlier that night.

She also told investigators that she “strongly believed” she had seen AP earlier, some time after midnight. He had been, she said, on a bicycle riding against the traffic lights and weaving in and out of traffic in a very dangerous manner at a busy intersection. She recalled that a car had to “slam on” its brakes to avoid hitting him.

When he was interviewed by IIO investigators, AP told them that on the night in question he had been “hanging out” with friends in an area close to the scene of the accident, south of the six-lane highway. He said he left to go to a friend’s house around, he thought, 1:00 or 2:00 a.m. on a green BMX bike, dressed in a black hoodie and grey pants. His bicycle had no lights. He was not wearing a helmet. He acknowledged having used heroin that night.

AP could not recall what route he took, but said that he would often cross the street on which the accident occurred wherever he happened to be, not using an official intersection or crosswalk. He could not recall the accident in which, medical evidence indicates, he suffered a broken left leg and a concussion.

Accident reconstruction was carried out, and concluded that the collision took place approximately in the middle of the curb (southmost) lane. AP’s injuries, the damage to the bicycle and the car, and marks on the road surface indicated that the bicycle was travelling in a direction from the curb across the road, from the passenger’s side of SO’s vehicle towards the driver’s side, when it was struck. Marks on the road showed that the brakes of SO’s car were applied before the collision, and the Antilock Braking System activated, but impact occurred before the vehicle’s speed was much reduced.

The distribution of damage to SO’s vehicle and to the bicycle indicated that the car was turning towards the left at the moment of impact. The bicycle appears to have been proceeding across the east-west street in a direction between northward and northeastward. The resulting impact was at approximately a 45-degree angle, the passenger side front corner of the car connecting roughly with the middle of the bicycle and the left leg of AP. AP was thrown approximately 15 to 20 feet by the collision.

In particular, the bicycle and vehicle were examined together. When positioned at what appeared to be the point of impact, the bicycle matched the marks and dents on the vehicle caused by the collision. Effectively, there was an impression of the bicycle on the vehicle. This fully confirmed the direction of the bicycle is well described as cutting directly across the road in front of SO's vehicle.

The examination of the bicycle also showed fresh grass stuck to the rear tire. A recent track through wet grass was noted on the south side of the road, approaching the location of the accident.

A mechanical inspection was carried out on SO's vehicle. The vehicle was found to be in good working order, with no defect of steering, brakes or suspension.

Telephone records for SO's work-issued cell phone were obtained, and showed no activity of the phone during the material time period.

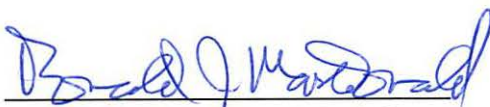
A canvass was conducted in the area for possible closed-circuit television video recordings, but none was available.

Legal Issues and Conclusion

The purpose of any IIO investigation is to determine whether there are reasonable grounds to believe that an officer, through an action or inaction, may have committed any offence in relation to the incident that led to the injuries to AP. More specifically, the issue to be considered in this case is whether there are grounds to believe that the manner of driving of SO was a contributory cause of the accident. If it was, it could result in criminal liability for the offence of dangerous driving causing bodily harm or an offence under the B.C. *Motor Vehicle Act*.

The evidence collected in this case does not provide grounds to consider any charges against the officer. Rather, the evidence points to a careless act on the part of the AP, perhaps contributed to by his use of heroin, in cycling out from a dark, shadowed area under the trees beside a six-lane highway, wearing dark clothing and without lights. AP rode directly into the path of SO who, on the evidence, was driving normally and reacted as quickly and appropriately as could be expected in the circumstances.

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.



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

September 20, 2019
Date of Release