



**IN THE MATTER OF THE SERIOUS INJURY OF A MALE
WHILE BEING APPREHENDED BY A MEMBER OF THE
RCMP AT SAYWARD, BRITISH COLUMBIA
ON AUGUST 11, 2018**

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

Chief Civilian Director:

Ronald J. MacDonald, Q.C.

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Introduction

On August 11, 2018, an RCMP member in an unmarked police vehicle attempted to catch up to a suspect SUV for a distance along the highway near Sayward, B.C. The driver of the speeding suspect vehicle lost control and crashed into the trees off the side of the highway. He suffered serious injuries, and because of the connection to police action 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 from two civilian witnesses and one police witness officer;
- Police Records Information Management Environment (“PRIME”) and Computer Aided Dispatch (“CAD”) records;
- police vehicle dashcam video;
- scene examination, photos and video;
- a Mobile Data Terminal (“MDT”) download including police vehicle GPS data;
- RCMP policies relative to Emergency Vehicle Operations; 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 submit their notes, reports and data, nor participate in an IIO interview. In this case, the Subject Officer (“SO”) provided a written statement, but did not submit to an interview with IIO investigators.

Narrative

Affected Person

The Affected Person (“AP”) in this investigation has not agreed to provide a statement to IIO investigators. The IIO understands that his injuries included a shattered pelvis and other broken bones. PRIME reports indicate that AP made an admission to attending paramedics about his recent consumption of methamphetamine. A search of the SUV found two small bags of crystal meth and two glass pipes for the consumption of the drug.

SUV Passenger

AP’s passenger at the time of the incident was discharged from hospital after an initial examination, and has not subsequently provided a statement to IIO investigators.

Witness Officer

A police witness officer (“WO”) who attended at the scene of the accident told IIO investigators about having spoken with AP’s passenger: WO stated that the passenger had said AP was “driving too fast” at the time of the crash.

Subject Officer

SO’s statement indicates that at about 10:30 a.m. on the morning of August 11, 2018, he was on patrol north of Sayward. He was in full police uniform, but in an unmarked police vehicle. At an obstruction on the highway where traffic was moving slowly, he observed an SUV passing in the opposite direction. He noted that the driver of the SUV did not make eye contact as he passed, which SO found suspicious. Looking back at the SUV as it passed, SO also noticed that the rear licence plate was not properly affixed, and that the decal had expired. The expired decal made it probable that the vehicle was not currently licenced, and therefore not insured.

SO turned his vehicle around and drove after the SUV, which had by now disappeared around a bend in the highway. As SO came out of the bend, he saw the SUV at the far end of a long straight section of road, entering another curve. SO accelerated and activated his emergency lights. Shortly after this, seeing the SUV still well ahead at the end of another straight, SO activated his siren. At this point, he estimated he was approximately three to four hundred metres behind the SUV. He increased his speed still further, attempting to get close enough to the SUV to read its speed with his radar unit, but could not accomplish this.

SO stated that at this point he began to slow down and was about to pull over. Approximately one minute had passed since he turned and began to follow the SUV. He had travelled about two kilometres. At this time he saw the rear of the SUV “fishtail” and saw the vehicle drive off the highway into the trees. SO accelerated again, drove to the scene of the crash and radioed for Ambulance and Fire Rescue services. AP was found in the driver’s seat of the SUV, and a second person was in the front passenger seat. Both were unable to exit the vehicle: a large quantity of copper wire had slid forward from the rear seat area in the crash and had forced the front seats forward, trapping the occupants.

AP and his passenger were eventually extricated from the SUV by First Responders with the assistance of civilian passers-by. Two different licence plates, both with expired decals, were recovered from the crashed SUV.

Dashcam Video and GPS Data

The vehicle driven by SO was equipped with a dash cam system that recorded the view ahead of the vehicle as SO attempted to catch up to the SUV. The recording also included audio and real-time speed information for the vehicle, as well as indications of the status of the radio microphone, brakes, emergency lights and siren. A review of this video corroborates SO's statement with respect to the sequence of events.

GPS data from SO's vehicle MDT indicates that while his speed reached a maximum of 151.6 km/h, that was momentary. For the most of the minute SO followed the SUV his speeds ranged between approximately 110 to 130 km/h. Speed data captured by the video system indicates similar speed information. The video and GPS data confirm SO's vehicle slowed as SO's statement describes, just before the SUV, seen in the distance, loses control and crashes.

The posted speed limit over the section of highway along which SO travelled was 70 km/h.

The video shows that during the period of time SO's police vehicle was travelling above the posted speed limit, with emergency lights and siren activated, it only passed one other vehicle on the highway. On a straight stretch of road, a civilian vehicle is seen coming in the opposite direction, but it has already pulled over to the far side of the road, apparently aware of the approach of SO's police vehicle.

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 SO, by exceeding the posted speed limit, may have driven in a manner that amounted to an offence either under the *Criminal Code* or under the B.C. *Motor Vehicle Act*.

That manner of driving must be evaluated in the light of provincial legislation and regulation, and of *Criminal Code* offence definitions.

Motor Vehicle Act

Like every other driver on the road, SO was also subject to the *Motor Vehicle Act*. Section 122 of the *Act* provides the operators of emergency vehicles with exemptions from some provincial motor vehicle rules. In this case, paragraph 122(1)(a) permits an officer driving

a police vehicle to exceed the posted speed limit, provided he does so “in accordance with the regulations.”

The relevant regulation is the B.C. *Emergency Vehicle Driving Regulation*. An officer is entitled to exceed the speed limit when attempting to catch up to a vehicle, but when doing so an officer must balance the risks of harm involved and must operate his emergency lights and siren as appropriate to the circumstances—again, with a balancing of risks in mind.

Those circumstances, as they relate to the balancing of risks contemplated by the regulation, are:

- the officer was attempting to “close the distance” with a speeding suspect vehicle;
- the officer is expected to make an attempt to stop the vehicle, and is entitled to make that attempt for a reasonable length of time;
- the offence of which the suspect driver was reasonably suspected was a provincial offence, but a relatively serious one: operating a motor vehicle without licence or liability insurance;
- the road along which the speeding occurred was a rural two-lane highway with lengthy straight sections and several curves with somewhat limited sightlines;
- it was daytime with good visibility;
- it was raining lightly so the road surface was wet, though in good condition;
- there was very little motor vehicle traffic in the area, no pedestrian traffic, and very little commercial or residential development opening directly onto the highway;
- the duration of the speeding was relatively limited, both in time and in distance;
- the officer lost sight of the suspect vehicle from time to time;
- he quickly activated his emergency lights—and the siren quite soon after that—as his speed increased, indicating that he was consciously and progressively evaluating the level of risk.

On the evidence as a whole, it cannot be said that any risk to the public created by SO exceeding the speed limit while attempting to close the distance with AP’s vehicle was such that he was unable to rely on the exemption in s. 122 of the *Motor Vehicle Act*.

Criminal Code

The potential *Criminal Code* offence in a case like this is dangerous driving (then under section 249 of the *Code*, and now under section 320.13). The substance of that offence is operating a motor vehicle in a manner that is objectively dangerous to the public. The required degree of fault is a marked departure from the standard of care that a reasonable

person would observe in the circumstances. Excessive speeding alone can amount to dangerous driving, depending on the circumstances.

The circumstances here were such that the level of risk or danger to the public was limited. SO encountered only one other vehicle along the highway, and SO's judicious use of his emergency lights and siren evidently caused that individual to move well out of the way in ample time.

SO was in the execution of his duty as a police officer, investigating an apparent provincial offence with a suspicion that other more serious criminality might be involved. He took what were, in the circumstances, reasonable and limited steps to try to identify the suspect vehicle and driver until it became apparent that this would require driving in too extreme a manner because of the suspect's own high-speed driving. He did this for only one minute. Having reached this conclusion, SO was in the process of letting the suspect go when the accident occurred. During the time when he was exceeding the speed limit, SO operated his emergency lights and siren as required, and video evidence from his dashcam recorder shows that he slowed to more moderate speeds as he approached and negotiated curves in the road. Indeed, it shows he was in control of his vehicle throughout.

Because of these factors, and the factors itemized above related to the Motor Vehicle Act provisions, it can not be said SO's driving was dangerous. His training, use of emergency equipment, and specialized vehicle distinguish his driving at these speeds from similar driving by a lay person. Additionally, it was carried out for only a minute. Had it continued for an extended period, different conclusions might well be drawn.

In summary, the evidence gathered indicates that SO did not breach the *Motor Vehicle Act* or the *Criminal Code*. Accordingly, as the Chief Civilian Director of the IIO, I do not consider that there are reasonable grounds in this case to believe 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

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