



**IN THE MATTER OF THE DEATHS OF THREE PEOPLE
RESULTING FROM A MOTOR VEHICLE COLLISION
IN CHILLIWACK, BRITISH COLUMBIA, ON DECEMBER 29, 2020,
AND THE INVOLVEMENT IN THE INCIDENT
OF A MEMBER OF THE RCMP**

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

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

IIO File Number: 2020-321

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INTRODUCTION

In the early morning hours of December 29, 2020, a motor vehicle was seen being driven at high speed, westward in the eastbound lanes of Highway 1 between Hope and Chilliwack. Police responded to the area and the Subject Officer ('SO'), while driving east in the eastbound lanes, saw the suspect vehicle pass him. SO turned his police vehicle, activated his emergency lights and pursued. Several minutes later, the suspect vehicle collided head on with an eastbound vehicle driven by Affected Person 1 ('AP1'). The driver of the suspect vehicle, AP2, and his passenger, AP3, died in the crash. AP1 was taken to hospital but died later.

Because of the involvement of police officers in the tragic incident, 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 ten civilian witnesses and seven witness police officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- recordings of 911 calls and police radio transmissions;
- data downloads from SO's police vehicle Mobile Data Terminal, including GPS data;
- video of the incident, including the collision and events leading up to it;
- photographs of the scene and of involved vehicles;
- collision analysis and vehicle mechanical inspection reports;
- examination of a police spike belt deployed during the incident;
- RCMP policies;
- SO's training records; and
- autopsy and toxicology reports.

The IIO does not compel officers who are the subject of an investigation to submit their notes, reports and data. In this case, SO has not provided any account to the IIO.

NARRATIVE

Chronology

On December 29, 2020, the first of several 911 calls about a Toyota Corolla traveling on the wrong side of the divided highway west of Hope was received at 4:04 a.m. The Toyota, driven by AP2 with a female passenger, AP3, was seen by several witnesses driving westbound in the eastbound lanes at speeds estimated by the witnesses at between 100 and 180 km/h. The posted speed limit along the relevant sections of the highway at the time was 100 km/h.

Near the Prest Road highway intersection, just east of Chilliwack, eastbound driver Civilian Witness 1 ('CW1') had to pull onto the shoulder to avoid a collision with the oncoming Toyota. CW1 later told IIO investigators that "probably about two seconds" after the Toyota passed, a police vehicle went past, also in the eastbound lanes.

Shortly afterward, CW2 entered the highway from Vedder Road and drove westbound at about 100 km/h. He saw the Toyota pass him, over in the eastbound lanes, and said that the driver (AP2) "didn't look astonished, he looked like he knew what he was doing". CW2 said that he then saw a police vehicle following the Toyota, "about fifty metres back ... with his lights on and maintaining the speed". CW2 said that the Toyota had its lights and "flashers" on.

CW3 told investigators that he was driving west in the westbound lanes, a little west of Lickman Road, when the Toyota passed him in the eastbound lanes, followed by a police vehicle with its emergency lights on, driving at a constant distance behind.

The police vehicle described by the various civilian witnesses was driven by SO. Starting from a transmission by SO at 4:08 a.m., recordings of police radio transmissions establish a chronology of police actions leading up to the fatal collision:

- 4:08:09 – SO asks if there had been any more 911 calls on the Toyota.
- 4:10:25 – Dispatch states the Toyota was approaching Popkum Road at a high rate of speed.
- 4:11:02 – SO asks if a supervisor is listening, and Witness Officer 1 ('WO1'), who was Acting Patrol Supervisor for the shift, responded that he was monitoring.
- 4:15:04 – SO states he is approaching Gibson Road.
- 4:15:38 – SO states he is approaching Annis Road.
- 4:16:00 – SO announces the Toyota is "just about to pass me. I have my lights on ... I'll be turning around".

- 4:17:14 – WO2 placed a spike belt just east of Prest Road, and SO radioed that the Toyota, ahead of him, had slowed to 95 km/h (in her IIO statement, WO2 said she saw the Toyota slow to about 50 or 60 km/h and pass the spike belt without striking it. She then drove east until she was able to cross over to the westbound lanes. Asked why she did not simply drive west in the eastbound lanes, following the Toyota and SO, she said, “I didn’t see myself putting myself or other people at risk, knowing there are other members west of me that were there to help [SO]”). Watch Commander WO3 told the IIO that when he heard that AP2 had deliberately evaded the spike belt, his level of concern about what was happening heightened: “Now we’ve showed the driver’s intent has gone from, I don’t think it, I don’t think it’s medical, I think it’s more criminal at this point”.
- 4:18:55 – SO called for officers to set up roadblocks at several locations to the west, and stated that the Toyota had “just swerved passing three cars”.
- 4:19:20 – WO3 asked for confirmation that there was an officer (SO) following the Toyota westbound in the eastbound lanes.
- 4:19:51 – WO3 called SO and directed him to disengage from the pursuit, saying officers would “try to deal with the vehicle” at the next overpass. At this time, SO’s speed was 127 km/h, and he did not acknowledge WO3’s order. Speaking with IIO investigators later, WO3 explained that he was concerned about the increased risk created by the pursuit as SO approached a more populated area with more traffic, “more roads, more T-intersections, more chances of something to happen”:

Now he’s coming into an area that’s more heavily populated and he’s increasing his speed. My thought process is to shut it down because on occasion that can cause the vehicles to slow down. Not all the time, that’s not a hundred per cent. And I also realized the pub – the general public coming the other way, we have – there’s concerns there as well. But I also know this is a long stretch that’s flat and straight. So I’m hoping that people if they are coming, will be able to pull over.

- While SO was pursuing the Toyota westbound, other officers were moving to stop eastbound traffic at on-ramps and to set up roadblocks in the eastbound freeway lanes. Some of those officers, interviewed by the IIO, said that they did not hear WO3’s initial order to SO, and/or suggested that SO might not have heard it:
 - WO1 said the transmissions from WO3 were “not perfectly clear”. He said he did not remember hearing WO3’s order to disengage, and added, “I’d say there’s a chance [SO] didn’t hear it”.
 - WO4 said that if SO “had heard a supervisor to tell him to disengage, he would have disengaged”.

- Other witness officers stated that they did hear WO3's order, and/or said that in SO's position they would have discontinued the pursuit anyway:
 - WO5 said, "I did recall [WO3] asking if, if our vehicles were still following that vehicle, and then mentioning, because the situation's dangerous, advising for them to stop following the vehicle... It was clear to me to stop following. Now, whether that's because when I was in that position I personally would have stopped following, partly because I know traveling in that, I mean you're putting yourself at great risk... so I was, was already under the impression that, to stop following in my own perspective".
 - WO6 said she heard WO3 radio, "make sure nobody's pursuing the vehicle".
 - WO2 said she clearly heard WO3 call for SO to disengage: "I remember one thing coming from him – he said 'stop following'".
- 4:20:00 – SO radioed, "Let's BOLF this out to Abbotsford right away, because at this speed there's no way we're going to get set up for a spike". Hearing this, WO3 realized that SO was not discontinuing the pursuit, so he telephoned Dispatch and instructed them to tell SO again to stop.
- 4:20:06 – Dispatch called SO, asking, "Did you copy from Watch Desk to pull over and stop following?" SO did not acknowledge, but instead continued to radio updates on speed and location as his speed varied between 125 and 138 km/h.
- 4:21:11 – SO, continuing his westbound pursuit in the eastbound lanes, announced that he was passing Evans Road and approaching Lickman Road at 135 km/h.
- 4:21:39 – SO, hearing that WO7 had been directed by WO3 to set up a spike belt at a location approximately eleven kilometres west of Lickman, radioed, "He's gonna be in the fast lane. So I'm not sure how you can set that up, but just make sure that you're in the safest spot".
- 4:22:46 – SO radioed, "We've got a head-on collision with another vehicle", stated that the vehicle the Toyota had struck was on fire, and called for Emergency Health Services paramedics to attend urgently.

AP1, the driver of the eastbound vehicle, was taken to hospital and was subsequently declared deceased. AP2 and AP3 died at the scene. All three Affected Persons died from multiple blunt force injuries suffered in the collision.

The collision occurred on a long right hand turn. AP1 was following behind a tractor-trailer at a distance of perhaps a few hundred metres. AP2 drove to the left of the tractor-trailer, and then turned into AP1's lane leading to the head-on collision. The evidence of the

video strongly suggests AP1 did not see AP2's vehicle or the police vehicle, given AP1's position behind the tractor-trailer and because of the long turn.

Legislation/Regulation

Subsection 122(1) of the B.C. *Motor Vehicle Act* ("the *Act*") grants the driver of an emergency vehicle an exemption from some of the rules set out in the *Act*. The exemptions that are relevant to this case are from the prohibitions against "exceeding the speed limit" and against "disregard[ing] rules and traffic control devices governing direction of movement or turning in specified directions". Section 122 goes on to say that "The driver of an emergency vehicle must not exercise the privileges granted by subsection (1) except in accordance with the regulations", and that the driver must drive with due regard for safety, having regard to all the circumstances of the case". Those circumstances are to include "the nature, condition and use of the highway; the amount of traffic that is on, or might reasonably be expected to be on, the highway; [and] the nature of the use being made of the emergency vehicle at the time".

The applicable regulation is the *Emergency Vehicle Driving Regulation* ("the *Regulation*"). Section 3 of the *Regulation* addresses "Pursuit by Police". The section reads as follows:

- (1) To engage in or continue a pursuit, a peace officer must*
 - (a) have an emergency light and siren activated, and*
 - (b) have reasonable grounds to believe that*
 - (i) the driver or a passenger in the vehicle being or to be pursued has committed, is committing or is about to commit an offence, and*
 - (ii) the seriousness of the offence and the need for immediate apprehension outweigh the risk to the safety of members of the public that may be created by the pursuit.*
- (2) In considering whether there are reasonable grounds under subsection (1) (b), the driver of the emergency vehicle must consider any pertinent factors, including the following, if relevant:*
 - (a) the nature and circumstances of the suspected offence or incident;*
 - (b) the risk of harm posed by the manner in which the emergency vehicle is being or is likely to be operated;*
 - (c) the risk of harm posed by the distance, speed or length of time required or likely to be required to exercise the privileges;*
 - (d) the nature, condition and use of the highway;*
 - (e) the volume and nature of pedestrian or vehicular traffic that is, or might reasonably be expected to be, in the area.*
- (3) For the purposes of subsection (1) (b),*
 - (a) the need for immediate apprehension will be low if*

(i) the driver or a passenger in the vehicle pursued has not committed an indictable offence, or

(ii) identification or apprehension of the suspected offender may be achieved by other means at that or a later time,

(b) the greater the distance, speed or length of time required or likely to be required for the pursuit, the greater the risk to the safety of members of the public, and

(c) an attempt to evade apprehension is not a factor to be considered in determining the seriousness of the offence or the need for immediate apprehension.

Subsection 4(2) of the *Regulation* provides that, in specified circumstances and for purposes other than a pursuit, a driver of an emergency vehicle may exercise the privileges granted by section 122 of the *Act* without activating emergency lights or siren.

RCMP policies and B.C.'s *Provincial Policing Standards* essentially reflect and parallel the statutory and regulatory provisions.

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 an incident resulting in serious harm or death. More specifically, the issue to be considered in this case is whether SO's pursuit of AP2 involved the commission of any offence(s), either regulatory or criminal. Potential regulatory offences would fall under the *Motor Vehicle Act* and could include speeding (section 140) and driving on the wrong side of a divided highway (section 163) while criminal offences that must be considered would include dangerous driving and criminal negligence.

There is no doubt that SO, in the course of this incident, drove at speeds significantly in excess of the posted speed limit, and also drove in a manner that was contrary to rules governing the direction of travel of vehicles on a divided highway. The question is whether, in the circumstances, he was exempted from culpability by operation of section 122 of the *Act* and the *Regulation*, referred to above. Only if he drove within the limits set out in the *Regulation*, and if he drove "with due regard for safety, having regard to all the circumstances", is he able to claim the exemption under section 122.

On the evidence, SO pursued the Toyota with his emergency lights activated, but not his siren. In these specific circumstances, I do not consider that the failure to use his siren as required by the *Regulation* created or heightened any risk to the public, and was only a technical breach insufficient to base liability under the *Act*.

With respect to paragraph (1)(b) of the *Regulation*, it was clear that the driver of the Toyota was committing an offence when SO decided to pursue him, and that it was a

serious offence that endangered the driving public, with a corresponding need for immediate apprehension. In choosing to pursue—and to continue the pursuit despite instructions from a supervisor to disengage—SO was required by provincial law to balance the risk to the public created by AP2’s dangerous driving against the risk created by the pursuit.

Perhaps unsurprisingly, Canadian criminal law required the same balancing calculation on SO’s part when he decided whether it was reasonable in the circumstances to drive at high speed in the oncoming traffic lanes in pursuit of an individual who was driving in that dangerous manner himself. If SO was acting in lawful execution of his duty (which he clearly was) and attempting to enforce the law, a manner of driving that might otherwise be viewed as criminal would instead be justified and lawful as long as it was objectively reasonable in the circumstances.

In summary, if SO’s actions were based on a reasonable balancing of risks, he is entitled to the protection of *Criminal Code* subsection 25(1) with respect to any potential criminal liability, and of section 122 of the *Act* with respect to provincial regulatory liability. Since we have no account from SO, and consequently no way to know what his subjective thinking was, the reasonableness of his decisions must necessarily be judged from the objective circumstantial evidence—from the factors that can be considered as weighing for or against the appropriateness of pursuit.

Factors weighing against pursuit in this case include the following:

- The risk of a collision with an eastbound vehicle was potentially increased (perhaps doubled) by the fact that there were now two vehicles speeding westbound on the wrong side of the highway.
- There was a very real risk that pursuing the Toyota with police emergency lights flashing would tend to ‘push’ its driver to speed up so as to evade apprehension, and could also tend to distract his attention from the road ahead of him (by the time SO started to pursue the Toyota, AP2 had been driving into the oncoming traffic for a very significant distance without a collision, so was evidently capable of doing that, if not distracted or motivated to increase speed).
- There was also a risk that the flashing emergency lights behind the Toyota might distract the attention of oncoming traffic from the Toyota to the police vehicle, and increase the risk of a collision with the Toyota. In this regard, it should be noted that SO was following relatively closely behind the Toyota, matching its speed.
- Once SO had followed the Toyota for a significant distance and it had not stopped in response to his presence and his flashing lights, it should have been obvious to SO that pursuit alone was not going to lead to apprehension.

- Risk to the public was being mitigated more effectively by officers' actions in blocking eastbound on-ramps so as to minimize oncoming traffic.
- Other options to stop the suspect vehicle were being actively pursued, in the form of roadblocks and spike belts being set up ahead along the highway.
- Finally and significantly, SO had been ordered by his supervisor to disengage, and was required under police regulations to comply with any such order.

Factors weighing in favour of continuing the pursuit:

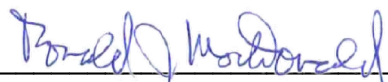
- While the SO's vehicle on the road meant there were now two vehicles heading west in the east bound lane, SO was clearly far enough behind AP2 to lower the risk of him being involved in a collision, as demonstrated by the fact he was able to avoid the actual collision.
- The presence of SO behind AP2 did not appear to cause AP2 to increase speed. Speeds at the time of collision were normal highway speeds for the section of highway.
- AP2 had shown that he was quite willing and able to evade a spike belt, and there is no guarantee that anything short of a complete roadblock across all eastbound lanes would have been successful in stopping him. In addition, police had not been able to establish a roadblock to that point, meaning AP2 would continue to drive for some distance before that could be accomplished, continuing to endanger the public as he did so.
- There was the potential that the driver of an eastbound vehicle would see SO's emergency lights and pull over to the shoulder, thus avoiding a collision with the Toyota. Effectively, SO's flashing lights could serve as an important warning to oncoming traffic.
- It is possible that SO did not hear WO3's order to disengage, or the subsequent inquiry from Dispatch. Even if he did, that does not determine the matter. SO is entitled to exercise his own judgement in these circumstances, although ignoring the command of a superior is an important factor when considering reasonableness.
- AP2 was first seen driving on the wrong side of the road since just west of Hope, a distance of over 80 kms from where the collision occurred. He was not pursued by police onto the wrong side of the highway, but chose it himself. For some reason he was motivated to remain on that side of the road. The options on how to protect those he was approaching from the opposite direction were limited.

In the end, SO was faced with making a decision between two very difficult choices:

- 1) Discontinue his pursuit, removing his personal risk and any additional risk to the public, but at the same time removing any potential warning to oncoming traffic; or
- 2) Continue to follow AP2 with lights flashing, providing the only realistic warning to oncoming vehicles until such time as a roadblock could be established, although that meant personal risk to himself and some degree of risk to others (which he showed could be mitigated by travelling far enough behind AP2).

In the end, SO chose to risk his own safety in order to give the only warning that could be given to members of the public travelling east that morning. While in the end this was unsuccessful, likely due to where the collision occurred, in these tragic and very difficult circumstances, it can not be said that SO's choice was the wrong one.

Accordingly, as the Chief Civilian Director of the IIO, I do not consider that there are reasonable grounds 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

February 9, 2022

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