



PUBLIC REPORT OF THE

CHIEF CIVILIAN DIRECTOR

Regarding the March 5, 2014 serious injury
of an adult male involving the
Vancouver Police Department

IIO 2014-000054

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 (CCD) of the IIO, 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 Counsel.

This is a public report related to the investigation into the serious harm of an adult male that occurred on March 5, 2014 in Vancouver. The affected person sustained serious injuries after being struck by a police vehicle while he was riding what was alleged to be, a stolen scooter.

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. I will not be disclosing names of any persons involved.

The affected person was 30 years old at the time of his injury.

NOTIFICATION AND JURISDICTION DECISION

On March 5, 2014, the affected person sustained injuries after a police vehicle slid into the scooter he was riding. According to police, the scooter was believed to have been stolen and the collision occurred as the affected person was allegedly trying to flee.

The affected person complained of back pain and was transported to hospital for treatment.

At the time, the incident was not reported to the IIO but was (reported by the VPD) to the Office of the Police Complaint Commissioner (OPCC) as a reportable injury.

On March 21, 2014, after their review of the file, the OPCC notified the IIO and reported the affected person had sustained a fracture to his L1 vertebrae.

On March 22, 2014, the IIO asserted jurisdiction after determining that the affected person's injuries fell within the *Police Act* definition of "serious harm".

EVIDENCE CONSIDERED

During the course of their investigation, IIO investigators reviewed radio transmissions, GPS data from the involved police vehicle, scene photographs, a traffic accident report prepared by a member of a VPD accident investigation team, and medical records.

Timeline of Events

The following sequence was established by reviewing video evidence, GPS data and radio transmissions just before 10:00 a.m.

- 9:59- 10:16 a.m.
 - The Subject Officer received information via police radio relating to a stolen (scooter); confirms the license and is notified that the scooter is approximately 200 yards ahead of his location.

- 10:17-10:19 a.m.
 - At 10:17:59, the Subject Officer advised that he is pursuing the stolen scooter.
 - At 10:18:37, GPS indicated the impact between the Subject Officer's vehicle and the scooter.
 - At 10:18:44, the Subject Officer confirmed to dispatch: "I got it here now." (Moaning can be heard in the background.)

- 10:19 – 10:38 a.m.
 - At 10:19:33, the Subject Officer confirms male suspect is "in custody."
 - At 10:19:49, the Subject Officer radios for a "Code 3" Emergency Medical Services response (response with utilization of emergency equipment) and for a supervisor to come to the scene.
 - At 10:38:33, paramedics are on the scene.

Affected Person

The affected person was interviewed by IIO investigators. He stated that on March 5, 2014, he was riding his motorbike on Matheson Crescent when he tried to make a turn onto Boundary Road. He saw what he thought was a shortcut so he made a right turn onto a path he described as a "bike lane." That route was, in his words, "slippery, and wet," so he went onto the grass and "slipped" on it. His body hit the grass when he fell. The affected person stated he fell to his right side while trying to round a bend in the path which veered to the right.

The affected person described the fall as "embarrassing" so he got up quickly. He claimed no injuries as a result of the fall, saying he got up and quickly straddled the bike. The affected person stated he got back up onto the bike, sat on it, and intended to "keep on going." The affected person realised the bike wasn't going to move quickly, describing the fact that it had been tipped so "it got flooded" so it would take "a couple of kicks" to get the fuel running and the bike going.

According to The affected person, "And when I looked around, I saw the black vehicle pulled over by a -- by a -- by a curb -- curb -- by the curb was there. And that's the only vehicle I saw. And I -- I didn't think much of it. I didn't think it was a cop." He described the vehicle as a black SUV with a "push-bar."

While seated on the motorbike, he said, "And when I sat up on the bike, I got hit from the back. And then I was pinned underneath the -- between the grass -- between the ground and the car behind me." He said the push-bar at the front of the vehicle hit the motorcycle first, not his body, upon impact. He said he didn't know there'd been a vehicle behind him, and estimated "two seconds" passed between the time he got back up on the bike and the time of the collision. The affected person said he was hit from behind, and described the collision as coming from "right" behind him. "And then [the] cop jumped out of the vehicle and he -- he was all distraught, and he was looking around, to see if anybody saw. And he was swearing a lot. And then he told me I was under arrest for theft."

The affected person stated was unsure of whether the officer was in uniform, but once he heard "you're under arrest," he knew it was a police officer. The affected person recalled the officer then saying that he'd tried to stop but it was slippery, and that he didn't mean to hit him.

The affected person questioned why there'd been no lights and sirens used to warn him of the officer's presence, and he said he was told by the officer that he'd been followed for two blocks and "you should have seen me." The affected person denied knowing he'd been part of a pursuit involving police and maintained he was sitting atop the motorbike which was not moving at the time of impact.

Upon impact, the affected person said he was “dragged ahead” by the vehicle “a few feet” “on the grass.”

At the time of the collision, the affected person stated the first officer who interacted with him was alone, but was joined by others. The affected person said there were no further discussions between himself and the officer involved in the collision once other officers arrived on scene.

The affected person described the environmental conditions at the time of the collision as slippery because of the rain.

Subject Officer

The Subject Officer submitted to a voluntary interview by IIO investigators.

The Subject Officer stated that on March 5, 2014, he was on duty, in full uniform, driving an unmarked police SUV, accompanied by his police service dog. The Subject Officer was informed there was a report of a stolen vehicle (* for purposes of clarity, it will be referred to as a scooter) in the area he was patrolling. Another officer had lost sight of the scooter and requested assistance in attempting to locate it.

The scooter in question was described as a limited speed motorbike which was a licensed motorcycle. A description of the driver was also provided. Over the next 70 minutes, both the Subject Officer and another officer searched the area with no success.

At approximately 10:20 a.m., the other officer radioed that he had spotted the scooter, with the same suspect description, coming out of a townhouse, traveling north. The Subject Officer accelerated uphill heading north and spotted the scooter. The Subject Officer advised dispatch via police radio to confirm the license plate of the scooter as stolen, and then gave his location.

The Subject Officer stated he made the decision at that location to pull back, and not activate his lights and sirens in order to build room between himself and the scooter. The Subject Officer stated he wanted to build some resources to set up the arrest so he did not want to “spook” the driver or engage in a pursuit. He referenced police practice not to pursue stolen vehicles unless there were serious property crime or violent offences involved.

The Subject Officer stated that at the top of the hill, the driver turned to look behind him, over his right shoulder, first once, then again “really hard.” “We made direct eye contact and at that point I knew, I knew that he knew I was the police and that I was behind him.” “You can tell a lot of facial expressions, and I believed he knew 100 per cent that I was behind him and we were the police.”

The Subject Officer was asked how the rider would know he was being followed by police, given that there were no lights and sirens deployed on the unmarked vehicle. The Subject Officer stated given the affected person's previous interactions with police, he would have the knowledge that a black SUV would be associated with the PDS (police dog service).

The Subject Officer said the driver then pulled towards the curb to the right, slowing down, leading him to believe the scooter was soon to be "*dumped*," in that the rider would ride it, jump off while it's moving, then run. At this point, the Subject Officer said he was 20-30 feet behind the affected person, and was traveling 25-30 km/hr.

The Subject Officer said he then slowed down and watched as the affected person jumped the curb and veered to the right, onto a sidewalk heading north into Sparwood Park, accelerating, and was then out of view.

The Subject Officer estimated the total travel time was approximately 10 seconds, between the time he first spotted the scooter traveling north, to the time of arrival at Sparwood Park.

The Subject Officer said when he lost visual contact, he stopped his vehicle and did not proceed into the park. The Subject Officer stated he peered around into the park and spotted the affected person approximately 200 feet away. "All I see is the crash, like he's tumbling, and the bike's tumbling, and he's upside down, the bike's down, he's down."

The Subject Officer said he assessed the situation, and watched the affected person "get back up right away, grabs the bike, and tries to kind of push start it, and get moving again, tried to flee a second time. And that I point, I believe I have a very short window of opportunity to arrest him."

The Subject Officer said he scanned the park and saw no one present. In assessing whether to deploy his police service dog (PSD), the Subject Officer said he was concerned about two blind spots on either side of the affected person's location, where the park opened up and is known to be an active walking area.

The Subject Officer stated he made the decision to "roll into the park slowly, decrease my distance," between himself and the affected person, aiming for a 20 foot gap, at which point he would use his PSD to "challenge" the affected person in order to affect the arrest. The Subject Officer said the deployment of the PSD would have occurred if the affected person did not comply.

The Subject Officer stated he drove in at a 45 degree angle to the affected person, travelling at approximately 25 kilometres an hour. There was no visual contact between the Subject Officer and the affected person at this time. The Subject Officer stated that the affected person was trying to push start the scooter and was not looking towards the road.

The Subject Officer said the affected person was on the left side of the scooter, as he tried to push start it. At the 20-30 foot mark, the Subject Officer said he began to apply the brakes to his vehicle when he realised he was sliding. He depressed his brakes fully, the Anti-Lock Braking System activated, and “the truck is just sliding, like it’s just, I’m not sliding fast, but I’m just sliding, I can’t stop.”

The Subject Officer said his vehicle made contact with the right side of the scooter first, while the affected person was on the left side of the motorbike. The Subject Officer described the contact as “light.” “The bike falls down, he falls down, and then they, both the bike and him, get pushed across the mud about 10 feet, approximately.”

The Subject Officer said he then backed up his vehicle, secured his dog, then got out of the vehicle to check on the affected person.

The Subject Officer stated that, from what he could tell, the scooter was always between his vehicle and the affected person, and that no contact between the vehicle and the affected person had been made.

The Subject Officer said he ran to the affected person, touched him, told him he was under arrest for possession of stolen property, and told him not to move as medical assistance would arrive. The Subject Officer asked the affected person whether he was okay and stated that the affected person answered that he was, and complained of pain to his back, in that it was “a little bit sore.”

The Subject Officer did a quick assessment and told the affected person to lie on the ground, and did not use handcuffs on him.

The Subject Officer advised dispatch of his location and the arrest and asked for EHS “Code 3” following a “minor MVA.”

Within five to ten minutes of the collision, the Subject Officer stated that the other officer arrived on the scene.

The Subject Officer described the weather conditions on that day as muddy, slippery, following heavy rains, but more slippery than he would have anticipated. “I thought I could stop the vehicle without an issue.”

Other Witnesses

IIO investigators interviewed responding police officers and a number of civilian witnesses. None of the witnesses actually observed the collision or the circumstances immediately prior to the collision. No significant additional information was obtained from these interviews.

Medical Reports

The physician told an IIO investigator that the affected person suffered “a compression fracture to the L1 vertebrae.” The records indicated that the injury was “load bearing” and “could have occurred either from falling from the scooter and landing on the buttocks or being hit by a vehicle and falling on the buttocks.”

GPS Evidence

Global Positioning Satellite data was obtained from the mobile data terminal associated with the SUV which was being driven by the Subject Officer. GPS data showed the Subject Officer vehicle entering the park while traveling approximately 18 kilometres an hour. The data shows the Subject Officer speeding up to approximately 30 kilometres an hour and traveling at that speed for only a few seconds. Over a period of another few seconds, his vehicle rapidly decreases in speed until it comes to a full stop.

Scene Conditions

The VPD Traffic Accident Analyst observed that the weather was cloudy with periods of rain and approximately six degrees. The roadways were “dry or lightly damp.”

Photographs and documentation showed the road and the entrance to the park. An asphalt pathway led north from the road until it met an east-west asphalt pathway. Fresh tire marks appeared in the muddy grass area of the park leading up to the rear of the police vehicle. There were also 3-4 feet of tire marks beyond the police vehicle consistent with the vehicle backing up after moving forward. There were also markings along the muddy grass area just north of the police vehicle, leading to the scooter and consistent with the scooter being pushed along its side on the grass. A single tire mark was also observed along the grass area of the park consistent with the scooter cutting the corner from a north/south bike/walking path to head eastbound along an east/west pathway.

Photographs depict a gentle grade down from where the Subject Officer’s vehicle entered the park to where the collision occurred

Video Evidence

Although IIO investigators canvassed for video relevant to the incident, none could be located. The Subject Officer’s vehicle was not equipped with in-car video.

ISSUES

The general issue after any IIO investigation is whether a person suffered serious harm or death as a result of the actions of an officer and, if so, how and why. If I consider that an officer may have committed an offence, then I must forward a report to Crown Counsel. There are a number of legal issues to be considered in this case in order to determine whether a report to Crown Counsel must be made.

In this case, I considered the following potential offenses: Assault causing bodily harm; Dangerous Driving, Driving without Due Care and Attention; and various Motor Vehicle offences, including Driving at an Unsafe Speed.

ANALYSIS

The statements provided by the affected person and the Subject Officer are generally consistent with the exception of one point: the affected person asserts that he did not realize he was being followed by the police while the Subject Officer observed behaviour that let him to conclude that the affected person was intentionally attempting to evade arrest.

I do not consider that the Subject Officer intentionally used force by striking the scooter driven by the affected person in order to take him into custody. Given all the circumstances, the Subject Officer's assertion that he was trying to get close enough to the affected person to safely deploy his police service dog is consistent with the evidence. Given his training as a dog handler and the immediate availability of the police service dog, such a tactic would appear to have been a reasonable one. In addition, immediately upon approaching the affected person (and according to the affected person), the Subject Officer made a spontaneous statement that he had tried to stop and that he didn't mean to hit him. Finally, the muddy conditions in the park further corroborate the Subject Officer's explanation for how the collision took place.

The criminal offence of dangerous driving requires evidence of a marked departure from the standard of care of a reasonably prudent driver. *R. v. Beatty*, [2008] 1 S.C.R. 49. For criminal liability, there must be a foreseeable risk or danger. *R. v. Martin*, 2012 BCCA 194.

The Subject Officer had cause to drive his vehicle in the park, in order to get close enough to the affected person to make an arrest through the use of his police service dog. His speed did not exceed 30 kilometres an hour and he drove at that speed for only a short period of time. He had cause to attempt to approach the affected person fast enough to be able to stop and deploy his dog before the affected person had the opportunity to flee. The Subject Officer drove down a gentle grade. It was 10:18 a.m. and there were no issues regarding visibility. There is no evidence of any other people in the area at the time.

It is clear that the Subject Officer braked too late as he approached the affected person and subsequently skidded into him. The photographs suggest that the police vehicle dragged the affected person about ten feet in the wet grass. Considering his slow speed, it appears that the Subject Officer misjudged his braking by a fair distance. Muddy conditions and the slight downward slope of the terrain would, however, explain this sliding distance.

Both the affected person's account and the photographs suggest that, prior to striking the affected person, the Subject Officer's vehicle crossed over the east-west pathway. One would expect this type of path to offer reasonably good traction. It would have been objectively reasonable for the Subject Officer to expect that the presence of the walkway would give him an opportunity to stop prior to reaching the affected person's position and therefore sliding across the pathway was not a reasonably foreseeable risk.

Given these circumstances, there is no reason to believe that the Subject Officer committed the offense of Dangerous Driving.

I considered whether the Subject Officer may have committed a driving offence such as Driving without Due Care and Attention. Even if I were to assume that the Subject Officer drove in a manner which would offend some section of the *Motor Vehicle Act*, he could not be prosecuted under that Act because the relevant offences under that Act are all defined in terms of behaviour "on a highway." The park and its pathways do not fall under the definition of "a highway."¹

Finally, I do not consider that by driving in a City Park, that the Subject Officer committed any other criminal offence. I specifically considered a Vancouver Parks Control By-law (PCB) (subsection 14(f)) which provides that "no person shall (without permission of the General Manager) drive any vehicle over any grass area or flower bed in any park." With consideration to this violation, however, there is no reason to believe that this bylaw applies to a police vehicle actively engaged in pursuing a stolen vehicle that enters the grass areas of park property in order to lawfully apprehend its operator.

While there is no express exemption in the PCB for the police or police vehicles, from the general prohibition provisions of the by-law, support for this position is based upon an analysis of the entire PCB, including the purpose of the by-law and the application of the rules of statutory interpretation, and the following factors:

- (1) the interpretation section of the PCB distinguishes between a "vehicle" and an "emergency vehicle," the latter of which definition includes "any vehicle ...of the... City Police Department(s)." While the PCB does not specifically make provision for the operation of emergency vehicles on park property, the fact of the distinction being

¹ *ICBC v. Bruneau*, 2000 BCSC 786.

made between these types of vehicles in the interpretation section suggests that emergency vehicles are not caught by the generally applicable provisions in the PCB that do apply to simply “a vehicle” (i.e., all other non-emergency vehicles);

(2) the PCB also distinguishes between “no person,” “any other person,” and “a Peace Officer” again suggesting that peace officers are distinct from, and do not fall within the scope of the meaning of a “person” for the purposes of the s. 14(f) prohibition provision. This provides an additional basis to support the position that the PCB prohibition against driving a vehicle on park grass areas simply was not intended to apply to a peace officer driving a police vehicle while lawfully engaged in performing his/her duties;

(3) to interpret the PCB as applying to a peace officer operating a police vehicle in these circumstances, so as to make it a by-law offence for a police vehicle to drive on grass areas of a park, would lead to some ludicrous results, such as the police would also be committing a PCB by-law violation by parking a police vehicle in any area of a park that was not a street, or in a no parking area, regardless of the reason or need for the police to be doing so – be it for public safety, or apprehending criminals, or whatever other lawful duty the police officer is performing.

DECISION

Based on the evidence obtained during the course of this investigation, I do not consider that the Subject Officer may have committed an offence in relation to this motor vehicle collision. As such, the IIO file will not be referred to Crown Counsel for consideration of possible charges.

It is the role of the OPCC and the VPD to examine the conduct of all involved members in the execution of their duties against applicable training, policies, procedures and guidelines and where applicable, take remedial action. These issues fall outside the mandate of the IIO. However, as per normal practice, the IIO file will be provided to the Professional Standards Unit investigators assigned to this file and will necessarily be included in any administrative review of the incident.

Prepared for release 20th day of August, 2014 by

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