



PUBLIC REPORT OF THE  
CHIEF CIVILIAN DIRECTOR

Regarding the injuries sustained by an adult male on May 12, 2014, involving an officer employed by the Central Saanich Police Department.

IIO 2014-000086

## 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 of the IIO (CCD), 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.

This is a public report related to an investigation into the injury of an adult male that occurred on May 12, 2014 in the city of Saanich. The affected person sustained serious injuries after a motor vehicle collision. Prior to the collision, a Central Saanich Police Department officer was attempting to make a traffic stop on the affected person’s vehicle.

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. In this report, I will not be using the name of the affected person or of any other person involved in this matter.

Further, I am significantly limited in the information I can presently disclose about this particular case as there is the potential for criminal charges to be laid against the affected person. To provide the information that would normally be disclosed in a public report would have the potential of interfering with the fairness of any subsequent criminal proceeding or trial.

## **NOTIFICATION AND JURISDICTION DECISION**

On May 12, 2014, the IIO was notified of a motor vehicle collision that resulted in serious injuries to the affected person. The crash took place in the City of Saanich, British Columbia. According to the notification, a Central Saanich Police officer reported that he was attempting to make a traffic stop of the affected person's vehicle immediately preceding the crash.

The IIO asserted jurisdiction to determine whether or not the affected person's injuries were the result of a police officer in British Columbia and whether or not a police officer committed any offence in relation to those injuries.

## **INVESTIGATIVE EVIDENCE CONSIDERED**

Information was obtained from interviews with the affected person and with civilian witnesses. In addition, the IIO obtained and reviewed the Traffic Reconstruction Report as well as the GPS data from the subject officer's vehicle. The subject officer provided consent for the IIO to review his "duty to account" report. In addition, the subject officer provided two additional written statements.

### **GPS Data**

Global Positioning Data (GPS) from the subject officer's vehicle was obtained and reviewed by the IIO. The data indicates that the subject officer drove a total of 5.5 kilometres from the point he began pursuing the affected person's vehicle to the point of the crash. The subject officer's vehicle took a total of six minutes and 50 seconds to travel that distance. He drove in excess of the posted speed limit for almost three minutes.

## **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 specifically whether the subject officer may have violated:

1. Section 249(1) or 249(3) of the *Criminal Code* – Dangerous Driving or Dangerous Driving Causing Bodily Harm; or
2. Section 144(1) of the *Motor Vehicle Act* -- Driving Without Due Care and Attention.

The criminal offence of dangerous driving requires a marked departure from the standard of care of a reasonably prudent driver *R. v. Beatty*, [2008] 1 S.C.R. 49 and for subs. (3) the element

of causation of bodily harm requires that the criminally negligent conduct of the accused be at least a contributing cause....outside the *de minimis* range *R. v. Smithers*[1978] S.C.R. 506.

#### Drive Without due Care and Attention

Section 144(1) of the *Motor Vehicle Act* which provides: “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, or (c) at a speed that is excessive relative to the road, traffic, visibility or weather conditions.” In order to support a violation of s. 144(1), it must be established that the subject officer’s driving, in consideration of “all the surrounding circumstances, depart[ed] from the accustomed sober behaviour of a reasonable man...” (See *R. v. Funk*, 2005 BCSC 1873.)

#### **ANALYSIS**

The evidence in this case indicates that the affected person was driving dangerously from the time he was first observed by the subject officer to the time of the crash. The evidence does not conclusively establish whether or not the affected person knew he was being followed by or was in flight from the subject officer. All of the evidence however, supports that the subject officer was not immediately behind the affected person at any time during the course of the pursuit.

The evidence indicates that the subject officer attempted to stop a dangerous driver, as he is expected to do as part of his official duties. Police officers are permitted to drive in excess of the posted speed pursuant to Motor Vehicle Act Section 122 as long as the officer drives “with due regard for safety, having regard to all the circumstances of the case, including the following: (a) the nature, condition and use of the highway; (b) the amount of traffic that is on, or might reasonably be expected to be on, the highway; (c) the nature of the use being made of the emergency vehicle at the time.”

In this case, the subject officer drove in excess of the posted limit for approximately three minutes. The posted limit varied from 40 kilometres per hour to 60 kilometres per hour along the entirety of the route. Although the subject officer drove significantly in excess of the speed limit (at or over 120 kilometres an hour), the period of time ranged from three to 12 seconds.

There is no evidence that the subject officer’s driving put any person in danger or was the type of police driving prohibited by law. Road conditions were dry; there was good visibility and little traffic. The subject officer had activated his emergency equipment to alert anyone who may have been in the area.

Further, there is no evidence that the subject officer’s driving was a contributing cause of the affected person’s dangerous driving or the crash and subsequent injury.

As such, there is no reason to believe that the subject officer acted outside the “standard care of a reasonably prudent” person or police officer, nor that he “depart[ed] from the accustomed

sober behaviour of a reasonable driver.” Similarly, there is no evidence to support that the subject officer’s driving unduly endangered any person such that a violation of Section 144(1) may have occurred.

**Conclusion and Decision of the Chief Civilian Director**

Since there is no reason to believe that the subject officer may have committed any offence in this case, the IIO file will not be referred to Crown Counsel for consideration of possible charges.

Richard Rosenthal,  
Chief Civilian Director

November 26, 2014