



PUBLIC REPORT OF THE
CHIEF CIVILIAN DIRECTOR

Regarding the injury to a child on July 9,
2014, involving an off duty officer employed
by the RCMP in Surrey.
IIO 2014-000121

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 sustained by a child that occurred on July 9, 2014, in the city of Surrey. The child sustained serious injuries in a motor vehicle crash involving a member of the child’s family and an off duty RCMP officer.

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, to 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, as the affected person is a child, some information will not be included in order to protect her privacy.

NOTIFICATION AND JURISDICTION DECISION

On July 9, 2014, a crash occurred at the intersection of 184th Street and 40th Avenue in Surrey. The driver of the SUV was an adult travelling with two family members – one was the affected person. The driver of the other vehicle, an F-150 truck, was identified as an off duty police officer.

The Independent Investigations Office (IIO) was notified immediately and asserted and sustained jurisdiction as the affected person's injuries fell within the definition of "serious harm" as defined in the *Police Act*. The *Police Act* definition includes injuries that result in "serious disfigurement," or "a substantial loss or impairment of mobility of the function of any limb..."

Investigative Evidence Considered

IIO investigators reviewed the interviews (conducted by the RCMP) with the driver of the SUV and two civilian witnesses. The subject officer declined to provide a statement, which is his right under the *Charter of Rights and Freedoms*.

In addition, the IIO obtained the Collision Reconstructionist Report from the RCMP.

Collision Scene

The collision occurred at the intersection of 184th Street (which is a two lane road with northbound and southbound lanes) and 40th Avenue (a two lane road with an eastbound and a westbound lane.) The speed limit on both streets is 60 kilometres per hour. Traffic control devices at the intersection consist of stop signs for eastbound and westbound traffic on 40th Avenue. There are no traffic control devices or stop signs for traffic on 184th Street.

Interview with the Involved Driver

The driver of the SUV submitted to a voluntary interview with the RCMP on July 23, 2014.

The driver stated that on the date of the incident, she was driving with two family members in the vehicle. The driver stated that she had never been to the area prior to the date of the crash.

The driver stated that, while driving, she was talking to her passengers. She stated that the posted speed was 50 kph and she was driving up to 50 kph because it was a single lane road and the road conditions were not very good.

The driver stated that while driving on 184th Street, she was distracted by her passengers. She turned her neck slightly to look at her passengers and by then she had missed the stop sign. She stated she did not know how she missed the stop sign. The driver stated that she was not speaking on the cell phone but was distracted by her passengers and only became aware of the other vehicle after it hit her vehicle.

Civilian Witnesses

Two independent witnesses were identified and interviewed by the RCMP. The interviews were audio recorded and obtained by the IIO.

Civilian witness 1 stated she was a passenger in a car heading northbound on 184th Street towards Highway 10. While approaching 40th Avenue she saw a black SUV go through the intersection and a Ford F-150 (the vehicle driven by the subject officer) “T-bone” the SUV. The SUV was traveling east on 40th Avenue. The SUV failed to stop at the stop sign.

Civilian witness 1 stated that the truck was southbound on 184th Street. The collision occurred in the middle of the intersection. The SUV was struck on the rear driver’s side door. Civilian witness 1 was 100- 200 feet back from the intersection. Civilian witness 1 did not know how fast the SUV was going but it was “definitely fast”. She estimated 70 or 80 kph, “speeding through the intersection.” Not only did the SUV not stop for the stop sign, it did not appear that it slowed down at all.

Civilian witness 2 observed the collision from the southwest corner of the intersection. He heard a crash, looked out the window, and saw a truck hit something and stop instantly.

Prior to the collision, civilian witness 2 saw the truck pass his window. It was his view that speeding was a frequent occurrence on 184th Street but that the truck wasn’t “overly speeding”. He estimated that the truck was going 70 kph. He said “you can tell when they hit past 80.” Civilian witness 2 looked down after seeing the truck and that is when he heard the crash. When he looked up the truck was stopped.

Expert Evidence – Traffic Reconstruction Report

A traffic reconstruction report was prepared by an expert employed by the RCMP and was reviewed by the IIO Reconstructionist.

The reconstruction report described view obstructions for both eastbound and northbound traffic. These obstructions consisted of an “ATCO” style trailer, a metal shipping container and dirt mounds located on the southwest corner of the intersection. The report also described physical evidence at the scene including scrape marks, tire marks, a displaced chain link fence post on the northeast corner of the intersection, a displaced yellow painted concrete barrier, broken glass, exterior vehicle components and auto fluid.

Both vehicles were noted to be located off the roadway at the northeast corner of the intersection. The SUV was on its right side facing southeast. The primary damage to the SUV was to the right side. The Ford F-150 was upright resting on top of the yellow painted barrier. The F-150 was facing southeast. The primary damage to the F-150 was to the front end.

The driver’s side rear light assembly from the SUV was examined and there was no evidence of stretching or “hot shock”. The Reconstructionist concluded that neither the brake light nor turn signals were illuminated at the time of the collision.

The Reconstructionist concluded that the evidence was consistent with the collision having occurred while the Ford F-150 was traveling north on 184th Street and the SUV travelling east on 40th Avenue. The report also concluded that due to the view obstructions it was likely that one or both drivers failed to see the other vehicle. It was also noted that there were no obstructions obscuring the view of the stop sign on 40th Avenue for eastbound traffic.

The report was unable to address the issue of the speed at which either vehicle was travelling.

The IIO Reconstructionist reviewed the report and noted that there were two possible ways to determine speed. One method was via the crash data recorder; however in this case, it did not record the necessary data. The IIO Reconstructionist opined that “the dynamics of the truck to final rest account for the EDR [event data recorder] not recording all the data in the crash.”

The second method for determining speed was through the use of calculations from “impact velocity from conservation of linear momentum.” In this case, he formed the opinion that these calculations could not be performed due to the truck being “high centered” onto a barrier and the SUV rolling over onto the passenger side.

The IIO Reconstructionist formed the opinion that the speed of the truck could not be determined by any known means. However, he concluded that based on the final resting positions of the vehicles, high speeds were not a factor in the collision. If high speeds were a factor one would expect to find the vehicles further into the field (on the northeast corner of the intersection).

There was no indication of any evidence that would support that either driver was driving while impaired or distracted through the use of a cell phone.

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 on or off duty 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.

ANALYSIS

The evidence appears clear that the cause of the collision was the driver of the SUV's failure to see the stop sign which required her to yield to traffic driving on 184th Street. She was distracted by her passengers, ran the stop sign and was subsequently struck by the vehicle driven by the subject officer, an off duty RCMP member.

In civilian witness 1's statement to the RCMP, she stated that the subject officer's vehicle was traveling southbound on 184th. In actuality, the physical damage to the vehicles and the scene examination (as well as civilian witness 2's statement) support that the subject officer's vehicle was actually traveling northbound on 184th. Regardless, civilian witness 1's description of the SUV having been driven through the 40th Avenue stop sign was consistent with the driver's statement in that regard. As such, civilian witness 1's inaccuracy regarding the subject officer's direction of travel is not of particular significance.

S.249 of the *Criminal Code of Canada* reads: (1) everyone commits an offence who operates

(a) a motor vehicle in a manner that is dangerous to the public, having regard to all the circumstances, including the nature, condition and use of the place at which the motor vehicle is being operated and the amount of traffic that at the time is or might reasonably be expected to be at that place;

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.

Section 144(1) of the *Motor Vehicle Act* 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 a person'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.)

There is no evidence that the off duty police officer drove in a manner that would violate either of these statutory provisions nor is there any other evidence that he committed any other offence. The RCMP has jurisdiction over any driving offence committed by a civilian. The IIO has no jurisdiction in that regard.

CONCLUSION AND DECISION

Based on the evidence obtained as a result of the investigation, I cannot conclude that any officer may have committed any offence in this case. As such, no further action will be taken by the IIO and I will not be making a Report to Crown Counsel for consideration of possible charges.

CCD Decision Written on February 2, 2015.

Public Report Prepared for Release on February 23, 2015.

Richard Rosenthal
Chief Civilian Director