



**IN THE MATTER OF THE INJURY OF A FEMALE  
IN CONNECTION WITH THE ACTIONS OF A MEMBER OF THE  
RCMP IN VIEW ROYAL, BRITISH COLUMBIA  
ON SEPTEMBER 12, 2019**

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

Chief Civilian Director:	Ronald J. MacDonald, Q.C.
IIO File Number:	2019-175
Date of Release:	July 21, 2020

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## **Introduction**

At about 4:30 p.m. on September 12, 2019, the Subject Officer ('SO') was driving a marked police vehicle northbound on Admirals Road in View Royal. As he was turning right into Seenupin Road his vehicle was involved in a collision with a bicycle operated by the Affected Person ('AP'). AP was thrown over the hood of the police vehicle onto the pavement and was seriously injured. 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 three civilian witnesses and two witness police officers;
- evidence from a concurrent RCMP investigation;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- video from SO's police vehicle Watchguard video recorder; and
- information provided by the B.C. Ministry of Highways.

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. In this case, SO declined to provide any account to the IIO.

## **Narrative**

On the afternoon of September 12, 2019, Civilian Witness 1 ('CW1') was driving northbound on Admirals Road in Esquimalt. CW1 said that as it was rush hour, traffic was "pretty heavy", and visibility was poor due to heavy rain. CW1 said he saw SO exiting Thomas Road on the west side of Admirals, and let the officer into the line of northbound traffic, which was temporarily stalled. As the traffic moved on again, CW1 said, he saw that SO was making a right turn onto Seenupin Road, about one hundred metres north of Thomas Road.

CW1 said that his own vehicle's lights were turned on, like most of the other traffic on the road, and he noticed that the lights on SO's vehicle were not illuminated. He said he saw SO's brake lights flash as SO slowed for the right turn, but said that SO did not use his turn signal. Questioned further on this point by IIO investigators, CW1 said he was quite certain SO did not signal the turn.

CW1 said that as SO turned he saw a cyclist (AP) overtake to his right and collide with the front right quarter of SO's vehicle. AP was thrown over the front of SO's vehicle and landed in the roadway, suffering what appeared to be serious injuries. CW1 said that he and SO "kept her as comfortable as we could until an ambulance arrived".

Interviewed by a police investigator in connection with a potential *Motor Vehicle Act* charge against AP, CW1 said that he did not see any front light on AP's bicycle. Asked about SO's turn signal, CW1 said that the reason he clearly remembered it not being used was that the police were "always on us for not doing it, that's why it stuck with me".

Front and rear facing video cameras in SO's police vehicle recorded the incident. In the rear-facing footage, AP can be seen approaching along the shoulder at a speed significantly higher than the vehicular traffic. She is wearing dark clothing and no front light is visible on her bicycle. The front facing camera records SO completing a partial turn to the right and AP colliding with the front of his vehicle. GPS data shows SO slowing from approximately 24 km/h as he approaches the intersection, his speed dropping into the single digits as he turns and then immediately stops after the collision. After coming to a halt, SO can be seen exiting his vehicle while radioing for assistance, and attending to AP as she lies on the ground.

AP had been following her usual route from work, northbound on Admirals Road. While it is still within the township of Esquimalt, Admirals Road features a marked, designated bike lane on each side, one northbound and one southbound. However, at the boundary between Esquimalt and the Songhees First Nation, the periodic stencilled 'bike lane' symbols in the northbound lane cease, as the lane is no longer a bike lane. At law, it is now simply a paved and more narrow shoulder. Consistent with this, about one hundred and fifty metres farther along the road there is a permissive sign indicating that cyclists may ride on the sidewalk.

Asked by the IIO for analysis regarding these matters, CW2, a senior manager with the B.C. Ministry of Transportation and Infrastructure, confirmed that the delineated lane in which AP was riding at the time of the collision was not a 'designated bike lane'. While a cyclist can continue on the paved shoulder they no longer enjoy the privileges that a designated bike lane offers. Specifically, they are no longer permitted to pass another vehicle on the right hand side. While the signage might be more specific to designate the end of the bike lane, the lack of stencils on the road as well as the much narrower lane does this. In spite of multiple requests, AP did not provide the IIO with a statement, which makes it impossible to know what AP actually knew or did not know about the roadway. However, by law she is expected to understand she was no longer in a bicycle lane.

## **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 committed the offence of driving without

due care and attention or of failing to signal a turn, both of which are offences under the *Motor Vehicle Act*.

A driver in SO's circumstances, intending to make a turn, must take reasonable care to ensure that the manoeuvre does not either cause an actual collision, or cause another road user to take urgent evasive action to avoid such a collision. If AP were travelling in a legitimate parallel lane of traffic—a 'designated bike lane'—then SO's duty would be particularly onerous. However, AP was riding on what was, in law, only a paved shoulder, which is no more than an extension of the northbound lane in which SO was driving. As noted, while she could continue to drive on the roadway, she was not permitted to pass vehicles on the right hand side. That may have meant she had to stop when the traffic stopped. Of course, she had the option to simply mount the sidewalk and ride unimpeded, which at this point she was specifically permitted to do. That being so, her act of passing SO on the right was unlawful, and the duty upon SO to check for another vehicle unlawfully passing in that manner was somewhat reduced accordingly.

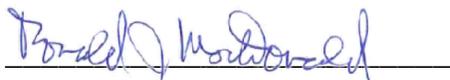
That is not to say that SO was not under any legal duty to take reasonable steps to check that his turn could be executed safely. On the evidence, though, it cannot be said that there are grounds to conclude he did not take such reasonable steps. Visibility was poor, and the video from SO's vehicle demonstrates that AP was difficult to see as she passed several vehicles on the right hand side, travelling quite a bit faster than the slow line of traffic. Any reasonable shoulder check could quite easily miss a bicycle that was difficult to see and unexpectedly passing in an unlawful manner. Thus there are no grounds to believe that SO's apparent failure to see AP was caused by any negligence on his part.

With respect to the failure to signal, the evidence is clearer. CW1 gave a firm and detailed account of his observations, and he was in an ideal position to make those observations, as he was following directly behind SO at the time. There is no positive evidence from any source that SO signalled before starting the turn, and persuasive evidence that he did not.

The *Motor Vehicle Act* makes failure to signal a turn an offence only "[i]f traffic may be affected by turning a vehicle". In this case, there was no traffic of which SO could reasonably have been aware that would be affected by his turn. Any oncoming traffic could not proceed to turn left into Seenupin Road, whether SO was turning or proceeding straight through the intersection, and the video evidence does not disclose any vehicular traffic or pedestrians in or around Seenupin that would have been affected. While AP was affected by the turn, SO could not reasonably have been aware of her presence, given the poor visibility and the fact that at law he would not expect traffic to be passing to his right. The only road user affected was CW1, who was affected not by the turn but by the braking and slowing that accompanied it, and he was alerted to that decrease in speed

by the operation of SO's brake lights. From CW1's perspective, the turn itself was inconsequential, and he received adequate notification of what did matter to him, the reduction in SO's speed.

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

July 21, 2020

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