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21-02

No charges approved following motor vehicle incident involving Surrey RCMP Officer

Victoria – The BC Prosecution Service (BCPS) announced today that no charges have been approved against a member of the Surrey RCMP involved in an attempted traffic stop on January 7, 2020 of a suspected impaired driver. The suspect driver refused to stop for the officer and engaged in driving that culminated in a single vehicle rollover. The driver suffered serious injuries in the rollover.

Because of the serious nature of the injuries, the incident was investigated by the Independent Investigations Office (IIO). Following the investigation, the Chief Civilian Director of the IIO determined that there were reasonable grounds to believe the officer may have committed offences and submitted a report to the BCPS (IIO file #2020-002).

In this case, the BCPS has concluded that the available evidence does not meet the BCPS's charge assessment standard. The BCPS is not able to prove, beyond a reasonable doubt, that the officer committed any offence in relation to the incident. As a result, no charges have been approved. A Clear Statement explaining the decision in more detail is attached to this Media Statement.

In order to maintain confidence in the integrity of the criminal justice system, a Clear Statement explaining the reasons for not approving charges is made public by the BCPS in cases where the IIO has investigated the conduct of police officers and forwarded a report for charge assessment.

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Clear Statement

Synopsis

On the evening of January 7, 2020, while engaged in an investigation of a suspected impaired driver, a Surrey Police officer (the Officer) apparently committed several driving offences as the Officer first closed the distance from the suspect, attempted a traffic stop and pursued the fleeing suspect. While the provisions of section 122 of the *Motor Vehicle Act* (MVA) provide exemption from compliance with traffic controls for peace officers engaged in the lawful execution of their duties, the exemptions will not be available where the driving conduct of the police is dangerous to the public or otherwise constitutes driving without due care and attention.

In assessing the conduct of the Officer in this case the BCPS has considered whether the driving was dangerous as defined in section 320.13 of the *Criminal Code*, careless, as defined in section 144 of the MVA or otherwise an infraction of any other provision of the MVA. The BCPS has concluded that the charge assessment standard for approving charges has not been met for any offences in this case.

Summary of evidence

On the evening in question the Officer was on duty in Surrey driving an unmarked Ford Explorer police vehicle equipped with lights and siren. This vehicle was also equipped with a WatchGuard system, which records the view ahead of the vehicle; the date and time; GPS coordinates of the vehicle; the speed at which the vehicle is travelling; and the engagement of brakes, emergency lights, and sirens. The majority of relevant events were captured by the WatchGuard video.

At approximately 9:30 pm, the Officer began following a suspected impaired driver travelling westbound on 101A Avenue. The WatchGuard video shows the Officer following a green Nissan. The video shows that the Officer then turned right to travel north on 154th St., following the Nissan.

The WatchGuard video shows that the Officer accelerated rapidly on 154th Street, closing the distance between the Officer's vehicle and the Nissan. The video shows the Officer travelling in excess of the 50 km/hr posted speed limit for 17 seconds, momentarily reaching a maximum speed of 109 km/hr. The video shows no other vehicles travelling in the same direction other than the Nissan which is, initially, a significant distance ahead. In the 17 seconds during which they were travelling in excess of 50 km/hr, the Officer did not engage the emergency lights or sirens. The Officer then stopped behind the Nissan at a red signal at the junction with 104th Avenue before following the vehicle as it turned right on 104th Avenue.

The Officer drove eastbound on 104th Avenue at an apparently reasonable distance behind the Nissan, with both vehicles travelling in the lane closest to the median. The WatchGuard video then

shows the Officer's vehicle exceeding the speed limit of 50km/h for a total of nine seconds, reaching a maximum speed of 83 km/hr. The Officer's emergency lights were activated three seconds after exceeding the speed limit and their siren was briefly engaged. During this time, the Officer passed two cars in the curbside lane, which appeared on the video to slow to allow them to pass.

The Officer then attempted a traffic stop of the Nissan close to the intersection with 155A Street. As the Nissan entered the intersection, the driver indicated an intention to pull over to the curb lane. Once the Nissan had passed through the intersection with 155A Street, it pulled over close to the curb, but did not come to a complete stop and moved slowly forward for 29 seconds. As the Officer drove behind the Nissan at a reasonable distance in the curb lane, the Officer engaged their siren in two brief bursts.

As soon as the traffic signals ahead at the intersection of 104th Avenue and 156th Street turned yellow, the Nissan accelerated rapidly through the intersection. The signal turned red as the Nissan crossed the westerly crosswalk.

Having passed through the intersection at 156th Street, the Nissan can then be seen on the WatchGuard video travelling at high speed and weaving through traffic before pulling significantly ahead of the Officer's vehicle. The Nissan is seen to travel around a left-hand bend on 104th Avenue and is then largely obscured by trees in the median and oncoming traffic. Some moments later it is apparent on the video that the Nissan had lost control and left the roadway, shortly after passing through the intersection with 104th Avenue South.

After the Nissan pulled away at speed, the Officer followed and proceeded through the intersection of 104th Avenue with 156th Street while its signal was freshly red. The Officer passed through the intersection in the curbside lane at a speed of 51 km/h with emergency lights still engaged as they had been prior to and throughout the attempted stop. The video footage shows two cars stopped in the two northbound lanes of 156th Street. They do not appear to have begun to move forwards into the intersection at the time the Officer crossed. There are no vehicles visible in the 156th Street's southbound lanes.

The WatchGuard video records the Officer accelerate after passing through the intersection with 156th Street, reaching speeds up to 98 km/h as they passed three other vehicles which slowed to allow the Officer to pass. According to the WatchGuard video, the Officer's vehicle continued to accelerate, reaching a maximum speed of 112 km/h before the Officer engaged their brakes and then stopped at the intersection with 104th Avenue South. In the period before the Officer began to brake, the distance between the Nissan and the Officer's vehicle appeared to increase.

A City of Surrey Traffic Camera video which captured vehicles traveling eastbound from just prior to the intersection of 104th Avenue and 104th Avenue South shows the Nissan entering the video

straddling both the eastbound travel lanes of 104th Ave as it negotiates a slight left-hand curve. The Nissan continued to move into the right-hand lane and was travelling somewhat to the right side of that lane as it passed through the intersection of 104th Avenue and 104th Avenue South. Thereafter, it is apparent that the driver has lost control of the Nissan as the rear lights are seen to move uncontrollably in a clockwise direction as the front of the vehicle spins to the right and the vehicle is clearly starting to leave the roadway. The final portion of the video shows the Nissan to have almost entirely left the roadway.

A traffic reconstructionist determined that the Nissan flipped three times and, based on an analysis of City of Surrey traffic camera footage, was travelling at 114km/h just before losing control.

After stopping at the intersection with 104th Avenue South, the Officer reported via their police radio "I'm at ... 104 and 160 just at the Highway 1 onramp. I had a vehicle take off from me and it looks like he crashed pretty bad." The Officer then proceeded through the intersection against a red light, with emergency lights engaged. Additional RCMP members, fire department, and ambulance personnel attended the scene. The driver of the Nissan was admitted to hospital in critical condition and was diagnosed with a spinal cord injury. Comments made by the Officer to other officers that attended the scene indicate that the Officer suspected the driver of the Nissan was impaired when they initiated the stop.

The applicable speed limit for the entirety of the Officer's route was 50 km/h. The temperature at the time of this incident was approximately 7° Celsius, the sky was cloudy, and the road surface was wet with water pooling on the roadway surface.

This Clear Statement provides a summary of the evidence gathered during the IIO investigation and the applicable legal principles. These are provided to assist in understanding the BCPS's decision not to approve charges against the officer involved in the incident. Not all the relevant evidence, facts, case law, or legal principles are discussed.

The charge assessment was conducted by Crown Counsel with no prior or current connection to the officer who was the subject of the investigation.

Charge Assessment

The Charge Assessment Guidelines that are applied by the BCPS in reviewing all RCCs are established in BCPS policy and are available at:

www.gov.bc.ca/charge-assessment-guidelines

BCPS guidelines for assessing allegations against Police Officers are also established in policy and are available at:

www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/prosecution-service/crown-counsel-policy-manual/pol-1.pdf

The BCPS applies a two-part test to determine whether charges will be approved, and a prosecution initiated. Crown Counsel must independently, objectively, and fairly measure all available evidence to determine:

1. whether there is a substantial likelihood of conviction; and, if so,
2. whether the public interest requires a prosecution.

Under BCPS policy, a substantial likelihood of conviction exists when Crown Counsel is satisfied there is a strong, solid case of substance to present to the court. To reach this conclusion, a prosecutor will consider what evidence is likely to be admissible and available at trial; the objective reliability of the admissible evidence; and the likelihood that viable, not speculative, defences will succeed.

In making a charge assessment, Crown Counsel must consider the presumption of innocence, the prosecution's burden of proof beyond a reasonable doubt, and the fact that under Canadian criminal law, a reasonable doubt can arise from the evidence, absence of evidence, or inconsistencies in the evidence. The person accused of an offence does not have to prove that they did not commit the offence. Rather, the Crown bears the burden of proof from beginning to end.

Charges considered

The potential charges considered in this case were dangerous driving contrary to *Criminal Code* section 320.13(1), dangerous driving causing bodily harm contrary to *Criminal Code* section 320.13(2), driving without due care and attention contrary to the *Motor Vehicle Act* section 144, exceeding the posted speed limit contrary to the *Motor Vehicle Act* section 140 and proceeding against a red traffic signal contrary to the *Motor Vehicle Act* section 129.

Relevant Law

The elements of the offence of dangerous driving are set out in section 320.13(1) of the *Criminal Code*:

Everyone commits an offence who operates a conveyance in a manner that, having regard to all the circumstances, is dangerous to the public.

Determining whether driving meets the criminal standard requires an analysis of whether the available evidence establishes that the person's driving was objectively dangerous to the public in light of all the circumstances. These circumstances have been taken to include the nature,

condition and use of the place at which the vehicle is being operated and the amount of traffic that is or might reasonably be expected to be at that place. Additionally, the available and admissible evidence must demonstrate that the person's mental state rose to the level of a marked departure from the standard of care expected of a reasonable driver in the same situation. A momentary lapse of attention is not enough to make out the mental element of the offence.

The requisite mental state can be inferred either by direct evidence of the driver's intentions or from evidence of a driving pattern that constitutes a marked departure from what would be expected of a reasonably prudent person in the circumstances.

Dangerous driving causing bodily harm additionally requires proof that the dangerous operation was a significant contributing cause of the bodily harm.

Section 144 of the *Motor Vehicle Act* provides, in part, as follows:

Careless driving prohibited

144(1) 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,

Analysis

In considering whether an offence has occurred, it is necessary to evaluate the driving pattern demonstrated by the Officer with regard to all the circumstances. Aspects of the driving pattern which might be considered dangerous include:

- traveling through intersections when the traffic light was red
- exceeding the speed limit after the attempted traffic stop
- the limited use of emergency equipment

Passing through signals on red

The Officer passed through two intersections against a red traffic light, the first immediately after attempting to stop the Nissan and the second after the Nissan lost control and left the roadway. On the first occasion, as noted above, after initially slowing and pulling over to the curb the Nissan suddenly accelerated rapidly through a yellow traffic signal at the intersection of 104th Avenue and 156th Street. The Officer followed the Nissan, passing through the red signal light travelling at 51km/h. While they did not come to a complete halt immediately prior to entering the intersection, they had been travelling at a slow speed (below 10km/h) for almost 30 seconds and had engaged their emergency lights for some 45 seconds prior to entering the intersection as well as sounding

the siren less than ten seconds before they did so. The video shows vehicles with the right of way at the intersection were still stationary. There is no indication of any vehicles entering the intersection southbound on 156th Street or any other indication that the Officer failed to keep a proper lookout as they moved through the red signal.

The Officer passed through a second traffic signal on red at the intersection of 104th Avenue with 104th Avenue South. They had observed the Nissan lose control and overturn in what was an obviously serious collision. Prior to passing through this intersection, the Officer's vehicle came to a full stop and they allowed two vehicles to pass in front of them. At the time they moved forwards into the intersection, the Officer's emergency lights had been engaged for 11 seconds.

There is no substantial likelihood that the Crown could prove, beyond reasonable doubt, that either of these maneuvers was dangerous to the public given the steps and the care taken by the Officer in completing them.

Excess Speed / Use of Emergency Equipment

Although the evidence indicates the Officer drove in excess of the applicable speed limit on three occasions, at times without full use of the emergency equipment, there is no evidence that their speed during this period or the limited use of their emergency equipment was dangerous to the public. There is no evidence to prove that the Officer's speed, during the times they travelled above the legal limit, was such as to impair their ability to control the vehicle or observe other traffic or pedestrians, there is no evidence that they impeded the passage of other vehicles or caused them to change course other than to slow appropriately to allow the officer to pass and there is no evidence that the failure to employ their full lights and siren throughout placed any road users at risk.

These speeds alone do not constitute proof of dangerous driving in the absence of evidence that the driver's ability to respond adequately to road conditions or the presence of others on the road was compromised or the speeding was accompanied by other dangerous maneuvers.

In this case the Officer retained control of the vehicle and maneuvered around the vehicles they passed without causing any apparent danger or risk to them and used lights and siren as necessary to warn other road users of their presence. There is no substantial likelihood that the Officer's driving at this stage would be found to be dangerous to the public having regard to all the circumstances.

As there is no substantial likelihood of proving that the Officer's driving was dangerous as defined in the *Criminal Code* there can be no charge of dangerous driving causing bodily harm.

Even if it could be argued the Officer's driving was dangerous, there is no evidence that the Officer's driving caused the Nissan's driver to drive as they did. Nor is there evidence to prove to the required standard that the Officer's actions were dangerous to the public by reason of the effect they were likely to have on the conduct of the driver of the Nissan.

It is also significant that the WatchGuard video suggests that, at the time at which the Officer engaged their brakes, they made the decision to cease any attempt to keep up with the Nissan or keep the vehicle in view prior to the Nissan losing control.

Driving without due care and attention/ reasonable consideration for other persons using the highway contrary to section 144 of the *Motor Vehicle Act* (MVA)

The evidence of the WatchGuard video does not establish that the Officer drove at any stage in a manner which was "improper, careless, or inconsiderate" or "departed from the accustomed sober behavior of a reasonable man" as the courts have defined the standard of care in these cases.

While the Officer drove at high speed having passed through the intersection with 156th Street, they used emergency equipment to alert other drivers and passed them in a manner which did not, apparently, place them or any other observed road user at risk. While the roads were wet, there is no evidence to suggest that the Officer failed to pay due care and attention to road conditions.

For these reasons, the evidence does not establish that the Officer drove without due care or reasonable consideration for other road users, contrary to the MVA.

Other MVA Offences

It is apparent from the evidence cited above that the Officer may have committed other breaches of the MVA during this incident. The WatchGuard video provides evidence that the Officer exceeded the posted speed limit on three occasions and passed through two intersections against red lights. The fact that the Officer is a peace officer engages the exemption provisions of the MVA.

Section 122 of the MVA provides that the driver of an emergency vehicle, in certain circumstances may:

- (a) exceed the speed limit;
- (b) proceed past a red traffic control signal or stop sign without stopping;
- (c) disregard rules and traffic control devices governing direction of movement or turning in specified directions;

provided the officer complies with the regulations and exercises due regard for safety, having regard to all the circumstances of the case, including:

- (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, and
- (c) the nature of the use being made of the emergency vehicle at the time.

In all the circumstances of the case the onus is on the Crown to prove that the exemption provisions did not apply to the actions of the Officer. In this case, there is no evidence to prove that the Officer did not comply with the conditions which allow for the application of the exemption, either when they exceeded the speed limit or when they entered the second intersection against a red traffic signal.

Exceeding the speed limit

There is no evidence to suggest, given the clear sight lines and lack of traffic, that the Officer failed to drive with due regard for safety, having regard to all the circumstances as required by the provisions of section 122, including 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 on those occasions when they exceeded the speed limit.

There is also no evidence that the Officer failed to exercise reasonable judgement in weighing the risks of speeding in these circumstances against the risks to the public in not doing so, as required by the Emergency Vehicle Driving Regulations ([EVDR](#)). The circumstantial evidence, as well as the statement of a witness officer, suggests that the Officer was engaged in an investigation into possible impaired driving, the risks of which to the public are self-evident.

Passing through red signal at intersection with 104th Avenue South

The Officer came to a halt at the red traffic signal at the intersection of 104th Avenue and 104th Avenue South at 21:30:58. They remained stopped while two vehicles turned left from the northbound carriageway to travel westbound on 104th Avenue and then engaged emergency lights at 21:31:03. They then moved through the intersection at 21:31:14 with the signal still on red. The Officer did not engage the siren.

Subject to the availability of privileges under section 122(1)(b) MVA, the Officer committed an apparent *Motor Vehicle Act* violation in that they caused their vehicle to proceed before the control signal instructed them that they were permitted to do so. However, there is no evidence to prove that the Officer did not properly exercise the privilege under section 122(1)(b) MVA.

In the circumstances set out above, there is no evidence that the Officer failed to have due regard for safety as required by section 122 (4) MVA or that he unreasonably exercised his judgement

under section 4(1) of the [EVDR](#), considering all factors under subsections 4(3) and 4(6) EVDR. While the Officer did not engage the emergency siren there is no substantial likelihood of proving that they did not have reasonable grounds to conclude that it was safe to proceed without doing so. They had ample time to view approaching traffic and engaged the lights for an appreciable period before entering the intersection.

The evidential test for an offence contrary to section 129(1) is not therefore met in respect of the Officer proceeding against the red signal at the intersection with 104th Avenue South.

[Passing through red signal at intersection with 156th Street](#)

Subject to the availability of privileges under s.122(1)(b), the Officer committed an apparent *Motor Vehicle Act* violation in passing through the fresh red signal at the intersection with 156th Street in that they both failed to stop and caused their vehicle to proceed before the control signal instructed them that they were permitted to do so.

Section 4(5) EVDR limits the privilege under section 122(b) to pass through a red control signal *without stopping* to emergency vehicles using full emergency equipment. The video shows the Officer did not use full emergency equipment when passing through the intersection. Only the emergency lights were engaged.

The video clearly demonstrates that the Officer did not come to a complete stop before entering the intersection and was therefore in breach of the EVDR. The privilege under section 122(b) therefore does not apply to this violation of section 129 (1) MVA and the evidential test is met in respect of a charge under this section.

[Public Interest Test](#)

The evidential test is met only in respect of an offence under section 75 MVA for a violation of section 129 (1) MVA committed when the Officer passed through the fresh red signal at the intersection with 156th Street without coming to a halt and without engaging their siren. However, the public interest test in respect of this one offence is not met. The breach of the EVDR is a minor one, there is no likelihood of a significant sentence upon conviction and the length and expense of a prosecution is not justified when considered in relation to the social benefit to be gained by it. The officer was acting consistently with his duty to prevent crime and protect the public when the breach occurred. Under these circumstances a prosecution is not required to maintain public confidence in the administration of justice. A charge under section 75 MVA is therefore not approved in respect of this breach of section 129 MVA.