



Deputy Commissioner      Sous-commissaire  
Chief Human Resources Officer      Dirigeant principal des ressources humaines

NOV 30 2017

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Mr. Guy Bujold  
Interim Vice-chairperson and Acting Chairperson  
Civilian Review and Complaints Commission  
for the RCMP  
P.O. Box 1722, Station "B"  
Ottawa, Ontario  
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Dear Mr. Bujold:

I acknowledge receipt of the Commission's Interim Report on the Chair-initiated complaint regarding the death of Mr. Victor Duarte in a motor vehicle incident in Langley, British Columbia, your file number PC-2013-0073.

I have completed a review of this matter, including the findings and recommendations set out in the Commission's interim report.

I agree with Finding No. 1, that the RCMP members involved in the events of October 29, 2012, failed to comply with "E" Division Operational Manual policy, which required members to ensure that safety precautions were taken.

I agree with Finding No. 2, that Corporal Patrick Davies failed to properly supervise the traffic checkpoint.

I do not agree with Finding No. 3, that Constable Robert Johnston and Constable Derek Cheng engaged in a pursuit contrary to policy.

Similar to my delegate in this instance, Superintendent D.R. Cooke, as well as the British Columbia Independent Investigation Office (IIO), I find that the members did not engage in a pursuit. This finding is based on the fact that both the RCMP policy (Operational Manual, chapter 5.4, "Emergency Vehicle Operations [Pursuits]") and British Columbia regulation (*Emergency Vehicle Driving*

.../2

*Regulation*) define "pursuit" as the operation of an emergency vehicle for the purpose of apprehending a person "who refuses to stop as directed by a peace officer and attempts to evade apprehension." The common definition implies that two conditions must be met for a situation to qualify as a pursuit: (1) that the suspect was directed to stop and refused; and (2) the suspect attempts to evade apprehension. Both the IIO and Superintendent Cooke interpreted the facts of the incident to conclude that the suspect driver had not been clearly directed to stop, thereby not meeting the above-mentioned criteria (1).

I acknowledge that the Commission came to a different conclusion based on interpretations of various aspects of the incident. However, with all due respect, I disagree with the Commission's interpretations, for the following reasons:

At paragraph 55 of the Interim Report, the Commission provides several examples of how a direction to stop can be made; however, it does not indicate how any of them apply to the incident at hand, nor does it provide an assessment of whether a clear direction to stop was or was not made during the incident.

Between paragraphs 57 and 61 of the Interim Report, the Commission cites statements provided by involved members to indicate a perception that the suspect driver was fleeing. The members' perception is subject to interpretation; however, even if they perceived that the suspect driver was fleeing, it does not alter the fact that a pursuit is established according to RCMP policy and BC regulation when another criteria is met, namely, that a direction to stop is made and disobeyed (the Commission recognized these two separate criteria at paragraph 53 of the Interim Report). The Commission has not offered any indication whether a direction to stop was or was not clearly conveyed to the suspect driver.

At paragraph 60 of the Interim Report, the Commission infers, from the fact that two members in two separate cars, Constables Cheng and Johnston, went after the suspect driver, that the members recognized the situation as being a potential pursuit. Constable Cheng, in his statement, has articulated that he joined Constable Johnston to provide assistance in a potential foot pursuit if the driver abandoned the vehicle, or with a traffic stop conducted by Constable Johnston. Constable Cheng articulated that he did not want to engage in a pursuit, but rather wanted to be of assistance to Constable Johnston should the suspect driver be pulled over.

Furthermore, at paragraph 61 of the Interim Report, the Commission refers to Corporal Davies' police report and the documented steps taken by Corporal Davies to track down the suspect driver (e.g., contact the police helicopter, send a member to the vehicle owner's residence, send a lookout to surrounding area) to infer that Corporal Davies knew the suspect was fleeing.



These actions by Corporal Davies are not reproachable and are not an indication that Corporal Davies recognized the situation as being a pursuit as defined in policy and regulations; they are merely steps taken to locate the driver of the vehicle.

At paragraph 62 of the Interim Report, the Commission mentions the suspect driver's intentions as per the statement he provided; I will address the suspect driver's statement shortly.

At paragraph 63 of the Interim Report, the Commission mentions the in-car video recording showing the suspect driver's vehicle fleeing at a high rate of speed; again, this fact is not denied. However, it is the direction to stop and subsequent disobeying, which is a criteria to meet to have a pursuit according to RCMP policy and BC regulation, that is equivocal.

At paragraph 64 of the Interim Report, the Commission refers to the fact that the suspect driver was criminally charged with and convicted of flight from police pursuant to subsection 249.1(1) of the *Criminal Code* (N.B.: the suspect driver was in fact charged with and convicted of flight causing death pursuant to subsection 249.1(3) of the *Criminal Code*). The Commission uses the fact that the RCMP sought, and the Crown approved, charges for an offence that includes pursuit as an element to infer an acknowledgment by the RCMP that a pursuit took place during this incident. With all due respect, I disagree with this reasoning. The definition of "pursuit" in criminal law is different than the definition given in administrative contexts such as the RCMP policy and the provincial driving regulations. For the purpose of section 249.1 of the *Criminal Code*, the courts have generally accepted that the term "pursuit" is defined as "to follow with intent to overtake," with "overtake" signifying "to catch up with." This is the definition that Crown would have had to consider when approving charges. This definition is quite different from the one found in RCMP policy and BC regulation, and should not be used in the context of a public complaint investigation under Part VII of the *Royal Canadian Mounted Police Act*, where it is the conduct of members in light of an expected standard that is under the microscope. The Commission itself recognized the importance of the distinction between Part VII proceedings and criminal proceedings at paragraph 56 of the Interim Report:

"It is crucial to recognize that the purpose of the pursuit policy is to circumscribe the situations in which a member is permitted to pursue a vehicle, not to define elements of the *Criminal Code* offence of flight from police. Accordingly, the policy must be read in accordance with this purpose."



Of note, despite the fact that the IIO is conducting a criminal investigation against the members involved, I find that their interpretation of the incident remains relevant, as they are determining whether the members' conduct exceeded the accepted standard to such a degree to become criminal negligence or dangerous driving, where RCMP policy and provincial regulations are one of several elements constituting an accepted standard.

At paragraphs 65 to 67 of the Interim Report, the Commission uses various elements to assert that the members knew that the suspect driver was fleeing; even if this assertion was to be accepted, it does not take into account the finding that a direction to stop was not clearly provided to the suspect driver, and a direction to stop is an element of what constitutes a pursuit as defined in RCMP policy and BC Regulation. At paragraphs 66 and 67, the CRCC refers to Superintendent Cooke's reasoning that it was acceptable to attempt to close the distance to the fleeing suspect driver so that a clear direction to stop could be conveyed, since one was not given at the initial point of contact. I find Superintendent Cooke's rationale to be reasonable, and a similar rationale was also adopted by the IIO in their report, when they concluded that:

"In this case, I have concluded that it was reasonable for the officers to initially believe that the driver may have misunderstood their direction to pull over to the side of the road. As such, the initial decision to attempt to "close the distance" with the offending vehicle through the use of emergency equipment was objectively reasonable." (IIO report, page 5).

The Commission surmised that this would be against policy on the premise that it was not acceptable to attempt to close the distance because the situation was no longer one of closing the distance, but rather of pursuit as defined in policy. However, again, policy first requires a direction to stop (which did not happen in the present situation) and a subsequent disobeying for a situation to qualify as a pursuit. The Commission apparently recognized such at paragraph 67 of the Interim Report:

"Under existing policy, once a vehicle has refused to stop for police and has made an attempt to evade police, the pursuit policy – and not the "closing the distance" policy – must immediately apply."

The Commission also apparently recognized at paragraph 82 of the Interim Report that the direction to stop was not clearly conveyed.

At paragraph 68 of the Interim Report, the Commission determined that the provincial offence of driving while prohibited is not one for which a pursuit can be initiated and that, therefore, the members could not initiate a pursuit (also



referred to at paragraphs 51 and 52). Although this is correct, a driving prohibition can also be put in place in accordance with the *Criminal Code* (section 259), and driving while being under such prohibition is also a criminal offence (subsections 259(4) and (5)) as well as a provincial offence (Part 2 of the *British Columbia Motor Vehicle Act*). Of note, driving while under a provincial prohibition implemented following an impaired driving conviction also constitutes a criminal offence (subparagraph 259(5)(b)(i) of the *Criminal Code*), and none of these driving prohibitions preclude a pursuit under RCMP policy. According to the evidence on file, namely, a printout of the Automated License Plate Recognition (ALPR) system and Constable Gaenor Cox's statement, there is no indication from the ALPR system of the source of the provincial driving prohibition (for poor driving record, which would be a provincial offence not allowing a pursuit, or impaired-driving based, which can constitute an element of the criminal offence of driving while disqualified pursuant to subsection 259(4) and subparagraph (5)(b)(i) of the *Criminal Code*). The quick pace of the incident apparently did not allow the members to conduct the required database checks to determine the source of the prohibition. Therefore, the pursuit, if there was one, could at first sight have been sourced from a criminal offence.

At paragraph 70 of the Interim Report, the Commission refers to the radio transmission logs to claim that the suspect driver's identity was known to the members and that, therefore, there was no urgency in stopping the driver. The radio transmission logs were reviewed, and a reference to the suspect driver's identity being confirmed could not be found. At best, the radio transmission logs indicate that the members had a summary physical description of the suspect driver. The ALPR provided information on the registered owner of the vehicle, but that does not necessarily mean that the registered owner of the vehicle is in fact the driver.

At paragraph 72 of the Interim Report, the Commission refers to the statement provided by the suspect driver where he explains that seeing the police emergency lights "pressured him to continue driving in a reckless manner in an attempt to escape." With all due respect, I find that caution should be exercised when referring to the statement of the suspect driver, because several discrepancies were observed:

- The suspect driver stated several times that the police vehicle was right behind him, whereas the in-car video recordings show that the suspect driver's vehicle is so far ahead that it is barely visible, and is in fact not visible most of the time.
- The suspect driver stated that he rarely speeds, whereas his Certified Extract of British Columbia Driving Record shows three speeding convictions.



- The suspect driver described the police vehicle pursuing him as being a white, marked Crown Victoria type, whereas the closest police vehicle to the suspect driver was an unmarked grey SUV.
- The suspect driver stated he was wearing his seatbelt and that he always wear his seatbelt, whereas his Certified Driving Record shows five convictions for failing to wear seatbelt, and the post-collision inspection of his vehicle by the Integrated Collision Analysis & Reconstruction Services (ICARS) determined that the driver seatbelt was not buckled.
- The suspect driver stated that two or three vehicles ahead of him also made a turn when directed by police, whereas the in-car video recordings show that the vehicles ahead of the suspect driver were allowed to go through the checkpoint and did not turn.

These inaccuracies do not necessarily indicate an intention to deceive by the suspect driver and could certainly be due to memory failings caused by the crash and subsequent concussion; however they do prompt caution when referring to the suspect driver's evidence.

In concluding paragraph 72 of the Interim Report, the Commission claims that drivers driving in a reckless manner in an attempt to evade police "...is precisely this type of reaction by a fleeing driver that the pursuit policy is designed to prevent." With all due respect, I find that the pursuit policy is not designed to prevent pursuits and fleeing, it is designed to circumscribe when and how a pursuit can and cannot take place. It appears that the CRCC recognized such at paragraph 56 of the Interim Report.

I do not agree with Finding No. 4, that Corporal Davies failed to direct Constables Johnston and Cheng to discontinue their pursuit, based on my finding that Constables Johnston and Cheng did not engage in a pursuit.

I agree with Finding No. 5, that the RCMP national policies relating to traffic checkpoints are inadequate.

I support Recommendation No. 1, that RCMP national policy be amended to provide specific guidance on the set-up of police checkpoints to ensure police and public safety and to minimize the risk of vehicle pursuits, including the use of an escape prevention vehicle and the use of fully marked police vehicles when available. I will direct that policy be amended accordingly.

I support Recommendation No. 2, that the RCMP provide additional training to any regular member involved in checkpoint operations on how to plan vehicle checkpoints in order to minimize the risk of pursuits and vehicle collisions. This training should also emphasize alternative methods of enforcement. I will direct that additional training be explored.

I agree in part with Finding No. 6, that the RCMP national policies relating to police vehicle pursuits are inadequate.

I do not support Recommendation No. 3, that RCMP national policy be amended to remove the concept of "closing the distance."

I find that the concept of "closing the distance" in routine traffic stop situations is necessary, since members need to get in a position for a violator to see the member and for the member to execute the traffic stop. "Closing the distance" when attempting to pull over a vehicle for a traffic stop is an action that needs to be conducted in a safe and sound manner and deserves some form of policy control by the RCMP. Of note, the *Emergency Vehicle Driving Regulation* of British Columbia includes the concept of "closing the distance."

I do not support Recommendation No. 4, that the definition of a "pursuit" in RCMP national policy incorporate the concept that a pursuit begins once the driver of a subject vehicle takes any evasive action to distance the vehicle from police, regardless of whether police emergency equipment has been activated on the police vehicle(s) involved in attempting to intercept the subject vehicle.

I find that the proposed recommendation is redundant, as existing policy includes a similar two-pronged approach of (1) attempt at interception ("stop their vehicle as directed by a peace officer") and (2) evasive action ("and attempts to evade apprehension"), regardless of the activation of police equipment.

I support Recommendation No. 5, that RCMP national policy impose a requirement on members to immediately discontinue attempts to stop a vehicle once the pursuit definition is met, unless the pursuit may continue pursuant to criteria outlined in the policy (the criteria is proposed in Recommendation No. 8.). I will direct that policy amendments be made to clearly indicate this.

I do not support Recommendation No. 6, that the RCMP Incident Management/ Intervention Model (IM/IM) be amended to include vehicle pursuits under the "lethal force" category.



I find that police vehicles should not be considered as an approved lethal use of force option. The primary purpose of a police vehicle is transportation of police officers to and from calls for service and to transport clients in the course of a police officer's duty. It is not intended as an intervention option in response to a person's behaviour. A police vehicle should not be considered as an approved lethal force use of force option, despite the fact that it may be a weapon of opportunity in a given context, like any other item, if the police officer has conducted a risk assessment and determined that its use is reasonable and necessary to stop the threat.

It is reasonable to believe that if a police officer used her or his police vehicle in a pursuit, the risk assessment would be elevated in accordance with the risk assessment process. In the context of a vehicle pursuit, the police officer pursues the subject's vehicle in order to effect an arrest while evaluating the seriousness of the offence in relation to public and police safety. The focus should not include the use of the vehicle as an approved weapon or use of force option. This does not imply that it would preclude a police officer, upon conducting a continuous risk assessment and considering the totality of the circumstances, from using the vehicle as a lethal force option if the member could articulate why it was reasonable and necessary to respond in such a manner.

However, it should not be a focus of the training and the respective operational policy, as it would detract from the primary focus and intent of a vehicle pursuit, keeping in mind the paramount concern for public and police officer safety. While I acknowledge that RCMP Emergency Vehicle Operations (Pursuits) policy refers to the IM/IM, I underline that the IM/IM is a model that can be used by a police officer to conduct a continuous risk assessment, formed through an evaluation of situational factors, subject behaviour, officer perceptions and tactical considerations. In the context of a pursuit, the police officer uses this risk assessment to evaluate whether to initiate, continue and terminate a pursuit, and not to use the police vehicle as an intervention tool. As an example, a police officer responding to a situation where a suspect is believed to be en route to commit murder would use the IM/IM as a guide as part of her or his risk assessment in determining whether she or he should engage in a pursuit, given the threat posed by the suspect and the risk to the public.

I do not support Recommendation No. 7, that the RCMP IM/IM refresher training include training on vehicle pursuits.

As indicated under Recommendation No. 6, I do not support the inclusion of vehicle pursuits in the IM/IM. However, I will direct that the possibility of having recurring recertification process for emergency vehicle operation, including pursuits, be explored.



I support Recommendation No. 8, that RCMP national policy be amended to clearly prohibit vehicle pursuits unless the member reasonably believes that the suspect has committed or is imminently about to commit a serious indictable offence of violence against another person, and the risks to the public in not immediately apprehending the suspect outweigh the risks to the public, the police, and the suspect in continuing the pursuit.

Current policy provides a list of non-pursuable offences; I will direct that policy be modified to specify which offences may justify a member engaging in a pursuit, rather than a longer list of offences for which a member cannot engage in a pursuit as is currently the case.

I support Recommendation No. 9, that the RCMP research emerging technologies such as GPS tracking devices, unmanned aerial vehicles, and electronic vehicle immobilizers to develop effective and safer alternatives to vehicle pursuits.

While the technologies suggested by the Commission in this recommendation have been explored by the RCMP, and shortcomings have prevented their implementation, the RCMP remains attentive to and constantly considers emerging technologies in policing.

I do not support Recommendation No. 10, that the RCMP amend national policy to require the completion of the Subject Behaviour/Officer Response (SB/OR) form for all vehicle pursuits, including abandoned pursuits.

The SB/OR report provides an essential reporting process for a police officer to articulate their intervention option in response to managing the behaviour of a person. Conducting a pursuit is not an intervention option but rather a police technique.

However, I will direct that form 2088, "Pursuit Report", be modified to include situational factors that are common to the SB/OR report, such as environment, number of subjects, knowledge of subject, time and distance, threat cues etc.

I support Recommendation No. 11, that the RCMP publish an annual report with detailed statistics gathered from the aggregated pursuit data, including the number of pursuits initiated, the outcome of those pursuits, the number of collisions, injuries, and fatalities as a result, and the ultimate judicial outcomes.



I will direct that the possibility of implementing such an annual report be explored.

I look forward to receiving your final report on this matter.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Stephen White".

Stephen White, Assistant Commissioner  
Acting Chief Human Resources Officer