

**IN THE MATTER OF THE PUBLIC HEARING
INTO THE COMPLAINT AGAINST
CONSTABLE 1675 RAYMOND WONG OF
THE VANCOUVER POLICE DEPARTMENT**

BEFORE THE HONOURABLE ALLAN D. THACKRAY Q.C.

REASONS FOR DECISION

Counsel for the Police Complaint Commissioner	J. Doyle
Counsel for Constable Wong	K. Woodall and M. Jackson
Date of hearing	14, 15, 16 September, 22, 25 November 9 December, 2010
Date of decision	20 December 2010

1. On 7 June 2007 Deputy Police Complaint Commissioner Bruce Brown issued an order for an investigation pursuant to section 55(3) of the ***Police Act***, R.S.B.C. 1996, c.267. The incident giving rise to the investigation occurred on 1 August 2006 and was defined as a “police pursuit that resulted in a fatal motor vehicle accident in the City of Richmond, British Columbia.”

2. A managerial review and a Pursuit Review Board report recommended discipline and training for several Vancouver police officers. The Pursuit Review Board concluded relevant information concerning a suspect who had been pursued had not been provided to the Richmond detachment of the Royal

Canadian Mounted Police. Specifically, the suspect had been pursued in Vancouver, but the pursuit was terminated and an arrest plan had been set up at a known residence in Vancouver.

3. Inspector Eric Petit of the Vancouver Police Department, a designated discipline authority, found the actions of four officers adhered to the Department's Regulation and Procedure Manual. The Police Complaint Commissioner invited Inspector Petit to undertake a further review and reconsider his decision. In doing so he brought to the Inspector's attention that both the Pursuit Review Board and a management review found the officers had disobeyed pursuit termination guidelines and the officers should not have gone into Richmond. The Police Complaint Commissioner said he was "satisfied that a hearing is necessary both to ascertain the truth and to preserve public confidence in the complaint process." This invitation was declined.

4. The Police Complaint Commissioner again reviewed the investigation and concluded the designated discipline authority's interpretation of the *Code of Professional Conduct* regulation was incorrect. One of the basis for his conclusion was the seriousness of the harm "that resulted directly or indirectly from the conduct of the respondents."

5. A Notice of Public Hearing pursuant to section 60(3)(a) was issued on 3 February 2009 by Police Complaint Commissioner Dirk Ryneveld, Q.C. citing

four Vancouver Police officers, including Constable Wong. Paragraph 10 alleged the officers committed disciplinary defaults under the *Code of Professional Conduct* regulations. In particular there was discreditable conduct in following the suspect into Richmond and in not complying with an order or directive or policy in contravention of the pursuit termination guidelines issued on 16 March 2006. With respect to Constable Wong only, paragraph 11 the Notice charged as follows:

11. It is further alleged that Constable 1675 R. Wong committed additional defaults of discreditable conduct while on duty when he acted in a manner that is likely to discredit the reputation of the municipal police department with which the police officer is employed, when he:

- a) directed or requested the Richmond RCMP to stop the suspect vehicle, despite the supervisor having confirmed that the plan was to arrest the suspect once she returned to a known residence in the City of Vancouver, and exited on foot rather than pursue the vehicle.
- b) failed to warn the Richmond RCMP that an earlier pursuit of the suspect vehicle had been terminated; failed to advise the Richmond RCMP that the identity of the suspect was known; and that the plan was to arrest the suspect once she returned to the known residence in the City of Vancouver and exited the vehicle on foot rather than pursue the vehicle.

6. In a case management conference held on 12 April 2010, Mr. Doyle, counsel for the Commissioner, said the Commissioner would not “be tendering any evidence directed at proving the allegations made...in paragraph 10” of the Notice. He said, “the focus of the hearing will therefore be the allegations made against constable Wong in paragraph 11.”

7. An Amended Notice of Public Hearing was issued by Police Complaint Commissioner Stan T. Lowe dated 25 August 2010. It withdrew all allegations made in the earlier Notice and stated “the sole respondent is Constable Raymond Wong.” It adopted paragraph 11 in the original Notice as paragraph 13

8. At the commencement of the hearing on 14 September 2010, Mr. Doyle withdrew the allegations contained in paragraph 13(b) of the Amended Notice: That left only one allegation, being:

13. It is alleged that CONSTABLE WONG committed discreditable conduct while on duty when he acted in a manner likely to discredit the reputation of the municipal police department with which the police officer is employed, when he:

- a) directed or requested the Richmond RCMP to stop the suspect vehicle, despite the supervisor having confirmed the plan was to arrest the suspect once she returned to a known residence in the City of Vancouver, and exited on foot rather than pursue the vehicle.

NARRATIVE DERIVED FROM THE AGREED STATEMENT OF FACTS, TELEPHONE CALLS AND RADIO BROADCASTS

9. The telephone calls and broadcasts were played at the hearing. Counsel, much to their credit, reduced them to writing in two formats. They are in exhibit 7, as tabs 7 and 8. I will use only the tab 7 format in these reasons and

will, in brackets, insert the line at or about which each broadcast or call was recorded.

10. In 2006 Ms. Sherri Gehring, age 34, was charged with assaulting Mr. J. Kreiser, age 76, a drug addict. He lived at 1436 West 71st Avenue, Vancouver. Mr. Kreiser owned a blue Hyundai Elantra motor vehicle. Ms. Gehring was the subject of an order to have no contact with Mr. Kreiser or to attend at his residence.

11. At the relevant time Ms. Gehring was subject to arrest. On 1 August 2006 shortly after midnight Vancouver police officers observed the Kreiser Hyundai near the Kreiser residence being driven by a female. They thought the driver was Ms. Gehring and broadcast (85) she was arrestable for a breach. They reported her speed at 110 kph. Sergeant Rattray, the supervisor, ordered the pursuit cancelled (101) and at 12:22:37 a.m. he approved a box and pin at Sixteenth Avenue and Granville Street. (197) It failed.

12. At 12:24:36 (210) Sergeant Rattray said: "Were assuming she's going to return to the residence so just put a vehicle ... a car down there. Let's just let her return home." He confirmed that at 12:26:21 (247). At 12:28:51 Constable Wong came on the air and spoke about obtaining a spike belt (282). At 12:35:59 Sergeant Rattray said: "Let's give her some room 'cause I'm sure she's gonna go back to this address... ". (453)

13. At 12:37:26 a constable asked as to Sergeant Rattray's "wishes" with regard to trying a box and pin (475). He replied (477) "If we're able to pin in a safe factor. The way she's been driving let's not take many chances. If we can pin her, fine." This failed as the Hyundai "took off." Sergeant Rattray, at 12:43:22 said, "Once again, let's just try to see if she's going to go home. ... And there's no sense in this keepin' goin' like this." (563)

14. At 12:44:46 Sergeant Rattray said he was hoping she would get out of the vehicle "and we won't have to box her in. Just grab her." (572) At 12:53:22 Sergeant Rattray suggested she "always returns" to that address. (602) At 12:53:43 the Sergeant said he wanted the vehicles at the residence unmarked "so we don't heat her up." (642)

15. At 1:12:20 Constable Wong, who was alone in a vehicle, broadcast (822) he was holding at West 70th Avenue and Oak Street and observed the Hyundai going south over the Oak Street Bridge. He said, "If you want to advise Richmond. I'm not in pursuit..."

16. Sergeant Rattray asked if the vehicle was the one they had been looking for. Dispatch said it was, that it "just headed into Richmond and "they've just asked us to advise Richmond." At 1:13:32 Constable Wong again raised (833) the issue of advising Richmond. He asked, "Did you, uh ... advise

Richmond yet” Uh, radio?” The dispatcher replied, “... the CD is taking care of that.” The agreed statement of facts says:

34. As PC Wong was driving over the Oak St. Bridge he asked the District Dispatcher whether she had contacted Richmond yet. The District 4 Dispatcher advised PC Wong that the Chief Dispatcher was taking care of transmitting that.

17. At 1:13:51 a telephone conversation commenced between E-Comm’s chief dispatcher and Richmond “INFO.” At 1:14:11 (852) the Vancouver dispatcher said:

Sue. We’re dealing with a car that’s now into your area. I just want to give you the heads up on it because we’re not dealing with it. We’re waiting for her to return home. A female who’s driving in an erratic manner.

She then gave the car’s licence number and details as to what had taken place.

The Richmond dispatcher said, “Okay, we’ll broadcast it.” (871)

18. In the hearing Sergeant Rattray explained E-Comm is a private company that includes the Vancouver Police chief dispatcher, call takers and other dispatchers. If, for instance, a Vancouver Police officer wanted information sent to the Richmond R.C.M.P., he or she would ask the chief dispatcher to advise Richmond in that there is no radio communication directly from the officer to the Richmond R.C.M.P.

19. The agreed statement of facts says:

35. At approximately 1:14 a.m., the VPD Chief Dispatcher from E-Comm advised the Richmond RCMP dispatch of the entry of the Hyundai into Richmond, and provided some background information. The background information included:

- The Hyundai had entered Richmond
- The Vancouver Police Department were not dealing with the driver, but were waiting for her to return home
- The female was driving in an erratic manner
- The licence plate was JGJ 961
- She had taken her boyfriend's car and her boyfriend was aware she had taken it
- She had failed to stop for the Vancouver police
- She had blown some lights
- She had been driving in an erratic manner
- She was actively having an argument with herself in the car
- The Vancouver Police Department had been following the car all over the place.
- The Vancouver Police Department did not know what her problem was, it might be drugs.

36. The Richmond Information Dispatcher told the Vancouver Chief Dispatcher that they (the Richmond dispatchers) would broadcast this information.

39. PC Wong spoke to Richmond RCMP dispatch at approximately 1:15 am to confirm that the Richmond dispatcher had received the pertinent information from the Vancouver dispatchers.

20. At 1:14:59 (917) Constable Wong asked if E-Comm was talking to Richmond. The Richmond dispatcher responded that no call had been received. Constable Wong replied (917): “the vehicle we were pursuing earlier ... now in your area ... a blue Hyundai Elantra.” R.C.M.P. Constable Bojic asked (926), “What’s this vehicle involved with?” Richmond dispatch said (928) it was “just getting all the information and reading through the Vancouver file.” Constable Wong replied (930), “The female’s probably wanted for breach as well as initiating pursuit. Dangerous driving from ... earlier on.”

21. At 1:16:32 (934) Constable Wong advised Richmond dispatch and Constable Bojic the Hyundai was in a hotel parking lot in Richmond. At 1:17:01 (941) R.C.M.P. Constable Bojic asked, via the R.C.M.P. dispatcher: “So do they want us to ... attend there and pull the vehicle over?” At 1:17:09 (943) Constable Wong responded: “Yeah, if you can.” Constable Bojic replied at 1:17:51, “Okay, copy that. We’re about a minute away.”

22. At 1:19:01 (978) R.C.M.P Constable Bojic radioed: “This vehicle’s trying to evade all these uh ... unmarkeds.” At 1:19:23 (983) he broadcast , “Yeah, vehicle’s uh ... taking off on us.” He was asked if he had “activated” (989).” He answered, “Negative. Then he reported the Hyundai was “swerving to the opposite lane of traffic now” followed by” just blew a red light ...Vancouver units here... And I’ve activated my lights now.” (994)

23. On an OPS channel, at 1:20:21, Vancouver Police Constable Taylor spoke to Vancouver Police Constable Brown (1025). He said, "Vehicle's takin' off from Richmond ... I think they're going to pull the pursuit here shortly." Then he said, "Just following the lights here driving on wrong side of traffic so they called off the pursuit." At 1:21:51 Constable Bojic reported an accident.

WITNESSES

24. I will now summarize the testimony of the witnesses, focusing on the "plan", the events immediately preceding the accident and information that is informative about the radio and telephone communication system between officers, dispatch and districts outside of Vancouver.

Vancouver Police Constable Blumel

25. Constable Blumel and Constable Mitchell were in plain clothes in an unmarked vehicle. They were advised Ms. Gehring was arrestable and patrolled in the area of the Kreiser residence. They followed the Hyundai for some time. It went north on Oak Street. At 70th Avenue, at about 12:16 a.m, Constable Mitchell put on his siren and lights in an attempt to pull it over.

26. Sergeant Rattray asked, by radio, for the speed of the Hyundai. Constable Blumel replied it was 110 kilometres and had gone through the red light at 41st Avenue and Oak Street. At 33rd Avenue the constables discontinued

the pursuit on instructions to do so from Sergeant Rattray. The officers returned to the Kreiser residence to await her return.

Vancouver Police Sergeant William Rattray

27. Sergeant Rattray testified, "If there are serious events, I would be the supervisor and make sure that the things are done properly." The regulations mandated supervisors take charge of any police pursuit. He became aware of a situation involving a Hyundai Elantra and ordered units into the area. He heard on the radio that one of his units "was down at this location [71st and Cartier] hoping she [Ms. Gehring] would arrive there and they would arrest her."

28. On the night in question he understood there was a pursuit underway involving Constables Mitchell and Blumel. He knew the pursuit involved speeds of up to 110 kilometres an hour. He knew Ms. Gehring had "blown a red light." He ordered the pursuit terminated because it was "dangerous."

29. Sergeant Rattray continued to monitor the situation as he left police headquarters and headed for the scene. He heard from two officers that they were behind the Hyundai. He radioed at 12:22:37 (197) "If they're able to pin it at uh ... Sixteen and Granville ... go ahead." The box and pin did not take place because Ms. Gehring turned east on 16th.

30. Sergeant Rattray testified a “box and pin” procedure is “an arrest technique” which takes place at low speeds. He agreed it is not a pursuit. He testified that “pulling over” does not mean there is a pursuit. He said ordering “no pursuit” does not “mean we can’t try and stop someone to pull over. When they leave and they don’t stop, it becomes a pursuit.”

31. The Hyundai Elantra was followed eastbound on 10 Avenue heading towards Alma Street. Its speed was modest, but a radio broadcast said, “She just blew a red light ... she double checked and she went through it. We’re not following.” The Hyundai proceeded to 4th Avenue and proceeded west. A Constable Thrower asked as to the “NCO’s” [Sergeant Rattray’s] wishes if we’re able to pin?” He replied, “If we’re able to pin in a safe factor. The way she’s been driving let’s not take many chances. If we can pin her, fine.”

32. There were many further broadcasts as to the route, etc. of the Hyundai, including some from Constable Wong. Sergeant Rattray broadcast there were units set up at the residence and, “She is gonna go back to that location and there’s no sense in this keepin’ goin’ on like this.”

33. Constable Wong radioed he just observed the Hyundai going south over the bridge into Richmond and, “If you want to advise Richmond I’m not in pursuit or anything.” Sergeant Rattray asked if that was the vehicle the police had been looking for. Dispatch said, “Yeah, the same vehicle. She has just headed into

Richmond. They just asked us to advise Richmond.” The Sergeant asked if Richmond had yet been advised and the dispatcher said, “the CD (chief dispatcher) is taking care of advising Richmond.”

34. Sergeant Rattray testified he is of the opinion the information of the details of the matter as it took place in Vancouver that was passed to Richmond dispatch was a “fair summary.” He added it was “the pertinent information that was passed along there.” He agreed this information was passed to Richmond dispatch at 1:15 a.m. which was about six minutes before the collision.

35. Sergeant Rattray testified that while he had not given an order to pull the vehicle over, he might have done so at the time Constable Wong agreed the Vancouver Police wanted the vehicle pulled over, “if you can.”

36. Mr. Doyle asked him if he understood the chief dispatcher was advising Richmond RCMP of the details of the matter. He said that was correct, but he did not overhear the broadcast from the dispatcher to the Richmond RCMP. He explained that his duties lay within the city of Vancouver. He added: “I did not even switch the channel. Typically, we pass the information and they rely on that information and they act how they feel is appropriate.”

37. Sergeant Rattray commenced his cross-examination by reiterating that a box and pin operation is not a pursuit and neither is the “stopping” of a vehicle.

Later in his cross-examination he said the speed at which the suspect was driving in Vancouver called for calling off a pursuit, but that did not bar a box and pin. He said that was “obviously the way to go.”

38. Mr. Woodall referred the Sergeant to a broadcast at 1:13:30 wherein Constable Wong said, “Did you, uh ... advise Richmond yet? uh, radio? Sergeant Rattray heard that broadcast. He agreed that was consistent with his understanding of how the communication protocol was supposed to happen. That is, the chief dispatcher would advise Richmond R.C.M.P.

39. Mr. Woodall then reviewed radio broadcasts commencing at about 1:13 a.m., particularly those from Constable Wong. In those he said there had been a pursuit, it had been called off, the suspect went to Richmond, and his response to the Richmond police as to whether the Vancouver police wanted them to pull her over. The response being, “Yeah, if you can.” Sergeant Rattray agreed the answer, “yeah, if you can” was “consistent with [his] expectations of him [Wong] at that time on that evening.”

R.C.M.P. Constable Thornton

40. Constable Thornton was with the U.B.C. detachment. He was in uniform in a marked vehicle. Both his mobile radio and the vehicle radio were tuned to Richmond. Just after 1 a.m. he heard a message asking if the U.B.C. detachment had a spike belt. Shortly thereafter he saw the Hyundai. It was

being followed by unmarked police vehicles which were not using emergency equipment. At 1:13 a.m. he heard the broadcast in which it was reported the vehicle had gone to Richmond and in which constable Wong said he was not in pursuit.

41. In cross-examination by Mr. Woodall, Constable Thornton testified he heard a broadcast in which R.C.M.P. Constables Kaila and Bojic asked what the Hyundai was “involved in.” A Richmond dispatcher responded saying she was, “getting all the information and reading through the Vancouver file.”

42. Constable Thornton agreed he could have, if he thought it advisable or necessary, broadcast a message that there had been discussion of a plan to arrest at a residence in Vancouver. He agreed to the suggestion that he did not do so “because by this point, that seemed to be a dead letter since she was obviously not going to the residence in southwest Vancouver but was instead going to Richmond.”

R.C.M.P. Constable Bojic

43. Constable Bojic was in uniform in a marked car with Constable Kaila. He testified he was monitoring the Richmond dispatch channel and heard Constable Wong say the Hyundai had gone into Richmond, but “we’re not pursuing (923) and heard the dispatcher respond “our INFO was being advised.”

He explained that INFO is a channel for “more priority communications.” He was not listening to the INFO channel.

44. He heard dispatch say she was “reading through the Vancouver file.” He heard Constable Wong agree to the suggestion the R.C.M.P. “pull the vehicle over” by saying, “yeah, if you can.” Constable Bojic said he took the message to mean:

Just attend, locate the vehicle, try to pull it over if we can ...

45. He said this would be done by activating the lights and as well, if necessary, the siren. In reply to a question from Mr. Doyle, Constable Bojic said the process for pulling the vehicle over would be, “get close enough to it, initiate the lights and hopefully they pull over. If they keep going you can activate the sirens as well. Get their attention. If they look in the rearview mirror and see the marked police vehicle they will pull over.” He testified this would not be a pursuit.

46. As Constable Bojic proceeded north on No. 3 Road he saw the Hyundai going south followed by three or four unmarked SUV’s that he thought were unmarked police cars. They were not traveling at a high rate of speed. He did a U-turn and followed. He was not using any emergency equipment. He said, “As I catch up these vehicles start pulling over because they see me there.” As he was getting around the first SUV the Hyundai went into the Comfort Inn parking lot, but exited and accelerated.

47. Constable Bojic was asked what he was planning to do. He testified as follows:

Just get close enough. I activate the lights as I said I pull it over. At that point I am thinking, yes, this is something serious. But the way it is communicated to me when I am seeing it's not full out pursuit at this point, trying to catch up to the vehicle and pull it over. Let's see what happens.

48. Mr. Doyle asked the constable what assumption he had made based on what he had seen. He replied:

Just to me it was strange when I saw it. When I came up to No. 3 Road going northbound I knew this vehicle was involved in a pursuit earlier, but the kind of driving behavior the slow speed wasn't consistent with that. Also, this caravan of black SUVs is something that wasn't a typical sight. I hadn't seen it before this type of caravan.

He said the three or four black unmarked SUVs, "just when I saw it, it looked strange. It looked out of place to me."

49. When Constable Bojic went into the parking lot he was ahead of the SUVs. He followed the Hyundai out of the parking lot, its speed being between 70 and 80 kph which he said was not "an excessive speed." The Hyundai went through a stop sign and some time later "swerved into the opposite lane of traffic." He said it was not a "maneuver", but looked "disoriented." He did not get within ten car lengths of the Hyundai. At 1:19:01 Constable Bojic broadcast (978) that the Hyundai was trying to evade the unmarked vehicles. Constable Wong said (981) "I'm not in this at all." At 1:19:23 Constable Bojic said the Hyundai was, "taking off on us." Richmond dispatch asked Constable Bojic (989)

if he had activated. Constable Bojic said, “negative.” At 1:20:23 Constable Bojic said the Hyundai was “swerving”, “blew a red light” and “I’ve activated my lights now.”

50. Constable Bojic was asked to explain in more detail. He answered:

A. I follow on to Sea Island behind the suspect vehicle still trying to catch up. At this point I am overtaken by one of these black SUVs, these unmarked SUVs.

Now, I have got the suspect vehicle, I have got a black unmarked SUV in front of me and I am in behind the SUV. Do you want me to talk more about that?

Q. Continue on from there, yes.

A. So when I see this, my reaction is at this point, well, there is something here that I am not doing. To me this is more of an aggressive maneuver than me just catching up to this vehicle and trying to pull it over, is not what the Vancouver police wants of me. They want something more.

I also thought according to policy, we cannot have an unmarked police vehicle as a lead vehicle. I even remember turning to Constable Kaila – so when I activated, I activated just to let the police officers operating the SUV know that they pull aside and I will take the lead here.

51. Constable Bojic testified as to activating his lights and saying he would try and get ahead of the unmarked vehicle. He said the unmarked vehicle pulled aside and responded, “go ahead.” Constable Bojic was then the lead vehicle with his lights and siren activated.

52. The Constable said it was hindsight as to what he would have done if he had heard the message that the Vancouver police had a plan to arrest the

suspect at a known address, but said he “most likely would not have been aggressive and got involved in the pursuit. I would have just continued with what I was doing attempting to pull the vehicle over.” He said this is hindsight and he does not know what difference it would have made, “but it would have been useful information definitely.”

53. Constable Bojic was referred to the broadcast about pulling over the Hyundai. He agreed Constable Wong spoke in a “very casual tone of voice” with no urgency when he agreed the Hyundai be pulled over, “if you can.” He interpreted this to mean a pull over if it could be done safely. He agreed it was his opinion, until he was passed by the SUV, that the Vancouver police did not want him to pursue the Hyundai. He agreed with the proposition that what caused him to take the matter more seriously and begin a pursuit was being passed by the unmarked SUV at highway 99. He testified the unmarked SUV radioed that it was in agreement with him going ahead of it. He increased his speed to 96 kph. He put his emergency equipment in operation. He increased his speed to 106 kph.

R.C.M.P. Sergeant Ackles

54. Sergeant Ackles was the R.C.M.P. watch commander at the time in question. Constable Bojic was under his supervision. Sergeant Ackles was asked by Mr. Doyle about the INFO channel. He said it is not a “normal dispatch channel” and you have to physically switch it on. Consequently he knew nothing

about the incident until he heard a broadcast asking him to listen in. He did not hear the messages about arresting at a known residence. He said this information was “never dispatched” by the Richmond dispatch. I interjected and the Sergeant replied:

WITNESS: The radio system is such that it's one of those unique pieces of equipment.

ADJUDICATOR: Frustrating?

WITNESS: It can be; it can be.

55. Sergeant Ackles testified the information that was not broadcast,

... would have formed a basis of part of the assessment that goes on, on any gathering of information and involving any nature of events that we become involved in exchange of information. It's changed. We used [it] to go forward with the investigation, to stop an investigation, to do whatever. It would have been valuable information, yes.

He added that “at this stage of the game”, he could not say what difference it would have made if the information had been broadcast.

56. Sergeant Ackles became aware of a situation developing when dispatch asked Constable Bojic if he had activated. He said he “tried to break into the radio a couple of times to gather more information. When Constable Bojic's speed increased to 160 kph Sergeant Ackles wanted answers as to what was going on. However, he said he did not “have the opportunity or the availability of overriding that radio system.” He tried to break in but “somebody had the mike

pressed prior to mine.” This denied him entry. The following exchange then occurred:

ADJUDICATOR: Well, if you had broken in or keyed in, what would you have asked?

WITNESS: I would have asked what the offense was that we were following and whether we have the identity of the vehicle or not. Those are two key components as to whether or not we are allowed to continue or shut it down.

ADJUDICATOR: Shut down the pursuit?

WITNESS: Yes.

Sergeant Herrmann

57. Sergeant Herrmann is a twenty year member of the Vancouver Police Department. On the night in question he was in charge of the emergency response team. He was driving a black unmarked Ford expedition SUV. He was traveling east on 41st Avenue when he switched his radio to channel 4 and “began to listen to the events at 71st and Cartier.” He therefore drove in that direction to see if assistance was needed. He observed Constable Wong’s vehicle on the Oak Street Bridge.

58. Sergeant Herrmann followed into Richmond and came up behind the Hyundai. Constable Wong’s vehicle was to the left. They were stopped at a red light. The Hyundai made al U-turn and Constable Wong followed. Sergeant Herrmann came upon them again at the Comfort Inn parking lot, but before he

got close they left. He went east on Capstan and saw Constable Wong. At that moment the Hyundai came out of a parking lot and inserted itself between his vehicle and that of Constable Wong.

59. Constable Wong pulled to the right and the Hyundai passed him. While the speed was in violation of the speed limit, it was not, in the Sergeant's opinion, dangerous driving. He lost sight of the other vehicles so parked facing east on Sea Island Way near the intersection with Great Canadian. He then saw the Hyundai traveling south on Great Canadian followed by a marked R.C.M.P. vehicle with its emergency lights on. It in turn was followed by Constable Wong and another unmarked vehicle.

60. Those vehicles proceeded east to Sea Island Way and then took the exit on to highway 99. When they made the turn from Great Canadian to Sea Island Way they were traveling at about 30 to 40 kilometres an hour. As they approached the exit their speed increased to 90 kilometres an hour. Sergeant Herrmann stayed at the intersection until the light changed to green and then traveled in the direction of the other vehicles.

61. He heard on the radio there had been an accident.

Sergeant Wong

62. I have noted the officer's rank as a sergeant in that he is now of that rank. However, in that he was a constable at the time of the incident I have addressed him that way and will so continue.

63. Constable Wong has been with the Vancouver Police Department for nineteen years. At the time of the events he was a dog handler. He testified the dog patrol was a resource for both inside and outside the City of Vancouver. Consequently, while he listened primarily to the four Vancouver radio channels, he carried a portable radio which allowed him to listen to surrounding jurisdictions.

64. He explained his understanding of E-Comm, saying it is difficult for officers to relay information as there are a multitude of things going on. He said the role of E-Comm is to "take that extra responsibility away and allow for a more streamlined process and let them do their role, which is communication."

65. Constable Wong said "part of the plan" on the day in question was the "hope that Ms. Gehring would return to a residence that she had a no-go to." When she went over the Oak Street Bridge, "the hope that we had earlier on was not materializing." When, at 1:12:20 a.m. he radioed that he was holding and referred to advising Richmond, he said he expected E-Comm to advise

Richmond of his “location, what [he] was observing, as well as the events that had occurred earlier in the city of Vancouver.” He added, “That is their role. That is their responsibility.”

66. Constable Wong made a second reference to advising Richmond. He testified he did that, “Because I had already made one request, and it didn’t appear to be happening fast enough, so I wanted to make sure that my request was copied again.” At 1:13:42 the dispatcher said the Chief Dispatcher, “is taking care of advising Richmond.” Constable Wong reiterated in his testimony that the passing of that information was “their responsibility.”

67. Constable Wong said it would have been unreasonable to have suggested to the R.C.M.P. they should ignore her because of an earlier plan to arrest her at a residence in Vancouver. Constable Wong did not at that time view her recent driving as a public danger.

68. Mr. Doyle cross-examined Constable Wong as to whether he heard broadcasts about the Hyundai not being a stolen car, about setting up at the residence and about box and pin attempts. Constable Wong said, “hearing and listening” are two different things. He pointed out that he was tuned to four channels, he was “going through red lights”, positioning himself, had a “German shepherd dog barking in my rear compartment”, i.e. doing “a multiple of things.”

69. He did not hear the exchange in which details of the event, particularly the plan to arrest at a known residence, were conveyed from E-Comm to Richmond because this was conveyed by telephone. He agreed he knew, “at that time”, the Richmond police officers did not have that information. He also agreed that when Constable Bojic was in pursuit he, that is Constable Bojic, had “only the information” that Cst. Wong had given directly to the Richmond police.

70. Constable Wong testified neither that nor the thought that “the last thing we need happening is a marked RCMP cruiser following this vehicle” went through his mind when Constable Bojic passed him. He said he “had an expectation that the Richmond dispatcher would have provided that information to them.” Then this followed in cross-examination:

Q. You might have had the expectation, but you knew very well that hadn't happened, correct?

A. That is correct. But also it's a fine line on stepping on the toes of the dispatcher when I'm not even from their jurisdiction. As well as when it is not my responsibility as per policy to provide that information when I expected and based on her transmissions that they were getting the information and that they would be doing it fairly soon.

Q. Well, I suggest to you that all changed when you now knew that the vehicle following her was a marked police vehicle and that was exactly the danger that Vancouver was trying to avoid.

A. I disagree.

Q. Well, it didn't cause you any concern when you knew that a marked police vehicle was now following Gehring?

A. No, it did not

THE CHARGE

71. The charge is as follows:

13. It is alleged that CONSTABLE WONG committed discreditable conduct while on duty when he acted in a manner likely to discredit the reputation of the municipal police department with which the police officer is employed, when he:

- a) directed or requested the Richmond RCMP to stop the suspect vehicle, despite the supervisor having confirmed the plan was to arrest the suspect once she returned to a known residence in the City of Vancouver, and exited on foot rather than pursue the vehicle.

72. Mr. Doyle, in his opening remarks agreed this case “comes down to” whether Constable Wong committed discreditable conduct by saying “yeah, if you can” to a question from the R.C.M.P. as to whether the Vancouver Police Department should “attend there and pull the vehicle over.” In his closing submission he argued that when Constable Wong said, “if you can”, he “knew considerably more that he chose not to provide to those police officers so they could make an informed decision.”

73. The entire focus of the case was upon the fact Constable Wong did not directly inform the Richmond R.C.M.P., in particular Constable Bojic, of the plan to arrest at a known address. That is, the case was pursued on the basis of a lack of direct advice by Constable Wong to the R.C.M.P.

74. That expansion or interpretation of the charge has to be viewed in the context of the original charge which included the following:

b) failed to warn the Richmond RCMP that an earlier pursuit of the suspect vehicle had been terminated; failed to advise the Richmond RCMP that the identity of the suspect was known; and that the plan was to arrest the suspect once she returned to the known residence in the City of Vancouver and exited the vehicle on foot rather than pursue the vehicle.

75. The Amended Notice, when refined orally by Mr. Doyle at the commencement of the hearing on 14 September 2010, withdrew the allegations that Constable Wong committed discreditable conduct in failing to warn the R.C.M.P. an earlier pursuit had been terminated and failed to advise the R.C.M.P. that the identity of the suspect was known and a plan was in place to arrest her at a known residence in Vancouver.

76. When Mr. Doyle said Constable Wong “knew considerably more that he chose not to provide”, he was referring to the plan to arrest at a known address. Mr. Woodall submits that 13(a) is a charge of violating the plan whereas 13(b) was for not advising of the plan. Mr. Woodall pointed out that 13(b) contained the particulars of what Mr. Doyle now argues should have been provided. Those particulars being the earlier pursuit, the identity of the suspect and the plan.

77. Mr. Woodall argues that what Mr. Doyle is attempting to do is revive 13(b). His submission is that this cannot be done, certainly not without notice. I agree. Withdrawing 13(b) withdrew the charge that Constable Wong acted in a

discreditable manner in failing to inform Richmond of the plan and the termination of an earlier pursuit. If Constable Wong was to face that charge it had to be contained in 13(a). In my opinion it is not.

78. The charge that remains in 13(a) is extremely narrow. It is confined to directing or approving the RCMP “to stop the suspect vehicle” contrary, in effect, to a plan from Sergeant Rattray to arrest her at a known address. There is nothing on the face of that charge giving notice to Constable Wong that he was being cited for discreditable conduct in not directly passing along information of a plan and termination of an earlier pursuit. The charge, as written, is a charge that Constable Wong violated a plan, not that he failed to advise of a plan.

79. The charge, as it stands, cannot be read as informing Constable Wong that he was charged with discreditable conduct in failing to warn of the danger of a pursuit. That might be read into the plan, but charges must be definitive and not subject to inferences.

80. The charge, as worded, does not support and cannot contain the expansion sought by the Commissioner. In that the entire case was pursued on the grounds of the “expanded” charge, it must be dismissed.

THE “EXPANDED” CHARGE

81. Mr. Woodall urged me to go beyond the narrow confines of the charge as worded and analyze the case based on matters of substance rather than rest the case on what might appear to be a technical dismissal of the charge. That is, read the charge in its broadest sense and determine whether Constable Wong was in breach of the plan, disregarded the directions or orders of Sergeant Rattray or failed to communicate relevant information contrary to his duty.

82. I am prepared to do that, but such an analysis must also consider whether, even if there was a breach, it caused or contributed to the accident. During the hearing this was referred to as causation or connection between Constable Wong’s conduct and the accident. As noted in paragraph 4 of these reasons, one of the basis for the charge was the harm “that resulted ... from the conduct of the respondents.” I am satisfied, on all of the evidence, that if there had not been an accident with dire consequences no charges would have been laid.

The plan

83. The following sequence of broadcasts helps in determining the plan that was in Sergeant Rattray’s mind:

2:12:14 ... the driver’s arrestable for breach and they’re failing to stop. (Blumel)

Sirens could be heard.

12:14:22 ...She just blew a red (Blumel)

12:14:41 ...speeds were one-ten. (dispatch)

12:17:58 ...just blew the red at Twelfth

12:19:59 ... driving is quite erratic (Wilson)

12:22:37 If they're able to pin at ... Sixteen and Granville ... Go ahead (Ratray)

12:23:18 ...just blew a red. Shut it down. (Pimlott)

12:23:24 ... You're shutting it down? (dispatch)

12:23:55 We're not pursuing right now.

12:24:05 No one is pursuing this vehicle at the moment? (Ratray)

12:24:10: That's affirmative (dispatch)

84. Sergeant Ratray apparently thought there was a pursuit, but dispatch confirmed that was not the case. Following this being brought to Sergeant Ratray's attention he was asked by Mr. Doyle what his plan was "at this stage." He testified: "I didn't have much of a plan at this time until further information became available" He then made the following comments:

12:24:36 We're assuming she's going to return to the residence so just put a vehicle ... a car down there. Let's just let her return home.

12:26:12: No one has their emergency equipment activated. No, we are not lit up. (Vancouver police officers)

12:26:21 Chances are she is going to go home so let's ... just set up somebody at the residence.

12:37:26 ... What are the NCO's wishes, if we're able to pin?

12:37:35 If We're able to pin in a safe factor [fashion?]
The way she's been driving, let's not take many chances.
If we can pin her, fine.

85. During the airing of these broadcasts in the hearing I interjected as follows:

ADJUDICATOR: But you sort of had the plan to have her picked up at the residence.

SGT. RATTRAY: If she had gone back there.

ADJUDICATOR: Even though the pursuit was called, something else could have happened. She could have been arrested.

SGT. RATTRAY: If she had stopped her car to go buy a candy bar, to get gas, or go buy drugs, Mr. Adjudicator, yes, we would have had an opportunity to arrest.

ADJUDICATOR: That doesn't mean the only way she is going to be arrested is at her house?

SGT. RATTRAY: That's correct.

86. Sergeant Rattray agreed in cross-examination the "plan" to arrest the suspect at home could be termed "an idea." He said it was "one of the options available to us if she returned to that residence." However, even using the word "plan" he said the reply from Constable Wong, "if you can", was not contrary to [his] plan as it existed at that time." Sergeant Rattray testified that at the time of Constable Wong's agreeing the vehicle should be pulled over some 29 minutes had passed from his order not to pursue. He added:

There is nothing to preclude a member trying to pull her over. If she takes off, we are not going to pursue it. There is nothing wrong with trying to attempt a pull over which to me is stopping the vehicle. If it doesn't stop, that is a whole different set of circumstances to deal with. I wouldn't allow the pursuit to continue or to even initiate.

87. Defence counsel made an objection to a question asked by Mr. Doyle.

This then followed:

ADJUDICATOR: No, my reservation on it [the question] was that it [the plan] was a "hope for thing", if she went home. If she went home, but it didn't preclude everything else such as a boxing in or pulling over.

SGT. RATTRAY: That is correct.

88. To further questioning by Mr. Doyle the Sergeant said:

As I said, if it happened in Vancouver 29 minutes later, I probably would have authorized to try to stop her, but if she had taken off I wouldn't have authorized her pursuit.

89. I have emphasized the above testimony of Sergeant Rattray in that it summarizes the issue of whether there was a plan beyond avoiding a pursuit. It was a plan contingent on Ms. Gehring returning to the Kreiser residence. It was an "if" plan and a "hoped for" plan. That is, if Ms Gehring returned as hoped for to the known residence. If she did not it was, as stated by Constable Thornton and submitted by Mr. Woodall, "a dead letter."

90. I have given consideration to the agreement of Constable Wong in cross-examination to the proposition that, "The one thing that he [Sergeant

Ratray] did not want to happen ... [was] for a marked car to try to pull that Elantra over.” However, that followed immediately upon Constable Wong disagreeing with the suggestion the plan “was never to pull this vehicle over with a marked car.” He said, “That did not come across the radio.” As the questioning continued it became clear Constable Wong was agreeing only to the proposition that, “He’s [Sergeant Ratray’s] concerned that nobody be pursuing the vehicle.”

91. The only absolute I can find was that Sergeant Ratray did not want a pursuit. When he was asked as to his “wishes”, he replied, “If we can pin her, fine.” At 12:43:22 he said (563), “... let’s just try to see if she’s going to go home. ...there’s no sense in this keepin’ goin’ like this.” After referring to this broadcast the Sergeant was asked by Mr. Doyle for his “plan for that district at that point?” He said, “Hopefully she is going to go back home.” He testified that what Constable Wong said in approving a pull-over was not inconsistent with his directions.

92. I find this is well illustrated when looking at the series of events and the specific question that was asked by Constable Bojic. At 1:16:32 the Hyuandai went into the parking lot of the Comfort Inn. R.C.M.P. Constable Bojic asked if the Vancouver police, “want us to ...

attend there and pull the vehicle over?” Constable Wong replied

“Yeah, if you can.”

93. Constable Bojic asked if the Vancouver police wanted the vehicle pulled over, “there.” That is, in the Comfort Inn parking lot. Constable Wong testified he was responding to a question of whether I wanted “them to attend the Comfort Inn parking lot and pull the vehicle over.” In reply to further questioning by myself and Mr. Woodall, Constable Wong said:

Yes, the comfort Inn into the parking lot, as I believed at the time that it was no exit aside from the one that we came into and that it was a dead end. And that if the R.C.M.P. could attend to this location and try to stop the vehicle as the parking lot would have had no escape route for the vehicle and it could have been done safely within that parking lot.

94. Once again this is entirely consistent with Sergeant Rattray’s only inviolable direction, that being there should be no pursuit. To “stop the vehicle” in the parking lot cannot be seen as a violation of any order or directive of Sergeant Rattray.

95. On the basis of all of the evidence it cannot be held Constable Wong breached any plan or gave directions contrary to any plan put in place by the Vancouver City Police.

Communications and the communication system

96. I do not have a mandate to investigate the system whereby Vancouver police officers communicate by radio and telephone with each other and with officers and dispatchers in other jurisdictions.

97. However, the events surrounding the charge were governed by such communications. Indeed, the “expanded” charge against Constable Wong is narrowly based upon what he did not communicate. Therefore, I must make reference to the system in coming to a decision on the charge, but my comments should not be taken as a condemnation or approval of the system

98. There are four police radio channels in Vancouver regularly used for communication between officers and E-Comm. As well there are others, i.e. a “chat” line and an INFO line. Other jurisdictions, as an example the U.B.C. police, have a separate channel as does the Richmond R.C.M.P. Further, there are telephone communications.

99. Constable Blumel was referred to a radio message that took place at midnight. Her partner, Constable Mitchell, asked, “Can we have an OPS channel?” He was told to use OPS4A. Constable Blumel was asked if that channel was “a different channel than the other members are on?” She said it was. Constable Blumel was then referred to a broadcast that took place shortly

after 1 a.m. between Constable Wong and dispatch reporting the Hyundai was going south over the Oak Street Bridge into Richmond. Constable Blumel said she did not hear this because her vehicle was “still on the OPS channel.” For the same reason she did not hear the radio communication between Constable Wong and Richmond dispatch in which Constable Wong reported he was “not pursuing” and the driver was “probably wanted for a breach as well as initiating pursuit.”

100. Constable Blumel was referred to another broadcast she did not hear. She explained it was on “Chat-Four” which she said was “another radio channel that we use ... If we want to talk a little more.” There was some clarification of the radio communication system in the cross-examination of Constable Blumel:

Q. I finally want to ask you a couple of questions about the radio channels to clear things up for the adjudicator. In Vancouver there are four districts: is that correct?

A. Yes, that is correct.

Q. The district where you were within corresponds with southwest Vancouver?

A. That's correct. ...

Q. That is what you see on the transcript as DISP 4?

A. Correct.

Q. That's a channel for which radio protocol is very strict. Members are supposed to get in and get out give and take information as briskly as possible.

A. That's correct.

Q. Because that deals with all of the operations within that district?

A. That's correct.

Q. In addition to that there is a chat channel where officers can have more involved conversations about any matters that happen to be a concern to them that evening?

A. Correct.

Q. That's a specified channel that any body in the district might go to to have a less formal conversation?

A. That's correct.

Q. And finally, there are operations channels which may be assigned on an ad hoc basis to deal with a specific event that is occurring?

A. That's correct.

101. The number of channels, choice of channels by any officer and the use of telephone communications, all played a part in this incident. For the officer in a vehicle, particularly one alone in a vehicle, there are other problems. The officer not only has his/her duties, he/she has traffic noise, engine noise and, in the case of Constable Wong, a barking dog. I can go no further than Sergeant Ackles who said the system can be "frustrating."

102. It was recently reported that when the Prince of Wales and the Duchess of Cornwall were "exposed to a violent mob" one of the reasons was, "the convoy's motorcycle outriders, whose job was to keep the route clear, were using

a different radio channel to the officers policing the demonstration. This left them in the dark as to the protesters' movements.”

103. In coming to my decision I have taken into account the above factors that add to difficulty in communicating between officers and between jurisdictions.

Advice to Richmond on the night in question

104. It was Constable Wong who first raised the issue of advising Richmond. At 1:12:20 (822) he suggested advising Richmond he was, “not in pursuit.” Dispatch acknowledged this suggestion. Sergeant Rattray was listening and interjected and asked if it was the vehicle they had been looking for.

105. Constable Wong repeated (833) this inquiry: “Did you ... advise Richmond yet?” to which the dispatcher responded the chief dispatcher was “taking care of that.” This was brought to Sergeant Rattray’s attention. I interjected and Sergeant Rattray replied:.

SGT. RATTRAY: But from 21 years of service, I know that E-Comm the chief dispatchers are very competent people. I would expect that’s what they would pass on. All the pertinent information would be passed on to Richmond dispatchers.

...

ADJUDICATOR: That E-Comm would pass that on.

SGT. RATTRAY: That's correct.

ADJUDICATOR: That the pursuit had been called off, and that you had a plan to – if she went home, you would arrest her at home?

SGT. RATTRAY: If she went home, but now she entered another jurisdiction.

106. A telephone communication was held between E-Comm and the Richmond dispatcher at 1:13:51: a.m. (852). Vancouver dispatch informed Richmond the Hyundai was in Richmond and Vancouver police were, “not dealing with it. We’re waiting for her to return home.” The Richmond dispatcher said, “Okay, we’ll broadcast it.” (871)

107. The agreed statement of facts sets forth at paragraph 35 details of the information that was passed to Richmond dispatch. It included:

The Vancouver Police Department “were not dealing with the driver, but were waiting for her to return home.

The agreed statement of facts also recorded the Richmond dispatcher informed the Vancouver dispatcher that they [Richmond] would broadcast the information and that Constable Wong spoke to Richmond dispatch to confirm Richmond had received the pertinent information.

108. Constable Bojic testified he did not hear the broadcast that there was a plan to arrest the suspect at a known residence. I interjected:

ADJUDICATOR: You didn't hear it because it was between Vancouver and the RCMP in Richmond?

CST. BOJIC: Yes, it would have been on the INFO channel.

ADJUDICATOR: Your detachment and the RCMP in Richmond they got this?

CST. BOJIC: Yes.

ADJUDICATOR: They knew that Vancouver was waiting for them to return home?

CST. BOJIC: Yes.

ADJUDICATOR: They didn't tell you that?

CST. BOJIC: No

109. No witness was called from Richmond dispatch. Mr. Woodall said:
"Why the information was never passed on to the people in the street in Richmond will have to remain a mystery." .

110. Furthermore, it appears there was no responsibility on Constable Wong.
I am referring to the agreed statement of facts:

33. On August 1, 2006, the policy that was in place, which was developed jointly by E-Comm and the Vancouver Police Department, was as follows:

If Vancouver Police Department members follow a vehicle involved in a police incident from Vancouver into Richmond, the Chief Dispatcher at E-Comm has the role of communicating details about the incident to the Richmond RCMP; individual officers do not have that role.

111. No case, either on the facts or as a policy, has been made out that Constable Wong was at fault in his communications.

The pursuit

112. I am satisfied there was a pursuit. The following broadcasts are of assistance in establishing this and when it commenced:

1:16:32 It just went into the comfort Inn parking lot ...
(Bojic)

1:16:40 ... is through the comfort Inn parking lot
(Bojic)

1:17:01 So, do they want us to ... attend there and
pull the vehicle over? (Bojic)

1:17:09 ... yeah, if you can. (Wong)

1:17:15 ... We're about a minute away. (Bojic)

1:19:01 This vehicle's trying to evade all these ...
unmarkeds. (Bojic)

1:19:23 Yeah, vehicles ... taking off on us. (Bojic)

1:19:59. Have you activated Echo-Five? (Richmond
dispatch)

1:20:06 Negative. But its swerving to the opposite
lane of traffic now. (Bojic)

!:20:23 ... just blew a red light. ... And I've activated
my light now." (Bojic)

1:20:42 [speed] Ninety-six K. Just following ... an
unmarked Vancouver. I'll just try and get ahead of
him here. (Bojic)

!:20:55 Yup, go ahead ... marked unit, I'll just ...
hold your six [behind] (Wong)

1:21:01 We are passing the Shell Road exit. Going one-sixty.(Bojic)

1:21:53 We've got an MVA here. It hit another vehicle." [The words, "is in pursuit" followed.] "Yeah, suspect getting out of the vehicle, VPD's on scene as well. Richmond is in pursuit of that vehicle." (Wong)

113. On the OPS channel, at 1:20:21, Vancouver Police Constable Taylor spoke to Vancouver Police Constable Brown (1025). He said, "Vehicle's takin' off from Richmond ... I think they're going to pull the pursuit here shortly." Then he said, "Just following the lights here driving on wrong side of traffic so they called off the pursuit."

114. In his oral testimony Constable Bojic said, "... when I activated, I activated just to let the police officers operating the SUV know that they pull aside and I will take the lead here. We know from the broadcast that he "activated" at 1:20:23 and that he then passed Constable Wong's vehicle.

115. Constable Bojic testified as follows as to why he activated:

Q. You had indicated after you had been told pull it over if you can by the Vancouver member, your intent was to pull the vehicle over by getting close to it and activating your lights?

A. Right.

Q. When did your plan change and why?

A. The plan changed when one of these unmarked police vehicles got in front of me. I took it as, okay, this is not what they want done here. They want me to be more

aggressive in stopping this vehicle. This is something that is more serious than I thought. To me that's why I initiated the pursuit at that point.

116. Constable Bojic agreed it did not appear the Vancouver police "were regarding this as an emergency" until the black SUV passed him. When shown a picture of Constable Wong's vehicle he agreed that was not the vehicle that passed him.

117. Constable Bojic testified he did not hear the message about an arrest at a known residence because it, "was by telephone rather than a radio transmission." He said he does not know why the information in that message was not transmitted by the Richmond dispatcher. However, from the messages he did hear he knew there had been an earlier pursuit and it had been terminated. He agreed this was "significant" information and he realized a pursuit was "not something that they [Vancouver police] regard at this time as being worthy of pursuit."

118. Constable Bojic participation in the pursuit commenced when he was behind Constable Wong and activated his lights. However, before that moment the Hyundai was swerving into the oncoming lane, was "taking off on us", blew a red light and was traveling at an excessive speed.

119. I am of the opinion the pursuit was initiated by Ms. Gehring.

It was not initiated because of anything said in any communication

from Constable Wong. Mr. Doyle, in his opening remarks, said:

I expect you will hear that it wasn't the instructions of Constable Wong alone that caused Constable Bojic to pursue the vehicle. It was a consolidation of things that happened including that.

I do not agree Constable Wong "instructed" Constable Bojic as to what to do.

He agreed with Constable Bojic's plan of arrest. Further, regardless of how his agreement is defined, it had nothing to do with the initiation of a pursuit.

Decisions of Richmond dispatch and Constable Bojic

120. Sergeant Rattray testified the Vancouver police, "pass the information and they rely on that information and they act how they feel is appropriate." In the context of this case it can be said he is of the opinion the Richmond dispatch and the Richmond police are not subject to direction from the Vancouver police.

121. In cross-examination Constable Wong said, "it's not my job or responsibility to dictate to the R.C.M.P. how to do police business in their jurisdiction." Mr. Doyle repeated to Constable Wong the things he had, and had not, passed on to the Richmond officers. Then the following exchange:

Q. You didn't tell them that there was an overriding concern about this vehicle was a marked unit seeing it and causing a pursuit?

A. I did not state that either.

Q. Isn't that most – of all the things you could have told them, wasn't that the most important? Don't let a marked unit follow this vehicle; that's when she might take off.

Q. I would disagree with you there, Mr. Doyle. Again, I'm a constable in another police jurisdiction. It's not – it's a fine line between dictating to the RCMP how to do police business. They may see it beneficial that a marked police car get behind a suspect vehicle.

122. Constable Bojic answered as follows in cross-examination:

Q. And under ordinary practice when an incident comes in from Vancouver to Richmond it is up to the Richmond members to assess the situation including the information and decide how they are going to proceed?

A. Yes.

Q. That's what you did?

A. Yes.

123. Constable Bojic decided how he was "going to proceed" and Richmond dispatch did likewise. This cannot be visited upon Constable Wong.

CONCLUSION

124. I do not find it necessary to discuss the required standard of proof.

Whatever the standard, it is higher than a mere possibility. At any standard

above possibility it cannot be found there was either discreditable conduct on the part of Constable Wong or a connection between his conduct and the accident.

125. It follows that I find there was no connection between Constable Wong's conduct and the "harm" that the Commissioner was concerned "resulted directly or indirectly from the conduct of [Constable Wong]." I therefore do not have to deal separately with the issue of causation between Constable Wong's conduct and the "harm."

126. The charge is dismissed.

Allan D. Thackray, Q.C.

20 December 2010