



OFFICE OF THE  
POLICE COMPLAINT COMMISSIONER

---

British Columbia, Canada

**ADDENDUM TO REASONS FOR DECISION**

**PUBLIC HEARING REQUEST REGARDING THE OAK BAY POLICE  
INVESTIGATION INTO FATAL MVA**

---

**Previous Decision**

On 11 April 2006, I released my Reasons for Decision<sup>1</sup> regarding the Oak Bay Police Department's investigation into a fatal motor vehicle incident that occurred on September 28, 2003. The investigation revealed HM was returning by cab to her apartment on Oak Bay Avenue. She exited the cab in which she had been a passenger by way of the passenger side rear door, apparently walked behind the vehicle, and began crossing the street where there was no crosswalk when she was struck by an oncoming taxicab traveling westbound on Oak Bay Avenue. Emergency personnel arrived very quickly, but HM was pronounced dead later that morning at the hospital as a result of her injuries.

During the course of that decision I made reference to various contentious issues that arose between the external investigator's report, allegations by HM's parents (the complainants) and the respondent's recollections of events. I concluded that regardless of the outcome of the investigation into those discrepancies, it was my decision that it would not be in the public interest to hold a public hearing into this case. I am still of that view.

Nevertheless, sufficient concerns have been raised regarding some of the contentious issues noted in my April 11 2006 Reasons for Decision that I deemed it necessary to have some of the issues re-investigated. The results of that re-investigation are now in hand, and, although it does not alter my decision to not hold a public hearing, I believe that it is appropriate to disclose the results in this Addendum to my previous decision.

On April 18, 2006 the complainants met with members of my staff and I to discuss their views on what I deemed to be significant issues in my Reasons for Decision. After a

---

<sup>1</sup> OPCC website: [www@opcc.bc.ca](http://www@opcc.bc.ca) under PCC Decisions

lengthy meeting during which we explained the process and our role in the police complaint process, they understood my decision to not call a public hearing into this matter, although expressing ongoing concerns with the police investigation.

The complainants raised a number of issues with respect to my Reasons for Decision, however, I indicated that I would revisit only the issue surrounding the date of the re-enactment and request further investigation because the complainants had provided further evidence relating to this date. Considerable discussion of this issue was found at pages 12 and 13 of my Reasons for Decision. By way of capsule summary, the complainants were adamant that they observed Sgt DM on October 3, 2003 at the scene of the accident with the taxi drivers. Sgt. DM vehemently denied this allegation and was equally adamant that this event occurred only after he received the translated statement of one of the taxi drivers on 20 October 2003. One of the problems confronting both the external investigator and my office is that Sgt. DM did not take adequate notes of his investigation and relied totally on memory and his deduction that he would not have conducted the re-enactment until he had a translated statement.

Although ultimately nothing relating to the decision as to whether to call a public hearing turns on the date of the re-enactment, it was an important issue for the complainants, the respondent and the external investigator. For that reason, I decided to have that issue re-investigated. Accordingly, on May 5<sup>th</sup>, 2006 I wrote to Chief Anderson of the Oak Bay Police Department and requested that a senior member be assigned to conduct a follow-up investigation into the issue as to when Sgt. DM conducted the accident reconstruction.

**The issue:**

**A) The Complainant's position:**

The complainants indicate that they are positive that they saw Sgt DM of the Oak Bay Police in the company of the taxi drivers conducting a re-enactment of the accident on October 3, 2003. They say that they returned to their daughter's apartment on Oak Bay Avenue where they had been staying since the accident, after returning from the crematorium. They recall that this occurred on October 3, 2003. Their daughter's cremation took place on the following day, October 4<sup>th</sup>. They indicated that they saw Sgt. DM take the taxi driver by the arm and in their words "forced him down the road". They claim they later confronted Sgt DM about the way in which he had "man-handled" the taxi driver and he explained to them what he was doing.

The complainants also indicate that according to their recollection, they were staying in their daughter's apartment, when in the early morning hours of October 4, 2003, at about 3 or 4 am, they apparently noted an Oak Bay Police officer at the scene of the accident. Consistent with their involvement in all aspects of this investigation, they advise that they went outside to speak to the officer and asked what he was doing. He responded that Sgt. DM was out earlier the previous day with the taxi driver but did not have spray paint in

his trunk. Sgt. DM left grease crayon (chalk marks) on the roadway and asked the officer on the night shift to locate the marks and spray paint them because he was afraid the traffic around the nearby construction site would obliterate the marks. The complainants say they witnessed the officer finding the marks with a flashlight.

B) The external investigator's (Sgt. RM) version:

Sgt RM throughout his investigation report accepted the date of October 3, 2003 provided to him by the complainants. He had no reason to doubt that date, since the respondent officer, Sgt. DM, did not dispute the date when it was put to him in questioning. The documentation he received from Oak Bay all referred to the October 3<sup>rd</sup> date. Neither the respondent officer, nor Chief Anderson took issue with that date in subsequent correspondence. At the time, the date did not appear to have particular significance thereby requiring further investigation. No one challenged the accuracy of the date until the respondent officer (Sgt DM), on 30 December 2005 in the course of his rebuttal to Sgt RM's external investigation report, claimed that the date of the re-enactment was wrong.

Moreover, during an interview Sgt DM was specifically asked by Sgt RM about the events of October 3 2003 on numerous occasions. At page 16:

*Sgt RM "...Um I just want to go into the re-enactment, now you did a reenactment with Mr...with both the cab drivers on October 3<sup>rd</sup> "*

*Sgt DM "Yes"*

Reference is made during the course of the statement on four more occasions to the October 3 date before Sgt DM himself adopted that date in response to questions put to him regarding follow-up interviews. At page 24:

*Sgt. DM " No, no, I did do follow-up interviews and that's what the October 3<sup>rd</sup> um, was".*

Sgt RM concluded that all the documentation and the subsequent statement confirmed in his mind that the date of the re-enactment was October 3 and that the fact that the respondent officer had made no notes of what he had done regarding the re-enactment did not persuade Sgt RM that the respondent officer's recollection two years later was more accurate than the information he had at the time.

C) The Respondent Officer's (Sgt DM) recollection:

In his rebuttal to the external investigation report, the respondent officer (Sgt. DM) took exception to a number of issues. The only one that I will refer to in this Addendum to my Reasons for Decision is the one concerning the date of the re-enactment. Rather than quote from his lengthy rebuttals to the external investigation, I shall provide a brief capsule summary of his contentions regarding the date of the re-enactment.

In essence, the respondent officer's recollection was that he had received two statements from both taxi drivers. One was in Punjabi and he had sent it for translation. Sgt DM states he had no intention of conducting a follow up interview until he had the opportunity to review both statements. As well, Sgt DM contends, he did not want to conduct a follow-up interview with the other cab driver until he knew what the cab driver (who had provided a statement in Punjabi) had said. He did not receive the translated statement until October 20 2003. Sgt DM claims that on the date he received the translated statement, he phoned and met with both taxi drivers, and did not return to the scene until October 20. He also claims that the purpose of the attendance at the scene was not to conduct a re-enactment, but instead it was to conduct follow-up interviews at the scene. Sgt DM further claims that October 20<sup>th</sup> was the only time he had the taxi driver Mr. D. return to the scene with him.

### **Results of the re-investigation:**

As a result of my request for a re-investigation, Chief Andersen assigned Sgt Symes to look into the matter I wished to have clarified. His investigation revealed that on October 4, 2003, Deputy Chief Gaudet noted Sgt. DM working in the company of two officers not normally on his shift at the location of the fatal accident scene. Sgt. DM advised him that the members were called out to replace two other officers who had booked off sick. The shift records for October 4 confirm that was in fact the case.

Sgt M, (then a constable) confirmed having been called to work on overtime due to another member being sick. He recalls being requested by Sgt DM to assist in the re-enactment of the accident scene on October 4 2003. He indicated that Sgt DM had advised him that he had arranged with the taxi driver who had struck HM to meet him at the scene. Sgt M conducted traffic control while Sgt DM dealt with the taxi driver and made markings on the road.

Cst. H was the Oak Bay officer who attended at the accident scene in the early morning hours of October 5 2003. He had started his night shift on Saturday October 4. He had been asked to return to the area where Sgt. DM had left chalk marks on the roadway to apply spray paint to avoid the marks being lost to vehicle traffic. He recalled Sgt. DM explaining the circumstances of the fatal MVI to him and pointing to crayon marks that had been left at the scene. As he was completing his task he recalls being approached by the parents of the deceased. He explained to them what he was doing when they asked him.

Investigator Symes also reviewed the 29-page statement taken by Sgt. RM and noted the reference to the October 3 dates. Furthermore, Saanich traffic analysts also did not attend the scene on either October 3 or 4<sup>th</sup>. Sgt. Symes advised the respondent officer Sgt DM of his findings and asked if Sgt DM recalled any of the events described in the re-investigation. Sgt DM apparently remained resolute, despite the evidence to the contrary,

that he attended to the accident scene with the taxi drivers only once, and that date was October 20.

**My conclusions:**

I am satisfied on all the evidence that Sgt DM did in fact attend at the accident scene in early October as suggested by the complainants. I also find that they spoke to Cst. H in the early hours of the next morning while he was spray-painting the chalk marks left behind by Sgt. DM during the re-enactment. Although the complainants are sure about the October 3 date, the evidence suggests that it was in fact, October 4<sup>th</sup>. I accept that they were grieving their daughter's tragic demise and were experiencing the additional trauma of arranging for her cremation. Despite the error by one day, everything else they recall has been accurate and corroborated by other evidence. In any event, I find that Sgt DM did attend at the accident scene on October 4<sup>th</sup> 2003 and not on October 20<sup>th</sup> as he alleges. He did not wait for the translation of the statement before conducting the re-enactment or his follow up to the initial statements taken on the date of the accident. The fact that he maintains his position despite the clear and convincing evidence to the contrary is troubling. This is especially so when he has no notes to rely on, and no other evidence to corroborate his recollection.

I considered whether Sgt DM's faulty rebuttal amounted to yet a further disciplinary default, but I am persuaded that there was no intent to deceive. I accept that Sgt DM honestly but mistakenly believed what he contended. That conclusion, however, does not give one cause to completely accept other assertions he has made about this matter either, because it is now proven that his memory is faulty and his note-taking was practically non-existent. It is hoped that this experience has shown the respondent officer the necessity to take contemporaneous, detailed and accurate notes to increase reliability of his evidence and prevent a lack of credibility in the future.

I do not wish to leave this matter without making some comments about the task undertaken by Sgt RM as the external investigator. At the outset, I want to commend Sgt RM for his thorough investigation into this matter. I recognize that upon a re-reading of my April 11 decision, I may have inadvertently left the impression that I was critical of the "questionable findings in Sgt. RM's Final Investigation Report"<sup>2</sup>. I did not intend to leave that impression. My comments were *inter alia* in relation to the (at the time) questionable conclusion that the re-enactment had taken place on Oct 3. In light of the respondent officer's rebuttal of 30 December, the assumption by Sgt RM that the date suggested to him by the complainants was correct, appeared to be "in question". That matter has now been laid to rest. My comment was intended to be in relation to whether the (then apparently unwarranted) assumption resulted in Chief Andersen's ultimate decision being flawed. I concluded then, and confirm now, that it was not. I also mentioned that "Sgt RM's findings in this regard appear to be based on sound evidence".

I recognize that it is often a thankless and unenviable task for a police officer to investigate the conduct of another police officer. It takes courage and professionalism,

---

<sup>2</sup> See page 15 of April 11 Reasons for Decision

combined with a belief in the value of the police complaint process to undertake such an investigation with complete objectivity. Sgt RM fulfilled this task admirably and competently.

I have already indicated that for the reasons stated in my April 11 Reasons for Decision, “the investigative errors which gave rise to the discipline defaults by both respondent officers have been identified. They admitted the defaults and the appropriate sanctions have been imposed. A public hearing would not provide additional evidence to assist in a determination as to whether the investigating officers committed discipline defaults”<sup>3</sup>. As mentioned earlier, the complainants have been advised and understand my decision to not call a public hearing into this matter. Hopefully, the concerns about the way in which the initial investigation was handled and the necessity to take adequate notes and file management will be noted by both officers found to have committed a disciplinary default. As well, I am confident that senior management within the Oak Bay Police Department will ensure that proper training and monitoring will prevent similar problems from arising in the future.

Dirk Ryneveld, QC  
Police Complaint Commissioner  
Victoria BC  
June 21, 2006

---

<sup>3</sup> Pages 17 – 18 of April 11 Reasons for Decision