

# DUI investigation involving a police officer

## Canwest News Service

Forthwith, it shall ever be known as The Full Monty Defence.

You drink and drive. Maybe enough to blow over the limit, maybe not: Only an onsite breathalyser test would be able to establish that fact. Soon after, you get into an accident.

Rather than staying at the scene of the accident, as the law and common decency demand, you leave because, say, your wife phoned and told you someone was trying to break into your house. Once at home, you, shaken but not stirred, imbibe. Mightily. You down a quick couple of generous shots to calm your nerves. Only then do you return. There, you are taken into custody by the attending police, take a breathalyser test and - no surprise - blow over the limit.

Your defence? Your blowing over the limit was a result of alcohol ingestion after the accident, not before. So no harm, no foul.

And the \$54-million question is: What lesson, as citizens who may one day be involved in a serious car accident, can we learn from this scenario?

That question - asked only after I had spit up my morning coffee on the pages of The Vancouver Sun - came to mind when I read that RCMP Cpl. Benjamin (Monty) Robinson, who was involved in the Oct. 25, 2008, crash that killed 21-year-old Orion Hutchinson, would not be charged with impaired driving causing death, dangerous driving or an accident resulting in death. He would be charged only with the lesser charge of attempting to obstruct justice.

The case, I should say now, is close to home. In Tsawwassen, where I live, and where the accident occurred, the outcome of the Delta police force's investigation into that accident has been closely watched. Lots of people in town know Orion Hutchinson's mother, Judith, a popular personal trainer who, before Orion's death, had an irrepressible and upbeat energy. I also happen to know Judith personally, and wrote about her in The Sun when she helped me train for the Sun Run. She's a lovely woman. So the Crown's decision to pursue the lesser of the charges came as - how do I put this delicately? - a surprise. Earlier in the year, when Robinson attempted to get a 90-day driver's licence suspension overturned, B.C. Supreme Court Justice Mark McEwan denied the request because he found Robinson's claim that he drank only two shots of vodka after the accident not credible. Justice McEwan also noted in his judgment that police at the scene believed Robinson's demeanour, which included slurred speech and bloodshot eyes, indicated he had more than two shots.

But laying a drinking and driving charge is another thing. The criminal justice branch wouldn't comment, but the Crown is there to determine what will stand up in court and what won't, and in this case, I'd guess, the Crown may have felt the lack of continuity between the time of the accident and the time Robinson made himself available to police was problematic. Could the police guarantee a substantial likelihood of conviction, as the charge approval standard demands? The Crown, apparently, thought not, and went for the lesser charge.

"In situations where there's a gap in time," said Michael Shapray, a Vancouver lawyer who does a lot of drinking and driving cases, "it's near impossible to prove the charges. ... If the evidence raises a reasonable doubt [in this case, the difficulty of establishing exactly when Robinson drank what], it would result in acquittal."

Was this kind of scenario, Shapray was asked, common in drinking and driving cases?

"Well, I wouldn't say 'common,'" Shapray said, "but it's not an unusual scenario."

Drinking and driving cases are often complicated, and a whole area of law has sprung up around them despite the fact that the trend in numbers of DUIs has been steadily falling over the last 25 years. Still, the numbers are high. In 2006-2007, there were 14,596 incidents reported by police in B.C., with charges resulting in 8,772 of them. Of those 8,772 cases, just over 7,500 resulted in conviction, which is a good success rate of 86 per cent of those charged, but it's just over 50 per cent of all reported incidents. The odds for conviction, for police at least, are not inspiring.

Back to our question:

What, as citizens who may one day be involved in a serious car accident, can we learn from the Robertson case?

I put the question to SFU criminology Prof. David MacAlister, who, in a news release Wednesday, wondered in print why Robinson was not charged with failure to stop at the scene of an accident. (I had wondered the same thing, if only because it seemed counterintuitive for a police officer not only to not remain at the scene of an accident, but to not aid someone mortally hurt at the scene of an accident.) MacAlister laughed when I asked him the question, because he had just been on radio, and before he had gone on, he said, he had asked that he not be asked that question on air, and he was a little ticked off because the interviewer had turned around and asked him the question, anyway.

And why, I asked him, did he not want that question asked on air?

"Because I didn't want the public to get the idea that here was a good way to beat a drinking and driving charge."

I admired MacAlister for that sense of civic duty. I was also sure members of the public had made note of that lesson whether he had said that on radio or not.

I was also sure that, despite whatever happened on that October night in Tsawwassen, the majority of them would still do the right thing.

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