



April 22, 2009

Attorney General Wally Oppal
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VIA FAX: (250) 387-6411

Dear Sir:

RE: Police involved death of Paul Boyd, CJB delays

I write to you on behalf of the B.C. Civil Liberties Association concerning the events following the police involved death of Paul Boyd in Vancouver on August 13, 2007.

In early April our office made inquiries to the Vancouver Police Department, Coroner's Service of British Columbia, and the Criminal Justice Branch ("CJB") to determine what had become of Mr. Boyd's death investigation.

We have recently been notified by the Vancouver Police Department that their investigation file was closed in August of 2008, and that the file has been at the office of the CJB for charge assessment since then. We have contacted the CJB and been advised that no determination on criminal charges has been made to date.

That revelation is surprising, particularly given our research into reports and publications from your Ministry in the past several years. Those show that after some efforts were made to set protocols for timeliness in charge assessment and in progressing from charge to disposition, there has not been public disclosure of the standards that Crown counsel are to adhere to. On further inquiry, we were advised by the CJB that they process 60% of all charge assessments in a day and have 91% done within a month.

That clearly has not taken place here, nor is it the case with charge assessments against law enforcement officers generally. That is troubling, for the obvious reasons that the public expects prompt investigations into police-related deaths or injuries. All police agencies hold themselves out as being accountable and yet that very accountability falters if any of the mechanisms for ensuring it fail to deliver.

Although coroner's inquests and internal VPD police discipline may be outside of your jurisdiction as Attorney General, you should also be aware that in addition to the delay at the CJB, the Coroner's Service has not yet determined whether or not to hold an inquest, and the Professional Standards investigation into the conduct of the involved officers pursuant to Part 9 of the *Police Act* has still not commenced.

Here, there has been a failure on the part of the VPD to make a timely investigation and report to Crown counsel on possible charges, there has been a failure of the CJB to make up its mind and do something, there has been an abdication of duty by the coroner's office and there has been a failure of the VPD to hold the required investigation under the *Police Act*.

Our office is extremely concerned about the inordinate delay in processing this file. We are particularly concerned because it appears that time delays for CJB charge assessment in police involved deaths are increasing, not decreasing, representing a distressing pattern in deaths that require increased transparency and accountability given the critical Davies and Wood reports and the recent revelations at the Braidwood Inquiry.

We draw to your attention the following deaths and the length of time from death to completed charge assessment:

- Frank Paul – Died December 6, 1998, VPD report completed May 1999, 1st assessment September 1999, 2nd assessment December 1999, 3rd Assessment December 2000, 4th Assessment March 2004, 5th Assessment April 2004. (269 days to first charge assessment)
- Ian Bush – Died October 29, 2005, first and only charge assessment announced September 5, 2006. (311 days)
- Robert Dziekanski – Died October 14, 2007, first and only charge assessment announced December 12, 2008. (425 days)

We encourage you to investigate these apparently increasing delays, and to move swiftly to address this matter that threatens the confidence of the public in their police and justice system.

One recommendation that we would encourage you to consider is to amend the *Crown Counsel Act* and provide therein for the mandate of the Criminal Justice Branch to include the timely and efficient review and assessment of charge assessment reports and the timely and efficient prosecution of charges. While in some quarters it may be considered a matter that ought to go without saying, given the track record in the above cases and many more that apparently exist, it is appropriate that the Criminal Justice Branch be provided with that express direction in statute. In the meantime, we suggest as well that you revise the description of how that Branch is to operate on your website to include timeliness as a key factor and that you provide a written direction to those in charge of administration of the Criminal Justice Branch to like effect.

Before concluding this letter, we will pass this along as a matter for further consideration by you and your Ministry. From our investigation it appears that one possibility for the delay in charges being assessed by the CJB and a decision made is that the investigating law enforcement officers frequently regard the question of "reasonable grounds" or "reasonable and probable grounds" as it relates to the conduct of the officers in question as being something upon which they are not obliged to make a judgment or assessment. Instead, they pass along to CJB the basic facts and leave the assessment or conclusion of that for the CJB to do. Alternatively, they express the view of the officers in question that they had "reasonable grounds" or set out their view that that is so, but leave it to CJB to decide whether that is so.

We understand that CJB, on the other hand, takes the position that it is not in the business of investigating crime and thus it looks for someone else to provide the information on whether "reasonable" grounds existed. Where nothing is provided or where what is provided is from law enforcement officers saying that "reasonable" grounds existed, CJB is left with a situation where it must decide whether simply to accept the police report on that point (in which case no charge is authorized) or stall in indecision (in which case matters drag on without any conclusion).

It would appear that there must be a means devised for this impasse to be resolved. Two possibilities commend themselves. One is to establish within your Ministry a section of lawyers who deal with evaluating whether "reasonable" grounds existed in police-related deaths and injuries and to include that assessment in the charge assessment report provided to CJB. Another is to vest the responsibility for doing that in a revamped Office of the Commissioner on Police Complaints.

We encourage you to revisit this point and to consider how to make the process from investigation through charge assessment report and from charge assessment report through to charge a more efficient and streamlined one, particularly insofar as police-related deaths and injuries are concerned.

For your reference, we have sent a similar letter to the Solicitor General concerning the police investigation, professional standards investigation and Coroner's Service delays.

Yours truly,

A handwritten signature in black ink, appearing to read "R. Holmes", with a long, sweeping underline.

Robert Holmes
President