



December 22, 2010

Deputy Attorney General Robert Gillen, Q.C.
Ministry of Attorney General
Criminal Justice Branch
P.O. Box 9276 Stn Prov Govt
Victoria, BC V8W 9J7

Dear Deputy Attorney General Gillen:

RE: Paul Boyd Case

I am writing you in my role as Executive Director of the B.C. Civil Liberties Association ("BCCLA"). The BCCLA is requesting that the Criminal Justice Branch appoint a Special Prosecutor to reconsider criminal charges in relation to the police shooting of Paul Boyd on August 13, 2007, in light of new evidence that has become public through the Coroner's Inquest into the matter.

The BCCLA has a copy of the publicly released Criminal Justice Branch summary of the evidence available to the CJB, in which the CJB described its charge assessment analysis. We have compared this public document with the evidence that was presented at the inquest, and we have two concerns as a result.

First, we have found several troubling contradictions between the CJB summary and witness testimony, on key points, that lead us to believe a different decision might be arrived at concerning criminal charges in relation to this incident if the witness evidence as presented at the Inquest is considered.

Second, and most alarmingly, we found that two major pieces of evidence critical to our analysis were either not canvassed at all, or not examined for their probative value in the CJB summary. These documents are the report and evidence of Dr. Lee, the forensic pathologist, and Vancouver Police Department evidence on the timing of the shots. Dr. Lee presented evidence at the Inquest that Paul Boyd was most likely crawling when he was hit by the only bullet that was immediately fatal, namely the ninth and final shot. Dr. Lee's evidence strongly supports the many police and civilian witnesses who testify unambiguously that Mr. Boyd was crawling when he was shot the last time by Constable Chipperfield.

Contradictions between the CJB summary and witness testimony

A number of discrepancies arose between the testimony at the Coroner's Inquest and the CJB preferred version of the events that took place that would not ground a criminal charge. These discrepancies tended to break into two groups, with one consistent version of events put forward by a group consisting of disinterested civilian witnesses supported by most of the non-shooting police

witnesses and the physical evidence. The second consistent version of events, which contradicts the version put forward by the first group, is advanced by the shooting officer, supported in part by some police witnesses.

It reasonable to expect based on the evidence presented at the inquest that a judge would conclude, beyond a reasonable doubt, that the preferred version of facts is that of the civilian/police cohort rather than the shooting officer's version of events. In fact, the shooting officer's evidence should be looked at with considerable skepticism given the self-interested nature of the evidence, that the officer only believed he shot four times when he actually shot nine times, and the contradictions of his account presented in the physical evidence and most civilian and police witness accounts.

The evidence did not support the conclusion that Boyd was an active threat through all nine shots fired by the shooting officer

The Criminal Justice Branch Clear Statement suggests a number of reasons why the shooting officer could reasonably have feared grievous bodily harm or death from Boyd. All of these reasons, despite the fact that some may have been valid at certain points during the event, were ultimately completely dismissed or undermined by testimony and physical evidence during the Inquiry.

- **Boyd was not repeatedly swinging the chain and padlock at police or civilians in the road:** According to the Criminal Justice Branch Clear Statement, Boyd repeatedly swung the chain and padlock in a threatening manner in the middle of Granville Street, where he was ultimately shot. For this statement to be accurate and adopted by the CJB, one would expect civilian and police witnesses would support it consistently, and most present would at least know that Mr. Boyd had some kind of rope or chain weapon with him. Not one of the civilian witnesses who testified at the inquest supported the claim that Mr. Boyd was swinging the chain in the road, and neither did the majority of police witnesses. Many police witnesses testified they did not see the chain throughout the incident.
- **Boyd was not armed when he was shot fatally, and that he was disarmed to the knowledge of the shooter is supported by the reconstruction of the timing of the shots:** Constable Baird testified that, following Constable Chipperfield's fifth shot, he called out "hold your fire" and removed the sole remaining weapon from an apparently disabled and disoriented Boyd. His testimony is supported, almost exactly, by the timing of the shots recorded by audio of the event, which suggest the shooter paused during the "hold fire" event and would therefore be aware that Boyd had been disarmed. To the fifth shot, the gap between shots is two to four seconds. Between the fifth and sixth, the gap is 14 seconds. According to Detective Griffiths, the file coordinator in the Vancouver Police Department Homicide Division

responsible for the Paul Boyd file, at 21:29:08 the second shot was fired, followed by the third at 21:29:12, the fourth at 21:29:16, and the fifth at 21:29:18. The sixth shot follows a 14 second pause at 21:29:32, and then there was a second pause before the seventh and eighth shots were fired at 21:29:57 and 21:29:58. The final shot was fired 23 seconds later at 21:30:21.

- **Boyd was not an active threat:** Constable Baird testified to the common sense notion that once the chain had been removed and Mr. Boyd had been shot five times, the level of danger of the situation had decreased significantly. Officer Baird felt that if he were in Constable Chipperfield's position, he would not have shot Mr. Boyd at all, let alone when Boyd was disarmed and crawling.
- **Not all officers drew their guns, indicating their belief of the level of threat presented:** We note that not one other officer fired his or her service revolver throughout the entire incident. The Criminal Justice Branch statement says that Constable Baird did draw a gun, inviting the reader to conclude that all officers perceived that Mr. Boyd presented an imminent threat to officers of death or grievous bodily harm. Constable Baird testified at the Inquest that he did not draw his own firearm at any point during the event. He stated that he did not do so as he wanted to have non-lethal options available to him if Mr. Boyd were to attack him again, and he did not feel the need to use lethal force.
- **It was not reasonable to believe Boyd had other weapons:** Constable Baird testified it was unlikely that Mr. Boyd would have more weapons (or body armour) as he was wearing only a tight t-shirt and tight jeans.
- **Officers had space to escape if the situation escalated:** Every witness agreed that there was sufficient space (between 10 and 15 feet) between Mr. Boyd and Officer Chipperfield and that officers had escape routes if necessary.
- **Officers had time to assess the true nature of the threat:** That the final and fatal shot was fired a full 23 seconds after the previous shot suggests that Officer Chipperfield had ample time to reassess the threat that Boyd represented to him, creating the *mens rea* necessary, through at the very least willful blindness or criminal negligence as to the circumstances and the nature of any threat posed by Mr. Boyd, to ground any mental element considerations beyond a reasonable doubt.

Despite any other contradictions between and among witnesses, it is beyond a reasonable doubt that the final and sole fatal shot was fired while Mr. Boyd was crawling on the road, disarmed

The Criminal Justice Branch summary indicated that there was a credible competing version of events that suggested Mr. Boyd continued to get up and advance on Officer Chipperfield after each shot. This conclusion was not supported by preponderance of both police and civilian witness evidence presented at the inquiry, and also, tellingly, by the pathological evidence of the location of the bullets and routes of bullets in Mr. Boyd's body. Every civilian witness, most police witnesses, and the physical evidence of Mr. Boyd's body agree that the final and sole fatal shot was fired while Mr. Boyd was crawling.

- **Police witness #1:** Constable Smith testified that he believed Mr. Boyd was unarmed, and that when he returned from recovering a less lethal weapon from a car he saw Mr. Boyd on his knees with one hand on the ground during the final fatal shot.
- **Police witness #2:** Constable Baird testified that Mr. Boyd was crawling during the last shoots fired by Constable Chipperfield.
- **The unique nature of police evidence:** Evidence could and should be led by the Crown, and such considerations should inform the charge deliberations, that testimony provided by a police officer against the interests of a colleague, supported by civilian witnesses and physical evidence, is uniquely reliable even if contradicted by other officers.

Police officers have significant workplace cultural pressures that dictate that they support the version of events put forward by colleagues involved in use of force incidents. Significant social science expert evidence on this unique and troubling aspect of police culture is readily available on this point. For example, in August, 2006, the Canadian Association of Police Boards thought the issue serious enough to host author and former police officer Michael Quinn to speak on his book *Walking with the Devil: The Police Code of Silence* concerning the reticence of police officers to testify against other officers.

For a police witness to contradict the "official" version of events provided by a self-interested shooting officer and impugn the conduct of that officer indicates a high degree of reliability, as that officer provides such a version of events in the face of enormous social pressures not to "rat" on his colleagues by breaking the code of silence. In other words, if a witness officer has any doubts, police culture strongly pressures the witness to emphasize the uncertainty of his observations, to resolve doubts in favour of the shooting officer's version of events, and/or remain silent. That two officers breached the code of silence and are supported in their version of events by disinterested civilian witnesses

and physical evidence should overwhelmingly support that version of events as accurate and beyond a reasonable doubt.

- **Police witnesses were supported by all civilian witnesses:** The police witness evidence on these points was supported by all testifying civilian witnesses, in particular that not one civilian witness' testimony would support a conclusion that Mr. Boyd presented a threat of grievous bodily harm or death to anyone during the firing fifth to ninth shots fired. In particular, for those who recalled the shooting chronology, all civilian witnesses testified that Boyd was alternately "creeping", "crawling" or on all fours, during the fifth to ninth shots, and that Boyd was at the very least certainly on hands and knees for the final and, according to the pathologist, immediately fatal shot.
- **Civilian witness #1:** Sandra McLaren, a disinterested civilian witness of the incident, testified, very similarly to Constable Baird, that Boyd was shot about four times before he fell to the ground. After falling she testified that Boyd continued to make small motions, trying to get up as he kept "creeping" forward. She stated that the shooting officer continued to shoot although it was obvious that Mr. Boyd was "not going anywhere."
- **Civilian witness #2:** Kimberly Wendel, another disinterested civilian witness, stated that after four to six shots, Boyd was laying on the ground in Granville Street. He stayed down for 20 to 30 seconds. He then started to stand up. He did not get fully to his feet, and looked as though he were trying to stumble to his feet without ever getting fully upright. She then heard three to four more shots. After the first he continued to move in a forward direction, he advanced though he was not walking or standing. After the second shot in this series Mr. Boyd fell forward toward the ground, moving forward only through momentum. By the time the last shot was fired Ms. Wendel stated that if Mr. Boyd was not fully flat on the ground, he was certainly on his way down.
- **Civilian witness #3:** Mr. Byron Chong, another civilian witness, was uncertain about the order of shots and events, but testified that Mr. Boyd was shot at least one time while crawling.
- **Pathological evidence supports the police and civilian witnesses that Boyd was crawling:** Dr. Charles Lee, the Forensic Pathologist who performed Mr. Boyd's autopsy, testified that Mr. Boyd had been hit by eight bullets. The shot that Dr. Lee believes immediately killed Boyd (Bullet #2 in his report, not chronologically numbered) struck Boyd's face, entered his chest, and caused fatal damage to his heart. He testified that this wound would indicate that the shot came from the sky above Mr. Boyd, or that Mr. Boyd was leaning fully forward, hinged at the

waist with his face up, that he was crawling, or in some other way had his torso horizontal to the ground with his face facing the shooter.

- **The final shot incapacitated and killed Paul Boyd:** Dr. Lee testified that this shot would have caused immediate incapacitation, providing indisputable evidence that it was the final shot given that the reconstruction places this final shot by itself, 23 seconds after the preceding shot. Dr. Lee says bullet #2, fired while almost all witness and certainly all physical evidence agrees that Mr. Boyd was disarmed and in a crawling or doubled over position, was the shot that killed Mr. Boyd.
- **The final shot was the only shot that was immediately fatal:** Dr. Lee, testified that, of the eight wounds, only two had the potential to be fatal. One of these wounds was to Mr. Boyd's abdomen, and would not have been immediately fatal; death was not certain from this wound. The shot that he concluded killed Mr. Boyd (bullet #2 in his report) was the final, incapacitating shot that entered his face and chest and caused lethal damage to the heart, immediately incapacitating Mr. Boyd.

The need for a special prosecutor

The Criminal Justice Branch works with police every day on a number of different files. The Branch has also announced that it believes, on the evidence it reviewed, that criminal charges are not necessary in this matter. While we hope it is not, inordinate delay in the assessment of the file by the Branch and prejudice that delay may have caused to any defendant may also be part of the factors to consider in the reconsideration process and one of which the public should be aware.

On these three facts alone, a reasonably informed member of the public could legitimately come to the conclusion that the CJB is in a conflict of interest on this file, and should provide it to an independent special prosecutor for reconsideration. We hope that you agree with us that this perception of conflict could undermine public confidence in the charge assessment process, and that you see the need for an independent special prosecutor to be appointed to review this file and the evidence heard at the inquest.

Thank you for your prompt attention to this matter. We look forward to hearing your response to this issue.

Yours truly,



David Eby

Executive Director

cc. Attorney General Barry Penner, QC, VIA FAX: 250 387-6411