



July 8th, 2009.

Mr. Murray Mollard
BC Civil Liberties Association
Suite 550-1188 West Georgia Street
Vancouver BC
V6E 4A2

Dear Mr. Mollard,

I am writing to you to provide you with an update into your third party complaint that was received by the Office of the Police Complaint Commissioner on December 17th, 2007, regarding the death of an individual involved in a police incident near the intersection of Knight St and East 41st Avenue on December 10th, 2007.

The Vancouver Police Department's Homicide Section conducted an investigation into this tragic event. That investigation has been completed and it was exceptionally thorough and comprehensive in its scope. The findings of the investigation support the Department's position that the force applied by the officer during this event was appropriate, lawful and consistent with the training provided to him by the Vancouver Police Department. For these reasons, the Vancouver Police Department will not be submitting this investigative file to Crown Counsel for review.

The Office of the Police Complaint Commissioner is aware of this decision and has been provided with all of the investigative materials related to the investigation. The Vancouver Police Department Professional Standards Section is continuing its investigation and review of this matter to determine its compliance with the *B.C. Police Act*.

Sincerely,

Inspector 1415 Mario Giardini
Professional Standards Section
Support Services Division
Vancouver Police Department



July 17, 2009

Inspector Mario Giardini
Professional Standards Section
Vancouver Police Department
312 Main Street
Vancouver, BC
V6A 2T2

VIA FAX: 604-665-5078

Dear Sir:

RE: Police involved death near Knight and East 41st

I write to you in my capacity as President of the BC Civil Liberties Association concerning your letter of July 8, 2009 and the police-involved death that took place December 10, 2007 near the intersection of Knight Street and East 41st Avenue.

In your letter, you advise the BCCLA that “the Vancouver Police Department will not be submitting this investigative file to Crown Counsel for review.” We disagree with this decision.

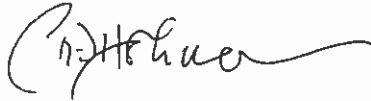
It was just five months ago that Commissioner Davies wrote, concerning his in-depth investigation into the VPD’s response to Frank Paul’s death: “I have concluded that the current practice of a home police department conducting criminal investigations of police-related deaths is fundamentally flawed.”

It would appear that message has not been taken to heart by the VPD. Our organization is deeply concerned that despite the conflicts of interest – real and apprehended – involved with the VPD investigating itself in police-involved deaths, the VPD in this case is acting not just as investigator, but also as judge in its own cause. This arises from the VPD evaluating the sufficiency of its own investigations and whether or not officer conduct rises to the level of justifying criminal charges.

Given the Commissioner’s conclusion that there were inherent problems with the VPD impartially investigating criminal fault among its own membership, it is difficult for us to understand why the VPD would now be removing the Criminal Justice Branch, which we take to be an impartial third party, from the process of evaluating the investigation and the officer’s conduct. While that step would still not achieve the impartiality of a full investigation by an independent force, as the Commissioner and our organization have recommended, it would nonetheless provide at least some measure of independent review of the VPD’s conduct here.

We urge you to reconsider this decision and to forward the complete investigation file to the Crown for determination of the appropriateness of criminal sanction or further investigative steps in this matter. If the VPD declines to do so, our office is prepared to file a service and policy complaint on the matter, arguing that policy for all police-involved deaths should be to forward the full investigative file to the Crown for review.

Yours truly,

A handwritten signature in black ink, appearing to read "R. Holmes", with a stylized flourish extending to the right.

Robert Holmes
President

cc. Chief Jim Chu, (604) 665-3417



May 5, 2010

Mr. Stan Lowe
Office of the Police Complaint Commissioner
Vancouver, B.C.

VIA FAX: (604) 660-1223

Dear Sir:

RE: Service and Policy Complaint: VPD handling of in-custody death investigation files

Please find enclosed the BCCLA's service and policy complaint and supporting documentation concerning the Vancouver Police Department's handling of in-custody death investigation files.

The BCCLA is concerned with the actual and apparent conflict of interest in the VPD determining which in custody death files are referred to the Provincial Crown Counsel's office for determination of charges, and which are not. At a minimum, review of files by Crown Counsel provides some independent assurance to the public, as well as opportunity to request further investigative steps.

We are concerned with the Vancouver Police Department's policy on this issue particularly in light of the findings of the Frank Paul Inquiry that there are systemic issues – yet to be addressed – within the in-custody death investigation system in British Columbia and within the VPD that raise questions about the fairness and quality of the investigations done in the situations of in custody and police-involved deaths.

Please note that we have raised these concerns directly with both the Professional Standards Division of the VPD and the Office of the Chief Constable of the VPD, and we understand that the policy has not changed.

If you have any questions about our complaint, please do not hesitate to contact me.

Yours truly;

David Eby
Executive Director

Cc via fax: Chief Jim Chu (604)665-3417; Van. Police Bd. (604)257-3878

Complaint Form

Office of the Police
Complaint Commissioner
British Columbia, Canada

If you wish to file a complaint against an officer with a municipal police department, please complete the form below. Please fill in as much information as possible and additional pages may be attached if required.

Registered or Non-Registered?

You have the choice of how you wish to proceed with your complaint.

You may file a formal "Registered Complaint" that will entitle you as a Complainant to various rights under the *Police Act*, including:

- Participating in a mediation session or informal resolution
- Being kept informed of the progress of the investigation
- Receiving a final investigation report
- Given the opportunity to make submissions on the complaint, adequacy of the investigation, and what you feel are appropriate disciplinary or corrective measures
- If not satisfied with the outcome, the ability to appeal the decision

If you simply want the police department and the OPCC to know about your concerns, but do not wish to participate in the formal complaint process, you may file a "Non-Registered Complaint". Depending on the information provided, it may or may not result in an investigation and you will not have the same rights as a Complainant as set out above. ALL complaints - Registered or Non-Registered - are recorded and reviewed by the OPCC.

If you would like further information about the *Police Act* complaint process before making your decision, please visit the OPCC website at www.opcc.bc.ca or call at 1 877-999-8707.

How do you wish to proceed? (Please check one): Registered Complaint ☒ Non-Registered Complaint ☐

Your Details:

* Indicates this information is required in order to process your complaint. Please be as precise as possible.

Last Name: * EBY First Name: * David Title (eg. Mr): Mr.
Mailing Address (or where you'd like to be contacted):
BC Civil Liberties Association
550-1188 West Georgia Street
Vancouver, BC V6E 4A2
Date of Birth: N/A
(Year / Month / Day)
Home telephone: N/A
Work telephone: (604) 630 9752
Email address: david@bccla.org Cell phone: (778) 865 7997

* Please provide at least 1 way in which we can contact you *

Details of the Complaint:

When did the incident happen? * N/A Time it occurred? * _____
(Year / Month / Day)

Where did the incident happen? * _____

Name of the Police Department involved: * VPD Police File # (if known): _____

Name or badge number of Officer(s) - if known: _____

Were there any witnesses? If so, please list their names and contact information (if known):

Describe your injuries (if any):

If you received treatment for your injuries:

Where? _____

When? _____

www.opcc.bc.ca

Office of the Police Complaint Commissioner

1 877-999-8707

Description of Complaint

Please describe your complaint and the details of what occurred. If required, you may attach additional pages:

See attached

Page 2 of 2

I affirm the information I have provided in this form is correct and true to the best of my knowledge.

Signature of Complainant

Date signed

May 10 / 10

The information contained in this form relating to your complaint is collected and disclosed to the investigating agency pursuant to Part 11 of the Police Act. If you have any questions or any concerns regarding the complaint process, please contact the Office of the Police Complaint Commissioner.

The completed form may be submitted to any municipal police department or submitted directly to:

The Office of the Police Complaint Commissioner
3rd Floor, 756 Fort Street, PO Box 9895 Stn Prov Govt, Victoria, BC V8W 9T8
Tel: 250 356-7458 Fax: 250 356-6503 Website: www.opcc.bc.ca

A wide variety of support groups are available to assist you with the complaint process. For help finding the right support group for your needs, please call our office at 1 877-999-8707 and ask for the Support Group Coordinator. A complete list of support groups is also available on our website.

To be completed by the person receiving this complaint:

I hereby acknowledge receipt of the above-noted complaint,

Received on _____ at _____
(Year/Month/Day) (Time)

(Name of person receiving complaint)

Agency receiving complaint: _____

How was the complaint received? In person ☐ By mail ☐ By phone ☐ By webmail ☐ On Line ☐

If received orally, choice of Registered or Non-Registered and contents of complaint read back to Complainant? Yes ☐ No ☐

Copy of complaint acknowledging receipt provided to Complainant? Yes ☐ No ☐

Forwarded to OPCC: ☐ Date sent: _____



July 17, 2009

Inspector Mario Giardini
Professional Standards Section
Vancouver Police Department
312 Main Street
Vancouver, BC
V6A 2T2

VIA FAX: 604-665-5078

Dear Sir:

RE: Police involved death near Knight and East 41st

I write to you in my capacity as President of the BC Civil Liberties Association concerning your letter of July 8, 2009 and the police-involved death that took place December 10, 2007 near the intersection of Knight Street and East 41st Avenue.

In your letter, you advise the BCCLA that “the Vancouver Police Department will not be submitting this investigative file to Crown Counsel for review.” We disagree with this decision.

It was just five months ago that Commissioner Davies wrote, concerning his in-depth investigation into the VPD’s response to Frank Paul’s death: “I have concluded that the current practice of a home police department conducting criminal investigations of police-related deaths is fundamentally flawed.”

It would appear that message has not been taken to heart by the VPD. Our organization is deeply concerned that despite the conflicts of interest – real and apprehended – involved with the VPD investigating itself in police-involved deaths, the VPD in this case is acting not just as investigator, but also as judge in its own cause. This arises from the VPD evaluating the sufficiency of its own investigations and whether or not officer conduct rises to the level of justifying criminal charges.

Given the Commissioner’s conclusion that there were inherent problems with the VPD impartially investigating criminal fault among its own membership, it is difficult for us to understand why the VPD would now be removing the Criminal Justice Branch, which we take to be an impartial third party, from the process of evaluating the investigation and the officer’s conduct. While that step would still not achieve the impartiality of a full investigation by an independent force, as the Commissioner and our organization have recommended, it would nonetheless provide at least some measure of independent review of the VPD’s conduct here.

We urge you to reconsider this decision and to forward the complete investigation file to the Crown for determination of the appropriateness of criminal sanction or further investigative steps in this matter. If the VPD declines to do so, our office is prepared to file a service and policy complaint on the matter, arguing that policy for all police-involved deaths should be to forward the full investigative file to the Crown for review.

Yours truly,

A handwritten signature in black ink, appearing to read "R. Holmes", with a long, sweeping horizontal flourish extending to the right.

Robert Holmes
President

cc. Chief Jim Chu, (604) 665-3417



July 15, 2010

Mr. Stan Lowe
Office of the Police Complaint Commissioner
Vancouver, B.C.

VIA FAX: (604) 660-1223

Dear Sir:

RE: Service and Policy Complaint: VPD handling of in-custody death investigation files, OPCC File #2010-5229

On May 11, 2010, the BCCLA submitted a complaint to your office concerning the Vancouver Police Department's (VPD's) handling of in-custody death files, and their process around not referring files where the decision not to recommend charges was taken to the Criminal Justice Branch. This complaint was submitted in the name of David Eby, our Executive Director.

In particular, we were concerned with the actual, or at the very least apparent, conflict of interest in the VPD appearing to act as judge in its officers' own cause in serious matters that could implicate public trust and confidence in the VPD with no independent civilian review.

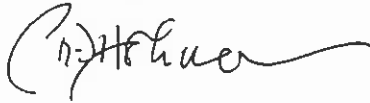
Since filing that complaint, we have been contacted by the Vancouver Police Board, which has shared with us a new ratified Memorandum of Understanding between the OPCC and the municipal forces across British Columbia. This MOU sets out a protocol whereby, if a municipal force has a police-involved death file, or other serious harm matter, or other allegation that could impact public confidence in the police, and their investigation leads to their decision that no charges should be recommended, they may request a review of that decision by the OPCC.

We are pleased that the OPCC is working with municipal departments in these circumstances and that the MOU has been established to ensure some review in these circumstances. While we continue to argue that the provincial legislature should mandate that these investigations be conducted by civilians and that these recommendations about charges should be made, or not made, by an independent civilian body, such a body has not yet been established. On review of the MOU, it is our understanding that short of municipal forces requiring themselves to participate – rather than leaving the review process discretionary – this is the best we can hope for in the current legislative environment.

We thank you for your assistance in brokering this MOU, and Vancouver for participating in it. We hope that Vancouver will avail itself of this review process for every file that meets the criteria of the MOU, until such time as the legislature establishes the Independent Investigation Office recommended by Commissioner Braidwood in the Dziekanski Inquiry.

While we understand from the Vancouver Police Board that the *Police Act* does not contemplate the withdrawal of a policy complaint, please consider this letter a formal withdrawal of our above-noted policy complaint, and your office and the Vancouver Police Board may treat it as such, or institute such procedures as you see fit to recognize that the complainant in this case is satisfied with the response of the VPD.

Yours truly,



Robert Holmes
President

I concur with the above-noted request of BCCLA President Robert Holmes, for the reasons he gives, that the OPCC and the Vancouver Police board may withdraw the BCCLA's policy complaint in this matter, or otherwise dismiss it as they see fit under their statutory jurisdiction.



David Eby
Executive Director

cc. Vancouver Police Board, VIA FAX: 604-257-3878; Vancouver Police Chief Jim Chu (604) 665-3417