



June 1, 2011

David Eby
Executive Director
BC Civil Liberties Association
Suite 550 – 1188 West Georgia Street
Vancouver, BC V6E 4A2

Dear Mr. Eby:

Re: **Paul Boyd**

I am writing in response to your letter dated December 22, 2010, addressed to my attention relating to the tragic death of Paul Boyd.

In your letter you assert that the Coroner's Inquest into the death of Mr. Boyd had uncovered "new evidence" which was not available to Crown Counsel at the time the criminal charge assessment was conducted with regard to the officers involved in the shooting of Mr. Boyd. I directed senior Crown Counsel to review your assertions against the transcripts of the evidence provided at the Inquest, and the evidence relating to this unfortunate incident. We have now completed our extensive review of this matter and I can advise that it is my view that there is no new evidence provided at the Inquest which would undermine the evidence reviewed by Crown Counsel or the decision not to lay criminal charges, or indicate that a Special Prosecutor ought to be appointed to review this matter.

I will address your letter in some detail as it provides a significantly inaccurate representation of the evidence heard at the Inquest.

In your letter you identify "two concerns" which you state are raised by the evidence presented at the Inquest:

1. The existence of "troubling contradictions" between the Criminal Justice Branch (CJB) summary and testimony provided at the Inquest; and
2. "Two major pieces of evidence" which were not canvassed or examined in the CJB summary - (i) Dr. Lee's evidence that Mr. Boyd "was most likely crawling" when hit by the fatal bullet; and (ii) the timing of the shots.

Your assertion of “troubling contradictions”

With respect to your first “concern”, there are no contradictions of significance in the evidence presented at the Inquest and the CJB summary. Your assertions are based on erroneous accounts of the testimony provided at the Inquest.

Your letter states “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.” This statement is not correct. Two of the civilian witnesses called at the Inquest testified they observed Mr. Boyd attacking an officer and swinging a chain. Ms. Wendel testified as follows:

I saw - - I saw a man with something in his hand and I saw the uniformed police officer. And there was a car parked - - I'll just use the pointer again - - there was a car parked in this parking lane on the east side of Granville Street, maybe 15 or 20 feet north of the bus stop. There was a - - a man who was standing on the eastern sidewalk just behind the back end of that car and he had something in his hand, and he was advancing in a northbound fashion, he was walking north. And facing him was a uniformed police officer who was - - as the man was advancing towards him, was walking backwards and they were moving northbound along the sidewalk. The man had an object in his hand that looked like it was about a foot to a foot-and-a-half long, it appeared dark in colour, it looked like it had something on the end of it. It looked like it had a strap or a chain attached to it, and the man was holding it up about shoulder height, swinging it and he was hitting the uniformed police officer in the upper body and in the head area. And the police officer had his hands up as if to protect himself. I don't recall anything that was being said at the time...

There was approximately three to five that I saw. And as - - as the two advanced northbound on the sidewalk, it got to the point where the police car - - the police officer was nearing the front end of the parked car and he turned around and he ran around the car, front end of the car, out into Granville Street and the man who had the object continued to hit him from behind. I had an unobstructed view of that aspect of it”

Mr. Curat testified that Mr. Boyd was attacking an officer and Mr. Boyd “rushed to him and started swinging something at him”.

All four officers (Csts. Chan, Edwards, Baird and Chipperfield) who were present when the initial shots were fired testified that Mr. Boyd was swinging an item at officers which was later confirmed to be a chain. All other officers who attended at the scene arrived after Mr. Boyd was no longer swinging the chain.

There is a strong body of evidence indicating Mr. Boyd used a bike chain with an attached padlock to strike officers and inflict serious injury.

Your letter next states "Boyd was not armed when he was shot fatally". This is not correct. Mr. Boyd was armed at the time of the final shot. When the police were safely able to approach Mr. Boyd after the final shot, located in Mr. Boyd's waistband was a pair of vise grip pliers.

There is a large body of evidence, confirmed by testimony at the Inquest, supporting the conclusion that during the course of the altercation, Mr. Boyd possessed three weapons: a hammer, a chain with padlock attached, and a pair of vise grip pliers. The evidence provided by the use of force experts indicated that given the violent and aggressive behaviour of Mr. Boyd, and the known earlier possession of a hammer and a chain, that it would be prudent and reasonable for an officer to assume Mr. Boyd may be in possession of another weapon. Based on all the evidence, such an assumption proved to be accurate.

Your letter next states that Cst. Baird testified when the chain was removed from Mr. Boyd, "the level of danger of the situation had decreased significantly". This was not Cst. Baird's evidence. In addressing the level of danger, Cst. Baird stated that once the chain had been removed "the level had gone down". However, Cst. Baird also testified that earlier in the incident he had failed to recognize the hammer in Mr. Boyd's possession and that he had also failed to recognize Mr. Boyd was in possession of a chain and padlock which were ultimately used to seriously injure Cst. Chan and assault Cst. Baird. Cst. Baird testified that there was always the possibility Mr. Boyd possessed another weapon.

Your letter next states "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". The CJB statement does not say Cst. Baird drew his gun. The CJB statement states "a number of officers were pointing firearms at Mr. Boyd". This statement is confirmed by testimony presented at the Inquest. Csts. Edwards, Lavalee, and Chipperfield testified they had drawn their firearms. Indeed, Cst. Lavalee testified that he was in fact squeezing the trigger to shoot Mr. Boyd at the time of the last shot but relaxed his finger after the last shot incapacitated Mr. Boyd. As to the nature of the threat perceived by the remaining officers, Cst. Van Beek testified that he had his hand on his pistol during the shooting. Cst. Chan testified he would have drawn his firearm if others had not. Cst. Smith testified he arrived as the shooting was ongoing and was engaged in retrieving the "bean bag" shotgun from the trunk of his vehicle during the shooting. Cst. Ovington arrived just as the last shot was fired. The testimony of Cst. Baird was that he had unsnapped his holster and had started to take his pistol out but decided it would be better if he had his hands free if the situation changed.

Your letter next states "It was not reasonable to believe Boyd had other weapons: Constable Baird testified it was unlikely that Mr. Boyd would have more weapons" Cst. Baird did not say it was "unlikely" Mr. Boyd would have more weapons. Cst. Baird testified that he could not "say for sure" particularly as he had earlier failed to detect

either the hammer or the chain in Mr. Boyd's possession. As addressed above, the evidence at the Inquest confirmed that an officer acting prudently and reasonably in this situation would have assumed Mr. Boyd possessed another weapon, which the evidence confirms he did.

Your assertion that two pieces of evidence were not canvassed by CJB

With respect to the first item identified in your second "concern", Crown Counsel conducting the charge assessment fully considered Dr. Lee's opinion. Dr. Lee never provided the evidence that you assert, that Mr. Boyd "was most likely crawling". Dr. Lee was quite clear in his report and his testimony that the most likely scenario is that the upper part of Mr. Boyd's body was "leaning forwards" at the time of the last shot. Dr. Lee was clear that he could not say whether Mr. Boyd "was kneeling or he was on the ground or simply bent over". Dr. Lee's evidence is consistent with the statements provided to the police and testimony at the Inquest that at the time of the last shot the description of Mr. Boyd's position included "walking", "lunging", "launched himself", "charging", "kneeling", "crouching", and "crawling" while he continued to move toward Cst. Chipperfield.

You state in your letter that Mr. Boyd being in a crawling position is supported by "the many police and civilian witnesses who testify unambiguously that Mr. Boyd was crawling" at the time of the last shot. This mischaracterizes the evidence. With respect to police witnesses only Cst. Ovington and Cst. Baird suggest Mr. Boyd was crawling at the time of the last shot. The other six officers who saw the last shot fired testified Mr. Boyd was either standing or on his hands and knees ("crouched") advancing towards Cst. Chipperfield.

Only three civilian witnesses who observed the final shot testified at the Inquest and their evidence was hardly "unambiguous". Ms. Wendel indicates Mr. Boyd's "momentum was propelling him forward" towards Cst. Chipperfield. Mr. Chong testified that he "doesn't remember but believes [Mr. Boyd was] crawling". Ms. McLaren states Mr. Boyd was "on ground creeping toward the officer". In short, the testimony at the Inquest and the statements obtained from other witnesses describe Mr. Boyd in various positions at the time of the last shot.

Your letter goes on to say, "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". As addressed earlier, this is not correct. There is no agreement among the witnesses and the physical evidence with respect to the position of Mr. Boyd's body at the time of the last shot. The CJB summary recognizes the various accounts when it states "Some describe Mr. Boyd as on the ground and crawling towards the officer when the final shot was fired. He is variously described as 'moving towards them making the aggressive noises', 'crawling towards them', 'moving fairly quickly towards the members', and "again lunged/launched ... in an attack".

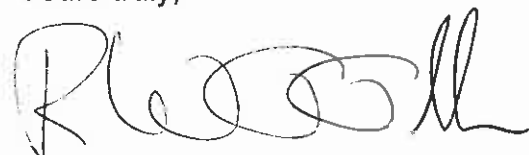
Critical to assessing the evidence at the time of the last shot is not only the varying accounts of the position of Mr. Boyd's body, but that the vast majority of the witnesses recount Mr. Boyd advancing towards Cst. Chipperfield at that time. The witnesses, both civilian and police, variously describe Mr. Boyd as "still charging", "lunged", "propelled forward", "moving fairly quickly toward the members", "deliberately crawling", "crawling at a steady pace", "crawling pretty quickly", "launched himself", "slowly moving towards", "very sudden movements", "walking", and "creeping toward".

With respect to the timing of the shots which you identify as a "concern", Crown Counsel conducting the charge assessment had been provided with the information of the timing of the shots which was presented at the Inquest and this information was fully considered in the charge assessment process.

Contrary to your assertions there is nothing in the transcripts from the Inquest that would require a reconsideration of the charge assessment or the appointment of a Special Prosecutor. The evidence presented at the Inquest supports the conclusion set out in the CJB summary that "It is not possible on all of the evidence to prove beyond a reasonable doubt that the force used by the officer in response to Mr. Boyd's aggressive behaviour was excessive."

In closing, I would note that it is unfortunate you do not appear to have reviewed the transcripts of evidence before making assertions based on the evidence. I believe we can both agree that the public interest is not served by my office expending valuable resources to confirm that assertions made by your organization are not correct.

Yours truly,

A handwritten signature in black ink, appearing to read "R. Gillen", written in a cursive style.

Robert W.G. Gillen
Assistant Deputy Attorney General
Criminal Justice Branch