



June 16, 2011

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**

Thank you for your letter of June 1, 2011. We note that six months have passed since we wrote to ask you to appoint a special prosecutor, and during that time we had no response from your office.

We appreciate your suggestion that we should have obtained transcripts of the evidence in the Coroner's Inquest. With respect, such an investment by our non-profit Association is not possible given our budgetary constraints. However, if you have a suggestion about how we could obtain transcripts for reduced or no cost, we would greatly appreciate it.

With respect to the tone and content of your letter, again, we must respectfully request that you appoint a special prosecutor to review the charge decision. British Columbia has been embarrassed nationwide for having the highest number of police involved deaths per capita, and hosting in the last five years not one, not two, but three public inquiries now based on your office's decisions not to lay charges, two of which were in relation to police-involved deaths: Frank Paul, Robert Dziekanski and Robert Pickton.

When the video of the death of Clayton Alvin Willey is released, we suspect that there is a distinct possibility of yet another call for a public inquiry into your office's failure to hold police criminally accountable for excessive use of force. We will not speculate about the final findings of the Frank Paul Inquiry into your office, but we do note with concern your apparent view that reviewing coroner's inquest transcripts for additional evidence is a waste of resources rather than something your office would engage in for police-related deaths. If this is not the role of your office, and the police have closed their file, we ask, respectfully again, whose role it is to ensure that all of the evidence has been collected in relation to the *criminal* process and decision making in regard to potential criminal prosecution of police, if not the Criminal Justice Branch.

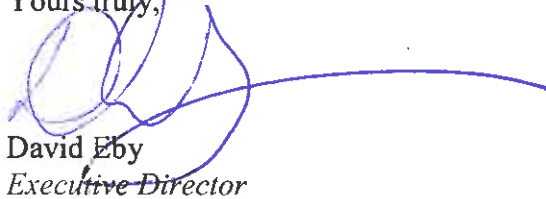
Given that you have advised us that you carefully reviewed our letter and the transcripts, we are now concerned that you are deliberately misstating or reframing evidence to justify your decision not to charge, rather than to examine the evidence that was tendered at the inquest. For example:

1. **Your letter conflates civilian evidence in relation to the initial incident at the bus stop, where no shots were fired, to the final confrontation with police in the road, where Mr. Boyd was shot and killed, in relation to Mr. Boyd's actions with the chain and the threat he presented.** We refer you to *R v. Bottrell* (1981), 60 C.C.C. (2d) 211, which holds that a trier of fact “must have regard to the circumstances *as they existed at the time that the force was used.*” [emphasis added]
2. **You state legal tests that do not exist in case law, and the tests you apply have little connection with “reasonableness.”** What is the “reasonable and prudent assumption that someone has a weapon” test that justifies lethal force, and from where does it come? Your rearticulated test would justify lethal force by police in virtually every circumstance. For example, on this test it is reasonable and prudent to assume, if vise grip pliers are a weapon, that cars are full of weapons and a person refusing to exit a car can then be shot. A person who has dropped a knife, as Paul Boyd dropped the hammer and the chain, can be reasonably assumed to have at least one weapon and can be shot. With respect to the lethal danger represented by a vise grips pliers set, and a stapler, which your office has also found to be a weapon, we query the “reasonableness” standard by which your office is judging what is a weapon and what is not a weapon.
3. **You suggest that civilian witnesses say Mr. Boyd was attacking before the final shot, when they are clear he was incapacitated.** According to the civilian witnesses, the “momentum was propelling him forward” as Mr. Boyd was falling to the ground. According to the other two witnesses, he was “on ground creeping toward the officer” or was “crawling.” Your office’s efforts to portray these statements as contradictory (Was he falling, creeping or crawling?) avoid the conspicuous thread among civilian witnesses that Mr. Boyd had been incapacitated in advance of the last, and fatal, shot, which version of events was verified by the physical evidence collected by Dr. Lee.
4. **Any contradictory evidence appears to be used by your office to suggest that the case cannot properly go to trial.** You are simply incorrect when you state that you found that it is not “possible on all of the evidence to prove beyond a reasonable doubt that the force used...was excessive.” Clearly, an officer shooting a crawling man would suffice to justify charges, which was the version of events put forward by more than one civilian witness, two police witnesses and was affirmed by Dr. Lee’s evidence. There is more than sufficient evidence to justify a conviction if a judge preferred these versions of events to those put forward by, for example, some of the police witnesses.

We understand that the prosecutor's test for laying charges is whether there is a reasonable prospect of conviction, and whether prosecution is in the public interest. Is it reasonable to believe that the civilian witness' version of events would be preferred? We expect so, as they have no interest at stake in the matter, including that they have no prior relationship with the shooting officer and their version of events is supported fully by the physical evidence, and uniquely, by police witnesses despite the "code of silence" issue we explained to your office in our first letter, but which you did not address at all in your response. In such a situation is it in the public interest that the matter go ahead? We think so. For some reason, your office does not think so, has never thought so in this or any other police death case, and continues to hold to that position.

We look forward to the final report of the Frank Paul inquiry into the failure of the CJB to lay charges in that incident, as perhaps then we will understand how it is that your office continues to be able to justify failing to lay charges in police involved death incidents from the historic, like the death of Fred Quilt, to the current, like the deaths of Frank Paul, Paul Boyd, Ian Bush, Robert Dzikanski, Kevin St. Arnaud, and Clayton Alvin Willey.

Yours truly,



David Eby  
*Executive Director*

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