



September 1, 2011

Honourable Shirley Bond,  
Minister of Public Safety, Solicitor General and  
Acting Attorney General, Ministry of the Attorney General  
Victoria, BC

VIA FAX: (250) 387-6411

Dear Madam Attorney:

**RE: Appointment of RCMP officers to advise on Independent Investigation Office structure**

I write to you in my position as President of the B.C. Civil Liberties Association. On June 18, 2010, our office wrote to former Attorney General and Solicitor General, Mr. Mike De Jong to offer our assistance in your efforts to establish a new civilian body to investigate police deaths and allegations of serious police misconduct in British Columbia. A copy of that letter is attached for your ease of reference. You will note that we congratulated your government for its decision to accept the recommendations of the Braidwood Commission and for its efforts in introducing this civilian investigative agency.

Our offer of assistance still stands, and please do not feel that simply because the legislative process has completed for the establishment of this body, that we are not willing or able to assist. I repeat this offer to you because it has come to our attention that your office has hired two senior RCMP officers to, in the words of Deputy Attorney General David Loukidelis, Q.C., “make recommendations on a strategic and operational framework” for the Independent Investigation Office (“IIO”).

As you know, your office is not currently consulting with our organization in relation to the development of policy for this new body. If your office is seeking the assistance of the police, we hope that you will also reach out to civil society groups for assistance as well. However, and with respect, that is not our sole concern in light of this news, and we would like to raise two matters for your attention.

First, we understand that your goal is to set up a civilian investigation body charged with investigating allegations of serious police misconduct, and investigating deaths caused by police and deaths that take place in police custody. The natural experts in such a scenario are civilians who currently operate similar bodies internationally. If there were no other options for advice in this field, we would understand the need for police to

advise on how to structure major police accountability investigations; however, there are many civilian investigation bodies across the world with years of experience in conducting this type of investigation, sometimes in the face of police non-cooperation and, occasionally, outright hostility.

Civilian investigative expertise may cost extra in advance, but will save a great deal of headache and future financial cost, and will also likely save public, as well as police, criticism down the road. There is no need for us to re-invent the wheel in B.C. as if no other jurisdiction has already put in place civilian investigation agencies for investigations of the police. Australia, Northern Ireland, England, and Ontario are just a few of the jurisdictions that currently have civilian investigation agencies in operation. Bringing in those who have experience and expertise in civilian investigation of police will assist in setting up a robust and effective civilian investigation body.

The same cannot be same for bringing in those who may be expert in crime investigation, like the RCMP, but whose track record of investigating police-related deaths and serious injuries led to the lengthy inquiries and the recommendations for establishing civilian investigative agencies. Relying too heavily on existing police agencies will not, in our respectful view, assist in setting up a robust and effective police force.

Although the functions to be performed may appear similar on the surface, they are fundamentally different in the political and logistical challenges they face on a day-to-day basis. For example:

- Police officers often provide interviews and written statements about incidents they are involved in to investigation bodies, but criminal suspects rarely provide the same to police.
- The IIO's investigations will be used for professional standards investigations as well as for criminal investigations, but police investigations are strictly criminal in nature.
- The IIO cannot, and should not, use police forensic resources in the province. The police, obviously, can, should, and do depend on such resources.
- The IIO needs special policies concerning use of police "experts" in use of force or crime scene reconstruction. Police need no such policies.

- Police forces and officers can be compelled to cooperate by going to court; but it is the rare case where criminal suspects can be so compelled.

The foregoing is but a partial list of some of the key differences between the two types of investigations.

Second, it is our wish, and we trust it is your desire as well, that the public perceives that the IIO operates, and will operate, free of undue influence or interference from police. That is, after all, why the body has been established in the first place. We are concerned that asking senior RCMP officers – from a force that arguably created the justification for this investigation body through many problematic internal investigations – to advise your office will not enhance public confidence. This would be the case no matter which RCMP officers you hired for this role. The legislation that establishes the IIO goes out of its way, based on the recommendations of two separate public inquiries, to keep police at arm's length from the operations of the IIO. Those constructing this body should also be at arm's length from police, for the same reason.

This concern is well illustrated by the reality that the particular officers you have selected have been the public face of major public controversies involving the RCMP in British Columbia. Russ Nash, for example, has been the RCMP spokesman defending and promoting the widely criticized RCMP murdered and missing women investigation along the Highway of Tears. Dick Bent authored an e-mail that contradicted RCMP officer testimony at the Braidwood Inquiry. The result of it being disclosed, albeit late, by the RCMP's legal counsel in that inquiry resulted in the inquiry being delayed for three months. You will recall the public controversy over whether appropriate standards of disclosure had been observed in a timely way.

It would be challenging for your office to find senior RCMP officers who have not, either directly or indirectly, been involved in a case subject to major public scrutiny around issues of accountability. This would likely be the case for most major metropolitan forces in B.C. as well, and is not an issue confined to the RCMP.

We urge you to terminate your agreements with these officers and to instead dedicate resources to working with those who have set up similar bodies in other jurisdictions to avoid repeating the mistakes they may have made, and to build on the successes that they may have enjoyed.

It is difficult to understate the importance of this new civilian investigative agency to the confidence of the public in their police. I have made it an ongoing theme of my public statements as President of the B.C. Civil

Liberties Association that in a democratic society it is imperative that each member of the public understand that what the police do in terms of law enforcement is done in the name of and on behalf of us all as citizens. We thus bear collective responsibility for those acts and for ensuring that there is appropriate investigation and follow up when any acts occur that require that.

Having an effective civilian investigative agency ought to serve to reinforce that understanding of the role of the police and of the rule of law. Thus, the points made in this letter ought not be taken as a criticism of the police, but rather as a call to ensure the confidence of the public.

Yours Truly,

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

Robert Holmes, Q.C.  
*President*



June 18, 2010

Solicitor General Mike De Jong  
Victoria, British Columbia

VIA FAX: (250) 356-8270

Dear Sir:

**RE: Establishment of Independent Investigation Office for B.C.**

I am the President of the B.C. Civil Liberties Association (BCCLA), Canada's oldest and most active civil liberties organization. I am writing you on behalf of the Association's more than 2,000 members and supporters to thank you for your historic announcement that the Province of B.C. will be implementing the recommendations of Commissioner Braidwood as they concern the implementation of an Independent Investigation Office for British Columbia.

As you may know, for more than 15 years the BCCLA has advocated for civilian investigation to ensure police accountability to British Columbians. The new federal Bill C-38 anticipates the creation of such an independent body. The Chiefs of police of British Columbia have called for such an independent investigative body. Commissioner William Davies of the Frank Paul Inquiry has called for this type of independent civilian investigation.

Your courage in taking up this cause and pushing for the re-establishment of the public's confidence in their local police forces should be lauded and celebrated. We are extremely pleased to hear of this development in your office's policy.

The BCCLA would like to take this opportunity to offer any assistance your staff may desire in reviewing the draft legislation before it is introduced in the legislature to ensure full and broad public confidence in this initiative. Now is our opportunity to restore the public's confidence in the police, and the BCCLA has unique expertise and perspective, as well as access to experienced parties in other provinces and countries, that we hope you will take advantage of in crafting this critically important legislation.

Congratulations again for taking this historic and courageous step. We fully support you in your efforts to implement the Braidwood Inquiry recommendations in their entirety. Your commitment on this point is recognized and celebrated by the BCCLA.

Yours truly,

Robert Holmes  
*President*