

February 14, 2006

Paul Kennedy, Chai
Commission for Public Complaints Against the RCMP
PO Box 3423, Station D,
Ottawa, Ontario
K1P 6L4

BY FAX: 613-952-8045

Dear Mr. Kennedy:

RE: RCMP Refusal to Process BCCLA Complaints According to the *Royal Canadian Mounted Police Act*

I am writing to request that you initiate an investigation or institute a hearing under subsection 45.43(1) of the *Royal Canadian Mounted Police Act* (the "*RCMP Act*") into the recent deaths of four civilians involving the RCMP.

The BCCLA has launched complaints under the *RCMP Act* regarding the deaths of Kevin St. Arnaud of Vanderhoof, B.C. in December 2004, Gurmeet Sandhu of Surrey, B.C. in June 2005 and of Ian Bush in Houston, B.C. in October 2005. Most recently, Ryan Snopek in Cranbrook, B.C. died on or about January 1, 2006 while in custody of the RCMP.

Subsection 45.43(1) states:

Where the Commission Chairman considers it advisable in the public interest, the Commission Chairman may investigate, or institute a hearing to inquire into, a complaint concerning the conduct, in the performance of an duty or function under this Act, of any member or other person appointed or employed under the authority of this Act, whether or not the complaint has been investigated, reported on or otherwise dealt with by the Force under this Part.

We believe that it is in the public interest for you to investigate or call a hearing regarding these deaths. Let us explain why.

The BCCLA has recently received a response from the RCMP in relation to our complaint regarding the death of Mr. Bush. The RCMP's response mirrors the responses of the RCMP to our complaints regarding Mr. St. Arnaud and

Mr. Sandhu. In all three cases, the RCMP have indicated that they will not undertake an investigation into our complaints until their criminal and internal investigations are complete, the review of their investigation by an outside police force is complete (in the case of Mr. Bush), a review by the Attorney General of B.C. is complete and the completion of coroner's inquest. We attach the RCMP's response in all three cases. We note that it has been well over a year now since the death of Mr. St. Arnaud and there has yet to be an determination regarding whether criminal charges will be laid. It is our understanding that a coroner's inquest will not begin until after this decision is made.

In our view, the RCMP's responses to our complaints have no legal basis under Part VII of the RCMP Act which governs public complaints. Subsection 45.36(4) requires the RCMP to investigate a complaint according to Rules made pursuant to section 45.38 if it is not disposed of informally. We have examined the RCMP's rules made pursuant to section 45.38 of the *RCMP Act* entitled: "Rules Respecting Public Complaints Against the Royal Canadian Mounted Police". There are no rules that authorize the RCMP to refuse to conduct or delay conducting an investigation into a complaint

Subsection 45.36(5) of the Act states:

Notwithstanding any other provision of this Part, the Commissioner may direct that no investigation of a complaint under subsection 45.35(1) be commenced or that an investigation of such a complaint be terminated if, in the Commissioner's opinion,

(a) the complaint is one that could more appropriately be dealt with, initially or completely, according to a procedure provided under any other Act of Parliament;

(b) the complaint is trivial, frivolous, vexatious or made in bad faith; or

(c) having regard to all the circumstances, investigation or further investigation is not necessary or reasonably practicable.

There are no other provisions regarding the RCMP's duties to investigate upon receiving a complaint other than provisions relating to informal resolution of complaints.

With respect to the RCMP's response to our complaint in relation to the death of Mr. St. Arnaud, the BCCLA wrote to Shirley Heafey, then Chair of the Commission for Public Complaints Against the RCMP (CPC) on March 10, 2005 requesting a review of the RCMP's refusal to investigate our complaint. In our letter, we explicitly argued that a RCMP criminal investigation, coroner's inquest and an RCMP internal investigation are not sufficient substitutes for independent civilian review of RCMP conduct in relation to professional standards with respect to a complaint under the *RCMP Act*.

The BCCLA has recently received a letter from Brooke McNabb, Vice Chair, CPC affirming the decision of the RCMP not to initiate an investigation into our complaint against the RCMP in

relation to the death of Mr. St. Arnaud. Mr. McNabb states that:

“The three investigative processes cited by the RCMP essentially subject Mr. Russell’s allegations to forms of review other than the public complaint process, all capable of making findings and recommendations relating to police conduct. Accordingly, I find that the decision of the RCMP not to commence a public complaint investigation into Mr. Russell’s allegation was reasonable, in light of a desire to avoid an unnecessary multiplicity of proceedings.”

It is reasonable to conclude that Mr. McNabb would arrive at the same conclusions in relation to our complaints involving Mr. Sandhu and Mr. Bush.

With respect, we believe that Mr. McNabb has erred in law in reaching the conclusion that complaint investigation under the *RCMP Act* is not necessary because the three procedures in place to review RCMP conduct (criminal investigation, internal review and coroner’s inquest) are sufficient. As noted above, we believe that a complaint under the *RCMP Act* is significantly different such that it does not merely duplicate other review procedures.

We would like to re-iterate the arguments of the BCCLA conveyed to Ms. Heafey in our letter of March 10, 2005. First, a criminal investigation assesses RCMP conduct based on a different standard and for a different purpose than what is appropriate for a complaint under the *RCMP Act*. The standard is a criminal standard (proof beyond a reasonable doubt) rather than a civilian standard (balance of probabilities) that is used for complaints. The purpose of a criminal investigation is to assess whether criminal charges will be laid rather than whether discipline proceedings will be commenced. The public has no access to reports to Crown Counsel. Second, an RCMP initiated internal review is not subject to any review or appeal by a civilian review agency like the CPC in the case of a complaint. Nor does the public have a right to receive status reports or a final report with respect to the internal investigation. Under sections 45.39 and 45.4 of the *RCMP Act*, a complainant does have a right to receive a response to his or her complaint. Third, provincial legislation specifically prohibits a coroner’s inquest from making any findings regarding legal responsibility for a death whereas the complaint process under the *RCMP Act* permits the Chair of the CPC to make findings and recommendations regarding professional misconduct of respondent RCMP officers.

Furthermore, Mr. McNabb, though citing our letter of March 10, 2005, did not recite our arguments or respond to them in his decision. In declining to deal directly with our arguments as to why a criminal investigation, internal review and coroner’s inquest are not adequate substitutes for independent civilian review of RCMP conduct through an investigation of a complaint under the *RCMP Act*, we believe Mr. McNabb has erred in law.

Thus, the BCCLA believes that there is a compelling public interest for invoking your authority under section 45.43(1) as none of the current procedures can provide timely and transparent accountability with respect to professional standards by an independent civilian agency.

In the case of in-custody or in-pursuit deaths of civilians involving the RCMP – the most serious of incidents – public confidence in the police will be best ensured through timely and transparent review by an independent civilian agency.

In small communities like Vanderhoof, Houston, and Cranbrook, B.C., civilian deaths involving the RCMP will have especially profound ramifications for the relationship between the police and the citizenry. That said, civilian deaths in larger communities can have as great an impact. The family and friends of the deceased individuals demand timely and transparent answers. The community at large has a right to know. In such serious matters, secretive, internal review by the RCMP will only exacerbate concerns in the community.

Though the BCCLA and others have the option of initiating a complaint after all these other processes are complete, the BCCLA believes this is too little, too late to instill public confidence in the process. Completion of a criminal investigation, internal review and inquest often takes many months if not years to complete. *Timely* civilian review is clearly in the public interest.

A *Vancouver Sun* article dated December 20, 2005 (attached) echoes these concerns:

“‘It’s been a very rough year for Kevin’s [St. Arnaud] family and my own. We have a lot of unanswered questions,’ Rebecca Gingera told media Monday on the anniversary of her common-law husband’s death. ... ‘I believe that if they treat the victims of these situations with a little bit more respect and keep in touch with us a little bit more with the ongoing process, I think it might help,’ she said. ‘But all they do is slam the door on us. They shut us out and they don’t give us any answers.’”

As you know, the BCCLA believes that cases involving the death of someone in custody of the RCMP, being pursued as a suspect by the RCMP or the death of an innocent third party, or a serious injury of these persons in relation to RCMP conduct should be automatically reviewed by an independent civilian agency.

To that end, the BCCLA wrote to RCMP Commissioner Giuliano Zaccardelli on November 28, 2005 requesting his support for automatic civilian review by the CPC in cases in which there is a death or serious injury of a civilian while in the custody of the RCMP. That letter is attached. Regrettably, that support has not been forthcoming as confirmed in a recent telephone conversation between BCCLA Executive Director Murray Mollard and RCMP Superintendent Louise Morel on January 24, 2006 who was assigned to respond to our letter.

We also note that we raised this matter with your predecessor Shirley Heafey. Though sympathetic, she indicated to us that she simply does not have the resources to carry out automatic civilian reviews involving RCMP in-custody/in-pursuit deaths or serious injury.

Most recently, the BCCLA has written to new Minister for Public Safety and Emergency Preparedness to urge him to review and reform the complaint provisions of the *RCMP Act* to bring them up to date with current standards in Canada. In this letter, we also ask him to ensure that there is automatic civilian review of all RCMP in-custody/in-pursuit deaths or serious injury. The *RCMP Act’s* complaint provisions have not been updated since they were brought into force in 1988. A copy of this letter is enclosed. Even if the government is willing to update the *RCMP Act*, this will take considerable time. In the interim, the BCCLA believes that the solution is for the CPC to create a policy requiring automatic investigation by the CPC into all in-custody or in-pursuit deaths of civilians involving the RCMP.

We look forward to your prompt ordering of an investigation or hearing under section 45.31(1) into the deaths of Mr. St. Arnaud, Mr. Sandhu, Mr. Bush and Mr. Snopek as soon as possible. Public confidence in the RCMP demands no less.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'J. Gratl', written in a cursive style.

Jason Gratl
President

cc: The Honourable Stockwell Day, Minister of Public Safety and Emergency Preparedness Canada
Giuliano Zaccardelli, Commissioner, RCMP
The Honourable John Les, Minister of Public Safety and Solicitor General of British Columbia
The Honourable Wally Oppal, Attorney General of British Columbia