



FIRST NATIONS LEADERSHIP COUNCIL



**BC FIRST NATIONS
JUSTICE COUNCIL**

May 29, 2024

VIA EMAIL

Ministry of Attorney General
PO Box 9290 Stn Prov Govt
Victoria, BC V8W 9J7
Email: Barbara.Carmichael@gov.bc.ca

Dear Assistant Deputy Attorney General Carmichael:

Re: Reconsider prosecuting the RCMP officers who killed Dale Culver and Jared Lowndes

I am writing to you on behalf of the BC Civil Liberties Association, Gitanyow Hereditary Chiefs, #JusticeforJared, First Nations Leadership Council, the BC First Nations Justice Council (“BCFNJC”), in solidarity with family members, including Laura Holland, Debbie Pierre, Tracy Speed, and Lily Speed-Namox, friends, and supporters seeking justice for Dale Culver and Jared Lowndes.

Pursuant to section 5 of the *Crown Counsel Act*, we request that the Deputy Attorney General (“DAG”) direct the Assistant Deputy Attorney General (“ADAG”) to:

1. Reconsider prosecuting Prince George RCMP officers, Cst. Ste-Marie and Cst. Monette, who were charged with manslaughter in Dale Culver’s death.
2. Reconsider approving criminal charges against the three Campbell River RCMP officers who killed Jared Lowndes.
3. Appoint a Special Prosecutor or *Ad Hoc* Counsel, that Counsel be an Indigenous lawyer or, in the alternative, that an Indigenous lawyer accompany the Special Prosecutor or *Ad Hoc* Counsel as second chair during the criminal proceedings.

In the Matter of Dale Culver’s Death

On April 5, 2024, the BCPS announced that there was no longer a reasonable prospect of conviction against two members of the Prince George RMCP, Cst. Paul Ste-Marie and Cst. Jean Francois Monette, who were both charged with manslaughter in the lethal arrest of Dale Culver.

Dale died on July 18, 2017, following an arrest by a Prince George RCMP Officer. The circumstances of Dale's death can be found in [BCPS's Clear Statement](#). According to the BCPS Clear Statement, the pursuing officer decided to arrest Dale because he did not stop his bike or because he was not wearing a helmet. This unnamed RCMP officer violently escalated the situation resulting in Dale's tragic death.

Given historic and contemporary police violence against Indigenous peoples, it is reasonable to understand how Dale felt fear and panic that night. The level of violence used is only evidence of his well-founded fear. The fact that a benign infraction like riding a bike without a helmet can be the pretext to a death sentence for an Indigenous person is demonstrative of the deeply rooted colonial oppression inflicting harm on Indigenous peoples since contact.

The Independent Investigations Office (IIO) investigated and submitted a report to the BCPS because it determined that there were reasonable grounds to believe the officers involved may have committed offences. The BCPS charged Cst. Ste-Marie and Cst. Monette with manslaughter. The BCPS also charged Sgt. Cruz, Cst. Dalman, and Cst. MacDonald with obstruction of justice.

The original autopsy report, dated February 6, 2019, was reviewed by a committee consisting of the attending forensic pathologist, and two others. A report was issued in October 2021 where the committee determined that the "‘respiratory compromise’ (i.e., the combined effects of a history of asthma, exposure to pepper spray, Mr. Culver's supine position and the presence of pentazocine in his blood) was among ‘the most important mechanisms that led to his death.’"¹ Both reports concluded that the blunt force head trauma was a contributing cause of Dale's death.

Despite the attending pathologist's report and the concurring opinion of two separate pathologists, Crown Counsel sought out the opinion of a fourth pathologist from Toronto. The fourth pathologist, who did not conduct the original autopsy, but reviewed photographs from the autopsy, microscopic slides, and brain tissue samples, did not confirm the findings of the other three pathologists. Relying on an Australian study, the fourth pathologist concluded Dale's death was the result of acute and chronic adverse effects of methamphetamine exacerbated by strenuous activity.

It is unclear why Crown Counsel sought a fourth pathologist's opinion rather than contacting one of the concurring pathologists. It is unclear why the fourth pathologist's conclusion outweighed the opinion of the other three pathologists who agreed that blunt force head trauma was a contributing cause of Dale's death. Furthermore, we submit that regardless of the fourth pathologist's conflicting conclusion, it is for the trier of fact to weigh the evidence and determine which expert they find credible. Crown Counsel's actions and conclusions are indicative of a disturbing trend that BCPS is unwilling to prosecute police officers who kill Indigenous people.

We submit that there is sufficient evidence to meet a reasonable prospect of conviction, that prosecution is in the public interest, and that it is for the trier of fact to hear the testimony, weigh the evidence, and deliver a verdict in open court. We request that the DAG direct the ADAG to

¹ 24-10 BCPS Stay of proceedings relation to charges arising out of the death of Dale Culver, April 5, 2024, at p. 8.

reconsider criminal proceedings against RCMP Cst. Ste-Marie and Cst. Monette in relation to Dale Culver's death.

In the Matter of Jared Lowndes' Death

On April 23, 2024, BCPS announced that they would not be approving charges against three Campbell River RCMP officers involved in the fatal shooting of Jared Lowndes. The circumstances of Jared's death can be found in [BCPS's Clear Statement](#).

Again, the IIO investigated and submitted a report to the BCPS because it determined that there were reasonable grounds to believe the officers involved may have committed offences. Despite the IIO's investigation, the Crown determined that there was not a substantial likelihood of conviction because they could not prove, beyond a reasonable doubt, that the officers committed an offence.

We are deeply concerned with the Crown's determination. First, it is important to note that British Columbia is one of the few provinces which uses the reasonable likelihood of conviction as a charge assessment standard while other jurisdictions, like Ontario, require a reasonable prospect of conviction.² However, the Guidelines provide that, "where the relevant public interest factors weigh so heavily in favor of a prosecution that it is necessary to resort to a lower charge assessment standard in order to maintain public confidence in the administration of criminal justice, a charge may still be approved."

This lower charge assessment standard was applied when charges were approved against the Prince George RCMP officers involved in Dale's death. It is unclear why BCPS did not apply the lower charge assessment standard against the officers involved in Jared's death. We submit that considering the role of police officers to maintain peace and public order, their duty to protect the public, and their access to deadly weapons and lethal tactics, the lower charge assessment standard should always apply in police-involved deaths, and it is in the public interest to do so.

More specifically, given the seriousness of the allegations, the seriousness of harm caused to Jared, Jared's public comments that he feared the RCMP were going to kill him months before his death, the use of lethal force, the escalation in violence, the overrepresentation of Indigenous people as victims of police violence, the systemic failure of the criminal justice system to hold police accountable for perpetrating violence against Indigenous peoples, and the fact that the offence is one that affects the integrity of the justice system,³ there are more than enough public interest factors that warrant applying the lower charge assessment standard. There is a "need to maintain public confidence in the administration of justice."⁴

According to the Clear Statement, the "central question in this case is whether the force used by the three officers was objectively necessary, reasonable, and proportionate in the

² Ontario Crown Prosecution Manual, D.3: Charge Screening, published October 14, 2017, updated January 16, 2024. < <https://www.ontario.ca/document/crown-prosecution-manual/d-3-charge-screening>>.

³ BCPS Charge Assessment Guidelines (CHA 1), at pp.3-4.

⁴ BCPS Charge Assessment Guidelines (CHA 1), at p. 5.

circumstances.”⁵ We believe there is sufficient evidence to support a lower threshold of a reasonable prospect of conviction. However, in assessing the charges, Crown Counsel has determined they cannot prove beyond a reasonable doubt that the officers’ use of force was not justified.

Crown Counsel has misapplied the charge assessment test, importing a higher burden of proof – beyond a reasonable doubt. Essentially, Crown Counsel has run a trial in their mind, deferring to the state’s arguments for use of force and concluding that a trier of fact would find that the Crown did not meet its burden to prove the officers were guilty beyond a reasonable doubt. Contrary to the BCPS’s charge assessment policy, the Crown is attempting to substitute “their own subjective view of the ultimate weight or credibility of evidence,” usurping the role of the judge or jury.⁶

We submit that the lower charge assessment standard of a reasonable prospect of conviction should be applied in this case because it is in the public interest. We also submit that there is sufficient evidence to meet this standard and that it is for the trier of fact to hear the testimony, weigh the evidence, and deliver a verdict in open court. We request that the DAG direct the ADAG to reconsider criminal charges and move forward with criminal proceedings against the RCMP officers responsible for Jared Lowndes’ death.

BCPS continues to undermine the role of the Independent Investigations Office

In both Dale’s death and Jared’s death, the IIO referred their files to the BCPS because it found that there were reasonable grounds to believe the RCMP officers involved committed offences. The IIO is a civilian-led police oversight agency responsible for conducting investigations into incidents of death or serious harm that may have been the result of the actions or inactions of police officers, whether on or off duty. This civilian oversight model was designed to increase public trust that investigations would be conducted in a fair and impartial manner, independent from the police.

However, the BCPS’s refusal to prosecute police officers based on the IIO’s investigations has undermined the IIO’s legitimacy and the public’s faith in the IIO’s ability to hold police accountable. Former Chief Civilian Director, Ron MacDonald, has openly voiced his frustration with the BCPS’s refusal to prosecute the police. Recently, in a [Tyee article](#), Mr. MacDonald called on the government to review the BCPS’s handling of his office’s recommendations for criminal charges against officers. According to Mr. MacDonald, the prosecution service has approved recommended charges against police officers less than 50% of the time over the past five years. A statistic much lower than the approval rate for criminal charges recommended by police agencies.⁷

During his appointment, Mr. MacDonald oversaw 1,200 IIO investigations. During that time, there have been no convictions. Approximately 30% of the IIO’s investigations involved

⁵ 24-10 BCPS Stay of proceedings relation to charges arising out of the death of Dale Culver, April 5, 2024, at p. 8.

⁶ BCPS Charge Assessment Guidelines (CHA 1), at p.

⁷ Jen St. Denis, *BC’s Police watchdog Wants to Know Why Officers Aren’t Being Charged*, The Tyee, April 26, 2024, <<https://thetyee.ca/News/2024/04/26/BC-Police-Watchdog-Wants-Know-Officers-Not-Charged/>>.

Indigenous people. Between 2017 and 2023, 50 cases have been referred to Crown Counsel for charge approval.⁸ Yet, the public is still waiting for police accountability to play out in the courtroom. How long must the public continue to wait?

Appoint a Special Prosecutor or *Ad Hoc* Counsel

Pursuant to section 7 of the *Crown Counsel Act*, the ADAG may appoint a lawyer, not employed by the Minister of the Attorney General, as a Special Prosecutor or *Ad Hoc* Counsel. Given our concerns regarding BCPS's systemic failure to prosecute police officers who have killed Indigenous people, we submit that the ADAG appoint an Indigenous lawyer or, in the alternative, that an Indigenous lawyer accompany the Special Prosecutor or *Ad Hoc* Counsel as second chair during criminal proceedings. Not only is this necessary for the public interest, the administration of justice, and reconciliation, but it is consistent with BCPS's recognition that Indigenous peoples continue to face discrimination in all matters of the criminal justice system.⁹

Prosecution is in the public interest and necessary for public trust.

The [BCPS Charge Assessment Guidelines](#) ('the Guidelines') acknowledge that "[n]umerous government commissions and reports, as well as the judgments of the Supreme Court of Canada, have recognized that discrimination experienced by Indigenous persons (First Nations, Métis, and Inuit), whether as a result of overtly racist attitudes or culturally-inappropriate practices, extends to all parts of the criminal justice system."¹⁰ Furthermore, "[t]he continuing consequences of colonialism for Indigenous persons in Canada provide the necessary context for any charge assessment involving an Indigenous person as a victim or potential accused. These consequences 'must be remedied by accounting for the unique systemic and background factors affecting Indigenous peoples, as well as their fundamentally different cultural values and world views.'"¹¹

It is unclear to what degree these factors were considered during the BCPS's decision to stay criminal proceedings, in the matter of Dale Culver, and to not approve criminal charges, in the matter of Jared Lowndes. Regardless of intention, the Crown's failure to move forward with criminal proceedings in both these instances, signal that police can kill Indigenous peoples with impunity.

Justice must be done and be seen to be done. Prosecuting police officers who have been investigated by the IIO and recommended for charges are of significant public interest. The failure to prosecute in these instances is not only an affront to the administration of justice, but it fundamentally undermines public trust in the criminal justice system; a colonial system imposed on Indigenous peoples; a system from which they have never benefited.

To begin to rebuild public trust in the criminal justice system and take meaningful steps towards reconciliation, it is necessary for these proceedings to take place transparently in the light of a

⁸ IIO Annual Report, 2022-2023, at p. 17, < https://iiobc.ca/app/uploads/sites/472/2023/07/2022-2023_IIO-Annual-Report_Final.pdf.>

⁹ BCPS Charge Assessment Guidelines (CHA 1), at p. 5.

¹⁰ BCPS Charge Assessment Guidelines (CHA 1), at p. 5.

¹¹ BCPS Charge Assessment Guidelines (CHA 1), at p. 6.

courtroom and not behind closed doors in the minds of prosecutors. Crown Counsel may be a representative of the state, but its duty is to the public. If Crown Counsel operates from the position that it owes a duty to the Crown, it will continue to defer to the state in all criminal proceedings, whether prosecuting the public or failing to prosecute the police. Not only does this contradict the Crown's role in the administration of justice, but it fundamentally undermines the public's trust in BCPS and the criminal justice system.

For too long, the criminal justice system has ignored the unlawful activities of police officers. For too long they have killed with impunity, inflicting harm on Indigenous communities since the inception of the RCMP. For too long, police officers have been held above the law rather than being subject to the rule of law. For too long, the colonial legal system, founded upon the myth of terra nullius, continues to oppress Indigenous peoples evidenced by, among other damning facts, the lack of police accountability, and the continued gross overrepresentation of Indigenous peoples in the criminal justice system. Reconciliation requires the Crown to collaborate with Indigenous people to implement recommendations endorsed by Indigenous people.

We call on the DAG to direct the ADAG to reconsider criminal proceedings against the RCMP officers involved in the death of Dale Culver and Jared Lowndes because it is essential to the administration of justice, the public interest, and because it is the right thing to do. We request that the DAG appoint a Special Prosecutor or *Ad Hoc* Counsel, that Counsel be an Indigenous lawyer or, in the alternative, that an Indigenous lawyer accompany the Special Prosecutor or *Ad Hoc* Counsel as second chair during criminal proceedings. Finally, we call on the BCPS to address the pervasive and systemic racism which is manifest in these decisions and work to undo its role in escalating the disproportionate over-incarceration and under-protection of Indigenous Peoples.

In 2020, the BCFNJC released the BC First Nations Justice Strategy. It provides a path forward and the BCFNJC reiterates its commitment to working collaboratively with the BCPS to implement these strategies, including increasing the Indigenous representation in the BCPS (Strategy 18) and advancing prosecution policies for Indigenous people (Strategy 25). The BCFNJC offers support to the BCPS in transforming the way it deals with cases involving Indigenous people, including through the creation of a unique police complaint process for First Nations people, as called for in Strategy 7.

Sincerely,

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

Latoya Farrell
Policy Staff Counsel (Community)
BC Civil Liberties Association



Laura Holland
Mother of Jared Lowndes
#JusticeforJared



Joel Starlund/Sk'a'nism Tsa 'Win'Giit
Executive Director
Gitanyow Hereditary Chiefs

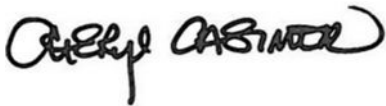


Dr. Judith Sayers (Cloy-e-iis)
Director
BC First Nations Justice Council



Boyd Peters (Xoyet thet)
Vice-Chair
BC First Nations Justice Council

On behalf of the **FIRST NATIONS SUMMIT**



Cheryl Casimer



Robert Phillip



Hugh Braker

On behalf of the **UNION OF BC INDIAN CHIEFS**



Grand Chief Stewart Phillip



Chief Don Tom



Chief Marilyn Slett

On behalf of the **BC ASSEMBLY OF FIRST NATIONS**



Regional Chief Terry Teegee

cc: The Honourable Niki Sharma, Attorney General (by email)