



MEDIA STATEMENT

CRIMINAL JUSTICE BRANCH

May 12, 2011

11-09

Charges Laid in Relation to Testimony at Braidwood Inquiry

Victoria - The Criminal Justice Branch of the Ministry of Attorney General today announced that perjury charges have now been laid against four members of the Royal Canadian Mounted Police in relation to evidence given at the Braidwood Inquiry.

On May 6, 2011 the Branch announced that Special Prosecutor Richard Peck, Q.C. had recommended and the Branch had accepted that each of the four officers should be charged with perjury in relation to the evidence that each officer gave at the Braidwood Inquiry, and that the charges should proceed by way of Direct Indictment.

On May 9, 2011, acting on Mr. Peck's recommendation, Deputy Attorney General David E. Loukidelis, Q.C. consented to charges proceeding by Direct Indictment. Four direct indictments separately charging Corporal Benjamin M. Robinson, Constable Bill Bentley, Constable Gerry Rundel and Constable Kwesi Millington were filed Wednesday May 11, 2011 in Supreme Court in Vancouver. First Appearances on the charges are scheduled for June 29, 2011 in Vancouver.

A Clear Statement approved by Mr. Peck in relation to the matter is attached to this release.

Mr. Peck was appointed on June 18, 2010 by Assistant Deputy Attorney General Robert W. G. Gillen, Q.C. to determine whether, in view of the evidence heard at the Braidwood Inquiry and the findings and recommendations of Commissioner Braidwood, it was appropriate to reassess the decision of the Criminal Justice Branch not to prosecute any of the officers involved in the incident. Mr. Peck was also to review other conduct of the officers in connection with the incident.

Mr. Peck's mandate included:

- Conducting an independent review of the Braidwood Commission report relating to the death of Robert Dziekanski. This review was to include the four officers' conduct in relation to the initial encounter with Robert Dziekanski, their participation in the subsequent investigation and their testimony at the Braidwood Inquiry, with a view to determining whether anything contained in the report called for a reassessment of the Branch decision not to prosecute the officers.
- Providing a written report to the Assistant Deputy Attorney General with the results of his review and the reasons for his decision;

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- If in his view the initial charge assessment should be revisited given the findings made by Commissioner Braidwood in his report, proceeding to examine all materials relied on in the original charge assessment decision and any other materials he might deem appropriate including the evidence taken at the Braidwood Inquiry and exhibits or reports filed therein, and making whatever charge assessment decision he deemed appropriate in the independent exercise of his prosecutorial discretion.
- In addition, examining any other conduct of the four officers in relation to the matter, and in particular their statements to investigators and their testimony at the Braidwood Inquiry with a view to determining whether their conduct was at any time contrary to any provisions of the Criminal Code or applicable provincial legislation and making whatever charge assessment decision he deemed appropriate in the independent exercise of his prosecutorial discretion.
- If following his review, and any charge reassessment he might undertake, it was his view that a prosecution was warranted in connection with the conduct of the four officers in relation to their initial encounter with Mr. Dziekanski or their subsequent conduct in relation to this matter, to take conduct of the prosecution and any subsequent appeal.

On June 29, 2010 the Branch announced that Mr. Peck had recommended that the initial charge assessment should be revisited, citing among other reasons that the Braidwood Commission Report into the death referred to "factual material that was not available to the Branch at the time [of the initial charge assessment decision], including but not limited to expert video analysis and expert opinions relating to the reasonableness of the escalation and de-escalation of force."

As this matter is now before the court no further comment will be made by the Special Prosecutor or the Criminal Justice Branch at this time.

Report of the Special Prosecutor for Allegations of Misconduct Associated with the Death of Robert Dziekanski

Clear Statement of Conclusions

May 12, 2011

In his role as Special Prosecutor, Richard Peck was asked to conduct an independent charge assessment with respect to allegations of misconduct involving four members of the Royal Canadian Mounted Police ("RCMP") as they pertain to the in-custody death of Robert Dziekanski on October 14, 2007. His mandate included the consideration of any potential criminal charges, including but not limited to offences arising from the physical altercation with Mr. Dziekanski, the subsequent RCMP investigation into his death, and finally, the testimony of the four officers before the Braidwood Inquiry ("Inquiry"). The following is a brief summary of Mr. Peck's conclusions.

On October 14, 2007, Robert Dziekanski travelled to Vancouver, Canada to meet his mother. After spending many confusing and frustrating hours at the Vancouver International Airport ("YVR"), Mr. Dziekanski became upset and started to act out. His behaviour led several people to contact the Richmond RCMP and four officers responded to the call: Cst. Kwesi Millington, Cst. Bill Bentley, Cst. Gerry Rundel, and Cpl. Benjamin Robinson (the "Four Officers"). Upon their arrival, the Four Officers made first contact with Mr. Dziekanski and the situation deteriorated swiftly. Within two minutes, Mr. Dziekanski lay dead or dying on the floor at YVR. Much of the altercation was recorded on video by an eye-witness. As a result of an investigation into his death, a police report was forwarded to the Ministry of the Attorney General (the "Crown") for its consideration. In February of 2008, the government of British Columbia called a public inquiry into the circumstances of Mr. Dziekanski's death. Later that year, on November 21, 2008, the Crown concluded that no criminal charges would be laid against any of the Four Officers in relation to the death.

On January 19, 2009, Phase 2 of the Braidwood Inquiry commenced, which considered the events at YVR. The second phase of the Inquiry included evidentiary hearings in Vancouver over 61 days at which 91 witnesses testified under oath or affirmation.

During this phase, the Four Officers testified under oath on the following days:

- **Cst. Rundel** – February 23-25, 2009
- **Cst. Bentley** – February 25-26, 2009
- **Cst. Millington** – March 2-4, 2009
- **Cpl. Robinson** – March 23-25, 2009

During their testimony, each officer was cross-examined at length about the events surrounding Mr. Dziekanski's death. The Four Officers were examined in detail concerning aspects of their police notes, statements, and testimony before the Inquiry; and each officer was taken through Mr. Pritchard's video in detail.

On May 20, 2010, Commissioner Braidwood released a report summarizing the evidence he heard during Phase 2 of the Inquiry and enumerating his findings of fact in that regard.

The Charge Assessment Guidelines of the Criminal Justice Branch establish the criteria to be applied by Crown Counsel (or a Special Prosecutor) in determining whether or not a prosecution should proceed. Crown counsel must:

fairly, independently, and objectively examine the available evidence in order to determine:

1. whether there is a substantial likelihood of conviction; and, if so,
2. whether a prosecution is required in the public interest.

The Guidelines establish that the public interest is to be assessed with reference to the "particular circumstances of each case and the legitimate concerns of the local community," and goes on to provide a list of factors to assist in this determination.

As part of his mandate, and in addition to the offences originally considered by the Crown (manslaughter and assault), the Special Prosecutor considered a range of

potential offences in the *Criminal Code*. These potential offences were divided into three groups: (1) offences arising from the officers' conduct immediately before, during and after Mr. Dziekanski's death; (2) offences arising from the officers' conduct in relation to the subsequent investigation by members of the RCMP's Integrated Homicide Investigative Team (IHIT); and (3) offences arising from the officers' testimony at the Braidwood Inquiry.

This portion of the summary begins with a brief discussion of the charges which Mr. Peck decided must be laid against each of the Four Officers. In short, he concluded that charges of perjury must be laid against the Four Officers in relation to the testimony that each officer gave at the Inquiry.

In relation to category three, "Testimony-related Offences," Mr. Peck focused his analysis on the offences of perjury and obstruction of justice. After a comprehensive review of the officers' testimony, and taking into account all of the other independent evidence, he concluded that there is sufficient evidence to support a charge of perjury against each of the Four Officers. Due to express limitations in section 13 of the *Public Inquiry Act*, S.B.C. 2007, c. 9, there are significant legal impediments to laying a charge of obstruction of justice against the Four Officers.

The prior charge assessment decision from the Crown focused only on whether the Four Officers were criminally liable for the death of Mr. Dziekanski, specifically manslaughter, assault and assault with a weapon. Mr. Peck was tasked with conducting a fresh assessment of those offences, based on the available admissible evidence. In addition to manslaughter assault, and assault with a weapon he also conducted an analysis of whether the evidence supported a charge of failing to provide the necessities of life. In relation to the "investigation-related offences" he considered whether, in the preparation of their notes and police reports and in their statements to investigators, the Four Officers committed the offence of obstructing justice, mischief or breach of trust.

In relation to the other two categories of offences, the “Death-related Offences” and the “Investigation-related Offences”, after many months of review and analysis, Mr. Peck concluded that there is no substantial likelihood of conviction in relation to those sets of offences. The reasons for this conclusion are myriad and will be released publicly at an appropriate time. Mr. Peck has concluded that in order to protect the integrity of the four perjury prosecutions going forward the Crown should exercise its discretion in refraining from enumerating the express details underlying the decision not to prosecute the Four Officers for their roles in the death of Robert Dziekanski *at this time*. The Special Prosecutor wishes to emphasize that these details will be made public once the prosecutions have been concluded. At that time, Mr. Peck will provide a further “Clear Statement” which will outline the precise reasons for the charge approval decision in relation to the offences considered in categories one and two

A number of factors affected the timing of Mr. Peck’s decision and the announcement of that decision. The materials that had to be reviewed in this case were voluminous in scope and detailed in nature. Sensitivities existed both in relation to Mr. Dziekanski’s family and in relation to the Four Officers. The fact that a Media Release was issued by the Criminal Justice Branch late in the day on May 6, 2011, was occasioned and necessitated by the concern that aspects of Mr. Peck’s recommendations had entered the public domain unofficially and were expected to be the subject of media reports that evening. Such breakdowns in the proper lines of communication are unfortunate. In this case it affected the planned and orderly release of information at a more appropriate time. It was always Mr. Peck’s intention that his recommendations be made public – but that they be made public with the appropriate level of explanation and context, taking into account the timing of the announcement and the need to protect the integrity of the prosecutions which will proceed.