



**DIE BUNDESMINISTERIN
FÜR JUSTIZ**

BMJ-4017043/0004-IV 2/2008

Vienna, *Dr^R* September 2008

Dear Mrs. Lynda MacPherson!

Dear Mr. Robert MacPherson!

Referring to Your letter from the 15th May, 2008 and Your other letter transmitted by fax on the 6th July, 2008 concerning the tragic death of Your son Duncan MacPherson I would like to inform You as follows:

At first I want to express my deepest regret for the death of Your son. The examination of the documents transmitted by You has painfully affected me, in particular also in view of the long period of uncertainty about the whereabouts of Your son.

I have passed the documents transmitted by You as well as Your request to reopen the already closed criminal proceedings and to carry out further investigations to the competent specialized division of my Ministry.

This division sees in the particular case, unfortunately, no possibility for a continuation of the criminal proceedings. The tragic accident occurred in 1989. According to the present results of investigations the area of the glacier fissures was sufficiently secured by a fence on to the ski slope and the ski-lift. A reconstruction of the circumstances of the accident and the establishment of a possible third-party responsibility are impossible so many years after the accident. Apart from that fact no other judicial inquiry steps can be initiated because with the death of Duncan MacPherson all potential offences by negligence committed in connection with the accident would already have come under the statute of limitations.

According to Austrian law the limitation commences in an event of death at the time of the death. Since the accident of Your son happened in 1989, the period of limitation has already commenced on this date.

For this reason, the limitation for potential offences by negligence being considered would already have become effective in the 90s. In connection with the death of Duncan MacPherson there are neither clues for intentional homicide like murder by unknown persons that has not yet come under the statute of limitations nor for an intentional judicially punishable behaviour of the investigating officers. Hence, a resumption of the criminal proceedings and conducting of further investigations fails due to the fact that there is no evidence supporting the suspicion of offences being still punishable today.

As far as You criticize the investigations of the death of Your son, I would like to point out that, according to information available to me, in 1988 comprehensive search actions have taken place which, unfortunately, remained fruitless. As the report of the Tyrol Police Department (*Landesgendarmeriekommando für Tirol*), Criminal Division, from the 14th September, 2003, which also is available to You, clearly shows, all measures necessary under the circumstances of the case have indeed been initiated on discovering the corpse. An autopsy of Duncan MacPherson was not required, because, on the one hand, his identity could be unambiguously ascertained with the help of the found identity cards, credit cards etc. and since there were no clues for a not yet come under the statute of limitations criminal offense on the other hand.

Referring to Your request to pass the documents transmitted by You to e.g. the Federal Ministry of Internal Affairs I refer to the fact this Ministry has no competence as far as a continuation of the criminal proceedings desired by You is concerned, which is why I had to refrain from forwarding the documents and have to return them to You. The Ministry of Internal Affairs would only be competent e.g. in connection with search measures.

Regarding this the Federal Ministry of Internal Affairs has already answered the list of questions You have submitted; this letter from 17th February, 1984 is attached in part VI of Your set of documents.

I finally can only again reassure how deeply I regret the tragic death of Your son, and assure that on the part of the operators of ski-slopes and the responsible authorities in Austria everything possible is done to guarantee the safety of the skiers and

snowboarders by means of barriers and markings also on glacier ski-slopes, and remain

Yours sincerely

Karin Gastinger

(Karin Gastinger)

Mrs. Lynda MacPherson and
Mr. Robert MacPherson

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Saskatoon, SK
[REDACTED]

Enclosures: Box of documents "Appeal to Minister of Justice" transmitted by You together with the letter from the 15th May, 2006