

Lawyers' Rights Watch Canada

NGO in Special Consultative Status with the Economic and Social Council of the United Nations
Promoting human rights by protecting those who defend them

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Monday, March 12, 2018

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The Honourable Scott Moe, Premier of Saskatchewan, and Don Morgan, Attorney General;
Re: Necessity to ensure an appeal of the R v. Stanley verdict

Errors of law that necessitate an appeal in the R v. Stanley case occurred first when the trial was allowed to proceed and second when the finding of fact was put to the jury, in the absence of evidence upon which any jury could reasonably make a finding of fact as to what happened and whether the death of Colten Boushie resulted from:

- 1) an intention to kill; or,
- 2) the careless or unlawful use of a fire arm;¹
- and:
- 3) whether there were reasonable grounds for the Gerald Stanley to believe that force was being used against person or property;² and,
- 4) whether such force was sufficient to justify shooting and killing Colten Boushie.

The Attorney General as chief law officer of Saskatchewan is obliged by the *UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions* (UN Investigation Principles),³ to pursue, “investigations [of the killing of Colten Boushie] through an independent commission of inquiry” in certain circumstances. All four of the circumstances specifically identified in the UN Investigation Principles—each of which can trigger the necessity for an independent investigation—were present within days of Mr. Boushie’s death and well in advance of the trial. The UN Investigation Principles, which reflect a

1 See the Criminal Code section 87 and the Firearms Act, S.C. 1995, c. 39 and regulations for "Storage, Display, Transportation and Handling of Firearms by Individuals" SOR/98-209.

2 See Criminal Code, ss. 34 and 35, enacted as part of Citizen's Arrest and Self-defence Act, S.C. 2012, c.9.

³ United Nations, *Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions*, 24 May 1989, recommended by Economic and Social Council (ECOSOC) resolution 1989/65 of 24 May 1989, welcomed by the General Assembly in Resolution A/RES/44/159, 15 December 1989, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ArbitraryAndSummaryExecutions.aspx>.

global consensus on the standards required for lawful investigations of unlawful deaths, mandates in paragraph 11:

In cases in which the established investigative procedures are inadequate because of lack of expertise or impartiality, because of the importance of the matter or because of the apparent existence of a pattern of abuse, and in cases where there are complaints from the family of the victim about these inadequacies or other substantial reasons, Governments shall pursue investigations through an independent commission of inquiry or similar procedure. (emphasis added)

Instead the RCMP were allowed to continue an investigation so apparently lacking in expertise and impartiality as to constitute a failure of Canada's international law duties to protect the right to life and to prevent and remedy violations. The matter was then allowed to go to trial and the finding of fact was put to the jury in the absence of the investigation required by law and in the absence of the factual evidence that such an investigation would have provided. The elucidation of facts was further hampered by reportedly less than vigorous testing of the presented evidence.

The duty to investigate violations of the right to life is an essential component of the duty to protect the right to life, a non-derogable, *jus cogens* norm guaranteed by "international and regional treaties, customary international law, and by domestic legal systems globally."⁴

This duty arises also from the *International Covenant on Civil and Political Rights* (ICCPR) to which Canada is a party. The ICCPR imposes on Canada (and Saskatchewan) the duty to ensure a thorough, competent and impartial investigation of all cases of extra-legal, arbitrary and summary executions—such as that of Colten Boushie—as an essential component of the duty to protect the right to life. Such investigations must be capable of not only of identifying suspects—not necessary in this case—but also of bringing the perpetrator before a competent court⁵ for prosecution and punishment in accordance with fair trial standards and the law. The right to such investigations and remediation belongs primarily to Colten Boushie and his family and secondarily to the public.

The United Nations Human Rights Committee has determined that failure to take such effective measures to investigate and remedy unlawful deprivation of life, can itself constitute violations by the State of the ICCPR.

There may be circumstances in which a failure to ensure Covenant rights as required by Article 2 would give rise to violations by States Parties of those rights, as a result of States Parties' permitting or failing to take appropriate measures or to exercise due

⁴ Minnesota Protocol on the Investigation of Potentially Unlawful Deaths: Revised UN Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, A/HRC/32/39/Add.4, June 2016, para. 11, <http://www.ohchr.org/Documents/Issues/Executions/UNManual2015/A.HRC.32.39.Add.4.docx>. Also see UN Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, A/HRC/26/36, 1 April 2014, para. 42, http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A-HRC-26-36_en.doc.

⁵ Minnesota Protocol, *infra* note 21, Section B.

diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities.⁶

Saskatchewan's failure to ensure the remediation required (by *inter alia*, ICCPR, Article 2) is an apparent violation of the ICCPR guarantee (Article 6) to ensure that all persons, including Colten Boushie and other members of First Nations communities are, 'not to be arbitrarily deprived of life'.

These principles apply to a proper interpretation of the Canadian *Charter of Rights and Freedoms* guarantee "not to be deprived [of the right to life] thereof except in accordance with the principles of fundamental justice." The Supreme Court of Canada has confirmed that, "the *Charter* should be presumed to provide at least as great a level of protection as is found in the international human rights documents that Canada has ratified."⁷ This principle was reaffirmed by the Supreme Court of Canada in *Saskatchewan Federation of Labour v. Saskatchewan*.⁸

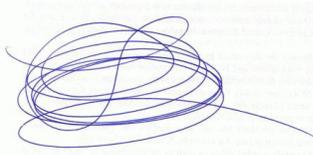
Colten Boushie was undeniably unlawfully deprived of life contrary to Canadian and international human rights law. The investigation and trial also contravened principles of fundamental justice established by international and Canadian law. The deceased Colten Boushie, his family and the public are entitled to have these critical legal issues reviewed in open court by the Saskatchewan Court of Appeal .

The right to know was further hampered by the dismissal of the 16 January 2018 applications of PostMedia, APTN, CTV, CBC and Global for permission to broadcast and live stream limited portions of the trial of Gerald Stanley using 3 fixed television cameras. The judge also imposed a ban on publication of the Application and his decision until the jury retired to consider its verdict.

LRWC has compiled from media reports, and will share on request, a partial list of significant deficiencies in the gathering, presentation and testing of evidence that contaminated the apparent legitimacy of the trial.

LRWC urges that an appeal be filed immediately.

Sincerely,



Gail Davidson, Executive Director, LRWC

⁶ UN Human Rights Committee, General Comment No. 31 on Article 2 of the Covenant: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. CCPR/C/74/CRP.4/Rev.6, 21 April 2004, para. 8.

⁷ *Divito v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 47, [2013] 3 SCR 157, at para. 23.

⁸ *Saskatchewan Federation of Labour v. Saskatchewan* 2015 SCC 4, [2015] 1 SCR 245, at para. 64.

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