

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

www.lrwc.org – lrwc@portal.ca – Tel: +1 604 736 1175 – Fax: +1 604 736 1170
3220 West 13th Avenue, Vancouver, B.C. CANADA V6K 2V5

Civilian Review and Complaints Commission for the RCMP
P.O. Box 1722, Station B
Ottawa, ON K1P 0B3
Attention Acting Chair, Guy Bujold
Email: guy.bujold@crcc-ccept.gc.ca

Dear Mr. Bujold;

Re: Complaint and Public Interest Investigation by the Civilian Review and Complaints Commission of the RCMP response to and investigation of, the 9 August 2016 extra-judicial killing of Colten Boushie

Lawyers' Rights Watch Canada (LRWC) is a committee of lawyers and other human rights defenders who promote international human rights and the rule of law through advocacy, education and legal research. LRWC is a volunteer-run NGO in Special Consultative Status with the Economic and Social Council of the United Nations.

LRWC welcomes the Chair-initiated Complaint and Public Interest Investigation by the Civilian Review and Complaints Commission to determine whether the RCMP response to and investigation of, the extra-judicial killing of Colten Boushie was “reasonable.”

LRWC is writing for the purposes of;

- I. Voicing concern that the RCMP investigation did not fulfill the international human rights law (IHRL) obligations of Saskatchewan and Canada to provide equal and non-discriminatory protection of the right to life and remediation of unlawful deprivation of life;
- II. Stating that to be ‘reasonable’ an investigation must comply with the applicable international laws and standards including those arising from the:
 - a. *International Covenant on Civil and Political Rights* (ICCPR);¹
 - b. *American Declaration on the Rights and Duties of Man* (ADRDM);²
 - c. *United Nations Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions* (UN Investigation Principles);³ and,
 - d. *United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions* (Minnesota Protocol).⁴

¹ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p 171.

² *American Declaration on the Rights and Duties of Man*, O.A.S. Res. XXX, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OAS/Ser.L/V/II.4 Rev. 9 (2003); 43 AJIL Supp. 133 (1949) (ADRDM).

³ Recommended by Economic and Social Council resolution 1989/65 of 24 May 1989, welcomed by the General Assembly in Resolution A/RES/44/159, 1 December 1987.

III. Requesting that the Chair-initiated Complaint and Public Interest Investigation by the Civilian Review and Complaints Commission (CRCC) conduct an investigation and review of the issues itemized in the Appendix below.

I. Concern that the RCMP investigation did not comply with minimum standards

From available reports, the RCMP investigation of the extra-judicial killing of Colten Boushie: failed to obtain and preserve evidence upon which a judge or jury could make findings of facts necessary to determine and remedy wrongdoing.

As a consequence of the failed RCMP investigation, evidence upon which an accurate determination of the facts could have been made was not before the court at the trial. The public and the victim's family still do not know the facts leading up to the unlawful death of Colten Boushie.

II. RCMP investigation failed to comply with IHRL

The RCMP investigation appears to have been so markedly lacking in expertise and impartiality as to itself constitute a violation by Saskatchewan and Canada of the *International Covenant on Civil and Political Rights* (ICCPR) obligations to provide equal and non-discriminatory protection of the right to life.

As set out in our 11 February 2018 letter to Attorney General Morgan and Premier Moe (attached), the international law obligations of States to ensure competent and effective investigations of extra-judicial killings as an essential part of the overarching duty to ensure the enjoyment of the right to life has been confirmed by the Inter-American Court of Human Rights and the UN Human Rights Committee.

The ICCPR obligation to protect the right to life includes—where the perpetrators is known—ensuring an investigation that obtains and preserves evidence upon which a competent, impartial and independent tribunal can determine the facts and apply the law.

The UN Investigation Principles reflect a global consensus on the standards for investigations, and require:

- thorough, prompt, and impartial investigation of all suspected cases of extra-legal, arbitrary, and summary executions;
- an independent commission of inquiry for those cases in which the established investigative procedures are ineffective because of lack of expertise or impartiality, and for cases in which there are complaints from the family of the victim about these inadequacies or other substantial reasons;

The Minnesota Protocol sets out basic minimum standards governing the collection, analysis and management of evidence, data and materials, the forensic examination of the crime scene, and interviews of witnesses, necessary to ultimately discover, through a trial, the truth about the events leading to the death of a victim.

4 Part III of the United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, U.N. Doc. E/ST/CSDHA/12 (1991),

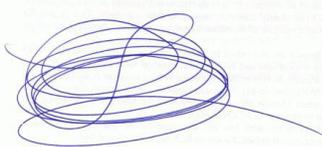
Shortly after 9 August 2016, it was apparent from media reports that the RCMP was failing to comply with minimum IHRL standards with respect to the recovery and preservation of evidentiary material related to the death that could aid in a prosecution. Review of such reports suggests a lack of impartiality and competence and that those deficiencies contaminated the investigation and significantly hampered the capacity of the prosecution and trial to determine the truth. The RCMP appear to have inappropriately focused on exculpating the known perpetrator and inculcating the victim and his companions. This focus led to evidence critical to elucidating the truth or the testing the RCMP theory, being lost or ignored.

The appended list of issues for examination by the CRCC in the Appendix was prepared from media reports of the investigation and trial. Once a trial transcript is available, it may be necessary to add other issues. The CRCC investigation must be capable of determining both what the RCMP did in the course of the investigation of the extra-judicial killing and whether those actions and inactions were reasonable within the context of the relevant facts and applicable law.

IHRL requires that investigations of unlawful deaths, such as that of Colten Boushie, be prompt, effective, thorough, independent, impartial and transparent. We trust that the review, investigation and determination of the Chair-initiated Complaint and Public Interest Investigation by the Civilian Review and Complaints Commission will comply with these requirements.

Thank you for your reply.

Sincerely,

A handwritten signature in blue ink, appearing to be 'Gail Davidson', written over a light green grid background.

Gail Davidson, Executive Director, LRWC

Copied to:

Special Rapporteur on extrajudicial, summary or arbitrary executions
Ms. Agnes Callamard
eje@ohchr.org

Prime Minister Justin Trudeau
Office of the Prime Minister
justin.trudeau@parl.gc.ca

The Honourable Jody Wilson-Raybould
Minister of Justice and Attorney General of Canada
Email: mcu@justice.gc.ca

The Honourable Carolyn Bennett
Minister of Indigenous and Northern Affairs Canada
Email: minister@aadnc-aandc.gc.ca

APPENDIX

LIST OF ISSUES REQUIRING EXAMINATION AND REVIEW

by the

**Chair-initiated Complaint and Public Interest Investigation by the Civilian Review and
Complaints Commission
of the**

**RCMP investigation of the 9 August 2016 extra-judicial killing of Colten Boushie by
Gerald Stanley**

Crime Scene: Failure to secure, obtain and preserve evidence

1. Failure to secure and preserve clothing of Gerald Stanley and Colten Boushie for examination by forensic specialists;
2. Failure to secure the crime scene from possible interference by people or animals;
3. Failure to protect the crime scene from damage by the elements such that crucial blood splatter and other evidence was destroyed;
4. Failure to ensure the timely attendance of a forensic team capable of adequately photographing the entire crime scene and of collecting and preserving evidence of blood, blood spatters, gunshot residue, footprints, fingerprints, and other potentially critical evidence;
5. Details of attendance at the crime scene on 9 August 2016 by RCMP officers, land and air vehicles including times and duration of attendance and record of activities;
6. Details of when the crime scene was visited by a forensic team capable and prepared to do the work described in the immediately preceding paragraph and reports of what evidence had been destroyed, diminished or contaminated by the weather or other factors;
7. Failure to plot movements of the three Stanleys, Eric Meechance, Cassidy Cross-Whitstone and of the 2003 Ford Escape on the map of the crime scene showing locations of vehicles, house and outbuildings, ATV, sites where ballistic evidence recovered;
8. Failure to conduct or to enable others to conduct reconstruction and re-enactments after witness statements and reports including the pathologist's report were available;

Body of Colten Boushie

9. Details of RCMP examination, treatment, photographing, transport and delivery of the body of Colten Boushie, including dates, times and locations;
10. Details of dates, times and locations of examinations of the body of Colten Boushie by others including by the examining pathologist;

Weapon: Tokarev TT 33 semi automatic handgun Gun

11. Failure to immediately secure the Tokarev TT 33 semi automatic handgun that killed Colten Boushie and to ensure its uncontaminated preservation;
12. Details of actions taken by the RCMP to collect evidence from, to test and attempt re-enactments with, the Tokarev TT 33 semi automatic handgun;
13. Details of RCMP custody, examination and treatment of the Tokarev TT 33 semi automatic handgun and all ballistics related evidence including spent cartridges;

14. Details of RCMP investigation including obtaining and preserving evidence, photographs and witness statements regarding the historic and current storage, use and care of the Tokarev TT 33 semi automatic handgun and ammunition;

Automobile

15. Failure to secure and preserve the 2003 Ford Escape for collection of potentially critical evidence and reconstructions and re-enactments;
16. Failure to examine, gather evidence from and preserve for further examination, testing, reconstruction and re-enactment, the 2003 Ford Escape in which Colten Boushie was shot;
17. Failure to have the 2003 Ford Escape and cars keys examined by appropriate specialists for fingerprints, blood, gunpowder and other potentially critical evidence and to conduct tests to determine if it was operable at the time of Colten Boushie's death;

Witness statements

18. Failure to take statements from Gerald Stanley, Sheldon Stanley and Mrs Stanley at the crime scene or on the day of the killing and before they had an opportunity to discuss their statements;
19. RCMP actions to obtain and record witness statements from Gerald Stanley, Sheldon Stanley, Mrs Stanley, Eric Meechance, Cassidy Cross-Whitstone, Belinda Jackson and Kiora Wuttunee, including details of when, where and by whom each statement was taken, in whose presence each statement was made, length of interrogation prior to the statement being made, inducements offered, and how each statement was recorded;
20. Records of all conversations with and statements by, Gerald Stanley, Sheldon Stanley, Mrs Stanley, Eric Meechance, Cassidy Cross-Whitstone, Belinda Jackson and Kiora Wuttunee 9 August 2016;
21. All communications with, reports, statements and evidence received from other witnesses including expert and civilian witnesses offering testimony in relation to the 'hangfire' issue;

RCMP Arrests on 9 August 2016

22. Details including dates, times, locations, reasons, related documents and number of officers involved for the arrest, transport and release of Gerald Stanley, Belinda Jackson and Kiora Wuttunee;
23. RCMP reports and documents in relation to the arrests;
24. Details of RCMP attendance at the Fouhy farm on 9 August 2016, including time and duration of attendance at the Fouhy farm, officers involved and record of all communications, including the original telephone complaint;

RCMP recommendations for charges

25. RCMP recommendations for charges against any parties present or in the vicinity when the killing took place including Gerald Stanley and Sheldon Stanley, including but not limited to charges under the Criminal Code and the Firearms Act and regulations;

RCMP communications with Crown Counsel

26. RCMP recommendations to Crown Counsel in relation to charges under the Criminal Code and/or the Firearms Act against Gerald Stanley, Sheldon Stanley, Eric Meechance, Cassidy Cross-Whitstone, Belinda Jackson and Kiora Wuttunee;
27. Communications sent and received by the RCMP in relation possible agreed upon statements of facts and/or law;
28. Details as to whether all statements made by the three Stanleys and the four live occupants of the 2003 Ford Escape were communicated to Crown Counsel including statements made at the crime scene but not recorded or recorded only by notes;
29. All communications between the RCMP and Crown Counsel in relation to the investigation of the killing of Colten Boushie;

RCMP contact and communications with Colten Boushie's family

30. Details of RCMP notification of Debbie Baptiste concerning the death of Colten Boushie and the search of her home, including duration, number of members present, number of automobiles, helicopter, number of members showing arms, search warrant;
31. RCMP communications to the Government of the Red Pheasant First Nation concerning the death of Colten Boushie;
32. RCMP practice rules and practice protocols for notifying family members of death.

The above concerns are based on a review of media reports and may be revised once a transcript of the trial is available.