

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

11 February 2018

Attorney General Don Morgan
Office of the Minister of Justice and the Attorney General of Saskatchewan,
Room 355, Legislative Bldg
2405 Legislative Drive,
Regina SK Canada S4S 0B3
Fax: 1 306 787 1232
Email: jus.minister@gov.sk.ca

Premier Scott Moe
Room 226, Legislative Bldg
2405 Legislative Drive,
Regina SK Canada S4S 0B3
Fax: 1 306 787 0885
Email: premier@gov.sk.ca

The Honourable Scott Moe, Premier of Saskatchewan, and the Honourable Don Morgan,
Attorney General;

Re: Discrimination and inequality concerns arising from the investigation of the shooting death of Colten Boushie and the conduct of the prosecution and trial of the admitted perpetrator.

Lawyers' Rights Watch Canada (LRWC) is a committee of lawyers and other human rights defenders who promote international human rights, the rule of law, and the integrity of legal systems 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 calls on the Attorney General of Saskatchewan, in compliance with international human rights law obligations, to ensure:

1. an adequately resourced appeal of the acquittal of Gerald Stanley for the shooting death of Colten Boushie;
2. an independent commission of inquiry to conduct a thorough, competent and impartial investigation of the killing of Colten Boushie and to examine and determine and make recommendations in reference to:
 - a. the RCMP response to, and investigation of, the killing;
 - b. irregularities, errors and omissions by the prosecution of the known perpetrator;
 - c. irregularities, errors and omissions in the conduct of the trial;

Discrimination and inequality concerns arising from the investigation of the shooting death of Colten Boushie and the conduct of the prosecution and trial of the admitted perpetrator

- d. the use of peremptory challenges in jury selection;
 - e. the extent to which discrimination against indigenous people determined any aspect of the conduct of the investigation, prosecution and/or trial;
3. implementation of the remedial and preventative measures required by law.

The acquittal of Gerald Stanley for the shooting death of Colten Boushie appears to signal a failure of the criminal law system to ensure equal and non-discriminatory protection of rights and access to effective remedies for violations as required by international human rights laws and standards. The Government of Saskatchewan failed to address the inequities apparent in the initial RCMP response—which suggested criminalization of the victims and exoneration of the perpetrators—and the resulting appearances of bias and/or incompetence persisted and undermined public confidence in the investigation, the prosecution and the trial.

The Government of Saskatchewan is legally bound to protect the right to life of all people within the province and to maintain effective measures to prevent and remedy violations. The measures necessary to ensure protection, prevention and remediation must be applied and made accessible to all on an equal and non-discriminatory basis.

Rights to equality and non-discrimination are recognized as having entered the realm of *jus cogens* by both the United Nations (UN) and Organization of American States (OAS) human rights systems. Canada is a member of the UN and the OAS. The Supreme Court of Canada describes *jus cogens* as,

“...a higher form of customary international law. In the same manner that principles of fundamental justice are principles “upon which there is some consensus that they are vital or fundamental to our societal notion of justice”...*jus cogens* norms are customs accepted and recognized by the international community of states from which no derogation is permitted”¹

These international human rights law obligations, applicable federally and provincially, arise from Canada’s membership in the UN and the OAS and from treaties and other instruments binding on Canada, including but not limited to the *Universal Declaration of Human Rights* (UDHR)², *International Covenant on Civil and Political Rights* (ICCPR)³ and the *American Declaration on the Rights and Duties of Man* (ADRDM).⁴

The *Vienna Convention on the Law of Treaties* specifies that States parties, such as Canada, are bound by their treaty obligations, and that internal law cannot justify failure to perform treaty obligations.⁵ The Supreme Court of Canada has affirmed the principle that, “the *Charter* should be presumed to provide at least as great a level of protection as is found in the international

1 *Kazemi Estate v. Islamic Republic of Iran*, 2014 SCC 62, [2014] 3 SCR 176, at para. 151.

2 *Universal Declaration of Human Rights*, GA Res. 217(III), UN GAOR, 3d Sess., Supp. No. 13, UN Doc. A/810 (1948).

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

4 *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).

5 United Nations, *Vienna Convention on the Law of Treaties*, 23 May 1969, United Nations, Treaty Series, vol. 1155, 331 [Vienna Convention].

human rights documents that Canada has ratified.”⁶

Both the Inter-American Court of Human Rights (IACtHR) and the UN Human Rights Committee (HR Committee) have unequivocally confirmed on many occasions, the duty 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. The HR Committee has determined that failure “to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by [violation of protected rights]”⁷ may itself constitute a violation of the ICCPR. As observed by the IACtHR, “When the right to life is not respected, all the other rights lack meaning.”⁸

The UN has developed detailed standards for investigation of unlawful killing, including the:

- UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (UN Investigation Principles);⁹ and
- UN Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (Minnesota Protocol).¹⁰

The UN Investigation Principles, which reflect a global consensus on the standards required for lawful investigations of unlawful deaths, require,

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.(para.11)

In this case, complaints about RCMP treatment of the family in the immediate aftermath of the killing of Mr. Boushie should alone have alerted the Government of Saskatchewan to put in place special investigation procedures and protocols likely to fulfill its legal obligations to ensure an effective investigations and prosecution. The subsequent failure by the RCMP to secure the crime scene, coupled with widespread identification of the killing with endemic racism and inequality suffered by indigenous people in Saskatchewan, indubitably triggered the duty of the Government of Saskatchewan to urgently put such measures in place. Instead, the perception of state agents and laws operating to criminalize the victims and exonerate the perpetrators, persisted and so tainted the prosecution and trial with apparent discrimination and unfairness as to render the verdict unacceptable.

⁶ *Divito v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 47, [2013] 3 SCR 157, at para. 23 and *Saskatchewan Federation of Labour v. Saskatchewan* 2015 SCC 4, [2015] 1 SCR 245, at para. 64..

⁷ HR 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.

⁸ IACtHR, *Case of Myrna Mack-Chang v. Guatemala*. Judgment of November 25, 2003. Series C No. 101, para. 152.

⁹ 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.

¹⁰ 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),

The Inter-American Commission of Human Rights, the UN Committee to Eliminate all Forms of Racism (CERD) and the Committee to Eliminate Discrimination against Women (CEDAW) have all identified the lack of equal rights protection for indigenous people in Canada and the lack of access to effective remedies for rights violations. In 2015, CEDAW noted the failure of Canada's police and courts to adequately protect indigenous women from violence, hold offenders to account and provide redress for victims. CEDAW concluded that Canada had committed 'grave violations' of the rights of indigenous women by failing to properly investigate murders and other violence.¹¹ In 2017, CERD noted persistent racial profiling by police and disproportionate incarceration by courts of indigenous people in Canada and made many recommendations to combat discrimination against indigenous people including to:

Implement the [UN Declaration on the Rights of Indigenous Peoples], and adopt a legislative framework to implement the Convention including a national action plan, reform of national laws, policies and regulations to bring them into compliance with the Declaration, and annual public reporting.¹²

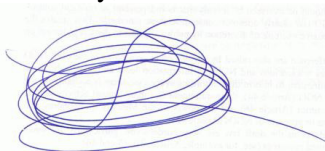
The *UN Declaration on the Rights of Indigenous Peoples*, Article 2 expands on the equality and non-discrimination provisions contained in the UDHR, ICCPR, ADRDM and other human rights treaties and instruments, with these words,

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

LRWC urges the Government of Saskatchewan to comply with its international human rights obligations and to immediately file and properly resource an appeal and appoint an independent commission of inquiry to provide the full range of redress and information to which the family and the public are entitled.

Thank you.

Sincerely,



Gail Davidson, Executive Director, LRWC

Copied to:

Special Rapporteur on the rights of indigenous peoples

Ms. Victoria Lucia Tauli-Corpuz

indigenous@ohchr.org

¹¹ CEDAW, Report of the inquiry concerning Canada of the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women¹ CEDAW/C/OP.8/CAN/1 Convention on the Elimination of All Forms of Discrimination against Women Distr.: General 30 March 2015.

¹² CERD Concluding observations on the twenty-first to twenty-third periodic reports of Canada, CERD/C/CAN/CO/21-23 ADVANCE UNEDITED VERSION Distr.: General 25 August 2017, para. 18(b).

Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

Mr. Mutuma Ruteere

racism@ohchr.org

UN Working Group on Indigenous Populations

Mr. Yozo Yokota

Mr. Miguel Alfonso

Ms. Christy Ezim Mbonu

Mr. Gaspar Biro

Mrs. Francoise Hampson

WGindigenous@ohchr.org

Prime Minister Justin Trudeau

Office of the Prime Minister

80 Wellington Street

Ottawa, ON K1A 0A2

Fax: 613-941-6900

justin.trudeau@parl.gc.ca

The Honourable Jody Wilson-Raybould

Minister of Justice and Attorney General of Canada

284 Wellington Street

Ottawa, Ontario K1A 0H8

Email: mcu@justice.gc.ca