



MEDIA STATEMENT

CRIMINAL JUSTICE BRANCH

February 27, 2008

08-04

NO CHARGES IN LAND TRANSACTION INVESTIGATION IN ABBOTSFORD

Victoria – The Criminal Justice Branch of the Ministry of Attorney General today announced that an independent Special Prosecutor has determined that no charges are warranted in relation to a Financial Institutions Commission of British Columbia (FICOM) investigation into allegations of possible misconduct on the part of individuals associated with a land transaction in Abbotsford, BC in 2006.

FICOM submitted a Report to Crown Counsel concerning allegations that a number of individuals were involved in a potentially illegal land transaction in Abbotsford, BC. As one of the individuals associated with the investigation was Harry Oppal, the brother of Attorney General Wally Oppal, the Criminal Justice Branch determined it was appropriate to appoint an independent Special Prosecutor pursuant to the *Crown Counsel Act*.

On September 6, 2007, Assistant Deputy Attorney General, Robert W.G. Gillen, Q.C. appointed George K. Macintosh Q.C., a senior Vancouver lawyer as an independent Special Prosecutor. Mr. Macintosh's mandate included:

- Offering independent legal advice as the investigative agency may require in the event further investigation was required;
- Conducting an independent charge assessment based on the evidence contained in the Report to Crown Counsel or any other information the investigative agency may submit;
- Providing the Assistant Deputy Attorney General with a written report setting out his charge assessment decision; and
- If in his view a charge is warranted, conducting the prosecution and any subsequent appeal.

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In British Columbia, independent Special Prosecutors are bound by the Criminal Justice Branch charge approval policy, which requires both a substantial likelihood of conviction and that a prosecution is in the public interest.

There are two components to the Branch charge approval standard: an evidentiary test that requires a substantial likelihood of conviction and a public interest test. The evidentiary test is met when the available evidence supports that there is a strong, solid case of substance to present to the court. It is only when the evidentiary test is met, that Prosecutors must further determine whether the public interest requires a prosecution. Branch policy provides guidance in relation to factors to be considered in relation to the public interest.

In a written report to Mr. Gillen dated February 19, 2008, Mr. Macintosh concludes that no charges should be brought against any individual associated with the land transaction in question, including Harry Oppal.

In his report Mr. Macintosh states:

“Having reference to the first of the two criteria for charge assessment, in my view, there is not a substantial likelihood of conviction. Uttering forged documents, contrary to section 368(1) of the Criminal Code, and submitting false information to obtain a mortgage, contrary to the fraud provisions in section 380(1)(a) of the Criminal Code, are the charges we have considered. Conviction is unlikely because the two primary witnesses for the prosecution ... lack all credibility and would not be believed.

If it had been necessary to address the second criteria, I would have concluded that prosecution was required in the public interest.”

In assessing the reliability of the two primary witnesses, Mr. Macintosh noted amongst several concerns that:

- One witness admitted to forging several key documents;
- The same witness provided a number of conflicting statements;
- Both witnesses made material misrepresentations to a financial institution; and
- In reviewing the available evidence, the allegation that a relative of the primary witnesses had paid a \$100,000 down payment which was lost on foreclosure was not substantiated, and likely not true.

Mr. Gillen has reviewed Mr. Macintosh’s report and agrees with its conclusion not to proceed with any criminal charge in this case.

Special Prosecutors are appointed under the Crown Counsel Act when there is a significant potential for real or perceived improper influence in the independent exercise of prosecutorial responsibilities, including the charge assessment process.

The decisions of Special Prosecutors are final subject only to receiving written instructions from the Attorney General, Deputy Attorney General or the Assistant Deputy Attorney General for the Criminal Justice Branch. In such an event, those directions must be made public by publishing them in the BC Gazette.

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