



MEDIA STATEMENT

CRIMINAL JUSTICE BRANCH

May 21, 2009

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DECISION OF SPECIAL PROSECUTOR ANNOUNCED

Victoria - The Criminal Justice Branch of the Ministry of Attorney General today announced the decision of independent Special Prosecutor Paul D.K. Fraser, Q.C. in relation to a complaint of possible criminal misconduct by individuals associated with the defence team of Inderjit Singh Reyat. Mr. Reyat was charged in connection with the 1985 explosion of Air India Flight 182 and the intended explosion of Air India Flight 301.

Mr. Fraser was appointed on July 19, 2002 by Robert W.G. Gillen Q.C., the Assistant Deputy Attorney General for the Criminal Justice Branch. The appointment was made following a request from the RCMP for a Special Prosecutor in relation to their investigation, after one of Mr. Reyat's former legal counsel made public allegations of fraud with respect to accounts submitted to the B.C. government for work done by individuals associated with the Reyat defence team. The allegations related to the conduct of David John Martin, the lead counsel on the team, and to two of Mr. Reyat's children, Didar Reyat and Prit Reyat. Mr. Martin has since been subject to Law Society disciplinary proceedings in connection with the allegations.

Mr. Fraser has concluded that no criminal charges should be laid based on the results of the police investigation. Mr. Fraser concluded that the available evidence did not support a charge of fraud against Mr. Martin or Prit Reyat. Mr. Fraser further concluded that there was a substantial likelihood of conviction if a fraud charge were laid against Didar Reyat, but that a prosecution was not required in the public interest.

Mr. Fraser has approved the release of the attached summary of the reasons for his decision.

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Mr. Fraser's mandate as the Special Prosecutor included:

- Offering such legal advice as the police investigators might require during the course of their investigation;
- Making any charge approval decision in the exercise of his independent prosecutorial discretion;
- If in his view a charges were warranted, conducting the prosecution and any subsequent appeal.

The Assistant Deputy Attorney General for the Criminal Justice Branch appoints Special Prosecutors pursuant to the Crown Counsel Act when there is a significant potential for real or perceived improper influence in the administration of criminal justice.

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

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REPORT OF SPECIAL PROSECUTOR

Possible misconduct of individuals associated with the defence team of Inderjit Singh Reyat in Air India Proceedings.

SUMMARY OF CONCLUSIONS

1. At the request of the RCMP, and pursuant to the *Crown Counsel Act*, an independent Special Prosecutor was appointed by the Assistant Deputy Attorney General, Criminal Justice Branch, to provide legal advice as necessary to the police in relation to their investigation, and to ultimately make the appropriate charging decision.
2. The RCMP investigation resulted from allegations of fraud under Section 380(1) of the *Criminal Code* against David John Martin, lead defence counsel, and Didar and Prit Reyat, document and translation assistants and children of Mr. Reyat, with respect to an account submitted to the BC Government for work done by the defence team acting for Mr. Reyat in the defence of charges he faced in 2002, connected with the Air India tragedy.
3. The defence team was paid out of public funds for legal and related services provided to Mr. Reyat pursuant to a financial arrangement signed between the Government of British Columbia and the team. The accounts were paid by the Government only after they were approved by an independent Reviewer, chosen by the parties to review and approve the accounts.
4. Mr. Martin had the responsibility to verify the accounts submitted by the team to the Reviewer. The allegations investigated with respect to his conduct were twofold: *first*, that he defrauded the government by entering into an improper agreement with Mr. Reyat to pay \$10,000 per month in fees to Mr. Reyat's children for document and translation services, irrespective of whether the work for which accounts would be submitted to the government was done; and *second*, that he fraudulently concealed the employment of Reyat family members from the Reviewer and/or the Ministry of the Attorney General, and that he submitted erroneous accounts to the Reviewer for work which he knew had not been done by the Reyat children in the months of February and March, 2002.

5. The allegation against Mr. Reyat's son, Didar, was that he committed fraud by the submission of false invoices for himself and his sister to the defence team for February and March, 2002. The accounts were approved by the Reviewer and sent to the government for payment. After the inflated accounts were identified in April, 2002, the defence team advised the government of irregularities in the February and March, 2002 accounts, before payment was made. Didar and Prit Reyat did not receive payment for the two months in question.

6. These various allegations surfaced as the Reyat defence team was involved in pre-trial motions as part of the preparation for the start of the Air India trial. As a result, all of the members of the defence team, except for Mr. Martin, resigned and were replaced by new counsel. Before the police investigation was fully underway and the Special Prosecutor appointed, three of the lawyers who were previously members of the defence team filed a complaint with the Law Society of British Columbia (June 11, 2002) with respect to Mr. Martin's alleged conduct. The Law Society conducted an initial investigation and issued a citation on September 9, 2004. Ultimately, a five day hearing was held in April, 2005. The hearing panel decided that Mr. Martin had professionally misconducted himself. On October 19, 2006 the Benchers of the Law Society reprimanded Mr. Martin and ordered that a fine of \$25,000 be paid in addition to the sum of \$35,000 for the costs of the proceedings. The Benchers recorded that "it was common ground that [Mr. Martin's] misconduct involved neither dishonesty nor deceit, was not intentional and was not characterized by moral turpitude". A description of the misconduct that was accepted by both counsel for the Law Society and counsel for Mr. Martin was "gross culpable neglect".

7. While the Law Society's various proceedings were taking place, Mr. Reyat pleaded guilty (on February 10, 2003) to a charge of manslaughter and was sentenced to five years. The Air India trial proceeded against the other two accuseds and on March 16, 2005 the trial ended with their acquittal.

8. The proceedings of the Law Society under the *Legal Professions Act* were of vital importance to the police investigation in this case. While the information provided to the Law Society is, by its governing statute, inadmissible in any criminal proceedings, the evidence given by the complainants and Mr. Martin has been of fundamental importance to an understanding of the various allegations that had been made. All of the evidence and the findings are on the public record and provide detailed information about public funds paid to the Reyat Defence team.

9. The RCMP investigation benefited from all of the evidence and documentation that was forthcoming in the Law Society proceedings. From it, information was obtained that would not otherwise have been available. The cost or consequence of that benefit was that the investigation became protracted.

10. The investigation conducted by the RCMP in this case was entirely separate from the investigation done by the RCMP in the Air India case. Great care was taken to ensure that there was no cross-pollination of information. The Special Prosecutor is satisfied that the decision by the RCMP to prolong its investigation until after both the Air India trial and the Law Society proceedings had been completed was necessary to ensure a fair trial in the criminal proceedings and so that information in the Law Society proceedings could inform the investigation of this case.

11. As a result of solicitor and client confidentiality and because sensitive information about the work of the defence team might have compromised Mr. Reyat's right to a fair trial, very little real information about what went on in this matter was available at the time the police investigation commenced. By the end of the investigation, a very great deal more was known than would otherwise have been available in order to inform the charge assessment responsibility of the Special Prosecutor.

12. In determining whether or not a prosecution will proceed, it is incumbent upon the Special Prosecutor under the Charge Assessment Guidelines in the Crown Counsel Policy Manual, to fairly, independently and objectively examine the available evidence to determine whether there is a substantial likelihood of conviction; and, if so, whether a prosecution is required in the public interest. Under the *Crown Counsel Act* (Section 4(3)(a)), the Special Prosecutor is authorized to examine all relevant information and documents and to approve charges in respect of any offence or offences that he or she considers appropriate.

13. In order to determine whether a substantial likelihood of conviction exists, the Special Prosecutor must be satisfied that there is a strong, solid case of substance to present to the court. In determining whether that standard has been satisfied, the Special Prosecutor must determine what material and testimony are likely to be admissible in evidence and the weight likely to be given to them. In addition, it is necessary to determine the likelihood that viable, not speculative, defences will succeed.

14. In this case, and after considering all of the potentially admissible evidence, the Special Prosecutor concluded that there was not a substantial likelihood that Mr. Martin would be convicted of fraud under Section 380(1) of the *Criminal Code*, either with respect to the allegation that he made a fraudulent agreement with Mr. Reyat that his family would unconditionally receive \$10,000 per month from his provincially funded defence, or that Mr. Martin fraudulently concealed the employment of Reyat family members from the Reviewer and/or the Ministry of the Attorney General. With respect to the former allegation, the evidence at a criminal trial would likely be ambivalent and would lack the cogency and clarity to support a finding of the necessary criminal intent. With respect to the latter allegation, there was conflicting evidence about the extent of the Reviewer's knowledge. In any event, there was nothing in the funding agreement to prevent members of Mr. Reyat's family who were competent to provide translation and document assistance (and, it is expected the evidence would be, added value to the preparation work that was ongoing) from being employed by the legal team. The issue was never discussed by the negotiating parties, but there is nothing explicitly or inferentially contained in the funding agreement that amounts to an obligation to inform the Government. In these circumstances, the available evidence cannot, in the opinion of the Special Prosecutor, support a charge of fraud against Mr. Martin.

15. With respect to Didar Reyat, the evidence discloses that he was forthright in admitting to the defence team that the accounts he had submitted for payment for himself and his sister in the months of January and February, 2002 were inflated. That admission was unequivocal and was made immediately upon being questioned about the apparently inflated accounts. In the opinion of the Special Prosecutor, there is a substantial likelihood of conviction if a charge under Section 380(1)(b) were to be laid against Didar Reyat.

16. The Charge Assessment Guidelines under the Crown Counsel Policy Manual provide that if the evidentiary test (the likelihood of conviction) is satisfied, the Special Prosecutor must then go on to determine whether the public interest requires a prosecution. In making that assessment many factors are to be taken into consideration.

17. In the particular circumstances of this case, the Special Prosecutor has decided for several reasons that a prosecution is not required in the public interest. The evidence is that Didar Reyat's admission was given quickly when he was confronted and his assistance ultimately led to a more complete understanding of what had actually occurred. His cooperation

resulted in the government being advised sooner, rather than later, of the discrepancies in the accounts and before the government made any payments on the accounts. In the result, the Reyat children received no payment at all for the work they actually did in the months of February and March 2002.

18. In summary, the further reasons are that significant time has lapsed since the conduct in question; Didar Reyat's admission of inflating the accounts and the disclosure to the defence team was widely reported at the time and have been in the public domain and have affected his reputation for some years; the amount involved was less than \$3,000 and a conviction is likely to result in a modest penalty; and he has no past criminal record.

19. In the result, the Special Prosecutor has decided that no charges will be laid against either Mr. Martin or Mr. Didar Reyat.