



MEDIA STATEMENT

CRIMINAL JUSTICE BRANCH

June 6, 2013

13-13

No Charge Approved For In-custody Death in Penticton RCMP cells

Victoria - The Criminal Justice Branch of the Ministry of Justice announced today that after a thorough review of evidence provided to the Criminal Justice Branch (the Branch) by the Saanich Police Department (Vancouver Island), the Branch has concluded that the available evidence does not support a substantial likelihood of conviction for failing to provide necessities of life (s. 215 of the Criminal Code) in relation to the in-custody death of Steven Joseph Scott at the Penticton R.C.M.P. detachment in August 2012.

As such, no criminal charges against either the R.C.M.P. officer or the civilian guard who were on duty at the time will be approved.

A Clear Statement explaining the Branch's charge assessment is attached to this Media Statement. In keeping with the recommendation of Commissioner Stephen Owen, QC following the Discretion to Prosecute Inquiry (1990), a Clear Statement of the reasons for not prosecuting is sometimes made public by the Branch in high profile cases where the criminal investigation has become publicly known, so as to maintain confidence in the integrity of the system.

As with all in-custody deaths, this case carries the potential for an inquest under the provincial Coroner's Act. In light of that potential and to safeguard the integrity of any such process, the Branch is limited in the information that it can make public at this time.

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Branch Vision

Courageous, Fair and Efficient – A Prosecution Service that has the Confidence of the Public.

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Clear Statement

Summary of Charge Assessment

The Criminal Justice Branch (the Branch) has received an investigative file from the Saanich Police Department (Vancouver Island), in relation to the August 2012 in-custody death of Steven Joseph Scott at the Penticton detachment of the Royal Canadian Mounted Police (the R.C.M.P.). After a thorough review of the material provided by police, the Branch has concluded that the available evidence does not support a substantial likelihood of conviction for a criminal offence.

As such, no criminal charges have been approved against either the R.C.M.P. officer or the civilian guard who were on duty at the material time.

The Branch applies a two part test to determine whether criminal charges should be approved and a prosecution initiated:

1. there must be a substantial likelihood of conviction based on the evidence gathered by the investigating agency; and
2. a prosecution must be required in the public interest.

Under Branch policy, a substantial likelihood of conviction exists where Crown counsel is satisfied there is a strong, solid case of substance to present to the court. To reach this conclusion, a prosecutor will consider whether the evidence gathered by the investigating agency is likely to be admissible in court; the weight that would likely be given to the admissible evidence by a judge or a jury; and the likelihood that viable, not speculative defences will succeed.

In making a charge decision, Crown counsel must assess the evidence gathered by investigators in light of the legal elements of the criminal offence that is said to have been committed. Crown counsel must also remain aware of the presumption of innocence, the prosecution's burden of proof beyond a reasonable doubt and the fact that under Canadian criminal law, a reasonable doubt can arise from the evidence, the absence of evidence, inconsistencies in the evidence or the credibility or reliability of one or more of the witnesses. The person accused of a crime does not have to prove that he or she did not commit the crime. Rather, the Crown bears the burden of proof from beginning to end.

The evidence reviewed by the Branch in this matter included material from four primary sources:

1. the jail guard log book;
2. closed circuit television (CCTV) recordings of police cells;
3. witness statements from other prisoners; and
4. written statements from the supervising R.C.M.P. officer and the civilian guard.

In accordance with Branch policy, this evidence was assessed by a senior Crown Counsel from a region of the province other than where the R.C.M.P. officer and the civilian guard are employed, and who has had no prior contact with them.

Legal Framework for the Charge Assessment

Section 215 of the Criminal Code imposes a legal duty on police and civilian guards to “provide necessities of life” to persons who are “under [their] charge” by “reason of detention”. Depending on the circumstances, it may be a criminal offence to fail in that duty. On its own, the fact that a death occurred in custody is not a sufficient basis for criminal culpability.

To obtain a conviction under section 215 in this case, the prosecution would have to establish beyond a reasonable doubt that the acts or omissions of the R.C.M.P. officer and the civilian guard that led to a failure to provide necessities of life while Mr. Scott was in their care, amounted to a marked departure from that expected of reasonably prudent persons in similar circumstances. In addition, the Crown would have to prove that it was objectively foreseeable to both of these individuals that a failure to provide necessities of life would lead to a risk of danger to the life of Mr. Scott, or permanent endangerment to his health.

In deciding whether the Crown’s burden of proof was met, the whole of the circumstances would have to be taken into account by a trial court, including any observations made by the R.C.M.P. officer and the guard over the course of the time in question; any conversations that occurred with Mr. Scott; the visual appearance of medical difficulties or lack thereof on the part of Mr. Scott; and the actions of each accused person. The legal test for proof of an offence under s.215, as recently noted by the British Columbia Supreme Court, is an “onerous” one. It is not enough for the Crown to show that other ways of managing the situation were open to the R.C.M.P. officer and/or the guard. The Crown must prove a “marked departure” from what would be expected of a reasonably prudent person in those same circumstances.

The Investigation and Circumstances Surrounding the Incident

As with all in-custody deaths, this case carries the potential for an inquest under the provincial Coroner's Act. In light of that potential and to safeguard the integrity of any such process, the Branch is limited in the information that it can make public at this time.

What can be said now is that on August 10, 2012, Steven Joseph Scott died while in police cells at the Penticton detachment of the R.C.M.P. Mr. Scott's death did not result from an application of force by police. This is not a case in which it is alleged that police used excessive force. Instead, according to the evidence provided by the Saanich Police Department, Mr. Scott's death was attributed to terminal aspiration pneumonia.

The investigative file reveals that Mr. Scott was booked into police cells at 7:45 am. He had a bail hearing with the Justice Center by telephone at 4:23 pm and was remanded in custody. He complained of medical difficulties at 7:15 pm.; conversations were held with him by the supervising R.C.M.P. officer and the civilian guard; visual and personal checks occurred over the course of the evening; food and beverage was supplied to him; and on the last personal contact with Mr. Scott at 10:47 p.m., he was noted to be feeling better. Mr. Scott died a number of hours after the 10:47 p.m. check.

On the evidence as a whole, Crown counsel has concluded that the prosecution cannot prove the R.C.M.P. officer and the guard should have foreseen that Mr. Scott's physical condition was such that medical intervention was required, and that a failure to facilitate medical intervention therefore constitutes a marked departure from that expected of a reasonably prudent person in similar circumstances.

In light of this conclusion, no criminal charges have been approved against either of the R.C.M.P. officer or the civilian guard.