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23-15

Special Prosecutor announces stay of proceedings in R. v. Basran

Victoria – The BC Prosecution Service (BCPS) announced today that Special Prosecutor Brock Martland KC has directed a stay of proceedings of the single charge of sexual assault previously approved on Kelowna information #98632-1. On October 13, 2022, Mr. Martland was appointed Special Prosecutor in relation to an investigation of a sexual assault alleged to have occurred in Kelowna in May 2022. The accused was Mr. Colin Basran, the sitting mayor of Kelowna at the time of the alleged offence. The announcement of Mr. Martland's appointment can be found here:

<https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/prosecution-service/media-statements/2022/22-25-bcps-appointment-of-special-prosecutor.pdf>

Mr. Martland made the decision to direct a stay of proceedings after receiving further information from counsel for the accused and police investigators. After receiving this information, the Special Prosecutor conducted a careful review of all the materials and information available and concluded that the charge assessment standard for proceeding with criminal charges could no longer be met.

The charge assessment guidelines that are applied by the BCPS and Special Prosecutors in reviewing all Reports to Crown Counsel are established in policy and are available at:

www.gov.bc.ca/charge-assessment-guidelines

The BCPS applies a two-part test to determine whether criminal charges will be approved, and a prosecution initiated or continued. Prosecutors must independently, objectively and fairly measure all available evidence against a two-part test:

1. whether there is a substantial likelihood of conviction; and, if so,
2. whether the public interest requires a prosecution.

The reference to "likelihood" requires, at a minimum, that a conviction according to law is more likely than an acquittal. In this context, "substantial" refers not only to the probability of conviction but also to the objective strength or solidity of the evidence. A substantial likelihood

of conviction exists if prosecutors are satisfied there is a strong and solid case of substance to present to the court.

In determining whether this test is satisfied, prosecutors must consider what material evidence is likely to be admissible and available at a trial; the objective reliability of the admissible evidence; and whether there are viable defences, or other legal or constitutional impediments to the prosecution, that remove any substantial likelihood of a conviction.

If prosecutors are satisfied that the evidentiary test is met, prosecutors must then determine whether the public interest requires a prosecution. The charge assessment policy sets out a non-exhaustive list of public-interest factors both for and against a prosecution for prosecutors to consider.

This two-part test continues to apply throughout the prosecution. If, at any time, prosecutors conclude the standard is no longer met a stay of proceedings is the appropriate course of action. In this case the Special Prosecutor concluded that the standard was no longer met and earlier today directed a stay of proceedings.

There will be no further comment either from the Special Prosecutor or the BCPS.

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