



MEDIA STATEMENT

CRIMINAL JUSTICE BRANCH

December 6, 2016

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No Charges Approved in RCMP Investigation re: Paige Gauchier

Victoria - The Criminal Justice Branch, Ministry of Justice (CJB) announced today that no charges have been approved against the Delta Police Service officers and paramedics who dealt with Paige Gauchier on January 22, 2011 and did not report the incident to the Ministry of Children and Family Development (MCFD).

The incident was investigated by the RCMP which subsequently submitted a Report to Crown Counsel to CJB recommending charges of failing to report a child in need of protection contrary to section 14(1) of the *Child, Family and Community Services Act*.

CJB has concluded, based on the available evidence, that there is no substantial likelihood that the officers or paramedics would be convicted of the offence recommended by the RCMP. The decision, which is explained in greater detail in the attached Clear Statement, follows an extensive and thorough review of the available evidence by Crown Counsel.

In order to maintain confidence in the integrity of the criminal justice system, a Clear Statement explaining the reasons for not approving charges is made public by CJB in high profile cases where the investigation has become publicly known.

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Branch Vision

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Summary of Decision

Just after 2:00 AM on January 22, 2011, 17 year-old Paige Gauchier walked into a gas station in Delta. She was intoxicated and suffering from a sore, slightly bleeding nose. She said that she had recently been assaulted by six girls but she was unclear on the details.

The Delta Police and the British Columbia Ambulance Service (BCAS) attended. Paramedics determined that Ms. Gauchier's injuries were minor but they recommended that she go to hospital. She refused. The police then spoke to her uncle in Vancouver, who asked that she be delivered by taxi to his residence. The police understood that he was her guardian and that she was living with him at the time. Neither the police nor the BCAS paramedics reported the incident to the Ministry of Child and Family Development (MCFD).

Just over two years later, in April 2013, Ms. Gauchier was found dead in a public washroom adjacent to Oppenheimer Park in Vancouver. The cause of death was a drug overdose. She was 19. The Representative for Children and Youth (RCY) subsequently conducted an extensive investigation of Ms. Gauchier's life, and released her findings in May 2015 as *Paige's Story*.

A major focus of the RCY's report was a review of numerous contacts Ms. Gauchier had during her life with police, paramedics, health care workers, school staff, and others who typically come into contact with children in distress. In the RCY's opinion, many of those contacts should have been reported to the MCFD, pursuant to the *Child, Family and Community Service Act* (the Act) because Ms. Gauchier was a reportable "child in need of protection" as defined in the Act.

Grand Chief Stewart Phillip, in his role as president of the Union of British Columbia Indian Chiefs, requested that police investigate to determine if any offences of failing to report a child in need of protection had been committed. Ms. Gauchier was of Indigenous ancestry.

The RCMP completed an investigation and submitted a Report to Crown Counsel in March 2016 recommending that the main police investigator and two paramedics who dealt with Ms. Gauchier on January 22, 2011, be charged with failing to report a child in need of protection to the MCFD, contrary to section 14(1) of the Act.

Charge Assessment and the Criminal Standard of Proof

The Charge Assessment Guidelines applied by the Criminal Justice Branch in reviewing all Reports to Crown Counsel are established in Branch policy and are available online at:

www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/prosecution-service/crown-counsel-policy-manual/cha-1-charge-assessment-guidelines.pdf

Under the Charge Assessment Guidelines, charges will only be approved where Crown Counsel is satisfied that the evidence gathered by the investigative agency provides a substantial likelihood of conviction and, if so, that a prosecution is required in the public interest. The charge assessment in this case was conducted by senior Crown Counsel with knowledge of the applicable legislation, the relevant case law, and the legal and evidentiary issues that can arise in this kind of case. Crown Counsel conducting the charge assessment reviewed the material provided by the RCMP and had ongoing communications with the RCMP during the charge assessment process to ensure that Crown Counsel had a solid understanding of the available evidence.

In making a charge assessment, Crown Counsel must review the evidence gathered by investigators in light of the legal elements of any offence that may 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. When assessing the strength of the case the Crown must also consider the likelihood that viable defences will succeed.

Potential Charges

The potential charge that was considered in this assessment was under section 14(1) of the Act, which provides that:

A person who has reason to believe that a child needs protection under section 13 must promptly report the matter to a director or a person designated by a director.

Relevant Law

The Duty to Report

There have been no prosecutions for breaching the duty to report in British Columbia. There have been some reported cases for a similar offence in Ontario, where the duty to report has been narrowly interpreted. The outcome in all of the reported cases from outside BC ultimately turned on issues that do not arise in the present case.

Child in Need of Protection

Section 13(1) of the Act identifies a broad array of circumstances in which a child is defined as a "child in need of protection", including if the child is absent from home in circumstances that endanger the child's safety or well-being. If a director is informed that a child is in need of protection, the director has wide powers under the Act to investigate, to provide assistance and support, or even to remove a child whose health or safety is in immediate danger.

Section 13 has been judicially considered and has been given an expansive interpretation in order to ensure that children are protected from abuse, neglect, harm, or the threat of harm. The circumstances listed in s. 13 are not exclusive or exhaustive. Courts have noted that while children must be protected from harm, child welfare legislation does not mandate protection from every conceivable harm. The harm must be significant, and not trifling or transitory in nature. It must be substantial enough to warrant direct intervention by government, beyond mere government assistance through the provision of support services. Courts have also noted the risks associated with raising children and that it is not uncommon for children to stray beyond safe boundaries. Not all such cases are indicative of a lack of supervision that would require the Director to take child protection steps.¹

Judicial commentary and the context of the Act indicate that the basis for governmental intervention, and therefore the duty to report, requires both harm (or the threat of harm) to the child and an unsatisfactory home situation, and a connection between the two.

In summary, the case law provides three helpful parameters for the definition of “child in need of protection” and therefore the scope of the duty to report:

- a. “Harm” means harm that is more than trifling or transitory in nature;
- b. There must be a need for governmental intervention rather than simply governmental assistance; and,
- c. The duty to report must be considered in the context of the child’s home situation since the Act is essentially aimed at ameliorating “unsatisfactory home situations”. In other words, the duty to report requires a nexus between harm (or the threat of harm) to a child and an unsatisfactory home situation.

The Circumstances Surrounding the Incident

On the date of the incident, Ms. Gauchier was 17 years old. She was alone, and had walked into a gas station just after 2:00 AM, impaired by alcohol and suffering a sore, slightly bleeding nose. A paramedic recorded the injury as a soft tissue injury. Ms. Gauchier said she had been in Surrey, and had been picked up, driven somewhere unknown, and then assaulted by six females. Delta Police reported the assault allegation to the Surrey RCMP. Ms. Gauchier refused to go to hospital as urged by the paramedics.

Ms. Gauchier was not in the care of MCFD at the time. Police learned that she was living with her uncle whom they understood to be her guardian. At the uncle’s request, the police put Ms. Gauchier in a taxi to go to his home in Vancouver.

Neither the police nor the paramedics reported the incident to MCFD.

The first responders had no information suggesting that Ms. Gauchier was being abused or neglected by a parent or guardian. They indicated to the RCMP members investigating the alleged failure to report that they did not consider the incident

¹ J.L. (Re), 2011 YKTC 61, paras 39 - 42.

reportable as there were no indications of a problem in Ms. Gauchier's home. One of the first responders noted that he saw no reason to report the matter of a 17 year-old who had been drinking alcohol, as that was something he came across on a regular basis, "probably ten times a day".

Application of the Law to the Circumstances of the Case

Crown Counsel determined that there was a narrower and a broader possible interpretation that could be given to the offence of failing to report under the Act, giving rise to two possible routes to culpability:

1. The duty to report might be said to arise if Ms. Gauchier were suffering abuse or neglect at the hands of a parent or guardian; or,
2. The duty to report might be said to arise if Ms. Gauchier were at risk of non-trivial harm or the threat of non-trivial harm, and there were some nexus between the harm or threat of harm and Ms. Gauchier's home situation.

On either interpretation, Crown Counsel determined that the available evidence would not support a finding of a failure to report under s. 14(1) of the Act.

There is no evidence to suggest that the paramedics and police who dealt with Ms. Gauchier on January 22, 2011, had any reason to believe Ms. Gauchier's uncle or anyone else in his household had supplied her with liquor or had injured her in Surrey or Delta. Further, they had no reason to believe she was neglected by her uncle or that such neglect played any part in Ms. Gauchier's circumstances on January 22, 2011.

It is a reality of contemporary life that parents and guardians have limited ability to monitor and control the behaviour of children in their late teens. It is not unusual for teenagers to be out late at night unsupervised and to be drinking. It is also not unusual for teenagers to become involved in physical altercations with their peers. Neither of these situations necessarily suggests neglect on the part of parents or guardians.

The paramedics attended to Ms. Gauchier's apparent injuries and suggested that she go to the hospital. She refused. The police ensured Ms. Gauchier was delivered by taxi to her uncle's home, which they believed to be her residence, and which appeared to be a suitable and safe place for her to go. In fact, in her Report the RCY commented that living with her uncle was "one of the best options" for Ms. Gauchier.²

In the circumstances, it would have been reasonable for the paramedics and police to conclude Ms. Gauchier was not a child in need of protection and that a report to a director was neither appropriate nor necessary.

Conclusion

There is no substantial likelihood of conviction under s.14(1) of the Act, and as such, no charges have been approved.

² Paige's Story at p 7.