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BC Prosecution Service receives recommendations following review of Darling prosecution

Victoria – The BC Prosecution Service (BCPS) announced today that it has received the results of an internal review of the prosecution of Larry Darling for the murder of Kristy Morrey in Port Alberni. On June 13, 2018 Crown Counsel directed a stay of proceedings of the first degree murder charge against Mr. Darling. This was done after receiving additional information from investigators that was unavailable at the time of the initial charge assessment, conducting a review of the file and all of the available evidence, and concluding that the BCPS charge approval standard was no longer met.

The Charge Assessment Guidelines applied by the BCPS in reviewing all Reports to Crown Counsel (RCCs) are established in policy and are available at:

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

In determining whether a prosecution will be initiated or continued, Crown Counsel must independently, objectively, and fairly measure all the 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.

This two-part test continues to apply throughout the prosecution.

In reviewing the *R. v. Darling* file, the BCPS recognized that issues of case management, disclosure, and the handling of exhibits and evidence had created challenges for the prosecution. On July 25, 2018, Peter Juk QC, the Assistant Deputy Attorney General (ADAG), asked senior Crown Counsel, Robert Wright QC, to review the BCPS's handling of the prosecution. Mr. Wright, who has extensive experience in the management of serious crime prosecutions, was asked to identify any lessons to be learned and to make recommendations to the ADAG about best practices for the future.

Mr. Wright recently concluded his review and provided a number of recommendations to

the ADAG. A summary of those recommendations is attached to this release. The BCPS welcomes the recommendations and, as part of its ongoing commitment to continuous improvement, will take steps to implement those that are not already part of the BCPS approach to managing serious crime prosecutions.

Media Contact: Dan McLaughlin
Communications Counsel
Daniel.McLaughlin@gov.bc.ca
250.387.5169

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RECOMMENDATIONS

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THE INVESTIGATIVE STAGE

Recommendation #1: Have early focused involvement of Crown Counsel at the investigative stage.

Recommendation #2: Have stronger communications between early involved Crown Counsel and trial Crown Counsel, if different. This includes Crown who participates in supporting police investigative techniques.

PRE-CHARGE APPROVAL

Recommendation #3: Ensure all required disclosure is received before charge approval subject to exceptional circumstances and/or public safety concerns.

Recommendation #4: Barring exceptional circumstances and/or public safety concerns, charges must not be approved until there is a complete review of the investigative file, including a full disclosure review by Crown Counsel.

Recommendation #5: Ensure BC Prosecution Service policy and practice clearly establishes the requirement to have vetted disclosure prepared before swearing the information or preferring the Indictment.

RESOURCE MANAGEMENT

Recommendation #6: For all cases that involve sophisticated police techniques, a minimum of two Crown Counsel should be assigned to work on the case full time.

Recommendation #7: Increase the availability of paralegal assistance at the front end, to facilitate effective transfer and review of investigative material from police to BC Prosecution Service.

Recommendation #8: Have incoming files reviewed by a paralegal to ensure compliance with BC Prosecution Service disclosure quality standards.

Recommendation #9: Create a paralegal position for the North Island.

ENHANCE DISCLOSURE SUPPORT, STRATEGIES AND EDUCATION

Recommendation #10: Promote the practice of utilizing existing BC Prosecution Service resources.

Recommendation #11: Establish a central repository accessible by BC Prosecution Service for all disclosure policy and practice references and resources.

ENHANCE SUPPORT FOR CROWN COUNSEL

Recommendation #12: Continue to support and promote BC Prosecution Service paralegals and the skills they bring to prosecution teams.