



MEDIA STATEMENT

CRIMINAL JUSTICE BRANCH

Thursday, 28 March 2008

08-07

Special Prosecutor Recommends Crown Not Oppose Re-Opening of Appeal

Victoria – The Criminal Justice Branch of the Ministry of Attorney General today announced that independent Special Prosecutor Leonard T. Doust Q.C. has made a series of recommendations as a result of his review of new evidence as well as of the evidence underpinning the convictions of Ivan William Mervin Henry in March 1983.

Mr. Doust, a senior Vancouver Lawyer, was appointed on November 15, 2006 by Robert W.G. Gillen, Q.C., the Assistant Deputy Attorney General for the Criminal Justice Branch to undertake a comprehensive review of this case. This review was initiated by the Criminal Justice Branch and included evidence which formed the basis of the convictions, as well as new evidence which came to the attention of the Criminal Justice Branch. The purpose of the review was to determine whether there had been a potential miscarriage of justice.

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

- Offering such independent legal advice as was necessary to police investigators in the event further investigation was deemed necessary in his view;
- Undertaking an independent review of all the materials relating to this matter and determining what if any action was required to be taken by the Criminal Justice Branch; and
- Providing a written report of his conclusions to the Assistant Deputy Attorney General.

In a written report to Mr. Gillen dated March 20, 2008, Mr. Doust concluded that the Crown ought not oppose any application to re-open Mr. Henry's appeal, should such an application be made.

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Mr. Doust further recommended that:

1. "the Crown make full disclosure to Henry of the results of the Vancouver Police Department's investigation in Project Smallman, which evidence is in my view relevant and potentially exculpatory and which the Crown is therefore obliged to disclose pursuant to its ongoing disclosure obligations at common law";
2. "the Crown make full disclosure to Henry of the totality of the evidence in its possession relating to the offences for which Henry was charged and/or convicted, so as to ensure that Henry has the benefit of any potentially exculpatory evidence which may not have been previously disclosed to him";
3. "the Crown provide a copy of my report to Henry's counsel and make full disclosure to Henry of the documents and information which I collected in the course of my review"; and
4. "the Attorney General appoint a Special Prosecutor independent of my office and the office of Crown Counsel to represent the Crown in response to any application which Henry might bring to re-open his appeal and adduce fresh evidence on the basis of the conclusions in my report."

As a result of this report, David Crossin, Q.C., a senior Vancouver lawyer, was formally appointed as an independent Special Prosecutor on March 27, 2008 by Robert W.G. Gillen, QC, the Assistant Deputy Attorney General for the Criminal Justice Branch. The purpose of Mr. Crossin's appointment is to address Mr. Doust's recommendations and respond to any application brought on by Mr. Henry's counsel.

The Criminal Justice Branch will provide the Special Prosecutor full disclosure of all relevant material in its possession. In addition, Mr. Crossin will have access to all material collected by Mr. Doust during his review including his report.

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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