

PART 2—THE COMMISSION OF INQUIRY

C. Policy Issues

1. The Terms of Reference and the issues arising from the evidentiary hearings

When this inquiry began, I extracted three broad policy themes from paragraphs (c) to (g) of the Terms of Reference:

- examining the VPD's and BC Ambulance Service's current policies and procedures respecting their interaction with people who are incapacitated by alcohol or drug use,
- examining the role and response of the BC Coroners Service, the Police Complaint Commissioner and the Criminal Justice Branch when a person dies in circumstances similar to Mr. Paul, and
- identifying the health care and social service programs and facilities that a VPD officer may access when confronted with a person like Frank Paul, who does not need to be detained but who requires immediate health care or social services because he or she is incapacitated by alcohol or drug use.

Put more simply:

- How should police officers and ambulance attendants deal with people like Frank Paul?
- When the police are involved in the death of someone like Frank Paul, how should our public agencies respond?

My understanding of these issues has evolved over the past year, as I listened to witnesses during the evidentiary hearings, read reports about the three intertwined issues of homelessness, addiction and mental illness, and heard from experts in two seemingly unrelated fields—the investigation of police-related deaths and the provision of shelter and services to homeless people who, more often than not, also experience mental illness and/or addictions.

As my understanding of these issues grew, I identified some limitations in the strict wording of the Terms of Reference that I found troubling. I am advised that

this is common as public inquiries delve into the tasks assigned to them. Quite understandably, those who draft and approve an inquiry's terms of reference have a general appreciation of the concerns that led to the inquiry being established, but cannot be expected to anticipate what avenues the inquiry will ultimately pursue based on the evidence that emerges.

This inquiry is no different. I can provide several examples of how my interpretation of my mandate has evolved because of the evidence I have heard and the policy issues our team has explored.

First, police involvement with incapacitated people: paragraph (c) of the Terms of Reference focuses on the VPD's rules, policies and procedures for dealing with people incapacitated by alcohol or drug use, and paragraph (f) invites me to recommend changes that I consider necessary to those rules, policies and procedures. As I will discuss in more detail later in this report, British Columbia has "decriminalized" public intoxication in the sense that chronic alcoholics are no longer charged with an offence for being intoxicated in public, yet we still depend on police officers to respond to such "man down" calls and to arrange for their transport either to a short-term sobering unit, such as the one at the Detox Centre or, if they have a history of violence, to the Jail's sobering cell ("drunk tank"). In either case, the intoxicated person is released back to the streets within a few hours, and the cycle repeats itself with alarming regularity.

Narrowly construed, the Terms of Reference invite me to propose improvements in the VPD's procedures respecting its officers' interactions with such incapacitated people. I have concluded that I cannot do so. During this inquiry, participants have unanimously condemned the current regime. However compassionate individual ambulance attendants and police officers are, the current practice of incarcerating incapacitated people and then releasing them back onto the streets and alleyways of the Downtown Eastside, with inadequate community supports and no assurance of safe accommodation, ignores the problem and must stop immediately.

If I suggest improvements to the VPD's procedures for handling such incapacitated people, I run the risk of perpetuating the current regime, which I will not do. When this inquiry began, my team and I did not foresee the profoundly important social policy issue contained within paragraph (c) of the

Terms of Reference. Now that it has clearly emerged, I must interpret my mandate with this new understanding, and address the issue accordingly.

The second instance of how my mandate interpretation evolved over the course of the inquiry arose out of paragraph (g) of the Terms of Reference: the issue of health care and social services for people incapacitated under similar circumstances to those of Mr. Paul. Construed narrowly, the terms invite me to stand in the shoes of a Vancouver police officer who has responded to a “man down” call, and finds a person who is clearly incapacitated by alcohol or drug use. In all likelihood, this officer or others will have dealt with this person many times before. If the attending officer concludes that it is not necessary to detain the incapacitated person for criminal charges or outstanding warrants, but realizes (perhaps with the assistance of ambulance attendants on the scene) that the person is incapable of looking after himself or herself, what health care or social services and facilities are available that will accept someone in this condition? In other words, I am asked to prepare an inventory of current services that the officer can draw on.

As I will discuss in more detail later in this report, the list is very short—the emergency ward of a hospital, the short-term sobering unit attached to the Detox Centre, or the Jail. People so grossly intoxicated (and sometimes violent) are not eligible for admission to other residential detox facilities, or shelters, in the Downtown Eastside.

Police officers are generally aware of what services and facilities they can access in these situations. Merely reciting them in this report would provide no assistance to police officers on the street, and would offer no guidance to our political leaders and policy makers.

What has emerged with resounding clarity during this inquiry is that the way we as a society deal with such incapacitated people is a disgrace, and must change. I have interpreted my mandate in that light. I am confident that a new approach to providing a home and supports for such chronically incapacitated people can be put in place promptly and at less cost than our current dysfunctional non-system, and will restore an element of dignity to their desperate and often troubled lives.

My third example of an evolving mandate interpretation pertains to the investigation of police-related deaths. Paragraph (b) of the Terms of Reference instructs me to examine the response of the VPD to the death of Mr. Paul. The department's response was twofold. Its Major Crimes Section conducted a criminal investigation to determine the circumstances surrounding Mr. Paul's death. When that investigation was complete and a report had been forwarded to the Criminal Justice Branch, the department's Internal Investigation Section (IIS) conducted a separate investigation into whether any police officers should face disciplinary proceedings for a breach of their professional obligations.

As the facts emerged during the evidentiary hearings, it became clear to me that there were serious inadequacies in both investigations, which I will discuss in more detail later in this report. At a broader policy level, I became persuaded that the current practice of a home police department conducting criminal and professional standards investigations of its own members in a police-related death is permeated with a fundamental conflict of interest. Even when such investigations are conducted rigorously and impartially, a public perception exists that the police should not investigate themselves.

How should I respond to these conclusions? I appreciate that paragraph (c) of the Terms of Reference invites me to recommend improvements in the VPD's policies respecting its officers' interaction with people who are incapacitated by alcohol and drug use, not its investigation of police-related deaths. Yet paragraph (b) clearly places such investigations on my agenda within the context of ascertaining how those investigations were conducted in the Frank Paul case.

After conducting an exhaustive forensic examination of the VPD's investigations into this case, and after reaching conclusions about the inadequacy of investigations, and the fundamentally flawed current practice of a home department investigating its own members in cases of police-related deaths—it would not serve the public interest if I were to then walk away from the important policy issues thus raised.

In closing submissions, counsel for the VPD took the position that statutory reform was beyond this commission's mandate, because the Terms of Reference

speak of “rules, policies and procedures” rather than statutory change.¹ The VPD clarified that it took this position not to curtail this commission’s important work, but because statutory reform requires consultation with numerous competing stakeholders, beyond this commission’s participants. I appreciate this note of caution. I recognize that there are other perspectives—there will always be other perspectives—and I do not pretend to offer the final word on these matters. Nonetheless, I have concluded that the proposed distinction between “policy” and “statutory reform” in this case cannot be maintained; it does not survive scrutiny. Having gathered significant information on, and insight into, the underlying policy issues, I see no realistic conclusion other than to tackle those issues in a meaningful way.

Later in this report I will discuss this issue in more detail, and propose significant changes in the way in which municipal police forces investigate police-related deaths. In doing so, I recognize that these proposals strike at the heart of two important societal values—police independence in the investigation of allegations of criminality, and the need for our police to be subject to civilian overview. Raising these issues triggers many interests, and in the process of formulating public policy it is essential that all relevant interests be voiced. It is my hope that this report will, at the very least, contribute to this conversation.

2. The inquiry’s roundtable discussions

Between April 28 and May 8, 2008, the inquiry convened nine days of informal roundtable discussions of the policy issues arising from the Terms of Reference. Those sessions included presentations by the following participants.²

- Aboriginal Legal Services of Toronto:
 - The Criminalization of Intoxication in Canada, by Prof. Neil Boyd, Department of Criminology, Simon Fraser University.

¹ Final Submissions on Behalf of the Vancouver Police Department and the Vancouver Police Board, paras. 230–34. The VPD, however, took a more nuanced position in its Phase Four Submissions document: “The VPD and Board do not take a position on the sufficiency of the oversight mechanisms in the *Police Act*” (Submissions Regarding Policy on Behalf of the Vancouver Police Department and the Vancouver Police Board, para. 51).

² Transcripts of presentations and discussions are available on the inquiry’s website: <http://www.frankpaulinquiry.ca/hearings.php>.

- Extreme Intoxication—An Extreme Medical Problem Among the Homeless, by Dr. Tomislav Svoboda, Seaton House and St. Michael's Hospital, Toronto.
- The Annex Harm Reduction Program, by Art Manual, Seaton House Hostel Services Unit, Toronto.
- Hooper Center at Central City Concern, by Sarah Goforth, Director of Recovery and Engagement Services, Portland, Oregon.
- How to Decriminalize Intoxication in Vancouver, a panel discussion with:
 - Insp. John De Haas, VPD,
 - Jim Hauck, Manager, Addictions Services, Vancouver Coastal Health,
 - Ann Livingstone, Vancouver Area Network of Drug Users,
 - Chris Livingstone, Western Aboriginal Harm Reduction Society, and
 - Bill Wong, Manager of Saferide, Vancouver Recovery Club.
- United Native Nations Society—presentations by:
 - Cameron Ward, counsel for the United Native Nations Society,
 - Peter Ritchie, Q.C., Vancouver lawyer, and
 - Dr. John C. Butt, forensic pathologist.
- BC Ambulance Service—presentations by:
 - Douglas Eastwood, counsel for the BC Ambulance Service, and
 - Dr. Jim Christensen, St. Paul's Hospital emergency physician and Vice-President, Medical Programs, for the Emergency Medical Services Commission.
- BC Coroners Service—presentations by:
 - Rodrick MacKenzie, Director of Legal Services and Inquests
 - Norm Leibel, Deputy Chief Coroner, and
 - Terry Smith, Chief Coroner.
- VPD—presentations by:
 - Sean Hern, counsel for the VPD, and
 - Insp. John De Haas.
- BC Civil Liberties Association—presentations by:

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- André Marin, former Director, Special Investigations Unit, Ministry of Attorney General, Ontario, and
- Gareth Jones, former investigator with the Special Investigations Unit.
- Police Complaint Commissioner—presentation by:
 - Frank Falzon, Q.C., counsel to the PCC.

The inquiry also received from counsel for the UNNS a well-researched written submission (and two large volumes of supporting materials) on the health care and social services currently available in Vancouver for members of the Aboriginal community who may be experiencing homelessness, addictions and/or mental illness, and what additional services and facilities are needed.