

PART 4—THE RESPONSE TO MR. PAUL’S DEATH

F. The BC Police Complaint Commissioner

1. The legislative scheme

As I discussed earlier in this part, when a complaint is made about the conduct of a municipal police officer,¹ members of that officer’s home police department carry out the professional standards investigation. If, as a result of that investigation, it is concluded that the officer has violated the *Code of Professional Conduct Regulation*, the chief constable (as discipline authority under the *Police Act*) imposes disciplinary or corrective measures.

The 1998 *Police Act* established an independent PCC, as a civilian overseer of a municipal police department’s investigation of professional standards complaints. The PCC is selected by, and reports annually to, the Legislative Assembly rather than the Executive Branch.

The investigating police department must notify the PCC when it receives a complaint. While the PCC’s office may monitor the police department’s investigation, it normally does not play an active role until it receives the department’s final report on how the complaint was investigated and dealt with. At that stage, the PCC’s office may review the adequacy of the police department’s professional standards investigation, following which the PCC may:

- take no further action, in which case the police department’s investigation, and any disciplinary or corrective measures imposed, are final (s. 59.1(4)),
- order that the police department provide further reasons justifying the particular disciplinary or corrective measures imposed (s. 59.1(2)(a)),
- order an external investigation by another municipal police department (s. 55.1), or
- order a public hearing (s. 60).

¹ The police complaint scheme established by Part 9 of the *Police Act*, R.S.B.C. 1996, c. 367 applies only to British Columbia’s 11 municipal police departments. Complaints against RCMP officers, who police the remainder of the province, are regulated federally.

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A public hearing may arise in two situations. First, the PCC must order a public hearing if the disciplined police officer (the respondent officer) requests one, and a disciplinary or corrective measure more severe than a verbal reprimand has been imposed. Second, the PCC may order a public hearing in any other case, if the commissioner determines that “there are grounds to believe that a public hearing is necessary in the public interest (s. 60(3)(b)).”

In deciding whether a public hearing is necessary in the public interest, the PCC must consider all relevant factors including, without limitation, the following:

- (a) the seriousness of the complaint;
- (b) the seriousness of the harm alleged to have been suffered by the complainant;
- (c) whether there is a reasonable prospect that a public hearing would assist in ascertaining the truth;
- (d) whether an arguable case can be made that
 - (i) there was a flaw in the investigation,
 - (ii) the disciplinary or corrective measures proposed are inappropriate or inadequate, or
 - (iii) the discipline authority’s interpretation of the *Code of Professional Conduct Regulation* was incorrect; and
- (e) whether a hearing is necessary to preserve or restore public confidence in the complaint process or in the police (s. 60(5)).

A public hearing is conducted by an adjudicator, who must be a retired judge. Generally, witnesses are compellable to testify and produce records. However, the rule is different for the respondent officer. Section 61.1(1) states that:

A respondent who is subject to a public trust complaint is not compellable to testify as a witness at a disciplinary proceeding, or at a public hearing, in respect of that complaint, but an adverse inference may be drawn from the respondent’s failure to testify at the discipline proceeding or at the public hearing.

At the conclusion of a public hearing, the adjudicator may:

- find that all, part or none of the alleged discipline default has been proved on the civil standard of proof,

- impose any disciplinary or corrective measures that may be imposed by a discipline authority, and
- affirm, increase or reduce the disciplinary or corrective measures proposed by the discipline authority (s. 61(6)).

2. Commissioner Morrison’s handling of the Frank Paul complaint

a. The police complaint commissioner’s receipt of the Frank Paul complaint

Don Morrison served, between 1998 and 2002, as British Columbia’s first PCC. He first became aware of the Frank Paul complaint in August 1999 when his office received the Form 1 complaint form that Sgt. Hobbs of the VPD had prepared. Mr. Morrison confirmed the characterization of the complaint as a public trust complaint. Mr. Morrison testified that at this stage he was not concerned about the file; he did not see anything indicating that the VPD was not doing its job.²

In late 1999, Mr. Morrison approved a request from Insp. Eldridge for a three-month extension of the VPD’s professional standards investigation. The department’s practice of awaiting decisions from the coroner (respecting whether an inquest would be held) and from the Criminal Justice Branch (respecting whether criminal charges would be approved) meant that it could not complete its investigation within the six-month period mandated by the *Police Act*.

In seeking this extension, Insp. Eldridge canvassed the possibility of a “management advice” response to the Paul matter. Management advice was an informal process outside the *Police Act*, which did not result in the imposition of any disciplinary or corrective measures. Mr. Morrison testified that he was not satisfied with such an approach, and the department did not pursue it.³

b. Assignment of the Frank Paul file to Mr. MacDonald

² Mr. Morrison acknowledged in his testimony that he had little recollection of conversations related to the Frank Paul complaint, independent of the documents recording those discussions. He did not prepare notes or memos recording his thinking about the file: Transcript, Mar. 12, 2008, pp. 100–107.

³ Transcript, Mar. 12, 2008, pp. 37, 39–42; Exhibit 152, Tabs 8, 9, 10.

In June 2000, Commissioner Morrison received the VPD’s final report of its professional standards investigation, in which Sgt. Sanderson had been given a two-day suspension without pay and Cst. Instant had been given a one-day suspension without pay. Mr. Morrison was aware, at this juncture, that the Coroners Service had decided against an inquest, and that the Crown had decided not to proceed with criminal charges. He testified that, in his view, his options were to confirm the discipline imposed, review it with a possibility of calling a public hearing, or to collect more information. He concluded that further information was needed,⁴ and the file was assigned to Bill MacDonald, one of the office’s investigators.

c. Mr. MacDonald’s file review and report

Mr. MacDonald, who joined the Office of the PCC (OPCC) as an investigator in July 1998, testified that his first involvement in the Paul file was to review the VPD’s criminal and professional standards investigations, and prepare a “file review” memo on the Paul matter.

In his August 2000 memo, he came down strongly in favour of ordering a public hearing. He articulated the recommendation following the criteria set out in s. 60(5) of the *Police Act* for the ordering of a public hearing. He recommended that Cst. English be added as a respondent, and set out an analysis of which sorts of disciplinary defaults were alleged. He focused on inconsistencies, particularly in the accounts given by Cst. Instant and Sgt. Sanderson. His view was that incongruities in the evidence could be explored in a public hearing. While the respondent officers would not be compellable, experience suggested that such officers do take the stand and testify. On this basis he felt a public hearing would lead to the truth of what happened.⁵

d. Mr. Morrison’s consideration of Mr. MacDonald’s report

According to Mr. MacDonald, there was a meeting in September or October 2000, at which there was a discussion about how to proceed in

⁴ Transcript, Mar. 12, 2008, pp. 46–49.

⁵ Exhibit 155, Binder 1B, Tab 20 (also at Exhibit 152, Tab 16); Evidence of W. MacDonald, Transcript, Mar. 18, 2008, pp. 39–52; Evidence of D. Morrison, Transcript, Mar. 12, 2008, pp. 111–18.

the Frank Paul matter. He testified that Mr. Morrison had already expressed concern that too much time had passed for a public hearing to take place.⁶

According to Mr. Morrison, he wanted more evidence before making the decision on whether to call a public hearing.⁷ There was agreement to obtain further information, including an analysis of Cst. Instant’s statement, and an expert opinion from Dr. James (Rex) Ferris, a forensic pathologist.⁸

e. Dr. Ferris’s opinion letter

In November 2000, Dr. Ferris delivered his opinion letter to the PCC. In it, he reviewed a series of documents from the police investigation report, including Dr. Laurel Gray’s post-mortem report.

In his written report, Dr. Ferris agreed with Dr. Gray’s conclusion that Mr. Paul’s death was a consequence “of excess alcohol consumption and exposure to cold in the period shortly before his death.” He went on to opine as follows:

In the case of Frank Paul, it is likely that his fatal hypothermia developed over the course of many hours and there seems no doubt that he was suffering from hypothermia when he was removed from the Jail.

The video photographs show that Mr. Paul was unable to stand and had to be dragged in and out of the elevator. It is my opinion that at the time of his discharge from the Police Jail, Mr. Paul was totally incapable of taking care of himself.

I do not believe that at the time he was left in the alley that Mr. Paul was capable of being walked to the side of the lane. I think it is likely that he was dragged to the wall and then position [*sic*] on the ground with his back against the wall.

The position of Mr. Paul’s clothing at the time he was found dead is consistent with his body being dragged and it is unlikely that Mr. Paul

⁶ Transcript, Mar. 18, 2008, pp. 53–55.

⁷ Transcript, Mar. 12, 2008, p. 149; Transcript, Mar. 13, 2008, pp. 66–67.

⁸ Transcript, Mar. 12, 2008, pp. 49–52, 121–22.

was capable of any significant voluntary movement after he was left in the alley.⁹

Dr. Ferris concluded that Mr. Paul’s death could have been prevented if he had been medically assessed at the Jail, and if he had not been removed from the Jail and left in an alley exposed to rain and cold.¹⁰

In his testimony (by video conference from New Zealand), he expressed the opinion that Mr. Paul’s appearance in photographic stills extracted from the Jail videotape, showing him being dragged in and out of the Jail, could not be explained based on alcohol intoxication; rather, it had to involve hypothermia. However, he acknowledged that this conclusion reasoned backward, knowing Mr. Paul later died from hypothermia. He testified that, in Vancouver’s moderate climate, hypothermia tends to occur slowly, so he felt it reasonable to say that Mr. Paul would have been hypothermic while at the Jail. Dr. Ferris acknowledged, however, that hypothermia may occur slowly or quickly, and nothing in an autopsy would give a precise answer as to when the person became hypothermic. He also recognized that there is no medically recognized timeline for hypothermia; each case is case-specific.¹¹

f. The November 27, 2000 meeting

On November 27, 2000, Dr. Ferris presented his report at a meeting with Commissioner Morrison, Deputy Commissioner Matt Adie, Commission Counsel Dana Urban, Q.C., and investigator Bill MacDonald.¹² Although the documentary record of what was said during this meeting is incomplete, several people who attended the meeting recalled Dr. Ferris making a statement to the effect that Frank Paul may have been dead before Cst. Instant placed him in the alleyway.

⁹ Exhibit 183, pp. 4-5.

¹⁰ Exhibit 183, p. 5.

¹¹ Transcript, Jan. 15, 2008, pp. 3–5, 10–20, 23–25; Exhibit 183 (also entered as Exhibit 155, Binder 1B, Tab 24).

¹² Evidence of W. MacDonald, Transcript, Mar. 18, 2008, pp. 56–60; Evidence of D. Urban, Transcript, Apr. 2, 2008, pp. 23–25, 18; Evidence of D. Morrison, Transcript, Mar. 12, 2008, p. 207. Mr. Urban thought that Marilyn Whitfield may have been part of the meeting also.

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According to Mr. MacDonald, Dr. Ferris indicated that it was possible that Frank Paul died in the police wagon. Mr. MacDonald thought this was “more of an afterthought” remark, and he did not make a note of it.¹³

According to Mr. Urban, Dr. Ferris spontaneously said: “I can’t even exclude the possibility that he was already dead when he was placed in that alley.” The remark caught his attention and he noted it in some of his memoranda.¹⁴

According to Dr. Ferris, while he did not recall it and did not think he said it, he may have expressed that thought as a “throwaway” comment. It was not included in his opinion letter.¹⁵

g. Action taken after the November 27, 2000 meeting

Mr. Morrison testified that, in his view, Dr. Ferris’s report was valuable, and he sent it to the Vancouver Police Board. He also sent it to Vancouver Regional Coroner Jeannine Robinson, asking that she consider calling an inquest. He then asked Mr. Urban to provide a written opinion on what his (Mr. Morrison’s) next step should be.¹⁶

In Mr. Urban’s December 16, 2000, legal opinion, he recommended that the Frank Paul matter be referred back to Crown Counsel to consider whether to lay criminal charges, and that Mr. Morrison defer his decision on a *Police Act* public hearing until after the Crown’s decision.

Mr. Urban testified about his recommendation:¹⁷

I thought that even if Don changed—Mr. Morrison changed his mind and—that even if he changed his mind and decided he wanted a public hearing, that was unnecessary at the time until the Crown made that decision, because if the Crown decided to charge, there’s your public forum, your search for the truth, your consequences, all those things that are in a different way looked at in Section 60(5). So if that played out, whether convicted or acquitted, many of those concerns under the *Police Act* would be answered and you have to look at matters at that

¹³ Transcript, Mar. 18, 2008, pp. 64–67.

¹⁴ Transcript, Apr. 2, 2008, pp. 25–29.

¹⁵ Transcript, Jan. 15, 2008, pp. 21–23, 63.

¹⁶ Transcript, Mar. 12, 2008, pp. 53–55; Exhibit 152, Tabs 20, 21.

¹⁷ Transcript, Apr. 2, 2008, p. 44.

point to see whether or not it’s any longer in the public interest to proceed with a public hearing. There may have been no need for it.

Mr. Morrison agreed with this advice. On December 22, 2000, the matter was referred to Crown Counsel, along with Mr. Urban’s opinion and Dr. Ferris’s report.¹⁸

Also in December 2000, Mr. MacDonald went to the VPD and obtained the multiplex videotape of the Jail for December 5, 1998, when Frank Paul was dragged in and out of the Jail. He immediately took it to the RCMP’s forensic lab, requesting that the lab develop a “slave tape” that would show, in isolation, the view of individual cameras from the Jail when Frank Paul was taken there. He received this tape on January 12, 2001. Mr. MacDonald was not aware of any audio recordings.¹⁹

h. Mr. Adie’s recommendation to Mr. Morrison

In late April 2001, shortly before he resigned from the office of the PCC, Deputy Commissioner Adie wrote two memos to Mr. Morrison, recommending that he hold a public hearing. He stated that the file was extremely important, mentioning the *Police Act* criteria for a public hearing and his concern about criticism from the general public and outrage from the Native community. In one of the memos, he referred to the situation in Saskatchewan involving the treatment of Native people by Saskatoon police.²⁰

i. The Crown’s decision not to approve criminal charges

On August 15, 2001, Mr. Morrison received a one-page letter from Crown Counsel, informing him that no criminal charges would be approved. Mr. Morrison testified that he was disappointed both with the decision and with the absence of any explanation of why that decision was reached.²¹

¹⁸ Exhibit 155, Binder 1B, Tab 29; Evidence of D. Urban, Transcript, Apr. 2, 2008, pp. 35–45, 49–50; Evidence of D. Morrison, Transcript, Mar. 12, 2008, pp. 55–57; Transcript, Mar. 13, 2008, pp. 66–69; Exhibit 155, Binder 1B, Tab 31; Evidence of M. Adie, Transcript, Apr. 4, 2008, pp. 73–75.

¹⁹ Transcript, Mar. 18, 2008, pp. 62–64, 125.

²⁰ Exhibit 155, Binder 2, Tabs 15 and 16; Transcript, Apr. 4, 2008, pp. 80–89.

²¹ Transcript, Mar. 12, 2008, p 59–60, 66; Exhibit 155, Binder 2B, Tab 18.

j. The August 21, 2001 meeting

At an August 21, 2001 meeting, Mr. Morrison and OPCC staff discussed the Frank Paul matter, and the options open to PCC. Fortunately, then-Deputy Police Complaint Commissioner Barbara Murphy recorded these options,²² which included holding a *Police Act* public hearing; asking the Attorney General to call a public inquiry; asking the Director of Police Services to order a special investigation or to conduct a policy review or study of the issues in the Paul case; and engaging in further OPCC research.

Mr. MacDonald testified that the meeting did not involve a review of the evidence or the video:²³

Essentially it came down to simply that the members had been disciplined and they accepted their discipline and that it was concluded that there would not be a public hearing because too much time had gone by and that was essentially it. It was a *fait accompli* at that point.

Mr. Morrison testified that, at that time, he had in mind several factors:²⁴

- there had already been a significant delay, much of it owing to the Crown assessment;
- the Crown had now twice declined to approve criminal charges; and
- the officers had acknowledged responsibility and accepted their disciplinary sanctions; and the officers were not compellable as witnesses in a *Police Act* public hearing.

Mr. Morrison testified that he did not think a public hearing would achieve much. Although he considered the penalties inadequate, he did not expect a public hearing would lead to anything more than a somewhat longer suspension (the maximum suspension under the statute being five days, and the greater punishment of termination being unlikely, he felt). He testified:

²² Transcript, Mar. 17, 2008, pp. 7–10, 15–16, 3; Exhibit 155, Binder 2, Tab 22.

²³ Transcript, Mar. 18, 2008, p. 81.

²⁴ Transcript, Mar. 12, 2008, pp. 69–72; see also Evidence of B. Murphy, Transcript, Mar. 17, 2008, pp. 20–21.

The problem with the public hearing mechanism is that it was dealing with two respondent officers, that's all. And I wasn't sure whether there wasn't some form of systemic problem. Clearly in the note to me from Matt Adie, he talked about the racial issue, but the fact is that you have an individual who, in my opinion, had been released from the control of the police when they were incapable of looking after themselves. One of the things that I was very interested in was to find out if that was a practice that occurred in other departments, both RCMP and municipal, in the province.²⁵

Mr. Morrison went on to explain that a broader, systemic response, including one that could look at the RCMP's approach (a matter beyond his *Police Act* jurisdiction), would be preferable.

At the conclusion of this meeting, Commissioner Morrison decided not to order a public hearing under the *Police Act*.

k. Mr. Morrison's meeting with Chief Constable Blythe

Ten days later, on August 31, 2001, Mr. Morrison met, for lunch at a restaurant, with VPD Chief Constable Blythe and Insp. Rothwell. The record is not clear whether anyone else from Commissioner Morrison's office was present. At this meeting, Mr. Morrison advised Chief Constable Blythe that he would not be holding a public hearing into the Paul matter.²⁶

Mr. Morrison did not publicly announce this decision until January 18, 2002.²⁷ He testified that, while he ordinarily would make his decision public at this stage, he decided not to do so in this case because he was looking at other alternatives, and did not consider the file closed.²⁸

l. Other alternatives that Mr. Morrison pursued

i. Request for an inquest

Mr. Morrison corresponded with, and on October 4, 2001, met with, Chief Coroner Smith, and asked him to consider calling an

²⁵ Transcript, Mar. 12, 2008, pp. 72–76. For further discussion of the “province-wide” point, see Evidence of B. Murphy, Transcript, Mar. 17, 2008, pp. 28–29.

²⁶ Evidence of D. Morrison, Transcript, Mar. 13, 2008, pp. 82–83; Evidence of B. Murphy, Transcript, Mar. 18, 2008, pp. 6–7; Evidence of T. Blythe, Transcript, Feb. 27, 2008, pp. 23–24, 26, 91; Exhibit 110, Tab EE.

²⁷ Transcript, Mar. 12, 2008, pp. 84–86, 93–94; Exhibit 155, Binder 3A, Tab 3 (also at Exhibit 152, Tab 53).

²⁸ Transcript, Mar. 12, 2008, p. 85.

inquest.²⁹ He also wrote to the Solicitor General asking for an inquest, which would permit the respondent officers to be compelled to testify, and which could make broad recommendations to prevent similar deaths. It is apparent, from both the documentary record and Mr. Morrison’s testimony, that he wanted to engage the coroner’s process as a way of compelling the respondent officers to testify and be cross-examined.³⁰

ii. Request for a province-wide review

On October 4, 2001, Mr. Morrison also petitioned the Solicitor General, by a separate letter, to undertake a province-wide review.³¹ He outlined his idea of having Vince Cain (a former RCMP officer and former Chief Coroner) undertake a province-wide review, which could look at the RCMP as well as municipal forces, and which might look at the larger issue of the police practice of “breaching” people (under which, instead of arresting a person, an officer transports the person to a different part of the city and releases the person there).

Mr. Morrison testified that he was mindful of the cost associated with a public inquiry and wanted to suggest something cost-effective and responsive to the systemic concerns he identified. All these requests were declined.³²

3. Commissioner Casson’s handling of the Frank Paul complaint

After Mr. Morrison resigned in 2002, Benjamin Casson, Q.C., was appointed as PCC. He dealt with a few matters related to the Frank Paul case, including a request from the Paul family to have the Jail video provided to them, and a report from the VPD on the notification of Mr. Paul’s next of kin.³³

²⁹ As I noted earlier in this part, the Coroners Service had earlier decided to proceed by way of a Judgment of Inquiry, rather than an inquest.

³⁰ For example, see Transcript, Mar. 12, 2008, p. 156.

³¹ Exhibit 155, Binder 3A, Tab 3.

³² Transcript, Mar. 12, 2008, pp. 76–80, 86–93.

³³ Transcript, Mar. 19, 2008, pp. 193–95.

Mr. Casson considered the prospect of calling a public hearing in the Paul case. He obtained a legal opinion on his statutory authority to do so and, in reliance on that advice, concluded that the decision made earlier not to call a public hearing brought the authority under statute to an end, and he therefore lacked jurisdiction to effectively reverse the earlier decision made by Mr. Morrison.³⁴

In the Fall of 2002, Mr. Casson also attempted to have Ted Hughes, Q.C. (a former justice and former Deputy Attorney General) review the Frank Paul file. He wanted a credible and independent person who would review the Paul file and provide a report of “what happened.” This appointment was not made, because the parties could not agree on the terms of reference.³⁵

4. Commissioner Ryneveld’s handling of the Frank Paul complaint

Dirk Ryneveld, Q.C., became PCC on February 13, 2003. He reviewed the Frank Paul matter. He re-opened the OPCC file, ultimately publishing on January 16, 2004, written Reasons for Decision calling for a public inquiry into the death of Frank Paul.³⁶

5. My conclusions about the response of the Police Complaint Commissioner

Based on this review of the evidence, I have reached several conclusions respecting the PCC’s response to the death of Frank Paul. I heard during the evidentiary hearings considerable evidence about clashing personalities and a fractious atmosphere in the Office of the PCC during Mr. Morrison’s tenure. I have chosen not to dwell on those matters in this report because, in my view, they do not assist me in determining what happened and why.

First, my ability to ascertain what happened in the OPCC (as well as what matters were discussed, what decisions were made at key meetings and what people were thinking) has been seriously hampered by the incomplete documentary record as it pertains to Mr. Morrison’s tenure. The public is entitled to expect that, when a

³⁴ Evidence of B. Murphy, Transcript, Mar. 17, 2008, pp. 57, 60–63, 78.

³⁵ Evidence of B. Casson, Transcript, Mar. 19, 2008, pp. 199–206; Evidence of B. Murphy, Transcript, Mar. 17, 2008, pp. 68–72, 74.

³⁶ Transcript, Mar. 13, 2008, pp. 137–40; Exhibit 155, Binder 5, Tab 1; Exhibit 184. Commissioner Ryneveld provided a copy of his Reasons for Decision, and a compendious binder of supporting documents, to the Attorney General, the VPD, the Coroners Service and the Solicitor General.

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public body such as this deals with suspicious deaths and issues affecting professional careers and reputations, important milestones are recorded and preserved, to ensure thoroughness, fairness and transparency.

Second, while I do not think it would be appropriate for me to second-guess the substantive decision of Mr. Morrison, in September or October 2000, to obtain further information before deciding whether to order a public hearing, I am satisfied that the information that he had before him made such a decision reasonable.

Third, while I do not think it would be appropriate for me to second-guess the substantive decision of Mr. Morrison, in December 2000, to ask the Criminal Justice Branch to reconsider its decision not to approve criminal charges, I am satisfied that the information that he had before him made such a decision reasonable, in particular Mr. Urban’s recommendation to do so. Referring the matter to the branch was a reasonable basis for postponing any decision about a public hearing; if the Crown approved charges, the events surrounding Mr. Paul’s death would be canvassed during the criminal proceedings, which would obviate the need for a public hearing.

Fourth, I commend Mr. MacDonald for obtaining the Jail video showing Mr. Paul being dragged into and out of the Jail building. It portrayed the department’s treatment of Mr. Paul, and his obvious incapacitation, in a way that galvanized public attention and was, in my view, an important contributing factor to this inquiry being convened.

Fifth, I am satisfied that at the August 21, 2001 meeting, Mr. Morrison and OPCC staff fairly considered the options open to Mr. Morrison at that time. While Mr. Morrison testified that he would have applied the criteria set out in section 60(5) of the *Police Act*, the inadequate documentary record prevents me from knowing the extent to which he did so, or his reasoning in concluding that those criteria were not met. At this late stage, the most that I can say is that Mr. Morrison had a body of evidence before him from which one could reasonably conclude that the public interest did not compel a public hearing at that point in time.

Having said that, it was, in my view, a serious error of judgement for Mr. Morrison not to commit to paper this decision and the reasons for it, with

particular reference to the statutory criteria in section 60(5). When a statute articulates the criteria so explicitly, it is reasonable to infer an underlying legislative intent to ensure principled decision-making and transparency. I say this especially in light of the careful case made out for a public hearing made by Bill MacDonald in his report. The commissioner had the clear authority to reject that advice but without a recorded and reasoned decision the public cannot be assured by written evidence that the proper principles were applied to the question. In my view, the public is entitled to expect that a public officer who is bound to apply such criteria will act in a manner that affirms those values.

Sixth, I question the appropriateness of the manner by which Mr. Morrison communicated his decision to the VPD (a lunch meeting at a restaurant), and I find his justification for a four-and-a-half month postponement in making his decision public (because he was pursuing other alternatives) unconvincing. It would have been, in my view, far more appropriate to communicate his decision to the department by letter, setting out the reasons for his decision. Similarly, nothing prevented him from promptly informing the public about his decision not to order a public hearing, and then seeking an inquest or a ministerial policy review.

I conclude my review of the public bodies' response to the death of Frank Paul with one general observation. During our policy roundtable discussions, counsel for one of the participants astutely observed that the single most important document in these bodies' responses was the criminal investigation report prepared by Det. Staunton in May 1999:

- Professional standards investigation—Sgt. Boutin relied on it, with very little additional investigation, in his professional standards investigation, which led to the disciplinary measures being imposed.
- Coroners Service—Ms. Lister relied on information from the police in preparing her preliminary investigation report (which led to the decision not to hold an inquest), and Ms. Robinson relied heavily on it, in preparing her Judgment of Inquiry.
- PCC—Mr. MacDonald relied on the criminal investigation report (and the professional standards investigation report that was based largely on the criminal investigation report) in preparing his file review, and the report

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was central to the PCC’s assessment, which led ultimately to Mr. Morrison’s decision not to order a public hearing.

- Criminal Justice Branch—While I do not yet have a complete record of the branch’s response to Mr. Paul’s death, the evidence is clear that Det. Staunton’s criminal investigation report became the Report to Crown Counsel, which would normally be the principal evidentiary source for deciding whether or not to approve criminal charges.

I conclude the quality of decision-making in these four subsequent “response” processes was largely dependent on the underlying criminal investigation report. Given the inadequacies I have already identified, the result was that the public was not well served by the reliance placed on it by the other response processes.

Further, I do not think that one can dismiss this as a single inadequately done investigation performed a decade ago. As I discussed earlier in this part, these inadequacies are largely attributable to the legislative regime for conducting criminal investigations in the case of police-related deaths—a scheme premised on the police investigating themselves. It is, in my view, a systemic flaw riddled with conflict of interest, which necessitates significant reform. I will explore this issue in more detail in Part 6.