

**The Honourable Colin McKinnon, Q.C.**

Arbitration Place – World Exchange Plaza  
100 Queen Street, Suite 940  
Ottawa, Ontario K1P 1J9  
Telephone: 1-613-769-7557  
Email: cmckinnon@arbitrationplace.com

---

18 May 2022

**The Honourable Tyler Shandro, Q.C.**

Minister of Justice and Solicitor General  
424 Legislature Building  
Edmonton, Alberta, T5K 2B6

Dear Minister,

**Re: Alberta Crown Prosecution Service Review – Dr. Evan Matshes  
Final Report**

Introduction

Attached, please find my 321-page final report, together with 717 footnotes, entitled *Review of the Steps Taken by the Alberta Crown Prosecution Service in Relation to Concerns Raised Respecting Medical Examination Reports Produced by Doctor Evan Matshes for the Purpose of Prosecutions*.

This Report is accompanied by a digital Appendix, which contains the over 500 documents (totalling over 11,000 pages) cited in this Report, except for publicly-available materials, such as news reports and reported court decisions that are available online. This Appendix does not contain the many other documents that were consulted during the Review, but not specifically cited in this Report. The Appendix has been compiled in a USB flash drive and will be sent by Mr. Matthew B. Day directly to you, to your Deputy Minister, and to Ms. Alice Barnsley-Kamal.

Summary of the Final Report

Part I of the report summarizes the issues under Review as well as the steps that I took in conducting this Review. Part II of the report sets out my factual findings and my conclusions as they relate to the institutional response of the Alberta Crown Prosecution Service (ACPS), the one homicide investigation for which no charges were laid, and the fourteen homicide prosecutions and one injury prosecution in which charges were laid. Part III of my report summarizes my four policy recommendations for the ACPS. For your benefit, I can provide the following high-level, non-granular summary of my findings and conclusions as well as my recommendations.

*Part II – Findings and Conclusions*

During the impugned review of Dr. Matshes' work between 2012 and 2013, numerous letters and emails were generated by the Office of the Chief Medical Examiner (OCME), ACPS personnel, and others that contained information that was relevant to some of the impugned

prosecutions. Additionally, some of Dr. Matshes' autopsies in these prosecutions were subjected to an internal peer review by another OCME forensic examiner between February and November 2012. Most significantly, the OCME convened a panel of external peer reviewers in November 2012 to review his opinion in fourteen death investigations, including five of the homicide investigations at issue in this Review. Finally, in some prosecutions, new forensic reports were completed by other medical examiners in 2012 and 2013 in order to replace Dr. Matshes' original report and anticipated testimony.

As you will see, I found no evidence that the ACPS attempted to improperly conceal any relevant disclosure from defence counsel. On the contrary, the ACPS took all reasonable steps to identify and disclose the relevant letters and emails, internal peer reviews, the external peer review panels' full report, and the forensic reports to defence counsel. Depending on the case and the disclosure item in question, these materials were either successfully disclosed to counsel, offered but declined by counsel, sent but not received by counsel, overlooked by ACPS counsel due to human oversight, or reasonably withheld by the ACPS due to the circumstances of the particular prosecution.

- Overall, the ACPS was highly principled, well-organized, and inclusive when addressing itself to the disclosure obligations arising from the issues surrounding Dr. Matshes. Nevertheless, I found that the ACPS failed in its disclosure obligation by inadvertently or mistakenly deciding not to disclose certain documents that I considered relevant to the accused persons. Accordingly, I have made one policy recommendation (see **Recommendation 1**) based on this issue. However, I also concluded that non-disclosure of that material did not contribute to any miscarriage of justice in any of the cases under review.
- In RCMP file 2010-1435153 (OCME file 1016-4944), the homicide investigation for which no charges were laid, peer reviewers Conclusion of peer reviewers, containing third party personal information I found that the ACPS inadvertently did not provide certain relevant documents to investigators. However, I also concluded that the decision not to charge the suspect remains a reasonable decision even in light of the impugned material. Accordingly, I have made no recommendations regarding this investigation.
- In the matter of *Her Majesty the Queen v Evan Caswell Gilmer* (OCME file 1013-0362), there was no peer review conducted on Dr. Matshes' opinion. I found that the ACPS satisfied its disclosure obligation by disclosing all relevant documents to the accused. I also concluded that even if that material had not been disclosed, non-disclosure of that material would not have resulted in a miscarriage of justice. Accordingly, I have made no recommendation regarding this case.
- In the matters of *Her Majesty the Queen v Jenny Olivea Beaverbones*, *Her Majesty the Queen v Melvina Jean Beaverbones*, *Her Majesty the Queen v Terrance Beaverbones*, *Her Majesty the Queen v Evan Foureyes*, *Her Majesty the Queen v Darcy John Lightfoot*, and *Her Majesty the Queen v Cameron Paul Francis Strawberry* (OCME file 1016-2067), peer reviewers Conclusion of peer reviewers, containing third party personal information I found that the ACPS failed in its disclosure obligation by intentionally not disclosing certain relevant documents

in one instance, although done in good faith, and in other instances inadvertently not disclosing certain relevant documents to some of the six co-accused. Other co-accused persons did receive the material. Accordingly, I have made two policy recommendations (see **Recommendation 2** and **Recommendation 3**) based on this issue. However, I also concluded that non-disclosure of that material did not result in a miscarriage of justice for any of the six co-accused. Accordingly, I have made no recommendation regarding these cases.

- In the matters of *Her Majesty the Queen v Martin David Munro* and *Her Majesty the Queen v Jolyn Esther Ten Hove* (OCME file 1016-7885), the peer reviewer [REDACTED] Conclusion of peer reviewers, containing third party personal information I found that the ACPS met its disclosure obligation with respect to one co-accused, but I could not determine whether it met its disclosure obligation with respect to the other co-accused. I concluded that if in fact disclosure was not made, it would have been the result of unintentional oversight. I also concluded that even if that material had not been disclosed, non-disclosure of that material would not have resulted in a miscarriage of justice for either of the two co-accused. Accordingly, I have made no recommendation regarding this case.
- In the matter of *Her Majesty the Queen v Michael Ernest Thivierge* (OCME file 1017-3416), the peer reviewer [REDACTED] Conclusion of peer reviewers, containing third party personal information I found that the ACPS met its disclosure obligation. I also concluded that even if that material had not been disclosed, non-disclosure of that material would not have resulted in a miscarriage of justice. Accordingly, I have made no recommendation regarding this case.
- In the matter of *Her Majesty the Queen v Accused* [REDACTED] (OCME file 1016-3055), the peer reviewer [REDACTED] Conclusion of peer reviewers, containing third party personal information I found that the ACPS failed in its disclosure obligation by failing to disclose certain relevant documents to the accused, but I cannot determine why disclosure was not made. I concluded that there was no bad faith involved in the failure to disclose. I also concluded that non-disclosure of that material did not result in a miscarriage of justice – in particular, I note that the ACPS stayed the proceedings against the accused, meaning there was no finding of guilt or conviction. Accordingly, I have made no recommendation regarding this case.
- In the matter of *Her Majesty the Queen v Harpal Singh Dhillon* (OCME file 1016-4947), the peer reviewer [REDACTED] Conclusion of peer reviewers, containing third party personal information I found that the ACPS met its disclosure obligation. I also concluded that even if that material had not been disclosed, non-disclosure of that material would not have resulted in a miscarriage of justice. Accordingly, I have made no recommendation regarding this case.
- In the matter of *Her Majesty the Queen v Wendy Joy (Herman) Scott* and *Her Majesty the Queen v Connie Jean Oakes* (OCME file 1017-3651), the peer reviewer [REDACTED] Conclusion of peer reviewers, containing third party personal information I found that the ACPS failed in its disclosure obligation by not disclosing one relevant document in both cases due to human error, I was not able to determine whether the other relevant documents were provided to one of the two co-accused, but I found that all of those other documents were disclosed to the other co-accused. Accordingly, I have made one policy recommendation (see **Recommendation 4**)

based on these issues. However, I also concluded that non-disclosure of that material did not result in a miscarriage of justice for either of the two co-accused – in particular, I note that both cases resulted in successful defence appeals (on other issues) with no re-trial, meaning there is no prejudice to either defendant due to late disclosure or non-disclosure of this material. Accordingly, I have made no recommendation regarding this case.

- In the matter of *Her Majesty the Queen v Heather Elaine Wilson Duncan* (OCME file 1016-5895), the peer reviewer Conclusion of peer reviewers, containing third party personal information I found that the ACPS met its disclosure obligation. I also concluded that even if that material had not been disclosed, non-disclosure of that material would not have resulted in a miscarriage of justice. Accordingly, I have made no recommendation regarding this case.
- In the matters of *Her Majesty the Queen v Patrick Striker Holloway*, *Her Majesty the Queen v Ameria Kadre Holloway*, and *Her Majesty the Queen v Andrew Leigh Pooreagle* (OCME file 1016-6855), the peer reviewer Conclusion of peer reviewers, containing third party personal information I found that the ACPS met its disclosure obligation for all three co-accused. I also concluded that even if that material had not been disclosed, non-disclosure of that material would not have resulted in a miscarriage of justice for any of the three co-accused. Accordingly, I have made no recommendation regarding these cases.
- In the matter of *Her Majesty the Queen v Accused* (no OCME file number), peer reviewers Conclusion of peer reviewers, containing third party personal information I found that the ACPS met its disclosure obligation while the case was ongoing. I also concluded that non-disclosure of certain material after the completion of the case can be viewed as a reasonable decision and certainly did not result in a miscarriage of justice – in particular, I note that the charges against the accused were quashed at the preliminary inquiry for other reasons. Accordingly, I have made no recommendation regarding this case.
- In the matter of *Her Majesty the Queen v Shelby Anna Herchak* (OCME file 1016-0289), peer reviewers Conclusion of peer reviewers, containing third party personal information I found that the ACPS met its disclosure obligation. I also concluded that even if that material had not been disclosed, non-disclosure of that material would not have resulted in a miscarriage of justice. Accordingly, I have made no recommendation regarding this case.
- In the matter of *Her Majesty the Queen v Ahmed Mohamed* (OCME file 1016-6853), the peer reviewer agreed with Dr. Matshes' opinion. I found that the ACPS met its disclosure obligation. I also concluded that even if that material had not been disclosed, non-disclosure of that material would not have resulted in a miscarriage of justice. Accordingly, I have made no recommendation regarding this case.
- In the matter of *Her Majesty the Queen v Franco Sebellino Sevandal* (OCME file 1016-6993), peer reviewers Conclusion of peer reviewers, containing third party personal information I found that the ACPS substantially met its disclosure obligation but failed in its disclosure obligation by inadvertently failing to disclose two relevant documents. However, I also

concluded that non-disclosure of that material did not result in a miscarriage of justice. Accordingly, I have made no recommendation regarding this case.

- In the matter of *Her Majesty the Queen v Butch Durant Chiniquay* (OCME file 1016-6993), peer reviewers Conclusion of peer reviewers, containing third party personal information I found that although the ACPS fulfilled its disclosure obligation, the accused did not receive certain relevant documents. However, I also concluded that while non-receipt of that material raised a *potential* miscarriage of justice, I could not reasonably conclude that there has been one. Accordingly, I have made no recommendation regarding this case.
- In the matters of *Her Majesty the Queen v Robert David Reitmeier* and *Her Majesty the Queen v Tyler William Sturup* (OCME file 1016-2766), peer reviewers Conclusion of peer reviewers, containing third party personal information I found that the ACPS met its disclosure obligation. I also concluded that even if that material had not been disclosed, non-disclosure of that material would not have resulted in a miscarriage of justice. Accordingly, I have made no recommendation regarding this case.

In particular, I can confirm that none of the three Alberta-based cases featured in the CBC's 2020 *Fifth Estate* documentary "The Autopsy" involved a miscarriage of justice and none of them resulted in any policy or case-specific recommendations.

### *Part III – Summary of Recommendations*

Several of the issues identified in this Review have already been addressed by the ACPS's Prosecutor Information System Manager (PRISM) system, Criminal eFile (CREF) system, and updated disclosure policy.

I made the following four recommendations, which address the issues that are not already addressed by the ACPS's PRISM system, CREF system, and updated disclosure policy.

- **Recommendation 1:** I recommended that, in future cases where the ACPS have concerns about whether a potential disclosure item contains sensitive information, the ACPS should not obtain a new version of the document that omits the sensitive information. Rather, they should redact that information from the document, include an explanation as to why it was redacted, disclose the redacted copy, and re-evaluate that redaction at an appropriate time.
- **Recommendation 2:** I recommended that the ACPS adopt a policy that covering letters or emails accompanying disclosure materials should be reviewed for potentially disclosable information.
- **Recommendation 3:** I recommended that the ACPS adopt a policy clarifying that relevant documents and information must be disclosed even if they are substantively redundant.
- **Recommendation 4:** I recommended that, in future situations where a state witness (e.g. a police officer, a forensic pathologist) is under investigation, and where that investigation gives rise to an obligation to make disclosure in one or more criminal cases, and where

Alberta Justice recognizes its obligation to obtain and disclose that material in multiple closed or ongoing prosecutions, the “point person” in charge of obtaining and disclosing that material should either (A) personally disclose it to all defence counsel and obtain confirmation of receipt or (B) arrange for the material to be disclosed through the normal disclosure system (i.e. CREF). Either way, they should not put the responsibility for disclosure on the trial prosecutors.

#### Final comments

As you will see, my final report is replete with sensitive information, ranging from the personal information of homicide victims, to privileged legal opinions and communications within the Department, to the statements and reports that Dr. Matshes alleges are defamatory of him. In preparing this covering letter, I have attempted to summarize my findings and conclusions in a way that avoids disclosing that sensitive information.

When I was retained to conduct my review of these cases, I was instructed “to leave no stone unturned.” As a result, this summary fails to disclose the extent of my investigatory efforts, the details of Dr. Matshes’ opinions and those of the peer reviewers, the nature of what materials were not disclosed, the specific circumstances in which those materials were not disclosed, or my reasons for concluding that non-disclosure of that material did not cause a miscarriage of justice in any of the cases under review. For the benefit of anyone who reads this letter, I must emphasize that this summary does not do justice to my report.

I concluded my report with the following observations, which I will repeat here for emphasis:

Finally, as noted several times in my case-by-case analysis, most instances of non-disclosure can only be explained by simple human error and oversight. While PRISM, CREF, the ACPS’ updated disclosure policy, and my four recommendations should reduce the risk of such error and oversight, no combination of technology and policy can eliminate that risk entirely. The ACPS and its individual prosecutors must remain highly principled, well-organized, and inclusive when discharging their disclosure obligations in all cases. My exhaustive review of the cases analyzed leaves me without doubt that this will happen. All crown counsel acted in good faith throughout the carriage of their assigned cases and exhibited all the qualities required to be called surrogate Ministers of Justice, as our law demands.

Sincerely,

Signature



**The Honourable Colin McKinnon, Q.C.**  
Ontario Superior Court of Justice (ret’d)  
Ottawa, Canada