

MEDIA RELEASE

Re: Law Enforcement Review Board *Arkininstall Inquiry Report* – A Call For Change in Alberta’s Approach to Police Oversight

Criminal Trial Lawyers’ Association

Criminal Defence Lawyers Association (Calgary)

Calgary, AB – October 1, 2018 – With the release of the Law Enforcement Review Board [LERB] Arkininstall Inquiry Report, Albertans now have a clear answer to a long-standing question: Can police be trusted to properly investigate allegations of their own misconduct?

Absolutely not.

The findings of the Inquiry are a damning indictment of the organizational culture of the Calgary Police Service [CPS]. After a respected, independent and impartial judge ruled at trial that CPS officers’ sworn testimony was not credible – because a citizen-recorded video showed the testimony was false – the CPS “...failed to diligently and conscientiously handle the Arkininstall matter.”¹

Without the repeated demands of the CTLA and CDLA, this Inquiry never would have taken place and the public would not have learned the truth. Initially, we were accused of misconduct and of being “conspiratorial” rather than having our concerns taken seriously by the CPS. We persisted on behalf of the public interest and after reviewing the evidence, the independent and expert LERB has stated:²

“...we conclude without hesitation that CPS’s failure to properly and fully investigate the Arkininstall matter fell far short of what the public has every right to expect in such a case.”

How did the CPS fall far short? By doing many of the things one would expect a police service to do if its end goal was to protect one of its own from accountability:³

“CPS, including PSS, failed to communicate and document information reviewed, decisions taken, and reasons for various courses of action.”

“...of all the senior officers actually involved in the review, only one...testified that she had reviewed all of the undoubtedly relevant material...”

¹ Inquiry Report at para 147

² Inquiry Report at para 147

³ Summary of “serious deficiencies” Inquiry Report at para 148

“...no senior officer reviewed all of the evidence in order to make an informed decision regarding a service investigation. The administrative review simply continued without anyone ever attempting to uncover the full picture.”

“...CPS very early on formed the view that the matter was only about poor note-taking and preparation for court. We are unable to discern a proper evidentiary foundation for so concluding.”

“None of those involved could explain their reasoning in their inquiry testimony. They developed what can only be described as tunnel vision about the true nature of Judge Semenuk’s concerns.”

“There is, again, no evidence to explain on what basis everyone involved could reasonably have concluded that this was solely about poor note-taking and court preparation.”

“There are numerous CPS documents, including memos, contained in the inquiry record that have no date, no authorship and no signature. It was unclear when some documents were sent, or whether they were in fact even sent.”

“...obvious investigative steps were overlooked at various stages of the process.”

While the Inquiry Report specifically states there is “no evidence of deliberate attempts within CPS to avoid, impede, frustrate or interfere with the ordinary course of the disciplinary process under the Act”, the CTLA and CDLA maintain the CPS conduct created an appearance to any reasonable member of the public of institutional willful blindness. In policing and the justice system as a whole, justice must not only be done but must manifestly be seen to be done, and appearances matter.

Ordinary citizens defending themselves against criminal allegations by the CPS do not have the benefit of self-created procedures that ignore the legal requirements established by our elected legislature(s). But when the person accused is a CPS officer, the CPS appears to be of the view that the law is whatever they say it is. According to the Inquiry:⁴

“...CPS has de facto operated its own version of ‘off the books’ oversight without clear policies and processes and none of the legislated protections...”

“...Part 5 of the [Police] Act must be respected. A police service simply should not ignore the Legislature’s direction by in effect creating its own local law.”

“[administrative reviews] appear to be unique to CPS, with no other Alberta service being involved in such a practice as far as we are aware.”

⁴ Inquiry Report at paras 228, 231, 232

“...we are of the clear view that an informal, light touch ‘administrative review’ is not a proper investigation of the kind the Legislature intended. Alberta’s citizens expect police to diligently and professionally investigate offences and it is reasonable to expect this of CPS.”

As the search for a new Chief Constable of the CPS is currently ongoing, the public is already debating whether an internal or external candidate should be chosen. In our view, the findings of the Arkininstall Inquiry are reflective of a seriously dysfunctional police service that for decades has failed to adequately address police misconduct from within its ranks. The new Chief must be selected from outside of this organization, and must be prepared to confront those in positions of power and influence who have been in a position to, but failed to, act properly and prudently on behalf of the public.

The Inquiry concluded the CPS approach “...could only result in none of those involved having anything approaching a reasonable basis on which to properly, prudently address the concerns raised in *Arkininstall*.”⁵ This finding applied to each of the following officers (identified by rank held at the time), some of whom have been publicly identified as possible candidates to become the next CPS Chief:

Chief Rick Hanson
Deputy Chief Trevor Daroux
Superintendent Kevan Stuart
Superintendent Katie McLellan
Inspector Catherine Light
Inspector Kathy Grant
Acting Superintendent Sat Parhar

The public cannot be expected to respect and support a police oversight regime that allows tunnel vision to result in serious alleged officer misconduct being inadequately investigated.

We urge the Alberta Minister of Justice and the Calgary Police Service to immediately and unreservedly embrace the recommendations of the Inquiry – and in particular, to act on the short term recommendations that can significantly improve civilian oversight while the recently announced larger and more comprehensive *Police Act* review runs its course.

Specific instances of individual officers being accused of illegal or unethical conduct must be taken seriously and fully investigated in accordance with high professional standards and with the maximum possible public transparency. It should not matter who the officer is or who the complainant is thought to be.

The failure to deal with so-called ‘bad apples’ inevitably results in a spread of such conduct throughout the ‘bunch’. At the very least, the many honest, hard-working and diligent CPS

⁵ Inquiry Report at para 165

officers may be unfairly seen as being part of such conduct and the overall morale of the police service and the public trust in its members as a whole is diminished.⁶

The CTLA and CDLA would like to express our appreciation for the courage and conviction demonstrated by each of the current members of the Calgary Police Commission, its Chair Brian Thiessen, Calgary Police Service Chief Constable Roger Chaffin, and the Honourable Minister of Justice, Kathleen Ganley. Because each of these individuals recognized the need for this Inquiry and had the integrity to support it, the policing oversight regime in Alberta will undoubtedly be greatly improved in the future.

As well, the hard work and efforts of all of the members of the Law Enforcement Review Board including the panel members and the Board staff are deserving of the respect and appreciation of all Albertans.

It has been our associations' privilege to play a role in this very important public inquiry and what we hope will be a productive and ongoing public discussion about meaningful civilian oversight of police services in general, and more specifically, the Calgary Police Service. All police officers in Alberta must be accountable directly to the citizens they are sworn to serve.

For further comment please contact counsel for the CTLA and CDLA during the Arkininstall Inquiry:

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⁶ See the Independent Review of Police Use of Force by The Honourable Neil Wittmann, QC – April 2018 at paras 268-269