



Royal Canadian
Mounted Police

Gendarmerie royale
du Canada

Security Classification/Designation
Classification/désignation sécuritaire

Inspector Paul N. Cheney
Assistant District Commander
Island District RCMP
2881 Nanaimo Street, Victoria, BC V8T 4Z8

Your File - Votre référence

Our File - Notre référence
PSU2008-9190

Murray Mollard
BC Civil Liberties Association
550-1188 West Georgia Street,
Vancouver, BC V6E 4A2

Date

October 23rd, 2008

RE: Public Complaint Against Sergeant David Lucas and Constable William Bain

This is in reference to a public complaint lodged by yourself to the Commission for Public Complaints Against the Royal Canadian Mounted Police.

Background Information:

On August 4th, 2007, Mr. Christopher Tom had been arrested by members of Tofino Detachment for being intoxicated in a public place. Mr. Tom was taken to Tofino Detachment where he later died in custody. An investigation into Mr. Tom's sudden death was conducted and a subsequent Coroner's Inquest was held on February 19th, 2008. The findings of the Coroner's report detail in part, your complaint which was "*The senior officer attended the detachment and instructed that Mr. Tom be put back onto his side as close as possible to the position he was found in, and that photographs be taken; a highly unusual step.*"

Nature of the Complaint:

On June 27th, 2008, you submitted a written complaint to the Commission for Public Complaints Against the RCMP ("CPC") alleging that according to the Coroner's decision, the RCMP officer, who entered Mr. Tom's cell rolled Mr. Tom on his back in an attempt to rouse him. Later, the senior officer instructed the member to put Mr. Tom back in the original position. The coroner called this a "highly unusual step." This allegation would fall under the category Neglect of Duty.

Findings of the Investigation:

Allegation #1 - Neglect of Duty:

According to the Coroner's decision, the RCMP officer, who entered Mr. Tom's cell rolled Mr. Tom on his back in an attempt to rouse him. Later, the senior officer instructed the member to put Mr. Tom back in the original position. The coroner called this a "highly unusual step."

Summary of Investigation:

On July 4th, 2008, "E" Division Professional Standards received a public complaint from you through the CPC. Sergeant Vaz Kassam, a member of the RCMP attached to "E" Division Professional Standards, was assigned the investigation. As a result, Sergeant Kassam conducted a review of the Christopher Tom in custody death.

On August 5th, 2008, Sergeant Kassam requested a copy of the Coroner's Report surrounding the findings of the Inquest into Mr. Tom's death. On August 7th, 2008, Sergeant Kassam received a copy of the Coroner's report which is dated February 21st, 2008. The report details in part: *The senior officer attended the detachment and instructed that Mr. Tom be put back onto his side as close as possible to the position he was found in, and that photographs be taken; a highly unusual step.*"

On August 25th, 2008, Sergeant Kassam requested copies of the transcripts from the Tom Coroner Inquest where Sergeant Lucas and Constable Bain provided evidence. On August 27th, 2008, Sergeant Kassam received the requested transcripts and reviewed the respective member's evidence. The following in part is a synopsis of Sergeant Lucas' evidence:

On page 47 line 10 of his transcript- evidence in chief:

Question: *And what did you observe?*

Answer: *I observed Mr. Tom basically in the – in the same position that you saw on that photograph, and observed that he appeared to be dead to me.*

On page 65 line 20 of his transcript - questions by the coroner:

Question: *And when you arrived what did you see?*

Answer: *I walked into the detachment through the front door. I observed that, going down the hallway there, I observed Cst Carr and – and Randy Fielder standing outside of Cell number 1, that into Cell number 1 and observed Cst Bain standing next to Mr. Tom, who was still laying on his mattress in the cells and appeared to be – it appeared that he had died.*

Question: *Was Mr. Tom in the same position as he was when you left him?*

Answer: *Not exactly the same, but roughly the same.*

Question: *Can you tell me what exactly was different?*

Answer: *Again as you look at the – the photograph, his – his arms were a little bit different. It was obvious that he had – had been moved. And speaking with Cst Bain, he had attempted to – to revive Mr. Tom and obviously had turned him over. When he wasn't able to get a response he turned him back in the recovery position basically.*

On page 67 line 3 of his transcript - questions by the coroner:

Question: *Who took the photographs?*

Answer: *I believe it was Cst Bain, I believe that's who it was.*

Question: *Is that your normal routine?*

Answer: *Madam Coroner, this is my first cell death.*

Question: *Okay.*

Answer: *I've never experience this before. This is my sixth detachment. But I know that we needed to – to get some photographs and to record what was going on.*

The following in part is a synopsis of Constable Bain's evidence:

On page 102 line 19 of his transcript - evidence in chief:

Question: *All right. So, what was happening then between then and when the ambulance came?*

Answer: *Well, at that time I – like I say, I rolled Mr. Tom over.*

Question: *Mm-hm.*

Answer: *At that time I put him back to – to the best position that which I found him, which – and then I – and then I took some photos for a sudden death investigation.*

Question: *So, so you put him back into the way you found him before you took the pictures?*

Answer: *Yes, I did.*

On page 107 line 36 of his transcript - cross examination by Mr. Baker:

Question: *And when you repositioned the body, if I understand you correctly, you walk in, you see him, he's laying there, he's not breathing. You try to roll him over to administer the breathing mask. And then later when it's decided not to do any CPR and to take photographs you – you return the body as close as you can remember to the position that it was in when you first arrived, have I got that sequence correct?*

Answer: *That's correct. His – where his mouth area was, it was on the edge of the mat –*

Question: *Mm-hm.*

Answer: *– so it was quite easy to tell, to put him back into that position based on the indent in the mat.*

On August 25th, 2008, Sergeant Kassam contacted Sergeant Lucas and enquired if Sergeant Lucas had instructed Constable Bain to reposition the body and take photographs. Sergeant Lucas advised that he did not.

On October 14th, 2008, Sergeant Kassam obtained an audio recorded statement from Constable Bain who stated the following in part:

Constable Bain advised that the cell guard had informed him that Mr. Tom was not moving. As a result, Constable Bain attended cells and shook him, however, there was no response. Constable Bain performed CPR on Mr. Tom, thus moved his body, however, realized that the CPR was not working;

Recognizing that Mr. Tom had passed away, Constable Bain decided that he would place Mr. Tom back in the position that he found him in. Constable Bain advised that he was doing this in good faith, as he wanted to have an accurate depiction of the manner in which he found Mr. Tom;

Constable Bain advised that it was his practice to move bodies in sudden deaths to ensure that there was no suspicious component associated with the death. If it appeared as though the death was as a result of foul play, Constable Bain would attempt to position the body in the manner in which he found it; and Constable Bain advised that he has had the investigators course, however, has not had the major crime course, and that his only formal

training to crime scenes was at depot and on the job training.

FINDINGS:

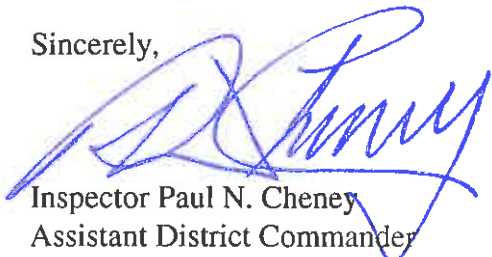
The investigation has determined that in fact the senior officer did not instruct Constable Bain to reposition Mr. Tom. Constable Bain was attempting to administer CPR to Mr. Tom and determined that this individual had succumbed and Constable Bain then ceased his actions. In view of these events, I cannot substantiate your complaint in this regard.

Conclusion:

Please be advised that, pursuant to Section 45.4 of the *RCMP Act*, I am notifying you that the investigation into your complaint has now been concluded. If you are not satisfied with the manner in which your complaint has been addressed by the RCMP, you may request a review by the Commission for Public Complaints Against the RCMP by corresponding with them at the following address:

Commission For Public Complaints Against the RCMP
PO Box 3423, Station "D"
Ottawa, Ontario
K1P 6L4
Tel: 1-800-267-6637
Fax: 1-613-952-8045

Sincerely,



Inspector Paul N. Cheney
Assistant District Commander
Island District RCMP

cc: Professional Standards & External Review, Sergeant Robert Chartrand
Commission for Public Complaints against the RCMP