

*Only the spoken text is authoritative.*

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**DECLARATION OF THE DIRECTOR OF  
CRIMINAL AND PENAL PROSECUTIONS**

**Press conference on the DCP's decisions concerning  
the allegations of abuse toward Aboriginal complainants  
involving mainly Sûreté du Québec police officers**

**Val-d'Or courthouse  
November 18, 2016 at 1 p.m.**

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Good afternoon ladies and gentlemen, and thank you for responding to this invitation.

**Background**

Allow me to recall the context in which we were asked to intervene.

On October 23, 2015, the ministère de la Sécurité publique (MSP) made the Service de police de la Ville de Montréal (SPVM) responsible for investigating allegations of criminal offences against members of Aboriginal communities by Sûreté du Québec (SQ) police officers. That announcement was made after a Radio-Canada public affairs program aired testimonies from Aboriginal women.

On November 1, 2015, a lot of information was gathered which led to the opening of 38 investigation records, mainly in the Val-d'Or region but also in the Rouyn-Noranda, Chibougamau, Schefferville and Sept-Îles regions.

This was phase 1 of the investigation conducted by the SPVM.

On April 5, 2016, the MSP broadened the SPVM's mandate. The SPVM also had to investigate every complaint by Aboriginal people against officers from police forces other than the SPVM. This was essentially phase 2.

## Mandate

The Director of Criminal and Penal Prosecutions, Mtre. Annick Murphy, has expressly mandated Mtre. Haviernick, Mtre. Locas and Mtre. Petitclerc to analyze together the cases prepared further to the SPVM investigation initiated at the request of the MSP. After receiving the various SPVM investigation reports, the three prosecutors were to conduct together a full examination of all the evidence gathered in order to determine whether it showed that criminal offences had been committed. Then, they were to submit to me an analysis report containing their conclusions as to whether charges should be laid in each case. My role consisted in making sure they had fulfilled their mandate in an objective and impartial manner, in compliance with the orientations and measures of the Minister of Justice and the instructions of the Director of Criminal and Penal Prosecutions.

I also verified that their decisions complied with the applicable legal standards. Lastly, I made sure that their conclusions in each case were based on their analysis of the evidence.

The three prosecutors were designated by the Director because of their extensive experience, particularly in matters of sexual crimes, and because they serve as prosecutors outside the judicial districts concerned. They had not had to interact with the police officers under suspicion in the past and were not likely to do so in the future. This was in order to avoid any conflict of interest or any appearance of conflict of interest.

As announced, today, we will disclose the results of our analyses of the cases comprising phase 1 of the SPVM's investigation. Since analysis of the cases comprising phase 2 has not been completed, we will announce the results subsequently.

Today, we will make public the decisions made in 37 cases. To enable the SPVM to complete its investigation, we postponed the decision in one of the phase 1 cases to phase 2.

Criminal charges were laid in two of those 37 cases. In the other 35 cases, we concluded that the evidence was not sufficient to lay charges.

Before we go into the details of the reasons for our decisions, we must point out that it is exceptional for the Director of Criminal and Penal Prosecutions (DCPP) to publicly set out the reasons for a decision not to lay charges.

That initiative is part of the implementation of the guidelines adopted nearly a year ago by the DCPP. Those guidelines allow the publication of the reasons for a decision not to lay charges where the DCPP considers that the exceptional circumstances of the case justify it, in the public interest, in order to preserve the public's confidence in the administration of justice and the institution of the DCPP. That is the case today.

However, given the importance of respecting the private lives and reputations of the complainants and of the people under investigation, we cannot disclose personal information or give out the details of each case. Doing so would be detrimental to those people and would undermine the trust of citizens likely to report the commission of similar offences.

Before making our decisions public, it was essential that we first inform the complainants of the result of the analysis of their case, explain to them the reasons for the decisions, and allow them to ask questions.

We have taken all the necessary measures to individually meet each person who lodged a complaint in this investigation, to inform them of the decision made in their case. When it proved impossible to meet them in person, they were contacted by phone. We had to take the time required to properly go through that process.

It took us all week, which is why we are only meeting with you today.

We were able to inform a total of 26 people of the decision we made in the case or cases that concern them personally. Furthermore, we wish to emphasize the great cooperation of the SPVM investigators and the Native Friendship Centre in organizing those meetings.

### **Role of the DCP**

Before we set out our reasons, we must briefly recall the role of the DCP, as well as the criteria and rules of law that prosecutors must follow in making their decisions as to whether criminal charges should be laid further to a police investigation.

The DCP acts as prosecutor in matters stemming from the application of the *Criminal Code* and related laws. Its mission is to provide, on behalf of the State, an independent criminal and penal prosecution service to ensure the protection of society, in keeping with the public interest and the victims' legitimate interests.

The role of the DCP is to conduct a thorough examination of the evidence gathered by the police to determine whether it shows that a criminal offence was committed and, if so, to prove it before the courts at a criminal trial.

To that end, the prosecutor may also request further investigation where he or she considers that certain elements should be examined more closely or that new avenues should be explored.

I wish to point out that it is not the role of the DCP to rule on civil or ethical faults that may have been committed by the police officers who are the subject of this investigation.

Nor is it up to the DCP to make comments or recommendations regarding police intervention methods.

If there are more general and systemic problems with relations between members of police forces and members of Aboriginal communities, it is not the DCP's role to identify and expose them.

We are aware that a number of people, especially complainants, are disappointed with the fact that few charges have been laid. We understand their disappointment.

A police investigation and a criminal prosecution concern a precise event and identifiable individuals with a degree of evidence that must be very high before charges can be laid.

We have analyzed each of the events revealed in the 37 cases individually in order to determine whether a criminal offence was committed and whether the perpetrator could be brought to justice.

Again, if there are more general and systemic problems with relations between members of police forces and members of Aboriginal communities, it is not the DCP's role to identify and expose them.

### **Criteria for deciding to prosecute**

The task of criminal and penal prosecutors consists in analyzing the cases submitted to us by the police further to their investigation and deciding whether criminal charges should be laid. To that end, the prosecutor must apply several criteria.

In criminal law, the burden of proof that the prosecution must discharge is very high. Due to the presumption of innocence principle, the prosecution must in fact demonstrate before the court that the accused is guilty beyond a reasonable doubt. Although the prosecution need not demonstrate that the accused is guilty with absolute certainty, given the presumption of innocence, it is not sufficient to demonstrate that the accused is probably guilty. While the prosecution, unlike the courts, need not be personally convinced that the accused is guilty beyond a

reasonable doubt, it must take into account that the evidence must meet the high burden of proof.

After examining the investigation report, the prosecutor must first assess the sufficiency of evidence, taking into account the admissible evidence as a whole, including that which could support certain means of defence. At the end of the analysis, the prosecutor must be reasonably convinced that he or she is able to establish the accused's guilt.

The applicable standard for deciding to prosecute is provided for in directive No. ACC-3, which is public and available on the DCPD website. Most public prosecutors in Canada have directives that impose a similar standard.

Moreover, the courts acknowledge that this standard is more demanding than the standard of simple reasonable and probable grounds to believe that someone has committed an offence. The courts also believe that a lower threshold for instituting proceedings would be inconsistent with the role of the prosecutor as a judicial officer. The prosecutor does not seek to get a conviction at all costs and must avoid laying charges if the evidence is insufficient. The prosecutor must conduct a professional assessment of the legal basis for a prosecution, regardless of his or her personal opinion on the outcome. The prosecutor's evaluation must remain objective, impartial and critical. Deciding whether or not to prosecute is a discretionary decision made by the prosecutor in the performance of his or her professional duties without fear of judicial or political interference and without yielding to pressure from the media or the public.

The Supreme Court of Canada considers that such independence is essential for a sound administration of criminal justice.

In addition, criminal and penal prosecutors take an oath to exercise their functions honestly, objectively, impartially and justly.

It is important to point out that the DCP's not laying charges does not mean that the incident did not occur. The prosecutor must consider whether he or she is able to prove it beyond a reasonable doubt at a trial.

A directive issued by the Director provides that, barring exceptional circumstances, before laying sexual offence charges, the prosecutor must meet with the victim in person, accompanied by the investigator. The directive also provides that the victim may be accompanied by the person of his or her choice where the sole objective of the meeting is to explain the judicial process. Where the meeting with the prosecutor concerns the facts in the case, it takes place in the presence of the victim and the investigator only.

The main goal of that restriction is to avoid claims that the complainants have been influenced in their testimony. In addition, if accompaniers are present at the meetings on the facts in the case, they could be compelled to testify by the accused in an attempt to contradict the complainant's testimony before the court.

In recent months, we have held such meetings in order to properly assess the evidence available in the cases.

### **Categories of cases**

The 37 cases we examined originated from 28 complainants. There are cases in which more than one offence was alleged.

We examined 14 sexual allegations, 15 allegations of excessive use of force by police officers, and 9 allegations of forcible confinement, that is, incidents where the police allegedly drove people to remote locations in their patrol car, without their consent. That phenomenon is better known as "geographic cures" or "starlight tours".

Certain allegations concerned threats, criminal harassment, intimidation, mischief and dangerous operation of motor vehicles.

The allegations had to do with 28 police officers who are currently employed by the SQ, six who are retired and one who is now deceased.

Criminal charges were laid in two of the 37 cases examined.

In the first case, Alain Juneau, a retired Sûreté du Québec police officer, was arrested on November 15, 2016 further to the execution of an arrest warrant issued by a judge.

Mr. Juneau was charged with the following offences:

- between May 1, 1992 and May 17, 1994, in Schefferville, District of Mingan, sexually assaulted a person, thereby committing the indictable offence provided for in section 271(1)(a) of the *Criminal Code* of Canada;
- between May 1, 1992 and May 17, 1994, in Schefferville, District of Mingan, assaulted a person while carrying, using or threatening to use a weapon, thereby committing the indictable offence provided for in section 267(1)(a) of the *Criminal Code* of Canada.

In the second case, Jean-Luc Vollant, a retired police officer with the Schefferville Aboriginal police force, was arrested on November 14, 2016 further to the execution of an arrest warrant issued by a judge. Mr. Vollant was charged with the following offences:

- between January 1, 1980 and January 3, 1983, in Schefferville, District of Mingan, raped a person, thereby committing the indictable offence provided for in section 144 of the *Criminal Code* of Canada in force at the time;
- between January 1, 1980 and January 3, 1983, in Schefferville, District of Mingan, indecently assaulted a person, thereby committing the indictable offence provided for in section 149 of the *Criminal Code* of Canada in force at the time;

- between January 4, 1983 and December 31, 1986, in Schefferville, District of Mingan, sexually assaulted a person, thereby committing the indictable offence provided for in section 246.1(1)(a) of the *Criminal Code* of Canada in force at the time.

As provided for in the two arrest warrants, the accused were released with several conditions, including a prohibition from communicating with the complainant. Since charges were laid in those cases and they are now before the courts, we will not comment them further, so as not to hinder the fairness and integrity of the judicial process.

The two accused must appear at the Sept-Îles courthouse on January 19, 2017.

The other 35 cases we have analyzed do not have the elements required to lay criminal charges. Note that there may be more than one reason for deciding not to lay charges in a given case. As we mentioned, there are cases in which more than one offence was alleged.

In ten cases, the facts alleged by the complainants do not show that a criminal offence was committed, or that they were related to possible civil or ethical faults on the part of the police.

In one case, no charges can be laid because the suspect is deceased.

In three cases, no charges were laid because the allegation was made by a third party and the alleged victim denied that the incident had occurred.

In 19 cases, the identification evidence was insufficient to lay criminal charges, as it would have been impossible to prove the identity of the suspect or suspects concerned by the allegations. In a criminal trial, the prosecutor must be able to submit evidence that makes it possible to prove beyond a reasonable doubt that the accused is in fact the person charged with the offence.

The Supreme Court has pointed out many times that identification evidence is one of the main causes of miscarriages of justice in Canada. In that regard, a prosecutor must always look at identification evidence with a critical eye. In some cases, the descriptions made by the complainant or the witnesses were not sufficiently detailed to allow the identification of a suspect.

In other cases, the complainant or the witnesses were unable to identify a suspect in a photo lineup.

In certain cases where the disclosure took place long after the alleged events occurred and where the complainant or the witness was unable to identify the suspect, the police did not have other identification evidence, such as DNA samples or fingerprints, which could have allowed for the identification of a suspect. In certain cases, the investigators obtained all of the incident reports and statements of offence involving a complainant, as well as the police officers' work schedules, or verified the trips made by the officers in their patrol cars, the whole in order to identify some of the perpetrators of the alleged offences, to no avail.

In certain cases where excessive use of force was alleged, we did not lay charges because we are of the opinion that the conditions set out in section 25 of the *Criminal Code* have been met. That provision grants protection to peace officers who use force in the administration or enforcement of the law, provided that he or she acts on reasonable and probable grounds and only uses as much force as is necessary in the circumstances.

Lastly, in 16 cases, we were not reasonably convinced that the suspects' guilt could be established beyond a reasonable doubt. We reached that conclusion further to an exhaustive examination of the whole of the evidence in each case, which included an analysis of the reliability of the complainant's testimony.

We remind you that the prosecution's burden of proof consists in proving that the accused is guilty beyond a reasonable doubt. A reasonable doubt may originate from the evidence, the absence of evidence, contradictory evidence, or the lack of credibility or reliability of a witness or witnesses.

The prosecution's burden of proving beyond a reasonable doubt also applies to the assessment of testimonies. It is not a credibility contest between the witnesses for the prosecution and those for the defence, or a choice between believing the victim or the accused. The Supreme Court has established that, in a criminal trial, the accused is acquitted in all the following cases:

- First, if the accused's version is accepted by the judge, the accused is acquitted.
- Second, if the judge does not believe the accused but the accused's version still raises a reasonable doubt in the judge's mind, the accused is acquitted.
- Third, if the judge does not believe the accused and the accused's version does not raise a doubt, the judge must consider whether the prosecution's evidence convinces him or her that the accused is guilty beyond a reasonable doubt. If not, the judge must acquit the accused.

It is therefore important to point out that assessing a testimony's reliability in light of the rules of law applicable to a criminal trial does not necessarily mean that we do not believe the complainant or that the complainant is not telling the truth.

## **Conclusion**

The fact that no criminal charges have been laid in certain cases does not necessarily mean that the alleged events did not occur. Rather, it means that the evidence at our disposal did not allow us to lay criminal charges, given the criteria and rules of law that the prosecution must follow.

Nobody should assume that, in our analysis, we chose one version over the other. We did not choose the version of the police officers concerned to the detriment of the complainants' version. Our burden was to prove beyond a reasonable doubt that an offence was committed and that the accused was the perpetrator.

If you are the victim of a crime, the fact that no criminal charges were laid in certain cases must not discourage you from filing a complaint. On the contrary, filing a complaint is the first step toward having the person who committed the offence tried before the courts.

I also wish to point out that there are a number of measures to protect victims, particularly victims of sexual assault, throughout their proceedings with the justice system. First, police investigations remain confidential. Second, non-publication orders are rendered by the judges during the trial in order to protect the identity of sexual assault victims and enable them to go through the process without having to face the media. Victims also do not have to worry about irrelevant information, such as their sexual history or medical record, being disclosed.

In closing, over the coming weeks, the DCPD will assess the phase 2 cases. Following that analysis, we will make public our decisions on whether or not to prosecute in those cases.

Thank you for your attention.