

## **MANITOBA PROSECUTION SERVICE CLEAR STATEMENT**

### **DECISION NOT TO AUTHORIZE CRIMINAL CHARGES IN THE INVESTIGATION INTO THE CONSTRUCTION OF POLICE HEADQUARTERS**

On December 13, 2019, the Manitoba Prosecution Service (MPS) released a statement explaining why charges were not authorized in Project Dalton, the RCMP investigation related to the construction of the Winnipeg Police Headquarters on Graham Avenue. MPS considered whether potential criminal charges should be laid against individuals or partner and corporate entities, including fraud, breach of trust, forgery, keeping false books and money-laundering. After a comprehensive review of all evidence and any legal impediments to the prosecution, MPS concluded that the available evidence could not meet the standard to prove any criminal charges beyond a reasonable doubt. There was no reasonable likelihood of a criminal conviction.

The City of Winnipeg initiated civil proceedings against many individuals and companies involved in the Police Headquarters project. Actions against some defendants settled. In April 2022, the former Chief Administrative Officer of the City of Winnipeg was found liable in the civil tort of bribery for accepting a secret payment and was ordered to pay damages (see [2022 MBQB 53](#) and [2022 MBQB 81](#)). On July 7, 2023, the Manitoba Court of Appeal dismissed the appeal ([2023 MBCA 63](#)).

A finding of civil liability does not affect whether criminal charges can be brought. In particular, the standard required to prove a criminal act is much more stringent – proof beyond a reasonable doubt. Alleged wrongdoing in a civil claim need only be proved on a balance of probabilities, or in other words, it is more likely than not that a wrong was done. In addition, as the trial judge noted, the intentions of defendants in the civil case were not relevant. This is unlike criminal proceedings where the Crown must prove the criminal intent of the accused beyond a reasonable doubt.

Despite the differences in what must be proved and the markedly different standards of proof in criminal and civil matters, in light of the finding of the court during the civil proceedings and the potential that other evidence might have been disclosed, MPS decided to undertake a further review of whether criminal charges might be laid. It is important to note that evidence provided by an individual in a civil proceeding generally cannot be used against that person in a criminal trial to prove the offence. To expedite the review, which involved the examination of a very large volume of material, MPS retained a retired prosecutor to conduct the review.

The review considered whether criminal charges should be authorized for accepting a secret commission (s. 426 of the Criminal Code), fraud (s. 121) or breach of trust (s. 122). Ultimately, the conclusion reached was that no criminal charges should be laid because there was no reasonable likelihood of conviction. The prosecution lacked proof beyond a reasonable doubt.

In the civil proceedings, the Court of Appeal remarked that “detering and denouncing public corruption is a matter not just for the criminal courts because, as is the case here, sometimes

criminal law solutions are unworkable or unsuccessful. Bribery prosecutions are complicated and rare; however, that does not mean the law is powerless to address the “evil” of bribery” (para. 128).

In relation to the Police Headquarters project, an individual found to have accepted a bribe was held accountable in law through the civil courts. Notably, the remedy included an award of \$100,000 in punitive damages. Punitive damages are intended to punish, denounce and deter egregious wrongdoing. This does not preclude also pursuing a prosecution of criminal behaviour, if warranted. However, a further close examination of the evidence, including possible defences and legal challenges to admissibility of evidence in a criminal court, confirmed that the prosecution could not prove the case to the high criminal standard of beyond a reasonable doubt.