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Mike Ferguson Situation Update #4

Mike Ferguson Parole Hearing

Joel Johnston requests letters be sent to appeal for the parole board to approve

Now is the time to put pen to paper. Mike Ferguson's parole application is overdue and he needs some support. We already know that "the other side" has written letters asking that the parole application be denied. Joel has asked all interested parties to write a letter to the parole board and to the Minister of Justice. The following letter was put out by Joel and both mailed and FAXed to the parole board and to the JM. PLEASE NOTE: When putting the newsletter together, the formatting of the paragraphs is lost unless I break each section up into individual paragraphs in the program that is used. I did not have the time to do this in this instance. As such, the letter will be a bit difficult to read due to the lack of paragraph formatting, but all of the info is there and you can use the language as a template for your own letters.

From: dti [mailto:dti@shaw.ca] Sent: Saturday, October 28, 2006 10:31 AM To: 'webadmin@justice.gc.ca' Cc: 'McKay, John' Subject: Parole Application for Mr. Michael FERGUSON Dear Minister Toews: Attached is a copy of a letter submitted by FAX, conventional mail and now electronic mail to yourself and the National Parole Board. Please take the time to read this attachment, and I am certain you will see this is a unique and disturbing case that has implications for police officers and public safety across Canada. My contact information is contained below and I would welcome your response. Thank you for your consideration. Respectfully submitted, Joel A. Johnston

COPY for the Honourable Vic Toews – Federal Justice Minister
National Parole Board of Canada 32315 South Fraser Way.
Abbotsford, BC V2T 1W6 FAX - 1-604-870-2498 RE: Parole Application for Michael FERGUSON Dear Sir or Madam: My name is Joel Johnston, now a twenty-two year member and Sergeant with the Vancouver Police Department. I am currently

email:
fergusonhelp@armiqr.net

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seconded as the Use of Force Coordinator for the Province of British Columbia. I am writing this letter to support the immediate granting of parole without special conditions to Michael Ferguson, who is currently incarcerated at William Head Institution on Vancouver Island. Mr. Ferguson has exceeded the time served requirement for parole eligibility. Mr. Ferguson is an honourable, exemplary, positive, productive, gainfully employed member of his community. Mr. Ferguson is in no way at risk to "re-offend", and is certainly no risk to his community. A review of what landed Michael Ferguson in prison is entirely salient to this letter and process. When I wrote the above paragraph, I felt a sense of sadness and loss. Loss for a community, loss for the law enforcement profession, loss for the Varley family, and loss for the Ferguson family. Mr. Ferguson, at the time of his "offence" was an exemplary veteran member of the Royal Canadian Mounted Police. Then Constable Ferguson was on-duty as a uniformed police officer, serving his community as he had for 19 years, and the only such officer on-duty for over 100 square kilometres. Constable Ferguson was dispatched to attend the Hospital in Pincher Creek where he was met by a confrontational and then assaultive complainant – Mr. Darren Varley. Constable Ferguson tried to verbally calm Mr. Varley down. Mr. Varley instead punched Constable Ferguson in the face after grabbing him, and then pulled his jacket over his head and continued to assault this officer. With no back-up, and now trying to control an intoxicated, violent, distraught, yet goal-oriented subject 20 years his junior, Constable Ferguson was able to gain control of Mr. Varley, to handcuff him and to lodge him in his patrol car. Mr. Varley was under arrest. After returning briefly to the hospital, Constable Ferguson returned to his car to find Mr. Varley had kicked out the windows. As per procedure and in accordance with his mandate and sworn duty to enforce the law, Constable Ferguson returned to the detachment in Pincher Creek. A 70-plus year-old Commissionaire was on-duty at the detachment when they arrived, but left his post when Mr. Varley became violent and confrontational. Constable Ferguson searched Mr. Varley, unhandcuffed him and moved him into a holding cell. As Constable Ferguson was leaving and about to close the cell door Mr. Varley attacked him – again. This time he pulled Constable Ferguson's external body armour vest over his head and grabbed his sidearm, gaining possession of it. In the midst of a fight for his life, Constable Ferguson re-gained sufficient control of his sidearm to fire two rounds (as he had been trained to do) at Mr. Varley in a time-span of .5 – 2 seconds (according to the Courts). The first shot grazed his abdomen, the second shot entered the side of his head. Mr. Varley subsequently died from his wounds. - According to Use of Force research, people that disarm police officers go on to kill the officer and other members of the public in most cases. According to the statistics and research, and in consideration of Mr. Varley's demonstrated violent, goal-oriented behaviour, it is highly likely that Constable Ferguson and the elderly Commissionaire would have been murdered by Mr. Varley that evening. - According to Use of Force research, it takes time for officers to respond to a deadly threat and it takes time for officers to stop responding to a deadly threat (Force Science Research Centre at Minnesota State University – "Time to Start Shooting-Time to Stop Shooting"). According to the science, it is not possible to be responding to the fear of death or grievous bodily harm one moment (as per the Court Judgment) and to halt that response the next moment. Constable Ferguson was eager to tell his story immediately. He knew he did the only thing he could have done to survive. He was advised by his Counsel to cooperate with the investigation and was assured by

his Counsel that he had done nothing wrong. Constable Ferguson provided a detailed statement without Counsel present after being awake for 33 consecutive hours on the same day of the incident. This statement was prefaced with the extremely salient comment: "I don't really remember what happened, but .." Flying in the face of all scientific research on sleep deprivation, post- critical incident stress and memory, this aspect of Constable Ferguson's statement was overlooked from that point forward. - According to the scientific research, individuals who have gone for 24 or more hours without sleeping are as impaired as individuals who are legally drunk. (TIRED COPS, by Dr. Bryan Vila - Police Executive Research Forum). After going for 33 hours without sleep, Constable Ferguson was in no physical condition to give an adequate statement and should have been strongly advised to wait at least 24 hours and get at least one good sleep cycle before making any kind of statement. - According to the scientific research, officers involved in shootings are prone toward variety of emotional reactions including second guessing, memory gaps, inaccurate memories, concentration problems, guilt, and sleep disturbance, all of which could impair the officer's ability to provide an immediate coherent statement based on the facts of the case. (Dr. Alexis Artwohl, Dr. Dave Klinger, Dr.s Audrey Honig and Steve Sultan, PPCT). This is why the Psychological Services Section of the International Association of Chiefs of Police recommends that "Ideally, the officers should be provided with some recovery time before detailed interviewing begins. This can range from a few hours to overnight. Officers who have been afforded this opportunity are likely to provide a more coherent and accurate statement." It was NOT appropriate to recommend that Constable Ferguson provide an immediate statement even without the added disability of being cognitively impaired from sleep deprivation. The completed investigation was forwarded to Alberta Crown Counsel. Alberta Crown Counsel had the Edmonton Police Service and the Calgary Police Service review the incident. Alberta Crown Counsel could not decide whether or not to proceed based upon all of the information they had received. Alberta Crown Counsel sent the file to Manitoba Crown Counsel who decided to proceed with charges against Constable Ferguson. Constable Ferguson was subsequently told to move away from his homestead in Alberta. The Ferguson family relocated to Kamloops, BC. Constable Ferguson was advised by the RCMP of a possible "Suspension without Pay", and had to bargain vigorously to remain suspended with pay. A Crown Prosecutor from Saskatchewan was appointed to handle the matter. This same prosecutor was subsequently convicted of malicious prosecution from a trial he handled years earlier in Saskatchewan (the McMartin Pre-School fiasco). Constable Ferguson was ultimately tried three times. In 2001, 2003 and 2004. After 2 previous hung juries he was convicted by jury of manslaughter in 2004. A letter from a juror was sent to the judge immediately after the conviction stating that several jury members were intimidated by several other 'very aggressive' jurors to convict, and that they believed Constable Ferguson to be not guilty. This is on record and was brought forward as an appeal motion by the Defence. All verdict appeals by the Defence were denied Constable Ferguson was immediately advised by the RCMP that he must retire or risk losing his Pension. Constable Ferguson retired. Upon sentencing, Constable Ferguson was granted a Constitutional Exemption from the four-year minimum mandatory sentence, and sentenced by the trial judge to 2 years less a day for the charge of manslaughter - to be served as house-arrest, along with 500 hours of Community Service, taking into account time

he had already served in Remand. Constable Ferguson completed that sentence on May 13th, 2006 along with roughly 1,000 hours of Community Service On September 25th, 2006, two of three Alberta Appeal Court Judges reversed the Constitutional Exemption, thus re-sentencing Constable Ferguson to 4 years in prison, which according to current law is the minimum sentence for manslaughter involving a firearm. A warrant was immediately issued for the arrest of Mike Ferguson. Mike Ferguson left his job as a manager of 35 employees and surrendered immediately because he wanted to be respectful of the system. Mike Ferguson is in prison in BC currently. Mr. Ferguson is not a criminal. Mr. Ferguson is well-beyond eligibility for parole. If the criteria for the granting of parole are predicated on community risk, likelihood to re-offend, and successful re-integration with the community – these are all assured in Mr. Ferguson's case. Mr. Ferguson's case will serve as a hallmark for police training in the future from an equipment, deployment, training, procedure, and post-incident perspective. The law enforcement community acknowledges the loss of the Varley family, and our hearts go out to them. However Mr. Varley is the one who initiated a deadly force attack against Constable Ferguson. Mr. Varley could have, at any time during this incident, chosen to be cooperative. He would then have been processed, given some time to "sober-up", and subsequently released from custody that same morning. Remember, Constable Ferguson had been an officer for over 19 years and had dealt with these types of situations (save the deadly force assault against him) time and time again. Had Constable Ferguson, on the other hand given up, he would likely have been killed in the cells at Pincher Creek that early morning. There would have been a funeral service full of pomp and ceremony mourning the loss of yet another police officer trying to "protect and serve" their community. The informed law enforcement community is collectively appalled with this particular judgment and the process which allowed it to occur against Mr. Ferguson. We further believe that a Fatality Inquiry should be ordered in the province of Alberta to examine in much greater detail how this tragic event occurred, in an effort to support positive recommendations to reduce the risk of it ever happening again. Thank you for your consideration. Please do not hesitate to contact me with any inquiries you may have. Yours truly, Joel A. Johnston

The Honourable Vic Toews Federal Minister of Justice
Department of Justice Canada 284 Wellington Street Ottawa,
Ontario K1A 0H8 FAX - 1-613-954-0811

Several have written ... let's get on this!

Once again, sorry for the lack of formatting in Joel's letter, but I'm behind the clock on a number of things and start traveling for a month beginning tomorrow.

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