



## **Outcome of investigation into collapse of the CTV building**

I am writing to inform you of the outcome of the Police investigation into the 2011 collapse of the CTV in Christchurch.

This follows a very complex, technical investigation which has been one of the longest and most difficult New Zealand Police has ever undertaken.

As well as extensive investigations by the Police team we have sought a range of expert engineering advice, reconstructed and tested certain structural elements of the building, excavated the CTV site, and sought legal reviews by the Christchurch Crown Solicitor and the New Zealand Government's legal advisers Crown Law.

I am very aware of the length of time this has all taken and I thank you for your patience.

After very careful consideration of all the information available to us, including the legal advice and expert opinion, Police has determined that there will be no prosecution arising from our investigation.

We fully recognise that there will be disappointment with this decision.

Police, Crown Law and the Christchurch Crown Solicitor would like to meet with you in December to explain the decision further, and answer your questions. Details of this meeting are below at the end of this document.

I can say that the investigation did identify significant deficiencies in the CTV building design, and Police considered charges of negligent manslaughter. The Solicitor General's prosecution guidelines were applied, as they are to all our prosecution decisions.

However we concluded that the evidence available was not sufficient to provide a reasonable prospect of conviction in court, as is required under the Solicitor General's prosecution guidelines. Furthermore, technical legal obstacles were identified regarding the length of time between the conduct of individuals and when the deaths occurred. This is a further obstacle to prosecution.

Crown Law has provided a summary of its position. To assist you in understanding how we have reached our decision I have included some of Crown Law's comment here:

### **Crown Law comment – attribute to Brendan Horsley, Deputy Solicitor-General (Criminal)**

*"The decision whether to prosecute rests with Police. But in a complex or high-profile case it is usual for Police to consult with the local Crown Solicitor, and also with the Solicitor-General, before making a decision. In this case Police completed their investigation report on 26 May 2017 and sought the advice of the Christchurch Crown Solicitor, Mark Zarifeh. Mr Zarifeh's advice was in turn reviewed by the Deputy Solicitor-General (Criminal).*

*Decisions to prosecute are governed by the Solicitor-General's Prosecution Guidelines. The Guidelines provide for a two-stage test: (i) the admissible evidence must be sufficient to provide a reasonable*

*prospect of conviction (“evidential sufficiency”); and (ii) the prosecution must be required in the public interest.*

*The investigating Police identified potential charges of negligent manslaughter in relation to Dr Alan Reay and Mr David Harding, the engineers responsible for the design of the CTV building. Police were assisted by a comprehensive engineering report from Beca, which identified a number of significant deficiencies in the building’s design. Beca’s report was peer reviewed by two independent experts, one of whom is based in San Francisco.*

*Negligent manslaughter is an exception to the normal principle that serious criminal offences require a blameworthy state of mind. But “ordinary” negligence, or failure to take reasonable care, is not enough. The prosecution must prove, beyond reasonable doubt, that the particular defendant’s conduct was a “major departure” from the standard of care expected of a reasonable person in the circumstances. This can be a difficult threshold to meet. It requires the jury to be sure that the conduct was so bad that it deserves to be condemned as a serious crime.*

*The prosecution must also prove that the defendant’s negligence caused the death of the individual or individuals concerned, although it need not be the only cause. This too can be difficult, especially where an extreme event such as a natural disaster intervenes.*

*The Crown Solicitor and Deputy Solicitor-General both advised that the “evidential sufficiency” test was difficult and finely balanced. Both considered there were real issues with proof of “major departure” and of causation. Neither considered the prospects of a successful prosecution were high.*

*With some reservations, the Crown Solicitor thought the evidential sufficiency test could be satisfied, relying heavily on Beca’s opinion. The Deputy Solicitor-General disagreed, and thought a conservative approach was warranted. While the prosecution case is supported by Beca’s report, it is not “trial by expert” and the Guidelines require consideration of other evidence, as well as of likely defences. A key difficulty for the prosecution would be in proving the CTV building would not have collapsed in the absence of the identified design errors. The expert peer reviewers were cautious about drawing this conclusion.*

*There is also a technical obstacle to prosecution in this case. The Crimes Act requires death to have taken place within a “year and a day” after the defendants’ negligent conduct ceased. The “year and a day” rule has not been the subject of much consideration by the courts. But the Deputy Solicitor-General considered it is likely to be a complete bar to any prosecution. On the most natural interpretation of events, the alleged negligence ceased when the design process was complete, in 1986. The year and a day rule is an historical anomaly and law reform is currently being considered.”*

**END**

***(Police has released a number of documents including legal opinions and engineering reports to assist in further understanding of the decision. These documents are available via the New Zealand Police website [www.police.govt.nz](http://www.police.govt.nz) )***

I know there will be disappointment with this decision.

There is no doubt that the issues we have dealt with have been very difficult and finely balanced, particularly as the advice and expert opinion we received has evolved over time as the investigation progressed.

I can assure everyone affected by this tragedy that the Police team has worked tirelessly and diligently throughout the investigation.

Ultimately, however, our decision must be based on the evidence before us and the thresholds we must meet.

It is not simply a matter of letting the court decide. Under New Zealand jurisdiction we must be satisfied that there is a reasonable prospect of conviction based on the evidence available before we put a criminal case before the court. Any prosecution must then prove its case 'beyond reasonable doubt'. These tests apply to any criminal matter which we put before the court.

I am aware that some will question why the findings of the Royal Commission of Inquiry into the CTV collapse do not allow a prosecution to proceed. There is no doubt that the Royal Commission was a detailed and thorough examination of the issues which ultimately led to the collapse of the CTV building. However the evidence and findings of the Royal Commission are not in themselves sufficient to meet the test for prosecution, even with the further information gathered during our investigation.

I am also aware that the legal options available following a tragedy like this are different in some other countries. However the 115 deaths in the CTV building occurred in New Zealand, and we could only investigate under relevant New Zealand law.

I understand that this will be a very difficult day for you. I would like to again extend our deepest sympathies to all of you who lost loved ones in the CTV building.

Our thoughts are very much with you today.

**Peter Read Detective Superintendent**

Peter.Read@police.govt.nz

**Details of family meeting:**

Police, Crown Law and the Christchurch Crown Solicitor invite you to a meeting to discuss the decision further, and answer your questions.

**When:** Thursday 14 December - 1.30pm

**Where:** Avonhead Baptist Church,

102 Avonhead Road,

Avonhead,

Christchurch.