

IN THE MATTER OF THE INQUIRY INTO
PEDIATRIC FORENSIC PATHOLOGY IN ONTARIO
The Honourable Stephen Goudge, Commissioner

AND IN THE MATTER OF a Motion for Standing by the
Ontario Crown Attorney= Association

MOTION FOR STANDING OF
THE ONTARIO CROWN ATTORNEYS= ASSOCIATION

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INTRODUCTION

1. The Ontario Crown Attorneys- Association (AOCAA[®]) seeks standing in the Inquiry into Pediatric Forensic Pathology in Ontario (Inquiry[®]) in respect of the issues which affect the OCAA and its individual members. It is submitted that the OCAA has a direct and substantial interest in the Inquiry since Assistant Crown Attorneys form an integral part of the administration of justice. In particular, the use of pediatric forensic pathology in investigations and criminal proceedings is a subject matter over which Assistant Crown Attorneys have experience. Moreover, it is anticipated that the practical experience of certain members of the OCAA may become a subject of interest to the Inquiry for the purposes of its systemic review of the justice system. As a result, the OCAA has an interest in ensuring that the interests of its members are properly represented and protected. In addition, it is submitted that the OCAA represents a distinct ascertainable interest and perspective that will be useful to the Inquiry in carrying out its mandate since it is the organization whose sole objective is to represent the interests of Assistant Crown Attorneys in Ontario.

I. INQUIRY'S MANDATE

2. By Order in Council, the Honourable Stephen Gouge has been appointed as Commissioner of the Inquiry which has been mandated to conduct a systemic review and an assessment of the policies, practices and oversight mechanisms, quality control measures and institutional arrangements of pediatric forensic pathology in Ontario between 1981 and 2001 as they relate to its practice and use in investigations and criminal proceedings. The Commissioner is called on to make recommendations to address systemic failings and restore and enhance public confidence in pediatric forensic pathology in Ontario.

II THE APPLICANT

A. Overview of the OCAA

3. The OCAA is a professional association which was incorporated in 1946 and which represents over 800 Crown Attorneys in Ontario. The OCAA's membership consists of all the non-management trial and appellate counsel who represent the Attorney General for Ontario in the criminal courts of Ontario and before the Supreme Court of Canada.

4. The OCAA's objects relate to the education and training of Crown counsel and the resolution of employment relations issues, including disciplinary matters and professional issues. The OCAA's specific objects include promoting the professional interests of its members; discussing and studying the administration of criminal justice in Ontario and elsewhere; discussing and studying all matters related to the status, roles and duties of Crown Attorneys, Assistant Crown Attorneys, Crown Law Officers and others involved in prosecutorial functions; promoting and encouraging efforts towards the just and efficient enforcement of the law including the public perception of the same; promoting better relations between its members and the employer; and making recommendations or engaging in undertakings or activities consistent with the above purposes.

B. The OCAA's Expertise

5. The OCAA has particular expertise in issues relating to the duties and conduct of Assistant Crown Attorneys who form an integral part of the justice system.

6. The OCAA has experience in providing training and education to Crown Attorneys on all aspects of practice. The education and training programs are provided through educational conferences for members that the OCAA in partnership with the Ministry of the Attorney General, presents twice each year and through the OCAA's annual Crown ASummer School® comprising week-long courses that every Crown counsel is required to attend.

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7. For many years up to 1997, and now again since May 2007, the OCAA has also published a monthly or quarterly newsletter. The Crown's Newsletter includes articles dealing with substantive criminal law, new regulations, summaries of recent cases, commentaries, practice notes and updates on Crown activities all of which are directed toward continuing education and training of Crown counsel.

8. The OCAA's expertise on issues relating to the conduct of Crown Attorneys and the administration of justice is also reflected in the following activities:

- (a) The OCAA has been asked to testify at public inquiries and inquests involving the Crown's role in the administration of justice. Some high profile examples include the Yeo Inquiry, the May/Isles Inquest and the Commission on Proceedings Involving Guy Paul Morin;
- (b) The OCAA is an active member in working groups throughout the province that deal with issues relating to the administration of justice;
- (c) The OCAA has been involved in various committees that have produced reports which impact upon the criminal justice system;
- (d) Committees of Parliament and the provincial legislature have invited the OCAA to make submissions regarding proposed legislation pertaining to issues relating to the criminal law and the criminal justice system; and
- (e) The OCAA regularly consults with other professional legal organizations including the Law Society of Upper Canada, the Ontario Bar Association, the Criminal Lawyers Association, and the Advocates Society. As well, the OCCA is a member of the Canadian Association of Crown Counsel and associates with the International Association of Prosecutors.

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9. The OCAA also has experience acting as a friend of the court on issues related to the administration of criminal justice. On its own or as a member of the Canadian Association of Crown Counsel, the OCAA has intervened in matters in the Ontario Court of Appeal and the Supreme Court of Canada.

III. RULES AND PRINCIPLES GOVERNING STANDING

10. Rule 11 of the Commission's *Rules of Standing and Funding* provides that standing will be granted in the discretion of the Commissioner, in accordance with Section 5 of the *Public Inquiries Act*, the Terms of Reference, the systemic nature of this Inquiry and the desirability of a fair and expeditious proceeding.

11. Section 5 of the *Public Inquiries Act* provides that any person with a substantial and direct interest in the subject-matter of the Inquiry shall be accorded an opportunity to be heard.

IV. OCAA MEETS THE REQUIREMENTS FOR STANDING

12. It is submitted that the OCAA meets the requirements for standing set out in Rule 11 of the Inquiry's Rules of Standing and Funding.

13. The OCAA has direct and substantial interest in the Inquiry because it is the representative of the Assistant Crown Attorneys who, in practice, could be directly affected by the Commission's proceedings and recommendations. The OCAA's interest does not merely involve a concern with the systemic issues being addressed. Since the Inquiry will review individual cases for the purposes of determining what systemic issues they raise, the actions of individual members of the OCAA may become a subject of interest to the Commission. As such, the OCAA has an interest in ensuring that these cases are reviewed in a fair, thorough and expedient manner.

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14. As the only organization whose sole mandate is to speak on behalf of Assistant Crown Attorneys in Ontario, the OCAA represents distinct interests and perspectives that are essential to the Inquiry in fulfilling its mandate. It is submitted that the OCAA's perspective as a representative of Assistant Crown Attorneys would not be duplicative of, and in fact would provide a necessary complement, to the perspective advanced by other parties. The OCAA would provide a valuable complement to the more general perspective of the Attorney General of Ontario who is responsible for all aspects of the justice system, including crown prosecutors.

15. Not only are the OCAA's interests directly and substantially engaged in this Inquiry, but the Association would also draw on the considerable experience and expertise detailed above to make a useful contribution to the Inquiry, thereby assisting the Commissioner in fulfilling his mandate.

16. Finally, it is submitted that the OCAA's participation would assist in ensuring that the Inquiry is fair, thorough and expedient. The OCAA respects the need for the Inquiry to fulfill its mandate expeditiously, and seeks only to ensure that its members interests are fairly and properly represented in the Inquiry's investigation and recommendation stages.

V. CONCLUSION

17. It is respectfully requested that, for all the reasons set out above, the Commissioner grant standing to the OCAA in respect of issues which directly affect the interests of its members individually or as a group.

18. The OCAA does not seek funding.

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19. The OCAA will make oral submission in support of its motion if requested by the Commissioner.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 16th DAY OF JULY, 2007.

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