

IN THE MATTER OF an application by William Mullins-Johnson,
Sherry Sherret-Robinson and seven others for standing and funding at
the Inquiry Into Pediatric Forensic Pathology in Ontario

(Hereinafter called the Applicants)

AFFIDAVIT OF CHARMIAN LEONG

I, CHARMIAN LEONG, student-at-law, of the City of Toronto, Province of Ontario,
make oath and say as follows:

1. I am presently doing a summer internship with the Association in Defence of the Wrongly Convicted (AIDWYC). The position commenced in May, 2007 and concludes at the end of August, 2007. My position is funded through the *Honourable Ian Scott Public Interest Internship Program*.
2. My work is entirely devoted to the individual cases in which AIDWYC is involved arising out of the Chief Coroner's *Review of Criminally Suspicious and Homicide Cases Where Dr. Charles Smith Conducted Autopsies or Provided Opinions*.

The Application for Standing

3. In his public announcement on April 19, 2007, the Chief Coroner, Dr. Barry McLellan, stated:

"The final question was whether the reviewers agreed with the interpretation of the examinations conducted with regard to the cause and, where Dr. Smith provided an opinion, the mechanism of death. In 20 of the 45 cases, the reviewers had some issue with the opinion of Dr. Smith that appeared in a written report, testimony in Court, or both. The concerns raised by the reviewers in these 20 cases ranged from relatively minor to potentially more serious issues. In a number of these cases the reviewers felt that Dr. Smith had provided an opinion regarding the cause of death that was not reasonably supported by the materials available for review.

There were restrictions of liberty arising from findings of guilt, including 12 convictions and one finding of Not Criminally Responsible, in 13 of these cases where the reviewers did not agree with significant facts or with the interpretation of the examinations conducted. To date the reports of the reviewers have been provided to Crown and Defence counsel in three of these 13 cases. The reports in all of the remaining cases will be provided to the Crown and they will then be appropriately disclosed to Defence counsel."

4. AIDWYC was already investigating two of these 13 cases prior to the Chief Coroner's announcement, namely the case of William Mullins-Johnson, convicted in Sault Ste. Marie in 1993 of the murder of his 4 year old niece, and the case of Sherry Sherret-Robinson, convicted in Belleville in 1999 of infanticide in the death of her five month old infant.

5. James Lockyer, a director of AIDWYC, was a member of the Chief Coroner's Committee that assisted in the collection of the cases to be reviewed by the external reviewers as part of the Chief Coroner's investigation. He was asked to contact 10 of the 13 persons referred to by the Chief Coroner in his announcement.

6. As a consequence, there are now nine individuals, including Mr. Mullins-Johnson and Ms. Sherett-Robinson, who have requested AIDWYC's assistance in reviewing their cases. AIDWYC has agreed to review their cases. The nine individuals are the nine Applicants herein. The seven individuals who have not been publicly identified have all, to date, requested

continued anonymity. Each of them was put through a very public, humiliating and traumatic experience when they were charged and convicted of causing the deaths of loved ones. Each has had his or her life torn apart by their prosecution and conviction. Each is extremely vulnerable. They very much want to avoid further publicity. Some may be prepared to 'go public' sometime in the future; however, at least one of them will abandon any claim for a remedy if he/she thought his/her name might re-appear in the public domain.

7. The Commissioner, and Commission Counsel, know the identity of all seven Applicants who have not been publicly identified. It is requested that this state of affairs should continue, and that their anonymity should remain so that they do not have to be identified on this application for standing.

8. All nine of the individuals have asked James Lockyer, barrister and solicitor, to seek standing on their behalf at the Inquiry and to represent their interests. All believe that they provide a unique perspective on the issues which fall in the Commission's mandate, and can make a valuable contribution to the Commission's findings and recommendations. All have substantial and direct interest in the subject matter of the Inquiry. For example, they will likely be seeking findings and recommendations relevant to the following issues:

- a) Do the results of the Chief Coroner's Review, and other findings that the Commissioner may make, reveal systemic problems in the policies, procedures, practices, oversight mechanisms, quality control measures, and institutional arrangements for pediatric forensic pathology in Ontario?
- b) Is there accountability within the system for those individuals who practice the profession of pediatric forensic pathology?
- c) How should potential miscarriages of justice resulting from erroneous pediatric opinions on the cause and manner of death of infants and children be approached? Is the present ministerial review process sufficient? Is the appellate process properly equipped to deal with the fall-out? How should the Attorney General respond to a situation such as this? Should it respond on a case by case basis, or adopt a systemic approach to the cases?

- d) Should those in the position of the nine Applicants have access to funding for their cases? There can be no doubt that each of their cases will involve significant legal work and substantial disbursements will need to be incurred for expert opinions and other purposes.
- e) Do the problems in pediatric forensic pathology stop at Dr. Charles Smith? Do they extend to pediatric forensic pathology throughout the Province and, if so, how can they be addressed? Do they go beyond *pediatric* forensic pathology and extend to the profession of forensic pathology as a whole?
- f) What responsibility do professions other than that of forensic pathology have in ensuring that miscarriages of justice are avoided? Do police institutions, the Crown institutions and the defence bar share any responsibility for what has happened? If so, what can be done to ensure it will not happen again?
- g) Particular problems in pediatric forensic pathology need to be considered. For example diagnoses of *shaken baby syndrome* and *asphyxia* need to be addressed. The interpretation of post-mortem artefacts as pre-mortem 'injuries', a well known cause of wrongful convictions, needs to be addressed by the Commission. The cases for all nine applicants for standing involve these issues in one way or another.

These and many other issues are all matters that the nine Applicants are able to address if granted standing.

9. The Applicants are mindful that the Commission's work is focussed on systemic issues, not individual cases. But the Applicants' cases are bound to play a role in the development of the systemic issues to be considered by the Commission. The facts of their cases provide an underpinning for the Commission's work. They can, therefore, assist in identifying the systemic issues which arise from their cases. Having experienced the consequences of the systemic and institutional failures at the most extreme level, they constitute a powerful voice for systemic and institutional change.

10. The Applicants are joined together in a common cause, and believe that their interests and positions can best be presented jointly, and that this will also be an economical effective means for their representation. For these reasons, they are requesting standing as a group, and not as individuals.

11. The Applicants have already instructed counsel to share information and documentation on their cases with the Commission. All of them have already met the Commissioner in private meetings, and many of them have availed themselves of counselling services offered by the Commission.

12. It is fair to say that likely no one has a more *direct* interest in the subject matter of the Inquiry than the nine Applicants. It is reasonable to suppose that any fair-minded member of the public would agree with this proposition. I believe that the nine Applicants, if granted standing, will be an important resource for, and enhance the findings of, the Commission.

The Application for Funding

13. The Applicants cannot provide the necessary funding for counsel, whether individually or collectively. Indeed, they are unable to fund their own individual cases, which is why they have had to seek the assistance of AIDWYC.

Conclusion

14. The Applicants will provide their names, addresses and other means of contact in a separate confidential letter to the Commission.

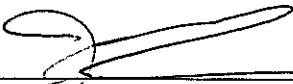
15. The name of the Applicants' counsel is:

James Lockyer
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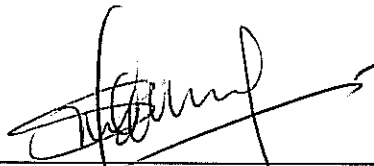
Philip Campbell has agreed to be a second counsel. Counsel will, of course, comply with any rules or accounting protocols established by the Commission.

16. The Applicants wish to make oral submissions through counsel in support of their application to the Commissioner.

SWORN before me this 16th day)
of July, 2007, in the City of)
Toronto, in the Province of)
Ontario)
)



A COMMISSIONER, etc.



CHARMIAN LEONG