

In the matter of the *Public Inquiries Act*, R.S.O 1990, c. P.41

And in the matter of the

INQUIRY INTO PEDIATRIC FORENSIC PATHOLOGY IN ONTARIO

**AFFIDAVIT OF LES HORNE
SWORN JULY 16, 2007**

I, Les Horne, of the City of Burlington, in the Municipality of Halton, MAKE OATH AND SAY:

1. I am the Executive Director of Defence for Children International - Canada (DCI-Canada).
2. My life's work, both paid and volunteer, through governmental and non-governmental organizations, has been devoted primarily to issues involving young people. I was the Director of Sprucedale School for Boys, helped create the Office of Child and Family Services Advocacy and later became the first official Child Advocate in Ontario and Coordinator of the Inter-Ministerial Placement Action Committee. I was also involved in the development and operation of White Oaks Village under the auspices of the Ministry of Reform Institutions (as it was then named) - a training school for younger boys which was transformed into a children's mental health centre. In these roles, I helped to develop policies and procedures for the protection of the rights of children in institutional care in Ontario.
3. I understand from a variety of public reports, and from information received from DCI-Canada's counsel Suzan Fraser and do verily believe to be true that the Inquiry into Pediatric

Forensic Pathology in Ontario (the Inquiry) was established by the Government of Ontario under the *Public Inquiries Act*, R.S.O. 1990 c. P.41, on April 25, 2007.

A. Defence For Children International-Canada

4. Defence for Children International (DCI) is an independent, grassroots human rights organization with a mission to promote and protect the rights of the child through concerted, international actions. It was founded in Geneva, Switzerland in 1979, the International Year of the Child. DCI played a significant role in the creation and ratification of the United Nations Convention on the Rights of the Child, which was adopted November 20, 1989 (the Convention). DCI has consultative status with the Economic and Social Council of the United Nations, UNICEF and the Council of Europe.

5. DCI-Canada is part of the international network of organizations, all of which are affiliated with the international secretariat of DCI in Geneva, Switzerland. These national sections of DCI monitor the implementation of the Convention in their respective countries. The DCI international network provides a link to organizations throughout the world as well as credibility with groups involved in human rights work and particularly the rights of children and youth.

6. DCI-Canada was recognized in June, 1989 and incorporated as a non-profit organization in Canada in 1990. The Board of Directors is composed of 9 elected, volunteer directors. The Board meets monthly. Minutes are kept of these meetings in accordance with the requirements

for registered charities. DCI-Canada has 30 members from across Canada. These members pay membership dues in the amount of \$20.00 per year.

7. In Canada, DCI-Canada has been involved internationally, nationally, and provincially with juvenile justice issues, public education programs on children's rights issues, and the prevention of violence against children, and particularly the prevention of institutional child abuse. DCI-Canada's activities in these areas include:

- DCI-Canada provided leadership among civil society organizations in the campaign to establish an independent Child Advocate's office in Ontario. DCI-Canada led and coordinated advocacy efforts among community groups and non-profit organizations, provided expert policy analysis of legislative proposals and made submissions to the legislative committee responsible for studying relevant legislation. DCI-Canada's recommendations from two reports (described below) were largely implemented when the Ontario government passed Bill 165, the *Provincial Advocate for Children and Youth Act, 2007*;
- The June, 2003 publication and release of the report *It's Time to Break the Silence: Creating Meaningful Access to Rights and Advocacy Services for Young People in Care in Ontario* by Matthew Geigen-Miller which reported an increasing number of deaths of young people in the care of the state, the lack of an independent child death review body, and the lack of independence of the Child Advocate's office. A copy of that report is attached hereto and marked as Exhibit "A" to this my affidavit;

- The June, 2006 publication and release of the report *Child Advocacy Renewal in Ontario* by Matthew Geigen-Miller which reported the progress toward establishing an independent Child Advocate's Office in Ontario. A copy of that report is attached hereto and marked as Exhibit "B" to this my affidavit;
- Supporting the work of Justice for Children and Youth in their participation at the inquest into the death of James Lonnee;
- In November, 2002, DCI-Canada and its Youth in Care Committee successfully applied for standing and participated fully in the inquest into the death of Stephanie Jobin who died at the age of 13 as a result of being restrained in a Brampton group home where she resided;
- In January, 2004, DCI-Canada and its Youth Justice Action Group successfully applied for standing and participated fully in the inquest into the death of David Meffe who died at the age of 16 as a result of hanging himself in the Toronto Youth Assessment Centre, a youth detention facility that was closed shortly after the inquest concluded.
- DCI-Canada intervened at the Supreme Court of Canada in *Baker v. Canada (Ministry of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, a case concerning the rights of children with Canadian citizenship and in the Ontario Court of Appeal in *Francis v. Canada (Ministry of Citizenship and Immigration)*, (1999, C29900), another key immigration case affecting children;

- Assisting a number of the young victims from the Bluewater facility (a correctional facility where children were abused at the hands of guards). Due to a riot, these children were moved to the Elgin-Middlesex Detention Centre where they were met with batons and further physical assaults. DCI-Canada has been instrumental in advocating for the young persons traumatized in Bluewater and in coordinating and facilitating psychological and psychiatric assessment and follow up treatment, as well as involvement on their behalf in litigation which is now resolved;
- Submissions to the federal Legislative Review consultations respecting the rights of children;
- In 1990, the preparation and publication of *Children Have Rights Too! A Primer on the U.N. Convention on the Rights of the Child*, plain language version of the Convention on the Rights of the Child created for children;
- Monitoring Canada's performance on the implementation of the United Nations Convention on the Rights of the Child and attending at the presentation of the first report on its progress at the United Nations Committee on the Rights of the Child in 1995; and
- DCI-Canada is a founding member of the Canadian Coalition on the Rights of the Child, the coalition of civil society organizations which monitors Canada's compliance with the Convention, and which is responsible for reporting on behalf of nongovernmental organizations to the United Nations Committee on the Rights of the Child. DCI-Canada is an active contributor to the Coalition's

submissions to the United Nations Committee on the Rights of the Child and is responsible for the Coalition's submissions regarding juvenile justice, which includes the treatment of incarcerated young people.

8. DCI-Canada's mandate includes the education of Canadians regarding matters pertaining to children's rights, developing awareness of and a commitment to children's rights, particularly among children and adolescents, and encouraging the creative involvement of children and youth in activities and initiatives concerning their rights and the manner in which they are exercised in Canada and abroad.

9. DCI-Canada works on a variety of national and international projects. Overseas, DCI-Canada has been involved in the Mapping Our World children's rights project, funded by the Canadian International Development Agency (CIDA) Development Education Program. DCI-Canada coordinated the Children as Peacebuilders Project (CAP) funded by the CIDA Peacebuilding Fund. CAP's purpose was to increase the peace-building and conflict prevention roles, capacities and voices of young people in nine war-affected countries. The project provides positive alternatives for youth caught in situations where their human rights are systematically denied and their options to become responsible and engage citizens are limited. At the invitation of the Government of Canada, DCI-Canada developed a program for children affected by armed conflict in Africa, which received financial support under the CIDA's Canada Fund for Africa.

B. Issues at the Inquiry and Knowledge and Expertise of DCI-Canada

10. I understand that the Order in Council establishing the Inquiry stated the mandate as follows:

4. The Commission shall conduct a systemic review and assessment and report on
 - a. the policies, procedures, practices, accountability and oversight mechanisms, quality control measures and institutional arrangements of pediatric forensic pathology in Ontario from 1981 to 2001 as they relate to its practice and use in investigations and criminal proceedings;
 - b. the legislative and regulatory provisions in existence that related to, or had implications for, the practice of pediatric forensic pathology in Ontario between 1981 to 2001; and
 - c. any changes to the items referenced in the above two paragraphs, subsequent to 2001

in order to make recommendations to restore and enhance public confidence in pediatric forensic pathology in Ontario and its future use in investigations and criminal proceedings.

11. I further understand that on June 18, 2007, the Commissioner made an opening statement in which he identified the following objects as flowing from the Terms of Reference of the Inquiry:

- Ensuring that no one will have to endure the horror of being charged criminally, or having a family unit pulled apart, or being wrongfully convicted because of flawed pathology findings or evidence.
- Ensuring that pediatric forensic pathology appropriately supports society's interest in protecting children from harm and ensuring that those individuals who do harm children are brought before the courts to be dealt with according to the law.
- Ensuring that when a child dies in circumstances that might be described as criminally suspicious the death investigation is detailed, thorough, objective, compassionate, and balanced.

12. I further understand that in the same opening statement of June 18, 2007, the Commissioner identified the following issues within the scope of the Inquiry:

.....

c) how key institutions within our justice system work together, and how well they do so. We will examine the interaction between pediatric forensic pathologists, the police, the Coroner's office, Crown Attorneys, and others. We will identify best practices to avoid tunnel vision during investigations and criminal proceedings involving pediatric forensic pathology;

d) the evolution of pediatric death investigation procedures;

e) different models of death investigation and reporting including coroner-based systems and medical examiner-based system, their strengths and weaknesses, and what we can learn from other jurisdictions;

13. DCI-Canada has substantial special knowledge of: the protection of children from violence; addressing and preventing institutional child abuse; and the examination of deaths of children and youth in residential care.

14. DCI-Canada's substantial special knowledge is evident, in part, in its participation in three Coroner's inquests in the deaths of children who were in the care of the state:

- James Lonnee, age 16, died while in custody at the Young Offender Unit of the Wellington Detention Centre. He was beaten to death by another youth inmate while both young people were being held in a 1.5 x 1.5 metre segregation cell.
- Stephanie Jobin, age 13, died from asphyxia as a result of being physically restrained by two staff in a Brampton group home. Stephanie suffered from a developmental disability and was a crown ward in the care of a Children's Aid Society.

- David Meffe, age 16, committed suicide by hanging while in custody at the Toronto Youth Assessment Centre, a young offender secure detention facility that has since been closed because of the deplorable conditions. The inquest also heard evidence that David had been abused by other young people in custody prior to his death.

15. As part of its work to address and prevent institutional child abuse, including its participation in these three inquests and its policy work regarding the legislative proposal to reform Ontario's Child Advocate office, DCI-Canada has made submissions and recommendations to improve the investigation of deaths of children and youth in residential care. The main concerns of DCI-Canada's submissions and recommendations on child death investigations have been:

- Improving public confidence in the pediatric death review procedures in Ontario;
- Ensuring that child deaths are investigated by an impartial body, and in particular ensuring that deaths of children in government care are investigated by a body that is independent from the government and from the agencies and institutions involved in the death;
- Making Ontario's pediatric death review procedures more accountable and transparent through public reports on the methods and results of pediatric death investigations;
- Strengthening pediatric death review procedures by ensuring that the body responsible for pediatric death investigations is granted investigative powers and provided with adequate funding;

- The roles of actors and institutions in the criminal justice system, child protection system, and child advocacy agencies in pediatric death investigations;
- Ensuring that pediatric death review procedures are provided with a high level of expertise in the form of a multi-disciplinary team; and
- The evolution of pediatric death review procedures in Ontario, particularly with respect to deaths of children who are in government care.

C. DCI-Canada's Child Rights-Based Perspective

16. DCI-Canada's perspective in this Inquiry flows from our mandate to promote the implementation of the Convention. Important provisions in the Convention relevant to the Inquiry include:

- **Article 3** of the Convention provides that “in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”;
- **Article 12** of the Convention requires States Parties to “assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child”;
- **Article 19** of the Convention requires States Parties to “take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child”; and

- **Article 19** of the Convention further provides in protecting children from violence, States Parties shall provide for the “...identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore...”

These articles of the Convention are the framework for the child rights-based perspective that DCI-Canada brings to the issues in the Inquiry.

17. In my view, the Commissioner in his opening statement of June 18, 2007, paragraph 13, has alluded to the possible tension between two aims, both in the public interest, that concern the Inquiry: (1) preventing miscarriages of justice that result from improper pediatric forensic pathology findings or evidence; and (2) supporting society’s interest in protecting children from harm and ensuring that those individuals who do harm children are brought before the courts to be dealt with according to the law. The first aim is concerned with preventing “false positives,” or the erroneous over-identification of violence against children. The second aim is concerned with preventing “false negatives,” or the erroneous under-identification of violence against children. In formulating his recommendations for systemic change, the Commissioner may be called upon to balance these two valid aims. A child rights-based perspective is not sufficient to inform such balancing, but it is necessary. DCI-Canada’s child rights-based perspective provides the Inquiry with a unique perspective that will assist the Commissioner to balance broad policy considerations that require the weighing and balancing of competing interests.

18. DCI-Canada is also concerned with ensuring that children who are living in the care,

custody or control of the government or government-mandated residential care facilities are not overlooked in the examination of systemic issues, and the formulation of recommendations for systemic change. This includes the examination of systemic issues and the formulation of recommendations regarding pediatric death investigations.

19. In my view, some consideration of the unique circumstances of children in institutional care is required to reach a robust and complete understanding of Ontario's legislation, policies and procedures for pediatric death investigations, and to make appropriate recommendations for systemic change. Children in institutional care are often invisible to the communities in which they live, to the public, and to policy makers. This invisibility creates the risk that the unique circumstances and hazards of institutional care will be overlooked in systemic investigations and policy-making exercises. Yet, it is the same invisibility that contributes to their vulnerability to abuse. Although children in institutional care may be a minority group among the children who are affected by pediatric forensic pathology, they are a particularly vulnerable group and therefore require special attention and care. DCI-Canada's long-standing expertise and concern with the rights and wellbeing of children in institutional care contributes a unique perspective that will assist the Commissioner.

20. In an effort to operate according to the spirit of Article 12 of the Convention, DCI-Canada also acts as a platform for the perspective, experience and voice of young people who are survivors of violence, and/or who have lived in state care and government-mandated residential care facilities. In the James Lonnee, Stephanie Jobin, and David Meffe Inquests, DCI-Canada organized groups of young people with relevant first hand experience to participate in the

inquests. In each inquest, the youth group applied for standing. The youth group was not granted standing in the James Lonnee Inquest. In the Stephanie Jobin and David Meffe Inquests, the youth groups were granted standing in conjunction with DCI-Canada. In these two inquests, the youth groups met regularly to review the evidence heard in the inquest, to instruct counsel, and to formulate recommendations.

21. If granted standing in the Inquiry, DCI-Canada will organize a youth group similar to those organized for Coroner's inquests in the past. DCI-Canada will partner with both youth-run and youth-serving organizations to develop a group that has direct, first-hand experience with issues relevant to the Inquiry. This group will meet regularly to review the evidence presented in the Inquiry, to give guidance to counsel, and to assist in the formulation of recommendations for systemic change. The perspective of young people who have direct, first hand experience with such issues as surviving violence and the investigation of violence against children provide the Inquiry with a perspective that is different from other parties, and will assist the Commissioner in making recommendations for systemic change.

D. Funding

22. DCI-Canada will not be able to participate in the Inquiry without funding provided by the Attorney General in accordance with the Inquiry Terms of Reference.

23. DCI-Canada is a charitable non-profit organization. It has historically been sustained with membership fees of \$20.00 per member, small personal donations and minor grants that were specified for a particular purpose. An example would be a grant of \$20,000 from the Laidlaw

Foundation to support a youth engagement project.

24. Most of our work is carried out through the efforts of Board members, members, volunteers and pro bono support from interested professionals.

25. DCI-Canada does not engage in any major or public fundraising campaigns and, in fact, has made a conscious decision not to compete for scarce charitable dollars with other Canadian charities that provide direct services to youth such as food and shelter.

26. DCI-Canada had received two grants from the Canadian International Development Agency (CIDA) to engage internationally in peacebuilding activities with youth. The projects were successful and when the Canada Fund for Africa was established within CIDA, DCI-Canada was encouraged to put forward a proposal for a three million dollar project. The project called Restoring Peace was developed in 2004 and subsequently approved. DCI-Canada's use of these funds is subject to a contract with the Government of Canada. The funds are carefully monitored and unused funds must be returned to CIDA. Programs are carried out in partnership with local NGO's in three countries in Africa: Angola, Burundi and Uganda. The fourth country, Kenya, plays a unique role of coordinating activities between the countries and ensuring that information and learning is shared.

27. The Restoring Peace project supports youth, particularly child mothers, who have suffered through the horrors of armed conflict, including abduction, rape, brutality, hunger, physical abuse, loss of family and abandonment. The project helps youth to develop skills and find

employment including small self-directed businesses. The participants are also provided with education about their rights and assistance with social issues including legal issues.

28. This project is scheduled for completion in 2007 but at least two of the countries require some additional time and resources to make the best use of the work achieved to date.

29. DCI-Canada's most recent financial statements cover the fiscal years 2005 and 2006.

Attached hereto and marked as Exhibit "C" to this my Affidavit is a true copy of the *Defence for Children International-Canada Audited Financial Statements: June 30, 2005 and 2006*.

These financial statements reflect the flow-through of the funds provided by CIDA specifically for this project. As noted in the balance sheet, most of DCI-Canada's funds are required for the project and the Board has committed most of DCI-Canada's unrestricted assets to continuing residual support over the next year.

30. Aside from the CIDA funding which is specifically directed to the work in Africa and carefully monitored, DCI-Canada has few assets except for the time and energy of its Board members and volunteers.

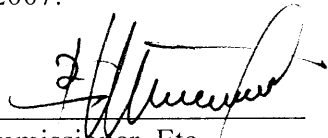
31. I am informed by DCI-Canada's counsel Ms. Fraser and do verily believe to be true that the cost of legal representation in the Inquiry's hearings can be expected to be \$10,000-\$12,000 per week, which does not include disbursements or GST. I further understand that it is common for a public inquiry to hold hearings for a number of weeks.

32. Given that the cost of legal representation in hearings lasting 1-2 weeks would consume all of DCI-Canada's available funds, legal representation for the Inquiry is beyond DCI-Canada's financial capacity.

33. Legal representation in lengthy hearings is also far beyond the scope of any pro bono work that has been performed for DCI-Canada in the past, or that could be reasonably requested from our members and volunteers.

34. I make this affidavit in support of DCI-Canada's application for standing and for no other or improper purpose.

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



A Commissioner, Etc.



Les Horne

**ROUMIANA MINTCHEV, a Commissioner, etc.,
City of Toronto, for Suzan E. Fraser,
Barrister and Solicitor.
Expires May 28, 2010.**