

**INQUIRY INTO
PEDIATRIC FORENSIC
PATHOLOGY IN ONTARIO**



**COMMISSION D'ENQUÊTE
SUR LA MÉDECINE LÉGALE
PÉDIATRIQUE EN ONTARIO**

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**INTERVIEW SUMMARY
DOROTHY ZWOLAKOWSKI**

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Background and Role¹

From 1995 to 2001, Ms. Zwolakowski worked at the Hospital for Sick Children ("HSC"). During that time Ms. Zwolakowski had little to do with the Suspected Child Abuse and Neglect Team ("SCAN Team") or the pathology department, and had no contact with Dr. Charles Smith.

In July 2002, Ms. Zwolakowski started to work for the Office of the Chief Coroner of Ontario ("OCCO") as the Executive Officer, Investigations. She replaced Jeff Mainland, who left that position in May 2002. Ms. Zwolakowski reported to Dr. Jim Cairns, Deputy Chief Coroner ("DCCO").

On her first day of work, Dr. James Young, the Chief Coroner of Ontario ("CCO"), announced that he was leaving the OCCO. At that time, Dr. Barry McLellan took over as the acting CCO. Ms. Zwolakowski had very little contact with Dr. Young between the start of her employment and Dr. Young's departure from the OCCO.

Ms. Zwolakowski's primary responsibility was to support the work of the Pediatric Death Review Committee ("PDRC"), the Death Under 2 Committee; and Dr. Cairns in his investigations and in his executive capacity as DCCO.

¹ Ms. Zwolakowski's resume, PFP057433.

Ms. Zwolakowski does not recall discussing Dr. Charles Smith when she started her new position or hearing any discussion about any of the media coverage of Dr. Smith. Her immediate task was to prepare the cases to be reviewed at the September meeting of the PDRC.

Knowledge re Concerns Surrounding Dr. Smith

Ms. Zwolakowski believes that she first heard mention of Dr. Smith in October 2002, in the context of the *R. v. Kporwodu and Veno* criminal proceedings. Dr. Cairns needed to prepare an affidavit for the purpose of that case. Ms. Zwolakowski attended meetings with counsel for the OCCO when Dr. Cairns prepared his affidavit and the chart of certain prior cases that involved Dr. Smith. Dr. Cairns swore an affidavit dated October 23, 2002, and a supplementary affidavit dated November 20, 2002.²

Ms. Zwolakowski understands that Dr. Cairns referred in his affidavit to two reviews of Dr. Smith's work that had taken place:

- First, Ms. Zwolakowski was aware of a review completed by Dr. Blair Carpenter, which had involved Dr. Chiasson selecting and sending certain non-criminal cases to Dr. Carpenter for assessment.³ Ms. Zwolakowski understood that the purpose of this was to provide some level of quality assurance of Dr. Smith's work so that he could continue to do medico-legal autopsies for the OCCO.
- Second, at that time, Ms. Zwolakowski was aware of, but did not know much about the other review described in Dr. Cairns' affidavit. Ms. Zwolakowski knew there was a chart that listed certain of Dr. Smith's cases that had been "reviewed", but she did not know who completed that review, or how. Ms. Zwolakowski did not prepare the chart of the 17 cases that had been reviewed.

Ms. Zwolakowski did prepare a chart to assist with the notification of the next of kin for the 17 deceased children. The OCCO delegated some of the contact responsibilities to the relevant Regional Supervising Coroners. If the OCCO knew that families had counsel involved, the OCCO or the Regional Supervising Coroner would have made contact through counsel.

Ms. Zwolakowski was present with Dr. Cairns when he prepared to give his evidence, and she attended court with him when he testified on November 19,⁴

² PFP031169 and PFP029019.

³ PFP056705 and attachments.

⁴ PFP021125.

November 20,⁵ November 28,⁶ and November 29, 2001.⁷ She was not present for any other testimony.

Ms. Zwolakowski interacted with Dr. Smith through the PDRC and the Deaths Under 2 committee until he withdrew from those committees in April and July 2003. In addition, from time to time, Ms. Zwolakowski would accompany Dr. Cairns when he went to HSC to observe an autopsy. At that time, Dr. Smith was still performing autopsies for the OCCO, but not on criminally suspicious or homicide cases. Ms. Zwolakowski interacted with Dr. Smith on those occasions. Ms. Zwolakowski would occasionally attend the weekly clinical pathology rounds at HSC.

Ms. Zwolakowski is not certain how many autopsies she saw Dr. Smith perform, but she does not recall any differences in the way Dr. Smith performed autopsies compared to others. Ms. Zwolakowski understood that Dr. Smith was a good teacher.

From time to time people, including Regional Supervising Coroners, would call Dr. Cairns looking for autopsy reports from Dr. Smith. Ms. Zwolakowski recalls that these callers were concerned that Dr. Smith's reports were late, and/or that they could not reach Dr. Smith. Dr. Cairns would then ask Ms. Zwolakowski to contact Dr. Smith and ask about the status of the report. Ms. Zwolakowski recalls contacting Dr. Smith by telephone, or in person at HSC. Ms. Zwolakowski recalls that if Dr. Smith was present, she would deal with him directly regarding the report. If he was not, she would deal with Maxine Johnson (Maxine Raymond).

Ms. Zwolakowski observed Dr. Smith's office on several occasions. She recognized that he had a small office, but she was concerned about the apparent lack of organization in the office. She observed that papers, pathology materials, glass slides, tissue blocks, books and journals covered all available desk space, and were piled on the floor and other surfaces. Often there was nowhere to sit down in his office. According to Ms. Zwolakowski, Dr. Smith appeared to have more material in his office than other pathologists appeared to have in their offices.

Ms. Zwolakowski recalls Dr. Cairns stating that Dr. Smith needed more administrative assistance to help him run his practice. Ms. Zwolakowski does not recall any discussion with Dr. David Chiasson concerning Dr. Smith or his office.

From January to July 2003, Ms. Zwolakowski recalls that Dr. Smith:

⁵ PFP021219.

⁶ PFP023389.

⁷ PFP023573.

- was the subject of a number of media stories about Sharon, Jenna and Tyrell's cases;
- became significantly less available to Ms. Zwolakowski and that he was frequently absent from HSC, and failed to return her telephone calls and pages; and
- was absent from meetings of the PDRC and the Deaths Under 2 Committee until he formally withdrew from the committees in April and July 2003

PDRC Concerns

Ms. Zwolakowski recalls discussions at the PDRC about Dr. Smith and the general concern about him continuing to attend the meetings in light of all the media attention. Members of the PDRC were worried about the integrity of the committee, and ensuring that its work was taken seriously. The people raising the concerns included: Dr. Desmond Bohn, Dr. Robin Williams, Dr. John Watts, Dr. Ted Cormode. They were also concerned about Dr. Smith as a person. They had worked with him for years, and they had respected his opinion. They were concerned about how he was handling the pressure, and hoped that he was dealing well with it.

At some point, Ms. Zwolakowski was informed that Dr. Smith was no longer the Director of the Ontario Pediatric Forensic Pathology Unit. ("OPFPU"). Ms. Zwolakowski was not involved in any discussions leading up to that decision.

Missing Slides from Valin ██████████ Case November 2004 – January 2005

Ms. Zwolakowski recalls that in November 2004, Dr. McLellan, received a fax from Phil Downes of the Crown Law Office Criminal.⁸ Mr. Downes asked Dr. McLellan to help him locate material related to the death of Valin ██████████. Dr. McLellan asked Ms. Zwolakowski to help locate that material. Ms. Zwolakowski contacted HSC, but HSC had no record of the case. Ms. Zwolakowski quickly discovered that the autopsy had not been performed at HSC and that Dr. Smith was consulting on the case, but that he had not prepared a report. The OCCO would not necessarily be aware that one of its fee-for service forensic pathologists was doing a consultation on a case.

Ms. Zwolakowski recalls that on November 26, 2004, she and Dr. Cairns visited Dr. Smith at the OPFPU to ask him about and for the missing materials from the Valin ██████████ case. They met with Dr. Smith in the pathology boardroom. Dr. Cairns asked Dr. Smith about the material, but Dr. Smith did not appear recall that he had been involved in such a file. Ms. Zwolakowski recalls being surprised

⁸ PFP003995.

that Dr. Smith did not go and look for the material, given the urgency of the situation.

Someone then went to locate Maxine Johnson to help find the materials. She found Dr. Smith's working file in a filing cabinet in his office and brought it to the boardroom. Ms. Zwolakowski recalls that there were only a few pieces of paper in the file, including a letter from the HSC Suspected Child Abuse and Neglect Team ("SCAN Team") and an older fax or letter from either the Crown or Dr. Rasiah, the pathologist who conducted the autopsy. Ms. Zwolakowski recalls that there were no slides in the file.

On November 29, 2004, Ms. Johnson called Ms. Zwolakowski and advised that she had found the slides in Dr. Smith's office. Ms. Zwolakowski picked up the slides from HSC the next day. It was clear to Ms. Zwolakowski that not all of the slides, and none of the tissue blocks had been located. Ms. Zwolakowski and the OCCO advised Mr. Downes that they had located some of the missing material.

On December 7, 2004, Dr. McLellan gave the slides to Dr. Michael Pollanen, then the Medical Director of the Toronto Forensic Pathology Unit in the OCCO, to be catalogued.

On December 10, 2004, Dr. McLellan, Al O'Marra, Dr. Cairns and Ms. Zwolakowski met with Mr. Downes to discuss the situation involving the slides. Decision was made that all available pathological materials will be reviewed by Dr. Pollanen and that a report be prepared. The Crown agreed to provide Dr. Pollanen with the autopsy and scene photographs for his review, and did so on December 15.

On January 19, 2005, Dr. Pollanen delivered his first report on the death of Valin ██████████.⁹ Ms. Zwolakowski understands that after reviewing this report, Dr. McLellan asked Dr. Cairns to meet with Ken Campbell, Director of the Crown Law Office Criminal, and to give him Dr. Pollanen's report. This meeting took place on February 11, 2005.

On May 6, 2005, Maxine Johnson called Ms. Zwolakowski and said that she had located an additional 7 slides from the Valin ██████████ case in Dr. Smith's office. Ms. Zwolakowski informed Dr. McLellan that more slides had been located, and went to the HSC to retrieve them. Ms. Johnson had located the slides in a box containing many loose slides. Ms. Zwolakowski searched Dr. Smith's office and located three more slides and the 28 tissue blocks from the Valin ██████████ case.

It was clear to Ms. Zwolakowski when she was attempting to locate the Valin ██████████ slides there were numerous slides in Dr. Smith's office at the OPFPU. Ms. Zwolakowski believes that this would have been obvious to anyone in his

⁹ PFP003797

office. Ms. Zwolakowski was concerned that the slides were not stored in the storage room where they would normally be filed.

Tissue Audit – March to June 2005

On March 30, 2005, Dr. McLellan announced that the OCCO would conduct a tissue audit of pathological materials in the OPFPU. Dr. McLellan wanted to ensure that that the OCCO could account for all pathology materials for the OPFPU from 1991 to date. The OCCO audited approximately 70 cases, 40 of which were cases involving Dr. Smith.

Ms. Zwolakowski recalls four people helping her with the tissue audit: Ms. Johnson, and two HSC pathology assistants, Jimmy Choi, Don Perrin; and Steve Johnson (Lab Technician). The audit team held an initial meeting to discuss how they would conduct the audit. Ms. Zwolakowski recalls that the audit team did not know what to expect, or how long it would take them to account for all of the slides and tissue blocks that should be present. The audit commenced on approximately April 7, 2005, and Ms. Zwolakowski spent approximately six weeks at HSC to complete the audit.

Dr. Glenn Taylor advised Dr. Smith that the audit would be taking place, that representatives of the OCCO and HSC would be going through his office, and that he should remove his personal items. Ms. Zwolakowski did not see Dr. Smith during this time.

The audit team first looked for slides and tissue blocks in the storage area, which was where they would normally have been stored. The audit team pulled the slides from a metal cabinet in the storage room to verify that all the slides that should have been there could in fact be found.

The audit team then went through Dr. Smith's office. To Ms. Zwolakowski, it was obvious that there were slides and other materials of interest located in Dr. Smith's office. The audit team found slides on his desk, and under his papers. They located 35 mm slides at various locations in his office. Ms. Zwolakowski describes the office as disorganized, with slides and materials scattered everywhere.

Ms. Zwolakowski kept the slides from the 70 cases under audit separate from the others. If a slide was from one of the 70 cases under audit, the audit team placed the slide into a metal cabinet, sorted by case. If the slide came from a case that was not one of the 70 cases under audit, the HSC filed the slides where they belonged. Slides from the 70 cases were not re-filed at the conclusion of the audit. Ultimately, many of those slides from cases involving Dr. Smith were taken to the OCCO for the purposes of the Chief Coroner's Review. The OCCO documented the slides that it removed from Dr. Smith's office.

The audit team located tissue blocks and slides. If a tissue block related to one of the 70 cases, and all of the slides were located for that case, the tissue block was filed and not removed from the HSC.

Ms. Zwolakowski found several unusual items in Dr. Smith's office. For example, she discovered containers that once contained human wet tissue, but whose contents were now dried out because the formalin had evaporated. In addition, Ms. Zwolakowski located a Tupperware container that appeared to contain the rib cage of an infant. Ms. Zwolakowski found this to be unusual.

On June 7, 2005, Dr. McLellan issued a press release announcing the results of the tissue audit.¹⁰

Ms. Zwolakowski reported that at the end of the audit, Dr. Smith's office was much more orderly than before. Ms. Zwolakowski recalls that HSC needed the office and the pathology department was moving. HSC staff placed the contents of Dr. Smith's office into 59 boxes. Ms. Zwolakowski was concerned that the OCCO might need future access to the contents of the boxes, and that HSC might at some point send the boxes to Dr. Smith. She observed that the boxes contained a variety of potentially important material, and included unopened envelopes that appeared to contain evidence from criminal proceedings in other jurisdictions.

Dr. Taylor and Dr. McLellan agreed that D/S/Sgt. Girling, Maxine Johnson and Ms. Zwolakowski should go through the boxes. They did not attempt to write down a description of every item in each box. Instead, they roughly categorized and labelled the boxes (e.g. Personal items, OCCO, originals, cases for review).

There was nothing left in the office except the microscope, Dr. Smith's desktop computer, and his working files. In November 2005, Dr. Smith agreed that the OCCO could take possession of the working files. On November 18, 2005, 24 bankers boxes, containing Dr. Smith's working files, were transferred from HSC to the OCCO. These files remain secured at the OCCO.

¹⁰ PPF033962.