

1

The Death of a Child and the Criminal Justice System

The sudden, unexpected death of a child is a devastating event for parents, for family, and for the entire community. If something suggests that a criminal act may have been involved, the devastation takes on a further tragic dimension. This reality lies at the core of the cases we examined at this Inquiry. Each case tells the story in its own way. But the theme remains as constant as it is powerful.

For the parents, the loss is shattering. Children are not supposed to die unexpectedly, and certainly not before their parents. If a suspicion arises that a parent killed the child, the death is only the beginning of the nightmare. The parent is immediately subjected to an intensive police investigation that inevitably stands in the way of any grieving process. If a charge is laid, it is very likely to be a serious one, with the parent removed from the home and often held without bail. The child protection authorities will likely seize the surviving children, remove them from the home, and place them in care. Emotions in the community will often run high. Each new trauma builds on the ones before.

For the surviving children, the impact is profound as well. They are often very young themselves, yet must cope with the sudden inexplicable loss of a sibling. If one of their parents is suspected, the children will likely be removed from their home and family, sometimes for years or even permanently. The same fate may befall children born later to the parents. They must live with the horror that the parent they love is suspected of killing a brother or sister.

For the extended families, there is also much pain. The child's death is their loss too. Some family members will be prepared to sacrifice everything to defend their loved one against any criminal charge. Others may be convinced of the suspected parent's guilt. Splits can emerge that remain painful for years, if not forever.

If the person suspected is not a parent but the child's caregiver, such as a babysitter, there can be similar trauma. Babysitters are often young people themselves. The shock of being suspected of killing a child in their care is profound.

The families of young suspects will also likely exhaust all the family's resources to come to their defence. A suspected caregiver who is charged faces the same lost freedom and the same community stigma as a suspected parent.

For the community itself, the death of a child in criminally suspicious circumstances is deeply disturbing. Children are the community's most precious and most defenceless asset. The sense of outrage and the urgent need to understand what happened are overwhelming.

Thus, the tragedy of a child who dies unexpectedly in suspicious circumstances has many victims. It becomes vital for society to deal with the tragedy in a way that is right and just, and that allows all those affected to come to terms with it. The criminal justice system is central to this task. It must seek to determine whether there is truth to the suspicion that the child was killed and, if so, by whom. Despite the complex and difficult challenges of investigating and adjudicating pediatric death cases, the criminal justice system must do so correctly and fairly, often in a highly charged emotional atmosphere.

The consequences of failure in these circumstances are extraordinarily high. For the parent or caregiver who is wrongly convicted, it almost certainly means time, perhaps years, unnecessarily suffered in jail, a shattered family, and the stigma of being labelled a child killer. Even if the criminal justice system stops short of conviction, family resources, both financial and emotional, are often exhausted in the struggle. And in either case, there may be a killer who goes unpunished. For the community at large, failure in such traumatic circumstances comes at a huge cost to the public's faith in the criminal justice system – a faith that is essential if the justice system is to play the role required of it by society.

The cases we examined demonstrate how vital the role of the pathologist can be in the success or failure of the criminal justice system in coping with the sudden, unexpected death of an infant in criminally suspicious circumstances. The suspected parent or caregiver will often have been the only person in contact with the child in the hours preceding death. There may be little additional evidence. But if the pathologist determines the cause of the child's death, that opinion may be enough to play a decisive role in whether someone is charged and convicted. In these circumstances, the criminal justice system must be able to rely confidently on the opinion if it is to deliver a just outcome. The fate of the person suspected, the family, the surviving children, and the peace of mind of the community all depend on it.

The far-reaching human consequences of flawed forensic pathology provided the context for our work from the very beginning. Before the hearings began, I had the benefit of meeting with individuals who were directly affected by the events that precipitated the Inquiry. They spoke poignantly about the pain of losing a child, and the added stress and shame that follow when the loss becomes

the subject of criminal proceedings. The central role that flawed pediatric forensic pathology played in these cases was unmistakable.

One tragic case involved William Mullins-Johnson, who was convicted of the first-degree murder of his niece Valin, in large measure because of the pathology evidence of Dr. Charles Smith. Dr. Smith's opinion was that the little girl had been strangled and sexually assaulted while Mr. Mullins-Johnson was babysitting her. This opinion was ultimately determined to be wrong. Mr. Mullins-Johnson has been found to have been wrongly convicted and was acquitted, but only after spending more than 12 years in prison.

During his testimony at the Inquiry, Dr. Smith was invited by Mr. Mullins-Johnson's lawyer to apologize. Mr. Mullins-Johnson was pointed out to him in the audience. Struggling with emotion, Dr. Smith offered his apology. Mr. Mullins-Johnson's spontaneous and deeply moving response is an eloquent testament to the human cost of failed pathology where a child dies in suspicious circumstances. This was their exchange:

DR. CHARLES SMITH: Could you stand, sir?

(BRIEF PAUSE)

DR. CHARLES SMITH: Sir, I don't expect that you would forgive me, but I do want to make it – I'm sorry. I do want to make it very clear to you that I am profoundly sorry for the role that I played in the ultimate decision that affected you. I am sorry.

MR. WILLIAM MULLINS-JOHNSON: For my healing, I'll forgive you but I'll never forget what you did to me. You put me in an environment where I could have been killed any day for something that never happened. You destroyed my family, my brother's relationship with me and my niece that's still left and my nephew that's still living. They hate me because of what you did to me. I'll never forget that but for my own healing I must forgive you.

This Inquiry was given two tasks. The first is to determine what went so badly wrong in the practice and oversight of pediatric forensic pathology in Ontario, especially as it relates to the criminal justice system. This task is addressed in this volume. It is my report on the systemic review and assessment of the practice and oversight of pediatric forensic pathology in Ontario, from 1981 to 2001. It chronicles the systemic failings that occurred as they affected the criminal justice system.

My second task is to make recommendations to restore and enhance public confidence in pediatric forensic pathology. That is the subject of the following volume.

My recommendations attempt to ensure that pediatric forensic pathology appropriately supports society's interest in protecting children from harm and bringing those who do harm children before the courts to be dealt with according to the law. If implemented, my recommendations will, I hope, also ensure that no one has to endure the horror of being charged criminally or having a family pulled apart or being wrongfully convicted because of flawed forensic pathology.