

AFFIDAVIT OF THE HONOURABLE PATRICK W. DUNN

(Sworn December 19 2007)

I, Patrick W. Dunn, of the City of Toronto, in the Province of Ontario,
MAKE OATH AND SAY:

1. I am a Justice of the Ontario Court of Justice in Brampton, Ontario. In October 1989 and February, October and November, 1990, I presided over the case of *R. v. M.(S.)* in Timmins, Ontario. As such, I have personal knowledge of the matters to which I herein depose.
2. My decision acquitting S.M. was released on July 25, 1991. A copy of my reasons for decision is attached as Exhibit "A" to my affidavit.
3. During the course of the trial, I flew back and forth between Toronto and Timmins. On one occasion, I was on the same flight from Timmins to Toronto as Dr. Charles Smith. Dr. Smith and I exchanged pleasantries on the flight. Although I do not have a specific recollection of my conversation with Dr. Smith, I am certain that I did not discuss the merits of the case or the evidence with Dr. Smith. I may have commented upon the Susan Nelles case because I understood Dr. Smith had some involvement in that case.
4. I recall speaking to Dr. Smith on one other occasion. About a year after the S.M. case, I attended a family law conference. Dr. Smith was one of the presenters. I spoke to Dr. Smith very briefly at the conference, perhaps while Dr. Smith was setting up his slides for the presentation. I do not have a specific recollection of what we discussed.

5. I have reviewed Dr. Smith's letter to the College of Physicians and Surgeons of Ontario ("CPSO") dated May 4, 1992. At no point during the course of the trial did I discuss Dr. Smith's evidence with him or indicate to Dr. Smith that I believed S.M. to be guilty. I also did not indicate to Dr. Smith that I believed the opinions provided by Drs. Barker, Driver and Smith, as alleged in Dr. Smith's letter to the CPSO. A copy of Dr. Smith's letter to the CPSO is attached as Exhibit "B" to my affidavit.

6. I have reviewed Dr. Smith's report of our conversation at the family law conference outlined in paragraph 4 of my affidavit, as detailed in Dr. Smith's email to Jane O'Hara of *Maclean's* magazine on May 7, 2001. Dr. Smith's report of our conversation is inconsistent with my recollection. I am certain that I did not approach Dr. Smith to discuss the S.M. case. I did not agree with Dr. Smith that "if the case had gone to trial in the late 1990's, as opposed to the early 1990's, the uncertainties at that trial would have been obviated." In fact, I have no recollection of discussing the S.M. case with Dr. Smith at the family law conference or at any other time. I would not have discussed the case with Dr. Smith. I would let the written judgement speak for itself. A copy of Dr. Smith's email to Ms. O'Hara on May 7, 2001 is attached as Exhibit "C" to my affidavit.

7. I have reviewed an excerpt from the transcript of a taped interview between Dr. Smith and Ms. O'Hara on May 8, 2001. I never informed Dr. Smith, during the trial or at any other point, that I thought that S.M. was guilty. I have no recollection of making any arrangements with regards to Dr. Smith's airline tickets, and I do not believe I would have made any such arrangements. I never engaged in a conversation with Dr. Smith about the merits of the case, as alleged by Dr. Smith in his conversation with Ms. O'Hara. I certainly never indicated to Dr. Smith that I thought, "[S.M.] was guilty as sin". I also have no recollection of discussing Dr. Ommaya or Dr. Duhaime with Dr. Smith at the family law conference referenced in paragraph 4 of my affidavit. A copy of the excerpt of the

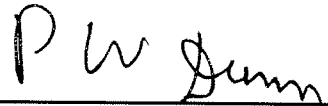
transcript of the interview between Dr. Smith and Ms. O'Hara is attached as Exhibit "D" to my affidavit.

8. I do not recall having any other communications with Dr. Smith since I presided over the S.M. case.

9. This affidavit is made for the purposes of the Inquiry into Pediatric Forensic Pathology in Ontario and for no other or improper purpose or motive.

SWORN BEFORE ME at the City of)
Brampton in the Province of Ontario, this)
19th day of December 2007.)


A Commissioner, etc.)



The Honourable Patrick W. Dunn