

IN THE PROVINCIAL COURT OF NOVA SCOTIA

Desmond, (Re)

Re: An Inquiry under the *Fatality Investigations Act*, S.N.S. 2001, c. 31, as amended, into the death of Aaliyah Desmond, Brenda Desmond, Shanna Desmond and Lionel Desmond

DECISION

RULING ON STANDING

Judge: The Honourable Judge Warren K. Zimmer

Heard: October 13, 2021, in Port Hawkesbury, Nova Scotia

Decision: March 31, 2022

Counsel: Allen Murray, QC, Inquiry Counsel
Shane Russell, Esq., Inquiry Counsel

By the Court:

[1] On May 21, 2019, the Desmond Inquiry began and Applications to Participate at the fatality inquiry pursuant to section 36 of the *Fatality Investigations Act* (the Act) were heard.

[2] Section 36(2)(a) of the Act provides that “any person who applies to the judge before or during the inquiry and is declared by the judge to be an interested person” may be a participant.

[3] On October 13, 2021, the Inquiry heard applications from the Health Association of African Canadians, Nick Cardone, Derek Hill, Raymond Sheppard and May Machoun.

[4] The Health Association of African Canadians, following their application and further discussions, were permitted to participate by filing a brief in advance of a panel presentation of evidence before the Inquiry.

[5] Mr. Raymond Sheppard’s application included reading a prepared statement to the Inquiry and did not seek to participate beyond that statement.

[6] Mr. Nick Cardone is a therapist in private practice in Nova Scotia registered with the Nova Scotia College of Counselling Therapists. He has a private practice

called Free Range Therapy where he does, primarily, individual counselling with male-identified teenagers or adults under the auspices of mental health and addictions. He also co-facilitates a project called T.O.N.E., which stands for Therapy Outside Normal Environments, which is a group therapy alternative for adult men who are struggling with mental health and addictions.

[7] Mr. Cardone is also involved in other therapy services that are oriented to male-identified individuals in settings outside of those traditionally associated with mental health and addictions counselling.

[8] Mr. Cardone`s approach and philosophy to therapy is noted, however, I do not see it as furthering the conduct of the Inquiry as set out in the terms of reference.

[9] Mr. Derek Hill also made an application to participate in the Inquiry. In his opening statement he explained that the root cause of the “horrible tragedy” was twofold. The first cause related to:

... the obviously illegal negligent and fraudulent invocation of Article 5 of the NATO Treaty on September 12th, 2001. ... Article 5 was invoked just one day after 9/11 by a NATO official who, according to their own reporting, was still in a state of shock, confusion, and ignorance of the facts relating to the horrible 9/11 attack just one day earlier.

[10] I explained to Mr. Hill that the broader geopolitical circumstances under which the war in Afghanistan came about, or how it was that Lionel Desmond wound up in Afghanistan and exposed to the traumas of war that likely resulted in post-traumatic stress disorder and likely major depressive illness and other issues that invaded his life, were beyond the scope of what I could look at and consider under the legislation creating the fatality inquiry.

[11] It was Mr. Hill's position that the root cause of the death (Cpl. Desmond) was:

The undemocratic, negligent and shortsighted [sic] way that just a few of our politicians and tricky NATO bureaucrats sent our precious troops into Afghanistan combat and kept them there for much, much too long.

[12] His recommendation to avoid such circumstances in the future was to:

Legislate exclusive authority for sending our troops into combat to be in the hands of the Canadian citizens, writ large, by way of national public referendum.

[13] Mr. Hill's submissions do not address the terms of reference of the Inquiry.

[14] May Machoun made an application to participate and presented the Inquiry with extensive material that was well researched.

[15] She retired from the military with over 29 years of military medical experiences gained primarily as a result of being a military medical technician. She was a civilian primary care paramedic for over 10 years as well as being a military trained physician assistant. She has had first-hand experience with brain injury, a diagnosis of post-traumatic stress disorder and has gone through the process of release through the military. She was a military physician assistant with the rank of captain at the time of her release April 17, 2020.

[16] Ms. Machoun in her submissions makes it clear to me that much of her experiences relate to her time and interactions with a variety of federal entities that Cpl. Desmond was also engaged with leading up to and post release. Although I believe she appreciates that the Inquiry does have limited jurisdiction to deal with and make recommendations concerning Department of National Defence and Veterans Affairs Canada policies, much of the information provided relates to practices, training and policies within the Canadian Armed Forces healthcare system.

[17] The challenges that she faced in dealing with the Canadian Armed Forces, as described in her supporting documents, were considerable. However, the jurisdictional limitations that this Inquiry has simply do not give me sufficient leeway to hear from her and of her personal journey as important as it may be.

[18] Thank you for your service Ms. Machoun.

Zimmer, JPC