

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 deaths of Aaliyah Desmond, Brenda Desmond, Shanna Desmond and Lionel Desmond

<p style="text-align: center;">DECISION PARTICIPATION APPLICATIONS</p>

Judge: The Honourable Judge Warren K. Zimmer
Heard: May 21, 2019, in Guysborough, Nova Scotia
Decision: June 20, 2019
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* were heard.

[2] Section 36(1) of the *Fatality Investigations Act* provides that a Crown attorney or counsel for the Minister shall appear at a fatality inquiry and may examine and cross-examine witnesses and present arguments and submissions. Mr. Allen Murray, QC, Chief Crown Attorney, Central Region and Shane Russell, Senior Crown Counsel have both been designated to appear at the Inquiry and, accordingly, they have the right to participate and will act as Inquiry Counsel.

Richard Borden and Thelma Borden

[3] Section 36(2)(a) of the *Fatality Investigations Act* directs that a personal representative of the deceased is a participant at a fatality inquiry. Richard and Thelma Borden have jointly come forward as the personal representative of their daughter Shanna Desmond, who is a deceased, and, accordingly, they are entitled to participate at this Inquiry. Their counsel is Coline Morrow.

Sheldon Borden

[4] Sheldon Borden has made an Application to Participate at this Inquiry as an interested person. He is the brother of Shanna Desmond, brother-in-law of Lionel Desmond and uncle of Aaliyah Desmond. He has a clear and substantial connection to the mandate of the Inquiry and will be permitted to participate.

Chantel Desmond

[5] Chantel Desmond is the daughter of Brenda Desmond and has made an Application to Participate at the Inquiry as the personal representative of Brenda Desmond, a deceased. Accordingly, she will be entitled to participate at this Inquiry. Her counsel is Tara Miller, QC.

Cassandra Desmond

[6] Cassandra Desmond is the brother of Cpl. Lionel Desmond, a deceased, and she has made an Application to Participate at the Inquiry as his personal representative. Ms. Desmond will be entitled to participate at this Inquiry in that capacity. Her counsel is Mr. Adam Rodgers.

Attorney General of Canada

[7] An Application was received from the Attorney General of Canada seeking standing as a party to the Inquiry. I understand that Lionel Desmond, as a member of the Canadian Armed Forces, and later as a veteran, interacted with various federal entities while accessing federally supported services and benefits and that various government agencies would have information relating to the Inquiry's mandate. It is clear that the participation of the Attorney General would assist in advancing the Inquiry's investigation, accordingly, participation rights are granted. Ms. Lori Rasmussen and Ms. Melissa Grant are counsel.

Attorney General of Nova Scotia

[8] The Attorney General of Nova Scotia, representing Her Majesty the Queen in Right of the Province of Nova Scotia has applied to participate in the Inquiry on behalf of all of Nova Scotia's departments, agencies, and officials who have relevant information to provide to the Inquiry within the Terms of Reference of the Minister's Order. There are a number of provincial departments, agencies and officials who possess documents and knowledge relevant to the terms of the Inquiry. It is clear the province would have a direct interest in the subject matter of this Inquiry and any recommendations that may be forthcoming. The Attorney

General will be granted the right to participate. Mr. Glenn R. Anderson, QC, is counsel.

Nova Scotia Health Authority

[9] An Application to Participate has been received from the Nova Scotia Health Authority. The Nova Scotia Health Authority operates hospitals and health centres in the Province of Nova Scotia including St. Martha's Regional Hospital in Antigonish and the Guysborough Memorial Hospital in Guysborough, Nova Scotia. The Nova Scotia Health Authority has various records relating to assessment, treatment and care of Mr. Desmond at these facilities that would be relevant to the subject matter of the Inquiry and its scope as set out in the Minister's Order. In addition to the records, there are the Health Authority employees who interacted with Mr. Desmond at various relevant times who can likely assist the investigation. The Nova Scotia Health Authority will be granted standing to participate. Mr. Roderick (Rory) H. Rogers, QC, and Ms. Karen N. Bennett-Clayton are outside counsel. Ms. Martina Munden and Ms. Lesley Sawers are in-house counsel.

Dr. Ian Slayter

[10] Dr. Slayter is a psychiatrist who provided mental health services to Lionel Desmond in 2016 and proximate to the events of January 3, 2017. Given the Terms of Reference his participation would appear to be highly relevant. His application to participate is granted. His counsel is Mr. Stewart Hayne.

Dr. Faisal Rahman

[11] Dr. Rahman has made an Application to Participate and I am granting his application. Dr. Rahman has relevant and important information relating to Lionel Desmond who he saw at St. Martha's Regional Hospital on January 2, 2017. His counsel is Mr. Stewart Hayne.

(Sgt. Retired) David T. MacLeod

[12] Retired Sgt. David MacLeod filed an Application to Participate in the Inquiry seeking to make an opening statement as well as a closing submission. Mr. MacLeod had the opportunity to address the Inquiry on May 21, 2019. With regard to making a closing submission, if he intends to file a written submission following the evidence, and relating thereto, then he is permitted to do so. If he

wishes to make an oral closing submission, I would ask him to contact Mr. Murray at the close of the evidence for further clarification.

Heather MacPherson

[13] Heather MacPherson also filed an Application to Participate in the Inquiry. Ms. MacPherson appeared on May 21, 2019 and addressed the Inquiry and, in particular, related circumstances concerning her father, his service to our country and the difficulties that he encountered following his service. I would like to thank her for taking the time to complete the Application and appear before the Inquiry to provide her personal insight the importance of which is not lost sight of.

Zimmer, JPC