

CANADA

PROVINCE OF NOVA SCOTIA

IN THE MATTER OF THE
FATALITY INVESTIGATIONS ACT
S.N.S. 2001, c. 31

THE DESMOND FATALITY INQUIRY

TRANSCRIPT

HEARD BEFORE: The Honourable Judge Warren K. Zimmer

PLACE HEARD: Guysborough, Nova Scotia

DATE HEARD: February 24, 2020

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

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1 **February 24, 2020**

2 **COURT RESUMED (15:37 HRS)**

3

4 **THE COURT:** Mr. Rubin Coward.

5 **MR. COWARD:** Yes, Your Honour.

6 **THE COURT:** Mr. Coward. Mr. Coward, I'm going to ask
7 you to come around the barrier, if you could, and maybe have a
8 seat at the last table there.

9 **MR. COWARD:** Thank you, Your Honour.

10 **THE COURT:** Thank you. One of the things that will do,
11 there's a microphone there that will help pick up your voice as
12 well.

13 **MR. COWARD:** Thank you.

14 **THE COURT:** All right, thank you.

15 I might indicate that this application, it's an application
16 for standing by Mr. Coward. The application is being recorded,
17 it is not being broadcast on the webcast and it will not be part
18 of the webcast. I made a decision earlier that the applications
19 would be part of the record but would not be part of the webcast
20 and consistent with that previous decision, Mr. Coward's
21 application is not being webcast. All right, thank you.

22 Mr. Coward, I'm just going to ask you a couple questions

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1 here. I know that I have the documentation that you had
2 provided to the Inquiry. One of the documents that I have, it
3 was received by the Inquiry office November 15, 2019. It's the
4 document, it would have been page two of three in relation to
5 the application. Under "Criteria for Participation" you
6 indicate that you have a substantial and direct interest in the
7 subject matter of the Inquiry in the context of the terms of
8 reference. Your participation would further the conduct of the
9 Inquiry or your participation would contribute to the openness
10 and fairness of the inquiry.

11 And then when asked to explain how you satisfied the
12 criteria that had been checked off in all three of the boxes,
13 the (audio blip) reference that had been checked off, you wrote:
14 "Please refer to my email sent on February 15 ... November 2019
15 and addressed to Mr. Shane Russell and Ms. Elise Levangie." So
16 I have that email.

17 There's a couple of November 15th emails that I have but
18 I'm going to go back a little earlier in time to a June 22nd
19 application or a June 22nd email that you had sent to the
20 Inquiry as well as having sent it to Mr. Rodgers, a copy to Mr.
21 Sheppard, and others and it was regarding standing and I'm just
22 going to read a portion of it because I happen to have it in my

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1 hand here so I'll put it on the record.

2 It reads in part and it's addressed to the Administrators
3 and the Court:

4 The specific purpose of this letter is to
5 humbly request standing in the subject
6 Inquiry.

7 And the next paragraph reads:

8 Whereas I am an African Nova Scotian who
9 proudly served in the Canadian Armed Forces
10 (Air Force) with unassailable distinction
11 both domestically and several years
12 overseas, I will submit that I am fully
13 cognizant and acutely aware of the
14 significant trials and tribulations of
15 racism that both African Nova Scotians and,
16 indeed, African Canadians are forced to
17 endure throughout the Canadian Armed Forces
18 rank and file.
19 More specifically, however, as a survivor of
20 PTSD occasioned as a direct result of
21 racism, I was targeted for while attempting
22 to carry out my duties as a senior non-

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1 commissioned officer at 14 Wing Greenwood,
2 Nova Scotia, 404 Maritime Patrol and
3 Training Squadron.

4 I will assert that I strongly believe this
5 reality added to the PTSD that Lionel
6 Desmond suffered and endured. It will only
7 serve to shed a very bright light on
8 specifically what Lionel Desmond and other
9 visible minorities and Indigenous people are
10 compelled to endure (audio blip) such a
11 systemic system.

12 And then the next paragraph is just a form of apology for
13 the lateness of your application which is neither here nor
14 there.

15 I think that it came to pass that Mr. Coward, I know by
16 email November 15, 2019 at 7:45 p.m., had completed the, I think
17 it may have been the first page, the application page with his
18 name and his personal particulars as well came in that day.

19 The Inquiry also received an email from Mr. Coward November
20 15, 2019 at 1:40 a.m. It was either an early morning or a late
21 night for Mr. Coward, I don't know which. Again, I'm reading
22 the third paragraph:

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1 Accordingly, I would humbly ask that an
2 alternative date be considered as I will be
3 out of the country (and then he goes on to
4 explain that but this is the crux of the
5 paragraph).

6 More importantly however, I wish to
7 reiterate that I am very interested in
8 participating in the subject Inquiry as it
9 is felt that my position as a senior non-
10 commissioned officer in the Canadian Air
11 Force and, in particular, as an African Nova
12 Scotian, my postings both overseas and
13 within Canada will shed, I believe, some
14 significant light on the culture and
15 manifestations of systemic discrimination
16 and institutional racism that are pervasive
17 within the rank and file members and
18 officers of the Canadian Armed Forces.

19 Hence, I will, therefore, submit that these
20 circumstances are indeed germane to the
21 genesis of the PTSD and trauma that Lionel
22 Desmond and we as racially visible people

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1 and Indigenous people continue to suffer as
2 a direct result of targeted racism and
3 discrimination we occasioned on a regular
4 basis while we merely attempted to perform
5 our military duties.

6 I will further submit to the Honourable
7 Court that this racism and discrimination we
8 suffered is the very foundation upon which
9 we were successful in both securing and
10 ultimately retaining (audio blip).

11 And he goes on to speak about a class action lawsuit that
12 he has been involved in as well.

13 The Inquiry also received on November 15th at 7:45 p.m.
14 that date, an additional email from Mr. Coward wherein he states
15 in part:

16 Furthermore, let me indicate that I wish to
17 provide both written submission to the
18 Honourable Court and avail myself of oral
19 submissions as well if it so pleases the
20 Honourable Court.

21 So having gone through that summary, Mr. Coward, I'll give
22 you an opportunity to speak as well, I'm just kind of creating

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1 the backdrop if you will I guess. I want to ask a question.
2 It's my understanding that you would be looking for standing to
3 make an oral and a written submission at some point in time, am
4 I correct?

5 **MR. COWARD:** If I may, yes, Your Honour.

6 **THE COURT:** All right. And have you given any thought
7 to the timing of when you would do that? I will tell you this,
8 that the way I expect matters to go, that when all of the
9 evidence is eventually in, that counsel will be given an
10 opportunity to provide a written submission and make an oral
11 submission if they so choose. I take it that if you would be
12 permitted to make your submissions, it would be at that stage as
13 well after all the evidence is in and you've had a chance to
14 consider it?

15 **MR. COWARD:** That's correct, Your Honour.

16 **THE COURT:** I will say this, Mr. Coward, let me put it
17 in this way. If I give you standing to make a submission, a
18 written submission, you would be able to file the submission if
19 I give you permission to do that. I would read the submission
20 so long as it relates to ... it's within the terms of the
21 Inquiry, it would be accepted and you would be entitled to make
22 an oral submission within the same terms, the same subject

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1 matter that might be in your brief as it relates to the terms of
2 the Inquiry. All right? You understand that, do you?

3 **MR. COWARD:** Yes, Your Honour. Your Honour, may I just
4 clarify if I may?

5 **THE COURT:** Yes, certainly, go ahead.

6 **MR. COWARD:** Having familiarized myself in particular
7 with the **Fatality Investigation and Inquiries Act** and more
8 specifically with the ministerial order as drafted by the
9 Attorney General, and having familiarized myself with the terms
10 of reference and specifically the mandate, it's my intention to
11 stay within the confines of those terms of reference and
12 certainly the mandate in this specific instance.

13 I was essentially trying to give the Inquiry a broader
14 understanding of my interest and I want to make it clear, if I
15 may, that my advocacy, I have advocated for European males and
16 females, Indigenous males and females, and certainly racially
17 visible individuals and I have fought tenaciously for each and
18 every one that I have advocated for. So I don't want to give
19 this Inquiry the misapprehension that the significance of the
20 weight that I bring to this Court is by virtue of ethnicity or
21 by virtue of racism.

22 I would like the opportunity to explore in its totality the

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1 ramifications of post-traumatic stress disorder and as it
2 affects individuals and more importantly to highlight my
3 understanding of the Veterans Affairs', I guess, implications
4 with respect to whether they are adequate or inadequate,
5 certainly the Canadian Armed Forces, and last but certainly not
6 least, external forces such as the health care system right
7 across this country because I've had the pleasure and honour of
8 advocating for people from as far away as British Columbia and
9 certainly all the way back to Cape Breton.

10 **THE COURT:** At the time that the Inquiry began, I made
11 some opening comments. I don't know if you've had a chance to
12 read them, they are on the website, and at that time I explained
13 the jurisdictional limitations that a provincial fatality
14 inquiry has as it relates to federal jurisdiction, federal
15 agencies, federal department policies, practices, and how far I
16 can go. It may be, not to suggest you haven't read it, but it
17 may be useful to read it and maybe kind of refresh your memory
18 as to what I said and it might give you some guidance as to how
19 far you may want to go in looking at issues more broadly.

20 **MR. COWARD:** Thank you, Your Honour.

21 **THE COURT:** There is a limit.

22 **MR. COWARD:** Thank you.

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1 **THE COURT:** And there's other information that suggests
2 to me and I appreciate that Mr. Coward is also associated as an
3 advocate on behalf of the Borden family as well.

4 **MR. COWARD:** Yes, Your Honour.

5 **THE COURT:** And I appreciate and I know that you're here
6 with Mr. Sheldon Borden as well, apart from the rest of the
7 family as well so I appreciate that ...

8 **MR. COWARD:** Thank you, Your Honour.

9 **THE COURT:** ... that additional connection.

10 Having said that, I am going to give Mr. Coward standing to
11 file a written submission at the conclusion of the proceedings,
12 at the same time and it will be on the same schedule as I
13 eventually will set out for counsel. I will read Mr. Coward's
14 brief, I am actually going to read everybody's brief and just to
15 make certain, so I am not setting out Mr. Coward's brief, I will
16 be reading all the briefs to make certain that they remain
17 focused within the terms of the Inquiry and do not step outside
18 or do not drive down the wrong lane, although you can swerve
19 into the lane temporarily. I think that is what the law says, I
20 have kind of paraphrased it.

21 And then assuming that like all the other briefs they are
22 within the terms of reference, then Mr. Coward will be given an

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1 opportunity to make an oral submission in accordance with what
2 will be permitted by other counsel as well. All right?

3 **MR. COWARD:** Thank you, Your Honour.

4 **THE COURT:** Thank you.

5 **MR. COWARD:** I appreciate it.

6 **THE COURT:** Now there's someone that wants to put their
7 hand up back there about something.

8 **MS. MACPHERSON:** I spoke to be standing back in May.
9 I'm not sure if I am or not. Heather MacPherson.

10 **THE COURT:** Ms. MacPherson, what I'm going to do is I'm
11 going to suggest that you have a conversation with Mr. Murray
12 and Mr. Russell.

13 **MS. MACPHERSON:** Yes, I know I brought up mefloquine
14 when I talked to them and I wasn't supposed to but the day
15 before I came on May 21st, there was a veteran that committed
16 suicide.

17 **THE COURT:** Again, I thank you for being here, Ms.
18 MacPherson. Still, I'm going to ask if you could just have a
19 conversation with Mr. Murray and Mr. Russell. I made a comment
20 the other day when I think it was Ms. Chambers was testifying
21 that she had brought up mefloquine, as well, and I had indicated
22 then and I'll indicate again that I have read the extensive

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1 disclosure that's been provided in relation to this matter and
2 I've not seen any indication nor has anyone pointed or directed
3 me to any information that would suggest that mefloquine was a
4 substance that Corporal Desmond had been taking.

5 **MS. MACPHERSON:** Your Honour ...

6 **THE COURT:** No, I'm not going to have a discussion.
7 Okay? This is the end of the discussion. I'm going to ask you
8 to speak to Mr. Murray and Mr. Russell if you want to speak to
9 them any further. All right?

10 Thank you, Mr. Coward.

11 **MR. COWARD:** Thank you, Your Honour.

12 **THE COURT:** I appreciate your time. So we're adjourned
13 until tomorrow morning at 9:30. Thank you.

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15 **COURT CLOSED (15:54 HRS)**

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CERTIFICATE OF COURT TRANSCRIBER

I, Margaret Livingstone, Court Transcriber, hereby certify that the foregoing is a true and accurate transcript of the evidence given in this matter, **re Desmond Fatality Inquiry**, taken by way of electronic digital recording.



Margaret Livingstone

(Registration No. 2006-16)

Verbatim Inc.

DARTMOUTH, NOVA SCOTIA

February 28, 2020