

CANADA

PROVINCE OF NOVA SCOTIA

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

**THE DESMOND FATALITY INQUIRY**

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**TRANSCRIPT  
OPENING REMARKS**

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HEARD BEFORE: The Honourable Judge Warren K. Zimmer

PLACE HEARD: Guysborough, Nova Scotia

DATE HEARD: May 21, 2019

COUNSEL: Allen Murray, Q.C., Inquiry Counsel  
Shane Russell, Esq., Inquiry Counsel

1 **COURT OPENED (TIME: 09:44 HRS)**

2 **Opening Remarks**

3

4 Good morning everyone, please have a seat.

5 My name is Warren Zimmer and I am a Judge of the Provincial Court of Nova  
6 Scotia. I have been appointed to conduct this fatality inquiry which is being referred  
7 to as the Desmond Inquiry.

8 I would like to begin by acknowledging that we are in Mi'kma'ki, the  
9 ancestral and unceded territory of the Mi'kmaq People. This territory is covered by  
10 the "Treaties of Peace and Friendship" which Mi'kmaq, Maliseet, and  
11 Passamaquoddy Peoples first signed with the British Crown in 1726. The treaties  
12 did not deal with surrender of lands and resources but in fact recognized Mi'kmaq  
13 and Maliseet title and established the rules for what was to be an ongoing  
14 relationship between nations.

15 We are assembled here today as a consequence of the deaths of Aaliyah,  
16 Shanna, Brenda and Lionel Desmond. They were found together, deceased, in a  
17 residence in Upper Big Tracadie, Guysborough County, on January 3, 2017. Family  
18 members, friends and the community have all been impacted by their deaths in a  
19 variety of ways and many questions have been left unanswered.

1           The Chief Medical Examiner for the Province of Nova Scotia, Dr. Matthew  
2 Bowes, conducted an investigation of the deaths under the provincial *Fatality*  
3 *Investigations Act* [the *Act*] and at the conclusion, was of the view that a fatality  
4 inquiry was necessary. I believe that he wrote the Minister of Justice in late  
5 December 2017 with his recommendations for an inquiry. Section 26 of the *Act*  
6 provides in part:

7                           **Recommendation for inquiry**

8  
9                           **26 (1)** Where the Chief Medical Examiner is of the view  
10 that it is necessary that a fatality inquiry be held regarding  
11 one or more deaths that occurred under a circumstance  
12 referred to in Sections 9 to 12, the Chief Medical Examiner  
13 may recommend to the Minister that an inquiry be held.  
14

15  
16           The Minister of Justice, upon receipt of the recommendations of the Chief  
17 Medical Examiner was obliged as a matter of law to order a fatality inquiry. Section  
18 27 of the *Act* reads in part:

19  
20                           **Minister's powers or recommendation**

21  
22                           **27(1)** Where the Chief Medical Examiner recommends to  
23 the Minister under Section 26 that a fatality inquiry be held,  
24 the Minister shall order that an inquiry be held.  
25

26  
27           The *Act* also provides that:  
28  
29

1 (2) Where the Minister is satisfied that a fatality inquiry is  
2 in the public interest or the interest of public safety, the  
3 Minister may order that an inquiry be held.  
4

5  
6 This section was not invoked by the Minister.  
7

8 By Order, dated February 14, 2018, the Minister of Justice, the Honourable  
9 Mark Furey, in referencing the recommendation of the Chief Medical Examiner,  
10 directed that a fatality inquiry be held and identified additional issues for the inquiry  
11 to report on. The Order reads in part:  
12

13 3. The judge appointed to conduct the inquiry shall make and  
14 file with the Provincial Court a written report containing any  
15 findings made by the judge as to:  
16

- 17 a. the date, time and place of death;  
18 b. the cause of death;  
19 c. the manner of death; and  
20 d. the circumstances under which the death occurred  
21 including  
22
- 23 (i) the circumstances of Lionel Desmond's release from  
24 St. Martha's Hospital on January 2, 2017;  
25 (ii) whether Lionel Desmond had access to appropriate  
26 mental health services, including treatment for  
27 Occupational Stress Injuries;  
28 (iii) whether Lionel Desmond and his family had access  
29 to appropriate domestic violence intervention  
30 services;  
31 (iv) whether health care and social services providers who  
32 interacted with Lionel Desmond were trained to  
33 recognize the symptoms of Occupational Stress  
34 Injuries or domestic violence;

- 1 (v) given Nova Scotia administration of the Canadian  
2 Firearms Program, whether Lionel Desmond should  
3 have been able to retain, or obtain a license, enabling  
4 him to obtain or purchase a firearm;  
5 (vi) what restrictions, if any, applied to accessing federal  
6 health records of Lionel Desmond, by provincial  
7 health authorities or personnel; and  
8 (vii) any recommendations of the judge about the  
9 foregoing matters.

10  
11  
12 Once the fatality inquiry was announced, a decision had to be made as to the  
13 location. On May 24, 2018, this location was announced as the site for the inquiry,  
14 and, thereafter, work began to assemble a team of people to start preparations to  
15 convert the municipal council chamber into a functioning hearing facility akin to a  
16 courtroom and suitable for the anticipated needs of the inquiry. This is, after-all, a  
17 judicial proceeding.

18 The process to appoint a Judge of the Provincial Court to conduct the inquiry  
19 is set out in Section 27(3) of the *Act* and reads:

20  
21 (3) Where the Minister orders that a fatality inquiry be held  
22 pursuant to subsections (1) or (2), the Chief Judge of the  
23 Provincial Court of Nova Scotia shall appoint a judge to  
24 conduct an inquiry and make recommendations on any  
25 issues identified in the order of the Minister.

26  
27  
28  
29 In July 2018, I was announced as the presiding Judge and Allen Murray QC,  
30 Chief Crown Attorney Antigonish, as the Crown Attorney who would appear

1 pursuant to Section 36 of the *Act* and assume the role as Inquiry Counsel. He has  
2 since been joined by Shane Russell, Crown Attorney, in that same capacity. Elise  
3 Levangie is my judicial assistant and will act as the clerk to these proceedings.

4

5 All of the necessary contact information is available on the Inquiry website  
6 which also contains other useful and relevant information. The website will be  
7 updated regularly to keep the public informed and to provide access to inquiry  
8 exhibits and transcripts of proceedings.

9

10 Section 32 of the *Fatality Investigations Act* provides that:

11

12 **32.** All hearings at a fatality inquiry shall be open to the public  
13 except where the judge is of the opinion that

14

15 (a) matters involving public security may be disclosed; or

16

17 (b) intimate, personal matters may be disclosed at the  
18 hearing that are of such a nature, having regard to the  
19 circumstances, that the desirability of avoiding  
20 disclosure of the matters in the interest of any person  
21 affected or in the public interest outweighs the  
22 desirability of adhering to the principle that hearings be  
23 open to the public,

24

25 in which case the judge may hold the hearing or any part of  
26 it concerning any such matters *in camera*. (in private).

27

28

29 In order to provide the widest public access to these proceedings, I have  
30 directed that the Inquiry will generally be livestreamed on the Inquiry website,

1 except if the circumstances require otherwise, and the archived video will also be  
2 posted online.

3  
4 There have been many people working together to get us to this point today  
5 and I intend to reference them when the evidentiary portion of the inquiry begins. I  
6 will say today, however, how much I appreciate their diligent efforts to date.

7  
8 **What this Inquiry is and What it is not**

9  
10 I want to briefly comment on the nature of this fatality inquiry and, in  
11 particular, how it differs from a public inquiry under the provincial *Public Inquiries*  
12 *Act*.

13  
14 The *Public Inquiries Act* of Nova Scotia provides in Section 2 that:

15  
16 **2.** The Governor in Council may whenever he deems it  
17 expedient cause inquiry to be made into and concerning any  
18 public matter in relation to which the Legislature may make  
19 laws.

20  
21 That a “public inquiry” is a function of the executive branch of government is  
22 reasonably clear, according to Professor Ed Ratushny in his authoritative book  
23 entitled “The Conduct of Public Inquiries”. Consider the following comments:

24 Page 141:

1           Once a commission of inquiry has been established, the  
2           interpretation of its terms of reference is the role of the  
3           Commissioner rather than the government. This is so even  
4           though the commission owes its entire existence and its  
5           mandate to the government...

6  
7           Page 145:

8           The government creates a commission, establishes its  
9           mandate, provides funding for its operation, and may  
10          terminate it if that should become politically expedient.  
11          Unlike the office of judge, the office of Commissioner has  
12          no legal guarantees of its ultimate independence, even when  
13          the Commissioner is also a judge.

14  
15          Page 157:

16          The office of Commissioner is an appendage of the  
17          executive branch of government even if the Commissioner  
18          is also a judge, since any judicial authority is not carried  
19          over to the role of Commissioner except to the extent  
20          specifically provided in the inquiries act or terms of  
21          reference. The authority of the commissioner is derived  
22          entirely from the Inquiries Act and the terms of reference  
23          established for each commission. These define the  
24          jurisdiction of the commission and impose legal constraints  
25          as well as authority.

26  
27          Page 281:

28          The fundamental legal nature of a commission of inquiry is  
29          simply that it is a temporary appendage of the executive  
30          branch of government, created and potentially extinguished  
31          at its will or whim.



1           The *Fatality Investigations Act* of Nova Scotia is concerned with deaths and  
2 any inquiry in relation thereto means a “fatality inquiry” under Section 27 of the *Act*.

3           As I noted earlier, where the Chief Medical Examiner is of the opinion that a  
4 fatality inquiry should be conducted, a recommendation can be made to the Minister  
5 that an inquiry be held. If a recommendation is made by the Chief Medical  
6 Examiner, Section 27 of the *Act* directs that “the Minister shall order an inquiry be  
7 held.” The Inquiry is not directed by the executive branch of government.

8           Once the Minister orders that a fatality inquiry be held, it is the Chief Judge  
9 of the Provincial Court, not the executive, who appoints a judge of that court to  
10 conduct the inquiry, report and make recommendations on any issues identified in  
11 the Order of the Minister.

12           At the conclusion of the inquiry, the appointed judge is required to make and  
13 file with the Provincial Court a written report containing any findings made by the  
14 judge relating to the statutory requirements listed in Section 39 as well as any issues  
15 identified by the Minister in the Order requiring the inquiry to be held. In addition,  
16 a copy is required to be sent to the Minister. In my view, a report filed with the  
17 Court is presumptively public.

18           Professor Ratushny, at page 29, refers to the case of *Consortium*  
19 *Developments (Clearwater) Ltd v. Sarnia (City)*, [1998] 3 SCR 3, a decision of the

1 Supreme Court of Canada, that dealt with a municipality`s authority to authorize a  
2 judicial inquiry into matters of municipal concern. The *Municipal Act* authorized a  
3 municipality to request “a judge of the Ontario Court (General Division)” to  
4 investigate certain matters. The Supreme Court of Canada in its decision stated that:

5 [26] The power to authorize a judicial inquiry is an  
6 important safeguard of the public interest and should not be  
7 diminished by a restrictive or overly technical interpretation  
8 of the legislative requirements for its exercise.

9  
10 Professor Ratushny explained that the term “judicial inquiry” was used by the  
11 Supreme Court because the relevant legislation in that case required that such  
12 inquiries be conducted by a judge.

13 The Nova Scotia *Fatality Investigations Act* is very similar to the  
14 corresponding legislation in Manitoba which is called *The Fatality Inquiries Act*.  
15 There are some differences in terminology.

16 The Manitoba Act generally provides for an “inquiry” by a medical examiner  
17 that can lead to an “investigation” which in turn can lead to the chief medical  
18 examiner directing that an “inquest” be held in which case there is a direction to the  
19 Chief Judge to assign a provincial judge to conduct the “inquest”. (s. 19) What  
20 Manitoba refers to as an “inquest” is a “fatality inquiry” in Nova Scotia.

1 In *Hudson Bay Mining and Smelting Co. v. Cummings*, [2006] MJ No 304,

2 at paragraph 42 the Manitoba Court of Appeal observed:

3 42. There are two general "death inquiry" systems - the  
4 coroner system and the medical examiner system. In the  
5 coroner system, the initial investigation of the death, the  
6 decision to hold an inquest and the conduct of the inquest is  
7 assigned to coroners. In most coroner systems, a jury is  
8 usually convened to hear the evidence and give the verdict.  
9 British Columbia, Saskatchewan, Ontario, Quebec, New  
10 Brunswick, Prince Edward Island, Northwest Territories  
11 and Nunavut and Yukon use coroner systems. In the  
12 medical examiner system, the initial investigation of the  
13 death and the decision to hold an inquest is assigned to  
14 medical examiners and the conduct of the inquest is  
15 assigned to a judge, who writes the report. Manitoba,  
16 Alberta, Newfoundland and Nova Scotia have medical  
17 examiner systems.

18  
19 In *Sinclair (Re)*, [2010] MJ No 89, Preston J. made the following comments  
20 in relation to inquest or fatality inquiry powers, which I paraphrase in part. At  
21 paragraph 53 the Judge noted that:

22 An inquest or fatality inquiry is not a public inquiry. Public  
23 inquiries are initiated by the delegation of an executive  
24 power to a commission. The commissioner may or may not  
25 be a judge. The commission of a public inquiry is not a  
26 court. It is not a branch of the judiciary. It fulfils executive  
27 or administrative functions. A public inquiry is established  
28 by an order in council of the government setting out the  
29 terms of reference and is not a sitting of a court.

30 Further at paragraph 54:

1 Inquests or fatality inquires are judicial proceedings. They  
2 are in fact sittings of the Provincial Court. Powers of the  
3 judge at an inquest or fatality inquiry are derived from  
4 legislation, the Provincial Court Act and the FIA. On the  
5 other hand, a commission or public inquiry has powers  
6 derived from legislation, but also has powers derived from  
7 executive powers, either directly or implicitly.

8  
9 At paragraph 55 he observed that:

10 ... public inquiries are by their nature broader in scope and  
11 subject matter than fatality inquires. The mandate of a  
12 fatality inquiry is limited to the Order of the Minister and  
13 the duties of a Provincial Court Judge at a fatality inquiry  
14 are governed by the provisions of the FIA...

15  
16 Preston J. in his decision also referenced the Manitoba Court of Appeal  
17 decision in *Hudson Bay Mining and Smelting Co. v. Cummings*, [2004] MJ No  
18 425, which considered the authority of a provincial judge appointed to conduct a  
19 fatality inquiry. From that case he noted as follows:

20 **10.** As a preliminary matter I want to make clear my view  
21 that, when conducting an inquest [i.e. fatality inquiry] under  
22 the FIA, a provincial judge is acting qua judge, and is not  
23 acting as persona designata.

24 **13.** In recent years, the Supreme Court of Canada has  
25 effectively entombed the concept of persona designata, so  
26 far as judges are concerned, subject to any express statutory  
27 preservation. In *R v Herman*, Laskin C.J.C. said (at pp. 731-  
28 32):

29 .... Nowadays, the vesting of statutory functions in  
30 Courts or other tribunals is commonplace, and

1 nothing of substance is added in trying to apply a  
2 distinction between ordinary curial duties of a Judge  
3 and statutory duties. I do not think, therefore, that  
4 Hynes v. Swartz [[\[1938\] 1 D.L.R. 29](#) (Ont. C.A.)], is  
5 any longer acceptable in drawing a distinction  
6 between powers exercisable by a Judge under The  
7 Ontario Judicature Act and powers vested in a Judge  
8 by another public Act, a regulatory statute respecting  
9 a profession.

10 In a later case, *Minister of Indian Affairs and Northern Development v.*  
11 *Ranville et al.*, [\[1982\] 2 S.C.R. 518](#), Dickson J. said (at pp. 525, 527):

12 ... I would declare that whenever a statutory power is  
13 conferred upon a s. 96 judge or officer of a court, the power  
14 should be deemed exercisable in an official capacity as  
15 representing the court, unless there is express provision to  
16 the contrary.

17

18 Judge Preston continued at paragraph 18.

19

20 **18.** ... If a statute of this province confers a power on such  
21 a judge, then, in the absence of a clear statutory provision to  
22 the contrary, that power is conferred on the judge qua judge,  
23 and not personally, as persona designate. ...

24

25 And at paragraph 20:

26 ...when conducting the inquest [or fatality inquiry,] the  
27 judge acts qua judge, and thus has all the powers of a  
28 provincial court judge.

1           It was noted at paragraph 23 that unlike judges of a superior court, the judges  
2 of the Provincial Court have only such jurisdiction as is conferred on them by statute.  
3 However, the judges of these courts have powers intrinsic to all judges when they  
4 carry out their functions, and specifically, all powers which are necessarily  
5 incidental to the carrying out of their functions. These are powers ancillary to the  
6 jurisdiction set out in a statute; they are powers found by necessary implication in  
7 the legislation.

8           And lastly from paragraph 24, I note:

9           **24.** A recent and persuasive articulation of this principle  
10 can be seen in *McNally v. Bass et al.* ([2003](#)), [223 Nfld. &](#)  
11 [P.E.I.R. 322](#), [2003 NLCA 15](#) (at para. 29):

12

13           Even for those courts with no inherent jurisdiction, in the  
14 sense of original jurisdiction, there was a recognized  
15 power to control their own procedure. The Court of  
16 Appeal for New South Wales concluded in *Bogeta Pty.*  
17 *Ltd. v. Wales*, [1977] 1 N.S.W.L.R. 139 (C.A.), at p.  
18 149:

19

20           The general principle, where a court is properly  
21 seized with a matter, and there is no procedure laid  
22 down which enables it to deal with the particular  
23 problem facing it, that it should devise its own  
24 procedure is, in my opinion, applicable to all courts  
25 of Petty Sessions in this day and age. Historically,  
26 inferior courts have been allowed to devise their own  
27 procedures.

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The reasoning behind this view was expressed by Baron Alderson in *Crocker v. Tempest* (1841), 7 M. & W. 501; 151 E.R. 864 (Exch.):

The power of each Court over its own process is unlimited; it is a power incident to all Courts, inferior as well as superior; were it not so, the Court would be obliged to sit still and see its own process abused for the purpose of injustice.

To be clear, I am a Judge of the Provincial Court and sit in that capacity on this Fatality Inquiry. I am not a Commissioner appointed by the executive branch of government and this is not a public inquiry. I note, however, that Section 29 of the *Fatality Investigations Act* does give me all the powers, privileges and immunities of a Commissioner appointed under the *Public Inquiries Act* for the purposes of this inquiry.

I am presiding in an inquisitorial process meant to expose what happened in a public forum and without making any findings of legal responsibility. This means that my report will not express any findings, conclusions or recommendations about civil or criminal liability of any person, organization or entity, however described.

This Inquiry must also keep in mind the fact that it has limited authority to inquiry into areas of federal jurisdiction.

1  
2 In *Re Rogers*, [2017] AJ No 1079, Prov Ct. Judge Richardson made a number  
3 of observations during a Fatality Inquiry, under the Alberta *Fatalities Inquiries Act*,  
4 in relation this limitation. I borrow from her decision as follows, to give an  
5 overview of the issues:

6  
7 **17.** Appellate courts have repeatedly pronounced that the  
8 constitutional jurisdiction for the Fatality Inquiries Act is  
9 derived from the assignment of the "administration of  
10 justice" to the provinces in s. 92(14) of the *Constitution Act*.

11 **18.** The Canadian Forces is a federal entity. The doctrine of  
12 paramountcy precludes any provincial statutory authority  
13 over a federally created or regulated body. The issue of the  
14 jurisdiction of a fatality inquiry over a federally regulated  
15 activity was the subject of *Mercier v. Alberta (Attorney-*  
16 *General)*, [1997 ABCA 161](#). In that case, the Court found  
17 that a "fatality inquiry will be permissible if it does not  
18 intrude heavily on the core of the federal subject by  
19 regulating aviation accidents or investigating the  
20 management of the executive branch of the federal  
21 government" (para 13).

22 **19.** The Court of Appeal went on to direct the application  
23 of the dominant purpose principle to determine the  
24 jurisdiction of the scope of the fatality inquiry. Citing *Faber*  
25 *v. The Queen* [\[1976\] 2 S.C.R. 9](#) from the Supreme Court,  
26 the Court of Appeal said "[Fatality inquiries are] to assist  
27 and reassure the public by exposing the circumstances of a  
28 death. An inquiry dulls speculation, makes us aware of the  
29 circumstances which put human life at risk and reassures all  
30 of us that public authorities are taking appropriate measures  
31 to protect human life" (*Mercier*, para 14).



1           **20.** The intersection of provincial authority over the  
2 administration of justice and the death of someone within a  
3 federal entity or federally regulated activity has attracted  
4 appellate consideration. In *Quebec (Attorney-General) and*  
5 *Keable v. Canada (Attorney-General) et al.*, [1978 CanLII](#)  
6 [23](#) (SCC), Justice Pigeon held that no provincial authority  
7 could intrude into the management, regulation and practices  
8 of the RCMP, a federal agency. The Supreme Court in  
9 *Canadian National Railway Co. v. Courtois*, [1988 CanLII](#)  
10 [82](#) (SCC) at para 24 interpreted *Keable* as standing for the  
11 proposition that "provincial commissions of  
12 inquiry...cannot be empowered by a province to investigate  
13 a federal institution...its services, rules, policies and  
14 procedure so as to make recommendations on changes to be  
15 made to those rules and methods" (para 24).

16           **21.** The appellate authority is clear that a provincial inquiry  
17 cannot become a *de facto* review into the organization,  
18 management, policies, procedures, practices or regulations  
19 of the Canadian Forces. The scope of this inquiry cannot be  
20 [that] broad ...

21           In *Keable* the court noted that when an inquiry into a matter that is within  
22 provincial competence reveals the desirability of changes in federal law, that the  
23 inquiry could "submit a report in which it appeared that changes in federal laws  
24 would be desirable". This did not mean that the gathering of information for the  
25 purpose of making such a report may be a proper subject of inquiry by a provincial  
26 inquiry. An inquiry cannot do indirectly that which it is prohibited from doing  
27 directly, as that would engage the doctrine of "colourability".

## 28 **Participation defined**

1 Today I will be addressing the applications for “participation” or standing that  
2 have been filed and determine who the “interested persons” are who will be  
3 permitted to participate in these proceedings. I would note that participation  
4 applications can also be considered during the inquiry.

5 Section 36 of the *Act* provides that:

6 A Crown Attorney or counsel for the Minister shall appear  
7 at a fatality inquiry and may examine and cross-examine  
8 witnesses and present arguments and submissions.

9  
10 In this case, as I said before, Allen Murray, QC, and Shane Russell, both  
11 Crown Attorneys, will fill that role.

12 The section goes on to provide that:

13 The “participants” at a fatality inquiry are

14 (a) a personal representative of the deceased; and

15 (b) any person who applies to the judge before or  
16 during the inquiry and is declared by the judge to be  
17 “an interested person”.

18  
19 Each of the four deceased persons is entitled to have a personal representative  
20 appear as a participant at the inquiry. The *Act* does not provide any guidance in

1 determining who may be “a personal representative” nor what, if any, limits apply  
2 to their participation.

3 The evidentiary boundaries of the inquiry are not sharply defined in Section  
4 31 of the *Act*, however, the section does appear to direct that evidence considered  
5 vexatious, unimportant or unnecessary for the purposes of the fatality inquiry should  
6 not be admitted.

7 The term “interested person” is not defined or elaborated upon in the *Act*. In  
8 the Hyde Inquiry, Judge Derrick (now Mme. Justice Derrick) had this to say about  
9 “interested persons”:

10 ... I found some assistance in the decision from Alberta  
11 where the legislation uses the same language of “interested  
12 person”. In *Pham (Re)* [2004] AJ No 245, a decision of the  
13 Alberta Provincial Court the judge noted that standing at  
14 fatality inquiries has become more inclusive in said;  
15 “Disparate groups with no obvious connection to the event  
16 are being given standing on the basis of public interest  
17 and/or expertise...” He found that parties seeking standing  
18 need only show either a direct or a substantial connection to  
19 the mandate of the inquiry. I am satisfied that is an  
20 appropriate test to apply when determining who meets the  
21 requirement of being an “interested person” under Nova  
22 Scotia’s Fatality Investigations Act and it is the criteria I  
23 intend to use unless there are submissions that I should be  
24 considering a different approach”.

1 I intend to follow the same criteria as Justice Derrick subject to any  
2 submissions on the issue.

3 The expectation is that when interested parties are granted standing, that will  
4 allow for their individualized perspectives, experiences and knowledge to be applied  
5 to the examination of the evidence. Similarly, the participation of the personal  
6 representatives may broaden the viewpoints that can be advanced at this Inquiry.

7 Once we have dealt with the issue of standing, we will turn our attention to  
8 the Rules of Procedure which are being drafted and Mr. Murray and I will review  
9 them before they are circulated to the participants for comment and before they are  
10 formally adopted by the Inquiry and posted to the Desmond Inquiry website. If  
11 deemed necessary, I will re-convene the parties for discussions and upon adoption  
12 they are expected to be followed.

13 I would add that, as this is a court proceeding, the participants are expected to  
14 adhere to the ordinary practises, courtesies and decorum of the Provincial Court.

15 Procedural matters arising from the rules or otherwise should be brought to  
16 Mr. Murray`s attention.

17 It is important to understand that the role of the Inquiry judge is very different  
18 from the judge presiding over a criminal trial. The role is inquisitorial in this setting

1 and is concerned with fact gathering in a non-adversarial proceeding in the public  
2 interest.

3 A criminal trial judge would not be involved in deciding which witnesses  
4 would be subpoenaed, nor would interested third parties have direct involvement in  
5 a criminal trial. An Inquiry judge is provided with a great deal of material in advance  
6 of the inquiry, and, consequently, the judge has a much more active role in directing  
7 the scope of the proceedings in order to fulfil its mandate. (MacDougall [20])

8 The role of a Crown Attorney at the inquiry is to represent the public interest  
9 and ensure that the truth comes out. Crown Attorneys, just as any other interested  
10 party can, may make submissions, recommendations or suggestions as to which  
11 witnesses will be called in order to ascertain the truth surrounding the material  
12 circumstances of the deaths.

13 It would be incorrect to understand that the Crown gives legal advice to the  
14 Inquiry judge. It is true that the Crown attorney takes the lead in terms of ensuring  
15 the appropriate witnesses are subpoenaed and usually conducts the direct  
16 examination of the witness.

1           The Crown attorney has a duty to assist in the administration of justice and  
2 the facilitative role the Crown attorney takes in an inquiry is an example of carrying  
3 out that duty.

4           While the Crown attorney is not counsel to the Inquiry judge, neither does he  
5 represent a specific government department or narrow government interests. Crown  
6 counsel represents the Attorney General, who, in turn, represents the public interest  
7 and is expected to ensure that all available relevant evidence is presented in a fair,  
8 impartial and objective manner to assist the Inquiry in fulfilling its mandate.  
9 (MacDougall [23])

10           I have every confidence that Mr. Murray and Mr. Russell, as the Crown  
11 Attorneys assigned to this Fatality Inquiry, understand their role and I am equally  
12 confident in their ability to fulfill it.

13           We will take a short break and return in 30 minutes to deal with the  
14 applications.

15   **COURT RECESSED (10:16 HRS)**