

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: May 21, 2019

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

INDEX

	<u>Page</u>
<u>May 21, 2019</u>	
<u>SUBMISSIONS OF PARTIES SEEKING STANDING</u>	
Attorney General of Canada	4
Attorney General of Nova Scotia	10
Nova Scotia Health Authority	14
Physicians	17
Family Members	
Cassandra Desmond	20
Chantel Desmond	26
T., R., S. Borden	30
Aaliyah Desmond	31
Other Applicants	
Heather MacPherson	35
Sgt. David MacLeod	46

1 May 21, 2019

2 **COURT RESUMED (10:51 HRS)**

3

4 **THE COURT:** Mr. Murray?

5 **MR. MURRAY:** Thank you, Your Honour. Good morning, good
6 to get started. Your Honour, after discussion I believe it
7 would be appropriate, if the Court pleases, for us to begin with
8 the Attorneys General and we'll start with, again if the Court
9 pleases, with the Attorney General of Canada. The Attorney
10 General of Canada is represented here today by Ms. Lori
11 Rasmussen and Ms. Melissa Grant who are seated behind me.

12 **THE COURT:** Ms. Rasmussen?

13

14

15

16

17

18

19

20

21

22

SUBMISSIONS OF PARTIES SEEKING STANDING

ATTORNEY GENERAL OF CANADA

1
2
3 **MS. RASMUSSEN:** Thank you, Judge Zimmer.

4 On behalf of the Attorney General of Canada, we seek
5 standing as we believe it would be in the public interest and of
6 assistance to the Inquiry's task. As Your Honour as already
7 outlined, there are legal constraints on federal participation
8 in provincial inquiries arising from the nature of our
9 constitution and affirmed by the Supreme Court of Canada.
10 However, we are confident we can operate within these
11 constraints and still be of assistance in shedding light on the
12 factual matrix of these tragic events.

13 What that means for our purposes is that we are quite able
14 and willing to share information we have that pertains to the
15 facts surrounding Mr. Desmond and his family. We are unable to
16 delve into the administration and management or inner workings
17 of federal institutions. Another way to frame it is in terms of
18 the specific versus the general. Our focus will be on the
19 specific events in question rather than the general practices of
20 federal entities except where a discussion of those practices is
21 essential to understanding what happened.

22 Looking at the terms of reference, there are some obvious

SUBMISSIONS OF PARTIES SEEKING STANDING

1 areas where the Government of Canada has relevant information to
2 share, for example, the reference to federal health records in
3 item six. As Mr. Desmond was a member of the Canadian Armed
4 Forces, that institution will have relevant information in
5 relation to his service. Likewise, Veterans Affairs Canada will
6 have relevant information pertaining to services available to
7 Mr. Desmond after his release and which he may have accessed.
8 The RCMP, pursuant to its contract policing role, carried out
9 the investigation following these deaths and, as such, has
10 relevant information to share.

11 So, Your Honour, the Attorney General of Canada is ready to
12 assist with those matters where we are able and accordingly,
13 seek standing as a party to this Inquiry. Subject to any
14 questions.

15 **THE COURT:** RCMP, Veterans Affairs, which other ...
16 which other government departments?

17 **MS. RASMUSSEN:** Canadian Armed Forces.

18 **THE COURT:** Mm-hmm.

19 **MS. RASMUSSEN:** The one I didn't mention was Health Canada
20 which administers an employee assistance program that was
21 accessed by Mr. Desmond and, tangentially, Public Safety which
22 is involved in the registration of firearms although those

SUBMISSIONS OF PARTIES SEEKING STANDING

1 programs are administered provincially.

2 **THE COURT:** The Public Safety is responsible for the ...
3 for the firearms?

4 **MS. RASMUSSEN:** Responsible for firearms policy.

5 **THE COURT:** Policy.

6 **MS. RASMUSSEN:** And the programs are administered by each
7 province.

8 **THE COURT:** Okay, thank you.

9 **MS. RASMUSSEN:** So those are the five federal entities, Your
10 Honour.

11 **THE COURT:** All right, thank you. The ... I noticed in
12 the application that there was no suggestion that the Attorney
13 General might offer expert witnesses. Is it not anticipated
14 that ...

15 **MS. RASMUSSEN:** We did not anticipate offering any experts
16 and I'm not sure what ... what subject areas Your Honour would
17 be considering.

18 **THE COURT:** Well, no, I ask in the context of whether or
19 not the Attorney General has considered, knowing what he knows
20 or his Department knows in terms of what you can bring to the
21 Inquiry ...

22 **MS. RASMUSSEN:** Well, frankly ...

SUBMISSIONS OF PARTIES SEEKING STANDING

1 **THE COURT:** ... the specific as opposed to the general.

2 **MS. RASMUSSEN:** Right. In terms of the specific, I don't
3 think that we ... we considered witnesses who would speak to
4 actual events to be experts and in terms of policies, getting
5 into the policies and programs that would tangentially be
6 related to those events, those same witnesses we did not
7 consider would be put forward as experts per se.

8 **THE COURT:** All right, thank you. Thank you, Ms.
9 Rasmussen.

10 **MS. RASMUSSEN:** Thank you, Your Honour.

11 **THE COURT:** Mr. Murray, do you have any brief comment?

12 **MR. MURRAY:** Your Honour, Inquiry counsel thinks the
13 participation of the Attorney General of Canada would bring
14 value to the Inquiry and would support their application.

15 **THE COURT:** Thank you. I might say that because we're
16 going to go through the list of applicants today, for those that
17 once ... once they're heard, are free to take their leave if
18 they choose or they can remain. At the end of the proceedings
19 today, when all the applications are heard, I'll consider what
20 I've heard and what has been filed and make ... make a decision
21 and the parties, individual applicants, will be notified in due
22 course with regard to their ... their applications for

SUBMISSIONS OF PARTIES SEEKING STANDING

1 participation or standing.

2 They'd also be advised in due course with regard to the
3 rules when the rules become available and we solicit any input
4 or comment they might have. We're in a bit of a state of flux
5 with regard to actual hard dates to do things. Those dates will
6 become, I think, more ... more focused and come into sharper
7 view as we ... as we move along in the process, once the
8 information that the participants would produce by way of
9 disclosure has been received and produced. Then we'd be looking
10 at further discussions with counsel and I expect that Mr. Murray
11 and Mr. Russell engage with counsel in some sessions to have
12 discussions about planning on a go-forward basis. Well, that's
13 ... that's just the comment that I make at the present time.

14 This ... to sit down, I guess, at this point in time and
15 have a discussion about all the things and all the directions we
16 could possibly go would be time consuming and would be a bit of
17 an unfocused discussion because there are so many things that
18 need to taken into account but just as a rough outline is once
19 we deal with these matters of participation and once we deal
20 with the rules, the obligations to produce the disclosure are
21 going to arise. There will be a timeframe for the production of
22 that information.

SUBMISSIONS OF PARTIES SEEKING STANDING

1 It's going to come to the Inquiry initially on a
2 confidential basis so if the parties have any issues relating to
3 editing or confidentiality or particular issues, those can be
4 addressed with counsel and after it's agreed that the material
5 or the content of the material can be released, it's anticipated
6 that all the material that comes to the Inquiry will eventually,
7 when it's in a form that's releasable to the parties, will be
8 made available and accessible through a database. It'll be
9 shared. There will be confidentiality agreements, there'll be
10 some limitations on access to that information when it comes
11 into counsel's hands and that will all be spelled out in the
12 rules but generally that's what's anticipated. That's how the
13 information will be made available back to the participants once
14 it comes to the Inquiry.

15 So along the way if there are issues with regard to, as I
16 say, editing or redactions, confidentiality, privilege, anything
17 that comes to the Inquiry stays in confidence in the Inquiry's
18 hands until the parties that have produced it are satisfied or
19 that the Inquiry's satisfied it can be released and then it'll
20 be accessible so that's what's anticipated.

21 There is ... the rules will also give some guidance as to
22 the format for the provision of the disclosable material. It

SUBMISSIONS OF PARTIES SEEKING STANDING

1 will be coming in an electronic format and we'll have, in the
2 rules, some guidance as to how that should be provided to the
3 Inquiry to facilitate everyone else's access electronically
4 through the database.

5 All right, thank you. Thank you, Ms. Rasmussen.

6 **MS. RASMUSSEN:** Thank you.

7 **THE COURT:** Mr. Murray?

8 **MR. MURRAY:** Yes, Your Honour, perhaps we can move to the
9 Attorney General of Nova Scotia.

10

11

ATTORNEY GENERAL OF NOVA SCOTIA

12

13 **THE COURT:** Mr. Anderson.

14 **MR. ANDERSON:** Thank you, Your Honour. Glenn Anderson here
15 for the Attorney General of Nova Scotia. As submitted in the
16 application to participate, the Province has a direct interest
17 in the subject matter of the Inquiry as well as any
18 recommendations. I'm here representing the Departments of
19 Justice which would include the Medical Examiner Service,
20 Firearms, Victim Services and perhaps the Domestic Violence
21 Court, Department of Health, the Nova Scotia Advisory Council on
22 the Status of Women. Also being examined is the extent any of

SUBMISSIONS OF PARTIES SEEKING STANDING

1 the following will be involved: Community Services, Education
2 and African Nova Scotian Affairs.

3 So we're looking at the extent to which they might
4 contribute to the issues before the Inquiry so the Attorney
5 General seeks standing.

6 **THE COURT:** Mr. Anderson, the various agencies,
7 officials, departments that you just referenced, the only
8 question I would have would be perhaps an issue or a question
9 about potential divergence of interests within those groups and
10 how you think you might manage that if it occurs considering
11 that you are just one individual.

12 **MR. ANDERSON:** Well, what ... what I would be proposing to
13 do is in consultation with Inquiry counsel, I could be proposing
14 the nature of possible information or evidence and get their
15 view if it would be of assistance.

16 **THE COURT:** Thank you, Mr. Anderson.

17 **MR. ANDERSON:** Thank you.

18 **THE COURT:** Mr. Murray?

19 **MR. MURRAY:** Yes, Your Honour, similar comments.

20 Obviously the various entities that the Attorney General of Nova
21 Scotia represents have, and almost certainly have in the case of
22 some of them and very well may have in the case of others,

SUBMISSIONS OF PARTIES SEEKING STANDING

1 relevant information to give to the Inquiry which would be of
2 assistance.

3 Again, we would support the Attorney General's
4 participation in the Inquiry.

5 **THE COURT:** Thank you. Thank you, Mr. Anderson. I will
6 say this as well is that for those that would be familiar with
7 court processes, the trial process, generally a matter winds up
8 in front of a court after there's been an investigation, so the
9 police might conduct an investigation, they would prepare a
10 report with files and witness statements and various other
11 documentation. It would wind up going to the Crown or charges
12 be laid. The individual would come before a court and by the
13 time the individual comes before the court, the investigation
14 has generally been completed because that's what results in the
15 charges being laid.

16 This Inquiry is not a trial and that process hasn't taken
17 place, even though the RCMP would have conducted an initial
18 investigation with regard to the circumstances related to the
19 events and that, of course, is available so that part of it may
20 be complete.

21 But the other part of what this Inquiry does is it conducts
22 an investigation. It's an inquisitorial process. There's a

SUBMISSIONS OF PARTIES SEEKING STANDING

1 certain amount of investigation that gets done by the Inquiry,
2 by counsel, to bring forth the information that bears on the
3 terms of reference that we have in the Minister's order.

4 So when we talk about disclosure and about the
5 participation of, for instance, the federal and the provincial
6 governments through their Attorneys General, it's a process
7 whereby they provide information as it relates to the terms of
8 reference. Mr. Murray and Mr. Russell, when they receive that
9 information, would be considering it and be making, if
10 necessary, requests for more and additional information. That
11 information is shared with the parties and they are expected to
12 review it and contribute, as well, additional information and
13 insight as it becomes important for the Inquiry to understand
14 all the various forces and circumstances that were at play
15 leading up to the tragic deaths that occurred on January 3rd.

16 So we're involved in an inquisitorial process, we're
17 involved in an investigation, we're involved in collecting the
18 information and that's what the various parties are going to be
19 hopefully bringing back to the Inquiry and providing us with a
20 foundation to start working towards what would be ultimately the
21 conclusion and hopefully some recommendations to a better
22 understanding of what occurred. Thank you. Thank you, Mr.

SUBMISSIONS OF PARTIES SEEKING STANDING

1 Anderson.

2 Mr. Murray?

3 **MR. MURRAY:** Yes, perhaps the Nova Scotia Health
4 Authority would be appropriate. Mr. Rory Rogers and Ms. Karen
5 Bennett-Clayton are here on behalf of the Nova Scotia Health
6 Authority.

7

8

NOVA SCOTIA HEALTH AUTHORITY

9

10 **THE COURT:** Mr. Rogers?

11 **MR. ROGERS:** Thank you, Your Honour. Here together with
12 Karen Bennett-Clayton. As well, I anticipate from time to time
13 the Inquiry will also see in-house counsel for the Health
14 Authority, Martina Munden and/or Lesley Sawers who will be in
15 attendance.

16 As set out in the written submission, we are requesting
17 full participation rights, full standing at the Inquiry. As
18 Your Honour pointed out, the test to be applied in determining
19 standing is whether a party has a direct or substantial
20 interest. The Commission here is dealing with circumstances
21 concerning the tragic and very sad events of January 3, 2017.
22 The Nova Scotia Health Authority operates a number of health

SUBMISSIONS OF PARTIES SEEKING STANDING

1 centers and hospitals throughout the province including the
2 Guysborough Memorial Hospital in Guysborough, here in
3 Guysborough, and the St. Martha's Regional Hospital in
4 Antigonish. Mr. Desmond had contact with both those hospitals
5 over the course of his lifetime, there are, therefore, medical
6 records and chart materials at those hospitals. There are
7 employee witnesses at both of the hospitals who will likely have
8 evidence that will be germane to the matters that are at issue
9 before the Inquiry.

10 It's also possible, as you see from our submission, that
11 there may be expert evidence that might be of benefit to the
12 inquiry dealing with various issues that are medically related
13 as one example, in point, to the **Involuntary Psychiatric**
14 **Treatment Act** and the balancing factors that are in place in
15 that legislation with respect to certain decisions that have to
16 be made. Those are matters that may be of interest of the
17 physicians who are seeking standing here but also of relevance
18 to the Health Authority so we anticipate that the Health
19 Authority would potentially have witnesses who could speak to
20 that from a direct or managerial level, that could provide some
21 insight and benefit to the Inquiry.

22 So as a result, on behalf of the Health Authority, we are

SUBMISSIONS OF PARTIES SEEKING STANDING

1 seeking full participatory rights and ability to make
2 representations and participate in the manner that we indicated
3 in the written submission. If there are no questions, those are
4 my submissions.

5 **THE COURT:** No, I know that Mr. Rogers had, on behalf of
6 the Nova Scotia Health Authority, filed the application together
7 with an Appendix B that contained the outline. So, Mr. Rogers,
8 you know what, I'm just going to take a minute and I'm going to
9 read it out loud so that I think it fairly summarizes the
10 position of the Health Authority.

11 The Nova Scotia Health Authority
12 operates hospitals and health centers in the
13 Province of Nova Scotia including St.
14 Martha's Regional Hospital in Antigonish,
15 Nova Scotia and the Guysborough Memorial
16 Hospital in Guysborough, Nova Scotia.

17 Lionel Desmond, prior to the tragic
18 events of January 3, 2017, attended at each
19 of St. Martha's Regional Hospital and
20 Guysborough Memorial Hospital at various
21 times. The Nova Scotia Health Authority,
22 through each, has charts and records in
23 relation to Lionel Desmond.

24 The Health Authority records include
25 chart materials relating to Emergency
26 Department visits by Mr. Desmond in November
27 2016. There are charts from 2016 relating
28 to Mr. Desmond's consultations at St.
29 Martha's Mental Health Clinic in December
30 2016. The Health Authority records include
31 chart material relating to Mr. Desmond's
32 attendance at St. Martha's Regional Hospital
33 the evening of January 1, 2017, his
34 admission for observation overnight at St.
35 Martha's, his assessment, treatment and care

SUBMISSIONS OF PARTIES SEEKING STANDING

1 on January 1st and 2nd, his discharge from
2 St. Martha's Regional Hospital late in the
3 morning of January 2, 2017, and the
4 scheduling by Lionel Desmond on January 3,
5 2017, a follow-up psychiatric appointment at
6 St. Martha's Hospital for January 18, 2017.
7

8 Given the terms of reference, it's reasonably clear to me
9 anyway that those dates and that information impacts in the
10 context of the directions of the Minister in the order.

11 Mr. Murray?

12 **MR. MURRAY:** I would agree, Your Honour.

13 **THE COURT:** Thank you. Thank you, Mr. Rogers.

14 **MR. ROGERS:** Thank you, Your Honour.

15 **THE COURT:** Mr. Murray?

16 **MR. MURRAY:** Your Honour, just perhaps remaining on the
17 medical front, Mr. Hayne is here with respect to the
18 applications for Dr. Slayter and Dr. Rahman and perhaps it would
19 be appropriate to hear from him next.

20 **THE COURT:** Yes, thank you. Mr. Hayne?

21
22 **PHYSICIANS**

23
24 **MR. HAYNE:** Thank you, Your Honour. As Mr. Murray
25 mentioned, my name is Stewart Hayne. I represent two
26 physicians, Dr. Ian Slayter and Dr. Faisal Rahman. These are

SUBMISSIONS OF PARTIES SEEKING STANDING

1 each psychiatrists who practice at St. Martha's Regional
2 Hospital in Antigonish and who saw Lionel Desmond in 2016 and
3 2017 respectively. I intend to make one standing submission on
4 behalf of both physicians if that's fine with ...

5 **THE COURT:** Yes.

6 **MR. HAYNE:** Thank you.

7 The application form for standing sets out criteria for
8 standing and I won't read those but reference them. I note that
9 the application form in respect of the criteria for standing
10 uses the conjunctive "or" so any one of those particulars should
11 be sufficient to achieve standing and Your Honour has given your
12 view on the test and the threshold to be met for standing.

13 The mandate of the Inquiry sets clearly out in the terms of
14 reference signed by the Honourable Mark Furey that there will be
15 an examination and I'm going to highlight three aspects of that
16 - whether Mr. Desmond and his family had access to appropriate
17 mental health services; the circumstances of Mr. Desmond's
18 release from St. Martha's Hospital on January 2, 2017; and,
19 whether health care providers who interacted with Mr. Desmond
20 were trained to recognize the symptoms of occupational stress
21 injuries or domestic violence.

22 As set out in the applications for these two physicians,

SUBMISSIONS OF PARTIES SEEKING STANDING

1 Dr. Ian Slayter saw Mr. Desmond in a clinical capacity in 2016
2 and Dr. Faisal Rahman saw Mr. Desmond in January 2017, in my
3 submission certainly both important points in time. We expect
4 that both Drs. Slayter and Rahman will be examined in the
5 context of the Inquiry given the terms of reference and we
6 submit that Drs. Slayter and Rahman's participation and standing
7 will further the conduct of the Inquiry. We expect that their
8 standing will provide direct insight into medical services
9 provided and the status of Mr. Desmond and that this insight
10 will lead to greater openness and fairness and understanding of
11 the Inquiry.

12 As for the types of participation sought by the physicians,
13 we are seeking full participatory rights. As Your Honour raised
14 in respect of others, we reserve the right to lead expert
15 evidence. We don't, at this point, know if that will come to
16 pass but we seek all aspects of participation on behalf of both
17 Drs. Slayter and Rahman.

18 And subject to any questions of Your Honour, those are the
19 submissions for standing.

20 **THE COURT:** No, thank you, Mr. Hayne. Mr. Murray?

21 **MR. MURRAY:** Yes, Your Honour. As Your Honour knows, a
22 number of family members have applied for standing as well.

SUBMISSIONS OF PARTIES SEEKING STANDING

1 Perhaps we might begin with Mr. Rodgers to my left who is
2 counsel for Cassandra Desmond, Mr. Desmond's sister, who has
3 applied to be the personal representative of Mr. Desmond
4 pursuant to the **Act**.

5 **THE COURT:** Just before we do that then, in relation to
6 Mr. Hayne's comments regarding Dr. Rahman and Dr. Slayter or did
7 you have no comments?

8 **MR. MURRAY:** None.

9 **THE COURT:** Their potential involvement and
10 participation ...

11 **MR. MURRAY:** Absolutely, Your Honour.

12 **THE COURT:** ... I think is pretty clear. Thank you, Mr.
13 Murray. Mr. Rodgers.

14

15

FAMILY MEMBERS

16

17 **MR. RODGERS:** Thank you, Your Honour.

18 Your Honour, as per Section 36(2) (a) of the **Fatality**
19 **Investigations Act**, a personal representative of the deceased is
20 deemed to be a participant in the Inquiry. Ms. Cassandra
21 Desmond, who is present, is the personal representative of the
22 estate of her late brother, Corporal Lionel Desmond, and expects

SUBMISSIONS OF PARTIES SEEKING STANDING

1 to be a full and substantive participant during all stages of
2 the Inquiry, Your Honour, contributing not only through
3 examining of witnesses and reviewing of evidence, but also
4 through providing insight herself and along with other members
5 of the family into Corporal Desmond's life and personality prior
6 to joining the military, their perceptions of the effects of his
7 military service on him, and also some insight into information
8 on others who served with Corporal Desmond and other potential
9 witnesses that might be suggested to the Inquiry.

10 So she is seeking standing on the basis of the **Act** and for
11 the purposes as outlined just now and in her application.

12 **THE COURT:** The question I'd have, Mr. Rodgers, is this.
13 The **Act** provides that a personal representative of the deceased
14 is a participant of the fatality inquiry. Now, Ms. Desmond has
15 come forward and says, I'm the personal representative of Lionel
16 Desmond, I'm going to appear on this Inquiry. Can you explain
17 how that comes about and I don't mean that in a challenging way.

18 **MR. RODGERS:** Yes.

19 **THE COURT:** I mean it in the context of I understand
20 that Mr. Desmond had a number of siblings ...

21 **MR. RODGERS:** Correct.

22 **THE COURT:** ... and that I understand, as well, that he

SUBMISSIONS OF PARTIES SEEKING STANDING

1 may have had an executrix with regard to his will and I also
2 appreciate the **Act** doesn't really define participant or next-of-
3 kin or nearest relative or legal representative or executrix or
4 executor. All of those are various words that can describe
5 people's involvement in his affairs. So and my interest in
6 asking the question now is that in the event that somebody, at
7 another stage says, Wait, you're not the personal
8 representative, I have as much right to be the personal
9 representative of Lionel as you do, how do we deal with it? I'd
10 rather kind of have the discussion now as opposed to at some
11 later time.

12 **MR. RODGERS:** Yes.

13 **THE COURT:** If it's a discussion that relates to, you
14 know, very personal matters as between family, I might ... I
15 understand that that may be as well and I don't necessarily need
16 to have you engage in those but I'd like to know at this point
17 if there's been at least a discussion and some agreement and
18 some understanding what Cassandra's role would be in relation to
19 giving you instructions and on this Inquiry versus another
20 sibling's interest in giving you instructions because I
21 understand one of the other siblings has given instructions to
22 Ms. Miller potentially in relation to the interests of Brenda

SUBMISSIONS OF PARTIES SEEKING STANDING

1 Desmond.

2 **MR. RODGERS:** Yes, that's correct, Your Honour. That is
3 all correct and all fair questions, as well.

4 Your Honour, there are four sisters and two of them are
5 being, are personal representatives of, one of Lionel's estate,
6 one of Brenda Desmond's estate. That has come about through
7 discussion and consensus among the siblings. And, in addition,
8 Your Honour, I'm aware and have spoken to the executrix of
9 Lionel Desmond's estate, that is, his Aunt Sandra Greencorn, who
10 is also supportive of Cassandra Desmond being the personal
11 representative for the purposes of the Inquiry and for the
12 purposes of providing instructions to me as counsel to, well, as
13 counsel to the personal representative, that's the way the **Act**
14 frames it but, essentially, it would be acting on behalf of the
15 estate of Lionel Desmond through the personal representative is
16 the way I view it.

17 In any event, Your Honour, there is no dispute among the
18 potential personal representatives, I guess I would put it that
19 way.

20 **THE COURT:** All right. Well, whether you're acting for
21 the estate of Lionel Desmond through the personal
22 representative, I don't know whether that, at the end of the

SUBMISSIONS OF PARTIES SEEKING STANDING

1 day, is a discussion we need to engage in because I'm not going
2 ...

3 **MR. RODGERS:** I'm not sure it's a relevant distinction,
4 Your Honour.

5 **THE COURT:** I'm not going to engage. That's right. I
6 tend to agree. But my, if I understand correctly, then, as
7 between Ms. Greencorn, Mr. Desmond had four sisters?

8 **MR. RODGERS:** Correct.

9 **THE COURT:** Four sisters. And that the agreement that
10 they have reached is that Cassandra will be, for the purposes of
11 this Inquiry, the personal representative of Lionel Desmond, the
12 deceased, and that she will be giving you instructions as to
13 this matter?

14 **MR. RODGERS:** That's correct, yes, Your Honour.

15 **THE COURT:** Do I have that all correct?

16 **MR. RODGERS:** Yes.

17 **THE COURT:** Okay.

18 **MR. RODGERS:** And, you know, to try to predict how we
19 would deal with some future circumstance where that status might
20 be challenged, I guess we would deal with it at the time and who
21 had the more direct and substantive connection but I guess
22 that's something we'd have to think about.

SUBMISSIONS OF PARTIES SEEKING STANDING

1 **THE COURT:** Well, at this, at this point in time, if
2 that's the agreement and you hear and you stand here on behalf,
3 taking instructions from Cassandra Desmond, who has come forward
4 as personal representative of Lionel Desmond, with the
5 concurrence of her sisters and the executrix, then I would,
6 subject to me hearing something different today, then I would be
7 prepared to accept, based on your representations, that
8 Cassandra Desmond should be recognized as the representative of
9 Lionel Desmond with regard to the matters before me, that is,
10 this fatality inquiry. All right? If that changes, then it
11 changes in the context of somebody else having to come forward
12 and then persuade me that hereafter they are the legal
13 representative and should be recognized as such.

14 **MR. RODGERS:** Yes.

15 **THE COURT:** All right. So to be clear, as of today,
16 Ms. Cassandra Desmond is the person, the only person that's
17 before this Inquiry as the personal representative of Lionel
18 Desmond and will be recognized as such.

19 **MR. RODGERS:** Yes, Your Honour.

20 **THE COURT:** All right. Thank you.

21 **MR. RODGERS:** Thank you.

22 **THE COURT:** Mr. Murray, any, any comments?

SUBMISSIONS OF PARTIES SEEKING STANDING

1 **MR. MURRAY:** I would just echo, I guess, those comments
2 that as long as there have been those discussions and there's a
3 consensus among the family members, that's the key.

4 **THE COURT:** That's fine. Thank you.

5 **MR. MURRAY:** Your Honour, we have the other application
6 in relation to the Desmond family, that of Chantel Desmond to be
7 the personal representative of her mother and Ms. Tara Miller is
8 here for that matter.

9 **THE COURT:** Ms. Miller?

10 **MS. MILLER:** Thank you, Your Honour, Tara Miller
11 appearing on behalf of Chantel Desmond in her application for
12 standing as personal representative of her mother, Brenda
13 Desmond. Per section 36 of the **Fatality Investigations Act**,
14 Chantel, like Cassandra, is applying for standing as a personal
15 representative of her mom, the deceased. I've heard your
16 comments with my friend, Mr. Rodgers, and can assure the Court,
17 as well, that that same discussion has been had with Chantel on
18 behalf of who is the agreed upon representative for Brenda
19 Desmond by way of the four daughters and four siblings left to
20 provide instructions on behalf of Brenda Desmond.

21 Brenda Desmond did not have a will, Your Honour. The four
22 sisters were appointed as administrators under Probate, and

SUBMISSIONS OF PARTIES SEEKING STANDING

1 again just to reassure Your Honour that there has been
2 consultation and agreement amongst those four sisters in their
3 role of administrators that Chantel will represent the
4 collective, will provide instructions to me and disseminate
5 information through to the balance of the siblings in her role
6 as personal representative of her mother, Brenda Desmond.

7 **THE COURT:** So if I understand, Cassandra Desmond is an
8 administrator of Brenda Desmond's estate, Cassandra is?

9 **MS. MILLER:** Cassandra, Chantel, Kaitlin, and Diane
10 Desmond are all administrators of their mom's estate.

11 **THE COURT:** All right. And they, they collectively
12 give you instructions with regard to estate matters?

13 **MS. MILLER:** That is correct.

14 **THE COURT:** And then Cassandra Desmond is giving
15 instructions to Mr. Rodgers in relation to matters on this
16 inquiry as they relate to Mr. Lionel Desmond and, at the same
17 time, Chantel is giving you instructions on this Inquiry as the
18 representative of Brenda Desmond as matters relate to Brenda
19 Desmond?

20 **MS. MILLER:** That is correct, Your Honour. That
21 arrangement had been reached after collaboration, consultation,
22 and agreement amongst the four sisters in terms of who would act

SUBMISSIONS OF PARTIES SEEKING STANDING

1 as personal representative for each of their brother and their
2 mom.

3 **THE COURT:** I would just say this, that how everything
4 on the Inquiry will unfold is hard to say but it's not outside
5 the realm of possibility that the interests of Brenda Desmond
6 and Lionel Desmond on this Inquiry may not mesh. And at the
7 same time that Cassandra Desmond is giving instructions to Mr.
8 Rodgers, she's also giving you instructions on the estate
9 matters, which leaves the door open to an issue of conflict. I
10 only say that because everyone has to keep a sharp eye open
11 because if it happens, it's like dropping an anchor out of a
12 boat in soft sand and it's going to come to a halt.

13 **MS. MILLER:** I appreciate that, Your Honour. If I can
14 give you assurance, my instructions from the sisters in total
15 with respect to any matters arising from Probate of Brenda
16 Desmond's estate have been very focused on one issue, which came
17 to culmination in the last couple of weeks. So I do not
18 anticipate that there would be any potential for conflict
19 arising, as properly identified by Your Honour, moving forward
20 in terms of the Inquiry, and that is why we are comfortable and
21 confident, having discussed with Mr. Rodgers and myself and the
22 four sisters and also some communication with Commission

SUBMISSIONS OF PARTIES SEEKING STANDING

1 counsel, that this would be an appropriate way for me to receive
2 instructions from Chantel, subject to Your Honour's appropriate
3 concerns.

4 **THE COURT:** Thank you. And that's helpful that you've
5 had that conversation, Ms. Miller.

6 So given the discussion we've had, then I'm, at this time,
7 prepared to recognize that Chantel Desmond is coming forward and
8 applying as the personal representative of Brenda Desmond and
9 she'll be recognized as such for the purposes of this Inquiry
10 and, in the event that that changes and that gets, if it happens
11 to get challenged in any way at a later date, someone will have
12 to come forward and convince me or persuade me that I need to
13 change the decision that I make today. And it may be hard
14 persuasion or it may be soft persuasion, it depends on the
15 circumstances. The same would apply to Mr. Rodgers. So if we
16 know on a go-forward basis who, who is it that has, that has the
17 standing here and who's giving the directions and if they're
18 given in consultation with the rest of the family, that makes
19 sense on some level, as well. Thank you.

20 **MS. MILLER:** Thank you, Your Honour.

21 **MR. MURRAY:** Your Honour, Ms. Morrow is here on behalf
22 of Ricky and Thelma Borden and also Sheldon Borden.

SUBMISSIONS OF PARTIES SEEKING STANDING

1 **THE COURT:** Ms. Morrow?

2 **MR. MORROW:** Thank you, Your Honour. Three applications
3 for standing were filed with Your Honour - one from Thelma
4 Borden, that was dated March 30th, 2019; one from Richard
5 Borden, also known as Ricky Borden, dated March 30th, 2019; and
6 one from Sheldon Borden, dated April 8th, 2019. These
7 applications are made pursuant to section 36(2) of the **Fatality**
8 **Investigations Act.** I represent Richard and Thelma Borden, the
9 personal representatives of their daughter, the late Shanna
10 Desmond, and Aaliyah Desmond, as well. In relation to Shanna
11 Desmond, the personal representatives have opened an estate for
12 her. They are, all of the living members of the family are here
13 present today at the Inquiry - that would be Ricky and Thelma
14 Borden, Sheldon Borden, their son, their only son, and their
15 only living daughter, Shanda Borden. She's also present today.
16 And there is no disagreement within the family that they are the
17 personal representatives of their daughter, the late Shanna
18 Desmond. They have not opened an estate for Aaliyah Desmond
19 but they are the grandparents of Aaliyah. There has been no
20 dispute amongst any of the other family members, the Desmond
21 family, from both the Bordens applying for representation as the
22 personal representative of Aaliyah Desmond.

SUBMISSIONS OF PARTIES SEEKING STANDING

1 Sheldon Borden is applying as an interested person. He is
2 an immediate family member, being a sibling of Shanna. He has
3 personal knowledge of the family members that have passed away.
4 He knew all four of them well. He has been deeply impacted by
5 the tragic loss of Shanna and Aaliyah and Lionel and Brenda.

6 All three of these applicants, Your Honour, will have
7 direct and substantial and relevant information in regard to the
8 terms of reference assigned by the Minister. I'm not going to
9 go over all the sections from the order but, for example, under
10 section 3(d)(v), Sheldon Borden will have information on that,
11 on the ability to retain or obtain a license to purchase a
12 firearm. All three people knew and were very involved with the
13 deceased and will have this relevant and helpful information to
14 bring to the Inquiry and we look forward to working with Mr.
15 Murray and Mr. Russell to bring the family's input to help the
16 Inquiry meet the mandate as set out in the order.

17 So I ask that you would grant standing to Richard Borden
18 and Thelma Borden, and to Sheldon Borden, as an interested
19 person. And that would be pursuant to section 36(2) of **Act**.

20 **THE COURT:** Aaliyah was 10 years old.

21 **MR. MORROW:** She was 10 years old at the time.

22 **THE COURT:** The time of her death. And Mr. and Mrs.

SUBMISSIONS OF PARTIES SEEKING STANDING

1 Borden, that is, Thelma and Richard Borden, are her
2 grandparents?

3 **MR. MORROW:** That's correct, Your Honour.

4 **THE COURT:** And those are the maternal grandparents.
5 Are there paternal grandparents, as well?

6 **MR. MORROW:** Well, the paternal grandmother would have
7 been Brenda Desmond.

8 **THE COURT:** Yes. And is there a paternal grandfather?

9 **MR. MORROW:** Not that I'm aware of, Your Honour.
10 It's Ken Jones, Your Honour. There has been no discussions
11 with him.

12 **THE COURT:** All right. So I was just going to ask the
13 question then - Mr. Jones was not active in Aaliyah Desmond's
14 life?

15 **MR. MORROW:** No ... Well ... No, Your Honour.

16 **THE COURT:** So when Mr. and Mrs. Borden present as the
17 representative of Aaliyah, they've had discussions with the
18 other members of the Desmond family, do I have that
19 understanding? That's what you seemed to suggest to me was
20 that there had been some discussion and everyone was agreeable -
21 maybe I'm paraphrasing - was agreeable that Richard and Thelma
22 would, on this Inquiry, be the personal representatives of

SUBMISSIONS OF PARTIES SEEKING STANDING

1 Aaliyah?

2 **MR. MORROW:** I can say that Mr. Rodgers was aware that
3 the ...

4 **THE COURT:** Sorry. Being aware and having an
5 understanding with the other part of the family is different.
6 And it's the same point I was trying to make earlier, Ms.
7 Morrow, is that when somebody comes forward and says they are
8 the representative of a deceased, I'd like to know on what basis
9 they put that position forward.

10 **MR. MORROW:** Yes, Your Honour, I understand. Well, I
11 ...

12 **THE COURT:** And only in the context that no one else is
13 coming forward or makes a decision that they think they are well
14 placed or better placed to look after, if I can use that
15 expression, the interests that come out of this Inquiry as they
16 relate to a 10-year-old deceased. And that may very well be.

17 **MR. MORROW:** Yes, Your Honour. Well, if I may have a
18 moment, I can discuss that with Mr. Rodgers and Ms. Miller. My
19 understanding is there is no dispute but I would like to have a
20 moment to have that discussion with them, Your Honour.

21 **THE COURT:** This is where it needs to be put on the
22 record what everybody's positions are so that I know going

SUBMISSIONS OF PARTIES SEEKING STANDING

1 forward. And to the extent that I make a determination whether
2 somebody is properly before this Inquiry as a representative of
3 a deceased, I think it's worthwhile to have that conversation so
4 that I can hear from everyone that's here at this time what
5 their positions are. Okay? So when we take a break, I will
6 give counsel an opportunity to have that conversation.

7 I'll call on you again, then, Ms. Morrow. So we'll just
8 leave it here for now, okay?

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

10 **THE COURT:** Thank you. I might say that with regard to
11 the fact that Richard and Thelma Borden are, you know, asking to
12 be recognized as the representative of their daughter, I don't
13 think that's in dispute.

14 **MR. MORROW:** Thank you, Your Honour.

15 **THE COURT:** Okay. I'm more interested ... more
16 concerned with the issue as it might relate to Aaliyah Desmond.
17 All right. Thank you.

18 **MR. MORROW:** Any further questions in relation to
19 Sheldon Borden, Your Honour?

20 **THE COURT:** No, I understand pretty clearly what Mr.
21 Sheldon Borden's interests are here.

22 **MR. MORROW:** Thank you.

SUBMISSIONS OF PARTIES SEEKING STANDING

1 **THE COURT:** Thank you. So we'll set that aside.

2 Mr. Murray?

3 **MR. MURRAY:** Yes, Your Honour, there are other
4 applicants for standing pursuant to section 36(2)(b) of the
5 legislation. Mr. Russell and I have had conversations with a
6 number of those individuals to determine the role that they wish
7 to play in the Inquiry, whether, in fact, they do wish to have
8 full standing or partial standing as participants, or whether
9 they wish to play some other role as a resource to the Inquiry
10 and potential witness with relevant information. And some of
11 the applicants have, I think, decided that they may not wish to
12 pursue their application pursuant to section 36(2)(b) for formal
13 standing but would like to play a role in the Inquiry. There
14 are at least two applicants, however, who were still considering
15 their position. I know that one is present today, Ms. Heather
16 MacPherson. Perhaps if Your Honour wishes, you could call on
17 her now.

18 **THE COURT:** Thank you. Ms. MacPherson?

19

20

OTHER PARTIES

21

22 **MS. MACPHERSON:** Yes.

SUBMISSIONS OF PARTIES SEEKING STANDING

1 **THE COURT:** Could you come forward, please?

2 **MS. MACPHERSON:** Yes.

3 **THE COURT:** Ms. MacPherson, actually there's a chair,
4 just a spot open on the last bench. If you could just go over
5 there. There's a microphone there. All of these proceedings
6 are recorded.

7 **MS. MACPHERSON:** Okay.

8 **THE COURT:** So we just need to have you in front of a
9 microphone. All right?

10 **MS. MACPHERSON:** Okay.

11 **THE COURT:** Thank you. I'm sorry, Ms. MacPherson, I
12 would just ask you to stand, then, if I could, please.

13 **MS. MACPHERSON:** Okay.

14 **THE COURT:** So I know, Ms. MacPherson, that you
15 completed an application to, to participate in these, in this
16 Inquiry. What would you like to say?

17 **MS. MACPHERSON:** Well, I'm a daughter of a veteran,
18 World War II veteran. My dad served from 1943 to '45 and then
19 again in 1954 when he remustered to Air Force. He was a combat
20 infantry veteran. I've been dealing with Veterans Affairs for
21 the past 30 years on his behalf and, to be honest, their motto
22 is, basically, in the veteran community, it's delay and deny

SUBMISSIONS OF PARTIES SEEKING STANDING

1 until the veteran dies or gives up. And that is the sad truth.

2 I'm sorry, I'm a bit rattled because I found out yesterday
3 another veteran died. He didn't go out with a bang. He didn't
4 kill his family members but he was a veteran and I think, to be
5 honest, another victim of Mefloquine. I mentioned that in my
6 report. I used to be a rehab member or I used to work in mental
7 health rehab so ... And I know what combat, like, shell shock,
8 battle fatigue, PTSD, it's different. Back in 2013 there was
9 four, four veterans who committed suicide in one week and I said
10 there has to be an underlying chemical connection. So that's
11 where Mefloquine ...

12 **THE COURT:** That was the anti-malarial medication?

13 **MS. MACPHERSON:** Yes.

14 **THE COURT:** Um-hmm.

15 **MS. MACPHERSON:** It's in court now. But, I mean, I
16 don't know, I'm not an expert on Mefloquine but I've been
17 reading and studying since, like I said, 2013, when all these
18 suicides happened.

19 **THE COURT:** So your experiences have been, you've lived
20 the experience with your father, clearly?

21 **MS. MACPHERSON:** Yeah, yeah.

22 **THE COURT:** For quite a number of years and those

SUBMISSIONS OF PARTIES SEEKING STANDING

1 that were associated with him and those that were engaged in
2 mental health and counseling that you may have been familiar
3 with, as well.

4 **MS. MACPHERSON:** Yes. I mean back in ... According to
5 Veterans Affairs, and when Dad was in ... when he re-enlisted
6 into the Air Force, he had his mental break, but at least back
7 then there were veterans' hospitals. There are no veterans'
8 hospitals anymore. And there is, like, 40,000 disabled veterans
9 on a waiting list, 40,000, at least.

10 **THE COURT:** Ms. MacPherson, I appreciate that you've
11 come forward today, and I know it's a difficult circumstance for
12 you, given your personal living experiences you have had with
13 your father and others and I want to thank you for taking the
14 time to complete the application, for coming forward today, and
15 for sharing your observations with us.

16 **MS. MACPHERSON:** You're welcome.

17 **THE COURT:** There's always value in understanding, you
18 know, a broad spectrum of events that occur in the community.
19 Thank you for your time.

20 **MS. MACPHERSON:** Thank you.

21 **THE COURT:** Mr. Murray?

22 **MR. MURRAY:** Your Honour, just with respect, I

SUBMISSIONS OF PARTIES SEEKING STANDING

1 referenced a moment ago several applicants who made applications
2 pursuant to section 36(2) (b) and after our discussions with them
3 determined that that may not be precisely the role that they
4 wish to play. And if the Court pleases, I would just put those
5 on the record?

6 **THE COURT:** If you could, just by way of explanation.
7 Thank you.

8 **MR. MURRAY:** Yes, Your Honour. We received an
9 application or the Inquiry received an application from an
10 organization called Silent Witness Nova Scotia, and my colleague
11 Mr. Russell and I had a conversation with the Chair of that
12 organization, Dolly Mosher. And when we discussed the nature of
13 participation or standing as an interested person, I believe Ms.
14 Mosher indicated that she did not wish to pursue that formally,
15 but Ms. Mosher does have and already has provided us with some
16 information with respect to the issue of domestic violence in
17 Nova Scotia and I believe wishes to potentially play a role as a
18 resource or a witness for the Inquiry. So I did not anticipate
19 Ms. Mosher would be pursuing her application for formal
20 standing.

21 **THE COURT:** Thank you.

22 **MR. MURRAY:** Similarly, we received an application, Your

SUBMISSIONS OF PARTIES SEEKING STANDING

1 Honour, from Dr. Verona Singer, Ph.D. Ms. Singer similarly has
2 a wealth of knowledge with respect to the issue of domestic
3 violence and has some familiarity with or has taken an interest
4 in this particular tragedy. After speaking with Ms. Singer,
5 she, similarly, at this time does not wish to pursue her
6 application for standing pursuant to section 36(2)(b) but,
7 again, wishes to play the role of resource, if we wish, and
8 provide assistance to us in addressing that issue. So she will
9 not be following her application at this time or pursuing her
10 application at this time.

11 We also received an application from the Health Association
12 of African Canadians and, again, myself and Ms. Russell had an
13 opportunity to speak with representatives from that
14 organization, particularly, Sharon Davis-Murdoch, the co-
15 president. And Ms. Davis-Murdoch indicated that they would not
16 be appearing today to follow their application under the **Act** but
17 would be, again, available to provide some information with
18 respect to the unique health concerns of African Nova Scotians,
19 which may have some relevance to the terms of reference. So,
20 again, we did not expect to hear from a representative of that
21 organization today.

22 **THE COURT:** Thank you.

SUBMISSIONS OF PARTIES SEEKING STANDING

1 **MR. MURRAY:** Finally, Your Honour, we spoke with another
2 applicant, Sergeant David T. MacLeod. Sergeant MacLeod applied
3 for standing, at least limited standing, pursuant to section
4 36(2) (b). When we spoke with Sergeant MacLeod last he
5 indicated that he would consider and we expected that he would
6 be making an application for at least limited standing. I may
7 have suggested that we would be a bit longer than we were
8 working through these so we're going to, if we could have a
9 short break, we would just check with him. I may have suggested
10 that he come at a little bit later time.

11 **THE COURT:** All right. That's fine. I would say
12 that, with regard to the applications that were filed through
13 the organization Silent Witness and Dr. Verona Singer and also
14 through the Health Association of African Canadians, the
15 application process is of value in this particular way, I guess,
16 that even though those individuals or groups at the end of the
17 day would not be looking for standing, it's helpful because it
18 gives counsel, it gives the Inquiry information to help identify
19 potential resources of information that, whether it's factual,
20 statistical, research, information that can be of assistance and
21 may lead to other information, as well. So to those individuals
22 I would thank them for their interest and the time they took to

SUBMISSIONS OF PARTIES SEEKING STANDING

1 complete their applications and Mr. Murray and Mr. Russell have
2 them as potential sources of information, resource-based
3 information if and as needed.

4 What time is it? It's 10 to. Ms. Morrow wants to have a
5 discussion with Mr. Rodgers and Ms. Miller, and Mr. Murray is
6 going to have a discussion with Mr. MacLeod or Sergeant MacLeod.
7 We would normally break at 12:30 for lunch, but it seems to me
8 that we've moved along efficiently enough that we could probably
9 conclude what we need to do today and adjourn for the day
10 shortly. So let's take a break now and try and come back
11 within half an hour, and we may be able to conclude today's
12 sitting at that point in time. I'll hear from anybody else, if
13 counsel want to raise any other issues when we come back. All
14 right. Or you can raise issues with Mr. Murray and Mr. Russell.
15 All right.

16 **COURT RECESSED (11:53 HRS)**

17 **COURT RESUMED (12:27 HRS)**

18 **THE COURT:** Thank you. Ms. Morrow?

19 **MS. MORROW:** Yes. Thank you, Your Honour. There is no
20 agreement on representation in regard to Aaliyah Desmond. So I
21 would ask to set that matter over. Suggest that perhaps it
22 could be set over to a day for determination down the road.

SUBMISSIONS OF PARTIES SEEKING STANDING

1 We're not asking for a hearing on it today, Your Honour, or a
2 determination today.

3 **THE COURT:** All right. So with regard to the
4 application as it relates to Aaliyah Desmond as put forward by
5 Richard and Thelma Borden, I'm going to adjourn that without
6 day.

7 **MS. MORROW:** Thank you, Your Honour.

8 **THE COURT:** And I will advise that ... give directions
9 to Mr. Murray and Mr. Russell to have discussions with counsel
10 to get this matter back before the Inquiry as soon as possible.
11 We'll find a date.

12 **MS. MORROW:** Yes, Your Honour. I'll do that. Thank you.

13 **THE COURT:** As I said, I'm going to give Mr. Murray and
14 Mr. Russell some directions to pursue that with counsel so that
15 it gets determined sooner rather than later. Thank you.

16 Mr. Murray, that was the last matter other than the matter
17 of Sgt. MacLeod?

18 **MR. MURRAY:** Yes.

19 **THE COURT:** Is that correct?

20 **MR. MURRAY:** I believe so, Your Honour. Yes.

21 **THE COURT:** And I understand that, based on your
22 discussions, you were able to contact Sgt. MacLeod and he's

SUBMISSIONS OF PARTIES SEEKING STANDING

1 expected to be here. Do you have some timeframe?

2 **MR. MURRAY:** Probably within the hour.

3 **THE COURT:** Within the hour?

4 **MR. MURRAY:** Yes.

5 **THE COURT:** All right. And I think that is going to be
6 the last of the applications we're going to be dealing with. So
7 I'm going to ... we'll adjourn for an hour, I guess, and we'll
8 come back about 1:30. Do you anticipate that will be
9 sufficient?

10 If anyone in attendance, the parties/the lawyers, have
11 anything they want to discuss with Mr. Murray and Mr. Russell, I
12 would suggest that you try and do it now or during the break.
13 We're going to hear from Sgt. MacLeod and then that will
14 probably conclude the day's sitting. We had set aside tomorrow,
15 as well, for a date for applications but that won't be needed.
16 On the 23rd, we have scheduled a motion by Mr. Rodgers and I
17 know that Mr. Anderson is involved in that. I had thought at
18 some point we could maybe move that to tomorrow but I understand
19 some of counsel have other commitments tomorrow. Ms. Miller has
20 a commitment, Mr. Anderson has a commitment. And
21 congratulations, Ms. Morrow.

22 **MS. MORROW:** Thank you, Your Honour.

SUBMISSIONS OF PARTIES SEEKING STANDING

1 **THE COURT:** Ms. Morrow is receiving her Q.C. tomorrow,
2 as I understand.

3 **MS. MORROW:** That's correct.

4 **THE COURT:** So after today, then we'd be adjourning
5 until Thursday morning at 9:30 to hear the application, if
6 that's agreeable. All right?

7 Well, thank you then. So we're adjourned until 1:30.

8 **COURT RECESSED (12:33 HRS)**

9 **COURT RESUMED (13:54 HRS)**

10 **THE COURT:** Thank you. Sorry for the delay. We were,
11 in part, waiting for Mr. MacLeod and, in part, trying to work
12 through some recording issues. Thank you.

13 Mr. Murray?

14 **MR. MURRAY:** Yes. Sgt. MacLeod is present.

15 **THE COURT:** Sgt. MacLeod. Sgt. MacLeod, we need to find
16 ... actually, if you move down the table there to where the
17 Deputy is, you can kind of speak to us from there. The
18 microphone that's in front of you, Sergeant, it's relatively
19 sensitive, but it requires that you speak out to be recorded.
20 And I'd ask you just to stand, if you could. I have your
21 application and I know that Mr. Murray had indicated this
22 morning a little bit about what you might want to say but the

SUBMISSIONS OF PARTIES SEEKING STANDING

1 floor is yours.

2 **SGT. MACLEOD:** Thank you, sir. I am Sergeant David Thomas
3 MacLeod, retired, CD, MA. I have military service in the
4 Canadian Armed Forces since 1982. I was medically released in
5 2010. I served as an infantryman. I also served as an
6 intelligence operator. I have Military service in Cyprus,
7 Bosnia, Kosovo, and a few deployments to Afghanistan, as well as
8 operational experience in domestic and other foreign locations.

9 While serving, I earned a Bachelor of Arts in Political
10 Science and a Masters Degree in Human Security. The Human
11 Security focuses primarily on Maslow's hierarchy of needs, not
12 on the physical security, though it has been a great deal of
13 value to help me study veterans' issues.

14 I am disabled. I suffer from severe chronic PTSD. I co-
15 authored a book entitled, **A Dirty Little Skirmish**. I co-edited
16 a forthcoming book entitled, **Treated Like a Liability**. Both
17 have to do with veterans' health and welfare, both have to do
18 with the challenges that veterans face when dealing with VAC.

19 I'm here because it is in my family's best interest, my
20 community's best interest, and the province's best interest that
21 we find out, explore, discover, the faults that led to the
22 demise of Corporal Desmond and his family. I also feel that I

SUBMISSIONS OF PARTIES SEEKING STANDING

1 can add to this in that I've done quite a bit of research for my
2 books that deals primarily with some of the material from
3 Veterans Affairs Canada as well as the challenges that veterans
4 face when being medically released and moving to a new province.
5 There is quite a few bureaucratic tripwires and that's why I
6 submitted my application, sir.

7 **THE COURT:** Sergeant MacLeod, do you reside in Nova
8 Scotia at the present time?

9 **SGT. MACLEOD:** Yes, sir. I live in Antigonish. Actually,
10 I live in a place called Ashdale. It's 17 kilometers outside of
11 Antigonish. Would you like the address, sir?

12 **THE COURT:** No. Thank you. I think that we have
13 current contact information on your application?

14 **SGT. MACLEOD:** Yes, we do, sir.

15 **THE COURT:** All right. Thank you. The research that
16 you've done, Sergeant, is that research that made your way or
17 found its way into the first book and is part of what's in the
18 second book, as well?

19 **SGT. MACLEOD:** Yes, it is, sir.

20 **THE COURT:** Am I correct?

21 **SGT. MACLEOD:** I don't work alone. Because I know that I
22 have a few problems, I get help from lawyers; as a matter of

SUBMISSIONS OF PARTIES SEEKING STANDING

1 fact, a very small team. We have a lawyer, we have former
2 members of Veterans Affairs Canada, we have former members of
3 Veterans Review and Appeal Board, a former member of parliament,
4 and I think our actuary finally joined. So I do have some help.
5 I don't do it on my own and the information that we do have does
6 go into the books. Yes, sir.

7 **THE COURT:** And as a part of your research, are you
8 involved in collecting, for instance, statistical information?
9 Do you have somebody that analyzes your statistical information
10 for you?

11 **SGT. MACLEOD:** Yes, sir. We have some pretty basic stats,
12 but most of those stats are ... well, they're skewed because the
13 data that we use comes from Veterans Affairs Canada and, in
14 that, Veterans Affairs Canada fails. They do not collect all
15 data on all veterans. What they do is collect data on veterans
16 that are receiving benefits and services in accordance with
17 their directions, which is a failure of the **Department of**
18 **Veterans Affairs Act**, Section 4. It clearly states that the
19 Minister is responsible for all veterans and their transition to
20 Canadian society ... sorry, their reintegration into Canadian
21 society.

22 **THE COURT:** Does your research look at any of the

SUBMISSIONS OF PARTIES SEEKING STANDING

1 statistical analysis, or otherwise, that comes from the United
2 States?

3 **SGT. MACLEOD:** No, sir. We find that the United States has
4 a completely different culture. As a matter of fact, you can
5 look upon the United States, as a whole, as more of a martial
6 culture. Canada does not have a martial culture at all. As a
7 matter of fact, there's a great ...

8 **THE COURT:** Sorry. When you say "martial culture", what
9 do you mean?

10 **SGT. MACLEOD:** A deep understanding of their military and
11 great support for the military ...

12 **THE COURT:** Okay.

13 **SGT. MACLEOD:** ... as in the majority of the people may
14 have served or had family served in the military. What we find
15 is in Canada there is a lack of veterans' literacy. And when I
16 say "veterans' literacy", I don't mean whether or not a veteran
17 can read and write but, in fact, whether or not society, as a
18 whole, understands the nuances and the challenges that veterans
19 face when they try to reintegrate into Canadian society and
20 that's why we don't use American stats.

21 **THE COURT:** Do you, in your research, look at issues
22 relating to ... I'm not familiar with your book.

SUBMISSIONS OF PARTIES SEEKING STANDING

1 **SGT. MACLEOD:** Very few people are, sir.

2 **THE COURT:** Well ...

3 **MALE:** Some of us are.

4 **THE COURT:** Some would read and it may be that at some
5 point that I will read it just as background information. But
6 the relationship between, in this case, PTSD and domestic
7 violence, however that's defined, does your research take you
8 into those areas?

9 **SGT. MACLEOD:** What we do, for the most part, in that case,
10 is instead of touching families, we look back at what Veterans
11 Affairs actually knows themselves. For example, in ... let me
12 check my notes, please. So in 2003, a report entitled "Meeting
13 Veterans' Treatment Needs - A Report on DND/VAC PTSD Programs",
14 was a document that was prepared by Veterans Affairs Canada and
15 was presented to the Senate. It identifies the VAC's and the
16 government's negligence in dealing with PTSD and that includes
17 the domestic violence.

18 **THE COURT:** That was a document presented to the Senate
19 when the Senate was considering legislation with respect to the
20 development of a policy dealing with PTSD across the country?
21 Is that ... those are the hearings that you're talking about?

22 **SGT. MACLEOD:** Yes, sir. That was correct.

SUBMISSIONS OF PARTIES SEEKING STANDING

1 **THE COURT:** And, I'm sorry, what was ... I may as well
2 ask you for the name of that document again.

3 **SGT. MACLEOD:** "Meeting Veterans' Treatment Needs - A
4 Report on DND/VAC PTSD Programs".

5 **THE COURT:** And that was prepared by whom? Did Veterans
6 Affairs provide that report or was it ...

7 **SGT. MACLEOD:** That was put together by a former member of
8 Veterans Affairs, Mr. Harold Leduc, while he was the president
9 of the Canadian Peacekeeping Veterans Association.

10 **THE COURT:** It was part of a presentation to the Senate
11 was it?

12 **SGT. MACLEOD:** Yes, sir. They were examining veterans'
13 issues at the time specific to PTSD. There's another document,
14 a VAC-generated document, 1999, "A Review of Veterans' Cares
15 Needs - Part 3". It's an important document for this Inquiry as
16 it's a study that increases VAC's awareness of how they let
17 military veterans and their families fall through the gaps when
18 dealing with PTSD. I realize it's a somewhat dated document but
19 much of what's in it is still relevant.

20 **THE COURT:** All right. Thank you.

21 Thank you, Sgt. MacLeod. Thank you for your application
22 and the information you've provided us with this afternoon. I

SUBMISSIONS OF PARTIES SEEKING STANDING

1 have indicated earlier this morning that at the conclusion of
2 the applications we were going to adjourn and various
3 individuals who had applied to participate would be advised, and
4 you'll be advised in due course as well.

5 **SGT. MACLEOD:** Thank you, sir.

6 **THE COURT:** All right. Thank you for your time and
7 thank you for your interest, Sergeant.

8 I think that was the last of the applications, Mr. Murray?

9 **MR. MURRAY:** Yes, it was, Your Honour.

10 **THE COURT:** All right. Thank you. Well, I'd like to
11 thank everyone that came today and those that came out of
12 interest, friends and the family members. I appreciate, as I
13 think we all do, that the events ... the life of Lionel Desmond
14 following his deployment, what I've been able to glean from what
15 I've read, was fraught with difficulty that led to the tragic
16 events of January the 3rd.

17 I appreciate that it's particularly difficult on the family
18 members that are here to deal with it. And I have some
19 reasonable expectation that at times in dealing with this will
20 become just as challenging for all of us to face and confront
21 the circumstances but that's what we're here to do and we'll do
22 our best to fulfil the obligations of the mandate that was

SUBMISSIONS OF PARTIES SEEKING STANDING

1 directed by the Minister of Justice.

2 We're going to conclude for the day. I'm going to ask Mr.
3 Anderson and, in particular, Mr. Rodgers and Ms. Morrow and
4 perhaps Ms. Miller and counsel if they want to stay for a few
5 minutes. I'd like to have a discussion just as to the process
6 that we're going to follow on Thursday.

7 There is a motion that I'm going to deal with on Thursday
8 brought by Mr. Rodgers. It's particularly related to him in the
9 circumstances and his potential clients. For those that want to
10 attend all of these proceedings are open to the public, so
11 you're invited to return.

12 Today's proceedings, we're adjourning until this coming
13 Thursday at 9:30. All right? So after the room clears, if
14 counsel want to stay, we'll have a discussion. We'll probably
15 have a discussion in here. All right?

16 All right. Thank you, everyone.

17

18 **COURT ADJOURNED TO MAY 23, 2019 - 09:30 HRS**

19

20

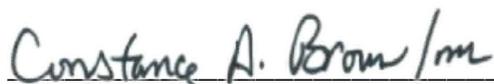
21

22

CERTIFICATE OF COURT TRANSCRIBERS

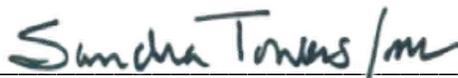
We, the undersigned Constance A. Brown, Sandra Towers, Wilma VanSickle, Court Transcribers, hereby certify that we have transcribed the foregoing and that it is a true and accurate transcript of the evidence given in this matter, **The Desmond Fatality Inquiry**, taken by way of electronic digital recording.

Pages 23 to 42



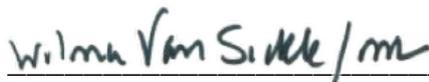
Constance A. Brown
(Registration No. 2006-269)

Pages 1 to 22



Sandra Towers
(Registration No. 2006-236)

Pages 43 to 53



Wilma VanSickle
(Registration No. 2006-13)

DARTMOUTH, NOVA SCOTIA**May 24, 2019**