CORONERS COURT

IN THE MATTER OF the *Coroners Act*, R.S.O. 1990, c. 37
AND IN THE MATTER OF the Inquest into the death of Junior Manon

WRITTEN SUBMISSIONS OF THE MANON FAMILY

Contents

I. OVERVIEW 1
II. FACTS 4
Constable Adam's account of his interaction with Junior Manon 6
The Beating of Adam Nobody 7
Constable Adam's account of his arrest of Adam Nobody 8
III. ISSUES 10
IV. LAW AND ANALYSIS 11
The public interest function of an Inquest 11
Natural Justice at an Inquest 12
Natural justice necessitates the conduct of a *voir dire* 13
Is the proposed evidence relevant and material to the inquest? 14
The evidence is relevant to the preventative function of the inquest 15
The evidence is necessary in order that the jury not be left with a "distorted picture" 16
The evidence is relevant to the assessment of Constable Adams' justification for using force 18
Admissibility of the OIPRD Report 20

I. OVERVIEW

1. An otherwise healthy 18 year old teenager is dead after two police officers (Subject Officers Adams and Blower) restrained him by beating him with punches, knee strikes and radio strikes (according to two eyewitnesses). The Chief Forensic Pathologist has ruled out excited

delirium as a cause of death. Dr. Pollanen is of the opinion that Junior Manon died of positional asphyxia – that is he concludes that the manner of Junior Manon's restraint resulted in this otherwise healthy 18 year old asphyxiating to death. Chest compression via weight on his back from the officers combined with Junior being held face down are key aspects of this restraint. The Manon family seeks answers as to the role of the police beating in Junior's death. What made this young man so defenceless that he could not even breathe for himself? What role did the police beating have in Junior's death?

2. Inquests are not fault finding vehicles but the jury's job is to return a verdict that speaks the truth about Junior's death – the whole truth. Our Courts have recognized that Inquests are, among other things, a "means for satisfying the community that the circumstances surrounding the death of no one of its members will be overlooked, concealed, or ignored" [*People First*]. Justice Campbell speaks of the essential role of inquests as providing "the degree of public scrutiny necessary to ensure that it cannot be said, once the inquest is over, that there has been a whitewash or a cover up. There is no better antidote to ill-founded or mischievous allegations and suspicions than full and open scrutiny." [*Stanford v. Harris*]

3. This motion is about the appropriate steps to follow when other "circumstances" of the beating of another member of the public in the same time period by the same officer arise. In two strikingly similar incidents just seven weeks apart, Constable Mike Adams was involved in the application of force to a member of the public that resulted, in one case, in death (Junior Manon) and in serious injuries in the other (Adam Nobody). It is not the function of an Inquest jury to make findings of fault or to arrive at conclusions of law. It is the jury's function to closely scrutinize the circumstances surrounding this death in police custody and

to arrive at findings of fact as to the role (if any) the police punching, knee strikes and radio strikes had in Mr. Manon's ultimate death.

4. Officer Adams' restraint of Adam Nobody is caught on video. His punches were to both the body and head and have resulted in a complaint of excessive force that was found to be "substantiated" (after an investigation by the Office of the Independent Police Review Director - "OIPRD"). OIPRD investigators rejected Constable Adams' account of alleged physical violence by Adam Nobody as a justification for the police beating.

5. There is no video of the beating and restraint of Junior Manon. Adams is one of two subject officers. It is clear that Constable Adams' manner of restraint caused Junior Manon's death. A Post Mortem Report found unequivocally that Constable Adams actions in forcibly restraining Mr. Manon caused his death: **"the mechanism of death was the reduced ability to breath due to restriction of chest movements during prone restrain with added weight on the back"**. The Post Mortem Report ruled out the possibility that "excited delirium" or "intoxicating drugs/alcohol" caused or contributed to Mr. Manon's death.[1]

6. The Manon Family submits that Constable Adams' accounts of his interactions with Mr. Manon and Mr. Nobody, as well as his justifications for his conduct in those cases, are strikingly similar. The Manon Family seeks to cross-examine Constable Adams on his use of force against Adam Nobody, and to have evidence of his misconduct admitted at the inquest. This evidence is relevant and material to the inquiry into the means by which the deceased came to his death, "the circumstances of the death", and to the preventative function of the inquest.

[1] Post Mortem Report prepared by Dr. Michael Pollanen, November 18, 2010

7. The Manon Family submits that unequivocal and binding judicial authority requires that a Coroner conduct a *voir dire* where evidence sought to be elicited by a party with standing is contested on the basis of relevance and/or admissibility. The Manon Family's entitlement to elicit evidence concerning Constable Adams' propensity for using excessive force in situations temporally and factually related to Junior Manon's death has been disputed by other parties. The only vehicle through which this dispute over admissibility can be litigated is a *voir dire*. To require the Manon Family to meet an additional legal threshold to justify the holding of a *voir dire* on the proposed evidence would offend natural justice.

8. The presiding Coroner has directed submissions on the issue of whether a *voir dire* is required to address the Manon Family's motion to elicit this evidence. While these submissions address this narrow issue, the Manon Family also addresses the relevance to and admissibility of the impugned evidence. Under the procedure directed by the Coroner, these submissions may be the Manon Family's sole opportunity to address the merits of the relevance and admissibility issue.

II. <u>FACTS</u>

9. Junior Manon died on May 5, 2010 while being forcibly restrained by Constables Adams and Blower during his arrest following a traffic stop.

10. At the time of his death, Mr. Manon was a healthy 18 year old youth. A Post Mortem examination was conducted by Dr. Michael Pollanen. Dr. Pollanen concluded that Mr. Manon's death was caused by the force used by Constables Adams and Blower in restraining him during the course of the arrest: "the mechanism of death was the reduced ability to breath due to restriction of chest movements during prone restrain with added weight on the back". The Post Mortem Report also ruled out the possibility that "excited delirium" or drug/alcohol intoxication played any role in Mr. Manon's death.

11. Constables Adams and Blower deny in statements provided to the Special Investigation Unit ("SIU") that they applied any pressure or force to Mr. Manon's back or chest during his restraint. By contrast, civilian witnesses report that during the arrest, Mr. Manon was lying on the grass in a prone position with Constables Adams and Blower both lying across Mr. Manon's back to restrain him.[2]

12. Other civilian witnesses report that after Mr. Manon fled from the officers, he was forcibly taken to the ground, placed in a headlock and/or neck hold, and thereafter repeatedly punched in the head and neck area. Two civilians, who witnessed the arrest from a distance of no more than thirty feet, report that Constable Adams repeatedly struck Mr. Manon on his head with a police radio.[3] A police radio is an unauthorized weapon pursuant *Ontario Regulation* 926/90.

---

[2] SIU statement of Todd William Zubyk, May 7, 2010 and SIU statement of Paul Allison, May 16, 2010
[3] SIU statements of Shawn Kristopher Williams and Rosa Marie Berdejo-Williams, June 17, 2010

Constable Adam's account of his interaction with Junior Manon

13. During his interview with the SIU regarding the death of Junior Manon, Constable Adams described the events with Mr. Manon on May 5, 2010 as follows:

> …Once I got close to Junior and I began to speak with him, he turned to me and it was the first time I was able to see what I described as a crazy look in his eyes. He looked directly at me, but through me. It- - it was not focusing on me. His jaw was clenched and his teeth were gritted. He looked like - - wild. **He once again assumed his fighting stance, first puffing his chest at me, and then he began to swing his arms as if they were practice punches two or three times, getting ready to strike me.** At this point I felt it was inevitable I was going to have to be hit by Junior, so I braced myself and moved slowly towards him in order to complete the arrest. When I was about to make contact with Junior, he turned again and ran…
> …
> I reached out for Junior with my left hand and again told him he was under arrest. Junior's reaction to this was to punch my left- my left arm with his right hand in a downward motion, hitting my hand away. After he did that one strike, he immediately turned and began to run eastbound again, but I was close enough at this point I was able to grab the rear of his waistband. He was wearing jeans and I was able to pull him to the ground with my escort's assistance **and we all come to landing on the east boulevard of Founders which is a grassed area**. Once on the ground, **Junior immediately started to roll violently** and I was trying to get control of his limbs.
>
> **When we came to some sort of resting position after he rolled, he was laying in between my escort and I, facing me. I was on my right side and he was on his left. He immediately began to swing at me, punching me in my shoulder and my neck area on the left side of my body.** I was able to keep some distance and ul- - and prevent him from hitting my face… Junior continued to punch at me and at one point he grabbed my shirt by the left should and tried to pull my head towards his face.
>
> **His head was going from side to side and his jaw was - - like, chomping as if he was trying to bite us** and I thought that's what he was going to do to me when he pulled my head down…
>
> I was scared that we were never going to be able to control him and that one or both of us was going to get seriously hurt. **At this time I began to issue distraction strikes to the male's right side of his body, as well as the right side of his head, with a closed fist.**[4] [emphasis added]

---

[4] SIU Interview with Constable Michael Adams, June 13, 2010

14. Constable Adams attempted to explain his use of force against Mr. Manon on the basis of Mr. Manon's resistance, which was said to include attempts to punch and bite Constable Adams while both parties were on the ground. Constable Adams' characterized his blows to Mr. Manon's face and neck area as "distraction strikes".

The Beating of Adam Nobody

15. On June 26, 2010, just seven weeks after Mr. Manon's death, Constable Adams was involved with other officers in the forcible arrest of Mr. Nobody during the G20 Summit protests. Due to the extent of Mr. Nobody's injuries, which included a broken nose (requiring reconstructive surgery) and a fractured cheek bone, the mandate of the SIU was triggered.

16. Following the SIU's investigation, Director Ian Scott concluded that there were reasonable grounds to believe that Mr. Nobody had been the victim of an assault by police officers. However, as the SIU was unable to identify any of the police perpetrators (including Constable Adams), Director Scott concluded that no charges could proceed.[5] Following a public outcry and the emergence of additional evidence in the form of videos taken by members of the public, Constable Andalib-Goortani was identified and charged with assault causing bodily harm. The SIU was still unable to identify any additional police perpetrators beyond Constable Andalib-Goortani.

17. On December 21 2010, Mr. Nobody filed a public complaint with the OIPRD. Mr. Nobody's complaint alleged that he was in the area of Queen's Park on June 26, 2010, when

[5] SIU News Release November 25, 2010

a line of police officers began approaching the crowd. Mr. Nobody decided to walk away from the crowd. As he was walking away, Mr. Nobody turned and saw that police officers were running towards him. Startled, Mr. Nobody began running and the officers continued to chase him.[6]

18. Mr. Nobody alleged he was not given any verbal direction or commands by police prior to his arrest. Mr. Nobody was tackled to the ground and officers jumped on top of him, pinning his arms down. Mr. Nobody alleged that he was repeatedly struck in the face, and that he was required to move his head from side to side in order to avoid being struck twice in the same area.[7]

19. On January 13, 2012, following a lengthy investigation, the OIPRD found that reasonable grounds existed to substantiate charges of unlawful or unnecessary exercise of authority against five officers, including Constable Adams. The OIPRD concluded that Constable Adams' use of force during Mr. Nobody's arrest was "excessive".

Constable Adam's account of his arrest of Adam Nobody

20. Constable Adams advised OIPRD investigators that he was detailed with his unit to Queen's Park to assist in controlling the crowd. Constable Adams advised that Mr. Nobody was identified as an individual who was to be arrested and police began to pursue him. Constable

[6] OIPRD Investigative Report of Adam Nobody Complaint, pg. 9
[7] *Ibid* at pg. 10

Adams advises that while officers were pursuing Mr. Nobody they were yelling "stop, stop, you're under arrest."[8]

21. Constable Adams advised that when the first officer reached the complainant, **Mr. Nobody "turned, faced the officer and engaged the officer**." Constable Adams went on to explain that Mr. Nobody "**very quickly spun the officer, throwing the officer over his back**."[9]

22. Other officers then reached Mr. Nobody and he was taken to the ground. The OIPRD report details Constable Adams' account of the events as follows:

> Constable Adams said he grabbed the Complainant around his head and shoulder area in order to take him to the ground and **they all went down in a "heap"**. He stated that he tried to control the area of the Complainant's right shoulder and upper right arm. He said he along with other officers was **yelling at the Complainant that he was under arrest**, to put his hands behind his back and to stop resisting. **Constable Adams said the Complainant was not complying and continued to manoeuvre his arms and "strike" at him and other officers**. Constable Adams advised that the Complainant was attempting to get up and was **attempting to roll**.
> …
> Constable Adams reported that that **the Complainant ended up in a position that was slightly on his stomach and he was attempting to move the Complainant's right arm behind his back so he could be handcuffed** by the officers that were behind him. Constable Adams said he put his left hand on the Complainant's right shoulder when the Complainant turned his head and **attempted to bite his left hand**. He reported that he was wearing gloves and **in response to the complainant attempting to bite him he struck the Complainant "in the right side of the face" with his "hand in a fist".** Constable Adams said he stopped striking the Complainant after he turned his head in the other direction and was "no longer going to bite" him. He advised that **he struck him three to four times in the face.**
>
> **Constable Adams was asked to explain his notebook entries where he described that he struck the Complainant to get his hands behind his back. He explained that he did strike the Complainant on the back of his right**

[8] *Ibid* at pg. 76
[9] *Ibid*

> **shoulder area to obtain compliance**. **He stated that he struck the Complainant's shoulder three to four times.**
>
> …
>
> Constable Adams described the Complainant's behaviour according to the Use of Force Model as being "assaultive**".** **He explained that even leading up to his involvement when he turned around and engaged the first officer he would describe the Complainant's behaviour as "assaultive because he consciously turned and engaged the officer".** Constable Adams went on to state that when the Complainant attempted to bite his hand, the Complainant was trying to do him harm and described his behaviour at that time as being "assaultive".[10] [emphasis added]

23. John Bridge, a civilian bystander present at Queen's Park during Mr. Nobody's arrest, videotaped the entirety of the incident. Mr. Bridge's video recording was central to both the SIU and OIPRD investigations.[11] Based on the video evidence, OIPRD investigators rejected Constable Adams' account of alleged physical violence by Adam Nobody.

III. ISSUES

24. Is the Coroner required to conduct a *voir dire* with respect to the admissibility of the proposed evidence?

25. Is the proposed evidence potentially relevant and material to the inquest?

26. Is the proposed evidence admissible?

---

[10] *Ibid* at pg. 76-78

[11] Affidavit of John Bridge sworn November 29, 2010 attaching the video recording of the arrest of Adam Nobody

IV. LAW AND ANALYSIS

The public interest function of an Inquest

27. An inquest is a public hearing held under the authority of the *Act*. The Supreme Court of Canada described the functions of a coroner's inquest in *Faber v. R.*,[12] in the following terms:

> At the present time the coroner's inquest may be taken to have at least the following functions, apart from the investigation of crime:
>
> (a) identification of the exact circumstances surrounding a death serves to check public imagination, and prevents it from becoming irresponsible;
>
> (b) examination of the specific circumstances of a death and regular analysis of a number of cases enables the community to be aware of the factors which put human life at risk in given circumstances;
>
> (c) the care taken by the authorities to inquire into the circumstances, every time a death is not clearly natural or accidental, reassures the public and makes it aware that the government is acting to ensure that the guarantees relating to human life are duly respected.

28. A coroner's inquest is special in that it has a public interest mandate. It is mandated to examine the circumstances of death and make policy recommendations in the public interest in order to prevent similar death from occurring. An inquest makes no determination of legal rights.[13]

29. A unique feature of a coroner's inquest, relative to other administrative tribunals, is that its determinations are made by a five-person lay jury. In that vein, section 31 of the *Coroners Act* sets out the purposes of an inquest: for the jury to determine the five questions of who

---

[12] *Faber v. R.*, [1976] 2 S.C.R. 9 at p. 30; see also *Pierre v. McRae*, *supra*, at paras. 21-22.
[13] *Johnson v Lombard Canada Ltd.,* [2009] O.J. No. 5892 at para. 12 (Div. Ct.) (QL).

the deceased was and how, when, where and by what means the deceased died. The fifth question ("by what means"), as a matter of long-standing practice, is answered with a verdict of either accident, natural causes, homicide, suicide or undetermined. Pursuant to s. 31(3), the jury may (and nearly invariably does) make recommendations directed to the avoidance of death in similar circumstances. Thus, there is both an investigative function and a separate social and preventive function for an inquest.

30. In *People First of Ontario*, this Court adopted the description of the coroner's inquest from the 1971 report of the Ontario Law Reform Commission on the coroner system, at para. 41:

> ... the inquest should serve three primary functions: as a means for public ascertainment of facts relating to deaths, as a means for formally focusing community attention on and initiating community response to preventable deaths, and as a **means for satisfying the community that the circumstances surrounding the death of no one of its members will be overlooked, concealed, or ignored** [emphasis added].[14]

31. The scope of an inquest, must, at law, include those issues which "genuinely arise" out of a death. An issue will arise out of a death if it is a "potentially significant" factor in relation to the death. Once a matter is potentially significant as a contributing factor in a death, a coroner is bound to leave it to an inquest jury to decide whether the issue contributed to the death. A coroner loses jurisdiction if he or she pre-determines an issue as peripheral where that issue is potentially significant.[15]

Natural Justice at an Inquest

32. An inquest is governed by the rules of natural justice, and has the "trappings of a trial".

> Although the jury is prohibited from making any finding of legal responsibility or expressing any conclusion of law on the matters to be considered by it, the very nature of

[14] *People First of Ontario*, *supra*. See also *Pierre v. McRae*, *supra*, paras. 21-22.

[15] *Black Action Defence Committee v. Huxter*, [1992] O.J. No. 2741 at para. 79 (Div. Ct.).

> the proceedings compel it, in my opinion, to act impartially in the conduct of those proceedings. . . . . .
>
> Apart entirely from s. 33 of the Coroners Act, 1972 the procedure contemplated has the trappings of a trial, and it is implicit that the Legislature intended that the principles of natural justice govern.[16]

33. Parties to an inquest enjoy a statutory right to be represented by counsel, to call and examine witnesses, and to conduct cross-examinations of witnesses "relevant to the interest of the person with standing and admissible". The statutorily prescribed rights of participation signal that parties to an inquest are entitled to a high degree of procedural fairness, in particular with respect to the right to call evidence.

Natural justice necessitates the conduct of a *voir dire*

34. The Manon Family submits that *Gentles v. Gentles Inquest (Coroner of)*[17] is dispositive of the issue of whether a *voir dire* is required in these circumstances. In *Gentles,* the family of the deceased sought to introduce an internal Correctional Service of Canada report on a "deviant subculture" of correctional officers which existed at the time of Mr. Gentles' death, as well as production of the working papers and notes used in the preparation of the report. The presiding Coroner initially permitted questioning of witnesses with respect to the report, and ruled that a *voir dire* would be held on its admissibility in the proceedings. Subsequently, the Coroner ruled the entire issue of the "deviant subculture" irrelevant, without holding a *voir dire*.

---

[16] *Beckon v. Young, Deputy Chief Coroner*, [1992] O.J. No. 1463 at para. 66 (C.A)
[17] *Gentles v. Gentles Inquest (Coroner of)*, [1998] O.J. No. 3927(Ct. J. Gen. Div)

35. On judicial review, the Divisional Court found that the failure to conduct a *voir dire* on the disputed evidence, and to permit the family to call evidence and make submissions on the *voir dire*, constituted a violation of natural justice. The Court ruled the evidence relevant and material, and ordered the Coroner to hold a *voir dire* on whether the evidence was privileged and therefore inadmissible.[18]

36. The Manon Family respectfully submits that *Gentles* is indistinguishable from this case. *Gentles* dictates that where a party seeks to call impugned evidence, on an issue of disputed relevance, that party is entitled to "call evidence and make submissions on the *voir dire*". To deny the Manon Family an opportunity to lead such evidence and make submissions would constitute a clear violation of natural justice and jurisdictional error.

Is the proposed evidence relevant and material to the inquest?

37. In *Smith v. Porter (Judicial Review)*, the Divisional Court had occasion to elaborate on the test for relevance and materiality at an inquest. The Court found that the "ambit of materiality governing the Coroner's power to seize under s.16(2)(c) is equally applicable to the right of a person with standing to adduce evidence…". The Court went on to find that a party need only "establish a reasonable belief that the potential evidence may be material".[19]

38. The Manon Family respectfully submits that the proposed evidence going to Constable Adams' propensity for using excessive force meets the low threshold of relevance and

[18] *Ibid* at para 54; see also *Smith v. Porter (Judicial Review)*, 2011 ONSC 2844 (Div. Ct.)
[19] *Smith v. Porter (Judicial Review),* 2011 ONSC 2844 (Div. Ct.) at paras 16 and 19

materiality prescribed by the Divisional Court in *Smith*. There are three distinct basis on which the evidence, whether elicited through cross-examination or through admission of the OIPRD report, is relevant to contested matters properly before the jury.

<u>The evidence is relevant to the preventative function of the inquest</u>

39. The adequacy and appropriateness of Toronto Police Service training and policies with respect to the use of force is central to this inquest. To the extent that such training and policies permit officers to use a level of force in the conduct of arrests that is likely to cause serious bodily harm or death, the jury may determine that recommendations designed to address this failing are appropriate.

40. For the jury to fully appreciate the nature and extent of the training/policy inadequacies and how they contributed to Mr. Manon's death, the Manon family is entitled to elicit evidence before the jury on the issue of whether Adams' conduct on May 5, 2010 was an isolated matter borne of incompetence or error, or alternatively whether Constable Adams' potential excessive use of force was consistent with the training and policies implemented by the Toronto Police Service.

41. If the jury was persuaded that Constable Adams' use of force against Mr. Manon was merely incompetent and unintended, a determination that no systemic remedial measures to address use of force training and policies are required may follow. On the other hand, should the jury find that excessive force was used on Mr. Manon, and is part of a larger systemic failing (as evidenced by the Nobody beating), then remedial recommendations may be required.

42. Without the benefit of hearing evidence on Constable Adams' use of force in respect of Mr. Nobody, the inquest will be deprived of evidence which is central to its social and preventative function.

<u>The evidence is necessary in order that the jury not be left with a "distorted picture"</u>

43. In Constable Adams' SIU audio statement, he alleges that Mr. Manon has a predisposition for violence and an animus against police:

- "…returns on file for assaulting police and I knew him to be anti-police in the past."
- Q. And you described him as a anti-police person.

  A. Yes

  ….

  Q. Do you know if he was violent person from previous experience -

  A. From previous experience, never—I – was aware of him being charged prior with assaulting a police officer, resisting arrest, those types of charges...

  …

  A. Right. In my dealing with Junior, he was verbally combative, insulting. I had seen him spit…

  …

  A. I believe there were weapons charges that I saw on the CPIC hit, but I can't say for sure. I can't remember them specifically.

44. Similarly, Constable Candace Kennedy alleged to SIU that Mr. Manon had been classified through the bail compliance program as a "violent offender". Counsel for Constable Kennedy has requested Mr. Manon's bail compliance file. Coroner's counsel, without

seeking submissions from the Manon Family, has apparently come to the view that this material is relevant.[20]

45. In a case where the reasonableness of a use of force is in issue, and a party attempts to justify his use of force by alleging that the recipient of the force had a disposition for violence, that party places his own disposition for violence in issue. As stated by Justice of Appeal G. Arthur Martin in *R v. Scopelliti*:

> ... It may be that by introducing evidence of the deceased's character for violence, an accused impliedly puts his own character for violence in issue. See Wigmore on Evidence, vol. 1 at p. 472. However, I set aside this question until it requires to be decided.[21]

46. This principle was elaborated by Justice Watt (as he then was) in *R. v. Yaeck*:

> On the other hand, where evidence is adduced in such cases of the deceased's disposition for violence, it is at least arguable that the prosecution may, in reply, adduce evidence of the accused's disposition for violence in the manner permitted in Scopelliti, supra. **The introduction of such evidence in relation to the deceased endeavours to persuade the trier of fact that, as between the accused and the deceased, it is more likely the deceased who was the aggressor than the accused on account of the deceased's disposition for violence. The disposition for violence of the deceased renders it more likely that he or she acted in accordance therewith at the material time. It is at least implicit in such a position that the accused asserts, that as between the two parties, the accused is not or less so inclined or disposed.** To put the matter otherwise, the assertion by the accused that the deceased acted in such a way on account of disposition, implies that the accused did not so act since he or she lacks such disposition. By parity of reasoning with that employed in R. v. McMillan (1975), 23 C.C.C. (2d) 160, affirmed [1977] 2 S.C.R. 824, **the prosecution should be entitled to show that the combat was between two persons of similar disposition for violence, not one with and the other without it. The trier of fact would then have evidence bearing on the probability of each version of aggression, as well as the direct evidence thereof, thereby being in a better position to assess the legitimacy of the claim.**[22] [emphasis added]

---

[20] Email from Jimmy Lee to Coroner's Counsel Mr. Giordano, January 20, 2012
[21] (1981), 63 C.C.C. (2d) 481 (ON.CA) at para 54
[22] [1989] O.J. No. 3002 (H. Ct. J) at para 21

47. To permit Constable Adams to suggest that Mr. Manon had a disposition for violence, without permitting the Manon Family to elicit evidence with respect to Constable Adams' propensity for excessive force would leave the jury with a "distorted picture"[23]. In determining whether Mr. Manon's death was by means of homicide or accident, the jury is entitled to consider evidence relevant to Constable Adams' intention in applying force to Mr. Manon in the context of his alleged propensity for using excessive force.

The evidence is relevant to the assessment of Constable Adams' justification for using force

48. The Manon Family submits that the jury is entitled to consider Constable Adams' justification for his use of force on Adam Nobody as "similar fact evidence" in its assessment of Constable Adams' justification for his use of force on Junior Manon.

49. Both criminal and civil courts have admitted evidence of similar facts where such evidence is sufficiently relevant and cogent to an "issue in question" that its probative value in the search for truth outweighs any potential for misuse.

> While emphasizing the general rule of exclusion, courts have recognized that an issue may arise in the trial of the offence charged to which evidence of previous misconduct may be so highly relevant and cogent that its probative value in the search for truth outweighs any potential for misuse, per Sopinka J., dissenting, in B. (C.R.), supra, at p. 751:
>
> The fact that the alleged similar facts had common characteristics with the acts charged, could render them admissible, and, therefore, supportive of the evidence of the complainant. In order to be admissible, however, it would be necessary to conclude that the similarities were such that absent collaboration, it would be an affront to common sense to suggest that the similarities were due to coincidence...[24]

[23] *R. v. Hankey*, [2008] O.J. No. 5016 (Sup. Ct. J) at para 28
[24] *R. v. Handy*, [2002] S.C.J. No. 57 at para 41

50. Similar fact evidence may be admissible where there is repeated conduct in a particular and highly specific type of situation, such that it provides a "compelling inference that may fill a remaining gap in the jigsaw puzzle of proof":

> References to "calling cards" or "signatures" or "hallmarks" or "fingerprints" similarly describe propensity at the admissible end of the spectrum precisely because the pattern of circumstances in which an accused is disposed to act in a certain way are so clearly linked to the offence charged that the possibility of mere coincidence, or mistaken identity or a mistake in the character of the act, is so slight as to justify consideration of the similar fact evidence by the trier of fact. The issue at that stage is no longer "pure" propensity or "general disposition" but repeated conduct in a particular and highly specific type of situation. At that point, the evidence of similar facts provides a compelling inference that may fill a remaining gap in the jigsaw puzzle of proof, depending on the view ultimately taken (in this case) by the jury.[25]

51. In the police misconduct context, evidence concerning misconduct by a police witness collateral to the investigation of an accused, may be relevant and disclosable in criminal proceedings:

> When the police misconduct in question concerns the same incident that forms the subject-matter of the charge against the accused, the police duty to disclose information concerning police disciplinary action taken in respect of that misconduct is rather self-evident. To state an obvious example, if a police officer is charged under the applicable provincial legislation for excessive use of force in relation to the accused's arrest, this information must be disclosed to the Crown. Where the misconduct of a police witness is not directly related to the investigation against the accused, it may nonetheless be relevant to the accused's case, in which case it should also be disclosed. For example, no one would question that the criminal record for perjury of a civilian material witness would be of relevance to the accused and should form part of the first party disclosure package. In the same way, findings of police misconduct by a police officer involved in the case against the accused that may have a bearing on the case against an accused should be disclosed.[26]

52. In this case, Constable Adams' use of force against both Mr. Manon and Mr. Nobody arise in a "highly specific type of situation", namely a forcible arrest and handcuffing of an allegedly

---

[25] *Ibid* at para 91
[26] *R. v. McNeil*, [2009] 1 S.C.R. 66 at para 54

assaultive subject. The accounts provided by Constable Adams of Mr. Manon's and Mr. Nobody's alleged resistance are strikingly similar, as are the justifications provided by him for his use of force. The jury is entitled to consider Constable Adams' account of his arrest of Mr. Manon, and his explanation for using lethal force, in the context of his account and explanation of his arrest of Mr. Nobody. The jury may be persuaded that neither of Constable Adams explanations are credible given their striking similarity.

53. It cannot be said that there is any real prejudicial effect to the introduction of evidence concerning Constable Adams' excessive use of force on Mr. Nobody. It has been made clear to the jury by both the Coroner in his opening remarks, and by Coroner's Counsel in his opening statement, that the roll of the jury is not to find fault but to uncover the circumstances that led to Mr. Manon's death and make recommendations that may prevent any similar deaths. As such, the probative value of the evidence greatly outweighs the minimal prejudicial effect on Constable Adams.

<u>Admissibility of the OIPRD Report</u>

54. The Manon Family submits that there is no legal bar to the admissibility of the OIPRD report with respect to Adam Nobody. The OIPRD does not assert a privilege or any form of confidentiality in the report. Mr. Nobody has consented to its use during the inquest procedure.

55. It can be anticipated that parties opposing the admission of the report will rely on section 83(8) of the *Police Services Act*, which provides:

Inadmissibility of documents

> (8) No document prepared as the result of a complaint made under this Part is admissible in a civil proceeding, except at a hearing held under this Part.

56. The Manon Family submits that section 83(8) is, on its face, inapplicable to the admission of documents at an inquest. Section 83(8) applies narrowly to the admission of documents in civil proceedings. By necessary implication it authorizes the admission of documents in proceedings other than civil proceedings.

57. An inquest is not a civil proceeding. It does not determine rights as between private parties. It is an administrative inquiry with a broad public interest mandate. During the Ipperwash Inquiry, Commissioner Linden heard a motion on whether police discipline files could be introduced as evidence at a provincial commission of inquiry. In ruling the evidence admissible, Commissioner Linden held that:

> "a public inquiry is an investigative and not an adjudicative process. It is inquisitorial not adversarial. Under the mandate of this inquiry, I can make no determination of civil or criminal liability, nor can I impose damages or penalties."[27]

58. It is submitted that the role of an inquest is akin to that of a public inquiry. An inquest is mandated to inquire into the circumstances of the death and not to find fault or apportion blame. An inquest, as the public inquiry, is not a civil proceeding and as such section 83(8) of the *Police Service Act*, does not apply to these proceedings.

59. In the alternative, the Manon Family respectfully submits that even if section 83(8) rendered the OIPRD report inadmissible, the report would still be available for use in cross-

[27] *Ipperwash Public Inquiry*. Commissioner's Ruling Regarding OPP Disciplinary Files, August 15, 2005 at para 42

examination. In *M.F. v. Sutherland*, the Court of Appeal held that records arising in a professional disciplinary context, while inadmissible as evidence in a civil lawsuit (pursuant to a provision analogous to s.83(8), were still available for cross-examination:

> Second, s. 36(3) refers to a “report, document or thing,” suggesting a distinction between, for example, a written complaint and the fact of a complaint having been made. The document, the written complaint, is inadmissible, but the fact a complaint was made may be provable at trial. That distinction, however, does not arise in Dr. Sutherland’s pleading because he has pleaded the written complaint and the sworn recantation and their contents to support his defence, and it is these documents he seeks to prove at trial. Moreover, Dr. Sutherland did not draw this distinction in his submissions to this court.
>
> Third, my decision is not meant to preclude the trial judge from considering whether either Ms. F.’s complaint or her sworn recantation may be used to challenge her credibility on cross-examination. I note, however, the Supreme Court of Canada’s judgment in R. v. Calder (1996), 105 C.C.C. (3d) 1 at 10, holding, albeit in a different context, that the use of evidence for the limited purpose of cross-examination on credibility is an “admission” of the evidence under s. 24(2) of the Canadian Charter of Rights and Freedoms.[28]

ALL OF WHICH IS RESPECTFULLY SUBMITTED, THIS 20th DAY OF JANUARY 2012.

Julian N. Falconer

Julian K. Roy

Asha James

[28] [2000] O.J. No. 2522 at paras. 45-46

W:\General\Doc\M\Manon.Luisa. Inquest. 1339-11\Court\written submissions FINAL Jan 20 2012.docx