

CORONERS COURT

IN THE MATTER OF the *Coroners Act*, R.S.O. 1990, c. 37

AND IN THE MATTER OF the Inquest into the deaths of Jethro Anderson, Curran Strang, Paul Panacheese, Robyn Harper, Reggie Bushie, Kyle Morriseau, and Jordan Wabasse

**JOINT SUBMISSIONS ON SCOPE
OF THE FAMILIES AND NAN**

I. OVERVIEW 1

II. FACTS 4

 The Quality of the Thunder Bay Police Investigation 4

 The Particularization of Racism under Discrimination 6

 i. Racism in Education for Aboriginal People..... 10

 The Many Struggles Faced by these Youth beyond Addiction 13

 The Treaty Relationship Underlying this Inquest..... 13

III. LAW AND ARGUMENT..... 14

 Public Reassurance is a Purpose and a Function of a Coroners Inquest: The Investigation Must be Explicitly Included 14

 Inquests have a Social and Preventative Function:..... 16

 The Inclusion of Treaty causes no Jurisdictional Problem 17

IV. ODER SOUGHT 18

I. OVERVIEW

1. These written submissions are made on behalf of seven parties with standing (the six Families and Nishnawbe Aski Nation). In addition to filing written submissions, these parties will be asserting their right to make oral submissions in open court with regard to the scope statement.
2. These submissions are broadly directed at expanding the scope statement, in order to ensure the explicit inclusion of certain substantive issues, and particularly, to reinforce the public’s regard for the inquest process. The Anderson, Panacheese, Harper, King (Bushie), Morriseau, and Jacob (Wabasse) families, referred to collectively as the “Families”, together

with Nishnawbe Aski Nation (NAN), seek the amendment of the scope of this inquest in four areas:

- a. the quality of the Thunder Bay Police investigation into the seven deaths, as this has been an issue of ongoing concern for the parties making this submission, since the application to expand the inquest;
 - b. the explicit inclusion of racism experienced by First Nation people that negatively impacts on the experience of First Nation Youth in Thunder Bay and the efficacy of programs to address this when addressing discrimination.
 - c. the other relevant obstacles / challenges faced by the students in their home communities and in Thunder Bay, beyond the limited and problematic focus on substance abuse; and
 - d. the political / legal context for the provision of secondary school education, as an issue shared between treaty partners with constitutional obligations.
3. The Families and NAN respectfully submit that the scope of this inquest should be amended to read as follows [amendments have been indicated by underlining or striking]:

A. *Statement of Scope*

This inquest shall

1. Inquire into the circumstances of the deaths and determine, in each case,
 - a. who the deceased was;
 - b. how the deceased came to his or her death;
 - c. when the deceased came to his or her death;
 - d. where the deceased came to his or her death; and
 - e. by what means the deceased came to his or her death, and,
2. Hear evidence directed to the prevention of future deaths of youths from remote First Nations during the course of their high school education in Thunder Bay (“subject students”)

B. *Anticipated Areas of Evidence*

Insofar as it is relevant to the matters set out in (A) above, the jury will hear evidence concerning the following matters regarding the deceased and subject students:

1. Selection and intake of students including application process and needs assessment;

2. Boarding and supervision, including:
 - a. Policies and procedures;
 - b. Physical accommodations and amenities;
 - c. Qualifications and training of persons supervising subject students.
 - d. Identification of, and response to a missing student;
3. Programs, regardless of provider, directed to the prevention of deaths;
4. ~~Prevalence of alcohol and substance use, and programs to reduce harm,~~ The obstacles / challenges faced by subject students within their home communities, and within Thunder Bay prior to and during their enrolment at DFC or MLC; and
5. Discrimination and racism against First Nation people that negatively impact on the experiences of First Nation youth, and programs to prevent discrimination, anti-racist programs and/or programs that reduce the harm caused by discrimination; and
6. The quality of the Thunder Bay Police Service's investigations into the disappearances of the seven First Nations Youth and the subsequent death investigations, including community policing approaches and communications with the families and communities throughout the investigative process.

C. Contextual evidence

In addition, the jury will hear limited contextual evidence in the following areas, insofar as it is a necessary foundation for other evidence and potential recommendations:

1. A brief overview of the history of secondary school education to subject students, including the Indian Residential School System and its continuing impact on First Nations;
2. The framework governing the current delivery of high school education to subject students, including the statutory framework, funding mechanisms, governance, constitutional and treaty obligations and accountabilities;
3. Different models for delivery of high school education to subject students, taking into account:
 - a. Effectiveness in minimizing preventable deaths.
 - b. Rates of graduation and, for non-graduates, highest grade completed;
4. Adequacy of resources to support a potential recommendation.

D. Not within scope

The following areas of evidence are not within the scope except where it provides a necessary foundation for other evidence and potential recommendations:

1. Curriculum content;
 2. Measures of academic achievement other than those specified in C(3)(b);
 3. Specific funding requirements;
 4. Provision of medical care by emergency medical services to Paul Panacheese and Robyn Harper.
4. Such further and other orders as counsel may advise and the Presiding Coroner may permit.

II. FACTS

The Quality of the Thunder Bay Police Investigation

5. The scope, as currently defined, does not explicitly include the issue of the quality of the Thunder Bay police investigation. The parties were assured by Coroner's Counsel by email on November 7, 2014, that the Presiding Coroner considered the issue of the original investigation as implicitly part of the scope:

For clarification, the Coroner did not add "investigative issues" to the scope because it was his view of the case law that investigative issues arising are implicitly included in scope of an inquest, to the extent that they affect the quality and completeness of the evidence relevant to the jury's determinations.

Email of Trevor Jukes to all Parties with standing, November 7, 2014

This email also indicated that submissions on the issue of whether it should be explicitly included would be welcome. The Families and NAN submit that due to the parties' repeated focus on this issue, and the fact that the Families, NAN, Northern Nishnawbe Education Council (NNEC), and the police parties' preliminary submissions on scope all explicitly included the investigative issues, this issue should be explicitly enumerated within the scope document. It is only by explicit examining of the quality of the investigation that a key purpose and function of inquests - that of providing a measure of public reassurance through open airing of all issues - can be fulfilled.

6. On May 11, 2012, a letter was sent by Julian Falconer on behalf of NAN to Dr. McCallum containing the application for a direction to hold an Inquest into multiple deaths. In that letter of application, it was outlined that in addition to a serious level of family and community grief over the loss of their children, a general community anxiety has

developed over the safety of their youth going forward. It was specifically noted that there are major questions being raised across NAN, including questions about the quality of the police investigations into the deaths by the Thunder Bay Police, such as: “What is most troubling is the almost universal belief that the authorities have not taken the necessary steps to address these cases because the deceased are First Nations.”

7. On September 13, 2013, the Families provided preliminary submissions on the issue of scope, in a letter which outlined seven points that their family clients wished to see raised during the inquest. One of the seven points was “The Thunder Bay Police Investigation of the Seven Deaths”. It was particularized as follows:

The Thunder Bay Police investigation and what they did do or failed to do in relation to their searches and investigations should be addressed in the Inquest. This should include community policing approaches and communications with the families and their First Nation Communities throughout the investigative process.

8. On September 13, 2013, NAN provided preliminary submissions on the issue of the scope of the Inquest. First maintaining that priority must be given to the wishes of the families, NAN relied on the concerns that had been voiced at the Families Circle Support Conference, and adopted the submissions of the Families. NAN’s submissions outlined that the scope of the Inquest should include the issue of the nature and quality of the Thunder Bay Police Service’s investigations into the disappearances of the seven First Nations youth, in addition to the subsequent death investigations: this was the first point on its list of issues. The second point was also directed to the role of the police, particularly:

The role, if any, of systemic racism in the apparent treatment of the youth by police authorities as less than worthy victims. Among these concerns, is the question of what role, if any, the status of the deceased as First Nations played in the nature and quality of the police investigations into their disappearances and/or deaths.

9. Drawing attention to the nationally publicized failures of the authorities to properly investigate the murdered and missing women and girls in Canada, NAN stated in their preliminary scope submissions that it was essential that the scope of the inquest be defined to address these concerns.

10. On September 13, 2013, NNEC provided their Preliminary Submissions on the issue of the scope of the Inquest. NNNEC's submissions outlined a list of broader questions to be considered within the scope of the Inquest, including, "What efforts were made to locate the missing children?" and "What was the interaction between the schools and the police?"
11. Also provided on September 13, 2013, the police parties' preliminary submissions (including the Thunder Bay Police Services Board, the Thunder Bay Police Service, The Chief of Police, J.P. Levesque, the Deputy Chief of Police Andrew Hay, and The Chief of Police [ret] Robert Herman), identified three broad areas or topics relevant to the scope of the Inquest, which related to the police parties:
 - i. Policies, Procedures and Best Practices regarding Service intake and response to missing persons reports involving Aboriginal youths ("Missing Persons Reports")
 - ii. Policies, Procedures and Best Practices regarding Service response to sudden death occurrences involving Aboriginal youths ("Sudden Death Occurrences"); and
 - iii. Policies and procedures governing the relationship between the Police Parties and the City of Thunder Bay Aboriginal Liaison Office (the "Aboriginal Liaison Office").

These broad issues were further itemized throughout the police parties submissions, outlining nine sub-issues "likely relevant to the Joint Inquest's review of the practices of the Police Parties".

The Particularization of Racism under Discrimination

12. As stated above, on September 13, 2013, the Families made preliminary submissions on scope on behalf of the Families. The points in those submissions identify the issues that the Families have outlined individually as well as collectively. The second listed point was "**Racism**". The Families and NAN respectfully submit that the Inquest must address racism. It must look at the way youth are treated by the community in Thunder Bay and by the Police parties. More specifically the Families submit that it is important for the Inquest to hear knowledge of how First Nation and Aboriginal communities experience racism in a sociological context that speaks to experiences that their children had in daily interactions with institutions and communities in Thunder Bay.
13. Racism is but one form of discrimination. In seeking to explicitly include racism, the Families and NAN are not asking that other forms of discrimination are discounted. The

World Health Organization identifies racism explicitly as a social determinant of health inequities. The term “racism” specifically refers to individual, cultural, institutional and systemic ways by which differential consequences are created for groups historically or currently defined as white, being advantaged, and groups historically or currently defined as non-white (African, Asian, Hispanic, Native American, etc.), being disadvantaged.

14. Other definitions of racism include:

Racism is founded on the view that there are supposedly biologically real divisions that involve “a hierarchy of value”. In today’s political context, the concept of **democratic racism** helps to explain how Canadians can hold negative views of racialized groups of people while at the same time espousing liberal principles of equality, tolerance, fairness, and justice

Henry F, Tator C, Mattis W, Rees T. Racism and human-service delivery. In: Henry F, Tator C, eds. *The colour of democracy: Racism in Canadian society*. 3rd ed. Toronto, ON: Hartcourt Brace; 2006:207-227.

Institutional racism can be understood as “the practices, policies, and procedures of various institutions, which may, directly or indirectly, consciously or unwittingly, promote, sustain or entrench differential advantage or privilege” for certain groups of people

Henry et al., 2000, p. 56.

15. Dr. Emma LaRocque, an academic, writer, poet, and a professor in the Department of Native Studies, University of Manitoba, specializes in colonization and its impact on Native/Non-Native relations. In her article “Colonization and Racism” for the National Film Board of Canada, she states:

Racism may be expressed individually or structurally. It may be expressed person to person, for example, by name calling, by refusal of service in any public place, or even by personal attacks. Aboriginal peoples continue to encounter such forms of personal discrimination or other indignities every day of their lives. Such racism is intolerable but racial prejudice by proverbial “rednecks” is not the only sort of racism that exists in our country. It is especially important to understand that racism against Aboriginal peoples is embedded and entrenched in Canadian institutions.

She also notes:

It is in this sense that racism is not necessarily personal, conscious or intentional, but for these very reasons institutionalized racism is extremely powerful and should be

deeply disturbing to Canadians. Society is conditioning non-Aboriginal peoples, particularly youth, to acquire racist views towards Aboriginal histories, cultures and persons. Consequently, non-Aboriginal children may develop fear, disrespect and even racial hatred toward First Nation or Métis peoples. The effect on Aboriginal peoples is equally distressing as racism can lead to racial shame and self-rejection. The net effect is the stereotyping, mistrust and mistreatment of Aboriginal peoples and the resulting strain and conflict.

Emma LaRocque, National Film Board of Canada, available at
<<http://www3.nfb.ca/enclasse/doclens/visau/index.php?mode=theme&language=english&theme=30662&film=16933&excerpt=612109&submode=about&expmode=2>>

16. Although each of the youth came from NAN First Nation communities, they lived in Thunder Bay while attending school. Aboriginal experiences and perceptions have been documented in a number of reports showing great concern about racist attitudes towards First Nations people in Thunder Bay and there are demonstrably quantified experiences of both racism and discrimination.

17. In 2007, the Urban Aboriginal Task Force (UATF) Report found:

Aboriginal people under the age of 25 comprises 48 per cent of the population in Thunder Bay compared to only 30 per cent of non-Aboriginal people of the same age; and Aboriginal people age 15 and under comprise 33 per cent of Thunder Bay's population.

Urban Aboriginal Task Force, "Ontario Final Report" (February 2007), online:
<<http://ofifc.org/sites/default/files/docs/UATFOntarioFinalReport.pdf>> at page 46.

18. According to the Urban Aboriginal Peoples Study (UAPS), a study conducted in major cities across Canada, significant minorities in Thunder Bay identified explicitly negative stereotypes they associated with Aboriginal people. The study showed that non-Aboriginal peoples' perceptions towards Aboriginal people were worsening in recent years. Public perception of Aboriginal people in Thunder Bay did not seem to get any better, as 45 per cent of respondents said their beliefs have stayed the same as beliefs they held previously. These worsening perceptions may be associated with rising crime rates, or perceptions thereof, or may also coincide with a growing population of Aboriginal people in Thunder Bay.

Urban Aboriginal Task Force, “Thunder Bay Final Report” on-line
 <<https://web.archive.org/web/20140327140432/http://74.213.160.105/ofifchome/page/uatf/UATFThunderBayFinalReport.pdf>> pages 85-87, 114 and 115.

19. The issue of racism was cited by 80 per cent of Aboriginal respondents in Thunder Bay as being a major area of concern for them. Respondents experienced racism in the city and that it is a major barrier between Aboriginal and non-Aboriginal relations. Aboriginal residents cite shopping malls, restaurants, schools, buses and interactions with police as some of the most common experiences of instances of racism. Also, 32 per cent of respondents believe racism in Thunder Bay has become an increased area of concern for Aboriginal peoples

Urban Aboriginal Task Force, “Thunder Bay Final Report” pages 85-86; Urban Aboriginal Task Force “Ontario Final Report” pages 103-113.

20. In 2011 the *Urban Aboriginal Peoples Study* Report found that:

- A majority believe they are viewed in negative ways by non-Aboriginal people. Three in four participants perceive assumptions about addiction problems, while many feel there are negative stereotypes about laziness (30%), lack of intelligence (20%) and poverty (20%).
- Education is their top priority, and an enduring aspiration for the next generation. Twenty percent want the next generation to understand the importance of education, 18 percent hope younger individuals will stay connected to their cultural community and 17 percent hope the next generation will experience life without racism.

Urban Aboriginal Peoples Study, The Urban Aboriginal Peoples Study: Thunder Bay Report (2010) on-line <<http://www.canoha.ca/wp-content/uploads/2010/02/UAPS-Thunder-Bay-report.pdf>> pages. 36-46

Some of the other findings of the report include:

- Aboriginal peoples in Thunder Bay – like their counterparts in other *UAPS* cities – widely believe that they are viewed negatively by non-Aboriginal people. There is a very strong perception among Aboriginal peoples in Thunder Bay that non-Aboriginal people hold a wide range of negative and distorting stereotypes about them, the most prominent being about alcohol and drug abuse. Although a minority

believe that these attitudes may be changing for the better, the balance of opinion is that they remain unchanged.

- Most Aboriginal peoples in Thunder Bay agree that others behave in an unfair or negative way towards Aboriginal people. A majority say they have personally been teased or insulted because of their Aboriginal background, on par with the experiences of Aboriginal peoples in other *UAPS* cities. At the same time, Aboriginal peoples in Thunder Bay are more likely than not to feel accepted by non-Aboriginal people.
- Aboriginal peoples in Thunder Bay report a substantial amount of contact with non-Aboriginal services, particularly banks and the health care system. Experience with elementary and secondary schools (as a parent) is higher in Thunder Bay than in most other *UAPS* cities. Positive assessments of these experiences largely outweigh negative ones, including in the case of the child welfare system (where, in most other cities, negative experiences outweigh positive ones). Negative experiences are generally related to being treated poorly by the people who deliver the services, rather than to concerns about the overall effectiveness of the services or about the process of accessing the services.
- Over four in ten (43%) Aboriginal peoples in Thunder Bay say their experience was negative, primarily because of racism or discrimination (19%).

i. Racism in Education for Aboriginal People

21. Aboriginal people face racism in accessing education - historically and contemporarily. Classifying the experience that First Nation youth had while attending school in Thunder Bay as only “discrimination” fails to appropriately identify what should be addressed in approaching the systemic issues and recommendations for prevention of similar deaths and more positive outcomes. Sadly, the failure to name and address racism leads to distrust in the systems and institutions that are a part of everyday life, and this is deeply rooted in the historical education of Aboriginal people. The fact that racism based on those same early false assumptions and stereotypes continues in accessing education and other services, without recognition of its existence, only heightens distrust.

We need a public reckoning with the fact that whole cultures were broken, children brutalized, and poverty and racism institutionalized by design. We need to acknowledge that all this was sanctioned by the prevailing value system, which is to say the race-based conventions of British imperialism, and that it required institutions and individuals to pull it off.

Aboriginal Healing Foundation, Response, Responsibility, and Renewal Canada's Truth and Reconciliation Journey, Susan Crean, "Both Sides Now: Designing White Men and the Other Side of History" p.62, 2009.

22. Failure to recognize the historical context of racism experienced within the residential school era and continued racism results in a disconnection between the reality of the lived experience of First Nations students both then and now. The current lack of equal access to education for students in remote First Nations is layered on top of the historical assumptions of inferiority, racism and systems of attempted assimilation.
23. In order to understand the struggles that First Nation youth have attending school away from home, the Jury should understand how racism has influenced education for First Nation people. Part of understanding this issue is to understand where value is placed in western education:

Racism has at its core an absence of belief in the worth and capabilities of those who are its target. This attitude becomes institutionalized in many systems where it operates mostly 'out of sight.' The public education system that most First Nations, Inuit, and Metis children and youth attend offers curricula anchored in the Western world view and its ways of knowing. Because this approach and strategy has been problematic for most Aboriginal learners, and although their advocates have succeeded in modifying service delivery in many places, many of the same problems continue. Efforts to acknowledge the learners' cultures and build upon them have not included formal recognition of Indigenous knowledge as legitimate curriculum content and a reliable source for shaping the teaching and learning strategies. Until this is done, roots for racism will continue to thrive.

Aboriginal Healing Foundation, From Truth to Reconciliation Transforming the Legacy of Residential Schools, William Julius Mussell, "Decolonizing Education: A Building Block for Reconciliation", p.333, 2008

24. Racism is detrimental to educational outcomes of Aboriginal youth. Feelings of alienation from discrimination are linked to problems in school and contribute to school drop out. Aboriginal youth in the United States who have grown up in their communities may find themselves unprepared for attending school outside of their community.

Whitebeck, L. B., McMorris, B. J., Chen, X., & Stubben, J. D. (2001). Perceived discrimination and early substance abuse among American Indian children. *Journal of Health and Social Behavior*, 42(4), 405-24.

25. The mainstream education curriculum contributes to the marginalization of Aboriginal youth by not respecting Aboriginal culture and worldviews through a lack of representation of their histories and values. Interviews with 39 First Nations youth from 2 reserve communities in Northern Ontario ages 16 – 20 years regarding their educational experiences, career aspirations and growing up in their communities showed these youth find strength in their culture, communities and relationships to overcome the effects of their negative experiences.

[W]e have come to understand the Indigenous-specific responses of these youth as they made choices about how to move ahead in their schooling. These young warriors demonstrated commitment and courage by surviving the assaults that schooling imposed on their cultural integrity. These new warriors also moved beyond survival to draw on the inherent and internal resources of strength available to them, which included their relationships to family and connections to the First Nations community, as well as opportunities within it, such as the alternative high school.

Hare, J. & Pidgeon, M. (2011) *The Way of the Warrior: Indigenous Youth Navigating the Challenges of Schooling*. *Canadian Journal of Education*, 34(2), 93-111.

26. Other parties with standing have recognized the need to take anti-racism approaches to the racism and systemic discrimination that plague First Nation people. The Thunder Bay City Council voted to become a signatory municipality to the Canadian Coalition against Racism and Discrimination (CCMARD) in 2006. By joining this initiative, City Council assumed leadership to develop a unique, municipal Plan of Action Against Racism and Discrimination for Thunder Bay, adhering to CCMARD's 10 common commitments.
27. The Thunder Bay Committee Against Racism and Discrimination released "Overcoming Racism & Discrimination: A Plan for Action" in 2009. This report was intended to provide support and direction to City Council and its partners towards a strategic plan of action.
28. In their preliminary written submissions on scope, the City of Thunder Bay submitted that addressing discrimination and racism through Diversity Thunder Bay is identified as a commitment in their Building on the New Foundation Strategic Plan. The City also addressed Anti-Racism issues from paragraph 29-30 of the same submissions. Evidence on racism is already accumulating within the brief and on submissions by parties. Arguably

some parties were granted standing on the basis that they would be responsible for implementing recommendations, including ones that should be anti-racist in their approach.

The Many Struggles Faced by these Youth beyond Addiction

29. In the scope of the inquest, as it currently stands, the issue of alcohol and other substance abuse has been isolated as an important aspect of the student's personal lives, both prior to their enrollment at DFC or MLC, and during their time at school.
30. This focus on potential addiction issues problematically reinforces discriminatory views in play. Without denying very real problems with regard to addictions in First Nations youth, there are prevalent stereotypes that impact the way substance abuse is regarded in First Nations people, and particularly, that encourage our focus on addictions in First Nations people.
31. This is why it is absolutely crucial to include other struggles, which may give context to addictions or be totally unrelated to them. Substance abuse is relevant to this inquest, but cannot become the focus, appear to be the sole struggle in the students' lives, and end up as the determining factor in their behavior. If addiction issues arise, they must be understood as linked to, and existing alongside, other conditions which are equally relevant, such as isolation, poverty, and other social determinants of health.
32. The jury is entitled to make recommendations aimed at avoiding similar deaths in the future. They cannot perform this function without the evidence upon which to base those recommendations. The failure to include struggles other than addictions will prevent this inquest from achieving its purpose.

The Treaty Relationship Underlying this Inquest

33. Already within the scope of the inquest is the contextual history of secondary school education, including the history of Indian Residential Schools and its continuing impact and legacy on First Nations people and communities today. These imposed educational regimes, including Residential Schools, Church Schools, Sixties Scoop, Indian Day

Schools, and underfunded delegated authority for local administration all have roots in the political /legal relationship which exists between treaty peoples.

34. Further, also already within the scope of the inquest is a delineation of the statutory framework, funding mechanisms, governance and accountabilities, again, all of which have roots in the political / legal relationship which exists between treaty peoples.
35. Without the addition of the words “treaty and constitutional obligations”, the parties to this inquest will spend months discussing the effects of our treaty relationship, without making mention of the fact we are in one. That we are in a treaty partnership, and that this partnership gives rise to constitutional obligations must be at the root of the contextual evidence.

III. LAW AND ARGUMENT

Public Reassurance is a Purpose and a Function of a Coroners Inquest: The Investigation Must be Explicitly Included

36. The *Coroners Act* provides broad powers to a coroner to investigate a death. As a result, it is expected that a coroner will arrive at an inquest with a great deal of prior knowledge about the subject matter into which inquiry is being made. While the *Coroners Act* contemplates that the jury will make the determinations required by section 31, it is for the coroner to administer the inquiry by broadly delineating those issues into which inquiry is to be made. The presiding coroner may not pre-determine the importance of a relevant issue. Rather it is a matter that ought to be left to the inquest jury, but the coroner’s prior knowledge will properly inform the coroner’s perspective on the issues relevant to the inquest. In all of this, a coroner’s power to delineate the scope of the inquest arises from and is defined by the purposes of the inquest as defined by section 31. A coroner cannot define a scope that is so narrow that the purposes of the inquest cannot be met.

Black Action Defence Committee v. Huxter, [1992] O.J. No. 2741 (Div. Ct.) at para. 55-56, 68, 72.

37. The purposes and functions of a coroner’s inquest were set out by the Supreme Court of Canada in *Faber v. R*:

An authoritative description of the functions of a coroner's inquest have been set by the Supreme Court of Canada in, 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.

Faber v. R., [1976] 2 S.C.R. 9 at p. 30, 27 C.C.C. (2d) 171 at p. 189
Black Action Defense Committee v. Huxter, Coroner, [1992] O.J. 2741

38. In order to fulfill their investigative, social and preventive functions, inquests must place individual deaths into “appropriate social and community context in order to appreciate fully and expose situations of risk, need, want of care, lack of resources, or inappropriate systemic responses. Society demonstrates how much it values life by examining deaths constructively in order to protect and enhance present and future lives.” The Law Reform Commission, in its 1995 report on the law of coroners, highlighted the right of community and family members to know the true circumstances of a death:

The community and the family members and friends of a deceased are entitled to know the true circumstances of a death. They are also entitled to know whether it could have been prevented and whether future similar occurrences can be avoided.

Ontario Law Reform Commission (1995), *Report on the Law of Coroners* at p. 177-178, 183.

Stanford v. Harris, [1989] O.J. No. 1068 Div. Ct.

39. In performing these functions, an inquest is not confined to inquiring into the “immediate circumstances” of a death. Rather, an inquest is required to inquire into matters that are causally related to the death. As noted by the B.C. Superior Court, pursuant to a coronial system that is very similar to the system in Ontario, “the public is entitled to the fullest possible inquiry based on evidence relevant to the purposes of the inquiry.” Matters that are causally related to the death are “relevant to the purposes of the inquiry.”

Wastech Services Ltd. V. Costello, [1996] B.C.J. No. 376 at para. 11-18.

40. Inquests serve 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.

People First of Ontario v. Porter, Regional Coroner Niagara, [1991] O.J. No. 3389 at para. 41, rev'd on different grounds [1992] O.J. No. 3 (Ont. C.A.).

41. By identifying the exact circumstances surrounding a death, inquests serve to check public imagination and prevent it from becoming irresponsible. Inquests enable the community to be aware of the factors that put human life at risk in given circumstances. Finally, the Court stated that:

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.

R. v. Faber, 1975 CanLII 12 (S.C.C.) at p. 18.

Inquests have a Social and Preventative Function that Requires a Systemic Perspective

42. Inquests perform two vital functions. First, inquests perform an investigative function in determining the circumstances of a death. Secondly, they perform a “social and preventive function” with recommendations designed to avoid preventable deaths in the future:

The public interest in Ontario inquests has become more and more important in recent years. The traditional investigative function of the inquest to determine how, when, where, and by what means the deceased came to her death, is no longer the predominant feature of every inquest. That narrow investigative function, to lay out the essential facts surrounding an individual death, is still vital to the families of the deceased and to those who are directly involved in the death.

A separate and wider function is becoming increasingly significant; the vindication of the public interest in the prevention of death by the public exposure of conditions that threaten life. The separate role of the jury in recommending systemic changes to prevent death has become more and more important. The social and preventive function of the inquest which focuses on the public interest has become, in some cases, just as important as the distinctly separate function of investigating the individual facts of individual deaths and the personal roles of individuals involved in the death.

People First of Ontario v. Porter, Regional Coroner Niagara, [1991] O.J. No. 3389 at para. 32-33, rev'd on different grounds [1992] O.J. No. 3 (Ont. C.A.).

43. Evidence is admissible that is relevant to both the investigative function and the social and preventive function of inquests.

Wastech Services Ltd. V. Costello, [1996] B.C.J. No. 376 at para. 17-18.

44. This inquest does not have to become a Commission of Inquiry to explicitly include racism in its scope or to explore relevant obstacles and challenges faced by the students within their home communities and within Thunder Bay prior to and during their enrolment at DFC and MLC. Various and interdisciplinary Inquiries and Commissions have already been completed to examine racism and these obstacles and challenges. Such material can be submitted once the scope is defined to pinpoint necessary information to make meaningful recommendations. Reports such as the Manitoba Aboriginal Justice Inquiry, the Royal Commission on Aboriginal People, numerous provincial justice inquiries and federal task forces, and the Ipperwash Inquiry in Ontario have addressed the issues of racism and challenges more broadly. Such findings and information where it is of assistance to the Jury should be honestly discussed and available. In addition to these resources there is a large amount of sociological research and secondary material available on racism and obstacles faced by First Nation youth, in similar circumstance to the subject students.

45. The importance in recognizing racism and challenges subject students faced in relation to these specific deaths is that the Families and community members believe that racism in its various forms, intentional or not, had a role at differing points of the youths' demise, during investigations, in communications with the Families, and in general in the daily lives of the descendants while they were living and getting education in Thunder Bay. This reason fits squarely within the public interests and allows for "formally focusing community attention on and initiating community response to preventable deaths."

People First of Ontario v. Porter, Regional Coroner Niagara, [1991] O.J. No. 3389 at para. 32-33, rev'd on different grounds [1992] O.J. No. 3 (Ont. C.A.).

The Inclusion of Treaty causes no Jurisdictional Problem

46. Though the predominant purpose of a coroner's inquest, even when conducted in the context of a federal institution, is not to trench on a federal field or usurp the management function of that institution. A coroner's inquest involving a federal institution maintains its essential character as an inquiry into matters within provincial jurisdiction.
47. The power of a provincial inquiry to touch on federal matters was defined in *Quebec (Attorney General) v. Canada (Attorney General)*. The court held that a provincial commission may make recommendations touching on federal matters where the desirability of such recommendations are revealed through an inquiry into an area validly within provincial competence:

Great stress was laid by the appellants as well as by intervenants on Dickson's J. statement in *Di Iorio*, at p. 208, that "A provincial commission of inquiry, inquiring into any subject, might submit a report in which it appeared that changes in federal laws would be desirable". This was said *obiter* in a case concerning an inquiry into organized crime. As previously noted, the basis of the decision was that such an inquiry into criminal activities is within the proper scope of "The Administration of Justice in the Province". The intended meaning of the sentence quoted is not that a provincial commission may validly inquire into any subject, but that any inquiry into a matter within provincial competence may reveal the desirability of changes in federal laws. The commission might therefore, whatever may be the subject into which it is validly inquiring, submit a report in which it appeared that changes in federal laws would be desirable. This does not mean that the gathering of information for the purpose of making such a report may be a proper subject of inquiry by a provincial commission. [emphasis added]

Quebec (Attorney General) v. Canada (Attorney General), [1979] 1 S.C.R. 218 ("Keable No.1") at 241-242.

48. While the gathering of evidence for the specific purpose of making recommendations respecting federal legislation is prohibited, a provincial inquiry is entitled to make recommendations when deficiencies in federal legislation become apparent through a validly constituted inquiry within provincial areas of jurisdiction.
49. Finally, the above arguments must be considered in the light that treaty relationships arise both at the federal and provincial level.

IV. ODER SOUGHT

50. The Families and NAN respectfully request that the Presiding Coroner amend the scope of the inquest to read as follows [amendments have been indicated by underlining or striking]

A. *Statement of Scope*

This inquest shall

1. Inquire into the circumstances of the deaths and determine, in each case,
 - a. who the deceased was;
 - b. how the deceased came to his or her death;
 - c. when the deceased came to his or her death;
 - d. where the deceased came to his or her death; and
 - e. by what means the deceased came to his or her death, and,
2. Hear evidence directed to the prevention of future deaths of youths from remote First Nations during the course of their high school education in Thunder Bay (“subject students”)

B. *Anticipated Areas of Evidence*

Insofar as it is relevant to the matters set out in (A) above, the jury will hear evidence concerning the following matters regarding the deceased and subject students:

1. Selection and intake of students including application process and needs assessment;
2. Boarding and supervision, including:
 - a. Policies and procedures;
 - b. Physical accommodations and amenities;
 - c. Qualifications and training of persons supervising subject students.
 - d. Identification of, and response to a missing student;
3. Programs, regardless of provider, directed to the prevention of deaths;
4. ~~Prevalence of alcohol and substance use, and programs to reduce harm,~~ The obstacles / challenges faced by subject students within their home communities, and within Thunder Bay prior to and during their enrolment at DFC or MLC; ~~and~~
5. Discrimination and racism against First Nation people that negatively impact First Nation youth, and programs to prevent discrimination, anti-racist programs and/or programs that reduce the harm caused by discrimination; and
6. The quality of the Thunder Bay Police Service’s investigations into the disappearances of the seven First Nations Youth and the subsequent death investigations, including community

policing approaches and communications with the families and communities throughout the investigative process.

C. Contextual evidence

In addition, the jury will hear limited contextual evidence in the following areas, insofar as it is a necessary foundation for other evidence and potential recommendations:

1. A brief overview of the history of secondary school education to subject students, including the Indian Residential School System and its continuing impact on First Nations;
2. The framework governing the current delivery of high school education to subject students, including the statutory framework, funding mechanisms, governance, constitutional and treaty obligations and accountabilities;
3. Different models for delivery of high school education to subject students, taking into account:
 - a. Effectiveness in minimising preventable deaths.
 - b. Rates of graduation and, for non-graduates, highest grade completed;
4. Adequacy of resources to support a potential recommendation.

D. Not within scope

The following areas of evidence are not within the scope except where it provides a necessary foundation for other evidence and potential recommendations:

1. Curriculum content;
 2. Measures of academic achievement other than those specified in C(3)(b);
 3. Specific funding requirements;
 4. Provision of medical care by emergency medical services to Paul Panacheese and Robyn Harper.
51. Such further and other orders as counsel may advise and the Presiding Coroner may permit.

DATED this 17th day of February 2015



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