



October 14, 2016

SENT VIA EMAIL

Chief Coroner, Greg Forestell  
Argyle Place  
364 Argyle St., PO Box 6000  
Fredericton, New Brunswick E3B 5H1

Dear Chief Coroner,

***Re: Inquest into the Death of Glen Edward Wareham  
Request for Standing on behalf of Heather Locke***

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I am writing on behalf of Heather Locke, the mother of Glen Wareham. Please accept this letter as Ms. Locke's formal request for standing at the above noted Inquest.

It is our understanding that *Coroner's Act*, RSNB 1973 c. C-23 (hereinafter "the *Act*"), does not provide a process by which a standing request can be made. In addition, we are aware of the decision of the New Brunswick Court of Appeal in *Forestell v. Regional Health Authority B.*, wherein the Court of Appeal held that:

In New Brunswick, coroners have neither the authority nor the discretion to grant standing to anyone at an inquest. As will be explained below, the *Coroners Act* does not provide standing rights for those who have a substantial interest in the inquest, or even for those whose interests may be directly and substantially affected by the findings of the jury.<sup>1</sup>

Nevertheless, Ms. Locke is seeking a ruling on her standing based on the submission below that New Brunswick's legal bar against granting standing at inquests into the deaths of a family member is unconstitutional and against the principles of natural justice.

We will be in attendance when the inquest commences to make this submission orally in open court. In addition, these submissions are drafted in support of this request.

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<sup>1</sup> *Forestell v. Regional Health Authority B.*, 2014 NBCA 40; [2014] NBJ No 251 (QL) [*Forestell*].



***Family has substantial and direct interest***

Ms. Locke hopes that, through this inquest, Glen's death may assist others by leading to recommendations to prevent other families from suffering the kind of loss that she has suffered. It is Ms. Locke's expectation that the inquest will thoroughly examine the circumstances that lead to Glen's early and unnecessary death. These would include his mental health, previous history of trauma, and personal circumstances leading to incarceration, in addition to the conditions of his confinement, the treatment or lack thereof by Correctional Service of Canada, ability to access family support (including Ms. Locke), and his deteriorating physical health. Ms. Locke has a personal, substantial, and direct interest in these matters as Glen's mother and closest surviving relative. She should be granted standing on that basis.

Given the fundamental role that Ms. Locke played in Glen's life, including as the chief advocate for his welfare while he was in custody, their relationship will necessarily be the subject of scrutiny at the inquest. Furthermore, although Ms. Locke welcomes this investigation into the circumstances that robbed her of her son, the inquest will necessarily require her to relive some of her most traumatic experiences. Few hearings could be more psychologically stressful than a public examination of circumstances that lead a mother to have to bury her own child.

Any person with a direct and substantial interest in the inquest should be afforded rights of participation as a matter of fairness, and in order to best fulfill the fact-finding and public safety function of the inquest. However, in the case of a close family member, a bar to meaningful participation through a grant of standing is unconstitutional and against the principles of natural justice.

***Barring Ms. Locke from Standing at the Inquest Infringes the Right to Security of the Person***

In *Barbra Schlifer Commemorative Clinic v. HMQ Canada*, the Court examined the scope of the rights protected under section 7 of the *Canadian Charter of Rights and Freedoms* (the "Charter"). Citing the Court of Appeal in *Bedford v. Canada*, the Court stated:

An applicant alleging a breach of s. 7 must demonstrate on the balance of probabilities that: (1) the challenged legislation interferes with or limits the applicant's right to life, or the right to liberty, or the right to security of the person; and (2) that the interference or limitation is not in accordance with the principles of fundamental justice.<sup>2</sup>

The Supreme Court in *Blencoe v. British Columbia (Human Rights Commission)* recognized that state-imposed psychological stress engages an individual's constitutionally protected right to security of the person. The Court stated that:

...interference with bodily integrity and serious state-imposed psychological stress constitute a breach of an individual's security of the person. In this context, security of the person has been held to protect both the physical and psychological integrity of the individual.<sup>3</sup>

<sup>2</sup> *Barbra Schlifer Commemorative Clinic v. HMQ Canada*, 2012 ONSC 5271 at para 54

<sup>3</sup> *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44 at para. 55-56



Courts have stated that delineating the boundaries protecting the individual's psychological integrity from state interference is an inexact science. The right to security of the person does not protect the individual from the ordinary stresses and anxieties that a person of reasonable sensibility would suffer as a result of government action, but rather, from those actions which have a serious and profound effect on a person's psychological integrity. The Court has held that this must be greater than ordinary stress or anxiety, but need not rise to the level of nervous shock or psychiatric illness.

In this case, a breach of section 7 is triggered by a state process that imposes significant psychological stress without any corresponding standing to effectively participate in the proceedings. An inquest into the death of a family member is a hearing that clearly imposes greater than ordinary stress or anxiety for the family of the deceased. In particular, the parental interest in raising and caring for a child is an "interest of fundamental importance in our society".<sup>4</sup> Obvious distress arises from a proceeding in which this private and intimate relationship is subject to state inspection, review, and judgment.

Where government action will foreseeably engage these s. 7 interests, the government has a constitutional obligation to do whatever is required to ensure that the process is conducted fairly and in accordance with the principles of fundamental justice. In the case of *New Brunswick (Minister of Health and Community Services) v. G. (J.)* the Supreme Court of Canada held that:

When government action triggers a hearing in which the interests protected by s. 7 of the Canadian Charter of Rights and Freedoms are engaged, it is under an obligation to do whatever is required to ensure that the hearing be fair. In some circumstances, depending on the seriousness of the interests at stake, the complexity of the proceedings, and the capacities of the parent, the government may be required to provide an indigent parent with state-funded counsel. Where the government fails to discharge its constitutional obligation, a judge has the power to order the government to provide a parent with state-funded counsel under s. 24(1) of the Charter through whatever means the government wishes, be it through the Attorney General's budget, the consolidated funds of the province, or the budget of the legal aid system, if one is in place.<sup>5</sup>

Unlike in *G.(J.)*, where the issue was whether the state had a constitutional obligation to provide state-funded counsel, the issue in this case is whether the state is obligated to allow a party with s. 7 interests at stake to have standing at all. In *G.(J.)*, the Court held that "[f]or the hearing to be fair, the parent must have an opportunity to present his or her case effectively."<sup>6</sup> The Court further held that the state's obligation to ensure effective participation and thereby a fair hearing included the obligation to provide state-funded counsel where necessary to ensure effective participation. Under New Brunswick's legislation, meaningful family participation through a grant of standing in coroner's inquests is not only unfunded, it is legally barred. In our respectful submission, the ability to testify and make limited suggestions to coroner's counsel falls far below the constitutional standard of effective participation.

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<sup>4</sup> *New Brunswick (Minister of Health and Community Services) v. G. (J.)*, [1999] 3 SCR 46 at para 61.

<sup>5</sup> *Ibid* at para 2.

<sup>6</sup> *Ibid* at para 73.



***Barring Ms. Locke from Standing is against the Principles of Natural Justice***

The Court of Appeal's conclusion that the New Brunswick *Coroners Act* is procedurally fair was based on the holding that "[b]ecause the coroner's jury cannot make findings of civil fault or criminal liability, any duty of procedural fairness owed to the respondents, if such a duty were to exist, would be minimal".<sup>7</sup> With respect, this view of the law rests on two faulty premises.

First, the natural justice principle of *audi alteram partem*, demands that anyone exercising a judicial function must make adequate opportunity for those affected to present their case. It is the minimum standard for fairness, in the context of this affected party, a mother seeking participation at the inquest looking into her child's death.

Further, the natural justice principle of *audi alteram partem* has a place in the state-sanctioned investigative forum that is a Coroner's Inquest, and should not be limited in effect to cases focused on finding civil fault or criminal responsibility. It has been held that Coroner's Inquests have all of the trappings of a trial, and are adversarial processes (see *Booth v. Huxter*, [1994] O.J. No. 52 (Ont. Div. Ct), leave to appeal to Ont. C.A. dismissed (February 28, 1994) and *Evans v. Milton* (1979), 46 C.C.C. (2d) 129 (Ont. Div. Ct.) affd [1979] O.J. No. 4171 (Ont. C.A.). The nature of these proceedings thus require that Ms. Locke be provided the opportunity for effective participation at the inquest into the death of her son through a grant of standing.

Thank you for considering our submission on this matter. If you have any questions or concerns with respect to the above, please contact the undersigned.

Yours very truly,



Julian Falconer

cc. Heather Locke

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<sup>7</sup> *Forestell*, *supra* at para 87.

