

## **In the Matter of the Inquest Touching the Death of Ashley Smith**

### **And in The Matter of an Application by the Empowerment Council, a Party with Standing, to Call Witnesses**

#### **I. INTRODUCTION**

1. The Empowerment Council, a Party with Standing at this inquest, seeks an evidentiary hearing pursuant to section 6.7(c) (iii) of the Chief Coroner's Rules of Procedure for Inquests to obtain a ruling that would permit the Empowerment Council to call two additional proposed witnesses to testify at this inquest: (1) Jennifer Chambers, Coordinator of the Empowerment Council and (2) Lisa Walter, Co-Founder of the Canadian Association for Research and Education in Borderline Personality Disorder and person with lived experience.
2. In the Ruling as To Relevance and Admissibility, dated September 9, 2013, the proposed evidence to be given by Ms. Chambers and Ms. Walter was deemed not to be relevant and admissible at this inquest.

#### Evidence of Jennifer Chambers

3. The Empowerment Council is proposing to call Ms. Chambers to testify as an expert in two areas:
  - 1) Institutional policy development for the purpose of reducing the use of restraints; the development and delivery of education for hospital staff on the prevention of restraints, alternatives to restraints, minimization of time in restraints, and debriefing of patients and staff (individually and as a team) following incidents of restraint; and
  - 2) the training of Toronto police officers and others, as it can be applied to relate to training of Correctional Officers on interacting with people with mental health issues.
4. As set out below, these areas of proposed evidence by Ms. Chambers are clearly relevant to this inquest, particularly to issues 3, 4, and 5 of the Scope and Focus Statement and Ms. Chambers' training and broad experience clearly supports her qualifications as an expert in these areas.

#### Qualifications:

##### *(i) Work Experience*

5. Ms. Chambers has been the Co-ordinator of the Empowerment Council, Systemic Advocates in Addictions and Mental Health ("Empowerment Council") since April 2003. In 2002, the Empowerment Council became the voice to work

with and on behalf of psychiatric consumers and survivors at the Centre for Addiction and Mental Health. The Centre for Addiction and Mental Health ("CAMH") is Canada's largest health sciences centre devoted to mental health and addiction. From 1991-2001, Ms. Chambers was Coordinator for the Queen Street Patients Council, and 2001-2003 Empowerment Facilitator for CAMH (when she formed the Empowerment Council and the Family Council at CAMH).

6. The CAMH and Empowerment Council Funding Agreement provides:

The Empowerment Council was established as a member-run Client Voice organization and its Work is to include the provision and/or facilitation of:

Representation on a systemic level (e.g. to CAMH, government) on behalf of mental health and addiction Clients;

Information and education to Clients, mental health professionals, addiction workers, and other members of the CAMH and broader community;

Significant Client involvement in decision-making and accountability structures of CAMH, including Client representation on relevant CAMH committees; and

Outreach and community development with Clients of CAMH, and liaison with CAMH and other groups and organizations sharing EC goals.

(ii) Public Presentations and Conferences

7. As Coordinator of the Empowerment Council, Ms. Chambers has delivered many public presentations on a variety of topics related to her work across a broad spectrum of contexts including government bodies, police organizations, judicial bodies, lawyers, and members of the general public.

8. Ms. Chambers has devoted a significant amount of her work towards policy development and implementation of the Least Restraint Initiative, an initiative to reduce and/or eliminate the use of restraints at CAMH. This initiative stemmed from the Inquest into the Death of Jeffrey James who died while being restrained at CAMH. Ms. Chambers testified at that inquest which led to a myriad of recommendations by the jury recommending the reduction and elimination of the use of restraints as proposed by the Empowerment Council. Ms. Chambers was involved at all levels in the implementation of these recommendations at CAMH, and has been a member of every committee specifically about restraint use at the CAMH since the James inquest. These consist of the: Least Restraint and Seclusion Steering Committee, Restraint Incident Review and Debrief, Staff Procedure for Client Debrief following Restraint, Program for Preventing

Aggressive Behaviour (PPAB) Curriculum Development, Seclusion/Restraint Prevention Toolkit, Data Informing Practice, and Alternative Toolkit Development.

9. Ms. Chambers co-authored the curriculum module on Accountability in the use of restraints. She also reviewed the Registered Nurses Association of Ontario's (RNAO) guidelines on the use of restraints. Ms. Chambers is currently on the three committees at CAMH involving restraint use: Client Debrief, Safety, and the Best Services Spotlight Organization Restraint Committee.
10. A large part of Ms. Chambers work has also focused on training of security and justice professionals when interacting with people with mental health issues. In particular, Ms. Chambers has provided training to Mental Health Court workers and Corrections Workers, about the perspectives of people who have direct experience with the psychiatric system. She has also participated in a consultation with the office of the Director of Mental Health for Ontario's Crown Law Office, Criminal Division to provide the perspective of accused with mental health issues in the criminal justice and Ontario Review Board systems.

(iii) Teaching Experience

11. More recently, Ms. Chambers began teaching a course entitled "Special Needs Offenders" within at Community Justice Services Program at Humber College. This program is designed to prepare students for occupations where they will work with offenders and other high-risk client groups. Graduates of the program may find work in community justice agencies, youth facilities, as well as provincial or federal correctional institutions. Furthermore, Ms. Chambers has also delivered a presentation to the Ontario Conference of Judges about psychiatric consumer/survivors in the judicial system.
12. Finally, Ms. Chambers has considerable experience delivering training and educating police officers when encountering people with mental health issues. In particular, Ms. Chambers has delivered weekly classes about persons with mental health issues for the Toronto Police Service at C.O. Bick Toronto Police College (2000 – 2002). She has been involved in the training and training review of almost all uniformed officers in Toronto as part of their Advanced Patrol Training. Furthermore, she also participated in the Canadian Association of Police Boards Conference, "Shaping Police Interactions with Emotionally Disturbed Persons", August 16, 2008.

(iv) Boards and Committees

13. Ms. Chambers has served on a variety of boards and committees with respect to policing. In particular, Ms. Chambers served on the Mental Health Subcommittee of the Toronto Police Services Board. She also served as a Co-Chair at the Hospital Protocol SubCommittee of Toronto Police Services Board in 2012. She serves as Advisory Committee Member on Training and Education Toronto

Police College (2010 – present). She also participated as the co-chair of its subcommittee on Police-Hospital Relations. Finally, Ms. Chambers participated in the Mental Health Commission of Canada’s roundtable looking at a curriculum for Canada wide police training in mental health.

(v) Prior Expert Testimony

14. Ms. Chambers has previously testified as an expert witness in prior Coroner’s Inquests where she was qualified as an expert to provide opinion evidence on the client perspective on what could have avoided the person developing a crisis, and what might have managed it once it started. She testified how in each case the person could have been helped by supports that met their self-identified needs, if anyone had ascertained them. In particular, Ms. Chambers testified at as a Witness at the Inquest into the death of Jeffrey James, 2008, Inquest into the death of Otto Vass, November, 2006, Inquest into the death of Wayne Williams, June 2000, and Inquest into the death of Edmond Yu, March, 1999.

Evidence of Lisa Walter

15. The Empowerment Council is proposing to call Ms. Walter to testify as an expert in:

- (i) A person with lived experience of serious self-harm and the resulting interactions with the mental health system

16. This area of proposed evidence by Ms. Walter is relevant to this inquest, particularly to issues 3 and 4 of the Scope and Focus Statement and Ms. Walter’s experience supports her qualifications as an expert in this area.

Qualifications

(i) Work Experience

17. Ms. Walter co-founded the Canadian Association for Research and Education in Borderline Personality Disorder (CARE-BPD). Ms. Walter co-founded CARE-BPD in 2011. As a community organizer engaged in addressing inequities faced by people with BPD, she has consulted extensively with dozens of her peers, both formally and informally. She has also engaged with clinicians and researchers specializing in BPD

(ii) Lived Experience

18. Ms. Walter is also a person with lived experience of the psychiatric system, and was diagnosed with Borderline Personality Disorder (BPD) in 2008. She began self-harming when she was a teenager, was involuntary detained under the Mental Health Act on a number of occasions as a result of her self-harming behaviour, physically restrained against her will, subjected to being searched by

hospital staff, experienced numerous barriers to accessing treatment, participated in Dialectical Behavioural Therapy, and experienced an increase in her self-harming behaviour as a result of her interactions with authorities.

### Admissibility of Evidence at Coroner's Inquests

19. Section 44 of the *Coroners Act* permits evidence to be received at an inquest if it is, *inter alia*, "relevant to the purpose of the inquest", and not "unduly repetitious".

Section 44 of the *Coroners Act*, R.S.O. 1990, c. C.37

### Purpose of an Inquest

20. Pursuant to section 31 of the *Coroners Act*, the purpose of an inquest is to inquire into the circumstances of the death and answer five factual questions. These are the name of the deceased, the time and place of death and the cause and manner of death. In addition, the jury is authorized to make such recommendations as they feel are needed aimed at the prevention of deaths in similar circumstances in the future. Such recommendations, if any, must be based on evidence the jury heard during the hearing.

Section 31 of the *Coroners Act*, R.S.O. 1990, c. C.37

### Scope and Focus of this Inquest

21. In the Ruling as to Relevance and Admissibility, it was further determined that in order for the proposed evidence of a party with standing to be considered relevant and admissible, it must also "fall within one of the items set out in the scope and focus statement for the inquest".

Ruling as to Relevance and Admissibility, p. 1

22. On that basis, and as will be set out further below, the Empowerment Council submits that the proposed evidence of Ms. Chambers and Ms. Walter is relevant to assist the jury to make appropriate recommendations to prevent future deaths in similar circumstances and falls within one of the items set out in the Scope and Focus statement for this Inquest.

### Motto: We speak for the dead to protect the living

23. The motto for the Office of the Chief Coroner of Ontario is "We Speak for the Dead to Protect the Living." In other words, the coroner will review the circumstances surrounding the death of a person in the hope of preventing future deaths in similar circumstances.

24. The Empowerment Council submits that the most effective way to approximate the voice of the person who died is to hear directly from the voices of those who are similarly situated to Ashley and those with direct experience working with persons similarly situated to Ashley and directly impacted by the outcome of this inquest.
25. Members of the Empowerment Council consist of and represent persons who are recipients or former recipients of mental health and/or addiction services at the Centre for Addiction and Mental Health many of whom have actual experience interacting with the justice system and corrections. As Coordinator of the Empowerment Council, Jennifer Chambers has direct experience working with individuals involved in the criminal justice and mental health systems, many of whom are similarly situated to Ashley. Lisa Walter is a person with lived experience in the psychiatric system and who is similarly situated to Ashley with respect to her experience in the psychiatric system.
26. It is submitted that the integrity of this entire process requires that this inquest hear the voice of those most directly connected to the group directly affected.

*Decision With Respect to Standing*

27. The Empowerment Council was granted standing at this inquest on September 24, 2012 pursuant to section 41 of the *Coroners Act* because it was determined to have “*substantial and special knowledge of the issues that are within the scope of the inquest*” and to “*bring a unique perspective to the issues which is different from other public interest groups applying for standing at the inquest*”.

*Ruling on Standing*, p. 4.

28. In particular, in the Ruling on Standing, the Empowerment Council was found to have “*expertise*” and a “*unique perspective*” with respect to “*issues of mental health care and in particular mental health care of inmates in the justice system and corrections from the point of view of the actual patients/inmates*” which was found to clearly relate to “*issue #3 in the scope and focus statement*”.

*Ruling on Standing*, p. 11.

29. In granting standing to the Empowerment Council, this Court recognized the role that the Empowerment Council played at previous inquests about deaths of persons with mental health issues and involvement with the criminal justice system.

*Ruling on Standing*, p. 11.

30. In granting standing to the Empowerment Council, the scope of its participation was determined to be:

- (i) Criminal and corrections issues including use of, effects of, and alternatives to the use of restraints and seclusion for people in distress. “The unique perspective of The Empowerment Council on these issues which clearly will arise during the inquest was evident to me”.
- (ii) The effects on your mental health of being in a system where one’s rights are violated, including rights to consent and refuse to consent to treatment. “This area seemed apt to engage the perspective of The Empowerment Council and I accept that it refers to Item #5 in the scope and focus statement”.
- (iii) How correctional officers can relate to persons with mental health issues. “This area also seemed apt to engage the *expertise* and *experience* of The Empowerment Council and related to items #4 and #5 of the scope and focus statement”.

*Ruling on Standing*, p. 11-12.

31. The Empowerment Council submits that in being granted standing at this inquest, it was recognized as having a unique perspective and expertise in respect of three areas that are clearly at issue in this inquest and that relate to items 3, 4, and 5 of the inquest. It is submitted that to deny the Empowerment Council the ability to call additional evidence (in addition to Dr. Cardish) in respect to the very issues that it has been granted standing on is to ultimately deprive it of the very essence of its right to standing at this inquest.

## II. LAW REGARDING THE ADMISSIBILITY OF EXPERT OPINION EVIDENCE

### General Principles

32. The test for the admissibility of expert testimony was set out in *R. v. Mohan*, [1994 CanLII 80 \(SCC\)](#), [1994] 2 S.C.R. 9 (“*Mohan*”). The Supreme Court held that the admission of expert evidence depends on the determination of four criteria: (a) relevance; (b) necessity in assisting the trier of fact; (c) the absence of any exclusionary rule; and (d) a properly qualified expert.

*R v. Mohan*, [1994] 2 S.C.R. 9, at paragraph 17.

33. In discussing the second requirement (b) necessity in assisting the trier of fact, the Supreme Court in *Mohan*, determined that the appropriate test for necessity is whether the expert is capable of assisting the trier by providing information likely to be beyond the trier's knowledge or experience. In other words, expert

evidence will be considered necessary if it provides information likely to be outside the knowledge or experience of a judge or jury.

*Mohan*, at paragraph 22.

*Not Solely Based on Academic Credentials But Also Based on Experience*

34. Furthermore, in discussing the fourth requirement (d) a properly qualified expert, the Supreme Court further states:

Finally the evidence must be given by a witness who is shown to have acquired special or peculiar knowledge through study **or experience** in respect of the matters on which he or she undertakes to testify".  
[emphasis added]

*Mohan*, at paragraph 27.

35. The *Mohan* criterion have been applied and further elaborated upon in numerous cases at all levels of courts. In *Dulong v. Merrill Lynch Canada Inc.* [2006 CanLII 9146 \(ON SC\)](#), (2006), 80 O.R. (3d) 378, [2006] O.J. No. 1146, Ducharme J. observed at paras. 20 and 21 that it must be established that the proposed expert witness does have “special” or “peculiar” knowledge. That knowledge can, however, be acquired in a variety of ways and practical experience is as valuable as academic qualifications:

How the witness acquired that “special” or “peculiar” knowledge is not the central issue at this point. Rather the issue is whether the witness does, in fact, have the “special” or “peculiar” knowledge. Thus one can acquire the necessary knowledge through formal education, private study, work experience or other personal involvement with the subject matter. [...]

When assessing the qualifications of a proposed expert, trial judges regularly consider factors such as the proposed witness’s professional qualifications, actual experience, participation or membership in professional associations, the nature and extent of his or her publications, involvement in teaching, involvement in courses or conferences in the field and efforts to keep current with the literature in the field and whether or not the witness has previously been qualified to testify as an expert in the area.

36. Furthermore, Ducharme J. referred to the “old hunter” example given by Falconbridge C.J. in *Rice v. Sockett*, [1912] O.J. No. 49, 27 O.L.R. 410 (C.A.) at paras. 21-22:

Dr. John D. Lawson, in "*The Law of Expert and Opinion Evidence*", 2nd ed., p. 74, lays down as rule 22: "Mechanics, artisans and workmen are experts as to matters of technical skill in their trades, and their opinions in such cases are admissible;" citing numerous authorities and illustrations.

"The derivation of the term "expert" implies that he is one who by experience has acquired special or peculiar knowledge of the subject of which he undertakes to testify, and it does not matter whether such knowledge has been acquired by study of scientific works or by practical observation. Hence, one who is an old hunter, and has thus had much experience in the use of firearms, may be as well qualified to testify as to the appearance which a gun recently fired would present as a highly-educated and skilled gunsmith:" *State v. Davis* (1899), 33 S.E. Repr. 449, 55 So. Car. 339, cited in *Words and Phrases Judicially Defined*, vol. 3, p. 2595.

*Dulong* at paras. 21-22.

37. Accordingly, practical training can clearly be the source of an expert's special knowledge. In order to satisfy the test for the admissibility of expert evidence, it must be demonstrated that the proposed expert possesses special knowledge and expertise beyond the trier of fact. The proposed expert witness must be skilled in the field in which his opinion is based. However, the admissibility of expert evidence does not depend upon whether the expert's skill was derived from specific studies or practical training experience.

38. Deficiencies in the expertise may go to weight and not admissibility:

The proponent of the expert evidence must satisfy the trial judge that the proffered expert witness acquired special or peculiar knowledge through study or experience in respect of the subject matter of the opinion. The witness' expertise must be in the particular field in which the witness' opinion is sought and the expert's evidence should be confined to her or his area of expertise to minimize its potential for misuse or confusion. The admissibility of expert evidence does not depend upon the means by which that skill was acquired. As long as the trial judge is satisfied that the witness is sufficiently experienced in the subject matter at issue, the judge will not be concerned with whether the expertise was derived from specific studies or by practical training, although that may affect the weight to be given to the evidence. [Emphasis added]

Bryant et al., *Sopinka, Lederman & Bryant: The Law of Evidence in Canada*, 3<sup>rd</sup> ed. (Markham: LexisNexis Canada Inc., 2009), at p. 820,

39. Furthermore, persons with lived experience have also been recognized as experts to give expert evidence about that experience. In *Lane v. Adga Group Consultants Inc.*, 2007 HRTO 34 (CanLII), the Ontario Human Rights Commission proposed to call an expert, Philip Upshall, to testify at the hearing. The Respondent challenged the qualifications of the proposed expert Mr. Upshall. The Tribunal found that although Mr. Upshall did not have any academic or professional credentials, he was qualified as an expert on the basis of his lived experience, namely, of having bipolar disorder himself and working in the field of mental health. The Human Rights Tribunal stated:

[12] The Commission indicated that it would be calling as an expert witness, Philip Upshall, himself a victim of bipolar disorder, a registered lobbyist for various organizations promoting the interests of those with mental illness, a member of various task forces dealing with mental illness issues, and the President of the Mood Disorders Society of Canada, an advocacy group for those suffering from depression, bipolar disorder and associated illnesses. Mr. Upshall was a lawyer by training but had no qualifications as a medical practitioner. The Commission proposed to qualify him as an expert in providing vital background and contextual information about bipolar disorder. This included not just the impact that the disorder can have on its victims but forms of treatment and management, and the extent to which accommodation is possible, as well as information as to the results of research on attitudes to mental disorder in the workplace, including the incidence of stigmatization and stereotyping.

[.....]

[14] [...], I accepted the following in ruling that Mr. Upshall could testify on the matters for which the Commission sought to qualify him:

- The evidence was not only relevant in the usual sense of being related to matters that would be in issue at the hearing but also in the sense that its probative value would outweigh any prejudicial tendency to have excessive influence on the trier of fact.
- It was being used to provide information that “was likely to be outside the experience and knowledge” (*R. v. Abbey*, [1982 CanLII 25 \(SCC\)](#), [1982] 2 S.C.R. 24, at p. 42) of this Tribunal, particularly given the novelty of a Complaint like this in Ontario and rarity across the country.

- While not a physician, Mr. Upshall was someone who was “shown to have acquired special or peculiar knowledge through study or experience in respect of the matters on which he or she undertakes to testify” (*Mohan, supra* at para. 27).

40. More recently, in *Carmen Alfano Family Trust (Trustee of) v. Piersanti*, [2012] O.J. No. 2042, leave to appeal refused [2012] S.C.C.A. No. 309, the Ontario Court of Appeal discussed the Mohan test. The Court stated that the party tendering expert evidence has the burden to satisfy the four Mohan criteria on a balance of probabilities.

Par. 103

41. The court of appeal discussed the second requirement (b) necessity in assisting the trier of fact in terms of helpfulness to a trier of fact and the need for objectivity and independence: The Court of Appeal stated:

**[105]** In determining whether an expert's evidence will be helpful, a court will, as a matter of common sense, look to the question of the expert's independence or objectivity. A biased expert is unlikely to provide useful assistance.

**[106]** Courts have taken a pragmatic approach to the issue of the independence of expert witnesses. They have recognized and accepted that experts are called by one party in an adversarial proceeding and are generally paid by that party to prepare a report and to testify. The alignment of interest of an expert with the retaining party is not, in and of itself, a matter that will necessarily encroach upon the independence or objectivity of the expert's evidence.

**[107]** That said, courts remain concerned that expert witnesses render opinions that are the product of their expertise and experience and, importantly, their independent analysis and assessment. Courts rely on expert witnesses to approach their tasks with objectivity and integrity. As Farley J. said in *Bank of Montreal v. Citak*, [2001] O.J. No. 1096, "experts must be neutral and objective [and], to the extent they are not, they are not properly qualified to give expert opinions."

42. The Court of Appeal further elaborated on the requirements for independence, non-bias, and objectivity with respect to the admissibility of expert testimony:

**108** When courts have discussed the need for the independence of expert witnesses, they often have said that experts should not become advocates for the party or the positions of the party by whom they have been retained. It is not helpful to a court to have

an expert simply parrot the position of the retaining client. Courts require more. The critical distinction is that the expert opinion should always be the result of the expert's independent analysis and conclusion. While the opinion may support the client's position, it should not be influenced as to form or content by the exigencies of the litigation or by pressure from the client. An expert's report or evidence should not be a platform from which to argue the client's case. As the trial judge in this case pointed out, "the fundamental principle in cases involving qualifications of experts is that the expert, although retained by the clients, assists the court."

**109** The report of the Goudge Inquiry, *Inquiry into Pediatric Forensic Pathology in Ontario* (Toronto: Ontario Ministry of the Attorney General: 2008), at p. 503, noted the importance of expert witness independence, quoting the principles described by the Court of Appeal of England and Wales in *R. v. Harris and others*, [2005] EWCA Crim 1980, at para. 271:

(1) Expert evidence presented to the court should be and seen to be the independent product of the expert uninfluenced as to form or content by the exigencies of litigation.

(2) An expert witness should provide independent assistance to the court by way of objective unbiased opinion in relation to matters within his expertise. An expert witness in the High Court should never assume the role of advocate.

*Lived Experience Does Not Render A Person Biased*

43. In *R. v. S. (R.D.)*, [1997] 3 S.C.R. 484, the Supreme Court of Canada held that a black female judge's comments about interactions between police officers and "non-white" groups was not biased or even reasonably apprehended as biased. It is submitted that this case stands for the proposition that the application of an individual's personal experience and/or direct experience with persons directly affected does not render them biased or impartial. Rather, such experience can have the opposite effect of enhancing their credibility, impartiality and ultimately their expertise. It is submitted that an individual's personal understanding and experience of the society in which they live and work has become an accepted step towards impartiality. As stated by Justices L'Heureux-Dubé and McLachlin, "This process of enlargement is not only consistent with impartiality, it may also be seen as its essential pre-condition".

*R v. RDS*, [1997] 3 S.C.R. 484 at para. 44.

*Lived Experience as Expertise*

44. Expertise can be acquired in a variety of ways. Most commonly, a person is considered to be an expert in an area because they have completed a certain level of formal education or training or have extensive work and/or research experience. However, an equally significant type of expertise is held by people who have lived experience with respect to a certain issue. Persons with lived experience hold valuable perspectives about how to address such issues and are often excluded from the policy development process. Various contexts have recognized the valuable perspective that persons with lived experience bring and have ensured their full inclusion and participation in the process.
45. The value of the perspective of persons with lived experience in the development of policy has been recognized by the inquest process. Coroner's juries regularly recommend the inclusion of persons with lived experience in its recommendations to direct various organizations to consult with persons with lived experience in the development of its policies. In particular, in the Inquest into the Death of Mathew David Reid, 2010, the Jury recommended that "the Ministry of Children and Youth Services, in consultation with youth with lived experience in the child welfare system, work with Children's Aid Societies to develop best practice guidelines that will enhance the voice of the child in all aspects of service delivery". The Coroner's stated that the reason for this recommendation was that "the jurors wanted to encourage the development and implementation of an optimal process for the placement of children in foster homes across Ontario. They felt that young people should be included in this process in recognition of the importance of providing them with a voice in their own affairs".

*Reid (Re)*, 2010 CanLII 99953 (ON OCCO)

See also *Youth (Re)*, 2011 CanLII 99634 (ON OCCO)

46. It is submitted that to allow a Coroner's jury to make recommendations supporting the important role that person's with lived experience play in the development of policies on the one hand, yet exclude such evidence at this stage of the inquest process on the other simply undermines the true impact of any such recommendations and ultimately the entire inquest process.

**III. APPLICATION OF THE LAW TO THE EMPOWERMENT COUNCIL'S PROPOSED WITNESSES**

Admissibility of the Evidence of Jennifer Chambers

47. As set out above, the Empowerment Council proposes to call Jennifer Chambers to provide expert opinion evidence with respect to two areas:

- 1) Institutional policy development, for the purpose of reducing the use of restraints; development and delivery of education for hospital staff on the prevention of restraints, alternatives to restraints, minimization of time in restraints, and debriefing of patients and staff (individually and as a team) following incidents of restraint; and
- 2) the training of members of the Toronto Police Service, as it can be applied to relate training of Correctional Officers on interacting with people with mental health issues.

(i) Prevention and Alternatives to the Use of Restraint and Seclusion

48. With respect to the area of the prevention and alternatives to the use of restraints and seclusion, the Empowerment Council proposes that Ms. Chambers participate on a panel with Mr. Charles Currie who has already been accepted as an expert to testify at this inquest. It is submitted that Ms. Chambers and Mr. Currie propose to testify with respect to a similar subject matter, however, in respect of different jurisdictions, and that the jury would benefit from hearing their evidence together.
49. Mr. Currie has been permitted to testify as an expert “on the effect and management of seclusion in mental hospitals in those who are mentally ill”. Mr. Currie was further found to be an expert “in the use of physical restraints in mental hospitals”. In the Ruling on Evidence, it was determined that “since the matter of prolonged and continuous segregation, a prison term, is a focus of our inquest as set out in the scope and focus statement, his [Mr. Currie’s] evidence is relevant in that it may explicate issues arising during Ashley’s time in mental hospitals which are analogous to the issues set out in paragraph 1 of that statement and may also be relevant to pp. 3”. Furthermore, Mr. Currie’s proposed evidence regarding the use of physical restraints was found to be “relevant to the circumstances of Ashley’s death in relation to her management in several mental hospitals”.
50. Similar to Mr. Currie, it is submitted that Ms. Chambers’ proposed evidence with respect to prevention and alternatives to the use of restraints and seclusion, is relevant to the circumstances of the death of Ashley Smith particularly paragraphs 1 and 3 of the Scope and Focus Statement particularly in relation to her management at several psychiatric facilities. It is submitted that given Ms. Chambers’ considerable role in developing and implementing the Least Restraint Initiative at CAMH, she is qualified to give evidence in respect to that issue.
51. Furthermore, in the Ruling as to the Admissibility of Evidence, it was determined that “Evidence about the training of staff in a mental hospital to deal with the mentally ill might be relevant and admissible if the proposed witness were an

expert in that area of which expertise I have not been persuaded”. It is submitted that given Ms. Chambers extensive experience (as outlined above) in training staff at CAMH with respect to dealing with their clients on a variety of issues including the use of restraints and seclusion, she is qualified as an expert to give expert opinion evidence on this issue.

(ii) the training of Correctional Officers when interacting with people with mental health issues

52. It is submitted that, as the Ruling on Standing at this inquest makes clear that evidence with respect to “How correctional officers can relate to persons with mental health issues” engages “the *expertise* and *experience* of The Empowerment Council” and relates “to items #4 and #5 of the scope and focus statement”. As outlined above, given Ms. Chambers extensive experience in the delivery of training to various security and justice professionals including police officers, mental health court workers, correctional officers, lawyers and judges, she is qualified as an expert to give opinion evidence on this issue.

53. The Ruling as to the Admissibility of Evidence with respect to Ms. Chambers appears to presume that lack of certain academic credentials combined with direct experience with the group most affected, renders the proposed evidence biased or impartial and therefore lack expertise. However, the Empowerment Council submits that the opposite is the case and that it is precisely this direct experience which informs her expertise with respect to her proposed evidence.

54. It is further submitted that if this Court determines that Ms. Chambers lacks a certain level of academic qualifications, then, this can go to the weight of her evidence as opposed to its admissibility.

Admissibility of the Evidence of Lisa Walter

55. The Ruling as to Admissibility of Evidence Decision with respect to Ms. Walter appears to presume that the lack of academic qualifications excludes someone from being recognized as an expert witness. However, as set out above, there is legal jurisprudence to support the proposition that lived experience can constitute expertise. In particular, in *Lane v. Adga Group Consultants Inc.*, the Human Rights Tribunal of Ontario accepted a person with lived experience as an expert to testify before it.

56. In addition, the Ruling as to the Admissibility of Evidence denied Ms. Walter’s evidence on the basis that her proposed evidence merely constitutes an account of her own experience of self-harming behaviour and its management without any information about the similarity or relevance of her experience to that of Ashley’s except the statement that she self-harmed.

57. It is submitted that Ms. Walter's experience, as outlined below, is sufficiently similar to Ashley's to provide relevant evidence to the jury:

*Age:* Ms. Walter is 45 years old. She has had four periods of time in her life during which she engaged in self-harming behavior, when she was 13-14 years old, in her early 20's, in her late 20's, and most recently between 2007 and early 2013.

*Diagnosis:* Ms. Walter has had interactions with the mental health system since she was a teenager. In 2008, she was diagnosed with a personality disorder, specifically Borderline Personality Disorder.

*Nature of self-harm:* Ms. Walter has engaged in a variety of self-harming behaviour – see her will say.

*Involuntary Detention in Hospital:* Ms. Walter sought assistance in the mental health system, including through voluntary admissions. She was also detained involuntarily on a form 1 approximately 10 times and on a form 3 once.

*Searches:* Ms. Walter has been subjected to numerous searches of her person and belongings including against her will.

*Treatment Readiness/Access to Treatment:* Ms. Walter has been refused treatment due to the nature of her mental health issues and because she was not determined to be ready for treatment.

*Restraints:* Ms. Walter was held in two point restraints when she attempted to leave hospital after being admitted on a Form 1. After she was put in restraints she beat her head against the wall. She was left in the restraints in a hospital room overnight. The restraints were removed in the morning.

*Medication:* Ms. Walter has been prescribed a variety of medication over the years.

*Interaction with Authorities and impact on self-harm:* When Ms. Walter engaged in self-harm, she was always looking for engagement. If she found someone to be engaged, then her desire to self-harm was reduced. However, when she was met with invalidation, dismissiveness, coercion or hostility, or if her pain was not taken serious, she would seek to engage in more extreme or more frequent self-harming behaviour.

58. The Empowerment Council Submits that Ms. Walter lived experience is similar to that of Ashley Smith's, particularly, her experience in the metal health system. On that basis, the Empowerment Council submits that Ms. Walter is similarly situated to Ashley and other self-harming women who have been detained in hospital/and or prison and can thereby testify as a representative of that

perspective in a manner that can help inform the jury in its recommendations at this inquest.

ALL OF WHICH IS HEREBY SUBMITTED THIS 16<sup>th</sup> DAY of SEPTEMBER 2013:

Karen Spector

Mary Birdsell

Tess Sheldon

Karen R. Spector

Mary Birdsell

C. Tess Sheldon