

IN THE MATTER OF THE COMMISSION OF INQUIRY
RESPECTING THE DEATH OF DONALD DUNPHY

Ruling 5: On Application Regarding Proposed Experts:

Dr. Stephen Hart and Sgt. Patrick Lenehan

On February 25, 2017, the Royal Newfoundland Constabulary (RNC) filed an application to adduce expert evidence by Sgt. Patrick Lenehan of the Justice Officials Protection and Investigation Section of the Ontario Provincial Police. Cst. Joseph Smyth applied to have Dr. Stephen Hart, who holds a PhD in clinical psychology, provide expert evidence. Both experts were proposed to give evidence regarding risk/threat assessment in the context of protection of public officials. On March 3, 2017 the Commission received from counsel for Cst. Smyth, a report authored by Dr. Hart. On the same date, I heard the applications with respect to both proposed experts as well as submissions from parties with respect to the applications. While I allowed both experts to testify, I reserved my decision to prepare full written reasons. These are those reasons.

As this is the third ruling I have made in this Inquiry with respect to the admissibility of expert evidence, I will not repeat the applicable law. Suffice it to say, I have to apply the criteria for admitting expert evidence as set out by the Supreme Court of Canada in *Mohan* and *White Burgess*, and recently confirmed in *Bingley*, all of which have been previously cited in rulings before this Commission.

The key aspects of the test to be applied with respect to these two proposed experts are: the relevance and necessity of the opinions, and whether the probative value of the opinions to be rendered outweighs any potential prejudicial effect.

Dr. Hart was available to be heard on March 7, 2017, so no significant delay would arise which might negatively impact the Inquiry process. The evidence which Dr. Hart will provide challenges the qualifications of Dr. Coleman insofar as Dr. Coleman may give an opinion on violence/risk/threat assessment, particularly in the context of the protection of public figures. I note that Dr. Hart's evidence on the definition of these terms is yet again different from that of others who have already given evidence before the Commission. But in any event, I accept that Dr. Hart's opinion will be relevant and necessary and that it could assist me in understanding the nuances of threat assessment in the context of preventing violence against public figures. I am satisfied also that the probative value of his report will outweigh any prejudicial effect. I must note that the prejudice to Constable Smyth, if it is not admitted, could be significant in terms of the impact upon reputation, career and so forth, while the impact upon the case presented by Ms. Dunphy would not be that significant.

Counsel for Meghan Dunphy did not strenuously object to Dr. Hart being permitted to testify but did request that if he were to be allowed to give evidence, that his evidence be heard at a later date to permit counsel for Ms. Dunphy more time to prepare for his evidence. I was not prepared to allow a delay in the Inquiry process for that purpose. I was prepared, however, to allow counsel a reasonable amount of funding (to be determined in consultation with Commission counsel), to permit the obtaining of advice to assist in the preparation of appropriate questions for the examination of Dr. Hart and the testing of his qualifications.

With respect to the application for the admission of opinion by Sgt. Lenehan, counsel for the RNC sought to admit the testimony of Sgt. Lenehan regarding whether the threat-risk assessment of Constable Smyth was appropriate in the circumstances. I am satisfied the opinion of Sgt. Lenehan is relevant and necessary and that it would help me better understand what is

involved in threat and risk assessment in the context of the protection of public figures. I am also satisfied the probative value outweighs any potential prejudicial effect.

A handwritten signature in blue ink that reads "Leo Barry". The signature is written in a cursive style with a long horizontal stroke at the end.

Leo Barry
Commissioner

2017-04-11