Court of Appeal File Nos.: C51589 and C51590

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

ELIZABETH PIERRE and MARLENE PIERRE

Appellants

- and -

DR. SHELAGH MCRAE, CORONER

Respondent

AND BETWEEN

NISHNAWBE ASKI NATION, RHODA KING and BERENSON KING

Appellants

- and -

DR. DAVID EDEN, CORONER

Respondent

RESPONDING FACTUM OF THE PROVINCIAL ADVOCATE FOR CHILDREN AND YOUTH

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RESPONDING FACTUM
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PART I - OVERVIEW

1. The Provincial Advocate for Children and Youth (the Provincial Advocate) supports the appellants in their attempt to seek clarification of whether Aboriginal people are properly and lawfully represented on the jury roll in the Thunder Bay judicial district.

2. The Provincial Advocate submits that, in respect of the Bushie inquest, the underlying proceeding is about children and youth and that this Honourable Court should

have due regard to the principles of the *UN Convention on the Rights of the Child*. In particular, young people are entitled to a process that considers their best interests and their need for emotional and spiritual development. Young Aboriginal people will be affected by the jury's recommendations in the Bushie inquest and they are entitled to a process that ensures representativeness from their communities.

PART II - STATEMENT OF FACTS

3. The Provincial Advocate accepts the facts relating to the Bushie inquest set out in the joint factum of the Appellants. In addition to the facts set out by the Appellants, the Provincial Advocate relies on a number of additional facts.

A. The Provincial Advocate

4. The Provincial Advocate is an independent Officer of the Ontario Legislature established pursuant to the *Provincial Advocate for Children and Youth Act, 2007*, S.O. 2007, c. 9 (the Act). The purpose of the Act is:

> to provide for the Provincial Advocate for Children and Youth as an independent officer of the Legislature to,
>
> (a) **provide an independent voice for children and youth, including First Nations children and youth and children with special needs, by partnering with them to bring issues forward;**
>
> (b) encourage communication and understanding between children and families and those who provide them with services; and

> (c) **educate children, youth and their caregivers regarding the rights of children and youth.**

5. The Provincial Advocate was created as an officer of the Legislative Assembly (along the lines of the Provincial Auditor and the Ombudsman) to allow for an independent office that would be responsible for, amongst other things, holding the Ontario government accountable in the area of children's rights.

6. Section 2 (1) of the Act defines a number of terms. "Advocacy" means promoting the views and preferences of children and youth as provided for in the Act and exercising the functions and powers outlined in sections 15 and 16 of the Act.

7. Section 2 (3) of the Act provides that:

> In interpreting and applying this Act, regard shall be had to the following principles:
>
> 1. The principles expressed in the *United Nations Convention on the Rights of the Child*;
>
> 2. The desirability of the office of the Provincial Advocate for Children and Youth being an exemplar for meaningful participation of children and youth through all aspects of its advocacy services.

8. The Provincial Advocate sought and was granted standing at the Inquest into the Death of Reggie Bushie by the Presiding Coroner on January 16, 2009.[1]

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[1] Ruling of Dr. David Eden, Appeal Book of the Appellants NAN & King in the Bushie Inquest (hereinafter Appeal Book), Tab 4, page 38

B. Ruling of the Divisional Court

9. In dismissing the application for judicial review, the Divisional Court made no reference to the best interests of young people affected by the Coroner's decision. In making its decision, the court held:

> In my view, the coroners made no jurisdictional error or any error in legal principle when they refused to issue a summons to Mr. Gordon, as they had no statutory power to review the process for the selection of the jury roll or to provide any remedy if it were shown to be flawed.
>
> **….**
>
> Indeed, the coroner would have no authority to remedy any problems with the jury roll, should they be present. … At most, the coroner could adjourn the inquest indefinitely, a "remedy" that would undermine the fundamental purpose of the *Coroners Act* to inquire into the death of a member of the community and to try to prevent future deaths.[2]

10. In respect of an argument that the Coroner has powers under section 50 of the *Coroners Act* to make orders to prevent the abuse of its process, the court held:

> ... neither of the coroners was satisfied, on the material submitted, that there was sufficient evidence to require further inquiry in order to prevent an abuse of process. It is the task of the coroner, not this court, to weigh evidence. Given the lack of jurisdiction of the coroner to go behind the jury roll, their decisions are deserving of deference.
>
> While the evidence from the Kenora district may well give cause for concern about the representation on jury rolls of First Nations people who live on reserves, the remedy for such underrepresentation does not lie with the coroner in a particular inquest. Rather, the remedy lies elsewhere, perhaps in the context of a challenge to the jury roll under the Canadian Charter of Rights and Freedoms, or a challenge to a jury panel in a criminal case, as in *R. v. Nahdee (No. 1)*, [1993] O.J. No. 2425 (Gen. Div.), or by action in the political arena.
>
> The coroners did not err in law nor make an unreasonable decision in refusing to issue a summons to Mr. Gordon.[3]

[2] Decision of the Divisional Court, Appeal Book, Tab 3, page 25, paragraphs 68, 71
[3] Decision of the Divisional Court, Appeal Book, Tab 3, pages 25 to 26, paragraphs 74 to 76

PART III - ISSUES RAISED BY THE APPELLANTS

11. The Provincial Advocate agrees with and adopts the position taken by the Appellants in respect of the issues set out in paragraphs 49(a) to (e) of their joint factum. He takes no position in respect to issue (f) of whether a new inquest should be ordered to examine the death of Jacy Pierre.

12. The Provincial Advocate makes the following additional submissions on the question of whether the Divisional Court erred in finding that the coroners did not err in failing to issue a summons. This Respondent will address both the conclusions whether coroners have the jurisdiction to inquire into whether their inquest jury was lawfully constituted and whether the Coroners erred in failing to make an order to prevent an abuse of their processes. In so doing, this Respondent will address the requirements of the *Juries Act*, the powers of the Coroner under section 50 and the nature of abuse of process.

A. Requirements of the *Juries Act* and Nature of the Inquest

13. The Reggie Bushie inquest is about preventing the deaths of young Aboriginal people who leave their home communities to attend school in Thunder Bay. Young Aboriginal people, therefore, will be directly affected by the jury's verdict and recommendations. It is submitted that for young Aboriginal people to have confidence in the inquest process and its verdict and recommendations, the jury must have the potential to be representative.

14. A legal jury is a representative jury. The *Juries Act* is the foundation for determining representativeness and it sets out the mechanism by which a legal jury is constituted.[4]

15. The *Juries Act* creates a mechanism to ensure that First Nations' people living on reserves can be represented on juries by virtue of section 6(8) which on its face ought to ensure a representative roll. It logically follows that the ability to create a representative jury depends on a representative roll.

16. By requiring that First Nations' people from reserves situate in a judicial district be included on the jury roll, the first step towards a representative jury which includes First Nations' people is fulfilled.[5] Based on the only information before the presiding coroner in the Bushie inquest on the motion, the Affidavit of Rolanda Peacock (the Peacock Affidavit), it appears that, in the past, the ability to create a representative roll depended on the cooperation of Indian and Northern Affairs Canada (INAC) which provided the names of members of reserve communities to the Provincial Jury Centre which in turn provided lists of eligible jurors to the sheriff of the judicial district. This evidence further suggests that since 2000, INAC has failed to provide the information necessary for creating a representative roll. The Provincial Advocate respectfully submits that the evidence that INAC stopped providing information necessary for

[4] *R. v. Sherratt* [1991], 1 S.C.R. 509, Appellants' Authorities, Tab 13, at 5
[5] *R. v. Nahdee (No. 2)*, [1994] O.J. No. 928 (Gen. Div.), Appellants' Authorities, Tab 14, at 6

creating a representative jury roll in 2000 raises a reasonable basis for concern regarding compliance with the *Juries Act* and the ability to create a representative jury.[6]

17. Given that the Peacock affidavit disclosed a systemic failure to include First Nation's citizens on the District of Kenora jury roll and patent non-compliance with the *Juries Act*, and that no evidence was offered to respond to the notion that INAC's actions have created a problem at the Provincial Jury Centre, the Appellants NAN and the King family had a reasonably held belief, as did the Respondent Provincial Advocate, that a representative jury could not be constituted.

18. In addition to raising significant issues regarding potential underrepresentation of Aboriginal people, the Peacock Affidavit raises significant issues regarding the underrepresentation of young Aboriginal people in the Kenora District. The Peacock Affidavit states that INAC stopped providing band lists to the Provincial Jury Centre in the year 2000. Since the Peacock Affidavit speaks to INAC's actions towards the Provincial Jury Centre, it is reasonable, without any other evidence available, to assume that what is happening in Kenora is happening in Thunder Bay.

19. The Peacock Affidavit strongly suggests that, for the past ten years, the names of young Aboriginal people living in reserve communities situate in the judicial district of Thunder Bay have **not** been placed on the jury list **as they come of age**. The Peacock Affidavit, when fully considered, suggests that the failure to add young Aboriginal adults

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[6] Affidavit of Rolanda Peacock sworn September 8, 2008 (the Peacock Affidavit), Appeal Book, Tab 9, pages 106-107

from reserve communities as they come of age has given rise to an absence of Aboriginal adults between the ages of 18 and 27 from reserve communities on the jury list. Since the Bushie inquest relates to the death of a young Aboriginal person from a reserve community, and the deceased Jacy Pierre was a 27-year-old from a reserve community at the time of his death, the consequences of the potential underrepresentation are all the more concerning to this Respondent.

20. The Respondent Provincial Advocate therefore submits that proceeding with a coroner's inquest with an unrepresentative jury (thereby an unlawful jury) is an abuse of process and that the coroners had powers to prevent this abuse of process in their respective inquests. Further, the Provincial Advocate submits that the Divisional Court erred in failing to assess whether the evidence was sufficient to merit an order (i.e. the summonsing of Mr. Gordon) under subsection 50(1) of the *Coroners Act* to prevent an abuse of process. Rather, than assessing the reasonableness of the Coroners' assessment of compliance, the Divisional Court deferred entirely to the Coroners (even though they were of the view that they had no statutory power to review that compliance).[7] In so doing, the Court below essentially endorses a decision of the Coroners which it states the Coroners had no jurisdiction to make.

21. Its conflated analysis is seemingly inconsistent. On the one hand, the Divisional Court suggests that the coroners had no statutory power to review the jury selection process: "they had no jurisdiction to review the process for the selection of the jury

[7] Decision of the Divisional Court, Appeal Book, Tab 3, pages 25, Paragraphs 68 and 74

roll".[8] On the other hand, the court endorses the coroners' assessment of the evidence and in fact defers to it: "neither of the coroners was satisfied, on the material submitted, that there was sufficient evidence to require further inquiry in order to prevent an abuse of process. It is the task of the coroner, not this court, to weigh the evidence." [9]

22. The Provincial Advocate further submits that the Divisional Court erred in its analysis of the powers of a coroner under section 50 of the *Coroners Act*. As noted above, in paragraph 74 of its decision, the court concluded that neither of the coroners concluded that there was sufficient evidence to require further inquiry in order to prevent an abuse of process. The task of the Divisional Court, therefore, was to assess the reasonableness of this decision. The Provincial Advocate further submits that the conclusion in paragraph 75 of the decision that the evidence from Kenora may well give cause for concern about the representation of First Nations people who live on reserves is inconsistent with a finding that the coroners were reasonable in making no further inquiries about the lawfulness of the jury.

23. According to the Supreme Court of Canada, the doctrine of abuse of process:

> engages the inherent power of the court to prevent the misuse of its procedure, in a way that would be manifestly unfair to a party to the litigation before it or would in some other way bring the administration of justice into disrepute. It is a flexible doctrine unencumbered by the specific requirements of concepts such as issue estoppel.[10]

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[8] Decision of the Divisional Court, Appeal Book, Tab 3, page 25, Paragraph 68
[9] Decision of the Divisional Court, Appeal Book, Tab 3, pages 25 to 26, Paragraph 74
[10] Toronto (City) *v.* C.U.P.E., Local 79, [2003] 3 S.C.R. 77, 2003 SCC 63 at para. 37, Book of Authorities of the Respondent Provincial Advocate, Tab 1

24. The focus of the analysis is on the integrity of the process.

25. The Provincial Advocate submits that it would be an abuse of process to proceed with an unlawful jury in any circumstance. In this case, not only would it be manifestly unfair, but a decision to proceed with the coroner's inquest involving an Aborginal youth where there appears to be an exclusion of persons from First Nations reserve communities within the Thunder Bay judicial district, let alone First Nations youth, would surely bring the administration of justice into disrepute and undermine the functions of the inquest that the Divisional Court sought to protect.

26. The Divisional Court's decision suggests that the Coroner ought not inquire into whether a wrong has occurred if it has not remedial powers to cure it. This cannot be correct. This suggests that the only recourse for a coroner faced with an unlawful jury would be to adjourn the process. As suggested by the Appellants, it is premature to examine the remedy when the Coroner has refused transparent means to identify whether a problem exists.

27. The only affidavit evidence before the Coroner on the motion demonstrated that since 2000, INAC failed to provide the information necessary to make a representative jury roll the consequence of which was underrepresentation of First Nations people and young First Nations people. The Provincial Advocate submits that it was incumbent upon the Divisional Court to consider whether proceeding with an unlawful jury would

constitute an abuse of process and that it did not. In failing to make this assessment, it erred in law.

28. Finally, the Supreme Court of Canada recently stated in *R. v. Conway* that tribunals have an obligation to exercise their statutory functions in a manner that is consistent with *Charter* values. The Divisional Court's statement that a remedy lies elsewhere (i.e. perhaps through challenge to the jury rolls under the *Canadian Charter of Rights and Freedoms*) runs contrary to this notion.[11]

PART IV – ADDITIONAL ISSUES RAISED BY THE RESPONDENT PROVINCIAL ADVOCATE

29. The Provincial Advocate suggests that the appeal raises an additional issue:

> (a) Did the Divisional Court err when it failed to make (in accordance with the *UN Convention on the Rights of the Child*) the best interests of young people a primary consideration?

30. The Provincial Advocate argued before the Divisional Court and submits here that given the fact that the Bushie Inquest relates to the death of a young person, the court ought to give consideration of the issues with the best interests of young people being a primary concern.

31. The Provincial Advocate respectfully submits that this court's consideration of the issues should be given with due regard to the *U.N. Convention on the Rights of the Child* (the *Convention*). The *UN Convention* forms part of Canada's international treaty

[11] *R. v. Conway*, 2010 SCC 22, Book of Authorities of the Respondent Provincial Advocate, Tab 2

obligations to children. Canada has ratified the *Convention* and therefore is presumed to comply and the interpretation of law shall be informed by the Convention's principles.

32. As noted in *Baker v. Canada (Minister of Citizenship and Immigration),*[12]:

> Another indicator of the importance of considering the interests of children when making a compassionate and humanitarian decision is the ratification by Canada of the *Convention on the Rights of the Child*, and the recognition of the importance of children's rights and the best interests of children in other international instruments ratified by Canada. International treaties and conventions are not part of Canadian law unless they have been implemented by statute: *Francis v. The Queen*, [1956] S.C.R. 618, at p. 621; *Capital Cities Communications Inc. v. Canadian Radio-Television Commission*, [1978] 2 S.C.R. 141, at pp. 172-73. I agree with the respondent and the Court of Appeal that the Convention has not been implemented by Parliament. Its provisions therefore have no direct application within Canadian law.
>
> **Nevertheless, the values reflected in international human rights law may help inform the contextual approach to statutory interpretation and judicial review.** As stated in R. Sullivan, *Driedger on the Construction of Statutes* (3rd ed. 1994), at p. 330:
>
>> **[T]he legislature is presumed to respect the values and principles enshrined in international law, both customary and conventional. These constitute a part of the legal context in which legislation is enacted and read. In so far as possible, therefore, interpretations that reflect these values and principles are preferred. [Emphasis (bolding) added.]**
>
> The important role of international human rights law as an aid in interpreting domestic law has also been emphasized in other common law countries: see, for example, *Tavita v. Minister of Immigration*, [1994] 2 N.Z.L.R. 257 (C.A.), at p. 266; *Vishaka v. Rajasthan*, [1997] 3 L.R.C. 361 (S.C. India), at p. 367. It is also a critical influence on the interpretation of the scope of the rights included in the *Charter*: *Slaight Communications*, *supra*; *R. v. Keegstra*, [1990] 3 S.C.R. 697.
>
> The values and principles of the Convention recognize the importance of being attentive to the rights and best interests of children when decisions are made that relate to and affect their future. In addition, the preamble, recalling the *Universal Declaration of Human Rights*, recognizes that "childhood is entitled to special care and assistance". A similar emphasis on the importance of placing considerable value on the protection of children and their needs and interests is also contained in other international instruments. The United Nations

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[12] [1999] 2 S.C.R. 817, Book of Authorities of the Respondent Provincial Advocate, Tab 3

> *Declaration of the Rights of the Child* (1959), in its preamble, states that the child "needs special safeguards and care". The principles of the Convention and other international instruments place special importance on protections for children and childhood, and on particular consideration of their interests, needs, and rights. They help show the values that are central in determining whether this decision was a reasonable exercise of the H & C power.[13] (emphasis added)

33. The Provincial Advocate submits that the Bushie inquest involves children who attend school far from their communities and that this proceeding affects young people who are attending school in Thunder Bay. Any recommendations that the jury makes will have an impact on current and future students and they should be heard should they so desire. As such, this Court should have due regard to the principles outlined in the *Convention*.

34. Article 3 of the *Convention* provides:

> 1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
>
> 2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
>
> 3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision. [14]

[13] *Baker*, *supra* at paras. 69 to 71
[14] *U.N. Convention on the Rights of the Child*, Book of Authorities of the Respondent Provincial Advocate, Tab 4

35. The January 30, 2009 *General Comment on Indigenous Children and Their Rights under the Convention* outlines the importance of involving young people by permitting them to participate in processes that affect them:

> 37. The Committee considers that, in relation to article 12, there is a distinction between the right of the child as an individual to express his or her opinion and the principle of participation, which allows children as a group to be involved in consultation on matters involving them.
>
> 38. With regards to the individual indigenous child, the State party has the obligation to respect the child's right to express his or her view in all matters affecting him or her, directly or through a representative, and give due weight to this opinion in accordance with the age and maturity of the child. The obligation is to be respected in any judicial or administrative proceeding. Taking into account the obstacles which prevent indigenous children from exercising this right, the State party should provide an environment that encourages the free opinion of the child. The right to be heard includes the right to representation, culturally appropriate interpretation and also the right not to express one's opinion.
>
> 39. When the right is applied to indigenous children as a group, the State party plays an important role in promoting their participation and should ensure that **they are consulted on all matters affecting them**. The State party should design special strategies to guarantee that the principle of participation of this group is effective. The State party should ensure that this principle is applied in particular in the school environment, alternative care settings and in the community in general. The Committee recommends States parties to work closely with indigenous children and their communities to develop, implement and evaluate programs, policies and strategies for implementation of the Convention.[15] (emphasis added)

36. The Provincial Advocate submits that as a society we hope that our young citizens will engage in democracy increasingly as they move from youth to the age of majority. While it is accepted that under present law, young people under the age of 18 are not permitted to serve as jurors, it is hoped that young Aboriginal people over the age of 18

[15] *General Comment, Indigenous Children and Their Rights under the Convention*, January 30, 2009, United Nations Committee on the Rights of the Child, Book of Authorities of the Respondent Provincial Advocate, Tab 5

from reserve communities would have the potential to serve on an inquest jury where the recommendations have the potential of affecting Aboriginal youth. As noted above, if the principles of the Peacock affidavit apply to the Thunder Bay judicial district, young Aboriginal adults from reserve communities are being excluded from the jury roll and have no ability to participate in proceedings affecting their communities.

37. Finally, the Provincial Advocate submits that this Honourable Court must have regard to the best interests of the children affected by the Bushie proceeding. Their best interests would include the ability to see that a proceeding that affects them is conducted with a lawful jury in which their people have the potential to be included. The Divisional Court failed to assess the best interests of young people as did the Coroner below.

PART V - ORDER SOUGHT

38. This Respondent respectfully submits that the appeal ought to be allowed.

All of which is respectfully submitted this 13th day of August, 2010.

Suzan E. Fraser, Counsel for the Respondent,
The Provincial Advocate for Children & Youth

CERTIFICATE

I hereby certify that:

(i) an order under subrule 61.09(2) is not required; and

(ii) this respondent requires 20 minutes for oral argument.

Date: August 13, 2010

____
Suzan E. Fraser, Counsel for the Respondent,
The Provincial Advocate for Children & Youth

SCHEDULE "A"

AUTHORITIES CITED

1. *Toronto (City) v. C.U.P.E., Local 79*, [2003] 3 S.C.R. 77, 2003 SCC 63

2. *R. v. Conway*, 2010 SCC 22

3. *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817

4. *U.N. Convention on the Rights of the Child*

5. *General Comment, Indigenous Children and Their Rights under the Convention*, January 30, 2009, Committee on the Rights of the Child

SCHEDULE "B"

RELEVANT LEGISLATIVE PROVISIONS

Sections 2 (1), 2 (3), 15 and 16 of the *Provincial Advocate for Children and Youth Act, 2007*, S.O. 2007, c. 9

Section 6 of the *Juries Act*, R.S.O. 1990, c. J.3

Provincial Advocate for Children and Youth Act, 2007, S.O. 2007, c. 9

Section 2 (1) In this Act,

"advocacy" means promoting the views and preferences of children and youth as provided for in this Act, and exercising the functions and powers outlined in sections 15 and 16, but does not include conducting investigations or providing legal advice or legal representation; ("intervenir", "intervention")

"Advocate" means the Provincial Advocate for Children and Youth appointed under section 3; ("intervenant")

"Board of Internal Economy" means the Board of Internal Economy established by section 87 of the *Legislative Assembly Act*; ("Commission de régie interne")

"capable" has the same meaning as in section 2 of the *Personal Health Information Protection Act, 2004*; ("capable")

"child" has the same meaning as in subsection 3 (1) of the *Child and Family Services Act*; ("enfant")

"investigative authority" means a person, body or organization that has the authority under an Act of Ontario or Canada to conduct investigations into allegations of offences, abuse, wrongdoing or other matters, and includes, but is not limited to, a police service, Children's Aid Society or coroner, and the Ombudsman; ("autorité chargée des enquêtes")

"law enforcement" has the same meaning as in subsection 2 (1) of the *Freedom of Information and Protection of Privacy Act*; ("exécution de la loi")

"Minister", except in sections 17 and 21, means the Minister of Children and Youth Services, or, if the administration of this Act has been assigned to another Minister under the *Executive Council Act*, that Minister; ("ministre")

"personal information" means personal information within the meaning of the *Freedom of Information and Protection of Privacy Act*; ("renseignements personnels")
"regulations" means regulations under this Act; ("règlements")
"review" means gathering and assessing information for the purpose of advocacy; ("examen")

"systemic review" means providing advocacy to a group of children or youth who are in similar circumstances, either in response to a complaint or request by one child or youth, or on the Advocate's own initiative and includes the review of facilities, systems, agencies, service providers and processes as permitted under this or any other Act; ("examen systémique")

“youth” means one or more young persons within the meaning of the *Child and Family Services Act*. (“jeune”)

Section 2 (3) In interpreting and applying this Act, regard shall be had to the following principles:

1. The principles expressed in the United Nations Convention on the Rights of the Child.

2. The desirability of the office of the Provincial Advocate for Children and Youth being an exemplar for meaningful participation of children and youth through all aspects of its advocacy services.

Section 15 The functions of the Advocate are to,

(a) provide advocacy to children and youth who are seeking or receiving approved services under the *Child and Family Services Act*;

(b) Repealed: 2009, c. 2, s. 29 (1).

(c) promote the rights under Part V of the *Child and Family Services Act* of children in care;

(d) provide advocacy in accordance with clause 16 (1) (k) to children who are pupils of provincial schools for the deaf, schools for the blind or demonstration schools under section 13 of the *Education Act*;

(e) provide advocacy in accordance with clause 16 (1) (l) to children and youth with respect to matters that arise while held in court holding cells and being transported to and from court holding cells; and

(f) provide any other advocacy that is permitted under the regulations or any other Act.

Section 16 (1) In carrying out the functions of the Advocate, the Advocate may,

(a) receive and respond to complaints;

(b) conduct reviews, whether in response to a complaint or on the Advocate’s own initiative;

(c) represent the views and preferences of children and youth to agencies and to service providers;

(d) use informal methods to resolve disputes between children or youth and agencies and service providers;

(e) make reports as to the result of the Advocate's review to the complainant, subject to section 20;

(f) provide advice and make recommendations to entities, including governments, ministers, agencies and service providers responsible for services,

(i) under the *Child and Family Services Act*, or

(ii) that are provided for in the regulations;

(g) educate children in care, their families and staff of agencies and service providers about the rights of children in care under Part V of the *Child and Family Services Act*;

(h) communicate with children in care regarding complaints;

(i) provide advocacy to, but not represent as legal counsel or agent, children in care who are appearing before a court or tribunal, or who are appearing before a body or person that is reviewing their care, custody or detention disposition;

(j) provide advocacy to children in care regarding complaints made with respect to rights under Part V of the *Child and Family Services Act*;

(k) receive and respond to complaints from children who are pupils of provincial schools for the deaf, schools for the blind or demonstration schools under section 13 of the *Education Act* and use informal methods to resolve those complaints;

(l) receive and respond to complaints from children and youth with respect to matters that arise while held in court holding cells and transported to and from court holding cells;

(m) meet with children who have undergone emergency admission to a secure treatment program under the *Child and Family Services Act* to explain, in language suitable to their understanding, the children's right to a review of the admission;

(n) where an investigative authority is conducting an investigation that involves a child in care, provide advocacy to the child or youth that does not interfere with the investigation;

(o) provide information to children and youth and their families on how to access approved services;

(p) engage in systemic reviews on behalf of children and youth;

(q) provide public education about this Act and the role of the Advocate; and

(r) perform other powers and duties provided for in the regulations.

The Juries Act, R.S.O. 1990, c. J.3

Section 6 (1) The Director of Assessment shall in each year on or before the 31st day of October cause a jury service notice, together with a return to the jury service notice in the form prescribed by the regulations and a prepaid return envelope addressed to the sheriff for the county, to be mailed by first class mail to the number of persons in each county specified in the sheriff's statement, and selected in the manner provided for in this section.

(2) The persons to whom jury service notices are mailed under this section shall be selected by the Director of Assessment at random from persons who, from information obtained at the most recent enumeration of the inhabitants of the county under section 15 of the *Assessment Act*,

(a) at the time of the enumeration, resided in the county and were Canadian citizens; and

(b) in the year preceding the year for which the jury is selected, are of or will attain the age of eighteen years or more,

and the number of persons selected from each municipality in the county shall bear approximately the same proportion to the total number selected for the county as the total number of persons eligible for selection in the municipality bears to the total number eligible for selection in the county, as determined by the enumeration.

(3) In a territorial district for the purposes of subsection (2), all the municipalities in the district shall together be treated in the same manner as a county from which the number of jurors required is the number fixed under subsection 5(2) to be selected from municipalities.

(4) The jury service notice to a person under this section shall be mailed to the person at the address shown in the most recent enumeration of the inhabitants of the county under section 15 of the *Assessment Act*.

(5) Every person to whom a jury service notice is mailed in accordance with this section shall accurately and truthfully complete the return and shall mail it to the sheriff for the county within five days after receipt thereof.

(6) For the purposes of subsection (5), the notice shall be deemed to have been received on the third day after the day of mailing unless the person to whom the notice is mailed establishes that he or she, acting in good faith, through absence, accident, illness or other cause beyond his or her control did not receive the notice or order, or did not receive the notice or order until a later date.

(7) The Director of Assessment shall furnish to the sheriff for the county a list of persons in the county arranged alphabetically to whom jury service notices were mailed under this section forthwith after such mailing and the list received by the sheriff

purporting to be certified by the Director of Assessment is, without proof of the office or signature of the Director of Assessment, receivable in evidence in any proceeding as proof, in the absence of evidence to the contrary, of the mailing of jury service notices to the persons shown on the list.

(8) In the selecting of persons for entry in the jury roll in a county or district in which an Indian reserve is situate, the sheriff shall select names of eligible persons inhabiting the reserve in the same manner as if the reserve were a municipality and, for the purpose, the sheriff may obtain the names of inhabitants of the reserve from any record available.

ELIZABETH PIERRE and MARLENE PIERRE
NISHNAWBE ASKI NATION, RHODA KING and BERENSON KING and **DR. SHELAGH MCRAE, CORONER**
DR. DAVID EDEN, CORONER

Appellants | Respondents

Court File Nos.:C51589 & C51590

ONTARIO
COURT OF APPEAL

Proceeding commenced at Toronto

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