

CORONERS' COURT

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

AND IN THE MATTER OF the Inquest Concerning the Death of Romeo Wesley

NOTICE OF MOTION FOR ADJOURNMENT

TAKE NOTICE that Cat Lake First Nation will make a motion to Dr. David Eden, the Presiding Coroner, on Wednesday, 27 May 2015, or as soon after that date as the motion can be heard, for an order adjourning the Coroner's Inquest into the death of Romeo Wesley on 9 September 2010, currently scheduled to commence in Sioux Lookout on 8 June 2015.

THE MOTION IS FOR AN ORDER:

1. For an extension of time to serve and file the within Motion Record for an adjournment of the Coroner's Inquest into the death of Romeo Wesley, currently scheduled to commence in Sioux Lookout on 8 June 2015, pursuant to the attached Form 4 - Application for the Hearing of a Motion after a Deadline; and
2. To adjourn the Coroner's Inquest into the death of Romeo Wesley on 9 September 2010, currently scheduled to commence in Sioux Lookout on 8 June 2015, pursuant to s. 46 of the *Coroner's Act*.

THE GROUNDS FOR THE APPLICATION ARE:

1. The Coroner's Inquest into the death of Romeo Wesley on 9 September 2010, at the Nursing Station of Cat Lake First Nation, is currently scheduled to commence in Sioux Lookout, Ontario, on 8 June 2015, over 4½ years after Romeo's death.

2. None of the delay between 9 September 2010 and 2015 is attributable to any actions or omissions of any of the parties who have applied for and been granted standing at the Inquest.
3. The deceased, Romeo Wesley, is a citizen of Mishkeegogamang Ojibway Nation. His father, Dwight Wesley, is a citizen of Cat Lake First Nation. Romeo's mother pre-deceased him in the early 1980's. Dwight Wesley lives a traditional life on the land, in the deep bush far from the townsite of Cat Lake First Nation. He is self-sufficient and often difficult to locate and speak to, particularly in urgent or pressing circumstances in which time is an issue.
4. Cat Lake First Nation is an Indian band as defined by section 2(1) of the *Indian Act*, R.S.C. 1985, c. I-5, as amended, whose citizens are the treaty beneficiaries of the *James Bay Treaty - Treaty No. 9* of 1905-6.
5. Cat Lake First Nation is a remote fly-in community of aboriginal persons with reserve lands held in trust by the Government of Canada, with limited road access only during winter months over the winter road.
6. Although Romeo Wesley was a citizen of Mishkeegogamang Ojibway Nation, he maintained close family, personal and social bonds with Cat Lake First Nation and its citizens. Romeo relied on for support and obtained services from time to time from Cat Lake First Nation and its citizens over the course of his life.

Pre-Inquest Meeting of 12 February 2015

7. A Pre-Inquest Meeting was held in Thunder Bay on 12 February 2015, at which meeting the nominal commencement date of the inquest of 8 June 2015 was first put forward by the Presiding Coroner. Coroner's Counsel advised, amongst other things, that it was anticipated that an expert witness on police use-of-force would be called from the Ontario Police College.

8. Amongst the concerns raised by those attended the Pre-Inquest Meeting were:
 - a. the nature and quality of the Ontario Provincial Police investigation into Mr. Wesley's death;
 - b. the potential need for witnesses to provide cultural and social background and context of and to the community (Cat Lake First Nation);
 - c. the absence of any representatives from Health Canada, the Department of Justice, Aboriginal and Northern Development Canada, the Ontario College of Physicians and Surgeons, and the College of Nurses of Ontario, and the apparent lack of positive steps to encourage their respective participation and/or standing as parties to the Inquest; and
 - d. the lack of information as to steps taken to ensure community engagement, access, ability to remotely attend at and participate in inquest.

9. Applications for standing were to be filed by any party seeking standing at the Inquest with Coroner's Counsel by noon, 27 February 2015.

Standing granted to Dwight Wesley and Cat Lake First Nation

10. Dwight Wesley and Cat Lake First Nation sought standing at the Inquest. Mr. Wesley and Cat Lake First Nation were represented by the same counsel, Gavin Wood Freitag, on their applications for standing.

11. Mr. Wesley and Cat Lake First Nation were both were granted standing in the inquest by Dr. David Eden, the Presiding Coroner, in his "Ruling on the Motion concerning Applications for Standing", released on 17 March 2015.

Separate Counsel for Dwight Wesley and Cat Lake First Nation

12. Dr. Eden identified in his Ruling on Standing the issue that Mr. Wesley and the First Nation had the "... potential for divergence of interest between Cat Lake and the Wesley family sufficient to require separate representation".

13. Community discussion and consultation within the First Nation was required, including with Dwight Wesley living in the forest, which took place beginning in early April and continuing through the month.
14. Coroner's Counsel was advised by or about mid- to late April by Mr. Freitag that Mr. Wesley and Cat Lake First Nation did not dispute the Coroner's Ruling on Standing that they should seek separate counsel; that new and independent counsel was being sought for the First Nation to represent it at the Inquest; and that Mr. Freitag and his firm would continue to represent Romeo Wesley's family as they had a pre-existing relationship arising from civil litigation proceedings previously commenced by Mr. Freitag on their behalf as their legal counsel.
15. Unsuccessful efforts were made by Cat Lake First Nation during April and early May 2015, with the assistance of Mr. Freitag, Catherine Beamish (counsel for the Nishnawbe-Aski Police Service) and Doug Keshen (counsel for Mishkeegogamang Ojibway Nation) amongst others, to retain new and independent legal counsel, including but not limited to Peter Hollinger, Robert Edwards, and Etienne Esquega.
16. Cat Lake First Nation also requested the assistance of Alanna R. McKenzie, Acting Council Chair and CEO of Windigo First Nations Council, of which the First Nation is a member, to retain new legal counsel, as well as counselling assistance and preparation for the family and community for the anticipated mental and emotional trauma and upset occasioned by the Inquest.
17. Ms McKenzie is also a member of the Board of Directors of the Nishnawbe-Aski Legal Services Corporation ("NALSC"), and sought the assistance of Mary D. Bird, Area Director of NALSC, to obtain new legal counsel for Cat Lake First Nation as well as sources for mental health counselling and support.

18. No steps were taken by the Presiding Coroner or Coroner's Counsel to confirm that Cat Lake First Nation had retained new counsel as of 5 May 2015, the date of the public announcement by the Office of the Chief Coroner that the date of commencement of the Romeo Wesley Inquest was 8 June 2015.
19. Cat Lake First Nation was able to retain counsel with the requisite experience and knowledge only 2 weeks ago, on 14 May 2015. That retainer was accepted by counsel solely on the basis and understanding that an adjournment of the Inquest would be required, if for no other reason than there was insufficient time by mid-May for any counsel to adequately and properly prepare for an Inquest starting less than 4 weeks later. This is particularly an issue with respect to any witnesses the First Nation might itself seek to call. Francis Thatcher accepted the retainer on that basis because it was his professional opinion that proceeding with the Inquest on 8 June 2015 was premature, for a wide variety of reasons.
20. Cat Lake First Nation is entitled to the assistance of competent and prepared counsel. The First Nation's inability to retain counsel prior to mid-May is not a reflection of a lack of purpose or motivation, but rather of the difficulties and realities of conducting community consultation, consultation with its previous counsel, and retaining counsel with sufficient knowledge and expertise.
21. Cat Lake First Nation is also entitled to the opportunity to have its counsel travel to the First Nation to meet the community elders, elected leaders, and members, on their home ground in order for the community to teach and instruct its counsel on the issues and matters of specific and particular concern in the Inquest, including but not limited to counsel interviewing potential witnesses, and determining what additional witnesses the First Nation would propose to call or have the Coroner's Counsel consider calling.

22. Cat Lake First Nation has complied with its obligations and duties under section 2.3(1) of the *Chief Coroner's Rules of Procedures for Inquests*:

2.3(1) It is the duty of all parties to consider their need for representation and interpretation and to retain a representative or interpreter as required at the earliest opportunity, and to take timely measures to obtain any necessary funding.

Accommodation of remote First Nations

23. Although Romeo Wesley died in Cat Lake First Nation, the Inquest will be held in Sioux Lookout, and few citizens of Cat Lake First Nation and Mishkeegogamang Ojibway Nation have the resources to cover the cost of travel to and attendance at a multi-week Inquest, and that includes Chiefs Russell Wesley and Councillors of Cat Lake First Nation, and Chief Connie Gray-McKay and Councillors of Mishkeegogamang Ojibway Nation. The resources of the First Nations are limited and the efforts of the Office of the Chief Coroner need to be directed toward assisting the First Nations in obtaining funding to permit any semblance of adequate and meaningful participation in the Inquest.
24. Notwithstanding that the Inquest is to be held in Sioux Lookout Cat Lake First Nation requests that the opening day of the inquest be held at the First Nation, as well as at least 1 additional day toward the end of the inquest, for the following reasons:
- a. It is important that the citizens of Cat Lake First Nation and Mishkeegogamang Ojibway Nation have the opportunity to see and participate, at least to a limited extent, in the Inquest convened to address the circumstances leading to and resulting in the death of Romeo Wesley, all of which circumstances remain as relevant and problematic today as the day on which he died 4½ years ago; and

- b. For the jury to be able to make meaningful recommendations they must have at least some understanding of the situation of the First Nation and its citizens. Such understanding will be substantially enhanced if the jurors re-visit the community late in the Inquest when they are able to see and understand matters in a different light having heard much of the evidence and testimony at the Inquest.

Live Streaming and Interpreters

25. It is respectfully submitted that, notwithstanding section 10.6 of the *Chief Coroner's Rules of Procedure for Inquests*, it is incumbent on the Office of the Chief Coroner and the Presiding Coroner to make all reasonable arrangements, in advance and without specific demand, for live streaming/webcasting of the Inquest proceedings to the remote aboriginal communities where the deaths occurred that are subject of the Inquest. A formal request will nonetheless be made by Cat Lake First Nation under section 10.6 of the *Chief Coroner's Rules* for webcasting facilities to be set up in Sioux Lookout, Cat Lake First Nation and Mishkeegogamang Ojibway Nation for live streaming of the Inquest from Sioux Lookout into those communities.
26. This has been done previously, live streaming from Timmins of the Inquest into the Deaths of Jamie Goodwin and Ricardo Wesley (the Kashechewan Inquest) to Kashechewan First Nation in 2008; and live streaming from Thunder Bay of the Bruce Moonias Inquest to Neskantaga First Nation in the fall of 2013, and should be the expected standard rather than an optional request.
27. New counsel for Cat Lake First Nation raised the issue of live streaming and interpreters with Coroner's Counsel immediately, on a conference call with Coroner's Counsel on 14 May 2015, the day he was retained by the First Nation.

28. Interpretation issues will arise at both the Inquest itself, and with live streaming. English is not the first language for either First Nation, and interpretive services will need to be arranged for the elders and other non-English speaking members of the communities observing the proceedings.
29. Cat Lake First Nation has invited elders, elected leadership and citizens of Mishkeegogamang Ojibway Nation to travel to Cat Lake First Nation and meet with their counterparts and members of Romeo's family to ensure that the Inquest is carried out in an culturally appropriate and respectful way. This has not taken place as yet and needs to be scheduled when it is a mutually appropriate time.
30. Associated with this is the need for multiple Information Sessions in both First Nations on the Inquest process for the community members: the communities are unclear as to what the actual process is in terms of evidence to be heard; submissions; jury recommendations; and the overall purpose of Coroner's Inquests in general.

Counselling Services prior to and during the Inquest

31. Preparation of the family and both communities for the anticipated mental and emotional trauma and upset occasioned by the Inquest will require mental health counselling and support to be put in place and available prior to and during the Inquest. These arrangements have not yet been made. This is particularly important as there remain very strong feelings and emotion, including anger at those associated with the death of Romeo.

Expert Witnesses to be called by Coroner's Counsel

32. At the Pre-Inquest Meeting the Presiding Coroner and Coroner's Counsel advised of and reviewed the anticipated expert witnesses that would be called. The Presiding Coroner stated in his letter of 5 March 2015 to Dr. Paul Links that

the Inquest would "... also be hearing expert evidence from a forensic pathologist, a physician who provides emergency services in a small hospital which serves a First Nations population, and a police use-of-force trainer".

33. As of noon Friday, 15 May 2015, only 3 weeks before the scheduled commencement date of the Inquest on 8 June 2015, no expert reports had been provided with respect to the latter two above areas of expertise.
34. Late on Friday, 15 May 2015, just before the Victoria Day long weekend, Coroner's Counsel provided the synopsis of the proposed expert opinion evidence of Dr. Cooper, "...a physician who provides emergency services in a small hospital which serves a First Nations population".
35. Dr. Cooper practices on Manitoulin Island, which is roughly 1,600 kilometers by road (during the winter) from Cat Lake First Nation, about 3 times as far as Manitoulin Island is from Toronto. Manitoulin Island is not a remote, fly-in community with no road access for much of the year. The only commonality between Manitoulin Island and Cat Lake First Nation is that aboriginal peoples reside in both locations.
36. The circumstances at Cat Lake First Nation are very different from those on Manitoulin Island. The more relevant question with respect to medical practice and experience that needs to be challenged is the statement: "What is unique to remote communities is that the health care providers will be less skilled than their urban colleagues in providing the technical skills in resuscitation and advanced life support that may be required to manage possible side effects of interventions. The lesser skill is not usually from a lack of training, rather a lack of practice and experience." What happened with Mr. Wesley would not necessarily be a lack of practice and experience, because of the increasingly high rates of substance abuse and violence in many remote communities; but rather the lack of training that has been a fairly consistent refrain from health

care providers in the remote north of Ontario, especially from those who come from the aboriginal community themselves and work in the nursing stations.

37. Cat Lake First Nation will require the time and opportunity to research and retain expert(s) with more relevant experience and expertise in an equivalent remote access aboriginal community to provide the expert opinion evidence of the delivery and quality of health care services; and broader issues including: historic trauma and its continuing resonance into contemporary living; addictions and concomitant responses in Indigenous populations; critical mental health resources/services and the lack or shortage of those services in remote First Nation communities, and intergenerational habitus and its effects. The First Nation will be unable to do so prior to the current scheduled dates of the Inquest.

38. The parties were assured from the Pre-Inquest Meeting on that Coroner's Counsel would be calling a police use-of-force expert. No expert report was provided to the parties despite repeated requests for that report. On 26 May 2015, Coroner's Counsel advised for the very first time, and less than 2 weeks before the scheduled start date of the Inquest, that no such expert report would be forthcoming, and no-one produced to be qualified as an expert to give expert opinion evidence on police use-of-force. Without an expert report, and with what amounts to no notice prior to the Inquest, the parties lack any opportunity to consult with or call expert evidence on this issue.

Other Witnesses

39. It is necessary for the Ontario Provincial Police (O.P.P.) investigating officers be called as witnesses. Relevant factual issues of the actual events directly prior to the death of Romeo Wesley will likely arise and may only be resolved by the investigating officers who were on the scene.

40. It is necessary to call or summons senior manager(s) from Health Canada and the Ontario Ministry of Health and Long-Term Care. Both have statutory obligations to provide various health services and support to the citizens of Cat Lake First Nation and Mishkeegogamang Ojibway Nation, and senior representatives are required to explain the relevant and underlying policies and priorities for training and the provision of health care services and support to remote First Nations in general, and these First Nations in particular. This will include examination of whether Canada or Ontario or both have jurisdiction over the delivery of certain health care programs and services, for example, mental health programs and services, or more specifically the absence of critical mental health services and programs in remote First Nation communities, including Cat Lake First Nation.
41. The opportunity is also required by the First Nations to reach out to and seek the participation of professional and regulatory bodies of health care professionals: representatives of the Ontario College of Physicians and Surgeons; the College of Nurses of Ontario; the Canadian and/or Ontario Medical Associations, etc., either voluntarily or through the power to compel witnesses under s. 40 of the *Coroners Act*.

Reports of the Auditor General of Canada

42. The Auditor General of Canada released the following reports that overlap with the matters that are, or should be the subject matter of this Inquest:
- a. First Nations Policing Program—Public Safety Canada, Chapter 5 of the Report of the Auditor General of Canada released in April 2014; and
 - b. Access to Health Services for Remote First Nations Communities, Report 4 of the Report of the Auditor General of Canada released in May 2015.

43. The Auditor General's Report presents the results of a performance audit; independent, objective, and systematic assessment of how well government is managing its activities, responsibilities, and resources. Audit topics are selected based on their significance. While the Office may comment on policy implementation in a performance audit, it does not comment on the merits of a policy.
44. The Auditor General of Canada has identified serious deficiencies, from a fiscal, management and operations perspective in Reports that consider the issues that are, or should be under consideration at the Inquest from a different perspective from that of a Coroner's Inquest, but confirm that there are significant and systemic issues that require examination and consideration by the Coroner's Jury.
45. To conduct the Inquest without any consideration of the issues raised by these reports is to effectively conduct the Inquest in a vacuum, with limited or no relevance to the actual situation on the ground at Cat Lake First Nation.

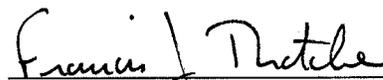
THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. Affidavit of Chief Russell Wesley, sworn 27 May 2015; and
2. Such further and other material as counsel may advise and this Honourable Court may permit.

Date: 27 May 2015

BIRD & THATCHER

PER:



Francis J. Thatcher, LSUC #31697F
Barristers and Solicitors
215 Camelot Street
Thunder Bay, Ontario P7A 4B2

Tel: (807) 345-6001

Fax: (807) 344-7221

Email: thatcher@tbaytel.net

Counsel for Cat Lake First Nation

To: MINISTRY OF THE ATTORNEY-GENERAL
OFFICE OF THE CROWN ATTORNEY
445 Albert Street East
Sault Ste. Marie, Ontario
P6A 6W2

LEILA MEKHERI, ASSISTANT CROWN ATTORNEY
Tel: (705) 945-8001
Fax: (705) 942-6060
Email: Leila.Mehkeri@ontario.ca

Coroner's Counsel