

**CAVALLUZZO HAYES SHILTON**  
**McINTYRE & CORNISH**  
 BARRISTERS & SOLICITORS

43 Madison Avenue  
 Toronto, Ontario M5R 2S2  
 Telephone: 416-964-1115  
 Facsimile: 416-964-5895

Our Ref: 001057

## FACSIMILE TRANSMISSION

Date: April 20, 2001

<i>NAME:</i>	<i>FAX NO.</i>
Dr. James Young and Al O'Marra, Office of the Chief Coroner	416-314-4030
William Carter, Borden Ladner Gervais LLP	416-361-7061
Richard Blair, Ryder Wright Blair & Doyle	416-340-9250
Kelly Waddingham, RNAO	416-599-8626
Tim Murphy, McCarthy Tétrault	416-868-0673
Laurel Baig, Sack, Goldblatt, Mitchell	416-591-7333
Edward Burrow, Ministry of Health	416-327-8605
Frank Gomberg, Teplitsky, Colson	416-365-7702
Yola Grant	416-535-9781
Sharon Shore	905-764-8640

**FROM:** Elizabeth J. McIntyre  
**RE:** *Coroner's Inquest into the Death of Sanchia Bulgin  
 at the Hospital for Sick Children*

Total Number of Pages Being Transmitted (including cover page): 10

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**CAVALLUZZO HAYES SHILTON  
McINTYRE & CORNISH**

BARRISTERS SOLICITORS

43 Madison Avenue  
Toronto, Ontario M5R 2S2  
Telephone: 416-964-1115  
Facsimile: 416-964-6896  
Email: [inquiry@cavalluzzo.com](mailto:inquiry@cavalluzzo.com)  
Website: [www.cavalluzzo.com](http://www.cavalluzzo.com)

Please refer to: Elizabeth J. McIntyre  
Direct Line: 416-964-5501  
Email: [emcintyre@cavalluzzo.com](mailto:emcintyre@cavalluzzo.com)  
Assistant: [mmarcantonio@cavalluzzo.com](mailto:mmarcantonio@cavalluzzo.com)  
File No.: 001067

April 20, 2001

Dr. James Young  
Deputy Chief Coroner  
**OFFICE OF THE CHIEF CORONER**  
26 Grenville Street, 2nd Floor  
Toronto, ON M7A 2G9

**Delivered by Facsimile to 416-314-4030**

Mr. Al O'Marra  
Counsel to the Coroner  
**OFFICE OF THE CHIEF CORONER**  
26 Grenville Street, 2nd Floor  
Toronto, ON M7A 2G9

Dear Sirs:

Re: **Coroner's Inquest into the Death of Sanchia Bulgin  
at The Hospital for Sick Children  
Standing Application by Sharon Shore**

This is to advise that we will be opposing the application for standing made by Sharon Shore on behalf of the nurses whom we represent. While we will be making oral submissions, we are providing these written submissions in advance.

We submit that a review of Ms Shore's written materials establishes neither a private nor public interest in this inquest which is substantial or direct within the meaning of section 41 of the *Coroner's Act*. Accordingly, we take the position that there is no legal requirement to grant standing to Ms Shore in this inquest.

Furthermore, to the extent that a coroner has discretion to grant standing to an applicant without a direct and substantial interest in the proceedings we submit that it should not be exercised in favour of Ms Shore. Our clients, all nurses on Unit 5A at the Hospital, are adamantly opposed to Ms Shore's participation in this proceeding. Based

on her ongoing hostile attitude toward the nursing staff on the unit, Ms Shore's participation would not only prolong this inquest unduly, it would aggravate the existing morale problems on the unit.

### **Private Interest**

Interest in the private law sense was defined by Campbell J. in *Range Representative on Administrative Segregation, Kingston Penitentiary v. Ontario (Regional Coroner)*, [1989] O.J. No. 1068 (Div. Ct.), *sub. nom Stanford v. Harris*:

*[T]he traditional private law approach[...]restricts standing at inquests to those who have a personal or pecuniary interest in the outcome of the inquest, or those whose conduct might be subject to implicit censure or criticism.*

Ms Shore has no personal or pecuniary interest within the meaning of s. 41. She had no involvement in the circumstances surrounding the death of Sanchia Bulgin and did not have any pre-existing relationship with the Bulgin family. Her conduct is not called into question by this inquest. Neither does she have any particular interest in the result of this inquest except as it relates back to the prior inquest regarding her daughter.

Ms. Shore clearly holds strong views and has ongoing concerns regarding the operation of the Hospital for Sick Children and its staff, and therefore has a keener "interest" in this inquest than the average observer. However, those concerns relate to the death of her own daughter and do not constitute interest in the private law sense for purposes of an inquest into the death of Sanchia Bulgin.

It is clear throughout Ms Shore's submissions that her principal concern relates back to her daughter's death and her expressed concern that "*Lisa's death should not be in vain*". The circumstances surrounding that death have already been thoroughly investigated in the prior inquest, have been considered by the jury in that case and have resulted in extensive recommendations. That inquest is complete and should not be reopened. Even if the recommendations of the prior jury are considered by the jury in this case, this does not create a direct and substantial interest for Ms Shore within the meaning of s. 41 of the *Coroner's Act*. Otherwise, the number of parties in successive inquests would grow exponentially.

### **Public Interest**

Since the decision of the Divisional Court in *Stanford v. Harris*, requests for public interest standing have been granted in appropriate circumstances. However, while

recognizing the public interest function of an inquest, Campbell J. in the *Stanford* decision made it clear that a public law approach to standing is not tantamount to allowing anyone who is interested in the subject of the inquest to acquire standing:

*Mere concern about the issues to be canvassed at the inquest, however deep and genuine, is not enough to constitute direct and substantial interest. Neither is expertise in the subject matter of the inquest or the particular issues of fact that will arise. It is not enough that an individual has a useful perspective that might assist the coroner.*

Similarly, the Court of Appeal in *People First of Ontario v. Porter, Regional Coroner Niagara* (1992), 6 O.R. (3d) 289 (C.A.), rev'd (1991), 5 O.R. (3d) 609 (Div. Ct.), while endorsing the public interest function of inquests, stated that there are significant limits on the role of public interest groups at coroner's inquests. In particular, the role of public interest groups should not be allowed to take over the role of the Crown to act as the ultimate advocate of the public interest:

*While public interest interveners can strengthen the coroners inquest it would be inappropriate for them to dominate the inquest by turning it into a royal commission or an advocacy forum to advance the particular views of any group. It must never be forgotten that the inquest is held because a member of the community has died under circumstances where the public interest requires examination from the point of view of the deceased persons, their families and associates, and those involved in the death. The social and preventive function is not the only function of the inquest. The interest of the families of the deceased and those dedicated to their care can never be forgotten. The coroner always has the difficult and sensitive job during the conduct of the inquest of balancing the requirements of the social and preventive function against the requirements of the investigative function. [Emphasis added.]*

In this passage, the Court emphasized the balance that must be reached by the coroner between the investigative mandate of a coroner's inquest and its social and preventative function. The coroner retains the discretion through his or her determination of "substantial and direct interest" to determine which, if any, public interest groups will help further the latter function without overbalancing the former:

*Notwithstanding the emerging public interest in the jury recommendations in the modern Ontario inquest, an inquest*

*is not a trial; an inquest is not a royal commission; an inquest is not a public platform; an inquest is not a campaign or a lobby; an inquest is not a crusade.*

Finally, in *Toronto (Metropolitan) Police Services Board v. Young*, [1997] O.J. No. 1076 (Div. Ct.), Sharpe J., while recognizing the benefit of contributions from knowledgeable public interest groups, held that the coroner was entitled to insist that any public interest groups must demonstrate a distinct or unique perspective in order to be granted standing.<sup>1</sup>

Based on a review of these principles, it is apparent that Ms Shore's application for public interest standing should not be granted.

### **Ms Shore Does Not Represent a Group with a Recognized Public Interest Mandate or Perspective**

The judicial decisions cited above have recognized the appropriateness of participation in inquests by groups representing public rather than private interests. In spite of her claims that she represents parents of paediatric patients, Ms Shore has not established that she represents this or any other public interest group. Groups such as the Black Action Defence Committee or the Urban Alliance on Race Relations who have been given standing in other inquests are recognized as unincorporated groups who have established themselves in the community. They have constitutions, members and a mandate. Ms Shore represents only herself and her family. As stated above, Ms. Shore's concerns relate to the death of her own daughter; this cannot elevate her to the status of a public interest group merely by claiming it is so.

Ms Shore also alleges in her letter that neither the Bulgin family nor any other party represents the interests of parents of paediatric patients. We would disagree with this contention. The Bulgin family is represented by competent counsel who in fact was counsel to Ms Shore herself during the prior inquest. We are confident that the role of the parents, in the circumstances of this death, will be more than adequately represented.

Furthermore, the role of the Crown includes representation of the parents of pediatric children as part of the public interest. There is no suggestion that the Crown in this case cannot adequately represent the interests of this group. It is important to note that, in a number of the cases in which outside groups have been granted standing, systemic societal issues, most notably racism or discrimination against the mentally ill,

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<sup>1</sup>

The Court of Appeal overturned the majority decision of the Divisional Court ([1998], O.J. No. 4736 (CA)) but not on this point.

have been alleged as potential or contributing causes to a death. Groups seeking standing in these cases are at least implicitly suggesting that the Crown, as part of the system, will be unable to perceive the discrimination or racism at play, and that is why their input is needed (see *People First, BDAC v. Huxter*, and *Toronto (Metropolitan) Police Services Board v. Young*).

There is no suggestion made by Ms Shore that she has or can address societal systemic issues which may have contributed to Sanchia Bulgin's death. On the contrary, her concerns relate back to the death of her own daughter and how the circumstances of that death relate to the one in this case. As was stated by Mr. Justice Campbell in the Stanford case, "*Mere concern about the issues to be canvassed at the inquest, however deep and genuine, is not enough to constitute direct and substantial interest*".

### **Ms Shore Should not be Allowed to Usurp the Role of Coroner's Counsel**

The role of the Crown, the Coroner's Counsel, is to represent the public interest. The definition of public interest standing was initially expanded in *Stanford v. Harris* because it was not clear that the Crown could represent the interests of the members of the group seeking standing – prisoners in a super-protective custody unit – as prisoners and Crowns are traditional adversaries.

There is no suggestion in this case that the Crown cannot adequately represent interested members of the public. In fact, it is the essence of the Crown's job to represent the public. The Crown in this case is entirely capable of investigating Sanchia Bulgin's death, and of determining and putting all relevant facts before the jury. It is the jury's role to make recommendations as to how any future deaths can be prevented. Ms Shore should not be entitled or permitted to step into the shoes of the Crown.

### **Ms Shore's Concerns are not Properly Before this Inquest**

A coroner's inquest is constrained by the *Coroner's Act*. Its mandate is determined by s.31(1):

31. (1) *Where an inquest is held, it shall inquire into the circumstances of the death and determine,*
- (a) *who the deceased was;*
  - (b) *how the deceased came to his or her death;*
  - (c) *when the deceased came to his or her death;*

- (d) where the deceased came to his or her death; and
- (e) by what means the deceased came to his or her death. [...]

As the Court held in *People First*, a coroner's inquest is not a public inquiry, and it is not a Royal Commission. It cannot solve all problems or delve into every issue. Its focus must be on the deceased person and on preventing similar deaths in the future.

Ms Shore states in her application that, "I believe I am rightfully entitled to learn the circumstances of Sanchia Bulgin's death to determine the full extent of any similarities to Lisa's...".

It is apparent that Ms Shore's intention, were she to be granted standing, would be to pursue her investigation into the circumstances surrounding Lisa Shore's death in the context of comparing that death to the death of Sanchia Bulgin. We submit that this is not the proper mandate of this inquest and would deflect this inquest from its proper purpose – an examination of the circumstances surrounding the death of Sanchia Bulgin.

Lisa Shore's death has already been thoroughly canvassed in the former proceeding. Were it to be reopened by granting Ms Shore standing to pursue further questions pertaining to her daughter's death it would also be necessary to grant standing to all other persons or parties who had an interest in Lisa Shore's death. It is apparent from her written submission that Ms Shore continues to make spurious allegations against those involved in the former inquest. Without the presence of those parties there would be significant danger that reputations would be further damaged.

Finally, it must be noted that there are other, ongoing proceedings relating to Lisa Shore's death, notably a criminal investigation and disciplinary proceedings at the College of Nurses. Participants in those proceedings would be severely prejudiced by another investigation into Lisa Shore's death. It is probable that their actions will be questioned and their skills brought into issue in a proceeding in which they have no role and no right to answer any allegations made against them. Such a position would be, we submit, improper and contrary to the tenets of natural justice.

**Ms Shore's Perspective is Not Sufficiently Unique nor is her Knowledge Sufficiently Specialized or Expert**

Ms Shore attempts to portray herself as an expert on the Hospital for Sick Children in these terms:

*I have personally been immersed in the details of Lisa's death over the past two years and as a by-product have acquired substantial hospital and medical knowledge.*

Ms Shore clearly does not have expertise that would be of assistance to the inquest either in the area of medicine or hospital systems. While she may have gained substantial knowledge in her investigation of Lisa Shore's death, this does not equal expertise. Furthermore, even if Ms Shore were recognized to have some special knowledge or expertise, as pointed out by Campbell J. in *Stanford v. Harris*, "*expertise in the subject matter of the inquest or the particular issues of fact that will arise*" is not sufficient to constitute direct and substantial interest.

To the extent that any information which Ms Shore may possess and which may become relevant to the issues is examined by this inquest, she could be called as a witness either by the family or by the Coroner's Counsel.

#### **Many of Ms Shore's Concerns are Speculative**

Ms Shore's request for standing suggests that the Hospital is planning to lie, obfuscate or try to deceive the inquest. While she acknowledges that the Hospital "*may or may not act in such an adversarial manner at the Bulgin inquest*" as she alleges it did at the Shore inquest, it is clear that she thinks the Hospital is planning to be uncooperative.

This supposition is completely speculative and belied by the behaviour of the Hospital to this point. Disclosure has been quick and forthcoming; cooperation has been thorough; and accountability and responsibility have been acknowledged. The past behaviour of the Hospital cannot be a ground on which Ms Shore should be granted standing at this inquest.

#### **It Would be Dangerous to Grant Ms Shore's Application For Standing.**

The nurses whom we represent are strongly opposed to the participation of Ms Shore in this proceeding. Her conduct in the prior inquest, through the media, and on her website constituted an unprecedented and unfair attack on nurses at the Hospital for Sick Children. It is clear from a review of the Lisa Shore website and of her letter seeking standing in these proceedings that she continues in her crusade against these nurses. To the extent that the coroner has residual discretion to grant standing in this case, we would strongly submit that Ms Shore's application be denied. She should not be given this platform to continue her attack on the nurses. To allow her to do so would exacerbate the disruptive effect of these proceedings on the ongoing care on Unit 5AB and the low morale problems already in existence amongst the nursing staff.

On this point we rely on the following comments by Campbell J. in *Stanford v. Harris*:

*While great benefits may come from granting standing at an inquest to interested groups who may not technically have a direct and substantial interest, there are corresponding dangers if the residual discretion to grant standing is not exercised with some caution.*

*The danger is not simply that of the busybody or crank, but also the danger of sincerely motivated groups seeking a public platform for views that are not sufficiently relevant to the subject of the interest and which will only result in undue delay and inefficiency.*

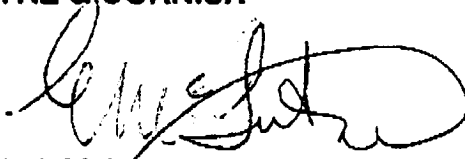
*To paraphrase what was said with respect to criminal trials in McCormick's Evidence Handbook (2 ed. 1972) at p. 81: the coroner has the power and the duty to see that the sideshow does not take over the circus. As said with respect to criminal trials. It is for the coroner in each case to balance this danger, and the need to avoid repetition and unduly prolonged procedures, against the degree of knowledge or expertise demonstrated by the applicants for standing and the degree to which they and their counsel can assist by providing a point of view that might not otherwise emerge.*

## **Conclusion**

We submit that to allow Ms Shore to participate in this case as a party would result in undue delay and inefficiency. Her interest, however deep and genuine, is neither substantial nor direct. Ms Shore has not demonstrated a perspective that is distinct and unique as it relates to the death of Sanchia Bulgin. To the extent that her concerns are relevant to Sanchia Bulgin, they overlap with the interests of both the Bulgin family and the Crown. To the extent that her concerns are related to Lisa Shore, those concerns have been fully canvassed in the Shore Inquest. Any further investigation into Lisa Shore's death through this inquest prejudices the parties in other ongoing proceedings that have arisen from that incident. Finally, it would be prejudicial, not only to the nurses in this case but to all nurses at the Hospital to allow Ms Shore the further opportunity to pursue her crusade against nurses at the Hospital for Sick Children.

Yours truly,

**CAVALLUZZO HAYES SHILTON  
McINTYRE & CORNISH**



Elizabeth J. McIntyre

EJM/mm

- Copy - William Carter, Borden Ladner Gervais, LLP**
- Copy - Richard Blair, Ryder Wright Blair & Doyle**
- Copy - Kelly Waddingham, Registered Nurses' Association of Ontario**
- Copy - Tim Murphy, McCarthy Tétrault**
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