

IN THE PROVINCIAL COURT OF NOVA SCOTIA

Citation: Hyde (Re), 2010 NSPC 23

Date: February 24, 2010

Registry: Halifax

Re An Inquiry Under the *Fatality Investigations Act*, S.N.S. 2001, c. 31 into the death of Howard Hyde

**DECISION ON THE ADMISSIBILITY OF DR. MICHAEL WEBSTER'S
OPINION EVIDENCE**

Judge: The Honourable Judge Anne S. Derrick

Heard: February 24, 2010

Decision: February 24, 2010

Counsel: Charles Broderick, Acting Inquiry Counsel

Edward Gores, Q.C., and Dana MacKenzie,
counsel for the Attorney General

Kevin C. MacDonald, Counsel for Joanna Blair and Dr.
Hunter Blair

David Roberts, Counsel for the Nova Scotia Government
and General Employees' Union

Sandra MacPherson, Q.C., and Elizabeth Buckle,

Counsel for the Halifax Regional Police

Rory Rogers and Matt Pierce, Counsel for Capital District Health Authority

Thomas Donovan, Q.C., and Loretta Manning, Counsel for Dr. Janet MacIntyre

Michael Wood, Q.C., and Jennifer Ross, Counsel for Dr. Stephen Curry

Blair Mitchell, and Marion Ferguson, Counsel for the Schizophrenia Society of Nova Scotia

Carol Tooton, Executive Director of the Canadian Mental Health Association, and Simon Li and Mallory Treddenich, *pro bono* students at law, for the Canadian Mental Health Association

By the Court:

[1] On February 15, 2010 I made a decision not to receive into evidence a report written by Dr. Webster and instructed Acting Inquiry Counsel to interview Dr. Webster on certain identified areas. Counsel have been provided with a copy of the transcript for that interview which was conducted on February 18, 2010. To be fully understood, the decision I am rendering this afternoon needs to be read with the decision I made on February 15.

[2] In my decision of February 15 I identified the need to have Dr. Webster on attend at the Inquiry before I could further consider the issue of his qualifications, the admissibility of his opinion evidence and any allegations of bias. When Dr. Webster took the witness stand this morning, Acting Inquiry Counsel indicated that

he was being put forward as an expert witness qualified to give opinion evidence in “crisis intervention from a use of force perspective” and “the psychology of conflict.” The Halifax Regional Police Service (HRPS) has objected to Dr. Webster being qualified to give opinion evidence as described. HRPS submit that Dr. Webster could be qualified to give opinion evidence on “crisis intervention” although not on its practical application in use of force situations, and accept that he could also be qualified to testify as an expert in “the psychology of conflict.”

[3] Submissions have been made by Acting Inquiry Counsel, the Attorney General, the NSGEU, the Blairs and the Schizophrenia Society of Nova Scotia cautioning me not to circumscribe Dr. Webster’s ability to provide useful evidence to this Inquiry. Time prevents me from setting out in this decision the arguments of HRPS and those of other parties on the issue of the admissibility of opinion evidence from Dr. Webster.

[4] I will try to briefly summarize what I understand to be the issues that HRPS have advanced as underpinning its objection to Dr. Webster being qualified as an expert witness. These are issues that were the focus of an extensive cross-examination of Dr. Webster. HRPS submits that Dr. Webster is not qualified to speak about the operational use of force, in other words, the practical application of the psychology involved in crisis intervention. In the submission of HRPS, Dr. Webster is qualified only to speak about the training he has done with police officers and courses he has taught in crisis intervention. HRPS points to Dr. Webster’s *curriculum vitae* as disclosing a concentration of professional consultancy work in the national security and drug interdiction contexts but not in the field of crisis intervention. HRPS argues that Dr. Webster does not have the practical application of use of force expertise that

would entitle him to talk about crisis intervention in the context of unplanned, spontaneous use of force situations.

[5] HRPS has also made a challenge to Dr. Webster's objectivity, citing various letters he wrote following the Braidwood Inquiry in which he was highly critical of RCMP management in particular. In a couple of these letters Dr. Webster referred to "corruption in policing" and the loss of "confidence and trust in Canadian policing" without specifically indicating that his comments were directed at the RCMP and their role in the Dziekanski incident at the Vancouver Airport. When asked about this in cross-examination here, Dr. Webster testified that he was referring to a crisis of confidence in policing in British Columbia and that he was not casting any aspersions on the Halifax Regional Police.

[6] I have listened carefully to Dr. Webster's testimony this morning and read the interview he did with Acting Inquiry Counsel. I have also read his evidence from the Braidwood Inquiry in 2008 and 2009 and the materials produced in cross-examination by counsel for Halifax Regional Police Service. I am not persuaded at all that Dr. Webster comes before this Inquiry with a bias against police. I do note that he obviously has strong opinions about the death of Robert Dziekanski and the involvement of the RCMP in that incident and the Inquiry examining it. There is nothing in the Inquiry that I am conducting that touches upon the RCMP. There is nothing before me that indicates Dr. Webster has an axe to grind against the Halifax Regional Police or police forces in general or that he is seeking to exploit the opportunity of testifying here to advance a private agenda or secure a personal financial benefit. It was put to Dr. Webster on cross-examination by HRPS that he stands to benefit from recommendations on crisis intervention from this Inquiry,

should any be made, because John McKay, who testified as a use-of-force expert before this Inquiry, is planning to collaborate with Dr. Webster on a course entitled “Crisis Intervention and the Use of Force - Defusing the mentally ill” through a consultancy and training business Mr. McKay has started. I reject this suggestion and do not find that Dr. Webster is before me to promote crisis intervention for his personal financial gain.

[7] On the bias issue I will repeat what I said in my February 15 decision: Dr. Webster’s evidence will be subjected to the same scrutiny as other witnesses appearing as experts before this Inquiry and I am confident that if his opinions are tainted with a bias that would make them unsafe or inappropriate to consider this will be evident to me and identified by counsel. There is nothing that causes me to conclude that Dr. Webster should be precluded from testifying before this Inquiry on the grounds of bias.

[8] Dr. Webster has a long career as a psychologist who has been consulted by police forces over a range of issues including crisis intervention in the context of police use of force. John McKay testified that in 2000 he was the sergeant in charge of the training section at the Vancouver Police Department and in that role, began to look at training for front-line police officers dealing with persons with mental illness. Mr. McKay told this Inquiry that the impetus for the development of the training was the fact that there had been a number of high-profile shootings involving persons with mental illness. He said in his evidence that he “began to look at some type of training that we could use to develop our officers and prevent those kinds of things from happening.” He found a programme in Albuquerque, New Mexico and a Vancouver police officer who had attended it. The course was developed and Dr. Webster was

brought into the programme as the psychologist. The first programme for Vancouver police officers was offered in 2001 and continues to run. John McKay obviously still considers Dr. Webster to have expertise in crisis intervention in the context of use of force judging from the course he is offering to co-teach with him that I mentioned earlier.

[9] I note from the material provided by HRPS that John McKay describes the course on “Crisis Intervention and Use of Force - Defusing the mentally ill” in a section on his website entitled “Psychology and Use of Force.” The description in that section of the real-life scenario that could be confronted is of a spontaneous, unplanned event. The text goes on to indicate that Dr. Webster will teach the psychological skills needed before and after the incident and John McKay will instruct in the legal aspects, tactics, and techniques “that will create an ability to survive and excel.”

[10] It is apparent to me that Dr. Webster understands the limits of his expertise in a use of force context. In his interview with Acting Inquiry Counsel at page 24 he states that dealing with a person in a behavioural emergency requires the practical application of use of force which he notes he is not “well-versed” in. I am not concerned that Dr. Webster will step over the boundaries of his knowledge and experience but I do not see how he can usefully discuss what he knows and has instructed on, in a vacuum. It is crisis intervention in the context of use of force that I am interested in understanding. Dr. Webster’s expertise lies in training police officers in the psychological aspects of conflict and use of force and the role, psychology, and techniques of crisis intervention in that context.

[11] I will say that perhaps it is preferable to frame the basis for Dr. Webster's opinion slightly differently from the way it was set out in the Braidwood Inquiry. As I indicated in my February 15 decision, I used Braidwood as my starting point for Dr. Webster. It may be a distinction without much of a difference but describing Dr. Webster as being qualified to give opinion evidence on "crisis intervention in the context of use of force" may give a clearer picture of what he is being asked to address. I do not expect this to satisfy HRPS's objections because it still connects crisis intervention and use of force but it is a more coherent topic for me to understand.

[12] It will be apparent by now from these reasons that I am satisfied Dr. Webster is qualified to give opinion evidence in crisis intervention in the context of use of force and the psychology of conflict. I am satisfied his evidence will be reliable and relevant. I am not concerned that the dangers identified by the Ontario Court of Appeal in *R. v. Abbey*, [2009] O.J. No. 3534 are an issue here. I will be able to make "an effective and critical assessment of the evidence" of Dr. Webster and I will not be abdicating my judgment on the issues in this Inquiry to any of the experts who have testified before me.