

2024 CarswellOnt 7039

Ontario Coroner

Elliot, Re

2024 CarswellOnt 7039

## **Inquest into the Death of Jayson Elliot**

Selwyn A. Pieters Presiding Officer

Judgment: February 26, 2024

Docket: None given.

Counsel: Peter Napier — Inquest Counsel  
Tiffany Elliot, Family of Mr. Elliot, for themselves  
Cathy McKnight, Family of Mr. Jayson Elliot, for themselves  
Larissa Easson, for Ministry of the Solicitor General

Subject: Civil Practice and Procedure

### **Related Abridgment Classifications**

Judges and courts

#### **VII Coroners**

##### **VII.2 Coroner's inquest**

##### **VII.2.b Practice and procedure**

##### **VII.2.b.v Witnesses**

##### **VII.2.b.v.D Miscellaneous**

### **Headnote**

Judges and courts --- Coroners — Coroner's inquest — Practice and procedure — Witnesses — Miscellaneous  
Qualification of expert witness.

### **Table of Authorities**

#### **Cases considered by Selwyn A. Pieters Presiding Officer:**

*R. v. Evans* (2019), 2019 ONCA 715, 2019 CarswellOnt 14412, 377 C.C.C. (3d) 231, 147 O.R. (3d) 577 (Ont. C.A.)  
*R. v. Johnson* (2019), 2019 ONCA 145, 2019 CarswellOnt 2546, 373 C.C.C. (3d) 194, 145 O.R. (3d) 453 (Ont. C.A.)  
*White Burgess Langille Inman v. Abbott and Haliburton Co.* (2015), 2015 SCC 23, 2015 CSC 23, 2015 CarswellINS 313,  
2015 CarswellNS 314, 383 D.L.R. (4th) 429, 18 C.R. (7th) 308, (sub nom. *Abbott and Haliburton Co. v. WBLI Chartered  
Accountants*) 470 N.R. 324, 67 C.P.C. (7th) 73, (sub nom. *Abbott and Haliburton Co. v. WBLI Chartered Accountants*)  
1135 A.P.R. 1, (sub nom. *Abbott and Haliburton Co. v. WBLI Chartered Accountants*) 360 N.S.R. (2d) 1, [2015] 2 S.C.R.  
182 (S.C.C.)

#### **Selwyn A. Pieters Presiding Officer:**

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### **Brief Facts**

1 On May 11, 2021, Mr. Jayson Elliot was housed in cell #8 with Shane Bullis at the Ottawa-Carleton Detention Centre (OCDC). According to the written statement of Mr. Bullis, Mr. Elliot began "gasping" for air and tried to knock for help so he, Mr. Bullis, got up and ran to the cell door as Mr. Elliot fell to the ground hitting himself off the wall. Mr. Bullis continued to bang on the cell door and saw the Sergeant (Sgt.) walking and yelled to her for help.

2 Later, after Mr. Bullis had been removed from the cell, he was assessed by Nurse Collicot in the presence of Sgt. Siroski. Sgt Siroski recorded what was said by Mr. Bullis in an occurrence report. According to Sgt. Siroski, Mr. Bullis told Nurse Collicot that he could hear Mr. Elliot trying to clear his throat because he was choking on something. Mr. Bullis thought he was choking on a muffin from his supper. He stated that Mr. Elliot started to bang on the cell door, stating he couldn't breathe and then fell down, hitting his head off the bunk or the floor and was unconscious. Mr. Bullis himself then began to bang on the door to get the attention of staff.

3 Exhibit 7 is a video recording showing the cell door of cell #8 on the B side of 1 wing at the OCDC. That cell door can be seen moving, consistent with a person knocking or banging on the door from inside cell #8 at 8:16:44 pm and again at 8:17:39 pm.

4 Sgt Sylvana Baric arrives at the cell door, can be seen looking into the cell. Sgt. Baric called a medical emergency. The door of cell #8 is opened at 8:18:21 and a number of officers enter the cell to find Mr. Elliot unresponsive.

5 OCDC medical staff and correctional officers attempted to resuscitate Mr. Elliot. Emergency medical services were requested via 911. Rescue actions included attempts to clear his airway, abdominal thrusts, cardiopulmonary resuscitation, and bag-mask ventilation.

6 Dr. Christopher Milroy is a forensic pathologist. The post-mortem report was prepared by Dr. Milroy.

7 Inquest Counsel seeks to have Dr. Milroy qualified as an expert witness in the field of forensic pathology.

8 The Jury has the benefit of Dr. Milroy's 65-page curriculum vitae (CV) and Inquest Counsel has walked the jury through Dr. Milroy's qualifications and expertise.

9 The principles governing the admissibility of expert opinion evidence are set out below.

### **Admissibility of Expert Evidence**

10 The Court of Appeal has set out the well-established principles governing the admissibility of expert evidence in [R. v. Johnson, 2019 ONCA 145](#) and [R. v. Evans, 2019 ONCA 715](#) as follows:

- There are two components. The threshold stage and the gatekeeper stage.<sup>1</sup>
- At the threshold stage, for the proposed evidence to be admissible, the proponent of the evidence must establish on a balance of probabilities that the proposed evidence is relevant, necessary to assist the trier of fact, not subject to an exclusionary rule and be given by a properly qualified expert.<sup>2</sup>
- "At the threshold stage, *relevance* refers to logical relevance, the relationship between the evidence and the fact in issue it is tendered to establish. Evidence is relevant where it is probative of the fact its proponent seeks to establish by its introduction."<sup>3</sup>
- "To satisfy the *necessity* requirement at the threshold stage, the proposed evidence must be more than helpful to the trier of fact in its decision. A standard of "helpful" sets the bar for the requirement of necessity too low. Although necessity is not to be judged by too strict a standard, the proposed opinion must be necessary in the sense that it provides information which is likely to be outside the experience of the trier of fact. The evidence must be necessary to enable the trier of fact to appreciate the matters in issue because of their technical nature. Put in another way, the subject matter of the inquiry must be such that ordinary people are unlikely to form a correct judgment about it, if unassisted by persons with special knowledge"<sup>4</sup>

- A properly qualified expert is a witness who is shown to have acquired special or peculiar knowledge of a subject through study or experience, that the average trier of fact lacks. If the proposed expert's special or peculiar knowledge of the subject on which he or she is tendered to testify is minimal, he or she should not be qualified as an expert on that subject.<sup>5</sup>
- At the gatekeeper stage, the trial judge must balance the potential risks and benefits of admitting the evidence to determine whether the potential benefits justify the risks associated with its reception.<sup>6</sup>
- This is "a cost-benefit analysis" in which the trial "judge balances on the one hand the potential risks, and on the other the potential benefits of admitting the evidence. The judge does this in order to decide where the balance settles — whether the potential benefits justify the risks."<sup>7</sup>

### Applications to this case

11 Dr. Milroy has been a Forensic Pathologist since 1990 in the United Kingdom. Since 2008, Dr. Milroy has worked as a Forensic Pathologist at the Eastern Ontario Regional Forensic Pathology Unit and Full Professor in the Department of Pathology and Laboratory Medicine at the University of Ottawa. He is also a registered Forensic Pathologist with the Ontario Forensic Pathology Service.

12 Dr. Milroy professional duties are to perform medico-legal autopsies. Dr. Milroy has significant experience of performing autopsies on unnatural deaths including many homicides.

13 Dr. Milroy has provided expert evidence in all levels of courts in England and Wales and in Ontario including the Ontario Court of Appeal. He has provided expert evidence internationally including many hundreds of inquests and hundreds of trials for homicide and serious woundings. He was also an expert to the Ontario Inquiry into Pediatric Forensic Pathology (The Goudge Inquiry).

14 In this case Dr. Milroy will provide evidence about report of the autopsy which he had prepared on the cause of death of Mr. Jayson Elliot. This will assist the jurors in answering the fourth (4<sup>th</sup>) question on the cause of death, and the fifth (5<sup>th</sup>) question on the manner of death, in particular, whether he could have died from choking on food.

### Ruling

15 I find, following the test and guidance set out in the Supreme Court of Canada decision in [White Burgess 2015 SCC 23](#), and having regard to his impressive CV, that Dr. Christopher Milroy is qualified as an expert in the field of forensic pathology and he is permitted to testify as an expert in that field to assist the jury.

### Footnotes

- 1 *Johnson*, at para. 50; *Evans*, at para. 132
- 2 *Johnson*, at para. 50-51; *Evans*, at para. 134
- 3 *Johnson*, at para. 52; *Evans*, at para. 135-136
- 4 *Johnson*, at para. 53
- 5 *Evans*, at para. 137
- 6 *Johnson*, at para. 55; *Evans*, at para. 138-139
- 7 *Johnson*, at para. 55; *Evans*, at para. 138-139

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