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Most Recent Recently added (treatment not yet designated): [Gahungu, Re](#) | 2024 CarswellOnt 17014 | (Ont. Coroner, Nov 4, 2024)

2024 CarswellOnt 14971

Ontario Coroner

Gahungu, Re

2024 CarswellOnt 14971

Inquest into the Death of Melkioro GAHUNGU

Selwyn A. Pieters Presiding Officer

Judgment: October 2, 2024

Docket: None given.

Counsel: Liesha Earle — Inquest Counsel

Mimi N. Singh, Gavin Wolfe, for Ministry of the Solicitor General

Andrew Brouwer, for Refugee Law Office

Laila Demirdache, for Canadian Council, for Refugees

Professor Alexander McClelland, Lindsay Jennings, for Tracking (In) Justice

Jocelyn Espejo Clarke, Nicholas Dodokin, for Canada Border Services Agency

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.i Standing

Headnote

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Statutes considered:

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Coroners Act, R.S.O. 1990, c. C.37

Generally

s. 10

s. 10(4.3)(a) [en. 2018, c. 6, Sched. 3, s. 6(1)]

s. 31(1)

s. 31(2)

s. 31(3)

s. 41

s. 41(1)

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s. 41(2)(c)

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Correctional Services Transformation Act, 2018, S.O. 2018, c. 6

Generally

Customs Act, R.S.C. 1985, c. 1 (2nd Supp.)

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Federal Courts Act, R.S.C. 1985, c. F-7

s. 18(1)

s. 18.1(1) [en. 1990, c. 8, s. 5]

s. 18.1(3) [en. 1990, c. 8, s. 5]

Immigration and Refugee Protection Act, S.C. 2001, c. 27

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s. 115(2)(a)

Legal Aid Services Act, 2020, S.O. 2020, c. 11, Sched. 15

s. 40(1)

Ministry of Correctional Services Act, R.S.O. 1990, c. M.22

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Regulations considered:

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Ministry of Correctional Services Act, R.S.O. 1990, c. M.22

General, R.R.O. 1990, Reg. 778

Generally

Selwyn A. Pieters Presiding Officer:

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I OVERVIEW

1 On July 03, 2024, Dr. Richard Wells, Regional Supervising Coroner for Central Region, Toronto West Office, announced that an inquest will be held into the death of Melkioro Gahungu.

2 Mr. Gahungu, age 64, died in Toronto, Ontario on March 7, 2016, whilst in custody at Toronto East Detention Centre (TEDC). He was detained by the Canadian Border Services Agency ("CBSA")¹ under Division 6 of Part I of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 ("IRPA"), pursuant to an agreement between CBSA and Ontario.²

II FACTS

3 Mr. Gahungu migrated to Canada in 2008 with his family. He was a citizen of Burundi and the father of four children. Mr. Gahungu was Hutu and his wife was Tutsi. It was difficult to live in Burundi as a mixed couple.

4 In 2009, Maria Nzokilandevi, the wife of Mr. Gahungu died of incised wounds due to a stabbing. Mr. Gahungu was initially charged with Murder and that was reduced to manslaughter.

5 In February 2012, Mr. Gahungu was convicted of manslaughter and sentenced to 10 years in prison. His prison term was reduced to four years and nine months.

6 On April 2, 2015, Mr. Gahungu was admitted into custody at Central East Correctional Centre (CECC) on an Immigration Warrant by Canada Border Services Agency (CBSA) for deportation. Through the aforementioned agreement Ontario has with Canada, Ontario provides detention facilities for certain persons who are on immigration holds.

7 On January 12, 2016, CBSA issued transfer notification to TEDC that Mr. Gahungu would be transferred from CECC to TEDC by the provincial bailiffs.

8 On January 12, 2016, CBSA issued an Authority to Release from Detention notice to TEDC. Mr. Gahungu was to be picked up by CBSA Officers on January 16, 2016, at TEDC. Mr. Gahungu was to be deported to Burundi, Africa.

9 On January 14, 2016, a Fitness to Fly was prepared for Mr. Gahungu, by Dr. Clovis Araujo, a psychologist. The psychologist wrote that "Mr. Gahungu's English is rather limited and speaks a dialect of Swahili. Unfortunately, given that I received the referral yesterday and have been told by nursing staff that he will likely be leaving CECC tomorrow, the assistance an interpreter could not be arranged in time. Nevertheless, his medical file was reviewed, and we were able to communicate in English to some extent" (Emphasis added).

10 On January 14, 2016, the Refugee Law Office (RLO") of Legal Aid Ontario (LAO) took over the representation of Mr. Gahungu in the Federal Court and went on the record as Mr. Gahungu's counsel in IMM-187-16. RLO filed affidavits from Benjamin Liston and John Norquay. The RLO sought an interim stay of the deportation on the basis that Mr. Gahungu had received inadequate legal representation in his Danger Opinion proceeding and the conditions in Burundi were such that it was not safe to send Mr. Gahungu to Burundi at that time. In addition, the RLO also sought a deferral of Mr. Gahungu's removal from the Canada Border Services Agency for these same reasons and additionally, (i) that they needed to obtain disclosure from the CBSA about Mr. Gahungu's medical records and (ii) that Mr. Gahungu required a further psychiatric assessment.

11 On January 15, 2016, Mr. Gahungu, was transferred from the Central East Detention Centre, in Lindsay, Ontario, to the Toronto East Detention Centre, in Toronto, Ontario. Mr. Gahungu had served a sentence for manslaughter and was on an immigration detention order in anticipation of being removed from Canada.

12 On January 15, 2016, at the Federal Court, The Honourable Madam Justice Anne Mactavish stayed Mr. Gahungu's removal from Canada "for a period of 10 days, or until further Order of the Court, whichever event occurs first.

13 Mr. Gahungu was housed on the fifth floor in the protective custody area, now known to be the 5A East unit.

14 On February 3, 2016, Mr. Gahungu had an Immigration Detention Review at TEDC and the adjudicator ordered his continue detention.

15 On February 26, 2016, Mr. Gahungu had another Immigration Detention Review at TEDC and the adjudicator ordered his continue detention.

16 On March 7, 2016, Mr. Gahungu, secured in cell 5334 of the 5A East unit, was the lone occupant of cell 5334 while his cell mate was attending court. The following chronology of that day is appropriate:

i. At approximately 10:32 a.m., Mr. Gahungu was in his cell, as were all other inmates in their respective cells in the 5A East unit, so that correctional staff could provide meals.

ii. At approximately 10:54 a.m., Mr. Gahungu was issued a meal by correctional staff.

iii. At approximately 11:25 a.m., correctional staff picked up the food containers from Mr. Gahungu's cell.

iv. At approximately 11:52 a.m. Mr. Gahungu was observed in his cell by a Correctional Officer conducting cell checks, to be hanging by a thin rope attached to an air vent. Correctional Officers employed an emergency tool to cut the rope allowing Mr. Gahungu to be carried to the floor outside his cell where emergency first aid treatment was provided.

v. At approximately 11:56 a.m., a 9-1-1 call was placed initiating a tiered response from the Toronto Police Service, Toronto Fire Department, and Toronto Paramedic Services who attended the scene to treat Mr. Gahungu. Despite efforts made to revive Mr. Gahungu, Mr. Gahungu did not survive.

vi. At approximately 12:46 p.m. by Dr. Kevin Mudrick from Sunnybrook Hospital pronounced Mr. Gahungu deceased at TEDC.

17 On March 7, 2016, Security Manager, Sergeant John Lawson, from TEDC notified CBSA Officer Daniel Iozzo of Mr. Gahungu's death.

Toronto East Detention Centre

18 The Toronto East Detention Centre is a maximum-security provincial detention centre located in the City of Toronto. The institution provides custody for up to 550 adult males. Most inmates are housed in "double bunked" cells (i.e. rooms each featuring two bunks mounted on the wall, a toilet and sink unit and a window to the outside).

19 Prior to his transfer to TEDC, Mr. Gahungu expressed concerns about not eating while at CECC — some perhaps as a result of delusions about food tampering. He was described as having many hunger strikes and lost significant weight while at the CECC. After his transfer from CECC to TEDC in January 2016, this concern was never addressed at the TEDC from the documents we have so far.

20 The purpose of his transfer to provincial remand centres was to await deportation. Impending deportation has been recognized by forensic psychiatrists and in case law as a potential destabilizer in mental health³. This issue appears not to be a concern for those charged with his care once he left federal institutions. Indeed, Mr. Gahungu appears to have passed an approval for flight in January 2016 even with hunger strike history, a diagnosis of a major mental illness Psychosis Not Otherwise Specified (likely schizophrenia) for which he was taking psychotropic medications while in federal custody under substitute consent, and without a recent assessment concerning whether he was currently experiencing psychotic symptoms. Without reliable and consistent translation, it would be very difficult to determine his current mental health status and baseline. At various times he reported that he was fine with leaving Canada and then also expressed a desire to stay. Given the language issues raised above, it is questionable if this issue was adequately explored by health care staff before signing off on this approval for flight.⁴

The January 15, 2016, Stay by the Federal Court

21 The Minister of Citizenship and Immigration, in a decision dated August 21, 2015, found the Mr. Gahungu to pose a danger to the public under s.115(2)(a) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 ("IRPA").

22 On January 15, 2016, at the Federal Court, The Honourable Madam Justice Anne Mactavish stayed Mr. Gahungu's removal from Canada "for a period of 10 days, or until further Order of the Court, whichever event occurs first."

23 The stay by the Federal Court simply meant that the date of removal was paused until after a hearing by a Judge of that Court.

24 As of February 10, 2016, Mr. Gahungu through his counsel advised the Federal Court "that he will file his application record once he has received medical record."⁵

25 The medical records were never produced nor filed in the Federal Court.

26 On May 18, 2016, a Notice of Discontinuance on behalf of the applicant was filed.

III THE NATURE OF THIS INQUEST AND SCOPE

Mandatory Inquest

27 The *Coroner's Act* provides that an inquest is mandatory in circumstances, such as this case, in which a person dies while committed to and on the premises of a correctional institution.⁶

The Mandatory Five (5) Questions

28 This inquest is mandatory under Section 10 of the *Coroners Act* because Mr. Gahungu died while he was being detained in a provincial correctional facility. The purpose of an inquest is to answer the five mandatory questions set out in s. 31(1) of the *Coroners Act*:

- a) who the deceased was;
- b) how the deceased came to his death;
- c) when the deceased came to his death;
- d) where the deceased came to his death; and
- e) by what means the deceased came to his death.

29 The Ontario Divisional Court described the three functions of an inquest in the following terms:

... the inquest should serve three primary functions: as a means for public ascertainment of facts relating to deaths, as a means for formally focusing community attention on and initiating community response to preventable deaths, and as a **means for satisfying the community that the circumstances surrounding the death of no one of its members will be overlooked, concealed, or ignored**

[emphasis added].⁷

30 In *Stanford v. Harris*, the Divisional Court made the following trite observation:

One of the functions of an inquest into a death in a prison or other institution not ordinarily open to public view is to provide the degree of public scrutiny necessary to ensure that it cannot be said, once the inquest is over, that there has

been a whitewash or a cover-up. There is no better antidote to ill-founded or mischievous allegations and suspicions than full and open scrutiny.⁸

31 Justice Stephen Goudge observed that the Coroner's Inquests involves "The drive to understand such deaths is a manifestation of the value the society places on life and human dignity."⁹

Pre-Inquest Meeting

32 A Pre-Inquest meeting took place on September 4, 2024, by videoconference on Microsoft Teams where parties identified as potentially having an interest in the inquest were invited to attend. The following persons and entities attended:

- i. Gavin Wolfe, Counsel, Ministry of the Solicitor General (SolGen);
- ii. Christopher Ezrin, Counsel — Department of Justice representing the interest of CBSA;
- iii. Andrew Brouwer, Senior Counsel, Legal Aid Ontario, Refugee Law Office;
- iv. Lindsay Jennings and Alexander McClelland, Tracking (In) Justice.

33 Applications for standing have been received from:

- i. Counsel on behalf of the Ministry of the Solicitor General;
- ii. Counsel, Legal Aid Ontario, Refugee Law Office and the Canadian Council for Refugees;
- iii. Tracking (In) Justice, Alexander McClelland and Lindsay Jennings as applicants to be introduced to the jury and make submissions.

34 The Inquest Investigator is still working to make contact with Mr. Gahungu's family. The extent to which the family will be participating, if at all, will be ascertained at a later date.

35 The inquest will begin at 9:30 a.m. on Monday, November 25, 2024, and is estimated it will last approximately ten days and hear from approximately 20 witnesses.

36 In this inquest, the jury will be looking to past to reach a verdict on the five questions and, if necessary, make recommendations for the future. No one is on trial at an inquest. However, it is important that any potential party with an interest in this inquest be provided the opportunity for effective participation at the inquest through a grant of standing.¹⁰

37 For the reasons given below, all the applicants for standing listed above are designated as parties to the inquest.

IV THE TEST TO BE DESIGNATED AS A PARTY TO AN INQUEST

38 Section 41(1) of the *Coroners Act*, RSO 1990, c C.37 provides that:

41 (1) On the application of any person before or during an inquest, the coroner shall designate the person as a person with standing at the inquest if the coroner finds that the person is substantially and directly interested in the inquest. [R.S.O. 1990, c. C.37, s. 41 \(1\)](#); 1993, c. 27, Sched.; 1999, c. 12, Sched. P, s. 2.

(2) A person designated as a person with standing at an inquest may,

- (a) be represented by a person authorized under the [Law Society Act](#) to represent the person with standing;
- (b) call and examine witnesses and present arguments and submissions;

(c) conduct cross-examinations of witnesses at the inquest relevant to the interest of the person with standing and admissible. *R.S.O. 1990, c. C.37, s. 41 (2)*; 2006, c. 21, Sched. C, s. 104 (1).

39 A person is designated as a party to an inquest under the *Chief Coroner's Rules of Procedure* ("CCRoP") either as a Person with Standing or as a Person Permitted to Make Submissions:

A. Person with Standing

Under CCRoP Rule 2.1(ii), pursuant to *s. 41 of the Coroners Act*, the Presiding Officer shall designate a person as a person with standing ("PWS") he finds that the person is substantially and directly interested in the inquest. In order to be designated as a PWS, the applicant must satisfy at least one of two tests, the Private Law test or the Public Interest test.

i. Private Law Test - The Private Law test is met when the applicant satisfies one or more of the following components:

1. Personal - Close personal connection to the deceased,
2. Reputational - Exposure to implicit criticism through the inquest process; or,
3. Implementational - Responsibility for implementation of jury recommendations.

ii. Public Interest Test¹¹ - The Public Interest test is met when the applicant demonstrates that it satisfies all of the following components:

1. The applicant legitimately represents a group of persons,
2. The group of persons share a commonality of identity with the deceased,
3. The group of persons will be acutely affected by the recommendations; and,
4. The applicant brings unique expertise and perspective to the inquest.

In order to be granted standing, the applicant must fully meet criteria for either the Private Law or Public Interest test. An applicant will not be granted standing where it only partially satisfies each of the Private Law and Public Interest tests.

The participatory rights of a PWS are specified in *Section 41 of the Coroners Act* and are limited to the areas in which the PWS is substantially and directly interested.

B. Person Permitted to Make Submissions

Under CCRoP Rule 2.1(iii), pursuant to *s. 50.1 of the Coroners Act*, the coroner may designate a person as a person permitted to make submissions ("PPS") where the coroner finds that the designation is in the interests of the inquest. The basis for the person's participation, and the degree and manner to which the person may participate in the inquest, arise from and are limited to the Presiding Officer's order.

V ANALYSIS AND RULING

A. Parties being granted standing

i. *Ministry of the Solicitor General (SOLGEN)*

40 The Ministry of the Solicitor General and its officers and medical staff have a direct and substantial interest in the inquest given their specific involvement. In its application counsel for the Solicitor General made the following submissions:

SOLGEN operates provincial correctional institutions across Ontario that provide for the secure custody of adult men and women ordered into provincial custody, including immigration detainees such as Mr. Gahungu. One of these institutions is the Toronto East Detention Centre (TEDC), which had custody of Mr. Gahungu when he died on or about March 7, 2016. In addition to its operational duties, SOLGEN is also responsible for administering the [Ministry of Correctional Services Act \(MCSA\)](#), which establishes a legislative framework for Ontario correctional institutions.

We submit that SOLGEN's operational and legislative responsibilities over TEDC, and Ontario correctional facilities more broadly, result in it having a direct and substantial interest in this inquest. Therefore, we respectfully request that SOLGEN be granted standing pursuant to [s. 41 of the Coroner's Act](#).

Under the private law test for establishing a direct and substantial interest in an inquest, SOLGEN has both significant reputational and implementational interests at stake. Since Mr. Gahungu's death occurred while he was in custody of a SOLGEN institution while under the care of SOLGEN employees, the jury's answers to the five mandatory questions will directly affect SOLGEN's reputational interests.

Further, since SOLGEN operates TEDC and administers the [MCSA](#), it will have a significant implementational role to satisfy with respect to any recommendations that the jury may direct at TEDC or SOLGEN more broadly.

SOLGEN believes that this inquest is important and wants to contribute to answering the five mandatory questions and any possible recommendations arising out of the evidence.

41 Under the [Ministry of Correctional Services Act, RSO 1990, c M.22](#), Ministry of the Solicitor General operates and regulates the governance of provincial correctional facilities in Ontario inclusive of Correctional Centres, Detention Centres and Jails. See also, [Correctional Services Transformation Act, 2018, S.O. 2018, c. 6 - Bill 6](#).

42 Correctional Officers, Nurses, Doctors and Administrators are responsible for the care, custody and control of persons who are detained in custody on remand, or an immigration hold and/or serving a sentencing of less than two years. The relevant sections of the *Act* briefly are section 5 which outlines the "Functions of Ministry", section 12, which refers to "Protection from personal liability", and section 22, which refers to "Inspections, Investigations." Regulation 778 under the [Ministry of Correctional Services Act](#), generally operationalizes the *Act* in so far as the specific responsibilities of various officials in the correctional system are concerned.

43 In addition to the legislation, the Statement of Ethical Principles, the Toronto East Detention Centre Standing Orders and the Ontario Correctional Services Code of Conduct and Professionalism (COCAP) are part of the Ministry policies and procedures governing the management and supervision of its Detention Centre.

44 The Correctional Services Code of Conduct and Professionalism Policy for employees working in correctional services provides, in part, that employees have a professional responsibility to:

- ensure the well-being of people in custody
- maintain a respectful, safe and healthy environment¹²

45 The Ministry of the Solicitor General, given its statutory responsibilities, may be subject to implicit criticism through the evidence before the jury, and therefore meets the reputational component of the private law test. In addition, it bears direct responsibility for implementing jury recommendations, and therefore meets the implementational test. Standing is granted to the Ministry of the Solicitor General in the following area of interest: "The reputational and implementational interest of Ministry of the Solicitor General in the circumstances of the death of Mr. Gahungu." Solicitor General is granted standing in the areas 1, 2, 3, 4, 5, and 6 of the scope paragraphs, at this inquest into the death of Mr. Gahungu."

ii. *Refugee Law Office and Canadian Council for Refugees*

Refugee Law Office

46 The Refugee Law Office is a Legal Aid Ontario staff office that provides legal representation among others, persons in immigration detention, including persons facing removal, persons with mental health issues, and persons with interpretation requirements. The RLO is substantially and directly interested in the inquest based on its representation of immigration detainees, who will be affected by any recommendations made.

47 The RLO has provided detention review representation as a core part of its mandate for well over a decade. This includes regular representation to persons detained on immigration hold appearing before the Immigration Division of the Immigration and Refugee Board (the tribunal that adjudicated immigration detention), as well as the Federal Courts on Judicial Review, and the Ontario Superior Court on applications for habeas corpus.

48 In 2017, the RLO worked with the Immigration Division to establish a mental health detainee referral project, to ensure representation to this particularly vulnerable population. As of 2020, the RLO has expanded its detention representation program to ensure duty counsel for all unrepresented immigration detainees in our region. Many of the RLO's clients struggle with serious mental illnesses and/or addictions, in addition to precarious immigration status, and limited access to mental health resources. They are a particularly vulnerable segment among those incarcerated.

49 The Refugee Law Office asserts its interest in this inquest meets the test for public law standing for the following reasons:

1. The RLO legitimately represents immigration detainees, including immigration detainees with mental health issues, facing removal from Canada, and/or requiring interpretation in a language other than English or French;
2. This group of persons therefore share commonalities of identity with the deceased;
3. The persons the RLO represents will be acutely affected by the recommendations of the jury because they are the population at the core of this inquest. Any recommendations with respect to the availability of real time translation and interpretation of languages other than English and/or French to Inmates in Ontario detention facilities; the identification and treatment of mental health issues of detainees; the transfer of medical and psychiatric information between custodial institutions; the training of medical and corrections staff on suicidality/mental health including destabilizers such as impending deportation; and the consideration of the role of deportation as a potential mental health destabilizer in assessing flight safety, will impact the immigration detainees that the RLO represents.
4. As a result of the RLO's long standing representation of this population, it is recognized for its expertise on immigration detention issues. While representing the full range of immigration detainees in this region, the RLO has a unique expertise with respect to the specific issues impacting persons with mental illness. As a result, the RLO brings a unique expertise and perspective to this inquest.

The Canadian Council for Refugees

50 The Canadian Council for Refugees is a national non-profit umbrella organization founded in 1978 and federally incorporated in 1986. The CCR's mission is committed to the rights and protection of refugees and other vulnerable migrants in Canada and around the world and to the settlement of refugees and immigrants in Canada. The CCR has approximately 200 member organizations, whose networking, information-exchange and advocacy needs the CCR serves.

51 The CCR has longstanding concerns about the protection of the basic rights of persons detained under immigration law, and their access to adequate health care, including mental health care. Some of their member organizations represent or provide services to immigration detainees. CCR member organizations also communicate with detainees by telephone or assist them after release. The CCR membership has adopted numerous resolutions on detention, including three specifically on issues of mental health and detention (in 2012).

52 The CCR has well-established relationships with the CBSA and the IRB with whom the CCR regularly raises issues relating to detention, based on the input of members. The CCR has been regularly consulted by the CBSA on the development of its Alternatives to Detention program and of its national detention standards, and by the IRB on its Chairperson's guidelines on detention and on its follow up to the independent audit on long-term detention reviews at the IRB (2018). The CCR is a member of the International Detention Coalition, a global advocacy network on immigration detention issues.

53 The CCR was a party at the inquest into the death of Lucia Vega Jiménez held by the BC Coroners Service in 2014. Ms Vega Jiménez died in 2013 while in a detention facility of the Canada Border Services Agency (CBSA). As well, the CCR and the RLO jointly sought and were granted standing in the 2023 Coroner's Inquest into the Death of Abdurahman Hassan.

54 The CCR submits it meets the test for public interest standing for these reasons:

1. The CCR, through its member organizations, legitimately represents immigration detainees, including immigration detainees with mental health issues;
2. Immigration detainees share a commonality of identity with the deceased;
3. Immigration detainees, represented by CCR member organizations, will be acutely affected by any recommendations regarding the conditions of detention and mental health treatment of incarcerated immigrants;
4. As a result of the CCR's interest and advocacy on, and knowledge of, immigration detention policies, programs and practices, it brings a unique expertise and perspective to this inquest.

55 I find that the Refugee Law Office and Canadian Council for Refugees:

- i. Legitimately represents refugees who are in immigration detention and experiencing mental illness;
- ii. The Refugee Law Office and Canadian Council for Refugees shares a commonality of interest with the deceased, Melkioro Gahungu
- iii. The persons represented by the Refugee Law Office and Canadian Council for Refugees are acutely affected by the recommendations, and
- iv. The Refugee Law Office and Canadian Council for Refugees brings unique expertise and perspective to the inquest.

56 Standing is granted to the Refugee Law Office and Canadian Council for Refugees in the following area of interest: scope paragraphs 1, 2, 3, 4, 5, and 6 of the scope paragraphs, at the inquest into the death of Mr. Gahungu.

57 They have a unique perspective that would bring issues before the jury different from that of another public interest group, Tracking (In)Justice.

58 They may participate as two separate entities in their own right rather than an ad hoc coalition.¹³

RLA's Prior Representation of Mr. Gahungu

59 The Legal Aid Ontario's Refugee Law Office represented Mr. Melkioro Gahungu, in the latter part of his Federal Court proceedings including seeking an urgent request for an interim-interim stay of the Applicant's removal to Burundi, which was granted by The Honourable Madam Justice Anne MacTavish on January 15, 2016.

60 Solicitor-client privilege attaches to communications between a lawyer and his or her client for the purpose of seeking or obtaining legal advice. That privilege protects those communications from disclosure, subject to a finding that the privilege has been waived. That legal services that were provided to Mr. Gahungu by the Refugee Law Office means that the law firm's relationship is presumptively covered by solicitor and client privilege.¹⁴ However, having regard to the issues and scope in

this inquest and my assessment, I am satisfied that the Refugee Law Office standing as a public interest party with public law standing in this circumstance is not problematic and a conflict of interest and breached of its duty of loyalty does not arise here. In the unlikely event that changes, the issue will be revisited.

iii. Tracking (In) Justice

61 Tracking (In)Justice requests standing to participate in the inquest into the death of Melkioro Gahungu, as a "person designated to make submissions".

62 Tracking (In)Justice submits that it is a law enforcement and criminal justice data and transparency project that tracks and analyzes information on two separate but sometimes interconnected issues:

- i. police-involved deaths when force is used across Canada, and,
- ii. deaths that occur in custody (prisons, jails, police custody, immigration detention, forensic psychiatric, youth detention) across Canada.

63 Tracking (In) Justice submits that it uses accurate and verified data to support communities doing advocacy calling for justice, accountability, and transparency from police and jail and prison officials, and oversight bodies.

64 Institutions that are formally affiliated with Tracking (In)Justice include the Institute of Criminology and Criminal Justice at Carleton University (ICCJ) Data Justice and Criminology Lab, the Ethics and Technology Lab at Queen's University, and the Center for Research and Innovation for Black Survivors of Homicide Victims (CRIB). A number of community partners and organizations are also involved in the project, including Aboriginal Legal Services, Canadian Civil Liberties Education Trust, Empowerment Council, JusticeTrans, Maggie's Toronto Sex Workers Action Project, Canadian Civil Liberties Association (CCLA), and Women's Health in Women's Hands.

Tracking (In)Justice's Expertise

65 The scope of the inquest includes "The process and practices of how mental health issues are identified and what happens once mental health issues are identified including priorities for care/treatment." Tracking (In)Justice submits that it will provide data and analysis based on the first-hand experiences of prisoners and their families. Tracking (In)Justice will also provide quantitative data on the rates of death where suicides and mental health has been identified as a factor.

66 The scope of the inquest includes an exploration of "Once admitted from other institutions particularly Federal Penitentiaries to Provincial Detention Centres, on detention holds, the extent to which medical and psychiatric information are transferred to the receiving institution." Tracking (In)Justice submits that it will provide data and analysis based on the first-hand experiences of prisoners and their families relating to the actual practices that families have experienced in attempting to report such information.

67 The scope of the inquest includes an exploration of the "Training for both medical and corrections staff on suicidality/ mental health including destabilizers such as impending deportation, frequency of the training." Tracking (In)Justice submits that it will provide data and analysis based on the first-hand experiences of prisoners and their families relating to the actual practices that families have experienced in attempting to support loved ones.

68 The scope of the inquest includes "The circumstances surrounding the death of Mr. Melkioro Gahungu whilst incarcerated at Toronto East Detention Centre;" Tracking (In) Justice submits that it will provide data and analysis on trends in deaths of persons in custody in Ontario including trends specifically relating to suicides and mental health and immigration detention.

The area of interest proposed by Tracking (In) Justice

69 As a "person designated to make submissions", the Tracking (In) Justice seeks

- i. to be introduced to the jury;
- ii. and to make submissions to the jury after the evidence.

70 For a party to be granted standing, the application must substantially include the reasons that the party is "substantially and directly interested in the inquest" as per the *Coroners Act*, section 41(1), and a clear statement of the interest of the party under section 41(2).

71 The presiding officer retains a wide discretion when considering an application for standing. This discretion is exercised in favour of public interest groups seeking standing who can establish that their interest and expertise will be of assistance to the jurors in deciding the mandatory five questions and the discretionary recommendations on matters of public interest.

72 I find that Tracking (In) Justice bring to this inquest:

- i. the diverse in background of its members, inclusive of its organizational membership,
- ii. the lived experience of some of its members,
- iii. its unique expertise and perspective,
- iv. its representation of persons in similar situations to Mr. Gahungu, and,
- v. its proposed area of interest in this inquest.

73 One of the primary functions of the inquest is to serve as a means for formally focusing community attention on, and initiating community response to, preventable deaths.

74 I am granting Tracking (In)Justice standing, as a party entitled to make submissions to the jury, in respect to scope paragraphs 1, 3, 4, and 5.

75 Tracking (In)Justice brings to this inquest substantial special knowledge that would assist the jury.

B. Ruling on Scope

i. The Scope of the Inquest

76 It is the role of the Presiding Officer to decide, in a fair, balanced, and transparent manner, the most important issues to be explored at an inquest, in consultation with inquest counsel, inquest investigator, and potential parties. Presiding Officers are well-positioned to do this given our training, skill, and experience.¹⁵ Further, Presiding Officers are required to determine the scope of the inquest based on a prior involvement in reviewing the brief and directing our own investigation into the subject matter.¹⁶ The draft scope is then circulated so that potential parties can provide their input, if necessary. These decisions inform the scope of the inquest and the evidence to be admitted. Ultimately, it is within the Presiding Officer's discretion to set the scope and decide what evidence will be tendered.¹⁷

77 In Gahungu, the investigation conducted by the inquest team has been extensive, thorough, and time-consuming. The issues to be explored at this inquest are contained in the scope of the inquest. As presiding officer, I have carefully reviewed the results of the coroner's investigation. The scope of this inquest are as follows:

1. The circumstances surrounding the death of Mr. Melkioro Gahungu whilst incarcerated at Toronto East Detention Centre;
2. The availability of real time translation and interpretation of languages other than English and/or French to Inmates in Ontario detention facilities including gaps;

3. The process and practices of how mental health issues are identified and what happens once mental health issues are identified including priorities for care/treatment;
4. Once admitted from other institutions particularly Federal Penitentiaries to Provincial Detention Centres, on detention holds, the extent to which medical and psychiatric information are transferred to the receiving institution;
5. Training for both medical and corrections staff on suicidality/mental health including destabilizers such as impending deportation, frequency of the training; and
6. When there is a deportation order issued, what factors/recommendations are required for flight safety and the extent to which deportation as a potential destabilizer of mental health is considered.

78 [Section 31\(3\)](#) encourages the jury to make recommendations. It reads:

"Subject to subsection (2) the jury may make recommendations directed to the avoidance of death in similar circumstances or respecting any other matter arising out of the inquest."

79 The verdict also gives the jury an opportunity to make recommendations — which may be addressed to organizations, governments, ministries and other relevant bodies — and recommendations, if the jury makes them, will be aimed at preventing further deaths.

80 Inquests are unique legal proceedings. An inquest is not a trial. It is not the role of the Presiding Officer or jury to decide any question of criminal or civil liability or to apportion guilt or attribute blame.¹⁸

81 In terms of preventing further deaths, this is the "social and preventive function." As observed in [People's First](#):¹⁹

The public interest in Ontario inquests has become more and more important in recent years. The traditional investigative function of the inquest to determine how, when, where, and by what means the deceased came to her death, is no longer the predominant feature of every inquest. That narrow investigative function, to lay out the essential facts surrounding an individual death, is still vital to the families of the deceased and to those who are directly involved in the death.

A separate and wider function is becoming increasingly significant; the vindication of the public interest in the prevention of death by the public exposure of conditions that threaten life. The separate role of the jury in recommending systemic changes to prevent death has become more and more important. The social and preventive function of the inquest which focuses on the public interest has become, in some cases, just as important as the distinctly separate function of investigating the individual facts of individual deaths and the personal roles of individuals involved in the death.

82 As it relates to systemic and public interest issues, the Ontario Court of Appeal wrote:²⁰

[21] A coroner's inquest has two functions: a narrow investigative function and a broader public-interest function. The inquest's investigative function is to inquire into the circumstances of the death, including answering the five questions set out in [s. 31\(1\) of the Coroners Act](#) — who the deceased was, and how, when, where and by what means the deceased came to his or her death. The inquest's public-interest function, which is found in [s. 31\(3\) of the Act](#), is to make recommendations directed at avoiding a death in similar circumstances or on any matter arising out of the inquest.

[22] Although an inquest jury cannot make findings of legal responsibility, recent case law has emphasized the importance of the inquest's public-interest function in exposing systemic failings that cause death.

83 This Inquest will look into the systemic issues as it relates to the availability of real time translation and interpretation of languages other than English and/or French to Inmates in Ontario detention facilities including gaps. Further, the extent to which deportation as a potential destabilizer of mental health is to be considered by the jury, for reasons explained below.

84 Significantly, in my view, is also the extent to which medical and psychiatric information are transferred to the receiving institution where an inmate is transferred from Federal Penitentiaries to Provincial Detention Centres, on detention holds.

ii. Canada Border Services Agency (CBSA) and Immigration detention

85 Canada Border Service Agency established pursuant to the [Customs Act](#)²¹ is responsible for the enforcement of a multiplicity of Federal statutes inclusive of the [IRPA](#). The regime under which persons with a danger opinion who are facing removals²² from Canada and are held in provincial detention facilities on immigration detentions also called immigration holds warrants some discussion, having regard to the scope of this inquest.²³

86 CBSA have referred me to several documents, all of which are publicly sourced and online including:

1. Federal Court of Canada documents from IMM-187-16 - *Gahungu v. Canada (Citizenship and Immigration)*.
2. Federal Court of Canada docketed entries from IMM-4578-15 - *Gahungu v. Canada (Citizenship and Immigration)*.
3. Mr. Gahungu's Danger Opinion, dated August 21, 2015;²⁴
4. Federal Court Stay Order, dated January 15, 2016;²⁵ and
5. Agreement between Canada and Ontario respecting detention of persons detained under the *Immigration and Refugee Protection Act (IRPA)*, dated January 21, 2015.
6. CIC Operational Manual; Enforcement (ENF) (Enforcement Manual) specifically ENF 10 "Removals" dealing with removals.²⁶
7. CIC Operational Manual; Enforcement (ENF) (Enforcement Manual) specifically ENF 28 "Ministerial opinions on danger to the public, nature and severity of the acts committed and danger to the security of Canada" dealing with removals.²⁷
8. [Inquest into the Death of Abdurahman HASSAN, 2023 CarswellOnt 7132 \(Verdict and recommendation\)](#), dated February 10, 2023.

87 In [Hassan, 2023 CarswellOnt 7132](#) recommendations 1-8 were aimed at the Government of Canada. In recommendations 2 and 8, the Jury wrote that Canada should:

1. Redefine the purposes of immigration detention to include rehabilitation and when appropriate to the detainee's circumstances, reintegration into the community. This should include resources and facilities to:
 - a. Stabilize detainees with acute mental health symptoms,
 - b. Develop care plans for detainees with mental illnesses, and
 - c. Assist with discharge planning.
2. Train Canada Border Services Agency (CBSA) employees operating in the detention continuum on the impacts of detention on mental health.

88 CBSA provided a response to those recommendations and that is reported at [Inquest into the death of: Abdurahman Hassan 2023 CarswellOnt 17818](#).

89 In light of [Hassan](#), CBSA requested through Inquest Counsel that paragraph 6 of the scope document be amended.

90 In Gahungu, paragraph 6 of the scope document asks the Jury to consider "When there is a deportation order issued, what factors/recommendations are required for flight safety and the extent to which deportation as a potential destabilizer of mental health is considered and how." This issue was not addressed in *Hassan* and further, aligns with caselaw recognizing deportation as a potential destabilizer of mental health so I have decided that it will be kept within scope.

91 In making decisions on removals, CBSA officials are guided by the *Canadian Charter of Rights and Freedoms*, *Immigration and Refugee Protection Act* (IRPA), the *Immigration and Refugee Protection Regulations* (IRPR)²⁸ and related jurisprudence, as well as internal policies, directives and guidelines.

92 Everyone ordered removed from Canada is entitled to procedural fairness and all removal orders are subject to Application for leave and judicial review and various levels of leave to appeal and appeal to the Federal Court of Appeal and Supreme Court of Canada.²⁹

93 Decisions regarding detention placement are guided by a risk-based assessment tool called the National Risk Assessment for Detention (NRAD) form, which is documented for every detainee. The NRAD addresses factors that assist the CBSA in determining suitability for detention at an Immigration Holding Centre (IHC) or a Provincial Correctional Facility (PCF), including determining the ability to manage vulnerable persons within an IHC.

94 Detention is used when there are:

- a) serious concerns about flight risk;
- b) an individual being unidentified; or,
- c) a danger to the public.³⁰

95 Based on the detainee's NRAD score, ports of entry and inland offices near an IHC may refer detainees for placement in an IHC, or in a PCF. Ports of entry and inland enforcement offices not located in close proximity to an IHC can solely refer detainees for placement in a PCF. However, inland enforcement offices may later refer detainees for transfer to an IHC based on the detainee's total NRAD score.

96 The CBSA entered into Written Collaborative Agreements or Memoranda of Understanding with provinces in order to set in place mutually agreed upon terms and conditions whereby the province will, upon the request of the CBSA, maintain the care and control of persons detained by the CBSA in accordance with the IRPA. It also outlines the legislative framework for the disclosure and provision of personal and medical information between the CBSA and the province.

97 In June 2023, Ontario's Solicitor General announced it was cancelling its agreement with Canada as it relates to the housing of immigration detainees in provincial detention facilities. However, as of the date of these reasons immigration detention continues in provincial facilities in Ontario and there is no definitive word when such detentions will cease in provincial facilities.

C. Participatory rights & overlapping interests

98 The rights of inquest parties are set out in *section 41 of the Coroners Act*:

41(2) (a) A person designated as a person with standing at an inquest may,

...

(b) call and examine witnesses and present arguments and submissions;

(c) conduct cross-examinations of witnesses at the inquest relevant to the interest of the person with standing and admissible.

99 I remind all PWS that their participatory rights arise from, and are limited to the areas of interest in which, standing was granted. There is a potential for overlap among the interests of some of the PWS at this inquest. Except with my prior permission, those with overlapping interests may not duplicate each other's areas of questioning of a given witness. This may be achieved by working together to avoid duplication. If a PWS is of the view that duplication is required, they must seek my leave in advance of the witness testifying.

D. Hours

100 The inquest will begin at 9:30 a.m. on Monday, November 25, 2024, and is estimated it will last approximately 10 days and hear from approximately 20 witnesses.

101 I expect that we will sit every day from 9:30 am to 4:30 pm with mid-morning and mid-afternoon breaks and lunch. We will announce when we break and when we are to resume. Hopefully, some days we will end a little early.

D. Virtual Hearing via Zoom videoconferencing platform

102 This is a virtual hearing using a videoconference platform and it will be live streamed. Virtual hearings are now routinely conducted in Coroner's Court rather than in-person hearings which was the norm pre-Covid.

103 Access to justice, efficiency and transparency can all be promoted by virtual hearings.³¹

104 In *Stanford v. Harris*, the Divisional Court made the following trite observation:

One of the functions of an inquest into a death in a prison or other institution not ordinarily open to public view is to provide the degree of public scrutiny necessary to ensure that it cannot be said, once the inquest is over, that there has been a whitewash or a cover-up. There is no better antidote to ill-founded or mischievous allegations and suspicions than full and open scrutiny.³²

105 Any person in any part of the world can view this inquest by clicking on the livestream link.

106 In Coroner's Court, with minor exceptions where technical difficulties arise on the platform or in respect to a party or juror's connectivity, we have had exceptional success using this platform and this is one of the few Tribunals in Canada that has virtual jury hearings.

107 Witnesses will be heard and evidence presented to the jury through videoconference. Jury members will be joining on-line and will be able to hear the proceeding, view exhibits, ask questions of witnesses, and deliberate amongst themselves in private, all through the internet. Jurors may be at their home or some other quiet space suitable for this role.

108 While this inquest is being conducted virtually, it is a legal proceeding, so I ask that you commit to the same level of decorum as you would if you were in a physical court room. Participants are reminded to conduct themselves with dignity and respect for this inquest.

109 I thank all parties and counsel for their applications and participation in this inquest proceeding.

APPENDIX

STATEMENT OF SCOPE

Inquest into the Death of Melkioro GAHUNGU

File Number: 2016-2732

This inquest will look into the circumstances of the death of Melkioro Gahungu and examine the events of his death on or about March 7, 2016, to assist the jury in answering the five mandatory questions set out in [s. 31\(1\) of the *Coroners Act*](#) and to help the jury make recommendations to prevent further deaths, should the jury decide to make recommendations. The following are the five mandatory questions for the jury:

- (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

Specifically, beyond the facts required to accurately answer the five questions and understand the circumstances of the death, we will be addressing the following issues to the extent that these issues may have relevance to potential recommendations:

1. The circumstances surrounding the death of Mr. Melkioro Gahungu whilst incarcerated at Toronto East Detention Centre;
2. The availability of real time translation and interpretation of languages other than English and/or French to Inmates in Ontario detention facilities including gaps;
3. The process and practices of how mental health issues are identified and what happens once mental health issues are identified including priorities for care/treatment;
4. Once admitted from other institutions particularly Federal Penitentiaries to Provincial Detention Centres, on detention holds, the extent to which medical and psychiatric information are transferred to the receiving institution;
5. Training for both medical and corrections staff on suicidality/mental health including destabilizers such as impending deportation, frequency of the training; and
6. When there is a deportation order issued, what factors/recommendations are required for flight safety and the extent to which deportation as a potential destabilizer of mental health is considered and how.

Excluded from the scope will be any in-depth exploration of the following:

Medical care provided by paramedics

Footnotes

- 1 Established under the *Canada Border Services Agency Act*, R.S.C. 2005, c. 38
- 2 Agreement between Canada and Ontario respecting detention of persons detained under the [Immigration and Refugee Protection Act \(IRPA\)](#), between Her Majesty The Queen in Right of Ontario (as represented by the Minister of Community Safety and Correctional Services) and Her Majesty The Queen in Right of Canada (as represented by both the Minister of Public Safety and Emergency Preparedness and the President of the Canada Border Services Agency), dated January 21, 2015 online: <<https://stoptransferstojails.wordpress.com/wp-content/uploads/2016/05/contract-cbsa-corrections.pdf>>.
- 3 Anita Szigeti, Ruby Dhand, Dena Bonnet, and Justice Jill R. Presser, *Canadian Anthology on Mental Health and the Law*, § 34.03[4] (Toronto LexisNexis Canada, 2024)

- 4 "Important Note: If you have a [Human Rights Code](#) related characteristic or need (e.g., language barrier, physical disability, intellectual disability, etc.) that impacts your ability to read or understand the information in this guide, please let staff know and they will work with you to get the kind of help you need (see Human Rights). This also applies to any material (e.g., Misconduct Report, Segregation Handout, etc.) or forms (e.g. Request Form) that are provided to you during your time at the institution." Inmate Information Guide for Adult Institutions, Ministry of Community Safety and Correctional Services, September 2015. This would have been applicable and operational during the time Mr. Gahungu was at TEDC.
- 5 IMM-187-16
- 6 Section 10(4.3)(a) of the *Coroners Act*, RSO 1990, c C.37.
- 7 *People First of Ontario v. Porter, Regional Coroner Niagara* (1991), 5 O.R. (3d) 609 (Div. Ct.); rev'd on other grounds (1992), 6 O.R. (3d) 289 (C.A.)
- 8 *Stanford v. Harris*, [1989] O.J. No. 1068 at p. 21.
- 9 The Hon Stephen Goudge, Inquiry into Pediatric Forensic Pathology in Ontario, Report (2008), Vol 2, page 60.
- 10 *Booth v. Huxter*, [1994] O.J. No. 52 (Ont. Div. Ct), leave to appeal to Ont. C.A. dismissed (February 28, 1994) and *Evans v. Milton* 197946 C.C.C. (2d) 129 Ont. Div. Ct. affd [1979] O.J. No. 4171 (Ont. C.A.).
- 11 *Black Action Defence Committee and Urban Alliance on Race Relations v. Huxter, Coroner*, [1992] O.J. No. 2741 (Div. Ct); *Cinderella Allalouf Ad-Hoc Litigation Committee v. Lucas*, 1999 CanLII 18723 (ON SCDC) See also, *Delta Air Lines Inc. v. Lukács*, 2018 SCC 2 (CanLII), [2018] 1 SCR 6; *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45, paras. 31-34; *British Columbia (Attorney General) v. Council of Canadians with Disabilities*, 2022 SCC 27 at paras. 33-40 and 56-59.
- 12 Ontario, Ministry of the Solicitor General, Code of Conduct and professionalism (Toronto: Ministry of the Solicitor General, 2021), online: <https://www.ontario.ca/page/code-conduct-and-professionalism#:text=The%20Code%20of%20Conduct%20and%20safe%20and%20healthy%20work%20environment> accessed 20 September 2024
- 13 *Cinderella Allalouf Ad-hoc Litigation Committee v. Lucas* 1999 CarswellOnt 1774, [1999] O.J. No. 2006, 122 O.A.C. 115
- 14 *Descoteaux v. Mierzwinski*, [1982] 1 SCR 860. See also section 40(1) of *Legal Aid Services Act*, 2020, SO 2020, c 11, Sch 15.
- 15 Presiding Officer John Carlisle wrote in *Inquest into the Death of Ashley Smith* 2012 CarswellOnt 21302 "The coroner is an investigator and comes to the hearing with full knowledge of and in fact authorship of a searching investigation into the circumstances. It is my role, one of my core roles, with my counsel, to delineate the scope and focus of the inquest as it logically and necessarily flows from that investigation."
- 16 *Black Action Defence Committee v. Huxter*, [1992] O.J. No. 2741 (Div. Court.) at para. 55-56, 68, 72.
- 17 Chief Coroner's Rules of Procedure for Inquests, 2014. ("CCRoP"), Rules 3.3 and 8.2(1). See also *BADC v. Huxter*, [1992] O.J. No. 2741 ("BADC") at paras. 54-56 and *Canadian Union of Public Employees, local 416 v. Lauwers*, [2011] O.J. No. 2028 ("Hearst") at para. 51.
- 18 s. 31(2) of the *Coroner's Act*.
- 19 *People First of Ontario v. Porter, Regional Coroner Niagara*, [1991] O.J. No. 3389 at para. 32-33, rev'd on different grounds [1992] O.J. No. 3 (Ont. C.A.).
- 20 *Pierre v. McRae*, 2011 ONCA 187, paras 22-23.
- 21 *Customs Act*, RSC 1985, c 1 (2nd Supp).

- 22 Also referred to as deportation.
- 23 For a comprehensive review of the Immigration Detention Regime see recent decision of Justice Glustein in *Richard v. The Attorney General of Canada*, 2024 ONSC 3800 (Ont. S.C.J.) at paras.18 - 106
- 24 IMM-4578-15 - Certified Copy of the Decision (Danger Opinion) filed on November 02, 2015.
- 25 Doc 8, IMM-187-16, Order rendered by The Honourable Madam Justice Mactavish at Ottawa on 15-JAN-2016
- 26 Citizenship and Immigration Canada. Operational Manual: Enforcement (ENF). Chapter ENF 10: "Removals", online: <<https://www.canada.ca/content/dam/ircc/migration/ircc/english/resources/manuals/enf/enf10-eng.pdf>> (Date accessed: September 20, 2024)
- 27 Citizenship and Immigration Canada. Operational Manual: Enforcement (ENF). Chapter ENF 28, online: <<https://www.canada.ca/content/dam/ircc/migration/ircc/english/resources/manuals/enf/enf28-eng.pdf>> (Date accessed: September 20, 2024)
- 28 See discussion on when removal orders are enforced [Immigration and Refugee Protection Regulations \(SOR/2002-227\) s. 240\(1\)\(a\), \(b\),\(c\), \(d\), s. 240\(2\), and s. 240\(3\)](#) online <<https://laws-lois.justice.gc.ca/eng/regulations/sor-2002-227/section-240.html>>
- 29 *Federal Courts Act, RSC 1985, c F-7*, 18.1(1), 18.1(3), 18(1).
- 30 In Mr. Gahungu's case a danger opinion was issued on January 21, 2015.
- 31 Daly, Paul "Virtual Hearings at Administrative Tribunals" in *Administrative Law Matters* (July 23, 2024), online: <<https://www.administrativelawmatters.com/blog/2024/07/23/virtual-hearings-at-administrative-tribunals/>>.
- 32 *Stanford v. Harris*, [1989] O.J. No. 1068 at p. 21.
-