2024 CarswellOnt 17014
Ontario Coroner

Gahungu, Re

2024 CarswellOnt 17014

Inquest into the Death of Melkioro GAHUNGU

Selwyn A. Pieters Presiding Officer

Judgment: November 4, 2024
Docket: None given.

Counsel: Liesha Earle, for Inquest Counsel
Mimi N. Singh, Gavin Wolfe, for Ministry of the Solicitor General
Andrew Brouwer, for Refugee Law Office

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.xi Miscellaneous
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Statutes considered:

Canada Border Services Agency Act, S.C. 2005, c. 38
Generally

Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11
Generally

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

s. 31(1)

s. 31(2)

s. 31(3)

s. 50(1)
Criminal Code, R.S.C. 1985, c. C-46
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Human Rights Code, R.S.O. 1990, c. H.19
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Immigration and Refugee Protection Act, S.C. 2001, c. 27
Generally

Pt. 1, Div. 6
Mental Health Act, R.S.O. 1990, c. M.7
Generally
Ministry of Correctional Services Act, R.S.O. 1990, c. M.22
Generally

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

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 STANDING, SCOPE, POTENTIAL TIMELINES AND COMMUNICATIONS WITH THE PRESIDING OFFICER

3 On September 4, 2024, a Pre-Inquest Meeting (PIM) was held with potential parties. In attendance were:

Gavin Wolfe, Counsel (SolGen)

Christopher Ezrin, Counsel (Department of Justice representing Canada Border Services Agency (CBSA))

Alexander McClelland, Professor, (Carlton University working with Tracking (In) Justice)

Lindsay Jennings, Research Associate (Tracking (In) Justice)

Andrew Brouwer, Senior Counsel (Refugee Law Office (RLO) at Legal Aid Ontario)

4 During that meeting, Inquest Counsel outlined due dates as follows:

Timing of Motions

If you are planning on filing a motion, please talk to me first. I would like to see if we can come to a solution, if possible, first. If that is not possible, these are the due dates to keep in mind:

September 16, 2024 motions are due by 4pm

September 27, 2024 responses to the motion are due by 4 pm

If necessary, reply to response due by September 30, 2024 by 4 pm

All rulings will be released on October 4 including applications for standing.

5 During the recitation, Inquest Counsel made it clear that she would work collaboratively with the parties around these dates.

6 Inquest Counsel also told the parties once the PIM is over, I will be in an adjudicative bubble and there should be no communication directly with the presiding officer and any of the parties in respect to this Inquest. Everything from the lawyers go through her during the Inquest, and then it is communicated, as appropriate to the presiding officer. [3]

7 In my address to the participants, I stated that in presiding over the Inquest, I expect that I will rely on my counsel, Ms. Liesha Earle, who will present the evidence and will provide me with advice when necessary. All counsel participating in the Inquest should communicate with me through Inquest counsel, Ms. Earle.

8 This is the procedure I have been following in respect to communications that has came in from parties and non-parties. It is also expected that at the inquest proper, all go through inquest counsel unless I am presiding or meeting with all counsel and inquest counsel.

9 In an October 02, 2024, ruling, I granted standing to the following entities and parties: [4]

i Ministry of the Solicitor General (SOLGEN);

ii. Refugee Law Office;

iii. Canadian Council for Refugees;

iv. Tracking (In)Justice.

10 CBSA counsel from the Department of Justice, National litigation section, engaged with the inquest team on the issue of the scope, and that was addressed in paragraphs 86 to 90 of my ruling. [5]

11 In inquest proceedings if an organization may be the recipient of recommendations from the inquest, or if the organization's reputation may be exposed to criticism, it may be granted standing.

12 Because the inquest team view CBSA as an important stakeholder in this inquest, its counsel was provided with an opportunity to apply for standing or make any motions in respect to scope by October 15, 2024.

13 On October 17, 2024, CBSA counsel advised the inquest counsel by way of letter "The Minister of Public Safety and Emergency Preparedness will not be seeking standing with respect to the above stated Inquest."

14 It is possible that the jury may make recommendations in respect to CBSA and as well, for the purpose of this inquest one or more CBSA witnesses may be required to provide evidence to the jury to assist it in its fact-finding mission. This in turn means that as this inquest makes its way to its formal opening, CBSA will be kept apprised of any developments that affects its interest through its counsel.

15 Further, in respect to the family of Mr. Gahungu, I wrote at paragraph 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." [6]

16 In the likely event that the inquest team receive a standing application from the family, inquest counsel will work with counsel for the other parties to this dealt with expeditiously.

III INQUEST BRIEF AND TIMING OF THE APPLICATIONS TO AMEND SCOPE-FACTUAL UNDERPINNINGS

17 An abbreviated chronology of the developments in this case in September and October 2024 follows including periods during this period in which the inquest team were otherwise engaged with other SOLGEN matters.

18 On September 4, 2024, the Pre-Inquest Meeting took place in Gahungu.

19 The parties in Gahungu submitted their applications for standing between September 12, 2024 and September 19, 2024.

20 On September 23 to 24, 2024, this Presiding Officer presided over the Inquest into the death of O'Neil Singh Ramnath, another death in custody case emanating from the TEDC. [7]

21 On September 26, 2024, inquest counsel wrote to SOLGEN counsel at my direction stating that "The Presiding Officer has asked for the complete policy document as it relates to the accommodation of inmate's need for interpretation." There were SOLGEN documents which spoke to this issue but they were not in Gahungu's file.

22 On October 2, 2024, a comprehensive scope and standing ruling was released for this inquest.

23 On October 3, 2024, inquest counsel wrote to CBSA counsel at my direction stating:

> I wanted to make sure you knew that you can bring a motion to amend the scope without applying for standing if you wish. However, if the CBSA also wishes to apply for standing as well, the Presiding Officer wants the applications in the appropriate format and served on all the parties.
>
> The motions were due by September 16. The Presiding Officer has granted CBSA an extension to file until October 15, 2024 at 5:00 pm to file one or both applications.
>
> (Emphasis added).

24 Then this inquest team comprising of the Presiding Officer, Inquest Counsel and Senior Policy Advisor sat on the Inquest into the Death of Abdurazak Mussa from Monday, October 7, 2024 to Friday October 11, 2024, inclusive of receiving a last-minute expert report and CV on October 04, 2024. [8] The jury came back with its verdict and recommendations on October 11, 2024 in relation to the TEDC and SOLGEN. [9]

25 The above paragraph meant that the inquest team was focused on another matter between October 4 to 11, 2024. There was the long Thanksgiving weekend from October 12 to 14, 2024. The team was back to work on Gahungu on October 15, 2024.

26 In a conversation with counsel for RLO on October 18, 2024, Inquest Counsel was asked about adding institutional racism to scope and counsel for RLO indicated that they would wait to review this once they received the inquest brief. Inquest Counsel advised me that this application might be forthcoming.

27 On October 20, 2024, Inquest counsel wrote to the parties pursuant to my oral directions indicating that the Presiding Officer was requesting written submissions regarding expanding scope to include an examination of institutional racism as it intersected with scope:

> Hello All
>
> It has been brought to our attention that the issue of institutional racism as it intersects with scope may be an issue for the jury to consider. For your ease, here is the scope reproduced:

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.

The Presiding Officer has asked for party submissions on this issue of institutional racism as it intersects with scope in one week after the brief is released to the parties. It is anticipated that you will receive the brief on or before October 23, 2024, so the submissions are due by 4 pm on October 30, 2024.

If you have any questions, please get in touch with me as soon as possible.

28 I did another review of the inquest brief on October 21, 2024 to ascertain which documents contained Mr. Gahungu's demographic information including his date of birth, race, colour, place of origin, ethnic origin, disability, creed, marital status, age and gender. Upon a review of the Brief, I could not find one standalone document with this information which would be important to the ascertainment of his identity.

29 I directed the inquest investigator to request the following documents from SOLGEN:

1) Mr. Gahungu CLIENT PROFILE which contained his vital information and followed his movements at TEDC;

2) His OTIS Unit Notification Card;

3) Admission Checklist.

30 I was also advised that the relevant Institutional Services Policy and Procedures Manual was incomplete.

31 Also missing from the inquest brief were redacted policies in respect to Correctional Services. I understand that SOLGEN counsel provided redacted documents to inquest investigator on October 22, 2024, and October 29, 2024, some of which were included in the brief and some of which will be included in the exhibit binder.

32 On or just prior to October 23, 2024, the parties received the inquest brief. I so directed on or about October 20, 2024.

33 On October 30, 2024, the parties received the material from the joint moving parties RLO/CCR as per my directions of October 20, 2024.

34 I also granted Solicitor General a due date of November 4, 2024, to respond once RLO filed their application on October 30, 2024.

35 On November 01, 2024, a preliminary motion to dismiss summarily the RLO/CCR application, to include institutional racism as this intersected with the scope, was received from SOLGEN.

36 On November 01, 2024, RLO/CCR presented brief submissions as set out in the next section.

37 On November 02, 2024, in respect to communications from inquest counsel I made the following directions:

> For the request to dismiss summarily, those submissions are due on Monday November 4, 2024, by 12:00 p.m. The Presiding Officer will release a ruling later the same day.
>
> If the request to summarily dismiss is not granted, then the Ministry of the Solicitor General and CBSA have up to November 6th, 2024, by 4:00 p.m. to respond to RLO / CCR motion to expand scope.

38 On November 03, 2024, CBSA asked to make submissions on this preliminary application to dismiss. On the same day, I orally denied that request; Inquest Counsel advised CBSA and all of the parties of this decision, also on the same day.

39 I set out the relevant time periods from September to October as it will determine whether there was really any delay on the part of RLO/CCR that would inform the preliminary motion to dismiss summarily its October 30, 2024, application to amend the scope.

IV PRELIMINARY ISSUE ON TIMELINESS OF RLO /CCR MOTION TO AMEND SCOPE

Solicitor General submissions on timeliness and summary dismissal

40 Counsel for the Solicitor General submits that the Refugee Law Office ("RLO") and the Canadian Council for Refugees ("CCR") motion to expand the scope to include institutional racism should be dismissed summarily as out of time and contrary to the Coroner's Rules of Procedure (2014), Rules 7.2, 7.5 and 7.7. The Ministry requests that the Presiding Officer return RLO's motion to it for amendment under Rule 7.7(iii) and that the Presiding Officer determine the Form 4 motion in accordance with the factors set out under Rule 7.7 before requesting that the Ministry respond.

41 Counsel for the Solicitor General submits that Rule 7.2 of the Coroner's Rules of Procedure for Inquests (2014) requires Parties to serve notices of motions and motion records by the deadlines set by the Coroner. The Commentary to Rule 7.2 explains that motion deadlines are established in order to ensure the efficient and timely disposition of issues prior to the empanelment of the jury, so as to facilitate the orderly unfolding of evidence to the jury, and to avoid unnecessary interruptions and delays.

42 Counsel for the Solicitor General submits that a notice of motion served after a deadline is subject to Rule 7.5 and must be accompanied by Form 4.

43 Counsel for the Solicitor General says that the Presiding Officer set the date of September 16, 2024, as the deadline for serving any motions. RLO was well aware of the deadline and failed to comply with it. Moreover, its motion was not accompanied by Form 4 contrary to the Corner's Rule 7.5 which provides:

> Any notice of motion served after a deadline must be accompanied by an application in Form 4 — Application for the Hearing of a Motion After a Deadline, unless the Coroner has dispensed with the requirement. The Form 3 motion will not be heard until after the Coroner has made a ruling on the
>
> Form 4 application.
>
> [emphasis added]

44 Counsel for the Solicitor General referred to the commentary to Rule 7.5 which reads as follows:

> Rule 7.5 is designed to assess any late motion, to ensure that adequate grounds are provided and that hearing the late motion is in the interests of the inquest and not intended for instance, to serve collateral purposes or to create unnecessary delay.

> ... Inquests have been significantly delayed by motions raised after a deadline, where the applicant could reasonably have served the materials at an earlier date.
>
> Avoidable delays detract from the administration of justice and also add substantial costs to public and private purses. Furthermore, this Rule is intended to avoid a reasonable apprehension by members of the public that the moving party is abusing the process by means of tactical procedural delay, or attempts to redirect public focus away from the fulfilment of the statutory purpose of the inquest and towards a matter which is in the private interest of the party, but collateral to the inquest and the public interest.

45 Counsel for the Solicitor General submits that RLO has been aware of the deadline set by the Presiding Officer for filing its motion to amend the scope since September 4, 2024. RLO has failed to comply with the Presiding Officer's deadlines contrary to Rule 7.2 and has also failed to include the required Form 4 contrary to Rule 7.5.

46 Counsel for the Solicitor General submits that RLO's motion should be returned to it under Rule 7.7 as not in the required form. Following this, if and when RLO submits a Form 4, the Presiding Officer will need to determine RLO's Form 4 application taking into account the factors set out in the Commentary to Rule 7.7 including whether the matter would have been reasonably foreseeable by competent and adequately prepared counsel prior to the motion deadline, and the prejudice to the inquest due to the delays created by hearing the motion.

47 Counsel for the Solicitor General reminds me that the Coroner's Rules are intended to ensure that all inquest proceedings are dealt with fairly and efficiently in a manner that achieves simplicity in procedure, fairness in administration and the prevention of unjustifiable expense and delay. RLO's failure to follow deadlines set by the Presiding Office and to follow the Coroner's Rules undermines the fairness of this inquest and is inefficient. Moreover, it is an invitation to ignore the Coroner's Rules and may undermine the public's confidence in the proceeding. In its Commentary on "Compliance with the Rules", the Coroner's Rules state that:

> These Rules are in place to assist the Coroner in developing more effective inquest management practices and to encourage and require parties to conduct themselves in a disciplined and focused manner. In order to maintain public confidence in the inquest process, compliance with these Rules should not be dispensed with unless there are exceptional circumstances (emphasis added).

48 Counsel for the Solicitor General submits that this case presents no exceptional circumstances to justify a departure from the Coroner's Rules. Counsel submits that the Presiding Officer set a clear motion deadline and the RLO failed to meet it. Following that counsel for the Solicitor General submits that, the RLO failed to comply with the Coroner's Rules when it sought to file a motion after the deadline.

Refugee Law Office ("RLO") and the Canadian Council for Refugees ("CCR") responding submissions on timeliness

49 Counsel for the RLO and the CCR responded asking that formal compliance of the Coroner's Rules of Procedure for Inquests CCROP in particular Rules 7.2, 7.5 and 7.7. be waived as and to the extent required pursuant to rule 7.9 of the Rules.

50 Counsel for the RLO and the CCR submitted that the Presiding Officer set a deadline of September 13, 2024, for applications for standing and September 16, 2024, for motions to amend scope.

51 Counsel for the RLO and the CCR says that CCR and RLO submitted their standing application within the timeline set by the Presiding Officer, and were granted standing on October 2, 2024. The deadline for motions to amend scope had already passed. The RLO and CCR had not yet received the Inquest Brief.

52 On October 18, 2024, counsel for the RLO contacted the office of the Chief Coroner to seek information about when they would receive the brief and whether and how the issue of institutional racism would be considered during the inquest. This information request was brought to the attention of Inquest Counsel who in turn communicated it to the Presiding Officer.

53 On October 20, the Presiding Officer directed Inquest Counsel to requestwritten submissions on the intersection of institutional racism and the scope of the inquest, setting a deadline for submissions on October 30, 2024. This was communicated to the parties with standing by way of email.

54 The RLO and CCR received the Inquest Brief two days later, on October 22, 2024. After review of the brief, they determined that the scope of the inquest should be expanded to take full account of the numerous ways in which institutional racism affected the circumstances surrounding and leading up to Mr. Gahungu's death, in order to ensure that the jury was well placed to make the full range of necessary recommendations to prevent future deaths.

55 Counsel for the RLO and the CCR submitted that the RLO and CCR prepared and submitted their detailed motion within the timeline set by the presiding officer.

56 Counsel for the RLO and the CCR submitted that the RLO and CCR acknowledge that their motion was filed after the September 16, 2024, date originally set by the Presiding Officer for motions to amend scope. However, they maintain that they could not reasonably have been expected to provide them earlier, as they logically required first that the Presiding Officer grant them standing, and second that they receive the Inquest Brief. Further, they maintain that they complied with the deadline set by the presiding Officer for submissions on this issue.

57 Counsel for the RLO and the CCR submitted that taking into account the critical importance of the issue raised in their motion, the RLO and CCR request an order abridging the time pursuant to Rule 7.9 of the Coroner's Rules of Procedure (2014).

Reply

58 Counsel for the Solicitor General filed reply submissions in response to the submissions of the RLO and the CCR.

V. RULING ON PRELIMINARY ISSUE

59 The *Coroners Act* provides that:

> 50 (1) A coroner may make such orders or give such directions at an inquest as the coroner considers proper to prevent abuse of its processes. [10]

60 Section 3.2(2) of the Chief Coroners Rules of Procedure (CCROP) provides as follows:

> (2) Hearings in the absence of the jury shall take place in a format and according to a timetable as determined by the Coroner to be appropriate given the nature and complexity of the subject matter of the hearing. For greater clarity, a hearing may be conducted in writing, by teleconference, by videoconference, by an oral hearing in court or equivalent setting, or by a combination of these forms or formats as directed by the Coroner.

61 Section 7.1(1) of the CCROP provides as follows:

> 7.1(1) A motion may be made by a person with standing. With the exception of an application for standing, leave of the Coroner is required before any other party may initiate a motion [Emphasis added].

62 In *Mamakwa, Re*2022 CarswellOnt 19821, Presiding Officer Dr. David Cameron wrote:

> 41 Inquests are unique legal proceedings. Unlike a civil or criminal trial, an inquest does not determine rights or liabilities. Rather, it is an inquiry that leads to findings of fact regarding discrete verdict questions and possible recommendations. Inquests are non-adversarial, and juries are not permitted to assign blame or make findings of legal responsibility. Inquest verdicts and recommendations are directed at public safety and do not affect parties the same way as verdicts in criminal and civil trials.

> 42 Evidence at an inquest is rarely restricted to the simple facts surrounding a person's death. Juries often learn about systems, processes and environments that are likely new to them. Their recommendations may be aimed at changing those systems, processes and environments. Therefore, evidence must provide to the jury an understanding of the overall environment and the systems and processes in place and how they work.
>
> . . .
>
> 44 Most importantly, an inquest is not purely a retrospective exercise. Inquests look back at the circumstances of a death primarily to determine what lessons can be learned to prevent similar tragedies from happening again. The death this inquest is aiming to prevent is not Mr. Mamakwa's or Mr. McKay's, but rather someone else's who is alive today.

63 In *Stanford v. Regional Coroner Eastern Ontario*(1989), 38 Admin. L.R. 141 (Ont. Div. Ct.), Justice Campbell, writing for the court, said at 166:

> 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.

64 In *Doe v. Baker*2018 CarswellOnt 17842, 2018 ONSC 6240, Justice Flynn wrote in the context of an inquest where there were procedural issues to be determined:

> 33 There is a high level of public interest in this matter. The public has a right to scrutinize and comment upon the administration of justice in this coroner's inquest. That can only be effectively accomplished in the bright light of day: there is no better disinfectant that bright sunlight.
>
> 34 Justice must be done and patently be seen to be done.
>
> 35 The coroner has nothing to hide to get to the jury's answers to the questions.

65 I reiterate that is not the function of an inquest jury to make findings of fault or to arrive at conclusions of law. [11] It is the jury's function to closely scrutinize the circumstances surrounding this immigration detainee's death in custody at the TEDC to arrive at findings of fact for a mandatory verdict pursuant to s. 31(1), and if it chose to do so make recommendations pursuant to s. 31(3) of the *Coroners Act*.

66 This case, no doubt is complicated because of jurisdictional issues between two levels of governments, Ontario (Provincial) and Canada (Federal). An added complication is the interplay of the *Coroners Act* and the *IRPA*. Justice Sossin held in S.K.S. that "[51] Jurisdiction is a question of law." [12]

67 Presiding Officers in Coroners Court, whether they be lawyers, retired judges, or doctors, are required to independent, impartial, fair and to ensure procedural fairness and natural justice in our decision-making process. We are also required to ensure that processes under the *Coroners Act and Chief Coroner's Rules of Procedure for Inquests, 2014* are followed. For example, potential parties and parties are required to complete the Form 2 prior to accessing the inquest brief.

68 In *S.K.S*, Justice Sossin wrote:

> [77] This case law establishes that there are circumstances where a genuine lis is relevant and that the Minister may be entitled to make submissions on the issue. However, a distinction must be drawn between private family law disputes and child protection cases, where several of the parties are state actors and the proceedings are carefully supervised by the courts. I would make the point that, given those circumstances, concerns over a genuine lis will rarely arise. However, there

> may be circumstances where information available to the Minister through the immigration file or the length or nature of the child protection proceedings raises legitimate concerns about a genuine lis. [13]

69 The approach we are taking in this inquest is a collaborative and non-adversarial approach. [14] The decision-making process here is collaborative and non-adversarial. In inquest proceedings there is no true *lis inter partes*. [15]

70 In this case there is no doubt that scope paragraph 6 of Gahungu would engage the interest of the Canadian Border Services Agency (CBSA) under the Ministry of Public Safety and Emergency Preparedness, represented by counsel, Jocelyn Espejo-Clarke and Nicholas Dodokin.

71 As Justice Sossin notes:

> [85] I do not accept the argument advanced by the CCAS and OCL that the Minister's submission must be limited to facts about the removal proceedings. Nor do I accept, however, that the Minister's opportunity to make submissions is to be unfettered. Rather, I agree with the appellants that the Minister's submissions must be limited to his area of legitimate concern, in light of his duties under the IRPA.

72 As a matter of procedural fairness, I have, however, directed inquest counsel to keep counsel for the Department of Justice apprised of the developments in this case, notwithstanding CBSA's decision to not seek standing here. As indicated above, Inquest Counsel has notified the CBSA of my directions at every stage.

73 I have directed that the inquest brief be provided to Jocelyn Espejo-Clarke and Nicholas Dodokin upon the receipt of their Form 2, received on November 4, 2024. I understand that the Notice of Motion, Document Brief and case law from RLO and CCR has been provided to CBSA counsel, Jocelyn Espejo-Clarke and Nicholas Dodokin.

74 I have further directed that inquest counsel notify Jocelyn Espejo-Clarke and Nicholas Dodokin that they can file submissions on the substantive motion on areas within the Federal sphere that the issue of institutional racism may affect if it is added to the scope.

75 As indicated earlier, I declined to grant CBSA permission to respond to the preliminary motion filed by SOLGEN. It has no standing to do so. I have granted it limited standing in my discretion to reply to the substantive application by RLO and the CCR.

76 As indicated earlier as well CBSAs role in this inquest is important and would meet the substantial interest test and/or the public law test for standing. I am unclear as to why it did not seek standing but that was its decision to make.

. . . . .

:

77 I have considered the submissions of counsel for the Solicitor General and counsel for the Refugee Law Office and the Canadian Council for Refugees. I will examine the preliminary motion of the Solicitor General in the context of what it requested, that the application be dismissed summarily.

Summary Dismissals

78 In this case, the preliminary objection/motion is being heard in writing and this ruling sets out why summary dismissal is not available on the facts and law here.

79 As it relates to summary dismissals the Supreme Court of Canada decision in *R. v. Haevischer* 2023 SCC 11, ruled that in requests for summary dismissals the following consideration should apply:

i. Para 2: "It should also discourage decision makers from determining the merits of the underlying application without all the evidence, as this risks unfairness for an efficiency which may be more apparent than real.

ii. Para 3 — As a result, an application ... should only be summarily dismissed if the application is "manifestly frivolous".

iii. Judges perform a gatekeeping function, and the goal is that only those applications that should be caught by the summary dismissal power are in fact summarily dismissed. Trial judges should therefore err on the side of caution when asked to summarily dismiss an application....

iv. Para 66: "I conclude that the appropriate standard for summary dismissal is whether the underlying application is manifestly frivolous. This standard draws on the case law concerning frivolous applications, as advanced by some parties and interveners, including Mr. Johnston, Mr. Haevischer, the Independent Criminal Defence Advocacy Society, the Canadian Civil Liberties Association, and the Trial Lawyers Association of British Columbia. However, it also requires that the flaws in the application are manifestly apparent."

v. Para 69 — Court explained why manifest added: "[69] However, I add the word "manifestly" to capture the idea that the frivolous nature of the application should be obvious. "Manifestly" is defined as "as is manifest; evidently, unmistakably, openly", and "manifest" is defined as "[c]learly revealed to the eye, mind, or judgement; open to view or comprehension; obvious" (Oxford English Dictionary (online)). Just like the civil standard for striking a claim requires that it be "plain and obvious" that the claim discloses no reasonable cause of action (or, in French, "évident et manifeste"), the addition of the word "manifestly" adds another layer to the "frivolous" standard and helpfully indicates that a summary dismissal motion should be based on that which is clearly revealed."

vi. Para 71: Thus, the "manifestly frivolous" standard, which connotes the obvious necessity of failure, is the appropriate threshold for the summary dismissal of applications made in the criminal law context. If the frivolous nature of the application is not manifest or obvious on the face of the record, then the application should not be summarily dismissed and should instead be addressed on its merits.

80 There are three issues to be considered here:

i. The timeliness of the application to include institutional racism in scope;

ii. Whether there is some evidence to support the application;

a. How does all of this apply to the proposed amendment of the scope? Is the Application by RLO/CCR meritorious?

iii. Prejudice to another party.

Timeliness of the Application to amend the scope to include institutional racism

81 The procedural history was recited in great detail. To the extent that the Chief Coroner's Rules of Procedure for Inquests, 2014 are concerned "A motion may be made by a person with standing."

82 Standing was granted to the parties here on October 2, 2024.

83 The evidence to support an application can come from the Inquest Brief. That Brief was substantially disclosed on October 22, 2024.

84 In September 2024, the brief did not contain important documents from TEDC relative to Mr. Gahungu including:

i. Suicide prevention admission checklist, dated April 2, 2015;

ii. Client Profile from Offender Tracking Information System (OTIS). The OTIS Client Profile contains spots to populate in respect to Mr. Gahungu citizenship, date of birth, place of birth, race, primary language, secondary language, race, skin colour, height, mental health, why he was in the institution etc. [16]

iii. OTIS Unit Notification Card. [17] This document contained significant demographic information on Mr. Gahungu and also important information in respect to his mental state including previous suicide watch(es) and where he was housed at the TEDC;

iv. Unit Location History. This document indicates he was in protective custody from January 18, 2016 to his death on March 7, 2016. [18]

85 The inquest brief also did not contain significant documentation from the Federal government including:

i. Psychiatric history, which the Federal government disclosed in October 2024.

86 Prior to the documents referred to above being disclosed by SOLGEN there was no standalone document which provided the necessary demographic data that is significant to this inquest.

87 The material from SOLGEN is essential to accurately determine what happened and what the reasons for a decision or action were. In my role as Presiding Officer I found that the documents listed above are essential to this inquest and that the redacted documents be produced as part of the inquest brief to the parties with standing.

88 I directed that the Brief be disclosed by no later than October 23, 2024 so that RLO/CCR can assess the evidence to determine whether it is appropriate to raise the issue of institutional racism.

89 RLO/CCR complied with my direction to file their application by October 30, 2024.

90 I therefore find that in accordance with the CCROP's Rules, and as a matter of fairness, the joint applicants have set out the material facts that they rely upon in the motion to expand the scope to include institutional racism, the scope of their evidence is in a document package with the caselaw relied upon, and they did so in a timely manner.

Whether there is some evidence to support the application of Institutional Racism

91 Ministry's employees, Correctional Officers, Nurses, Doctors, Janitors, Cooks, Librarians, program and record staff, are required to work in compliance with the *Ministry of Correctional Services Act*, RSO 1990, c M.22, policies and procedures, including but not limited to the Institutional Services Policy and Procedures Manual (ISPPM), the Statement of Ethical Principles, the TEDC Standing Orders and the Ontario Correctional Services Code of Conduct and Professionalism (COCAP). These employees are also governed by a myriad of other legislation including *Mental Health Act*, RSO 1990, c M.7; *Human Rights Code*, RSO 1990, c H.19; *Criminal Code*, RSC 1985, c C-46 and the *Canadian Charter of Rights and Freedoms*. Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982.

92 The various actors at TEDC have different roles as it relates to the oversight, operations, and administration of jail to ensure public safety and the care, custody and supervision of individuals incarcerated.

93 Staff at various levels of SOLGEN detention facilities, jails and correctional institutions are exposed to various training including human rights training, Anti-Racism/Anti-Black Racism training, Indigenous training, gender responsive training, mental health training, suicide awareness training, first aid training, implicit bias testing, use of force training and other training depending on their rank and specialization. Some of the training above are the result of inquest recommendations, other are as a result of Human Rights Tribunal decisions.

94 For systemic discrimination and/or institutional racism cases, the alleged incidents of discrimination must have some connection in terms of time, character, theme, ground and social area. In cases where systemic discrimination is alleged, the

commonalities may be found in alleged patterns of conduct, policies, practices, organizational culture or attitudes that may not be discriminatory on their face. [19] It is also true that most cases including that involving institutional racism are decided on the basis of circumstantial evidence because direct evidence rarely exist in race-based cases. [20] It is facts that drives these cases not speculation or conjecture. [21]

95 Past occurrences of discrimination may justifiably raise concerns about the continued existence of discrimination at TEDC. However, they do not in themselves prove that systemic discrimination or institutional racism exists. The TEDC has had longstanding judicial decisions that spoke to institutional racism that occurred there for decades. [22]

96 In *McKinnon v. Ontario (Ministry of Correctional Services)* 2007 HRTO 4, SOLGEN and TEDC was found to have failed to implement Human Rights Tribunal of Ontario orders in good faith, leaving the applicant — an Aboriginal jail guard who successfully complained about institutional racism — to be further victimized by racism and reprisals for having complained in the first place.

97 In *Ontario Human Rights Commission v. Ontario (Correctional Services)*2002 CanLII 46519ON HRT, the adjudicator, Professor Hubbard wrote:

> Beginning with his human rights complaint of November 29, 1988 (the first of many), the complainant, Michael McKinnon, a Canadian of Aboriginal descent, has consistently striven to rid his workplace of the racist behaviour with which, some ten years later, **this Board of Inquiry found the Toronto East Detention Centre to have been "redolent ... particularly towards black employees and inmates** - which was a matter of considerable concern to the complainant as well, as is made plain by his many documented efforts to have such conduct redressed." (*McKinnon v. Ontario (Ministry of Correctional Services) (No. 3)* (1998), 1998 CanLII 29849 (ON HRT), 32 C.H.R.R. D/1, at D/60, para. 294.) What must now be decided is whether his struggles for that particular outcome have thus far been in vain and, if so, what is to be done [Emphasis added].

98 Black persons are also overrepresented in Canada's correctional system. [23] Anti-black racism in the criminal justice system has been the subject of judicial notice by several courts and it "is beyond reasonable dispute" that the criminal justice institutions do not treat racialized groups equally. [24] As stated in *R. v. Parks*, racism, and in particular anti-black racism "is a part of our community's psyche" [25] and "exists within the interstices of our institutions," including the criminal justice system, which reflects and perpetuates negative racial stereotypes. [26]

99 The Supreme Court spoke in *Le* of taking judicial notice: "Evidence about race relations relevant to the detention analysis, like all evidence of social context, can be derived from "social fact" or the taking of judicial notice. The information necessary to inform the reasonable person can take the form of reliable research and reports that are not the subject of reasonable dispute; and, rarely, direct, testimonial evidence." [27] The Court also stated in *Le* that "we do not hesitate to find that ... we have arrived at a place where the research now shows disproportionate policing of racialized and low-income communities..." [28]

100 The jurisprudence is also clear that justice system participants must acknowledge and address systemic racial discrimination against Black people wherever it presents itself in the criminal justice and correctional systems. In *R v. Morris* 2021 ONCA 680, a five-member panel of the Ontario Court of Appeal held at para. 1:

> It is beyond doubt that anti-Black racism, including both overt and systemic anti-Black racism, has been, and continues to be, a reality in Canadian society, and in particular in the Greater Toronto Area. That reality is reflected in many social institutions, most notably the criminal justice system. It is equally clear that anti-Black racism can have a profound and insidious impact on those who must endure it on a daily basis: see *R. v. Le*, 2019 SCC 34, [2019] 2 S.C.R. 692, at paras. 89-97; *R. v. Theriault*, 2021 ONCA 517, at para. 212, leave to appeal to S.C.C. requested, 39768 (July 19, 2021); *R. v. Parks* (1993), 15 O.R. (3d) 324 (C.A.), at p. 342, leave to appeal refused, [1993] S.C.C.A. No. 481; see also Ontario Human Rights Commission, A Collective Impact: Interim report on the inquiry into racial profiling and racial discrimination of

> Black persons by the Toronto Police Service (Toronto: Government of Ontario, 2018), at p. 19; Ontario Association of Children's Aid Societies, One Vision One Voice: Changing the Child Welfare System for African Canadians (Toronto: Ontario Association of Children's Aid Societies, 2016), at p. 29. Anti-Black racism must be acknowledged, confronted, mitigated and, ultimately, erased.

101 The vulnerabilities of immigration detainees on immigration holds at the TEDC, such as Mr. Gahungu, must be linked to race, colour, place of origin and other intersectional factors which put them at risk of discrimination in the context of the treatment to which they are subjected in the institution, whether it relates to real-time translation in their first language, where they are housed in the institution, or their mental health treatment, or even the predisposition of dangerousness.

How does all of this apply to the proposed amendment of the scope? Is the Application by RLO/CCR meritorious?

102 According to the submissions of the RLO/CCR, Mr. Gahungu, the deceased on whom this inquest is focused, was a national of Burundi. Mr. Gahungu migrated to Canada in 2008 with his family. He was a Black man. He was Hutu. He spoke Kirundi, a national language of Burundi spoken by the Hutu ethnic majority group. He spoke little or no English and was illiterate. He may have spoken some Swahili.

103 Mr. Gahungu was not a Canadian Citizen nor permanent resident and was, as stated earlier, on an immigration hold awaiting deportation.

104 Mr. Gahungu was mentally ill, on medication, housed in restrictive settings and was on suicide watch at least three times whilst in the custody of the state.

105 Counsel for RLO and the CCR wrote in their substantive submissions that:

> 11. On January 14, 2016, Mr. Gahungu, through newly retained counsel at the RLO, brought an emergency motion asking the Federal Court to stay Mr. Gahungu's removal. The Court granted an interim stay of removal valid for 10 days, to enable counsel to bring a full motion to stay removal pending a challenge to the danger opinion authorizing Mr. Gahungu's removal to Burundi.
>
> 12. On March 7, 2016, with removal to Burundi still imminent, Mr. Gahungu took his own life in his cell at TEDC, where he was being held in protective custody pending deportation by the CBSA.
>
> 13. By the time of his death, Mr. Gahungu had been in custody for almost 80 months, including over 31 months in presentence custody, 38 months completing his sentence, and the last 11 months on immigration hold pending deportation. During this time, he spent 71 days in solitary confinement and 123 days in protective custody. He had been diagnosed with schizophrenia and had been identified as a person at risk of suicide on multiple occasions.
>
> 14. Notwithstanding his documented diagnoses of a major mental health illnesses, including schizophrenia, in January 2016 a doctor employed by CBSA wrote that Mr. Gahungu was fit to fly.
>
> 15. It is indisputable that anti-Black racism — be it overt discrimination or implicit bias - pervades many of the structures of Canadian society, including the correctional, mental health and immigration enforcement institutions with which Mr. Gahungu interacted in the years and months leading up to his death.
>
> 16. Both direct and systemic racial discrimination within the criminal justice system, as well as the other systems that funnel Black people into the criminal justice system, has resulted in the mass criminalization of Black communities. Black people experience disparities in pre-trial detention, sentencing, and release conditions. Indeed, in 2012-2013 it was found that Black Canadians were among the fastest growing sub-populations in federal correction. Over the last decade, the number of federally incarcerated Black inmates was found to have increased by 80%. [Footnotes omitted].

106 The following additional facts from the standing ruling is included here for completeness.

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

108 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.

109 On January 14, 2016, a Fitness to Fly was prepared for Mr. Melkioro 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).

110 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.

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

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

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

114 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.

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

116 In its substantive submissions the RLO and CCR propose to add an additional issue to the statement of scope, namely:

The impact of institutional anti-Black racism on the issues identified in the statement of scope, including access to interpretation and translation, identification and treatment of mental health issues, training on suicidality/mental health,

considerations for flight safety as well as the safety of deportees with mental health issues and the impact of deportation as a potential destabilizer.

117 The proposed addition of institutional racism and anti-Black discrimination, are, as I read it, in relation to the specific events set out in the Notice of Application and as they relate to the six scope paragraphs.

118 In this case there is no doubt that there are intersecting grounds in which Mr. Gahungu was situated based on his race, colour, ethnic origin, mental health disabilities, citizenship, and place of origin.

119 What the jury role will be, if the scope is amended, is to determine how institutional racism aligns with the verdict it must reach and any recommendations it has the discretion to make to SOLGEN, TEDC, CBSA or any other body. The recommendations, if any, will be aimed at preventing further deaths. A jury does not have to make recommendations, but that option is there for them if they chose to.

120 Mr. Gahungu's detention was under the *Immigration and Refugee Protection Act*, and it is unclear how long he would have remained in immigration custody in provincial jail whilst his removal proceedings made its way through the justice system.

121 The recent Supreme Court decision in *Haevischer* paragraphs of which are cited above echoes an important caution that these matters should be examined on their merits unless manifestly frivolous or obvious on its face there is no merit. [29]

122 It follows that there is enough here to show that this application by RLO and the CCR is not manifestly frivolous or obvious on its face there is no merit. It has substantial merit.

Whether there is any prejudice in considering the motion of the RLO and the CCR at this stage

123 It is true, as counsel for SOLGEN submits, that RLO and the CCR submitted significant caselaw. However, most of the caselaw would be familiar to counsel who practice public or administrative or criminal and/or human rights law and who would have to know what the Court of Appeal and Supreme Court of Canada said on consideration of race, culture and the impact of personal, systemic and institutional racism on Black, Brown and Indigenous peoples. [30]

124 That the RLA and CCR submitted social context evidence in a document package to assist the Presiding Officer to contextualize his analysis is not novel. The context in which a death occurs can "corrects for possible systemic biases, stereotypes and assumptions." [31] As the Court of Appeal recognized in *King* systemic disadvantage can be prejudicial since "racist stereotypes lend considerable credence to the risk of propensity-based reasoning." [32]

125 Given the importance of contextual and circumstantial evidence, the caselaw from the higher courts on how Courts and Tribunals must consider of anti-Black racism where it is relevant and material to a proceeding and the consequent inappropriateness of dismissal at the preliminary or summary hearing stage where some evidence exist and the application is not manifestly frivolous, I will consider the written arguments on the issue of systemic / institutional racism and determine in a ruling whether the scope will be amended as requested by the moving parties: RLA and CCR.

126 The Solicitor General can address the likely relevance of institutional racism based on Mr. Gahungu's intersecting identity in its submissions, having regard to the RLA and CCR. submissions, document package and caselaw.

127 There is no prejudice here to SOLGEN's ability to respond and substantively to the motion material filed by RLO and the CCR. The same goes for CBSA, if they chose to accept my oral decision that they have standing to respond substantively to RLO and the CCR application to expand the scope to include institutional racism.

VI. CONCLUSION

128 The preliminary motion by SOLGEN that RLO and the CCR application to expand the scope be summarily dismissed is denied.

129 There was no failure on the part of RLO and CCR to comply with the directions of the Presiding Officer.

130 There was no delay on the part of the joint moving parties. In any event, if there were any delay, I would have exercised my discretion under Rule 7.9 of the *Coroner's Rules of Procedure for Inquests, 2014* and waived the delay to the extent necessary.

131 Solicitor General's request as outlined in paragraph 18 of its submissions for 4 weeks to respond to RLO/CCR's joint application to amend the scope is denied.

132 Counsel for the Solicitor General is directed provide a substantive rather than preliminary response by Wednesday, November 6, 2024 at 4:00 p.m.

133 Given the fact that the RLO/CCR's joint application also deals with country conditions and some other matters within the Federal sphere, I directed Inquest Counsel to provide their submissions to counsel for CBSA and to direct that if they wish limited standing to respond to those submissions, in so far as it affects their clients they can do so by Wednesday, November 6, 2024, at 4:00 p.m.

134 CBSA should also be provided the inquest brief upon their submission of a Form 2. I understand that that has now been received and I expect that the Inquest Brief will be released to counsel on November 4, 2024.

135 The RLO/CCR's joint applicants are granted until November 8, 2024, to provide their reply submissions.

136 I will then make a ruling on the substantive motion by no later than November 18, 2024.

137 If the parties are able to agree on an amended scope then I will simply issue an endorsement reflecting the agreement of the parties with standing.

138 This inquest is on track to proceed on November 25, 2024.

139 I thank the parties for their submissions on this issue.

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>. This agreement has now been extended to September 2025.

3 See, CCROP Guidelines, effective Date: July 1, 2014, Guideline 4 — Communications Among Coroner's Counsel and Parties During the Inquest, section E.

4 Standing and Scope Ruling *re Gahungu*2024 CarswellOnt 14971

5 Ibid.

6 Ibid.

7 *Ramnath, Re*2024 CarswellOnt 14505 and *Ramnath, Re*2024 CarswellOnt 13274

8 See, Ruling on Expert Witness Dr. Marco L.A. Sivilotti *Mussa, Re*2024 CarswellOnt 15172

9 Inquest into the Death of *re Mussa*2024 CarswellOnt 16129

10 Section 50(1) of the *Coroners Act*, RSO 1990, c C.37.

11 31(2) of the *Coroners Act.*

12 See: *Catholic Children's Aid Society of Toronto v. S.K.S.* 2021 ONSC 5813, and on a subsequent appeal to the Ontario Court of Appeal. See: *Catholic Children's Aid Society of Toronto v. S.K.S.* 2022 ONCA 228, per Sossin J. "This appeal (S.K.S.) concerns the interaction between a provincial legislative scheme governing child protection and a federal legislative scheme for removing those without citizenship or immigration status from Canada."

13 *S.K.S.*, para 77.

14 Chief Coroner's Rules of Procedure for Inquests, 2014. ("CCRoP"), Introduction.

15 *Re Evans et al. and Milton et al.* [1979] 97 DLR (3d) 687, 1979 CanLII 1820, 24 O.R. (2d) 181Ont. C.A.. See also. The Honourable Mr. Justice T. David Marshall, Canadian Law of Inquests, 2d ed. (Toronto: Carswell, 1991), p. 99; *Forestell v. Regional Health Authority B.*2014 NBCA 40.

16 This document has a run date of October 24, 2024.

17 This document has a run date of January 15, 2016.

18 This document is not on file: Protective Custody Decision / Review CSD 075-031 (10/04)

19 See, *Metro Taxi Ltd. et al. v. City of Ottawa* 2024 ONSC 2725, para 279. See also, *Québec (Commission des droits de la personne et des droits de la jeunesse) v Bombardier Inc. (Bombardier Aerospace Training Center),*2015 SCC 39, [2015] 2 SCR 789 at para 49; *R v Le* 2019 SCC 34, paras. 90-97; *Peart v. Peel (Regional Municipality) Police Services Board*2006 CarswellOnt 6912, [2006] O.J. No. 4457, 152 A.C.W.S. (3d) 825, 217 O.A.C. 269 (ON CA), at para 94.

20 See *R. v. Spence*, 2005 SCC 71 at paras. 56-58, and *Peart*, *supra*, at para 95-96.

21 See *R. v Villaroman*, 2016 SCC 33 at paras. 23, 32-37.

22 *Ontario (Ministry of Correctional Services) v. McKinnon*2010 CarswellOnt 5123, 2010 ONSC 3896, per Nordheimer J.; *Cybulski v. Ontario (Human Rights Tribunal) 2005*CarswellOnt 7045, per Carnwath J.; *Ontario v. McKinnon*2004 CarswellOnt 5191, [2004] O.J. No. 5051, per Catzman, Rosenberg, Gillese JJ.A.; *Ontario v. McKinnon*2003 CarswellOnt 6167, 51 C.H.R.R. D/440, per C. Campbell J., Dunnet J., Jennings J.; *Ontario v. McKinnon*2003 CarswellOnt 4891, per McRae J.; *Ontario v. McKinnon*2003 CarswellOnt 879, per Lane J.; *Ontario v. Ontario (Human Rights Commission)*2001 CarswellOnt 890, [2001] O.J. No. 1016, 104 A.C.W.S. (3d) 160, 145 O.A.C. 156, per Blair R.S.J., Lang, MacKenzie JJ.

23 See Canada, Department of Justice, Canada's Black Justice Strategy: Framework, by Akwasi Owusu-Bempah & Zilla Jones (Ottawa: Department of Justice, 2023).

24 *R v Theriault*, 2021 ONCA 517 at para 143.

25 *R. v. Parks*[1993] OJ No 2157, 84 CCC (3d) 353 (CA) at para 54.

26 *Parks* , at para 43

27 See *R v Le*, 2019 SCC 34 at para 71.

28 Ibid., para 97.

29 See also, *R. v. Cody*, 2017 SCC 31 at para. 38.

30 *R. v. Morris,*2021 ONCA 680 (ONCA); *R. v. Jackson* 2018 ONSC 2527 (ONSC); *R. v. Le* 2019 SCC 34 (SCC); *R. v. Anderson* 2021 NSCA 62 (NSCA); *R. v. Parks*15 O.R. (3d) 324 (ONCA); *8573123 Canada Inc. (Elias Restaurant) v. Keele Sheppard Plaza Inc.* 2021 ONCA 371 (ONCA).

31 *R. v. King*2022 CarswellOnt 13588, 2022 ONCA 665 (ONCA)

32 Rv. King, at para. 194, citing *R. v. Williams*, [1998] 1 S.C.R. 1128, at para. 58.

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