Inquest into the Death of Sammy Yatim

RULING ON A MOTION TO ADMIT EVIDENCE AND EXPAND SCOPE

Decision of March 29, 2023

by David Cameron, Presiding Officer

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I. Overview

[1] Sammy Yatim was 18 years old when he died from gunshot wounds received during a confrontation with TPS officers on July 27, 2013.

[2] An inquest was called into the death of Mr. Yatim. Inquests are public quasi-judicial hearings, chaired by a Presiding Officer (a coroner or lawyer), with a jury of five tasked with answering specific questions about the death (who died, where, when, what caused the death, and the manner of death) in accordance with section 31(1) of the *Coroners Act*. The jury also may make recommendations to prevent further deaths based on evidence heard at the inquest. Juries are not to make findings of fault or draw conclusions of law. Unlike most other proceedings, inquests are forward-looking, collaborative proceedings held for the benefit of public safety and public transparency.

[3] This inquest was scheduled to begin on Monday, November 14, 2022.

[4] On Sunday, November 13, 2022, a Motion Record from counsel for James Forcillo, a party to the inquest, was delivered via email to inquest counsel and distributed to the other parties. The Notice of Motion was dated November 14, 2022, the same day this inquest was scheduled to begin. Due to the nature of the motion and the time required to respond to it, the inquest had to be postponed until the motion was resolved.

[5] Written responses to the motion were received, and oral arguments were heard on November 23, 2022.

[6] The scope of this inquest, as contained in my Ruling on Standing and Scope dated October 19, 2022, is attached to this decision as Appendix “A”. (“Scope”)

II. Facts

[7] Mr. Yatim was born in Syria and, at the time of his death, had lived in Canada for four years. He had completed high school and had applied to and was accepted into a program in hospital management at George Brown College. He had been living with his father and sister until approximately June of 2013 when he moved into a room in an apartment near Victoria Park Avenue and St. Clair Avenue East in Scarborough.

[8] On the evening of July 26, 2013, Mr. Yatim had been with friends. He left them shortly after 10 p.m. He ended up on a westbound TTC streetcar on Dundas Street, seated near the rear. The streetcar had enough passengers on-board such that most seats were occupied.

[9] When the streetcar was near Grace Street, at approximately 11:57 p.m., Mr. Yatim brandished a knife and threatened passengers. He swung his knife in an arc in front of a passenger's chest. His pants were undone exposing his genitalia. Passengers fled the area and alerted the driver to stop the streetcar and let them out. Passengers exited through both the front and side doors while Mr. Yatim walked slowly behind the passengers towards the front of the streetcar.

[10] The events were recorded by several closed-circuit video cameras on the streetcar. The driver activated a silent alarm, alerting TTC dispatch of an emergency. When this alarm was activated, an audio recording of the situation began.

[11] The driver engaged in conversation briefly with Mr. Yatim, but after a short time got up and left the streetcar, leaving Mr. Yatim on the empty streetcar with both doors open.

[12] Several TPS officers arrived at the scene. Two officers approached with weapons drawn and instructed Mr. Yatim, loudly and directly, to drop the knife but he did not. Instead, he yelled back "no" and that he wasn't afraid of them.

[13] James Forcillo was a TPS officer, who, with his partner, stood near the open front doors of the streetcar with sidearms drawn and pointed at Mr. Yatim. Mr. Forcillo's partner re-holstered her sidearm. Mr. Forcillo continued pointing his at Mr. Yatim and told him that he would shoot if Mr. Yatim stepped forward.

[14] Mr. Yatim did not drop the knife as directed. When Mr. Yatim took a step forward in the streetcar towards the front door, Mr. Forcillo fired at him nine times and killed him.

[15] There were no conducted energy weapons available at the scene before shots were fired; rather, a Sergeant on duty was on their way to the scene with one.

[16] Mr. Yatim had no documented history of mental illness, psychosis, or violence.

[17] Toxicology revealed that Mr. Yatim's blood contained amphetamines, THC, and metabolites of cocaine.

[18] Mr. Forcillo was criminally charged and prosecuted. He was found not guilty in relation to firing the first three shots (which were determined to be fatal shots), but he was found guilty of attempted murder for the subsequent six shots, which were fired while Mr. Yatim was supine and unresponsive on the floor of the streetcar.

[19] During the criminal trial, counsel for Mr. Forcillo sought to lead evidence obtained from Mr. Yatim's cell phone – the same evidence proposed in this motion – to support the theory that Mr. Yatim had engaged in behaviour to bring about his own death through a police officer's use of force. This evidence was ruled inadmissible by the trial judge on the grounds that it was merely speculative, that there was much

better evidence available describing Mr. Yatim's behaviour (the video recordings and eye-witness accounts), and because it was not relevant to Mr. Forcillo's culpability.

III. Scope of the Inquest

[20] The issues that will be explored at the inquest into the death of Mr. Yatim are set out in the Scope of the inquest. The Scope was developed by me after a careful review of the results of the coroner's investigation and consultation with inquest counsel and those parties who were involved in the process at the time. The Scope was provided to all parties. None of the parties had requested any amendments or revisions to the Scope apart from and until the request contained in Mr. Forcillo's Notice of Motion dated November 14, 2022.

[21] The Scope describes the evidentiary boundary of the inquest. It is this boundary that keeps the inquest focused and effective. Having a clearly defined scope allows parties to properly prepare for the inquest and know what to expect. Parties can focus their work on effective witness examinations and identifying possible recommendations for the jury.

[22] An inquest's scope includes an inquiry into the circumstances of a death to provide the jury with an evidentiary foundation upon which they can base their answers to the five questions set out in section 31(1) of the *Coroners Act*.

[23] An inquest's scope may also include issues to be explored for the purpose of providing the jury with information and insight such that the jury may make recommendations aimed at the prevention of further deaths based on the evidence heard, should the jury decide to make such recommendations.

[24] All matters within scope must arise from the circumstances of the death and be material to the statutory purpose of an inquest as outlined in section 31 of the *Coroners Act.*

[25] Parties who might have been potentially interested in this inquest were invited to the pre-inquest meeting. I invited all attendees to provide their thoughts on the proposed scope at or after the meeting. I sought their ideas and viewpoints to ensure that I was defining the scope from an informed perspective.

[26] The materials that further assisted me in identifying areas of exploration were the results of the investigation of Mr. Yatim's death by the Office of the Chief Coroner, the Special Investigations Unit investigation file, the evidence contained in the inquest brief, and the evidence and outcome of the criminal trial of Mr. Forcillo.

[27] Ultimately, I determined that the factual circumstances of Mr. Yatim's death allow for a careful examination of how to optimize police officer recruitment, monitoring of police officers' execution of their duties, police officer decision-making, and available supports for those decision-making skills. To my knowledge, these are areas that

have not been fully explored in previous inquests. As such, they were included as key components of the Scope of this inquest.

[28] When developing the Scope, I also wanted to avoid redundancy. Repeating evidence about issues heard or determined at the related criminal trial, other inquests and inquiries with potentially resultant duplicate recommendations was something I wanted to avoid so that the jury could focus on important and unique safety issues.

[29] By way of example, there have been numerous, well-resourced, and carefully crafted studies and reports that have been released since the death of Mr. Yatim.[1] There have also been inquests into several deaths resulting from police interaction with people in crisis.[2] These delivered well-supported recommendations specifically on the need for Ontario to modify its use-of-force model to incorporate de-escalation as a key component. For the most part, police services in Ontario have endorsed these recommendations. Hence, a full re-examination of this issue at this inquest will not be an effective use of the inquest process.

IV. Issue to be Determined in this Ruling

[30] The issues that must be determined on this motion are as follows:

a) Should I allow evidence to be tendered relating to:

i. Mr. Yatim's state of mind generally for the purposes of better understanding the circumstances of his death and to inform the jury of important facts when determining manner of death?

ii. Redacted cell phone information from January 2013 to July 2013 to inform the jury as to Mr. Yatim's state of mind at the time of his death?

iii. Expert opinion evidence regarding Mr. Yatim's behaviour and the phenomenon of "suicide-by-cop" and related police training on such matters?

b) A corollary issue to be resolved is whether I should amend the existing Scope should I permit the admission of any of the proposed evidence.

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[1] "Police Encounters with People in Crisis", 2014, the Honourable Frank Iacobucci. "A Matter of Life and Death", 2016 Ontario Ombudsman Paul Dube. "Report of the Independent Police Oversight Review", 2017, the Honourable Michael H. Tulloch. "Police Encounters with People in Crisis and Use of Force", 2017, Gerry McNeilly, Independent Police Review Director.

[2] Verdict of the Coroner's Inquest into the deaths of Reyal Jardine-Douglas, Sylvia Klibingaitis, Michael Eligon, Jr. October 2013 -February 2014. This inquest began shortly after Mr. Yatim's death. In 2022, inquests with de-escalation recommendations came from the individual inquests into the deaths of Quin MacDougall, Marc Ekamba, Babak Saidi, and Matthew Mahoney. Between 2014 and 2021, there were 9 inquests recommending de-escalation training for police officers.

V. Positions of the Parties

[31] I received written submissions on this motion. I heard further oral arguments on November 23, 2022. The TPS Officers and the TTC took no position on the motion.

[32] I have heard and carefully considered all the submissions made by all parties to this motion, be they in writing or made orally. What follows is a summary of those positions. This is not an attempt to repeat those submissions in a verbatim format.

(a) Moving Party (James Forcillo)

[33] The moving party seeks permission to adduce evidence of Mr. Yatim's web-browsing history and text communications for approximately seven months prior to the shooting. A printed version of this information in redacted form was contained in the Motion Record.

[34] This information comprises data downloaded from Mr. Yatim's cell phone and is heavily redacted. The dates of the information run from January 7 to July 21, 2013, and includes:

(a) Web searches for "how to commit suicide without feeling any pain" from January 2013;

(b) Searches for employment, how to make money, and application processes for welfare mostly in May, June, and July 2013;

(c) Blackberry Messenger chats from June and July 2013 with friends discussing discord with his father, being kicked out of his father's house, the need to find a job and place to live, that he had applied for welfare and found a place to live; and,

(d) Google searches about fighting instincts on July 21, 2013.

[35] The purpose for which the moving party seeks the admission of this evidence is to provide a basis from which to advocate to the jury that Mr. Yatim's death was a suicide.

[36] The moving party also seeks permission to cross-examine witnesses with expertise on the phenomenon colloquially known as "suicide-by-cop". Should such exploration be considered outside the Scope, the motion proposes that the Scope be expanded to include it.

(i) Mr. Yatim's State of Mind

[37] The moving party submits that in order for the inquest jury to satisfy their statutory duty to inquire into the circumstances of the death and answer the five questions listed in section 34 of the *Coroners Act*, including the question regarding the means

(or manner) of death pursuant to section 34 (1)(e), it is necessary to explore Mr. Yatim's state of mind at and around the time of his death.

[38] In support of this proposition that an understanding of Mr. Yatim's state of mind is essential to determine his manner of death, the moving party references a guidance document, "Definitions and Guidelines for Classification of Manner of Death" produced in 2020 by the Office of the Chief Coroner. In particular, he highlighted page 19 as follows:

> **Guideline 4 – Suicide or Homicide?**
>
> In distinguishing between Suicide and Homicide, start with the principle that "manner flows from cause,", that is:
>
> 1. Identify the fatal injury which was the cause of death, then,
> 2. Determine the relative extent to which that fatal injury was inflicted by the deceased or another person
>
> In most cases, the distinction is clear, for instance a witnessed homicidal gunshot wound. In some cases, an inflicted injury involves decisions and actions of both the deceased and another person. In such cases, compare the relevant decisions and actions of the deceased versus other persons, and classify the death based on the decisions and actions which are most directly, logically, and factually related to the cause of death.
>
> For instance, where a person with an edged weapon is shot while advancing on a police officer, the decisions of both the deceased and another person contributed to the death. The investigator should classify the manner of death based upon the investigator's opinion about the relative contribution of the deceased person and the police officer to the infliction of the gunshot wound.
>
> It should be remembered that manner of death is a classification of facts. It is not a finding of fault or blame, nor does the finding exonerate any person.

[39] The moving party submits that the data extracted from the cell phone is valuable evidence in the exploration of Mr. Yatim's state of mind at the time of the shooting.

[40] The moving party also submits that the trial judge's determination, finding that such evidence was inadmissible, is not binding on me. It was made in a different proceeding with a very different purpose and was largely based on the fact that Mr. Yatim's state of mind was not relevant to Mr. Forcillo's culpability because Mr. Forcillo could not have known Mr. Yatim's state of mind at the time of the altercation and shooting.

[41] Further, the moving party urges me to disregard the Court of Appeal for Ontario's endorsement of the trial judge's decision, as this was not an issue on appeal.

(ii) Expert Evidence

[42] The moving party also proposes that they be permitted to question the witnesses with expertise that will be called at this inquest on the phenomenon of individuals attempting to induce police into using lethal force which, as I have noted, if done for the explicit purposes of causing one's death, is colloquially called "suicide-by-cop" and that the Scope should be expanded to the extent necessary to permit the exploration of this evidence.

[43] The moving party argues that this phenomenon is well-recognized academically but is not properly recognized in police service policy or police officer training in Ontario, resulting in lost opportunities to better manage these crises when they occur. Exploring this phenomenon at an inquest would align with the purposes of the inquest.

[44] The moving party further submits that the need to explore this phenomenon is supported by recommendation #8 of the recent inquest into the death of Alexander Wettlaufer, which states:

> The Solicitor General of Ontario should study the phenomenon of individuals attempting to induce police officers to use lethal force, to improve best police practices across the province.

[45] Although the moving party included in his Motion Record a report by Dr. Parent on the topic of "suicide-by-cop", he did not propose specifically that this doctor testify or that this report be admitted as evidence at the inquest.

(b) Responding Parties

[46] Inquest counsel, the family of Mr. Yatim, TPS-Board, TPS, SolGen, the City of Toronto, and Empowerment Council (the "responding parties") all opposed the motion in its entirety. For simplicity's sake, I will start by summarizing their position on amending the Scope.

(i) Expansion of Scope and Expert Evidence

[47] The responding parties submit that the Scope should not be expanded to include exploration of "suicide-by-cop" because the facts do not support it being a component of the circumstances of Mr. Yatim's death, other than by the moving party's unsupported conjecture.

[48] They further argue that the current Scope is focused and effective, and that the proposed evidence would essentially bring into scope everything that was specifically excluded in the Scope.

[49] The Scope specifically excluded an in-depth review of all the factual details of the shooting incident as they had been fully explored publicly in the lengthy criminal trial.

[50] Finally, the responding parties submit that the whole notion of “suicide-by-cop” is inflammatory and harmful, and it will ultimately be an unhelpful distraction for the jury as it essentially blames individuals in crises for their own deaths if they fail to comply with police directions rather than placing the obligation on the police to respond in accordance with their training. A person in crisis may exhibit any number of behaviours, many of which might appear to others to be threatening in nature. However, the responding parties argue, police have a mandate to de-escalate potentially violent situations and are prohibited from using lethal force unless it is necessary to prevent death or grievous bodily harm.

(ii) Mr. Yatim’s Statement of Mind – Cell Phone Information

[51] The responding parties argue that the video surveillance footage and audio recording from the streetcar, along with eye-witness accounts, provide ample probative and contemporaneous evidence to assist the jury in understanding the circumstances of the death and Mr. Yatim’s state of mind in the time leading to his death.

[52] The responding parties specifically submit that the cell phone evidence should not be admitted as its probative value is close to nil for many reasons, including:

a. It is not clear who conducted the Google searches on Mr. Yatim’s phone;

b. The searches and text messages are not proximate to the time of Mr. Yatim’s death, with some dating back to six months prior to his death;

c. The subject of the searches and text messages are non-specific, typical for a teenager, and do not indicate suicidal ideation let alone suicidal intent; and,

d. This evidence does not support the inferences that the moving party seeks to draw, rather its admission will invite the jury to engage in impermissible conjecture.

[53] The responding parties further urge that I could (or even should) rely on the decisions of the Superior Court of Justice and Court of Appeal for Ontario to conclude that the cell phone information is irrelevant to the manner of death.

[54] Finally, the responding parties submit that the prejudicial effect of the proposed evidence would far outweigh its probative value in that it is inconclusive and speculative and is likely to distract the jury from their purpose.

VI. Governing Principles

(a) The Nature of Inquests in Ontario.

[55] 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. As a corollary, it is also not the purpose of an inquest to vindicate.

[56] Rather, an inquest is a non-adversarial inquiry that leads to findings of fact regarding discrete verdict questions and possible recommendations. Inquest verdicts and recommendations are directed at public safety and do not affect parties the same way as verdicts in criminal and civil trials.

[57] Evidence at an inquest is rarely restricted to the simple facts surrounding a person's death, as it is important for the jury to understand the death in a broader context and social framework to enable the jury to add depth and quality to their recommendations.

[58] Evidence presented to a jury at an inquest arises out of the results of the coroner's investigation and is contained in the inquest brief. This brief, often containing thousands of pages, photographs, and video files, is shared with the parties but not the jury. The Presiding Officer, with input from inquest counsel and inquest parties, determines what evidence is material, relevant and admissible to the inquest and, through inquest counsel, presents that evidence to the jury. This allows the jury's task to be as efficient, truthful, and successful as possible.

[59] An inquest is not purely a retrospective exercise. Inquests look back at the circumstances of a death both to answer specific factually driven questions relating to that death and also to determine what lessons can be learned to prevent similar tragedies from happening again. When considering the second mandate, the specific details of the circumstances of the death can be less influential to the advancement of public safety than the systemic issues that led to the death, as the future deaths we are trying to prevent will not be identical in their factual make-up.

[60] However, it is also essential for inquests to remain focused. Issues explored at an inquest must be tied to the circumstances surrounding the specific death being examined. Otherwise, an inquest becomes indistinguishable from a public inquiry.[3]

[61] Similarly, conjecture that an issue may be related to a death is not enough to bring that issue into the scope of the inquest.[4]

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[3] *Ontario (Provincial Advocate for Children and Youth) v. Anderson Inquest (Coroner of)*, [2011] O.J. No. 2521 (SCJ) at paras. 18 and 30.

[4] *Canadian Union of Public Employees, local 416* v. *Lauwers*, [2011] O.J. No. 2028 ("*Hearst*") at para. 63 and *BADC* v. *Huxter,* [1992] O.J. No. 2741 ("*BADC*") at para. 72 and 133.

[62] There may be many important issues surrounding a death that deserve study and exploration, but that does not mean an inquest is the appropriate mechanism for that purpose. For some public safety issues, the inquest process and its five-person lay jury can be excellent at generating effective recommendations aimed at advancing public safety. For other public safety issues, other mechanisms may be better.

[63] Similarly, it may not be effective to explore issues that have already been explored at previous inquests or other inquiries, especially if it is likely to simply result in repeat recommendations.

[64] 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, investigators, and parties. Presiding Officers are well-positioned to do this given their training, skill, and experience. 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.[5]

(b) Evidence at an Inquest

[65] The admissibility of evidence at an inquest is governed by section 44 of the *Coroners Act*.[6] The test for admission is broad and is not restricted to evidence that would be admissible in a court proceeding. Section 44 reads as follows:

> **Admissibility of evidence**
> **What is admissible in evidence at inquest**
>
> 44 (1) Subject to subsections (2) and (3), a coroner may admit as evidence at an inquest, whether or not admissible as evidence in a court,
>
> (a) any oral testimony; and
>
> (b) any document or other thing,
>
> relevant to the purposes of the inquest and may act on such evidence, but the coroner may exclude anything unduly repetitious or anything that the coroner considers does not meet such standards of proof as are commonly relied on by reasonably prudent persons in the conduct of their own affairs and the coroner may comment on the weight that ought to be given to any particular evidence.

[66] Evidence heard at an inquest must be material, relevant, and admissible.[7] As stated in *R. v. Candir*, 2009, ONCA 915 at paras. 48 – 50 ("*Candir*"):

> [48] The threshold for relevance is not high. To determine whether an item of evidence is relevant, a judge must decide whether, as a matter of human experience and logic, the

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[5] Chief Coroner's Rules of Procedure for Inquests, 2014. ("CCRoP"), Rules 3.3 and 8.2(1). See also *BADC* at paras. 54-56 and *Hearst* at para. 51.
[6] *Coroners Act*, R.S.O. 1990. C. C. 37, section 44 ("*Coroners Act*"). Also, CCRoP expands on and clarifies section 40, as authorized under section 50.1.
[7] CCRoP, Rule 8.2 (2)

> existence of a particular fact, directly or indirectly, makes the existence of a material fact more probable than it would be otherwise: see R. v. Cloutier, 1979 CanLII 25 (SCC), [1979] 2 S.C.R. 709, at pp. 730-32. The exclusivity or cogency of the inferences that may be drawn from the item of evidence have no place in the inquiry into relevance: see R. v. Underwood (2002) 2002 ABCA 310 (CanLII), 170 C.C.C. (3d) 500 (Alta. C.A.), at para. 25.
>
> [49] Materiality is a legal concept. Materiality defines the status of the proposition a party seeks to establish by the introduction of (relevant) evidence to the case at large. What is material is determined by the governing substantive and procedural law and the allegations contained in the indictment. Evidence is material if what it is offered to prove is in issue according to the governing substantive and procedural law and the allegations contained in the indictment. Evidence is immaterial if what it is offered to prove is not in issue under the governing substantive and procedural law and the allegations contained in the indictment.
>
> [50] Admissibility is wholly and exclusively a creature of the law. The rules of admissibility, for the most part negative, exclude evidence that is both relevant and material. A rule of admissibility need not be invoked when an item of evidence is either irrelevant or immaterial. Evidence is admissible if it satisfies all applicable exclusionary rules.

[67] And rephrased in the inquest context:

1. Proposed evidence must first be assessed by determining if it is material and relevant – it needs to be both to be admittable.

2. Evidence is *material* if it contains information that is to be explored at the inquest in accordance with the inquest's scope. This material information is *relevant* if it adds benefit to the exploration of the issue and helps the jury determine facts and/or make recommendations to prevent further deaths.

3. The threshold for relevance is not high.

4. Given the nature of issues explored at inquest, there is often a large amount of material and relevant information, which may be excluded by rules of admissibility, such as if the evidence is redundant or repetitive, not the best available evidence, of poor quality, confusing, or prejudicial.[8]

[68] It is the Presiding Officer's decision as to whether the proffered evidence will help or hinder the jury in its duties, and whether such proposed evidence can be received in the context of a fair, efficient, and effective inquest.[9]

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[8] For an overview of exclusionary rules as they may apply to inquests, see guideline 6 and 7 in *Guidelines for CCRoP*, July 1, 2014. See also *Candir* at para. 59.

[9] *Coroners Act*, s.40(1); CCRoP Rule 8.2(1); *People First of Ontario* v. *Porter, Regional Coroner Niagara*, [1991] O.J. No. 3389, rev'd on different grounds [1992] O.J. No. 3 (Ont. C.A.).

VII. Analysis and Ruling

(a) Evidence on Mr. Yatim's State of Mind.

[69] Determining the means (or manner) of death is an extremely important part of the jury's verdict at an inquest. By virtue of section 31 of the *Coroners Act,* a jury is mandated to determine the manner of death. The five categories of manner of death used in Ontario are:

1. Natural;
2. Accident;
3. Suicide;
4. Homicide; and,
5. Undetermined.

[70] Evidence of the decedent's state of mind can be a critical component to understanding manner of death. Further, this exploration of evidence of the decedent's state of mind at the time of his death is important, not just for the ultimate decision on manner of death, but also to gain a deeper understanding of the circumstances that led to the death, chances for intervention, and so on.

[71] It is always legitimate to consider, and not shy away from, the potential of suicidality. In a coroner's death investigation, it is appropriate to look for evidence of related planning, preparation, and communications around the time of the death such as texts to friends, wills or notes left behind, and so on. Evidence of previous suicide attempts may be informative. Details of previous psychiatric care may also be helpful.

[72] The coroner's investigation into the death of Mr. Yatim revealed no such evidence of suicidality. However, the investigation did uncover much evidence with respect to the way Mr. Yatim was acting and reacting prior to his death. The video and audio evidence from the streetcar, testimony from witnesses to the event, and testimony from people who knew him will assist the jury in answering the five questions and also in making appropriate recommendations, should the jury choose to do so.

[73] As such, reliable evidence about Mr. Yatim's state of mind must be admitted.

(b) Cell phone evidence

[74] Having concluded that evidence relating to Mr. Yatim's state of mind is relevant to this inquest, I must now turn my mind to whether the proposed evidence extracted from the cell phone is admissible for that purpose.

[75] In deciding whether to admit this data, I conclude that I am not bound by the decisions of the Superior Court of Justice or the Court of Appeal for Ontario on this

issue. As well thought-out and proper as those rulings are, given that this inquest and its purpose are vastly different in so many respects, I cannot simply adopt the findings made by those courts.

[76] I do, however, agree with the conclusions of the Superior Court of Justice and the Court of Appeal for Ontario that there is much better evidence of Mr. Yatim's state of mind leading up to and during the confrontation with police in the form of video evidence, audio evidence, and eye-witness testimony.

[77] Upon careful review, I find the cell phone evidence proposed in this motion should not be admitted, for the reasons that follow.

[78] Firstly, the evidence is unreliable in its present form. The proposed cell phone evidence is contained in a document that is heavily redacted. It is unclear what guided the redactions, other than certain notations:

a. "clearly irrelevant browser cookies have been vetted";

b. "clearly irrelevant web browsing has been redacted";

c. some blocks of redaction just have the word "irrelevant";

d. "clearly irrelevant SMS messages have been redacted. Messages in a foreign language have been removed for translation. Where messages are included as potentially relevant, personal identifiers have been vetted".

[79] No evidence was tendered on this motion as to who was responsible for the redactions nor the purpose of the redactions. An unredacted copy was also not provided. As these records were presumably vetted for the purposes of the criminal trial, it is likely that vetting does not align with the purposes of an inquest proceeding. Regardless, based on the information before me, I have limited ability to effectively understand the nature and content of the records and I have grave concerns about a jury being asked to draw conclusions and make inferences based upon redacted records.

[80] By way of example, I note in the moving party's Motion Record, the report of Dr. Parent, Ph.D. references, at page 19, some web-browsing history contained in the records relating to, "magic powers that you don't know about" and "release your hidden energy and power". Yet this information is not visible in the redacted document of the cell phone browsing history filed on this motion. I will not speculate on what those searches may indicate, but this example supports the conclusion that the document is unreliable because of the nature of the redactions.

[81] Secondly, the evidence is unhelpful as it is not contemporaneous. The sole reference to suicide in these records is contained within the web searches captured by the cell phone. However, those web searches are not reasonably proximate to Mr. Yatim's death, having occurred some six months before. Other records are from months or weeks before the incident. I find that the searches and many of the

communications are too remote to aid the jury to understand Mr. Yatim's state of mind at the time of the incident, especially with regard to suicidality or intent.

[82] Next, I find the evidence unreliable as the identity of the guiding hand has not been established. No evidence has been tendered establishing that Mr. Yatim conducted these searches on the phone. We do not know whether Mr. Yatim shared his phone with friends or family who then conducted searches. Should this evidence be admitted, responding parties may wish to explore who had access to the cell phone at the relevant times and it would be appropriate and fair for me to allow that. Spending such extensive time to address the multitude of issues that arise from this evidence would put undue emphasis on this evidence and would distract the jury from their purpose.

[83] I further have a concern about the inferences that the moving party will seek the jury to draw from much of the evidence contained in these records. For example, I do not see a connection between potential suicidality and information regarding topics of looking for work, needing money, and discord between the 18-year-old Mr. Yatim and his father. I accept the responding parties' submissions that these may be commonplace topics for teenagers to talk about with their friends and any link between these topics and a desire to commit suicide, without further supportive evidence, is speculative.

[84] Finally, I have a concern about the distracting nature of this evidence. It is a lot of evidence, but it says little. I find it would be unhelpful for a jury and would unduly divert them from their purpose.

[85] During oral arguments, I expressed the opinion that, even taken at its highest, the cell phone information seemed to make suicidality less likely. Rightly, moving party counsel indicated that my uncertainty should not inform the admissibility of the evidence, and I agree.[10] However, the moving party has based their motion to admit this evidence on the proposition that it is some evidence tending to prove that Mr. Yatim intended for a police officer to take his life on July 27, 2013. I find the cell phone data, in the context of all of the other evidence, does not support that inference without relying upon impermissible speculation and conjecture.

[86] For the reasons expressed above, I decline to admit this evidence. I have had the benefit of reviewing the investigation brief carefully and I find the proffered evidence unhelpful due to the above-noted uncertainties and general unreliability. I find that the tendering of this evidence, which has little-to-no probative value, would run the very real risk of consuming the jury's focus, causing them to engage in improper speculation, and ultimately distracting them from their statutorily prescribed duty.

[10] *R*. v. *Underwood* (2002) ABCA 310 at paragraph 25, and is referenced in *Candir*.

(c) Expert Evidence Regarding Mr. Yatim's Behaviour

[87] The term "suicide-by-cop" has been used to describe a circumstance where an individual purposely engages in life-threatening behaviours in order to coerce police officers into the use of lethal force in an attempt to be killed.[11] Literature indicates a renewed interest in the study of this phenomenon and highlights the need to better understand it with the aim of achieving better outcomes from such interactions between individuals and police.[12]

[88] Prior to providing my analysis on the issue of the admissibility of this evidence, I wish to make two initial observations. Firstly, I do find the term "suicide-by-cop" troubling and demeaning to everyone involved in such interactions. The terms "victim precipitated homicide" or "subject precipitated homicide" similarly carry varying implications of blame on one party or another. There is a very real risk that the use of any term describing this phenomenon will minimize the seriousness with which we should be examining these deaths. I accept the Empowerment Council's assertion that when someone in a mental health crisis gets shot during an encounter with police, such deaths are often assigned fewer resources and shorter investigations than they are due.

[89] The second point of clarification is that nothing in this decision should be taken as a precedent for the proposition that properly qualified experts on the issue of 'suicide-by-cop' exist. As I noted at the commencement of this decision, the moving party has sought a ruling as to the admissibility of expert opinion on this issue generally. No proposed opinion was proffered on this application. As such, I make no finding as to the availability of such expertise generally.

[90] While interactions between suicidal individuals and law enforcement is an important and pressing public concern, I agree with the responding parties that the circumstances of this death make it inappropriate to explore this issue at this inquest.

[91] For expert evidence to be admissible to assist the jury with their understanding of this issue, there must be an evidentiary basis for the underlying assertion. Put more directly, the jury will be tasked with determining, on a balance of probabilities, manner of death based upon the factual evidence. I find that the moving party has not demonstrated an evidentiary basis that would permit such expert evidence to be admitted. My conclusion is based upon the following factors.

[92] There is no direct evidence that suggests that Mr. Yatim wished to end his life by way of a confrontation with police. Of course, this does not end the inquiry. Evidence can be circumstantial, and the jury is entitled to draw reasonable conclusions from such evidence. Reasonable inferences need not be obvious nor probable. Difficult

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[11] "Suicide by Cop: A New Perspective on an Old Phenomenon", *Police Quarterly,* 2020, Vol. 21(1) 82-105. "Examining 'suicide by cop': A critical review of the literature", *Aggression and Violent Behaviour 27,* 2016, 107-120. "Suicide by Cop Among Officer-Involved Shooting Cases", Journal of Forensic Science, March 2009. Vol. 54, No. 2, 456-462.

[12] *Ibid*.

inferences can still be reasonable. However, the inferences must be grounded in the evidence and not based upon impermissible speculation or conjecture.[13] Based on all the information I have reviewed, I find it mere conjecture that Mr. Yatim sought to end his own life and so orchestrated this confrontation with police to facilitate that wish.

[93] I find that there is an enormous space between suicidality and Mr. Yatim's apparent disgruntlement with family and finances. There is nothing in the evidence that would allow the jury to infer that these issues led Mr. Yatim to thoughts of suicide.

[94] I further find that there was no evidence of suicidal planning[14] and, notwithstanding that suicide can be an impulsive act, Mr. Yatim's behaviours prior to his death, such as being apparently surprised and angered at the arrival of police, run counter to the moving party's assertion that Mr. Yatim wished to engage police to end his life. His behaviour instead indicates that Mr. Yatim did not seek nor want police involvement.

[95] Mr. Yatim's behaviour on the streetcar was confrontational, risky, and showed bad decision-making. Medically, he presented as someone in crisis whose behaviour was consistent with the effect of the drugs found in his body on toxicological analysis, and possibly confounded by some mental health problems. I find there is nothing in his behaviour that could lead to a reasonable inference, without further evidence, that Mr. Yatim was suicidal.

[96] Finally, I recognize that while individual factors may be weak, when they are viewed collectively, they may form a compelling inference. I have considered the factors cumulatively and also in the context of the investigatory brief and I find that, even when viewed in this fashion they have no evidentiary value that supports a suicidal intent on the part of Mr. Yatim.

[97] As I have found that there is no evidentiary foundation for the assertion that Mr. Yatim intended to cause his death by way of an interaction with police, I decline to admit expert evidence on this issue at this inquest.

(d) Expansion of Scope

[98] For the reasons previously provided, the existing scope does not need to be expanded.

[99] Prior to concluding my decision, I wish to take the opportunity to comment on what I believe to be an important in-scope aspect of Mr. Yatim's death as it relates to his interaction with police and how police could best respond to that kind of behaviour. Reviewing Mr. Yatim's behaviour and best practices for police service response to similar behaviour is appropriate to explore at this inquest.

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[13] *R. v. Dwyer* 2013 ONCA 268 at para 4

[14] By contrast, the circumstances of the death of Alexander Wettlaufer recently explored at inquest did lend themselves to an exploration of the "suicide by cop" phenomenon. The evidence in the Wettlaufer inquest showed clear and direct intent and planning by Mr. Wettlaufer to end his life.

[100] For example, the jury may hear evidence that some people, often people in crisis, do not follow police directions even if they hear and understand them, even if yelled at, and even with the threat of being harmed. Some people, often people in crisis, will yell back at police and swear back at police. Some people will find that the crisis they are in is escalated upon the arrival of police, sometimes amplified when police are yelling and have their weapons drawn, with the result being that the person in crisis has their rational thinking processes even further hampered. Evidence such as this, if presented, may assist the jury in its understanding of these kinds of confrontations and may lead to the jury understanding the need for police to be trained to address such situations.

[101] De-escalation is a topic often studied in conjunction with the police use-of-force model, and the Scope as it stands excludes a detailed review of the use-of-force model.

[102] However, with a strong focus on officer decision-making, I believe there is room in the existing scope to look at what specific training is provided to officers to address situations like the one that occurred with Mr. Yatim. Is there specific recognition of this behaviour and how to respond? Is there recognition that sometimes police officers may need to de-escalate *themselves*, and perhaps from time-to-time, fellow officers? This latter notion is captured under the scope statement's paragraph 1(c) and it is a unique perspective on the approach to de-escalation.

[103] This clarification of scope does not impact my previous findings nor the decisions reached in this ruling. Such in-scope exploration of police officer training and decision-making in this regard does not require a review of Mr. Yatim's intention or his state of mind. The aspects of Mr. Yatim's behaviour that were observed and upon which the police based their decisions– quite clearly illustrated by video and audio evidence – are the important aspects to review for this exploration.

VIII. Conclusion

[104] For the reasons previously given, the redacted cell phone information the moving party seeks to tender will not be admitted into evidence.

[105] Likewise, exploring the phenomenon of "suicide-by-cop" is unnecessary and, as such, expert evidence will not be tendered in relation to this issue. No expansion of the Scope is necessary.

[106] The following are appropriate explorations that fit within the Scope:

(a) Mr. Yatim's state of mind leading up to and during the confrontation with police on July 26 and 27, 2013, which along with other evidence, is required for the jury to determine manner of death; and,

(b) Mr. Yatim's behaviour during his confrontation with police with the aim of optimizing police decision-making and response to such behaviour.

[107] As I conclude this decision, I wish to make it clear that I expect the parties to work collaboratively toward the true purposes of an inquest. I will not allow arguments about the manner of death used to simply to admonish or vindicate anyone's past behaviour. I will also curtail examinations of witnesses on issues that exceed the proper proportion of time due to them.

[108] Finally, in making this decision, I recognize that the jury will need proper instruction on several aspects of the evidence heard at this inquest and ultimately on the difficult question of the manner of death. Where and when it is appropriate, I will seek input from parties on those instructions in a collaborative fashion.

I thank all counsel for their submissions.

David A. Cameron, M.D., LL.B., C.C.F.P. March 29, 2023
Presiding Officer

APPENDIX 'A'

STATEMENT OF SCOPE

Inquest into the Death of Sammy Yatim

This inquest will explore the circumstances surrounding the death of Mr. Sammy Yatim. The evidence will be directed at assisting the jury to answer the five questions pursuant to section 31(1) of the *Coroners Act* and to help the jury make recommendations to prevent further deaths, should the jury decide to make recommendations.

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. An exploration of mechanisms in place to promote good decision-making by front-line police officers acting in the line of duty, which may include the following.
    a. Systems in place for the screening of police recruits.
    b. On-going monitoring of police officers including:
        i. the collection of data regarding use of force events and collection of data regarding key incidents related to decision making, such as
            1. frequency of events where use-of-force is deployed or nearly deployed
            2. complaints received about officers and their interactions with the public

c. Policies and practices related to how responding officers who are nearby (bystander officers) can improve the outcome of confrontations such as the one between Mr. Forcillo and Mr. Yatim.
d. Mechanisms in place and follow-up by supervising officers on the above monitored results and recommended actions to be taken.
e. Mental health supports and programs in place for officers to support good decision-making.

2. A general overview of the best practices for police responding to a person in crisis, such that the jury can understand the overall policing strategy of such interactions, including the supports and resources available to officers, as well as the risks of such strategy to the person in crisis, to police officers, and to the public.

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

1. Emergency or first-aid response provided to Mr. Yatim after he was shot;
2. The SIU investigation into the shooting and SIU interaction with family, officers and the public;
3. Analysis of the charges laid against Mr. Forcillo, or analysis of the criminal trial or outcome of the criminal trial of Mr. Forcillo;
4. Mr. Forcillo's potential culpability for his response, except as previously determined by the criminal verdict or admissions by Mr. Forcillo, and useful in the analysis of front-line police officer decision-making as outlined in the points in scope listed above;
5. Detailed review of the incident, such detailed review having been done during the criminal trial of Mr. Forcillo, except where such review substantially informs the points in scope listed above; and,
6. Detailed review of use-of-force models used by police services in Ontario.