

Indexed as: Smith, C.R. (Re)

**THE DISCIPLINE COMMITTEE OF THE COLLEGE
OF PHYSICIANS AND SURGEONS OF ONTARIO**

IN THE MATTER OF a Hearing directed
by the Inquiries, Complaints and Reports Committee of
the College of Physicians and Surgeons of Ontario
pursuant to Section 26(1) of the **Health Professions Procedural Code**
being Schedule 2 of the *Regulated Health Professions Act, 1991*,
S.O. 1991, c. 18, as amended.

B E T W E E N:

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. CHARLES RANDAL SMITH

PANEL MEMBERS:

DR. M. GABEL (CHAIR)
DR. B. TAA (PhD)
DR. F. SLIWIN
S. BERI
DR. R. MACKENZIE

Hearing Date: February 1, 2011
Decision Date: February 1, 2011
Release of Written Reasons: March 24, 2011

DECISION AND REASONS FOR DECISION

The Discipline Committee of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on February 1, 2011. At the conclusion of the hearing, the Committee stated its finding that the member committed an act of professional misconduct and that the member is incompetent, and delivered its penalty and costs order, with written reasons to follow.

THE ALLEGATIONS

The Notice of Hearing alleged that Dr. Smith committed an act of professional misconduct:

1. under paragraph 1(1)2 of Ontario Regulation 856/93 made under the *Medicine Act, 1991* (“O/Reg. 856/93”), in that he failed to maintain the standard of practice of the profession; and
2. under paragraph 1(1)33 of O. Reg. 856/93, in that he has engaged in conduct or an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

The Notice of Hearing also alleged that Dr. Smith is incompetent as defined by subsection 52(1) of the Health Professions Procedural Code, which is Schedule 2 to the *Regulated Health Professions Act, 1991*, (“the Code”).

RESPONSE TO THE ALLEGATIONS

Dr. Smith was not present at the hearing. Through his legal counsel, who was in attendance, he entered a plea of “no contest” to the allegations made against him. When such a plea is entered, Rule 3.02 of the Rules of the Discipline Committee provides as follows:

3.02(1) Where a member enters a plea of no contest to an allegation, the member consents to the following:

- (a) that the Discipline Committee can accept as correct the facts alleged against the member on that allegation for the purposes of the proceeding only;
- (b) that the Discipline Committee can accept that those facts constitute professional misconduct or incompetence or both for the purposes of the proceeding only; and
- (c) that the Discipline Committee can dispose of the issue of what finding ought to be made without hearing evidence.

3.02(2) Where the member enters a plea of no contest, the prosecutor shall state the facts alleged and the findings requested by the College and the member or his or her representative shall state that the member does not contest those facts and findings for the purposes of the proceeding only.

3.02(3) A member shall not introduce any evidence on the issue of what finding ought to be made when the member pleads no contest.

3.02(4) A plea of no contest does not prevent the member from introducing evidence on the issue of what order the Discipline Committee ought to make so long as the evidence is consistent with the facts found and findings made by the Discipline Committee after the plea of no contest.

3.02(5) A plea of no contest does not constitute an admission by the member as to the facts or findings for the purpose of any other proceeding.

THE FACTS

The following facts were set out in a Statement of Facts that was filed as an exhibit with the Committee:

1. Dr. Smith conducted post mortem examinations in criminally suspicious child deaths pursuant to the *Coroners Act* from 1981 to 2001. He was also asked, from

- time to time, to provide consultations in other criminally suspicious cases in which other pathologists had performed the initial post mortem examination.
2. Arising from these post mortem examinations and consultations, Dr. Smith was called upon to communicate his findings to coroners, the police, Crown Attorneys and other authorities, and to testify in judicial proceedings.
 3. Dr. Smith had no formal accreditation in forensic pathology and no formal forensic training; he was an accredited pediatric pathologist.
 4. In his practice of forensic pediatric pathology, Dr. Smith failed to maintain the standard of practice of the profession of pediatric forensic pathology in Ontario at the time, displayed a lack of knowledge, skill or judgment, and engaged in conduct that would reasonably be regarded by members of the profession as disgraceful, dishonourable or unprofessional. In particular, in multiple cases:
 - (a) Dr. Smith failed to gather relevant information, undertake appropriate investigations, and properly detail relevant information;
 - (b) Dr. Smith expressed opinions about the cause of injuries or death that were either contrary to or not supported by the pathology evidence at the time the opinion was first expressed or were no longer supported after receipt of additional information;
 - (c) Dr. Smith formed erroneous opinions about the cause of death based on non-specific findings, and he misinterpreted autopsy findings;
 - (d) Dr. Smith referenced aspects of the social history of the parents or caregivers of the deceased child which were irrelevant to the pathology;
 - (e) Dr. Smith opined on the manner of death rather than exclusively on the pathological cause of death;
 - (f) Dr. Smith failed to respond to communications from coroners, Crown Attorneys, police officers and other pathologists in an appropriate and timely manner. Furthermore, Dr. Smith attempted to unfairly shift

responsibility for these failures to others. These failures compromised the administration of justice;

- (g) Dr. Smith failed to create, maintain and preserve pathology materials relevant to criminal investigations in the manner expected of a pathologist acting pursuant to the *Coroners Act*. These failures compromised the administration of justice;
- (h) Dr. Smith exaggerated his experience, or conversely, failed to disclose his lack of experience in the area of forensic pathology. Dr. Smith offered opinions outside of his area of expertise. Dr. Smith gave evidence that was unbalanced, overly dogmatic or failed to acknowledge uncertainty or controversy, and which was speculative, unsubstantiated and not based on pathology findings;
- (i) Dr. Smith failed to provide his opinions to coroners, the police, Crown Attorneys and/or the Court in a manner that met the standard expected of a forensic pathologist in Ontario at the time. He gave his evidence in a manner that was misleading, overly casual, unfairly critical of other experts or unscientific. In other cases he acted as an advocate rather than expressing an unbiased opinion. Dr. Smith failed to adequately prepare for court; and
- (j) Dr. Smith failed to respond to inquiries from regulating bodies, including the CPSO, with the candour expected of a member regarding his involvement in certain of the cases under investigation. This lack of candour prevented the regulating bodies from exercising the degree of oversight that might otherwise have been exercised.

FINDINGS

The Committee accepted as correct the facts set out in the Statement of Facts. Having regard to these facts, the Committee:

- (1) found that Dr. Smith committed an act of professional misconduct in that he failed to maintain the standard of practice of the profession, and in that he engaged in conduct or an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional; and
- (2) found Dr. Smith incompetent under subsection 52(1) of the Code.

PENALTY AND REASONS FOR PENALTY

Counsel for the College proposed the following penalty and costs order in her submission to the Committee:

1. The Registrar revoke Dr. Smith's certificate of registration effective immediately
2. Dr. Smith be directed to appear before the Panel to be reprimanded
3. Dr. Smith pay costs to the College in the amount of \$3650.00 within sixty (60) days from the date of this Order
4. The results of this proceeding be included in the register

Counsel for Dr. Smith did not oppose this order.

In her submissions, College counsel reviewed the principles that must be considered in making a penalty order and submitted how they should be applied in this case. The penalty must serve to express profound disapproval of Dr. Smith's conduct. It must also serve to uphold the honour and integrity of the medical profession protect the public, and provide both specific deterrence to the member as well as general deterrence for all members.

Dr. Smith's conduct was subject to 65 days of public scrutiny as a result of a public inquiry before the Honourable Justice Goudge, the report for which was released in April 2008. The inquiry provided a detailed examination and review of Dr. Smith's practice of

forensic pathology in a public forum. Multiple parties participated in that process. In his conclusions, Justice Goudge condemned Dr. Smith's actions in multiple cases, where his actions resulted in irreparable harm to many individuals.

The Committee considered the magnitude and span of Dr. Smith's misconduct, as well as the repetition of the misconduct over many years, as significant aggravating factors.

In support of the penalty submissions, College Counsel presented and read into the record six separate victim impact statements for the Committee's consideration. Rather than summarizing these eloquent statements, the Committee considered that they should be reproduced in full to show the extent of the harm caused by Dr. Smith.

Impact Statement of AB (Exhibit 3)

Being wrongfully convicted of a crime has been very difficult for me. I have suffered from almost 20 years of depression.

I have not been able to find steady work. I am living below the standard of living.

I never had the opportunity to further my education and have no idea of what I could have become.

My family has also suffered. My parents were the ones to discover me and my brother and sister were too young to deal with this tragedy.

I am happy that my conviction was absolved and I look forward to the future.

Impact Statement of Mr. Q (Exhibit 4)

My wife and I considered ourselves fortunate, from not only, finding employment and housing in a new country with our young son, ABC. But God's blessings seemed unending when we welcomed our new son, DEF, into our family.

Our joy was only diminished by my wife's ill health but I was determined that my family would be well looked after both by my efforts and the expertise and excellent care of her doctors.

Little could have prepared us for the unexpected and tragic death of our tiny son, but to be accused and charged with his death was horrifying and shocking. I was and remain a loving and caring father.

To be put in a position of accepting a plea bargain or standing trial with the chances of not only going to prison, but losing custody of ABC, was more than my wife or I could bear. I worried what would happen to my young son and my wife who has suffered so much already. She may never recover from the loss of another child. I have wrestled with that decision all these years but without knowing the language or understanding the criminal justice system I had no choice but to accept.

I continued to work hard providing for my family, but my wife and I who longed to have more children decided against it because we could no longer trust that this horror would not be repeated.

We had support but there was always the whispers and finger pointing. Some believed that I had killed my son which has saddened me and made me long for them to know the truth. And finally after 18 years the truth is known but the cost of its revelation was astronomical.

My wife suffers from deep depression never fully having accepted DEF's death. I carry a photo of DEF with me always. I wanted ABC and DEF to grow up together, learn from one another and share their experiences both good and bad. My wife and I are proud of ABC and are grateful for his love and unwavering support and belief in us.

I hope that anyone who has been falsely accused of such an unspeakable crime will be vindicated and have faith in knowing that others such as my wife and I understand their anguish and pain.

Impact Statement of Mr. S (Exhibit 5)

I don't know where to begin. I can't submit an accurate impact statement on such a short notice. Less than 24 hours is too short a time to prepare such a statement. It is difficult to describe the last 18 years of a living nightmare. My reputation was tarnished so badly that I was branded a child molester and child killer. There is nothing worse than that. When I was sentenced to life imprisonment, I was forced to live under the daily threat of death.

The dynamics of my family has changed to the point where it may never be reconciled. My family turned their backs on me because of the accusation. My niece was coerced by the Children's Aid Society (CAS), which helped make this a child molestation case. I am still on the CAS registry as a sex offender. I am going to have to fight for years to have my name removed if it ever gets removed. I will be living under scrutiny by CAS for the rest of my life. And this is the part that makes it most invasive. I am further frustrated and angered that Charles Smith has never been held accountable for his actions and it does not matter at this point what punitive action the College takes he is virtually getting away with the destruction of numerous lives with no consequences at this late stage in his career.

I was held accountable for things that didn't even happen. On the other hand, he was allowed to practise unsupervised by the College and Sick Children's Hospital. His own professional training did not merit such a post which should have been looked into at the time of his hiring. Clearly, he did not have the credentials to perform that job.

In closing, I am still humiliated by the fact that I will never see justice done. My name and that of my family will forever be linked to Charles Smith in such a horrible situation, a situation that could have been prevented if people had been looking over his shoulder, if there had be due diligence and oversight.

Nothing that the College does now will ever rectify or smooth over what this man was allowed to do, it is a way too late. There is no way to change what has happened and although Smith is at the centre of this madness, he was allowed to continue his reign of terror even after complaints had been registered.

The lack of oversight, supervision and accountability is shocking. How could he possibly been elevated to such an important and crucial job in one of Canada's premiere and most respected hospitals without the proper qualifications? HOW?

If there were to be a trial I think that Smith would not be standing trial alone. He was not an island unto himself.

Impact Statement of Ms Z (Exhibit 6)

To Whom It may Concern,

Dr. Charles Smith. What can I say? Your name in the 1990's spread fear into defense lawyers who were defending clients charged with killing their own babies.

Your track record in the courts was impeccable. You were the best of the best. You were known as the "go to guy" in pediatric forensics. Defense lawyers were dealing clients

because you were on the file. You were allowed to practice without consequence. Your boss' promoted you as Canada's leading expert.

Your practice continued during the 90's unchecked. No person or colleague wanted to challenge you as you were considered the best.

GHI, my angel, was murdered by her babysitter.

Because of you I have to after 14 long painful years exhume GHI to have her made whole.

What did I ever do to you? What did any of us do to you? You took it upon yourself to destroy my life. Perhaps you don't realize but by destroying my life you destroyed my children too. You also destroyed my mother who never got to see the real killer caught. She died in 2000.

You show no remorse for what you have done. During the inquiry you gave an empty apology to us your victims, you have no idea of how we felt, nor do you care.

JKL, my oldest daughter, was sent away to live with strangers for 2 long years. This was two years of her life that we can never get back. He [my son] also lived without his mother for the first 10 months of his life. He lived with his father and grandparents.

You cannot understand the name you have labeled us with. We were known as child killers in our communities. You have no idea how that feels. You have no idea how it feels to go in public and be embarrassed to say your name. You have no idea what it is like to walk down a street and be called a child killer. You have no idea what it is like to live in poverty because now I cannot get work because I have been labeled a child killer. You have no idea what it is like not to be able to participate in your children's school trips because you have been called a child killer. You have no idea what it is like for your children to have no friends because their parent has been called is a child killer.

Truthfully Dr. Smith, I don't think you really care. I don't see you shedding any tears for us, your victims. The College cannot punish you enough for what you have done.

Impact Statement of Ms Y (Exhibit 7)

To be accused and convicted of the murder of MNO was the beginning of my nightmare. A nightmare that just got worse and seemingly unending as I entered into the harsh and unnerving Canadian penal system. Prison became my reality for the next 13 years. I woke up each day to prison's unpredictable craziness, endured the taunting, name calling and death threats; and went to bed each night wondering whether my two sons were in good and loving homes. Were they healthy, happy and doing well in school? I starved for news of them but none came. And so, when I wasn't dealing with the cold, dankness and inhumanity of prison I hoped that someone, anyone would believe me and that I would be exonerated and freed. I prayed, oh how, I prayed that I would be granted one more miracle; being reunited with my boys.

I have suffered from deep bouts of depression, anger, bitterness and I often wondered if I would ever be able to find the joy and laughter I once knew as a young mother.

The heartbreak and pain of losing MNO was unimaginable but to be declared his murderer has unrelentingly tortured my mind and the depths of my soul.

The truth didn't seem to matter and even my own family chose to believe your expert opinion.

There is nothing that can be done to erase the horror of losing a child and years of imprisonment. I wish there was. I wish an apology from you would be the magically cure but although it would be comforting to know that you are sorry for the devastation you have caused, it would not and could not stop the longing for the return of MNO and his two brothers.

Impact Statement of Ms X (Exhibit 8)

Impact Statement

(On behalf of Ms X and family)

Re: Disciplinary Hearing of Charles Smith

February 1, 2011

My name is Ms X, I am 40 years of age. My family and I are victims of the former Dr. Charles Smith. I am present today along with two of my children, QRS and TUV. This statement represents the horrific impact Charles Smith has made on my entire family and extended family since 1991.

This is my first formal impact statement since the re-opening of my case in the death of my step-daughter, WXY, in 1991. My silence is officially broken, only time will heal the wounds, but the memories will never be forgotten – both happy and sad. The story is too long to condense here, but this is a glimpse of the trauma that followed.

In 1991, I was only 21 years of age and a mother to QRS (4 years), WXY (3 years) and ZAB (1 year) – by choice. I chose to be a parent and loved my life with my children more than anything else. I was very young, but I know that I did the best I could as a young parent to provide for and love my children.

WXY was my step-daughter, but what most people don't realize is that she was my first little girl. Regardless of the fact that I was not her birth mother, I never saw her as a step-child, but rather as if she were born to me. She was QRS' best friend – QRS was her big brother, with whom she sang, played and went to school with. Their favourite song was "U Bet". Both WXY and QRS shared the excitement for the coming of their new sister. WXY later became a big sister to ZAB who was born on in February 1990. It was a joyous day of happiness and celebration for everyone. The following year, they would again happily welcome TUV. Sadly, WXY was no longer with us when CDE was born in 1993. Every year on WXY's birthday, we celebrate her life – we gather, sing her happy birthday and kiss her picture.

In 1990, WXY became more and more ill. My husband and I would seek the help of medical professionals to try and understand why she was so sick. Our experience with the hospital in Brampton, amongst other medical professionals brought no comfort or answers, but rather more confusion. Our family doctor was the one who cared the most and was the most genuine. It was him that told us to rush WXY to the hospital, where she would later pass away.

My family and I felt that we could trust anyone who practiced medicine. Unfortunately, the reality came and my fate was sealed when Charles Smith laid his hands on WXY to perform her autopsy. But little did Charles Smith know, that quietly in our prayers, we had hoped that Smith would be the one to explain how our beautiful WXY passed away – perhaps he could explain why she had been so sick for so long, vomiting, suffering, going blind, not being able to hold her head up or eat. It was because of him that my life and the lives of my family members would never be the same again:

- I was charged with Manslaughter and my children removed from me and sent to live with my parents who were 56 at the time; they later would develop a serious of medical conditions due to the stressors and magnitude of the circumstances;
- My parents would have to use their home to secure my release on over \$20,000 bail. They would also later provide funding for my legal defence and investigators;
- I was not able to see my children without an approved third party;
- My family was subjected to many random visits by the CAS;
- I was forced to plead guilty to killing WXY, otherwise, I would never be with my other children again;
- I was subjected to numerous death threats and labels of the “baby killer”;
- I did not see my children while I was in Detention as I refused to let me be exposed to seeing me behind plexiglass;

- I was subjected to protective custody at a Toronto detention centre, but later had to waive my right to protective custody so that I may transfer to another southern Ontario detention centre into general population and be at the institution closest to my children;
- I was pregnant during my prison term and delivered CDE very shortly after my release from prison into a half-way house;
- Days after CDE was born, CAS and a homicide detective would come to my apartment and take CDE out of our arms and rush her to the hospital because they suspected a marking at birth was a bruise, but it was normal – a mulato spot;
- My sister-in-law allowed me to live with her so that I could see the children;
- My brother would move back to Ontario from western Canada – so that I may reside in the home with the children;
- My son's father would fight for custody of QRS and used the strength of Charles Smith's evidence to obtain custody of QRS;
- It took approximately 3 year of family court hearings to get my children back;
- My children, my husband and I have had and continue to have extensive emotional trauma;

In consideration of all the victims of Charles Smith, it is imperative of the College to impose the most severe penalties and sanctions against Charles Smith as is possible.

Furthermore, a finding of incompetence is just. Charles Smith himself admitted under oath that his training in Child Forensic Pathology was “woefully inadequate”. How dare he undermine the very essence of what helps give people life, saves lives and studies to better the quality of life.

Charles Smith is a disgrace to the medical profession and to humanity itself. While I am confident that there are many doctors that have earned their right to exemplary work – it

is unfortunate that people like Charles Smith have tainted this for the good medical professionals. Whether it was due to oversight or systemic flaws or just plain ignorance, these parties must not go without accountability.

Although anger and resentment are evident in my letter – I do want Charles Smith to know that he was never God, never will be God, but rather that he will meet God one day as he so wishes.

The Committee accepts that Dr. Smith's actions constitute the most egregious breach of professional standards, and as such, call for the most severe sanctions that this College can impose.

ORDER

Therefore, the Committee ordered and directed that:

1. The Registrar revoke Dr. Smith's certificate of registration effective immediately.
2. Dr. Smith appear before the panel to be reprimanded.
3. Dr. Smith pay costs to the College in the amount of \$3,650 within sixty (60) days from the date of this Order.
4. The results of this proceeding be included in the register.

The Committee directed that the reprimand for Dr. Smith be administered on March 25th, 2011 at 9:00am at the College.