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**Reply Submission
Bill 115, Coroners Amendment Act
Minister's Power to Direct an Inquest**

Submission to:

Standing Committee on Justice Policy
Legislative Assembly of Ontario

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Submitted by:

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Vice-President

During the Committee's public hearings on March 12, 2009, it was suggested on a number of occasions that the Solicitor General's power to direct an inquest under section 22 of the *Coroners Act* has been used on only one occasion. At the same hearing, we learned of a memo dated March 11, 2009, prepared by the Committee's research officer, which presents the results of research regarding section 22. The March 11, 2009 memo states that a research librarian in the Ontario Legislative Library contacted two unnamed persons in the Office of the Chief Coroner (OCCO) and was advised that section 22 of the *Coroners Act* has been used once. The memo describes the inquest into the deaths of Arthur Simmons and Julie Schneider, which was called by the Solicitor General on May 13, 1986.

We are deeply concerned that the Committee has accepted as fact that the Solicitor General's power to direct an inquest under section 22 of the *Coroners Act* has only been

used once, and that the Committee may accept this claim as the justification for repealing section 22.

As a preliminary matter, many questions can be asked about the reliability of the claim that section 22 of the *Coroners Act* has only been used once. A telephone interview with two unnamed individuals in the OCCO should not be accepted at face value by the Committee. The March 11, 2009 memo does not indicate how these two unnamed persons were in a position to know the complete history of the use of section 22, or what sources they referred to in order to obtain this information. Did they perform an exhaustive search of records? Or are they simply relying on their own memories? The power of a minister of the crown to direct an inquest has existed for 98 years,¹ which causes one to wonder whether there is anyone in the OCCO who would be in a position to know the complete history of its use. If the OCCO's records were consulted, these records may not be reliable. For example, the OCCO *Report on Inquests* for the years 2004, 2005 and 2006 report inquests in four categories: construction, mining, custody, and discretionary.² These reports do not contain a category for minister-directed inquests. They do not report zero minister-directed inquests. Rather, they fail to mention minister-directed inquests at all. In these publications, as in past publications of the OCCO, all inquests that are not mandatory (construction, mining and custody) are categorized as "discretionary." It appears that the OCCO does not keep track of minister-directed inquests, and possibly never has.

The claim that the power provided in section 22 of the *Coroners Act* has been used once may or may not be true. Even if it is true, we wish to reiterate that we have good reason to believe that the minister's power to direct an inquest has resulted in numerous inquests that would not otherwise have been called.

¹ The power of a minister of the crown to direct an inquest was first created in 1911 with the passage of *The Coroners Act*, S.O. 1 George V, c. 23, s. 9(2), which stated:

Notwithstanding such declaration, the Attorney-General or the Crown Attorney may direct the Coroner making the same, or some other Coroner having jurisdiction, to hold an inquest upon the body, and the Coroner to whom such direction is given shall forthwith issue his warrant for an inquest and hold the same accordingly.

This provision was the subject of several minor amendments over the next six decades. In 1972 the power to direct an inquest was transferred from the Attorney General to the Solicitor General with the passage of *The Coroners Act*, 1972, S.O. 1972, c. 98, s. 19.

² Ontario, Office of the Chief Coroner, *Report on Inquests: 2004* (Toronto: Office of the Chief Coroner, 2007); Ontario, Office of the Chief Coroner, *Report on Inquests: 2005* (Toronto: Office of the Chief Coroner, 2008); Ontario, Office of the Chief Coroner, *Report on Inquests: 2006* (Toronto: Office of the Chief Coroner, 2008). Available on-line:

http://www.mcscs.jus.gov.on.ca/english/office_coroner/PublicationsandReports/Coroners_pubs_reports.html

As with many other powers held by public officials, the use of the minister's power under section 22 is almost certainly more nuanced than has been suggested. In practical terms, section 22 empowers a Solicitor General to suggest that an inquest be called. It is likely that in many cases this resulted in inquests being called without the section 22 power ever being formally invoked.

Indeed, both the Solicitor General and the coroner have strong reasons to avoid the formal, explicit use of the section 22 power. A coroner would likely prefer to call the inquest her or himself rather than being publicly overruled. For a Solicitor General, explicitly invoking section 22 could create a backlash among segments of the public opposed to an inquest, and create an unwanted lineup of persons who feel that an inquest should have been called in the deaths of their family members. It would serve the interests of both the coroner and the Solicitor General if a coroner responded to pressure from the Solicitor General by calling an inquest him or herself, rather than forcing the minister to do it. The Solicitor General will lose this influence if section 22 is repealed.

A fundamental purpose of the coroner's inquest is to inform the public about the circumstances of the death of a community member. The function of informing the public about the circumstances surrounding a death aids the prevention of similar deaths in the future, serves to check public imagination, ensures accountability for the government's obligations to protect the lives of community members, and ensures community scrutiny of closed or inaccessible institutions that care for vulnerable people.³ It is entirely appropriate that the ultimate responsibility for calling an inquest should lie with the Solicitor General, who is democratically accountable to the community.

We urge the Committee not to repeal section 22 of the *Coroners Act*.

³ See: *R. v. Faber*, [1976] 2 S.C.R. 9; Ontario Law Reform Commission, *Report on the Law of Coroners* (Toronto: Ontario Law Reform Commission, 1995), at page 4.