Statement from Dr. Sara Mitchell

I am primarily a clinician and an academic specializing in complex brain disorders, and I devote the vast majority of my time in those settings. I do also provide expert opinions in matters related to my area of expertise. I hold myself to the highest standards of a medical expert in my field. I understand and take seriously an expert's obligation to provide an unbiased expert opinion and in the context of civil litigation, to assist the court. I am retained by both plaintiff's counsel and defendant's counsel and give my unbiased opinion regardless of which side retains me.

I should note that I am also engaged in other endeavours bridging the divide between law and medicine including:

1) co-chairing a course on the role of the medical expert in estate litigation;

2) being a steering committee member on conferences related to estate litigation;

3) being a Law Society of Ontario lecturer on capacity, the role of medical experts, and testamentary capacity;

4) speaking at legal conferences and presenting on the role of medical experts;

5) writing manuscripts and engaging in research projects on the intersection of law and medicine; and

6) providing opinions to regulatory bodies on the mental capacity of professionals, including lawyers and doctors.

In my written opinion and testimony at trial in *Graul v Kansal*, my opinion was in part supportive of the plaintiff's claim that he may have suffered from a Mild Traumatic

Brain Injury. It was also my view that there were likely also other causes for his ongoing symptoms many years later. I continue to stand behind this opinion.

Graul v Kansal was one of my first experiences being cross-examined as an expert witness. While I understood in theory that it is the role of legal counsel to seek to undermine and discredit the opinion of an expert, experiencing the reality of this is something quite different.

I was confronted with out-of-context questions on cross-examination. As an example, I was asked by counsel whether a non-specific symptom of having a “vacant stare” was a marker of traumatic brain injury. I responded then, as I would now, that there are many reasons one might have a vacant stare after an accident or trauma of any kind and that it is not an objective focal neurological symptom. After giving that response at trial, I was shown a clip of a CBC interview that I had done years prior in which I mentioned having a “vacant stare” as a potential symptom of Mild Traumatic Brain Injury.

For context, in order to promote brain health awareness, I occasionally engage with media organizations at their request. Between September 2017 and April 2018, I was an expert resource to the CBC series “The Goods”, providing on air information about various brain related conditions and it was a clip of one of those appearances that was shown to me at trial.

In the context of the CBC interview, I was explaining to a general audience a subjective feeling that people may have following trauma so that viewers would understand when to seek medical help. That is a very different context than giving expert medical opinion with respect to whether that same subjective feeling is diagnostic of a specific neurological injury. When addressing the general public, it is important to speak broadly and to encourage people to err on the side of consulting a health professional for assessment. It will then be up to individual clinicians to evaluate all factors pertaining to an individual’s case to come to a diagnosis. In other words, a vacant stare is a non-specific symptom that may require further assessment, but it is not itself diagnostic of a Mild Traumatic Brain Injury and may ultimately be better explained by other factors unrelated to neurological injury.

When I was under cross-examination during the *Graul v Kansal* trial, I was surprised by counsel referencing a clip of this interview I had done years prior in a completely

different context in an attempt to make me look contradictory when it was clear to me that the things that I said were not inconsistent. In reaction to this, I involuntarily let out a nervous reaction that Justice Lemon mistook as being disrespectful to the court. My involuntary response was certainly not intended to be disrespectful either to counsel or to the court.

Additionally, a prior presentation that I had given on traumatic brain injury was shown to me at trial. On one of the slides, the term ‘miserable minority’ was used and shown to me. To be clear, that term was in quotation marks on the slide because it is not my term—it was a term taken directly from the academic literature as a discussion point during a presentation and I made that clear during my testimony at trial. “Miserable” is not a term that I use when I refer to a patient population as I care deeply about patients, their families and their suffering.

There was also attention paid to the process of drafting my expert opinion reports. In cases where I am retained through a third party, such as AssessMed, they may provide proof reading as part of their normal coordination and facilitation services. I would never permit any third party to do anything more than make non-substantive suggestions in respect of my draft reports. It is my practice that whenever a third party suggests a change to my draft opinion, I review and authorize all changes that I choose to accept. The final report reflects my opinion and my opinion alone.

Since *Graul*, I have been involved in several other trials including where the judge has been favourable to my opinion. I would like to highlight some cases in which my evidence has been accepted in full and my credentials appreciated by the court. Specifically, in *Zagorac v Zagorac*, the court stated:

> 79. Dr. Sara Mitchell is a highly respected neurologist…Her distinctions and research awards are too numerous to include in these reasons. Suffice it to say Dr. Mitchell has significant experience in assessing and working with dementia patients. Her background and experience in that area supported her well reasoned and clear report which is entirely accepted by this Court.

In *Meade v Hussein*, considered by some as a landmark decision respecting the use of SPECT scans to diagnose traumatic brain injuries, the court accepted my opinion in full.

You have asked about *Zwicker v Canada* and *Abbruzzese v Tucci.* In the case of *Zwicker*, I was unfortunately not provided with all of the relevant documents by the lawyers in advance of providing my written expert opinion, and thus my opinion did not refer to those documents. The judge in that case accurately noted that I was thus unaware of those documents. I do not think that I can fairly be expected to take into account other opinions when they are not provided to me.

Similarly, I was not given all of the relevant documents in *Abbruzzese*, including a key contemporaneous medical assessment regarding the individual's testamentary capacity at the time of my written opinion. In my written report, I referred to the applicant as "relatively healthy" for her age, despite having accrued several conditions common with aging. In this case, without the contemporaneous assessment, and compared to many of the patients I see in an acute care hospital, she was relatively healthy for her age.

I take my responsibilities to the court and the justice system extremely seriously. To suggest otherwise is simply not true. In any characterization of my role as a medical expert, I would expect a balanced and nuanced consideration of all of the above. Medical experts are integral to our legal system, and the administration of justice requires fair-minded, impartial, and highly qualified medical experts. Any public efforts to undermine their credibility can have serious implications for their reputations and will only serve to dissuade the very experts needed to fulfill this important role from being involved in the process.