Coronial Inquests

By Hugh Selby

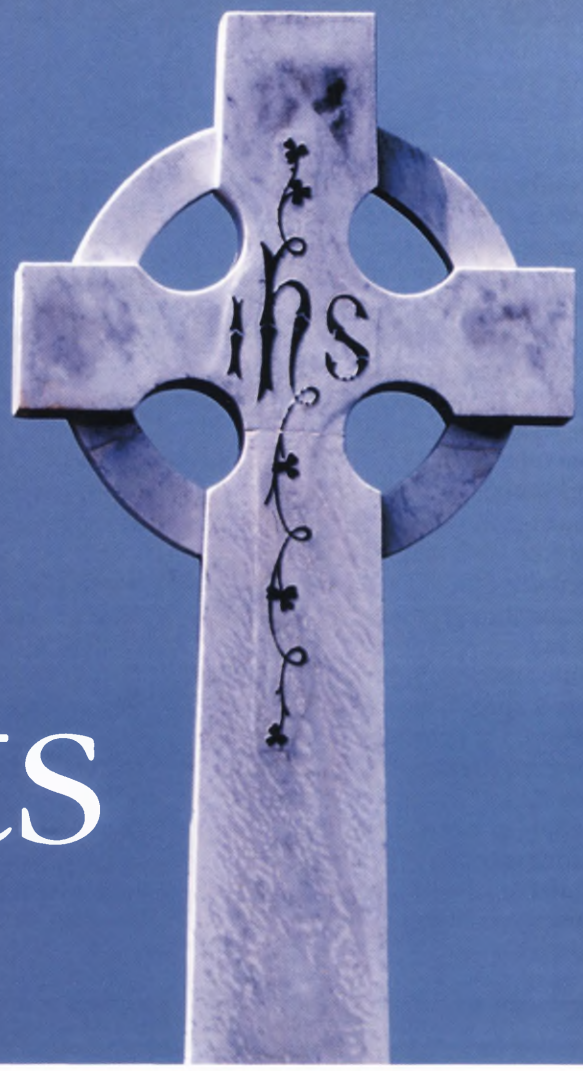

Photo by Lana Vshivkoff.

Survivors want the truth to out, they want accountability, they'd like compensation – and they'd like it all for next to nothing.

The inquest is about to start. This courtroom is one of the larger ones, kept for longer matters or those that are likely to attract some public attention. You're among the lawyers ranged along the bar table. Your client family, with mixed emotions of anxiety and relief, is sitting a couple of steps away in the public gallery. You can hear their muffled chatter, pointing out to each other who are friends and who are enemy. They've been middling 'high maintenance' – always wanting faster progress – an adult group version of kids in the back of the RV asking, 'Are we there yet?'

How many months is it since they came for that first interview, wanting to know what could be done, how long it would take, how much it would cost, where it would take place? The coroner's office told you pretty quickly that there'd be an inquest: however, its start would depend on how long it took to gather all the evidence, how long it was expected to run, and who would be assisting the coroner. That was months and months ago – more months than the patience of your clients allowed, but still less than a year. Musing as you wait for the coroner to appear, you have no complaint about the willingness of the coronial support team to answer your repeated queries about progress.

You're up as the coroner enters. You've drawn a full-time

coroner, which is a blessing because there's a track record. This coroner runs a tight hearing, works closely with counsel-assisting, asks probing questions without overly stepping into the ring, is always familiar with the witness material before the hearing begins, and doesn't let more than a couple of full moons wane before giving written reasons. This coroner has not been pulled up by the supreme court for procedural error and has a good 'take-up' rate on recommendations that accompany final reports.

This is not one of those inquests in which there has been a parallel circus into one or more aspects of the same tragedy – there has been no 'quick and dirty' administrative inquiry, nothing to draw the attention of an anti-corruption body, and no pressure for a bucket-load of money to be up-ended so that a Royal Commissioner could be appointed. The investigation is centred within this room.

At the far end of the bar table, counsel-assisting is going through her notes for the witnesses to be called today. She's from the DPP and in the past 12 months has done about half a dozen inquests. (Around the country there are two other approaches: police prosecutors or the private bar – a decision that reflects the degree of complexity and the extent of public interest in the matter.) You've spoken to her several times while the order of witnesses has been discussed and to persuade her, successfully, that the coroner should seek independent expert opinion on some issues. You remember how pleased your clients were with the news that the government was picking up the tab for those experts. You could almost feel their hands pulling back from their wallets.

The best-looking of your client family has been button-holed by an eager journalist. No thank you. Your tactical plan has no room for uncontrolled 'quotes'.

Inquests are expensive. They're generally not on the radar of legal aid. Very occasionally there'll be a secret sponsor for the victim's family: the generous (and very welcome) face of chequebook journalism. But the usual rule is pay your own costs, pay a lot, and pay often. Survivors want the truth to out, they want accountability, they'd like compensation, and they'd like it all for next to nothing. That's why you were so careful with the costs agreement, the letter of advice, the progress reports, and the time you spent preparing your clients for their witness experience.

Appearances are called and lawyers around you rise to seek leave to appear for this or that interested party. There's the >>

usual gang of insurer representatives who are well known to the coroner. There are a couple of lawyers who, like you, are occasional visitors to this quaint jurisdiction in which the adversarial tradition is bypassed here and there by inquisitorial forays. The expeditionary sense of it is conveyed by the coroner's intention to find out the identity of the deceased, the manner and cause of death. 'To find out' is not a phrase that we bandy about in our adversarial proceedings. But the inquest is inquisitorial, a quest for explanation. What's more, the coroner can make recommendations in the final report about what steps can be taken to prevent a recurrence of the tragedy. Of course they're mere recommendations, not enforceable orders, but they have the persuasive clout that flows from a credible public hearing and a thorough-going, objective analysis with a clear set of findings.

Your request to appear is granted. Other requests are granted, rejected, or granted on such limited terms as questioning named witnesses, or making written submissions when all the evidence has been taken.

The coroner then sets out the intended order of witnesses and gives some approximations as to the likely timetable. That confirms what you've already heard from counsel-assisting. Quite some thought has been given to the order. Counsel-assisting has an hypothesis about the causes of this tragedy and the witness order reflects a sequence which is governed by that hypothesis. This inquisitorial pursuit is not random; rather, it is a long course with quite specific checkpoints and a known range of outcomes. The 'truth' will emerge as the evidence is pushed this way and that, as witnesses perform well or falter. The order of witnesses gives some evidence a better chance – rather like barrier positions.

It's time for a brief break while the first witness is located. You walk out into the public area to see that the best-looking of your client family has been button-holed by an eager journalist. No thank you. Your tactical plan has no room for uncontrolled 'quotes'. This inquest will run for some days, maybe a week or more, and you do not wish to deal with a coroner whose inquiry is being reported under such bold black headings as 'Victim's family expects coroner to point the finger', etc. You nicely but firmly terminate this exchange and offer to brief the journalist after 4pm. She tells you that's too late for the copy deadlines and you give her the stare that says, 'Don't try that one on me'.

Back to the hearing. The first witness is being taken through his witness statement. He's a police officer, spending a year or two on coronial support. It's a lengthy statement, as it describes the full scope of his inquiries. You look along the bar table, checking that you're in about the right position for the cross-examination call. There's one advocate whose client, sub-nom insurer, is not happy with the police report of their involvement. He should be at the far end to ensure that he gets a final – or at least close to final – go. Instead, he's between you and counsel-assisting. Good. You prefer the version in the police brief so you can use your 'cross' time to have the police officer confirm the friendly nature of the interview, the willingness of the witness to help – anything and everything that will have the coroner prefer the police-recorded account to the later statement prepared under insurer lawyer supervision. You will do this after the other advocate has had his chance at cross, so your pleasant questions will be tailored to deal with the results of that exchange. You will smile at the police officer who will no doubt smile back.

One or two of your client family have gone outside for a smoke. You wish you too could take a few minutes outside. It's a near perfect day, blue sky, occasional wisps of cloud, the occasional touch of a breeze, hot enough to swim but cool enough for a lunch-time jog. But here you are, tethered to a bar table so that there can be argument abut the manner and cause of death of the deceased. There's no doubt about identity, but 'manner and cause' is such an elastic phrase. Appearing for the victim's family, you want to stretch it out to embrace all those acts of commission and omission by the still living, which contributed to the death. Just down the table your professional colleagues want to scrunch it like a cast-off head band so that manner and cause becomes, 'an accident, a death'.

There's a traditional range of coronial findings: unlawful homicide, lawful homicide, suicide, misadventure, accident, natural causes, and open finding. Rather than venture into any labelling that might have a 'criminal' connotation, you can expect findings to be more descriptive of the 'how' and the 'manner' of death. You're looking to misadventure while others along the table will press for accident. You think you

can persuade the coroner that the facts are there, and sufficiently strongly there, for misadventure to be a comfortable verdict. The standard is civil, though if the Coroner is going to come down hard on an individual or entity then prudence suggests that the sliding scale approach is kept in mind for such a finding: the more critical then the higher the degree of proof.

This is not an inquest with any chance of a criminal charge following. So it will run to its conclusion. Those which lead to criminal charges are interrupted so as not to interfere with a fair trial. They usually resume, briefly, after the criminal proceedings are finalised.

Your clients want public accountability of those they hold responsible. They want recommendations for action that will reduce the chance that this kind of tragic event will happen again. They'd like damages too because there's a young family to feed, clothe and educate. Their first two aims can be satisfied by this inquest. Their financial dreams may be helped by the way the evidence comes out in this hearing and in the performance of various witnesses. If a key witness for the insurer performs poorly, then the prospects for an early settlement are enhanced.

There's an objection from somewhere down the table. They don't like the hearsay. Tough. The coroner is not bound by the procedures or rules of evidence that apply in a court. Anyway, the hearsay is contextual: it usefully explains how people came to gather there. The objector is back in their box, in the dark, a proper place for anyone who comes into court without doing basic preparation.

You wonder if they've checked the current legislation to see if there's a right to comment on a draft report. That's a recent statutory innovation and a wonderful contribution to fairness and transparency. A criticised party is offered the chance to rebut the proposed criticism. Their rebuttal, or a fair summary of it, is included in the final report. But it hasn't been adopted in a number of jurisdictions. Still, in closing submissions you will ask for the opportunity to be given. There's no downside for your clients. Point out that such a chance undercuts any post-report 'media assault' by a dissatisfied party. In turn, that gives the recommendations a better chance of implementation.

You're jumping ahead, days too far. Even cross-examination for this police officer is still hours away. You put your head down and check and recheck your cross-references to the statements that he took from witnesses. There are witnesses at the scene and witnesses who will talk of related matters – things done and not done that led to this death. You reread the results of the search of the national coronial data base: this is not the first such incident; it's the third; there are some cross references to other 'almost fatal' incidents; you note the earlier recommendations from the second inquest (held on the other side of the country), and highlight the point that the operator was aware of those recommendations and ignored them.

There's an intra-company report in which a middle-level manager recommends some action to implement the key recommendations, and there's an email which tells her, none too politely, to mind her own business. She did, by changing jobs, and keeping the paperwork. When she read about the latest family loss, she handed it all to the coronial investigating team. That's how the truth of it so often comes to light: little acts of nastiness, greed and deception keep the embers of truth flickering in unlikely places until the winds of change fan some fiery light. ■

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