

BRIEFING NOTE

Silver Fox v. Chief Coroner, 2013 YKCA 11

A missed opportunity?

Mr. Silver Fox died on December 2, 2008 after being held in a police cell used for holding intoxicated people for 13½ hours. An Inquest was held into his death during which viva voce testimony was given by 28 witnesses, and another 3 testified by pre-recorded statement. There were a number of documents tendered including “*numerous manuals and other documents relating to release procedure*”. A forensic pathologist who conducted an autopsy testified the principal cause of death was sepsis and acute pneumonia. In addition, a general practitioner at the Whitehorse General Hospital (where Mr. Silver Fox was taken from the cell) opined that he likely contracted the infection by vomiting and breathing the aspirated vomit into his lungs. A toxicology report indicated no drugs or alcohol in his system.

The transcript of the summation to the jury reveals, apart from the boiler plate terminology, an absence of mention of the fact there were 2 theories as to the cause of death - only the evidence of the pathologist was mentioned. The jury returned a verdict that his death was from natural causes and made several recommendations.

Mr. Silver Fox’s family filed a petition for a judicial review of the verdict and that was heard in the Supreme Court. The Judge found that the jury charge failed to meet the duty of fairness, the manner of presenting some evidence precluded the jury from fully considering it, and the Silver Fox family were denied the requisite degree of participation.

The chief coroner appealed the matter to the Court of Appeal of the Yukon. The court had to, as a preliminary matter, deal with whether the chief coroner had standing to appeal the order quashing the verdict and held that the office did.

The Appellate court considered the issues under review to pertain to procedural fairness. In determining the appropriate standard of review it considered there was a duty of fairness and in assessing what that required, adopted the contextual approach set out by the Supreme Court of Canada in *Baker v. Canada (Minister of Citizenship and Immigration)*.

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In the objections, including the content of the jury charge, a great deal of deference was paid to the inquest. The Appellate court held that it was “*within the mandate of the coroner to present the results of the investigation to the jury as she considered appropriate in the circumstances*”. It noted that an Inquest is “*at some distance from a judicial process*” and found that the summation did not require a review of the evidence. It was noted in some circumstances it may be helpful, “*however, the decision of whether to sum up the evidence is one within the discretion of the presiding coroner, who will be in the best position to appreciate the need for such a review. Nor, in my view, does a summation require an analysis of competing theories. While a coroner may choose to explain the alternatives to the jury by referring to different ways of viewing the issue of cause of death, in placing a requirement on a coroner to do so risks involving a jury in issues of contributory causation such as is encountered in court proceedings determining the rights of individuals*”.

While the statutory regime under which Inquest are run does provide great latitude to coroners, this is an interesting decision and perhaps a missed opportunity for the appeal court to remind coroners of the need to provide all of the results of their investigation, in a fashion that assists the jury, but without editing. Often, the jury is set to retire at the end of a long week (as this may well have been with 31 witnesses called). There is a great deal of information for them to take in, and the summation is the only opportunity for them to be reminded of the course of proceedings during the week. Unlike civil trials, none of the interested parties have an opportunity to address the jury and ensure that all of the relevant evidence is presented. That is of course, part and parcel of the inquisitorial process. However, is it not the aim of the inquisitorial process to uncover the truth by providing all of the facts to the jury for their consideration, even if that may cause the jury some difficulty in considering causation?



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