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*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

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Chief Constable of the PSNI's Application [2010] NIQB 66

IN THE MATTER OF AN APPLICATION BY THE CHIEF CONSTABLE OF THE POLICE SERVICE FOR NORTHERN IRELAND FOR JUDICIAL REVIEW

AND IN THE MATTER OF A DECISION BY HER MAJESTY'S SENIOR CORONER FOR NORTHERN IRELAND IN RELATION TO THE PROPOSED RESUMPTION OF INQUESTS INTO THE DEATHS OF

SERGEANT JOHN McQUINN
CONSTABLE ALAN McCLOY
CONSTABLE PAUL HAMILTON
JOHN GERVAISE McKERR
EUGENE TOMAN
JOHN FREDERICK BURNS
MICHAEL JUSTINE TIGHE
PETER JAMES MARTIN GREW
RODERICK MARTIN CARROLL

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GILLEN J

Application

[1] The applicant in this matter is the Chief Constable of the Police Service of Northern Ireland ("the applicant"). He seeks primarily declaratory relief with respect to the correct approach to be adopted to the disclosure of materials in Coronial inquests where an application for Public Interest Immunity ("PII") is to be brought.

[2] All of the deaths relevant to this application are described by the Senior Coroner for Northern Ireland in the course of his affidavit of 25 February 2010 ("the first affidavit") as deaths which "might be labelled as controversial deaths occurring during the course of the height of the Troubles. An issue that may arise is whether or not any of the deaths were caused as a

consequence of an intention to kill on the part of the security forces, including the Royal Ulster Constabulary, the Army or their State agencies."

[3] The applicant is challenging the decision of HM Senior Coroner for Northern Ireland ("the Coroner") on 15 January 2010 whereby he directed the applicant to make available to him redacted copies of the "Stalker" and "Sampson" reports for onward dissemination to the other interested parties in relation to the proposed resumption of inquests into the deaths of the persons named in the title to this application (the notice parties). The applicant objects to the Coroner's refusal to first rule on the relevance of the said materials which thereby allegedly impedes the Chief Constable's application for a PII Certificate for proposed redactions to the reports.

Background

[4] The background information and history of this matter is set out by Detective Chief Superintendent McCombe in an affidavit of 11 February 2010 wherein at paragraph 8 et seq he avers as follows:

> "8. The inquest into the deaths of Sergeant Quinn and Constables McCloy and Hamilton were concluded on 4 March 1983. These police officers were killed by a covert explosive device at Kinnego Embankment, Lurgan on 27 October 1982. The deaths of these officers formed part of an investigation conducted by the Stalker/Sampson investigative teams. Notwithstanding the fact that these inquests concluded in March 1983 the Senior Coroner has requested the Attorney General to permit the re-opening of these inquests.
>
> 9. The inquests into the deaths of Gervaise McKerr, Eugene Toman and John Frederick Burns were abandoned by the Senior Coroner on 8 September 1994. He also indicated that he would not convene inquests into the deaths of Michael Tighe, Peter James Martin Grew and Roderick Martin Carroll in light of the limited access he was afforded to the Stalker/Sampson reports.
>
> 10. On 9 October 2007 the Senior Coroner convened a preliminary hearing into those deaths where he indicated that the ruling of the House of Lords in Jordan and McCaughey (2007) UKHL 14 may now provide a catalyst for the re-opening of

> these inquests. The Coroner stated that he would not be able to make any final decisions on who would be a witness until he had read and considered both the Stalker and Sampson reports and their totality of evidence available to him. The Coroner also indicated that he had not reached the conclusion that the resumption of these inquests was a viable exercise."

I pause to observe that this is still the Coroner's position.

[5] In the Coroner's first affidavit he confirmed that he has now read the Stalker report and the Sampson report though he had not read any of the underlying materials or appendices at that time ("the underlying material") .

[6] It is common case that on 29 October 2008 the Coroner convened a preliminary hearing in relation to these inquests. In his first affidavit at paragraph 5 he avers:

> "On that date I gave a written ruling in which I indicated that for inquest purposes not all of the contents of the reports were relevant. I also indicated at that time that access to the parts that I considered to be relevant would enable properly interested persons, particularly the bereaved families, to participate effectively in the inquest proceedings. Thus, I intended at that time, upon receipt of the redacted copies of the reports, to disseminate such material to the interested persons as I anticipated relevant to the issues arising within the inquest proceedings. Though there are no statutory provisions, instruments or rules relating to disclosure, such an approach was in accordance with the general practice of coroners at that time and also accorded with my general practice."

[7] The Coroner went on to record that in light of

- the inquest into the deaths of Princess Diana and Dodi Al Fayed ("the Diana inquests") held in London before Scott Baker LJ from early 2007 until Spring 2008,
- correspondence with Martin Smith, solicitor to the Diana inquest as to the nature and extent of the disclosure of material given to properly interested persons in that inquest,
- the approach of Lord Hutton in the David Kelly Inquiry to the effect that "generous disclosure consistent with the principle of transparency was made to interested persons",

he had altered the view that he had taken previously on 29 October 2008.

[8] At paragraph 11 of his first affidavit the Coroner avers:

> "In the letter of 25 November 2008 (*to the Crown Solicitor*) I advised that unless I was directed by a higher court that I am in error, I propose to follow the approach taken by Lord Hutton and Scott Baker LJ in relation to disclosure. I advise that I made the decisions that I did on 29 October in ignorance of their approach and the process that each followed."

[9] On 30 November 2009 a further preliminary hearing was convened into these inquests. In his first affidavit the Coroner avers at paragraph 19:

> "I thus believe following this hearing, as indeed I believe did everyone, that redacted copies of the Stalker and Sampson reports would be made available by the PSNI (subject to the mechanics of it being sorted out in terms of copying) to all interested parties part the end of February 2010."

[10] In a second affidavit of 27 April 2010 the Coroner has set out again his approach to the issue of disclosure in these inquests in the following paragraphs:

> "6. In re-opening the present inquests, I have yet to determine whether any or all of the inquests will be viable. To a very large extent this depends on the amount of disclosure that I am able to obtain. This matter remains under review. Further in the event that inquest/inquests is/are considered viable, I have to determine the scope of the inquests.
>
> 7. As I explained in my earlier affidavit … I have read the Stalker and Sampson reports though I have not read any underlying materials or appendices at this time. These are both important documents investigating the circumstances of the deaths of those in respect of whom I propose to conduct inquests. The content of both documents, taken cumulatively, provides information that is highly relevant to the circumstances of each of the individuals' deaths. Further, given that each of the deaths are believed by some sections of the communities and some of the

bereaved families to have arisen as a direct consequence of a policy "shoot to kill", I consider that these documents are generally relevant to all of the deaths.

8. As with any compendious document examining all circumstances touching upon a death, particularly one where it is alleged to be the product of a policy of the State, there are some details in both documents that I consider could properly be described as irrelevant on a strict basis. I said so in my earlier ruling on this issue back in October 2008. However, I subsequently tempered those remarks for the following reasons:

(a) Whereas I had previously formed the view that the scope of the inquests, and thus the issue of relevance was a matter to be determined by me alone without any representation from the interested persons, I considered that in light of the approach in the Diana and Dodi inquests that interested parties should properly have an input into determining the scope of the inquest and that, accordingly, the relevance of the documents and materials was only to be concluded once the scope of the inquests was finally determined.

(b) In order to allow interested parties to contribute meaningfully on the issue of the scope of the inquest (and the issue of relevance), it was proper to make as much disclosure as possible of all materials that could be considered potentially relevant to interested persons.

9. I consider that a document may be potentially relevant for two reasons:

(a) If it belongs to a category of documents or relates to a subject matter about which there is no agreed final position as to its relevance or irrelevance to the inquest and which ought to be disclosed so that meaningful submissions might be made by interested parties to me about the scope of the Inquest, and

(b) If the document, though technically irrelevant, ought nonetheless properly to be disclosed to interested parties to confirm or allay rumour or suspicion.

10. It is in my view that the Stalker and Sampson reports, in their entirety (and subject to such redactions as are appropriate to satisfy Public Interest Immunity) fall within the definition of potential relevance. This was the basis of my ruling in September 2009."

[11] In a letter of 15 January 2010 to the Crown Solicitor, the Coroner summarised his approach in the following terms:

> "I propose to follow closely the approach adopted by Scott Baker LJ in the inquest into the deaths of Princess Diana and Dodi Al-Fayed. Essentially that means the following:
>
> 1. General disclosure.
> 2. Submissions on which could constitute core relevant material.
> 3. My decision on what constitutes core relevant material."

Leave application

[12] I granted leave on 12 April 2010 to the applicant to make an application to quash the Coroner's determination of 15 January 2010 and for declaratory relief that the impugned determination was unlawful and ultra vires.

[13] The grounds of challenge were threefold namely:

(a) The Coroner erred in law in concluding he could require dissemination of a redacted version of the reports by deeming that material to be "generally relevant" without determining the specific relevance of that material.

(b) He had acted in a manner which failed to have due regard to Article 2 rights of third parties who might be identified in the reports in circumstances where a PII application could not be made un the Coroner had determined the relevance of the material in question.

(c) The Coroner was acting ultra vires and in error of law in proposing to require the applicant to furnish redacted copies of the reports pursuant to s.8 of the Coroners Act (Northern Ireland) 1959.

The applicant's case

[14] In the course of his well marshalled skeleton argument augmented by oral submissions, Mr Simpson QC, who appeared on behalf of the applicant with Mr McGleenan, made the following submissions.

[15] The determination of relevance of documents supplied in the course of a coronial inquest is a critical step for two reasons. First, the Coroner is only obliged to provide documents which are relevant to the interested parties and not to provide irrelevant documents. Secondly the PII process requires that the Tribunal in question first determine which documents are relevant for the inquiry in question. Counsel drew attention to R v Chief Constable of Nottinghamshire Constabulary ex parte Wiley (1995) 1 AC 274 ("Wiley") and Chief Constable's Applicant (2008) NIQB per Morgan J. In the former Lord Templeman said at 281E:

> "Whenever disclosure in litigation is under consideration ,the first question is whether a document is sufficiently relevant and material to require disclosure in the interests of justice …….If a document is not relevant and material it need not be disclosed and public interest will not arise."

[16] Mr Simpson submitted that the proper sequence of events to be followed by the Coroner was as follows:

- The Chief Constable provides documents to him pursuant to his duty under s.8 of the Coroner's Act (Northern Ireland) 1959.
- The Coroner forms a preliminary view as to the scope of the inquest.
- Having openly outlined that view, he invites representations from the interested parties.
- The Coroner makes a ruling on the scope of the inquest.
- The Coroner, having read the material, decides, against the background of his determination on the scope of the inquest, which parts of the material he considers to be relevant.
- The State agencies consider the material and indicate that a PII application is to be made.
- The PII applications are made to the Minister in relation to the relevant materials.
- If the Certificate is signed, the matter then comes back before the Coroner, the redactions can be made and the relevant materials can then be disseminated to the interested parties.

[17] The requirement of the Coroner to determine relevance is particularly significant in these circumstances where the Chief Constable cannot be seen to be the arbiter of relevance or the extent of disclosure.

[18] The approach adopted by the Coroner represents an abdication of his responsibility to determine the scope of the inquest and manage disclosure of documents through a workable determination of relevance.

The statutory and regulatory framework

[19] Where relevant, the Coroners Act (Northern Ireland) 1959 ("the 1959 Act") provides at Section 8:

> "Whenever a dead body is found, or an unexpected or unexplained death, or a death attended by suspicious circumstances, occurs, the Superintendent within whose district the body is found, or the death occurs, shall give or cause to be given immediate notice in writing thereof to the Coroner within whose district the body is found or that death occurs, **together with such information also in writing as he is able to obtain concerning the finding of the body or concerning the death**." *(emphasis added)*

[20] Section 31(1) of the 1959 Act provides that, inter alia:

> "Where all members of the jury at an inquest are agreed they shall give, in the form prescribed by Rules under Section 36, their verdict setting forth, so far as such particulars have been proved to them, who the deceased was and how, when and where he came to his death."

[21] The Coroners (Practice and Procedure) Rules (NI) 1963 ("the 1963 Rules") provide at Rule 7:

> "(1) Without prejudice to any enactment with regard to the examination of witnesses at an inquest, any person who in the opinion of the Coroner is a properly interested person shall be entitled to examine any witness at an inquest either in person or by counsel or solicitor, provided that the Coroner shall disallow any question which in his opinion is not relevant or is otherwise not a proper question."

[22] Rule 15 of the 1963 Rules provides:

> "The proceedings and evidence at an inquest shall be directed solely to ascertain the following matters, namely:
>
> (a) who the deceased was;
> (b) how, when and where the deceased came by his death;
> (c) the particulars … to be registered concerning the death."

Conclusion

[23] I have come to the conclusion that the applicant's case must be dismissed. I have arrived at this determination for the following reasons.

[24] I consider that the applicant has misconceived the nature of the coronial process, the role of the Coroner and the nature of disclosure within that process. An inquest is quite unlike other civil or criminal proceedings or inquisitional procedure. The role of the Coroner is different to that of any other judicial officer .I respectfully adopt the description of the Coroner's role by Sir Thomas Bingham MR in R v Coroner for Inner London West District ex parte Dallaglio (1994) 4 All ER 139 ("Dallaglio") at page 162 couched in the following terms:

> "He, through his officer, gathers the relevant evidence and I can readily accept that it would on occasion be appropriate to approach the press for information. He decides which witnesses should be called and which statements should be read. He examines the witnesses. In all these respects his role is quite unlike that of a judge as we know it. His function is indeed closer to that of a juge d'instruction than to that of a judge presiding over contested proceedings between adversaries. Thus his role is different. It is also very difficult and sensitive, because issues concerning the death of those they love are naturally of great moment to those they leave behind, and sometimes to the public at large."

[25] In R v Coroner for North Humbershire and Scunthorpe, ex parte Jamieson (1995) QB1 p. 26 (Jamieson) the court described the Coroner's duty as "to ensure that the relevant facts are fully, fairly and fearlessly investigated … he must ensure that the relevant facts are exposed to public scrutiny, particularly if there is evidence of foul play, abuse or inhumanity.

He fails in his duty if his investigation is superficial, slipshod or perfunctory." In order to perform the task set out in Jamieson, the Coroner must be invested with a wide-ranging discretion as to how he conducts his inquiry and a greater flexibility of approach than might be appropriate in other civil or criminal proceedings. Hence the court must be wary of Mr Simpson's suggestion that the Coroner should find guidance in Wiley's case which was set in a context of an action against the police for damages outside the coronial process and within the conventional litigation arena.

[26] I find it therefore both unsurprising and significant that there is no statutory provision, instrument or rule governing the Coroner's approach to disclosure. His task remains comparatively unfettered to that extent.

[27] That wide discretion vested in the Coroner as to the procedure he will adopt in the course of his investigation has been the subject of judicial confirmation in a number of cases, the most authoritative of which is perhaps that of Lord Bingham in Jordan v Lord Chancellor and Another (2007) UKHL 14 where he said at paragraph 37 in the context of the purpose of an inquest:

> "The Coroner must decide how widely the inquiry should range to elicit the facts pertinent to the circumstances of the death and responsibility for it. This may be a very difficult decision, and the inquiry may, as pointed out above, range more widely than the verdict or findings …"

[28] I find no departure from this broad purposeful approach in any of the other authorities that have been quoted to me during this hearing. On the contrary the approach now adopted in the instant case by the Coroner is securely founded in a number of authorities. I shall be sparing in citation but relevant instances include the following.

[29] In R (on the Application of Smith) v Oxfordshire Assistant Deputy Coroner (2008) 3 WLR 1284 Collins J, in the context of disclosure in inquests, cited favourably the view of Sullivan J in R (Bentley) v HM Coroner for Avon (2001) 166 JB 297 declaring:

> "It was his view, with which I entirely agree, that there must be a presumption in favour of as full disclosure as possible. (paragraph 37)."

[30] In the Coroner's Inquest into the deaths of Diana, Princess of Wales and Mr Dodi Al Fayed Lord Justice Scott Baker, the Assistant Deputy Coroner of Inner West London made a number of remarks pertinent to this case.

- On 27 July 2007 at pre-inquest hearing he said:

> "The list of 20 issues circulated to the interested persons are those that I have identified as likely to need to be assessed at the inquests … I should make it clear that the reason I am prepared to explore such a wide range of issues is because one of the purposes of the inquests is to confirm or allay public suspicion, and that questions relating to these issues have been circulating in the public domain albeit some times as matters of surmise rather than supported by any evidence. This should not, however, be interpreted as meaning that I shall call vast amounts of evidence on every issue. I wish to … point out the need to manage the time constructively so that it is not wasted on peripheral matters that prove to be of little relevance."

- On 12 March 2008 during the course of the inquest, and in the context of dealing with requests to call witnesses, Scott Baker LJ said:

> "If ever there was a case that has generated rumour and suspicion, and indeed it has done so on an international scale, surely this is it. Because of this a great deal of evidence has been called that is only of the most marginal relevance to the questions the jury have to answer. However that has been desirable in order to ascertain whether there is any substance in a number of assertions that have been made by Mr Mohamed Al Fayed or have been circulating in the media or both. Nevertheless, it seems to me that there comes a time when a halt has to be called to calling evidence of marginal if any relevance."

- On 7 November 2007 he said in the context of the introduction of evidence from witnesses unwilling or unable to give evidence:

> "As I expect will be apparent, I have been taking a liberal approach to the matters on which I have been prepared to adduce evidence. The 20 questions that I concluded warranted consideration cover much wider territory than would ordinarily be appropriate at an inquest. The reason for that is that one of the purposes of these inquests is to confirm or allay public suspicion. In that sense one is looking not only at the inquest but beyond."

[31] In an earlier hearing, when Baroness Elizabeth Butler-Sloss GBE was sitting as Deputy Coroner of the Queen's Household and Assistant Deputy Coroner for Surrey, she had variously described the process as requiring evidence "relevant to the remit of the particular inquest" and documentation which was "potentially relevant".

[32] Mr Simpson did not shrink from asserting that Scott Baker LJ had been in error in the approach that he had adopted. I do not agree. Depending on the circumstances and nature of the inquest, the Coroner is fully entitled to adopt a liberal and wide approach to the concept of relevance in the manner that Scott Baker LJ performed .I pause to observe that whilst Lord Hutton adopted a similarly broad approach to disclosure in the Hutton Inquiry ,I found this of less assistance to my determination because it was not an inquest .

[33] The comments of Scott Baker LJ to allaying rumours and suspicions may have found their provenance in the recommendations of the Brodrick Committee on Death Certification and Coroners. In Jamieson's case (cited with approval in the European Court of Human Rights McKerr v The United Kingdom Application No. 2888 3/95) Sir Thomas Bingham MR said:

> "(Previous judgments) make it clear that when the Brodrick Committee stated that one of the purposes of an inquest is 'to allay rumours or suspicions' this purpose should be confined to allaying rumours and suspicions of how the deceased came by his death and not to allaying rumours or suspicions about the broad circumstances in which the deceased came by his death."

[34] This serves to illustrate a crucial difference between the nature of the inquest procedure and other criminal/civil litigation where the concept of allaying rumours and suspicions would play no part whatsoever whilst at the same time recognising the confines of that discretion within the Coronial process. It is a further indication of the wide discretion vested in a Coroner to make a liberal interpretation of the concept of relevance as circumstances demand.

[35] Most recently in Coroners Inquest into the London Bombing of 7 July 2005, Hallett LJ said at paragraph 110 et seq:

> "I remind myself of the guidance of the Court of Appeal in *Dallaglio* to the effect that:
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> > 'The inquiry is almost bound to stretch wider than strictly required for the

> purpose of a verdict. How much wider is pre-eminently a matter for the coroner whose rulings upon the question will only exceptionally be susceptible to judicial review?'
>
> That would appear to indicate I have a broad discretion. Given the breadth of my discretion and the obvious legitimate public interest in investigating broad issues, I have no doubt some sort of independent inquiry conducted in public and involving the families is required on issues which go beyond the immediate aftermath. It will help put minds at rest, confirm or allay the rumour and suspicion generated by 'conspiracy theorists' and most importantly answers those of the families' questions that Mr Garnham concedes can be asked. To those who ask 'what is the point?' I would reply, as Mr Keith suggested: to those who lost their loved ones on 7thJuly 2005, there may be every point.
>
> 111. An inquest is not limited to looking at the last link in the chain. Thus, we are not necessarily restricted to a review of 7 July 2005 or even to the days before. It all depends on the facts of a case how far back one can go before the events become too remote."

[36] In Northern Ireland the same liberal approach to the task of the Coroner is discernible. McCloskey J in Re Siberry (No. 2) (2008) NIQB 147 at para. 57 has said:

> "The route to the permissible terminus of an inquest can be wider than the terminus itself."

[37] Weatherup J referred to the need to allay rumours or suspicion in Re Hemsworth (2009) NIQB 33 paragraphs 33-36 and Re Ramsbottom (2009) NIQB 55 at paragraph 11.

[38] Ms Quinlivan, who appeared on behalf of some of the interested parties with Mr Moriarty , properly reminded me of the concerns raised by Girvan LJ in Hugh Jordan v Senior Coroner (unreported GIR7682) when, at paragraph 4 whilst adverting to the difficulties facing a Coroner dealing with contentious inquests, he stated:

> "The problems are compounded by the fact that the Police Service which would normally be expected to assist a coroner in non contentious cases is itself a party which stands accused of wrong doing. It is not apparent that entirely satisfactory arrangements exist to enable the PSNI to dispassionately perform its functions of assisting the coroner when it has its own interests to further and protect."

[39] In my view that is all the more reason why in contentious inquests of this nature, a Coroner must adopt a broad and purposive approach to the issues that need determination and to invoke a generous approach to disclosure.

[40] That the current approach in inquests in Northern Ireland has invoked similarly flexible broad brush approaches to disclosure was, according to Ms Quinlivan, further evidenced by the affidavit in these proceedings from Niall Murphy of Kevin R Winters and Company, solicitors on behalf of several of the notice parties. This affidavit was to the effect that in inquests touching upon the deaths of Roderick Martin Carroll, Peter James Martin Grew and Roseanne Mallon, the next of kin had received from the Chief Constable redacted copies of all the documentation disclosed to the Coroner in compliance with the obligation under Section 8 of the 1959 Act. This had occurred in each instance in circumstances where the Coroner had not been invited to determine the relevance prior to disclosure of the redacted material.

[41] If inquests are to maintain public confidence, put minds at rest and answer the questions of the families who are bereaved, it is vital to ensure that the interested parties/next of kin can participate in an informed, open and transparent fashion on an equal footing with all other parties throughout the various stages of the Inquest including, at the outset of the process, the very scope of the inquest. This can only be achieved where appropriate disclosure has been made of potentially relevant material. As Mr McDonald QC, who appeared for certain of the notice parties with Ms Doherty, reminded me next of kin may be in a unique position to assist the Coroner pursue avenues not readily apparent to him and to throw new light on material that on first blush may give the appearance of being inconsequential. I accept the strength of the argument of Mr O'Donoghue QC, who appeared on behalf of the Coroner with Mr Daly, that the need for a public investigation, in this instance into issues surrounding the allegation that the State has a "shoot to kill" policy, requires the Coroner to view disclosure in a generous light to enable informed representations to be made by the notice parties as to the scope of the inquest itself. Hence the need to ensure they are appropriately involved in the manner suggested by the Coroner in this instance.

[42] An approach of adamantine rigidity as to the nature of disclosure will fail to serve the nature of the wide-ranging inquiry which a coroner may have to make. It is perfectly logical in my view for the Coroner to assert that in order to permit his Jamieson task to be properly carried out, the families of the deceased do need to see the entirety of the Stalker and Sampson reports which he has determined are generally or potentially relevant albeit in the first instance in a redacted form to protect sensitive material .The redaction will enable an application to be made at an appropriate stage by the applicant for PII once ,as recognised by Mr O'Donoghue, the Coroner has determined the relevance of the redacted material. I appreciate that this does place a not inconsiderable burden of work on the applicant but it must be met if the purpose of inquests is to be properly served. His concept of what is necessary within the general ambit of relevancy may change as the stages of his inquiry progress. Thus the documentation may be further confined once the investigation gets underway, the scope having been ascertained, and indeed further refined by the time necessary documentation is to go before the jury.

[43] Absent such flexibility of approach, which permits the Coroner to invoke terminology such as "potential relevance", "general relevance", "generous disclosure" and a determination to avoid being hide bound by arguments of "technical irrelevance" on matters of detail , I do not believe that the onerous duties cast on the Coroner under the 1959 legislation can be fulfilled. The legislative purpose of inquests and the Coroner's duty to ensure fairness and transparency would be unacceptably diluted if the Coroner's discretion required to be confined in every case in the manner suggested by Mr Simpson. It confirms my view that there is no basis for a legitimate expectation on the part of the applicant that the Coroner would act in a manner different from that which he has adopted in this instance

[44] Whilst this tour d'horizon of the authorities serves to draw contours of disclosure which are not only flexible but are affected by the varying nature and stages of the inquisitorial process within which it has to be carried out, I must not be taken however to imply that the Coroner's discretion is entirely unfettered or that it is for the Coroner to embark on a freestanding approach to what is required on any issue of disclosure. He cannot abdicate responsibility to define channels within which the scope of the inquiry must be confined and into which the notion of disclosure must fit. He is bound by the terms of s31 of the 1959 Act and rule 15 of the 1963 Rules. Thus in England and Wales in a *Jamieson* inquest, the question for the Coroner is "by what means" did the deceased meet their death. It is not "in what broad circumstances" did the deceased meet their death (see *Jamieson* itself).

[45] It is difficult to conceive of his performing that duty in the area of disclosure without eschewing matters that are too remote to his purpose and invoking the criterion of relevance albeit in the sense of what may be

potentially or generally relevant as the Coroner has done in this instance. Whilst he need not be hidebound by technicalities equally he must ensure that the inquiry elicits facts pertinent to the circumstances of the death and responsibility for the death. .

[46] Equally the Coroner is constrained by the concepts of fairness(see R(Bentley)v HM Coroner for Avon (2001) EWHC Admin 170), proportionality and transparency inherent in the European Convention of Human Rights and Fundamental Freedoms. I believe it is an entirely rational and proportionate decision for him to conclude that this means that he must permit the families of the deceased to see the entirety of the Stalker and Sampson reports - he having determined them "generally relevant "- whilst at the same time, recognising the need to protect sensitive material and the Article 2 rights under the Convention of police officers etc by indicating his readiness to accept redacted copies of the reports for dissemination to enable the applicant to make a PII request if the Coroner considers those redacted areas relevant to his inquiry. He is likely of course to invite the notice parties to address him on the PII issue and to schedule as far as he can the general nature of the documents to enable this to be meaningfully done. In short I see no impediment in law to the Coroner invoking the nomenclature of "general relevance", "potential relevance", "core relevance" etc. and abjuring too technical or pedantic an approach on matters of pure detail. I fail to see how in so doing he has acted ultra vires or is in error of law. The Art 2 rights of third parties under the Convention are amply protected in this process.

[47] Three other matters raised by Mr Simpson do not deflect me from the conclusions at which I have arrived. First, he relied on the decision of Morgan J in Chief Constable's Applicant (2008) NIQB 100. That was a case where the Chief Constable sought to prevent the Coroner disseminating an investigating officer's report to interested parties. It was Mr Simpson's contention that the court adopted the classic Wiley approach to the issue of relevance when at paragraph 9 the judge stated:

> "The issue is whether it is relevant to the task which he has to perform and in this case there is every reason to believe that it is so relevant."

[48] However that was an instance where the Coroner had made it clear that it was his intention to view the necessary documentation "and insofar as it is relevant to provide it to the interested parties to obtain their assistance on the question of the scope of the inquest". Insofar as Morgan J indicated that that appeared to him to a proper approach enabling the interested parties to participate effectively in the inquest proceedings, (see paragraph 12 of the judgment) I believe it was an instance of the court lending its imprimatur to the particular approach which the Coroner was adopting in a specific case. It was not an attempt to thereafter define the Coroner's discretion in other

instances. The obiter dicta comments of Morgan J must therefore be viewed in the context of a fact specific case.

[49] Secondly, I do not find compelling the argument by Mr Simpson that absent a determination as to which documents are relevant for the inquiry in question, the PII process cannot ensue in that the Minister cannot be asked to sign a certificate for materials that are not relevant to the process. The Coroner, both in his affidavits and through Mr O'Donoghue, has made it clear that the Chief Constable will be able to preserve his position by redacting sensitive material that it is anticipated may be the subject of an PII application and that in turn the Coroner will not only refuse to disseminate this sensitive material to the interested parties but will determine those parts of the sensitive material which are relevant and those which are not. The latter will of course never be disseminated to the next of kin unless the Coroner is persuaded that they are relevant and the former will not be disseminated pending an opportunity for the applicant to seek a PII application. It is inconceivable that the Coroner would ever seek to disseminate wholly irrelevant sensitive material. He will doubtless assume that any disclosure of sensitive material may not just be to the notice parties but to the world at large. Thus the fears raised by Mr Simpson are theoretical and will not arise in practice. The discretion of the Coroner will inevitably be exercised responsibly in the context of material put forward as sensitive/redacted in the first instance.

[50] Finally, Mr Simpson invited me to dilate upon the duties of the Coroner with respect to the underlying materials which have not yet been read by the Coroner. Judicial activism needs to be tempered by due restraint and given the infinite variety of facts which may drive the discretionary conduct of inquests by a Coroner I do not consider that it is appropriate for this court to go beyond the precise parameters of the present case which embrace only the Stalker and the Sampson reports. The court should be wary of determining matters not currently before it. Other than to observe that I see no reason why the Coroner would not adopt a broadly similar approach to the underlying materials as he has taken in the present instance I make no further comment on that issue.

[51] In all the circumstances therefore I dismiss the applicant's case. I will invite the parties to address me on the issue of costs.