

*Judgment: approved by the Court for handing down
(subject to editorial corrections)*

Delivered: **22/04/2005**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW BY
MICHAEL MILLAR**

MORGAN J

[1] The applicant is the husband of Christina Perpetua Millar (the deceased) who died on 18 January 1998. He challenges a decision of the Coroner for the District of Greater Belfast contained in a letter dated 10 November 2003 whereby the Coroner declined to investigate further the death of the deceased because he was functus officio.

[2] The deceased was born on 17 December 1947. She married the applicant in December 1967. She suffered from a range of serious illnesses from an early age. She was diagnosed as diabetic at the age of 11 and had difficulty with control of the condition. She suffered from epilepsy which was diagnosed in 1987. In 1993 she was diagnosed as suffering from dermatomyositis and in 1995 those treating her detected mild liver cirrhosis. She was given a range of drugs to combat these various conditions.

[3] Her condition deteriorated during 1997 and towards the end of that year she was admitted to the Lagan Valley Hospital for treatment of her liver cirrhosis. She died one month later.

[4] A death certificate dated 18 January 1998 identified the cause of death as idiopathic hepatic cirrhosis. It is clear from his affidavits that the applicant was concerned that the liver cirrhosis had been caused or contributed to by some of the drug treatments provided for the deceased. In part he was relying on certain comments which he said had been made to him by Dr Johnston, the doctor in charge of his wife's treatment at the Lagan Valley Hospital. On 23 January 1998 he attended Downpatrick Registry Office to register the death. Because the cause of the liver cirrhosis was unknown the death was not registered.

[5] The Coroner had no recollection of dealing with this case in 1998 but a note in his records for 26 January 1998 contains the following:

“Christina Millar 17-12-47

Died Lagan Valley Hospital 19-1 98. Death Cert. issued with idiopathic hepatic cirrhosis. Mr Leckey spoke to Dr Johnston and Mr Millar-death cert. to stand.”

[6] I am satisfied on the basis of this note that an issue as to the cause of the liver cirrhosis was referred to the coroner, that he investigated the issue and that he formed the view that no further action on his part was necessary.

[7] The applicant pursued his investigations with the assistance of various solicitors. He obtained a report from Professor Roger Williams, the Director of the Institute of Hepatology at the Royal Free and University College Medical School London, which cast doubt on the conclusion that liver cirrhosis was the cause of death. He gathered various materials dealing with the toxicity of some of the drugs prescribed for the deceased. On 3 November 2003 he wrote to the Coroner asking him to consider holding an inquest into the death of his wife. The Coroner replied on 10 November 2003 advising the applicant that because of his earlier investigation in 1998 he was functus officio and suggesting that the applicant should seek a remedy from the Attorney General.

[8] The relevant statutory background is to be found in the Coroners Act (Northern Ireland) 1959. Sections 7 and 8 identify the circumstances in which a report must be made to the coroner.

“Duty to give information to coroner.

7. Every medical practitioner, registrar of deaths or funeral undertaker and every occupier of a house or mobile dwelling and every person in charge of any institution or premises in which a deceased person was residing, who has reason to believe that the deceased person died, either directly or indirectly, as a result of violence or misadventure or by unfair means, or as a result of negligence or misconduct or malpractice on the part of others, or from any cause other than natural illness or disease for which he had been seen and treated by a registered medical practitioner within twenty-eight days prior to his death, or in such circumstances as may require investigation (including death as the result of the administration of an anaesthetic), shall immediately notify the coroner within whose district the body of

such deceased person is of the facts and circumstances relating to the death.

Police to inform coroner.

8. Whenever a dead body is found, or an unexpected or unexplained death, or a death attended by suspicious circumstances, occurs, the district inspector 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 the 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. "

[9] Section 11 establishes an investigative obligation where a coroner is informed that there is reason to believe that a deceased person died in any of the circumstances set out in sections 7 or 8.

"Coroner may take possession of body.

11. –

(1) Where a coroner is informed that there is within his district the body of a deceased person and that there is reason to believe that the deceased person died in any of the circumstances mentioned in section seven or section eight he shall instruct a constable to take possession of the body and shall make such investigation as may be required to enable him to determine whether or not an inquest is necessary.

(2) For the purposes of an investigation under subsection (1) the coroner may view the body but shall not be obliged to do so.

(3) The coroner may, with the consent of the [Lord Chancellor], employ such persons as he considers necessary to assist him in such investigation.

(4) For the purposes of exercising his powers under this section, a coroner may direct the exhumation of any body which has been buried within his district and the consent of any other authority or person to any exhumation so directed shall not be required by

any [. . .] regulations under section one hundred and eighty-one of the Public Health (Ireland) Act, 1878.”

[10] Section 13 sets out the coroner’s power to hold an inquest and section 14 provides that the Attorney General may direct any coroner to hold an inquest where he considers it advisable to do so.

“Coroner may hold inquest.

13. –

[(1) Subject to sub-section (2)] a coroner within whose district –

- (a) a dead body is found; or
- (b) an unexpected or unexplained death, or a death in suspicious circumstances or in any of the circumstances mentioned in section seven, occurs;

may hold an inquest either with a jury or, except in the cases in which a jury is required by sub-section (1) of section eighteen, without a jury.

[(2) Where more than one death occurs as a result of any circumstances and it appears to any coroner who may hold an inquest into one of the deaths under sub-section (1) that one inquest ought to be held into all the deaths so resulting he may –

- (a) with the consent of any other coroner who may hold an inquest into one of the deaths, hold the inquest; or
- (b) request that other coroner to hold the inquest.]

Inquest on order of Attorney General.

14. Where the Attorney General has reason to believe that a deceased person has died in circumstances which in his opinion make the holding of an inquest advisable he may direct any coroner (whether or not he is the coroner for the district in which the death has occurred) to conduct an inquest into the death of that person, and that coroner shall proceed to conduct an inquest in accordance with the provisions of this Act (and as if, not being the coroner for the district in

which the death occurred, he were such coroner) whether or not he or any other coroner has viewed the body, made any inquiry or investigation, held any inquest into or done any other act in connection with the death. “

[11] By section 24 the coroner can give authority to bury the body after an investigation where he decides not to hold an inquest and by section 27 he may order a post-mortem examination without an inquest.

“Authority for burial where inquest unnecessary.

24. –

(1) Where a coroner decides that an inquest is unnecessary he shall issue his authority to bury the body, and shall forthwith transmit to the registrar of deaths a statement setting forth briefly the result of the investigation and the grounds on which the authority was issued.

(2) Such statement shall contain particulars of the cause of death sufficient to enable the registrar of deaths to register the death.

Post-mortem examination.

27. –

(1) Where on any inquest it appears to a coroner that the cause of death has not been satisfactorily explained to him, he may, ..., employ a registered medical practitioner on the list mentioned in section twenty-six to perform a complete post-mortem examination”

[12] The applicant contends that the obligation to investigate under section 11 of the 1959 Act arises on any occasion on which the coroner is informed that there is reason to believe that the deceased person died in any of the circumstances mentioned in sections 7 and 8. Accordingly where new information is produced the fact that the coroner may have previously investigated the death does not excuse the coroner from his obligation to investigate as he sees fit the new material.

[13] The respondent contends that the duty to investigate under section 11 is only capable of being exercised on one occasion. Once that investigation has

been completed the bringing forward of new material does not give rise to a further duty to investigate and the coroner has no power to do so. The applicant's only remedy is to approach the Attorney General and seek to persuade him that an inquest is advisable.

[14] Section 17(1) of the Interpretation Act (Northern Ireland) 1954 provides as follows:

“17. –

(1) Where an enactment confers a power or imposes a duty, the power may be exercised and the duty shall be performed from time to time, as occasion requires”

If, therefore, the respondent is correct it must follow that the receipt of fresh information by a coroner suggesting a death in the circumstances set out in sections 7 or 8 would not be an occasion requiring him to undertake his investigative duty. If the matter had been free from authority I would have found such an outcome surprising. The scheme of the Act is to give the coroner a graduated series of options ranging from investigation by enquiry to exhumation, post-mortem and finally inquest. The Attorney may only direct the holding of an inquest pursuant to section 14. Where new information is produced there is no reason to construe the Act so as to remove the coroner's investigative options short of an inquest.

[15] Although there is no authority directly on point in this jurisdiction the issue has been addressed in *Terry v East Sussex Coroner* [2001] EWCA Civ 1094 in respect of the Coroners Act 1988. The scheme of that Act is for all material purposes the same as the 1959 Act. The coroner in that case had obtained a post-mortem report under powers equivalent to those in section 28 of the 1959 Act. On the basis of that report he concluded that he should not hold an inquest. Further material was put before the coroner. He concluded that he was *functus officio* because he had made a decision not to hold an inquest. Simon Brown LJ dealt with this argument in the following paragraphs:

“[11] What, then, do the legal commentators say?
Jervis on Coroners (11th edn, 1993), pp 326–327, reads:

‘18-05 There is a question mark as to when exactly a coroner becomes *functus officio*. Before 1927, there was no power to dispense with an inquest where the statutory criteria were satisfied. Nowadays, however, there is a procedure whereby in the case of a sudden death the cause of which is not

known, the coroner may order a post-mortem examination to be made and may thereafter dispense with an inquest (the so-called "Pink Form B" procedure). It is not clear whether utilising that procedure renders the coroner thereafter *functus officio* in relation to that particular death or whether if he thereafter discovered further evidence bringing the case within the other criteria for holding an inquest he could so do without an application to the court having to be made.

18-06 The Attorney-General has in the past refused his *fiat* to an application to the High Court to set aside a "Pink Form B" on the ground that it was unnecessary, as the coroner was not *functus officio*. This does not sit easily with the fact that, by statute, the post-mortem examination and the coroner's decision taken upon the report thereof take the place of the inquest which (if held) would have made the coroner *functus officio*.

18-07 On the other hand, a coroner who signs "Pink Form A" to inform the Registrar of Deaths that he does not propose to hold an inquest, so as to permit registration of the death, does not in any event become *functus officio*, because no inquiry equivalent to an inquest has taken place. Consequently, if information subsequently comes to light and the coroner considers he would otherwise have jurisdiction, he is not prevented from acting merely because of his earlier decision not to hold an inquest. "Pink Form A" is an administrative convenience for the Registrar of Deaths, and not a substitute for a coronial inquiry.'

[12] Volume 9(2) *Halsbury's Laws* (4th edn reissue) para 948 reads:

'Where a coroner has ordered a post-mortem examination and decided that an inquest is unnecessary, the issue of the appropriate certificate to the registrar of deaths does not constitute an inquest; and the Attorney General may thus refuse a coroner's request for a fiat to apply to the court for an order to hold an inquest on the grounds that, as no inquest had been held, the coroner is not functus officio.'

[13] It is Mr Hough's submission on behalf of the coroner, founded to some extent on para 18-06 of *Jervis on Coroners*, that the s 19 procedure where it leads to a decision that an inquest is unnecessary and results therefore in the coroner's certificate to the registrar of deaths, takes the place of an inquest. Mr Hough argues:

'Like an inquest, this procedure is based upon a medical investigation and a coronial decision. Like an inquest, it results in the death being registered on the basis of an ascertained and certified cause.'

[14] I would reject this argument. I cannot accept that the s 19 procedure takes the place of an inquest. No doubt the registration of the death on the basis of an ascertained and certified cause following a statutorily bespoken post-mortem examination provides a firmer foundation for the decision not to hold an inquest than a mere decision to that effect taken under s 8. It does not, however, follow that in the former case the coroner is functus officio when in the latter he plainly is not. Nor to my mind does this conclusion in any way undermine the obvious value of the s 19 procedure which in many cases will continue to eliminate the need for an inquest. In short, I prefer the view expressed by Dr Burton as the editor of *Halsbury's Laws* to that expressed in *Jervis*. "

[16] Although this decision is not binding on me it is clearly of the greatest persuasive authority and in any event I agree with the reasoning of the learned Lord Justice. Accordingly I consider that the coroner had jurisdiction under the Coroner's Act (Northern Ireland) 1959 to consider the request contained in the applicant's letter of 3 November 2003. Accordingly I propose to make a declaration to that effect.