

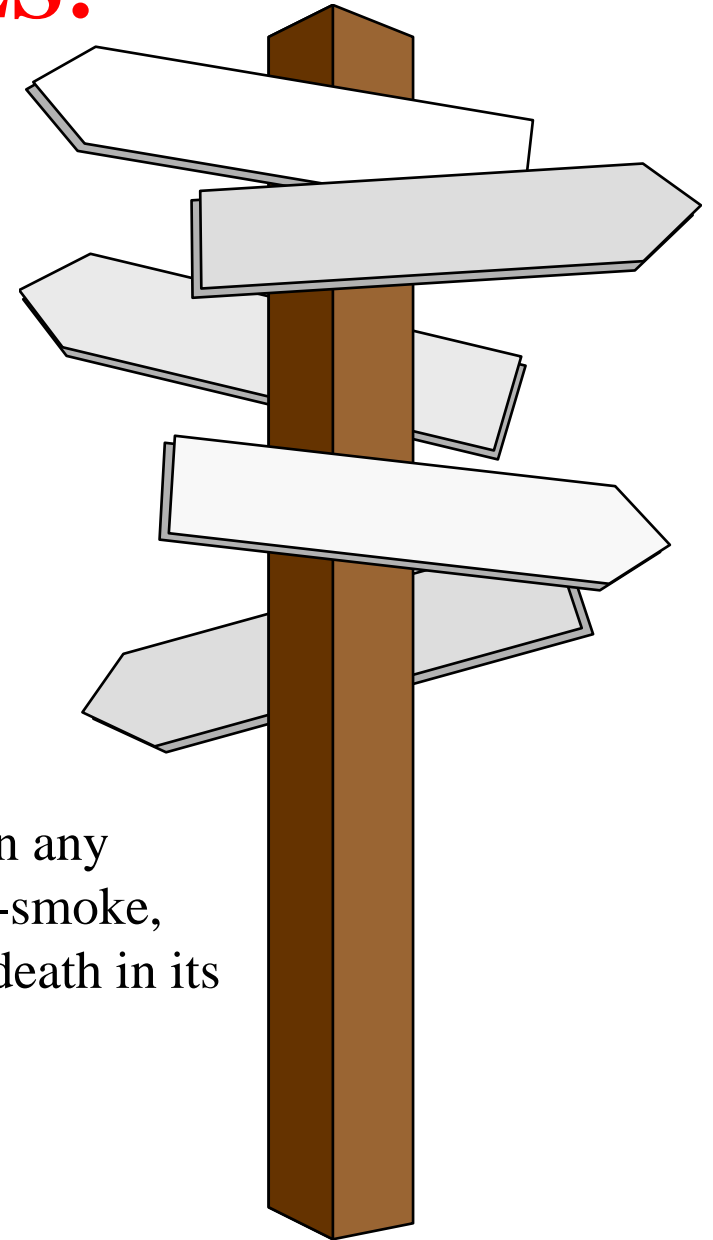


# PITFALLS AND PERILS: THE CORONER AS INVESTIGATOR

**Ian Freckelton**

“The coroner frequents more public houses than any man alive. The smell of sawdust, beer, tobacco-smoke, and spirits, is inseparable in his vocation from death in its most awful shapes.”

Charles Dickens, *Bleak House*, ch 11.

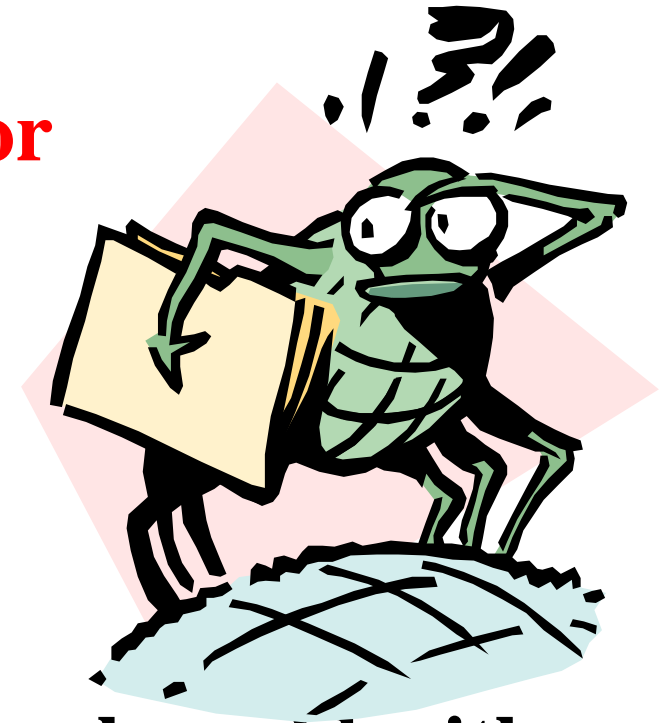


## **The Coroner as Inquisitor**

**The defining feature of the coroner's "differentness"?**

**How does the inquisition role meld with adversarial experience and expectations?**

**While it may be liberating, where are the constraints?**

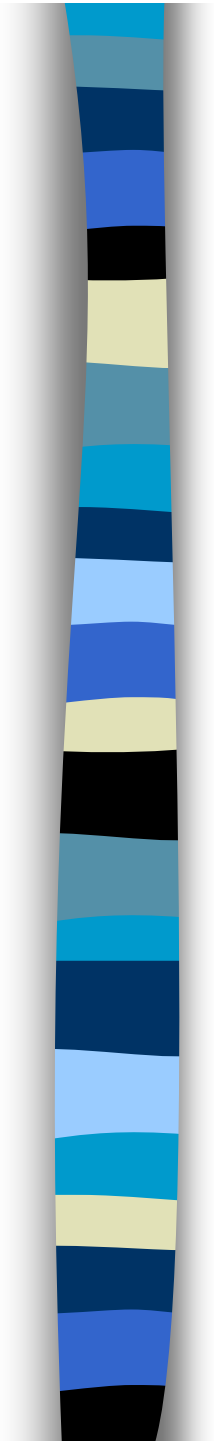


# **The Parameters of Inquests**

**Potential findings constituting the limits of the inquest**

**Evaluation of indirect causes and background circumstances**

**Recommendations flowing from findings**



# **The Keown v Khan [1999] 1 VR 69**

## **Confusion**

**Callaway JA:**  
**The test of contribution**  
**is “solely whether a**  
**person’s conduct was a cause of**  
**the death.”**



**In distinguishing between a cause and a background circumstance, a non-causal condition, necessary to consider whether an act departed from a norm or standard or was in breach of a recognised duty.**



# Preclusion on civil or criminal Findings

The *Perre v Chivell* [2000] SASR 282  
Challenge

**Nyland J: the mere recital of facts does not hint at civil or criminal liability; ie there must be no application of law**



# Natural Justice

**Annetts v McCann (1990) 170 CLR 596**





## **BIAS & APPEARANCE OF BIAS**

- **Interaction with counsel assisting;**
- **Conferring with witnesses in the absence of the parties;**
- **Meeting witnesses outside the confines of the inquest;**
- **Prior magisterial contact with a witness;**
- **Involvement of witness in investigative team**

## **Interaction with Counsel Assisting or Police Assistant**

**When does it become excessive or  
unfair or such as to give an unacceptable  
impression?**





## Conferences by coroners with witnesses

*Alonzo v Ontario*, Ontario Court of Justice, Divisional Court, 7 June 1994

Coroner spoke to expert witness the night before.

**Held:** The Coroner has the right to compel attendance so can speak to witness before giving evidence.

# Meeting with witnesses outside inquest

**Moles v The Queen (1994)**

**77 A Crim R 360**



**In the circumstances of a coroner's inquiry, fair-minded people or the hypothetical bystander would not reasonably apprehend bias from mere out-of-court contact between the coroner and a witness.**



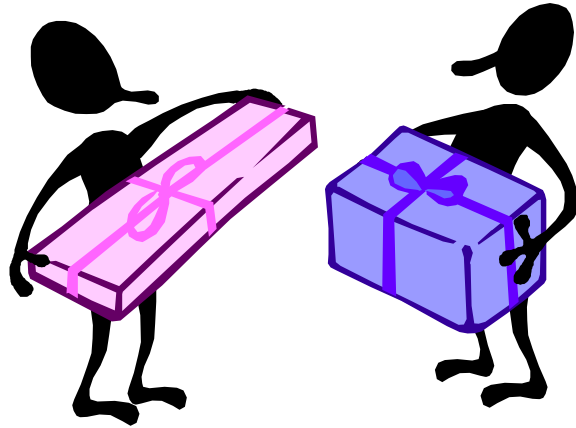
***Toronto Police Services Board v Young***  
**1998 CanLII 1982**

**Pathologist changed report after meeting  
with coroner**

**Coroner declined to recuse himself**

**Ontario Ct of Appeal: appropriate to ensure  
Expert report reliable**

## Prior contact with witnesses or deceased



**Re Sutherland [1994]  
2 NZLR 242 at 249**

**Question is whether prior knowledge  
of deceased could have affected  
judgment**



**R v Somes; Ex Parte Woods,  
Unreported, 3 March 1998, ACT Sup Ct**

**Deceased remanded in custody by coroner  
After failing to comply with bail**

**Crispin J: q is whether coroner would  
Not approach case impartially**

***R v Matterson***  
***[1994] 4 Tas R 87***

**Involvement of  
witness as  
member of coroner's  
team**



**Where police officer recorded  
Exhibits at scene and later joined  
Coroner's team.**

**Held too minimal involvement  
to compromise**

# Dismissing legal representatives

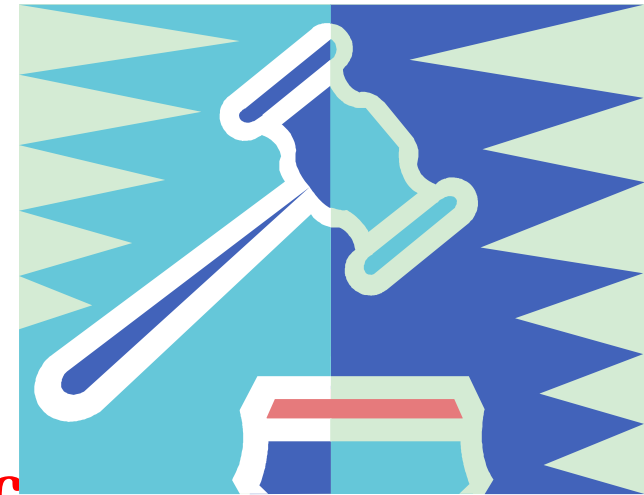
## The Ontario approach

### Conflict of interest

Where necessary for public confidence

**Canadian Chiropractic Assoc v Lewis, 2003, CanLII 43074**

**Booth v Huxter (1994) 111 DLR (4<sup>th</sup>) 111.**

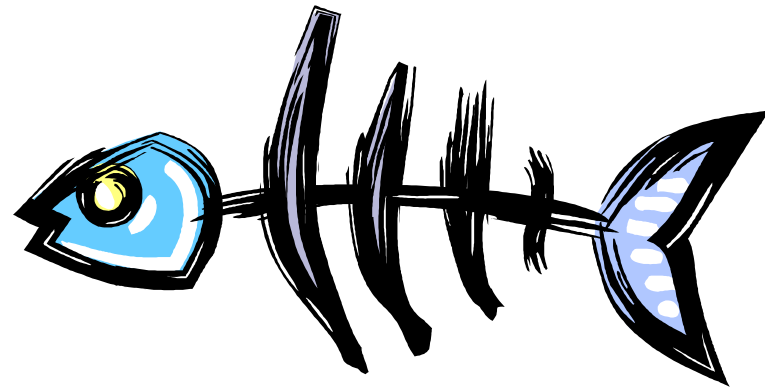


# **Proper Bases for Determinations**

**Centrality of “riders”**

**Obtaining necessary information**

**Foreshadowing potential  
recommendations or comments**





## **Participation in appeals**

**Hardiman decision generally not regarded as applying.**

**However, need for court to be assisted by contradictor and relevant information**

**Eg *Wuridjal v Coroner* [2001] NTSC 99”  
Autopsy objection**