



In The Supreme Court of Bermuda

CIVIL JURISDICTION

2013: No 433

In the matter of Order 53, rule 5(2) of the Rules of the Supreme Court of Bermuda

In the matter of the Administration of Justice (Prerogative Writs) Act 1978

In the matter of the Coroners Act 1938

In the matter of an inquest into the death of Mr Hubert Abraham Brown

In the matter of the decision of HM Coroner dated the 20th of November 2013

In the matter of leave granted to issue judicial review proceedings concerning the above noted matters as granted on the 22nd of November 2013

BETWEEN:-

THE BERMUDA HOSPITALS BOARD

Applicant

-and-

(1) HM SENIOR CORONER

(2) HM CORONER

Respondents

JUDGMENT

(In Court)

Date of hearing: 9th May 2014

Date of judgment: 19th June 2014

Mr Allan Doughty, ISIS Law Limited, for the Applicant

Ms Shakira Dill, Attorney General's Chambers, for the Respondents

Introduction

1. The office of coroner is an ancient one. Halsbury's Laws of England states that the office may be safely assumed to have existed since at least the beginning of the thirteenth century, and that there is other evidence to show that officers having powers similar to those of coroners were in existence before that date. In Bermuda, the office was put on a statutory footing by the Coroners Act 1888. Its powers are currently governed by the Coroners Act 1938 as amended ("the 1938 Act").
2. It is with the ambit of those powers that this case is concerned. It arises from the death of Hubert Brown. On 18th November 2002 Mr Brown was admitted to the King Edward VII Memorial Hospital as a geriatric patient for respite care. While in hospital he developed difficulty with his urinary tract and it became necessary for him to undergo a transurethral prostatectomy. Mr Brown suffered complications while recovering from surgery which led to excessive bleeding. As a result of the bleeding he needed a blood transfusion, which he received on 11th December 2002. Later that day he entered cardiac arrest and died.
3. The cause of death as stated on Mr Brown's death certificate was "Disseminated Intravascular Coagulation due to Incompatible Blood Transfusion". In other words, according to the death certificate, he died because during the transfusion he had been given the wrong type of blood.
4. On 23rd July 2013 the Bermuda Hospitals Board ("the BHB") was notified that the Senior Coroner intended to hold an inquest into the death of Mr Brown. On 18th November 2013 the BHB was advised by a former

employee that she had been summoned to appear before the Coroner at the inquest on 26th November 2013. On 19th November 2013 counsel instructed by the BHB wrote to the Senior Coroner asking that he provide the legal basis justifying his order that the inquest should proceed. On 20th November 2013 the Coroner replied on behalf of the Senior Coroner. She stated that in accordance with the provisions of the 1938 Act the Senior Coroner has a duty to hold an inquest into the death of a person where he has reason to suspect that that person died in a place of an unnatural death.

5. By a notice of motion dated 4th December 2013, the BHB applies for judicial review of to the Senior Coroner's decision to hold an inquest into the death of Mr Brown on the ground that the Respondents have no jurisdiction to do so. The BHB seeks orders of prohibition, *certiorari* and a permanent injunction against them in relation to that decision. The Court granted leave to apply for judicial review on 22nd November 2013, when it issued an interim injunction restraining the Respondents from holding an inquest pending determination of these proceedings.

The previous statutory scheme

6. The 1938 Act has been amended on various occasions, most recently in 1999. It is instructive to look at the 1938 Act as it stood immediately before the 1999 amendments came into force. The relevant sections were 8 through 11.

Duty to notify coroner in certain cases

8 (1) Whenever the dead body of a person is found on land or in the territorial waters of Bermuda, or is brought or washed ashore, and there is reasonable cause to suspect that such a person has died a violent or an unnatural death or a death the cause of which is unknown, or whenever any person dies in any prison (including a person upon whom sentence of death has been executed therein) or dies in a senior training school, or in the Mental Hospital, it shall be the duty of every person finding such dead body, and every person having knowledge of such death, and of the

principal occupier of the house or place or the master or person in charge of the ship or the person in charge of the prison, senior training school, or Mental Hospital wherein such body is found, or such death occurs, forthwith to notify a police officer; and it shall be the duty of that police officer forthwith to take the necessary steps to cause the appropriate Coroner to be notified of such death or the finding of such body.

.....

Post-mortem examination where cause of death unknown; power of Coroner to dispense with inquest if satisfied

9 (1) Where a Coroner has been notified in accordance with section 8 of a body lying dead and there is reasonable cause to suspect that such person has died a death of which the cause is unknown, the Coroner, if he is of opinion that a post-mortem examination may prove an inquest to be unnecessary, may direct any registered medical practitioner to make a post-mortem examination of the body of the deceased person and to report the result thereof to him in writing, and for the purposes of the examination the Coroner shall have the like powers and the medical practitioner shall be subject to the like punishment for disobedience as if the examination were a post-mortem examination directed by the Coroner at an inquest upon the body of the deceased person.

(2) If as a result of any such post-mortem examination as aforesaid the Coroner is satisfied that an inquest is unnecessary he may dispense with the holding of an inquest accordingly.

.....

Limitation of power to dispense with inquest

10 Nothing in section 9 shall be construed as authorizing a Coroner to dispense with an inquest where there is reasonable cause to suspect that a person has died a violent or unnatural death.

Coroner's jury

11 (1) Subject to section 9, upon receipt of any notification given in accordance with section 8 the Coroner shall forthwith take the necessary steps to hold an inquest into the death ...

7. The meaning of these provisions is clear. When the Coroner is notified: (i) of a body found lying dead in Bermuda or its territorial waters, and there is reasonable cause to suspect that the dead person has died a violent or unnatural death or a death of which the cause is unknown; or (ii) of a death within prison, a senior training school, or in the Mental Hospital, the Coroner shall hold an inquest into the death.
8. There is but one exception. Where there is reasonable cause to suspect that the person has died a death of which the cause is unknown, and providing that none of the other reasons for notifying the Coroner of the death apply, then, if the Coroner is of the opinion that a post-mortem examination may prove an inquest unnecessary, he may order that a post-mortem be carried out. If, as a result of the post-mortem, the Coroner is satisfied that an inquest is unnecessary, then he may decide not to hold one.
9. The duty to notify the Coroner arises under section 8; the requirement to hold an inquest under section 11; and the exception to that requirement under section 9 read in conjunction with section 10.
10. The reference in section 8 to a dead body being “*found*” means a dead body being discovered or perceived. It need not be found by chance or unexpectedly.
11. Had this version of the 1938 Act been in force when Mr Brown died then there is no doubt that the Senior Coroner would have been under a duty to hold an inquest into his death as there are reasonable grounds to suspect that Mr Brown died from unnatural causes.

The current statutory scheme

12. Sections 8 through 11 of the 1938 Act were amended by the Coroners Amendment Act 1999 (“the 1999 Act”). They now read as follows:

Duty to notify coroner in certain cases

8 (1) Where the dead body of a person is found on land or in the territorial waters of Bermuda, or is brought or washed ashore, and there is reason to suspect that that person –

- (a) died a violent or unnatural death; or
- (b) a death of which the cause is unknown,

every person finding that dead body, and every person having knowledge of that death, shall forthwith notify a police officer.

(2) Where a person dies in –

- (a) a prison;
- (b) a senior training school;
- (c) a hospital providing treatment for persons suffering from mental disorder,

the person in charge of that institution, and every person there having knowledge of that death, shall forthwith notify a police officer.

(3) Where a person dies in police custody, every police officer having knowledge of the death shall forthwith notify a Coroner.

(4) Where notification is given to a police officer under this section, the police officer shall notify a Coroner of the facts so notified to him.

.....

Post-mortem examination where cause of death unknown; power of Coroner to dispense with inquest if satisfied

9 (1) Where a Coroner has been notified in accordance with section 8 of a body lying dead and there is reasonable cause to suspect that such person has died a death of which the cause is unknown, the Coroner, if he is of opinion that a post-mortem examination may prove an inquest to be unnecessary, may direct any registered medical practitioner to make a post-mortem examination of the body of the deceased person and to report the result thereof to him in writing, and for the purposes of the examination the Coroner shall have the like powers and the medical

practitioner shall be subject to the like punishment for disobedience as if the examination were a post-mortem examination directed by the Coroner at an inquest upon the body of the deceased person.

(2) If as a result of any such post-mortem examination as aforesaid the Coroner is satisfied that an inquest is unnecessary he may dispense with the holding of an inquest accordingly.

.....

Duty to hold an inquest in certain cases

10 (1) Where a person has died and it appears to a Coroner, or he has reason to suspect, that the person died a violent or unnatural death or a death the cause of which is unknown and –

- (a) That his death occurred in an institution referred to in section 8(2) or in such a place or in such circumstances as to require an inquest under any other Act; or
- (b) That his death occurred in police custody, or resulted from an inquiry caused by a police officer in the purported execution of his duty,

the Coroner shall hold an inquest into the death in the manner required by section 11.

(2) Nothing in section 9 shall be construed as authorizing an inquest to be dispensed with in a case to which subsection (1) applies.

Coroner's jury

11 (1) Where under this Act a Coroner decides, or is required, to hold an inquest, he shall forthwith take the necessary steps to hold an inquest into the death ...

- 13. It will be observed that sections 8 and 10 have been repealed and replaced, section 9 remains unchanged, and section 11 has been amended.
- 14. The Explanatory Memorandum for the Bill which was enacted as the 1999 Act stated:

Clause 5 redrafts the existing section 8 and inserts a provision requiring that a death occurring in police custody be reported to the coroner.

Clause 6 redrafts the existing section 10 and adds two new sets of circumstances in which the coroner is obliged to hold an inquest namely, where a violent or unnatural death or a death the cause of which is unknown occurred in a prison, a senior training school or a mental hospital or in police custody or as a result of an injury caused by a police officer.

Discussion

15. The dispute in the present case arises from the migration of the express requirement to hold an inquest from section 11 under the previous version of the 1938 Act to section 10 under the current version. It is the express requirement, the BHB submits, which gives the Coroner jurisdiction to hold an inquest: no express requirement – no jurisdiction.
16. On the BHB's case the migration of that requirement is therefore significant because section 10 only requires that an inquest be held in the narrow range of circumstances specified in that section: where a violent or unnatural death or a death the cause of which is unknown occurred in a prison, a senior training school or a mental hospital; or in such place or circumstances as to require an inquest under any other Act; or in police custody or as a result of an injury caused by a police officer. The BHB submits that, as there is no express requirement that the Coroner should hold an inquest in any other circumstances, he has no jurisdiction to do so.
17. The BHB submits that, as Mr Brown did not die in any of the circumstances specified in section 10, the Respondents have no jurisdiction to hold an inquest into his death.
18. That would be a surprising result. It would not reflect how the current version of the 1938 Act has generally been understood to operate, and would in all likelihood mean that since the amendments made by the 1999 Act

came into force the Respondents have been blithely carrying out inquests in circumstances where they have had no jurisdiction to do so.

19. There is no suggestion in the Explanatory Memorandum that the redrafted sections 8 and 10 were intended to narrow the range of circumstances in which the Coroner could hold an inquest. The amendment to section 11 does not even rate a mention.
20. Moreover, as the Respondents submit, it has long been recognised that there is a public interest in the Coroner holding an inquest where there is reasonable cause to suspect that a person has died a violent or unnatural death or a death of which the cause is unknown. These are matters which are rightly of concern to the community and an inquest gives them the opportunity to understand what has happened and why.
21. However I do not find the BHB's submissions persuasive. If the Coroner could only hold an inquest in the circumstances set out in section 10 then there would be no point to the requirement in section 8 that he be notified of any case where a dead body is discovered within the jurisdiction and there is reason to suspect that the dead person died a violent or unnatural death or a death of which the cause is unknown. Moreover, the power to dispense with an inquest under section 9 where a post-mortem examination renders one unnecessary would be redundant, as would the reference in section 11 to a Coroner deciding to hold an inquest as opposed to being required to do so.
22. In my judgment, the Coroner is required to hold an inquest in the circumstances specified in section 10. He has, as the Respondents submit, a discretion to hold an inquest where he is notified of a dead body in the other circumstances set out in section 8. The Coroner's discretionary jurisdiction is not conferred expressly but arises by implication. There is, however, an express reference to it in section 11. I am satisfied that this construction of sections 8 through 11 accurately reflects what the Legislature intended.

23. The Coroner therefore has a discretionary jurisdiction to hold an inquest where, as in the case of Mr Brown, there is reason to suspect that the person died an unnatural death.

Conclusion

24. For the reasons given above, I am satisfied that the Coroner has jurisdiction to hold an inquest into the death of Mr Brown. The application for judicial review is therefore dismissed and the interim injunction is discharged.
25. If either party wishes to address me on the question of costs they may do so provided that they apply to the Registry within 7 days of the date of this judgment to have the matter listed for that purpose. Otherwise, costs will follow the event and the BHB, as the unsuccessful party, will pay the Respondents' costs on a standard basis, to be taxed if not agreed.
26. I should like to record my thanks to both Mr Doughty, counsel for the BHB, and Ms Dill, counsel for the Respondents, for their diligent research and helpful submissions on this unusual application.

DATED this 19th day of June, 2014

Hellman J