Inquest Into the Death of Sanchia Bulgin

Standing Application

This ruling is in regard to the granting of standing to Mrs. Sharon Shore in the Sanchia Bulgin inquest.

Sharon Shore is applying for standing in the Bulgin inquest for a number of reasons which directly relate to her role as mother and a party with standing in the inquest into her daughter Lisa Shore's death. This request for standing is being opposed principally by the Hospital for Sick Children and the nurses who looked after Sanchia Bulgin. They argue that Ms. Shore does not meet the essential test for obtaining standing at an inquest, that of having substantial and direct interest in the death.

In reaching this decision I have carefully reviewed the oral arguments before me by the parties with standing, Mrs. Shore and my own counsel; written submissions by the parties, and the cross examination of the affidavit of Dr. Alan Goldbloom.

The interest of Mrs. Shore in the inquest is beyond question. The question that must be answered, however, is whether this interest meets the test of direct and substantial. Campbell J. addressed this very issue in *Stanford v. Harris* where he wrote:

> *Mere concern about the issues to be canvassed at the inquest, however deep and genuine, is not enough to constitute direct and substantial interest. Neither is expertise in the subject matter of the inquest or the particular issues of fact that will arise. It is not enough that an individual has a useful perspective that might assist the coroner.*

The issue of standing has been one of the most contentious issues in recent times. As a result there are a number of divisional court decisions on the topic. In my view, these are both consistent, and on point. *Stanford v. Harris, People First of Ontario v. Porter*, and *Toronto Police Services Board v. Young* have all been reviewed and have been of assistance and guidance in reaching my decision.

Private Interest

The private interest test is the traditional test for standing that has always existed. This test is best expressed by Justice Campbell in *Stanford v. Harris*:

> *The traditional private law approach… restricts standing at inquests to those who have a personal or pecuniary interest in the outcome of the inquest, or those whose conduct might be subject to implicit censure or criticism.*

It is argued that Mrs. Shore has no personal or pecuniary interest within the meaning of *S.41* of the *Coroners Act*. Further she was not involved in the circumstances of the death nor is her conduct being called into question.

Mrs. Shore through counsel argues that she does have direct interest in the circumstances of the death since *some of the circumstances* are similar to the death of her daughter. Similarities between deaths have not been the criteria necessary to meet the private interest test.

Public Interest

The public interest test was added because of *Stanford v. Harris.*

The court of appeal in *People First v. Porter* gave further guidance where they stated:

> *While public interest interveners can strengthen the coroners inquest it would be inappropriate for them to dominate the inquest by turning it into a royal commission or an advocacy forum to advance the particular views of any group. It must never be forgotten that the inquest is held because a member of the community has died under circumstances where the public interest requires examination from the point of view of the deceased persons, their families and associates, and those involved in the death. The social and preventive function is not the only function of the inquest.*

The interest of the families of the deceased and those dedicated to their care can never be forgotten. The coroner always has the difficult and sensitive job during the conduct of the inquest of balancing the requirements of the social and preventive function against the requirements of the investigative function.

It is argued that Mrs. Shore does not represent a group with a recognized public interest mandate or perspective, Mrs. Shore should not be allowed to usurp the role of coroners counsel, Mrs. Shore's concerns are not properly before this inquest and Mrs. Shore's perspective is not sufficiently unique nor is her knowledge sufficiently specialized or expert.

Discretionary Power to Grant Standing

It has been argued that a coroner has discretionary power to grant standing either beyond or as part of the public law test. I do not believe that the matter of whether such power exists has been fully resolved to date through case law. If such discretion exists, I believe it must be exercised with great caution. I am mindful of Justice Campbell's observations in *Stanford v. Harris:*

While great benefits may come from granting standing at an inquest to interested groups who may not technically have a direct and substantial interest, there are corresponding dangers if the residual discretion to grant standing is not exercised with some caution.

The danger is not simply that of the busybody or the crank, but also the danger of sincerely motivated groups seeking a public platform for views that are not sufficiently relevant to the subject of the inquest and which will only result in undue delay and inefficiency.

To paraphrase what was said with respect to criminal trials in McCormick's Evidence Handbook, 2nd ed. (1972) at 81, the coroner has the power and the duty to see that the sideshow does not take over the circus, as said with respect to criminal trials. It is for the corner in each case to balance this danger, and the need to avoid repetition and unduly prolonged procedures, against the degree of knowledge or expertise demonstrated by the applicants for standing and the degree to which they and their counsel can assist by providing a point of view that might not otherwise emerge.

For many years the accepted test for standing in Ontario was the private law test. Given the times, *Stanford v. Harris*, correctly in my view, broadened the test to include public interest. In doing so, however, Justice Campbell was careful to set out limits to this test. This was an attempt to avoid upsetting the balance of interests in an inquest yet allow the process to evolve and function in a modern manner, recognizing the major preventative function that inquests had evolved to over time. These limits have been applied and upheld in cases like *Toronto*

Police Services Board v. Young. To go beyond the accepted existing public interest test into a discretionary granting of standing under the public interest criteria to an individual is a further step down the road. The risks to the inquest include: lengthening the inquest, making the process more difficult to control and upsetting the balance of rights between the parties with standing. Under the private interest, or traditional law test all parties have some personal or organizational risk to protect in the process. Under the public interest test some parties have much less risk although they have a direct and substantial interest in the recommendations. Under a discretionary test this widens the disparity between the parties even more. Lengthening the inquest adds financial cost to all of the participants and also risks the inquest losing its focus and getting bogged down in peripheral or secondary issues. When this occurs it has the risk of eroding public confidence in the process, potentially resulting in fewer of the recommendations being implemented. The length of an inquest is a careful balance between a full public airing of the facts of a death and a proper exploration of potential recommendations versus a hearing that is unduly repetitious or lost in secondary issues, legal argument or parties attempting to find fault. As well as all these considerations, in this case, there is the additional issue that the granting of standing could set an unwieldy precedent. The inquest into the death of Lisa Shore has been held. Mrs. Shore through her lawyer participated fully. It is anticipated that at the Sanchia Bulgin inquest some of the Shore inquest recommendations that appear to be relevant to the Sanchia Bulgin case will be reviewed. This will be done through evidence for Dr. Cairns the

presiding coroner from the Shore inquest and principle investigating coroner in the death of Sanchia, Dr. Goldbloom the Vice-President and Chief Operating Officer of the hospital, possibly other witnesses from the hospital and experts retained by the Office of the Chief Coroner. Examinations will be conducted by crown counsel, the hospital lawyer, counsels for other parties including nurses, doctors and the Sickle Cell Association and the Bulgin family lawyer. In this case Mr. Gomberg the family lawyer was also Mrs. Shore's lawyer at the Lisa Shore inquest. It is recognized that Mr. Gomberg acts solely for the Bulgin family in this case. He does however, possess detailed knowledge of the Lisa Shore case.

Mrs. Shore though counsel has argued that granting of standing in this case will not set a precedent for other families from earlier inquests. It is argued that this is a unique case because other families may not have the interest, the finances, the time or the unique expertise that Mrs. Shore has developed and therefore either would not apply or be eligible to be granted standing in a future cases. Other counsel have argued that Mrs. Shore's perspective is not sufficiently unique nor her knowledge sufficiently specialized or expert to qualify her for standing.

It should be recognized that the review of similar recommendations from past inquests is not that unusual. What is unique to date is a family from a completed inquest asking for standing in a subsequent inquest. What is also different from

most cases is that it is an individual not an organization that is applying for standing under the public interest test.

Conclusions

Sharon Shore has a keen interest in the inquest of Sanchia Bulgin. She holds strong views about the operation of the Hospital for Sick Children. She clearly does not want the death of her daughter to be in vain and is willing to make personal sacrifices of time, money and emotional stress to ensure success of the Bulgin inquest.

In reaching my decision I must first look at the law and whether Mrs. Shore qualifies under S.41 of the *Coroners Act*. Using the traditional private and public interest tests I do not believe that Mrs. Shore qualifies in either category.

Rather than decide whether I have discretionary power to grant standing I will consider whether I would exercise it in this case should such discretion exist. I have considered Mrs. Shore's arguments very carefully and weighed the benefit of her participation against the risks. As stated earlier I believe that there is a high threshold to get over before discretionary standing should even be considered. Mrs. Shore has raised the issue that there are many similarities between Lisa Shore's death and Sanchia Bulgin's death. I agree from the investigative evidence currently before the parties that there appears to be

similar circumstances in regards to the management of the two patients on the floor. These similarities appear to go well beyond the mere fact that these two girls both were on the same ward, as suggested by the hospital. There are, however, important differences as well between the two cases. Most importantly we must clearly keep in focus that this inquest is to examine the circumstances of Sanchia Bulgin's death. The earlier recommendations need to be examined and progress on implementation explored in order to determine the appropriate recommendations to be made from the Bulgin Case and in order to prevent similar deaths in future. It would not be proper to "redo" the Lisa Shore Inquest. All the parties to that process are not represented in this inquest nor would it be proper to reopen that hearing.

The granting of standing to Mrs. Shore would cross new frontiers in terms of precedent in my view. It would expand the public interest test to include discretion to grant standing to individuals rather than groups that have represented definable segments of the community. It would involve granting standing to a family member from a previous inquest. There is no doubt that Mrs. Shore has an interest in the Sanchia Bulgin inquest and recommendations but it is a very different type of interest than the interest of a group such as the Sickle Cell Association of Ontario; an advocacy and educational organization granted standing at this inquest under the public interest test.

It is the role of all participants but in particular my job, to ensure that the death of Sanchia Bulgin is not overlooked, concealed or ignored.

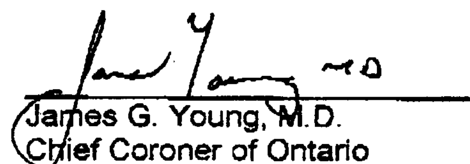
The public interest is of course served by coroner's counsel whose role is conducted by a crown attorney. The crown attorney's role, in keeping with the duties of his office is to represent the overall public interest at the inquest. Mrs. Shore, as an individual, albeit with a genuine interest can presume to act only in her own interest in the inquest into the death of Sanchia Bulgin. Following an inquest, many family members maintain a keen interest in specific topics of the inquest, such as drinking and driving or domestic abuse. Further inquests undoubtedly will explore some of these same issues. The inquest system of advancing public safety builds from one case to the next. However, involving family members from previous inquests has risks associated with it. The inquest could descend into a second inquest into the same death with the other parties not present or protected.

Finally there is the matter of balancing the benefits of Mrs. Shore's involvement versus the risks. I have no reason to doubt the sincerity of Mrs. Shore's desire to participate in order to ensure a better inquest result. I also have no reason to doubt that both Lisa Shore and Sanchia Bulgin's deaths have had a major impact on the operations of the hospital. There currently exists a nursing shortage in Ontario. It is in fact that thirty-four of sixty nurses have left ward 5AB since October 1998. This is an abnormally high number. It is not unreasonable to conclude that currently ward 5AB would not be a preferred place for many to work particularly in a tight job market. The effect of this has been the necessity to decrease elective surgery by 25% because of inability to staff the floor. It is

essential that the inquest examines the circumstances of Sanchia Bulgin's death and recommends safeguards to improve care for future children. While doing so we must minimize the disruption to children who currently need care. The hospital and nurses counsel suggests that Mrs. Shore's involvement potentially risks increasing that disruption. Mrs. Shore feels her involvement will improve the end result.

I have carefully weighed all the factors I have detailed in regards to granting discretionary public interest standing. On balance it is my view that the risks of Mrs. Shore's involvement outweigh the potential benefits. Standing is therefore denied.

In the circumstances of this inquest, to deny Sharon Shore standing does not deny her involvement necessarily. Without making a determination at this time it may be, given her interest in the follow up to the recommendations from the inquest into the death of her daughter, that as a witness she has evidence that would assist the jury at this inquest. It is open to all counsel representing interests to assess this possibility as the inquest progresses and to seek to have her evidence heard, if relevant.



James G. Young, M.D.
Chief Coroner of Ontario

Date: May 4, 2001