

INQUEST INTO THE DEATH OF

L I S A   S H O R E

SUBMISSIONS/CHARGE BY THE CORONER

TAKEN FEBRUARY 10, 2000

BEFORE DR. JAMES CAIRNS, DEPUTY CHIEF CORONER

CORONER'S COURT, TORONTO

A P P E A R A N C E S:

Counsel for the Coroner	MARGARET BROWNE, MS.
Counsel for the Shore Family	FRANK K. GOMBERG, ESQ.
Counsel for the Hospital for Sick Children, et al	PATRICK HAWKINS, ESQ. RENEE A. KOPP, MS.
Counsel for Drs. Schily, Catre and Wright	ANNE POSNO, MS.
Counsel for Corometric	VAN KRKACHOVSKI, ESQ.

REPORTING PLUS  
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1 THE CORONER: Good morning, Constable. Good  
2 morning, ladies and gentlemen of the jury.

3 Good morning, Ms. Browne.

4 MS. BROWNE: Good morning.

5 THE CORONER: I wonder, are you ready now to  
6 give your summation to the jury?

7 MS. BROWNE: I am. I don't know if they're  
8 ready to hear another lawyer speaking to  
9 them, but I will.

10

11 SUBMISSIONS BY MS. BROWNE:

12 Good morning, members of the jury.

13 This will be the last lawyer speaking in  
14 this inquest, I can promise you that. And I  
15 won't be that long. You've heard lots of  
16 lawyers and lots of styles. They range from  
17 elegant, coolly elegant, to passionate, and  
18 when I talk about coolly elegant, I'm  
19 referring of course, to Mr. Gomberg, and Ms.  
20 Posno is the passionate one.

21 From now on in, I have to remind  
22 you of some of the boring stuff that's the  
23 law. When you were picked for jury duty in  
24 an inquest, you managed to evade jury duty in

1 a criminal trial, which you'll probably be  
2 glad of, because jury duties in criminal  
3 trials can be really bad. You get locked up  
4 for days and days and days, and you have to  
5 listen to break and entry, murders, and so  
6 on.

7 Here, you not only can listen to  
8 all kinds of witnesses, but you have a real  
9 purpose. You can come up with  
10 recommendations, and you can do as much as  
11 you can to prevent similar deaths, deaths  
12 such as Lisa's. You have a real function,  
13 and, believe me, I've done a lot of inquests,  
14 and jury recommendations and verdicts are  
15 acted upon. They do make change, so I expect  
16 that you will have something to show for this  
17 besides a feeling of satisfaction.

18 The law now. I have to read to you  
19 from the Coroner's Act, Section 31, and you  
20 must, you must listen to this:

21 "... Where an inquest is held, it shall  
22 inquire into the circumstances of the  
23 death, and determine who the deceased  
24 was, how the deceased came to his or her  
25 death, when the deceased came to his or

1 her death, where the deceased came to  
2 his or her death, and by what means the  
3 deceased came to his or her death.

4 Subsection 2. The jury shall not  
5 make any finding of legal responsibility  
6 or express any conclusion of law on any  
7 matter referred to in Subsection 1 ..."

8 That's a very firm admonition. You  
9 may react in very emotional ways to some  
10 testimony, and some not. But you cannot make  
11 any legal -- make any finding of legal  
12 responsibility or conclusion of law.

13 "... Subject to that subsection, the  
14 jury may make recommendations directed  
15 to the avoidance of death in similar  
16 circumstances, or respecting any other  
17 matter arising out of the inquest. A  
18 finding that contravenes Subsection 2  
19 [that is, a finding of legal  
20 responsibility] is improper, and shall  
21 not be received. Where a jury fails to  
22 deliver a proper finding, it shall be  
23 discharged ..."

24 In other words, you get fired. So,  
25 now, I don't think there'll be any problem

1 with some of those, and you've heard that  
2 already from Ms. Posno and from the other  
3 lawyers that you know who the deceased is,  
4 Lisa Shore. You know when it happened,  
5 October the 22nd, and as far as refining it  
6 down to what hour, I'll leave that to your  
7 judgment, and where, at the Sick Children's  
8 Hospital. And the two that have been  
9 highlighted that you will have to consider  
10 are "cause of death," how the deceased came  
11 to death, and the "by what means."

12 Now, Ms. Posno has argued that this  
13 should be classified as an accidental death,  
14 and in my submission, that's something you  
15 must really consider. An accident is defined  
16 in the Oxford English Dictionary as "an  
17 occurrence, an incident, or event that  
18 happens without foresight or expectation."  
19 And no one expected Lisa's death.

20 Now, the cause of death we've  
21 heard, we haven't heard definitively, that's  
22 correct, we haven't heard anything  
23 definitively. The Paediatric Review  
24 Committee as expressed by Dr. Williams,  
25 didn't know initially. The pathologist, Dr.

1 Taylor when he wrote his report and when Dr.  
2 Smith interpreted it to us -- there's a  
3 spider here, sorry -- when that was  
4 interpreted, there was no, there was no cause  
5 of -- no anatomic cause of death. The  
6 toxicologist could find no toxilological cause  
7 of death.

8 When you look at the cause of  
9 death, in my view, look over the evidence of  
10 the toxicologist, the pathologist, the report  
11 and, of course, Dr. MacLeod. Dr. MacLeod  
12 can't say for sure, but he thinks and it's  
13 starting to be researched, that some adverse  
14 reaction to the drugs, the combination of  
15 gabapentin and morphine took place.

16 And now I think that one of his  
17 recommendations might well be to recommend a  
18 study of that, the gabapentin itself; when it  
19 should be used, should it be used for pain  
20 killing, should it be used in combination  
21 with other drugs. Studies should be done.  
22 You don't have to say, I think, for sure, but  
23 I think you should recommend a study. That's  
24 what Dr. MacLeod said, and I think that's  
25 going to be one of the things that may come

1 out of this inquest. You may do good for the  
2 rest of the hospitals in North America with  
3 regard to this.

4 Now, the "by what means" -- natural  
5 -- it must be one of five. It must be  
6 natural, it must be accident, it must be  
7 suicide, homicide, or undetermined. If you  
8 don't accept the cause of death as for sure,  
9 then, indeed, what you can say is it's  
10 undetermined what caused her death. If you  
11 don't feel that you can go as far as, say Dr.  
12 MacLeod, then you may indeed find that the  
13 cause of her death was undetermined.

14 Suicide or homicide do not belong  
15 here. There's no act of homicide, there's no  
16 act of suicide. It's not natural, because it  
17 was not expected. It was not, as we say, an  
18 anatomical cause of death. It wasn't the  
19 process of a disease, and it was not  
20 something that was expected at all. So I  
21 think you're down to accidental or  
22 undetermined, right? This is for you to  
23 rule.

24 We have heard lots and lots and  
25 lots of recommendations, some from -- we've

1 even got them handed out from Mr. Gomberg.  
2 I've looked them over. There's some that are  
3 certainly worth looking at, definitely. But  
4 it's you who are to make the recommendations.  
5 You can certainly advert to anything that  
6 Mr. Gomberg suggests, or Mr. Krkachovski or  
7 Ms. Posno, or Mr. Hawkins. A lot has been  
8 done already, as you have heard. You will  
9 have that with you, all the changes that have  
10 been made, any changes you think should be  
11 made.

12 Looking over Mr. Gomberg's  
13 recommendations, I am looking -- I'm sorry to  
14 do this, Mr. Gomberg, but I'm looking at  
15 recommendation nine, and I don't think that's  
16 practical. I'm not going to suggest -- I'm  
17 going to suggest that that is really  
18 impractical, and I think for the same reasons  
19 as other lawyers have mentioned to you. The  
20 recommendation nine is when an unexplained or  
21 unexpected death occurs, all persons who had  
22 any responsibility for the patient's care,  
23 including relieving nurses in the previous 12  
24 hours, should be removed from patient care  
25 until a thorough investigation by the

1 Coroner's office or other independent party  
2 has been completed.

3 I really do think that that's  
4 impractical. You can't -- there's lots of  
5 unexpected deaths that occur. There's deaths  
6 in the operating room, deaths, you can  
7 imagine, from side effects of pneumonia, in  
8 somebody who's had a heart attack. You can't  
9 close the hospital down. You can't freeze it  
10 into stasis. So I would say that you've got  
11 to be practical, too. You have to think of  
12 things that can be accomplished, and can be  
13 accomplished without impinging on our already  
14 stressed health care system. It is very  
15 stressed, as you know.

16 Now, with regard to recommendations  
17 you can come up with, I am sure that you will  
18 advert to all the evidence you've heard, and  
19 you've heard -- you've heard oral evidence  
20 under oath. You've got evidence in the form  
21 of paper, and you have enough paper to carry  
22 you into the new year, 2001, if you read  
23 every line. There's a lot of paper there.  
24 You know what's relevant, you know what you  
25 can turn to. But you must at least consider

1 a lot of what's in there.

2 We've heard about changes in the  
3 hospital. We've heard -- we had the Kidcom  
4 demonstration, which I found very helpful,  
5 although I know nothing about computers, and  
6 you've heard about what Dr. Reeder suggested  
7 is going on, and will continue to go on. Any  
8 direction that you can give this hospital,  
9 which they can give to other hospitals and  
10 can be passed through this province, and  
11 indeed, this country, I think would be very,  
12 very useful.

13 Nobody's perfect. There were human  
14 errors made, it was sad, and they have been  
15 faced and perhaps not to your satisfaction,  
16 but they have been faced. I wouldn't dwell  
17 on them too much. I would look at the  
18 preventative function of this inquest. Think  
19 of ways that we can avoid this. Think of  
20 ways we can not depend on things that might  
21 go wrong.

22 Now, I, like everybody else who has  
23 spoken here, I have expressed my condolences  
24 to the Shore Family in private and in public,  
25 and I do so again. Lisa appears to have been

1 a remarkable child, and you will have  
2 actually an exhibit of her art work to look  
3 at. I see that it's very nice, but we can't  
4 bring her back. We can prevent future deaths  
5 such as this.

6 The motto of the Coroner's system,  
7 the Coroner's inquest system, as you know, or  
8 you must know by now, "We speak for the dead,  
9 to protect the living," and I'm reminded of  
10 my past career when I taught English, a play  
11 by Arthur Miller called "Death of A  
12 Salesman," and one line in it, I think comes  
13 to mind here that was said about Mr. Loman  
14 after he died, "Attention, attention must be  
15 paid to such a death." And I expect that you  
16 will pay attention.

17 You have been very, very attentive  
18 all the way through. I'd like to thank you.

19 I don't think we've could have got a better  
20 jury. I'd like to thank you on behalf of all  
21 the lawyers and Dr. Cairns and myself, of  
22 course. Your questions have led us into some  
23 directions, they've elucidated on what we  
24 needed to know. You have really done a good  
25 job and I expect that you will do that to the

1 end, however long it takes. You're not going  
2 to be rushed about this. You'll have lots of  
3 time. Thank you again on behalf of everybody  
4 in the inquest. I'd like to thank the  
5 lawyers for their submissions and their  
6 suggestions, and of course, Constable  
7 Culleton, without whom I could not operate.

8 THE CORONER: Thank you, Ms. Browne.

9  
10 CHARGE BY THE CORONER:

11 It remains but for me to give you my final  
12 address and before I do so, I have to remind  
13 you that all the summations by the lawyers  
14 and by myself are but summations. You are  
15 not bound to accept the summation of any of  
16 the lawyers and you're not bound to accept my  
17 summation. You're the jury, I'm not the  
18 jury. Summations also are not evidence.  
19 People may, in their summations, have  
20 interpreted evidence the way they want, but  
21 that's not evidence, the evidence is only  
22 what you heard from witnesses when they were  
23 on the witness stand, and those are the only  
24 ones that you can accept. You can accept or  
25 reject all or part of any of the Counsel's