

Ruling on the Motion by the Family to re-visit the march 24,
2011 ruling on the Scope & Focus of the inquest, recall
Steve Flores and Sopha Anderson and add Joanne Smith
and Andrea Anderson
in the Inquest into the Deaths of Diane ANDERSON, Jahziah
WHITTAKER and Tayjah SIMPSON
*Note the Provincial Advocates Motion to have Crown
Counsel identify and call an appropriate witness from ESSD
was heard with this motion

Heard in Court at 180 Dundas Street West on May 16th 2011

Sophia Anderson & Andrea Anderson

Mr. Rowe, counsel for the family presented a motion to recall Ms. Sophia Anderson for further examination, and a motion to call a new witness, Ms. Andrea Anderson.

Mr. Rowe requests that Sophia Anderson be re-called to clarify the reasons why Ms. Diane Anderson did not accept TCHC's offers of larger housing units in different communities. Similarly, he requests that Andrea Anderson be re-called to again speak to the discussion she had with Ms. Diane Anderson about the offer of a larger 4 bedroom townhouse unit in Scarborough.

Mr. Rowe contends that Mr. Lukasiewicz introduced the transfer documents through Mr. Flores, after Sophia Anderson had testified, and this was in clear violation of the Coroners' Rules. Mr. Lukasiewicz indicates these documents were introduced, only in response to issues raised by Ms. Anderson in the course of her evidence in chief.

Ms. Fraser and Ms. Hofbauer supported the motions for the Provincial Advocate for Children and Youth [hereinafter PACY] and for the Children's Aid Society [hereinafter CAS], respectively.

Mr. Lukasiewicz for the Toronto Community Housing Corporation [hereinafter TCHC], Mr. Gourlay for the Toronto Fire Service [hereinafter TFS] and Ms. Edward, Coroners Counsel opposed the

motion on the basis that the transfer evidence introduced was not new evidence as it persisted throughout the brief in Mr. Flores' will state and in the welfare summary. Counsel further contend that this issue is a collateral one that is irrelevant to the scope and focus of this inquest.

The remaining parties, Children's Aid Workers [hereinafter CAW], Victim Services [hereinafter VS], Toronto District School Board [hereinafter TDSB] and the Ontario Fire Marshal [hereinafter OFM] indicated they took no position on the motion.

Analysis & Ruling:

Section 44 of the Coroners Act states

44.(1) Subject to subsections (2) and (3), a coroner may admit into evidence at an inquest whether or not admissible as evidence in a court,
(a) any oral testimony; and

(b) any document or other thing,

relevant to the purposes of the inquest and may act on such evidence, but the coroner may exclude anything duly repetitious or anything the coroners considers does not meet such standards of proof as are commonly relied on by reasonably prudent person in the conduct of their own affairs and the coroner may comment on the weight that ought to be given to any particular evidence.

Upon reviewing the contents of the motion, hearing the submissions from counsel and reviewing Ms. Sophia Anderson's will state and Andrea Anderson's Will states, I find that TCHC did not adhere to the proper rules of production articulated in the Coroners' Rules. Consequently, Mr. Rowe did not have a fair opportunity to review these documents with his client before she testified. I accept however that these documents were only introduced in response to issues raised in Sophia Anderson's evidence in chief. So while, these documents and this issue do not fall within the Scope and Focus of this inquest, I think that in fairness to the family and to

ensure that the jury has all the information around this issue, clarification by the family is necessary.

Allowing both Andrea and Sophia Anderson to testify however would be unduly repetitious and contrary to the Coroners' rules.

Consequently looking at the Will Says of these 2 proposed witnesses and Sophia Anderson's prior evidence, I am not prepared to re-call Sophia Anderson, but will allow Andrea Anderson to be called for the sole purpose of dealing with the transfer issue. Her testimony will be limited to the conversation on the telephone and the direct conversation she had with Ms. Diane Anderson concerning the transfer offer she received from the TCHC to move to a larger unit in Scarborough.

In her initial testimony, Sophia Anderson already provided the court with her understanding of the TCHC transfer process and Diane's involvement with it. Her Will Say does not add anything of further significance and is vague and imprecise with respect to her communications with Diane Anderson on this topic. In contrast, Andrea Anderson appears to recollect a specific incident, and appears to have a better understanding of Ms. Diane Anderson's reasons for not accepting the transfer offer from Toronto Community Housing Corporation.

Steve Flores

Mr. Rowe requests that Mr. Flores be re-called so that he can complete certain areas of cross-examination, that he indicates he was prevented from addressing because he had exceeded the time that had been allocated to him for examination. Mr. Rowe has listed the further areas he would like to examine Mr. Flores on in Paragraph 46 sections a) to i) of his motion record. He further indicates that these areas are of significant importance to the family and he did not feel that he was given an opportunity to conduct a sufficient examination.

The application was supported by PACY, and opposed by TCHC, TFS and Coroner's counsel. All other parties took no position on Mr. Flores being re-called.

Ruling:

I find that all the areas that Mr. Rowe indicates he has left to review with Mr. Flores, with the exception of that articulated in a), are collateral to the scope and focus of this inquest and will not help the jury with their task.

The parameters on cross examination were made clear to Mr. Rowe and the other parties at the beginning of the inquest, and none of the other parties appear to have experienced any issues in abiding by these restrictions. Coroners' Counsel's examination in chief lasted approximately 1 hour and 45 minutes and Mr. Rowe's cross examination lasted a little over an hour, leaving the remaining 8 parties with 40 minutes to divide among them. If further time was required to complete cross examination counsel were aware of their option to request further time by specifying the further areas they wished to cover and the relevance of these areas to their clients and the scope and focus of this inquest. This was not done at that time, and the information I currently have with respect to the areas left to cover, suggest that I would not have granted his request for an extension as these areas are collateral to the issues of this inquest and would not assist the jury in any way.

The area articulated in subsection a) of paragraph 46 of the Family's motion record relates to a question that was asked by a juror about more robust screens or screens available to managers so repair work can be documented and followed up on. This is specifically an area that came up in evidence and that the jury requested clarification on. Consequently that information should be provided to the jury.

The question now however is in what form this information should be introduced. Mr. Rowe and Ms. Fraser indicated that they were opposed to the Affidavit of Mr. Flores but could not articulate any reasons for their opposition, other than to indicate they would like him to testify on the other issues. Given that I have found the other

proposed areas of evidence irrelevant, and that I have not received any information about the areas of the affidavit counsel have concerns about, I will permit the evidence to be introduced via Affidavit.

Expansion of Scope & Focus to include ESSD

Mr. Rowe submitted a motion requesting the coroner to reassess his original decision on the scope and focus of the inquest of March 24th 2011 to extend the focus to include the Employment and Social Services Department of the City of Toronto and to bring a new witness Ms. Joanne Smith, Diane Anderson's caseworker from the Employment and Social Services Department of the City of Toronto.

Mr. Rowe on behalf of the family contends that if the Employment and Social Services Department [hereinafter ESSD] of the City of Toronto, made home visits they would have been able to identify Ms. Anderson's substance abuse issues, assess the state of the house and the children and therefore report any concerns to the Children's Aid Society thereby preventing this fire. Consequently the proposed Ms. Smith would be required to speak to the policy of the Employment and Social Services Department of the City of Toronto in relation to home visits, the services provided to Ms. Diane Anderson, the other services Ms. Anderson would have been eligible for that could have helped her improve herself, to gain useful employment and better her status in life. It appears from these submissions that the family believes that if Ms. Anderson had received certain services from ESSD, she would have improved herself to the point that she would no longer be in this situation.

The family further indicates that an ESSD witness or Joanne Smith is required to discuss the direct payment plan available with TCHC for rent payment. Such a plan would have ensured she was not in arrears and therefore would have received larger housing which in turn would have prevented the fire.

The motion was supported by Ms. Fraser who supplemented it with a motion of her own, asking that coroner's counsel be requested to identify and call a witness from the Employment and Social Services Department of the City of Toronto. This witness would explain the policy and procedures of the Employment and Social Services Department of the City of Toronto and what services were given to Ms. Diane Anderson and what services she might have been entitled to that would have helped her desire to improve her and her family's status. Ms. Fraser further indicated that while she supported Mr. Rowe's motion, she believe that her motion could be allowed without the scope and focus of this inquest being expanded.

Analysis and Ruling

In my original ruling I indicated

s. 31 (1) of the Coroners Act states in part:

*Where an inquest is held, it shall inquire into the circumstances of the death
.....*

One of the purposes of the inquest is to educate the public of the facts of the circumstances of the death to show that no death in the community will be overlooked, concealed or ignored. You must remember that the inquest cannot not make any finding of legal responsibility or express any conclusion of law on any matter in answering the five questions or in any recommendations in the verdict.

Consequently, as upsetting or difficult or systemically challenging as a person's life may be, an inquest does NOT look into the whole life of the deceased but focuses on the circumstances surrounding and leading up to the death.

In this inquest we are looking into the circumstances of the cause of the fire and what could have been done to prevent the fire and/or the loss of life. I am not aware of any evidence that established a connection between the involvement of The Employment and Social Services Department of the City of Toronto and the circumstances of the deaths. And no such evidence has been presented to me in any of the motion material provided. While Social services may have had a large impact on Diane Anderson's life, there is no evidence that The Employment and Social Services Department of the City of Toronto may be directly connected to these deaths.

*The motion to expand the scope and focus is denied. **If however as the evidence flows, some connection between The Employment and Social Services***

Department of the City of Toronto and the deaths is established I will reconsider the motion.

After considering submission of counsel and reviewing the evidence presented at the inquest to this date I find that there is no new, relevant evidence that has arisen through the course of this inquest that establishes a direct connection between the circumstances of Ms. Anderson's death and her long-term involvement with The Employment and Social Services Department of the City of Toronto.

At the March 24th motion, we heard some evidence from Ms. Fraser, Mr. Rowe and Mr. Gorlay concerning the responsibilities of ESSD and the appropriate circumstances in which a home visit is required. Throughout the course of the inquest however, we have heard no evidence that a home visit was required at any time or that ESSD failed to provide a needed service.

Mr. Rowe indicates that he was stopped by the objections of other counsel from delving into these areas, so there could be no new evidence connecting ESSD with these deaths. Ms. Fraser, further supported this view by indicating that counsel would feel "boxed in" in such a scenario. I find this argument perplexing since allowing Mr. Rowe to venture into these areas and ask specific questions in an attempt to connect ESSD to these deaths, would have flown in the face of my original ruling and would have, by definition, not been evidence that arose out of the normal course of the inquest, but evidence that was specifically elicited.

The evidence of a witness from the Employment and Social Services Department of the City of Toronto would again also not provide evidence "relevant to the purposes of the inquest" and directly relating to the circumstances of the events leading up to the deaths of Ms. Anderson and her two children

Similarly counsel's hypothesis that the pay direct plan is crucial evidence that could have prevented these deaths is premised on the position that if Ms. Diane Anderson had been able to transfer to a larger 4 bedroom unit, the fire would not have happened. This is faulty reasoning in my view and this argument fails for a number of reasons:

- 1) There is no evidence that 237-303 Grandravine was insufficient space for this family. The evidence is in fact that a bedroom was unused
- 2) Although the evidence indicates that the pay direct program has been available for many years (including Ms. Anderson's tenancy at TCHC), there is no evidence that she would have entered into the program.
- 3) There is no evidence that if a transfer to a larger unit had occurred, the other issues in Ms. Anderson's life would have disappeared.

Thus I see no reason to readdress my original ruling on the scope and focus of the inquest or to further consider calling Joanne Smith or another witness from ESSD. The motion is denied.