

# Aid to Ontario Inquests



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# THE INQUEST

## Purpose of this Aid

**This Aid to Inquests provides general information and assistance to persons who may wish to apply for, and who are granted standing, at an inquest in Ontario. This information is meant to provide an understanding of the purpose, conduct and outcome of an inquest and is not intended to be a substitute for legal advice.**

## History

The inquest has its origins in eleventh century England. When a body was found, a representative of the Crown had to decide five things:

- Who was the deceased?
- Where did he or she die?
- When did he or she die?
- How did he or she die?
- Who was to blame?

(NOTE: blame can no longer be assigned by inquest)

To help the “Crown” (or “Coroner”) decide these five questions, he summoned all the men from the surrounding villages to give evidence. Later, this evolved into a jury selected to hear the evidence.

The role of the coroner has been modified over the centuries. Today in Ontario, coroners are physicians appointed to serve the communities in which they live. The duties, activities and powers of coroners are defined in the Coroners Act, 1990. This Act is the legislated authority and reference for inquests. Death investigation is a provincial jurisdiction and other provinces and territories may have different systems and legislation governing the proceedings they conduct.

## The Five Questions

There are five questions that must be answered when investigating a death:

- Who was the deceased?
- Where did the death occur?
- When did the death occur?
- How did the death occur (i.e. the medical cause)?
- By what means did the death occur?  
(i.e. the classification or manner of death)

(“By what means” refers to the following categories: Natural causes, Accident, Homicide, Suicide, and Undetermined)

## **When is an Inquest called?**

There are two types of inquests: mandatory and discretionary. Mandatory inquests are conducted pursuant to legislative requirements under the Coroners Act. Mandatory inquests are conducted into deaths arising from accidents in the course of employment at construction, mining, pit or quarry sites, and deaths occurring while being detained or in custody. All other inquests are considered discretionary and may be conducted in accordance with section 20 of the Coroners Act.

There are several factors that a coroner takes into account when deciding whether to hold a discretionary inquest. For instance, the coroner must consider whether the answers to the five questions are known. The coroner may also determine whether or not it is desirable for the public to have an open and full hearing of the circumstances of a death. Additionally, an inquest allows juries to make useful recommendations to prevent other deaths in similar circumstances. This preventative function is a very important aspect of inquests because it encourages changes that will result in a safer province. Recommendations from previous inquests have resulted in changes to legislation (e.g. graduated licensing and labour laws), policy (e.g. how the police and courts administer justice), procedures (e.g. how we protect children and how safe medical practices are encouraged) and product development (e.g. safety mechanisms for motorized vehicles and other consumer goods).

A relative (as defined in S. 26 the Coroners Act) of a deceased, may request an inquest by submitting this request in writing to the investigating coroner. This request will be presented to the Regional Supervising Coroners management team to determine whether an inquest should be conducted in accordance with section 20 of the Coroners Act.

There is no time limit between the date of death and the convening of an inquest.

## **What an Inquest is NOT**

An inquest is NOT an adversarial process. It is also neither a trial, nor a process for discovery. It is not a royal commission, a campaign or crusade directed by personal or philosophical agendas. An inquest is an inquisitorial process designed to focus public attention on the circumstances of a death. It is to be a dispassionate public examination into the facts and all participants have a responsibility to conduct themselves with dignity and respect.

## **Inquest Courtroom Behaviour**

While an inquest is not a criminal court of record, it is nevertheless a court process. Appropriate behaviour, dress, and demeanour will be expected of participants, the media, and others attending an inquest.

## **The Jury**

The inquest jury consists of five persons selected by the coroners constable from a list of jurors from the community. Service on an inquest jury is a public duty. On the first day of the inquest, the jurors meet and select a foreperson from their group. Jurors are then sworn or affirmed to “diligently inquire” into the death and must deliver a verdict answering the five questions regarding the death. This verdict need not be unanimous and can be reached by majority. Jurors can take an active role in the inquest and are encouraged to ask relevant questions of the witnesses and raise issues of concern. Once the five questions are answered, jurors may make recommendations based on the evidence presented to them. However, it is not a requirement that jurors make recommendations.

Inquest juries are prohibited from making any finding of legal responsibility or expressing any conclusion of law. Their role is not to assign blame, to free from blame, nor to state or imply any judgment in their recommendations concerning the death. If a verdict does make such a finding, it will be considered improper and will not be received.

Inquest juries may be required to view photographs of the deceased’s injuries or to examine the location where a death occurred. In the modern day inquest, they are not asked to view the body of the deceased.

## **Who can participate in an inquest?**

An inquest is open to the public and the media. There are prohibitions regarding the use of cameras in the courtroom. There are also restrictions with respect to the use of recording devices in the courtroom by the media or any other person at an inquest.

A coroner presides in a quasi-judicial role over the inquest.

The coroner is usually represented by a Crown attorney who acts as counsel to the coroner. In addition, the presiding coroner shall allow other persons with a substantial and direct interest in the inquest, including persons who may be directly and uniquely affected by the recommendations to take an active part in the proceedings. This participation is called “standing”. A person or party must apply for standing. To be granted standing, the coroner must find that they are both substantially and directly interested in the inquest.

Parties with standing may represent themselves, or have lawyers or agents represent them. Parties may cross-examine witnesses relevant to their expressed interest and may call certain witnesses of their own if the coroner finds that the evidence of such a witness is relevant to the proceedings. In order to make such a finding, the coroner will require the production of a “will say” or written statement of the anticipated evidence before the witness is called to testify.

Parties with standing can also present arguments and submissions to the jury after all the evidence has been heard. This is to ensure that every person who might be significantly affected by the verdict or recommendations has an opportunity to be heard and to present their point of view. If necessary, the coroner will hold a separate hearing to determine issues of standing or any other matter that requires a decision in the absence of the jury.

Although an inquest may have lawyers representing various (and sometimes opposing) interests, it is essential to remember that no one is on trial and that the jury is not allowed to assign blame in its verdict.

The family of the deceased may wish to seek standing (with or without a lawyer), or may simply wish to observe the proceedings along with the public. Depending on the circumstances, family members may also be called as witnesses at an inquest. Unless they are going to be witnesses, the deceased’s family members are not required to attend the inquest.

Witnesses who have relevant evidence to give at an inquest will be summoned to attend. Witnesses will be sworn or affirmed and must give truthful testimony. Witnesses can be cross-examined by parties granted standing at the inquest. Evidence cannot be used to incriminate individuals in other courts unless they commit perjury. Perjury at an inquest is an offence and may lead to criminal charges. Witnesses are entitled to have their own lawyers or agents present to advise them of their rights, but further involvement requires permission of the coroner.

A court reporter is present during an inquest to record the proceedings. Transcripts of the proceedings can be obtained through the court reporter for a fee.

The coroner’s constable selects the jury and assists the coroner in maintaining order during an inquest. The constable swears or affirms witnesses, assists the jury and is responsible for handling the exhibits.

## **The Pre-Inquest Meeting**

Prior to the beginning of the inquest, the coroner may convene a pre-inquest meeting. At this meeting, which is usually conducted by counsel to the coroner, certain matters will be discussed to ensure an efficient and effective inquest.

Matters such as scheduling of hearing days, issues to be explored, and the sharing of information will be discussed. It is usually at this meeting that the inquest brief is handed out to parties having counsel present. The inquest brief is only distributed after the signing of an undertaking, which ensures confidentiality of the brief, and the return of the brief after the inquest is completed. If a party is not represented by legal counsel, special arrangements can be made to obtain access to the inquest brief.

## **Inquest Protocol**

The coroner at an inquest is addressed as Mister or Madame Coroner and the jury foreperson as Mister or Madame Foreperson. After the jury has been sworn, the coroner addresses the court with opening remarks. Coroner's counsel then addresses the jury and calls the first witness. As each witness is called, the other parties with standing have the opportunity to ask relevant questions of these witnesses in cross-examination. Jurors also have the opportunity to ask questions and examine exhibits. The coroner may rule on the admissibility or relevance of evidence. Rules regarding evidence at inquests are different from other court processes.

The jury is allowed to discuss the evidence amongst themselves outside the courtroom but these discussions must be kept secret during the inquest, during deliberations and after the inquest has been completed. This secrecy of deliberations is crucial to a fair process and to prevent harassment of jurors once the inquest is completed. The jurors are not to speak to anyone else, including the media, for the duration of the inquest or to discuss their deliberations after the inquest is completed.

Generally, access to exhibits is restricted to the parties participating in the inquest. At the discretion of the coroner, and being mindful of the privacy interests of the parties involved, exhibits may be available to the public and media for viewing during breaks. However, copying of exhibits will only be permitted by the coroner in certain rare circumstances.

When all the evidence has been heard, lawyers or agents will usually address the jury. These submissions will be a final opportunity to present the jury with interpretations of the evidence and to suggest recommendations. Joint recommendations from all parties may also be considered. Counsel to the coroner will also present closing submissions to the jury including defining points of law.

Following the arguments and submissions of all parties, the presiding coroner will charge the jury. The coroner will describe the jury's responsibilities and limitations and give them instruction regarding the law as it applies to inquests.

## Verdict and Recommendations

The jury will retire with all the exhibits to consider their verdict and prepare recommendations, if they so choose. A jury verdict that assigns blame will not be accepted. The jury must answer the five questions and they may make recommendations. Recommendations are not mandatory but they represent the voice of the community and should be considered in the prevention of similar deaths in the future. Recommendations must be based on evidence heard during the inquest.

The jury is not sequestered while they review the evidence and exhibits. However, they are instructed not to listen to, or read, anything about the inquest in the media and not to discuss their deliberations outside the jury room. When the jury returns to the court, the verdict is read aloud and the inquest is then closed. The verdict and recommendations are available to the public upon request, from the Office of the Chief Coroner.

The verdict and recommendations, along with a brief explanation written by the presiding coroner, are sent to the Chief Coroner for distribution to agencies, associations, government ministries, or other identified organizations that may be in a position to implement the recommendations. Recipients are asked to evaluate their response to the recommendations and are requested to submit their response to the Office of the Chief Coroner within a year of the inquest. Members of the public, including the media, may request a copy of responses to inquest recommendations by submitting a written request to the Office of the Chief Coroner.

The Office of the Chief Coroner prepares an implementation report on the status of implementation of recommendations from all inquests. Implementation reports are published in an annual report on inquests that is available to the public.