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*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

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IN THE MATTER OF AN APPLICATION BY ROBERT HOWARD FOR JUDICIAL REVIEW

AND

IN THE MATTER OF DECISIONS OF THE SENIOR CORONER

Howard's Application [2011] NIQB 125

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TREACY J

Introduction

[1] This applicant is a convicted child murderer. The background to the present case is that he was originally arrested and interviewed in relation to the suspected murder of Arlene Arkinson in September 1994. This young girl disappeared without trace on 13 August 1994 and has never been seen since. She is now widely assumed to be dead, though no official finding to that effect has ever been made by any lawfully constituted authority. The applicant was one of the last people to be seen with Arlene before her disappearance. Upon questioning he denied all allegations and was subsequently released without charge.

[2] In 2002 the applicant was tried and convicted for the murder of a different young girl, Hannah Williams, in England. Following his detention for that murder he was re-arrested and tried in relation to the suspected murder of Arlene Arkinson in 1994. At this trial the jury was told nothing about the character of the applicant. They therefore knew nothing about his previous conviction for the murder of Hannah Williams. Nor did they know that at the time Arlene disappeared, he was on bail for the rape and buggery of another child, or that he was subsequently convicted of unlawful carnal knowledge in that case. At the trial in relation to Arlene's murder, the applicant chose not to give evidence on his own behalf. Since Arlene's body was never found, one of the issues explored by his defence was the

possibility that she was alive at the material time. Indeed in the Order 53 Statement in the present case the applicant again sought to rely on the claim that there exists a substantial body of evidence undermining the view that Arlene is dead.

[3] In 2005 the applicant was acquitted of the murder of Arlene Arkinson. His defence was conducted entirely within the law, his acquittal stands, and the position remains that he is not guilty of that murder. Juries in criminal trials do not give reasons for their verdicts, so no explanation exists about what, if anything, the jury believed happened to Arlene Arkinson after her disappearance.

[4] In November 2007 (over two years after the conclusion of the trial) the Coroner ordered and opened an inquest into the death of Arlene Arkinson. In May 2011 the applicant sought to challenge that decision by bringing the present proceedings. In essence the grounds of the challenge are that the Coroner's decision to hold an inquest was irrational particularly in light of the fact that there had been a criminal trial and that there are in existence alternative avenues for registering the death of Arlene Arkinson which, it was argued, preclude the need for an inquest.

Background

[5] Section 16 of the **Coroner's Act (NI) 1959 ("the Coroner's Act")** provides:

> **"*Inquest where body cannot be found***
> **Where a Coroner is satisfied that the death of any person has occurred within the district for which he is appointed but, either from the nature of the event causing the death or for some other reason, neither the body nor any part thereof can be found or recovered, he may proceed to hold an inquest."**

[6] On **28 November 2007** the Coroner wrote to the applicant's solicitors announcing that he would hold an inquest into the death of Arlene Arkinson pursuant to his powers under Section 16 of the Coroner's Act and that their client Robert Howard would be a witness. I have not been enlightened by the parties as to what occurred between the conclusion of the trial in 2005 and the opening of the inquest in 2007. In any event, the letter announcing the Coroner's decision was sent in November 2007 and it also informed the applicant's solicitors, Madden & Finucane, that they would be advised of the hearing arrangements later. By letter dated **29 February 2008** Madden & Finucane replied to the Coroner confirming that they had instructions to represent the applicant at the inquest hearing. This important letter was not exhibited in the judicial review papers and no satisfactory explanation has been furnished for its omission. Nor does it appear in the analysis of the relevant correspondence in the applicant's skeleton argument. It was only handed in to the Court by Ms Quinlivan QC during questioning from the Bench at the hearing. Importantly, this letter raised no objection whatsoever to the decision to hold and open the inquest.

[7] The general purpose of an inquest is set out in Rule 15 of the **Coroners (Practice and Procedure) Rules (Northern Ireland) 1963 ("the Coroners Rules") –** in the following terms:

> **"15. The proceedings and evidence at an inquest shall be directed solely to ascertaining the following matters, namely: –**
> **(a) who the deceased was;**
> **(b) how, when and where the deceased came by his death;**
> **(c) the particulars for the time being required by the Births and Deaths Registration (Northern Ireland) Order 1976 to be registered concerning his death."**

Generally therefore, inquests are concerned to establish only how, when and where a deceased person died. In the present case, however, the inquest would also be required to address the anterior question of whether Arlene is in fact dead, as well as the Rule 15 questions.

[8] Having notified the Coroner in February 2008 that they did hold instructions to represent the applicant at the inquest, it was not until February 2009 (i.e. a year later) that the applicant's solicitors first raised any concerns about this inquest. In that letter they stated:

> **"... I would be grateful if you could advise why, in view of the fact that there was a public and thorough examination of the facts at the criminal trial, it is considered necessary, or in the public interest, to hold an inquest in this case. With the exception of the reopening of the inquest into the deaths of Messrs McKerr, Toman, Burns and Others I am unaware of any other inquests in this jurisdiction which followed a criminal trial."**

[9] On **1 April 2009** the Coroner, perhaps unwisely, engaged with the belated inquisition by correspondence. In his reply the Coroner unilaterally raised the question of his jurisdiction to hold an inquest when a body had not been found. This letter, so far as relevant states:

> **"While you are correct that it is unusual for an inquest to be held where a criminal trial has taken place in relation to the same death I must consider every case reported to me individually and on its own merits. Unlike previous cases where a decision had been taken not to hold an inquest, in this case,**

> **as you are aware, no body has been found. I am considering all the information presently available to me for the purpose of considering whether I have jurisdiction to hold an inquest pursuant to Section 16 ... An inquest could have the important outcome of allowing Ms Arkinson's family to register the death and obtain a Death Certificate"**

[10] In November 2009 a development occurred which might/might not have had some bearing on an ongoing inquest, namely **The Presumption of Death Act (Northern Ireland) 2009 ("the PDA")** was passed. In further correspondence on **24 November 2009**, again unilaterally, the Coroner raised yet another issue namely, the potential relevance of this new legislation to the inquest. He then indicated, without warning, that he was "now minded **not** to hold an inquest" and invited submissions about this matter. The letter states:

> **"At the time of my decision and in the absence of a body, no other means existed by which to investigate whether Arlene had died and, if so, the circumstances in which she died, which would allow for subsequent registration. However that position appears to have changed within the coming into force of the Presumption of Death Act (NI) 2009.**
>
> **The Act provides that where a person who is missing is thought to have died or has not been known to be alive for a period of at least 7 years application may be made to the High Court for a declaration that the person is presumed to be dead. The Act also establishes a register of presumed deaths.**
>
> **In these circumstances I am now minded not to hold an inquest, given that a criminal trial had taken place and there is now an alternative means by which the possible outcome of the inquest (i.e. a finding that death has occurred, when it occurred and subsequent registration) could be achieved. However, before taking a decision on this matter I would be grateful to receive any comments and/or submissions you may wish to make ...".**

[11] The Coroner's letter led to further correspondence, submissions and a preliminary hearing, leading to further delay in addressing the substantive business of the inquest.

[12] Representations dated **15 December 2009** were made to the Coroner on behalf of the next of kin urging the Coroner to hold the inquest. So far as material the letter of 15 December 2009 from their solicitors, Desmond J Doherty & Co, is in the following terms:

> **"Dear Sir....**
>
> **May we say from the outset that we would not agree at all with the proposition that an inquest is no longer necessary by virtue of the introduction into law of the Presumption of Death Act (NI) 2009.**
>
> **The inquest into the death of Ms Arkinson, which, of course, has already been opened and adjourned, would deal with much more than simply the family's ability to register the death. Indeed by the date on which the inquest was opened in November 2007, Arlene had already been missing for more than seven years and therefore there already existed at that time, the facility to make an application to the Court for a declaration as to presumption of death, though of course there was no register in existence. Notwithstanding that facility,** ***the family wished and still wish to proceed with the inquest.***
>
> **We would respectfully suggest that an inquest into the circumstances touching upon the death of Arlene has a significant public interest element. That is not to say that the inquest should proceed simply because the public have an interest in this case. Rather, it should proceed because it is in the public interest that it should proceed and because** ***the family now have a significant expectation that it will proceed, which expectation has not in any way been diminished or diluted over the years.***
>
> **In all of the circumstances of this most unusual and most serious case, a full and proper inquest, ought, in our respectful submission to be conducted.** ***To abandon it at this stage*** **the quest for a full exposition of the facts because an avenue now exists whereby an application can be made to the High Court for presumption of death and then registration of that presumption** ***would, it is submitted, be to miss the opportunity, and possibly***

> *the final opportunity of ascertaining what happened to Arlene.* **Crucially, lessons can be learnt from such an inquiry and overall it is in our respectful view in the interests of justice that the inquest proceeds.**
>
> **The Arkinson family's motivation in participating in *this inquest* was not and is not the simple ability to have the presumed death registered.**

[13] The applicant's solicitors did not make any submissions in response to the Coroner's letter of 24 November 2009 or to the next of kin's submissions contained in Mr Doherty's letter of 15 December 2009, although it is not always entirely clear who has been copied into what correspondence.

[14] On **2 November 2010** a Preliminary Hearing was held and the Coroner indicated that he was now satisfied that it remained open to him to hold a Section 16 inquest relating to the death. It seems the applicant's legal representatives were not present at the Preliminary Hearing. In a letter to Madden & Finucane on the same date he stated:

> **"...**
>
> **As you are aware a Preliminary Hearing was held today and I enclose a copy of a document summarising the provisional position of the Senior Coroner in relation to holding an inquest which was circulated to the interested parties at the hearing and discussed at court.**
>
> **The Senior Coroner has directed that the family should file any written submissions on the proposed *scope* of any inquest by the 19th November and the other interested parties may respond in writing by the 3rd December. It is then intended to hold a further preliminary hearing before the Christmas recess.**
>
> **..."**

[15] The attachment set out, *inter alia,* the proposed scope of the inquest and concluded by saying:

> **"4. If the family is content with the proposed scope of the inquest as set out in 2 above I would wish the family to provide me with written submissions as to why the scope of the inquest should be widened."**

[16] On **19 November 2010** the next of kin submitted written representations addressing their interpretation of the PDA submitting that it had "no relevance and that the only means by which the circumstances touching upon the death of Arlene may be investigated is through an inquest". Those representations again urged the Coroner to conduct an inquest, as he had already indicated he would do.

[17] On **10 December 2010** written representations were made on behalf of the applicant inviting the Coroner not to hold an inquest into the death. These representations refer to earlier correspondence which, again, was not exhibited in the present proceedings. However, the letter of 10 December 2010 is exhibited. In the first substantive paragraph the applicant's solicitors observe that it has not been established that Arlene Arkinson is in fact dead and ask the Coroner to advise them whether he had seen statements from persons who claimed to have seen Arlene in the days, weeks and months after her disappearance, including her friends. The letter then goes on to assert that the jury in the applicant's criminal trial had the opportunity "to hear all relevant evidence". The letter continues:

> **"We would also therefore ask you to identify the factor(s) which justify the holding of an inquest in this case against the background of a criminal trial at which all of the issues pertaining to whether Arlene Arkinson was dead, and if so "how" she came by her death, were fully ventilated.**
>
> **It appears to us that before reaching a conclusion that an inquest should be held you are *required to explain* the basis upon which you can *pronounce* yourself satisfied that Arlene Arkinson is dead. We further consider that you should outline the evidence you have considered which supports that conclusion and address the question as to whether you have considered any evidence which points away from that conclusion.**
>
> **We further consider that, against a background where the question of "how" Arlene Arkinson met her death (in the event that she is dead), has been fully ventilated in a criminal trial, it is also necessary for you to identify what factor(s) have influenced your conclusion that an inquest is nonetheless necessary."** (Emphasis added).

[18] The nature and tone of aspects of this letter might be thought somewhat disrespectful and inappropriately expressed. I will revert to the substance of its content later in this judgement.

[19] In response, by letter dated **2 March 2011**, the Coroner stated, *inter alia:*

> **"Given the absence of a body, the Coroner *considered* that an inquest provided the only possible means by which Arlene Arkinson's family could proceed to register her death, with the consequent legal and personal closure that registration could bring. *The decision to hold an inquest,* in spite of the fact that a criminal trial had taken place, *was made as a result of that,* exceptional, consideration. *While the Presumption of Death Act ... now provides a possible means for achieving registration of a "presumed death" the Coroner has concluded that it remains open to him to hold an inquest pursuant to Section 16 of the 1959 Act for this reason."*** [Emphasis added]

The letter goes on to comment that the scope of the inquest was yet to be determined and that he would in due course invite submissions on same from all interested parties.

[20] Following the Coroner's letter of 2 March 2011 the applicant sent another lengthy letter to the Coroner dated **23 March 2011** seeking to further interrogate him.

[21] The Coroner engaged with this correspondence and on **3 May 2011** rejected the PDA route "as it would not offer to the family a full exploration of the facts and circumstances surrounding the disappearance and death of Arlene Arkinson". In the same letter the Coroner stated that he considered that there are "strong and compelling reasons to hold an inquest and I intend to hold one into the circumstances of the death of Arlene Arkinson". He explained why and stated, *inter alia,* as follows:

> **"... an application to the High Court ... would not offer to the family a full exploration of the facts and circumstances surrounding the disappearance and death of Arlene Arkinson.**
>
> **Your letter makes the suggestion, implicitly if not explicitly, that I should decline to hold an inquest under section 16 of the Coroners Act (NI) 1959 Act ("the 1959 Act") on the basis that I should require the family of the deceased to make an application to the High Court under the 2009 Act. *I gave consideration to following that course but I decided, on proper consultation, that I would not do so. It seems to me that there are entirely legitimate reasons for me exercising my discretion based purely***

> ***on those considerations that fall to be considered by me in the exercise of my statutory power under the 1959 Act. These I have expressed in earlier correspondence.***
>
> **... I consider that there are strong and compelling reasons to hold an Inquest and I intend to hold one into the circumstances of the death of Arlene Arkinson."**

[22] The present judicial review challenge was lodged in **May 2011**.

Discussion

[23] The essence of the applicant's challenge is that it was irrational of the Coroner to decide to hold an inquest into this case which has already given rise to a criminal trial and a finding that the applicant is not guilty of the suspected death of Arlene Arkinson. I must now consider whether that decision was irrational in the way suggested.

[24] There is no doubt that the Coroner has the legal power to hold an inquest in cases where a body has not been found. The whole purpose of Section 16 of the **Coroner's Act** is to confer precisely this power. As already stated above S16 provides:

> *Inquest where body cannot be found*
> **Where a Coroner is satisfied that the death of any person has occurred within the district for which he is appointed but, either from the nature of the event causing the death or for some other reason, neither the body nor any part thereof can be found or recovered, he *may* proceed to hold an inquest."**

[25] Also the holding of an inquest where there has been a criminal trial is plainly envisaged by the statutory scheme. This is dealt with in Rule 13 of **the Coroner's Rules.** Rule 13 states that the Coroner shall, where a person has been charged, inter alia, with the murder of the deceased, in the absence of reasons to the contrary, adjourn the inquest until after the conclusion of the criminal proceedings. Rule 13(2) however provides that after the conclusion of the criminal proceedings the Coroner may resume the adjourned inquest if he is of the opinion that there is "sufficient cause" to do so. It is self-evident that the formation of that opinion by the Coroner will necessarily be fact and case specific. The criminal trial may well have provided a sufficiently public exploration of the how, when and where a person died. But this will not always be the case and certainly the fact of a criminal trial per se does not preclude an inquest from taking place. This is clear from the Rules and should be uncontroversial. Thus the acquittal of the police officers in **McKerr & Ors** did not

preclude the Coroner from opening an inquest into the deaths of the deceased in that case.

[26] It is an unfortunate feature of the present case that much of the exhibited correspondence relating to the inquest proceeded on an apparent acceptance by all concerned that the holding of an inquest after a criminal trial must be 'exceptional'. In the present hearing all the parties, including Ms Quinlivan, were agreed that this apparent requirement of 'exceptionality' was putting the matter too far and was not an accurate reflection of the statutory language. In the case of a resumed inquest the test is not exceptionality but "sufficient cause". Each case must be judged on its own facts and circumstances. It may be that an inquest following a criminal trial is the exception – but that is a consequence, not a test or threshold that has to be met. It is likely to be the exception because in most cases the criminal trial will be a sufficient exploration of the circumstances surrounding the death. But this will not always be the case and the rules are careful to preserve the possibility of resuming an inquest after a criminal trial whenever the Coroner is "of the opinion that there is sufficient cause to do so".

[27] It is important to note that the language of Section 16(1) and Rule 13(2) confers a wide discretion in 16(1) by the use of the word "may" and in the case of 13(2) by the provision that an adjourned inquest may be resumed whenever the Coroner is **"of the opinion** that there is sufficient cause to do so". It is of course well understood that it is not the function of the Judicial Review Court to substitute its opinion as to whether an inquest should be held or whether there is sufficient cause. This court exercises a restricted power of intervention on well known public law grounds only. The focus of the present challenge is a *Wednesbury* irrationality challenge.

Can this applicant challenge the Coroner's decision on the grounds that it is irrational?

[28] The Coroner's decision to hold this inquest was first announced in his letter of November 2007. Immediately afterwards the decision was accepted without demur by everyone concerned. No challenge was lodged either 'promptly' or within the three months of that decision, which has never been revoked. Nothing was heard about this exercise of the Coroner's discretion until February 2008, and then there was a letter from the applicant's solicitors confirming that they had instructions to represent their client at the inquest hearing that the Coroner had announced. By this stage the opportunity to bring judicial review proceedings promptly or within 3 months was fast disappearing, and the applicant's solicitor's letter of February 2008 seems to me to put an end to the prospect of the Coroner's decision to hold an inquest being challenged in this court.

[29] Almost exactly **a year later,** the applicant's representatives began a course of correspondence with the Coroner which investigated the grounds for a decision announced to them **some 15 months earlier**. Regrettably for him, the Coroner

allowed himself to become engaged in this investigative/fishing exercise by the applicant and in the course of this correspondence the Coroner's commitment to hold the inquest he had already announced, ebbed and flowed with the tide of argument. New facts arose which influenced his view. Perhaps unwisely he invited comment on these matters from the parties. So, in November 2009 the PDA was passed. In correspondence with the parties he explained how he thought this might be relevant to the inquest and how it was influencing his thinking:

> **"In these circumstances I am now minded not to hold an inquest, given that a criminal trial had taken place and there is now an alternative means by which the possible outcome of the inquest (i.e. a finding that death has occurred, when it occurred and subsequent registration) could be achieved.** ***However, before taking a decision on this matter*** **I would be grateful to receive any comments and/or submissions you may wish to make ...".**

[30] In a letter to the Arkinson's representative, Mr Doherty, dated **11 March 2010,** the Coroner refers to the previous submissions from Mr Doherty and explains that, having taken advice, the Coroner considers it appropriate to outline his view on the potential effect of the PDA which came into force on 9 November 2009. He then explains the effect of the legislation and, having done so, engages in a brief excursus on the state of domestic law relating to Art2 of the ECHR, referring to the judgments of the House of Lords in ***McKerr*** **[2004] UKHL 12** and the decision in ***Hurst*** **[2007] UKHL 13**. He then states:

> **"In circumstances, however, where it is open to the Arkinson family to apply to the Court for a declaration that Arlene is to be presumed dead, the effect of such a declaration being granted may be to widen the scope of the inquest. Until such time as the declaration is granted, however, the Senior Coroner cannot apply a date of death beyond October 2000 for the purpose of the inquest. Potentially, this has a constraining effect upon the Coroner in terms of determining both the viability of any inquest and its scope in light of the House of Lords Ruling in *McKerr*.**
>
> **In these circumstances your clients may wish to consider whether to make an application under the 2009 Act.** ***The Coroner would re-examine the need for and potential scope of any inquest following the determination of any such application. ...***" [Emphasis added]

[31] It seems to me that a fair reading of the exhibited correspondence in this case indicates that in his correspondence with the parties this Coroner was proceeding from the position that:

(1) an inquest into the death of Arlene Arkinson was already open; and

(2) that events had occurred that might be relevant to the scope of that inquest and indeed possibly to the need to proceed **any further** with the inquest at all.

[32] The Coroner invited the submissions of the parties on all these issues, but this was done on the basis that all the parties consulted were already engaged in the inquest process. They already were parties because each of them had already confirmed their participation in earlier correspondence. The Coroner was corresponding with them because he recognised that in the unusual circumstances of this case the scope of the inquest might be wider than normal, and because new legislation had intervened that might affect the attitude of one or both parties in relation to the need to continue with the inquest. Having taken their views on these matters the Coroner was determined to continue with the inquest he had opened back in November 2007.

[33] This reading of the correspondence is confirmed by the Coroner in his own affidavit in the current case. At para4 the Coroner stated:

> **"I accept the proposition that the convening of an inquest after a criminal trial is unusual. I do not accept, however, that there is any public policy argument not to hold an inquest in circumstances where there has been a criminal trial. Each case must be judged on its own facts and circumstances. In this case, the fact that the very issue of the death of Arlene Arkinson was left unresolved by the criminal trial process *was* the principle reason justifying the holding of an inquest in this case. In my view the family is entitled to a finding following an inquest that Arlene is dead and to a finding, if possible, as to when and where and in what circumstances she died."**

[34] At paras9 and 10 he states:

> **"9. I am not prepared to compel the family of Arlene Arkinson to make an application to the High Court ... In my view this would put them to considerable personal and emotional expense. The Coroner's Court is, in my view, a much more appropriate forum in which all relevant matters can**

> **be considered.** ***The inquest has been opened and adjourned. It is my intention to reconvene the inquest.***
>
> **10. In the circumstances, I am not prepared to** ***abandon the inquest*** **because the family of Arlene Arkinson declines to bring alternative proceedings in another forum."** (Emphasis added).

[35] These averments suggest to me that this Coroner regarded himself as conducting correspondence with the parties to a subsisting inquest which had been declared open in November 2007. He did consider, and discuss with the parties, the appropriateness of continuing that inquest in the light of new legislation which provided a new mechanism for a bereaved family to acquire a death certificate in certain cases. He invited the views of the parties to the inquest on this new legislation. Having considered their views, he confirmed his determination to continue with the inquest that was already open. This was what he conveyed in his letter of 2 March 2011 and which the applicant challenged by these proceedings issued in May 2011. In my view the Coroner's letter of 2 March was not conveying any new decision about the holding of an inquest. That letter conveyed some within-process decisions about the future conduct of an existing inquest that all the parties involved were already participating in. The decision to hold an inquest in this case had been conveyed in November 2007 and went unchallenged by any party until some four years later. In my view therefore the present challenge brought in May 2011, four years after the impugned decision is irredeemably out of time.

[36] In any event I further hold that the decision to hold or continue this inquest, whenever it was taken, was not *Wednesbury* irrational in the present case. The reason for this finding is that the Coroner's discretion to hold/resume inquests after a criminal trial is drafted in wide terms. Under Section 16(1) and Rule 13(2) the Coroner must of course conscientiously address the need for an inquest. But if, in his opinion, there is sufficient cause requiring him to resume an adjourned inquest or leading him to open an inquest under Section 16, the right to challenge that decision will necessarily be constrained by virtue of the statutory context and the consideration that the discretion is, by statute, the Coroners (and not the courts) as well as the limited basis upon which the Court is entitled to intervene. Under the relevant provisions all that is required is that the Coroner form the opinion that there is 'sufficient cause', for an inquest to be pursued. This is not a high threshold to fulfil. It is trite law that very broad statutory discretions such as the one in this case are inherently difficult to challenge on any public law ground. This is as it should be. Legislation and statutory systems place such discretions in the hands of experienced personnel, who are specialists in their own fields of endeavour. It would be quite wrong if every exercise of their judgement was open to challenge in the Judicial Review Court. For this reason, broadly phrased, statutory discretions whilst not exempt from challenge on public law grounds will require compelling evidence to

establish irrationality or legal perversity. There is nothing in the conduct of the Coroner in the present case which falls within that very limited category.

[37] There are aspects of the present case which call for further comment, not least the unconscionable delay which has bedevilled the present proceedings. Coroners are obliged to provide an inquest promptly. This is a fundamental requirement of domestic and Convention law. The processes of the coronial jurisdiction must promote and not undermine the achievement of this particular legal requirement otherwise public confidence in the system will diminish. Lack of promptitude can cause frustration, anxiety and distress. The next of kin are victims and their rights must be respected and taken into account at every stage of the proceedings. In their appropriate concern to respect the rights of persons such as the present applicant, Coroners must take equal care to remain mindful of the fundamental rights of the families of deceased persons. Other public authorities with a role capable of affecting the efficacy of the coronial jurisdiction, including the legal aid authorities, must also remain mindful of the balance of rights in play in inquest proceedings. Everyone involved must remember that promptitude is an integral part of the appropriate conduct of inquests. The old adage that 'justice delayed is justice denied' is nowhere more appropriate than in the Coroner's Court which often represents a family's last chance to achieve an outcome that offers closure to a most painful episode in their lives.

[38] In the present case I am not satisfied that everything possible was done to secure a prompt outcome to the inquest proceedings. Having unequivocally represented his intention to hold an inquest to the next of kin and opened it, the Coroner subsequently engaged in a protracted discourse with the parties about whether or not the inquest should be continued and what the precise remit of the proceedings should be. It is useful to reflect that any decision by the Coroner revoking his earlier determination, thereby frustrating the legitimate expectation of the next of kin, would itself raise serious public law issues. It will usually be preferable if Coroners who have announced that an inquest will be held would then devote themselves to bringing that inquest to a conclusion as expeditiously as is consistent with the requirements of fairness and due process, rather than debating the minutiae of the process with the parties during the currency of the hearing itself. Setting the terms of the inquest is a matter within the wide discretion of the Coroner himself. Unduly anxious, prolonged and public discussion of these matters is unlikely to be consistent with the overarching requirement of promptitude.

[39] It is concerning that four years have now elapsed since this inquest was first announced and no substantive progress has yet been made in that inquest hearing. I find it difficult to reconcile that history with the fundamental requirement of promptness for inquest proceedings and with the basic human imperative to provide grieving families with a working mechanism that can deliver finality and closure to them in their time of suffering.

[40] I recognise that inquests have grown in significance and importance in the last decade as a result of the jurisprudential developments. In many ways inquests have become a legal battlefield and the notion of a prompt inquest, whilst legally required as a matter of domestic and Convention jurisprudence, is frequently breached. This has consequences for the next of kin where the delay exacerbates their feelings of frustration, distress and anxiety. Indeed the European Court awarded £10,000.00 to each applicant by reason of the failure of the national authorities to carry out a prompt and effective investigation in the cases of ***Jordan, McKerr, Kelly & Shanaghan v UK*** **[2001] 11 BHRC 1**.

[41] The introduction of public law challenges during the lifetime of an inquest can seriously disrupt the progress of the inquest and endanger the requirement of promptitude. The proper course in most cases must be to wait until the conclusion of the inquest and, if unhappy with its outcome, to make a public law challenge if merited at that stage. In those necessarily exceptional cases where a challenge can be justified before the conclusion of the inquest, adherence to the requirement of promptness in Order 53 is of particular importance. It is important not to lose sight of the fact that once an inquest is required it must, as a matter of law, be conducted promptly. The notion of promptness in this context of course is not inflexible and must accommodate and be sensitive to the surrounding context, but not to the point where the legal bond of promptness is broken. All public authorities capable of influencing the course of inquest proceedings, including the Judicial Review Court and legal aid authorities considering applications for funding of public law challenges, should anxiously scrutinise the compatibility of any decision they propose to take with the overarching duty of the State to deliver a prompt and effective investigation into the circumstances surrounding a controversial killing. They must also anxiously weigh in the balance the fundamental right of grieving families to have a timely answer to that most human of questions: 'what happened to my loved one?'

[42] Applying all the above considerations to the present case I conclude that I must dismiss the present application and exhort the Coroner to now deliver this inquest without further delay.