

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)**

Ramsbottom's Application [2009] NIQB 55

**AN APPLICATION FOR JUDICIAL REVIEW BY
SIOBHAN RAMSBOTTOM**

WEATHERUP J

[1] This is an application for judicial review of decisions of the Coroner made on 14 November 2007 concerning the Inquest into the death of Gerald Lawlor. The applicant was the partner of the deceased who was murdered on 22 July 2002. Mr MacDonald QC and MS Doherty appeared for the applicant, Ms Anyadike-Danes QC and Ms Elliott appeared for the Coroner, Mr McMillen for the Police Service and Mr Kitson for the Police Ombudsman.

[2] The applicant made a statement setting out her information as to the events of the evening in question. The deceased was in the Bellevue Arms public house on the Antrim Road, Belfast, where he arrived about 8.30pm and left about 11.45pm. He walked to a Chinese takeaway and left those premises at about 11.55pm walking back past the Bellevue Arms towards his home on the Whitewell Road. Shortly after midnight residents in Flora Road nearby heard gunshots and two witnesses saw two men on a moped that drove off towards Glengormley. The two witnesses then found the deceased lying on the pavement.

[3] The applicant recounts that Police stated that the motive for the murder was sectarian and in revenge of the shooting earlier of a young Protestant man in Ardoyne. The result was that loyalist gangs carried out a number of attacks in an attempt to murder members of the Catholic community. The applicant gives further particulars of the events of that

evening involving loyalist gunmen firing shots in North Belfast and gunmen on a motorbike firing shots in the Oldpark area. Fortunately in neither event was anyone injured. At 11.20 pm a man was seriously injured in Rosapenna Street and then at around midnight the deceased was killed. A claim of responsibility was received by the BBC from the Red Hand Defenders and a further claim of responsibility was received from the UVF on behalf of the Ulster Freedom Fighters. Two men were arrested for the murder of the deceased on 7 August 2003 but they were subsequently released without charge.

[4] The applicant was not satisfied with the police investigation into the death of the deceased and complained to the Police Ombudsman. The Police Ombudsman carried out an investigation. The complaint included the manner in which the police had dealt with a witness known as 'X' who telephoned the police confidential telephone line and later made a statement to solicitors. Witness X claimed that two males had confessed to her that they had committed the murder and she provided the names of those concerned. However the applicant expressed the view that she did not believe that the police investigation team acted on this information and there were suspicions on the part of the family of the deceased that the killers were being protected because they were police informants.

[5] On 16 October 2007 the family were notified by the Ombudsman that they had indicated to the Coroner that although their investigation was not complete it did not reveal anything which may prejudice the Inquest into the death. There was some debate about the meaning of the expression "prejudice the Inquest". It seems that the Ombudsman's office did not believe that their investigations were going to advance the information that was relevant to the Inquest.

[6] The Coroner gave notice that he intended to proceed with the Inquest on 14 November 2007. The Coroner produced a witness list. The applicant's solicitor wrote to the Coroner on 7 November and among the comments was the expression of surprise that the witness list did not include witness X. The applicant's solicitor requested the Coroner to include witness X and the two individuals who had been named by her in the list of those to be called to give evidence at the Inquest and that the solicitor be provided with any material that had been gathered by the police or the Ombudsman in relation to the information provided by witness X.

[7] The Coroner replied on 8 November stating that he had been advised by the senior investigating officer, Detective Inspector Clarke, that the contents of witness X's statement did not relate to the murder of the deceased but rather to an incident that had occurred earlier that day and therefore it was not proposed to call witness X to give evidence. Further it was stated that

the Detective Inspector had been in contact with the Police Ombudsman's office and had received confirmation that their investigation had concluded.

[8] A preliminary hearing was held on 14 November and the Coroner called Mr Brennan of the Ombudsman's office to explain the progress of their investigation. Mr Brennan indicated that the investigation was not complete and he confirmed that he had not communicated any of his findings or the material generated by the investigation to the family or to the Coroner. He did say that nothing had emerged which would prejudice the Inquest.

[9] Further the Coroner stated at the preliminary hearing that Detective Inspector Clarke would be called to give evidence about the results of the investigation into witness X and that neither he, the Coroner, nor the family needed advance notice of what Detective Inspector Clarke would say. The Coroner then proceeded with the hearing of the Inquest. This prompted the applicant's solicitors to make an application for judicial review of the Coroners approach and on the same day the applicant obtained leave to apply for judicial review and an Order stopped the Inquest.

[10] The applicant's grounds for judicial review now resolve in essence to three matters. First, the Coroner refused to permit examination of the relevance of the evidence of witness X at the Inquest. Secondly, the Coroner refused to provide for disclosure of documents in relation to the investigation concerning witness X. Thirdly, the Coroner refused to recuse himself from the conduct of the Inquest.

[11] I had occasion to consider similar issues in Hemsworth's Application [2009] NIQB where the issue concerned police involvement in the death and the Coroner had reached the conclusion that there was not a basis for examining the issue of police involvement. At paragraph [27] it was noted that an Inquest must involve in the first place a full investigation of the relevant circumstances and secondly a public investigation, all for the purpose of eliciting facts pertinent to the circumstances of the death and responsibility for the death. The functions of an Inquest include, as was noted in the Broderick report in 1971, the allaying of rumour and suspicion. Thus it becomes necessary to identify the circumstances in which rumours and suspicions are required to be addressed at an Inquest. The Coroner cannot be expected to carry out an inquisition into every stated rumour and every stated suspicion, however apparently unfounded or unreasonable. There must be a plausible complaint relating to the issues touching the means by which the deceased came by his death. There must be a reasonable basis in evidence before the Coroner can be expected to conduct such an inquisition. There must be grounds for reasonable suspicion or a reasonable basis for the rumours, not amounting to mere speculation, to warrant further enquiry at the Inquest. If there are grounds for reasonable suspicion in relation to actions that are relevant to the direct cause of the death it is the obligation of the

Coroner to conduct a full investigation and a public investigation as to the circumstances and responsibility for the death.

[12] In the present case are there reasonable grounds for suspicion that the circumstances outlined by witness X relate to the means by which the deceased met his death? Witness X claimed that two males had confessed to her that they had committed a murder and she provided particulars of the circumstances in which the confession had occurred and the names of those concerned. This confession may or may not have related to the deceased. She telephoned the police confidential telephone line when she learned of the death of the deceased at the Bellevue Arms.

[13] The account given by witness X is strikingly similar to the death of the deceased in terms of date and time and place and the nature of the event. The Coroner in his affidavit stated that he was informed by Detective Inspector Clarke that there were a number of incidents on the evening that the deceased was murdered and he was advised that the police are of the view that the information provided by witness X did not relate to the murder of the deceased but related to a different matter. Detective Inspector Clarke gave sworn evidence on the issue when the Inquest opened. The Coroner did not accept that it was necessary to call witness X as he had been advised that her information was not relevant. Then the Coroner referred to the preliminary hearing and the evidence of Mr Brennan, the deputy senior investigating officer in the Ombudsman's office, about the state of the investigation that had been carried out by that office. Mr Brennan had advised that he did not believe there were any further lines of enquiry that had emerged. The Coroner stated his conclusion that DI Clarke "... could address the issue of witness X in the course of his sworn evidence at the Inquest and prove her witness statement under oath. I consider it appropriate to address the matter as it had been raised on behalf of the next of kin although the assessment was that the evidence was not relevant. I consider that this matter should be addressed to allay suspicions. Any decision in respect of the scope of the inquest is a matter for the coroner."

[14] Detective Inspector Clarke gave evidence at the Inquest on 14 November 2007 and his deposition is available. The applicant and her legal representatives were not present at that stage as they were proceeding with the judicial review application. The content of the deposition and the questions and answers added at the Inquest indicate that the issue of witness X was not examined.

[15] In his affidavit sworn in these proceedings Detective Inspector Clarke refers to the fact that he believes that documents relating to witness X are not relevant. He states that witness X refers to a burning car in the Country Park, that a red Vauxhall Corsa was recovered in the area described by the witness and that a red Corsa was seen leaving the area of an attempted murder

during the upsurge of violence that included the deceased's murder. The indication is that the car that witness X states that she saw in the park was identified by police as a red Vauxhall Corsa which was the same type of vehicle that was seen leaving the area of another attempted murder. There are no further particulars available as to the matters that led the police to their conclusion that the events described by witness X were not relevant to the death of the deceased.

[16] The Coroner's position is that on the present information there should be no exploration of the basis for the police conclusion on witness X. First of all the police have examined the issue and found no connection with the death of the deceased, although the basis for that conclusion is not disclosed beyond the statement of DI Clarke about the type of car that was recovered. Secondly, the Police Ombudsman had examined the issue and found no irregularity. While their inquiries are stated to be incomplete the Ombudsman feels able to state that there is no basis for questioning the police conclusion. Again the basis for the Ombudsman's conclusion has not been disclosed but no doubt will appear when the report is published.

[17] I am satisfied that there are reasonable grounds for suspecting that the evidence of witness X relates to the means by which the deceased met his death. I have described the account of witness X as strikingly similar to the account provided by the applicant. Further I conclude that those reasonable grounds for suspicion cannot be dispelled by reliance on undisclosed information held by the police or the undisclosed basis for the police conclusion said to establish that the reasonable grounds for suspicion are mistaken. There must be a full and public investigation as to the circumstances and responsibility for the death. It must include an examination of this line of enquiry concerning witness X.

[18] In any effective investigation of this death it is clearly relevant to establish whether the information provided by witness X relates to the deceased or to some other incident. There are indicators that it does relate to this incident, given what one of the men said to witness X when they met each other. There are indicators that it may relate to another matter given what DI Clarke says about the car. However this is an issue for the Inquest and not a matter for the Coroner to exclude from the Inquest because he has reached his own conclusion based on a report from the police.

[19] How then is this relevant issue to be examined? First and foremost that is a matter for the Coroner now that this line of enquiry is to be opened up at the Inquest. It may be that the evidence of DI Clarke will be sufficient to conclude the matter. On the other hand it may not. It may or may not require oral evidence from witness X. It may or may not involve her statement being read to the Inquest. It may or may not require special measures to be applied at the Inquest. It may or may not require examination

of documents. It is not known what documents are available but the police are not adverse to disclosure to the Coroner. There may be public interest issues requiring redaction of some part of some documents. It is not for the Court to set out the course of the Inquest on this issue. It is first and foremost a matter for the Coroner.

[20] In relation to the grounds relied on by the applicant the first concerns the relevance of the information provided by witness X, in respect of which I am with the applicant. Accordingly a declaration will issue that the information provided by witness X is relevant to the Inquest. The second relates to the disclosure of documents in relation to the investigation. Initially it is a matter for the Coroner to determine what disclosure is appropriate for the examination of this issue. Accordingly it is not proposed to make any Order in that regard.

[21] The third ground concerns the recusal of the Coroner. The applicant seeks a declaration that the Coroner should stand down from the Inquest because it is said that he has predetermined the issue of the relevance of witness X and has relied upon the conclusion of the police as to the irrelevance of witness X. The question of recusal also arose in Hemsworth's Application where I set out from paragraph [40] the basis of the challenge on the grounds of apparent bias. In Porter v Magill the House of Lords confirmed the objective nature of the approach to apparent bias and posed the question whether the fair-minded and informed observer, on considering the facts, would conclude that there was a real possibility that the decision maker was biased. In Hemsworth's Application the issue concerned the predetermination of the issue of police involvement in the events leading to the death and I concluded that, in the circumstances where the Coroner had reached his own conclusion on the evidence that there was no basis for examining the involvement of the police, it was appropriate for another Coroner to conduct the Inquest.

[22] In the present case the Coroner's second affidavit states that he denies that he has a closed mind on the matters relating to the investigation and the relevance of witness X; that he has accepted the conclusions stated to him by the police and the Ombudsman; that "... I have retained and continue to retain an open mind on all of these matters. If any evidence or information is brought to my attention which may be capable of altering my present belief I am quite prepared to consider that information and if it causes me to change my mind about any of these issues I prefer to take whatever steps may be appropriate in relation to the conduct of and/or admission of the evidence at the inquest".

[23] Thus the Coroner is prepared to examine this line of evidence if information is available that requires the same. I have ruled that the statement of witness X is relevant and that the Coroner should examine the witness X

information at the Inquest. I consider that ruling to be to the same effect as the Coroner having further information upon which to examine the issue. The Coroner has expressed his openness to doing so. I do not have any reason to doubt, in the light of the Coroner's declaration, that he would do so when a declaration has been made by the Court. The question therefore arises as to whether the fully formed and objective observer, being told that the Coroner would keep an open mind and look into the matter in question and accepting that that is what the Coroner will do, would conclude that the Coroner would perform his duty to do so. I conclude that the Coroner has not predetermined the issue but is open to an appropriate examination of the issue. I do not propose to order recusal in the circumstances.