

Understanding the Inquest Process: What Mental Health Practitioners Need to Know



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Witnesses – What to expect

- Anyone with direct knowledge of the events leading to the death may be called to give evidence
- If you were involved in providing direct care at the time of the death, it is very likely that you will be called
- Important events leading to your appearance
 - The police investigation
 - The "summons"



Witnesses – Your lawyer

- You need to find out whether or not and how a lawyer will be provided for you
 - If you are a non-unionized employee of a mental health facility or agency, it is likely that you will be covered by the hospital/agency's insurance – The lawyer representing the hospital will be your counsel
 - Except if your interests and the hospital's interests are not the same in which case you will require your own counsel



Witnesses – Your lawyer

- You need to find out whether or not and how a lawyer will be provided for you
 - If you are nurse you will be represented by the Ontario Nurse's Association or OPSEU
 - If you are a psychiatrist/physician you will be represented by the Canadian Medical Protection Association
 - If you are a non-medical private practitioner, you will be represented by counsel retained by your professional liability insurer

Witnesses – Preparation

- Meet with your counsel well before the start of the inquest – preparation takes time
 - Counsel will provide a list of potential questions
 - Counsel will identify potential vulnerabilities
 - Counsel will review your responses especially to potential critical questions
- The success of your appearance depends on the quality of your preparation – avoidance strategies do not work
- Counsel may arrange a meeting with the Coroner's Counsel to review the evidence that they intend to lead – this can be very helpful

Witnesses – Preparation

- Ask your counsel to find all similar fact deaths that have been subject to an inquest before
 - Especially those that have occurred at your facility
 - Review the jury's recommendations and status of responses to recommendations
 - Especially recommendations that relate to your role in providing care

Witnesses – Orient yourself to the Inquest procedures and environment

- Appearing at the Inquest – the witness box and taking an oath or affirmation
- Attend the proceedings before you are scheduled to give evidence to observe earlier witnesses
- This provides a helpful orientation to process

Witnesses – Your evidence is divided into 4 parts

- Coroner's Counsel is first to ask questions- leads the evidence
- Other parties with Standing may cross-examine the witness
- Witness's own counsel will "cross-examine" the witness after other parties
- Members of the Jury and the Coroner may ask the witness questions

Witnesses – Responding to Questions

- Wait for the questioner to complete the entire question – listen carefully – then pause
- If one or more counsel object to the question, do not answer but wait for the coroner's instructions
- If you do not understand the question, say so
- Feel free to ask that the question be repeated
- If you need some time to think about your answer – take whatever time you need
- If you need to refer to a document to refresh your memory, ask for the document and the time

Cross Examination

- Style of questioning, “You would agree with me wouldn't you that....”
- Counsels way of getting their evidence before the jury
- Be careful not to let them lull you into agreeing to things that you do not really agree with or do not have personal knowledge of

Witnesses – Your testimony

- Your answers should be based on one of four sources of knowledge
 - What you remember
 - What you recorded at the time
 - What you do as part of your normal practice
 - Whether or not you followed hospital policy and college standards of practice
- Do not guess or speculate
- Do not over analyze the question- treat each question as a simple straightforward question and give a simple straightforward answer

Witnesses are protected

- Witnesses are protected from having their testimony used against them – section 42 Coroner's Act
- Ask your counsel to ascertain prior to the start of the Inquest from the Coroner's counsel whether the Coroner will make a ruling at the outset that all witnesses are covered by section 42
- Don't allow the impression to be left that you are individually seeking protection of section 42 for fear of seeming to appear concerned about your own liability or “guilt”

Inquest may be a forum for questions posed for collateral purposes

- Future lawsuits
- Complaints to professional colleges
- Future criminal charges (although usually an Inquest is not begun until after criminal proceedings have concluded)

Witnesses – Adopt a responsible posture – Be accountable

- Nevertheless, avoid a defensive stance
 - You should not make excuses, deflect blame to others, or avoid answering questions
- Provide complete and honest answers to questions posed
- Answer only the question asked
- If you do not know the answer, say so

Witnesses – Be professional

- While answering questions
 - Direct your answers to the jury, not to counsel posing the questions
 - Be courteous and polite
 - Be responsive – do not add information that is not in direct answer to the question posed
 - When challenged, be firm – but do not argue

Witnesses – Adopt a caring and sympathetic attitude

- When an appropriate opportunity arises during questioning:
 - Express straightforward regret re death of patient and sincere condolences to family
 - Express commitment to Inquest as a learning opportunity
 - Express sincere interest in the jury's eventual findings and recommendations
 - Express the hope that your evidence will be or has been helpful to the jury

Witnesses – Giving medical evidence

- You should be prepared to answer basic questions regarding the medical condition of the deceased at the time of death, including signs, symptoms, course, prognosis, and treatments
- You should attempt to use non-medical non-technical jargon as much as possible – remember that you are speaking to 'lay persons'
- If you must use medical terms, you should be prepared to define the terms in concise and simple language
- But, don't talk down to the jury

Witnesses – This is your opportunity to influence the jury

- Counsel, the Coroner or the members of the jury may ask for your recommendations for improvements in the system to avoid these kind of deaths in the future – you should be prepared with your own thoughtful recommendations
 - Recommendations need an evidentiary base
 - Need to be practical and focused
- You might arrange before hand for your counsel to ask for your recommendations
- If they do not ask, try to work your recommendations into your answers to other questions

Witnesses - preparation

- To put the suggestions in the last four slides to work, you may need to rehearse
 - With your counsel
 - With your co-workers
 - With your significant others

Witnesses – Managing the Media

- When leaving the coroner's court, members of the media may approach for the purposes of requesting an interview or taking a photograph
 - Refuse to be interviewed, politely but firmly
 - Be aware that they can take your picture without your consent, and when they do, adopt a demeanor appropriate to the inquest setting

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