

CORONERS' COURT
IN THE MATTER OF The *Coroners Act*, R.S.O. 1990, c.37
AND IN THE MATTER OF The Inquest Touching Upon the Death of
Romeo Wesley

RULING ON THE MOTION concerning application for change of venue

From Cat Lake First Nation

BEFORE

DR. DAVID CAMERON
PRESIDING CORONER

COUNSEL TO THE CORONER

MS. LEILA MEHKERI

REPRESENTATIVES OF PARTIES

MR. FRANCIS THATCHER

counsel for Cat Lake First Nation ("Cat Lake")

MR. GAVIN WOOD FREITAG

counsel for the Wesley family

MS. TIFFANY BOISVERT

MS. YANA SOBISKI

counsel for Mishkeegogamang First Nation

MR. WILLIAM MAJOR

("Mishkeegogamang")

MS. CATHERINE BEAMISH

counsel for Nishnawbe-Aski Police Service

MR. SIMON OWEN

("NAPS")

CORONER'S CONSTABLE

Cst. Jim Murphy, Toronto Police Service

OVERVIEW

1. An inquest concerning the death of Romeo Wesley is scheduled to take place in Sioux Lookout commencing February 1st, 2016. The inquest is expected to last just under three weeks and hear from approximately 12 witnesses.
2. A motion dated October 7th, 2015, (the "Motion") was filed by Cat Lake First Nation ("Cat Lake"), a party to the inquest, for a change of venue from Sioux Lookout to the community of Cat Lake First Nation.
3. This is a mandatory inquest under section 10 (4.6) of the *Coroners Act* of Ontario, as Mr. Wesley died while in the custody of a police officer.
4. Mr. Wesley died in Cat Lake on September 9th, 2010, at the Cat Lake Nursing Station. He had attended the nursing station for medical aid, became aggressive, and police were called. He was subdued by police and put in handcuffs, prone, on the floor of the nursing station. Although he initially continued to struggle, his movements became less and less until the police noticed he was vital signs absent. Resuscitation was attempted by a doctor and the nurses present, but resuscitation was unsuccessful and he was pronounced dead in the resuscitation room.
5. The hearing was conducted through written submissions.
6. The request for a change of venue was supported by two of the four parties who currently have standing at this inquest, those supporting parties being the Wesley Family and the Mishkeegogamang Ojibway Nation.
7. The fourth party, the Nishhawbe-Aski Police Services, was not opposed to the Motion provided that its officers who were to be witnesses could testify remotely by video because of concerns for their safety.
8. For the reasons set out below, it is not possible to grant this motion. Despite the eagerness of the Coroner's Team to hold the inquest in Cat Lake, there are obstacles relating to infrastructure, security, and logistics which simply could not be overcome, even with additional resources.

Visit to Cat Lake-

9. On October 29th, 2015, I visited Cat Lake with the inquest's coroner's constable, inquest investigating officer, counsel for Cat Lake, and an Ontario Provincial Police ("OPP") liaison officer. This visiting party had the opportunity to see the proposed inquest venue, lodging, catering facilities, and other infrastructure and amenities of Cat Lake.

10. This visiting party also was able to observe, record, and work on the logistics of holding a proper coroner's inquest at Cat Lake.
11. Through the request of the presiding coroner, the Justice Officials Protection and Investigations Section of the OPP conducted a security audit of Cat Lake with respect to holding the proposed inquest there. This section of the OPP provides services to help assure the safety and well-being of personnel and the community in judicial proceedings such as a coroner's inquest. Discussion and problem solving occurred among the presiding coroner, coroner's counsel, constable, and investigating officer, and the Justice Officials Protection and Investigations Section.
12. The prospect of having the inquest held in Cat Lake would require considerable additional resources in terms of transportation and lodging of the presiding coroner, coroner's counsel, coroner's constable, investigating officer (together, the "Coroner's Team"), five-member jury, parties and their counsel, witnesses, support staff, (together with the Coroner's Team, the "Inquest Participants") and visiting police support personnel.
13. The presiding coroner confirmed with Ontario's Chief Coroner that the requirement for these extra resources, unless unreasonable, should not hinder the change of venue, nor weigh on the decision of the Motion.

The Motion -

14. The Motion properly identified that the fundamental purposes of this inquest would be better served if the Motion were granted.
15. Despite the eagerness of the Coroner's Team to hold the inquest in Cat Lake, there are logistic and security hurdles that could not be overcome, even with additional resources.
16. A non-exhaustive list of the factors considered is:
 - a. The Inquest Participants would number about 20 people who would be there full time, with approximately 12 witnesses that would be there during their testimony;
 - b. Police would be required to supply support and security to the Inquest Participants, other support personnel, the inquest venue, equipment, files, and so on and the community for 24-hours a day during the inquest;
 - c. By the nature of their duty and obligations, police tasked to support the inquest would also be required to respond to any emergencies requiring police attendance, even for situations unrelated to the inquest;
 - d. The ability to fly in and out of Cat Lake is dependent on the weather and delays and cancellations in flight schedules aren't uncommon.

- e. The ice road to Cat Lake, normally completed by mid-January, will in all likelihood be delayed, possibly significantly, due to the mild temperatures experienced by northern Ontario this late autumn of 2015;
 - f. Prior to the start of the inquest, police would require extra vehicles and equipment delivered by the ice road in order to provide guidance, security, and transportation to the Inquest Participants and other support personnel at Cat Lake;
 - g. Police had significant security concerns regarding witnesses, jury members, Inquest Participants, and the community-at-large should the full inquest be held in Cat Lake;
 - h. Police had significant concerns regarding the tentative nature of the air and road access in and out of Cat Lake, should the need for extra manpower or supplies/equipment arise.
17. The structure of a coroner's inquest is set out in the *Coroners Act*. Although less prescriptive than some other judicial or administrative proceedings, the requirements are nonetheless fixed such that the participants, rules of procedure, and so on, do not lend themselves to flexibility that may be required in order to hold an inquest in a remote location.
18. The purposes and benefits of an inquest can still be brought to the community where the death occurred through other efforts that occur during or after the inquest.

The Test for Change of Venue

19. Under s. 30(1) of the *Coroners Act*, and Rule 3.5 of the Chief Coroner's Rules of Procedure, the Coroner is obliged to select a date and location for the inquest and notify the interested parties of the chosen date and location.
20. Leaving the choice of venue in the hands of the presiding coroner makes sense as practical considerations are frequently at play, particularly so in our northern communities. The location usually selected is the town or city nearest to the place where the death occurred and which has adequate facilities to hold the inquest.
21. Limited legislative authority or precedent explicitly describes the presiding coroner's jurisdiction to change the venue of the inquest; however, it will be assumed that such authority exists as this point is not in dispute in the Motion.
22. In Ontario, inquest proceedings have occasionally been moved to other locations, most typically for a brief period to the site of the death or injury, so that the jury and parties may see evidence impossible to bring into the courtroom setting. In 2009, jury members and inquest personnel attended Kashechewan First Nation prior to commencement of the inquest in Toronto in order to view the scene of the death, the community, and partake in a smudge ceremony in the community.

23. In Ontario in 2015, a two-day Inquest Concerning the Death of George Alexander was held on the Wikwemikong First Nation on Manitoulin Island in a community centre.
24. Holding the inquest in Cat Lake would not significantly cloud the public nature of the inquest for other citizens of Ontario, as there are plans to broadcast the inquest live on the internet.
25. The objectives of an inquest have been nicely articulated in a 1971 report of the Ontario Law Reform Commission and quoted by the Divisional Court in *People First v. Porter, Regional Coroner Niagara* [1991], O.J. No. 3389 and by the Ontario Superior Court of Justice in *Loblaws Supermarkets Ltd v. Shand Inquest (Coroner of)* [2004] O.J. No. 619 as follows:

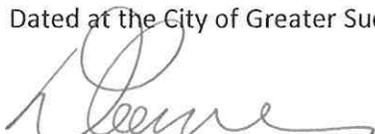
... the inquest should serve three primary functions: as a means of public ascertainment of facts relating to deaths, as a means for formally focusing community attention on and initiating community response to preventable deaths, and as a means for satisfying the community that the circumstances surrounding the death of no one of its members will be overlooked, concealed or ignored.
26. All three purposes articulated above would be advanced by holding inquest in Cat Lake. Arguments made by the applicant in the Motion Record highlight this.
27. Further benefit to having the entire inquest in Cat Lake may be found by providing the jury and parties with the opportunity to see Cat Lake and the Nursing Station, and also by experiencing life in Cat Lake.

Optimizing the Purposes and Benefits of the Inquest to Cat Lake

28. The current structure and requirements of a coroner's inquest in Ontario does not lend itself to having the inquest held in remote communities. Nevertheless, the purposes of the inquest and the benefits that may emanate from it can still be realized by the community of Cat Lake through other means. The Coroner's Team and Cat Lake First Nation should work together to make this happen.

I thank all representatives for their thorough submissions and assistance in this matter.

Dated at the City of Greater Sudbury, this 22nd day of December, 2015



Dr. David Cameron

Presiding Coroner

