

Nurses' Rights and Responsibilities in Coroner Cases: A Guide for Nurses

**Prepared by:
*Cavalluzzo Hayes Shilton McIntyre & Cornish***

1. The Ontario Coroners System

Whenever there has been a death under unusual circumstances in a hospital or other health care institution, the Coroner undertakes an investigation into the circumstances of the death. In some situations, the Coroner may hold an inquest to determine who has died; how they came to their death; when, where, and by what means the death occurred.

The Coroner may engage police officers or other public officials to assist with an investigation into a death. If an inquest is held, a jury will be selected to hear evidence and make a determination about the causes of death. The jury may also make recommendations to prevent similar deaths in the future.

The role of the Coroner is to satisfy the public that the causes of a death have been determined and that measures to prevent similar deaths, if any, have been examined and proposed.

The chief purposes of the coroners system are to answer questions surrounding a death, and then use those answers to promote public safety.

2. The Coroners Investigation

The Coroner is required to investigate the circumstances of deaths in many health care facilities where nurses may work, including psychiatric facilities, homes for retarded persons, mental institutions and children's residences. When a person dies in a nursing home or home for the aged, the coroner must be notified, but an investigation is discretionary.

The Coroner has broad powers to conduct the investigation, including the power to enter and inspect a premises and to seize evidence where necessary to the investigation. These investigatory powers may be delegated to the local police who typically assist the Coroner's investigation.

Upon completion of an initial investigation, the Coroner will determine whether an inquest will be held. Usually, an inquest is held where the investigation is inconclusive, or where it may result in recommendations that will prevent deaths of a similar nature in the future.

There are only about 150 Coroners Inquests every year.

3. Duties and Rights During the Investigation

Nurses may be questioned when an investigation is held into a death at their place of work. It is against the law to obstruct or interfere with a Coroner's investigation. It is also illegal to withhold information from a Coroner or the agents of a Coroner investigating the circumstances of a death.

If, however, you have been involved in a situation which you fear may lead to criminal charges, civil litigation or professional discipline, you do have legal rights and protections. Foremost among these is your right to retain legal counsel before being questioned.

Invoking your right to legal advice or that you be accompanied by legal counsel before making any statements to the investigating officials will not amount to obstruction.

As soon as you believe that your actions may be the subject of a legal proceeding, you should insist on speaking to counsel before giving any statements. If you are represented by a professional organization or union, contact them immediately.

Even where your employer offers to provide you with legal counsel, you should insist on independent legal advice to determine whether or not any conflict might exist between yourself and your employer or whether such a conflict might arise.

4. The Inquest

If the Coroner determines that it is in the public interest to conduct a more thorough, public inquiry into the circumstances of a death, an inquest may be held. An inquest is a formal legal proceeding, but is not meant to be adversarial. Several parties will be involved and evidence will be heard by a jury. The inquest is usually a public hearing.

Unlike a trial, a coroner's inquest does not determine legal responsibility or fault. The purpose of the inquest is to determine the circumstances of the death including:

- (a) who the deceased was;
- (b) how the deceased died;
- (c) when the deceased died;
- (d) where the death occurred; and
- (e) by what means the deceased died.

In answering "by what means", it is the policy of the Coroners' Office to ask the jury to classify the death into one of the following categories:

- natural,
- accident,
- suicide,
- homicide, or
- undetermined.

For the purposes of a coroner's inquest, "homicide" is meant to be a neutral term that does not reflect blame.

The jury is forbidden from making a determination of legal responsibility, but may make recommendations aimed at avoiding similar deaths in the future.

5. Conduct of the Inquest

During an inquest, evidence is presented and witnesses are examined just like in a court proceeding. Generally, as each witness is called to testify, the witness will first be questioned by the Crown Attorney, who acts as legal counsel to the Coroner. Witnesses testify under oath and may be cross-examined by parties with standing who will typically include the family of the deceased, the hospital or other institution where the death occurred and, possibly, counsel for the doctors and nurses involved.

The rules of evidence at inquests are more relaxed than in other court proceedings, and permit the Coroner to admit any oral testimony, including hearsay, or any document or thing that the Coroner considers relevant to the purpose of the inquest.

6. If You are Involved in an Inquest:

Although a Coroner's Inquest is supposed to be a fact-finding exercise which is not intended to determine fault, there may be considerable risk involved for nurses involved in such a proceeding. As mentioned above, the jury must not make a finding of legal responsibility, but involvement in the inquest may expose nurses to parties with ulterior motives.

For example, counsel for the family of the deceased may approach the Coroner's Inquest with a view to subsequent civil action and may use the inquest as a means to gather evidence for further litigation.

Although generally your employer is vicariously liable for your conduct during the course of your employment duties, the evidence and findings at an inquest could give rise to a complaint to the College of Nurses or even criminal charges.

Witnesses at an inquest are given legal protection from certain types of self-incrimination, that is, the answers given at the inquest cannot generally be used as evidence against them at subsequent criminal, civil or disciplinary proceedings. Since the protection against self-incrimination does not immunize witnesses or bar subsequent legal proceedings, it is essential to know the risks associated with such a proceeding and to be aware of your rights while participating. To do this, you will probably want to be represented by counsel.

It may be necessary to obtain legal counsel that is independent of your employer, if there is a possibility of a conflict of interest, for example, if you feel that some institutional factor contributed or caused the death.

If you obtain independent counsel, you will have to apply for standing at the inquest so that your counsel will have an opportunity to cross-examine other witnesses and to lead evidence so that a more comprehensive picture may be presented to the jury. In order to be granted standing, you must have a "substantial and direct" interest in the inquest.

This level of participation is essential because, although your own testimony may be inadmissible in a subsequent proceeding against you, that of other witnesses may be problematic. Your counsel will want an opportunity to test the evidence of witnesses that may incriminate you and to provide an alternative view of the facts. Standing will also entitle you to address the jury and offer suggested recommendations.

7. The Jury's Verdict and Recommendations

When the inquest is concluded, all parties with standing will have an opportunity to present their version of the facts and arguments and the jury will consider the evidence. The jury will generally make findings about the circumstances of the death. As discussed above, the jury is expressly prohibited from making any findings of blame or making any conclusions of law in respect of the five questions it must answer. A verdict which contravenes that prohibition is deemed to be improper cannot be received by the Coroner, and will result in the jury being discharged.

The jury may also make a series of recommendations intended to prevent similar deaths in the future. These recommendations are not binding on any of the parties.

Conclusion

The evidence presented at a Coroner's Inquest and the findings of the jury could raise serious concerns for nurses. For example, nurses could be subject to disciplinary, civil or even criminal proceedings. In addition, the jury's findings, while not intended to imply fault, may be misunderstood or misrepresented by individuals and the media. For all of these reasons, it is advisable that nurses involved in this process obtain legal advice as soon as they are aware that they may be the subject of a Coroner's investigation or inquest, or when they are potential witnesses at an inquest.

For more information please contact:

Elizabeth McIntyre 416-964-5501

Kate Hughes 416-964-5525

Victoria Reaume 416-964-5510