

COURT OF APPEAL FOR THE YUKON TERRITORY

Citation: *Silverfox v. Yukon (Chief Coroner)*,
2011 YKCA 9

Date: 20111014
Docket: YU671

Between:

**Deanna-Lee Charlie, Delores Aileen Lindstrom,
Deborah Ann Silverfox, Geraldine Jean Silverfox,
Janis Lorraine Silverfox, Peter William Silverfox,
Michael Douglas Silverfox, Mitchell Allen Silverfox,
Sheila Marie Silverfox, Corinne Mary Silverfox,
Charlene Margaret Silverfox and Joy Marlene Silverfox**

Respondents
(Petitioners)

And

Attorney General (Canada)

Respondent
(Respondent)

And

Sharon Hanley, Chief Coroner

Appellant
(Respondent)

Before: The Honourable Mr. Justice Lowry
The Honourable Mr. Justice Chiasson
The Honourable Madam Justice Garson

On appeal from: Supreme Court of Yukon, March 2, 2011
(*Silverfox v. Chief Coroner*, 2011 YKSC 17, Whitehorse Docket 10-A0022)

Counsel for the Appellant: Z. Brown

Counsel for the Respondents (Petitioners): S. Roothman

Counsel for the Respondent,
Attorney General of Canada S. Duncan

Place and Date of Hearing: Vancouver, British Columbia
October 5, 2011

Place and Date of Judgment: Vancouver, British Columbia
October 14, 2011

VANCOUVER

Written Reasons of the Court

OCT 14 2011

**COURT OF APPEAL
REGISTRY**

Reasons for Judgment of the Court:

[1] This is an appeal from an interlocutory order made for reasons indexed as 2011 YKSC 17 in the course of judicial review proceedings arising out of a coroner's inquest into the death of Raymond Benjamin Silverfox. He died while he was in police custody. The coroner's jury found he had died of natural causes. The petitioners, being members of the deceased's family, seek to have the verdict quashed. In the main, they allege the coroner was biased, or a perception of bias was attributable to her, and there was a denial of natural justice.

[2] The petitioners had counsel and were given standing at the inquest. They were given a copy of the coroner's extensive brief containing information provided to her by the RCMP which investigated the death. In exchange, the petitioners' counsel gave an undertaking: to use the brief for the sole purpose of the inquest; to maintain the contents in the strictest confidence; and to return the brief within a certain number of days of the verdict. Some of the content of the brief may have been admitted as evidence at the inquest; the substantial content of the brief was, however, not even tendered. Upon the application for judicial review being initiated, counsel was ordered to give a new undertaking in similar terms to extend possession of the brief until the application and any appeal thereof is completed.

[3] The petitioners then gave notice of an application for an order in the following terms in particular:

The contents of the Coroner's brief may be used by the Petitioners for the purpose of the judicial review of the Coroner's Inquest proceedings and the civil litigation that has been filed in Supreme Court Action No. 10-A0019 and any further and similar actions by relatives of Raymond Silverfox that may be filed in due course.

[4] The order the judge made on hearing the petitioners' application is as follows:

THIS COURT ORDERS that:

1. The record of the inquest shall be supplemented by all of the information that was collected by the Chief Coroner and disclosed to the Petitioners prior to and during the inquest, including information provided to the Chief Coroner by the R.C.M.P. and other parties with

standing at the inquest ("Coroner's Brief") subject to any privilege issues that may be raised.

2. Subject to any privilege issues, the Petitioners may refer to and rely upon any document in the Coroner's Brief during the hearing of the Amended Petition.
3. The Petitioners shall identify the specific documents in the Coroner's Brief that they intend to refer to or rely upon in an affidavit to be delivered to the other parties prior to the hearing of the Amended Petition in order that any issues of privilege may be raised.
4. The Coroner's Brief shall not be made public, subject to paragraphs 1, 2 and 3.

[5] The appeal is somewhat unorthodox. The coroner is the appellant, although she presided over the inquest from which the judicial review proceedings arise. The petitioners and the Attorney General (Canada) are the respondents, the latter because of the RCMP's involvement. The Attorney General (Yukon Territory), who the petitioners appear to have served with notice of their application, has not appeared as may have been expected, particularly given the allegations upon which the application for judicial review is founded and the importance the petitioners appear to attach to the use of the coroner's brief. Preliminary argument is advanced with respect to the coroner's status that raises questions of whether she can herself appeal the order and the extent of submissions she may be properly permitted to make in any event. It is, however, unnecessary to address this aspect of the appeal because the parties are agreed as to what the disposition of the appeal should be: what the order from which the appeal is taken should provide.

[6] The petitioners accept the order the judge made is much broader than the order for which they made application by the notice they filed. They acknowledge that the purpose of their application was only to put them in the same position to use the coroner's brief in the judicial review proceedings as they were in at the inquest. It is not necessary, for their purposes, that the brief in its entirety supplement the record of the inquest. The petitioners also accept that questions of admissibility of any of the content of the coroner's brief that was not admitted at the inquest should remain outstanding to be addressed in the usual way if and when the evidence is tendered. For her part, the coroner would be content with the order were it to

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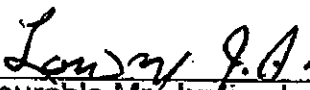
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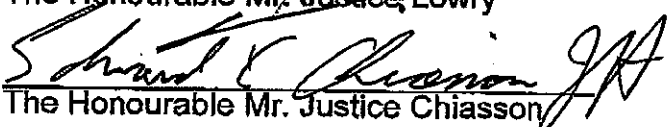
provide accordingly, as would the Attorney General (Canada). Given that the entire content of the coroner's brief has already been disclosed to the petitioners, it is difficult to see why the judge's order suggests questions of privilege may arise. Counsel are unable to offer any assistance in this regard. The provisions of the order pertaining to privilege would appear to be superfluous.

[7] Accordingly, the appeal is to be allowed to the extent of altering the terms of the order the judge made to provide as follows:

1. For the limited purpose of the application for judicial review, the petitioners will have access to and may make use of all of the information that was collected by the chief coroner and disclosed to the petitioners prior to and during the inquest, including information provided to the chief coroner by the RCMP and other parties with standing at the inquest (the "Coroner's Brief").
2. Any party wishing to tender any of the content of the Coroner's Brief in evidence on the application for judicial review that was not evidence tendered and admitted at the inquest will be required to exhibit such by way of affidavit and questions of admissibility may then be raised to be resolved under the principles governing the admissibility of evidence on judicial review proceedings in the usual way.
3. Subject to paragraph 2, the petitioners shall not make any of the content of the Coroner's Brief public.

[8] The parties will bear their own costs of the appeal.


The Honourable Mr. Justice Lowry


The Honourable Mr. Justice Chiasson


The Honourable Madam Justice Garson