


## Medicine and the Law

# Of Deaths and the Crown

## Unpacking Our Coronial System (Part 3)

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*This is the third article of a three-part series. In this article, the authors will focus on the various phases of a Coroner's Inquiry. Part 1 (<https://bit.ly/5405-Insight>) examines the historical developments of the coronial process and provides an overview, and Part 2 (<https://bit.ly/5408-Insight>) considers the parties involved in a Coroner's Inquiry.*


The coronial process may be broadly divided into the investigation phase and the inquiry phase if Inquiry is unavoidable.

### Investigation phase

At the investigation phase, medical or healthcare practitioners identified as potential witnesses of fact will be requested to furnish a medical report or further medical reports to the investigation officer (IO). They may also be asked to attend at the police division for an interview with the IO who will record the statements in accordance with the legal requirements in section 22 of the Criminal Procedure Code, such as that the statement when completed must be read over to the witness, be interpreted in a language understood by the witness if he/she does not

understand English, and be signed by the witness. Such statements are sometimes known as "long statements" as they contain the witness' narration of events and circumstances leading to and/or immediately following the patient's death, which is not to be confused with conditioned statements. Knowingly giving false statement to the IO is an offence punishable under section 182 of the Penal Code.

If it is assessed that the evidence of the witness is necessary for the Coroner's Inquiry (CI), the contents of the "long statement" may then be converted into a conditioned statement which will be used in Court. A conditioned statement has to be signed by the witness and contains a "penal notice" (ie, a declaration by the witness to the



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effect that it is true to the best of his/her knowledge and belief and that he/she made the statement knowing that, if it were given in evidence, he/she would be liable to prosecution if he/she stated in it anything he/she knew to be false or did not believe to be true).<sup>1</sup> This means that if the conditioned statement contains falsehoods that are proven after it is admitted as evidence in Court, the witness can be prosecuted for perjury. If the conditioned statement refers to any other document as an exhibit, it shall be accompanied by a copy of that document or by information that will enable the State Coroner (SC) to inspect that document or a copy of it. Typically, the IO and/or the assisting officer (AO) will ensure that a witness' conditioned statement is in order before it is tendered in Court.

Before the Inquiry hearing, the case will be scheduled for pre-inquiry reviews which involve mainly the SC, IO and AO. Counsels for properly interested persons (PIPs) can also attend such pre-inquiry reviews if required. The purpose of the pre-inquiry review is to settle administrative issues (eg, filing of the investigation report, autopsy report and conditioned statements of witnesses; ironing out issues of fact or law for the Inquiry; determining the witnesses to be called; and fixing the date of the Inquiry) with a view to expediting the Inquiry.

## Inquiry phase

At the Inquiry phase, the SC will direct the IO to serve a notice on the PIP, usually the deceased's next-of-kin, within a reasonable period, with the date, time and place of the Inquiry hearing stated in the notice.<sup>2</sup> Witnesses who are required to testify at the hearing will also be served summons to appear (commonly known as a subpoena) by the IO, with the date, time and place of the Inquiry hearing stated in the summons.

The Inquiry hearing will typically begin with the introduction of the parties before the SC, and the marking of exhibits. The IO will usually be the first to testify and he/she will tender the investigation report which contains a summary of the investigation findings. He/she may then be questioned by the AO, the SC, and the PIP or their counsel with the SC's permission.<sup>3</sup> This will be

followed by the witnesses of fact and expert witnesses if any, who will undergo a similar process of testifying.

During the hearing, a witness after taking an oath or affirmation will first be asked questions by the AO. If the witness has given a conditioned statement, the witness will be asked to confirm if he/she has made the conditioned statement.<sup>4</sup> This will then be followed by questions from the AO, the SC, and the PIP or their counsel. The witness is then released from the witness stand upon completion of his/her oral testimony.

The process in a CI is different from civil or criminal proceedings, where each witness undergoes the three distinct stages of examination-in-chief (ie, questioning by the lawyer who represents the party who calls the witness), cross-examination (ie, questioning by the lawyer who represents the opposing party), and re-examination (ie, questioning by the lawyer who had asked questions during examination-in-chief). In civil or criminal proceedings, the judge also intervenes minimally as the parties or their counsel are expected to conduct the proceedings in a manner that best advances the respective parties' interests. Strict procedural and evidential rules also apply in such proceedings. These features are characteristic of the adversarial process that defines our civil and criminal court proceedings.

In a CI, the process in the taking of evidence is inquisitorial and not adversarial. This means that the AO and any counsel representing the PIPs are allowed to ask questions in a manner that will assist the SC in the findings. There is no distinct three-stage process of examination-in-chief followed by cross-examination and then re-examination. The SC does not passively listen to the evidence but proactively asks questions of witnesses and directs the AO, IO and counsel for the PIP to provide relevant information that can assist in the findings. PIPs, in person or through their counsel, can only ask questions with the permission of the SC and not as of right. In complex cases, the SC may also direct the AO and sometimes counsel for the PIP to make oral or written submissions to assist with certain issues that are integral to the findings.

Unlike the judge in civil or criminal proceedings, the SC is not bound by strict rules of evidence and may conduct the Inquiry in any manner he/she reasonably thinks fit.<sup>5</sup> The Coroner may also decide to adjourn the Inquiry to another day, either for continuation of the hearing or to render the findings.<sup>6</sup> CIs are held in open court (ie, members of the public may attend), unless the SC is of the opinion that it is in the interests of justice, propriety, public order or public security, or there is other sufficient reason, that the public be excluded from the Inquiry or any part of the Inquiry. In that event, the SC shall report to the public prosecutor his/her reasons for not holding a public Inquiry.<sup>7</sup> The standard of proof in CI is the civil standard of balance of probabilities. This is in contrast with the standard of proof in criminal cases where "beyond a reasonable doubt" is required.

At the conclusion of a CI, the SC will record and render his/her findings as to the identity of the deceased and how, when and where the deceased came by his/her death. In a paper published in the *Annals of the Academy of Medicine of Singapore* in 2000, it was found that 77.3% of iatrogenic deaths received Coroner's verdicts of misadventure.<sup>8</sup> Since the enactment of the Coroner's Act, the most common finding in medical-related death cases is "medical misadventure", which refers to intended medical treatment with the unintended consequence of patient death. An example is death following complications arising from a medical procedure or administration of a drug. In other Coroner's cases, findings like "suicide", "accident", "open verdict" (which means that the cause of death cannot be reasonably ascertained based on the evidence produced in the Inquiry) and other types of misadventure (eg, where someone doing something lawful unintentionally kills another) have been recorded. A finding of accidental death or misadventure can be said to be neutral in terms of liability. That said, such a finding is no bar to the deceased's next-of-kin or personal representatives who wish to bring a civil claim against any party concerned. Nor does such a finding qualify as a defence to a civil claim brought.<sup>9</sup>

## The way forward

For a medical practitioner, being involved in a CI as a witness does not mean that you will no longer be exposed to other legal processes relating to the same patient. Although the evidence given at the CI is not admissible in subsequent judicial or disciplinary proceedings as evidence of any fact stated therein, a medical practitioner involved in a CI may concurrently or consecutively face criminal investigations by the police or law enforcement officers of other relevant authorities (eg, the Health Sciences Authority or the Ministry of Health [MOH] under legislations administered by these authorities), civil proceedings brought by the patient's next-of-kin, and/or disciplinary proceedings before the Singapore Medical Council. Having adequate professional indemnity insurance coverage is therefore very important for a medical practitioner as the legal costs for these processes can be potentially substantial.

It is also important to prepare oneself early and adequately for police investigations and the CI if one is expected to assist as a witness in a Coroner's case, as it is a solemn civic and professional duty to assist the SC in the findings and also to help the deceased's family come to some form of closure. Obtaining legal advice and representation from an experienced counsel on matters such as how to prepare comprehensive medical reports pursuant to the IO's request, how to prepare for the IO's interview and give a comprehensive and helpful "long statement" that can be easily converted into a conditioned statement for use in the Inquiry, and how to deal with questions from the various parties during the Inquiry, can greatly smoothen the process of preparation and minimise unnecessary anxiety and stress that comes with the onus of discharging such duty.

The new Registration of Births and Deaths Act 2021 came into force on 29 May 2022 and implemented a new purely online death certification process and digital death certification system.<sup>10</sup> Key changes under the new process includes (1) cessation of issuance of Certificate of Cause of Death; (2) allowing

amendments to death records up to two times and within six months from date of death; (3) removing the need for an informant for death registration; (4) removal of permit to bury/cremate from the death certificate; (5) removing the need for physical invalidation of deceased's NRIC; and (6) automatic death registration upon online submission of death certification. The new law also requires medical practitioners who certify death to submit related information to the Registrar-General of Births and Deaths within 24 hours from ascertaining the cause of death. Failure to do so without reasonable excuse is an offence. Whether and, if so, how these changes will potentially impact the current coronial process regarding medical-related death cases remains to be seen.

Looking ahead, the continued advancement of life-sustaining medical technology and other technological innovations may present novel issues and challenges in the realm of how death is to be defined and how evidence is to be presented in the Coroner's Court. For example, could "death" be defined differently when research and development in cryonics and mind-uploading (both of which are generally viewed as pseudoscience currently), or when life-sustaining medical technology mature to a point that renders the classical medical and legal definition of "death" obsolete? After all, brain-computer interfaces were viewed as the stuff of science fiction by some in the last century, but it is already a reality today. If this is considered to be an outrageous prediction of the future, the *custos placitorum coronae* also could not have foreseen that a millennium later, the modern Coroner no longer collect taxes but pays taxes as a public servant, and sits in the comfort of a courtroom equipped with computing devices where he/she can have a Zoom conference with his/her counterpart in England. ♦

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