

CAYMAN ISLANDS



Supplement No. 1 published with Extraordinary
Gazette No. 74 dated 8 October, 2014.

EXPLANATORY MEMORANDUM AND GUIDELINES TO THE CORONERS RULES, 2014

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1. Introduction

1.1 This Explanatory Memorandum and Guidelines is intended to provide guidance as to the scope and application of the Coroners Rules, 2014 ("**Rules**") and, where appropriate, their interaction with the Coroners Law, 1975 (Law 15 of 1975) (1995 Revision) ("**Coroners Law**").

1.2 Throughout all the stages of the process described below it is the Coroner who has the responsibility for ensuring that the various steps are completed. In practice, he will be assisted by various governmental agencies such as Royal Cayman Islands Police Service ("**RCIPS**"), the public pathologist, the Registrar of Births and Deaths ("**Registrar**"), and, if he holds an inquest, he and the jury will be assisted by the witnesses.

2. Notifiable Deaths

2.1 *Duty to Report a Death*

2.1.1 Any person in the Cayman Islands who discovers the body of a dead person, or becomes aware that a death has occurred in what may be considered violent, unnatural or sudden circumstances (the latter in which the cause of the death has not been medically determined), or has occurred in prison, must report the death¹.

2.1.2 In practice, the following types of death should always be reported:

- (a) Death where the medical cause of which is uncertain.
- (b) A sudden or unattended death, except where a person has been diagnosed before death with a terminal illness.
- (c) Death caused by an accident or injury.
- (d) Death caused by crime (including a suspected homicide, or a death in a road traffic accident).
- (e) Death caused by an anaesthetic or which occurred while the deceased was under the influence of a general anaesthetic, or which occurred shortly after the administering of an anaesthetic.
- (f) Death caused by a surgical operation or which occurred shortly after a surgical operation.
- (g) Still birth.
- (h) Death of a mother during or immediately after childbirth.
- (i) Suicide or suspected suicide.
- (j) Death in prison or other custody.
- (k) Death in a private care home such as The Pines.
- (l) Death caused, or suspected to have been caused, by drugs (illegal or prescription) or poison.

¹ Section 18, Coroners Law and Rule 5.

- (m) Death caused, or suspected to have been caused, by ill-treatment, starvation or neglect.
- (n) Death which occurred outside the Cayman Islands where the body (but not cremated ashes) of the deceased is brought into the Cayman Islands.

2.2 ***Making the Report***

2.2.1 The person responsible for reporting a notifiable death will differ depending on the circumstances in which the death occurred. In particular, the following people are responsible for reporting notifiable deaths:

- (a) Where the death occurs in a hospital, hospice or other type of care facility, either the doctor or other medical practitioner who attended on the deceased². In practice, the administrator of the relevant hospital, hospice or facility may make the report.
- (b) Where the death occurs in prison or in police or other custody, the Director of Prisons or the RCIPS, as appropriate³.
- (c) Where the death occurs in any ship or boat in the waters of the Cayman Islands, the Shipping Master⁴.
- (d) Where a body has been imported for burial in the Cayman Islands, the undertaker responsible for dealing with the body⁵.

2.2.2 Where the person required to report a death is a member of the general public, the person should make the report by notifying the RCIPS who shall in turn notify the Coroner⁶. Where the person making the report is not a member of the public, the report shall be made directly to the Coroner.

2.2.3 As soon as practicable after a Coroner has been notified of any death, the Clerk of the Court shall open a file and the Coroner shall notify the Registrar⁷.

2.2.4 The deceased's body will be sent to the mortuary at George Town Hospital pending the Coroner's decision as to whether or not an autopsy (i.e. a post-mortem examination) is required⁸.

2.3 ***Impact of a Notifiable Death Being Reported***

2.3.1 The fact that a notifiable death is reported to the Coroner does not necessarily mean that the Coroner will hold an inquest. When a Coroner is informed, by whatever means, that a dead body of a person is lying within his jurisdiction (whether the

² Rule 5(1)(a).

³ Rule 5(1)(b).

⁴ Rule 5(1)(c). The term "Shipping Master" bears the meaning assigned to it by the Merchant Shipping Law 1997 (as amended and revised).

⁵ Rule 5(1)(e).

⁶ Section 18, Coroners Law.

⁷ Rule 5(3).

⁸ See section 15, Coroners Law for the Coroner's jurisdiction to order an autopsy.

death occurred in the Cayman Islands, at sea, or abroad⁹) he must consider the circumstances of the death¹⁰. However, the Coroner has a duty to inquire (i.e. to hold an inquest) into the causes and circumstances of certain deaths, and in particular those where he has "*reasonable cause to suspect that the [deceased] has died either a violent or unnatural death, or has died a sudden death of which the cause has not been medically determined ... [or where the deceased] has died in prison ...*"¹¹.

3. Autopsy

3.1 The Coroner will generally order an autopsy to be performed where:

- (a) He is uncertain of the cause of death; or
- (b) The death is of a type where an inquest is required to be held.

3.2 In other words, the Coroner may order an autopsy to be performed on the basis that he has already decided to hold an inquest, or because he considers that a post-mortem examination may show that an inquest is unnecessary.

3.3 If the Coroner does order that an autopsy be performed, the Coroner must notify certain persons of the date, hour and place at which the autopsy will be performed, unless it is impracticable to notify any of them or would cause the autopsy to be unduly delayed¹². The persons that are required to be notified are:

- (a) Any relative of the deceased who has notified the Coroner of his desire to attend, or be represented at, the autopsy;
- (b) The deceased's regular medical practitioner (if known);
- (c) If the deceased died in a hospital, the hospital;
- (d) If the death of deceased may have been caused by any disease where any Law requires notice to be given, the Chief Medical Officer;
- (e) Any government department which has notified the Coroner of its desire to be represented at the examination; or
- (f) If the Commissioner of Police ("**Commissioner**") has notified the Coroner of his desire to be represented at the examination, the Commissioner¹³.

3.4 Any such person is entitled to be represented at the examination by a legally qualified medical practitioner or, if he is a legally qualified medical practitioner, he shall be entitled to attend the examination in person; the Commissioner may be represented by a member of the RCIPS¹⁴.

3.5 Where the Coroner directs or requests that an autopsy shall be performed, the autopsy shall be performed as soon after the death as is reasonably practicable¹⁵.

⁹ See *R v West Yorkshire Coroner, ex p. Smith* [1983] QB 335 (CA).

¹⁰ Section 4, Coroners Law.

¹¹ Ibid.

¹² Rule 8(1).

¹³ Rule 8(2).

¹⁴ Rule 8(3).

¹⁵ Rule 6(1).

3.6 The pathologist performing the autopsy shall submit a report of the autopsy to the Coroner¹⁶. The deceased's relatives should be told the result of the autopsy as soon as practicable, and in writing, if they request it. If there is any delay in holding the examination or in the delivery of the pathologist's report to the Coroner they should be informed. It will often be appropriate for the Coroner to offer to send a copy of the pathologist's report to the deceased's relatives' medical practitioner so that he may explain the report to them.

3.7 If, in circumstances where an inquest is to be held in relation to a death, the Coroner authorises a copy of the pathologist's report to be sent to those having a proper interest in advance of the inquest, and the pathologist is to be called as a witness at the inquest, then the copies of the pathologist's report should be clearly marked with a note to the effect that the pathologist will attend as a witness at the inquest at which time he may vary or supplement the information contained in his report.

3.8 If the Coroner decides not to order that an autopsy be performed, he will authorise the burial of the deceased (and, where relevant, authorise the transfer of the body out of the jurisdiction for cremation or burial overseas)¹⁷. The burial of the body of a deceased person shall not take place without either a certificate issued by the Registrar or an order for burial issued by the Coroner¹⁸. Only a Coroner may issue an order for burial.

4. Deciding whether to hold an inquest

4.1 Where a death is reported to the Coroner, the Coroner must promptly decide whether or not to hold an inquest. The Coroner will make this decision based on the facts and circumstances of the death, and, where relevant, the content of the pathologist's autopsy report and any statements from, or obtained by, the RCIPS. If the Coroner is satisfied (whether or not an autopsy has been performed) that there is reasonable cause to suspect that the deceased died either a violent or unnatural death, or died a sudden death of which the cause has not been medically determined, or that the deceased died in prison, then the Coroner must hold an inquest¹⁹.

4.2 If the Coroner decides not to hold an inquest, the Coroner will make an order for burial²⁰. Where relevant, the Coroner may issue an authorisation that the body of the deceased may be removed from the jurisdiction for burial (including burial at sea) or cremation overseas²¹.

4.3 The Coroner may also issue an interim certificate of the fact of death. This is, in effect, an interim document certifying the fact of death. The certificate of the fact of death may be used, for example, to assist in the removal of the body from the Cayman Islands for burial or cremation overseas, for commencing probate (or similar) proceedings for the administration of the deceased's estate, and making a claim under the deceased's life insurance policy²².

¹⁶ Rule 12(1).

¹⁷ Section 15, Coroners Law.

¹⁸ Section 18(1), Coroners Rules.

¹⁹ Section 4, Coroners Law.

²⁰ Rules 18 and 19 set out the relevant procedure.

²¹ The procedure for obtaining the authorisation of the Coroner for the removal of a body from the Cayman Islands is set out in Rule 20.

²² Rule 36.

5. Burial and Removal of Bodies from the Cayman Islands

5.1 *Burial*

- 5.1.1 The Coroner should ensure that an order for burial and a Registrar's certificate for burial are not both issued in respect of the same body. Accordingly, where the Coroner has decided not to hold an inquest in relation to a death, the Coroner may make an order for burial only once a certificate for the disposal of the body has been issued by the Registrar pursuant to section 32 of the Births and Deaths Registration Law (2007 Revision) ("**Registration Law**") and this has been surrendered to the Coroner²³. On issuing the order for burial, the Coroner shall send the certificate to the Registrar of Births and Deaths and inform him of the issue of the order authorising the burial of the body²⁴.
- 5.1.2 If the death has been reported to the Coroner and he has decided that an inquest will be held, the Coroner must be sure that sufficient evidence concerning the identity of the deceased and of the cause of death will be available at the inquest before he issues a burial order. This is especially the case if the body is to be removed for burial (including burial at sea) or cremation overseas.

5.2 *Removal of a body from the Cayman Islands*

- 5.2.1 Anyone intending to remove a body out of the Cayman Islands (i.e. whether the death was reportable or not) must give notice to the Clerk of the Court who must refer the matter to a Coroner for consideration immediately²⁵. This applies whether it is intended that the body be buried in another country or cremated and the cremated remains be disposed of in another country or transported back to the Cayman Islands for disposal. In practice, it will usually be the undertaker who notifies the Clerk of the Court.
- 5.2.2 If the deceased died in the Cayman Islands and the Registrar has issued a certificate under section 32 of the Registration Law or the Coroner has issued a burial order, then the applicant must deliver the Registrar's certificate or Coroner's burial order to the Clerk of the Court with his notice²⁶.
- 5.2.3 As soon as the Coroner has been notified of an intention to remove a body from the Cayman Islands, he must send or deliver an acknowledgment of receipt of the notice to the applicant, or the undertaker or other person designated by the undertaker for the purpose²⁷. The Coroner must also immediately notify the Registrar that he has received the notice, and, if the applicant has sent to the Coroner a certificate given by the Registrar under section 32 of the Registration Law, the Coroner must return the certificate to the Registrar²⁸.

²³ Rule 18.

²⁴ Rule 19.

²⁵ Rule 20.

²⁶ Ibid.

²⁷ Rule 20(2)(a).

²⁸ Rule 21(2)(b).

- 5.2.4 The Coroner will then consider whether any further enquiries by him are necessary in respect of the death (such as an autopsy and/an inquest). If the Coroner states in his acknowledgment of receipt of the notice that, having satisfied himself that he need not carry out any further enquiries, then the applicant may remove the body of the deceased from the Cayman Islands at any time thereafter. If the Coroner does not make such a statement in his acknowledgement of receipt of the notice, then the applicant may not remove the body from the Islands before the expiry of four clear days after the day on which the Coroner was notified by the Clerk of the Court of the applicant's intention to remove the body from the Cayman Islands²⁹.
- 5.2.5 The Coroner may send any notice, acknowledgment or notification in relation to the removal of a body from the Cayman Islands either by hand (if the applicant provides an address in George Town), or by fax or electronically if the applicant has provided a fax number or email address, but not by post. Applicants are encouraged to use the services of an undertaker in the Cayman Islands for the purpose of arranging the removal of a body from the Cayman Islands, and undertakers are encouraged to provide fax numbers or email addresses. The Coroner will also display any acknowledgment or notification that he is required to give in connection with the removal of a body from the Cayman Islands publicly in the Court House³⁰.

6. Inquests

6.1 *Nature of an Inquest*

- 6.1.1 A coronial inquest is fundamentally different from civil or criminal proceedings. It is an inquisitorial proceeding. As such, a coronial inquest is not adversarial in nature like civil or criminal proceedings before the Summary or Grand Courts. There are, therefore, no litigants or parties to an inquest. There are only witnesses who have, or may have, knowledge of some of the matters under investigation, and certain interested persons who are entitled to examine the witnesses. The witnesses appearing before the inquiry have no case to promote and no-one makes a case against them. It is not the function of the Coroner or jury to determine, or to appear to determine, any question of criminal or civil liability, to apportion guilt or attribute blame. It is not the function of an inquest to provide a forum for attempts to gather evidence for pending or future criminal or civil proceedings.
- 6.2.2 The inquest is conducted without the equivalent of pleadings (as would be used in civil proceedings) or an indictment or information (as would be used in criminal proceedings). It requires the Coroner and his jury to proceed with open minds.
- 6.2.3 The proceedings and evidence at an inquest is directed solely to ascertaining the following matters:
- (a) Who the deceased was;

²⁹ Rules 21(4) and 21(5).

³⁰ Rule 21(6).

- (b) How, when and where the deceased came by his death³¹;
- (c) The medical cause of the deceased's death; and
- (d) The particulars required by the Registration Law for the death to be registered³².

6.2.4 In addition, an inquest should seek to allay rumours and suspicion about the deceased's death, draw attention to the existence of circumstances which, if not remedied, might lead to further deaths, preserve the legal interests of the deceased's family, heirs or other interested parties, and advance medical knowledge.

6.2.5 Neither the Coroner nor the jury is entitled to express any opinion on other matters at any time during the proceeding³³. Accordingly, "recommendations" (whether from the Coroner or the jury) are not permissible³⁴, and no verdict may be framed so as to appear to determine criminal liability by a named person, or civil liability generally³⁵.

6.3 Conduct of the Inquest

6.3.1 Timing

- (a) Upon being notified of a death, the Coroner should decide promptly whether or not to hold an inquest. If the Coroner decides that an inquest shall be held, it should commence promptly and thereafter be pursued with reasonable expedition. Minimising delays reduces the cost and inconvenience to the witnesses, reduces distress to relatives of the deceased, and assists the deceased's personal representatives in the orderly, expeditious and efficient winding up of the deceased's estate. The Registrar, the RCIPS, public pathologists and, where relevant, the offices of the Director of Public Prosecutions ("**DPP**") and Director of Prisons, are expected to provide reasonable assistance to the Coroner to ensure that inquests are pursued with reasonable expedition.

6.3.2 General procedural matters

- (a) Every inquest and all hearings at an inquest are held in public unless the Coroner directs that the inquest or certain parts of the inquest should be conducted in private on the basis that this would be in the public interest or the interests of national security³⁶. Accordingly, it would be a very exceptional case where the inquest is not held in public.
- (b) At least seven (7) days in advance of all hearings forming part of an inquest, the Clerk of the Court will publish a notice of the hearing in the Court House and, in the

³¹ This is a more limited task than determining how the deceased died, and is directed to the means by which the deceased came by his death (*R v North Humberside Coroner, ex p Jamieson* [1995] QB 1, 24, CA).

³² Rule 40 and sections 30 and 31 of the Registration Law.

³³ Rule 40(2).

³⁴ *R v Shrewsbury Coroner's Court, ex p British Parachute Association* (1987) 152 JP 123.

³⁵ Rule 47.

³⁶ Rule 22.

case of a hearing taking place in Cayman Brac, the Aston Rutty Civic Centre. The Clerk of the Court shall also give notification of the date, hour and place of an inquest to the Police Commissioner, to any "Interested Persons" who have asked the Clerk of the Court to notify them of the details of the inquest and have supplied the Clerk of the Court with contact details sufficient for the purpose of being so notified³⁷. Interested Persons are discussed further below.

- (c) The Coroner will also give notice of the date, hour and place at which the inquest will be held to any person whose conduct is likely, in the Coroner's opinion, to be called into question at the inquest (irrespective of whether that person will be called as a witness)³⁸. If the conduct of any person is called into question at the inquest on grounds that the Coroner considers to be substantial and which relate to the matters that the inquest should seek to determine, and they are not present at the inquest and have not been summoned to attend the inquest or otherwise given notice of the inquest taking place, then the Coroner should adjourn the inquest to allow him the opportunity to attend the hearing³⁹, as discussed below.

6.4 *Interested Persons*

6.4.1 It follows from the inquisitorial, rather than adversarial, nature of an inquest that there are no "parties", in the same way that there would be in adversarial proceedings such as a trial. Instead, there are Interested Persons. These are persons who have an interest recognised to go beyond the interest of ordinary members of the public.

6.4.2 Interested Persons will include:

- (a) Any parent, spouse or child or other near relative of the deceased;
- (b) A beneficiary under a policy of insurance issued on the life of the deceased or the insurer who issued the policy;
- (c) A person whose act or omission or that of his agent or employee may, in the Coroner's opinion, have caused, or contributed to, the death of the deceased; or
- (d) Any other person who, in the opinion of the Coroner, is a properly interested person⁴⁰,

6.4.3 Interested Persons are also given specific rights in connection with an inquest, including the right to examine witnesses (as discussed further below).

6.4.4 It is for the Coroner to decide whether a particular person is an Interested Person to an inquest. The Coroner needs to be satisfied that the person's interest is reasonable and substantial, and the Coroner may also need to be satisfied that the concern of the person involved is genuinely directed to the scope of his interest under the Coroners

³⁷ Rule 24.

³⁸ Rule 30.

³⁹ Rule 31.

⁴⁰ Rules 24 and 26.

Rules. An Interested Person should have some personal interest in the inquest and not merely be a representative.

6.5 *Witnesses*

6.5.1 The Coroner must determine which persons should be called as witnesses. In deciding who should be called, the Coroner will consider who may be able to testify in furtherance of the inquest, i.e. who might have knowledge of some of the matters that are required to be determined at the hearing (in relation to which, see paragraph above). If the Coroner considers that the witness will attend voluntarily, the Clerk of the Court will notify the witness of the place, date and time of the hearing⁴¹. If the Coroner considers that a witness may not attend unless a formal summons is served, then he will issue and cause to be served a summons on the witness in the prescribed form⁴².

6.5.2 The Coroner may also require witnesses to bring with them to the hearing any documents or things in their possession or control⁴³.

6.6 *The Jury*

6.6.1 Inquests in the Cayman Islands are determined by a jury. The Coroner must sit with a jury of seven people⁴⁴.

6.6.2 As soon as the Coroner has decided to hold an inquest the Clerk of the Court will empanel a jury of twelve people from the jury list, and cause summonses to be issued and served on them to attend at the place, date and time set out in the summons⁴⁵.

6.6.3 From the panel summoned that are present, the Coroner will select seven jurors to serve. Anyone who satisfies the Clerk of the Court or the Coroner that he has served on a Coroner's jury or a Grand Court jury during the previous six sessions of the Grand Court, or pursuant to an order of a Coroner or Judge he is currently excused from serving on the jury, will be excused⁴⁶. The Coroner will also excuse anyone who is ineligible under section 8 of the Judicature Law to be a juror. If the Clerk of the Court or the Coroner has any doubts as to a person's ability to act as a juror, by reason of his physical disability or insufficient understanding of English, then the Coroner may discharge that person from attending. At the convening of the inquest, the jurors will elect one juror to act as the foreman⁴⁷.

⁴¹ Section 7, Coroners Law and section 25, Coroners Rules provide that the Coroner "shall" summon all witnesses. However, if the Coroner considers that a witness will attend voluntarily – for instance, most obviously, police officers and public pathologists - then no useful purpose would be served by summoning them. Of course, if such a witness does not in fact attend voluntarily then the Coroner may then formally summon the witness in the usual way.

⁴² See section 8, Coroners Law and Rule 25. The prescribed form of witness summons is set out in the Schedule to the Coroners Law.

⁴³ Rule 25(3).

⁴⁴ Section 6, Coroners Law. The procedure for summoning jurors, and the excusal of certain persons from jury service, is also governed by Part 7 of the Rules.

⁴⁵ Ibid. The jury list shall be compiled pursuant to section 13 of the Judicature Law (Revised) ("**Judicature Law**").

⁴⁶ Ibid.

⁴⁷ Section 6(2) Coroners Law.

- 6.6.4 Jurors are entitled to be paid a daily attendance fee and a travelling allowance on the scale set out in section 12 of the Judicature Law.

6.7 *Preparation for the hearing*

- 6.7.1 Due to the inquisitorial nature of the inquest, and the fact that there are no parties, only Interested Persons, there are no issues to be litigated at the hearing, and the inquest requires an open mind, rather than a pre-formed "case".
- 6.7.2 The Coroner will, if practicable, view the body of the deceased by physical attendance or using photographs⁴⁸. The Coroner prepares for the inquest by obtaining sworn statements from all available witnesses and other relevant documents from appropriate agencies and third parties. This part of the inquiry is usually carried out by officers of the RCIPS on behalf of the Coroner as part of their usual inquiries into a death. The RCIPS must supply the Coroner with all the materials in its possession concerning the cause and circumstances of the death. If its materials have been passed to the offices of the DPP, then the offices of the DPP must arrange for those materials to be provided to the Coroner⁴⁹.
- 6.7.3 The Coroner must not confine himself to the witness statements and he must not ignore material from others. However, he must decide how best to allocate his limited resources between various inquests. He must make reasonable and appropriate efforts to obtain the information and evidence which he reasonably considers that he needs for the inquest at hand. However he is not obliged to pursue every possible source of information or personally review every document available.
- 6.7.5 The rules governing the evidence used in an inquest are discussed further below.

6.8 *Adjournment or stay pending criminal proceedings*

- 6.8.1 Where criminal proceedings are pending, the Coroner must adjourn or stay an inquest after opening it. If a Coroner adjourns or stays the inquest pending the outcome of criminal proceedings, he may, if he thinks fit, discharge the jury⁵⁰.
- 6.8.2 If the DPP commences criminal proceedings for causing the death of the deceased in respect of whom an inquest is being held, then the DPP must notify the Coroner and the Coroner must stay the inquest generally. Once the criminal proceedings are finished, the DPP must inform the Coroner and the Coroner must determine whether or not to resume the inquest.
- 6.8.3 If at the conclusion of such criminal proceedings any person is convicted of an offence by which the death of the person upon whom the inquest was being held was brought about, the Coroner must record the details of the conviction and close the

⁴⁸ Section 7, Coroners Law.

⁴⁹ Rule 41(1).

⁵⁰ Rule 33(3)(b).

inquest⁵¹. If, however, the criminal proceedings do not lead to the conviction of a person in connection with the deceased's death, the Coroner shall require the DPP to provide all the materials in the possession of the office of the DPP and the RCIPS concerning the cause and circumstances of the death and resume the inquest⁵².

- 6.8.4 If, during the course of the inquest, evidence is given from which it appears to the Coroner that the death of the deceased is likely to be due to the murder, manslaughter, or infanticide, or causing death by dangerous driving or careless driving or similar offences under the Traffic Law, 2012, and that a person might be charged with such an offence, he must, unless he has previously been notified by the DPP that an adjournment is unnecessary, adjourn the inquest for a minimum period of 14 days and send the DPP the particulars of the relevant evidence⁵³.
- 6.8.5 The Commissioner may also request an adjournment of an inquest on the grounds that a person may be charged with murder, manslaughter, infanticide, or causing death by dangerous driving, careless driving and similar offences under the Traffic Law⁵⁴. If the Commissioner makes such a request, the Coroner is required to adjourn the inquest for a minimum period of 28 days⁵⁵.
- 6.8.6 The DPP may request an adjournment on the grounds that a person may be charged with an offence alleged to be connected with the deceased's death (but not being an offence of murder, manslaughter, infanticide or causing death by dangerous driving). In both cases, if the Coroner is satisfied that he should grant an adjournment, or a further adjournment, then the adjournments should be for fixed periods. If the RCIPS's inquiries are likely to be long and drawn out, and if the Coroner considers that the evidence at the inquest would not seriously prejudice those inquiries, he should hold, or resume, the inquest without further delay.

6.9 *General power to adjourn an inquest*

- 6.9.1 The Coroner may adjourn an inquest even when there are no pending investigations by RCIPS or pending criminal proceedings. A Coroner may do so where there is a proper reason for doing so and, in particular, may open the inquest, take evidence as to the identity of the deceased, issue a burial order and adjourn the remainder of the inquest pending the completion of some inquiry or other steps. This includes situations, as discussed above, where the conduct of any person is called into question at the inquest, and the criticism is relevant to the matters that the inquest is required to consider, and where that person has not already been given notice of the inquest. In such a case the Coroner will adjourn the inquest to enable notice to be given to that person so that he may attend if he so wishes. Such an adjournment should be for a fixed period of time.

⁵¹ Rule 33(5).

⁵² Rule 33(6).

⁵³ Rule 34(1).

⁵⁴ Rule 32.

⁵⁵ Ibid.

6.9.2 Where an inquest is adjourned or stayed, the Coroner must complete various practical steps, including notifying relevant parties of the adjournment or stay and issuing an interim certificate of death on the request of an Interested Person⁵⁶.

6.10 *Procedure at the Inquest*

6.10.1 *Witnesses and evidence*

- (a) In some cases, the Coroner may consider it helpful for the jury to make a physical inspection, including, for instance, the scene where the deceased was found, the scene of an accident, or the condition of a motor vehicle involved in a road traffic accident related to the deceased's death. The Coroner may also allow the Interested Persons to attend. The Coroner may attend, but must not discuss the matter with the other attendees.
- (b) An Interested Person may make applications to the Coroner in relation to the conduct of the inquest, including in respect of the calling of witnesses, production of documents, and adjournments (such as, for example, an application for the Coroner to call a certain witness, or for documents to be produced at the hearing). It is the duty of the Coroner to deal judicially in open court with all such applications as may be made to him. A Coroner need not give reasons for his decision in respect of any such application but he may do so and, if the application is complex, he will ordinarily give his reasons in writing.
- (c) The order in which witnesses are called to testify is a matter of discretion for the Coroner. It is usual for the first witness to be the one who testifies as to the identity of the deceased. It is also usual for a person whose conduct may be called into question to testify last.
- (d) If a witness is too ill to testify the Coroner may adjourn the inquest to the bedside of the witness.
- (e) If a witness does not appear to understand English, he will be examined with the use of an interpreter. In non-contentious cases, the Coroner may allow a relative or friend of the witness to act as interpreter, but in other cases a professional interpreter must act.
- (f) Hearsay evidence is admissible so, for instance, it is not necessary for the Coroner to call the maker of a document⁵⁷.
- (g) If a witness has provided a written statement that complies with section 10(1) of the Coroners Law and, if relevant 10(2) of the Coroners Law, and if the witness is not present at the inquest, and if the Coroner is satisfied that all or

⁵⁶ Rules 36, 37, 38 and 39 set out the various practical steps that the Coroner must take where an inquest is adjourned or stayed.

⁵⁷ *R v. A-G NI ex p. Devine* [1992] 1 WLR 262 (HL). See also s. 10(1) of the Coroners Law.

part of the evidence contained in the written statement is unlikely to be disputed then he may admit all, or that part, of the written statement without calling the witness to give oral testimony. Nevertheless, the Coroner retains a discretion to require such a witness to give oral testimony.

- (h) In such a case the Coroner will at the beginning of the inquest announce publicly that the documentary evidence may be admitted, identify the witness, give a brief account of that part of the statement to be admitted, and state that any Interested Person may object to its admission and is entitled to a copy of it⁵⁸.
- (i) If such a witness is present at the inquest, and if the Coroner is satisfied that all or part of the evidence contained in the written statement is unlikely to be disputed, then the Coroner may call on the witness to testify to confirm the truth of the facts and matters set out in his written statement, or the relevant part of it without the witness having to repeat the contents of his written statement.
- (j) If a witness has made a written statement that complies with section 10(1) and, if relevant, 10(2) of the Coroners Law, but the Coroner is not satisfied that the written statement is unlikely to be disputed, or if a witness has not made a written statement that complies with section 10(1) and, if relevant, 10(2) of the Coroners Law, then the witness will be required to be deposed under oath. In such a case, a contemporaneous transcript of the deposition must be made. At the end of the deposition, the Coroner and the witness have the opportunity to read over and check the transcript for errors, and once satisfied that the transcript is correct the witness shall confirm its correctness verbally or in writing. The Coroner will then sign the transcript⁵⁹.
- (k) If a witness is required to be deposed but is not in the jurisdiction and is unable or unwilling to travel, or it is not reasonably practicable for him to travel, to attend the inquest then the Coroner may permit him to be deposed by video-link. The Coroner will make arrangements so that the contemporaneous transcript may be sent to the witness by email, or other electronic means, so that he has the opportunity to read over and check the transcript for errors, and once satisfied that the transcript is correct confirm verbally via the video-link, or in writing by email or other electronic means, its correctness. The Coroner will then sign the transcript⁶⁰.
- (l) Unless the Coroner considers it inappropriate, all the witnesses who are to testify are expected to attend the inquest until they are called. Once a witness has testified, the Coroner may release him, whereupon he may leave the inquest. If the Coroner does not release him then he should remain at the inquest.

⁵⁸ Rule 41(4).

⁵⁹ Rule 43.

⁶⁰ Rule 43(3).

- (m) Except in exceptional circumstances, the Coroner will not exclude either a professional or scientific witness, or a person whose conduct may be called into question, from the inquest prior to giving his testimony⁶¹.
- (n) Unless the Coroner considers otherwise, a witness will be first examined by the Coroner. Once the Coroner has concluded his examination, any Interested Person who has a relevant and proper interest in the witness' testimony may examine him. If the witness is represented at the inquest, then, unless the Coroner considers otherwise, the witness' representative will examine him last⁶².
- (o) The Coroner will usually base his questions of the witness on the witness's written statement in connection with the death. If there is any inconsistency between the written statement of a witness and his oral evidence, and the Interested Persons are not aware of the inconsistency, the Coroner must explore and deal with it himself⁶³.
- (p) Because an inquest is an inquiry and not litigation, the rules of evidence in civil litigation or criminal proceedings do not apply to an inquest. In particular, hearsay evidence (both oral and documentary) may be admitted⁶⁴. The examination of witnesses also does not proceed along the lines of examination in civil litigation. There is no examination in chief or cross-examination. Leading questions may be put to a witness, but the Coroner should avoid putting leading questions to a witness that suggest the answer if his testimony is contentious. In a proper case, opinions may be sought from a witness whether or not he is an expert and, if relevant to the issues to be determined, evidence may be given as to a person's character and behaviour.
- (q) Medical evidence as to how the deceased died will generally form part of an inquest. However, the inquest must also inquire into acts and omissions that may be directly responsible for the deceased's death.
- (r) However, despite the fact that the usual restrictive rules of evidence do not apply, the Coroner must, in matters of evidence, act in a manner that is just and fair and be aware that, just because particular evidence (such as hearsay) is admissible does not make it satisfactory in all circumstances. The Coroner and attorneys-at-law for any Interested Parties must be aware of the main rules

⁶¹ *Re Devine's Application* [1998] 14 NIJB 10.

⁶² Rule 28.

⁶³ *Re Cohen* (1993) 158 JP 644.

⁶⁴ The basis for the non-application of the usual rules of evidence in the context of a coronial inquest is that an inquest is an inquisitorial proceeding, designed for the Coroner and the jury to start with no preconceptions and to elicit the true facts regarding the incident in question. There should therefore be no need for evidential restrictions – the aim of an inquest is to find out objective facts about the deceased, in the public interest, as opposed to determining the "truth" as between and for the purposes of two or more parties.

of evidence so as to reduce the number of occasions on which it is necessary to depart from them⁶⁵.

- (s) As discussed above, after the Coroner's examination is concluded, any person who falls within one of the categories of person set out in Rule 26(2), which includes any Interested Persons, may examine the witness. The Coroner may allow any questions to be put to a witness provided that they are both relevant and proper. The Coroner has a positive duty under the Coroners Rules to disallow any questions that are not relevant and proper⁶⁶. The Coroner should also protect witnesses from humiliating, intimidating or abusive questions⁶⁷, and must take care not to allow the inquisitorial nature of the inquest to become oppressive and an intrusion into the privacy of individuals taking part in the inquest.
- (t) Any person who is, or who contends that he is, an Interested Person or other person properly entitled to examine a witness and who wishes to examine a witness at an inquest shall notify the Clerk of the Court no later than two days prior to the inquest, and shall state in his notice whether he wishes to appear in person at the inquest or by an attorney-at-law, and, if by an attorney-at-law, he shall provide the name of the attorney and the attorney's firm⁶⁸.
- (u) Each attorney-at-law appearing on behalf of any person at an inquest must file a written notice of appearance on or before the time of his first appearance at the inquest or not later than 10 days after his appointment or retainer, whichever is sooner⁶⁹.

6.10.2 Self-Incrimination

- (a) No witness at an inquest shall be obliged to answer any question tending to incriminate himself. The potential incrimination need not be incrimination of the witness in respect of the death of the deceased, but extends to any civil or criminal liability of any kind. If it appears to the Coroner that a witness has been asked such a question, the Coroner must inform the witness that he may refuse to answer⁷⁰. The witness or his representative must, however, take the objection himself, and if he chooses to answer he waives the privilege. If a series of incriminating questions is deliberately asked, it is open to the Coroner to forbid them to be put to the witness on the basis that they are not proper questions. If the objection is taken, the Coroner should make a note of the wording of the question and the fact that objection was taken to it.

⁶⁵ The main rules of evidence at common law are that: (a) any fact that is relevant in evidence should be proved by the best evidence; and (b) generally, and subject to certain exceptions (the main ones being the "hearsay rule", opinion evidence and evidence as to character and behaviour), only relevant evidence is admissible.

⁶⁶ Rule 26(4).

⁶⁷ C.f. *R v Brown* [1998] 2 Cr.App.R 364 (criminal case).

⁶⁸ Rule 26(5).

⁶⁹ Rule 27. The notice shall contain the details set out at Rule 27(2).

⁷⁰ Rule 29.

- (b) Although the strict rules of evidence do not apply to an inquest, the Coroner must act fairly to determine whether or not he should admit any particular evidence. If an objection is taken as to whether or not evidence should be admissible then the Coroner may hear arguments in the absence of the Jury.

6.10.3 Documentary Evidence

- (a) The Coroner may admit at an inquest documentary evidence that is relevant to the purposes of the inquest from any living person which is, in the Coroner's opinion, unlikely to be disputed (unless an Interested Person objects to the evidence being admitted, although objected evidence may still be admitted if the Coroner is of the opinion that the maker of the document is unable to give oral evidence within a reasonable period)⁷¹.
- (b) The Coroner may also admit, as evidence at the inquest, any document made by a deceased person if the Coroner is of the opinion that the contents of the document are relevant to the purpose of the inquest⁷².
- (c) Any documentary evidence admitted at the inquest by the Coroner will be read aloud at the inquest and, if the Coroner so directs, an account shall be given orally of so much of any written statement not read aloud⁷³.
- (d) If a witness is not in the jurisdiction and his sworn written statement is, or may be disputed, and he is either unable or unwilling to travel to the Cayman Islands or the Coroner is satisfied that it is not reasonably practicable for him to travel to the Cayman Islands to testify at the inquest, then the Coroner may permit the witness to testify at the inquest by way of a video-link and admit any relevant documentary evidence produced by that witness⁷⁴.

6.10.4 Coroner's Notes

- (a) The Coroner must take a note of the evidence, or cause notes of the evidence to be taken on his behalf⁷⁵. His notes may take the form of a transcript or tape-recording.

6.10.5 Address as to the facts and legal submissions

- (a) No person is permitted to address the Coroner or the jury as to the facts in evidence⁷⁶, although reference to the evidence does not of itself contravene the Rules.
- (b) An Interested Person or their representative may address the Coroner as to relevant matters of law, which includes making legal submissions as to the

⁷¹ Rules 41(2) and 41(3).

⁷² Rule 41(6).

⁷³ Rule 41(8).

⁷⁴ Rule 41(9).

⁷⁵ Rule 43(1).

⁷⁶ Rule 40.

possible verdict of the jury. The Coroner may hear these submissions in the absence of the jury, and in certain cases is required to do so, including where legal submissions are being made with respect to possible verdicts or where the submissions relate to the summing-up to be given by the Coroner⁷⁷.

6.10.6 *Summing up and direction to the jury*

- (a) Once the evidence and any legal submissions have been completed, and any rulings have been made, the Coroner is required to sum up the evidence admitted in the inquest to the jury and to direct them as to the law before they consider their verdict. During the course of the summing up, the Coroner must remind the jury that they are not permitted to add any riders to the conclusion of the death nor to address the Coroner as to the facts in evidence⁷⁸.
- (b) The Coroner must direct the jury with care, and in particular in relation to the standard of proof⁷⁹. The summing up is particularly important where there are alternative theories of how the death occurred, which the jury is being asked to decide between⁸⁰.

6.11 *Verdict*

- 6.11.1 The jury must consider their verdict in private without anyone else, including the Coroner, present. If it is necessary for the Coroner to communicate with the jury or to answer any question proposed by them during their deliberations, this must be done in open court.
- 6.11.2 The jury's verdict may be a majority verdict⁸¹. It is desirable for the jury to try for unanimity and the Coroner will only accept a majority verdict once it is clear that the members of the jury cannot agree.

6.12 *Inquisition*

- 6.12.1 The formal record of the inquest is called the Inquisition and it must include the following details:
 - (a) the name of the deceased (if known);
 - (b) the injury or disease causing the deceased's death;
 - (c) the time, place and circumstances at or in which the injury to the deceased was sustained;
 - (d) the conclusion of the jury as to the death;
 - (e) the particulars for registration under the Registration Law.

⁷⁷ *R v East Berkshire Coroner, ex p Buckley* (1992) 157 JP 425, DC.

⁷⁸ Rule 45.

⁷⁹ *R v Southwark Crown Court, ex p Epsom Health Care NHS Trust* (1994) 158 JP 973, DC.

⁸⁰ *R v West Berkshire Coroner, ex p Thomas* (1991) 155 JP 681 at 696-697, DC.

⁸¹ Rule 46.

- 6.12.2 It must be signed by the Coroner and those members of the jury who agree with it.
- 6.12.3 If the name of the deceased is not known then the sex of the deceased should be stated in para. (1). If the sex is unknown, then it should be stated as undetermined.
- 6.12.4 Generally, the medical cause of death is only required when the death was not due to a violent occurrence, such as natural causes or drugs. Both the immediate cause of death and also morbid conditions giving rise to the immediate cause of death should be stated. Generally, in these cases, details for para. (3) may then be omitted.
- 6.12.5 If the death was due to violence, then details of the injuries should be stated in para. (2), and details of the incident causing the injury should be stated in para. (3). In the case of a death by poison (including illegal or prescription drugs) the poison, if known, should be specified, and para. (3) completed as far as may be appropriate. In the case of death by poison, and certain other cases, it may not be possible to state precisely the date on which the injury was sustained, in which case a period of time or earliest and latest dates should be stated.
- 6.12.6 The jury's conclusion as to the deceased's death as stated on the inquisition must fall within one of the following categories:
- (a) Natural causes;
 - (b) Misadventure; or
 - (c) Suicide, and, if so, the presumed state of mind of the deceased⁸².
- 6.12.7 If the evidence is insufficient to record any verdict as to what the death was due, then an open verdict may be recorded⁸³.
- 6.12.8 The burden of proof for a verdict of suicide is the criminal standard, i.e. beyond reasonable doubt. In all other cases it is the civil standard, i.e. on a balance of probabilities.
- 6.12.9 If the jury returns a verdict of suicide, and if it is satisfied that there was some evidence (which need not be medical evidence) that the deceased's state of mind was disturbed at the time of his death then the verdict should record this. However, if the jury is not satisfied that there was any evidence as to the deceased's state of mind at the time of his death then the verdict should not record a verdict as to the state of mind of the deceased.
- 6.12.10 In an appropriate case, the Coroner may ask questions of the jury, through their foreman, to remove any ambiguity or uncertainty in the answers they give to the specific questions put to them.

⁸² Rule 46(1).

⁸³ Rule 46(4).

6.13 *Report and recommendations*

- 6.13.1 At the conclusion of an inquest, the Coroner may make a written report where he believes that action should be taken to prevent the recurrence of fatalities similar to that in respect of which the Inquest is being held⁸⁴. In such a case, the Coroner should before the end of the Inquest publicly announce his intention to do so, and the substance of the report, neutrally expressed, that he intends to make.

DATED this 26th day of September 2014

The Hon. Anthony Smellie, QC
Chief Justice

⁸⁴ Rule 47. In the case of the Cayman Islands, such a situation is most likely to arise in connection with dangerous sports engaged by tourists, for instance scuba diving.