



Manitoba

THE PROVINCIAL COURT OF MANITOBA

IN THE MATTER OF: *THE FATALITY INQUIRIES ACT* C.C.S.M. C. F52

AND IN THE MATTER OF: INQUEST INTO THE DEATHS OF SHELDON
ANTHONY MCKAY AND DURVAL DAVID
TAVARES

AND IN THE MATTER OF : AN APPLICATION BY CANADIAN BROADCASTING
CORPORATION, CTV TELEVISION INC., AND THE
WINNIPEG FREE PRESS, A DIVISION OF THE FP
CANADIAN NEWSPAPERS LIMITED PARTNERSHIP
(THE “APPLICANTS” TO RECORD PROCEEDINGS)

Sheldon Anthony McKay and Durval David Tavares
Inquest Motion Decision
Delivered this 28th day of January, 2016

APPEARANCES:

Mr. Jonathan Kroft, for the Applicants
Mr. Charles Murray, for the Department of Justice Manitoba
Mr. Scott Farlinger, for the Department of Justice Canada
Mr. Tony Marques, for the Manitoba Association of Crown Attorneys

[1] I want to begin by thanking all counsel for their extensive written and oral submissions which I have reviewed at length.

[2] The applicants are seeking an order that they be permitted to record, videotape and broadcast the inquest proceedings into the deaths of Durval David Tavares and Sheldon Anthony McKay which occurred in Stony Mountain Institute on March 21, 2005 and May 3, 2006 respectively.

[3] It is the applicants' argument that they have a s. 2 (b) *Charter* protected right to do so. This right is subject to s.1 of the *Charter* with reasonable limits prescribed by law as are demonstrably justified in a free and democratic society.

[4] It is the submission of Mr. Kroft on behalf of the applicants that the case law is now clear with the decision from the Supreme Court in *CBC v. Canada* [2011] 1 S.C.R.

[5] The Attorney General of Manitoba, the Attorney General of Canada and the Manitoba Association of Crown Attorneys in response to this application, ask this Court for an order denying the broadcast application. It is their position collectively that there is no constitutional right to televise an inquest or any other judicial proceeding. It is their position that *CBC v. Canada* does not stand for the proposition that media has a constitutionally protected right to film and broadcast judicial proceedings. These respondents suggest that the decision in the *Re: Brian Lloyd Sinclair Inquest* 2010 MBPC 18 of Judge Preston is the appropriate decision to rely upon.

[6] My reading of the *CBC v. Canada* case concurs with this position. I do not believe that the media have a constitutionally protected right under s.2 (b) of the *Charter* to broadcast and film this inquest.

[7] In a joint effort of the three levels of court in Manitoba, a guideline under the Media Audi and Video Recordings in the Courtroom (MAVRIC) and policy have been developed since the Sinclair Inquest to further the directions of the Attorney General of the Province of Manitoba to have ongoing initiatives to improve public access to Manitoba's justice system. These court initiatives are designed to increase public knowledge and experience with our courts through both personal and internet access to our sitting courts or through media exposure to those courts through the pilot projects initiated in April 2014. These court initiatives were intended to be evolving and at no time were they to restrict the judicial independence of the presiding judge whose discretion to the operation of his or her court was in their domain exclusively. All parties to this motion have acknowledged this discretion as it relates to the application being made. Clearly, in my opinion, these guidelines and policies are a growing attempt by Manitoba judiciary to expand openness and access to justice within our court proceedings. As a result the application such as this can be heard and considered on an individual case by case basis.

[8] At first blush, it appears to me that an inquest hearing is a logical extension of the three court policy of televising court proceedings. Inquests have a very specific and limited process and the judge conducting this matter is to examine the circumstances relating to the death of each of the deceased inmates and to determine what if anything can be done to prevent similar deaths from occurring in the future. There is no fault finding function within this hearing and as such is somewhat of a neutral hearing which normally will not cause controversy. This should be even more on this specific inquest as a result of the deaths occurring more than ten years ago. It is important for the public to have a general

understanding at least to judicial processes and in particular to see how an inquest can be an effective tool to shape society for the better in the future.

[9] That being said, the circumstances, including the parties involved and the location of the deaths which are the basis of the calling of the hearing, cannot be overlooked. I have on file, affidavits of four anticipated witnesses, and from Ms Sholdice, the president of the Manitoba Crown Attorneys Association, outlining the serious concerns that they have as to the filming of evidence to be heard at this inquest. All of those parties are concerned about the personal safety of the participants of the hearing should their faces be televised. These fears arise as a result of the fact that the deaths being inquired into relate to once prominent gang leaders of two violent street gangs located and operating in Manitoba then and now. The concern is that there could be repercussions towards them or their families should current gang members take exception to the proceedings or the evidence which arises. I take these concerns seriously.

[10] Considering both competing positions, in my discretion, I am allowing the application to record audio only of the inquests of Sheldon Mckay and David Tavares. Obviously, should circumstances arise that require a restriction on any of the recordings that decision will be dealt with then.

DATED at the City of Winnipeg, in Manitoba, this 28th day of January, 2016.

“Original signed by:”

Brent Stewart, Provincial Court Judge