CITATION: *In Re: Brian Lloyd Sinclair Inquest*, 2010 MBPC 18

Date: 20100319

IN THE PROVINCIAL COURT OF MANITOBA

IN THE MATTER OF: ***The Fatality Inquiries Act***

AND IN THE MATTER OF: **Brian Lloyd Sinclair, deceased**

Decision of Judge Timothy J. Preston
Re: Motion by Canadian Broadcasting Corporation and CTV Television Inc., Canwest Media Works Inc. and Aboriginal Peoples Television Network for Electronic Media Access in the Courtroom during the Inquest into the Death of Brian Lloyd Sinclair
Delivered this 19th day of March, 2010

Parties present at hearing:

Mr. D. Henry, for the Canadian Broadcasting Corporation
Mr. R. Sokalski, for CTV Television Inc., Canwest Media Works Inc. and the Aboriginal Peoples Television Network
Mr. W. Olson, Q.C., for the Winnipeg Regional Health Authority
Mr. G. Smorang, Q.C., for the Manitoba Nurses Union
Mr. T. Kochanski, for Dr. Marnie Waters
Mr. M. Trachtenberg, for the Family and Estate of Brian Lloyd Sinclair
Ms D. Demas, for the First Nations Disability Association of Manitoba
Mr. D. Frayer, Q.C., Inquest Counsel
Mr. N. Carnegie, for the Attorney-General of Manitoba

Parties not present:

Mr. M. Pollock, for the Assembly of Manitoba Chiefs
Mr. K. Murray, for the Aboriginal Legal Services of Toronto
Ms L. Spillet, for Ka Ni Kanichihk

Preston P.J.

INTRODUCTION

[1] Courts must be open to the public. This principle, the "open court" principle, has been described by the Supreme Court of Canada as "a hallmark of a democratic society" and "the cornerstone of the common law". It is one of the fundamental characteristics of a judicial process. Only if courts are open is justice truly "seen to be done" (see *Vancouver Sun (Re),* [2004] 2 S.C.R. 332).

[2] The media have a vital role in this process. Most members of the public do not have the opportunity to attend court for a variety of reasons. By gathering and disseminating news of judicial hearings, the media allow everyone in our community the opportunity to read, see and hear news of the judicial process. In so doing, the public stays informed about courts and the legal issues that arise in courts.

BACKGROUND

[3] On September 21, 2008, Brian Lloyd Sinclair, a 45 year old man, died while waiting approximately 34 hours to be assessed by medical professionals in the Emergency Department at the Health Sciences Centre hospital in Winnipeg.

[4] On January 30, 2009, the Chief Medical Examiner of Manitoba wrote to this Court in accordance with *The Fatality Inquiries Act* (the "FIA") directing that an inquest be held into the death of Brian Lloyd Sinclair, for the following reasons:

1) to determine the circumstances under which Mr. Sinclair's death occurred; and

2) to determine what, if anything, can be done to prevent similar deaths from occurring in the future with regard to, but not limited to, the following:

   (a) reasons for delays in treating patients presenting in emergency departments of Winnipeg Regional Health Authority hospitals; and

(b) measures necessary to reduce the delays in treating patients in emergency departments.

[5] The circumstances surrounding the death of Mr. Sinclair resulted in ongoing and extensive media interest, coverage and scrutiny; a result which is neither surprising, nor inappropriate.

[6] The Applicants are asking this Court for an order to allow electronic public broadcasting from inside the courtroom, whereby the media can stream the proceedings on radio, television and the Internet, subject to my ongoing control and discretion. Extensive written submissions were filed and oral submissions were made recently by some of the parties.

ISSUES

[7] Do I have the jurisdiction as a judge at an inquest to allow cameras or other electronic media into the courtroom during the inquest to broadcast the proceedings? If so, should I allow cameras and electronic media into the courtroom? This requires an analysis of the powers of a judge at an inquest and what it means to have an inquest "open to the public".

ARGUMENTS

[8] The Canadian Broadcasting Corporation (the "CBC") argues that media groups such as the CBC have a constitutional right to record and broadcast the inquest on behalf of the public, by virtue of the right of freedom of expression, which is guaranteed by way of s. 2(b) of the *Canadian Charter of Rights and Freedoms* (the "*Charter*"). Any failure to authorize this coverage violates that freedom. The CBC argues that a ban on cameras or electronic media access in the courtroom at the inquest will severely restrict public access to the proceedings through the media. Such a ban, it is argued, constitutes an infringement of the public's right of access to the courts and is not justifiable as a "reasonable limit" under s. 1 of the *Charter*. The CBC dismisses any contentions or speculation about the privacy or fragility of witnesses. The CBC contends that the witnesses' testimony will "vanish in the mists of time". In oral argument, Mr. Henry argues that witnesses' sensitivities do not govern the process.

[9] The CBC relies on ss. 26(1) and 31(1) of the FIA, provisions that confirm that a judge has "conduct" of an inquest and an inquest "shall be open to the public". They also rely on s. 7 of *The Provincial Court Act*, which outlines the general jurisdiction of a Provincial court judge. The CBC contends that allowing cameras into the courtroom is within my jurisdiction.

[10] CTV Television Inc., Canwest Media Works Inc. and Aboriginal Peoples Television Network ("CTV et al") have filed a separate but related application for

an order of live and recorded television and Internet broadcasts and television camera access inside the courtroom for the duration of the inquest.

[11] CTV et al contend that there is a profound public interest in this inquest. They argue that the public is entitled to see and hear the proceedings, it is impractical for most to attend in person and the camera access serves the public interest. They argue that this Court has jurisdiction to allow cameras to accomplish its mandate at an inquest. Mr. Sokalski in his oral submission dismissed witnesses' privacy and safety concerns as "speculation".

[12] The family and estate of Brian Lloyd Sinclair support the applications and emphasizes that many Sinclair family members will not be able to attend the hearing. They argue that many other people will be keenly interested in the circumstances and nature of the inquest. The greater the public access, the more transparent the proceeding. The family also notes that medical personnel have often appeared as witnesses, on camera, at various inquiries and there is no evidence of resultant trauma or workplace harm. They argue that a webcast, for instance, will not in and of itself impair the inquest process or be deleterious to the public interest. Mr. Trachtenberg eloquently argued in oral submission that it is time for the Court to "open its doors" to everyone.

[13] The Aboriginal Legal Services of Toronto supports the applications and argues that both public interest and cost efficiencies demand it. They stress that the "public" in this instance includes First Nations people who are service users at emergency departments such as at the Health Sciences Centre.

[14] Ms Doreen Demas, the Director of the First Nations Disability Association of Manitoba, appeared in person at the hearing of this application and outlined their support for the Applicants. Ms Demas made a request, on behalf of all her constituents who would not be able to attend the hearing, that the proceedings be broadcast. Only in that way would her constituents have true access to the inquest.

[15] The Attorney-General of Manitoba (the "AG") in his written brief argues that there is no constitutional right to televise an inquest or, indeed, any other judicial proceedings. No Canadian court has ever upheld a constitutional right to televise proceedings. There is no consensus, to date, in favour of permitting the broadcast of judicial proceedings. However, at the hearing of this application, counsel for the AG told the Court that the AG takes no position on the issue of broadcasting, but submitted that the FIA does not give this Court the jurisdiction to allow cameras in the courtroom.

[16] The Manitoba Nurses' Union (the "MNU") opposes the motion. The MNU points out that not a single Canadian court authority has adopted the position that provincial court proceedings such as this inquest, which are evidential in nature,

are an appropriate venue for live, televised media coverage or recordings. By way of affidavit evidence, the MNU also argues that media exposure may wreck havoc on witnesses and potentially impair the evidence.

[17] Dr. Waters, through counsel, simply opposes the application.

[18] The Winnipeg Regional Health Authority (the "WRHA") also opposes the application. The WRHA emphasizes that the media are allowed to attend the inquest, report on the proceedings and have access to the evidence. The WRHA contends that to allow cameras or webcasting in the courtroom would be unprecedented. They point out that this proceeding is an inquest, a judicial proceeding, not an inquiry. They argue that witnesses in this context are fragile. They also refer to a letter dated December 7, 2009, from the Chief Justice of Manitoba, the Chief Justice of Queen's Bench and the Chief Judge of Provincial Court confirming that the three levels of court have struck a committee to examine the recommendations of a media committee. The letter advises that the court committee has just commenced its work and guidelines are not forthcoming.

[19] The Applicants argue that any prohibition of cameras in the courtroom constitutes a "publication restriction". The CBC argues that when assessing the issues, the "*Dagenais/Mentuck*" test, as elucidated by the Supreme Court, applies here. They argue that any restriction on publication should only be ordered when

1) such a restriction is necessary in order to prevent a real and substantial risk to the fairness of the trial, because reasonably available alternative measures will not prevent the risk; and

2) the salutary effects of the publication restriction outweigh the deleterious effects to the free expression of those affected by the ban.

(See *Dagenais v. Canadian Broadcasting Corporation*, [1994] S.C.J. No. 104, which dealt with a publication ban.)

[20] The CBC has framed the analysis by arguing that I must first assess if there is a substantial "risk" before I contemplate a "publication restriction". In this context, risk refers to the possible deleterious effects on witnesses or the quality of evidence due to cameras in the courtroom. The CBC argues that such a restriction can occur only if there are no reasonable available alternatives to the publication restriction and the balance of salutary and deleterious effects in this case requires it.

[21] The MNU argues that there is no *Charter* right to gather and distribute evidence by way of cameras or video and, therefore, no need to conduct a *Charter* analysis. The MNU also argues that s. 2(b) of the *Charter* does not extend to the right to videotape or audiotape court proceedings because such activity is not

protected, expressive activity contemplated by the *Charter*. Alternatively, the MNU argues that freedom of expression is captured by an open court process and preserved without permitting cameras in the courtroom.

[22] I want to thank all counsel for the comprehensive written materials they provided to the Court. Both written and oral submissions and the case law were very helpful. I do not intend to refer to each case cited, since many of the legal precedents I have been provided with deal with search warrants, in-camera orders, access to court exhibits and outright publication bans.

[23] In the decision of *Canadian Broadcasting Corporation v. New Brunswick (Attorney General)*, [1996] S.C.J. No. 38, the Supreme Court of Canada once again heralded the principle of open courts as a guaranteed *Charter* right of freedom of expression. In that case, the Supreme Court was examining an "in-camera" order at a sentencing hearing. An "in-camera" order, wherein the public is excluded and evidence is heard, resulted in the exclusion of all media. Because the order violated the open courts principle, the onus was on the sentencing Court to justify the order. The Court held that the sentencing hearing ought to have been open to the public.

[24] In the decision of *R. v. Cho*, [2000] B.C.J. No. 1561, the British Columbia Supreme Court allowed as an "experiment" the videotaping of submissions of counsel and the addressing of a jury in a criminal trial. Given s. 2 guarantees of freedom of expression, the experiment was undertaken and was done so subject to the overriding duty and right of any individual trial judge to control his or her process. The judge said that there will be occasions when the process might be considered too disruptive due to some "cogent reason". It is important to note that no witnesses were videotaped.

[25] The *Pilarinos* decision, [2001] B.C.J. No. 1936, from the British Columbia Supreme Court, involved an application by several media organizations for television and radio access to a criminal trial. The application was dismissed. The Court in *Pilarinos* held that the onus was on the applicants to show that the *Charter* right of freedom of the press had been violated. The Court held that the *Charter* right of freedom of the press did not provide an absolute protection to all expressive activities. Videotaping or audiotaping in open court was held not to be an expressive activity protected by the *Charter*. In this context, the media rights were the same as those enjoyed by the Canadian public. The Court went on to say that even if videotaping was a protected expressive activity, the *Charter* was not violated by the denial. It was not appropriate to have this type of activity in a courtroom because of the negative effect on witnesses, parties, counsel, or triers of fact. Even if there was a violation, the denial was a reasonable limit on the

application of the *Charter* and the need to ensure fairness, dignity, decorum and privacy.

[26] In short, the Court found that the media was not being denied the right to attend the trial and the right to freedom of expression was minimally being impaired by the exclusion of cameras and audio recording devices. Leave to appeal the decision in *Pilarinos* was denied by the Supreme Court of Canada.

[27] In the *McSorley* decision, [2000] B.C.J. No. 2639, the British Columbia provincial court judge who heard an application in criminal court for cameras in the courtroom held that even though it might have been his own, personal preference to allow camera access, such a decision was a decision which should be made as a policy decision by the entire Bench. Such a decision required input not only from the criminal judges but also from the family judges: in other words, the entire Bench.

CAMERAS IN THE COURTROOM

[28] The affidavit filed by the CBC cites examples of cameras in the Supreme Court of Canada and experiments with cameras in the Nova Scotia Court of Appeal. In their Motion Brief, the CBC argues that American jurisdictions have had electronic public access in numerous states for over two decades without problems. The federal appeals court in San Francisco approved a pilot program in December allowing cameras at selected civil non-jury trials. In his oral submission, Mr. Henry cited the example of a high-profile inquest having been televised in Nova Scotia.

[29] Generally, throughout Canada, cameras and other recording devices are not permitted in courtrooms. In fact, a prohibition on photographing witnesses in the halls of the courthouse was found to be a reasonable limit on the media's freedom of expression. One of the stated reasons for upholding the prohibition was the maintenance of decorum and dignity in the courthouse (see the *Squires* decision, [1992] O.J. No. 2738 (C.A.)).

[30] Similarly, the Quebec Court of Appeal upheld a prohibition on cameras in the courtroom. The curtailment of the media's right to film was upheld, since it only curtailed the form of reporting, not the activity of reporting itself (*Société Radio-Canada v. Quebec (Procureur General)*, 2008 CarswellQue 14639).

[31] Specifically in Manitoba, cameras are prohibited in all court facilities. Only when and if the media obtain the prior permission of the Chief Justices and Chief Judge are cameras permitted in court facilities for specific, limited purposes, such as swearing-in ceremonies of newly-appointed judges. Those Investitures are

sittings of the court, but relatively informal ceremonies. No evidence is presented. No witnesses testify.

[32] On the other hand, a Provincial Court Practice Directive, which is to all intents and purposes a rule of the Court, allows the unobtrusive use of audiotaping by a media person during “non-evidential proceedings” of the Provincial Court, for the sole purpose of supplementing or replacing handwritten notes. Such recordings cannot be used for broadcast or reproduction.

[33] Cameras are not currently allowed in a courtroom. Our own courts are currently investigating the whole issue of cameras in the courtroom. A tripartite committee has been struck, consisting of representatives from the Provincial Court, the Court of Queen’s Bench and the Court of Appeal of Manitoba. No new policy is currently in effect. The Chief Judge and Chief Justices of Manitoba will, after full consultation with their entire, respective Benches, eventually make decisions in this regard, which will govern the process.

DECISION

[34] The first issue to be decided is whether I have the jurisdiction to allow the inquest to be broadcast from the courtroom.

[35] As a general, guiding principle, the Supreme Court of Canada in the case of *R. v. 974649 Ontario Inc.*, [2001] 3 S.C.R. 575, confirmed that any implied powers of a statutory body are to be found only where they are reasonably necessary, as a matter of practical necessity, for the court or tribunal to accomplish its purposes.

[36] More specific to this application, the Manitoba Court of Appeal examined the issue of the jurisdiction of a provincial court judge sitting at an inquest in the decision of *Hudson Bay Mining and Smelting Co. v. Cummings*, [2005] 3 W.W.R. 572. (the “*HBMS* #1 decision”). This examination occurred because the Court was asked to clarify the use and extent of the implied powers of a provincial court judge to address procedural problems at an inquest. In the *HBMS* #1 decision, the Court of Appeal confirmed that that the Provincial Court is a statutory body. In other words, the Provincial Court derives its jurisdiction from statute.

[37] The Court of Appeal confirmed that the principal source of the jurisdiction of an inquest judge is found in s. 7 of *The Provincial Court Act*:

> 7 Every judge has jurisdiction throughout Manitoba and
>
> (a) shall exercise all the powers and perform all the duties conferred or imposed upon a judge by or under any Act of the Legislature or of the Parliament of Canada;

> (b) has all the power and authority now vested by or under any Act of the Legislature in a justice of the peace or a juvenile, youth or family court or a judge thereof;
>
> (c) may exercise all the powers and perform all the duties conferred or imposed on one or more justices of the peace under any Act of the Parliament of Canada…

[38] The Court of Appeal recognized that not all facilitative powers of an inquest judge are expressed. They may be implied, if they are necessarily incidental to the carrying out of court functions. Mr. Justice Freedman elucidated the implied powers of provincial court judges as follows:

> …powers intrinsic to all judges when they carry out their functions, and specifically, all powers which are necessarily incidental to the carrying out of their functions. These are powers ancillary to the jurisdiction set out in a statute: they are powers found by necessary implication in the legislation (Emphasis added)

[39] Thus, as the case law repeats, a provincial court judge has, by implication, powers that are reasonably necessary to accomplish the mandate of a judge presiding at an inquest. In this context, a provincial court judge has the power to control the process of the inquest.

[40] But what does this mean in practice? The Attorney-General argues that since it is not necessary for this Court to have the power to order televised coverage, the power to do so does not exist. I disagree. As a sitting judge in a court, I certainly have the power to allow cameras and electronic media into the court, if it is necessary or appropriate to carry out my mandate in court.

[41] Even though I have jurisdiction to allow cameras and electronic media in a courtroom, the power to so order must be required as a matter of practical necessity for this Court to carry out its purpose at this inquest. Is broadcasting the proceedings necessary for me to accomplish my mandate? Is the broadcasting of the proceedings a matter of practical necessity for the Court to accomplish its purpose?

[42] In this context, the power to control the process in a court at an inquest means the employment of procedures or methods that are necessarily incidental to the smooth running of the inquest, the tools reasonably necessary for the inquest to proceed in an efficient, fair and impartial manner. Does the inquest need a camera or webcast to truly make it open to the public?

[43] While I will explain later the full implications of the concept of having justice “seen to be done” in the context of this inquest, it is helpful to explain the concept of the inquest being “open to the public”.

[44] Section 31 of the FIA sets out that an inquest is open to the public. The words “open to the public” connote the right of members of the public, including members of the media, to be physically present and observe the proceedings. Any member of the public is entitled to attend the inquest. The court remains open to all, subject only to the power of the presiding judge to order parts of the evidence to be heard “in-camera” if necessary. Such instances are rare.

[45] The open court principle is inextricably linked to the freedom of expression protected by s. 2(b) of the *Charter*. The freedom of the press to report on judicial proceedings, including inquests, is a core value.

[46] The Applicants are asserting an obligation on the Court to assist them in disseminating information. In effect, the Applicants are making a claim that they have a positive right to be able to broadcast the inquest and, furthermore, that the Court ought to support or enable that mode of expression.

[47] The Applicants bear the onus of establishing that the order permitting the recording and broadcasting of the inquest is necessary to enable free expression of the subject matter of the inquest to occur. The assertion that the onus is on the Respondents to justify a publication restriction ignores the fact that the inquest is, in fact, already open to the public. The media are not banned, nor are publications of the proceedings prohibited or restricted, save and except for actual “in-camera” portions of evidence during the course of a proceeding. If such an in-camera event were to occur, the media have the right to oppose it.

[48] Freedom of expression guaranteed by s. 2(b) of the *Charter* does not guarantee any particular means of expression. In other words, although there should be no interference with freedom of expression, there is certainly no obligation on the court to assist in a particular type of expression. In the decision of *Haig v. Canada*, [1993] 2 S.C.R. 995, Madam Justice L’Heureux-Dube illustrated the proposition succinctly, by stating that freedom of expression “prohibits gags, but does not compel the distribution of megaphones”.

[49] The *Charter* right of freedom of expression, which includes freedom of the press, is not limitless. *Charter* rights are not absolute. They must be applied in context. Thus, the right to freedom of expression cannot be applied without reference to the context. We are not embarking on an inquiry.

[50] The *Charter* right of freedom of the press does not give the media any rights beyond those enjoyed by the Canadian public. Prohibiting cameras and electronic media access does not constitute a substantial interference with the freedom of the press or their freedom of expression. It is simply an interference with the means of expression. Prohibiting cameras in the courtroom does not mean preventing access

by the media to the inquest. Representatives of the media are all welcome as part of the open court principle.

[51] The media can avail itself of daily access to the inquest. The limit of being able to attend is not unreasonable or restrictive; it just may not be the most convenient for the media. Interpretation of the words “open to the public” does not suggest that the legislation intended to confer a power over the presiding judge to authorize the recording of proceedings. Excluding this type of media from the courtroom does not prevent the gathering of information as the court remains open. The only limit is the technical process.

INQUEST OR INQUIRY?

[52] In support of their Application, the CBC filed the affidavit of Cecil Rosner, the managing editor of CBC Manitoba. Mr. Rosner maintains that the objectives of an inquiry and an inquest are “closely related”. CTV et al also argues that inquests are analogous to commissions or inquiries, where camera access has been long-standing. The lawyers for the family argue that this inquest is a special inquest which will closely resemble a public inquiry, and attract a high degree of attention and scrutiny, analogous to the Ipperwash Inquiry. Indeed, in his oral submission Mr. Trachtenberg pointed to my mandate as “not limited to” issues of delay at emergency departments.

[53] An inquest is not an inquiry. Inquiries are initiated by the delegation of an executive power to a commission. The Commissioner may or may not be a judge. The commission of an inquiry is not a court. It is not a branch of the judiciary. It fulfills executive or administrative functions. An inquiry is established by an Order in Council of the government setting out the terms of reference and is not a sitting of a court.

[54] Inquests are judicial proceedings. Inquests are, in fact, sittings of the Provincial Court. Powers of the judge at an inquest are derived from legislation, *The Provincial Court Act* and the *FIA*. On the other hand, a commission of inquiry has powers derived from legislation, but also has powers derived from executive powers, either directly or implicitly.

[55] Although inquests have expanded in scope and complexity in recent years, inquiries are by their nature broader in scope and subject matter than inquests. The mandate of any inquest is limited to the directive of the Chief Medical Examiner and the duties of a provincial court judge at an inquest are governed by the provisions of the FIA. Section 33 of the FIA specifies those duties:

> After completion of an inquest, the presiding provincial judge shall

> (a) make and send a written report of the inquest to the minister setting forth when, where and by what means the deceased person died, the cause of the death, the name of the deceased person, if known, and the material circumstances of the death;
>
> (b) upon the request of the minister, send to the minister the notes or transcript of the evidence taken at the inquest; and
>
> (c) send a copy of the report to the medical examiner who examined the body of the deceased person;
>
> and may recommend changes in the programs, policies or practices of the government and the relevant public agencies or institutions or in the laws of the province where the presiding provincial judge is of the opinion that such changes would serve to reduce the likelihood of deaths in circumstances similar to those that resulted in the death that is the subject of the inquest.

[56] I have no intention of turning this inquest into a *de facto* inquiry.

PRIVACY

[57] The Applicants argue that privacy concerns as they pertain to witnesses at an inquest are not something the Court ought to consider as relevant to the issue. CTV et al contends that the current court committee on media is focused on adversarial settings such as trials, whereas inquests are by their nature non-adversarial. There are no findings of civil or criminal responsibility arising from an inquest. There is no guideline that impedes my making such an order. On the contrary, in the case of *Hudson Bay Mining and Smelting Co. v. Cummings*, [2006] M.J. No. 304 (C.A.), (the *HBMS* decision #2), Madam Justice Steel clarified that an inquest judge may receive evidence on a wide scope of matters, which could affect professional or personal reputations and could affect issues relating to civil or criminal liability. The arguments of the Applicants ignore completely the valid concern, echoed by courts in Canada, that broadcast of the proceedings in the courtroom may well interfere with the administration of justice and impact negatively on the privacy rights of the participants.

[58] Privacy has many facets, in a variety of contexts. It has been accurately described as a protean concept. In the context of an inquest, the privacy rights of the participants at the inquest are important. Inquests by their nature deal with sensitive issues surrounding circumstances of a death. To allow the filming of witnesses would be unprecedented. It is true that the full ramifications of allowing cameras and electronic media at this inquest are at this point immeasurable, but somewhat predictable. It would be precedent setting. It may indeed have ramifications on people's willingness to cooperate with the process. Moreover, the complexion of the entire process would be altered by the presence of cameras or webcasts.

[59] I need only point to the affidavit sworn in support of the opposition that the MNU has to this application. The nurses who will be called as witnesses have concerns, which include privacy concerns, safety concerns, stress and morale concerns and concerns for future privacy. Portions of the affidavit may be hearsay, but significant portions of the affidavit refer to first-hand observation, information and belief.

[60] The Applicants decry such assertions. However, such concerns are part of the ramifications of the presence of cameras in the courtroom. They are real, pragmatic and immediate concerns in terms of the administration of justice. Serious and valid privacy and security concerns are at stake when the image or the words of a witness are broadcast to the world. Uncontrolled access is not what is meant by justice being seen to be done. Images and words, once captured and stored, can be rebroadcast in a variety of uncontrolled contexts, for a myriad of motives. Witnesses and other participants risk losing their privacy, long after these proceedings are over.

[61] Even though this Court would in some circumstances have the jurisdiction to order the broadcasting of court proceedings, I am not prepared to order that this inquest be broadcast. The broadcast of an inquest is not something that is reasonably necessary to accomplish my mandate as a judge sitting at an inquest.

[62] Even if the denial of broadcasting constitutes a violation of the right to freedom of the press, the denial is a reasonable limit, because of the need to ensure fairness, dignity, decorum and privacy. The media is free to attend the inquest. The media is not restricted in its access to the inquest. The only restriction is the technology it can use. So the restriction is not on access but on technology. The right to freedom of expression is minimally impaired by the exclusion of cameras and recording devices.

ACCESS

[63] As far as the “public interest” is concerned, the Court realizes that ideally, everyone ought to be able to see what happens at this inquest. I am both cognizant and sensitive to the interest that the public in general and the family in particular will have in the evidence heard at this inquest. Yet, this fact is undeniably true in many cases that appear in our courtrooms. It is also unavoidable that not everyone who wishes to watch these proceedings will be able to. This fact is also true in many instances of court proceedings. I have a great deal of sympathy for those who are unable to have access to this proceeding directly.

[64] My ruling will not limit public access to the inquest. It is only electronic public access that will not be permitted. Cameras will not be allowed in the

courtroom nor will electronic media. The court will still be open to the public and the media will be allowed in to report on the case.

[65] The inquest is open to the public. Neither the freedom of the press to attend and report, nor the right of the public to attend the inquest is being interfered with in any way. An open court at this inquest means that justice will be seen to be done.

[66] Any decision to allow media access beyond traditional limits ought to, most properly, be made by the collective of the three levels of our courts and only after a thorough examinations of the issues, benefits and harm. Such a review is underway. As I have said, an inquest is a sitting of this Court, held in a courtroom and as such is subject to the multitude of considerations facing the committee.

[67] For all these reasons, the Applications are dismissed.

CULPABILITY

[68] I want to make one final observation about a portion of the written Reply Brief from the family's lawyer, which contains assertions of a "culture of secrecy" with respect to some of the witnesses.

[69] Section 33(2) of the FIA specifically precludes a provincial court judge from expressing an opinion or making a determination which blames any specific party:

> http://web2.gov.mb.ca/laws/statutes/ccsm/f052f.php - 33(2)33(2) In a report made under subsection (1), a provincial judge
>
> (b) shall not express an opinion on, or make a determination with respect to, culpability in such manner that a person is or could be reasonably identified as a culpable party in respect of the death that is the subject of the inquest.

[70] Such aspersions are not appropriate in a fact-finding, impartial, non-blame-assessing forum.

Original signed by Judge T. J. Preston

P.J.

CITATION: *In Re: Brian Lloyd Sinclair Inquest*, 2010 MBPC 18

Date: 20100319

IN THE PROVINCIAL COURT OF MANITOBA

IN THE MATTER OF: ***The Fatality Inquiries Act***

AND IN THE MATTER OF: **Brian Lloyd Sinclair, deceased**

Decision of Judge Timothy J. Preston
Re: Motion by Canadian Broadcasting Corporation and CTV Television Inc., Canwest Media Works Inc. and Aboriginal Peoples Television Network for Electronic Media Access in the Courtroom during the Inquest into the Death of Brian Lloyd Sinclair
Delivered this 19th day of March, 2010

ERRATUM

Please note the following corrections and changes which have been made to the above-noted decision:

1. On the cover page, under "Parties present at hearing":

   (a) Added are:
   Mr. D. Frayer, Q.C., Inquest Counsel
   Mr. N. Carnegie, for the Attorney-General of Manitoba;

   (b) "Messrs. M. Trachtenberg and V. Zbogar" is corrected to read "Mr. M. Trachtenberg";

   (c) "Mr. G. Smorang" is corrected to read "Mr. G. Smorang, Q.C.".

2. On the cover page, under "Parties not present":

   (a) Mr. M. Pollock is corrected as counsel for the Assembly of Manitoba Chiefs;

(b) “Ms L. Spillet, for Ka Ni Kanichihk” is added.

3. In paragraph 57, “Madam Justice Steele” is corrected to read “Madam Justice Steel”.