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Coroner's Inquests: Risk Management Strategies for Municipalities

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What is an Inquest?

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A court proceeding to answer 5 questions:

1. Who was the deceased?
2. How did the person die?
3. When did the person die?
4. Where did the person die?
5. By what means did the person die?

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- Inquests can be mandatory or discretionary.
- They can be called within months or even years after a death.
- With an inquest comes significant potential risk to a municipality. It should be managed carefully and strategically from the outset.

Areas of Risk

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1. Reputational Risk
2. Litigation Risk
3. Personnel Risk

Reputational Risk

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- The public nature of an inquest may result in harm to the reputation of the municipality and/or its employees
- Inquests attract media attention, and the coverage often distorts the evidence that has come out in the hearing

Media Coverage

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Christie Blatchford: Inquest questions firefighters' 'textbook' response to fatal blaze

How jarring it must be to be a parent of one of those three dead teens and hear again and again that everything about the emergency response went beautifully



Reality

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- On scene within 3.5 minutes of 911 call
- Firefighters entered the house within 4.5 minutes of arrival
- Victims were located and removed within 6.5 minutes of entry
- Victims became non-responsive within 1.5 minutes of calling 911

Media Coverage

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Inquest into Michael MacIsaac's shooting death focuses on conflicting accounts

Witness testifies that police moved MacIsaac after he had been shot

By Lucas Powers, CBC News Posted: Jul 18, 2017 7:42 PM ET | Last Updated: Jul 19, 2017 4:09 PM ET



Reality

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- 6 eyewitnesses testified that the deceased was wielding a table leg like a baseball bat when he was shot
- They all testified the deceased was moving towards the officer when he was shot
- There was an iPhone video showing the deceased had the weapon in hand

Strategies

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- Meet with municipal employees to explain how their involvement may be publicized and in some cases distorted by the media
- Meet with witnesses to make sure they are well prepared for their testimony – treat it like a trial

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- Select and properly prepare a spokesperson to respond to media requests for interviews, as appropriate
- Consider retaining a public relations specialist early on, to help craft formal statements/media releases to clarify evidence
- Consider the use of “sound bites” in court that appeal to the media

Litigation Risk

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- Not adversarial like a trial

- The jury cannot not make any finding of legal responsibility
  - Section 31(2) of the *Coroners Act*

Litigation Risk

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- Testimony given at an inquest cannot be admitted in a civil proceeding
  - Section 42(1) of the *Coroners Act*

- Parties sign an undertaking not to use documents from the coroner's brief in any other proceeding

Litigation Risk

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- Rules of evidence are very relaxed
- Low threshold for admissibility
  - Would it assist the jury?
- Unlike a civil trial, even the jury members can ask questions

Litigation Risk

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- Counsel can ask questions that would not be allowed in a civil court
- The family gets access to documentation it would not be entitled to otherwise
- The family will also have the benefit of free expert opinions from the coroner's and other parties' experts

Litigation Risk

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- By the end of the inquest, liability exposure will be clear
- The municipality will know whether the underlying civil action is defensible or whether it should be settled
- The municipality's counsel will have had an opportunity to develop defence strategy

Strategies

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- Build strategic relationships, especially with the Coroner's Counsel
- Coroner's Counsel drives the scope of the inquest and list of witnesses
- The Coroner's Counsel also provides legal advice to the coroner, including on questions of admissibility

Strategies

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- Crucial to have the same counsel representing the municipality at the inquest and in the civil suit

- Counsel should approach the inquest with the outcome in mind – the jury's recommendations

Litigation Risk

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- Recommendations are not binding on anyone, but there is public pressure on a municipality to implement them

- Not always realistic given the resources required to implement them

Strategies

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- Counsel for the municipality can help shape the recommendations beginning at the pre-inquest meeting
- Proposed recommendations will shape the questioning of witnesses
- The goal is to avoid recommendations that suggest fault or failure on the part of the municipality

Personnel Risk

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- The events giving rise to the inquest were likely traumatic for the involved municipal employees

- Testifying at an inquest, and reliving the experience, can trigger PTSD symptoms

Mandatory Inquests

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- Worker killed on a construction site
- Persons in police custody
- Inmates in a correctional facility
- Children in the custody of the Children's Aid Society

Discretionary Inquests

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- Fire fatalities – firefighter response and *Fire Code* issues
- Collapsed structures – *Building Code* issues
- Motor vehicle accidents – road design
- EMS response issues

Strategies

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- Working with coroner's counsel to avoid calling witnesses whose mental health would be severely impacted by testifying
- Role-playing with witnesses to ensure they are prepared for cross-examination
- Ensuring appropriate supports are in place if the witness requires treatment or a leave of absence after the inquest

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