

A Guide to Responding to Coroner's Inquests and Investigations in Ontario

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What is a coroner's inquest?

A coroner's inquest is a public hearing conducted by a coroner to determine the circumstances of a death. Coroner's inquests are held before a five-person jury and open to the public, except in rare circumstances. Since the COVID-19 pandemic, many coroner's inquests have been livestreamed.

The Supreme Court of Canada has said the primary functions of a coroner's inquest include:

- Providing clarity and closure regarding the circumstances of a death to limit conjecture or speculation about how a death occurred.
- Educating the public regarding factors and circumstances that can put a human life at risk.
- Reassuring the public that the government is acting to ensure that its guarantees relating to human life are duly respected.

As part of the inquest, juries may also make recommendations on how to prevent future deaths of a similar nature.

When are coroner's inquests held?

Coroner's inquests follow a death investigation by the coroner. Unlike an inquest, the death investigation does not proceed in public.

After completing an investigation, the coroner will call convene a public inquest where she is satisfied that: 1) the investigation into the death yielded enough information to support a successful inquest; 2) it is desirable for the public to have an open and full hearing of the circumstances of the death; and 3) a jury

could make useful recommendations to prevent further deaths in similar circumstances.

By law, a coroner's inquest must be held when:

- A death occurs during work at a construction site, mine, pit or quarry;
- A death occurs while a person is in custody or being detained (unless the death occurred from natural causes, in which case the coroner has discretion to choose whether to call an inquest)
- A death is caused by the use of force of a police officer, special constable, auxiliary member of a police force or First Nations Constable;
- A death occurs while an individual is being physically restrained and detained in a psychiatric facility, hospital or secure treatment program; or
- A death of a child occurs as a result of a criminal act of a person who has custody of the child, if certain circumstances are met.

Relatives of a deceased individual also have the right to request that a coroner's inquest be held in cases where a coroner has initially decided that an inquest is not necessary.

What is the outcome of a coroner's inquest?

An inquest is not an adversarial process, but rather an investigation of the circumstances surrounding a death. The coroner and jury do not make findings of legal liability.

All coroner's inquests in Ontario must answer the following questions:

- Who was the deceased?
- Where did the death occur?
- When did the death occur?
- How did the death occur (i.e. what was the medical cause of the death)?
- What were the circumstances of the death?

The inquest jury may also make recommendations that aim to prevent deaths in similar circumstances in the future or regarding other matters arising out of the inquest. While it is not mandatory for a jury to make recommendations, in practice, recommendations are regularly made and those recommendations may affect businesses or organizations involved in the inquest.

The jury's recommendations are not legally binding, however, their purpose is to prevent further deaths and are often implemented voluntarily.

Who can participate in a coroner's inquest?

Any individual or organization can apply for standing to participate in a coroner's inquest. The coroner will grant standing to the applicants with a substantial and direct interest in the inquest. This can include business and organizations that were affected by the death. Participants granted standing are allowed to:

- Have legal representation.
- Call and examine witnesses and present arguments and submissions.
- Conduct cross-examinations of witnesses at the inquest that have provided evidence relevant to the interests of the individual with standing.

Crown attorneys represent the coroner during the inquest.

Can a coroner compel testimony and documents?

Yes. A coroner can require any person by summons to provide relevant testimony or documentary evidence at the inquest. As such, even if a person or entity elects not to participate in an inquest, they may be compelled to give evidence and testify at the public hearings.

How can a coroner's inquest impact a business or organization?

First, coroner's inquests are often held for high-profile deaths and tragedies. Public hearings are regularly covered by the media. An organization's potential role in a death, or the evidence given by its employees or representatives, may be the subject of public scrutiny. The organization may wish to participate in the inquest to ensure its submissions and perspectives are heard, and that the evidence presented fairly represents what happened.

Second, while juries do not make findings of civil and criminal liability, the evidence elicited at an inquest, and the jury's determinations on cause and means of death, can have both direct and indirect effects on any concurrent or future civil or criminal proceedings.

Third, the jury may make recommendations that apply to a business or organization affected by a death, or a similarly-situated organization.

Fourth, the coroner can compel a business or organization to produce documents, as well as compel employees or other representatives to testify at the public hearings. The coroner may seek disclosure of documents and testimony that would normally be kept confidential, and issues of personal information and privilege can arise.

How are interested parties notified about coroner's inquests?

All inquests in Ontario are announced on the Government of Ontario website. A list of currently scheduled coroner's inquests can be found here: <https://www.ontario.ca/page/schedule-coroners-inquests>. As can be seen, the time between notice and the hearing is often only a matter of weeks.

If a business or organization is affected by a death, they should keep in mind that a coroner's inquest is possible. An early indication of a potential inquest is if the coroner contacts the organization or an employee as part of the preliminary death investigation.

A party interested in participating in a potential coroner's inquest can contact the appropriate coroner's office and request that they be notified of any decision to call an inquest.

What should a company do if it learns about a coroner's inquest that may affect it or its employees?

Whenever a death touches an organization, it is tragic and overwhelming. By definition, coroner's investigations and inquests arise during upsetting and stressful times. It is important that businesses and organizations seek experienced legal advice about how to engage with the coroner's office and its counsel.

DMG Advocates LLP has significant experience acting as counsel for public inquiries, investigations and inquests. If you believe your business or organization may be involved in a coroner's inquest, please John Mather or Max Libman at: jmather@dmgadvocates.com or mllibman@dmgadvocates.com.