

2024 CarswellOnt 7508

Ontario Coroner

Thomson, Re

2024 CarswellOnt 7508

## **Inquest into the Death of David Bartholomew Thomson**

Selwyn A. Pieters Presiding Officer

Judgment: February 2, 2024

Docket: None given.

Counsel: Maria Stevens, Shruti Ramesh — Inquest Counsel

Corbin Cawkell, for Lee Doolittle, Family of Mr. Thomson

Gary Clewley, for Insp. Mark Stiller, Sgt. David Spencer, Det. Andrew Coughlan, Cst. Alan Ing

Marco Visentini, for Hamilton Police Service Chief and Board

Subject: Civil Practice and Procedure

### **Related Abridgment Classifications**

Judges and courts

#### **VII Coroners**

##### **VII.2 Coroner's inquest**

##### **VII.2.b Practice and procedure**

##### **VII.2.b.ix Verdict or inquisition**

##### **VII.2.b.ix.D Miscellaneous**

### **Headnote**

Judges and courts --- Coroners — Coroner's inquest — Practice and procedure — Verdict or inquisition — Miscellaneous

### **Table of Authorities**

#### **Statutes considered:**

*Coroners Act*, R.S.O. 1990, c. C.37

s. 31(1)

#### ***Selwyn A. Pieters Presiding Officer:***

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### **Ruling on Request for Amendment to the Scope**

#### **Scope Amendment Decision:**

1 On January 15, 2024, I issued a ruling addressing standing at and the scope of the inquest into the death of David Thomson. I will not revisit the analysis undertaken by me in that ruling except as it may be as necessary to understand these reasons related to the inquest scope and its amendment.

2 In the Inquest into the Death of Sammy Yatim, Dr. David Cameron wrote in his March 29, 2023, decision on a motion to amend the scope:

[22] An inquest's scope includes an inquiry into the circumstances of a death to provide the jury with an evidentiary foundation upon which they can base their answers to the five questions set out in [section 31\(1\) of the \*Coroners Act\*](#).

[23] An inquest's scope may also include issues to be explored for the purpose of providing the jury with information and insight such that the jury may make recommendations aimed at the prevention of further deaths based on the evidence heard, should the jury decide to make such recommendations.

[24] All matters within scope must arise from the circumstances of the death and be material to the statutory purpose of an inquest as outlined in [section 31 of the Coroners Act](#).

3 As I noted in my earlier ruling, the inquest scope helps to ensure that we identify and maintain focus on important and relevant issues surrounding the death that has occurred. Further, the inquest scope helps the parties prepare properly for the inquest therefore enhancing its efficiency. The decision on the inquest scope rests with the presiding officer but is aided by input from the parties.

4 Recently, counsel for the involved officers contacted my counsel to request that the scope I had established for the inquest, in my January 15, 2024 ruling, be revised. This request was submitted outside of the deadlines I had previously communicated to all parties. However, I note that, following my ruling, some additional materials were added to the inquest brief and provided to the parties. This occurs from time to time in the lead up to an inquest as issues are explored and develop.

5 I understand that as a result of reviewing that added material, counsel for the involved officers deemed it necessary to request an amendment to the inquest scope. In response, my counsel have worked with the parties to the inquest to obtain their input with the objective of arriving at a consensus regarding potential changes to the inquest scope wording.

6 The underlying issue raised by counsel for the involved officers was the inclusion of the term "barricaded person" in the inquest scope. This term might be understood differently depending on whether one is within the law enforcement field or not.

7 Hamilton Police Service defines barricaded person as a suspect or person who is the focus of a legitimate police intervention, who has taken a position inside a structure or vehicle that does not allow for immediate police access and has refused police direction to exit.

8 The facts here appear to be that David Thomson, a suspect in a double murder in Hamilton which occurred on Saturday, November 2, 2019, was located at the Days Inn in Brantford late in the evening on Sunday, November 3, 2019. Emergency Response Unit (ERU) officers called out to Mr. Thomson from the hallways of the hotel and moments later a single shot was heard. A few minutes after hearing that sound, the ERU breached the door to the room and located Mr. Thomson who was deceased from a gunshot wound.

9 Based on the facts as we currently know them, Mr. Thomson is not believed to have verbally refused to exit, although he did not come out when so directed. The facts disclose that Mr. Thomson was sheltered within a hotel room, i.e., a structure to which police could not gain immediate access. He was believed to be armed and dangerous and his apprehension by police could reasonably be described as high risk. Ultimately, the specialized police ERU needed to break down the hotel room door to gain access.

10 Discussions between Inquest Counsel and the parties to the inquest have resulted in the following proposed new scope wording:

*2. Police training concerning interaction with and apprehension of a high risk and/or potentially armed person who is sheltered within a locked or not immediately accessible structure.*

*3. The ability of police to coordinate with a hotel within which a person is sheltered to allow for communication with that person, including whether phone contact can be made through the hotel.*

11 I find that it is in the best interests of the inquest process to revise the scope as proposed. The amended scope wording provides greater clarity for the public and the jury as to what this inquest will be examining. It more closely relates to the facts as we know them or reasonably expect them to emerge during the inquest.

12 Given that I will amend the scope in this manner, point 4 in the list of matters excluded from the inquest scope will need to be correspondingly changed as it also made reference to "barricaded" persons. For the purposes of consistency, this exclusion will be amended as follows:

*4. Any particular hotel's policies with respect to coordinating with police where there is a high risk or potentially armed person sheltered within that hotel.*

13 The final wording setting out the full inquest scope is attached as an Appendix to this ruling.

14 I thank all parties for bringing this issue to my attention through my counsel and working collaboratively to propose an appropriate resolution in a short period of time.

### Appendix

#### STATEMENT OF SCOPE

##### **Inquest into the Death of David Bartholomew Thomson**

This inquest will look into the circumstances of the death of David Bartholomew Thomson and examine the events of his death on or about November 03, 2019, to assist the jury in answering the five mandatory questions set out in [s. 31\(1\) of the Coroners Act](#) and to help the jury make recommendations to prevent further deaths, should the jury decide to make recommendations. The following are the five mandatory questions for the jury:

- (a) who the deceased was;
- (b) how the deceased came to his or her death;
- (c) when the deceased came to his or her death;
- (d) where the deceased came to his or her death; and
- (e) by what means the deceased came to his or her death

Specifically, beyond the facts required to accurately answer the five questions and understand the circumstances of the death, we will be addressing the following issues to the extent that these issues may have relevance to potential recommendations:

1. The circumstances surrounding the death of Mr. David Thomson;
2. Police training concerning interaction with and apprehension of a high risk and/or potentially armed person who is sheltered within a locked or not immediately accessible structure;
3. The ability of police to coordinate with a hotel within which someone is sheltered to allow for communication with that person, including whether phone contact can be made through the hotel.

Excluded from the scope will be any in-depth exploration of the following:

1. Emergency or first-aid response provided to Mr. Thomson after the self-inflicted gunshot;
2. The SIU investigation into the shooting;
3. A hotel's liability for allowing dangerous/armed persons to stay in the hotel, or possible protocols for preventing such persons from staying in the hotel;

4. Any particular hotel's policies with respect to coordinating with police when there is a high risk or potentially armed person within that hotel;

5. Whether any mental health issues or substance / opioid abuse played any role in this case. However, Mr. Thomson's state of mind at the time of the incident with police may be explored.

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