

NOTIFICATION THAT INQUIRY WILL NOT BE RESUMED**Sections 70(1)(a) and 70(2), Coroners Act 2006**

IN THE MATTER of **Scott Grahame Guy**

The Secretary, Ministry of Justice, Wellington

I notify you pursuant to section 70(2) of the Coroners Act 2006 that an inquiry will not be **resumed** in respect of:

Full Name of deceased: **Scott Grahame Guy**

Late of: **293 Aorangi Road
RD 5
Feilding**

Occupation: **Farmer**

Sex: **Male**

Date of Birth: **21 December 1978**

Place of Death: **293 Aorangi Road
RD 5
Feilding**

Date of Death: **8 July 2010**

Cause(s) of Death

(a). Direct cause: **Shotgun wound to neck**

(b). Antecedent cause (if known):

(c). Underlying condition (if known):

(d). Other significant conditions contributing to death, but not related to disease or condition causing it (if known):

Circumstances of death:

Sometime between 4.45 – 5.00am on 8 July 2010 Scott Guy drove in the pitch black darkness down the drive of his rural property, heading to milking. The only light was from his headlights, which were on high beam. As he approached the end of the drive he noticed that the gates were closed. This was unexpected, as neither he nor his wife had closed them the night before. Stopping his ute he jumped out and opened the gates, and was then shot by an assailant who waited in the darkness beyond the lights of his vehicle.

Mr Guy died where he fell from gunshot wounds, and his body was found shortly after 7.00am. Mr Guy's death was reported to the coroner, and a formal inquiry was opened.

Preliminary investigations confirmed Mr Guy's death was a homicide, and police investigations were directed at identifying the person responsible for his killing. The coroner's inquiry was accordingly

adjourned pending either advice that no one was going to be charged with a criminal offence relating to the death, or the criminal proceedings being finally concluded.

In April 2011 Mr Guy's brother-in-law Ewen Macdonald was charged with his murder. In July 2012 a High Court jury found Mr Macdonald not guilty of Mr Guy's murder.

I am satisfied having regard to the purposes of a coroner's inquiry as set out in s 57 of the Coroners Act 2006 that the circumstances of Mr Guy's death have been adequately established in the course of the Police investigation and High Court trial. I accordingly do not propose resuming the coronial inquiry into Mr Guy's death.

The reasons for this decision are set out in my ruling dated 24 October 2013 declining a request that the coronial inquiry be resumed.

Signed at Palmerston North on 24 October 2013

Coroner Carla na Nagara

IN THE MATTER of the Coroners Act 2006
AND

IN THE MATTER of an inquiry into the death of
SCOTT GRAHAME GUY

RULING OF CORONER: REQUEST TO RESUME CORONIAL INQUIRY

Introduction

1. Sometime between 4.45 – 5.00am on 8 July 2010 Scott Guy drove in the pitch black darkness down the drive of his rural property, heading to milking. The only light was from his headlights, which were on high beam. As he approached the end of the drive he noticed that the gates were closed. This was unexpected, as neither he nor his wife had closed them the night before. Stopping his ute he jumped out and opened the gates, and was then shot by an assailant who waited in the darkness beyond the lights of his vehicle.
2. Mr Guy died where he fell from gunshot wounds, and his body was found shortly after 7.00am. Mr Guy's death was reported to the coroner, and a formal inquiry was opened.¹
3. Preliminary investigations confirmed Mr Guy's death was a homicide, and police investigations were directed at identifying the person responsible for his killing. The coroner's inquiry was accordingly adjourned pending either advice that no one was going to be charged with a criminal offence relating to the death, or the criminal proceedings being finally concluded.²
4. In April 2011 Mr Guy's brother-in-law Ewen Macdonald was charged with his murder.
5. In July 2012 a High Court jury found Mr Macdonald not guilty of Mr Guy's murder.
6. The issue to be determined now is whether the coronial inquiry into Mr Guy's death should be resumed.³

¹ Ss 15 and 63, Coroners Act 2006

² S 68, Coroners Act 2006

³ S 70, Coroners Act 2006

The Legal Framework

7. The purpose of the Coroners Act 2006 (the Act) is to help prevent deaths and to promote justice through:
 - a) Investigations, and the identification of the cause and circumstances of sudden or unexplained deaths, or deaths in special circumstances; and
 - b) The making of specified recommendations or comments ... that, if drawn to public attention, may reduce the chances of the occurrence of other deaths in circumstances similar to those in which those deaths occurred.⁴
8. There are several categories of death that must be reported to a coroner. These include deaths without known cause, suicides, unnatural or violent deaths, deaths for which no doctor's certificate is given, deaths during medical, surgical or dental procedures, and deaths in official custody or care.
9. When a coroner takes jurisdiction of a reported death a decision is then made as to whether a formal inquiry into the death needs to be opened⁵ (although inquiries must be opened into deaths that appear to have been self-inflicted, and to deaths in official custody and care.)⁶
10. The Act specifically provides that the purpose of a coroner's inquiry is not to determine criminal, civil or disciplinary liability. Rather, a coroner opens and conducts an inquiry for three purposes stated in the Act:
 - i. To establish, so far as possible, that a person has died, the person's identity, when and where the person died, the causes of death, and the circumstances of death;
 - ii. To make specified recommendations or comments that, in the coroner's opinion, may, if drawn to public attention, reduce the chances of the occurrence of other deaths in circumstances similar to those in which the death occurred;
 - iii. To determine whether the public interest would be served by the death being investigated by other investigating authorities in the performance or exercise of their functions, power or duties, and to refer the death to them if satisfied that the public interest would be served by their investigating it in the performance or exercise of their functions, powers or duties.⁷
11. If someone is likely to be charged with criminal offences relating to a death or its circumstances a coroner's inquiry may be adjourned pending conclusion of that investigation and any criminal proceedings that follow. This is so as not to prejudice the person charged or likely to be charged.⁸ Once the criminal proceedings are finally

⁴ S 3, Coroners Act 2006

⁵ S 62 Coroners Act 2006

⁶ S 60 Coroners Act 2006

⁷ S 57 Coroners Act 2006

⁸ S 68 Coroners Act 2006

concluded, a coroner may decide not to resume the inquiry if satisfied the matters the coroner is to establish have been “adequately established” in the course of the criminal proceedings or investigation.⁹

12. Resuming an inquiry after an acquittal at a homicide trial, while not unheard of, is not a matter to be undertaken lightly.
13. It has been held by the Supreme Court of Victoria – with respect to a different, but comparable, coronial jurisdiction – that there should be the greatest consideration before a coroner embarks on an inquest subsequent to acquittal if there is no cogent evidence pointing to an alternative suspect or no clearly new cogent facts or evidence.¹⁰
14. That is not to say there is no instance in which resuming an inquiry and convening an inquest would be appropriate subsequent to a homicide trial. The High Court has held that there may be cases where the issues that surround a homicide may be worthy of investigation and analysis in order to identify non-criminal factors contributing to the death, which can then lead to recommendations, entirely consistently with the purpose of a coroner’s inquiry: *“It is not in the public interest that issues already adequately canvassed at the criminal trial be re-litigated at the resumed inquest except to the extent that the Coroner determines that the circumstances of the death were not adequately established at the trial or that they might be helpful when considering recommendations ...”*¹¹
15. With respect to the legal framework it is also important to record that the coronial jurisdiction differs in almost every respect to that of the criminal court. The coroner’s inquiry (and any inquest) is an inquisitorial, fact finding forum led by the coroner, where witnesses are involved to assist with the purposes of the inquiry. By contrast, a criminal trial involves an accused person who faces charges of criminal offending and the process is adversarial, where opposing sides present cases and run arguments with a view to convincing a judge or jury of the strength of their position, and/or the flaws in the opposing side’s position.
16. The two jurisdictions are bound by different rules of evidence, and different standards of proof. In the criminal jurisdiction the standard of proof is “beyond a reasonable doubt”, while in the coroner’s jurisdiction the standard is the balance of probabilities, but on a sliding scale such that the more serious the finding of fact, the more cogent and compelling the evidence must be.

⁹ S 70 Coroners Act 2006

¹⁰ *Domaszewicz v The State Coroner* (2004) 11 VR 237, per Ashley J at [81]

¹¹ *Abbott v Coroners Court of New Plymouth* Unreported, CIV 2004-443-660, 17 February, 20 April 2005, [26]

17. Resuming the coronial inquiry would have one of two outcomes, a hearing on the papers in Chambers (provided none of the witnesses wanted to give evidence in person), or an inquest.

The present case

18. It has been established in the course of the criminal investigation and High Court trial that sometime between approximately 4.45 – 5.00am on 8 July 2010 Scott Guy drove in the pitch black darkness down the drive of his rural property on Aorangi Road, Feilding, heading to milking. The only light was from his headlights, which were on high beam. As he approached the end of the drive he noticed that the gates were closed. This was unexpected, as neither he nor his wife had closed them the night before. Stopping his ute he jumped out and opened the gates, and was then shot in the neck by an assailant who waited in the darkness beyond the lights of his vehicle. Mr Guy died where he fell.
19. Mr Macdonald was charged with Mr Guy's murder, and found not guilty at the conclusion of a High Court trial.
20. Having reviewed the High Court trial transcript and the scope of the police investigation I consider the circumstances of Mr Guy's death were adequately established in the course of the criminal investigation and trial.
21. I conveyed this provisional view, and the fact that subject to their views I did not propose resuming my inquiry, to Mr Guy's parents, and to his widow Kylee Guy in correspondence earlier this year.
22. Mr Guy's parents accepted my view, and took no issue with the coronial inquiry not being resumed.
23. Kylee Guy, through her solicitor Mr Chris Morris, seeks a resumption of the coroner's inquiry.
24. In support of that request Mr Morris submits:
 - i. that the circumstances of Mr Guy's death have not been established as the identity of the killer is a question of fact directly relevant to the circumstances of the death that has not been determined in the criminal proceeding;
 - ii. that the acquittal of Mr Macdonald does not render it inappropriate for me to establish who inflicted the wound, as the question of who factually killed Mr Guy is quite a different question to that of whether Mr Macdonald bears any legal responsibility for his death;

- iii. that a valid further line of inquiry would be to summons Mr Macdonald to give evidence in person. As it stands, the only information about his whereabouts at the time of the shooting is contained in interviews given to police;
- iv. that it would be in the public interest that a definitive factual finding be made as to who killed Mr Guy, noting that the case has been subject to extensive public interest, allegations and rumours about Mr Guy's death, the persons responsible for it, and the circumstances that may have led to it;
- v. that Mrs Kylee Guy feels strongly that it is important for her and Mr Guy's two young sons that they be assured all available steps were taken to determine the circumstances surrounding their father's death; she feels at this stage this has not happened; and
- vi. that it is in the interest of other suspects that a factual determination of who shot Mr Guy is made, if this is possible.

The submissions in support of the request to resume the coronial inquiry

Have the circumstances of Mr Guy's death been adequately established?

- 25. While I accept the identity of the killer is a matter directly relevant to the circumstances of Mr Guy's death, it is but one matter that makes up the factual matrix. Mr Guy's identity, where and when he died, how he died and the broad circumstances of his death have been established, but for the identity of the killer.
- 26. I do not accept that because the identity of the killer has not been determined, the circumstances of the death have not been adequately established in this case, particularly given the purposes of a coronial inquiry, which broadly speaking are focused on death prevention. A finding as to the identity of the killer is not going to advance that purpose in this case.
- 27. It is the identity of the deceased that needs to be established. It is not a requirement that a coroner should necessarily establish the identity of other person(s) involved in a death. Furthermore, it is not a requirement that a coroner establish the identity of a person responsible in a situation of homicide and the Coroners Act 2006 expressly prohibits a coroner from determining civil, criminal, or disciplinary liability.¹²

Should a finding of fact, as opposed to of legal responsibility, be made as to the identity of the killer?

¹² S57(1) Coroners Act 2006

28. I accept on its face the proposition that a finding of fact differs from a finding of legal responsibility, but the principle cannot be pursued in a vacuum, and the consequences of its application need to be considered on a case by case basis.
29. I am mindful that findings of fact tantamount to establishing the identity of someone found responsible for inflicting fatal injuries on two babies were made following an inquest convened subsequent to an acquittal in a homicide trial.¹³ However, in my view that case can be distinguished from the present case on the basis that at the conclusion of that trial the possibility of other known suspects who were closely associated in time and proximity with the circumstances of the deaths had been left open. That is not the case here.
30. Moreover, the distinction between a finding of fact about identity and a finding as to legal responsibility is a very fine one, particularly in the public perception; on the facts of this case I would suggest it is more apparent than real.
31. It would be disingenuous not to acknowledge that Mr Macdonald remains the person against whom any finding of fact is sought in relation to responsibility for Mr Guy's wounds. There is no other witness being sought by counsel for Mrs Guy in terms of the submissions in support of the request to resume the coronial inquiry. There is no cogent evidence pointing to anyone else having been involved, so the finding of fact implicitly urged is that Mr Macdonald was the person who killed Mr Guy.
32. I am not persuaded that this is an appropriate reason to resume the inquiry because in my view to do so would risk the Coroner's Court becoming a back-stop jurisdiction for the reconsideration – by a different process, by different rules of evidence and to a lower standard of proof – of criminal matters, which in my view is a function fundamentally and uncomfortably at odds with its primary purpose. Moreover, in cases such as this, the distinction between a finding of fact and a finding of legal responsibility would risk being lost, to the peril of both the coronial and the criminal jurisdictions.

Should the inquiry be resumed so Mr Macdonald can be summonsed to give evidence in person?

33. While it is open to me to resume my inquiry, summons Mr Macdonald, and compel him to give evidence, I do not consider that is a defensible exercise of my power in the circumstances of this case.
34. Mr Macdonald exercised his right not to give evidence in person at his trial.
35. In my view it would undermine the integrity of the criminal trial process if I chose to compel Mr Macdonald to give evidence in person at a coroner's inquest convened solely

¹³ Inquest into the Deaths of Christopher Arepa Kahui and Cru Omeka Kahui.

to identify Mr Guy's killer. I note there are no other suspects who would be called. The purpose of summoning him would thus effectively be to have an opportunity to obtain evidence he was not compelled to give in a higher court, and I do not consider this appropriate, even on a fact finding mission. As was noted above, in the circumstances of this case this would risk the coroner's court being a backstop jurisdiction to determine matters perceived unresolved at criminal law, but which are only peripherally relevant to its primary purpose.

Is resuming the coronial inquiry in the public interest?

36. Section 70 allows a Coroner to exercise discretion if satisfied that the matters specified in section 57(2)(a) to (e) have been adequately established in respect of the death in the course of the criminal proceedings. In my view it is not mandatory that consideration is given to public interest, as submitted by counsel for Mrs Guy. However, I have given this consideration.
37. It is clear that the drama and particular dynamics of this case have led to it having a very high level of interest for the public. In my view however, while interesting to the public, the case does not have inherent public interest issues in the context of death prevention that justify the resumption of the coronial inquiry.
38. There is already a huge amount of information in the public domain about the circumstances of Mr Guy's death. Members of the public interested in the case will make of that what they will.
39. In my view it cannot reasonably be suggested that resuming the coroner's inquiry is going to add to the understanding about the circumstances of Mr Guy's death when the only outstanding issue is the identity of his killer, and there are no new suspects or lines of inquiry. The fact that the issue is interesting to the public does not make it a matter that is in the public interest such that resumption of the coronial inquiry is warranted.

Have all available steps been taken to determine the circumstances of Mr Guy's death?

40. As with the other arguments advanced in support of the request that the coronial inquiry be resumed, this needs to be considered with reference to the purposes of a coroner's inquiry.
41. Mr Guy clearly died by the hand of another, and there was a comprehensive police inquiry culminating in the arrest of Mr Macdonald and the subsequent High Court trial. Somewhat unusually, further investigations were made after the conclusion of the High Court trial, but no new evidence was found.
42. Having considered the High Court trial transcripts and the scope of the police investigation I am satisfied that all available steps have been taken to date to determine

the circumstances of Mr Guy's death. Should there be any change or development in the future there are provisions in the Coroners Act 2006 for there to be inquiries or further inquiries ordered by the Solicitor-General or High Court.

The interests of other suspects

43. It is submitted that it is in the interests of other named suspects that a factual determination of who shot Mr Guy is made, if possible. As with the submission made in relation to the topic of public interest, in my view this is not a necessary consideration for a coroner when deciding whether to resume a coronial inquiry. However, I have given this submission consideration.
44. It would set a dangerous precedent if coroners were to resume inquiries in homicide cases where there is an acquittal every time defence counsel raised the possibility of other suspects.
45. The issue must be decided on a case by case basis, and I note in the *Kahui* case it appears to have been in the interests of other people closely associated with the deceased babies that findings of fact were made as to who in whose care they were at the time they sustained fatal injuries.
46. With respect to the present case I am satisfied on the basis of the evidence and information available to me that there are no known suspects whose reputations need to be protected by a finding of fact as to the identity of the killer.

Ruling

47. I am satisfied having regard to the purposes of a coroner's inquiry that the circumstances of Mr Guy's death have been adequately established in the course of the Police investigation and High Court trial, notwithstanding that the identity of his killer has not been determined. I accordingly do not propose resuming the coronial inquiry into Mr Guy's death.
48. Mr Guy's identity, where and when he died, how he died and the broad circumstances of his death have been established.
49. I do not consider that resuming an inquiry and holding an inquest to traverse the issue of who allegedly fired the fatal shot that killed Mr Guy is an appropriate exercise of my power. In reaching this view I consider it relevant that there is no cogent evidence pointing to other suspects, the police investigation has been comprehensive, investigations made subsequent to the High Court trial revealed nothing, there is no new evidence and there are no lines of inquiry to pursue. The purpose of resuming the coronial inquiry would thus only be to pursue a finding of fact that Mr Macdonald – acquitted of Mr Guy's murder – was the killer.

50. In my view resuming the coronial inquiry for this reason would undermine the integrity of the criminal law process, for the Coroners' Court would essentially be a backstop jurisdiction where an acquitted accused would be examined in an inquisitorial forum with different rules of evidence and a lower standard of proof to those in the criminal court. This cannot be defended or justified in this case. Moreover, to do so would be putting the Coroners' Court to a use at uncomfortably at odds with its fundamental purposes.
51. I do not consider the second purpose of a coroner's inquiry - to see whether the circumstances of a death are such that recommendations can be made that may, if brought to public attention, reduce the chances of other deaths in similar circumstances – to be relevant in this case.
52. Either Mr Guy's death was related to issues firmly rooted in his private or personal life, or it was a random and opportunistic act. In either case there are no wider public interest or safety issues at play, and it cannot reasonably be suggested that in resuming my inquiry I could gather evidence with a view to making comments or recommendations that may, if drawn to public attention, reduce the chances of the occurrence of other deaths in circumstances similar to those in which this death occurred.
53. Similarly, and noting that the Police have conducted a comprehensive investigation, the third purpose of a coroner's inquiry - to determine whether the public interest would be served by the death being investigated by other investigating authorities in the performance or exercise of their functions, power or duties – is not relevant here.
54. For the reasons given I am not persuaded that this is a case where it is desirable or necessary to resume the coronial inquiry, and it is my decision that I will not do so.

Coroner Carla na Nagara

24 October 2013