

HARPER GREY LLP
3200 – 650 West Georgia Street
Vancouver, British Columbia, V6B
4P7
Canada

Tel: 604 687 0411
Fax: 604 669 9385

CASE SUMMARY: THE COURT HAS JURISDICTION TO ORDER AN INQUEST EVEN WHEN THE CHIEF CORONER DECIDES NOT TO DO SO

The Court of Appeal dismissed an appeal brought by the Chief Coroner of the Yukon. On an application for judicial review, a Chambers Judge had ordered an inquest into the death of Ms. Cynthia Blackjack in spite of the Chief Coroner's decision not to do so. The Court of Appeal dismissed the appeal, upholding the court's concurrent, equivalent and continuing jurisdiction pursuant to the *Coroners Act*.

Administrative law – Judicial review – Appeals – Jurisdiction – Compliance with legislation – Criminal matters – Coroner's inquest

Blackjack v. Yukon (Chief Coroner), [2018] Y.J. No. 91, 2018 YKCA 14, Yukon Territory Court of Appeal, October 24, 2018, E.A. Bennett, L.A.M. Charbonneau and G. Dickson JJ.A

Ms. Cynthia Blackjack died on-board a medevac aircraft while being transported to Whitehorse from a small Yukon community. In the four days leading up to her death, she repeatedly called or attended the Carmacks Health Centre complaining of toothache, abdominal pain and vomiting. The day before she died, she was tentatively diagnosed with alcohol-induced gastritis and advised to attend at Whitehorse General Hospital but medical staff were unable to arrange a ride for her. She was discharged from the Centre at 11:50 pm on November 6, 2013 and told to return the next day if she could not find a ride to Whitehorse. Ms. Blackjack attended at the Centre on November 7, 2013 by ambulance at 11:00 am. A decision was made to transport her to Whitehorse General Hospital by aeromedical evacuation. After some delays, she died during transport at 6:00 pm.

The Petitioner, the Chief Coroner of the Yukon, decided not to hold an inquest. The Chief Coroner made recommendations relating to medevac training and transfer of patients from community health centres to Whitehorse.

One of the Respondents, the Little Salmon Carmacks First Nation, brought allegations of racial discrimination in the provision of health care services to the Chief Coroner's attention and asked her to reconsider. The Chief Coroner declined to do so. Ms. Blackjack's mother (and the First Nation) applied to the court and sought an order requiring the Chief Coroner to hold an inquest pursuant to section 10 of the *Coroners Act*. The Chambers Judge ordered an inquest. The Chief Coroner appealed to the Court of Appeal.

On appeal, the Chief Coroner argued that the Chambers Judge did not have independent jurisdiction to order an inquest but, instead, was limited to judicially reviewing her decision. She further argued that the Chambers Judge erred in issuing a brief conclusory statement that she would have found the same result if judicial review was required.

The Respondents argued that the Chambers Judge was permitted to order an inquest pursuant to section 10 of the *Coroners Act*, given the nature and purpose of the legislative scheme. The Respondents argued that the Chief Coroner's jurisdiction was subject to judicial supervision in the concurrent jurisdiction in section 10.

The Court of Appeal set out 4 issues, which required a decision on this appeal.

First, what are the criteria for consideration under sections 8, 9, and 10 when deciding whether to hold an inquest? The Court of Appeal held that the legislative provisions allow for an inquest to be ordered in circumstances where there is family and community concern about systemic failings where a person received substandard care in around the time of death (regardless of what precisely caused the death from a medical perspective).

Second, what is the nature and extent of the jurisdiction of the Chief Coroner and a judge under section 10 of the Act when the Chief Coroner has taken over an inquiry pursuant to section 34 of the Act or declined to hold an inquest? The Court of Appeal held that the legislative intent and the context support the interpretation that a judge and the Chief Coroner have concurrent, equivalent and continuing jurisdiction to order an inquest.

Third, did the Chambers Judge err in finding that the Chief Coroner made her determination not to hold an inquest under section 8(1) of the Act? The Court of Appeal held that there was no error with this finding.

Fourth, did the Chambers Judge err in making his determination to hold an inquest pursuant to section 10 of the Act? The Court of Appeal held there was no error with this finding.

The Court of Appeal dismissed the appeal and awarded costs to the First Nation.

This case was digested by [Scott J. Marcinkow](#), and first published in the LexisNexis® Harper Grey Administrative Law Netletter and the Harper Grey Administrative Law Newsletter. If you would like to discuss this case further, please contact Scott Marcinkow at smarcinkow@harpergrey.com.