



SHERIFFDOM OF GLASGOW AND STRATHKELVIN AT GLASGOW

[2018] SC GLA 55

GLW-B1473-18

OPINION OF SHERIFF PRINCIPAL C D TURNBULL

in the

APPLICATION TO PARTICIPATE

by

MRS EVELYN MITCHELL

IN THE INQUIRY INTO THE DEATHS OF GARY LOUIS ARTHUR; ANTHONY LYNDEN COLLINS; JOSEPH ROBERT CUSKER; COLIN GIBSON; ROBERT JAMES JENKINS; JOHN McGARRIGLE; SAMUEL BELL McGHEE; KIRSTY MARY NELIS; MARK EDWARD O'PREY; and DAVID IAIN TRAILL

Applicant: M.Higgins; Lanarkshire Law Practice
Procurator Fiscal: S.C.Smith QC, Lamont; Crown Office & Procurator Fiscal Service
Interested Party (Dr Lucy Thomas): Adams, advocate; PBW Law

20 September 2018

[1] This application is made relative to the inquiry under the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 ("the Act") into the deaths of the ten people who died as a consequence of the incident on 29 November 2013 in which a Eurocopter (Deutschland) EC135 T2+ helicopter, registered as G-SPA0, then carrying out operations on behalf of Police Scotland, crashed into the Clutha Bar in Stockwell Street, Glasgow.

[2] The first order in the inquiry directed that any person who had not been given notice under section 17(1) of the Act but who wished to appear at the preliminary hearing assigned for 3 October 2018 was to make application in accordance with rule 3.5 of the Act of Sederunt (Fatal Accident Inquiry Rules 2017) (“the Rules”) by no later than 12 noon on 14 September 2018 and assigned today as a hearing for any such application.

[3] The Applicant, Mrs Evelyn Mitchell, moved the Court to allow her to participate in the inquiry. The Applicant is the half-sister of the deceased David Iain Traill. They have the same mother. Mr Traill was the pilot of the helicopter at the time of the crash. The Applicant was adopted in or around 1961, when she was approximately 18 months old. Mr Traill was born thereafter. The Applicant had no contact with either her mother or Mr Traill until in or around 1985, when she, and her three children, began living with her mother, Mr Traill, her mother's then husband (Mr Traill's father) and her step-brother (Mr Traill's brother).

Mr Traill was around 23 years of age at this time. This arrangement subsisted for approximately six to eight months before the Applicant secured accommodation for herself and her children. The Applicant then maintained regular contact with her mother and Mr Traill until in or around 1991. The Applicant maintains that she re-established contact with Mr Traill, via Facebook, in or around the end of 2011 or the beginning of 2012. She then recommenced contact with him initially by telephone and thereafter they communicated regularly with each other by telephone and Facebook messages until Mr Traill's death in November 2013. In the hearing of her application, the Applicant's solicitor confirmed that the Applicant had not seen Mr Traill since 1991, some 22 years prior to Mr Traill's death.

[4] The Applicant has raised proceedings against Babcock Mission Critical Services Onshore Limited (the operators of the helicopter) in which she seeks reparation from them

for the loss of society of her late brother. The action is sisted until 23 February 2019. Issues of liability and quantification are still to be resolved.

[5] The Applicant's position is that her participation in the inquiry would be just and reasonable in the circumstances and would further the purpose of the inquiry. She contends that it would allow her to actively participate in the inquiry process; to become aware of the circumstances of her said late brother's death; and would allow her to consider and, if appropriate, make proposals as to how similar circumstances can be avoided in the future. In that regard, the Applicant would be able to participate and contribute as a sister of the half-blood of Mr Traill and to give a family perspective upon matters. The Applicant recognised that Mr Traill was engaged to be married at the time of his death but argued that his fiancée, the Interested Party, Dr Lucy Thomas's knowledge of Mr Traill was "much more recent than hers (i.e. the Applicant's)". The Applicant submitted that she would be able to contribute to the inquiry by speaking of her experience of Mr Traill's way of life, frame of mind and such like.

[6] The Applicant argued that her participation in the inquiry would give her the additional benefit of progressing with her reparation action in light of information disclosed in the inquiry. Additionally, without further specification, she submits that the said reparation action may allow her to contribute information to the inquiry which would be relevant to its progress.

[7] Notice of the inquiry has been given to the Interested Party, who was Mr Traill's fiancée and was living with him as if married to him at the time of his death. Notice of intention to participate in the inquiry has been given by the Interested Party. Counsel for the Interested Party advised the court that Dr Thomas was involved in the inquiry; had experts instructed; and was able to provide such relevant participation as is required. Whilst

accepting that the Applicant's participation was, ultimately, a matter for the court, counsel was essentially opposed to the application on the basis that it would not further the purpose of the inquiry.

[8] The Crown indicated that it was not clear to them how the Applicant's participation would further the purpose of the inquiry.

Statutory Framework

[9] To determine this application, it is first necessary to consider the statutory framework which applies. Sections 1, 11 and 17 of the Act, insofar as relevant to the application, are in the following terms:-

"1 Inquiries under this Act

(1) Where an inquiry is to be held into the death of a person in accordance with sections 2 to 7, the procurator fiscal must—

- (a) investigate the circumstances of the death, and
- (b) arrange for the inquiry to be held.

(2) An inquiry is to be conducted by a sheriff.

(3) The purpose of an inquiry is to—

- (a) establish the circumstances of the death, and
- (b) consider what steps (if any) might be taken to prevent other deaths in similar circumstances.

(4) But it is not the purpose of an inquiry to establish civil or criminal liability.

...

11 Persons who may participate in the inquiry

(1) The following persons may participate in inquiry proceedings in relation to the death of a person ("A")—

- (a) A's spouse or civil partner at the time of A's death,
- (b) a person living with A as if married to A at the time of A's death,
- (c) A's nearest known relative if, at the time of A's death, A—
 - (i) did not have a spouse or civil partner, and
 - (ii) was not living with a person as if married to the person,

...

(e) any other person who the sheriff is satisfied has an interest in the inquiry.

17 Notice of the inquiry

(1) After the sheriff makes an order under section 15(3) in relation to an inquiry, the procurator fiscal must give notice to the persons mentioned in subsection (2) of the following matters—

- (a) the fact that the inquiry is to be held, and
- (b) if fixed in the order—
 - (i) the date and place for the holding of the preliminary hearing,
 - (ii) the date for the start of the inquiry and the place at which it is to be held.

(2) The persons referred to in subsection (1) are—

- (a) a person appearing to the procurator fiscal to be entitled to participate in the inquiry under section 11(1)(a) to (d) ...”

[10] Also of relevance are the terms of rule 3.5 of the Rules, namely:

“(1) A person who is not given notice under section 17(1) but who wishes to participate in an inquiry may apply to the sheriff to participate.

(2) That application must—

- (a) set out why that person's participation would further the purpose of the inquiry; and
- (b) be made at least 14 days before the start of the inquiry.”

[11] The cumulative effect of section 11(1)(e) of the Act and rule 3.5(2)(a) of the Rules is that, to be permitted to participate in an inquiry, an applicant must have an interest to participate and that participation must further the purpose of the inquiry.

[12] It is difficult to conceive of circumstances in which any family member would not have an interest in an inquiry into the death of a relative. I am satisfied that the Applicant has an interest in this inquiry. It is, however, notable that the Act limits intimation to only one individual (see section 11(1)(a) – (c)). There are obvious and understandable reasons for this. The underlying principle of the legislation is that, ordinarily, only one family member will be permitted to participate in the inquiry. In this inquiry, in relation to the late Mr Traill, intimation was made upon his fiancée, the Interested Party, Dr Thomas, who has given notice of her intention to participate in the inquiry. In such circumstances, having regard to

the underlying principle, in my view there would need to be compelling reasons to permit more than one family member to appear in an inquiry. The problems which might be associated with such a course of action are brought into sharp focus in an inquiry such as this one in which there are a significant number of deceased persons.

[13] I regret to say that the arguments advanced in support of the application are without merit. They do not set out a basis upon which it could be legitimately inferred that the Applicant's participation would further the purpose of the inquiry, namely, (a) to establish the circumstances of the death; and (b) to consider what steps (if any) might be taken to prevent other deaths in similar circumstances. The application singularly fails to address both aspects. The Applicant had not seen the late Mr Traill for approximately 22 years at the time of his death. Her application discloses nothing in relation to the late Mr Traill's "way of life, frame of mind and such" that might assist the purpose of the inquiry. The solicitor for the applicant was unable to expand upon this contention when making submissions in support of the application. In any event, the Interested Party is clearly far better placed to comment upon such matters.

[14] I am not satisfied that the Applicant's participation would further the purpose of the inquiry. The application is refused.