DISTRICT COURT OF QUEENSLAND

CITATION:	*Gentner v Barnes* [2009] QDC 307
PARTIES:	**Neale Kelson Gentner** **(Appellant)** **AND** **Michael Barnes (State Coroner of Queensland)** **(Respondent)**
FILE NOS:	40/09
DIVISION:	District Court of Queensland, Maroochydore
PROCEEDING:	Application
ORIGINATING COURT:	District Court at Maroochydore
DELIVERED ON:	30 September 2009
DELIVERED AT:	Maroochydore
HEARING DATE:	11 September 2009
JUDGE:	Judge J.M. Robertson
ORDER:	An inquest be held into the death of Adrian Elliott Jones which occurred on the 8th April, 2006

CATCHWORDS: Coroners Act, application to hold inquest where State Coroner has refused the application, whether inquest would be "in the public interest', nature of test to be applied, consideration of State Coroners Guidelines in relation to inconsistency and/or uncertainty in evidence relating to the cause of fatal accident, consideration of views of family of deceased person in relation to the issue of public confidence in the administration of justice, delay and consideration of earlier decision by local Coroner to hold inquest.

Legislation:

Coroners Act 2003 (Qld)

Coroners Act 1985 (Vic)

Coroners Act 1996 (WA)

Coroners Act 1995 (Tas)

Coroner Act 1997 (ACT)

Cases Considered:

O'Sullivan v. Farrer (1989) 168 CLR 210

McKinnon v. Secretary, Department of Treasury (2006) 228 CLR 423

Deloittee Touche Tohmatsu v. Australian Securities Commission (1995) 54 FCR 562

Harburg Investments Pty Ltd v. Mackeroth [2005] 2 Qd.R 433

Buck v. Bavone (1976) 135 CLR 110

Clancy v. West [1996] 2 VR 647

Rouf v. Johnstone [1999] VSC 396

Chiotelis v. Coate [2009] VSC 256

Veitch v. The State Coroner [2008] WASC 187

Herron v A.G. for NSW (1987) 8 NSWLR 601

COUNSEL: Mr. S. Courtney for the Applicant

Mr. L. Byrnes for Respondent

Mr. S. McLeod for the Attorney-General of Queensland as amicus curiae

SOLICITORS: Butler McDermott Lawyers for Applicant

Crown Law for the Respondent

INTRODUCTION

[1] At around 8am on the 8th April 2006, Adrian Jones, the 18 year old step-son of the applicant Neale Gentner was proceeding along the Yandina - Bli Bli road on his 1982 silver Honda CX-500 motor-cycle on his way to work at Fairhill Nursery at Yandina. He was due to commence work at 8:30am. As the cycle negotiated a left hand bend in the road near the intersection with Burton's road, Adrian appeared to loose control and the cycle proceeded across double white lines into the path of a Toyota Landcruiser Station Wagon driven by Michael Miley. At some point prior to collision the cycle went down on the roadway. The vehicles collided and Adrian suffered very severe lower body injuries which ultimately lead to his death at the Nambour General Hospital several hours later. Senior Constable Church from the Sunshine Coast Accident Investigation Squad investigated the fatal accident and from a very early stage concluded that excessive speed and/ or inexperience on the part of Adrian was the cause of the accident.

[2] The applicant is Adrian's step-father. I am told that Adrian's biological father died when Adrian was a small boy and that Mr. Gentner is the only father he knew. From very early in the investigation Mr. Gentner, Adrian's mother and his family have disputed Senior Constable Church's conclusions.

[3] The size of the Court file gives some indication as to the intensity of this dispute. The driver of the other vehicle Mr. Miley is in fact the father of a police officer whose wife and children were in the Toyota with their grandparents on that day.

[4] At various times Mr. Gentner has alleged that Church has deliberately lied; that in some way Mr. Miley was criminally negligent, and that police have protected him because of his son, and he has been very critical of the Coronial process since an early stage. Senior Constable Church's investigation has been reviewed on a

number of occasions and he has responded adversarily both to the allegations made by the family and to some criticisms in those reviews.

[5] From an early stage, Mr. Gentner retained Mr. Peter Boyce Solicitor to represent the family interests but it is clear that Mr. Boyce had only a "watching brief" and many of the letters written were obviously not reviewed by him. Mr. Gentner filed his own application to this Court supported by a vast quantity of documentation.

[6] Initially Adrian's death was investigated by the local Coroner His Honour Magistrate Ken Taylor of the Maroochydore Magistrates Court. Mr. Taylor was a very experienced judicial officer and Coroner. On 3 January 2007 he advised Mr. Boyce that the only way "in which such issues (a reference to Mr. Boyce's 18.12.06 submission to him) can be explored thoroughly is at an inquest".

[7] On 20 July 2007, he referred allegations of police misconduct to the CMC. On the 31 July 2007, the Chairperson of the CMC advised Mr. Taylor that "the allegations are best dealt with in the first instance through the coronial inquest".

[8] On 30 August 2007, the State Coroner Mr. Barnes obtained the file from Mr. Taylor to enable Senior Constable Church's report of 15.11.07 to be reviewed by a senior officer outside the region.

[9] On 3 October 2007 Mr. Taylor retired.

[10] On 4 October 2007, pursuant to s.63 of the *Coroners Act 2003* (Qld) (the Act), Mr. Barnes purported to transfer the coronial investigation into Adrian's death to the replacement Coroner at Maroochydore, Her Honour Magistrate Callaghan. For some reason, this transfer did not in fact take place, and the file remained with the State Coroner and further investigations and reviews were undertaken by his office.

[11] On the 29 January 2009, Mr. Barnes advised the applicant and Adrian's mother that he did not intend to hold an inquest.

[12] On the 17 February 2009 the applicant filed an application pursuant to s.30(5) of the Act.

[13] s.30 deals with the situation where either a Coroner or the State Coroner refuses an application to hold an inquest. If the State Coroner refuses the application the "… District Court may order that an inquest be held if satisfied it is in the public interest to hold the inquest": s.30(7).

[14] On the 10 March 2009 Mr. Boyce wrote to Mr. Barnes requesting that he re-consider his decision to refuse to hold an inquest. On 23.03.09 Mr. Barnes responded and reaffirmed his original decision.

[15] In submitting that it is in the public interest to hold an inquest in this case, Mr. Courtney for the applicant has concentrated on a number of the State Coroner's Guidelines issued by Mr. Barnes pursuant to s.14 of the Act, dealing with alleged conflicts and uncertainty in the evidence about the road surface prior to the incident and issues of public confidence in the administration of justice.

[16] He has specifically disavowed reliance on any "evidence" touching on a number of constant themes in Mr. Gentner's correspondence with police and the State Coroner alleging police cover up because of Mr. Miley's son, which necessarily involved imputations on Mr. Miley and his family. This approach is sound and appropriate in light of the known facts and avoids a distraction that clearly concerned Mr. Barnes, and for good reason.

[17] Mr. Byrnes appeared for Mr. Barnes to simply inform me that his client would abide the order of the Court. At an earlier hearing, I gave leave to the Attorney-

General to appear as amicus curiae, and Mr. McLeod has provided me with considerable assistance without descending into an adversarial role.

THE LAW

[18] I am told that this is the first ever application to this Court pursuant to s.30(7) of the Act and therefore there is no developed Queensland jurisprudence to guide me. I have been referred to a number of authorities where a similar application has been made to the Supreme Court of other States where the "test" is in different terms.

[19] Neither Counsel has suggested that there is anything in the Explanatory Notes or Second Reading Speech or extrinsic material to explain why in this State "the public interest" is the "touchstone" rather than "the interest of justice" as is this case in other States.

[20] The phrase "in the public interest" has been considered judicially on many occasions. In *O'Sullivan v. Farrer* (1989) 168 CLR 210, Mason CJ, Brennan, Dawson and Gaudron JJ said (at 216):

> "… the expression 'in the public interest', when used in a statute, classically imports a discretionary value judgment to be made by reference to undefined factual matters, confined only 'in so far as the subject matter and the scope and purpose of the statutory enactments may enable … given reasons to be [pronounced] definitely extraneous to any objects the legislature could have had in view': *Water Conservation and Irrigation Commission (NSW) v. Browning* (1947) 74 CLR 492 at 505 per Dixon J."

[21] A question about 'the public interest' will therefore rarely have only one dimension: *McKinnon v. Secretary, Department of Treasury* (2006) 228 CLR 423 at [55] per Hayne J. In *Deloittee Touche Tohmatsu v. Australian Securities Commission* (1995) 54 FCR 562 (at 579) Lindgren J. held that "… the expression

'the public interest' is one of wide import." See also *Harburg Investments Pty Ltd v. Mackeroth* [2005] 2 Qd.R 433.

[22] Accordingly, whether it is 'in the public interest", within s.30(7), that an inquest be held involves a judgment about which reasonable minds may well differ: *Buck v. Bavone* (1976) 135 CLR 110 at 118-119 per Gibbs J.

[23] What is "in the public interest" must be considered in light of relevant provisions in the Act. s.28(2) is in these terms:

> (2) In deciding whether it is desirable to hold an inquest, the coroner may consider—
>
> (a) the extent to which drawing attention to the circumstances of the death may prevent deaths in similar circumstances happening in the future; and
>
> (b) any guidelines issued by the State Coroner about the issues that may be relevant for deciding whether to hold an inquest for particular types of deaths.

[24] In arguing that the holding of an inquest is in the public interest in the circumstances of this case, Mr. Courtney focussed on a number of the Guidelines issued by the State Coroner pursuant to s.14 of the Act, in particular 8.1 and 8.2. Guideline 8.1 is (relevantly to Mr. Courtney's argument) in these terms.

> "The decision to hold an inquest should be exercised with reference to the purposes of the Act and with regards to the superior fact finding characteristics of an inquest compared to the fault attributing role of criminal and civil trials. The wide scope of the investigation … should be considered as should a family's right to know the circumstances of their relative's demise.
>
> …
>
> These considerations do not allow the compiling of an exhaustive list of the circumstances in which (sic) inquest should be held but assist in identifying the following categories of cases in which an inquest should usually be held:-
>
> - Any death where there is such uncertainty or conflict of evidence as to justify the use of the judicial forensic process
>
> …
>
> - Any deaths in which the views of the family or other significant members of the public are such that an inquest is likely to assist maintain public confidence in the administration of justice.

[25] It must be kept in mind that this is an "application" and not an "appeal" from Mr. Barnes's refusal. At the start of the hearing Mr. McLeod submitted that "there may

be an onus on the applicant to effectively demonstrate that (there has been) demonstrable error in the process". This is a reference to some obiter remarks by a single Judge in Western Australia. If "the public interest" does involve a judgment about which reasonable minds may well differ, then the bar may not be as high in this State for an applicant as Mr. McLeod seemed to suggest.

THE VICTORIAN AUTHORITIES

[26] s.18 of the *Corners Act 1985* (Vic) enables a Coroner to refuse a request to hold an inquest. It provides (relevantly):

> "(2) If, after the expiry of 3 months from the date a person requests a coroner to hold an inquest into a death, the coroner has not-
>
> (a) agreed to hold the inquest or asked another coroner to do so; or
>
> (b) refused the request and given his or her reasons in writing to the person and the State Coroner- the person may apply to the Supreme Court for an order that an inquest be held.
>
> (3) The Supreme Court may make an order that an inquest be held if it is satisfied that it is necessary or desirable in the interests of justice".

[27] s.18(3) has been judicially considered on a number of occasions.

[28] *Clancy v. West* [1996} 2 VR 647.

The unsuccessful applicant and appellant was the son-in-law of the deceased. In up-holding both the decision of the Coroner and the single Justice of the Trial Division that an inquest was neither "necessary or desirable in the interests of justice", the Court of Appeal observed that the evidence suggested that the request was an attempt to misuse an inquest for the purpose of perpetuating a family quarrel, and both the Coroner and the Court should be astute to prevent a misuse of an inquest. Tadgell JA (with whom Ormiston and Charles JJA agreed) observed that the jurisdiction vested in the Supreme Court to override a decision by a Coroner to refuse a request to hold an inquest "would appear … to be a jurisdiction excisable sparingly". Mr. McLeod submits that a similarly cautious

approach should be taken to the exercise of the jurisdiction conferred on this Court by s.30(7). His Honour went on in the same paragraph of his judgment to observe that in all the years since the Supreme Court has had the power (since 1911), "there does not appear to be any reported exercise of the jurisdiction following a refusal to hold an inquest". Whether or not his Honour's first observation related to this historical fact or involved a statement of principle, I am prepared to proceed on the basis that this Court should not lightly make a decision to hold an inquest in circumstances in which the State Coroner has refused one. The very fact that this is the first application made under s.30(7) suggests that such applications will be rare, and successful applications rarer still. As far as I can tell from my own limited research no Court in Queensland had this power prior to the commencement of the Act. The *Coroners Act 1958* seemed to invest the Minister with power to override the decision of a Coroner.

[29] *Rouf v. Johnstone* [1999] VSC 396

This was an application pursuant to s.18(3) after the refusal by the Coroner to order the exhumation of the body of the deceased brother of the plaintiff applicant. The applicant argued, by reference to a whole raft of circumstances, that an inquest was "necessary and desirable in the interests of justice," and suggested that, rather than dying from a heart attack, the deceased may have been poisoned by his wife with whom he was said to have had a disharmonious and sometimes acrimonious relationship prior to his death. Warren J. (as the Chief Justice then was) refused the application on the basis that she regarded the factors relied upon by the plaintiff as "highly speculative, based on hearsay on hearsay and (constituting) no more than a suspicion possibly propelled by inter-family ill-feeling."

[30] *Chiotelis v. Coate* [2009] VSC 256

The plaintiff, in this application pursuant to s.18(2) and (3), was the father of a young women who was killed in a motor vehicle accident. She was a passenger in a vehicle which was driven at high speed into a power pole. Robson J analysed a number of authorities including *Clancy v. West* and *Rout v. Johnstone*, and set out a number of principles to be applied in such applications based on the authorities: [26]. The issue concerned a complaint that the deceased may not have died instantly as police told the plaintiff the following day. The application was refused essentially on the basis that the matters relied upon by the plaintiff were not before the Coroner. His Honour said [at 39]:

> "The Act gives the coroner a wide discretion. Tadgell JA described it as an 'absolute discretion'. It is sufficient for me to say that s.18(3) is not activated if the court seeks to put itself in the position of a coroner and ask whether the coroner ought to have opted for a full inquest. Such a test would undermine the discretion of the coroner. In any event, I do not need to finally resolve that issue as, critically in this case, the coroner did not have before her the material now relied on by the plaintiff."

[31] Mr. McLeod submitted to me that there may be material in the applicant's affidavit that was not before Mr. Barnes. He did not seek to identify that material. I am not convinced that the different wording in s.30(7) necessarily supports the "principle" set out by Robson J. that the Court when considering an application such as this will only consider "circumstances in existence at the time (the s.30(1)) request was made." As far as I can tell, the material that I have considered was part of Mr. Barnes's file.

THE W.A. POSITION

[32] The *Coroners Act 1996* (W.A) s.24 replicates the Victorian legislation.

[33] *Veitch v. The State Coroner* [2008] WASC 187

Judgment was given on 3.09.08 by Beech J. who refused the application. The deceased died from multiple injuries sustained when the vehicle he was driving collided with a steel barrier at the intersection of an overpass over a river with such force that the vehicle left the road and went into the river, and the seat-belt he was wearing broke and he was ejected onto the road. Tests showed a markedly raised cannabis level in his body at the time of the accident. The plaintiff was a passenger in the vehicle who said she was asleep at the time of the accident when she made her first statement to police, but later changed her position in her affidavits before the Court and Coroner. These affidavits were made about 10 years after the incident. The plaintiff alleged that the accident had in fact been caused by an earlier collision between the vehicle and the police vehicle. After the plaintiff filed her application, the Coroner referred the matter to the Corruption and Crime Commission (the CCC) which in turn caused police to investigate the plaintiff's claims. The investigation found no evidence to support the claims and photographs and T.V. footage taken at the scene tended to undermine the plaintiffs allegations in a significant way.

[34] Beach J. concluded that if the Court was satisfied that the material before him gave rise to a realistic possibility that an inquest might conclude that the deceased's death was caused or contributed to by a collision with a police car it would then be necessary or desirable in the interest of justice that an inquest be held. His Honour concluded on a detailed analysis of the evidence before him that there was no such possibility, and refused the application.

[35] It is a reference in this judgment that underpins Mr. McLeod's submission that in deciding whether an inquest is in the public interest the Court should only so find is satisfied on "a reputable body of evidence" "the original finding … was

erroneous": per McHugh JA. in *Herron v A.G. for NSW* (1987) 8 NSWLR 601 at 617. That case involved an application to revoke orders made to quash a coronial inquest held 10 years earlier and to hold a fresh inquest under the *Corners Act 1980*, where the test involved a discretionary consideration of whether "it is necessary or desirable in the interests of justice" (to hold a fresh inquest etc). In my opinion, Beech J's words must be considered in the context of a different test to the one I am considering, and in light of the circumstances of *Herron* where there was new evidence suggesting that the appellant medical practitioner may have acted negligently and caused the death of his patient.

[36] Mr. McLeod also referred me to the Tasmanian *Corners Act 1995* where the test is in the same terms as the W.A. legislation, and to the *Corner Act 1997* (ACT) where the "test" is couched in the alternative, that is "it is in the public interest or the interests of justice that a hearing into a death … should be conducted". Neither Counsel referred me to any decided cases or these sections.

[37] Mr. Courtney makes the reasonable submission that the case law on the Victorian and W.A. legislation is limited (a) by the different test and (b) by the use of the words "necessary or desirable" to qualify "in the interests of justice". He also makes the point that each of the cases referred to concerning the Victorian and W.A. legislation involved, at the very least, a suggestion of an attempt to use the inquest process for an ulterior purpose, which is not the situation with his client's application.

[38] The words of s.30(7) are plain. It would be an error to simply apply the interpretation given to words used in the *Coroners Act* in other States where the "test" is in different terms. In my opinion, the proper approach to this application should be governed by the following principles:

(i) The relief sought should be granted rarely or sparingly and regard should be had by this Court to the specialist nature of the office of Coroner and the specialist knowledge of the State Coroner and his office, and resourcing issues.

(ii) The phrase "in the public interest" involves a discretionary value judgment made by this Court based on the evidence before it constrained by reference to relevant Objects of the Act set out in s.3 (namely (c) and (d)), and to s.28(2) and the relevant guidelines referred to above.

(iii) It is not necessary that I conclude that the decision of the State Coroner was erroneous; however it is necessary that in order for the application to succeed there be such uncertainty or conflict of evidence so as to justify the use of the judicial forensic process, and/ or that the views of the family of the deceased are such that an inquest is likely to assist maintain public confidence in the administration of justice.

[39] Mr. Courtney focused on the evidence which he submits is relevant to these two issues which he noted will inevitably overlap.

(A) Conflict of Evidence

[40] The argument of the applicant focussed on evidence which may suggest that Adrian's accident was caused or contributed to by dirt, gravel or other debris on the roadway consequent upon drilling undertaken in the vicinity of the intersection which concluded the evening before the accident.

The statements of Mr. and Mrs. Jakeman

[41] The applicant engaged a private investigator Robert Munt, a retired police officer, to investigate the circumstances of the accident and Mr. and Mrs. Jakeman gave him statements on 10.05.06. Mr. and Mrs. Jakeman resided at the time of the accident at Lot 17 Burton's Road Maroochy River which is on the corner of Burton's Road and Yandina-Bli Bli Road. Mrs. Jakeman noticed the drillers on Friday 7.04.06 and she went down to the scene of the accident the following day and made certain observations. In her 10th May statement to Munt she says (relevantly to the disputed issues):

> "5. I recall Friday 7th April 2006 and on that day at about 2.30pm I saw possibly Council workers or possibly Main Roads workers and they were drilling on the western side of the bitumen of the Yandina-Bli Bli Road near the opposite side to the entrance to Burton's Road. They were doing something like soil testing. They had a drill and were drilling into the edge of the road.
>
> 6. I recall later on Friday 7th April when I was with Adam at some time after 5pm. I saw that the area of the road near the drill hole was wet from some washing of the road and there was still some debris that I cannot describe, as we did not pull up and have a look at it. This debris was about 3 metres square and was near the edge of the road.
>
> 7. I believe the workers had made an effort to clean it up although I did not see these people cleaning the roadway.
>
> 8. I recall Saturday 8th April 2006 and on that date at about 8am I heard an ambulance arriving in the vicinity of our home.
>
> …
>
> 21. Also on that Saturday 8th April I believe it is possible that the motor bike rider Adrian JONES, had hit the debris left on the roadway from the drill hole. I could see where the bike rider had dropped the bike as he sled down the hill towards Yandina and also where the handle bars have skidded into the bitumen.
>
> 22. I could see some sort of marks leading from where the debris was situated and then headed down the hill. When I looked at these skid marks on the road and then looked back to where the debris was on the road, it all kind of lined up.
>
> …
>
> 24. I could also still see on that Sunday 9.4.06, that the graze marks, where Adrian JONES had possibly hit the debris, were still on the road.
>
> 25. One afternoon a few weeks later, I went out to the scene again with Adam when I saw a male person who I now know to be named Neale GENTNER and also a Policeman who I do not know the name of. It appeared they were trying to work out what happened at the accident.
>
> 26. I saw that the Policeman had a photograph taken on 8.4.06 of a Police car that was actually parked over the debris made by the drilling of the

bore hole. I told this Policeman and Neale GENTNER on that day, that the Police car was parked over the debris.

27. I also told the Policeman about the young male person I saw on Sunday 9.4.06 who said he was first on the scene and who had later gone to a hospital. The Policeman said "We have no record of this guy at the scene of the accident' and I said, "Well he told me that he was first person at the accident.'"

[42] Adam Jakeman says in his 10th May statement:

"5. On Friday 7.4.06 I saw workmen drilling on the western side of the Yandina - Bli Bli Road just south of the intersection with Burtin's Rd. I also saw them drilling along other areas of that roadway that day.

6. Later on that Friday 7.4.06 during the evening when I returned to my home with Tabatha I saw that same area situated on the western side of the Yandina – Bli Bli Rd near Burton's Rd was wet and there was debris on the road about a boot width from the edge. This wet patch was about 3 metres square.

7. It appeared to me that the workers who drilled the holes had made an attempt to clean the roadway of any debris.

8. I do not recall a great deal of debris on the road but there was enough to cause a motor bike rider harm. I am a motor bike rider myself and I knew that the debris could have been a problem for any bike rider.

…

25. I believe that on that morning of 8th April 2006 that I could see where the motor bike ridden by Adrian JONES has possibly driven through the debris from the drill hole which was made opposite Burton's Road on the 7th April. About half way from the debris, to the impact point of the accident, I could see where the bike had hit the roadway. I could see where parts of the bike had skidded into the bitumen and then skidded downhill along the Yandina – Bli Bli Rd.

…

27. I believe it is possible that he hit the debris left from the drilling hole the day before and then slid off and went under the 4WD."

[43] Mr. Jakeman does refer to speaking to a police officer and Mr. Gentner some weeks later at the accident scene but he does not see any photograph of a police car parked over the debris on 8th April. According to Sergeant King from the Sunshine Coast Forensic Crash Unit in part of a report to the Corner dated 22.10.08, Mr. Jakeman expressed concerns to him about Mr. Munt's approach alleging that he (in effect) signed the statement although it was not accurate. Senior Constable Church says that he was told of similar concerns.

[44] Patrick Leslie Staunton who lives at 790 Dunethin Rock Road Maroochy River approximately 50 metres from the scene of the accident provided a statement to Mr. Munt on 25.08.06.

[45] He went down to the accident scene at around 8:15am on 8th April 2006. Relevantly to this issue he states:

> "20. On that morning of 8th April I saw there was dirt on the road but whether it was from the drill hole, I couldn't say for sure. That dirt was all pushed over to the other side of the road by the traffic going by. It was then about 18 inches out from the entrance to Burtons Rd. It was spread out over about 3 or 4 metres and was about a metre wide. It was closer to Burton's Rd than what it was to the drill hole on the western side.
> 21. I did not see any dirt on the road in the proximity of the drill hole situated on the western or left side of the roadway, travelling from Bli Bli to Yandina.
> 22. I mentioned this to a Policeman who I believe was named Garry CHURCH. He is probably aged in his middle 50s. He is on TV quite regularly about traffic accidents.
> 23. I told him that a test borer had been on the Yandina – Bli Bli Rd on the opposite side to Burton's Rd and that there was a possibility that there was still gravel on the road at the time of the accident.
> 24. Gary CHURCH told me that the dirt had all gone from the roadway by the time of the accident and that speed was the main cause of the accident in his opinion. Gary CHURCH did not elaborate and say which vehicle was speeding.
> 25. Gary CHURCH referred me to a female Sergeant who was there with him who I think came from Maroochydore. She was about 6 foot tall and was of a skinny build. I told her the same thing about the test borer and the dirt being on the roadway but she didn't appear interested. Then I left the scene and went home.
> 26. According to both Police, they believed that the drill workers cleaned up the gravel after they finished but I believe there was still some left on the roadway. That dusty type dirt was situated by then on the Burton's Rd side.
> …
> 28. I also told both of the Police while they were still there with the damaged vehicles, that this was the second accident with the last 10-12 hours. I told them of another motor bike that had come to grief in the same area the night before. I believe that when I told the Police this that they didn't seem interested."

[46] The last paragraph is a reference to what he was told by another neighbour Scott Ritchie on the morning of the accident.

[47] Caleb Jay Fitzpatrick was driving along the Yandina – Bli Bli road at about 7:55am on the 8th April 2006 and appears to be one of the first motorists on the scene. He states:

> "25. I saw dirt on the road it was about 12 metres past Burton's Road and about a foot and half to two feet from the side line on Adrian left side of the road coming from Bli Bli. It looked like gravel to me. I had a look at it and I thought that if he came around the corner and he was leaning into the corner he could have lost it.
> 26. I didn't see any skid marks coming from the gravel.
> 27. When I was looking at the bike under the 4WD, I talked to the man from the 4WD. I asked him what happened and he said words to the effect of, 'He came around the corner and he lost it and we tried to swerve off the road to miss him and there was nothing we could do, there wasn't enough time and it was too late.'"

[48] Scott Andrew Ritchie also lives in the vicinity of the Burton's road intersection with the Yandina – Bli Bli road. He provided a statement to Mr. Munt on 28.08.06 in which he states (relevantly):

> "4. I am currently employed as a Surveyor's Assistant with the Maroochy Shire Council.
> 5. I recall Friday 7th April 2006 and on that date I saw a truck that was assisting some drilling on the Bli Bli – Yandina Road.
> 6. The workers were right out the front of my house. They dug a few holes along the road. They did one hole down near Camp Flat Road and they did a further couple near Kirra Rd plus the one out the front of my house near Burton's Rd and they did another around the corner.
> 7. It was a fairly big truck because they dug down 3-4 metres. It was a white truck with a blue frame on the back of it.
> 8. I'd say the hole would be less than a foot wide.
> 9. The workers take a sample of the soil and rock to see what is below, to see if they can drop the road down that far because if it is solid rock, they won't bother. They finished that afternoon about 5pm to 5.30pm. They had been here a couple of hours. They had traffic control because they had to block the left side of the road. They had 'stop and go' workers there.
> 10. Later at about 9.30pm on that same Friday night 7.4.06, I attended where a male person riding a motor bike, lost it out the front of my home near were a drill hole had been bored on the western side of the Yandina – Bli Bli Road shortly before Burton's Road.
> 11. That rider ended up near the same spot (as Adrian JONES did on 8.4.06) but on the other side of the road. He went straight passed (sic) where the cross for Adrian JONES is now erected.
> 12. By the time I arrived at that accident on 7.4.06, this rider had picked himself up and got his bike going again. I spoke with him and he said

that there was nothing coming the other way. I believe he would have been about 30 years old.

13. I had heard him coming along the Yandina – Bli Bli Rd and as he appeared to change gears, I heard here what appeared to be the rear tyre locking up and sliding.
14. I believe that at the time of 7.4.06 accident that there would have been marks on the road from where he has come off. I believe there would also have been some grease left on the road.
15. I also recall Saturday 8th April 2006 and on that date, at about 8am, there was another motor bike accident in exactly the same area near my home.
16. I saw that this accident was between a motor bike and a white coloured 4WD.
17. Once again it was immediately north of the Bli Bli - Yandina intersection with Burton's Road.
18. I did not see or hear the accident occur on that Saturday morning (8.4.06) because I came home just after it occurred. I saw it was in the exact same line as the rider from the night before.
19. I am now aware that the motor bike rider named Adrian JONES died as a result of the injuries he received from this traffic accident.
20. I saw the Saturday 8.4.06 accident about 20 minutes afterwards, I think the ambulance had just left. I didn't have to go down on to the road, I just stood right on the corner of my block, up on the embankment which was just about right above it.
21. There was dirt left on the road and it was possible to see where that area was sort of oily and greasy. It was just sort of dirty muck.
22. When those bore holes are dug, lubricants are used and the machine itself would also be full of grease.
23. I saw the Police at the accident on Saturday 8.4.06 but I didn't talk to them.
24. My neighbour Pat STAUNTON came over to me and I told him about the guy coming off his bike the night before. I pointed out the drill hole muck on the road to Pat, from up on top where we stood and I said, 'that is probably the cause'.
25. I saw Pat walk down to the Police and have a conversation with a tall skinny lady Police Officer with blonde hair. (Pat later told me that he had informed the Police Officer about the dirt and other mess on the road.)
26. I saw a Police station wagon parked, not actually on top of the drill hole but it was sort of just down the road a bit further. After Pat told the Policewoman about it, I did not see any Police have a look at the drill hole.
27. I have been a surveyor's assistant for 10 years with the Maroochy Council and I think workers on the 7.4.06 should have cleaned that stuff off the road because it is a dangerous piece of road there.
28. I would say that since 2004 there have been at least 10 or 11 accidents on that bend. Many road users come from Yandina direction heading towards Maroochydore and they crash into the embankment.
29. I did not see any tyre marks or scrapes coming from the drill hole residue on the roadway. The accident on the 8.4.06 happened just

> where a bike rider would expected to start to lean over in order the negotiate the bend."

[49] It is clear to me that the investigating officer Senior Constable Church concluded at a very early stage of the investigation that the accident was caused by excessive speed and/ or inexperience. He did not attempt to interview those responsible for the drilling on the road the day before the accident.

[50] The people involved were interviewed some 2½ years after the accident, by Detective Inspector Smith of the State Coroner's office. They were sub-contracted by Golder Associates to undertake the drilling of five bore holes on the Yandina - Bli Bli road south of the intersection with Burtons Road over a period of 2 to 3 days. Both drillers (Michael Dobe and Anthony Stevenson) say that the road surface was cleaned at the conclusion of the work in the afternoon of the 7th April. Mr. Dobe says it was "spotless" and Mr. Stevenson says that they "swept the road to free it of the gravel from Burtons Road" after completing the drilling and packing up. Mr. Dobe was the most experienced driller on site.

[51] Mr. Courtney makes the point that these men were not interviewed until 2½ years after the incident. Senior Constable Church was obviously aware of the drilling and had in fact obtained a report from Golder Associates on 10.11.06 in which it is stated (contrary to the statements taken earlier by Mr. Munt from residents) that "no soil from drilling works was on the road following the drilling." A number of photographs are included in that report which depict the drilling rig in place and its proximity to the road surface.

[52] Given the applicants emphasis on the possibility of debris from the drilling being a contributor to the accident, it is regrettable that the actual drillers were not interviewed earlier.

[53] At paragraph 25 of Mr. Dobe statement dated 31.10.08 he states:

> "I am aware that Golders had taken photographs of the work site prior to drilling commencing and again at the conclusion of the drilling and clean up" (my emphasis).

[54] When I enquired during the hearing about these photographs, I was very surprised to be told that no-one involved in the investigation over 3½ years has sought or obtained those photographs.

[55] Mr. and Mrs. Jakeman were interviewed again by police in November 2006 and, as Mr. Courtney concedes, they both pulled back from their more definitive statements about debris on the road after the drilling finished. They appear to say that the road surface had been washed clean after the drilling was completed on the 7th April. Mrs. Jakeman stated:

> "I recall Sunday the 9th April 2006. That morning I remember going down to the corner and speaking to guys on bikes. Whilst down there I saw a tyre mark and gouge marks in the bitumen surface. I saw that the tyre marks started in the area where they had been drilling on the Friday. I also saw that there was gravel/ dirt in the same area. This gravel/ dirt was not present after the workman finished working on the Friday. I remember that the area had been cleaned up with water as there was a wet patch on the ground. I am unable to say how the dirt was put on the road but it could have been put there by other cars, rain or even the cars involved in the accident."

[56] The investigating office Senior Constable Church in his report to Coroner Taylor dated 12.11.06, attributed the accident to a combination of Adrian's inexperience and excessive speed and failing to keep a proper lookout. He reports what he was told (apparently by Golders) that after completion of the drilling on 7th April "the site was inspected for soil spillage onto the roadway, no soil from the drilling remained on the roadway". Church positively asserts (at p.3 f.) that an inspection (presumably by him) "failed to locate any debris that may have contributed towards this incident."

[57] Mr. Geoffrey Barr is a member of Butler McDermott Lawyers who represents the applicant. Mr. Barr is an experienced litigator. He has provided a Statutory

Declaration to the Coroner in which he swears that he spoke on the telephone with Church on 30 June 2006. He states:

> "Church told me that the investigation brought to light the fact that there were people working on the road before the accident. He can see that there was loose material on the road. Unfortunately that seems to have happened right where the Police car was parked. He told me that as a result there were no photographs of the material or the work that had been performed, due to the position of the Police vehicle at the accident scene. Whilst I do not recall the words he used, Church expressed a degree of embarrassment at the fact that he had parked the Police vehicle over the area where the work was performed."

[58] The only direct evidence of speed comes from Mr. Miley, the driver of the 4WD. In his statement dated 28.04.06 he states:

> "On the approach to the intersection of Burton's road I saw a motor cycle coming around the bend from the direction of Bli Bli and towards us, the motor cycle appeared to be travelling a bit too fast for the bend and it was swaying from side to side and very close to the centre of the road."

[59] The other evidence of speed is circumstantial and it may be consistent with Adrian loosing control of the bike and going down as he came around the corner for reasons other than speed, e.g. debris on the road and/ or inexperience. Senior Constable Church's opinions have been reviewed on a number of occasions, and in particular by Acting Senior Sergeant Lamerton of the Forensic Crash Unit at Boondall. He was the first police officer or other person in authority to suggest that statements be taken from the actual drillers who performed the work. He was generally supportive of the integrity of Church's investigation but thought that Church's conclusion that the deceased was definitely speeding was "a bit too empathic." He observes that it is the experience of the specialist police at the unit that "… it is difficult to estimate the speed of an approaching vehicle. Also, civilian witnesses often over-estimate the speed of motor cycles due to their fast acceleration and loud noise, however, I conclude the acceleration of the bike is not an issue in this incident".

[60] There is also an issue about disclosure of photographs taken at the scene on the day. There is no issue about disclosure of photographs taken by the Scenes of Crime office at the direction of Church, however there is an issue about the photograph referred to by Mrs. Jakeman of a police vehicle at the scene parked over some debris on the road. The applicant says that Church showed him photographs on 1 May 2006 which Church says he took himself on the day of the accident including the photograph referred to by Tabatha Jakeman. No such photograph has ever been produced. On 3.07.07, Church met with the applicant and Mr. Steely who was an "expert witness" acting in the applicant's interests at the courthouse at Maroochydore and they walked to the police station and met with Inspector Lewis. The meeting was recorded and a transcript forms part of exhibit PJ22 to the affidavit of Mr. Johns filed 21 April 2009. Church accepted that he took digital photographs on the day and these were apparently viewed on a laptop in the possession of Steeley. Mr. Courtney does not suggest that a photograph of the type allegedly seen by Mrs. Jakeman was seen that day; rather he makes the point that Church told the applicant and Steeley that his digital photographs were not admissible in Court; something the applicant says he also mentioned on 1 May 2006.

[61] As is demonstrated by the extracts from the material set out above, a central issue in the applicant's case concerns the possibility that debris left on the road surface as a result of drilling, may have contributed to Adrian loosing control of his bike. Church has consistently maintained that as the drilling had been on the road shoulder and not in the bitumen surface debris on the road was unlikely and that an inspection on the day failed to locate any such debris. The applicant commissioned Dr. Ray Hope, a mechanical engineer with Gilmore Engineers to inspect the scene

of the accident which was done on 10 May 2006. Dr. Hope took some photographs of the road surface taken he says, in close proximity to evidence of a bore hole on the road verge. He says:

> "The photographs show definite remnant soil/ clay marks from a crawler track on the north bound lane of Yandina Bli Bli Road. During the elapsed month since the incident, I would expect degradation of the marks through traffic and any rain.
>
> The fact that marks remained up to one month after the incident, suggest strongly in my opinion that they were much more pronounced at the time of the accident."

DISCUSSION ABOUT THE CONFLICT POINT

[62] The issue of debris on the road surface after drilling was completed contributing to the loss of control of the bike is central to the applicants argument to do with conflict and/ or uncertainty in the evidence.

[63] The conflict can be summarised thus:

- Local residents Mr. and Mrs. Jakeman in statements to a private investigator commissioned by the family soon after the accident give evidence of debris and circumstantially, of its contribution to the accident.
- There is dispute about the integrity of the statement taking process undertaken by the investigator and in later statements to police those witnesses largely resile from their earlier position and seem to suggest that any dirt on the road on the 8.04.06 was not there after the drilling finished on the 7.04.06.
- There is other as yet untested evidence of neighbours, Staunton and Ritchie that suggests debris was left on the road after drilling.

- Ritchie refers to another bike accident in the same place on the evening of the 7th April which (on the evidence) was never reported and the identity of this person is unknown.
- The investigating officer Senior Constable Church says definitely that there was no debris on the road way on the day of the incident that could have contributed to the accident
- The applicant and Mrs. Jakeman both say they saw a photograph in the possession of Church on 1 May 2006 which they say depicted a police vehicle parked over the area of debris on the 8.04.06 which photograph has never been produced.
- Solicitor Barr swears that he spoke to Church on the telephone on 30.06.06 in which Church told him things which (prima facie) conflicts with Church's report to Mr. Taylor on 12.11.06.
- Church has maintained from the outset that speed and/ or inexperience were the main contributors to the accident. The only direct evidence of speed comes from Mr. Miley the driver of the 4WD which a senior investigator from the Forensic Crash Unit at Boondall says is unreliable.
- The observations of engineer Dr. Ray Hope on 10.05.06 supported by photographs may provide some evidence relevant to this point.

[64] Mr. Courtney also made a submission relating to the opinion of the pathologist who conducted the autopsy. I do not think this evidence advances his client's case and is entirely neutral.

(B) Public Confidence

[65] A number of the issues of concern raised by the applicant are relevant to both conflict and uncertainty evidence and public confidence in the administration of justice and have been discussed above.

[66] These include the long delay in obtaining statements from the actual drillers which may suggest a fixed view from early on in the investigation as to the cause or causes of the accident by those charged with its investigation. In addition, the photographs said by Mr. Dobe to have been taken by Golder Associates after drilling was completed have never been obtained by anyone. There is some evidence that at least one photograph taken at the scene on the day, relating to the issue of debris, has not been produced, and some evidence that may undermine the principal investigators opinion as to the cause of the accident and his own direct evidence of what he saw on the road surface on the date of the accident.

[67] The long delay is unfortunate. It is relevant that another Coroner apparently determined within approximately 8 months of Adrian's death that an inquest be held. After further investigation which involved long delay and (in effect) adversarial responses from both the applicant and the investigating officer, the State Coroner reached a different conclusion.

CONCLUSION

[68] As Mr. Courtney observed, an inquest into Adrian's death would involve about 10 witnesses and it may occupy up to two days of court time. It would not be a long and resource intensive hearing. In applying the correct legal approach set out above, and taking into account the uncertainty and conflict of evidence relating to the possible cause of the loss of control of the motor cycle; and the matters impacting on public confidence in the administration of justice particularly having

regard to the views of the family (to the extent to which I have taken these into account), I am satisfied that it is in the public interest that an inquest be held. I would respectfully recommend that the inquest be held in Maroochydore by the local Coroner.