

IN THE CORONERS COURT OF VICTORIA
AT MELBOURNE

CASE NO. 3226/06

IN THE MATTER OF AN INQUEST TOUCHING UPON THE DEATH OF KWAI
(PATRICIA) CHAN

RULING ON S. 57 APPLICATION OF MR DUNCAN TANG TO BE EXCUSED
FROM GIVING EVIDENCE

1. An inquest into the death of Mrs Patricia Chan is fixed to commence on 21 February 2012. At a Directions Hearing on 27 October 2011, Mr Lawrie of Counsel made an application pursuant to S.57 of the *Coroners Act* 2008 to have Mr Duncan Tang, husband of the late Patricia Chan completely excused from giving evidence. Mr Lawrie provided written submissions in support of his application. He advised that Mr Tang objected to giving evidence on the basis that any evidence he may give may tend to prove that he has committed a criminal offence.

Background

2. Mrs Patricia Chan died in or around 25 August 2006, apparently of diabetic ketoacidosis.¹ Mrs Chan suffered from type two diabetes. She was living with her husband Mr Duncan Tang at the time of her death.
3. On 23 August 2006, Mrs Chan had four teeth removed by a dentist as a result of her on going dental issues. In the wake of the removal of her teeth, she was

¹ I note that Mrs Chan's cause of death remains in issue until the completion of the inquest finding. Her medical cause of death was in issue in the criminal proceedings.

taken home by her husband. After returning home, Mrs Chan's medical condition appears to have deteriorated and ultimately resulted in her death.

4. On 14 January 2009, Duncan Tang was charged with the manslaughter of Mrs Patricia Chan. The basis of the criminal prosecution of Mr Tang appears to have been that he was so negligent in his failure or omission to obtain appropriate medical care for his wife as she was deteriorating, as to amount to criminal negligence within the meaning of the law.²
5. On 12 November 2009, Mr Tang was committed to stand trial at the completion of contested committal proceedings. He entered a plea of not guilty.
6. On or about 10 September 2010, the Director of Public Prosecutions (DPP) discontinued the proceedings against Mr Tang, after a pre trial examination of an endocrinologist, Professor Duncan Topliss, took place on 26 August 2010 in the Supreme Court before the Honourable Justice Coghlan.

The application pursuant to S.57 Coroners Act 2008

Reasonable grounds for the objection?

7. Given that Mr Tang has objected to giving evidence in these proceedings, (S 57(1)) the first question is whether or not there are reasonable grounds for the objection (S57(2)). As Mr Tang has already been charged with a serious indictable offence arising out of the circumstances surrounding Mrs Chan's death, and was committed to stand trial after contested committal proceedings, there is little doubt that there are reasonable grounds for the objection.
8. Whilst it was submitted that there is now little prospect of a criminal charge being **re-initiated**, it is at least open to conclude that the evidence **may** unfold in this jurisdiction in such a way that the DPP is encouraged to re-initiate

² I have been provided with a summary of the prosecution's opening at trial.

proceedings. As Mr Lawrie submitted, the reasoning of the DPP for the withdrawal is not on the record and thus to speculate about what may cause a re-initiation is exactly that, speculation.

9. For the above reasons, I am satisfied that there are reasonable grounds for the objection.
10. Given that Mr Tang has indicated through Mr Lawrie that he seeks a complete excusal from giving evidence, the next question is whether the interests of justice require Mr Tang to be compelled to give evidence under a certificate. (S.57(4)(b))

Considerations of whether the interests of justice require Mr Tang to give evidence.

11. Whether Mr Tang is to be compelled to give evidence after the granting of a certificate requires consideration of where the interests of justice lie in the coronial jurisdiction.³ Coming to a view on this issue is described in the authorities as a *balancing exercise* requiring the weighing up of facts and factors relevant to the particular case and application.
12. Mr Lawrie's first submission on this issue was that the risk of prosecution remains for Mr Tang as a discontinuance of a prosecution is not caught by the "autrefois acquit" rule. Indeed, as Mr Lawrie submitted, S 177 of the *Criminal Procedure Act 2009* provides that an accused may be indicted upon a charge upon which a prosecution had been previously discontinued.
13. The second matter upon which Mr Lawrie relied can be summarised as the "nature of the offence." That is, the more serious the offence that the proposed witness may be facing, the more the balance should tip in favour of a complete excusal. Mr Lawrie submitted that the effect of the authorities to date is that

³ See S 57 (4). I note the section also requires consideration of issues relevant to foreign law but these were not relevant matters to this ruling.

where that person is the prime criminal suspect implicated in the death being investigated, the coroner should be most reluctant to compel that person to give evidence. Mr Lawrie referred to and relied upon *Correll v AG of NSW*⁴ as authority for this proposition.

14. Finally, Mr Lawrie submitted that there was a considerable amount of information contained in the brief about the circumstances surrounding Mrs Chan's death. He referred to the statements of Dr Tang, Julia Chu, Pearl Chan, Pat Wee, Daniel Chan, Lan Leow and Constables Hawkins and Ridge. This part of the submission appears to go to a consideration of the **importance of the evidence** to the proceeding. That is, when balancing where the interests of justice lie, in this case, an important consideration is that there is much that is known about the circumstances of Mrs Chan's last two days through other witnesses. Indeed a number of witnesses are able to give evidence about what Mr Tang was doing and saying and his reporting of Mrs Chan's condition and behaviour.
15. Sen Const Cristiano, Assisting, submitted that there were considerable gaps in the information available and only Mr Tang knows what happened during the period of Mrs Chan's deterioration and ultimate death and that only he could give that information both to the Court and to the family.
16. Mr Robinson, on behalf of Dr Tang the dentist who treated Mrs Chan, endorsed the comments of Sen Const Cristiano. He opposed Mr Lawrie's application in so far as a complete excusal was sought but did not oppose the granting of a certificate. He submitted that given that his client's standard of dental care and professional reputation has been called into question, Mr Tang's evidence was very important to his client and thus should weigh in favour of giving evidence with a certificate.

⁴ [2007] NSWSC 1385

17. Mr Robinson also raised the prospect of me directing Mr Tang to proceed with a S. 57 certificate, but contemplated the possibility of intervening to stop the questioning if I became concerned or Mr Lawrie took further objection. This technique or process has been the subject of criticism by the superior courts commencing with *Alexander's* case and I do not propose to set out on such a course based on what the authorities say about the dangers of doing so.⁵

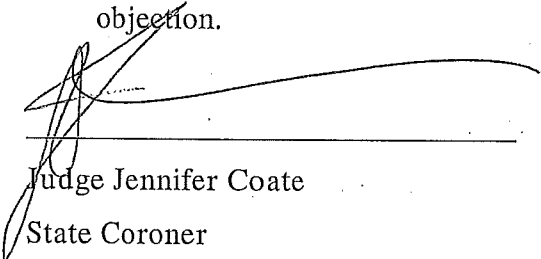
Conclusion

18. I am satisfied that whilst there would be value to this inquest in hearing evidence from Mr Tang into his knowledge of the circumstances surrounding Mrs Chan's death, the interests of justice lie in excusing Mr Tang completely. He has been committed to stand trial on a serious indictable offence arising out of the circumstances surrounding this death. He is not protected from the prosecution's decision to re-charge him with this extremely serious offence. Evidence may still emerge in this inquest which causes the DPP to do exactly that. Indeed, it may be that as a result of what emerges that I make a decision to refer the matter to the DPP for reconsideration. In summary, Mr Tang has been considered the prime suspect in a homicide investigation. He was not only investigated and charged but committed for a trial which ultimately did not proceed because the prosecution chose not to proceed at that time.
19. I have taken into account that there is a considerable amount of evidence in the brief that goes to information that Mr Tang gave various people about Mrs Chan's condition and her deterioration in the last couple of days of her life. I will hear that evidence. It is not a situation where nothing is known about what happened to Mrs Chan. Indeed the evidence as to her health, her teeth, her diabetes, the extractions and her deterioration are all the subject of evidence in the brief. The summary of the prosecution's opening refers to this material in

⁵ *R v Coroner; ex parte Alexander* [1982] VR 731

some detail and foreshadows that it was the intention of the prosecution to rely upon the extent of this evidence for a successful prosecution of Mr Tang.

20. As for the question of fairness to Dr Tang, on the complex questions of Mrs Chan's dental treatment, the timing and nature of it and her medical cause of death, Mr Tang is likely to be able to add very little to these issues.
21. I am satisfied that after engaging in the balancing exercise summarised above, the interests of justice lie in not compelling Mr Tang to give evidence over his objection.



Judge Jennifer Coate

State Coroner

20 January 2012

