SUPREME COURT OF QUEENSLAND

CITATION:	*Aplin & Anor v McIntyre*[2002] QSC 288
PARTIES:	**NICOLE APLIN AND EUGENE ESCOTT (IN THEIR OWN RIGHT AND AS REPRESENTATIVES OF THE DOOMADGEE COMMUNITY)** (applicants) v **GREG MCINTYRE** (respondent) **THE ATTORNEY-GENERAL OF QUEENSLAND** (appearing as amicus curiae)
FILE NO/S:	S737/02
DIVISION:	Trial
PROCEEDING:	Application for Review
ORIGINATING COURT:	Supreme Court at Townsville
DELIVERED ON:	24 September 2002
DELIVERED AT:	Townsville
HEARING DATE:	23 September 2002
JUDGES:	Cullinane J
ORDER:	**The application is dismissed.**
CATCHWORDS:	ADMINISTRATIVE LAW - JUDICIAL REVIEW LEGISLATION - ABORIGINALS - OTHER MATTERS - CORONERS - where death of applicant's baby in Doomadgee - where decision by respondent to have inquest in Mount Isa - whether making of decision an improper exercise of power conferred on the coroner by s 7 of the *Coroners Act* 1958 - whether respondent acted in accordance with the requirements of s 29(1) of the Act – whether respondent exceeded powers *Coroners Act* 1958 (Qld) s 4 (4), 6B, 29(1), 29A, 31, and s 36. *Judicial Review Act* 1991 (Qld) s 51 and Part 5. *Annetts & Anor v McCann & Anor* (1990) 170 CLR 596

Attorney-General v BBC (1981) AC 303
R v Surrey Coroner; Ex parte Campbell (1982) QB 661

COUNSEL: G Reithmuller for the applicant
W Elliott for the respondent
MO Plunkett as amicus curiae on behalf of the Attorney-General of Queensland

SOLICITORS: West Queensland Aboriginal & Torres Strait Islanders Corporation for Legal Aid for the applicant
Crown Solicitor for the respondent
Crown Solicitor for amicus curiae

[1] This is an application for review of a decision of the Respondent, the Coroner at Mount Isa made on 4th July 2002. The decision is contained in a letter from the Respondent of that date to the following effect:

> *"Dear Ms Trezise,*
>
> *Death Inquest – Eugene Herbert ESCOTT*
>
> *The above Inquest will commence on 26 September 2002 at Mount Isa.*
>
> *You have the right to examine witnesses and address me yourself or through any solicitor or barrister who is engaged by you.*
>
> *If you wish to examine any of those persons whose statements are now in evidence, or address me, you should advise accordingly. Further, if there are any other persons you wish to examine, you should indicate their name/s and reason for examination.*
>
> *In the alternative, if no contact is made I propose to make my findings in due course upon the material which is already before the Court and close the Inquest."*

[2] The letter is addressed to a solicitor employed by a legal service representing members of Aboriginal and Islander communities and acting on behalf of the applicants and who had presumably earlier made contact with the respondent.

[3] Counsel on behalf of the Attorney-General sought leave to appear as amicus curiae**.** This was granted. The Attorney-General did not seek to intervene under s 51 of the *Judicial Review Act* 1991.

[4] The inquest is an inquest into the death of an infant child of the Applicants, one Eugene Herbert Escott who died on 30th April 2001 at Doomadgee. The applicants are members of the Aboriginal community of Doomadgee and there is evidence that both are members of the traditional owners and that many members of the extended families live at Doomadgee. Doomadgee is a remote Aboriginal community some 500 kilometres south of Mount Isa. It has a court house which has recently been opened.

[5] It is sufficient for the purposes of this application to state that the death of the infant was the subject of an inquiry by Queensland Health. A copy of the report is before the Court. The infant was 22 days old when he died.

[6] The inquiry was concerned with and the inquest into the death will concern the adequacy of the response of hospital staff employed by Queensland Health at Doomadgee to the condition of the infant. The evidence suggests that there is considerable interest in the Doomadgee community in the events surrounding the death.

[7] Having received the notification of the 4th July the Solicitor wrote to the respondent asking for the inquest to be held at Doomadgee where the parents resided.

[8] By letter of 24th July 2002 the coroner responded:

> *Dear Sir or Madam,*
>
> *Re: Death Inquest – Eugene Herbert ESCOTT*

Reference is made to your recent correspondence requesting a copy of statements in relation to the above inquest which will be held in Mount Isa commencing 9 am on 26 September.

The inquest is to be held in Mount Isa as Barristers will be attending from Brisbane. It is also envisaged that several doctors residing out of Mount Isa will be in attendance. It would prove difficult to arrange for these people to attend at Doomadgee, so for convenience the Coroner decided to proceed with the inquest at Mount Isa.

The parents of the deceased have been summoned to attend the inquest. The cost of their attendance at Mount Isa will be covered by the Department of Justice and Attorney General.

The files are available to you on the basis that they are to be used for Coroner's purposes only."

[9] Subsequently representations were made by means of a petition signed by a substantial number of persons resident at Doomadgee and by other persons and organisations seeking to have the inquest held at Doomadgee. These are directed in some instances to the Attorney-General, and in other instances to the local member of Parliament or to the Respondent.

[10] Following these the Respondent by letter of 5th September 2002 again wrote to the solicitor for the applicants:

"*Re Inquest into the death of Eugene Herbert Escott.*

With reference to the above and to your facsimile dated 5 September 2002, I advise that the Inquest will be held at the Coroner's Court at Mount Isa on 26th September 2002 at 9 a.m."

[11] Attached to an affidavit of the applicants' solicitor filed on 20th September 2002 is a report of an anthropologist setting out the cultural significance to the family and the community generally of an understanding how the infant died. The death of a child is said to give rise to consequences which have to be addressed by the parents and the extended families. It is said that it is important that the process of investigating

the death be accessible to those concerned. There is also evidence that the hospital and its staff provide the only medical care available to the community and there is reference to some tension between the community and the department about the care provided.

[12] Although the applicants at one time were inclined to contend that the decision of the Respondent, the subject of the application, was an administrative decision. I am satisfied that it is not. Coroners' Courts are courts of record. See s 30 the *Coroners Act* 1958 as amended. See also *Attorney General v BBC* (1981) AC 303 and *R v Surrey Coroner;* Ex parte Campbell (1982) QB 661.

[13] The matter therefore falls for consideration under Part 5 of the *Judicial Review Act* 1991 which preserves the Court's power to exercise the supervisory powers previously exercised through the prerogative writs. See also s 4(4) of the *Coroners Act* 1958.

[14] Under the *Coroners Act* 1958 a coroner is required to hold an inquest in the circumstances provided for in section 6B.

[15] Section 29(1) of the Act provides as follows:

> *"29 (1) Where any inquest is to be held the coroner shall fix the time and place of the commencement of the inquest."*

[16] Under sub-section (2) of s 29 the coroner may cause to be notified in such manner and at such time as he/she sees fit any persons who, in his/her opinion have a sufficient interest in the subject on the result of the inquest of the holding of the inquest and of the time and place thereof.

[17] Section 29A provides for a power to summons witnesses. According to the affidavit of the applicants' solicitors some 14 witnesses including witnesses from Doomadgee have been summonsed to appear. It is not clear where this information came from nor is it made clear whether they have been summonsed to appear at the Coroner's Court at Mount Isa on 26th September although it was asserted from the Bar table that this was so.

[18] The coroner has power under s 36 of the Act to adjourn an inquest from place to place and from time to time. An inquest may be adjourned from one coroner to another.

[19] Section 31 provides as follows:

> "**Appearances**
>
> 31.(1) At any inquest any person who, in the opinion of the coroner, has a sufficient interest in the subject or result of the inquest, may attend personally or by counsel or solicitor and may examine and cross-examine witnesses.
>
> (2) At any inquest the person assisting the coroner, whether a police officer or not, may examine and cross-examine witnesses."

[20] It seems clear that the coroner proposes to grant the applicants leave to appear.

[21] Counsel appearing for the Attorney General, submitted that in fixing the time and place of the commencement of the inquest the coroner acted under s 29(1) which required him to do so and that he should not be taken as having done any more than this. Thereafter, it was submitted, it will be a matter for the coroner to determine in the light of the circumstances that the coroner is presented with where and when the inquest will thereafter proceed. It may be that the inquest will proceed at a number of different centres on a number of different occasions. This being so, it was argued, this application is premature.

[22] It was submitted that those who in the coroner's view had a sufficient interest to be allowed to appear ought to be heard on the issue of where and when evidence should be taken and that the right to be heard on this subject would not necessarily be limited to those entitled to appear under s 31. The appropriate time for those who contended that some or all of the proceedings should or should not take place at a particular place is at the place and time fixed for the commencement of the inquest.

[23] An analogy was drawn with the position of the parents of the deceased whose death was the subject of an inquest in *Annetts & Anor v McCann & Anor* (1990) 170 CLR 596. Just as in that case the High Court held that the requirements of natural justice required the parents to be heard in opposition to any potentially adverse findings it was said that in this case the applicants have a right to be heard in relation to where evidence should be taken particularly given the important considerations referred to in the anthropologist's report and in other evidence before the Court. In that case, which was concerned with legislation in similar terms to the *Coroners Act* 1958 , it was held that the rules of natural justice were not limited or excluded by a provision in the terms of s 31. The interests of the parents in that case, as in this case, was a sufficient basis to give rise to the right to be heard.

[24] It may be, as Counsel for the Attorney-General contended, that others will wish to oppose any part of the proceedings taking place at Doomadgee or contend for the taking of evidence or the hearing to take place in some other centre and advance reasons for this.

[25] Although the application sought the setting aside of the order and an order directing the hearing of the inquest at Doomadgee, it was ultimately conceded by Counsel for the Applicants that such an order could not be made.

[26] The language used in the letters written by the Respondent has varied somewhat. There are indications in the letter of 24th July that the Respondent may have decided that all of the proceedings in respect of the inquest including the taking of evidence will take place at Mount Isa.

[27] If this is correct, it seems to me that the coroner may have exceeded the powers conferred by s 29. This requires him to fix the time and place of the commencement of the inquest. Both Counsel representing the Attorney General and the applicants expressed this view in submissions and I think this is correct. What happens thereafter is a matter which will have to be determined by the Respondent according to the exigencies of the case. It will be a matter for the Respondent to determine who shall be heard on such matters but, as will be apparent, the Applicant's claim to be heard is a strong one. No doubt in any consideration of this issue, the Respondent will give appropriate weight to those factors weighing in favour of the taking of evidence at Doomadgee and any relevant considerations which might be advanced against that course.

[28] Although I have some reservations on the subject, I am inclined to accept the argument of Counsel for the Attorney General that the Respondent should be regarded as having done no more than fix the place and time for the commencement of the inquest, that is, that he has acted in accordance with the requirements of s 29(1) and has not exceeded his powers.

[29] If I have mistaken the Respondent's intent, I do not think it is necessary to make any formal declaration of invalidity as it can confidently be expected that the Respondent would not, in the light of this judgment, proceed in a manner contrary to the clear indication contained in it.

[30] This being so, it seems to me that it is inappropriate to grant the application leaving it to the applicants to pursue their rights before the inquest due to commence a few days hence.

[31] The application is dismissed.