SUPREME COURT OF QUEENSLAND

File No 6077 of 2002

BETWEEN:

MILU

Applicant

AND:

W.J. SMITH, CORONER

First Respondent

AND:

CHIEF EXECUTIVE, QUEENSLAND TRANSPORT

Second Respondent

AND:

ATTORNEY-GENERAL

Third Respondent

MOYNIHAN SJA – REASONS FOR JUDGMENT

CITATION:	*Dan Milu v WJ Smith & Ors* [2003] QSC 430
PARTIES:	**Dan Milu**
	Applicant
	v
	W.J. Smith, Coroner
	(First Respondent)
	Chief Executive, Queensland Transport
	(Second Respondent)
	Attorney General
	(Third Respondent)
FILE NO/S:	Supreme Court 6077 of 2002
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court

DELIVERED ON:	Thursday 18 December 2003
DELIVERED AT:	Brisbane
HEARING DATE:	7 November 2003
JUDGE:	Moynihan J
ORDER:	**1. The application is to be dismissed**
CATCHWORDS:	
COUNSEL:	Mr C Martinovic for the Applicant
	Mr RG Marsh for the First Respondent
	Mr SA McLeod for the Second Respondent
	Mr MJ Burns for the Third Respondent
SOLICITORS:	Applicant in person
	Crown Solicitor for the First, Second and Third Respondents

[1] The Applicant seeks judicial review of a coroner's decision that the death of Andrew Daniel Milu was caused by his inexperience as a motorcycle rider. He seeks orders setting aside the coroner's decision and remitting the matter for further consideration with directions. It is unnecessary to consider the terms of the directions at this stage.

[2] The coroner appeared to abide the outcome of the application and took no further part. The second respondent was represented by counsel as was the Attorney-General who intervened pursuant to s51 of the *Judicial Review Act* 1991 (Qld).

[3] The decision it sought to review was made after an inquiry into the death of Andrew Daniel Milu (the deceased), who was killed in a motor cycle accident on 14 December 2000. He was born on 24 September 1982, he was 18 years old at the time of his death.

[4] The applicant is the deceased's father. He and his wife attended the inquest. As next of kin they were represented by the same counsel at the inquest as appeared on this application.

[5] The deceased was employed as a chef at Kingfisher Bay Resort on Fraser Island. On the evening of 13 December 2000, he left Kingfisher Bay Resort and returned to Urangan Boat Harbour on the mainland. At approximately 12:15am on 14 December 2000, after disembarking at Urangan Boat Harbour, he set off on his motor cycle.

[6] The deceased was the rider, there were no passengers, of a black Honda 250cc motorcycle which was travelling west on Boat Harbour Drive, Urangan. The deceased held a learner's permit but was not accompanied by another rider.

[7] The night was clear, the weather was fine. The two lane bitumen road was well lit. Witnesses said the deceased overtook their vehicle at the top of a slight hill at what appeared to be a high speed and got "the wobbles" or "fishtailed" but straightened up and "got the wobbles" again

[8] The motor cycle appeared to hit a patch of loose gravel at the intersection of Boat Harbour Drive and Smith Street. The rider lost control.

[9] The cycle crossed over to the other lane. It scraped the curb and hit trees. The driver was thrown. The force of impact split the main trunk of one of the trees and the deceased's helmet came off his head and was found wedged in the fork. The motorcycle was damaged as described in the coroner's decision.

[10] The deceased apparently died instantly. The coroner found the cause of death to be chest and head injuries as a consequence of a motor bike accident. The deceased's blood was sampled and analysed for the presence of alcohol and cannabinoids, neither were found.

[11] The coroner added a rider to his decision recommending that the Commonwealth Department of Transport and Regional Services investigate the manner of importation of used motor cycles under import approvals to ensure that imported motor cycles actually comply with provisions of the *Motor Vehicles Standards Act* 1989 (Cth) before sale to consumers and registration.

[12] The issue to which the coroner's rider is directed arose in this way. The motor cycle the deceased was riding was a second hand Japanese motor cycle imported from Japan which had ADR compliance plates fitted by the dealer as a delegate of the second respondent. The documentation was incorrectly filled out with the consequence that a safety check was not carried out. The applicant apparently contended that it ought to have been apparent to the second respondent from the documentation that the vehicle was wrongly categorised by the dealer.

[13] There was evidence at the inquest capable of founding a conclusion there were mechanical defects in the motor cycle. As his reasons demonstrate the coroner was not, however, satisfied they contributed to the death of the deceased in this case but added the rider pursuant to s43 referred to in the *Coroners Act* 1958 (Qld) (the *Act*).

[14] The inquest was held as provided for by s24 of the *Act* which prescribed the coroner's functions in conducting it. The section provides to the effect that the purpose of the inquest was:-

> "Establishing as far as practicable –
> (a) the fact the person had died'
> (b) the identity of the deceased;
> (c) when, where and how the death occurred;

(d) the persons (if any) to be charged with murder, manslaughter, the offence of dangerous driving of a motor vehicle causing death.or any offence.in the Criminal Code s311."

[15] Section 43 of the *Act* relevantly provides that after considering all the evidence the coroner is to make findings in open Court as to who the deceased was, when, where and how the death occurred and the persons (if any) committed for trial.

[16] Section 43 (5A) and (6) of the *Act* provides that the Coroner is not to express an opinion on "any matter outside the scope of the inquest except as a rider designed to prevent the recurrence of similar occurrences". The rider is not part of the coroner's findings. "Moreover, no finding is to be framed so as to determine any question of civil liability or suggest that any particular person is guilty of an offence".

[17] The grounds on which review is sought are to be found in paragraph 5(a)(i) to (viii) of the affidavit of the applicant's solicitor filed on 2 July 2003. They are:

(a) There was a breach of the rules of natural justice namely:
  (i) the public including the Applicant could entertain a reasonable apprehension of bias on the part of the coroner as he rendered his decision that the deceased's lack of experience caused the fatal accident before both the calling of evidence on the Applicant's behalf and the commencement of closing addresses on questions of law;
  (ii) the coroner denied the Applicant natural justice by preventing the Applicant's legal representative from cross-examining the driver of the vehicle that was directly behind the deceased's motor cycle on maters that were within the scope of the inquest, namely, dangerous driving causing death;
  (iii) the public including the Applicant could entertain a reasonable apprehension of bias on the part of the coroner as he formulated an opinion in an attempt to pre-empt what expert evidence presented by the Applicant's legal representative would be before the expert was actually called to give evidence;
  (iv) The public including the Applicant could entertain a reasonable apprehension of bias on the part of the coroner as the coroner suggested that the Transport inspector's evidence was not disputed before the cross-examination of the expert was completed;
  (v) the coroner did not allow a reasonable opportunity to address the issues in the inquest to the Applicant's legal representative, through not allowing evidence to be presented on the point of there being no safety certificate issued by Queensland Transport in relation to the deceased's motor cycle;
  (vi) the public including the Applicant could entertain a reasonable apprehension of bias on the part of the coroner or further or alternatively there was a denial of procedural

fairness as the coroner allowed a Crown solicitor, representing Queensland Transport to have standing in the coroner's court, who ultimately stifled the investigation as to the cause of death through irrelevant objections, when in fact the representative did not have adequate standing;

(vii) the public including the Applicant could entertain a reasonable apprehension of bias on the part of the coroner as he implied some impropriety on behalf of the next of kind when there was no evidence presented in the coroners' court to support the inflammatory suggestion;

(viii) the coroner denied the Applicant natural justice by not exercising his powers contained within the *Coroner's Act* 1958 requiring the police to properly investigate the matter and accordingly present to the court a scaled map of the accident site and all of the evidence before reaching his final decision.

[18] At this stage, a number of points should be made. The Applicant's affidavit material, outline and oral argument directed much effort to the merits of the coroner's findings or to contending he ought to have made different findings. A judicial review is not a merits review but is designed to correct an error of law.

[19] Secondly, much of the relief sought is prerogative and the review is not, as the Applicant's material suggests, confined to part 3 of the *Judicial Review Act* 1991 (Qld). Part 5 is also relevant and argument proceeded on that basis.

[20] In this case, the coroner from time to time expressed views about evidence and its consequences. Some of these occasions are referred to in the grounds of review. When he did so, on a fair reading of the transcript, counsel for the next of kin was given the opportunity to make submissions in respect of the view and its foundations. It has not been demonstrated that the coroner made any decisions adverse to the deceased or the next of kin which were "not obviously open on the evidence"; see *York v General Medical Assessment Tribunal* [2003] 2 Qd R 104 at 113 [23].

[21] Grounds (i), (iii), (iv), (vi) and (vii) raise apparent bias. It is convenient to deal with that overall issue first before considering individual grounds.

[22] A "reasonable apprehension" of bias is not an apprehension that the case may be decided adversely to a party but rather that it will not be decided impartially. The apprehension must be "firmly established"; *Re J.R.L.; Ex parte C.J.L.* (1986) 161 CLR 342 per Mason J at 352, *Re Watson; Ex parte Armstrong* (1976) 136 CLR 248 at 262, *Re Shaw; Ex parte Shaw* (1980) 55 ALJR 12 at 14, *R v Commonwealth Conciliation and Arbitration Comm.; Ex parte Angliss Group* (1969) 122 CLR 546 at 553.

[23] There is nothing objectionable in a decision maker expressing a preliminary view. It must be established that there is a reasonable basis for concluding that the

decision maker's mind is irrevocably made up; *Carruthers v Connolly* [1998] 1 Qd R 339 at 372 per Thomas J, *Laws v Australian Broadcasting Tribunal* (1990) 170 CLR 70 at 100.

[24] The test for apparent bias is stated in *Johnson v Johnson* (2000) 201 CLR 488 at 492, per Gleeson CJ, Gaudron, McHugh, Gummow and Hayne JJ as:

> "It has been established by a series of decisions of this Court that the test to be applied in Australia in determining whether a judge is disqualified by reason of the appearance of bias is whether a fair-minded lay observer might reasonably apprehend that the judge might not bring an impartial and unprejudiced mind to the resolution of the question the judge is required to decide".

[25] Their Honours went on:

> "…the test is objective, *(it)* is founded in the need for public confidence in the judiciary, and is not based purely upon the assessment by some judges of the capacity or the performance of their colleagues. At the same time, two things need to be remembered; the observer is taken to be reasonable; and the person being observed is 'a professional judge whose training, tradition and oath or affirmation require [the judge] to discard the irrelevant, the immaterial and the prejudicial' (*Vakauta v Kally* (1988) 13 NSWLR 502 at 527, per McHugh JA, adopted in *Vakauta v Kelly* (1989) 167 CLR 568 at 584-585, per Toohey J)". See also *Re Watson; ex parte Armstrong (ante)* at 263.

[26] The first question which arises in respect of bias is whether any right to raise it has been waived. The law is clear that counsel is under an obligation to take the point as to apparent bias or be taken as having waived it;

> "Where such comments which are likely to convey to a reasonable and intelligent lay observer the impression of bias have been made, a party who has legal representation is not entitled to stand by until the contents of the final judgment are know and then, if those contents prove unpalatable, attack the judgment on the ground that, by reason of those earlier comments, there has been a failure to observe the requirement of the appearance of impartial judgment. By standing by, such a party has waived the right subsequently to object."

Vakauta v Kelly [1989] 167 CLR 568 at 572 as per Brennan, Deane and Guadron JJ. See also *Hinton v Mill* (1991) 57 SASR 97.

[27] In the course of the inquest a dialogue took place between counsel for the next of kin and the coroner. It related to Dr Gilmore, an expert who had carried out an examination of the motor cycle after the accident for the next of kin. Copies of his reports were made available before the inquest.

[28] Early in the hearing the coroner had stated that he did not propose calling Gilmore but it was open to the applicant to do so. Counsel submitted that that was "one sided" contending that Gilmore's evidence controverted the evidence of William Thomas Watson, an officer of the second respondent, who had also examined the motor cycle after the accident.

[29] Later the coroner said:

> "There's a simple solution, Mr Martinovic. I'll allow Mr Gilmore to give evidence in the court. We can ask questions of him. If that will satisfy you and Mr and Mrs Milu, that's important."

The coroner went on to say that that did not change the position, that many things outlined in Dr Gilmore's report went beyond s24 of the *Act.* The reference was apparently to matters bearing on civil liability, counsel stated that he would ensure that the restriction was observed.

[30] Counsel then stated:-

> "…I am requesting the Court to be very impartial and so that it's not one sided.."

The Coroner interrupted to say that he hoped that counsel was not suggesting that he was other than impartial and referred to the constraints on an inquiry under the *Coroners Act* 1958 (Qld). Counsel stated that he was not there to pursue the matter of litigation.

[31] The coroner then referred to counsel's reference to impartiality and stated:-

> "...It's a matter that you raised and it's improper. This is an open inquiry. It's an open court and all the proceedings are recorded."

[32] Counsel stated that he understood that. The coroner remarked that counsel had raised impartiality drawing this statement from counsel for the next of kin:-

> "I'm not going to take that matter any further, Your Worship"

[33] Later, in the course of his final address, counsel stated:-

> "…Your Worship has rightly pointed out and it has been, I will add, on the record entirely impartial in this particular case, and I apologise in any way, shape or form, if your Worship has misunderstood me and thought that I thought any differently in this particular case. You've been fair and reasonable in all the circumstances and in some respects, even overarching

> in terms of your – in terms of your impartiality to the benefit – to the benefit of my clients. So, to that extent your Worship and also to the extent, as I was indicating your Worship that come with regards to a matter of this particular nature, and with regard to the fact that civil liability is not something which this court considers."

[34] By this passage counsel acknowledges that there was no basis for a claim of bias, withdrew any allegation of it and waived the right to raise it in proceedings such as this.

[35] Although on one view of it that is the end of the issue of apparent bias in the circumstances of this case I do not propose disposing of the point on that basis alone.

[36] I have mentioned the evidence of Dr Gilmore and Mr Watson and it is convenient to say something about that at this stage. In the reasons for his decision the coroner referred to each having inspected the motor cycle after the accident. After reviewing the evidence he concluded that the engine brakes, wheels, tyres, lights and steering of the motor cycle did not contribute in causing the death of the deceased.

[37] Photographic evidence of the motor cycle prior to its removal from the scene raises doubts about whether the motor cycle was in the same condition prior to its being removed from the scene and when it was examined. During the course of the hearing the coroner canvassed this with Dr Gilmore.

[38] In his reasons for his decision the coroner went on to conclude that although Dr Gilmore observed the throttle cables were in poor condition and the grip was stiff and did not return to the idle position however, the throttle assembly rotated freely on the handle and the deceased could have reduced throttle on the motor cycle by moving his right hand in a clockwise direction. This finding was relevant to a hypothesis canvassed at the inquest about a mechanical defect contributing to the death.

[39] To the extent to which Watson's evidence was in conflict with Dr Gilmore, on matters relevant to his findings of the second respondent's officer who examined the cycle, the coroner is to be taken as accepting Watson's evidence. He was entitled to do so. The relevance and weight of evidence was a matter for him; *Minister for Immigration and Ethnic Affairs v Wu Shan Liang* (1996) 185 CLR 259 at 291.

[40] As to a hypothesis that the accident may have been caused by defects in the motorcycle, it is relevant to note that in cross-examination by the second respondent's representative Dr Gilmore said:-

> "...all I wanted to point out to the Court was that in considering those range of possibilities, you could not omit the fact that there were those mechanical defects present...in the motor cycle at the time."

[41] Put shortly, to the contrary of the submissions on behalf of the applicant the coroner did not ignore Dr Gilmore's evidence. He did not give it the weight or effect for which counsel for the applicant contends. It has not been demonstrated that he erred in law in dealing with it or reaching the conclusion he did.

[42] I turn to the individual grounds. In dealing with them I will not repeat the general consideration addressed earlier nor, in relation to later grounds, will I repeat what I have said in dealing with earlier grounds where it is applicable.

[43] Ground (i) of the ground of review is that the applicant could entertain a reasonable apprehension of bias on the coroner's part "as he rendered his decision that the deceased's lack of experience caused the fatal accident" before the calling of evidence on the applicant's behalf and the commencement of addresses.

[44] The submissions in support of this ground do not take it much beyond a matter of bare assertion. I will not repeat what I have already said about a tribunal expressing a preliminary view or about counsel for the applicant having had adequate opportunity to contradict such a view. This ground has not been made out.

[45] It will be recalled that ground (ii) is that the coroner denied natural justice by preventing the applicant's legal representative from cross-examining the driver of the vehicle travelling behind the deceased's in respect of matters "within the scope of the inquest, namely, dangerous driving causing death".

[46] The vehicle in question was driven by a Ms Burgess.

[47] It appears that the letter reference was intended to relate to Ms Burgess' conduct leading up to the deceased losing control of the cycle. On a fair reading of the evidence there is no basis for concluding her conduct played any role in the events involving the motor cycle. Counsel's suggestions about her driving, playing cat and mouse, possibly speeding and so on do not extend beyond speculation at best.

[48] Counsel for the defendant also took issue with the coroner reading Ms Burgess' statement into the record "in fairness to her" before counsel could cross-examine her. It seems to be said that this unduly favoured or prejudiced her evidence.

[49] Counsel also claimed that the coroner's interventions in relation to Ms Burgess' case had the consequence that counsel could not, as he would otherwise have done, explore with her whether or not she had a history of traffic offences particularly convictions for speeding which might "directly or indirectly" implicate her in the death of the accused.

[50] What, in fact, occurred is that Ms Burgess gave evidence by telephone without a copy of the statement which she had given to the police and which was in evidence at the inquest. That explains the coroner having read it to her before cross-examination commenced.

[51] In cross-examination counsel for the next of kin asked whether after the accident Ms Burgess went and attended to the deceased. She answered to the effect that she did not. She had stopped the car, one of the passengers set about calling the ambulance and Ms Burgess set about waving down approaching traffic. She saw a couple come out of a nearby house and attend the deceased.

[52] This having been elicited counsel for the applicant asked:-

> "You obviously had no concern for whether or not the deceased was going to live or die?"

[53] The coroner intervened saying that he thought that was an unfair question. The witness nevertheless answered it by explaining that her concern was to slow down the traffic coming up the road while others were attending to him.

[54] The applicant's counsel then asked her:-

> "You didn't attend his funeral, did you?"

[55] The coroner intervened to the effect that counsel's remark was an improper comment. He pointed out that there might be many reasons why she didn't attend the funeral and disallowed the question.

[56] After some dialogue between them counsel contended to the coroner that the question went "towards a guilty conscience". The coroner disagreed with counsel's contention stating that if there was any indication of Ms Burgess being implicated in the death of the deceased he would have given her an appropriate warning.

[57] After the police officer assisting the coroner reinforced the need for a warning in the circumstances predicated, the coroner went on to say that the witness:-

> "...has answered everything openly and honestly and there's clearly insufficient evidence to implicate her."

[58] After this intervention counsel for the applicant did not seek to make submissions identifying evidence capable of implicating Ms Burgess in the accident; he simply said he had no further questions.

[59] Before me counsel for the next of kin submitted that the coroner's demeanour was threatening and stifled his conduct of the case; "one would not dare, if you were counsel in the coroner's inquest, to raise…you would be a very brave man".

[60] The coroner's intervention in respect of the cross-examination of Ms Burgess was proper and justified. A fair reading of the record shows there is no basis for

concluding that counsel was in any way justifiably deterred by the coroner's conduct or ruling from properly advancing his case.

[61] Counsel for the applicant had ample opportunity before the coroner and before me to direct attention to any evidence capable of implicating Ms Burgess in the death of the deceased but he did not do so.

[62] There is no substance in ground (ii).

[63] Ground (iii) is to the effect that the coroner formulated an opinion "in an attempt to pre-empt what expert evidence presented by the applicant's legal representative would be before the witness was called".

[64] This is a reference to Dr Gilmore, to whom I have already referred, and takes place in the context of the exchange set out culminating in the coroner's decision to call Dr Gilmore.

[65] As I have already said Dr Gilmore was called and the coroner considered his evidence although he did not accept it, at least on the terms for which the applicant contends or find that it had the consequences for which the applicant contends.

[66] Dr Gilmore was called. Counsel for the applicant had ample opportunity to deal with any views expressed by the coroner. There is no substance to this ground.

[67] Ground (iv) is to the effect of a reasonable apprehension of bias because the coroner suggested that the transport inspector, Watson's, evidence was not disputed before cross-examination of the expert was completed. This apparently relates to a statement by the coroner that Watson's evidence:-

> "At this stage, in relation to that inspection has not been impugned."

[68] The remark was made in the following circumstances. Before the coroner the second respondents representative objected to counsel for the next of kin's cross-examination on the basis that it was not directed to issues relevant to the coronial inquiry.

[69] The coroner declined to restrict the cross-examination stating that it was clear that Watson:-

> "Has explained what he did, in fact, in relation to the material motor cycle in his evidence, at this stage, in relation to that inspection has not been impugned. I would allow Mr Martinovic to continue."

Counsel then continued with his cross-examination for some 20 pages of transcript.

[70] Counsel for the next of kin was given ample opportunity to impugn in Watson's evidence but failed to do so. There is no substance to this ground.

[71] Ground (v) is to the effect that the applicant's counsel was not allowed a reasonable opportunity to address the issues through the coroner "not allowing evidence to be presented on the point of there being no safety certificate". I have earlier outlined the circumstances in which the question of a certificate arose and was dealt with.

[72] The particular complaint appears to originate with events which took place on the first day of the inquest. Senior Constable Young, assisting the coroner, objected to statements made by counsel for the applicant in the course of his cross-examination of Constable Smith who attended the scene. Senior Constable Young stated that "just because a vehicle doesn't have a roadworthy certificate it doesn't mean it's not roadworthy."

[73] The coroner then remarked that a vehicle might be not roadworthy notwithstanding that it had a certificate and referred to the advantage of evidence of "an actual inspection" over a certificate which "might not be based on a proper inspection." He concluded in response to submissions repeatedly made by counsel for the next of kin on the issue by saying to counsel the issue of the certificate, as distinct from a proper inspection of the vehicle, had been given too much emphasis by counsel.

[74] Before me counsel for the next of kin stated that just before Constable Young's objection he was intending to tender documentation from the Queensland Department of Transport but he could not because "the objection was raised". The coroner made no ruling excluding evidence in terms of the objection. Counsel made no attempt to tender material which was rejected by the coroner.

[75] After the coroner's remarks about counsel giving too much emphasis to the certificate as distinct from proper inspection the applicant's counsel is recorded as having said, "I'll abandon (sic) that point for the time being", he does not seem to have returned to it in any identifiable way.

[76] As to address a fair reading of the transcript shows that, during the course of the evidence and in address, the coroner was more generous in allowing the applicant's counsel to raise, canvass, call evidence and address on issues beyond those defined in s24 of the *Act* and beyond the constraints imposed by s40. This was one such issue.

[77] There is no substance in this ground.

[78] Ground (vi) complains of denial of procedural fairness and reasonable apprehension of bias because the coroner allowed "a Crown solicitor, representing Queensland Transport, to have standing". The ground goes on to allege that this "ultimately stifled" the inquiry through "irrelevant objections" by the department's representative.

[79] Counsel was unable to provide any basis for a conclusion that giving leave to a "Crown solicitor" rather than any other lawyer constituted a denial of procedural fairness or gave rise to a reasonable apprehension of bias.

[80] The contention that the second respondent's representative stifled the investigation through irrelevant objections does not go beyond assertion and is unsustainable.

[81] Section 31 of the *Act* provides that:-

> "..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."

[82] It is clear that the role of the second respondent and his officers in the events leading to the death of Mr Milu were controversial, the subject of scrutiny and challenged by counsel for the next of kin.

[83] The inquest opened on 12 February 2002. As early as 21 March 2001 solicitors, then acting for the next of kin, wrote to the coroner urging an inquest on the basis that there was real concern regarding the issue or non issue of a safety certificate. The role allegedly played by the second respondent not adhering to "industry practices concerning the registration of motor vehicles" was canvassed. Further correspondence on these lines followed before the inquest opened.

[84] At the inquest, counsel for the next of kin cross-examined a Queensland Transport officer (Watson, previously referred to) with a view to showing he had not followed relevant procedures or regulations his investigation into the circumstances of the death of the deceased.

[85] During the inquiry counsel for the next of kin asked the police investigator whether he had "at least investigated whether Queensland Transport should be held accountable under the Criminal Code for manslaughter in respect of the death of the deceased".

[86] In my view, in the light of the considerations which I have canvassed it was quite open to the coroner to conclude that the second respondent and, for that matter, his officer had a sufficient interest in the subject or result of the inquest to found an exercise of the discretion conferred by s31 of the Act to allow the representation.

[87] No error has been shown in the coroner's decision to grant leave. There is no substance in this ground.

[88] Ground (vii) contends there was a reasonable apprehension of bias because the coroner implied impropriety on behalf of the deceased's next of kin when there was no evidence presented to support "the inflammatory suggestion".

[89] The ground appears to relate to an exchange between the coroner and the next of kin's counsel on the second day of the inquest in the course of the exchange about Dr Gilmore about which I mentioned earlier

[90] Counsel for the next of kin referred to "submissions as to the possible cause of death". He referred to the examination of the motor cycle before concluding:-

> "..The crux of the matter, as I understand it, goes towards the cause of death and whether or not there was a mechanical fault which caused the death. Whether there was some contribution on the part of the rider on the motor cycle and also some mechanical fault".

[91] In the course of this rather uninstructed exchange the coroner commented that the deceased should not have been riding unaccompanied. Counsel stated to the effect that that was understood and accepted but that it did not exculpate others.

[92] The dialogue continued. The coroner then intervened to say that if the deceased man was not riding the motorcycle or was riding it in accordance with the applicable traffic regulations his death would not have occurred and remarked:-

> "…any person who permitted him to drive – we'll certainly have to look at that situation as well."

[93] Arguing before me in support of this ground, counsel for the applicant submitted:-

> "…my clients are obviously sitting ducks in the court sitting next to me as that statement is being made. He looked right at them at that point of time effectively, your Honour. With the greatest of respect to the coroner at that point in time when he said that, whilst it might not be appreciated just through the words themselves on that sheet of paper, through the context of actually how he said it and he observed and looked at my clients at that point, it was extremely intimidating…"

[94] Counsel was then cut off by objections from counsel for the other parties. He retracted the allegation and apologised. Shortly afterwards he stated in respect of ground (vii) "…it doesn't go beyond that because the matter obviously isn't pursued."

[95] That may be taken as an acknowledgement that the ground is without substance. Be that as it may, in retrospect it may have been better for the remark not to have been made. That said the coroner's statement was a passing remark in circumstances in which the coroner was attempting to confine issues and keep the inquest on course. The coroner made no reference to the issue in his verdict or reasons; there is no substance in this ground.

[96] Ground (viii) is a complaint of denial of natural justice in not "requiring the police to properly investigate and present a scaled map". Counsel relied on s50 of the *Act* which deals with police assistance to the coroner.

[97] Counsel for the next of kin took no objection during the inquiry that the police investigation was adequate or that the preparation of the scale map was necessary. He made no application for an adjournment for this to be done or to put it to witnesses, he did not tender a scale map or cross-examine witnesses based on one.

[98] A sketch diagram was prepared and tendered by the investigating police officer. That officer rejected a suggestion that a scale map was required saying the sketch was adequate for the purpose of the inquest. Apart from generalised assertions there has been no attempt to demonstrate that a scaled map, if tendered, would have led to a different outcome to the inquiry.

[99] Before me counsel for the applicant submitted to the effect that thee was an error of law. The "accident investigation squad based at police headquarters in Roma Street" should have been directed to carry out an investigation. This and the fact that the police traffic incident training manual required scale drawings when there was a fatal accident gave rise to a reviewable error. The proposition is untenable.

[100] No error of law has been demonstrated in respect of this ground.

[101] The considerations being those I have canvassed the application is dismissed.