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MONASH LAW

ACCESS TO CORONIAL JUSTICE: HOW DO LEGAL PRACTITIONERS NAVIGATE CORONIAL LITIGATION?

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Introduction and background

Coroners investigate certain deaths to ascertain the identity of the deceased, cause and circumstances of the death.

Each year, more than 22,000 deaths are reported to coroners across Australia.

Stakeholders in dispute with coroners often must seek superior court review.

Most cases in the past three decades have been dismissed. Legal practitioners must navigate access to justice obstacles in the context of coronial litigation

How do lawyers navigate the challenges of coronial litigation?

Key questions:

- What are the professional perspectives on the barriers to access to justice in coronial litigation?
- What are the ethical and professional techniques and strategies that legal practitioners use to navigate this terrain?

Frameworks:

- Mather and Levin's ethical decision making in practice context (2012)
- Parker's four approaches to legal ethics (2004)

Interviews with legal practitioners

- Semi structured interviews with 11 legal practitioners

- Background experience
- How cases progressed
- The challenges of coronial litigation
- How the cases resolve
- Whether legislative changes have had an impact
- The motivations of applicants
- The role of Appropriate Dispute Resolution
- Case management
- Self represented litigants

Key findings

- Professional perspectives on barriers to access to justice in coronial litigation
  - Barriers to entry
  - Barriers to a fair justice experience

- How practitioners navigate and make sense of the coronial litigation terrain: Evidence of ethical frameworks
  - The responsible lawyer (and the moral activist lawyer)
  - Ethics of care

Legal practitioners in this setting adopt three key ethical and professional strategies for navigating the challenges of coronial litigation.

Barriers to entry

Costs and resourcing barriers

The chances of someone being able to then fund a Supreme Court appeal …even commercial parties probably wouldn't appeal on the basis of the costs involved. So I think that that is a huge barrier to appeals themselves

Qualitative and quantitative deficiencies in legal services

I would say that nearly all solicitors who are involved in a coronial appeal… would probably brief counsel to assist with that process. So the thought of a self-represented litigant managing, filing a notice of appeal that properly pleads the points of law that are being appealed, I think that would be incredibly difficult

Self represented applicants:

They need advice, they need advice, not case management because they don't understand. And this is probably why we don't see any represented cases making it that far… they need advice from an actual structured scheme, not pro bono requests to the Bar to fill a gap that the courts and the government aren't funding.

Barriers to a fair justice experience

Motivations (which cannot justify a legal position):

- **(Ir)Rationality, grief and unresolved angst – determined to pursue an appeal even if it is not pragmatic**
- **Procedural fairness – their feeling of alienation resulted in a need to pursue a ‘day in court’**
- **Search for answers and accountability (and the greater good) – meaning-making from tragedy**

How practitioners engage: evidence of ethical frameworks

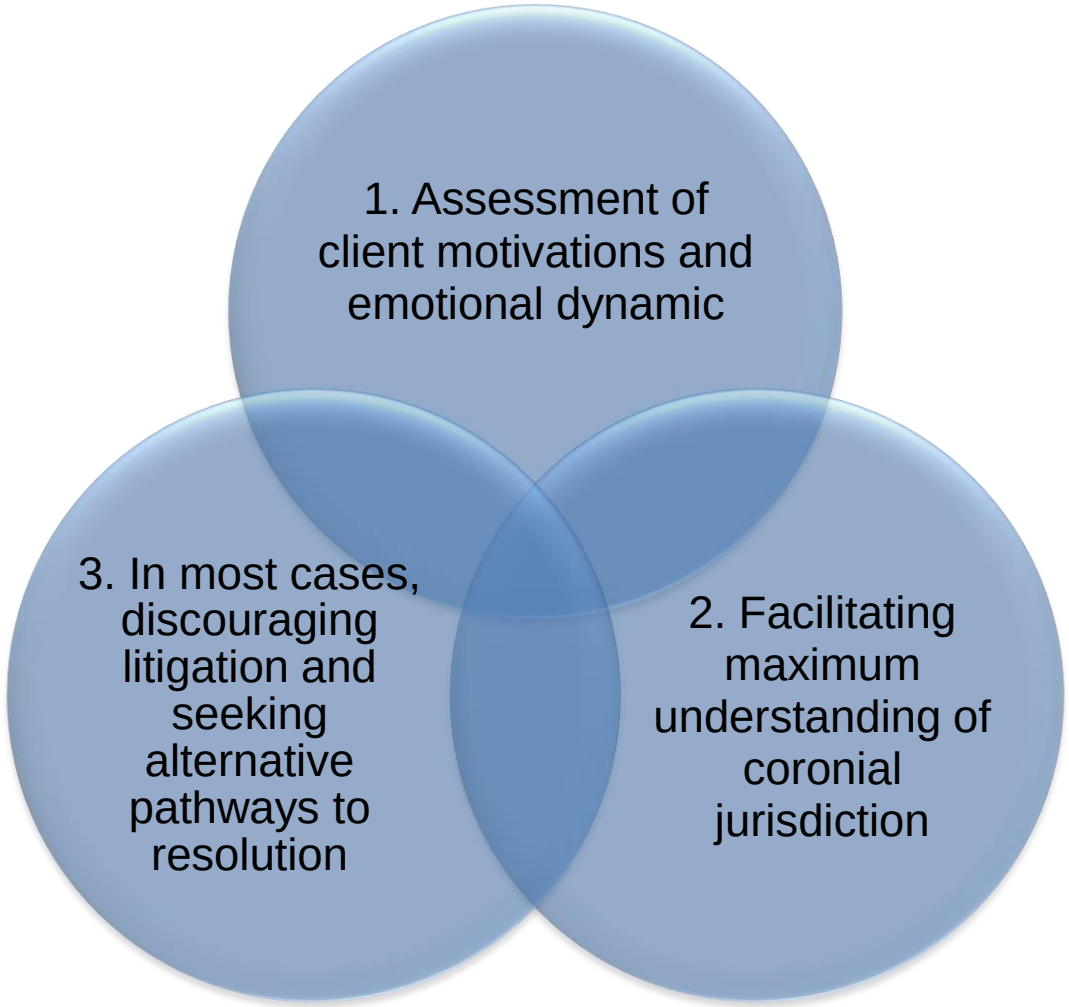
The responsible lawyer (balancing duties to court and clients) in the presence of SRLs and the Moral Activist Lawyer

I think the Supreme Court tries to help people to put some coherence into their applications, but I think it's possibly too late by then, trying to help at that point. They can't give advice and they'll say to the applicant and plaintiff, we can't give you advice, but these are the …procedural steps you need to take. And it just results in more things getting filed over and over again.

Ethics of care in this setting – a tailored approach

Even if arguably there might be a legal case, you sort of have a good talk with them about: 'what are you going to get out of this, what could an inquest actually achieve, and do you think that this is just going to be more aggravating of your grief?'

Ethical and professional strategies



THANK YOU

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