

IN THE CORONERS COURT OF VICTORIA
AT MELBOURNE

IN THE MATTER OF RGF
CASE NO. 1434/08

RULING ON S 57 APPLICATION OF MS ¹²⁰ [REDACTED] TO BE EXCUSED FROM
GIVING EVIDENCE

1. This inquest into the death of RGF is coming to a close, but for the evidence of one remaining witness, Ms ¹²⁰ [REDACTED]. Ms ¹²⁰ [REDACTED] made a statement to the investigating member on 12:2.2009. This statement has effectively already gone into evidence as it has been tendered as part of the balance of the inquest brief produced by the investigating member. However, just prior to the investigating member producing the brief, Ms Hinchey of Counsel on behalf of Ms ¹²⁰ [REDACTED], made application to have her client completely excused from giving evidence relying on the provisions of section 57 of the *Coroners Act 2008*.
2. At the commencement of this inquest, I had indicated (in a ruling as to whether or not an inquest should be held) that a combination of the transcript of committal proceedings and statements contained in the inquest brief, raised the issue as to whether or not some school staff may have had a suspicion or belief or knowledge of the sexual abuse of SB.¹ I sought to make clear that I was seeking to clarify what mandated notifiers did or did not know or believe and what they understood about their obligations to report. I sought this for purposes directed at the coroner's role, not as a substitute prosecuting authority or to further the purposes of a prosecuting authority.

¹ Ms ¹²⁰ [REDACTED] was a relevant mandated notifier, being one of SB's teachers.

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3. Ms [REDACTED]'s first and only statement at the time of this application, did not touch upon issues of whether or not she had any training as a mandated notifier, whether she understood her obligations and what view she had formed about her obligations in the context of the evidence of information she had been given by other witnesses. At the commencement of the inquest, the evidence produced in the investigation to date touching upon this aspect of the circumstances surrounding the death of RGF remained, as I have stated earlier, "unsettled and unclear".²
 4. A further statement had been requested some months ago from Ms [REDACTED] to assist in clarifying these issues and through her lawyers, Ms [REDACTED] declined to provide any further information. Ms [REDACTED] remained on subpoena and on the witness list and is now the remaining witness in this inquest.
 5. As indicated Ms [REDACTED]'s application made by Ms Hinchey on October 14, 2011, is to be completely excused from giving evidence. She has indicated through Ms Hinchey that she objects to giving evidence pursuant to section 57 of the *Coroners Act*, which provides a process for a witness in coronial proceedings to object to giving evidence at inquest on the grounds that the evidence may tend to prove, relevantly, in this application, that the witness is liable to a civil penalty under an Australian law.
 6. During the course of the application made by Ms Hinchey, a discussion took place with respect to the importance of the evidence from Ms [REDACTED] to these proceedings based upon the areas that have been foreshadowed by me, as the parameters of the inquiry, as I saw them at the commencement of the inquest. Before turning to the substance of the application, I pause to observe that a coroner's investigation is a dynamic thing. It is an investigation. Whilst I consider it good and appropriate practice wherever practicable for a coroner to make as clear as possible the areas of investigation that the coroner is pursuing, I wish to make it clear that this does not in any way preclude a coroner in the course of an inquest pursuing a matter that was not originally foreshadowed. In my view to suggest otherwise would be an improper fettering of an inquisitorial court and the role of an investigating coroner.
 7. Having said that, in this particular inquest, I have not moved away from the original foreshadowed areas of inquiry.

² See ruling: re Inquest or no Inquest September 29 2011

8. To return to the substance of the application pursuant to section 57, it was accepted for the purposes of this application that the reference in section 57 (1)(b) to a civil penalty incorporates a disciplinary proceeding. That is, that a disciplinary proceeding such as what I am advised is available under the *Education and Training Reform Act 2006*, referred to in paragraph 14 of Ms Hinchey's written submissions, fits the language of section 57 (1)(b). I am satisfied that liability to a disciplinary proceeding is liability to a civil penalty.
9. Thus, it was submitted that I should find that there are reasonable grounds for the objection to giving evidence. That is, that there are reasonable grounds to apprehend the danger to the witness of being compelled to answer. Consistent with the language of the common law prior to the enactment of section 57, there is a real and appreciable risk to Ms [REDACTED]^{ILO} of a civil penalty, that being possible disciplinary proceedings instituted by the Victorian Institute of Teaching, the body responsible for teacher registration and professional conduct.
10. Ms Hinchey advised me that the Victorian Institute of Teaching is actively monitoring these proceedings. It is already in evidence before this inquest through the first statement of Ms [REDACTED]^{ILO} that teaching is her livelihood and she has been a teacher for at least the past 28 years.
11. Based on the evidence to date in these proceedings and the advice provided by Ms Hinchey as to the active monitoring of these proceedings by the body responsible for professional conduct and teacher registration, I am satisfied that there are reasonable grounds for the objection to be taken.
12. Having come to this view and being satisfied through Ms Hinchey that her client is aware that she is therefore not required to give evidence unless directed by the court, and having also been satisfied through Ms Hinchey that her client is not prepared to give evidence willingly, the next consideration is whether or not to exercise the discretionary power to direct Ms [REDACTED]^{ILO} to give evidence in this inquest. This is generally referred to as the requirement for the coroner to apply the "interests of justice" test. That is, whether the witness is to be compelled to give evidence

requires the coroner to be satisfied that the interests of justice require it.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.

13. Essentially Ms Hinchey put her application on two bases.

(1) Importance of Ms ¹⁴⁰ [redacted]'s evidence to the areas of investigation in this inquest, balanced against the risk to Ms ¹⁴⁰ [redacted]'s future employment and possible proceedings against her under either the *Occupational Health and Safety Act* and/or *Education and Training Reform Act*

14. It was put on Ms ¹⁴⁰ [redacted]'s behalf, on the issue of the importance of her evidence to the areas of investigation in this inquest, that there were no areas of relevant evidence not already before the court either by document, statements or oral evidence of other witnesses and that this was a relevant consideration in balancing where the interests of justice lie in this case.

15. It was submitted that this issue should be balanced against the risk that whilst the certificate would protect Ms ¹⁴⁰ [redacted] from use of the *actual* evidence that she gives in these proceedings, it does not provide protection against further avenues of investigation being initiated by the two potential prosecuting authorities foreshadowed above as a result of disclosures she may make in the course of giving evidence.

16. Of considerable significance to my deliberations in this application is that I have now been provided with a further statement from Ms ¹⁴⁰ [redacted].⁴ The context of the provision of this statement being that I took issue with that part of Ms Hinchey's application that submitted that Ms ¹⁴⁰ [redacted] could add nothing to the areas of inquiry in this inquest as originally foreshadowed by me.

17. In the course of that discussion, Ms Hinchey offered to provide a further statement from Ms ¹⁴⁰ [redacted] addressing the areas identified as of interest to me. Ms Hinchey requested that the application be adjourned and not ruled upon until that further statement was completed and provided to me.

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

⁴ Now tendered into evidence as Exhibit 26

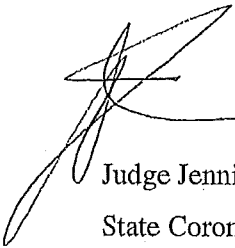
18. Upon consideration of that further statement of Ms [REDACTED]¹¹⁰ now provided to the court, the inquiry has the benefit of Ms [REDACTED]¹¹⁰ having addressed those matters, identified by me, upon which only she has been able to give evidence. Thus, in weighing up where the interests of justice lie, compelling Ms [REDACTED]¹¹⁰ to give *further* evidence beyond what has now been obtained, which may expose her to an investigation with potentially very grave consequences for her, I am satisfied that the interests of justice do not require Ms [REDACTED] to provide any further evidence.

(2)Protection of reputation

19. For the sake of completeness, I do want to address the other area raised by Ms Hinchey in this application. This was consideration of the adverse personal effect on the reputation of Ms [REDACTED]¹¹⁰ in a small close-knit community where she has been a teacher for 28 years. It was put that in balancing where the interests of justice lie, that I should take into account the impact upon the professional reputation of Ms [REDACTED]¹¹⁰ if forced to give evidence in these proceedings. In my view, the reach of section 57 is not intended to provide protection for the personal reputation of a witness.

20. It might be that a coroner may take into account such matters when making an assessment about the calling of a particular witness in an inquest generally, but this is not a consideration that touches upon a provision that is set up to regulate the application of the self-incrimination privilege.

21. For the reasons set out above I am satisfied that it is appropriate to excuse Ms [REDACTED]¹¹⁰ from providing any further evidence to this inquest.


Judge Jennifer Coate

State Coroner

November 4 2011

