

RIGHT-TO-KNOW LAW

HEARST TELEVISION, INC. V. NORRIS: INTERPRETING THE RIGHT-TO-KNOW LAW'S CONFLICT PROVISION

I. INTRODUCTION

The Supreme Court of Pennsylvania case, *Hearst Television, Inc. v. Norris*,¹ provides insight into how the court will determine which law to apply when the Pennsylvania Right-to-Know Law conflicts with another statute. Although the majority ultimately held that there was no conflict, the analysis utilized in the decision will provide guidance for the Office of Open Records when similar conflicts arise in the future.

In *Hearst Television, Inc.*, the Supreme Court of Pennsylvania interpreted two purportedly conflicting statutes, the Coroner's Act² and the Right-to-Know Law (RTKL),³ and found that they both allowed for immediate access to certain records of the coroner, thus, did not conflict.⁴ This survey will examine the analysis employed by the court by exploring the background of the case, discussing the relevant statutes, and evaluating the case itself. It will conclude that *Hearst Television, Inc.* will set the tone for how conflicts between the RTKL and other statutes will be resolved.

II. BACKGROUND

A. Statutes

i. The Coroner's Act

The Coroner's Act provides coroners with the authority to investigate certain deaths for the purpose of "determin[ing] the cause of any such death."⁵ The purpose of such an investigation is

¹ *Hearst Television, Inc. v. Norris*, 54 A.3d 23 (Pa. 2012).

² 16 PA. STAT. ANN. §§ 1231-53 (West Supp. 2013).

³ 65 PA. STAT. ANN. §§ 67.101-.3104 (West 2010).

⁴ *Hearst Television, Inc.*, 54 A.3d at 24-25.

⁵ tit. 16, § 1237(b).

to determine if the death was the result of a criminal act, negligence, or natural causes; thus, allowing for any wrongdoers to be charged, if necessary.⁶ But, while the act does grant the coroners authority to investigate, it also imposes a requirement to disclose the findings of such an investigation.⁷ Title 16, section 1251 requires coroners to deposit all of their official records in the prothonotary for public inspection.⁸ This must be done thirty days after the end of the year.⁹

In addition to this end of the year requirement, coroners may also receive various requests for their reports throughout the year.¹⁰ The Coroner's Act grants coroners the authority to charge a small fee for their work.¹¹ Further, the Act gives coroners the discretion to comply with requests for examinations.¹²

ii. The RTKL

The RTKL states that any "record in the possession of a Commonwealth agency or local agency shall be presumed to be a public record."¹³ This means that these records are to be made available to the public for inspection and duplication.¹⁴ The meaning of the term public record is very broad, and encompasses any "record, including a financial record, of a Commonwealth or local agency that: (1) is not exempt under section 708; (2) is not exempt from being disclosed under any other Federal or State law or regulation or judicial order or decree; or (3) is not protected by a privilege."¹⁵

Despite this broad definition, the RTKL does provide some exceptions to what records must be made available to the public.¹⁶

⁶ *Id.*

⁷ *Id.* § 1251.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* § 1236.1.

¹¹ tit. 16, § 1236.1(b)-(c).

¹² *Id.* § 1236.1(a).

¹³ 65 PA. STAT. ANN. § 67.305(a) (West 2010).

¹⁴ *Id.* § 67.701(a).

¹⁵ *Id.* § 67.102.

¹⁶ *Id.* § 67.708.

One of these exceptions applies to coroner's records.¹⁷ The statute provides that autopsy records are exempt from the general rule that all records of agencies are presumed public.¹⁸ However, the exception does not apply to either the name of the deceased or his or her cause of death.¹⁹ Thus, name and cause of death are presumed to be public under the RTKL.

The most important section of the RTKL for the purposes of this survey is the conflict provision.²⁰ This section provides that "[i]f the provisions of this act regarding access to records conflict with any other Federal or State law, the provisions of this act shall not apply."²¹ Therefore, if the RTKL was found to conflict with the Coroner's Act, the conflict provision would presumably apply and the Coroner's Act would control.

iii. The Statutory Construction Act

The Pennsylvania Statutory Construction Act provides that conflicting statutes generally must be construed in a way that allows them to co-exist without conflict.²² The relevant language of the statute provides: "Whenever a general provision in a statute shall be in conflict with a special provision in the same or another statute, the two shall be construed, if possible, so that effect may be given to both."²³ Thus, the legislature clearly favors reconciliation of conflicting provisions if the court can find a way to do so.²⁴

The act also provides a means of interpreting conflicting provisions when the court cannot reconcile them:

If the conflict between the two provisions is irreconcilable, the special provisions shall prevail and shall be construed as an exception to the general provision, unless the general provision shall be enacted

¹⁷ *Id.* § 67.708(b)(20).

¹⁸ *Id.*

¹⁹ tit. 65, § 67.708(b)(20).

²⁰ *Id.* § 67.3101.1.

²¹ *Id.*

²² 1 PA. CONS. STAT. § 1933 (1975).

²³ *Id.*

²⁴ *See id.*

later and it shall be the manifest intention of the General Assembly that such general provision shall prevail.²⁵

Therefore, provisions that are more specific will usually control when in conflict with those that are more general.²⁶

B. Penn Jersey Advance, Inc. v. Grim

In addition to the three statutes above, the court also discussed the decision in *Penn Jersey Advance, Inc. v. Grim*.²⁷ In that case, a police officer was shot and a coroner subsequently performed an autopsy and prepared a report.²⁸ A newspaper requested the autopsy report, but the coroner "declined on the ground that it was not one of the 'official records and papers' that Section 1251 of the Coroner's Act requires every coroner to deposit with the office of the prothonotary."²⁹ Thus, the issue in *Penn Jersey Advance, Inc.* was whether an autopsy report is an official record under the Coroner's Act.³⁰ The Supreme Court of Pennsylvania decided that autopsy reports are official records after it examined the language of the Coroner's Act.³¹

This, however, was not the only holding of the *Penn Jersey Advance, Inc.* court. On appeal, the Commonwealth Court of Pennsylvania had found that there was a conflict between two sections of the Coroner's Act – section 1251 (coroner must provide records to prothonotary thirty days from the end of the year for free) and section 1236.1 (coroner may provide records upon request at any time throughout the year for a small charge).³² The Supreme Court of Pennsylvania reversed and held that there was no conflict between these provisions.³³ The court stated that "Section 1236.1 merely provides a rapid means of procuring an autopsy report for those who do not wish to wait until after the end

²⁵ *Id.*

²⁶ *See id.*

²⁷ *Penn Jersey Advance, Inc. v. Grim*, 962 A.2d 632 (Pa. 2009).

²⁸ *Id.* at 633-34.

²⁹ *Id.* at 634.

³⁰ *Id.* at 636.

³¹ *Id.* at 636-37.

³² *Id.* at 637.

³³ *Penn Jersey Advance, Inc.*, 962 A.2d at 637.

of the year, and who are also willing to pay the charges associated with procuring it."³⁴

Although conflict within the Coroner's Act itself was discussed, the court did not examine the relationship between the Coroner's Act and the RTKL. The court noted that while this analysis could be relevant to the case, the RTKL was not applicable because the 'new' version was not in effect until January 1, 2009.³⁵ Although *Penn Jersey Advance, Inc.* was decided in 2009, the court stated that the RTKL had "no application to the events underlying this case."³⁶

C. The State of the Law Before 2012

Although the court has interpreted both the Coroner's Act and the RTKL in other cases, it had never before attempted to resolve a conflict between the two statutes. This survey case is an intriguing first look into how the court will address the interplay between these statutes. Further, there is very little case law concerning the conflict provision of the RTKL, likely due to the fact that the latest version of the statute was enacted rather recently. In fact, since the law became effective, only two appellate courts have discussed the conflict provision.³⁷

In *Pennsylvania Gaming Control Board v. Office of Open Records*,³⁸ the Commonwealth Court of Pennsylvania briefly addressed the provision in the context of written requests.³⁹ The court stated that because of the provision, other statutory procedures related to requests would not be displaced by the RTKL.⁴⁰ The court did not, however, address any specific conflict, nor did it engage in much statutory interpretation beyond the plain meaning of the law.⁴¹

³⁴ *Id.* (emphasis omitted).

³⁵ *Id.* at 633 n.2.

³⁶ *Id.*

³⁷ See *infra* notes 38-46 and accompanying text.

³⁸ Pa. Gaming Control Bd. v. Office of Open Records, 48 A.3d 503 (Pa. Commw. Ct. 2012).

³⁹ *Id.* at 511.

⁴⁰ *Id.*

⁴¹ See *id.*

In *Pennsylvania State Education Ass'n v. Department of Community and Economic Development*,⁴² a decision which was later vacated by the Supreme Court of Pennsylvania,⁴³ the Pennsylvania State Education Association (PSEA) argued that the RTKL conflicted with the Pennsylvania Constitution.⁴⁴ PSEA argued that the Constitution created a right to privacy, and that requiring disclosure of teachers' addresses violated this right.⁴⁵ The Commonwealth Court of Pennsylvania did not, however, address this argument. Instead, the court held that the Office of Open Records was not an appropriate defendant; thus, the court did not have jurisdiction.⁴⁶

III. *HEARST TELEVISION, INC. v. NORRIS*

A. *Background*

In April 2009, a Shippensburg student was found dead in his apartment.⁴⁷ Michael Norris, the Coroner of Cumberland County, investigated the death of the student, and subsequently determined the manner of his death.⁴⁸ Unsurprisingly, there was a large amount of media interest in the death of the student, as well as in the investigation.⁴⁹ Daniel O'Donnell, a reporter for Hearst Television, Inc. (Hearst), filed a RTKL request with Norris.⁵⁰ Norris denied the request, and indicated that pursuant to title 16, section 1251, the manner of death record concerning the student would be available thirty days after the end of the year.⁵¹

Hearst and O'Donnell appealed to the Office of Open Records (OOR).⁵² The OOR denied the appeal, "concluding that the cause

⁴² Pa. State Educ. Ass'n v. Dep't of Cmty. & Econ. Dev., 4 A.3d 1156 (Pa. Commw. Ct. 2010).

⁴³ Pa. State Educ. Ass'n v. Dep't of Cmty. & Econ. Dev., 50 A.3d 1263, 1277 (Pa. 2012).

⁴⁴ *Pa. State Educ. Ass'n*, 4 A.3d at 1161.

⁴⁵ *Id.*

⁴⁶ *Id.* at 1165-66.

⁴⁷ *Hearst Television, Inc. v. Norris*, 54 A.3d 23, 27 (Pa. 2012).

⁴⁸ *Id.* at 24, 27.

⁴⁹ *See id.* at 24.

⁵⁰ *Id.*

⁵¹ *Id.* at 24, 27.

⁵² *Id.* at 27.

and manner of death record only becomes a public record subject to disclosure under the RTKL when it has already been made public pursuant to Section 1251 of the Coroner's Act."⁵³ In response to the OOR's denial, Hearst and O'Donnell filed a motion for reconsideration.⁵⁴ The motion was granted, and the OOR affirmed Norris' refusal to comply with the request.⁵⁵ In addressing O'Donnell's argument that manner of death records are not exempt from RTKL requests, the OOR stated that there was a conflict between the RTKL and the Coroner's Act.⁵⁶ Thus, it concluded that the Coroner's Act would control, pursuant to the RTKL conflict provision.⁵⁷ Hearst and O'Donnell then appealed to the Court of Common Pleas of Cumberland County, which affirmed.⁵⁸

Eventually, the case was appealed to the Commonwealth Court of Pennsylvania.⁵⁹ In affirming the trial court's decision, the Commonwealth Court of Pennsylvania held that the two statutes conflict because it determined that section 1236.1 of the Coroner's Act gives the coroner discretion as to when to release reports.⁶⁰ The court found that the immediate release requirement of the RTKL is inconsistent with this discretion.⁶¹ In so holding, the court relied on *Penn Jersey Advance, Inc.*:

Moreover, in interpreting Sections 1251 and 1236.1 of the Coroner's Act, the Supreme Court, in *Penn Jersey*, made clear that the information contained in an autopsy report—manner of death information—is *not available to the public until* the records are filed with the prothonotary thirty days after the end of the year in accordance with Section 1251, or prior to that time if a coroner uses his or

⁵³ *Hearst Television, Inc.*, 54 A.3d at 27.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.* at 28.

⁵⁸ *Id.*

⁵⁹ *Hearst Television, Inc. v. Norris*, 8 A.3d 420 (Pa. Commw. Ct. 2010).

⁶⁰ *Id.* at 427.

⁶¹ *Id.*

her discretion to grant a request for rapid procurement under Section 1236.1.⁶²

The court reasoned that requiring immediate release of the reports conflicted with the Coroner's Act; thus, the Coroner's Act controlled under the RTKL conflict provision.⁶³

B. Issues on Appeal

Both issues on appeal were matters of statutory interpretation. The first issue examined by the court in this case pertains to the standard applied by the Commonwealth Court of Pennsylvania when determining if the statutes conflicted.⁶⁴ The court stated that the Commonwealth Court applied a more lenient inconsistency standard to the statutes.⁶⁵ The issue on appeal was whether the Commonwealth Court erred in applying this standard "instead of the strict 'irreconcilable' standard required by the Statutory Construction Act and precedents of [the] Court."⁶⁶

The second issue concerned the Commonwealth Court's application of the *Penn Jersey Advance, Inc.* case in holding that the statutes conflicted.⁶⁷ The court noted that the Commonwealth Court cited it as precedent for finding conflict between the immediate disclosure requirement under the RTKL and the annual disclosure requirement under the Coroner's Act.⁶⁸ The court questioned whether the Commonwealth Court erred in this regard, noting that "*Penn Jersey* reached a contrary conclusion, finding that the same annual filing requirement did not conflict with a statutory provision allowing immediate disclosure."⁶⁹

⁶² *Id.* (emphasis in original) (citing *Penn Jersey Advance, Inc. v. Grim*, 962 A.2d 632, 637 (Pa. 2009)).

⁶³ *Id.*

⁶⁴ *Hearst Television, Inc. v. Norris*, 54 A.3d 23, 29 (Pa. 2012).

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

C. Arguments

i. Hearst and O'Donnell

Hearst and O'Donnell contended that there was no conflict between the Coroner's Act and the RTKL; thus, the manner of death record should have been made available to them immediately.⁷⁰ In support of this contention, they offered seven arguments explaining why the Commonwealth Court was incorrect in holding that the statutes conflicted and that the coroner was not required to disclose until thirty days from the end of the year, or at his discretion at other times.⁷¹

They first argued that "courts must construe statutes to avoid conflicts between statutory provisions when possible," as required by title 1, section 1933.⁷² This statute also states that only when two provisions are irreconcilable may a court find that they conflict to the extent that only one may be applied (the special provision), and construed as an exception to the general provision.⁷³ Hearst and O'Donnell argued that the Commonwealth Court did not attempt to determine if the statutes were irreconcilable and failed to determine if the statutes could be given effect by being construed together.⁷⁴

Second, they argued that the Commonwealth Court could have given effect to both statutes by construing them together.⁷⁵ In other words, there was no irreconcilable conflict between the immediate disclosure requirement of the RTKL and the annual disclosure requirement of the Coroner's Act.

Their third argument concerned the coroner's discretion under section 1236.1 of the Coroner's Act.⁷⁶ As noted above, section 1236.1(a) gives coroners discretion to comply with "[r]equests for examinations [and] other professional services."⁷⁷ Section 1236.1(c) authorizes the coroner to collect a small fee for records,

⁷⁰ *Hearst Television, Inc.*, 54 A.3d at 29.

⁷¹ *Id.*

⁷² *Id.*

⁷³ 1 PA. CONS. STAT. § 1933 (1975).

⁷⁴ *Hearst Television, Inc.*, 54 A.3d at 29.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ 16 PA. STAT. ANN. § 1236.1(a) (West Supp. 2013).

but does not mention discretion.⁷⁸ Thus, Hearst and O'Donnell argued that section 1236.1 does not give coroners the discretion to choose whether or not to comply with requests for records.⁷⁹

Fourth, Hearst and O'Donnell argued that both the RTKL and the Coroner's Act favor public disclosure.⁸⁰ The Commonwealth Court should have recognized this fact when considering its decision, because refusing to apply the RTKL "makes little sense in this context."⁸¹

Hearst and O'Donnell's fifth argument addressed the Commonwealth Court's application of the *Penn Jersey Advance, Inc.* decision to this case.⁸² In fact, Hearst and O'Donnell used the *Penn Jersey Advance, Inc.* case to support their argument.⁸³ They noted that the court in *Penn Jersey Advance, Inc.* found no conflict between two similar provisions, both within the Coroner's Act itself: the immediate disclosure provision and the annual disclosure provision.⁸⁴ They argued that it was illogical for there to be two different results (one conflicts, one does not) when the provisions of the two statutes are similar in that they both require immediate disclosure.⁸⁵

Hearst and O'Donnell's sixth argument concerned section 708(b)(20) of the RTKL.⁸⁶ As noted above, this provision exempts coroners' records from RTKL requests, but allows the immediate disclosure of manner of death records.⁸⁷ Hearst and O'Donnell argued that manner of death records were specifically mentioned as records which were not exempt from RTKL requests.⁸⁸ Thus, these records should be public, as the legislature intended them to be.⁸⁹

⁷⁸ *Id.* § 1236.1(c).

⁷⁹ *Hearst Television, Inc.*, 54 A.3d at 30.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Hearst Television, Inc.*, 54 A.3d at 30.

⁸⁶ *Id.*

⁸⁷ 65 PA. STAT. ANN. § 67.708(b)(20) (West 2010).

⁸⁸ *Hearst Television, Inc.*, 54 A.3d at 30.

⁸⁹ *Id.*

Lastly, they argued that the Commonwealth Court exempted coroners from RTKL requests.⁹⁰ This would permit "coroners to respond to requests for records in an arbitrary manner through the exercise of unfettered discretion, immunized from the appeal and judicial review procedures of the RTKL."⁹¹

ii. Michael Norris

Norris contended that the Commonwealth Court did not err in finding that the statutes conflict.⁹² He presented three arguments in support of this contention.⁹³ First, he argued that the discretion mentioned in section 1236.1(a) "extends not only to deciding whether to undertake certain examinations and services, but also to releasing the information within the written report that was generated by those services."⁹⁴ Therefore, requesting records is simply requesting the written form of the coroner's examinations, and thus, the same amount of discretion should apply.⁹⁵ The only form of disclosure under the Coroner's Act that is not discretionary is the annual dissemination of records to the prothonotary for public inspection.⁹⁶

In his second argument, Norris referenced title 1, section 1933.⁹⁷ He claimed that the RTKL was a general statute in the context of section 1933, and that the Coroner's Act provides the special provisions.⁹⁸ Thus, under section 1933, the Coroner's Act should be treated as an exception to the more general law.⁹⁹

Third, Norris argued that the *Penn Jersey Advance, Inc.* decision was not applicable to the case.¹⁰⁰ *Penn Jersey Advance, Inc.* resolved a conflict between two provisions, both of which

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.* at 30-31.

⁹⁴ *Hearst Television, Inc.*, 54 A.3d at 30.

⁹⁵ *Id.* at 30-31.

⁹⁶ *See id.* at 31.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Hearst Television, Inc.*, 54 A.3d at 31.

were found within the Coroner's Act itself.¹⁰¹ Because *Penn Jersey* did not have anything to do with the RTKL, Norris argued that it should not be used in deciding the case.¹⁰²

iii. Office of Open Records

The OOR argued in support of Norris.¹⁰³ The OOR first argued that title 1, section 1933 does not apply at all to this case.¹⁰⁴ "Instead, the RTKL's own conflict provision . . . applies, and directs that any conflict between the RTKL and any other law must be resolved in favor of the other law."¹⁰⁵ That provision did not require that the conflict at issue be irreconcilable; thus, the legislature intended "to make the RTKL subservient to all other statutes regarding access to public records."¹⁰⁶

The OOR further argued that the RTKL conflicts with the Coroner's Act because of the coroner's discretion under section 1236.1.¹⁰⁷ Like Norris, the OOR acknowledged that section 1236.1(c) did not include the term discretion, but argued that the term should be expanded to include reports that are the result of the examinations over which the coroner has discretion.¹⁰⁸

D. Holding

The court first held that the discretion mentioned in section 1236.1(a) is not applicable to section 1236.1(c).¹⁰⁹ The term is mentioned only in section 1236.1(a), and thus, "[b]y its plain terms . . . Section 1236.1(c) allows the coroner to charge fees for records, but does not afford the coroner any discretion with regard to releasing such records."¹¹⁰ Thus, the discretion mentioned in section 1236.1(a) only applies to the coroner's discretion to choose whether to comply with "requests for 'examinations or other

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Hearst Television, Inc.*, 54 A.3d at 31.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 32.

¹¹⁰ *Id.*

professional services.' "¹¹¹ Further, that discretion only applies when the requests come from counties other than those in which the coroner practices.¹¹² Here, the death occurred in the coroner's own county; therefore, he was statutorily obligated to perform the examination and prepare the report.¹¹³ In other words, in this case, the coroner had no discretion as to whether to comply with the request for examination.¹¹⁴

The court also reiterated the holding of *Penn Jersey Advance, Inc.*: that section 1251 and section 1236.1 of the Coroner's Act do not conflict.¹¹⁵ In so doing, it attempted to clarify that by holding that the two do not conflict, the court "did not recognize any discretion in the coroner" in regard to section 1236.1(c).¹¹⁶ The statute simply provides two methods for obtaining these records.¹¹⁷

Next, the court turned its attention to section 708(b)(20) of the RTKL.¹¹⁸ The court noted that this provision exempts manner of death records from the general exemption of coroners' records from RTKL requests.¹¹⁹ The inclusion of this proviso signifies the legislature's intent to allow for the release of manner of death records to the public under the RTKL.¹²⁰

Lastly, the court held that the RTKL and the Coroner's Act do not conflict.¹²¹ The RTKL provides a mechanism for immediate disclosure of manner of death records, and the Coroner's Act simply allows the coroner to charge a fee for these records.¹²² As the statutes did not conflict, the coroner was required to provide Hearst and O'Donnell with the requested records.¹²³

¹¹¹ *Id.* (quoting 16 PA. STAT. ANN. § 1236.1(a) (West Supp. 2013)).

¹¹² *Hearst Television, Inc.*, 54 A.3d at 32.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.* at 33.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Hearst Television, Inc.*, 54 A.3d at 33.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.* at 34.

E. Dissent

The dissent's argument was largely based on the question of whether the coroner had discretion to comply with the RTKL request.¹²⁴ Justice Eakin argued that section 1236.1 of the Coroner's Act should be read as a whole, thus, imputing the discretion mentioned in subsection (a) to subsection (c).¹²⁵ He based this argument on the *Penn Jersey Advance, Inc.* decision, emphasizing the fact that the court found that section 1236.1 was simply a faster means of procuring records.¹²⁶ He noted that while the court made no explicit ruling that discretion was a part of subsection (c), the court in *Penn Jersey Advance, Inc.* read the provision as a whole.¹²⁷ Thus, "immediate access under the RTKL would conflict with a coroner's discretion in [section] 1236.1(c) of the Coroner's Act."¹²⁸

Last, the dissent argued that the conflict between the statutes triggered the RTKL's conflict provision, and that the Commonwealth Court did not create a new standard under title 1, section 1933.¹²⁹ The conflict between the two statutes is not reconcilable: one requires immediate access and the other only requires annual access.¹³⁰ Because the two statutes were irreconcilable, the Commonwealth Court did not need to use a new standard, it simply relied on the stricter irreconcilable standard.¹³¹ Thus, because the statutes were conflicting, the dissent would apply only the Coroner's Act and would hold that the coroner was not required to provide immediate access to his records.¹³²

¹²⁴ *Hearst Television, Inc.*, 54 A.3d at 34 (Eakin, J., dissenting).

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.* at 35.

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Hearst Television, Inc.*, 54 A.3d at 35 (Eakin, J., dissenting).

¹³¹ *Id.*

¹³² *Id.*

IV. EVALUATION

A. Discretion

The majority came to the correct decision in this case. While the dissent's argument concerning discretion is persuasive, the plain meaning of section 1236.1 of the Coroner's Act is clear. Discretion is mentioned in subsection (a), and not at all in subsections (b) or (c).¹³³ The coroner and the OOR also argued that because manner of death records are simply products of the examinations over which the coroner does have discretion, discretion also should be imputed to subsection (c).¹³⁴ Again, this argument is defeated by the plain meaning of the statute.¹³⁵ The legislature chose to separate the examinations and the reports in the statute, using the term discretion in one subsection and not in the other.¹³⁶ It clearly intended for the two to remain distinct from each other. Thus, discretion should not be a consideration in subsection (c).

Although the dissent and the Commonwealth Court both relied on the *Penn Jersey Advance, Inc.* decision to support their arguments,¹³⁷ the court in that case simply did not mention discretion at all.¹³⁸ It was not an issue in that case, and thus, *Penn Jersey Advance, Inc.* should not be cited as precedent for holding that a coroner has discretion in determining whether to provide immediate access to manner of death records. If anything, *Penn Jersey Advance, Inc.* supports the arguments of the majority. There, no conflict was found between the immediate access provision and the annual access provision of the Coroner's Act.¹³⁹ Although it did not interpret the RTKL, the issue is similar, and thus, the analysis should also be similar.

¹³³ See 16 PA. STAT. ANN. § 1236.1 (West Supp. 2013).

¹³⁴ *Hearst Television, Inc.*, 54 A.3d at 31.

¹³⁵ See tit. 16, § 1236.1.

¹³⁶ *Id.*

¹³⁷ *Hearst Television, Inc.*, 54 A.3d at 28; see also *id.* at 34 (Eakin, J., dissenting).

¹³⁸ See *Penn Jersey Advance, Inc. v. Grim*, 962 A.2d 632, 633-39 (Pa. 2009).

¹³⁹ *Id.* at 637.

B. Intent of the Conflict Provision

Despite this author's agreement with the majority in *Hearst Television, Inc.*, one important question remains: Did the holding defeat the intent of the conflict provision of the RTKL? The conflict provision of the RTKL states that when a statute conflicts with the RTKL, that statute governs.¹⁴⁰ Thus, it appears that the intent behind the conflict provision was to make the RTKL subservient to all other statutes. If this were the case, to hold that the RTKL applies even when there is a conflict would be a clear violation of this intent. Although the majority in *Hearst Television, Inc.* held that there was no conflict,¹⁴¹ this intent remains relevant and should still be considered.

Despite this, this author believes that the majority was correct, largely due to section 708(b)(20) of the RTKL.¹⁴² This section provides that coroner's records are exempt from RTKL requests, but also provides an exception to this exemption.¹⁴³ Thus, cause and manner of death records are still subject to the RTKL.¹⁴⁴ With this provision, the legislature clearly intended to do exactly what the provision provides: subject manner of death records to RTKL requests. If this is the case, then the intent of the conflict provision is not defeated. Although the provision may appear to make the RTKL subservient to other statutes in the case of a conflict, the legislature clearly wanted to make manner of death records immediately available to the public.¹⁴⁵ Although, in the case of a conflict, these two intents may seem to conflict, one can use the Statutory Construction Act to provide clarity.¹⁴⁶ In this case, the conflict provision is the more general of the two; thus, the terms of section 708(b)(20) control.¹⁴⁷

¹⁴⁰ 65 PA. STAT. ANN. § 67.3101.1 (West 2010).

¹⁴¹ *Hearst Television, Inc.*, 54 A.3d at 33.

¹⁴² tit. 65, § 67.708(b)(20).

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *See id.*

¹⁴⁶ 1 PA. CONS. STAT. § 1933 (1975).

¹⁴⁷ *See id.*

V. CONCLUSION

Although the majority held that the statutes did not conflict,¹⁴⁸ the analysis utilized in *Hearst Television, Inc.* is indicative of how the court may decide future conflict cases. The majority in this case was far more willing to find that the statutes were not in conflict and allow immediate public access to manner of death records.¹⁴⁹ Although the majority's arguments were based on sound legal arguments, it is possible that the court simply has a preference for interpreting statutes in a manner that allows them to coexist, despite the conflict provision's clear intent that the RTKL be subservient to other statutes.¹⁵⁰ Despite this, it seems likely that the court will be more willing to hold that the conflict provision applies when two statutes are more clearly in conflict. *Hearst Television, Inc.* was a close case, with persuasive arguments on both sides. In a more clear-cut case, the court will likely find that there is a conflict which triggers the conflict provision of the RTKL.

There is little certainty in predicting the future decisions of the Supreme Court of Pennsylvania. However, as a result of *Hearst Television, Inc.*, the state of the law involving potential conflict between the Coroner's Act and the RTKL is now clear. The two statutes do not conflict; thus, a coroner must provide cause and manner of death records immediately upon request, as required by the RTKL.¹⁵¹

*Lara Antonuk**

¹⁴⁸ *Hearst Television, Inc.*, 54 A.3d at 34.

¹⁴⁹ *See id.*

¹⁵⁰ *See* tit. 65 PA. STAT. ANN. § 67.3101.1 (West 2010).

¹⁵¹ *Hearst Television, Inc.*, 54 A.3d at 34.

* J.D. Candidate, Widener University School of Law (Harrisburg), May 2014; Elizabethtown College, B.A. 2010. This survey is dedicated to everyone who has supported me over the past three years. In particular, I want to thank Mom, Dad, Beth, Michael, Alexa, and Ryan for always believing in me.