

1985 BILL 20

Third Session, 20th Legislature, 34 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 20

FATALITY INQUIRIES AMENDMENT ACT, 1985

DR. ELLIOTT

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 20
Dr. Elliott

BILL 20

1985

FATALITY INQUIRIES AMENDMENT ACT, 1985

(Assented to _____ *, 1985)*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

- 1 The Fatality Inquiries Act is amended by this Act.*
- 2 Section 8(1)(c) is amended by adding "or" at the end of it.*

- 3 Section 22 is amended by adding the following after subsection (2):*

(3) Notwithstanding section 37(4) of the Mental Health Act or section 40(3) of the Hospitals Act or any other Act, regulation or other law, a medical examiner is entitled to inspect and make copies of any diagnosis, record or information relating to a person receiving diagnostic and treatment services in a centre as provided in section 37(7) of the Mental Health Act and to inspect and make copies of any diagnosis, record or information relating to a patient as provided in section 40(7) of the Hospitals Act.

Explanatory Notes

1 This Act will amend chapter F-6 of the Revised Statutes of Alberta 1980.

2 Section 8(1) presently reads:

8(1) A medical examiner ceases to hold office

(a) on ceasing to be a member of the College of Physicians and Surgeons of the Province of Alberta,

(b) on submitting his resignation to the Attorney General in writing,

(c) on ceasing to be ordinarily resident in Alberta,

(d) on termination of his appointment by order of the Attorney General.

3 Section 22 presently reads:

22(1) A medical examiner or an investigator acting under his authorization may, in exercising his duties under this Act,

(a) without a warrant, enter any place where he believes a body that is the subject of an investigation is located or has been located;

(b) without a warrant, take possession of anything which may be directly related to the death and may place anything seized into the custody of a peace officer;

(c) cordon off or secure the scene or area in which the death under investigation occurred for a period not exceeding 48 hours or any extended period that the Chief Medical Examiner may authorize;

(d) with the approval of the Chief Medical Examiner, obtain services or retain expert assistance for any part of his investigation.

(2) When a medical examiner or an investigator seizes anything under subsection (1)(b), he or the peace officer who has custody thereof shall retain it until the conclusion of any investigation or public inquiry into the death or until the thing seized is no longer required and then shall return it to the person from whom it was seized or, if that person is deceased, to the personal representative of that person.

4 *Section 40 is amended*

(a) *in subsection (1) by adding “but shall refuse to admit in evidence all or part of any oral testimony or any document or other thing if he is satisfied that the oral testimony, document or other thing or part of it is vexatious, unimportant or unnecessary for the purposes of the public inquiry” after “of the public inquiry”;*

(b) *by adding the following after subsection (1):*

(1.1) Notwithstanding section 37(4) of the *Mental Health Act* or section 40(3) of the *Hospitals Act* or any other Act, regulation or other law, a judge may admit in evidence all or any relevant part of a diagnosis, record or information referred to in section 22(3) to enable him to make findings and recommendations and to report in respect of any or all of the matters set out in section 47.

5 *The following is added after section 40:*

40.1 Subject to section 40.2 all hearings at a public inquiry under this Act shall be open to the public except where the judge is of the opinion that

(a) matters involving public security may be disclosed, or

(b) intimate or personal matters or other matters may be disclosed at the hearing that are of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure of the matters in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public,

in which case the judge may hold the hearing or any part of it concerning any such matters in camera.

40.2 Without restricting the generality of section 40.1(b), the judge shall weigh and consider the following matters, as applicable, before holding the hearing or any part of it in camera:

(a) the private interests of a patient or person or, where the patient or person is deceased, of the patient's or person's next of kin;

(b) the private interests of third parties;

(c) the private interests of the attending physician or any other person providing diagnostic or treatment services to a patient or a person;

(d) whether disclosure of all or part of the diagnosis, medical records or information of a patient or person is likely to result in harm to the patient or person or to the treatment or recovery of the patient or person or is likely to result in injury or harm to the mental or physical condition of a third person;

(e) whether disclosure of all or part of the diagnosis, medical records or information of a deceased patient or person is likely to result in injury or harm to the mental or physical condition of a third person;

4 Section 40(1) presently reads:

40(1) Subject to subsection (2), a judge may admit in evidence at a public inquiry, whether or not it is admissible as evidence in a judicial proceeding,

(a) any oral testimony, or

(b) any document or other thing,

that is relevant to the purposes of the public inquiry.

5 In camera hearings.

(f) whether the disclosure would be prejudicial to the interests of persons not concerned in the inquiry;

(g) whether the holding of the hearings in camera is essential in the interests of justice or would be injurious to the public interest;

(h) whether the holding of the hearings in camera is necessary in the interest of morals or public order;

(i) whether a patient or person or, if the patient or person is deceased, his legal representative has given his consent to having the diagnosis, record or information disclosed in a hearing open to the public.

40.3 An application that the public inquiry or any part of it be held in camera may be made by any person referred to in section 43, and the application shall be heard in camera.

40.4 No decision of the presiding judge that a hearing or any part of it be held in camera or in public shall be questioned or reviewed in any court, and no order shall be made or process entered or proceedings taken in any court, whether by way of certiorari, mandamus, injunction, declaratory judgment, prohibition, quo warranto or otherwise, to question, review, prohibit or restrain that decision.

40.5 No person who is required to furnish information or to produce any document, paper or thing or is summoned to give evidence at a public inquiry under this Act shall refuse to disclose the information, produce the document, paper or thing or give the evidence on the ground that an Act or regulation requires him to maintain secrecy or not to disclose any matter.

40.6(1) No person shall knowingly and wilfully release, publish or disclose or cause to be released, published or disclosed to anyone any oral testimony or documentary evidence introduced or heard in camera at a public inquiry.

(2) Subsection (1) does not apply to

(a) oral testimony, or

(b) documentary evidence

contained in the findings of the judge or jury or in the written report of the judge or jury under section 47.

6 Section 47 is amended by adding the following after subsection (3):

(4) The report and findings of the judge or jury under subsection (1) and any recommendations under subsection (2) shall not disclose any matters heard or disclosed in camera, unless the judge or jury is satisfied that the disclosure is essential in the public interest.

6 Section 47 presently reads:

47(1) At the conclusion of the public inquiry, the judge or jury, if any, shall make a written report to the Attorney General which shall contain findings as to the following:

- (a) the identity of the deceased;*
- (b) the date, time and place of death;*
- (c) the circumstances under which the death occurred;*
- (d) the cause of death;*
- (e) the manner of death.*

7 Section 40 of the Hospitals Act is amended

(a) in subsections (1) and (3) by adding “or any other person providing diagnostic or treatment services to a patient” after “physician”;

(b) by repealing subsection (8).

8 Section 37 of the Mental Health Act is amended

(a) in subsection (4) by adding “or any other person providing diagnostic or treatment services to that person” after “physician”;

(b) by repealing subsection (8).

*In accordance with section 4(1) of the Interpretation Act,
this Bill comes into force on the date it receives Royal
Assent.*

(2) A report under subsection (1) may contain recommendations as to the prevention of similar deaths.

(3) The findings of the judge or jury shall not contain any findings of legal responsibility or any conclusion of law.

7 Consequential amendment to chapter H-11 of the Revised Statutes of Alberta 1980. Section 40 of that Act presently reads in part:

40(1) The board of each approved hospital shall cause to be kept by the attending physician a record of the diagnostic and treatment services provided in respect of each patient in order to assist in providing a high standard of medical care.

(3) Information obtained from hospital records or from persons having access thereto shall be treated as private and confidential information in respect of any individual patient and shall be used solely for the purposes described in subsection (2) and the information shall not be published, released or disclosed in any manner that would be detrimental to the personal interests, reputation or privacy of a patient or the patient's attending physician.

(7) Notwithstanding subsection (3) or any other law, a medical examiner appointed under the Fatality Inquiries Act is entitled to inspect and make copies of any diagnosis, record or information relating to a patient.

(8) When a medical examiner obtains a copy of a diagnosis, record or information pursuant to subsection (7), the provincial judge who presides at a public inquiry under the Fatality Inquiries Act may admit the copy of the diagnosis, record or information in evidence at the public inquiry but all proceedings related to the diagnosis, record or information shall be held in private.

8 Consequential amendment to chapter M-13 of the Revised Statutes of Alberta 1980. Section 37 of that Act presently reads in part:

37(4) Information obtained from records maintained in a diagnostic and treatment centre or from persons having access thereto shall be treated as private and confidential information in respect of the person receiving diagnostic and treatment services in the centre and shall be used solely for the purposes described in subsection (3), and the information shall not be published, released or disclosed in any manner that would be detrimental to the personal interest, reputation or privacy of that person or that person's attending physician.

(7) Notwithstanding subsection (4) or any other law, a medical examiner appointed under the Fatality Inquiries Act is entitled to inspect and make copies of any diagnosis, record or information relating to a person receiving diagnostic and treatment services in a centre.

(8) Where a medical examiner obtains a copy of any diagnosis, record or information pursuant to subsection (7), the provincial judge who presides at a public inquiry under the Fatality Inquiries Act may admit the copy of the diagnosis, record or information in evidence at the public inquiry but all proceedings related to the diagnosis, record or information shall be in private.