

*Bill 24*

## **BILL 24**

2005

### **FATALITY INQUIRIES AMENDMENT ACT, 2005**

*(Assented to , 2005)*

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

#### **Amends RSA 2000 cF-9**

**1 The *Fatality Inquiries Act* is amended by this Act.**

**2 The following is added after section 14:**

#### **Special investigation**

**14.1(1)** Notwithstanding section 14, when an Alberta resident dies outside Alberta and the Minister considers that it would be advisable to investigate the death, the Minister may, whether or not the body is brought into Alberta for ultimate disposal, order the Chief Medical Examiner to investigate the death under this Part.

**(2)** For the purposes of an investigation under subsection (1), the Chief Medical Examiner may collect from persons in the other jurisdiction available records that may be relevant to the death.

**(3)** On completion of an investigation ordered under this section the Chief Medical Examiner shall provide a report to the Board, which must be in writing and be accompanied with all of the records that were collected by the Chief Medical Examiner and may be relevant to the death.

**3 Section 19 is amended by adding the following after subsection (1):**

(1.1) Where the Minister makes an order under section 14.1, the Chief Medical Examiner shall, in investigating the death, establish, where possible, the matters set out in subsection (1).

**4 Section 33 is amended**

**(a) by repealing subsection (1) and substituting the following:**

**Recommendation for public inquiry**

**33(1)** When the Board receives a notification pursuant to section 32 or a report pursuant to section 14.1(3), it shall review the notification or report and the material submitted to it with the notification or report, together with any other material it considers relevant, and may recommend any further investigation that may be necessary.

**(b) by repealing subsection (3) and substituting the following:**

(3) When the Board conducts a review under this section with respect to a death referred to in section 10(2)(i), 11, 12 or 13, the Board shall recommend that a public fatality inquiry be held unless it is satisfied

(a) that the death was due entirely to natural causes and was not preventable and that the public interest would not be served by a public fatality inquiry, or

(b) that there was no meaningful connection between the death and the nature or quality of care or supervision being provided to the deceased person by reason of the

deceased person's status as described in section 10(2)(i), 11, 12 or 13.

(4) Notwithstanding subsection (2), where, pursuant to a report from the Chief Medical Examiner under section 14.1, the Board makes a recommendation that a public fatality inquiry be held in respect of a death that occurred outside Alberta, the recommendation must be limited to inquiring into matters that are related to the death and have a direct connection to Alberta.

**5 The following is added after section 33:**

**Counsel's right to information**

**33.1** The Board shall, on the request of counsel appointed under section 35.1, make available to counsel for inspection

- (a) all material referred to in section 33(1) that is in its possession, and
- (b) all recommendations made by it under section 33(2).

**6 Section 35 is repealed and the following is substituted:**

**Public fatality inquiry**

**35(1)** The Minister

- (a) shall on the recommendation of the Board, and
- (b) may in any other case,

order that a judge conduct a public fatality inquiry into a death or 2 or more deaths that arose out of the same or similar circumstances.

(2) Where, pursuant to a recommendation of the Board referred to in section 33(4), the Minister makes an order under subsection (1) in respect of a death that occurred outside Alberta, the order must limit the scope of the public fatality inquiry to matters that are related to the death and have a direct connection to Alberta.

(3) On an order being made under subsection (1), the chief judge shall designate a judge to hold a public fatality inquiry into the death in respect of which the order was made.

**7 The following is added after section 35:**

**Appointment of counsel**

**35.1(1)** When the Minister makes an order under section 35, the Minister shall appoint a member of The Law Society of Alberta as counsel for the purposes of the inquiry.

(2) Counsel appointed under subsection (1)

- (a) shall, with direction from the inquiry judge, determine the witness list for the inquiry,
- (b) is responsible for overseeing the presentation of evidence at the inquiry, and
- (c) may present arguments and submissions and examine and cross-examine witnesses at the inquiry.

**Collection of records**

**35.2(1)** For the purposes of carrying out his or her duties under this Act in respect of a public fatality inquiry, counsel appointed under section 35.1 may collect any records that are or may be relevant for the purposes of the public fatality inquiry.

(2) A person who receives a request for a record from counsel appointed under section 35.1 shall disclose the record in accordance with the request.

(3) Where a person fails to comply with a request under this section, counsel appointed under section 35.1 may, on at least 2 days' notice to that person, apply to the judge conducting the public fatality inquiry for an order directing the person to comply with the request, and the judge may make the order accordingly, subject to any terms and conditions the judge considers appropriate.

**8 Section 36(a) is amended by striking out “or judge and jury”.**

**9 Section 37 is repealed.**

**10 The following is added before section 38:**

**Conferences**

**37.1(1)** A judge who conducts a public fatality inquiry

- (a) shall, before receiving any evidence at the inquiry, and
- (b) may, at any time during the inquiry

hold a conference under this section.

**(2)** At a conference referred to in subsection (1) the judge may give directions respecting

- (a) the issues that will be or are under consideration at the public fatality inquiry,
- (b) procedural matters and matters of fairness related to the public fatality inquiry, and
- (c) any other issues that the judge considers have arisen or will arise in connection with the public fatality inquiry.

**(3)** After holding a conference referred to in subsection (1), the judge may

- (a) limit the issues that will be under consideration at the public fatality inquiry, or
- (b) stay the public fatality inquiry if the judge is of the opinion that all of the matters referred to in section 53(1) have already been examined and determined in another forum.

**Disclosure of records**

**37.2(1)** Counsel appointed under section 35.1 may disclose to any of the persons referred to in section 49(2)

- (a) records that have been provided to counsel under section 33.1, and

(b) any other records collected by counsel that he or she considers relevant for the purposes of the public fatality inquiry.

(2) A person referred to in subsection (1) may use records disclosed under subsection (1) only for the purposes of preparing for or participating in the public fatality inquiry.

(3) When a record is disclosed to a person under this section, that person must return the record, together with any copies of it that have been made, to counsel appointed under section 35.1 within 30 days after the completion of any judicial review arising out of the findings of the judge or, if no application for judicial review is made, within 30 days after the expiry of the time allowed for doing so.

#### **11 Section 38 is amended**

**(a) by repealing subsections (1), (2) and (3) and substituting the following:**

##### **Powers of judge**

**38(1)** A judge who conducts a public fatality inquiry may engage the services of clerks, reporters and assistants to assist him or her in the inquiry.

(2) The judge has the power of summoning any persons as witnesses and of requiring them to give evidence on oath, orally or in writing, and to produce any documents, papers and things that the judge considers to be required for the purposes of the inquiry.

**(b) by adding the following after subsection (4):**

(5) If the judge considers it advisable because of the distance a person resides from where the person's attendance is required or for any other reason, the judge may appoint a person to take evidence of that person and to report it to the judge.

(6) A person appointed to take evidence under subsection (5) must, before doing so, be sworn before the judge or a justice of the peace to faithfully execute that duty.

**12 Section 39 is repealed and the following is substituted:**

**Reports as evidence**

**39(1)** A report that purports to be made by the medical examiner pursuant to section 19(3) or by the Chief Medical Examiner pursuant to section 14.1(3) shall be admitted in evidence without proof of the signature or appointment of the medical examiner or Chief Medical Examiner.

**(2)** Notwithstanding subsection (1), the judge may issue a summons to a medical examiner or to the Chief Medical Examiner to attend and give evidence at a public fatality inquiry, and the medical examiner or Chief Medical Examiner is entitled to receive a fee for attendance as prescribed by the regulations if that person is not a full-time employee of the Government.

**13 The following is added after section 40:**

**Examination of evidence**

**40.1(1)** Subject to subsection (2), no person other than the judge, counsel appointed under section 35.1 and the persons referred to in section 49(2) have a right to examine evidence at a public fatality inquiry.

**(2)** The judge may permit a person other than a person referred to in subsection (1) to examine evidence at a public fatality inquiry if the judge is satisfied that doing so would be consistent with the purposes of the inquiry and that there is no significant private or public interest reason why the person should not examine the evidence.

**Disposition of evidence**

**40.2** Within a reasonable time after the written report in respect of a public fatality inquiry is made to the Minister under section 53, exhibits must

- (a) be returned to the persons to whom they belong or who entered them in evidence, or
- (b) where the persons referred to in clause (a) cannot be located or refuse to accept the exhibits, be delivered to

the Chief Medical Examiner for storage or disposal as the Chief Medical Examiner considers appropriate.

**14 The following is added after section 45:**

**Alberta Evidence Act paramount**

**45.1** For greater certainty, sections 38, 40 and 45 are subject to section 9 of the *Alberta Evidence Act*.

**15 Section 46(2) is amended by striking out “or jury” wherever it occurs.**

**16 Section 47 is amended**

- (a) in subsection (1) by striking out “the Minister’s counsel” and substituting “counsel appointed under section 35.1”;**
- (b) in subsection (2) by striking out “On staying a public fatality inquiry” and substituting “Where a public fatality inquiry is stayed under subsection (1)”.**

**17 Section 49 is amended**

- (a) by repealing subsection (1);**
- (b) by repealing subsection (2)(d) and substituting the following:**
  - (d) any person who the judge, on application, determines has a direct and substantial interest in the subject-matter of the inquiry.**

**18 Section 53 is amended**

- (a) in subsection (1) by striking out “or jury, if any,”;**
- (b) in subsection (3) by striking out “or jury”;**



**(c) in subsection (4) by striking out “or jury” wherever it occurs.**

**19 The following is added after section 53:**

**Publication of report**

**53.1** The Minister shall make a written report under section 53 available to the public in a form and manner the Minister considers appropriate.

**20 Section 54 is repealed.**

**21 Section 55(a)(i) is amended by striking out “jurors,”.**

**22 This Act comes into force on Proclamation.**

### **Explanatory Notes**

**1** Amends chapter F-9 of the Revised Statutes of Alberta 2000.

**2** Special investigation of death outside Alberta.

**3** Section 19(1) presently reads:

*19(1) If a medical examiner receives notification of a death and is satisfied that the death occurred under any of the circumstances referred to in section 10, 11, 12, 13 or 17, the medical examiner shall investigate the death and establish where possible*

*(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, and*
- (e) *the manner of death.*

**4** Section 33 presently reads:

*33(1) When the Board receives a notification pursuant to section 32, it shall review the findings of the medical examiner including the examination report, the autopsy report, if any, and any other material that it considers relevant, and recommend any further investigation that may be necessary.*

*(2) After reviewing the matters set out in subsection (1), the Board shall*

- (a) recommend to the Minister that a public fatality inquiry be held, or*
- (b) recommend to the Minister that no public fatality inquiry be held.*

*(3) When the Board reviews the findings of a medical examiner with respect to a death referred to in section 10(2)(i), 11, 12 or 13, the Board shall recommend that a public fatality inquiry be held unless it is satisfied that the death was due entirely to natural causes and was not preventable and that the public interest would not be served by a public fatality inquiry.*

**5** Counsel's right to information.

**6** Section 35 presently reads:

*35(1) The Minister*

(a) *shall on the recommendation of the Board,  
and*

(b) *may in any other case,*

*order that a judge conduct a public fatality inquiry into a death or 2 or more deaths that arose out of the same or similar circumstances.*

(2) *An order under subsection (1) may include a direction that a jury be summoned for the purposes of the public fatality inquiry.*

(3) *On an order being made under subsection (1), the chief judge shall designate a judge to hold a public fatality inquiry into the death in respect of which the order was made.*

(4) *If a direction is made under subsection (2), the judge designated to hold the public fatality inquiry shall issue a warrant directing a clerk to summon a jury.*

**7** Appointment of and responsibilities of inquiry counsel.

**8** Section 36(a) presently reads:

*36 At any time after the conclusion of a public fatality inquiry the Minister may*

(a) *order that the judge or judge and jury who conducted the public fatality inquiry reopen the public fatality inquiry, or*

**9** Section 37 presently reads:

*37(1) On being directed under section 35(4) to summon a jury, the clerk shall*

(a) *choose 6 persons who are liable to serve as jurors under the Jury Act,*

(b) *issue a summons to each of those persons,  
and*

(c) *cause a copy of the summons to be served on  
each person to whom the summons is issued.*

(2) *If fewer than 6 jurors summoned appear at the  
time or place appointed for the public fatality  
inquiry, the clerk may choose persons who are  
available and who are liable to serve as jurors under  
the Jury Act to increase the jury to 6.*

(3) *If a person summoned to serve as a juror does  
not appear in answer to the summons, the judge may,  
after receiving proof that the person was served with  
the summons, issue a warrant to a peace officer  
commanding the peace officer to arrest the person  
and bring the person before the judge at the time and  
place specified in the warrant.*

(4) *When the person who is brought before the  
judge pursuant to a warrant issued under subsection  
(3) fails to show cause why the person did not obey  
the summons, the judge may impose on the person a  
fine not exceeding \$1000.*

(5) *If a person summoned to serve as a juror is  
arrested and brought before the judge and then  
refuses without reasonable excuse to serve as a  
juror, the judge may impose on the person a fine not  
exceeding \$1000.*

**10** Judge may hold conferences. Disclosure of records.

**11** Section 38 presently reads:

*38(1) A judge who holds an inquiry under this Act  
has all the powers of a commissioner appointed  
under the Public Inquiries Act.*

*(2) The judge may issue or direct a clerk to issue a summons to any person who in the opinion of the judge may be able to give evidence that relates to the death under investigation.*

*(3) Persons called as witnesses shall be examined on oath.*

*(4) A judge has the same powers*

*(a) to compel the attendance of witnesses, and*

*(b) to punish a witness for*

*(i) disobeying a summons to appear,*

*(ii) refusing to be sworn, or*

*(iii) refusing to give evidence,*

*as are conferred on a provincial judge by the Criminal Code (Canada).*

**12** Consequential. Section 39 presently reads:

*39(1) A report that purports to be made by the medical examiner pursuant to section 19(3) shall be admitted in evidence without proof of the signature or appointment of the medical examiner.*

*(2) Notwithstanding subsection (1), the judge may issue a summons to a medical examiner to attend and give evidence at a public fatality inquiry and the medical examiner is entitled to receive a fee for attendance as prescribed by the regulations if the medical examiner is not a full-time employee of the Government.*

**13** Examination of evidence. Disposition of evidence.

**14** Section 9 of Alberta Evidence Act paramount.

**15** Section 46(2) presently reads:

*(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 53.*

**16** Section 47 presently reads:

*47(1) The Minister or the Minister's counsel may at any time before or during a public fatality inquiry stay the inquiry*

*(a) for the purpose of allowing a police investigation in respect of a death, or*

*(b) pending the determination of a charge where a person, in respect of a death, is charged under any statute in force in Alberta.*

*(2) On staying a public fatality inquiry, the Minister may*

*(a) refer the matter back to the Board, or*

*(b) refer the matter back to the judge to continue the public fatality inquiry at a later date.*

**17** Section 49 presently reads:

*49(1) The Minister or the Minister's counsel shall appear at a public fatality inquiry and may examine*

*and cross-examine witnesses and present arguments and submissions.*

*(2) The following persons may appear at a public fatality inquiry either personally or through their legal counsel and may cross-examine witnesses and present arguments and submissions:*

- (a) any of the next of kin of the deceased;*
- (b) the personal representative of the deceased;*
- (c) a beneficiary under a policy of life insurance on the life of the deceased;*
- (d) any person who applies to the judge before or during the inquiry and is declared by the judge to be an interested person.*

**18** Section 53 presently reads in part:

*53(1) At the conclusion of the public fatality inquiry, the judge or jury, if any, shall make a written report to the Minister that 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.*

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

*(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.*

**19** Minister must make judge's report available to public.

**20** Section 54 presently reads:

*54(1) When a jury makes a written report to the Minister under section 53(1), the findings of the jury shall be agreed to by not less than 5 of the jurors.*

*(2) If less than 5 of the jurors are able to agree to any of the findings referred to in section 53(1), the jury shall make a written report to the Minister containing the findings, if any, that are agreed on by not less than 5 of the jurors.*

*(3) If less than 5 jurors are able to agree as to any of the findings referred to in section 53(1), the Minister may direct a judge to hold a 2nd public fatality inquiry or may take any other action the Minister considers proper.*

**21** Section 55(a) presently reads:

*55 The Lieutenant Governor in Council may make regulations*

*(a) governing fees payable under this Act*

*(i) to witnesses, jurors, court reporters and interpreters, and*

*(ii) to persons who provide services under this Act;*

**22** Coming into force.