



Province of Alberta

FATALITY INQUIRIES ACT

Revised Statutes of Alberta 2000
Chapter F-9

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Office Consolidation

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Note

All persons making use of this consolidation are reminded that it has no legislative sanction, that amendments have been embodied for convenience of reference only. The official Statutes and Regulations should be consulted for all purposes of interpreting and applying the law.

Amendments Not in Force

This consolidation incorporates only those amendments in force on the consolidation date shown on the cover. It does not include the following amendments:

2013 cC-12.5 s13 repeals and substitutes s13.

Regulations

The following is a list of the regulations made under the *Fatality Inquiries Act* that are filed as Alberta Regulations under the Regulations Act

	Alta. Reg.	<i>Amendments</i>
Fatality Inquiries Act		
Fatality Inquiries	65/2000	246/2000, 251/2001, 354/2003, 221/2004, 211/2005, 192/2007, 122/2008, 53/2009, 191/2009, 288/2009, 170/2012, 73/2017

FATALITY INQUIRIES ACT

Chapter F-9

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

Definitions

1 In this Act

- (a) “autopsy” means the dissection of a body for the purpose of examining organs and tissues to determine the cause of death or manner of death or the identity of the deceased and may include chemical, histological, microbiological or serological tests and other laboratory investigations;
- (b) “Board” means the Fatality Review Board established under this Act;
- (c) “body” means a dead human body or the remains of a dead human body;
- (d) “cause of death” means the medical cause of death according to the International Statistical Classification of Diseases, Injuries and Causes of Death as last revised by the International Conference assembled for that purpose and published by the World Health Organization;
- (d.1) “Child and Youth Advocate” means the Child and Youth Advocate appointed under section 2(1) of the *Child and Youth Advocate Act*;
- (e) repealed 2002 cA-4.5 s37;
- (f) “examination” means the examination of an unclothed body with or without the removal of body tissue or fluids for the purpose of toxicological examinations;
- (g) “investigator” means a medical examiners’ investigator appointed pursuant to section 6 or a person who is a medical examiners’ investigator by virtue of section 9;

- (h) “manner of death” means the mode or method of death whether natural, homicidal, suicidal, accidental, unclassifiable or undeterminable;
- (i) “medical examiner” means a medical examiner appointed pursuant to section 7;
- (j) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;
- (k) “next of kin” means the parents, children, brothers, sisters, spouse and adult interdependent partner of a deceased person, or any of them;
- (l) “pathologist” means a regulated member of the College of Physicians and Surgeons of Alberta who is authorized to use the title “pathologist”;
- (m) “public fatality inquiry” means a public fatality inquiry under Part 4.

RSA 2000 cF-9 s1;RSA 2000 cH-7 s146;2002 cA-4.5 s37;
2005 c13 s4(4);2008 c34 s18;2014 e8 s12;2017 c8 s2

Part 1 Administration

The Fatality Review Board

Fatality Review Board

- (1)** There is hereby established a Board called the “Fatality Review Board” that shall consist of 3 members appointed by the Lieutenant Governor in Council.
- (2)** Repealed 2009 c48 s5.
- (3)** One member of the Board appointed by the Lieutenant Governor in Council must be a physician.
- (4)** One member of the Board appointed by the Lieutenant Governor in Council must be a member of The Law Society of Alberta.
- (5)** The Lieutenant Governor in Council may designate
- (a) one member of the Board as chair of the Board, and
 - (b) one member of the Board as vice-chair of the Board.

(6) The members of the Board shall receive the remuneration for their services that may be prescribed by the Lieutenant Governor in Council.

(6.1) If regulations under the *Alberta Public Agencies Governance Act* apply in respect of the remuneration for the members of the Board, those regulations prevail, to the extent of any conflict or inconsistency, over any regulations prescribing remuneration under subsection (6).

(7) The members of the Board shall be paid, in accordance with any applicable regulations under the *Alberta Public Agencies Governance Act*, for travelling and living expenses incurred while absent from their places of residence and in the course of their duties as members.

RSA 2000 cF-9 s2;2009 cA-31.5 s42;
2009 c48 s5;2011 c20 s7

Quorum

3 Two members constitute a quorum at a meeting of the Board.

RSA 2000 cF-9 s3;2011 c20 s7

Duties of Board

4 The Board shall

- (a) review investigations under this Act in order to determine the need for holding a public fatality inquiry;
- (b) review complaints respecting misbehaviour or incompetence or neglect of duty by medical examiners or the inability of medical examiners to perform their duties under this Act and, in relation to the review of a complaint, make recommendations to the Minister, including recommendations concerning the suspension or termination of a medical examiner.

RSA 1980 cF-6 s4;1991 c21 s9;1994 cG-8.5 s89;
1998 c23 s7

Officials

Chief Medical Examiner

5(1) The Lieutenant Governor in Council shall appoint a Chief Medical Examiner who must be a pathologist.

(2) The Chief Medical Examiner shall receive the remuneration that may be prescribed by the Lieutenant Governor in Council.

(3) The Chief Medical Examiner may exercise and perform the powers and duties of a medical examiner.

- (4) The Chief Medical Examiner is responsible to the Minister for
- (a) the operation of this Act in relation to the reporting, investigating and recording of deaths,
 - (b) the supervision of medical examiners in the performance of their duties,
 - (c) the development and maintenance of facilities that may be required,
 - (d) the education of persons required to perform functions under this Act, and
 - (e) the inspection of medical certificates of death in all cases where burial permits are issued pursuant to the *Vital Statistics Act*.

RSA 1980 cF-6 s5;1994 cG-8.5 s89

Staff

6 In accordance with the *Public Service Act*, there may be appointed

- (a) Deputy Chief Medical Examiners and Assistant Chief Medical Examiners,
- (b) medical examiners' investigators on a full-time or part-time basis, and
- (c) any other employees required for the purpose of administering this Act.

RSA 1980 cF-6 s6

Medical examiners

7 The Minister may appoint physicians as medical examiners.

RSA 1980 cF-6 s7;1994 cG-8.5 s89

Ceasing to hold office

8(1) A medical examiner ceases to hold office

- (a) on ceasing to be a member of the College of Physicians and Surgeons of Alberta,
- (b) on submitting the medical examiner's resignation to the Minister in writing,
- (c) on ceasing to be ordinarily resident in Alberta, or
- (d) on termination of the medical examiner's appointment by order of the Minister.

(2) A medical examiner is suspended during any period that the medical examiner's registration is suspended under the *Health Professions Act*.

(3) The Minister may suspend the appointment of a medical examiner during any period that a complaint regarding the medical examiner is under review by the Board pursuant to section 4(b).

RSA 2000 cF-9 s8;RSA 2000 cH-7 s146;2005 c13 s4(4)

Investigators by virtue of their office

9(1) Every member of the Royal Canadian Mounted Police or a police service or peace officer responsible for the policing of any part of Alberta pursuant to an arrangement or agreement under section 5(1)(b) of the *Police Act* is, by virtue of that office, a medical examiners' investigator and has the same powers and duties as are conferred or imposed on a medical examiners' investigator by this Act.

(2) An investigator, when authorized to do so by a medical examiner,

- (a) shall assist the medical examiner in carrying out the medical examiner's duties under this Act, and
- (b) may exercise the powers enumerated in section 21.

RSA 2000 cF-9 s9;2005 c31 s27

Part 2 Reporting and Investigation of Deaths

Deaths that require notification

10(1) Any person having knowledge or reason to believe that a person has died under any of the circumstances referred to in subsection (2) or section 11, 12 or 13 shall immediately notify a medical examiner or an investigator.

(2) Deaths that occur under any of the following circumstances require notification under subsection (1):

- (a) deaths that occur unexplainedly;
- (b) deaths that occur unexpectedly when the deceased was in apparent good health;
- (c) deaths that occur as the result of violence, accident or suicide;

- (d) maternal deaths that occur during or following pregnancy and that might reasonably be related to pregnancy;
- (e) deaths that may have occurred as the result of improper or negligent treatment by any person;
- (f) deaths that occur
 - (i) during an operative procedure,
 - (ii) within 10 days after an operative procedure,
 - (iii) while under anesthesia, or
 - (iv) any time after anesthesia and that may reasonably be attributed to that anesthesia;
- (g) deaths that are the result of poisoning;
- (h) deaths that occur while the deceased person was not under the care of a physician;
- (i) deaths that occur while the deceased person was in the custody of a peace officer or as a result of the use of force by a peace officer while on duty;
- (j) deaths that are due to
 - (i) any disease or ill-health contracted or incurred by the deceased,
 - (ii) any injury sustained by the deceased, or
 - (iii) any toxic substance introduced into the deceased,

as a direct result of the deceased's employment or occupation or in the course of one or more of the deceased's former employments or occupations.

RSA 1980 cF-6 s10;1984 c9 s1;1991 c21 s9;1999 c26 s9

Notification of death of prisoner

11 If a person dies while

- (a) detained in a correctional institution as defined in the *Corrections Act* or a jail, including a military guard room, remand centre, penitentiary, secure services facility as defined in the *Child, Youth and Family Enhancement Act*, facility or place designated as a place of open or secure custody pursuant to the *Youth Criminal Justice Act*

(Canada), detention centre or a place where a person is held under a warrant of a judge,

- (b) a formal patient in any facility as defined by the *Mental Health Act*, or
- (c) an inmate or patient in any institution specified in the regulations,

the person in charge of that institution, jail, facility or other place shall immediately notify a medical examiner.

RSA 2000 cF-9 s11;2003 c16 s117;2003 c41 s4(32)

Notification of death of prisoner not in custody

12 If a person dies while

- (a) committed to a correctional institution as defined in the *Corrections Act* or a jail, including a military guard room, remand centre, penitentiary, secure services facility as defined in the *Child, Youth and Family Enhancement Act*, facility or place designated as a place of open or secure custody pursuant to the *Youth Criminal Justice Act* (Canada), detention centre or a place where a person is held under a warrant of a judge,
- (b) a formal patient in any facility as defined by the *Mental Health Act*, or
- (c) an inmate or patient in any institution specified in the regulations,

but while not on the premises or in actual custody of that facility or institution, jail or other place, the person in charge of that facility or institution, jail or other place, shall, immediately on receiving notice of the death, notify a medical examiner.

RSA 2000 cF-9 s12;2003 c16 s117;2003 c41 s4(32)

Notification of death of child

13 A director under the *Child, Youth and Family Enhancement Act* shall immediately notify a medical examiner of the death of any child under the director's guardianship or in the director's custody.

RSA 2000 cF-9 s13;2003 c16 s117

Notification of dead body brought into Alberta for disposal

14(1) When a body is brought into Alberta for ultimate disposal, a funeral director, undertaker, embalmer, mortuary attendant or other person who intends to dispose of the body shall, before disposing of the body, notify a medical examiner.

(2) After being notified under subsection (1), a medical examiner or an investigator authorized by the medical examiner may, if the medical examiner believes it is necessary to do so, make any investigation that may be necessary to establish or confirm the cause of death or to establish the identity of the deceased person.

RSA 1980 cF-6 s15;1991 c21 s9;1994 c23 s18

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.

2005 c11 s2

Examination of bodies to be cremated or shipped out of Province

15(1) No person shall

- (a) cremate a body,
- (b) ship or take a body from a place in Alberta to a place outside Alberta, or
- (c) dissect a body or otherwise subject a body to study or research under section 37 of the *Post-secondary Learning Act*,

until a medical examiner or an investigator authorized by a medical examiner issues a certificate stating that the medical examiner or investigator has examined the medical certificate of death.

(2) A certificate issued under subsection (1) shall be in the form prescribed by the Chief Medical Examiner.

(3) Notwithstanding subsection (1), in the case of the death in a hospital of a fetus or of a newborn infant as defined in the regulations under the *Cemeteries Act*, the hospital may dispose of the body in the manner specified by the regulations under the *Cemeteries Act*.

RSA 2000 cF-9 s15;2003 cP-19.5 s137

Interference with body prohibited

16(1) Subject to subsection (2), a person who has reason to believe that a person died under any of the circumstances referred to in section 10, 11, 12 or 13 shall not, except pursuant to a direction of a medical examiner or a general directive of the Chief Medical Examiner,

- (a) clean or make alterations to the body or clothing on the body or objects attached to the body, or
- (b) apply a chemical or other substance to the body, internally or externally.

(2) Subsection (1) does not apply to a police officer acting in the course of the police officer's duties or to a person who makes alterations or applies a chemical or other substance to a body for the purpose of resuscitation.

RSA 1980 cF-6 s17

Notification of death where body not located

17 If a person knows or believes that a death has occurred in Alberta but no body has been located because

- (a) the body or part of the body has been destroyed,
- (b) the body is lying in a place from which it cannot be recovered, or
- (c) the body has been removed from Alberta,

that person shall immediately notify a medical examiner or a member of the Royal Canadian Mounted Police or a member of a police service.

RSA 2000 cF-9 s17;2005 c31 s27

Disposal of unidentified body

18(1) If a body is unidentified and an investigation indicates that the body is likely to remain unidentified, the Chief Medical Examiner shall arrange for the storage of the body for a period of 7 days from the completion of the investigation.

(2) If on the expiry of the 7-day period referred to in subsection (1) the body remains unidentified, the Chief Medical Examiner shall notify the nearest university and, if a demand is made under the *Post-secondary Learning Act*, deliver the body to a university, or, if no demand is made, arrange for the burial of the body.

RSA 2000 cF-9 s18;2003 cP-19.5 s137

Duties of medical examiner

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.

(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).

(2) Notwithstanding subsection (1), when a medical examiner is unable to investigate a death of which the medical examiner receives notification, the medical examiner shall

- (a) notify another medical examiner if the death occurred under any of the circumstances referred to in section 10, 11, 12, 13 or 17, and
- (b) keep a record of the death including the reasons why the death was not investigated by the medical examiner.

(3) A medical examiner shall keep a record of all deaths of which the medical examiner is notified pursuant to this Act or the *Vital Statistics Act* and shall immediately report to the Chief Medical Examiner all investigations that the medical examiner or an investigator under the medical examiner's supervision make into a death.

(4) When a medical examiner has investigated a death and has determined the manner of death and the cause of death, the medical examiner shall immediately, in addition to making a report under subsection (3), complete a medical certificate of death in accordance with the *Vital Statistics Act*.

(5) Notwithstanding subsection (1), a medical examiner is not required to investigate a death that occurred through natural causes or in the circumstances described in section 10(2)(f)(i) or (ii) if

- (a) a physician is able to certify the information in subsection (6)(a) to (e), and

(b) the medical examiner is satisfied that an investigation is not required.

(6) A medical examiner who does not investigate a death under subsection (5) shall, based on information provided by the physician, record

- (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;
- (f) the name of the physician who provided the information.

(7) If a medical examiner does not conduct an investigation under subsection (5), the physician is authorized to complete and sign the medical certificate of death referred to in section 33 of the *Vital Statistics Act*.

RSA 2000 cF-9 s19;2005 c11 s3;2007 cV-4.1 s83

Investigation or autopsy

20 The Chief Medical Examiner may at any time

- (a) direct a medical examiner to make an investigation into any death at any place in Alberta, or
- (b) authorize an autopsy of the body of any person who died under the circumstances described in section 10, 11, 12 or 13.

RSA 1980 cF-6 s21

Powers of medical examiner or investigator

21(1) A medical examiner or an investigator acting under the medical examiner's authorization may, in performing the medical examiner's or investigator's duties under this Act,

- (a) without a warrant, enter any place where the medical examiner or investigator believes, on reasonable and probable grounds, a body that is the subject of an investigation is located or has been located;
- (b) without a warrant, take possession of anything that 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 the medical examiner's or investigator's investigation.

(2) When a medical examiner or an investigator seizes anything under subsection (1)(b), the medical examiner or investigator or the peace officer who has custody of it shall retain it until the conclusion of any investigation or public fatality 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.

(3) Notwithstanding 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) a person receiving diagnostic and treatment services in a diagnostic and treatment centre under the *Mental Health Act*, or
- (b) a patient under the *Hospitals Act*.

RSA 2000 cF-9 s21;RSA 2000 cH-5 s113

Possession and release of body

22(1) When a medical examiner conducts an investigation into a death pursuant to this Act, the medical examiner is deemed to take possession of the body at the time the medical examiner receives the notification.

(2) As soon as possible after taking possession of the body, the medical examiner shall sign a notice in the form prescribed by the Chief Medical Examiner and cause it to be affixed to the body or the shroud, garment or container holding the body.

(3) Failure to sign or affix the notice under subsection (2) does not affect the right of the medical examiner to take possession of the body.

(4) A medical examiner may carry out examinations of the body.

(5) The medical examiner may release the body for burial or other disposition when possession of the body is no longer required for the purposes of this Act.

RSA 1980 cF-6 s23

Destruction of soiled clothing

23 The medical examiner may destroy any soiled or damaged clothing that was taken into possession with a body and that is not required for the purposes of this Act or an investigation or proceeding conducted under any other statute in force in Alberta.

RSA 1980 cF-6 s24

Offence

24 A person who hinders, obstructs, intimidates or in any way interferes with a medical examiner or an investigator in the performance of the medical examiner's or investigator's duties is guilty of an offence.

RSA 1980 cF-6 s25

Conduct of autopsy

25(1) A medical examiner may authorize the autopsy of the body of any person who died under the circumstances described in section 10, 11, 12 or 13.

(2) Where a medical examiner authorizes an autopsy

- (a) the autopsy shall only be carried out by a pathologist;
- (b) the person who performs the autopsy may excise, remove and retain any part of the body or any object found in the body for the purpose of establishing the cause of death and the manner of death.

RSA 1980 cF-6 s26

Removal of tissue

26 Notwithstanding section 25(2)(b), a medical examiner may remove or allow the removal of tissue or organs in accordance with the *Human Tissue and Organ Donation Act*, if the removal of the tissue or organs does not interfere with any investigation or proceeding under any law in force in Alberta.

RSA 2000 cF-9 s26;2006 cH-14.5 s15

Autopsy report

27 A person who performs an autopsy shall provide the medical examiner who ordered the autopsy with any autopsy reports that may be prescribed by the regulations.

RSA 1980 cF-6 s28

Disinterment

28(1) Notwithstanding section 17 of the *Cemeteries Act*, the Chief Medical Examiner may order a body to be disinterred for the purposes of an investigation under this Act or the *Criminal Code* (Canada).

- (2) Copies of an order under subsection (1) shall be sent by registered mail at least 48 hours before the disinterment to
- (a) the spouse, adult interdependent partner or, if there is no spouse or adult interdependent partner, any other of the adult next of kin of the deceased who is resident in Alberta,
 - (b) the Registrar of Vital Statistics, and
 - (c) the owner or the person in charge of the cemetery or mausoleum where the body is buried or stored.
- (3) Subsection (2)(a) does not apply when the Chief Medical Examiner has ordered a body to be disinterred for the purposes of an investigation under the *Criminal Code* (Canada).

RSA 2000 cF-9 s28;2002 cA-4.5 s37;2007 cV-4.1 s83

Records

29 A medical examiner shall, immediately after completing an investigation under this Act, provide the Chief Medical Examiner with a record of the investigation and the reports, certificates and other documents that are prescribed by the regulations.

RSA 1980 cF-6 s30;1991 c21 s9

Release of information

30(1) Except for reports, certificates and other records made in the course of a public fatality inquiry, all reports, certificates and other records made by any person under this Act are the property of the Government and shall not be released without the permission of the Chief Medical Examiner.

- (2) On the completion of
- (a) the investigation, and
 - (b) the public fatality inquiry, if one is held,

and on the receipt of a request from any of the adult next of kin or the personal representative of the deceased, the Chief Medical Examiner shall complete and send a report to the person making the request.

RSA 1980 cF-6 s31;1998 c23 s7

Notification of possible offence

31 If, at any time during the course of a medical examiner's investigation, the medical examiner is of the opinion that an offence under the *Criminal Code* (Canada) that is related to the death being investigated may have been committed, the medical examiner shall immediately notify the Chief Medical Examiner and

the chief constable or officer in charge of the nearest police detachment or station.

RSA 1980 cF-6 s32

Part 3 Review of Investigations

Notice to Board

32(1) The Chief Medical Examiner shall notify the Board of any death that has been the subject of an investigation if

- (a) the cause of death has not been established;
- (b) the manner of death has not been established;
- (c) the body is unidentified or has not been located;
- (d) a medical examiner, any of the next of kin of the deceased or anyone that the Chief Medical Examiner considers to be an interested party requests in writing that the Board review the investigation and provides reasonable grounds for the review;
- (e) the death is one referred to in section 10(2)(i), 11 or 12;
- (f) the Chief Medical Examiner considers a review of the investigation to be necessary or desirable;
- (g) the death is one referred to in section 13 and the manner of death is unnatural or undetermined or the death has occurred under suspicious circumstances.

(2) Notification by the Chief Medical Examiner under subsection (1) must be in writing and be accompanied with all reports and certificates that may be relevant to the death.

RSA 1980 cF-6 s33;1991 c21 s9

Notice to Child and Youth Advocate

32.1(1) The Chief Medical Examiner shall notify the Child and Youth Advocate of all deaths of persons under 20 years of age, within 30 days of a medical examiner being notified under section 10, 11, 12 or 13.

(2) Notification by the Chief Medical Examiner under subsection (1) must be in writing and must include the name, date of birth and date of death of the person.

2017 c8 s2

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.

(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 conducts a review under this section with respect to a death referred to in section 10(2)(i), 11 or 12, 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 or 12.

(3.1) Subsection (3) does not apply to a death subject to an investigation under section 9(2)(d) of the *Child and Youth Advocate Act* or a review under section 9.1 of that Act by the Child and Youth Advocate.

(3.2) When the Board conducts a review with respect to a death referred to in section 10(2)(i), 11, 12 or 13 that has been or is being investigated by the Child and Youth Advocate under section 9(2)(d) of the *Child and Youth Advocate Act* or that has been or is being reviewed by the Child and Youth Advocate under section 9.1 of that Act, in deciding whether to recommend that a public fatality inquiry be held, the Board shall consider

- (a) whether the death was due entirely to natural causes and was not preventable,
- (b) the findings, including any recommendations or observations, of the Child and Youth Advocate in a report

under section 15 or 15.4 of the *Child and Youth Advocate Act*,

- (c) whether the conduct of a public fatality inquiry could have a potentially harmful effect on witnesses, and
- (d) any other factors set out in the regulations

and shall recommend that a public fatality inquiry be held if the Board is satisfied that the public interest would be served by a public fatality inquiry.

(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.

RSA 2000 cF-9 s33;2005 c11 s4;2017 c8 s2

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).

2005 c11 s5

Part 4 Public Fatality Inquiries

Definitions

34 In this Part,

- (a) "Chief Judge" means the Chief Judge of The Provincial Court of Alberta;
- (b) "clerk" means a clerk of The Provincial Court of Alberta;
- (c) "judge" means a judge of The Provincial Court of Alberta.

RSA 2000 cF-9 s34;2008 c32 s13

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.

RSA 2000 cF-9 s35;2005 c11 s6;2008 c32 s13

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.

2005 c11 s7

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.

2005 c11 s7

Reopening of or new inquiry

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

- (a) order that the judge who conducted the public fatality inquiry reopen the public fatality inquiry, or
- (b) make an order under section 35 directing that a judge conduct another public fatality inquiry into the death or deaths that were the subject-matter of the concluded public fatality inquiry.

RSA 2000 cF-9 s36;2005 c11 s8

37 Repealed 2005 c11 s9.

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, including but not limited to an investigation under section 9(2)(d) of the *Child and Youth Advocate Act* or a review under section 9.1 of that Act.

2005 c11 s10;2017 c8 s2

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.

2005 c11 s10

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.

(3) Repealed 2005 c11 s11.

(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 judge of the Provincial Court by the *Criminal Code* (Canada).

(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.

RSA 2000 cF-9 s38;2005 c11 s11;2008 c32 s13

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.

RSA 2000 cF-9 s39;2005 c11 s12

Evidence at public fatality inquiry

40(1) Subject to subsection (3), a judge may admit in evidence at a public fatality 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 fatality inquiry but shall refuse to admit in evidence all or part of any oral testimony or any document or other thing if the judge 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 fatality inquiry.

(2) Notwithstanding 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 21(3) to enable the judge to make findings and recommendations and to report in respect of any or all of the matters set out in section 53.

(3) Nothing is admissible in evidence at a public fatality inquiry that would be inadmissible in a judicial proceeding by reason of any privilege under the law of evidence.

(4) If the judge is satisfied as to its authenticity, a copy of a document or other thing may be admitted in evidence at a public fatality inquiry.

(5) When a document has been admitted in evidence at a public fatality inquiry, the judge may, or the person producing it or entitled to it may, with the permission of the judge, cause the document to be photocopied and the judge may

- (a) authorize the photocopy to be admitted in evidence in the place of the document admitted and release the document admitted, or
- (b) furnish to the person producing it or the person entitled to it a photocopy of the document admitted that has been certified by the judge.

RSA 2000 cF-9 s40;RSA 2000 cH-5 s113;2014 c13 s49

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.

2005 c11 s13

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.

2005 c11 s13

Private hearings

41 Subject to section 42, all hearings at a public fatality 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.

1985 c26 s5;1998 c23 s7

Considerations re private hearing

42 Without restricting the generality of section 41(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;

- (f) whether the disclosure would be prejudicial to the interests of persons not concerned in the inquiry;
- (g) whether the holding of the hearing in camera is essential in the interests of justice or would be injurious to the public interest;
- (h) whether the holding of the hearing 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, the patient's or person's legal representative has consented to having the diagnosis, record or information disclosed in a hearing open to the public.

1985 c26 s5

Application for private hearing

43 An application that the public fatality inquiry or any part of it be held in camera may be made by any person referred to in section 49, and the application must be heard in camera.

1985 c26 s5;1998 c23 s7

Decision of judge final

44 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.

1985 c26 s5

Refusal to disclose information

45 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 fatality 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 the person to maintain secrecy or not to disclose any matter.

1985 c26 s5;1998 c23 s7

Alberta Evidence Act paramount

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

2005 c11 s14

Disclosure of evidence from a private hearing

46(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 fatality inquiry.

(2) Subsection (1) does not apply to

- (a) oral testimony, or
- (b) documentary evidence

contained in the findings of the judge or in the written report of the judge under section 53.

RSA 2000 cF-9 s46;2005 c11 s15

Staying of public fatality inquiry

47(1) The Minister or counsel appointed under section 35.1 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) Where a public fatality inquiry is stayed under subsection (1), 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.

RSA 2000 cF-9 s47;2005 c11 s16

Incriminating questions

48(1) A witness at a public fatality inquiry is deemed to object to any question asked the witness if the answer to the question may tend to incriminate the witness or may tend to establish the witness's liability to a civil proceeding at the instance of the Crown or of any other person and no answer given by a witness at a public fatality inquiry may be used or be receivable in evidence against the witness in any trial or other proceeding subsequently taking place other than a prosecution for perjury in the giving of that evidence.

(2) When it appears at any stage of the public fatality inquiry that a witness is about to give evidence that would tend to incriminate the witness, it is the duty of the judge to inform the witness of the

witness's rights under section 5 of the *Canada Evidence Act* (Canada).

RSA 1980 cF-6 s42;1998 c23 s7

Persons at public fatality inquiry

49(1) Repealed 2005 c11 s17.

(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 the judge, on application, determines has a direct and substantial interest in the subject-matter of the inquiry.

RSA 2000 cF-9 s49;2005 c11 s17

Limitation on examination of witnesses

50 The judge may at any time limit examination or cross-examination of witnesses when in the judge's opinion the examination or cross-examination is vexatious, irrelevant or unnecessary.

RSA 1980 cF-6 s44

Record of evidence

51 The judge shall cause a record of the evidence received at a public fatality inquiry to be made including a list of exhibits and witnesses.

RSA 1980 cF-6 s45;1998 c23 s7

Continuation of public fatality inquiry

52 If a public fatality inquiry is commenced by a judge who dies or retires or is removed from office before the completion of the public fatality inquiry, or who for any reason is unable to complete the public fatality inquiry, the Minister may appoint another judge to complete the public fatality inquiry or to conduct another public fatality inquiry.

RSA 1980 cF-6 s46;1994 cG-8.5 s89;1998 c23 s7

Findings after inquiry

53(1) At the conclusion of the public fatality inquiry, the judge 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.

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

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

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

RSA 2000 cF-9 s53;2005 c11 s18

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.

2005 c11 s19

54 Repealed 2005 c11 s20.

Regulations

55 The Lieutenant Governor in Council may make regulations

- (a) governing fees payable under this Act
 - (i) to witnesses, court reporters and interpreters, and
 - (ii) to persons who provide services under this Act;
- (b) governing the procedures to be followed by medical examiners or investigators who conduct investigations under this Act;
- (c) governing the procedures to be followed by pathologists who perform autopsies under this Act;

- (d) prescribing reports, certificates and other documents that must be provided to medical examiners, the Chief Medical Examiner or the Board;
- (e) prescribing a tariff of fees to be charged for services provided under this Act;
- (f) designating any place as an institution for the purposes of section 11 or 12 or both;
- (g) prescribing the persons and classes of persons to whom copies of autopsy reports made under section 27 shall be provided by the Chief Medical Examiner;
- (h) respecting factors for the purposes of section 33(3.2)(d).

RSA 2000 cF-9 s55;2005 c11 s21;2017 c8 s2

Offence and penalty

56 A person who contravenes this Act or the regulations is guilty of an offence and liable to a fine of not more than \$1000 or to imprisonment for a term not exceeding 6 months.

RSA 1980 cF-6 s50



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