

IN THE CRIMINAL DIVISION OF
THE PROVINCIAL COURT OF ALBERTA

IN THE MATTER OF The Fatality Inquiries Act

IN THE MATTER OF The Death of

CONSTANCE BRENDA JACOBS

TYUNDANAIIKAH JACOBS

F A T A L I T Y I N Q U I R Y

Calgary, Alberta

18 January, 1999

INDEX

Submissions	252
Ruling by Goodson J., P.C.A.	302
Certificate of Transcript	313

EXHIBITS

Exhibit 1 on C.B.C. Application - Correspondence from E.S. Kozak, Esq. Faxed to all Counsel 14 January, 1999	257
--	-----

1 Proceedings taken at Fatality Inquiry in the Provincial
2 Court of Alberta, Provincial Courts Building, Calgary,
3 Alberta

4 -----

5 18 January, 1999

6

7 The Honourable Judge Goodson Provincial Court
8 of Alberta

9

10 P.G. Lister, Esq., Q.C. Commission Counsel

11 M. Mendola-Dow, Ms. (Agent)

12

13 F. ~~S~~. Kozak, Esq. For the Canadian
14 Broadcasting Corporation

15 K.E. Mahoney, Ms. For the Assembly of
16 First Nations

17 D.W. MacLeod, Esq. For the Tsuu T'ina
18 Nation, Tsuu T'ina
19 Nation Tribal Police
20 Service, Tsuu T'ina
21 Nation Child and Family
22 Service

23 M.C. Erb, Ms. For the Tsuu T'ina
24 Nation

25 (General Counsel)

26 J.N. Shaw, Esq. For the Department of
27 Justice Canada

1 the people here.

2 THE COURT: All right.

3 MR. SEMENUK: Your Honour, on behalf of Hardy
4 Jacobs, I can tell you, sir, my instructions are that
5 he is content to maintain a position of neutrality,
6 the same position expressed by my learned friend
7 Mr. MacLeod on behalf of the Tsuu T'ina Nation. We
8 are content, Your Honour, to leave it in Your Honour's
9 hands. Thank you very much.

10 MR. MacLEOD: Your Honour, my client's position
11 remains the same as it was last week.

12 MR. SHAW: Your Honour, the RCMP do not
13 oppose the application. Of course, we will be looking
14 at the form of an order, if granted, to determine,
15 perhaps, some of the appropriate terms, but at base,
16 do not oppose.

17 MS. MAHONEY: Your Honour, the Assembly of First
18 Nations is not opposed to the application. However,
19 they have reservations similar to those of counsel for
20 the Tsuu T'ina Nation.

21 MR. DAVIS: And the Samson Nation makes -- has
22 no position at this time.

23 MS. MENDOLA-DOW: We have no position at this time,
24 sir.

25 MR. KOZAK: So, I believe --

26 THE COURT: Are those the only counsel
27 appearing today on this matter besides Mr. Willier?

1 devices within the walls of the courthouse itself and
2 other courtrooms in Alberta. I note that it says the
3 purpose refers to cameras in courtrooms and other
4 courthouses in Alberta. Your Honour, as you know, I
5 appear on behalf of the C.B.C. They wish to apply for
6 electronic public access to televised proceedings from
7 a fatality inquiry that's scheduled to commence on
8 February the 1st.

9 As I indicated last week, I want to make it clear
10 from the outset that the C.B.C. recognizes that
11 pursuant to Section 40.1 of the Fatality Inquiries
12 Act, portions of the evidence will be heard in camera
13 or may be heard in camera. Therefore, this
14 application is only for electronic access to those
15 portions of the fatality inquiry that are open to the
16 public. C.B.C. is not suggesting or requesting any
17 access beyond that which is contemplated by the
18 governing legislation in this application today.

19 The nature of the application, Your Honour, has
20 been detailed in correspondence to counsel for all
21 interested parties pursuant to your direction last
22 Wednesday; that is, January the 13th. It was faxed to
23 each counsel, I believe, on January the 14th, and I am
24 prepared to make a copy of that an exhibit to this
25 application.

26 THE COURT: Exhibit 1 in this application.

27 MR. KOZAK: Thank you, Your Honour.

1 review of the circumstances leading to these
2 fatalities, with a view to perhaps making
3 recommendations aimed at the prevention of similar
4 deaths in the future.

5 Your Honour, in my submission, the words "shall
6 be open to the public" have to be given some meaning
7 and effect. It means more than not in camera. It is
8 obvious that public access is an essential element of
9 the entire inquiry process. There are many people
10 interested in the circumstances leading to these
11 fatalities who will not have any opportunity to travel
12 to the proceedings each day in the middle of winter,
13 even if they did have the financial means.

14 Again, I want to stress that C.B.C. is not
15 applying today to extend or enlarge the public access
16 afforded by the legislation. It is not seeking today
17 to have portions of the fatality inquiry that would
18 normally proceed in camera heard in public. C.B.C. is
19 not seeking to change any existing law that governs
20 publication of the information arising from this
21 inquiry. It is bound by laws that require its
22 coverage to be fair and accurate.

23 The application today is based on the premise
24 that when legislation refers to public access, that
25 is, in fact, what it means. That is, public access is
26 effective public access. If I were to take an extreme
27 example to illustrate that point, if something were

1 best means for winning for its public
2 confidence and respect.

3

4 That case, **Scott v. Scott**, has been quoted at length
5 in many subsequent cases. I won't go through all of
6 the quotes, but the conclusion reached by the House of
7 Lords in several subsequent cases is the security of
8 securities is essentially publicity.

9 That English notion of openness and public access
10 as been embraced by the Supreme Court of Canada on
11 several occasions, including a decision that was
12 released just before the enactment of the Charter;
13 that is, the **Attorney General of Nova Scotia v.**
14 **MacIntyre**. In that case, Mr. Justice Dickson, as he
15 then was, stated in the majority judgment:

16

17 Many times, it has been urged that the
18 privacy of litigants requires that the
19 public be excluded from court proceedings.
20 It is now well established, however, that
21 covertness is the exception and openness the
22 rule.

23 Public confidence in the integrity of
24 the court system and understanding of the
25 administration of justice are thereby
26 fostered. As a general rule, the
27 sensibilities of the individuals involved

1 public. The Supreme Court of Canada went on to say:

2

3 In today's society, it is press reports and
4 media coverage of trials that make the
5 courts truly open to the public.

6

7 So, the post-Charter affirmation of the principle
8 of effective public access is based on the belief that
9 it fosters important benefits for the administration
10 of justice. Those benefits were listed by Madam
11 Justice Wilson in the **Edmonton Journal** case, and
12 without going through all of them, in particular, she
13 stated:

14

15 An open court inspires public confidence in
16 the fairness of the proceedings, and it
17 inspires confidence in the litigants that
18 the proceedings and the results are fair and
19 just. It has important educational value
20 for the public, and finally, it is felt to
21 increase the public's respect for the law
22 and understanding of the methods of judicial
23 procedure.

24

25 So, in my submission, the reality, one that has
26 been recognized by the Supreme Court of Canada both in
27 the **Edmonton Journal** case and in the subsequent case,

1 proceedings which have been -- that have had some
2 experience with audio visual coverage has, in my
3 submission, been almost uniformly favourable.

4 By my count, there have been over 20 inquiries,
5 including coroners' hearings, which have been
6 televised, in whole or in part, in the last 15 years
7 in Canada, and without going through them, some of
8 them were mentioned last Wednesday. Those would
9 include the Coad Inquiry into the collapse of the
10 Principal Group of companies in 1989, the Inquiry into
11 the Administration of Justice in Aboriginal People in
12 1990, the Foise Inquiry into the Hinton train
13 collision, the Este Inquiry into the collapse of the
14 CCB, a number of coroners' inquests arising from
15 British Columbia, and, most recently, the inquiry into
16 conflict of interest allegations of the Premier of the
17 North West Territories; that is, the Morin Inquiry,
18 and one that is still going on at the present moment,
19 the Manitoba -- the Elections Manitoba Inquiry.

20 In all of those examples, the experience has been
21 that there has been no physical disruption. The
22 letter that has been marked as Exhibit 1 to this
23 application refers to a number of safeguards. The
24 placement of a single camera and microphone without
25 any additional light does not lead to any physical
26 disruption. In fact, the camera blends into the
27 background, and nobody that has had any experience in

1 off the record. But that really misses the point.
2 Informal proceedings, such as a fatality inquiry, the
3 camera is simply one more method of making
4 participants aware of the fact that this isn't a
5 private ceremony. This is something that has a true
6 public overriding interest.

7 Privacy rights often advanced, both generally and
8 specifically, as a reason to exclude a camera from
9 this type of proceeding have been addressed. That is,
10 generally, our courts have stated for centuries that
11 the public interest outweighs the privacy rights that
12 individuals may have outside of this context, and
13 specific privacy rights are addressed in the
14 legislation. The same legislation that establishes
15 the general rule - that is, that this should be open
16 to the public - also lists exceptions, and there are a
17 number of them. The privacy considerations are set
18 out in Section 40.2, and those are not affected in any
19 way by this application. It's a cliché, but justice
20 is seen to be done through effective public access.

21 Your Honour, for a variety of legitimate
22 practical considerations, few Canadians really get to
23 see what goes on in judicial or quasijudicial
24 proceedings. The result is, in my submission, that
25 most members of the Canadian public form their
26 opinions of our justice system based on televised
27 proceedings from the U.S. environment, and they all

1 can't help but have a positive effect on people that
2 are called upon to do something about things that
3 contribute to the events leading to fatalities.

4 There's also a more general benefit, and that is
5 there's a greater likelihood of public confidence in
6 the result if people know about it. Electronic
7 access, in my submission, improves the flow of
8 information to the public. It increases the
9 likelihood that the public will appreciate the result,
10 and it fosters public confidence - if, in fact, that
11 confidence is deserved. If it is, skeptics who would
12 otherwise sound credible in the absence of that
13 evidence are silenced or ignored because people can
14 judge for themselves whether or not that sceptical
15 analysis is well-founded.

16 In my submission, Your Honour, electronic access
17 is also thought to improve the performance of all the
18 participants in the proceeding. The public is more
19 likely to understand, respect and obey the rules and
20 procedures when it can see that it operates fairly.
21 The public is said to be more likely to generate
22 better proposals for new laws if it has access to the
23 best available information. So, in a free and
24 democratic society, the notion is that ultimately,
25 it's the public that governs itself. That is, in
26 fact, the case. It has a right to access to the best
27 available information about the day-to-day rules,

1 public access by virtue of the means that are set out
2 in Exhibit 1 to this application.

3 Now, I've just had a brief moment to look at
4 Mr. Willier's clients' affidavit, and I must first of
5 all confess that I'm not exactly sure of how to put
6 this affidavit into a context, because I understand
7 that Mr. Willier's acting for three individuals, and
8 my initial reading, although it was quick, was that
9 this affidavit seemed to speak on behalf of the
10 Tsuu T'ina Nation, which I understand to be adopting a
11 neutral position with respect to the application
12 subject to concerns expressed by my friend last
13 Wednesday, and therefore, I will answer it in a
14 general fashion.

15 The answer to it is: Undoubtedly, there are
16 always very strong feelings that is attached to those
17 most directly affected by a fatality, and the healing
18 process is an important process. The C.B.C. has no
19 intention of suggesting that that is not an important
20 function. But the entire reason that the Fatality
21 Inquiries Act exists is so that people can find out
22 whether or not the system is effectively addressing
23 legitimate concerns. That is: Is a death that gives
24 rise to an element of skepticism or cynicism which has
25 to be addressed in a public fashion?

26 And therefore, while inevitably, a death has
27 elements of tragedy with a desire to bring closure to

1 latter, the judge designated for each
2 judicial centre.

3

4 And then, it says in (3):

5

6 For any commission or inquiry, tribunal or
7 any quasijudicial hearing being conducted at
8 a location other than a courthouse, by the
9 presiding officer.

10

11 And those are my submissions, Your Honour, unless you
12 have any questions.

13 THE COURT: Perhaps I will have some questions
14 after Mr. Willier makes his submissions.

15 MR. KOZAK: Thank you.

16 THE COURT: Go ahead.

17 MR. WILLIER: Sir, to begin with, I'm here to
18 present, I suppose, my clients' position with respect
19 to this application to televise. I spoke to them
20 individually, and at first, they weren't really sure
21 what position to take. I informed them that, really,
22 it was a no-win situation, where, if you deny the
23 application, it looked like you had something to hide;
24 if you agreed with the application, it looked like you
25 wanted to gain publicity.

26 As it was a no-win situation, they took a while
27 to get back to me, and what they decided was that they

1 With respect to the Nation, they've invited this
2 court onto the Nation. Again, that is an invitation
3 which has been held out to encompass all the public,
4 and with that, the media. Now, they're in a difficult
5 position in deciding which media are welcome and which
6 media are not welcome, and that's a tough line to
7 distinguish between electronic media, print media, or
8 otherwise. So, again, they're estopped by their own
9 actions. Now, with respect to this, my clients'
10 position or concern is one for the community has a
11 whole. They're putting the community before
12 themselves, so to speak, making this motion to deny
13 access to the C.B.C.

14 Now, again, to digress, I guess, this inquiry is
15 being held on the Nation. It's Native custom and
16 tradition to ask the elders, or the host, I suppose,
17 the hosts, if you're going to do anything out of the
18 ordinary. It's also the tradition to ask the elders
19 when the community is involved, and this affidavit
20 effectively asks for the elders' input with regard to
21 the televising on this matter.

22 Again, the affidavit really speaks for itself
23 with regard to the concerns. They are really
24 threefold. The first is not allowing the community to
25 heal. The second is that there is a total disrespect
26 for the dead, and the third would be it would go
27 against Native traditions, and it would disrespect the

1 Again, for those reasons, I would suggest that my
2 friend's application is not exactly bona fide in the
3 circumstance in saying that the only way to do this
4 properly is through allowing it to be televised.
5 Again, what we have to revert back to is the idea of
6 what the fatality inquiry is about. It's to make
7 recommendations. The t.v. cameras itself do not
8 impact that. They do not take away from the
9 recommendations that you will be making at the end of
10 the fatality inquiry.

11 With regard to public access, by denying the
12 application of the C.B.C., public access is no less
13 there. The public who care enough to travel to the
14 Tsuu T'ina Nation to hear this will still have that
15 opportunity. In effect, it is not barring the doors.
16 As for the camera itself, I submit that the camera
17 would be distracting, and just the mere knowledge that
18 the camera was there, even if it didn't appear super,
19 I guess, imposed or right in the middle of the
20 courtroom, just the knowledge is distracting in
21 itself.

22 Now, my friend did make -- or did submit a list
23 of the inquiries that have been televised in Canada up
24 to this point. I would submit, sir, that with the
25 exception of the administration of justice with regard
26 to Aboriginal people, none of these inquiries have
27 covered a topic such as this, nor a forum such as

1 inquiry is over, that the Tsuu T'ina Nation remains in
2 the same place. It remains affected by this. It
3 really, by televising it, would have a negative impact
4 on that community. Once the fatality inquiry is over,
5 the counsel go home, the t.v. cameramen go home,
6 everybody goes home, and the Nation is left there.
7 It's basically taking place in their home, and as
8 such, this is a factor that would suggest that it
9 should not be allowed to be televised.

10 Once again, sir, just to recap and summarize, the
11 aim of this inquiry is to make recommendations. It is
12 not in any way --

13 THE COURT: Well, just a second. That's not
14 quite correct. The purpose is set out in
15 Section 47.1(a), (b), (c), (d) and (e), and then a
16 discretionary provision that the inquiry may contain
17 recommendations, a report may contain recommendations
18 as to prevention of similar deaths.

19 In fact, there is a prohibition against findings
20 of legal responsibility or any conclusions of law. It
21 seems to me that it is more -- that the purpose of the
22 act was merely to set out -- more or less set out the
23 facts. Would you agree with that?

24 MR. WILLIER: I would, sir. Now, the setting
25 out the facts of the circumstances surrounding the
26 death, to make those public would have a definite
27 deleterious effect upon the community, the Tsuu T'ina

1 idea. Now, that's a tough distinction to apply where,
2 on the one hand, they're saying, "Welcome to the
3 reserve for the fatality inquiry, but do not use a
4 television camera." That's a difficult line to
5 cross. I think that the elders -- it's my impression
6 that the elders have accepted that the Fatality
7 Inquiry Act is going to be on the reserve.

8 THE COURT: I have another question for you
9 specifically, Mr. Willier. You are an Aboriginal
10 member of the Sucker Creek First Nation. Is that
11 correct?

12 MR. WILLIER: Actually, the Dene Tha' Band, sir.

13 THE COURT: Dene Tha' Band.

14 MR. WILLIER: Yes.

15 THE COURT: Okay. Yes, even more appropriate,
16 because that's farther away.

17 MR. WILLIER: Yes, it is.

18 THE COURT: Is it not true that this incident
19 has touched every First Nation all across this
20 country, and all are interested in it, virtually all
21 550 odd reserves, and not to mention non-reserve
22 Aboriginals in the far north? Wouldn't you say that's
23 a true statement?

24 MR. WILLIER: That's a very true statement, sir,
25 and, in fact, I think clear evidence of that is the
26 participation by the Assembly of First Nations in this
27 inquiry, sir. However, again, that fact alone, sir,

1 Provincial Court, Chief Judges of the Court of Queen's
2 Bench and Provincial Court and the Deputy Attorney
3 General of the day, Mr. Paisley, was made in 1984?

4 MR. KOZAK: I believe 1985, sir. It became
5 effective in '85.

6 THE COURT: Yes. And at that time, was -- you
7 had proposed that this be televised on News World.
8 Did News World exist at that time?

9 MR. KOZAK: No, it did not. In fact, in
10 addition to News World and its C.T.V. equivalent,
11 there are a number of community-based cable network
12 systems that did not exist then. The technology
13 simply wasn't there.

14 By way of example, the -- I've referred from time
15 to time to the inquiry into conflict of interest
16 guidelines which completed, I believe, in December of
17 1998 in Yellowknife. In that inquiry, the
18 commissioner, Anne Crawford, allowed television
19 access, both the C.B.C. and a community-based cable
20 network, and stated that it was obvious that there
21 were a number of Native and Aboriginal groups who were
22 interested in the proceedings who -- some of who might
23 be affected by the proceedings. It was also obvious
24 to her that not all of them could travel, and it was
25 obvious to her that not all of them could read the
26 printed word, and she allowed access both to the
27 C.B.C. and the community-based cable network.

1 should be minimal intrusion; that is, the least
2 possible intrusion onto free and effective access.
3 And for the reasons set out in my application, I
4 believe that all of those issues have been addressed.
5 That is, if there is an aspect of this that should not
6 be heard in public, you, sitting as a commissioner
7 appointed pursuant to this Act, will say, "This
8 evidence will be heard in camera," and then everyone
9 leaves; not only the cameramen, but the print media
10 and everyone else other than those representing
11 interested parties. But those intrusions onto the
12 free and open access principle should be minimal.

13 Now, the only other thing that I wanted to say is
14 that my friend, I think, speculated, or I believe he
15 used the word he was conjecting that the Assembly of
16 First Nations and the Tsuu T'ina Nation were putting
17 forward a neutral position for a variety of reasons,
18 and I don't think that it's necessarily the right of
19 someone else to speculate on the position of other
20 parties. I believe those parties are represented, and
21 for the record, I think that they have adopted a
22 neutral position.

23 My last comment refers only to the legislation.
24 You have been asked to conduct this fatality inquiry,
25 and it will proceed on February the 1st. The inquiry
26 proceeds pursuant to the legislation. The legislation
27 contains specific wording, and it would be surprising

1 concern of the more immediate community within the
2 Province of Alberta, and, of course, most importantly,
3 for my client's point of view, the interests of the
4 Tsuu T'ina Nation with regard to these proceedings.

5 On the other hand - and again, this underlies the
6 neutral position - my clients are well aware of the
7 wounds within the community, the potential inhibitions
8 with regard to giving evidence of, perhaps, particular
9 witnesses, and that underlies, as I say, the stated
10 position of neutrality and the reservation of my
11 client to take a position with regard to particular
12 individual witnesses should those wounds be reopened
13 or should their evidence become unavailable to the
14 inquiry because of the inhibition. Certainly, it will
15 take a position on one side or other of the issue as
16 and when that concern arises, if, indeed, it does
17 arise.

18 I hope what I've offered here clarifies the
19 position, and I finally reiterate that our position -
20 that is, my client's position - remains neutral with
21 regard to this particular issue.

22 THE COURT: I don't believe I took down your
23 name.

24 MS. MAHONEY: Kathleen Mahoney.

25 THE COURT: Right.

26 MS. MAHONEY: Your Honour, as representative of
27 the Assembly of First Nations, I'd just like to

1 that of the Tsuu T'ina, and we feel that Your Honour
2 could make provisions in the order to cover for those
3 problematic issues.

4 THE COURT: Thank you.

5 MS. MAHONEY: Thank you.

6 THE COURT: Miss Hendricks.

7 MS. HENDRICKS: Yes, good morning, sir. Sir, I
8 represent the Department, the Alberta Family and
9 Social Services, and unfortunately, although I had
10 Mr. Kozak's letter, I didn't receive instructions
11 until four o'clock on Friday afternoon, so I have
12 spent the weekend essentially determining whether
13 there was any case law involving child protection
14 legislation and public inquiries, and virtually came
15 up with nothing in my search.

16 The Department opposes the application of the
17 C.B.C. for electronic access to the inquiry for the
18 following reasons: That the Jacobs inquiry has
19 suffered considerable grief and stress as a result of
20 this inquiry -- this tragedy, I'm sorry. They've been
21 already subjected to public scrutiny and speculation,
22 and the Department's concern is that the stress on the
23 family cease throughout this inquiry. Further, that
24 in order to preserve the dignity of the Jacobs family,
25 that this inquiry should be held in camera in its
26 entirety.

27 The inquiry will necessarily involve the

1

2 and it sets out those factors. In 40.2, however, the
3 factors that you are required to consider in deciding
4 whether the hearing or any part of this shall be held
5 in camera is enumerated in Subsection (a) to (i).

6 Further, Section 40.3 states that an application
7 for the inquiry or any part of it to be held in camera
8 may be made by any person referred to in Section 43,
9 and that application shall be heard in camera, and
10 finally, that your decision with respect to an
11 in camera inquiry or hearing would not be reviewed by
12 the court or any judicial review from your decision.
13 The confidentiality provisions are set out in
14 Section 91 of the Child Welfare Act.

15 THE COURT: Those are intended for what
16 purpose?

17 MS. HENDRICKS: Those are intended for any
18 proceedings under the authority of the Child Welfare
19 Act which provides for the apprehension, the
20 protection of child -- of children, or evidence being
21 presented to the court and disclosed to the parties
22 involved in those proceedings.

23 THE COURT: My question was: What's your
24 understanding of the purpose of those confidentiality
25 provisions?

26 MS. HENDRICKS: To protect the parties involved,
27 protect the children, informants that are providing

1 copy to you later, sir, but the decision in that case
2 that -- those portions were relating -- the portions
3 of evidence relating to the Mental Health Act
4 legislation and the privacy provisions there were
5 held -- were to be held in camera, and that was upheld
6 at the Alberta Court of Appeal.

7 The case -- I'll just read briefly from the
8 headnote in that case.

9
10 That Section 37(a) of the Mental Health Act
11 provides that a Provincial judge presiding
12 at a public inquiry into a death under a
13 Fatality Inquires Act shall receive certain
14 medical evidence in private does not
15 infringe upon the fundamental freedom of
16 expression of the public and press
17 guaranteed by Section 2 of the Charter.

18 Even if freedom of expression
19 encompasses public free access to the
20 courts, the fatality inquiry is not a court
21 proceeding, that it may be a judicial or
22 quasijudicial proceeding, and that in a
23 fatality inquiry, there is no dispute
24 between the parties, no accused, no charge
25 and no jurisdiction to try any person
26 accused of any wrongful act to acquit,
27 convict or punish.

1 have served them with proper documents?

2 MS. HENDRICKS: Yes, I -- like I indicated
3 earlier, my instructions came at four o'clock on
4 Friday afternoon.

5 THE COURT: Well, I am not going to entertain
6 that application at this point in time, but you may
7 continue your submissions with respect to television
8 coverage.

9 MS. HENDRICKS: You are not entertaining the
10 application that we oppose in its entirety?

11 THE COURT: Not without notice to your
12 colleagues.

13 MS. HENDRICKS: In just concluding in my
14 submissions, Your Honour, that the Department of
15 Alberta Family and Social Services is dependent upon
16 receiving private and prompt information of children
17 believed to be in need of protection and suspected
18 child abuse situations.

19 If this is prevented by the disclosure of
20 informants and private information, the effect that
21 this could have is that people would stop coming
22 forward to report situations involving children
23 believed to be in need of protection and suspected
24 child abuse situations, and that to have an effective
25 promise and guarantee of confidentiality, it's
26 submitted that this inquiry maintain the
27 confidentiality with respect to those witnesses

1 will make applications at the appropriate moment --

2 MS. HENDRICKS: Yes.

3 THE COURT: -- should something --

4 MS. HENDRICKS: Should your decision --

5 THE COURT: Should something fall within the

6 jurisdiction of Section 40.1 and .2?

7 MS. HENDRICKS: Yes.

8 THE COURT: And with respect to television,

9 that's an entirely different issue altogether. The

10 two issues don't mix.

11 MS. HENDRICKS: The Department's position is --

12 concerns all of the press - the electronic access and

13 print media - when there is evidence related to the

14 Child Welfare act.

15 THE COURT: Thank you.

16 MS. HENDRICKS: Thank you.

17 MR. MacLEOD: Your Honour, I wonder if I might

18 once again impose on your good nature to make some

19 brief representations, this time in my capacity as

20 counsel for the Tsuu T'ina Child Welfare Services

21 Agency, that I think may remove this issue altogether

22 as a matter of any kind of concern today at all, if I

23 might have your leave.

24 THE COURT: Certainly. Go ahead.

25 MR. MacLEOD: My reading of the two enactments

26 that we are going to be referring to time and time

27 again in this proceedings - that is, the Fatality

1 provision goes so far as to say that the witness is
2 protected from any prosecution for breach of a
3 statutory obligation imposed by an enactment such as
4 the Child Welfare Act.

5 I will now direct your attention specifically,
6 sir, to Section 8(6) of the Public Inquiries Act, and
7 my reading of that, along with Section 40.1 and 40.2
8 of the Fatalities Inquiries Act again were, at the
9 bottom, what animated my reservations of certain
10 positions for a later time, and Sub 6 says:

11
12 Any information disclosed or document, paper
13 or thing produced to which Subsection 2 or 3
14 applies shall not be published, released or
15 disclosed in any manner without the written
16 permission of the Minister of Justice and
17 Attorney General ...

18
19 And here are the important words, perhaps:
20

21 ... and the portion of the inquiry relating
22 to the information or the document, paper or
23 thing shall be held in private.
24

25 And that certainly will be the section upon which
26 I rely on behalf of my client, as and when issues of
27 this kind arise during the course of the inquiry. And

1 contained a specific exemption for records obtained
2 through the Mental Health Act, and without dwelling on
3 the facts, that issue isn't before you this morning
4 because, as I've tried to stress from time to time,
5 the exceptions that are found in 40.2 are not in issue
6 this morning, and I note that 40.2 takes into account
7 some of the expressed concerns of my friend in
8 Subsection (f), whether the disclosure would be
9 prejudicial to the interests of persons not concerned
10 in the inquiry.

11 So, at the appropriate opportunity,
12 Ms. Hendricks, I'm sure, will have an opportunity to
13 tell you why she thinks that portions of what should
14 be a public inquiry should be heard in camera, and
15 that will apply or not apply, depending on your
16 decision, with equal force, not only to the electronic
17 access, if it's allowed, but it'll also apply to the
18 print media, to broadcast media generally, and, in
19 fact, every member of the public who's in the
20 courtroom.

21 So, again, I don't see that as an issue before
22 you, and therefore, I don't think that anything
23 further has to be responded to on that basis. Those
24 are all of my submissions. Thank you.

25 THE COURT: Any further submissions?

26 (NO VERBAL RESPONSE)

27 THE COURT: I have one question of

1 MR. WILLIER: Sir, further, there was one other
2 factor, is that Mr. Enge had arranged for this to have
3 a website. Again, that's pretty much universal, as
4 well. The access to it would help in, I suppose,
5 alleviating concerns from the perspective of people
6 who have computers would have access to that if they
7 are, indeed, linked to the Internet, sir.

8 THE COURT: Mr. Enge or anyone from his office
9 is not represented here. Is that correct?

10 MR. WILLIER: That's correct, today, sir. I'm
11 not certain what's going to happen.

12 THE COURT: Does anyone have any submissions
13 to make with respect to the website that was
14 proposed?

15 (NO VERBAL RESPONSE)

16 THE COURT: All right. I am going to adjourn
17 for approximately 45 minutes, and I am going to make
18 my decision, and that will give Mr. Willier time to
19 make whatever calls he wishes to make.

20 (ADJOURNMENT)

21 THE COURT: This is an application by the
22 Canadian Broadcasting Corporation to televise the
23 proceedings -- or the inquiry proceedings. Most of --
24 most counsel who appeared here today were unopposed.
25 The application was opposed by Mr. Willier and
26 Miss Hendricks, both of whom represent -- well, in the
27 case of Miss Hendricks, the Department of Social

1 that I had myself when I first heard that this
2 application was being made; that it would be extremely
3 uncomfortable, and especially for me, it would create
4 a considerable amount of discomfort, and the intensity
5 of the proceedings would be augmented by the presence
6 of television. The first reaction is to be totally
7 against the concept.

8 However, it would appear that to refuse
9 television coverage in this day and age is really
10 indefensible when it comes to public inquiries, and I
11 am of the view, I must come to the view that the
12 greater good is served by television coverage than
13 other concerns that have been presented by Mr. Willier
14 and Miss Hendricks.

15 This is a matter which -- this is a matter which
16 interests -- has an intense interest among all
17 Aboriginal peoples throughout this country, and the
18 most effective way, and in some cases, the only way in
19 which -- perhaps more than in some cases, and maybe
20 some cases, the only way Aboriginal people have access
21 will be by television. Nowadays, most public
22 inquiries are televised, and from what I understand,
23 there are some tensions at the beginning, but within a
24 short period of time, everyone even tends to forget
25 that the camera is even present.

26 This decision is not intended as a precedent with
27 respect to other types of proceedings, such as

1 Item No. 6, which appears on page 3 of my friend's
2 letter.

3 My suggestion would be to both the court and my
4 friend that in the third line of that proposal, there
5 be added -- we're talking about conferences of one
6 kind or another; conferences between counsel, and
7 following upon that, between counsel and their
8 clients.

9 And the reason I propose that is Your Honour will
10 be well aware, both prior to the commencement of
11 formal hearings and during their adjournments, counsel
12 confer between themselves in order to resolve a great
13 many issues in order to save time during the course of
14 the hearing, and it would be my concern that those
15 conferences can proceed in confidentiality as between
16 counsel, and certainly, my experience over the course
17 of over 20 years now is the other media observe that
18 confidentiality, the print media and the radio people,
19 and, indeed, the television people do not, in my
20 experience, report those things, and I would like to
21 see those words added.

22 THE COURT: All right. I think that is
23 straightforward, and that those words should be added;
24 that is to say, "conferences among counsel". Any
25 further submissions?

26 MS. MENDOLA-DOW: Your Honour, Mr. Lister had wanted
27 clarification as to who owns the tape and the

1 Court of Canada proceedings, where the court itself
2 owns the tape, and I am sure I can come up with
3 wording to be included in the order that will meet
4 your concern. I should, however, point out that it --
5 I am not aware of any situation where the court itself
6 owns the word product, whether it's reporters' notes,
7 or a tape, or --

8 THE COURT: Any controls. I suppose we only
9 need to control the movement of the tape and the
10 reproduction of the tape.

11 MR. KOZAK: Yes, to make sure that it isn't
12 used for some improper purpose.

13 THE COURT: Right. Of course, it occurs to
14 me, Mr. Kozak, that you are in the best position to
15 prepare an order, so perhaps you should prepare the
16 order, since you have undoubtedly done these orders in
17 the past.

18 MR. KOZAK: I will prepare an order and
19 provide a draft to my friend, and perhaps she can then
20 circulate it to other counsel for interested parties.

21 THE COURT: All right.

22 MR. MacLEOD: Might I also make this additional
23 suggestion, Your Honour, and this may avoid some of
24 the issues flowing from ownership. The inquiry, of
25 course, functions as a court of record. Perhaps one
26 of the things that ought to be contemplated is that
27 the C.B.C. ought to be required to give you a complete

1 THE COURT: My experience is that the clerks'
2 office would rather not be occupied with the
3 protection of material such as that.

4 MR. KOZAK: I don't know how long it's
5 envisioned this inquiry will last, but there may be no
6 interest in retaining a copy of a tape in perpetuity.

7 THE COURT: Ms. Mahoney?

8 MS. MAHONEY: Your Honour, if I may make a
9 submission on behalf of the AFN on this matter. The
10 AFN would be very interested in Your Honour taking
11 possession of the tapes at the culmination of this
12 inquiry, looking forward to the contextual inquiry,
13 which will not have the same powers as Your Honour has
14 here. And also, considering the financial implications
15 of getting the physical record, the tape, I would
16 think, would be of great assistance to any subsequent
17 contextual inquiry for the inquiry to have an a
18 reference point.

19 So, looking forward to that eventuality of the
20 contextual inquiry, I think the tape would be very
21 much a beneficial tool for Your Honour to have so that
22 that tape could be available for further use.

23 THE COURT: All right. Could inquiry counsel
24 check with the clerks' office as to that possibility,
25 and if that is a reasonable -- if it is reasonable to
26 keep a copy of the tape in the clerks' office, then I
27 will make that order. Anything further?

1 that the court reporter provide transcripts to the
2 webmaster or the person designated by Mr. Enge.

3 MR. WILLIER: Sir, I think it was a disk with
4 the transcript contained therein as opposed to the
5 transcript itself.

6 THE COURT: The disk, right.

7 MR. WILLIER: Thank you, sir.

8 THE COURT: All right. If there are no
9 further matters, I propose to adjourn to nine o'clock
10 on Monday, February the 1st. Mr. Shaw?

11 MR. SHAW: Just briefly a housekeeping
12 matter. Max Bayer (phonetic), who is a barrister and
13 solicitor, has been appointed to represent the
14 personal interests of RCMP members, may arise from
15 time to time through the inquiry.

16 He has informed me that he has such instructions;
17 however, is not in the position to inform the court
18 specifically whether he makes application on behalf of
19 any member for interested-party status or simply
20 chooses to appear to represent their interests during
21 the course of an examination, for example.

22 I suggested to Mr. Bayer that we would inform the
23 court of that at this time, and indicate that between
24 now and February 1st or on February 1st, he may be in
25 a position to make a formal application. I simply ask
26 the court to be aware of that possibility, and that he
27 be given audience to make such an application at the

IN THE PROVINCIAL COURT OF ALBERTA

IN THE MATTER OF A FATALITY INQUIRY INTO THE
DEATHS OF CONNIE JACOBS and TY JACOBS PURSUANT
TO THE FATALITY INQUIRY ACT, R.S.A. 1980,
c. F-6 and the PUBLIC INQUIRIES ACT, R.S.A.
1980, c. P.29

BEFORE THE HONOURABLE)	ON MONDAY, THE 18TH
JUDGE T.R. GOODSON)	
PROVINCIAL COURT, COURTHOUSE)	DAY OF JANUARY, 1999
CALGARY, ALBERTA)	

O R D E R

UPON THE APPLICATION of Counsel for the Canadian Broadcasting Corporation ("CBC"); AND UPON having heard from Counsel for all interested parties having standing and appearing before me at this Inquiry; IT IS HEREBY ORDERED THAT:

1. The CBC shall be permitted to record or broadcast any or all public portions of this Fatality Inquiry, but this Order shall not extend to matters which, in the opinion of the Commissioner, are to be heard in camera pursuant to the *Fatality Inquiry Act*, R.S.A. 1980, c. F-6, or the *Public Inquiries Act*, R.S.A. 1980, c. P.29;
2. Unless otherwise permitted by the Commissioner, the following guidelines shall apply to this Order permitting electronic access:
 - 2.1 Equipment and personnel
 - (a) Not more than one portable television camera, operated by not more than one camera person, shall be permitted in the proceeding.

- (b) Not more than one audio system for broadcast purposes shall be permitted.
- (c) Any "pooling" arrangements among the media required by these limitations on equipment and personnel shall be the sole responsibility of the media without calling upon the Commissioner to mediate any dispute as to the appropriate media representative or equipment authorized to cover a particular proceeding.

2.2 Sound and light criteria

- (a) Only television photographic and audio equipment which does not produce distracting sound or light shall be employed to cover these proceedings. No artificial lighting device of any kind shall be employed in connection with the television camera and no camera shall give any indication of whether it is or is not operating, such as by use of a red light to note operational status.
- (b) If required, it shall be the affirmative duty of media personnel to demonstrate to the Commissioner adequately in advance of any proceeding that the equipment sought to be utilized meets the sound and light criteria enunciated herein.

2.3 Location of equipment personnel

- (a) Television camera equipment shall be positioned in such location in the facility as shall be designated by the Commissioner.
- (b) Broadcast media representatives shall not move about the facility while proceedings are in session.

2.4 Behaviour and Dress

Media representatives will be expected to present a neat appearance in keeping with the dignity of the proceedings and will be expected to be sufficiently familiar with Fatality Inquiries to conduct themselves so as not to interfere with the dignity of the proceedings, or to distract witnesses, counsel or the Commissioner.

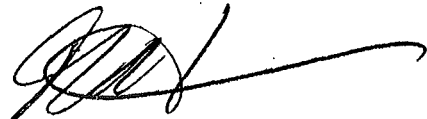
2.5 Movement during proceedings

News media photographic or audio equipment shall not be placed in or removed from the facility except prior to commencement or after adjournment of proceedings each day, or during a recess.

2.6 Conferences of counsel

To protect lawyer-client privilege and the effective right to counsel, there shall be no audio pickup or broadcast of conferences which occur in a facility between counsel, between counsel and their clients, between co-counsel of a client, or between counsel and the presiding Judge held at the bench.

3. The CBC shall provide a VHS copy of any segment of these proceedings that it records to the Commissioner upon request, provided that request is made within one month of the day the segment was recorded.

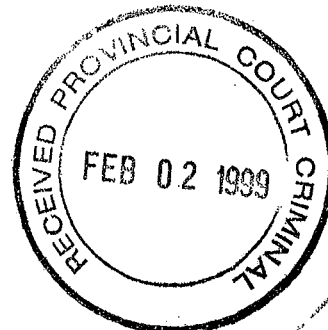


J.P.C.A.

ENTERED THIS 2 DAY OF
January, 1999

February

for "J. Hiebert"
CLERK OF THE COURT



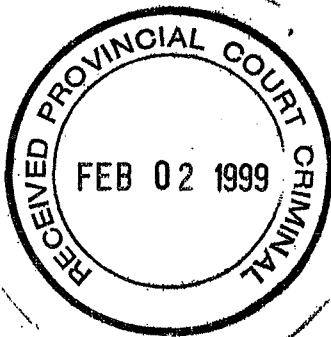
IN THE PROVINCIAL COURT OF ALBERTA

IN THE MATTER OF A FATALITY INQUIRY
INTO THE DEATHS OF CONNIE JACOBS and
TY JACOBS

PURSUANT TO THE FATALITY INQUIRY
ACT, R.S.A. 1980, c. F-6 and the
PUBLIC INQUIRIES ACT, R.S.A. 1980,
c. P.29

ORDER

Reynolds, Mirth, Richards & Farmer
Barristers & Solicitors
3200 ManuLife Place
10180 - 101 Street
Edmonton, Alberta T5J 3W8



Frederick S. Kozak
Telephone: 425-9510
Fax: 429-3044

FILE NO. 73059-10
218723_1 [362]

IN THE PROVINCIAL COURT OF ALBERTA

IN THE MATTER OF A PUBLIC FATALITY INQUIRY INTO THE DEATHS
OF CONNIE JACOBS and TY JACOBS PURSUANT TO THE FATALITY
INQUIRIES ACT, R.S.A. 1980, c. F-6.

BEFORE THE HONOURABLE)	
JUDGE T.R. GOODSON)	ON MONDAY, THE 8TH
PROVINCIAL COURT OF ALBERTA)	DAY OF FEBRUARY, 1999.
CALGARY, ALBERTA)	

ORDER

UPON THE APPLICATION of all Counsel present; AND UPON IT
APPEARING necessary in the interests of decency and public morals and the privacy
rights of the victims and their families; IT IS HEREBY ORDERED AND ADJUDGED:

1. That the CBC shall not film and the Clerk of the Court shall not make available
for viewing or photocopying or inspection or reproduction to any person or
body, all photographs entered as evidence at this Inquiry that show either of the
victims or any parts of their bodies, unless otherwise ordered.
2. That the CBC or any other interested party has liberty to apply to vary
this Order if and when so advised.

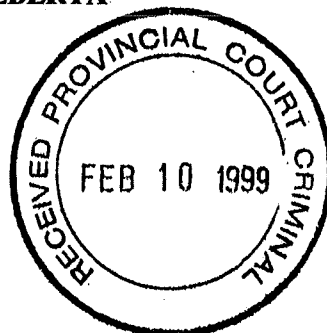


JUDGE OF THE PROVINCIAL
COURT OF ALBERTA

ENTERED this 10th day
of February, 1999.



CLERK OF THE COURT



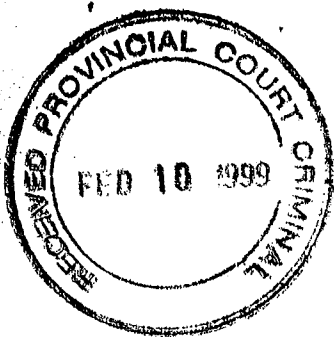
NO.

FEBRUARY, 1999

IN THE PROVINCIAL COURT OF ALBERTA

**IN THE MATTER OF A
PUBLIC FATALITY INQUIRY
INTO THE DEATHS
OF CONNIE JACOBS and TY JACOBS
PURSUANT TO THE
FATALITY INQUIRIES ACT,
R.S.A. 1980, c. F-6.**

ORDER



PHILIP G. LISTER, Q.C.,
Inquiry Counsel
Barrister and Solicitor
#400, 7015 Macleod Trail South
CALGARY, Alberta T2H 2K6

(403) 297-6446 Inquiry Office
(403) 297-7269 Direct line
(403) 297-7270 Fax