



CANADA
Province of Alberta

Report to the Minister of Justice and Attorney General Public Fatality Inquiry

Fatality Inquiries Act

WHEREAS a Public Inquiry was held at the Provincial Court of Alberta

in the Town of Didsbury, in the Province of Alberta,
(City, Town or Village) (Name of City, Town, Village)

on the 27th to 29th day of February, 2008, (and by adjournment
year)

on the 23rd Day of September, 2008),
year

before Judge Bruce A. Millar, a Provincial Court Judge,

into the death of Jordan Neave (male) 8
(Name in Full) (Age)

of Carstairs, Alberta and the following findings were made:
(Residence)

Date and Time of Death: May 20, 2006 at approximately 6:45 p.m.

Place: Olds Aquatic Centre

Medical Cause of Death:

("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 – The Fatality Inquiries Act, Section 1(d)).

Drowning

Manner of Death:

("manner of death" means the mode or method of death whether natural, homicidal, suicidal, accidental, unclassifiable or undeterminable – The Fatality Inquiries Act, Section 1(h)).

Accidental

Circumstances surrounding death:

1. On May 20, 2006 Jordan Neave (“Jordan”), together with his brother Daniel Neave (“Daniel”), accompanied by their grandpa, Orville Sailer (“Orville”) attended the Olds Aquatic Centre (“OAC”) during the family swim.
2. Jordan was eight years old and Daniel was nine years old. Neither boy could swim. They had their own lifejackets which they were to wear when attending the pool. Orville did not accompany the boys into the pool but remained in the public viewing area.
3. Both Daniel and Jordan had their lifejackets on when they entered the water. In addition, they had their “Boogie Boards”, a small surfboard type flotation device, approximately three feet long by two feet wide.
4. Jordan went to the waterslide, located adjacent to the deep end of the pool. As a practice, bathers were required to remove their lifejackets before going down the slide. The rationale was that the jackets either scratched the slide or could get caught up on the slide and present a danger to the bather. There was no system or protocol to ensure bathers put their lifejackets back on after exiting the waterslide.
5. After taking off his lifejacket and using the slide, Jordan entered the deep end of the pool without his lifejacket. He was playing with another child and perhaps using his “Boogie Board” or a floating mat, supplied by the OAC.
6. Jordan’s playmate notified an adult patron that Jordan was at the bottom of the deep end of the pool. The lifeguard was notified. She effected a rescue. CPR and emergency medical procedures were initiated. EMS and fire personnel attended.
7. Jordan was on the bottom of the pool for between 10 to 20 minutes prior to the lifeguard being notified. He could not be revived.
8. The child playing with Jordan witnessed his drowning, but did not fully comprehend what was happening and did not or could not effectively communicate the significance of the event as it happened, partially explaining the delay in notifying a lifeguard. He was eight years old.
9. The OAC had a written admission requirement that children under nine years of age must be accompanied by a responsible person 13 years or older, and always be within “arms’ reach”.
10. Children could wear their own lifejackets and brings toys, such as a Boogie Board into the pool.
11. Orville could not enter the pool with his grandsons because of a medical condition. Even though the boys were non-swimmers, needed lifejackets, could not be accompanied by a responsible person and Jordan was under nine years of age, they were allowed to enter the pool.

12. There was no protocol or requirement, written or otherwise, that the receptionist screen bathers for swimming ability and communicate same to the lifeguards on deck.
13. The OAC has the following amenities: a 25 metre pool with a shallow and deep end, a diving board in the deep end, a whirlpool, a wading pool and a waterslide. At all times relevant hereto, all areas of the pool were open to users. Attached as Appendix A is the floor plan of this facility.
14. On the day Jordan drowned there were two lifeguards and a receptionist working. Only one lifeguard would be on patrol at any given time and the other guard was engaged in cleaning duties throughout the facility.
15. The OAC operational procedures contained little or no attention to positioning of lifeguards or lifeguard scanning zones. A scanning zone is that area of the pool, both top and bottom, that can be viewed by a lifeguard from their position at a moment in time.
16. With the amenities that were operating in the OAC (*i.e.* 25 metre pool with diving board, wading pool, whirlpool and waterslide) one lifeguard could not scan all areas of use, including the bottom of the pool, at a moment in time, from any position in the facility.
17. Much testimony was heard on the lifeguard to bather ratio. Prior to Jordan's death it was one guard to 50 bathers. After his death it was changed to one guard to 35 bathers. There is no provincial standard and the ratios vary from facility to facility within the Province. Estimates of the number of bathers during times relevant ranged from 30 to 50 bathers.
18. A minimum standard may be misleading and in this case does not address the issue. Bather safety depends upon the lifeguards being able to see all areas of their scanning zone from their scanning position, taking into account the use of the pool (*i.e.* family swim, adult lane swim only, lessons, etc.), and amenities being used (*i.e.* whirlpool, wading pool, shallow and deep-end, diving board, etc.).
19. In this instance the lifeguard on duty was in a fixed position beside the whirlpool and could not see the bottom of the pool in the deep end from her position.
20. The lifeguard on deck at the time of the drowning was given an impossible task. She could not have seen all scanning zones from all positions around the facility, given what amenities were in use and the nature of the use, *i.e.* family swim. Recall, Jordan was on the bottom at the deep end, from 10 to 20 minutes before being removed.
21. The ratio of bathers to lifeguards is important but must be put into context to the scanning zones and what is happening at the pool.
22. Clearly, one lifeguard on duty at the time of Jordan's death was insufficient to adequately scan this facility with its multiplicity of uses and a family swim.

23. There are a total of 964 regulated facilities in the Province, 513 of which are outside Calgary and Edmonton. These pools are regulated pursuant to the *Public Health Act, Alta. Reg. 293/2006 Swimming Pool, Wading Pool and Water Spray Park Regulation* and the *Pool Standards, 2006*.

24. As set out in the Regulations, the owner of a pool is the “responsible person” for that pool. The owner may designate another person to be the responsible person, as was done in this facility by the Town of Olds.

25. The responsible person must ensure the pool is equipped, operated and maintained in compliance with, among other things, the *Pool Standards, 2006* and must ensure the pool is operated by a person who meets the qualifications set out in the *Pool Standards, 2006*.

26. That responsible person must then develop and implement a safety and supervision plan.

27. In developing that plan the responsible person may consult with, among others, the Alberta Lifesaving Society and refer to the Society’s publication on Safety Standards.

28. The Alberta Lifesaving Society is the Provincial branch of the national organization, The Lifesaving Society.

29. The Lifesaving Society is the Canadian authority in aquatic standards and safety and works with industry and government to provide expert consultation and safety audit processes.

30. At this inquiry we heard from two representatives of the Lifesaving Society, Mr. Michael Shane, Aquatic Safety Management Director for the national organization and Ms. Barbara Kusyanto, Chief Administrative Officer, Alberta and Northwest Territories Branch of the Lifesaving Society.

31. Mr. Shane’s qualifications are extensive and speak for themselves. He was qualified to give expert opinion evidence with respect to lifeguarding and aquatic facility management. He remained in court and heard evidence from the witnesses at the inquiry prior to his testimony. He conducted a site visitation to the OAC on February 25, 2008. He then prepared a report, including recommendations which were entered as an Exhibit, a copy of which is attached as Appendix B, and gave oral testimony, a copy of that transcript is attached as Appendix C. These are attached for the benefit of the Honourable Minister of Justice to provide background for her officials and other responsible government departments to take such actions as the Honourable Minister deems necessary upon the recommendations set out at the conclusion hereof.

32. Ms. Debra Mooney, Project Manager with Surveillance and Environmental Health at Alberta Health and Wellness, and responsible for dealing with pool standards, attended and gave testimony. Her mandate is to review and develop the applicable regulation and pool standards. Ms. Mooney’s training is as a Health Inspector as are the

majority of those responsible for the enforcement of the *Regulation* and *Pool Standards*.

33. Alberta Health and Wellness has as its primary concern the public safety of the physical pool environment, *i.e.* water quality and sanitation. A review of the *Regulation* and *Pool Standards* would confirm this focus as they predominantly address these issues.

34. The issue of bather safety is the responsibility of the pool owners or their designate. No one at the government regulatory level is checking on the qualifications of the responsible person, and the adequacy of their safety and supervision plan when it concerns bather safety. This amounts to a deficiency in regulatory oversight.

35. There may be many reasons but, certainly at this Inquiry, one is that those in government charged with the responsibility are, by and large, trained as public health inspectors and have as their focus public safety of the facility. In other words they don't have the training or mind set to oversee bather safety issues.

36. The current Aquatic Co-ordinator for the OAC, and also the responsible person, designated by the Town of Olds, gave testimony. His qualifications are extensive and he had an opportunity to review the Expert Report of Mr. Shane prior to his testimony. He was not the responsible person at the time of Jordan's death. Mr. Shane was of the opinion, which I have adopted in this report, that one lifeguard on duty at the time of Jordan's death was insufficient. Yet the person responsible disagreed and stated that one guard was sufficient to scan the entire facility. It is patently obvious that this cannot be the case.

37. Bather safety is left up to the pool operator. They are mandated by Regulation to formulate a plan and inform the public. However, those in charge of enforcing the Regulations (Alberta Health and Wellness), may not have the qualifications to review and assess the adequacy of the plan and it is likely that these plans are not even reviewed by regulators.

Recommendations for the prevention of similar deaths:

1. Initiate a comprehensive review of Regulations and their enforcement

The Lifesaving Society has the expertise and provides a service to audit a pool, *i.e.* where is the problem, and recommend a plan. At this point in time, regulation provides that pool operators may consult the Society. There is no minimum standard for using or implementing this expertise and regulators are not equipped for checking to ensure that any standards are being met. Each pool is left to its own devices. Why not use this expertise? This question needs to be answered by government and I recommend a comprehensive review of Regulations and their enforcement, with an emphasis on the safety of the bathers, in consultation with the Lifesaving Society and other stakeholders.

2. Establish a provincial admission standard

In order to ensure the supervision of young children, public swimming pools should adopt a provincial admission standard based on swimming ability and age. An example of such a provincial admission standard is to be found in the recommendations of Mr. Shane, Appendix B.

3. Ensure that lifeguard position, scanning zones, and rotation charts are defined and posted in the pool office.

Supervisory staff should ensure that for each of the various aquatic activities (e.g., recreation swim periods), lifeguard placement and supervision zones need to be defined. Issues affecting the placement of lifeguarding personnel should be identified (e.g. surface water glare) and resolved. Lifeguard rotation schedules should then be created.

Once defined, all of these items need to be documented and incorporated into the staff handbook and operational procedures manual. Diagrams or charts illustrating these placements and procedures should be posted in the pool office and staff given appropriate and regular training.

4. Ensure all “responsible persons” are certified with the Lifesaving Society Aquatic Management Training certification or equivalent training.

In all aquatic facilities there are management personnel responsible for the direction of aquatic staff. In order to ensure they are familiar with aquatic standards, all management personnel must receive training. The Lifesaving Society has a certification program that would ensure personnel have the necessary information to safely manage aquatic facilities.

5. Enhance lifeguard scanning training.

A training session should be conducted for all lifeguards highlighting scanning techniques and scanning standards. The Lifesaving Society has created a PowerPoint presentation which pool supervisory personnel can access. Lifeguard scanning practices should be monitored on a random and ongoing basis. The Lifesaving Society’s SEE (**S**upervision **E**valuation and **E**nhancement) evaluation system can assist pool supervisory personnel with swimming pool scanning evaluation.

6. Establish operational and supervision standards for the safe use of swimming pool mats, inflatable toys and life jackets.

The Government, in consultation with The Lifesaving Society, should research and develop operational and safety standards for the use of this equipment. Consideration should be given but not limited to the type of equipment used, type of program in the pool, bather load, amount of pool surface obscured, etc. Operational and safety standards should be part of the *Pool Standards, 2006*.

7. Promote the completion of the Lifesaving Society Comprehensive Aquatic Safety Audit.

The purpose of the aquatic audit is to maximize the safety of participants utilizing public pools. An aquatic safety audit identifies what steps might be taken to minimize the risk of drowning or serious water-related injuries in aquatic facilities. To enhance safety, owner/operators should be encouraged to undergo a Lifesaving Society comprehensive safety audit. Such an audit would have identified that one lifeguard during a family swim at the OAC was insufficient.

All of which is respectfully recommended.

DATED March, 2009,

at Calgary, Alberta.

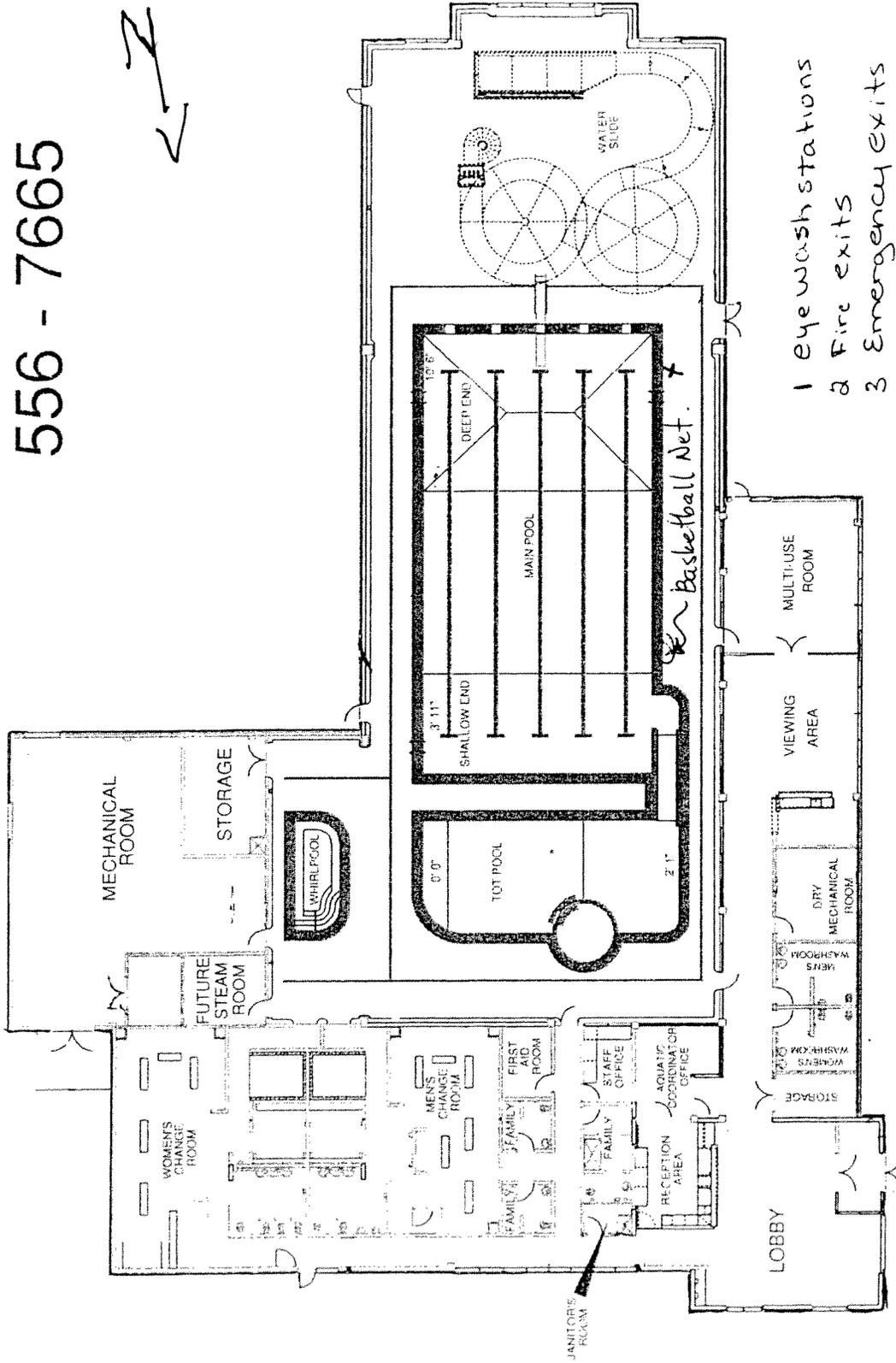
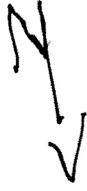
Bruce A. Millar,
A Judge of the Provincial Court of Alberta

APPENDIX A

OLDS AQUATIC CENTRE

5303 - 46 AVENUE

556 - 7665



- 1 Eye wash stations
- 2 Fire exits
- 3 Emergency Exits
- 4 First aid Box
- 5 Fire pulls
- 6 CPR MASKS
- 7 MSDS
- 8 Fire extinguisher

APPENDIX B



LIFESAVING SOCIETY®

The Lifeguarding Experts

Jordan Neave Inquiry Recommendations

February 29, 2008



LIFESAVING SOCIETY®

The Lifeguarding Experts

The Lifesaving Society is Canada's lifeguarding expert. The Society works to prevent drowning and water-related injury through its training programs, Water Smart® public education, and aquatic safety management services.

The Lifesaving Society establishes aquatic safety standards and consults widely on aquatic safety issues for aquatic facility owners and operators, governments, agencies and the judicial system.

The Society is an independent, charitable organization serving Canadians since the first aquatic lifesaving classes were taught in 1896.

Report for Jordan Neave Inquiry, submitted February 29, 2008 by the Lifesaving Society, 400 Consumers Road, Toronto, Ontario M2J 1P8. Telephone (416) 490-8844. Fax (416) 490-8766. E-mail experts@lifeguarding.com Registered Charity No. 10809 7270 RR0001

Introduction

The recommendations within this report are based on information presented to Michael Shane, Safety Management Director, Lifesaving Society, Ontario Branch:

- The Inquiry Brief given to Michael Shane by Christine Nugent, Alberta Justice
- Site visitation to Olds Aquatic Centre on Monday February 25, 2008
- Evidence presented at the Inquiry in Didsbury, Alberta from February 27 to February 28, 2008

Recommendations

1. Establish a provincial admission standard.

In order to ensure the supervision of young children, public swimming pools should adopt a provincial admission standard based on swimming ability and age. An example of such a provincial admission standard is attached (Appendix 1). Signage indicating this admission standard should be posted in the pool reception area. All staff should be trained in the application of this standard. In addition, this standard should be communicated to the public through recreation brochures and public education information.

In addition, a testing standard and procedure should be created to ensure all aquatic facilities utilize the safest procedure and effective tracking system of their bathers. All tests should be conducted in shallow water. This will ensure that all bathers are tested in a safe manner. In addition, an identification/ tracking method should be identified so that a bather's swimming ability (pass or fail the test) may be tracked while in the facility. An example of such a testing procedure is attached (Appendix 2).

2. Ensure that lifeguard position, scanning zones, and rotation charts are posted in the pool office.

Supervisory staff should ensure that for each of the various aquatic activities (e.g., recreation swim periods), lifeguard placement and supervision zones need to be defined. Issues effecting the placement of lifeguarding personnel should be identified (e.g. surface water glare) and resolved. Lifeguard rotation schedules should then be created.

Once defined, all of these items need to be documented and incorporated into the staff handbook and operational procedures manual. Diagrams or charts illustrating these placements and procedures should be posted in the pool office.

3. Ensure all “responsible persons” are certified with the Lifesaving Society Aquatic Management Training certification.

In many aquatic facilities there are management personnel responsible for the direction of aquatic staff. In order to ensure they are familiar with aquatic standards, all management personnel must receive training. The Lifesaving Society has a certification program that would ensure personnel have the necessary information to safely manage aquatic facilities.

4. Enhance lifeguard scanning training.

A training session should be conducted for all lifeguards highlighting scanning techniques and scanning standards. The Society has created a PowerPoint presentation which pool supervisory personnel can access. Lifeguard scanning practices should be monitored on a random and ongoing basis. The Society’s SEE (**S**upervision **E**valuation and **E**nhancement) evaluation system can assist pool supervisory personnel with swimming pool scanning evaluation (Appendix 4).

5. Establish operational and supervision standards for the safe use of swimming pool mats and inflatable toys.

The Lifesaving Society should research and develop operational and safety standards for the use of this equipment. Consideration should be given but not limited to the type of equipment used, type of program in the pool, bather load, amount of pool surface obscured, etc. Operational and safety standards should be published and promoted by the Society.

6. Ensure back-up personnel are within call.

When an emergency situation occurs, lifeguarding staff must be able to readily summons assistance. Back-up personnel should be "within call" which means the lifeguard on deck should be able to call the additional person by voice or by a pre-arranged alarm system. The lifeguard should not have to leave the pool enclosure or the victim to summons assistance. The additional person should be on the premises.

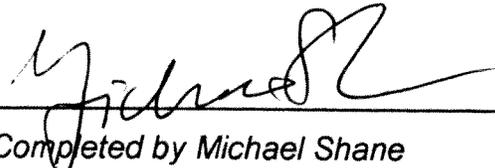
7. Ensure that public swimming pool operators create and publish an Aquatic Policy and Procedures Manual.

Aquatic facilities should set standards of operation. The staff member(s) responsible in this capacity should publish these standards in a Policy and Procedures Manual and ensure all staff are familiar with its' contents. A suggested content list outlined in Appendix 3.

8. Promote the completion of the Lifesaving Society Comprehensive Aquatic Safety Audit.

The purpose of the aquatic audit is to maximize the safety of participants utilizing public pools. An aquatic safety audit identifies what steps might be taken to minimize the risk of drowning or serious water-related injuries in aquatic facilities. To enhance safety, owner/operators should be encouraged to undergo a Lifesaving Society comprehensive safety audit.

This report constitutes opinions/recommendations of the undersigned as of the date of the report and is based upon the information provided as indicated within the materials reviewed section of the report, as well as my knowledge and experience in aquatics and as the Safety Management Director of the Lifesaving Society. In the event of additional information being brought forward, the foregoing opinions/recommendations may be subject to revision or modification.


Completed by Michael Shane

Feb 29 / 08

Date

Safety Management Director
Lifesaving Society, Ontario Branch

Appendix 1

Admission standard

- Children under the age of 10 years, who are non-swimmers must be accompanied by a parent or guardian who is at least 12 years of age and responsible for their direct supervision. The ratio of non-swimmers to parent or guardian may be a maximum of 4 bathers to one parent or guardian (4:1). The ratio of non swimmers to parent or guardian may be increased to a maximum of 8 bathers to one parent or guardian (8:1) if lifejackets are worn by all non swimmers in their charge
- Children under the age of 10 who are swimmers (able to demonstrate comfort in the water and pass the facility swim test) may be admitted to the swimming pool unaccompanied.
- Children under the age of 6 years may not be admitted to the swimming pool unless they are accompanied by a parent or guardian who is responsible for their direct supervision, with a maximum of two children for each parent or guardian.
- Guardians or group leaders are responsible for the children in their care while in this facility and must directly supervise the children at all times.
- Guardians or group leaders should be at least 12 years of age.
- Ratios of instructors/lifeguards to bathers must also be maintained as per Regulation 565/90.

Application

- The safety of children is of paramount importance. Owner/operators should ensure procedures are in place to reduce the risk of incidents.
- Owner/operators should encourage the use of the “Buddy system”.
- “Non-Instructional swim settings” include: recreational swims, instructional tapering off activities, birthday parties, rentals, etc.
- “Direct supervision” is defined as being able to render immediate assistance

Appendix 2

Recreational Swim Admission Standard Facility Swim Test

The following is an example of the application of the admission standard in a public swimming pool.

To successfully pass the facility swim test individuals must:

- Demonstrate comfort in water
- Swim a minimum of 2 widths of the pool (or approximately 50 meters) continuously in shallow water

Staff Guidelines to Conducting the Facility Swim Test

- Swim tests are to be completed in the shallow water (no more than chest deep water)
- Ratios: A maximum of three patrons to one staff with no more than six patrons being tested at one time.
- For large groups such as camps, two groups are formed – those who have completed Lifesaving Society Swimmer 4 or Aqua Quest level 6 and above and those who have not. The more skilled swimmers are tested first – they should be able to satisfy the test requirements easily– they can move on and the attention of the tester(s) focused on the less skilled.
- Patrons who cannot pass the swim test are restricted to the shallow end. To remain in the pool enclosure, those under ten years of age must be accompanied by a parent, guardian or designate as outlined in the Recreational Swim Admission Standard. Those 10 and over should be instructed to wear a lifejacket. Should a parent, guardian or designate not be available to accompany the patron under 10 years old in the water, the patron must leave the pool area.
- Patrons may attempt the swim test once per day. Those not able to satisfy the test requirements will require more work on their skill and / or endurance before reattempting the test.

- When children under 10 years of age pay for entry to a recreational swim (they are accompanied by a parent or guardian), the cashier will secure an orange band to their wrist. Should these patrons wish to swim in the deep end of the pool they will be required to perform the facility swim test. If all requirements of the swim test are met, the staff conducting the swim test will remove the band from the patron's wrist.
- Children under 7 years of age will all have orange wrist bands on when they enter the pool. Those who pass the swim test will have a green band added to their wrist indicating they may go to the deep end but must be accompanied by a parent, guardian or designate who is at least 16 years of age.

Facility Swim Test – “Must Sees”

In Order to Pass the Swim Test a Patron Must:

- Complete the entire distance
- Swim continuously
- Show strong forward movement
- Swim with face in
- Show ability to take breaths
- Not touch the bottom
- Not stop and rest

Appendix 3



LIFESAVING SOCIETY®
The Lifeguarding Experts

Aquatic Staff Manual

Suggested Contents List

January 2008

Introductory Section

- Welcome—identify the target of the manual (i.e.: Lifeguard and / or Pool Supervisor)
- Table of Contents –page numbers—index -- so information can be found quickly
- Vision / Mission of Department
- Staff Conduct / Norms of behaviour
- Facility location(s) and phone numbers
- Directions for travel to facility
- Facility description—answers to commonly asked questions (e.g. Dimensions, depth, special features)

Emergency Procedures (Aquatic)

- Aquatic Emergency Procedure summary (one pager showing Minor and Major procedures required by Health Regulations to be documented and available to staff at facility, usually posted)
- Emergency signals
- Emergency follow-up procedures (minor and Major)
- Emergency phone procedures (to EMS)
- Follow-up procedures
- Minor follow-up procedures
- Follow-up emergency telephone contact list (to supervisory staff)
- Accident / Incident reporting Procedures (sample forms)
- Missing person procedures
- Procedures for handling the media
- Signs & Symptoms/Common

Emergency Procedures (Non-Aquatic)

- Fire evacuation
- Power failure
- Gas Leak
- Bomb threat
- Suspicion of child abuse
- Theft

Aquatic Supervision Procedures

- Signals
- Minor rescue procedures
- Lifeguard rotation procedures—length of time
- Lifeguard positions, zones of responsibility
- Lifeguard: Patron ratios
- Safety in change rooms
- Instructor safe teaching practices
- Class size maximums

Operational Procedures

- Opening procedures
- Closing procedure
- Equipment required on deck
- First Aid stations-supplies required
- Day Camp procedures-councillor: child ratios
- Pool fouling procedures
- Daily telephone check
- Outlet check
- bottom visibility check

Patron Rules

- Admission requirements
- Definition of "Direct supervision"
- Medical conditions
- Age for opposite sex change room access-Alternate arrangements.
- Posted pool rules
- Patron discipline procedures
- "Hot pool" rules / policies (i.e.: age of access, health risks, length of submersion, activity restrictions)
- Slide rules / restrictions
- Maximum bather load
- Customer service guidelines

Health Regulations

- List those regulations (Health and Amusement devices Acts), which are relevant for the staff targeted by the manual.
- Use clear wording (such as wording in Lifesaving Society Guide to Public Pools Regulation)
- Reference each with the appropriate reg. number

Instructional Program Information

- Registration information
- First lesson procedure
- Final lesson procedure
- End of term paperwork (could include sample final reports etc.)
- Registration transfer policies
- Parent spectator policies (where no off – deck viewing is available)
- Facts on cross-contamination
- Information on common childhood diseases and communicable diseases
- Instructional devices for rescue breathing practice
- Family change facilities
- Make-up classes resulting from pool fouling etc.
- Weather cancellation policies

Human resources & Administration

- Position job descriptions
- Terms of Employment
- Staff qualifications-record of same
- Staff in-service training requirement
- Staff work attendance-replacements
- Staff evaluation
- Staff discipline
- Staff uniform
- Pay rates/Payroll Procedures
- Time sheets
- Facility keys
- Facility rental-procedures for booking
- Facility log book

Occupational Health

- WHMIS
- Sun / Heat safety for aquatic staff
- Cash / Reception
- Solo facility lock – up policies
- Harassment – free workplace policies
- Protective measures to prevent cross contamination (victim to staff)

Maintenance & Water Treatment

- Cleaning procedures
- Equipment repairs
- Fouling procedures
- Vacuuming procedures
- Cleaning scum line
- Water testing -record of same
- Adding chemicals
- Bottom visibility



LIFESAVING SOCIETY*

The Lifeguarding Experts

Appendix 4

SEE Visitation Report- Level 2

Date: _____ Facility _____ () Outdoor () Indoor () Beach

Time: _____ Weather _____ Pool Activity _____

Lifeguard: _____ Location _____

No. of staff on duty: _____ # of staff on deck: _____ Inspector: _____

<i>Visitation parameters</i>	<i>Rating</i>	<i>Scaling Score Factor</i>	
Head movement continuous	/5	x 5	_____/20
Coverage of Zone	/5	x 5	_____/20
Scanning pattern consistent	/5	x 5	_____/20
Scanning Standard	/5	x 5	_____/20
Rescue Ready	/5	x 5	_____/20
Total Score			_____/100

Supervisor

Lifesaving Society Inspector

Comments

Score Sheet Explanations

- 0- Not performed
- 3- Performed below NLS standard-performed poorly
- 5- Performed at NLS standard- performed well

APPENDIX C

THE PROVINCIAL COURT OF ALBERTA

IN THE MATTER OF *THE FATALITY INQUIRIES ACT*

IN THE MATTER OF THE DEATH OF
JORDAN NEAVE

F A T A L I T Y I N Q U I R Y
(EXCERPT)

Calgary, Alberta
29th February, 2008

Transcript Management Services
Suite 1901-N, Calgary Courts Centre
601 - 5th Street SW
Calgary, Alberta T2P 5P7

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1 A My role is -- my responsibilities include the
2 management of all safety management services within
3 the branch in Ontario.

4 Q And would safety management services be?

5 A In more detail, this would include the completion of
6 audits, the creation of safety standards, the
7 testifying in court as an expert witness, reviewing
8 regulation, managing and training, that is providing
9 management training, dealing with incidents -- major
10 incidents response, and conducting research.

11 Q How long have you been with the Life Saving Society?

12 A This July will be 20 years.

13 Q How long have you been in this position with the
14 Life Saving Society?

15 A About 12 years.

16 Q And what is your educational or training background
17 that brings you in to this position?

18 A My educational background is a university degree -
19 bachelor of science. And my training background is,
20 when I was 18 years of age, I started out as a
21 lifeguard, instructor, supervisor, became a trainer
22 of lifeguards, instructor-trainer, examiner.

23 Currently hold all of those certifications and other
24 safety management training instructional positions.

25 Q And is part of that training - sorry, you might have
26 said this - related to the management of aquatic
27 facilities?

1 A Yes. We call that aquatic management training.

2 Q Okay. Thank you.

3 MS. NUGENT: Your Honour, I would propose
4 to have Mr. Shane identified as an expert witness to
5 give information with respect to lifeguarding and
6 aquatic facility management. I have a copy of his
7 CV, which I have provided to my friends, and I don't
8 understand there to be any difficulty. And I would
9 propose to enter the CV as the next exhibit.

10 MR. HALLIDAY: No objection, sir. Thank you.

11 MS. SAUNDERSON: None, sir.

12 THE COURT: Very good. Your CV will be
13 the next exhibit and we look forward to your useful
14 testimony.

15 MS. NUGENT: Sir, there is a copy for you
16 and a copy for the clerk to mark.

17 THE COURT: Yes. Thank you. So this will
18 be Exhibit 9.

19

20 *EXHIBIT F9 - Curriculum Vitae of Michael Shane

21

22 *Ms. Nugent Examines the Witness

23

24 Q MS. NUGENT: All right. First, Mr. Shane,
25 I want to start off with talking about lifeguards,
26 and can you tell me what does the Life Saving
27 Society do to assist in lifeguards or their

1 training, or how does that work?

2 A The Society creates standards and training programs.
3 These programs are delivered by certified
4 instructors through communities such as towns and
5 cities, universities across Canada. We provide all
6 of the literature and sales and generate our
7 revenues from the certification of these individuals
8 and the issuing of their certification cards.

9 Q And, Mr. Shane, you were here for the first two days
10 of the inquiry and you heard the evidence from Ms.
11 Berreth and Ms. Jones with respect to NLS
12 certification. Is that something that the Life
13 Saving Society does?

14 A Yes. NLS stands for National Lifeguard Service. It
15 is a recognized lifeguarding program across Canada
16 and it is a program that we have established and set
17 the standards for.

18 Q And is the Life Saving Society the national body
19 that certifies persons who want to be lifeguards at
20 aquatic facilities?

21 A We are the certifier of NLS candidates nationwide.
22 That is correct.

23 Q Now, as a part of your preparation for appearing at
24 this inquiry, you had occasion to visit the Olds
25 Aquatic Centre?

26 A Yes.

27 Q And did you also have occasion -- or, sorry, you've

1 been here the last couple days and so you've
2 listened to the evidence of the witnesses?

3 A Yes.

4 Q And have you also had an opportunity to review the
5 documentation that was in the binder that we marked
6 as Exhibit 1?

7 A Yes.

8 Q Okay. Perhaps we can start with some general
9 information with respect to lifeguards. Can you
10 give us a bit of an idea as to what lifeguards --
11 what kind of training lifeguards go through to
12 become a lifeguard?

13 A Yeah. Generally, students who want to go into
14 lifeguarding are fairly confident swimmers. They
15 start off by receiving 20 hours of training at
16 bronze medallion. They then, once they're
17 successful, move on to the Life Saving Society
18 bronze cross course, which is another 20 hours of
19 training. They then move in to first aid training,
20 it's a prerequisite of NLS, as is bronze medallion,
21 where they spend 16 hours of first aid training.
22 And some courses also incorporate CPR
23 certifications, which is another eight hours of
24 training. So, all in all, they go through about 100
25 hours of training before they get onto the deck.
26 And I, of course -- I meant to include the NLS
27 program, which is 40 hours of training.

1 Q And how often would that training need to be updated
2 and recertified?

3 A Two years. Every two years.

4 Q And then, as part of your preparation also for this
5 inquiry, have you prepared a document for the
6 Court's review that sort of outlines your
7 recommendations?

8 A Yes, I have.

9 Q I have provided my friends with a copy of this - Mr.
10 Shane just completed it last evening - and I do plan
11 to take them through his recommendations so they can
12 talk to you about it, but it might be of assistance
13 for the Court to follow along.

14 MS. NUGENT: And I ask that this be entered
15 as the next exhibit.

16 THE COURT: Any objection?

17 MR. HALLIDAY: No objection. Thank you, sir.

18 MS. SAUNDERSON: No objection.

19 THE COURT: Very good. Thank you. That
20 will be the next exhibit, Exhibit 10.

21

22 *EXHIBIT F10 - Recommendations Prepared by Michael Shane

23

24 Q MS. NUGENT: And you have a copy of that
25 document in front of you, Mr. Shane?

26 A Yes.

27 Q So, when I -- just as a -- by way of introduction,

1 you've just listed those items that I talked about
2 in terms of review of the brief listening to the
3 witnesses and the visit to the Olds Aquatic Centre
4 in preparation for making this document, and then I
5 think you've listed eight recommendations?

6 A Yes.

7 Q All right. Why don't we talk about those. The
8 first one you talk about is a provincial admission
9 standard?

10 A Yeah. Well, as the recommendation states - and it's
11 my belief that there should be a provincial
12 admission standard created - it's extremely
13 important in the supervision of young children,
14 especially children under the age of 10, to provide
15 adequate supervision for them on the deck.

16 The route that I am suggesting here is very
17 similar to what we have been proposing and using in
18 Ontario since 1996, where we basically set this up
19 as such as children under the age of 5 must be
20 accompanied, whether they can swim or not. Children
21 between the ages of 5 and 9 have two options, you
22 are either accompanied or you pass the facility swim
23 test. If you pass the swim test, you can stay. If
24 you can't, you must be accompanied.

25 And by accompanied, I mean direct supervision
26 that is within arm's reach of the child - the
27 guardian must be within arm's reach. And the third

1 component of this, of course, is anyone over the age
2 of 10 may be admitted to a pool and no swim test is
3 required. I've attached the references on this to
4 the appendix of the report so that the Court can see
5 the standard written out in some detail on page 7.

6 And I also refer on pages 9 and 10 to some of
7 the application of the standard, how is it going to
8 work in your facility so that, in fact, the Court
9 could use it as an example, perhaps, for owner-
10 operators wondering how it is we could actually make
11 this work. And that's certainly just an example of
12 how they might want to make it work in their
13 facilities.

14 THE COURT: Okay. Sorry, where was that?

15 You were referring to something for the pool
16 operator?

17 A It would be on page 9.

18 THE COURT: Page 9?

19 A Yes.

20 THE COURT: You know, I was -- you were
21 going ahead. I was still on Appendix 1. Sorry. So
22 that is why I did not catch that now. So this is
23 Appendix 2, is that correct?

24 A Appendix 1 would be the standard and appendix 2
25 would be the application, you are correct.

26 Q MS. NUGENT: One of the things that you
27 mentioned, Mr. Shane --

1 A Can I just finish with that --

2 Q Sorry. Yes.

3 A -- if I can?

4 Q Sorry.

5 A I think, as well, it is certainly important to
6 create the standard, but it's also equally important
7 to educate. Spend time through brochures, through
8 public community education media systems, to educate
9 the public before they get to the facility about the
10 admission standard so that, when they do show up,
11 they clearly understand that, if they have young
12 children, they must accompany them on the deck.

13 Q One of the things that you discussed, Mr. Shane, is
14 that this is an admission standard that is in use in
15 Ontario, is that correct?

16 A Yes, it is.

17 Q Is it part of a regulation in Ontario?

18 A It is not, not yet. It had been created from work
19 that we did with the coroner's office as a result of
20 a drowning that occurred in Ontario. The coroner's
21 office in Ontario sent it to the Minister of Health,
22 who governs the operation of public facilities in
23 Ontario, and they in turn released it to all of
24 their regional offices, instructing them to ensure
25 that this standard was imposed in public facilities.
26 We have advertised it, as well, on our website and
27 through our networking system.

1 Q All right. So, even without a regulation, do you
2 find that this is something that is getting used in
3 Ontario?

4 A Yes.

5 Q And you aware of any other jurisdiction across
6 Canada that has a regulation in place for a similar
7 type of standard?

8 A No.

9 Q Is it something that the Life Saving Society is
10 looking to, sort of across Canada?

11 A We hope so, yes.

12 Q Okay. Another point you mentioned under this
13 recommendation was the idea of a child being
14 accompanied. And I think that we've heard from Ms.
15 Klienloog yesterday about the difficulty that
16 lifeguards have if the parent is sitting in the hot
17 tub and the child is sitting in the pool. Can you
18 give us any insider comments on that?

19 A Well, I think, as I say in my statement here,
20 accompany means within arm's reach, or direct
21 supervision. It's important that, if the child is
22 on -- has not passed the swim test, then the parent
23 must provide -- or guardian must provide supervision
24 - that that's done within arm's reach.

25 Q And how -- or might there be ways for the lifeguards
26 to know that this is a child that needs to be
27 accompanied?

1 A Well, I think that's where the application in
2 Appendix 2 comes into play. Many facilities make
3 this work in many different ways. They may chose to
4 place red wrist bands on the children that fit into
5 the category of -- that are non-swimmers, or as they
6 come to the counter they are identified that they
7 must be within arm's reach of the children so that,
8 if there is that child out in the pool area with the
9 red wristband on, the lifeguard could clearly see
10 that. And, of course, they are looking at the same
11 time for that parent who should be within arm's
12 reach.

13 Q Another item that you mention under this
14 recommendation is that, in terms of that testing,
15 that that be conducted in shallow water. Can you
16 explain that?

17 A Absolutely. We don't want children in deep water
18 doing swim tests. If they fail, we want them to be
19 able to stand up in water that is no higher than
20 their chest or their head -- their chin, so that
21 they feel secure. We would never want to put them
22 in the predicament of failing in deep water and
23 submerging.

24 Q And so by that then, if you were looking to test a
25 child that would be across the shallow end of a pool
26 or the mid level of a pool, but certainly not
27 perhaps the length if there is a deep end?

1 A Two widths is a common practice that is done, yes.

2 Q I want to refer to you appendix 1 that you referred
3 to under this recommendation. And that speaks in
4 the first bullet point to, "Children under the age
5 of 10 years must be accompanied by a parent or
6 guardian." Can you tell me what you know about that
7 10 years, or why 10 years is a number that the Life
8 Saving Society looks at in terms of a standard?

9 A Well, in our work in creating this standard, we
10 gathered experts around the table with the coroner,
11 we went to the Hospital for Sick Children and sought
12 their advice on when is it that children can best
13 make the right choices and have the skills and
14 cognitive decisions to make the right choices, and
15 their advice to us was 10. And because of that, we
16 set the number as 10, being able to make the correct
17 choice. And then, of course, anyone under the age
18 of 10 would either require supervision or be a
19 swimmer.

20 Q And now, when you say "cognitive choice", what are
21 you talking about there?

22 A The decisions as to whether or not it might be right
23 or wrong to jump into deep water, being able to make
24 the right choices.

25 Q Or whether or not -- would that also include a
26 situation of whether or not they -- if they had a
27 life jacket, whether they thought they actually

1 needed it or didn't need it?

2 A Yes.

3 Q Okay. I'm going to refer you now to your second
4 recommendation which talks about lifeguarding
5 positions, scanning zone and rotation charts. Can
6 you give us some comment on that?

7 THE COURT: Could I just go back for a
8 minute --

9 MS. NUGENT: Sorry?

10 THE COURT: -- to 1? Okay. So you
11 covered the age, 10 year old age, and then the
12 guardian or group leader should be 12 years of age.

13 A Mm-hm.

14 THE COURT: That is in appendix 1.
15 Similarly, how do you arrive at the recommendation
16 of 12 years for a person who is in that position of
17 responsibility?

18 A I believe that was the same advice we received from
19 the medical community on this. It may also have
20 been advice or research we had done on typical
21 babysitting ages, I can't be certain on that. It
22 represents a minimum standards and, in fact, in
23 application many communities exceed that standard by
24 imposing a much higher standard.

25 THE COURT: Thank you. Go ahead.

26 Q MS. NUGENT: Right. Now, we will now refer
27 to your second recommendation regarding lifeguard

1 positioning, scanning zones and rotation charts.

2 What are you looking at there?

3 A Well, what we are looking at is the creation of
4 these charts which we'd be -- posted on the pool
5 office wall, which would indicate where lifeguards
6 should be stationed, patrol zones if they're
7 patrolling or sitting in a lifeguard tower, as to
8 where they should be and, most importantly, where in
9 the pool are they supposed to be scanning, where
10 should they be looking, what zone in the water, of
11 course, which is the primary zone that they are
12 looking for, what zone in the water is that
13 lifeguard responsible for.

14 We ended up creating a bit of a crisscross
15 chart, shaded areas of the pool, so that everyone
16 clearly understands what zones they're responsible
17 for. We talk then, of course, here about where they
18 should rotate, how they should rotate around the
19 pool from zone to zone to zone. And of course this
20 requires some planning where you have to sit down,
21 plan this all out, look at every type of swim that
22 might go into the facility, what type of amenities
23 might be open, that is the slide, a hot tub, a hot
24 pool, and make those decisions in advance and post
25 them.

26 The other component, of course, is once you've
27 done that, you have to advise the staff of this, put

1 this in staff handbooks or policy and procedure
2 manuals and, of course, post it in the office. It
3 aids the lifeguards in ensuring they know where they
4 are supposed to go, but it also aids any supervisor
5 who walks in to a pool, look at the charts, so many
6 in the pool, the chart will tell me where to look
7 for the lifeguard, and we'll know whether or not
8 they're in the position they should be.

9 Q When you are talking about scanning zones, can you
10 tell me how scanning zones relate to bather-to-
11 lifeguard ratios?

12 A Well, scanning zone is really the way in which the
13 eyes of a lifeguard move across an area of water --
14 the area of water they're responsible for. So that,
15 if this was my pool and I'm responsible for this
16 pool, being the courtroom, I would scan from one
17 side of the pool across and back. And of course I'm
18 looking at the surface, mid range and I'm also, most
19 importantly, looking at the bottom of the pool in
20 this scan.

21 Your question dealt with numbers. By doing --
22 by adding more people to the water, then typically
23 you need to add more lifeguards to the deck. And so
24 you then begin to subdivide that zone that that
25 lifeguard might be responsible for. So, as an
26 example, if this was the deep end and that's the
27 shallow end, I might be only responsible for the

1 deep end if I'm the deep end lifeguard. And I would
2 scan halfway across and that shallow end lifeguard
3 might scan the other way across. And there'd be a
4 little bit of overlap. And that's quite often how
5 we break up the supervision of pools.

6 Q You talked about scanning zones and being able to
7 see all of the areas in your zone and, most
8 importantly, obviously the bottom of the pool. So
9 do I understand that to mean that in a lifeguard
10 scanning zone they should be able to see the bottom
11 of the pool within that entire zone?

12 A Yes.

13 Q Now, I understand that you've been to the Olds
14 Aquatic Centre and you've had a look at their pool.
15 Can you tell us whether that type of -- or setup of
16 facility with a water slide, a tot pool, a
17 whirlpool, a main pool, is something that lends
18 itself to one scanning zone or more than one
19 scanning zone, or can you say?

20 A I think a lot depends on the type of activity that's
21 going on in the pool. As an example, if there was a
22 lane swim --

23 THE COURT: Mm-hm.

24 A -- adults were swimming from one end of the pool to
25 the other --

26 THE COURT: Mm-hm.

27 A -- the slide was closed, the hot tub was closed and

1 the tot pool was closed, yeah, one lifeguard could
2 probably manage the large pool. However, if
3 everything else is open, that is a lot more
4 challenging and I don't think that that would be
5 true.

6 Q MS. NUGENT: Also, when we talk about
7 scanning zones, does the Life Saving Society, in
8 training lifeguards, do they talk about sort of a
9 time for scanning? I mean you could scan and take
10 five minutes to scan a zone. Do they talk about
11 that?

12 A Yes. We call it a scanning window. And by that I
13 mean, again if this is my swimming pool and I'm
14 standing across and I'm standing back, I should be
15 able to do that within 15 to 30 seconds. That's my
16 scanning window. If you're going faster than 15
17 seconds, you're not looking. If you're going slower
18 than 30 seconds, you're going to slow.

19 Q All right. Then let's move to recommendation 3.
20 And this is something my friend touched on, the
21 responsible person. And what do you understand is
22 the responsible person?

23 A The person that is really in charge of the facility.

24 Q In charge of making decisions with respect to
25 lifeguards, scanning zones, rotations?

26 A The standards of operation for the facility, yes.

27 Q And now you identify certified with a Life Saving

1 Society aquatic management certification. What --
2 can you explain what that is?

3 A Well, this is a certification that we offer. This
4 primarily is targeted at non-aquatic professionals,
5 folks who may not have gone up through the ranks of
6 becoming a lifeguard, yet are giving the multiplex
7 facility with the arena, the swimming pool, and the
8 fitness centre. And they may not have much
9 knowledge and background about aquatics.

10 The program is aimed at giving them knowledge
11 -- some knowledge of the standards and operation of
12 public aquatic facilities.

13 Q Is it your understanding that this type of
14 certification is mandatory?

15 A It's not currently mandatory.

16 Q But it certainly is something that is available
17 across Canada from the Life Saving Society?

18 A Yes.

19 Q Moving down to recommendation 4, the "Enhance
20 lifeguard scanning training." What can you tell us
21 about that?

22 A Well, I think that, certainly when lifeguards scan,
23 it's always a responsibility of an owner-operator to
24 ensure that they are continually scanning and
25 monitoring the facility, that they are vigilant.
26 And often we do evaluations of staff. This is a way
27 of evaluating how well a lifeguard is scanning.

1 It's a way of enhancing their scanning ability,
2 improving, working with them to perhaps work on
3 areas that are weak and strengthen them so they'll
4 be a better lifeguard.

5 Q Is scanning part of the NLS certification for
6 lifeguards?

7 A Scanning is a technique taught through the NLS
8 program.

9 Q And so there is further enhanced training or
10 assistance that the Life Saving Society can provide
11 to aquatic facilities?

12 A Yes.

13 THE COURT: Mm-hm.

14 Q MS. NUGENT: Moving on to number 5 then,
15 "Establish operational supervision standards for the
16 safe use of swimming pool mats and inflatable toys."

17 A Yes. There have been a number of unfortunate deaths
18 in Canada as a result of the use of large mats in
19 pools - one in Manitoba, one in Ontario. These have
20 caused -- have been suggested as a cause of
21 drownings because they have obstructed the view of
22 the bottom of the pool for the lifeguard.

23 I'm suggesting here that perhaps it is time for
24 us to do some further research to assist owner-
25 operators in setting some standards on the use of
26 these devices, mats, boats, whatever you want to
27 call them, anything that covers the surface of the

1 water, to reduce this likelihood or chance that
2 perhaps a lifeguard can't see someone.

3 Q Now, you've heard Mr. Neave speak about the boogie
4 board that Jordan might have had that day, as being
5 perhaps 3 by 2 feet. Is that the kind of size of
6 the thing -- of something that we are talking about,
7 or are we looking at larger things, or could those
8 also create problems?

9 A Well, I suppose they could. It would all depend on
10 the body of water that they are sitting in. The
11 types of things I'm looking, or considering here,
12 are a little larger, 3 by 6 type of mat. Certainly
13 I think that is a really good question that we would
14 have to explore, and perhaps it's -- the solution is
15 a percentage is okay -- of the coverage is okay, or
16 -- I really wouldn't want to go to far in to that
17 until we sat down and had some work done on it.

18 Q Now, you -- when you attended the Olds Aquatic
19 Centre they had these type of mats or boats
20 available, did you see those?

21 A I saw them, I didn't -- I wasn't able to determine
22 if they were available, they were piled up in a
23 corner by the hot tub.

24 Q And they were of the size you were talking about, a
25 larger size, maybe 3 by 5?

26 A Yes.

27 Q Moving then to number 6, "Ensure back up personnel

1 are within call." What do you mean by that
2 recommendation?

3 A In an emergency situation it's vital that backup
4 staff, backup lifeguards, are, and my key word here
5 is "readily" available, readily summonsed in the
6 event of an emergency. So, if they have been
7 assigned other tasks, other duties, they must be
8 with -- must be what we call within call, that is we
9 can get them, get their attention by some form of
10 prearranged alarm system that we've sat down and
11 decided will work under any circumstance.

12 Q And I think you heard from Mr. Ray yesterday that
13 they now employ the use of walkie talkies. Is that
14 the type of system that might assist in this area?

15 A Yes.

16 Q Other than a horn, that could be heard throughout the
17 area where lifeguards might be?

18 A Well, a horn might work if it can notify someone no
19 matter where they may be within the facility.

20 Q Because I think that what we heard from the
21 lifeguards was that there was a horn, but it wasn't
22 heard or wasn't able to be heard in the janitor's
23 room.

24 A Correct.

25 Q Okay. Number 7, "Ensure that public swimming pool
26 operators create and publish an aquatic policy and
27 procedures manual." And what do you mean by that?

1 A Well, I have attached another resource for the Court
2 on page 11 of this. I'm suggesting that the text
3 that I saw in the exhibit binder of the resource -
4 it may have been incomplete, I wasn't certain - did
5 not contain all of these items that I'm suggesting
6 on pages 11, 12, 13 and 14.

7 This is a table of contents that reflects the
8 types of materials and standards and policies that
9 should be in this text. We provide this to
10 affiliates so that they can then create their own
11 operations manual with this minimum amount of
12 material, which we think is vital to the safe
13 operation of a facility.

14 Q And then, finally, number 8, "Promote the completion
15 of Life Saving Society comprehensive aquatic safety
16 audit." Perhaps first you should describe for us
17 what this audit what it is or what it looks like.
18 How does it work?

19 A A comprehensive safety audit is an in-depth view of
20 the complete operations of aquatics within a
21 community. It comprises of three aspects, the first
22 being a review of literature, and typically that is
23 a policy and procedure manual; the second is a
24 detailed inspection and completion of check lists;
25 and the third is an interview phase.

26 This is all done by certified Society
27 inspectors, chief auditors and auditors. And as a

1 result of all of this work, we produce a detailed
2 written report which contains recommendation in four
3 different categories at three different levels of
4 importance. You know, our operator then takes this
5 information and begins working on the these
6 recommendations. The whole purpose behind this is
7 to enhance safety in the aquatic facility.

8 Q And when you say the operator takes this, who do you
9 mean by the operator?

10 A Whoever it was that hired us. But typically it is
11 the aquatic supervisor, the owner-operator of the
12 facility that has asked us to do this work.

13 Q And the comprehensive aquatic safety audit, is that
14 available from the Life Saving Society to any
15 aquatic facility that would like that?

16 A Yes.

17 THE COURT: What are the costs on average
18 of something like that?

19 A A comprehensive safety audit?

20 THE COURT: Yes.

21 A \$3,000.

22 Q MS. NUGENT: And as I understand it, out of
23 that comprehensive audit you were going to provide
24 to the aquatic facility your review and
25 recommendations and thoughts in terms of how they
26 can operate, I guess, more safely?

27 A Yeah. It's a very detailed report including our

1 findings, our photographs all included.

2 Q And to your understanding, Mr. Shane, has a
3 comprehensive audit ever been done at the Olds
4 Aquatic Centre?

5 A No.

6 Q Now, we heard from Mr. Ray that the Life Saving
7 Society had been involved after this incident with
8 the Olds Aquatic Centre, can you tell us in what way
9 they were involved?

10 A It's my understanding that they conducted on July
11 15th, 2006 a lifeguard station analysis. This was a
12 facilitated session that the Society ran for the
13 Town of Olds, where they went through a process of
14 -- led by Larry Patterson, who was the technical
15 director at that time, with the Life Saving Society,
16 on the analysis of lifeguard stations.

17 Q So what would that analysis of lifeguard stations
18 entail?

19 A It would entail hosting a short clinic, having the
20 staff in attendance, asking them targeted questions
21 with the intent of the staff creating the
22 positioning rotation charts for the facility.

23 Q So the Life Saving Society technical director, Mr.
24 Patterson in this situation, is he getting the
25 information from them and analyzing their lifeguard
26 stations, or is he just simply taking them through a
27 process that the Life Saving Society has?

- 1 A He's simply facilitating a session. He is not
2 analyzing the data.
- 3 Q Is there a report or something that would come back
4 to the facility as a result of this type of
5 analysis?
- 6 A Not from Larry Patterson.
- 7 Q Would there -- when you say "not from Larry
8 Patterson" --
- 9 A The Town would, in fact, would probably be host of
10 this, would likely create their own report or
11 charts, or not create a report. But the Society
12 would not create a report.
- 13 Q And does the Life Saving Society, in terms of pools
14 across the country, do they have some checklist
15 whereby they go back and check with pools to see if
16 they've done an audit? Or do they suggest that it's
17 time for them to come in and do an audit, or an
18 analysis of this type? Or are they waiting for each
19 pool or facility to come to them first in
20 assistance?
- 21 A We don't approach corporations, or cities, or
22 operators. We promote the benefits of an audit. We
23 encourage as we can for them to have these
24 conducted, but we typically don't directly approach.
- 25 Q And that's no different in Alberta as it might be in
26 Ontario or any of the other provinces?
- 27 A That's my understanding.

1 THE COURT: Do you know in Alberta how
2 many audits you did last year?

3 A No, I don't.

4 THE COURT: You do not. Okay. You
5 certify lifeguards. Do you certify facilities?

6 A We accredit facilities that meet a certain standard
7 in Ontario. I'm not certain what they do in
8 Alberta.

9 THE COURT: You mean you are not sure of
10 what the licensing side is?

11 A Correct.

12 Q MS. NUGENT: And what would accrediting a
13 facility mean?

14 A Accrediting would indicate that the facility has met
15 a certain standard and typically it is a process of
16 inspecting the facility. If they met a certain
17 standard, they would become accredited, receive a
18 wall plaque.

19 Q One of the things that we heard from Mr. Neave is
20 the discussion with respect to the water slide and
21 the deep end of the pool and some type of barrier.
22 Do you have any comment on that?

23 A I'm not so certain would it actually work in this
24 case. I think the key here is we've got to stop
25 this at the front door. The clerk has to stop this.
26 We have to ensure that the clerks are asking the
27 right questions, that any children who are under the

1 age of 10 are accompanied, or who can swim.

2 And I think that's certainly the primary spot
3 where now in Ontario we're able to actually correct
4 the problem. The lifeguards become a second line of
5 defence, I suppose. I am thinking that any type of
6 barrier is climbable and it may, in fact, restrict
7 access to the facility for lifeguards or any
8 emergency personnel.

9 I suppose I'd prefer to see the site and
10 examine that particular suggestion in detail. But
11 for my preliminary view I would suggest that it's
12 perhaps not the route to go.

13 Q And, sorry, I want to take you back just to
14 lifeguards and their training. When a lifeguard's
15 on deck, what are they trained to do?

16 A They're primary role is prevention. They're to scan
17 the water, the deck to some degree, as well to
18 ensure the safety of bathers that are in the pool.

19 Q And is it normal for lifeguards to be on some type
20 of, I think you talked about rotation. So it's
21 normal for them to be on a rotation?

22 A Yes. It's quite normal that they would be on the
23 deck for a period of time and of course rotate to
24 off-duty for a period of time.

25 Q Is it also -- when you talk about these rotations,
26 might they just be changing position on deck?

27 A Yes.

1 Q One of the other things that we've heard a lot about
2 is the ratio of bather-to-lifeguard, and we've heard
3 this standard of 1 to 75 that's from the Life Saving
4 Society. Do you have any comment on that number or
5 where that came about?

6 A I'm not sure where it came about. But if you look
7 across Canada, the standard is quite different. In
8 British Columbia it is 1 to 100, in Ontario it is 1
9 to 30. I must clarify though that, as the numbers
10 go up, as an example, in Ontario it's 31 to 75 for
11 two lifeguards. It also depends on the size of the
12 pool in many cases. Where you have water surface
13 area is greater than 500 square metres, you usually
14 add another lifeguard right away; depths of water,
15 amenities that are there.

16 In Ontario, if we have a water slide, there is
17 another lifeguard at the bottom of the water slide
18 and an attendant at the top. But I -- you know, in
19 all of this, there is so much variation across the
20 country.

21 It's a standard that Alberta has created that's
22 maybe not that far off the mark, perhaps a little
23 high, but not that far off the mark.

24 Q But as I understand from what you say, is you can't
25 just look at the number of bathers-to-lifeguards.
26 You need to incorporate all of the other
27 considerations that the facility might present to a

1 lifeguard who is not on duty.

2 A Yeah. And I think that is fairly clearly laid out
3 inside the public aquatic facility safety standards
4 that there are many variables that you have to
5 examine before you even create these charts - what
6 facilities are open, what type of bathers do you
7 have in the water, what types of toys do you have in
8 the water, even the size and design of a facility
9 affect the number of lifeguards.

10 Q Thank you, Mr. Shane. Do you have any other
11 information that you think would be of assistance to
12 this inquiry?

13 A No.

14 MS. NUGENT: I wonder, Your Honour, if you
15 want to take a break before my friends have their
16 opportunity to question?

17 MR. HALLIDAY: That would be satisfactory,
18 sir, if it meets convenience.

19 THE COURT: I think we should go on break
20 now. Thank you. And we will come back in say 15
21 minutes. Is that all right? Thank you.

22 THE COURT CLERK: Order in court, all rise.
23 Court stands adjourned for 15 minutes.

24 (ADJOURNMENT)

25 THE COURT CLERK: Calling the matter of Jordan
26 Neave Fatality Inquiry.

27 MS. NUGENT: I just have one preliminary

1 matter before my friends begin. I've been
2 approached by the members of the -- by the reporters
3 that are here.

4 THE COURT: Yes.

5 MS. NUGENT: And they're wondering if they
6 might have a copy of the recommendations that Mr.
7 Shane has provided. I don't think there's any names
8 in there. I don't know how my friends feel about
9 that. I told them I would ask the Court.

10 THE COURT: Let me think about that a
11 little bit, okay?

12 MS. NUGENT: That's fine.

13 THE COURT: And do you have any
14 submissions or concerns about that?

15 MS. SAUNDERSON: This is the first of the
16 request, sir. So, like you, I'd prefer a moment to
17 think about it and review the document in the
18 context of that request --

19 THE COURT: Yes.

20 MS. SAUNDERSON: -- before commenting.

21 THE COURT: Okay. And then I was thinking
22 as well, that is always a dangerous thing but, if we
23 finish with Mr. Shane, would it then be acceptable
24 if we just proceeded into any conclusory comments or
25 submissions that each party might have, as opposed
26 to breaking for lunch?

27 MS. NUGENT: I have no difficulty.

1 THE COURT: I guess it depends on how long
2 Mr. Shane is up there.

3 MR. HALLIDAY: I think we should attempt
4 that, sir, by me.

5 THE COURT: Okay.

6 MS. SAUNDERSON: Certainly no objection by me,
7 Sir.

8 THE COURT: Very good.

9 Okay. Go ahead. Are you complete now, Ms.
10 Nugent?

11 MS. NUGENT: I am, Your Honour.

12 THE COURT: Okay. And if I do not
13 remember about the request from the press and the
14 release of that document, someone should remind me.

15 MS. NUGENT: I will.

16 THE COURT: Go ahead, Mr. Halliday.

17 MR. HALLIDAY: Thank you, sir.

18

19 *Mr. Halliday Examines the Witness

20

21 Q MR. HALLIDAY: Sir, you saw the -- heard the
22 testimony of three trained lifeguards with a -- are
23 they typical of the quality type of individual that
24 you find certified by your -- in your program?

25 A If by quality you mean certifications, yes.

26 Q And as people -- you get quality people into your
27 program?

1 A Yes. The Society does not employ lifeguards.

2 Q Yes.

3 A We certify candidates --

4 Q Yes.

5 A And we find them to be very positive, forward
6 thinking, honourable people.

7 Q Thank you. Now, sir, Heather Klienloog mentioned
8 that she stopped lifeguarding. She was mentioned
9 comments -- or she mentioned that she was often
10 trying to enforce or was unhappy about parents in
11 the hot tub and children who ought to have been
12 supervised, somewhere else. What is the best way to
13 deal with that, in the view of the Society?

14 A Well, there are two or three routes that she could
15 go. First, of course, to the employer. Talk to her
16 employer about her concerns, document it and meet
17 with them to see if that can be resolved.

18 The second might be to involve, and again I'm
19 not certain in your province, but in our province
20 there's a Ministry of Health who inspects
21 facilities. If you're concerned about the safety in
22 the facility, you could go to that Ministry and have
23 those concerns heard and inspectors potentially
24 could come in and deal with that.

25 And a third, of course, is if you're not happy
26 with your employment, move on and perhaps find an
27 employer you are happy with.

1 Q Well, what about requiring that the parents and the
2 child leave for non-compliance? Is that something
3 that happens?

4 A Yes. Quite frequently at the front door, if
5 standards are not being met, of admission, and if
6 that's what we're talking about here --

7 Q Yeah.

8 A -- then, of course, we don't admit them to the
9 facilities. If it's a problem in the pool that
10 you're having with a patron, then yes, lifeguards
11 have the authority to eject those patrons.

12 Q Right. Does that happen, in your experience?

13 A Yes.

14 Q Well, are there any ramifications of ejecting a
15 patron that come to be discussed or reviewed? What
16 happens?

17 A Well, certainly in some cases, in some facilities,
18 they'll make a note of it in a log that they've
19 ejected a person.

20 Q Mm-hm.

21 A Every municipality manages it in a different way.

22 Q Mm-hm.

23 A They may take it to a staff training session,
24 discuss it there.

25 Q Mm-hm.

26 A And discuss potential solutions.

27 Q Well, what -- would you agree with me, sir, that an

1 ejected patron's going to be a very unhappy patron?

2 A Some are unhappy, yes.

3 Q And in a political situation of a town, is that
4 unhappiness likely to have effect?

5 A I guess a lot depends on the age of the person that
6 you're ejecting. A 10 year old maybe not as much as
7 perhaps a senior citizen --

8 Q Mm-hm.

9 A -- who certainly has the time and energy to contact
10 municipal departments.

11 Q Right. So what about a lifeguard that's viewed as
12 strict in terms of having children properly under
13 supervision, the arm's length thing? Is that
14 lifeguard going to be unpopular with the public?

15 A I don't think that the lifeguard's going to be
16 unpopular if they explain to patrons why it's so
17 important.

18 Q So it'd be an explanatory exercise and sort of
19 interpersonal persuasion, but in the end, the
20 lifeguard can eject.

21 A Yes.

22 Q Right. And that's going to make the lifeguard
23 unpopular with certain people.

24 A Perhaps.

25 Q Yeah. Now, sir, you mentioned accredited
26 facilities. How does that accreditation arise? Is
27 that the same as an audit or a successful audit?

1 A No. It's a little different. An accreditation
2 arises by a community contacting the Society or
3 contacting a certified inspector. This is primarily
4 being done in Ontario at the moment.

5 An inspector goes out to the facility,
6 inspects the facility and, if it meets a certain
7 standard, they are accredited and a wall plaque is
8 sent to them indicating that they are accredited.

9 Q Now, does any of that accreditation process deal
10 with lifeguard coverage, scanning and other
11 lifeguard involved decisions?

12 A I believe one of the checklist items requires that
13 the inspector sees lifeguard positioning, wall
14 charts and rotation zones posted, in the pool
15 office.

16 Q Right. So is the posting enough? Or is the
17 adequacy of the system of scanning reviewed in this
18 accreditation process?

19 A Not in the accreditation process.

20 Q So the accreditation would be having your documents
21 in order, would it?

22 A There are many things that an inspector would look
23 for, but documents would be one of them.

24 Q And what else?

25 A The checklist is about seven pages in length and
26 includes many regulatory requirements that are
27 listed in regulation and many operational standards

1 that we created.

2 Such as, wall charts indicating lifeguard
3 positioning, stocked first aid kits, policy and
4 procedure manuals that are present and, of course,
5 the list would go on.

6 Q Yes. And now, you mentioned that the cost of an
7 audit might be in the order of \$3,000?

8 A A comprehensive safety audit --

9 Q Yes.

10 A -- which is very detailed, yes. Approximately
11 \$3,000.

12 Q And would that be plus expenses or per diem for the
13 people handling it?

14 A There are no per diem charges that are extra.

15 Expenses would be extra.

16 Q Travel expenses and things like that?

17 A Travel, accommodation, meals.

18 Q Right. Now, sir, you've heard that, excuse me, that
19 the lifeguard in this pool, that -- if there's a
20 single lifeguard, it would -- one of the preferred
21 positions would be at the corner, just by the
22 whirlpool. So the lifeguard could look over their
23 right shoulder and see what's happening in the
24 whirlpool and then scan the top pool and all the way
25 around to the east wall and the, excuse me, the
26 slide area.

27 A Yes, I've heard that.

- 1 Q Yeah. And from that position -- and from that
2 position, by the whirlpool corner, did you
3 personally assess the ability to see the bottom of
4 the pool on the west wall deep end?
- 5 A Yes.
- 6 Q And what was your conclusion on that?
- 7 A I couldn't see the bottom in that corner.
- 8 Q Right. So that -- stationing in that position did
9 not meet your criteria, of scanning?
- 10 A For one lifeguard position, no, it would not have
11 been.
- 12 Q Right. And, sir, did you agree with the other
13 lifeguard evidence that the second lifeguard, were
14 it added, their view was that the second lifeguard
15 would be on the west side of the pool, up and down
16 and perhaps with a -- if stationary, would be at the
17 deep end, on the west wall?
- 18 A Yes, I heard that.
- 19 Q Does that -- would that be your same recommendation?
- 20 A Yes.
- 21 Q Right.
- 22 A I may also suggest that they may also want to use
23 the lifeguard tower.
- 24 Q Yes. And what is the advantage of using the tower?
- 25 A It offers a better view. It eliminates any glare
26 that's on the surface of the water. It removes you
27 from the crowd of people that are on the deck,

1 running around the deck. It allows other lifeguards
2 to see you immediately rather than trying to find
3 you in a crowd. Communication is sometimes
4 enhanced.

5 Q Sir, as you were listening to the, particularly the
6 report that came from Constable Burt (phonetic),
7 about the young boy playing with Jordan, seeing
8 Jordan on his -- a boogie board or some type of
9 flotation device, going down, then struggling, and
10 the boy walking down to the tot pool and back and
11 all that happened, did you come to some calculation
12 of how long or range of times that whole process
13 might have taken?

14 A No.

15 Q -- So, would it be a worth while exercise to try to
16 gauge that?

17 A I don't think you'd ever know how long they'd been
18 under water. Even the medical community would have
19 difficulty determining that.

20 Q Mm-hm.

21 A I don't think that you would find a number.

22 Q All right. And what -- I guess the basic question
23 is how long does it take to drown?

24 A Seconds.

25 Q Right.

26 THE COURT: How many seconds?

27 Q MR. HALLIDAY: So that's --

1 A Depends on the circumstance.

2 THE COURT: Mm.

3 Q MR. HALLIDAY: Right.

4 A A young child lying face down in a bathtub --

5 THE COURT: Mm-hm.

6 A -- trying to breathe --

7 Q MR. HALLIDAY: Mm-hm.

8 A -- drown very quickly.

9 THE COURT: Mm-hm.

10 A Literally seconds.

11 Q MR. HALLIDAY: So what about a young boy,
12 not a good swimmer, going down and then trying to
13 struggle up? Are we talking 20 seconds or something
14 like that?

15 A It's quite a misconception, I think, by the general
16 public about what drowning people look like.

17 Q Yeah.

18 A You'll never hear them, in most cases. Unless
19 they're a weak swimmer and they're able to yell out,
20 but in almost all cases, you won't hear anything.
21 And the submersion, submersion will be fairly quick.
22 They'll be at the surface or just below the surface
23 trying to climb the ladder to get to the surface.
24 But it would be very quick and usually very silent.

25 THE COURT: Mm.

26 Q MR. HALLIDAY: Yeah. And is there any range
27 of times under water in which there might be a

1 better chance of resuscitation?

2 A Again, that's a number that the medical community
3 has difficulty determining. And it's dependent on
4 so many variables from age, to fitness levels, to
5 body weight and so forth.

6 Q But can we say that the quicker that one is removed,
7 after sinking, from the pool, the better it is?

8 A The more likely of resuscitation --

9 Q Right.

10 A That's a fair statement.

11 Q And having a lifeguard right on top of the situation
12 is one of the -- is the best thing that can happen,
13 I gather?

14 A If the lifeguard sees this occur, then yes, of
15 course.

16 Q Mm-hm. Now, sir, I'd like you to turn to tab 17,
17 which is the in service meeting, of May 23, 2006.
18 Did you -- have you seen this document prior?

19 A Yes.

20 Q Okay. And we see that the meeting came up with the
21 following summary, that a better sounding emergency
22 system and that that'd be one of your
23 recommendations?

24 A Yes.

25 Q And receptionists need to have better knowledge of
26 guard's duties. Well, just perhaps a little better
27 coordination and a little more strength at the front

1 end is one of the things you're recommending.

2 A Well, I would probably rephrase that slightly, to
3 that, I would include receptionists in any first
4 aid, in any part of the emergency training that's
5 done at the facility so it's clear they understand
6 their roles and responsibilities.

7 Q Yes. Now, how common is it that lifeguards are --
8 have cleaning duties?

9 A Very common.

10 Q Okay. And they recommend that foam mats be limited
11 or banned and that's indeed one of your
12 recommendations.

13 A Well, I'm certainly suggesting in my recommendation
14 that we look at this and try to determine what is
15 safe and what is unsafe.

16 THE COURT: When you say "we", who is
17 "we"?

18 A The Life Saving Society.

19 THE COURT: Okay. That's something that
20 you have not, as a group, engaged in yet?

21 A Not yet.

22 THE COURT: Okay.

23 Q MR. HALLIDAY: Now, if we could just go over
24 the page, other issues that were addressed. A
25 change in the patron ratio, down to two, one guard
26 for 35.

27 A Yes.

1 Q And, indeed, that fits with your analysis that
2 another lifeguard on the west side, perhaps based
3 toward the deep end, would -- is a requirement for
4 -- to meet the scanning requirements.

5 A Well, again, as I said earlier, it would depend on
6 the type of swim that's going on and the amenities
7 that are open in the facilities. And I meant by
8 that, of course, whirlpools and so forth. As I said
9 earlier, one lifeguard could manage the 25 metre
10 tank on their own. But in general, if you're
11 opening up the entire facility, then certainly I
12 would recommend two.

13 Q Now, so --

14 A If I could just clarify that.

15 Q Certainly.

16 A As well, I think it's really important here that the
17 Court understands the lifeguard, no matter where
18 they are positioned, and I think this came out in a
19 question a little earlier. A lifeguard, no matter
20 where they are positioned, if they're given a zone
21 of responsibility, it's imperative that they see all
22 of that zone and, most importantly, the bottom of a
23 pool. So that, if they are, as an example at this
24 facility, given the entire facility, that means all
25 areas, no matter where their position might be.
26 Simply from walking from one end of the pool to the
27 other to gauge that, or to see the entire area of

1 the bottom, is not what we're suggesting here.

2 Wherever you are standing, whether you're
3 standing in the shallow end or you're standing in
4 the deep end, you've got to be able to see all areas
5 of the bottom of your pool. And I think that's why
6 I've been suggesting that, in this case, you can't,
7 no matter where you're standing along that east
8 wall, see all areas of the bottom of that pool at
9 one time. So I'm suggesting two lifeguards.

10 Q Yes, thank you.

11 So, sir, would you agree with me that this in
12 service got it mostly right? They got to the key
13 issues that you got to?

14 A Well, I think my report really speaks to certainly
15 the issues that I felt were recommended but I
16 certainly applaud their work that they've done in
17 this in service training session. And the steps,
18 initial steps, that they've taken.

19 Q Well, let's see. They're recommending dealing with
20 mats. And you dealt with mats. They're
21 recommending more lifeguards. That's your
22 recommendation?

23 A Well, again, what I want to reiterate here is that
24 they'll still be able to guard this pool with one
25 lifeguard and that's not what I'm suggesting. I'm
26 suggesting this pool, if all areas are open, needs
27 two lifeguards.

1 Q I see. Under any circumstances?

2 A With the exception of a lane swim, perhaps.

3 Q Yes. Yes. Now, sir, you're of The Royal Life
4 Saving Society -- has developed many processes, as
5 you've given evidence, by which owners and operators
6 of pools can assess their safety for swimmers and
7 how they might use that assessment process to move
8 forward to make recommendations to make their pool
9 more safe. The Royal Life Saving Society has
10 processes, facilitations and reviews of documents
11 and things like that; right?

12 A Yes, we do.

13 Q But we heard from the ambulance -- or the EMTs and
14 the fireman -- the person who was an EMT, but who
15 was attending at the -- as a fireman, as well as
16 Chief Thompson, that safety is a system of ties
17 thing (phonetic). Would you agree with me, sir,
18 that the easiest, most definite and most beneficial
19 step in safety that can be mandated is more
20 lifeguards?

21 A Well, that's a difficult question because every
22 situation is somewhat different, I think. And
23 sometimes it's just not more staff that provides
24 additional safety.

25 As an example, you may have a diving board
26 that's very slippery. Certainly more staff is not
27 going to make any difference there. You actually

- 1 have to replace the diving board or resurface it.
2 So I hope that answered your question.
- 3 Q Yes. Yes. Now, sometimes when you have an extra
4 lifeguard there, it perhaps it might not be needed,
5 but other times it will.
- 6 A Depending upon what's going on in the pool. As I
7 said, there's many variables that might dictate that
8 you may need additional supervision.
- 9 Q Yes. Now, sir, you've dedicated your career, and
10 perhaps your life, to water safety. Now, have you
11 also had some interrelation with the general safety
12 community, perhaps outside of the water safety,
13 perhaps the work place safety, the environmental
14 safety, the automobile safety. Have you had an
15 interest in these other safety areas?
- 16 A I'm a playground safety inspector. So, yes, I have
17 had some interest in other areas.
- 18 Q And would you agree with me, sir, that we are moving
19 toward a society that is far less tolerant to risk
20 of health and that the forward movement is toward
21 zero tolerance of risk?
- 22 A I might rephrase it to enhance safety.
- 23 Q Yes.
- 24 A I think folks are more interested in the safety of
25 their children, of anyone using our facilities.
- 26 Q Right. And that sometimes enhanced or increased
27 safety requirements may not be necessary in

1 particular circumstances but we still bump into
2 them. Would that be your experience?

3 A I'm afraid I really don't understand what you're
4 getting at with that question.

5 Q Okay. Well, sometimes the full press safety that is
6 mandated is just not necessary, in particular
7 circumstances.

8 A Well, I've never bumped into that example before.
9 The examples that I've always dealt with, the safety
10 precautions that have been established, make a lot
11 of sense to me.

12 Q All right. And, well, we have a lot of things. We
13 have mandatory bicycle helmets in this province. We
14 have ambulances parked beside drilling rigs. People
15 don't get carted off drilling rigs every day, but
16 the ambulance is still there. So that's a huge
17 expense just for the one instance that it's needed.
18 Do you agree with that, sir?

19 A Well, you know, if it prevents a death, I'm not
20 necessarily -- I would have to say it's probably
21 worth it.

22 Q So, sir, would you also agree that, if one more
23 lifeguard were there and not needed 99 times out of
24 100 but it was needed that one time, is that
25 worthwhile?

26 A Again, if the circumstances warranted that other
27 lifeguard being there, yes, it would be worthwhile.

- 1 Q Mm-hm. And, sir, do you run into economic
2 objections towards increased lifeguard coverage?
- 3 A As I said, no. As I said earlier, we don't employ
4 lifeguards.
- 5 Q Oh, excuse me --
- 6 A It's the towns and cities that do that.
- 7 Q No, say when you're consulting and you're with an
8 owner and you say you need to do this, you need to
9 that, whatever, do you run into the objection that,
10 Well, that's going to cost us a lot of money?
- 11 A We've had those sorts of objections before, yes.
- 12 Q And in public facilities, money are -- money is a
13 real issue?
- 14 A Yes.
- 15 Q Okay. Now, have you run into the objection that our
16 patrons are going to be mad if we do that?
- 17 A No.
- 18 Q Or that we're going to annoy some people if we do
19 that?
- 20 A Adding more staff?
- 21 Q No, changing a system to a more safe system.
- 22 A No.
- 23 Q No. Now, sir, in the safety business, a lot of the
24 recommendations, say particularly for the
25 lifeguards, has come out to minimum recommended.
26 Now, do you acknowledge the tendencies for the
27 minimum recommended to become the maximum required?

1 A No.

2 Q No. So that, if your minimum recommended is one
3 lifeguard for 35 patrons, you don't find a tendency
4 for the operator say, Well, we've got 35 -- we've
5 got 34 patrons, therefore we only need one
6 lifeguard?

7 A The common operating practice is that, once they get
8 close to that number, they'll add another lifeguard
9 because of the flux of people in and out of the
10 facility.

11 Q Okay. So, if they get into that margin, you say,
12 but below that? Below the margin, whether it's 30
13 or what ever? We only got 30 people there, we only
14 need one lifeguard.

15 A ~~That's the common operating practice, yes.~~

16 MR. HALLIDAY: Yes. All right, sir. Thank
17 you. Those -- excuse me.

18 THE COURT: Any questions?

19 MS. SAUNDERSON: I do have a question.

20 THE COURT: Go ahead.

21

22 *Ms. Saunderson Examines the Witness

23

24 Q MS. SAUNDERSON: Sir, in your recommendation
25 number 1 in Exhibit 10, you've given some specific
26 age recommendations in appendix 1, which you've
27 attached. And I take it that, when you say in

1 recommendation 1 that a provincial admission
2 standard should be adopted, you are in fact
3 recommending the ages indicated in Exhibit 1; is
4 that right?

5 A Yeah. Yes.

6 Q And how long has that been in force in Ontario?

7 A Its been -- The Society's position since 1996 and in
8 force, through the Ministry of Health, since 2002.

9 Q I'm interested, sir, on my reading of the Public
10 Aquatic Facility Safety Standards of Exhibit 23,
11 those ages aren't specifically indicated but,
12 rather, there's just a general indication that it's
13 important to set age restrictions. Is there some
14 reason your published guide hasn't gone further?

15 A The Alberta branch has not adopted that standard.
16 It is not listed in their Public Aquatic Facility
17 Safety Standards text.

18 Q Okay. So what we have at Exhibit 23 is the Alberta
19 branch's publication then as distinct from a
20 national publication; is that right?

21 A From an Ontario publication.

22 Q Okay. And The Life Saving Society is a national
23 organization; correct?

24 A Yes.

25 Q Does it have a national set of standards or
26 guidelines that it recommends across the country?
27 Are they different in each province, even within

1 your organization?

2 A There is no national standard. It is something we
3 are attempting to do.

4 Q And I take it, being from Ontario, you can't assist
5 His Honour as to why the Alberta branch hasn't
6 adopted the standards that the Ontario branch has
7 been recommending for quite some time?

8 A No.

9 Q Sir, you've emphasized the importance of lifeguard
10 scanning the entire pool area and the entire water
11 column, if I can call it that, including the bottom
12 of the pool. In a pool with people in it, whether
13 it's two people or 40, is it fair to say that it can
14 become difficult to clearly see the bottom with any
15 turbulence in the water at all?

16 A Sometimes.

17 Q And the greater the turbulence, the harder to see?

18 A Yes.

19 Q And so, while it's an ideal that a lifeguard see
20 every portion of the bottom of the pool on every
21 time they scan, is it reasonable to expect that that
22 will always be possible in a 30 second scan?

23 A It has to be possible.

24 Q Okay. Just to make sure I understand your position
25 with respect to the use of mats or other inflatables
26 in the pool, the Life Saving Society itself has not
27 yet conducted any research to give any

1 recommendations about whether any mats or how many
2 should be permitted in public facilities?

3 A No.

4 Q And are you aware of any research on that yet having
5 been done by any organizations that we could refer
6 to?

7 A No.

8 Q You've indicated in response to Mr. Halliday's
9 question that it is common for lifeguards, when they
10 are rotated off the deck, to have other duties
11 including some cleaning responsibilities.

12 A That's correct.

13 Q And that's not something that The Life Saving
14 Society opposes or recommends against, in fact it's
15 acknowledged in your -- in the Alberta branch's
16 standards; is that right?

17 A We do not oppose it.

18 Q The extent that you recommend safety audits for
19 public aquatic facilities, how often do you
20 recommend an audit be done for each facility?

21 A There is no set period, but quite commonly
22 facilities are re-audited every five years.

23 Q And I take it your experience would be in Ontario,
24 rather than Alberta, but accepting that, is it
25 typical in Ontario for all public aquatic centres to
26 have an audit done or is it uncommon, but something
27 you would like to see more of?

1 A You would be the exception if you had not done an
2 audit.

3 Q Do you know if that's true in Alberta?

4 A I do not.

5 Q Do you know how many people in Alberta are presently
6 qualified to perform such audits?

7 A No, I do not.

8 THE COURT: Do we have any?

9 A The branch would know the answer to that I -- well,
10 sorry.

11 Q MS. SAUNDERSON: You testified, sir, that you
12 are aware, although I don't believe you were
13 personally involved, that the Life Saving Society
14 did do a lifeguard station analysis in Olds in the
15 summer of 2006.

16 A Yes.

17 Q And you testified as to what that process is. Do
18 you have any information regarding the outcome of
19 that analysis that was done?

20 A I think it was the fall actually of 2006.

21 Q My apologies. I thought you said July.

22 A Oh, I'm sorry. You were correct. My mistake.

23 As far as I know, the branch has no outcome
24 from that work. It is a facilitated session and all
25 of the outcome stays with the town.

26 Q I appreciate that the branch would not necessarily
27 have written documentation, but I guess my question

1 is more general than that as to whether you know
2 what the discussions were at the time and what if
3 any recommendations or suggestions for change were
4 made in the course of the review?

5 A No, I do not.

6 Q So you don't have any information as to whether or
7 not at that time a suggestion was made to Olds by
8 the Life Saving Society that they needed more
9 lifeguards on duty?

10 A Well, it actually works that other way. It's a
11 facilitated session. The session leader would lead
12 you through a series of questions and you, in fact,
13 would answer these yourself. It's not a session
14 where we evaluate the outcomes. If you wanted that
15 to be done, then you would ask us to do an audit.

16 Q Okay. And Mr. Ray testified, and I believe you were
17 present for his testimony, that he participated in a
18 review and the outcome that came out of it was to
19 adjust the patrol pattern used by the lifeguards in
20 the Olds facility. Do you have any information that
21 there any other outcomes?

22 A I'm not aware of any outcomes.

23 Q In talking about lifeguard to patron ratios you
24 referred to the 1:75 standard as a standard that
25 Alberta created. Are you saying that because that's
26 what Exhibit 23, being an Alberta Life Saving
27 Society document, refers to? Or are you referring

1 to some other standard created by the Province of
2 Alberta?

3 A I'm referring, I believe, to the standard that's
4 published in the Public Aquatic Facility Safety
5 Standards document.

6 Q MS. SAUNDERSON: Thank you. And in fairness to
7 that document, it does acknowledge that you may have
8 to vary from that standard depending on the facility
9 specifics.

10 A Correct.

11 Q In referring to your accreditation practice or the
12 fact that accreditation is done, again, I
13 understand, in your experience, that Ontario is
14 doing that. Do you know whether there is a
15 checklist created specifically for accreditation of
16 Alberta facilities by The Life Saving Society?

17 A I do not.

18 Q Sir, you've indicated that it takes only seconds for
19 someone to drown and I appreciate you can't be
20 specific and it will vary from circumstance to
21 circumstance and I take it, in many circumstances,
22 can happen in less than the 30 seconds that would be
23 the typical maximum scanning time frame for a
24 lifeguard?

25 A It would occur, I'm sorry?

26 Q It could take less than the 30 seconds?

27 A Correct.

1 Q And it could take even less than the 15 seconds
2 which would be the shortest possible -- shortest
3 recommended scanning time for lifeguards?

4 A Yes.

5 Q In your observation of the Olds aquatic facility,
6 sir, did you observe anything structural about the
7 facility that makes it unusually difficult to see
8 the bottom of the pool?

9 A Structurally, by that you mean?

10 Q Would you have any recommendations to change the
11 construction or structure of the facility to make
12 the pool bottom visible?

13 A My only recommendation, which I discussed with
14 Stuart, was to re-examine the lighting at the
15 facility. I see this quite commonly in new
16 facilities where lights are shone up to the roof
17 rather than down at the water, which leads to low
18 lighting levels. So I would, and as I did to him,
19 recommend that that be addressed.

20 But remember, I wasn't there to do an
21 inspection, I was there to simply observe the
22 facility and become familiar with it's layout. But
23 I felt that I should mention that.

24 Q I understand that, sir. And to be clear, when you
25 comment on the number of lifeguards required, you
26 weren't there doing an audit during a full, busy,
27 public swim either; correct?

1 A No, I was not.

2 Q You spoke briefly about the Olds Aquatic Centre
3 perhaps being interested in considering greater use
4 of the lifeguard tower or chair. Would you
5 recommend that on occasions when there's only one
6 lifeguard on deck? Or is that something you feel is
7 appropriate when there's a second lifeguard on deck?

8 A I think it all depends on the position of the chair
9 and the area or zones that they're responsible for.

10 Q Okay.

11 A It would vary.

12 Q So there may be times when it's the most advisable
13 place and there may be times when it's not?

14 A Correct.

15 MS. SAUNDERSON: Thank you, sir.

16

17 *The Court Questions the Witness

18

19 Q THE COURT: While we are talking about the
20 facility, you know there was evidence that the
21 viewing area, those people that were in there, could
22 not see portions of the water slide and the deep
23 end. And I think that was demonstrated somewhat
24 through these photos. I do not know if you had a
25 chance to look at them.

26 A I haven't seen the photos but I have been to the
27 facility.

1 Q Right. Did you go into the viewing area?

2 A Yes.

3 Q Have you got any recommendations on the viewing
4 area?

5 A Well, the viewing area is used primarily for lesson
6 programs where parents are sitting there watching
7 their children learn to swim. It's not a position
8 you would ever put someone who's supposed to be
9 supervising children in. We want them within arm's
10 reach to provide that supervision.

11 Ideally, you'd love it to go down the full
12 length of the pool so you can have a clear view at
13 all times of all areas. But for those young
14 children who fall into the area that require direct
15 supervision, you really want those people out on the
16 deck.

17 Q Just a theory that I am working under is, the more
18 eyes that are on the pool, not that they have direct
19 responsibility, but for instance grandpa was there

20 --

21 A Mm-hm.

22 Q And the better their view, then that may just
23 increase the opportunity to spot the problem.

24 A Oh, absolutely. More people watching, the better.

25 Q Right. I did not -- did you look at the multi-use
26 room?

27 A I think it was locked. I don't recall going in

1 there.

2 Q Okay. I'm just wondering if the viewing area and
3 the multi-use room were combined or there was some
4 access that a person might be able to see from the
5 multi-use room - more. It just seems from the
6 diagram, more of the deep end, where their children
7 might be.

8 A Mm-hm. Yes.

9 Q Okay. Now, in the recommendations, and I notice
10 this also in the manual, at least it was supplied by
11 the Olds Aquatic Centre, it recommends a ratio of
12 direct supervision to bather. And in the Olds
13 manual, if I'm not mistaken, it was 1:3 and in your
14 recommendations it's a maximum of four bathers to
15 one parent or guardian.

16 A Correct.

17 Q So there is a slight difference there. And then
18 included in the Olds manual and in yours, I think
19 you indicate that a direct supervision is someone
20 who can render immediate assistance or be within
21 arm's reach.

22 A That's correct.

23 Q Is it really practical that one parent or supervisor
24 could be in arm's reach of up to four people?

25 A Yes. It's certainly doable. The number one to four
26 is something we debated a lot.

27 Q How would that happen though. If I -- say, you

1 know, if I went with my kids and let's say I have
2 three and took them to the pool. I was very seldom
3 in arm's reach of all three of them at once.

4 A And in most cases that's what's happening.

5 Q Yes.

6 A People will come with two or three. Very
7 infrequently do they come with four.

8 Q Right. So that in itself would be very difficult
9 for any lifeguard or other person in responsibility
10 to enforce, would it not?

11 A It depends how you tag, let's say tag, those non-
12 swimmers.

13 Q Mm-hm.

14 A If it's readily identifiable that there are four
15 non-swimmers in there and they have red wrist bands.
16 Then it's not very difficult for a lifeguard to spot
17 a child that's swimming on their own or walking
18 around the pool on their own with a red wrist band.
19 That's the clue to get that child out of the water
20 and find the parent that's supposed to be watching
21 them.

22 Q All right. Okay. Now, this is only anecdotal from
23 my experience, but when I was taking my kids to the
24 pool, or I was a young swimmer, there were not life
25 jackets. And today I think life jackets are, you
26 know, more readily used.

27 A Mm-hm. Yes.

1 Q Does the use of life jackets -- how do you see that,
2 in your experience, in terms of younger people?

3 A Well, there's a couple of things. Number 1, once
4 they're in the pool and they're required, let's say,
5 to wear a life jacket, and they're one of the eight
6 that we suggest here that could wear a life jacket,
7 it should always stay on. Never come off.

8 It works quite well for camps or large groups
9 that are required to come in to the pool. It's a
10 way of dealing with those groups that do come into
11 the facility. Without restricting their access.
12 Typically when you bring in if 8:1 or and you have a
13 caregiver, a caregiver is very familiar with those
14 children and will set up rules so those eight
15 children will stay in a particular area. Especially
16 if they are non-swimmers. And are able to monitor
17 those children.

18 Q Yes. So, in other words, if a child comes, he is a
19 non-swimmer, he is going to use a life jacket. Then
20 a situation where you have a water slide and you
21 have a rule you can not slide on the water slide
22 with your life jacket on, then really, it should
23 change somewhat, the child should not go on the
24 water slide?

25 A Yes. The child should always have the life jacket
26 on.

27 Q Right.

1 A And remember, even under this category we still
2 require that those children be within arm's reach of
3 the person that's responsible for them. We don't
4 want them wandering all over the facility. They can
5 do that if they are good swimmers. And they pass
6 our swim test.

7 Q Yes. And the only way that you can see to insure
8 that is through this colour coded wrist band system?

9 A Oh, no. No. There's many other ways I suppose that
10 facilities could do this. They can get very
11 creative with, I suppose, I've heard of tattoos on
12 shoulder and painting their arms with markers. It
13 really is up to each community to decide how it is
14 we want to identify these children. And what we're
15 trying to do is really prevent this from happening.
16 We want to make sure that at the front door we're
17 dealing with this. That we get the parents more
18 responsible. We educate them before they even get
19 to the facility so that they understand the role
20 that they have to play when they come to the
21 facility.

22 Q Right. Now, The Life Saving Society, national
23 organization with branches in each province.

24 A Correct.

25 Q Right. And where did that -- how did it become The
26 Life Saving Society? Was that part of the Red Cross
27 at one time?

1 A We used to be called The Royal Life Saving Society

2 --

3 Q Oh, yes.

4 A -- of Canada. We got tired of the phone calls
5 asking for bank loans and so forth. We wanted to
6 clarify our position in Canada as Life Saving and so
7 we became The Life Saving Society.

8 Q Right. Okay. Now, does The Life Saving Society in
9 - and you may not know this - in Alberta, do they
10 liaise with any government agencies in terms of
11 looking at various safety standards?

12 A Quite frequently.

13 Q Yes. In Alberta do you know who that would be?

14 A At The Life Saving Society office?

15 Q No, at the -- on the government side?

16 A No. I know that certainly work on these documents
17 was done with various levels of government, but I
18 don't know who that would be.

19 Q Now, have you ever been in Alberta and presented
20 recommendations before?

21 A No, I have not.

22 Q Okay. Do you know of anybody in your organization
23 that has?

24 A I believe at a previous inquiry, Larry Patterson
25 presented or was present. I do not believe he
26 presented recommendations. It's been my practice in
27 Ontario to do this.

1 Q Now, the exhibit that you entered - madam clerk, do
2 you have it there - did you sign that?

3 A I was going to ask to sign it.

4 Q Yes, that would be great.

5 THE COURT CLERK: Sir, which --

6 THE COURT: That is the last exhibit.

7 Okay. Right. Thank you.

8 Q THE COURT: Now, in the appendix 1 you
9 refer to ratio of lifeguards to bathers as per
10 Regulation 565/90. Is that an Ontario regulation?

11 A Yes.

12 Q And do you have a copy of that?

13 A No, I do not. It's on our website. It's on a
14 CanLit website.

15 Q Okay. It is on which website?

16 A C-A-N-L-I-T, I think it is.

17 Q Okay.

18 A It's the one I use.

19 Q CanLit, C-A-N-L-I-T.

20 A Yes. Or eLaws, which ever one you prefer to use.

21 THE COURT: Well, that is very helpful.

22 Thank you --

23 A You're very welcome.

24 THE COURT: -- for coming all this way to,
25 you know, give us the insight of your many years of
26 experience and expertise. We really do appreciate
27 it.

1 A Thank you.

2 THE COURT: Have a safe trip back.

3 MS. NUGENT: Your Honour, I had just a
4 couple of followup questions.

5 THE COURT: Okay.

6 MS. NUGENT: If I may.

7 THE COURT: Go ahead. Sorry, you are not
8 going to go back just yet.

9

10 *Ms. Nugent Re-examines the Witness

11

12 Q MS. NUGENT: My friend asked you a
13 comment about research with respect to mats or how
14 they effect the view of the pool, but that certainly
15 is something that individually for a facility, you
16 could look at, and would be looked at in an audit
17 type situation?

18 A Yeah. We would examine that. We may not form any
19 recommendations other than that certain guidelines
20 be established.

21 Q And also I think my friend asked you in terms of
22 your comments with respect to the number of
23 lifeguards, and that you didn't do an audit of the
24 Olds Aquatic Centre, but I think that one of your
25 original comments was just in terms of looking at
26 the pool facility there wasn't a spot at the Olds
27 Aquatic Centre where one lifeguard could stand and

1 see -- sorry stand and scan all of the water areas
2 and be able to see the bottom of all the water
3 areas.

4 A If all of the amenities were open, that's true.

5 Q Okay. And finally, there was a comment or a
6 question about the outcomes of the lifeguard
7 analysis and I just wanted to be clear. The Life
8 Saving Society in that process that was involved
9 with the Olds Aquatic Centre, they wouldn't have any
10 input to the outcomes. That would all be from the
11 facility.

12 A Correct.

13 MS. NUGENT: Thank you.

14 THE COURT: Anything arising from those
15 questions?

16 MR. HALLIDAY: Sir, there's nothing arising
17 but there's two areas that I probably missed. One
18 area was about the public reliance on lifeguards.
19 The other area was --

20 THE COURT: That would be a good one. Go
21 ahead. You can ask some questions about that. I am
22 interested in that.

23 MR. HALLIDAY: And the second one would be
24 the effectiveness of signs --

25 THE COURT: Right.

26 MR. HALLIDAY: -- perhaps negative signs.

27 THE COURT: Go ahead.

1

2 *Mr. Halliday Re-examines the Witness

3

4 Q MR. HALLIDAY: Now, sir, you heard the Neaves
5 had, from their experience, they had a high level of
6 comfort with lifeguard coverage, in at least the --
7 in the rec centre they described in Calgary. Do you
8 find that there's over reliance on lifeguards and
9 what they can do?

10 A Yes.

11 Q Among the public?

12 A Yes.

13 Q Is there a way that that can be addressed so that
14 there's not a misconception?

15 A I think a lot of it deals with public education.
16 Making it certainly very clear what the lifeguard's
17 role is. Setting up clear admission standards so
18 that the role of providing supervision to high risk
19 groups is identified.

20 Q Yes. What about negative, frightening posters.
21 Something in that direction?

22 A Well, certainly they may serve some purpose with
23 certain groups but, you know, I've seen signs that
24 saying, No, No, No, No and it certainly turns people
25 off. I think you have to be cautious with your use
26 of signage.

27 Q Mm-hm.

- 1 A Key in on the important messages that you want to
2 deliver with signage. Even though there are
3 certainly some regulatory requirements.
- 4 Q What about a sign that said something like, Life
5 guards can't do it all. You have to take care of
6 each other. Watch your children. Watch your
7 buddies. Something like that?
- 8 A I think what the last couple of words you used are
9 the most important messages. Parents watch your
10 children.
- 11 Q Mm-hm.
- 12 A That's the positive message you want to deliver to
13 the public. And it's certainly a very clear message
14 that we instill in all our operators in Ontario.
- 15 Q Do you see signs to that affect or posters to that
16 effect?
- 17 A Yes.
- 18 Q And have you had any feedback on their
19 effectiveness?
- 20 A We've not done an analysis, no.
- 21 Q Thank you. Do you -- what would be your view of a
22 sign that said, drownings happen? Or just to bring
23 forward the idea that drownings can happen in pools?
- 24 A I'm not so sure that it would actually work. I
25 think that I'd rather error on the side of trying to
26 educate the public and promote proper behaviour, if
27 I'm going to tell them something. Let's give them

1 something positive to do.

2 MR. HALLIDAY: Right. Thank you, sir. Those
3 are my questions in that connection.

4

5 *Ms. Saunderson Re-examines the Witness

6

7 Q MS. SAUNDERSON: I have just one question
8 arising out of that, sir. We have some evidence in
9 this case that a young child appears to have
10 actually observed the drowning and may not have
11 appreciated what was happening. Do you have any
12 recommendations around public education or other
13 steps that could be taken to avoid that scenario in
14 the future?

15 A Certainly we try to educate the public about
16 drownings can happen very quickly. With young
17 children it's very difficult to inform them. We've
18 spent time trying to educate the parents and adults
19 regarding it, but I suppose any step, that might
20 inform and educate the general public about the
21 speed at which a drowning can occur and maybe what
22 it's going to look like, may help.

23 MS. SAUNDERSON: Thank you, sir.

24 THE COURT: Mm-hm. Thank you very much.

25 (WITNESS STANDS DOWN)

26 MS. NUGENT: Your Honour, that concludes
27 the witnesses that are to be called. I would, just

1 for your information, there was a public fatality
2 inquiry with respect to a drowning at the Talisman
3 Centre that was in October of last year and Mr.
4 Patterson did appear at that inquiry and I think a
5 report was issued by Judge Shriar early this year.

6 THE COURT: Mm.

7 MS. NUGENT: I understand Mr. Patterson has
8 since retired and, hence, why he's not here at this
9 inquiry.

10 I don't have anything further in terms of
11 submissions or witnesses so I would leave it to my
12 friends now.

13 THE COURT: And Judge Shriar's report
14 then, that was conveyed to the Minister. Was it
15 released to the public?

16 MS. NUGENT: It has been released. It's on
17 the Alberta Government website but certainly if you
18 want a copy I can provide you with a copy.

19 THE COURT: If you would, I would
20 appreciate that.

21 MS. NUGENT: I can do that.

22 THE COURT: We can see, you know, what
23 recommendations were made. Every case is different
24 but certainly I am --

25 MS. NUGENT: Certainly.

26 THE COURT: I am thinking there must be
27 overlap.

1 MS. NUGENT: I'll send a copy to your
2 office, Your Honour.

3 THE COURT: Thank you.

4 Okay. Now, Mr. Halliday.

5 MR. HALLIDAY: Sir.

6 THE COURT: Is there anything that you
7 would like to say in summation?

8 MR. HALLIDAY: Yes, sir. Just briefly.

9 In this case, we know, we have a pretty good
10 idea what happened.

11 THE COURT: Mm-hm.

12 MR. HALLIDAY: We know where Jordan was
13 found. We know that another lifeguard, were there
14 another lifeguard, would have been in primary
15 position to effect a prompt recognition of the
16 situation. Whether it be by way of talking with the
17 boy, Adam. Or seeing the incident themselves. We
18 know that in the assessment of Mr. Shane, that
19 lifeguard on the east side, could not see the bottom
20 adequately to provide for a safe environment in that
21 area in which Jordan apparently drowned.

22 We know that we have very, very remarkable
23 young people who dedicate themselves to the
24 lifeguarding work. And certainly Aime was one of
25 the serious victims of this occurrence.

26 We see, perhaps, a not an unfamiliar process,
27 where the responsibilities is pushed down, pushed

1 down, pushed down, until there is just someone who
2 has to do it and those are the lifeguards are the
3 last line of defence and they'll do it,
4 notwithstanding the cleaning pressures that are put
5 on them, the lack of proper or not having enough
6 people on deck.

7 They're young children. They, perhaps
8 unfortunately, believe that adults know best in
9 these type of circumstances. These young people and
10 the people at the pool came up with the right
11 answers. And my respectful submission, as shown in
12 17, the in service, they knew what had to be done.
13 If they'd only been asked. If they'd only been
14 listened to, we might not be here today.

15 The responsibility rests with the owner and
16 operator of the pool and the designated person.
17 It's clear that The Life Saving Society has no
18 statutory ability nor the ability to mandate their
19 processes. Their processes are facilitative in
20 many of their events.

21 In my respectful submission, the solution is
22 mandated or must be mandated. And the easiest, from
23 what we've heard today, in my submission, the
24 easiest, most effective step that can be taken by a
25 mandate would be to increase the number of
26 lifeguards. Perhaps just double it.

27 We see in many safety environments that 99, 90

1 percent of the time, it's not needed but it's paid
2 for. And when it's needed it's there. So, won't be
3 needed in all circumstances. May not be even needed
4 in most circumstances but when it's needed the cost
5 is too high to not have it there.

6 Those are my respectful submissions, sir.

7 THE COURT: Thank you.

8 Ms. Saunderson.

9 MS. SAUNDERSON: Just a few comments, sir.

10 There's no doubt that this circumstance is one
11 that's disturbing to everyone to hear about it. And
12 to me, perhaps most troubling, is the notion that
13 there were patrons in the pool who saw something or
14 were notified of some problem and didn't immediately
15 notify the lifeguard, but took steps themselves or
16 delayed in doing that.

17 And so I would suggest that the primary
18 consideration in terms of prevention is public
19 education. To make sure the public understands, as
20 Mr. Shane said many of them don't properly
21 understand what a drowning might look like. They
22 don't appreciate how to respond. And I think public
23 education might well have gone a long way to have
24 had somebody cry out for help for Jordan sooner than
25 it happened in this case, unfortunately and
26 tragically.

27 Also what stands out is a comment that Heather

1 Klienloog made, and I think is emphasised by Mr.
2 Shane's comments, that some consistency of
3 guidelines and practices, if not nationally, at
4 least provincially, so that there is consistent
5 practices might be of great assistance.

6 We've hear the guards talk about getting
7 unhappy patrons because they impose guidelines that
8 other pools don't. If there was greater consistency
9 perhaps the public would accept the guidelines,
10 honour the guidelines and the guidelines would be
11 less difficult to enforce for the individuals who
12 take on that responsibility at public aquatic
13 facilities.

14 So that's consistent form of signage,
15 consistent rules and guidelines, and consistent
16 enforcement mechanisms might also be of assistance
17 for future prevention.

18 THE COURT: Right.

19 Madam clerk, could I just see those two
20 exhibits that we filed earlier, that Mr. Halliday
21 gave us, the Regulation.

22 Did you get copies? Yes?

23 MR. HALLIDAY: I didn't ask for one, sir,
24 thank you.

25 THE COURT: Did you? Okay.

26 MS. NUGENT: I have copies, thank you.

27 THE COURT: You have copies.

1 Thank you very much for your comments. And I
2 have not had an opportunity yet to look at the
3 Alberta regulation, promulgated under the *Public*
4 *Health Act*. And I might say this, that I do not
5 really know how swimming pools are governed or
6 regulated in the Province of Alberta. I know some
7 of it from Mr. Ray, who was quite helpful in telling
8 us that they really establish many of their own
9 guidelines. And then I see some of the useful
10 information that Mr. Halliday gave to the Court
11 about the regulation.

12 I might add I have never, ever looked at this
13 regulation or seen it and this is the first time it
14 has sort of come across my radar screen. So, you
15 know, and I am thinking in terms of when I make my
16 report with the recommendations, who does it go -- I
17 know who it goes to. But what happens to it after
18 that? And am I really duplicating in terms of any
19 recommendations perhaps, you know, procedures that
20 are all ready in the legislation or that have
21 somebody else in the government is already looking
22 at. I do not really know that.

23 And so, and I kind of feel I am out of my depth
24 here, in terms of how pools are really regulated in
25 the Province of Alberta. I do not know. And maybe
26 you do because, you know, you have looked into it
27 and maybe you have done these before.

1 So what I am thinking is this, that I am going
2 to review these exhibits and I am going to adjourn
3 the inquiry sine die. And it may be that, after I
4 look at this regulation and especially having
5 considered Mr. Shane's comments and his report and
6 the efforts undertaken by his Society to have some
7 sort of a national standard, it may be that I want
8 some further evidence from somebody in public health
9 or who ever administers pools and to find out what
10 it is they are doing. And it may all be here, I do
11 not know. I have not read -- I have not read
12 through this. And perhaps you have or you can set
13 me straight and tell me if that might be worthwhile
14 or if it might not be worthwhile. What do you
15 think?

16 MS. NUGENT: What I do know is that there's
17 very little legislation with respect to the
18 regulation of pools.

19 THE COURT: Mm-hm.

20 MS. NUGENT: And so I don't know if there's
21 currently anything else going on in government in
22 terms of looking at pools and how they're regulated
23 and what else might be done. I certainly can
24 investigate that. And find out if there is any work
25 in that area, but as far as I know the reg that is
26 there, the 293/206, and the pool standards that are
27 available, those are the only things I know about

1 that actually govern the regulation of pools.

2 THE COURT: Mm-hm.

3 MS. NUGENT: Other than maybe some building
4 codes and how the pools are built and that sort of
5 thing. So.

6 I'm certainly happy to look into that and
7 investigate with which ever government ministry to
8 see if there's any -- anything else going on
9 currently in that regard.

10 THE COURT: Well, let's say that I make
11 these regulations. Where do they go? Do they fall
12 into a black hole somewhere? Or will they have some
13 -- will somebody really take them and consider them?
14 Whether or not they're implemented or there is even
15 any way of implementing them. Those are sort of
16 things that I might consider to be important.

17 MS. NUGENT: Right. And in terms of the
18 process, I guess what I can tell you, is that I know
19 that from a fatality review, the recommendations
20 certainly come to all the parties. Whatever -- if
21 there is some recommendations that affect the
22 government or ministries, then I know those go out
23 to the ministries. But in terms of how they're
24 handled or what is done with them, I can't speak to
25 that.

26 THE COURT: Yes. Because my thinking is
27 this. Just -- I mean Mr. Halliday brings up a good

1 point in the sense -- you know, work place safety.
2 We have a regime and a structure in the province
3 that if there is an accident in the work place, it
4 is investigated, there is action taken.
5 Responsibility is, you know, apportioned by statute
6 and there is sanctions and all sorts of other
7 things.

8 I not saying that this is analogous, but let's
9 face it, many of us are parents. We have -- we
10 either have small children or have had small
11 children and public aquatic facilities are one of
12 the greatest things that we have in the whole
13 province and, you know, we, many of us, have the
14 ability to use them. And a death of a child in one
15 those facilities is so tragic, and just to me,
16 requires a level of scrutiny that there is a lot of
17 people in the province, I think, that are -- that
18 demand it.

19 Unknowingly, because just as Mrs. Neave said,
20 you know, we take our children to these places and
21 we believe that they are safe and that all is going
22 to be well. Now that may be our naivete. But if
23 there is anything we can do to help, education or
24 anything else --

25 UNIDENTIFIED SPEAKER: Can I say --

26 THE COURT: -- then this is maybe a good
27 opportunity to just stop and take some time as

1 opposed to, you know, just whipping through and
2 filing a report, that quite frankly, may not have
3 any impact.

4 So that is -- I am prepared to go further and
5 look at it and if you can do a little bit of
6 research in that area. Then it may be that we
7 reconvene at a later date and have someone come
8 back, if there is such a person, and tell us what is
9 happening in the province now as far as regulation
10 of pools. And maybe there is not anything, maybe
11 that is the answer. I do not know.

12 MS. NUGENT: Certainly, Your Honour.

13 THE COURT: But I do not think I should
14 have to go and research that.

15 MS. NUGENT: Certainly, Your Honour.

16 MR. HALLIDAY: If I may, sir, my perception
17 of the regulatory scheme is the same as my friend's.
18 And what -- how I view the Pool Standards of 2006 is
19 that, I believe it's either section 16 or 20, that
20 certain documentation is required. They are to go
21 through certain processes but that's about it.

22 And the second thing is that Mrs. Neave would
23 like the opportunity to address you, once again,
24 when convenient, sir.

25 THE COURT: Okay. Then if you have
26 information or you could do some research, then
27 communicate that to all of us and we will decide if

1 we then conclude the inquiry or if we need to have a
2 further session and have any other witnesses appear.

3 MS. NUGENT: I will do that.

4 THE COURT: Are you satisfied that we have
5 heard from as many people as we need to? Is there
6 anybody else that, you know, you have some concern
7 that we need to hear from, for me to do my job?

8 MS. SAUNDERSON: Nobody that I've identified,
9 sir.

10 THE COURT: Right.

11 MR. HALLIDAY: Sir, my -- perhaps someone
12 from the Alberta, if available, The Alberta Life
13 Saving Society chapter and also the designated
14 person at the time. The designated person at the --
15 under the regulations at the Olds pool at the time.
16 We didn't hear from that person. We heard from her
17 boss, I gather.

18 THE COURT: Right.

19 MR. HALLIDAY: But might be something to
20 consider, sir, perhaps.

21 THE COURT: I will take that under
22 advisement.

23 And then also the request from the press to
24 have the recommendations of Mr. Shane released. I
25 have given some thought to that and I am not
26 prepared to release those recommendations. And the
27 reason is this, that my function is to make a report

1 from this inquiry to the Minister and it is up to
2 the Minister then to release that report. So, I do
3 not think I can start to piecemeal out portions of
4 what has been given in evidence.

5 You are here. You have heard these things, so
6 you can report on them. But the actual report
7 itself, I do not think I have the authority to
8 release that or anything else, other than what is
9 allowed under the statute to the interested parties.

10 Okay. That deals with that. Now, Mrs. Neave,
11 did you have anything else to add that might be
12 helpful?

13 MRS. NEAVE: Just to remind -- in my time
14 of trying to get public awareness of trying to make
15 changes to extra lifeguards, I had over 6,000
16 signatures of people and they do need -- they have
17 all addressed to me it is a very necessary need.

18 I do not know who's in control. I've been
19 turned down and pushed around, through and writing
20 letters and going to Richard Marz, our MLA, but I
21 just wanted to make an address that over going to
22 the Stampede and every other places that I've been
23 and lobbying myself, there has been a lot of people
24 that have said that there is a very necessary need
25 to improve public safety and lifeguards into the
26 public pools.

27 THE COURT: Mm-hm.

1 MRS. NEAVE: I just wanted to address that.

2 THE COURT: Okay. Thank you for that
3 information. That is helpful.

4 Now, the other thing, madam clerk, I am going
5 to ask that you order a transcript of the evidence
6 and testimony of Mr. Michael Shane and including the
7 summations of counsel. So everything starting with
8 Mr. Shane's testimony. And that that transcript
9 then will be ordered by the Court and made available
10 to counsel, all counsel, and the Court.

11 And then what would be sort of a time line for
12 when you might respond, Ms. Nugent?

13 MS. NUGENT: Mm --

14 THE COURT: I know you have a busy
15 schedule. Everybody does and I am sympathetic with
16 you, so.

17 MS. NUGENT: Certainly, I think that I
18 could have something for you by the end of March, if
19 that's not too long.

20 THE COURT: That would be satisfactory to
21 me.

22 MS. NUGENT: Okay.

23 THE COURT: And then we will determine --
24 I do not know that we need to reconvene. If I
25 suggest that we might reconvene, then I will notify
26 all parties. We will find a date that we can do
27 that and, if not then, I will by letter conclude the

1 inquiry.

2 Is that acceptable to everyone?

3 MS. NUGENT: That's fine with me.

4 MS. SAUNDERSON: Yes, sir.

5 MR. HALLIDAY: Yes, sir. Thank you.

6 THE COURT: Now, Mr. and Mrs. Neave, do
7 you feel that you have found out a lot more about
8 what happened on May 20th to your son?

9 MR. NEAVE: Yes.

10 MRS. NEAVE: Yes.

11 THE COURT: Yes. Okay. And is there
12 anything that you think we have left out?

13 MR. NEAVE: No. This is going pretty much
14 in the direction we'd hoped for.

15 MRS. NEAVE: Yes.

16 THE COURT: Yes. Okay.

17 Well, thank you. I know it has been very, very
18 painful for you to be here and we appreciate it.
19 And we appreciate the fact that you came with your
20 lawyer, who was well prepared, and that was most
21 helpful. That gives us a better opportunity to, you
22 know, hear both sides and all different aspects of
23 this inquiry and it has been most helpful to me.

24 So thank you and I want to tell you I really
25 appreciate it. And I know it was difficult having
26 your son, Daniel, start the whole ball rolling but I
27 was most impressed with, you know, his composure and

1 the type of boy you have raised there.

2 MR. NEAVE: Thank you.

3 THE COURT: You are welcome.

4 MRS. NEAVE: I just want to address that.

5 I don't want this to be pushed under. My son was
6 worth more to me than anything. He was -- I was
7 looking forward to having grandchildren from him and
8 seeing his outcome in the future. And I do hope
9 that we can prevent and make changes in this pool
10 system and make it better for everybody.

11 THE COURT: Thank you. I think we all
12 share that. We are all parents here. Although we
13 have different roles, most of us are parents. We
14 either have small children or we have had.

15 MRS. NEAVE: I just don't to feel --

16 THE COURT: So we have the same sense of
17 importance of this process that you do.

18 Thank you very much.

19 MRS. NEAVE: Thank you.

20 THE COURT: We will adjourn for the day
21 then.

22 THE COURT CLERK: Order in court. All rise.

23 Court is now adjourned for the day.

24 -----

25 EXCERPT CONCLUDED

26 -----

27

1 Certificate of Record

2 I, Kristi Adams, certify that this recording is a
3 record of the oral evidence of proceedings in the
4 Provincial Court, held in courtroom 001, at
5 Didsbury, Alberta, on the 29th day of February,
6 2008, and I was in charge of sound-recording
7 machine.

8
9 *Certificate of Transcript

10 I, the undersigned, certify that the foregoing pages
11 are a true and faithful transcript of the contents
12 of the record, including the certificate of record
13 given orally by the court official, recorded by
14 means of a sound-recording machine.

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19 Lori Rosdal, Ms.

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