

REPORT TO THE ATTORNEY GENERAL
PUBLIC INQUIRY

THE FATALITY INQUIRIES ACT

CANADA
PROVINCE OF ALBERTA

WHEREAS a Public Inquiry was held at the Court House
in the Town of Claresholm
(City, Town, etc.) (Name of City, Town, etc.)
on the 17th day of November, 19 93 (and by adjournment
on the 18th day of November, 19 93), before
The Honourable Judge R.A. Jacobson, a Provincial Court Judge.

A jury was was not summoned and an Inquiry was held into the death of
Kurt Triebwasser 25
(Name in Full) (Age)

of Delvee Ranch west of Claresholm, Alberta and the following findings were made:
(Residence)

Date and Time of Death March 28, 1993 probably between 6:00 and 7:00 p.m.

Place A dugout on the land of the Delvee Ranch, near Claresholm, Alberta

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, which is supported by aspiration of soil, and suffusions of red
blood cells into the petrous bones

Manner of Death ("manner of death" means the mode or method of death whether natural, homicidal, suicidal, accidental or undeterminable — The Fatality Inquiries Act, Section 1(g))

Accidental - the deceased apparently fell through the ice covering
the water in the dugout and drowned

REPORT TO AG 338 - PAGE 2

CIRCUMSTANCES UNDER WHICH DEATH OCCURRED

See attached

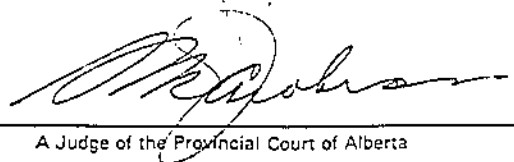
No. of additional pages attached 15

RECOMMENDATIONS FOR THE PREVENTION OF SIMILAR DEATHS

See attached

No. of additional pages attached 2

DATED this 7th day of December, 19 93


A Judge of the Provincial Court of Alberta

Fatality Inquiry - Kurt Triebwasser
Circumstances Under Which Death Occurred:

Introduction

Preparation of this report has been delayed, awaiting receipt of written submissions from counsel for Delvee Ranch. That submission is also being forwarded to the Attorney General.

There was no "eyewitness" testimony as to the drowning. An important witness could not attend. The evidence was sometimes confusing and often contradictory. However, all of the evidence creates a sense that chaos was awaiting disaster.

Background

The Delvee Ranch is on a quarter section of land west of Claresholm, Alberta. It was a social care facility for persons requiring special care; operated by a corporation, Delvee Re-Education Inc., of which Delores "Lori" Morgan, a registered psychologist since 1976, is the principal officer and director. She was assisted in management by her husband, Andy Morgan, and her son-in-law, Bryan Benn. Since 1981, the principal clients have been autistic adults with a broad range of severe behaviours. Each resident was to have his or her own special care and treatment program to satisfy the needs of that person. These people, or "residents", were referred to by the staff as "clients".

Care and accommodation was provided for approximately 10 to 12 clients. In December of 1992, officials from Alberta Family and Social Services were concerned about the supervision being provided. Subsequently, as of January 31st, 1993, they terminated the licence under the Social Care Facilities Licencing Act, S.A. Chap. S-14. However, the

facility was allowed to carry on business on a daily basis until February 8th, 1993 after which time it could lawfully carry on operations without a licence, provided that there were not more than three clients. Section 4 of the Act states:

No person shall operate a social care facility providing accommodation or care for four or more persons unless he holds a subsisting licence issued by the Director under this Act.

Although there are day care regulations, there are no relevant regulations under the Act governing the operation of any facilities such as operated by Delvee.

On April 5th, 1993, the Department issued a "stop order" to Delvee to permanently cease operations, giving as one of the reasons:

3. Residents' health and safety are at risk due to lack of proper and adequate supervision by facility staff.

Witnesses who were involved in the Delvee operation confirmed that there was lack of proper and adequate supervision by staff and management at the facility prior to and on Sunday, March 28th, 1993. Delvee was also suffering from lack of funding.

There are no statutory regulations covering staff/client ratios. Clients are often extremely difficult to deal with and may have to be treated with drugs. Delvee had three clients in Stavely, three in Granum, and three at the ranch. However, on the weekend in question, the three clients usually resident at Granum were staying at the ranch.

Benn says that he was the only remaining manager and that he

reported to Lori Morgan. Prior to March 28th, he had worked 22 days on a 24 hour day basis at Stavely where he was responsible for four clients. He describes himself as the contract manager responsible for administration, preparation of schedules, and supervision. He says that there were no employees. Staff workers are referred to as "contractors", who work independently by the day or the month. Morgan says that they were volunteers but that when she got the money, she would pay them.

The staff workers were essentially responsible for arranging their own shifts, the duration of those shifts and obtaining their own relief. There was no clear, organized work schedule, no effective chain of direction and responsibility, and no system of checks, controls, and reporting protocols being carried out.

There is a main residence and also a bunk house for the clients situate in the southwest corner of the property. The Morgans reside in their own home just across the driveway from the residence. There are other various farm buildings and enclosures with a pond nearby in a ravine. Further, towards the northeast corner, there is a knoll and close by it, a dugout , approximately 15 x 25 yards, with a very silty bottom, containing water to a depth of about 8 or 9 feet. At the material times, it was partially covered by ice. It was dug in 1989 or 1990 to provide water for animals. It was not stocked with fish.

The deceased, Kurt Triebwasser (DOB July 1st, 1968) was a 24 year old autistic adult who had lived at the Delvee Ranch for nine years. There is no daily record for his activities, behaviours and treatment on March 28th, 1993. The autopsy report states that he was 128 centimeters (approximately 6'0") tall, and weighed 71 kilograms (approximately 157 pounds). He was physically fit. Although he spent much of his time

outdoors and ate most of his meals alone, Kurt's activities and whereabouts were to be monitored by the staff approximately every 15 minutes.

As of February 28th, 1993, a number of inappropriate behaviours for Kurt had been identified, including physical acts of interference with others; and self-injurious action, such as biting himself, slapping himself, tearing his own clothes and most significant, head banging which had been "reduced to a few dozen times per day with much less force than previously". It was specifically noted that Kurt was "going off property". For outside work he had:

improved from sort of staying on the fringes of a group to at times being right in the middle of an activity. He has been involved with feeding horses, cows and chickens...he has helped pull weeds in the garden, carried water to water the trees and shrubs. He has helped wash the bus.

Morgan states that the rules for Kurt's supervision were that he was to be kept around the buildings where he could be seen. There was to be a head count of all clients every fifteen minutes. However, since Kurt was "learning to use his space" he didn't have to be viewed at all times. It was his home. He could wander. She felt that the safety and risk factor was no different than in an ordinary family.

Morgan feels that Kurt had the ability of an eight year old for a sense of direction and to be outdoors. He had fished at a dugout at Granum during the summer but not at the ranch, nor had he ice fished.

Benn had never seen Kurt near the dugout nor the pond. Although he knew Kurt wandered on the ranch, Benn was not aware that Kurt had ever gone missing before. He had seen Kurt use binder twine for kite

string.

Until January 20th, 1993, Ron Ravelle had been employed at Delvee for about 5 years, during which time he got to know Kurt quite well. Twice he found Kurt on the road about one-quarter mile from the ranch. Kurt frequented all areas of the ranch. Ravelle found Kurt at the dugout numerous times. Kurt liked to get his feet wet, and in so doing, got his shoes and pants wet. In the winter when Ravelle chopped ice at the pond to provide a water hole for cattle, Kurt was present and would sometimes jump on the ice to crack it. Ravelle never saw Kurt do this at the dugout.

Daryl Sutcliffe had worked for Delvee during the winter months from November 1st, 1989 until February, 1993. He was familiar with Kurt. Sutcliffe would try to check on Kurt every 15 minutes to one-half hour, but sometimes it could be one hour if Sutcliffe was having problems inside, or at mealtimes. Other times he forgot about Kurt. About two years ago, during the spring time, Kurt had returned wet to the waistline, and laughing about how he had fallen through the ice on the dugout. Sutcliffe spoke to Kurt about the danger of the ice on the pond. Although he had seen Kurt at the dugout, he never saw Kurt on the ice there.

Bill McDougall completed Grade 7 and has had no special training for care of disabled. He started work with Delvee on June 5th, 1992 as a "line contractor". His basic training consisted of working that day with a supervisor. Later a manual was given to him. He also got advice from co-workers.

In McDougall's experience, Kurt went to the dugout many times, and on occasion he "had got Kurt from the dugout". He had discussed the dugout with Kurt and told Kurt to stay away. In the summer, Kurt liked to

dig tunnels in the banks of the dugout. During the nine days prior to Saturday, March 27th, Kurt had been to the dugout "once or twice". McDougall states that he repeatedly (2 or 3 times each day) asked Kurt not to go out to the dugout because the ice was unsafe. The previous Tuesday at supper time, Kurt told McDougall that he had been to the dugout and McDougall assumed that Kurt meant that same afternoon.

There was a social system for clients to visit back and forth between the Delvee facilities. On the preceding Wednesday or Thursday, three clients were brought from Granum to stay at the ranch. One of them had problems and needed to be closer to Morgan. Morgan says that the staff ratio was to be one staff member for two clients. Although two could care for six clients, she wanted three. Morgan emphasized that there were three competent people to be on duty at the ranch at all times during the weekend:

1. Joan Koeppel
2. Jim Glover
3. John Hawkes

and that a checklist was to be completed for each client on a daily basis.

Koeppel suffers from multiple sclerosis. She was too ill to travel from Saskatchewan to attend the inquiry. Her statement (Exhibit #14), states that she had been at the ranch since February 6th "helping out in a volunteer capacity".

Morgan describes Koeppel as a volunteer, who had resided at the ranch for a few months, and whose main focus was on her own child, "but in fact supervised the house." The evidence of other witnesses does not support that final conclusion.

Although Koeppel prepared some meals, Glover considered her to be ill, under stress, and present at the facility for the mutual benefit of herself and her son. However, she did assist him. Benn has no personal knowledge of Koeppel's skills, but he had heard that she was subject to emotional outbursts of anger.

On January 14th, 1993, Glover (who also operates an appliance repair business in Claresholm) started as a maintenance man to do electrical and mechanical work at four facilities operated by Delvee: the ranch, Standard, Granum and Stavely. He was to interact with some clients by having them work with him. He had no formal training nor experience in the treatment of disabled adults. He was required to read a training manual. Morgan says that Glover had an outstanding rapport with the clients.

On Monday, March 22nd, 1993, in order to protect this job, and "because someone needed to be there", Glover's responsibilities were extended to "basically keep an eye" on the clients by caring for them, preparing meals and feeding them and the animals. His first such shift started Monday at 8:00 a.m. and ended Thursday, March 25th at 8:00 a.m. He had heard of "folders and plans" for each client, but he had not seen such records.

Saturday, March 27th, 1993

At 8:00 a.m., Saturday, March 27th, Glover started his second shift which was to last until Monday morning. Although "at least two other people were to be there, he was not sure if anyone was to be on shift with him to care for the six clients." He was not aware of any posted shift supervisors or workers. Glover knew he was to phone the Morgans if there were any problems.

Between 10:00 a.m. and 1:00 a.m. on Saturday, March 27th, 1993, McDougall was told by Koeppel and Glover to take time off. He had just finished 9 straight days working 18 to 20 hours per day. Whenever the clients got to bed, he would "sneak a few hours sleep". He was tired and burned out. McDougall says Hawkes was to relieve him until 8:00 a.m. on Monday. The other staff thought McDougall was to return at 8:00 a.m. Sunday.

Hawkes, who is also an independent drywall contractor, started work January 15th, 1993 in maintenance, doing general repairs and drywall. He had some outside drywall contracts to work on that weekend. It is not clear when he started his shift on Saturday, March 27th. McDougall did not return Sunday morning so Hawkes remained to assist Glover. During that time there were six clients and he wasn't familiar with any of them.

Glover knew Kurt as a loner who liked to wander the fields and didn't like to eat with others. Glover believes he was told to check Kurt "every few minutes".

On Saturday night, because of intermittent problems throughout the night with another client, Glover got only about two or three hours sleep.

Sunday, March 28th, 1993

Kurt got up about 6:00 or 6:30 a.m. After eating and getting dressed, Kurt played catch with Glover using a ball made from knitting yarn. At about 7:30 or 8:00 a.m., Glover advised Andy Morgan about the problems during the sleepless night. Although he felt very tired, Glover never specifically raised the matter with anyone and continued to work on his own. Starting about 11:00 a.m., Glover prepared lunch for the clients and fed Kurt about noon.

Between 12:30 and 1:15 p.m. the Morgans left with their twin boys for a concert in Edmonton. About 4:30 or 5:00 p.m., Glover started to prepare supper and subsequently started feeding between 5:15 and 5:40 p.m. About 5:00 p.m., Benn learned from Glover that Glover was alone and was trying to get relief. Benn suggested several names for Glover to call. Glover was not successful in getting any relief. Benn did not try to contact anyone to provide assistance.

Glover estimates the distance from the house to the dugout to be about a 5 minute walk. Glover had been at the dugout earlier in the day but at that time he didn't see any holes in the ice. He didn't know if Kurt had been at the dugout before. He noticed that Kurt tended to amble, that he was not "in too much of a hurry" however Kurt could move quickly. Glover estimates that it could take Kurt from 10 minutes to one hour to get to the dugout from the residence.

Glover never noticed Kurt playing with twine although twine could be found at various places on the ranch. However, Kurt often played with pails with twine attached to the handles. (see Exhibit #15) McDougall says one pail had about 15 feet of twine tied to it.

At about one o'clock Sunday afternoon, Hawkes found Kurt in the shop looking for a "magic carpet" in order to go sledding. He told Kurt to slide near the buildings. About one-half hour later, Hawkes saw Kurt sliding on the knoll close to the dugout. Hawkes called Kurt back and when Hawkes left the ranch at about 3:30 p.m. to look for McDougall, Kurt was playing in the yard.

On Sunday evening, while Glover prepared dinner, and later when all but Kurt were eating, Kurt remained outside. Glover says Kurt looked

in at 6:25 p.m. when two clients were still eating. About 5 or 10 minutes after dinner, Koeppel and her son went for a walk. Glover thinks they left at about 6:30 p.m. at about the same time that he called for Kurt to come in. He asked them to call Kurt in for dinner. About 10 or 15 minutes later Koeppel told Glover she hadn't seen Kurt. It was starting to get dark.

Glover drove in the ranch 4x4 onto the road, and then back on the property and across the field towards the knoll. Before he got there he ran out of gas. Then he ran to the knoll from where he could see virtually all of the ranch property. There was no response to his calls for Kurt. Glover returned on foot and searched the outbuildings with the assistance of Steve Liele (another client). When Steve asked Glover if he had checked the dugout, Glover requested him to do so. At about 7:00 p.m. Glover called Benn to notify him of Kurt's disappearance. Benn told Glover to remain at the residence and to telephone the police.

At 7:10 or 7:15 p.m. Glover learned from Steve that there was a hole in the ice of the dugout. He relayed this information by mobile phone to Benn who was already on route to the ranch with some of the Stavely clients. On the way, Benn stopped to search at Willow Creek Provincial Park.

After arriving at the ranch, Benn followed tracks to the dugout where he searched with the aid of a flashlight. He found a large hole with a set of tracks halfway out to it and back. He also found three or four small circular holes, 10 to 12 inches in diameter. Benn followed the tracks back towards the corral. He says that they were characteristic of Kurt's manner of walking and that the tread patterns were identical with Kurt's boots.

In accordance with Benn's instructions, Glover says he called the

police twice, at about 7:00 and again at 8:00 p.m. The Claresholm R.C.M.P. detachment was notified by the telecommunications centre that Kurt was missing at about 8:30 p.m. The police arrived at 9:40 p.m.

Earlier, that Sunday afternoon, McDougall met Hawkes in the bar at the Claresholm Motor Inn at about 4:15 p.m. McDougall had had too much to drink and was not capable of going back to work. Hawkes left for a while, returned, and at about 6:30 p.m. he got a phone call from Glover to get back because Kurt was missing. According to McDougall's recollection, it was between 6:00 and 6:30 p.m. that Hawkes received the phone call from Glover.

The two of them returned to the ranch about 7:00 p.m. No one said anything to them about the dugout. They started their search at the buildings and eventually got to the dugout. Hawkes examined it. He found an open hole in the ice with two sets of tracks leading on and one off. All tracks appeared to be made by Kurt. He also noticed certain other circular holes in the ice. Later, Glover observed these holes at 1:30 a.m. during a late night search.

Benn believes that McDougall and Hawkes arrived between 7:30 and 8:30 p.m. while he was at the dugout and that the police arrived at about 10:00 p.m. with a service dog. When Lori Morgan telephoned from Edmonton at about 1:00 a.m., Benn gave her a full report on the situation. She and her husband returned to the ranch arriving at about 6:00 a.m.

The Federal Meteorological Services of Lethbridge advises that sunset on March 28th, 1993 was 7:00 p.m. MST. The police indicate mild temperatures that evening of about 1 C, with a warm wind at about 10:00 p.m.; and a temperature of 2 C the next morning at about 11:35 a.m. The

tracks had started to melt the previous night. There hadn't been a recent snowfall so the snow was old and spotty.

Staff Sergeant Young, who is also a fisherman, identified 5 to 6 circular ice auger holes in the ice. No one knows how the circular holes got there. The Morgans have an ice auger which Andy Morgan used in January 1993 at a dugout near Granum for ice fishing. After the drowning, Morgan says her husband found the auger still locked up at the ranch.

Monday, March 29th, 1993

Divers were called in on Monday, March 29th to search the dugout. The ice broke as the divers entered the water, and again as they pulled Kurt's body from the dugout. Later, Kurt's rubber boots were retrieved from the bottom. At the time Kurt's body was recovered, the jacket zipper was popped open, and there was orange twine looped around his neck, with part under the zipper, with another part held in his hand, and the rest in a tangled mass at his front thigh. There were no knots in the twine, nor were there any ligature marks on Kurt's body.

Allegation of Foul Play

Prior to the body being recovered, Morgan alleged the possibility of foul play. Constable Critchley of the R.C.M.P. was specifically assigned to investigate the issue. There was no evidence at the scene, nor on Kurt's body. He concluded that there were no physical signs of foul play. The medical evidence affirms that conclusion.

The following circumstances have been suggested as a basis for foul play:

- a. Twine looped around the neck and partially under the popped jacket zipper:

There were no ligature marks on the neck, or knots in the twine to indicate resistance. Such twine was to be found throughout the property and Kurt even used a similar twine for his water pail. Twine of that kind had been used on various occasions to tie Kurt's jacket together after he tore his clothes, and to keep his mitts on. Ravelle had seen Kurt with twine wrapped around his neck.

- b. Two sets of footprints leading onto the hole in the ice and one returning:

Hawkes had seen Kurt at the dugout earlier Sunday afternoon. He examined the tracks which appeared to him to have been made by Kurt. Benn felt that the track sets were made by Kurt. Corporal Robertson felt they didn't compare. By evening the scene had been "contaminated" by searchers. One of the first searchers was Steve. We do not know where Steve went or how close he went to the hole. No satisfactory conclusion can be drawn from the footprints.

- c. The 4 to 6 circular holes in the ice which Staff Sergeant Young described as ice auger holes:

There is no explanation concerning these holes. There were no fish in the dugout. There is no evidence that anyone used Andy Morgan's ice auger, nor why an ice auger would have been used.

- d. Footprints along the east fence line:

There is no evidence when these prints were made. They are also consistent with searchers attempts to find Kurt.

- e. Kurt's apparent friendliness, or trust which would allow someone to lead or to lure him onto the ice:

There is no evidence to indicate anyone else was present to carry out such an act or to assist him to go onto the ice.

- f. The damaged zipper on the jacket:

Kurt was hard on his clothes, and often tore them. However, Morgan says his jacket was not torn when she left for Edmonton. No one else has described the condition of his clothes on Sunday afternoon. Perhaps the zipper popped after Kurt was in the water. There is no definitive explanation for the popped zipper.

- g. Kurt missed dinner:

Generally it is reasonable to conclude that Kurt would have wanted to eat supper. However, there were indications that Kurt did not always want to eat. If he was ignored, he would feel rejected and go away.

- h. Kurt's patterns of movement, and the time required to get to the dugout:

Morgan says it would be unusual for Kurt to go to the dugout, but if he did, then it would take a very long time. The evidence of the staff clearly indicates that Kurt was often at the dugout and that he was there that afternoon without Glover's knowledge. Kurt was capable of moving quickly.

- i. Motive:

Morgan stated that neighbours and others disliked her

clients being there. She said:

I know people who would try to discredit me by trying to hurt someone I cared for very much.

There is no evidence that anyone would cause Kurt harm.

Only speculation or conjecture support the allegation of foul play. The use of speculation and conjecture may achieve the same results as logic and intuition, but either approach, without more, is not proof. The facts must be disclosed in the evidence and must establish the necessary proof. The probability of accidental drowning is the only conclusion that can be drawn from all of the evidence heard at this inquiry.

CONCLUSION

The facts disclosed by the evidence establish that on Sunday, March 28th, 1993, Delvee Re-Education Inc. was conducting an unlicensed commercial operation providing accommodation and care for six of its clients at its facility, Delvee Ranch, near Claresholm, Alberta. At the material times, only one worker, sometimes assisted by a parent of one of the clients, was responsible for all six residents. The worker had been on duty for over 30 hours, with only a few hours of sleep. He could not provide the required vigilance. Notwithstanding the lack of proper care and supervision, it was still possible for the deceased, Kurt Triebwasser, acting on his own, to accidentally drown in the dugout.

Fatality Inquiry - Kurt Triebwasser
Recommendations for the Prevention of Similar Deaths:

1. The Department of Social Services should conduct a series of meetings involving all concerned with the care of mentally incapacitated persons resident in commercial operations, to ensure that there are adequate regulations and guidelines for their proper supervision and care. This consultation should be with the broadest group possible, including experts, government officials, administrators, commercial operators, care givers (paid and volunteer), police, firefighters, hospital personnel, educators, parents, families and friends of such disabled. Where appropriate, the disabled themselves should have input. Topics to be discussed must include:

- a. safety assessments, the various degrees of danger and how to avoid them or how to minimize risk
- b. staff/resident ratios for all numbers of residents
- c. qualifications and training of both ordinary and supervisory staff. It may be that some routine workers need only a minimum of training provided that they can establish a proper rapport with those under their care.
- d. proper working conditions, including duration of shifts, shift scheduling, rest periods, days off, and maximum overtime limits
- e. supervision, direction, control, reporting and checks for the:
 - (1) overall operation of the facility, plus
 - (2) daily and shift operations
- f. the need for accurate, complete and current daily charts or records for each individual
- g. periodic review of those individual records together with an objective assessment of satisfying individual needs
- h. the need to license commercial operations with three or fewer residents
- i. sanctions and penalties for breaches
- j. standard procedures or protocols to respond to emergency situations and missing residents including:
 - (1) immediate contact with fire, police, hospital and other emergency organizations
 - (2) immediate notification of provincial authorities
 - (3) maintaining a complete incident report covering the situation

(4) emergency situation practices and drills

- j. the emergency organizations should review their own internal procedures to ensure prompt and thorough response to calls; to maintain liaison, and to provide preventative guidance when and as reasonably required.

The objective is to determine the magnitude of the problem, and then meet the needs by developing ideas and providing suggestions through sound communication, to create a common understanding, in order to ensure that the regulations and guidelines provide maximum benefits, while minimizing problems for all concerned.

- 2. Instead of having statutory regulations, it may be more effective to use guidelines with model contracts and procedures that will indicate proper standards of care and accommodation in various settings.