



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 _____ Court House

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

on the _____ 28th _____ day of _____ July _____, _____ 2008 _____, (and by adjournment
year

on the _____ ----- _____ day of _____ ----- _____, _____ ----- _____),
year

before _____ J. Richard McIntosh _____, a Provincial Court Judge,

into the death of _____ Michael Berggren _____ 55 yrs _____
(Name in Full) (Age)

of _____ The District of Hines Creek in the Province of Alberta _____ and the following findings were made:
(Residence)

Date and Time of Death: _____ December 26, 2006 at approximately 10:15 a.m. _____

Place: _____ 10 kms north of Hines Creek, Alberta on Highway # 64 _____

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)).

Multiple blunt trauma due to or as a consequence of single vehicle accident/roll over

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 under which Death occurred:

Mr. Berggren was an experienced truck driver. He had been employed by Ponto Water Hauling Inc. for approximately two years prior to his death.

Mr. Ponto manages the water hauling business. He described Mr. Berggren as a very conscientious employee and a very cautious driver. Mr. Berggren habitually wore a seat belt.

Mr. Berggren died December 26, 2006. Work in the industry was slow leading up to the Christmas break. Mr. Berggren had worked December 24 for three or four hours. He did not work Christmas Day.

Mr. Ponto telephoned Mr. Berggren at around 8 a.m. December 26 to advise Mr. Berggren he needed him to make a run with his water truck. The phone conversation lasted a minute or so but Mr. Ponto remembered Mr. Berggren appeared to be happy and alert. He understood Mr. Berggren was already up for the day when he called.

Anna Tina Miller was in a common law relationship with Mr. Berggren. They lived on an acreage seven miles south west of Hines Creek. The Ponto shop was about twenty to twenty-five minutes from the acreage. Ms. Miller had been working Christmas Day and arrived home at about midnight. Mr. Berggren was sleeping. They got up together the morning of December 26. Ms. Miller was present when Mr. Ponto called. Mr. Berggren seemed just fine. He consumed coffee before he left. He usually ate something but on this morning he did not, he was in a hurry.

Mr. Berggren did not comment on any sleeping difficulties. As far as Ms. Miller was concerned there was nothing out of the ordinary.

Mr. Ponto did not see Mr. Berggren at the shop that morning but Mr. Ponto later spoke to two co-workers who were at the shop and did speak to Mr. Berggren. After the accident Mr. Ponto tried to determine the cause. His first thought was perhaps Mr. Berggren had fallen asleep. With that in mind he questioned the two co-workers. They advised Mr. Ponto that Mr. Berggren was alert, happy, talkative and joking and he did his usual walk-around inspection of the truck before departing.

Mr. Berggren was operating a Freightliner 106 truck equipped with a stainless steel tank. The tank was full of potable water. It was designed consistent with other tanks used for hauling fluids such as milk, tomato juice or canola oil. According to Mr. Ponto, the tanks are not equipped with baffles, which would prevent the liquid from sloshing about in the tank, for health reasons. Apparently there is a concern that baffles may be a collection point for bacteria.

The absence of baffles allows the water to move about more than if the tank was equipped with baffles but an experienced driver can safely handle the unit.

Alberta regulations require commercial vehicles to be inspected for safety concerns on an annual basis. The unit Mr. Berggren was operating had been inspected within the preceding year so the inspection was current.

Mr. Berggren departed from the Ponto shop at approximately 9:45 a.m. He was en route north bound on Highway # 64 to an oil rig near Worsley, Alberta. He was involved in a single vehicle roll over accident at approximately 10:15 a.m. approximately 10 kms north of Hines Creek.

Mr. Berggren was not wearing a seat belt. He was ejected from the cab of the truck. The truck rolled over him, crushing his chest. The motor vehicle came to rest on its side, across both lanes on the highway. The front of the vehicle was facing east and the roof of the cab was facing south.

Mr. Berggren died at the scene. His body was located on the highway in the middle of the north bound lane approximately 20 feet south of the truck.

Constable Compo, a member of the RCMP and the investigating officer, testified the road was clear of snow and ice.

Mr. Ponto attended the scene and attempted to determine how the accident happened. He took measurements. There was just a little bit of loose snow on the shoulder of the road. The shoulder at that location is very narrow. Highway # 64 at that location runs north and south.

He noticed the passenger's side tire tracks in the snow on the shoulder, first visible south of where the truck came to rest. The tire tracks indicated the truck traveled approximately 200 meters with the passenger's side tires on the paved shoulder, right next to the east ditch. The tracks in the snow establish the passenger's side tires then left the pavement and the truck continued to travel north. The tracks also establish Mr. Berggren made no attempt to drive the truck back up on the pavement.

A side road leads off # 64 at a 30 degree angle approximately 50 to 100 meters south of where the truck came to rest. The truck tracks cannot be seen crossing over the approach because of lack of snow but on the north side of the approach the tracks reappear. The driver's side tire tracks establish the driver's side tires were still on the highway but right next to the east ditch on the paved shoulder. The passenger's side tire tracks were in the east ditch. It appeared to Mr. Ponto it was at this point Mr. Berggren attempted to steer the truck back on to the highway, causing the truck to roll.

The Office of the Chief Medical Examiner has established a practice, in the case of sudden deaths involving an accident in the operation of a motor vehicle, as well as in other cases, to determine the presence of alcohol or drugs, if any, in the deceased's system and whether the presence of either of those substances, or a combination thereof, played any role in the cause of the accident.

An analysis was conducted of Mr. Berggren's blood, vitreous fluid from the eye, and urine. Alcohol was not detected but the presence of Estazolam was. The results of the assay indicate there were 55 micrograms of Estazolam per liter of blood.

Estazolam is a potent benzodiazepine tranquilizer or sedative. It is a Schedule IV substance under the Controlled Drugs and Substances Act (1996, c. 19). Years ago it was marketed legally as a nighttime sedative in Canada and the United States but that has changed. Estazolam is no longer legally available anywhere in North America.

Graham Richard Jones testified at the Inquiry. He is a PhD toxicologist and the Chief Toxicologist for the Medical Examiner's office.

When the Chief Medical Examiner's office detected the presence of Estazolam in Mr. Berggren's blood and other bodily fluids the office commenced an investigation to determine the source of the controlled substance.

It was determined Mr. Berggren was using Serenity Pills II.

He had been experiencing problems sleeping and discussed the matter with Mr. Ponto. Mr. Ponto informed him he too had been having problems sleeping until he started using Serenity Pills II. Mr. Ponto was under the impression Serenity Pills II were organic and completely harmless.

Mr. Ponto informed Mr. Berggren that he purchased the sleep aid from Evergreen Acupuncture in Calgary. Evergreen sold Serenity Pills II as a natural health product.

Mr. Berggren contacted the clinic and purchased the product. He had been using the product for about three months before he died. The product is packaged in 30 capsule containers. The consumer is directed to "Take one-two capsules at bedtime."

The Chief Medical Examiner's office obtained some of the capsules Mr. Berggren had purchased from Evergreen and analyzed two of them. One contained 1.32 milligrams of Estazolam and the other 1.41 milligrams.

Dr. Jones testified the amount of Estazolam found in Mr. Berggren's system is consistent with Mr. Berggren having taken one Serenity Pills II capsule late in the evening December 25 or early in the morning December 26.

Dr. Jones testified that the presence of Estazolam in a person's system could cause some amount of sedation and it could impair a person's judgment in driving. Dr. Jones offered his opinion that it was reasonable to assume that the drug would have had some effect.

One of my duties is to make findings as to the circumstances under which Mr. Berggren's death occurred. That includes a determination of the cause of the accident. The test is on the balance of probabilities.

In determining whether the presence of Estazolam in Mr. Berggren's system contributed to the accident Dr. Jones' evidence must be weighed in light of the observations of the people who came in contact with Mr. Berggren the morning of December 26 but before he died.

As I have already indicated, Mr. Ponto had a brief telephone conversation with him when he called him to come in to work. He described Mr. Berggren as happy and alert and he was already up when Mr. Ponto called him at 8 a.m.

Mr. Berggren's co-workers described him as alert, happy, talkative and joking, and he performed his usual walk-around inspection of the truck. The accident occurred approximately ½ hour after he left the shop.

When Ms. Miller arrived home at midnight December 25, Mr. Berggren was already asleep. I infer he took one sleeping pill before going to bed and he went to bed before midnight.

Ms. Miller and Mr. Berggren got up together that morning. Ms. Miller testified he seemed just fine, there was nothing out of the ordinary.

I conclude there are too many variables in this case to say with any degree of certainty that the presence of Estazolam in Mr. Berggren's system was a contributing factor to the accident.

I find the presence of Estazolam in Mr. Berggren's system did not contribute to the accident and therefore did not contribute to the cause of his death.

Counsel suggested I should use this Report to educate the public with respect to resources available through Health Canada concerning the regulation of natural health products that may offer relief for insomnia.

I will place the suggestion in context.

Mr. Berggren had Estazolam in his system when he died. The source of that substance is Serenity Pills II, sold as a natural health product.

Health Canada, through various branches and agencies, and under the authority of various pieces of legislation and regulation, is responsible for licensing of health products and the sale, manufacture, packaging, labeling, importation, distribution and storage of those products.

One of those regulations, Natural Health Products Regulations, prohibits the presence of certain substances in natural health products. One of those substances is Estazolam.

Health Canada was notified that the Serenity Pills II capsules contained Estazolam and became involved because of its duties and obligations.

Health Canada falls within federal jurisdiction.

Counsel agree a Provincial Court Judge has jurisdiction to conduct this Inquiry, including hearing evidence that encroaches on federal jurisdiction, so long as the Judge refrains from making recommendations concerning matters within federal jurisdiction.

As I indicated earlier, Counsel submitted I should use this Report to educate the public with respect to Health Canada's role in the regulation of natural health products.

I respectfully decline. I will limit my findings and recommendations pursuant to my duties as set out in s. 53 of the Fatality Inquiries Act.

Recommendations for the prevention of similar deaths:

Mr. Berggren habitually wore a seat belt when he was operating a motor vehicle. For reasons that cannot be explained he was not wearing a seat belt when he operated the water truck December 26, 2006. Had he been wearing a seat belt he would have in all likelihood survived the accident.

I recommend occupants of passenger and commercial motor vehicles wear seat belts to prevent similar deaths.

DATED January 16, 2009 ,

at Peace River , Alberta.

A Judge of the Provincial Court of Alberta