



VERDICT AT CORONER'S INQUEST

File No.:2006:0210:0203

An Inquest was held at Chief Coroner's Courtroom, in the municipality of Burnaby in the Province of British Columbia, on the following dates January 12th - 16th, 2009 before Vincent M. Stancato, Presiding Coroner, into the death of KANG Bhupinder Singh 39 Male into the death of KANG Bhupinder Singh 39 Male and the following findings were made:

Date and Time of Death: February 7, 2006 at 1530 hours

Place of Death: Matsqui-Sumas-Abbotsford (MSA) Hospital Abbotsford, BC (Location) (Municipality/Province)

Medical Cause of Death

(1) Immediate Cause of Death: a) Acute combined opiate, ethanol, fluoxetine and Sertraline intoxication

DUE TO OR AS A CONSEQUENCE OF

Antecedent Cause if any: b)

DUE TO OR AS A CONSEQUENCE OF

Giving rise to the immediate cause (a) above, stating underlying cause last. c)

(2) Other Significant Conditions Contributing to Death:

Classification of Death: Accidental Homicide Natural Suicide Undetermined

The above verdict certified by the Jury on the

16th day of January AD, 2009.

VINCENT M. STANCATO

Presiding Coroner's Printed Name

Handwritten signature of Vincent M. Stancato

Presiding Coroner's Signature

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FINDINGS AND RECOMMENDATIONS AS A RESULT OF THE INQUEST INTO THE DEATH OF

FILE No.:2006:0210:0203

KANG

SURNAME

BHUPINDER SINGH

GIVEN NAMES

PARTIES INVOLVED IN THE INQUEST:

Presiding Coroner: Vincent M. Stancato

Inquest Counsel: Mr. Rodrick MacKenzie

Court Reporting/Recording Agency: Verbatim Words

Counsel/Participants: Mr. Craig Paterson, counsel for the Kang Family (Jaspal Kang)
Mr. Scott Nielsen, counsel for WorkSafe BC

The Sheriff took charge of the jury and recorded eleven exhibits. Thirteen witnesses were duly sworn in and testified.

PRESIDING CORONER'S SUMMARY:

The following is a brief summary of the circumstances of the death as presented to the jury at the inquest. The summary and my comments respecting the recommendations, if any, are only provided to assist the reader to more fully understand the Verdict and Recommendations of the jury. This summary is not intended to be considered evidence nor is it intended in any way to replace the jury's verdict.

On February 7, 2006 at approximately 1430 hours, Mr. Bhupinder Singh Kang was found unresponsive in his residence by a family member. Emergency Services Personnel attended the residence and transported Mr. Kang to Matsqui-Sumas-Abbotsford (MSA) Hospital where resuscitation was unsuccessful and he was pronounced dead at 1530 hours. Police later attended the residence and did not find anything suspicious; however, they did note the existence of a very large Tupperware bin which, when examined at a later date, was found to contain approximately 240 empty and partially filled prescription medication bottles.

Investigation revealed that on February 7, 2006 at approximately 0830 hours, Mr. Kang attended an appointment at the WorkSafe BC Regional Office in Surrey. He was accompanied by his brother and lawyer. They met with a Vocational Rehabilitation Consultant (VRC) – this was the first meeting with the VRC and the intention of the meeting was to gauge Mr. Kang's current physical status and fitness to work. According to a statement prepared by the VRC the purpose of the meeting was to "obtain information" that would help her determine "suitable job options" for Mr. Kang. It is important to note that this meeting was the final one that took place between a WorkSafe BC representative and Mr. Kang. Mr. Kang had several dealings with multiple WorkSafe BC representatives as he had been involved in a lengthy adjudication with WorkSafe BC ever since his wage loss benefits were suspended on August 15, 2000. Mr. Kang's benefits were suspended because, according to WorkSafe BC, he would not participate in efforts to assist him. Mr. Kang appealed this decision which was ultimately upheld by Worker's Compensation Appeals Tribunal (WCAT) in January 2005. Following the decision by WCAT, Mr. Kang, through his representative, indicated a willingness to participate in efforts to assist him.

The history is that Mr. Kang, was a long-haul truck driver residing in Quebec, when he was involved in a motor vehicle incident (MVI) that occurred in Arizona, USA on February 13, 1998. At the time of the incident the truck that Mr. Kang was in was being operated by a co-driver and Mr. Kang was in the sleeping berth. The driver lost control of the truck and it flipped on to its side. Mr. Kang was extricated from the truck, placed in a hard collar on a spine board and transported to hospital in Phoenix, where he was diagnosed with two fractures, both on different sides of the first cervical vertebra (C1). He was placed in a "halo brace" and transported from Phoenix, by ambulance, to Montreal where he was hospitalized for two days before being discharged. He remained in the halo brace after discharge.



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Mr. Kang resided in Quebec at the time of the accident and his initial injury claim was handled by the Quebec Workers Compensation Agency - la Commission de la sante et de la securite du travail (CSST). The accident occurred in Arizona, but the employer did business in British Columbia and Mr. Kang routinely picked up his loads in Vancouver. An "inter-jurisdictional" adjudication determined that although the employer (Aman Enterprises [1989] Ltd.) had a presence in Quebec, it only paid assessments to WorkSafe BC. On July 31, 1998, WorkSafe BC accepted jurisdiction of the claim from CSST and assigned the claim to an adjudicator in Surrey.

Right after the incident, Mr. Kang continued to reside in Montreal and received follow up care – he wore the halo brace until June 10, 1998 and then traded it for a cervical collar. Up to this point, diagnosis, treatment and care was outside the supervision of WorkSafe BC. There was no record of further medical intervention until September 15, 1998 when a WorkSafe BC physician asked the inter-jurisdictional claims case manager to request the CSST to arrange a medical exam and more medical care for the worker. At the request of WorkSafe BC, the CSST referred Mr. Kang to a neurosurgeon in Montreal on March 10, 1999. The report concluded that Mr. Kang's neck condition was stable, but that he suffered greatly from pain, reporting himself as unemployable. Mr. Kang presented as sad at the time, but no referral was made for counselling. By June 1999, the WorkSafe BC case manager became concerned about a lack of medical management and lack of clinical direction. Arrangements for a full assessment in BC were initiated. Mr. Kang agreed to come to BC in August 1999 and he was seen by a specialist through the Visiting Specialist Clinic at WorkSafe BC's offices in Richmond on December 13, 1999. He was noted to be "extremely inactive". He was living with his mother and was described as "socially isolated". The specialist concluded that the "C1 fracture has healed, but his inactivity levels were disproportionately high. Mr. Kang was diagnosed with a chronic benign pain syndrome".

From 1999 to 2002, communication between Mr. Kang and WorkSafe BC continued despite the fact that his benefits were suspended in August 2000. Mr. Kang underwent multiple assessments in an attempt to further understand his condition including orthopaedic consultation, admission in to pain clinics/programs, neurological reviews and assessments, diagnostic procedures, psychological and psychiatric reviews and occupational therapy programs. Mr. Kang was also being treated by his own psychiatrist during this time and up until his death.

From August 2000 until the date of his death, Mr. Kang developed worsening psychological functioning – initially characterized as "passive" and "depressed" and later evolving in to periods of psychosis with paranoid delusions and auditory hallucinations. He did not respond well to medications and had attempted suicide on at least one occasion in 2003, for which he was hospitalized. It should be noted that during this period of treatment Mr. Kang was prescribed a number of different medications to assist with depression, anxiety and pain management.

During the adjudication/appellate period surveillance was conducted on Mr. Kang on three occasions. Surveillance was first initiated in Montreal from April 23 – 27, 2000. Mr. Kang was then brought to Vancouver at the request of Worksafe BC for physical examination and assessment and he was observed during this time for a period of 9 days, from May 11 – 19, 2000. A third period of surveillance took place from November 29 – December 8, 2005 during which time his claim was being re-assessed by WorkSafe BC after a lengthy period of inactivity and communication. The surveillance indicated nothing that would have affected Mr. Kang's claim in a negative way.

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Pursuant to Section 38 of the Coroner's Act, the following recommendations are forwarded to the Chief Coroner of the Province of British Columbia for distribution to the appropriate agency:

JURY RECOMMENDATIONS:

To: Dave Anderson, President/CEO
WorkSafe BC
PO Box 5350 Stn Terminal
Vancouver, BC V6B 5L5

We recommend the following:

1. That WorkSafe BC obtain all relevant documents (clinical or chart notes) in the possession of the workers GP, all treating physicians, hospitals and pharmacists on a regular basis during any period where a worker's benefits are suspended.

Coroners Comments: The jury heard that Mr. Kang was under the care of a general practitioner and psychiatrist (both known to WorkSafe BC). They also heard that Mr. Kang was hospitalized on one occasion (March 2003) for extreme depression and suicidal ideation and that he was known to be on multiple medications. However, despite ongoing concerns regarding Mr. Kang's mental health, WorkSafe BC did not routinely request or obtain relevant documents during the period that Mr. Kang's benefits were suspended.

2. That WorkSafe BC obtain the written opinion of the worker's family physician and any treating specialist physician prior to making decisions involving mental illness, regardless of whether the mental illness has been accepted as compensable.

Coroners Comments: The jury heard that during the course of Mr. Kang's adjudication/appeal, WorkSafe BC representative(s) did not seek out an opinion by either Dr. Aulakh (General Practitioner) or Dr. Sandhu (Psychiatrist) - the two individuals who knew his mental status best.

3. When video surveillance is obtained, WorkSafe BC should request a written opinion from the worker's general practitioner or specialist regarding the relevance of that evidence prior to any decision being made based on that evidence.

Coroners Comments: The jury heard that Mr. Kang was the subject of video surveillance on three different occasions and that the surveillance did not negatively impact his claim. They also heard that neither the general practitioner nor psychiatrist was consulted in advance of or following the surveillance for an opinion.

4. That WorkSafe BC considers having a single employee manage each file and be responsible for any and all communication with the worker to ensure consistency in messaging as it pertains to the worker's claim status and any decisions about entitlement. This will ensure a single point of contact for the worker. A different case worker can be requested by the worker.

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Coroners Comments: The jury heard that WorkSafe BC has several specialized divisions which handle claims at different stages, depending on the intervention necessary or status of a claim. They also heard that each case is assigned a case manager who is responsible for management of a particular file. The jury heard that, although a case manager is responsible for the file, this does not preclude other staff in those specialized divisions from making direct/indirect contact with a claimant. They heard that this can lead to miscommunication, inconsistent messaging and a general lack of coordination. As an example the jury heard that within a one week period (January 25 – 30, 2006) Mr. Kang was mailed three letters (all from different departments/staff persons within WorkSafe BC) – each letter contained unique information. The jury also heard that a letter dated November 7, 2006 (nine months after Mr. Kang's death) was mailed to Mr. Kang's attention but was received by his brother. It explained that Mr. Kang's claim had been received in the Disability Awards Department and that he may be contacted in due course for a medical assessment.

5. That WorkSafe BC consider implementing a bi-annual training program that educates staff on the critical factors specific to dealing with patients who may have mental health issues and that it require all staff in adjudicative positions to complete it.

Coroners Comments: Self explanatory.

6. That WorkSafe BC involve the Vocational Rehabilitation Consultant (VRC) at the earliest opportunity in a claim.

Coroners Comments: The jury heard that the VRC's primary responsibility is to gauge a worker's skill set and suitable job options. They also heard that it was not until late 2005 (almost eight years post incident) that the VRC was involved in Mr. Kang's case. Almost a full eight years elapsed prior to the VRC's involvement. The jury heard from Dr. Graham that this is an unusually long time frame and that earlier involvement may have been beneficial in this case due to the unique skills that VRC's possess.

7. That College of Pharmacists of BC (PharmaNet) and WorkSafe BC work together to develop a memorandum of understanding such that the WorkSafe BC adjudicator responsible for file management has ready access to the workers PharmaNet profile with appropriate safeguards respecting personal privacy.

Coroners Comments: The jury heard that WorkSafe BC staff involved in the management of Mr. Kang's claim were unaware of the extent and type of medications that Mr. Kang was prescribed. Currently, WorkSafe BC does not have an information sharing agreement with PharmaNet that allows for the sharing of information on individuals who have an active or suspended claim. Without this information they are unable to monitor issues of pharmacological over use or abuse.

8. That WorkSafe BC ensure timely implementation of all of the recommendations outlined in the Case Review into the death of Mr. KANG that was completed by Dr. Graham, Dr. Meloche and Mr. Hopkins in April 2006. Also, that WorkSafe BC's compliance with the recommendations be reviewed annually by an independent party and the results be published in WorkSafe BC's annual report.

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Coroners Comments: The jury heard that, following the death of Mr. Kang, the President/CEO of WorkSafe BC commissioned a Case Review. The Case Reviewer's made a total of 16 recommendations. They also heard that the status of the recommendations varied – some have been fully implemented while others have only been partially implemented or not yet acted upon. The jury also heard that the status of the recommendations have not been assessed by an independent party and they have also not been reported upon in any of WorkSafe BC's subsequent Annual Report's.

9. That WorkSafe BC consider transporting "inter-jurisdictional claimants" to British Columbia at the earliest possible opportunity for a complete "physical and mental" examination/assessment such that appropriate treatment can be initiated in a timely manner. Alternatively, a qualified team representing WorkSafe BC can be dispatched to those jurisdictions to attend the worker at the earliest opportunity.

Coroners Comments: The jury heard that Mr. Kang's injury was sustained in February 1998 but that it was not until March 1999 that he first saw a neurosurgeon in Montreal and it was not until December 1999 that he was seen by a specialist in British Columbia.

10. Where a claim is rejected based on section 57(2)(b) of the Workers Compensation Act, WorkSafe BC consider obtaining an independent expert opinion to examine the worker's refusal to engage in the recommended treatment in order to determine if it is willful. The expert must be acceptable to the worker prior to the examination.

Coroners Comments: The jury heard that S. 57 (2)(b) permits WorkSafe BC to suspend benefits if the worker "refuses to submit to medical or surgical treatment which the Board considers, based on expert medical...advice, is reasonably essential to promote his or her recovery". The jury heard that, based on medical opinion, WorkSafe BC believed that Mr. Kang's psychological condition(s) would benefit from various care programs and these were offered to Mr. Kang. Based on further medical opinion, WorkSafe BC also believed that Mr. Kang's neck condition would improve if he removed the cervical collar. The jury heard that Mr. Kang did not participate in the various care programs offered nor did he remove the cervical collar. The jury also heard that, at no time, did WorkSafe BC obtain an independent assessment of Mr. Kang to determine if he was mentally and/or physically able to partake in the programs that they insisted he complete.

11. That WorkSafe BC consider establishing a process to monitor the claims of fragile and high risk workers while they are in the appellate process.

Coroners Comments: The jury heard that communication between Mr. Kang and WorkSafe BC representative(s) was sporadic from August 2000 until the date of his death. The jury also heard that WorkSafe BC representative(s) did not routinely request or receive any reports or status updates from the physicians responsible for Mr. Kang's ongoing care during this period of time.

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12. That WorkSafe BC develops a practice directive that mandates active clinical monitoring and management of high risk mentally ill worker's by a staff psychologist to ensure early intervention and appropriate ongoing care.

Coroners Comments: The jury heard that despite the knowledge that Mr. Kang was experiencing depression and increased psychological issues throughout the life of his claim there was no active clinical monitoring by a staff psychologist. The jury also heard that during the claim/appellate stage there was very limited contact between WorkSafe BC staff and the physicians primarily responsible for his physical and mental health. Dr. Graham testified that communication between WorkSafe BC and high risk claimants (like Mr. Kang) would benefit from having ownership of the file rest with a staff psychologist. He testified that the complexity of such files and the interventions necessary often requires timely intervention and that a staff psychologist may be best positioned to understand and manage these types of cases.

13. That WorkSafe BC letters to worker's containing instructions about benefits be written in plain, non-confrontational, language with special consideration given to the sensitivities of worker's with identified mental health issues.

Coroners Comments: Self explanatory.

14. That WorkSafe BC letters to worker's containing instructions about benefits include and highlight the workers opportunity to seek the advice of advocates, social workers and worker's advisory services regarding their claims.

Coroners Comments: Self explanatory.

15. Where mental illness is identified, consultation with a worker's GP or specialist should take place prior to initiation of WorkSafe BC surveillance for assessment of effects on a client's mental health.

Coroners Comments: The jury heard that WorkSafe BC conducted surveillance on Mr. Kang on three occasions (April 23 – 27, 2000; May 11 – 19, 2000; and, November 29 – December 8, 2005). The jury also heard that in late 1999 and in 2000 assessments conducted on Mr. Kang revealed that he was experiencing depression and a chronic benign pain syndrome. WorkSafe BC representatives were aware of his increasing depression at that time. According to his psychiatrist, Mr. Kang's mental condition worsened with time to the point where he was experiencing severe depression, paranoid delusions and hallucinations. The jury heard that, at no time, prior to the initiation of surveillance, did any WorkSafe BC representative consult with Mr. Kang's GP or specialist (psychiatrist) for an opinion on the efficacy and possible consequences of conducting surveillance on an individual in his condition.

16. Where a claim is rejected based on Section 57 (2)(b) of the Worker's Compensation Act, that WorkSafe BC consider making available appellant benefits on request of the worker; and provide notice of all available appeal benefits to all worker's whose claims are rejected or suspended.

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Coroners Comments: The jury heard that when a worker's benefits are suspended under Section 57 of the Worker's Compensation Act that there is no provision to make benefits available to the worker while an appeal of the suspension is in process, unless there is compliance with the prescribed course of treatment. The jury heard that in cases of suspended benefits where workers are disputing the treatment and advice offered or may not have the mental capacity to fully understand the value of said treatment it may be prudent to apply a different approach – one that involves post-suspension assistance during the appeal phase.

17. Where suspension of a WorkSafe BC claim is pending, the worker shall be advised that he or she has 60 days before discontinuation of benefits, with the final deadline stated in the letter, and opportunities to seek independent advice explicitly stated.

Coroners Comments: The jury heard that Mr. Kang's wage loss benefits were suspended on August 15, 2000. A letter dated August 16, 2000 from the Case Manager to Mr. Kang was marked as Exhibit #3 and entered into evidence – it was considered by the jury during their deliberations. The letter provided notice of the suspension of wage loss benefits noting that the benefits were suspended effective August 15, 2000 due to Mr. Kang's unwillingness to partake in various treatment programs offered to him (specifically that offered by OT Consulting). The discontinuation of benefits was immediate. There was no provision for continuation of benefits for a period of time following receipt of the letter such that Mr. Kang could consider his/her options and there was also no information provided that guided Mr. Kang to resources whereby he could obtain independent advice. The letter did include an enclosed pamphlet detailing appeal procedures.