

RELEASE DATE: MARCH 29, 2004

THE FATALITY INQUIRIES ACT

REPORT BY PROVINCIAL JUDGE ON INQUEST

**RESPECTING THE DEATH OF: LORNA JOYCE BALLANTYNE
CONWAY WILFRED BALLANTYNE
BAPTISTE AARON BALLANTYNE**

An inquest respecting the deaths of the above named individuals was held in the weeks of April 28th, 2003, June 23rd, 2003 and October 14th, 2003 in the community of Moose Lake, Manitoba.

The deceased mother and two sons died as a result of a fire which destroyed their residence and they perished due to smoke inhalation.

I hereby make the following recommendations as set out in the attached schedule. (see attached)

Attached also are all exhibits to be filed by me.

Dated at the Town of The Pas, Manitoba this 10 day of March, 2004.

*Originally signed by
Judge Brent Stewart*

**Copies to: Mayor Lambert
David Gray
Scott Gray
Marlaine Anderson -Lindsay
Tanis Bjournson
Gavin Wood**

This inquest concerns the tragic death of a mother and two infants of the Lorna Ballantyne home in the Mosakahiken First Nation located on Moose Lake in northern Manitoba.

The evidence heard at this inquest clearly disclosed that there may be serious systematic issues dealing with the safety of First Nation persons residing on reserves. I find that as it relates to the Mosakahiken First Nation that its residents are unnecessarily exposed to real risks from fires when in their reserve homes. Clearly this needs to be properly addressed however, this tribunal has encountered consistent resistance from the aboriginal agencies, band and tribal council involved in this hearing in providing documentation or answers relevant to the inquest. I believe this to be, in part, at least, as a result of the issue as to whether the inquest has the jurisdiction to conduct a hearing on a First Nation (or for that matter any exclusively federally controlled lands). This does not even reflect on the end recommendations of this inquest and the participant's desire to implement any relevant recommendations. I believe that the Province of Manitoba has an obligation prior to expending significant amounts of Justice resources to determine this jurisdiction with the Government of Canada. I have reviewed the legislative authority for the calling of inquests by the Provincial Medical Examiner and question whether there is any authority to call inquests on federal lands and in particular on First Nations. The Provincial Court of Manitoba has sat on many inquests relating to First Nations issues but has either not been challenged as to authority or has accepted jurisdiction on a narrow issue based on the legislative authority of provincial matters effecting a federally based person.

Counsel at this inquest never really raised the jurisdictional issue until the summary brief provided by, ironically, the Government of Manitoba acting for the provincial department of Northern Affairs was submitted after the hearing of evidence. Some case law was submitted halfway through the inquest from the Federal INAC counsel but not pursued.

The issue in this inquest relates to the untimely death of First Nation members due to fire. Clearly such an issue is at the core of federal jurisdiction, that is, the wellbeing and safety of aboriginal persons on First Nations. There is a federal obligation to provide for the public safety on First Nations and thus in western Canada most First Nations are policed by the federal Royal Canadian Mounted police. Likewise the second aspect of public safety; that being fire and emergency services is a paramount responsibility of the federal government. Argument could be made that either the section 88 general inclusionary clause may give some provincial jurisdiction to have an intervention by the provincial medical examiner or the province's exclusive jurisdiction of civil and property regime may allow such intervention when it relates to a First Nation fire death. As this matter was not argued other than on a cursory manner I will not make any ruling on such a paramount legal issue. I hope that this will be decided however, quickly by some other inquest judge.

Whether any authority exists for any inquest on any First Nation in Manitoba by this court is questionable. Can this court make any recommendations binding on the Government of Canada? As it relates to this inquest I am choosing not to deal with the many issues that arise such as inappropriate funding by the band, lack of funding

accountability at all federal levels, minimum housing standards and maintenance etc. Until the jurisdiction issue is argued and decided such findings and any recommendations would in my opinion fall on deaf ears. As such I will make no comments on these issues.

Notwithstanding my conclusion, there is one area I feel I can comment upon. The Mosakahiken First Nation at the time of the Ballantyne fire had a fire protection agreement with the Community Council of Moose Lake to have fire protection covering their first nation. This was a mutual aid/ fee for service agreement for fire and emergency protection services. That being the case this inquest report will address that limited issue as it relates to the metis community and its funding source, the Government of Manitoba. It is my hope that these recommendations will be considered and perhaps implemented by the Government of Canada for the well being of its First Nation members.

To better understand the layout of Moose Lake, it is like many northern reserves where the Metis community of Moose Lake is adjacent to the First Nation and in fact several roads have community members living on one side and First Nations members on the other. Most of the public facilities in Moose Lake including the community hall, fire station, and water services are on the community side and owned and operated by the community council with service agreements existing between the two entities.

The facts of this inquest are straightforward. At around 4:30 a. m. on the 8th day of December 2001 the Moose Lake RCMP were called to a house fire at the Lorna

Ballantyne residence on the Mosakahiken First Nation. They arrived shortly after the arrival of some members of the Moose Lake voluntary fire department. The house was totally enveloped in flames. As a result of this fire Lorna Ballantyne and her two sons Baptiste born 1993-03-18 and Conway born 1994-05-19 died. One son Dillon Wilfred Ballantyne born 1995-08-16 survived after escaping from the bedroom window with the assistance of his mother.

The Fire Commissioners office was called in to do an analysis and we heard evidence from Investigator Brian Monkman a seasoned fire investigator with the department. His report is filed as Exhibit2, (6). He concluded, that the fire may have been caused by the clothes dryer venting directly onto the wooden panel wallboard as it did not have a vent exhaust to the exterior. In later evidence there was some suggestion that this was how the home was being heated supplementally, at least, due to difficulty with the baseboard heaters.

As a result of my jurisdictional concerns I will not review the housing difficulties found on the First Nation or the lack of accountability of the band's officials as to adequate documentation into housing defects. In any event the home was completely gutted. There was no opportunity to save any of the deceased despite valiant efforts from those firefighters who attended.

This inquest received excellent testimony both from the fire investigator Mr. Monkman and his supervisor the provincial fire commissioner Mr. Murray Popowich. Mr.

Popowich's testimony in particular outlined what was necessary in order to have a fully functioning fire department, which would be capable of fighting a house fire. It was his testimony that such a department clearly required a minimum on a fire operation of six personnel fully equipped and trained to carry out that function. At a minimum the level of training required for each firefighter was a level one certification which is approximately one hundred hours of training. The equipment necessary for fighting an interior fire attack was in his opinion proper protective clothing with operating breathing apparatus and other properly operating support equipment such as hoses, axes etc.

This inquest heard evidence from several of the firefighters who attended the Ballantyne fire. Several of these fighters were returning from The Pas arriving in time to see signs of a fire. As a result they attended to the firehall where as a result of a frozen lock their entry was delayed. Upon entering a further delay was experienced as the fire equipment was blocked by the parking of the local water truck in the way. The community not having a sufficient telephone system only had a fire bell to alert other fire fighters and as such only six of twelve firefighters made it to the scene. The equipment necessary to fight the fire as per the evidence of Mr. Popowich was lacking. Fire Chief Anderton testified that of nine firefighters outfits none were complete and most were in poor condition. Furthermore, evidence was received that the local fire hydrant at the Ballantyne yard was not working and in fact of the 18 hydrants on the First Nation, five were non-operational. Finally we heard evidence that none of the firefighters in the community have a level one training. In fact in listening to the evidence of the firefighters who all requested training none had fire training due to lack of funding. In

fact due to the lack of monies for the firefighters per diem as set out in the agreement between the community and the First Nation, the fire chief testified volunteers were hard to maintain.

As a result of the evidence heard, I find that the Moose Lake fire department was so grossly under equipped and under trained that they did not meet a minimum standard necessary to provide fire protection within the two communities. Tragically, Mr. Popowich has testified that such conditions existing for fire protection in these communities are not unusual in Manitoba and perhaps forty percent of all municipal fire protection services have similar or worse conditions in so far as equipment and training are concerned.

Clearly the Moose Lake Community fire department lacked a minimum level of equipment to fight any fire and in particular to fight an interior fire attack. This is not to be viewed as a criticism of the effort or enthusiasm of the local firefighters however with limited training the effectiveness of these volunteers was limited.

The responsibility for fire protection in Manitoba rests upon the municipality by virtue of the provisions of the Municipal Act. Mr. Popowich's office has no authority over First Nations in Manitoba. The Municipal Act, although requiring a municipal obligation to provide fire protection does not specify a minimum level of service. Fire protection under that heading can be done through a fire prevention program, a fire inspection program or having a fire suppression force or any combination of these.

When asked what minimum services should be provided when a community council enters into an agreement with a First Nation, Mr. Popowich commented that there is an expectation of a certain level of service of fire fighting and protection/prevention. I agree. When a citizen of Manitoba encounters what is held out to be a municipal fire department it is assumed that there is a level of fire fighting and protection that is being provided which will provide the community with emergency services sufficient to fight a fire and protect the community from possible fires. The Municipal Act unfortunately places a less onerous standard on the municipality and as such if they merely offer a fire prevention plan, that meets the necessary standard according to Mr. Popowich. This clearly is not the expectation of the general public.

I THEREFORE RECOMMEND that a minimum standard of fire protection be set under The Municipal Act whereby each municipality have the minimum capability to fight fires in their community in such a manner that the safety of the community is protected from fires and that the Government of Manitoba provide sufficient resources in order that such a minimum standard can be met.

Secondly; that no mutual aid/fee for service agreement be entered into by any Manitoba Municipal Corporation or First Nation community unless such a minimum standard can be complied with.

All of which is respectfully submitted.

Originally Signed By
Judge Brent Stewart