

RELEASE DATE: November 27, 2013



Manitoba

THE PROVINCIAL COURT OF MANITOBA

IN THE MATTER OF: The Fatality Inquiries Act C.C.S.M. c. F52

AND IN THE MATTER OF: RUDOLPH JAMES STARR (DOD: June 22, 2009)

**Report on Inquest and Recommendations of
Judge Carena C. Roller
Issued this 22nd day of November, 2013**

APPEARANCES:

ARI H. MILLO, Inquest counsel

SUSAN K. EROS, Counsel for Royal Canadian Mounted Police

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Manitoba

THE FATALITY INQUIRIES ACT
REPORTED BY PROVINCIAL JUDGE ON INQUEST

RESPECTING THE DEATH OF: RUDOLPH JAMES STARR

Having held an inquest respecting the said death on May 21, 22 and 23, 2013, at the City of Winnipeg in Manitoba, I report as follows:

The name of the deceased is: RUDOLPH JAMES STARR.

The deceased came to his death on the 22nd day of June 2009 at the City of Selkirk, in the Province of Manitoba.

The deceased came to his death by the following means: diphenhydramine overdose.

I hereby make the recommendations as set out in the attached report.

Attached hereto and forming part of my report is a list of exhibits required to be filed by me.

Dated at the City of Winnipeg, in Manitoba, this 22nd day of November, 2013.

“original signed by Judge Roller”

Judge Carena C. Roller



Manitoba

THE FATALITY INQUIRIES ACT
REPORTED BY PROVINCIAL JUDGE ON INQUEST

RESPECTING THE DEATH OF: RUDOLPH JAMES STARR

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I. MANDATE OF THIS INQUEST:

[1] By letter dated September 30, 2011, the Chief Medical Examiner for the Province of Manitoba, Dr. Thambirajah Balachandra, directed that a Provincial Court judge conduct an Inquest into the death of Rudolph James Starr for the following reasons:

1. To fulfill the requirement for an inquest as defined in Section 19(3)(b) of *The Fatality Inquiries Act*;
2. To determine the circumstances relating to Mr. Starr's death; and
3. To determine what, if anything, can be done to prevent similar deaths from occurring in the future.

[2] *The Fatalities Inquiries Act* requires that I make and send a written report of the Inquest to the Minister setting forth when, where, and by what means Mr. Starr died, as well as the cause and material circumstances of his death. I have the discretion to make recommendations respecting programs, policies or practices of the government and the relevant public agencies and/or institutions, or the laws of the Province if, in my opinion, would help to reduce the likelihood of deaths occurring in similar circumstances. My mandate does not permit me to express opinion or determine culpability.

[3] Standing in this Inquest was granted to the Royal Canadian Mounted Police. No other individuals or organizations sought standing.

II. INTRODUCTION:**A. Summary of Events of June 22, 2009:**

[4] Rudolph James Starr was a resident of the Lord Selkirk Hotel in Selkirk, Manitoba on June 22, 2009, and it was there that others first began to notice his unusual behaviour. He seemed to be unable to control his own movements and to be attempting to harm himself, so the Royal Canadian Mounted Police were called. The officers were unable to get Mr. Starr to calm himself so handcuffs were applied for his safety and the safety of those around him. He was placed in the recovery position and soon calmed down so the handcuffs were removed. When the ambulance arrived, no pulse could be found in Mr. Starr. CPR was initiated, and he was transported to hospital where he died at 11:02 p.m.

B. Cause of Death

[5] An autopsy confirmed that Mr. Rudolph James Starr died as a result of an accidental diphenhydramine overdose. The level of diphenhydramine in his blood prior to his death was

3873 ng/mL, which is more than thirty times greater than the quoted “therapeutic level” according to Richard Thurmeier, an expert witness who testified in these proceedings.

III. WITNESSES

A. Cheryl Sprong

[6] Ms. Sprong was present at the Lord Selkirk Hotel on June 22, 2009 and she came into contact with Mr. Starr but Ms. Sprong passed away prior to the Inquest. Her statement was filed as an exhibit in the Inquest.

[7] Ms. Sprong was outside the Lord Selkirk Hotel on June 22, 2009 and she became aware of Mr. Starr coming down the sidewalk. She noted he looked “kind of unsteady” and she ran to help him because he looked to her like he was about to fall down. He was on the sidewalk, shaking, and she noted his arms and legs to be flailing around. He called “Help me! Help me!” She said she would help him, and he wanted to enter the Lord Selkirk Hotel, to go home. As they were at the door to the hotel, Mr. Starr suddenly went backwards, over a concrete planter, and Ms. Sprong believed he hit his head on the sidewalk. She tried to catch him and screamed when he fell, but he answered that he was alright, and all he wanted was help to the door. His arms and legs continued to move wildly as she tried to help him inside the hotel and in her opinion he would not have been able to open the door without assistance. Once he was in the small vestibule between the outside and inside doors of the hotel, another man came from inside of the hotel and held the inside door shut so that Mr. Starr could not enter the hotel. This man, known to Ms. Sprong as “Randy”, held the door shut and Ms. Sprong decided to hold the outside door closed against Mr. Starr as well, effectively trapping Mr. Starr in the vestibule between the two doors. She explained in her statement that she did this out of concern for Mr. Starr’s safety, thinking he would otherwise go back on to the sidewalk and possibly into traffic. She asked if she could call someone for him, and Mr. Starr repeatedly told her not to “call the cops.” Mr. Starr also told Ms. Sprong that all he took was “three flippin’ pills.”

[8] A woman came from the hotel restaurant to say that the police had been called. When the police arrived, they entered the vestibule and took hold of Mr. Starr. Ms. Sprong said in her statement that the officers were trying to get Mr. Starr to lie down and he was thrashing about wildly. She saw one officer with his “knees bent over, trying to keep him down.” The other two officers tried to assist and Mr. Starr began to have a fit that she compared to an epileptic seizure. She tried to tell the officers how he had fallen on his head earlier, and then she went back outside.

[9] Ms. Sprong had no other involvement.

B. Tanya Budd

[10] Ms. Tanya Budd was an employee at the Lord Selkirk Hotel on June 22, 2009 and she testified at the Inquest. She had gone in to work at approximately 9:00 p.m. on June 22, 2009 and was inside the hotel restaurant when she noticed Mr. Starr in the “lobby room” throwing himself against the walls, kicking and hitting himself in the head with his shoes, and trying to pull out his own eyes. She knew Mr. Starr as a resident at the hotel, and she could see him through the window. She estimated he was about five feet from where she was, and she could also see another tenant known to her as “Greg,” and “Sherry” from the business next door, trying to calm him down and keeping the door closed against him so he could not leave the hotel. She saw Greg trying to calm Mr. Starr down and stop him from hurting himself. Ms. Budd called the R.C.M.P. “because she had never seen anybody act like that before.”

[11] Mr. Starr was telling everybody he took three pills but would not reveal what kind of pills. Ms. Budd believes she waited three minutes before calling the R.C.M.P. again and estimated it was a further two minutes before they showed up. Mr. Starr was still throwing himself around, then went on to the floor and was trying to pull his eyes out. Two police officers were trying to hold him down but he was resisting. They put him on his stomach and got handcuffs on him before he started convulsing and they turned him on to his side and removed the handcuffs. His legs continued to twitch back and forth. She then noticed he seemed to turn blue and there was a “little bit of blood” and the officers pulled him out of the vestibule and on to the sidewalk where she saw them checking Mr. Starr’s breathing and looking for a pulse until the ambulance arrived.

[12] Ms. Budd testified that she never saw any of the officers on top of Mr. Starr, and the ambulance attendants began CPR on Mr. Starr before they took him away in the ambulance. She estimated the ambulance was at the Lord Selkirk Hotel no more than five minutes before it left for the hospital. She further estimated that the time period for the entire incident - from when she first became aware of Mr. Starr to when he was taken to the hospital - was fifteen minutes.

C. Dyan McKinnon

[13] Dyan MacKinnon was a paramedic with the Interlake – Eastern Regional Health Authority, based out of Selkirk, Manitoba. She was dispatched to the Lord Selkirk Hotel on June 22, 2009, where she assisted with Mr. Starr. Dispatch told the paramedics of an “unknown overdose” at the hotel and they arrived at 10:11 p.m. She estimated it took the ambulance three minutes to arrive on scene after getting the dispatch.

[14] When she and her partner and the accompanying student arrived at the hotel, the police officers were already there. She and the student went to the man who was lying face-up halfway outside the hotel vestibule, and noticed that one officer was up at the patient’s head, checking for a pulse. The other officers were nearer to his shoulders and were removing handcuffs. Mr. Starr was immediately pulled out of the vestibule and on to the sidewalk, then

placed on a stretcher and taken into the back of the ambulance. Mr. Starr was not in handcuffs when he was placed on the stretcher, and the paramedics were told that Mr. Starr may have fallen and hit his head and he may have taken pills of some unknown kind.

[15] Ms. MacKinnon noted that Mr. Starr was extremely hot to touch, but dry and not sweating. His left hand was clenched such that the paramedics could not get it open, and his jaw was clenched so tightly they could not get an advanced airway in. His eyes were fixed and dilated and there was no reaction to light or touch. His shirt had to be removed and no blood or bruising was noted. CPR was being applied and then an advanced life support unit arrived and took the lead. Mr. Starr was transported to the Selkirk General Hospital at 10:28 p.m. where he was taken into the resuscitation room and transferred to the care of Dr. Du Preez.

D. Marko Bozic

[16] Marko Bozic is a Constable with the R.C.M.P. On June 22, 2009, he had been a constable for approximately eight months and was partnered that night with Constable Patterson. They heard a dispatch over their cruiser radio that referenced a man “flipping out” so he and Constable Patterson decided to attend and assist Constable Cavanagh. They ended up arriving at the Lord Selkirk Hotel at 10:11 p.m., and before Constable Cavanagh. En route they had received an update from dispatch indicating the man in question was trying to gouge out his eyes.

[17] Constable Bozic was the first officer to deal with Mr. Starr. He found Mr. Starr in the hotel vestibule. Also present were Ms. Sprong and a man known as “Randy.” Mr. Starr was slouched over in the vestibule, sitting on the floor, with his arms and legs moving erratically. He was making noises but Constable Bozic was unable to understand him. The constable identified himself as the police and was in uniform, but Mr. Starr seemed not to understand anything being said and he would push away whenever Constable Bozic tried to get close. The constable touched Mr. Starr’s wrist and was trying to calm him down by talking to him. He was unsuccessful, and Mr. Starr’s arms and legs continued to move abruptly. It seemed to Constable Bozic that Mr. Starr was getting more agitated so Constable Bozic waved over Constable Patterson. Mr. Starr was “freaking out”, not listening or acknowledging that the police were there, and speaking gibberish. At one point, Mr. Starr pulled back abruptly from Constable Bozic and banged his head against the wall. The officer was concerned for Mr. Starr’s safety and the safety of the others present.

[18] Constable Bozic asked Mr. Starr to “flip over” and then noticed he had keys in his hands. He was worried Mr. Starr might attempt to injure his eyes so he took hold of Mr. Starr’s wrist. Mr. Starr’s behaviour had escalated and so Constable Bozic tried to get him on to his stomach so his movements could be controlled. When trying to pull Mr. Starr up from sitting, Constable Bozic lost his balance and both fell, with Constable Bozic falling into the wall with his head and shoulders. He then landed on top of Mr. Starr, who was stomach-down. Mr. Starr pulled his arms under his chest and tried to resist Constable Bozic taking him by the hands or wrists. Constable Cavanagh arrived and when he tried to assist Constable Bozic, he ended up squatting

with his knee on Constable Bozic's hand. Constable Cavanagh managed to gain control of Mr. Starr's right arm and applied a handcuff. Constables Bozic and Patterson were able to cuff Mr. Starr's left wrist.

[19] Constable Bozic testified that there was something "not right" with Mr. Starr who, once handcuffed, was lying on his stomach on the floor of the vestibule. They moved Mr. Starr into the recovery position, which meant he was rolled on to his side with one leg bent, and his hands were cuffed behind his back. Constable Bozic noted that Mr. Starr felt hot to touch - a "different hot" - and he looked pale. He was concerned for Mr. Starr's safety and knew that an ambulance had been requested but does not recall who made that call. Mr. Starr spit out some blood and the decision was made to remove the handcuffs, which Constable Bozic did as Constable Patterson checked for a pulse. Mr. Starr still had a pulse and the ambulance arrived and the paramedics wanted Mr. Starr moved outside the vestibule which measured approximately 6' x 6'. The constables assisted with that move and the paramedics began CPR before placing Mr. Starr on to a stretcher and taking him inside the ambulance. The ambulance left for the hospital shortly after that and Constable Bozic's involvement ended.

[20] This was the third time Constable Bozic had come into contact with Mr. Starr. On the first occasion, he had been dispatched to assist paramedics in dealing with Mr. Starr who was believed to have overdosed on some substance. He had very little contact as Mr. Starr was taken to hospital almost as soon as Constable Bozic arrived. The second contact had been when Mr. Starr was accused of theft by a local business. Constable Bozic recalls that Mr. Starr was not wearing any shoes on that occasion, and only one sock. Mr. Starr had been cooperative, did not smell of alcohol, and did not appear to be intoxicated but gave only one-word answers to any questions posed.

E. Bradley Patterson

[21] Bradley Patterson was a nine-year veteran of the R.C.M.P. at the time of the incident involving Mr. Starr. He was working with Constable Bozic on June 22, 2009 and his account was essentially consistent with his partner's account but Constable Patterson did add some additional detail.

[22] Constable Patterson confirmed that he was the one to radio for an ambulance before he even arrived at the door to the hotel. He explained that from the cruiser car, he could see Mr. Starr inside the hotel vestibule once Constable Bozic opened the outside door of the hotel. He saw Mr. Starr "rolling around, squirming... bringing his knees up... straighten them out again, roll from side to side." Constable Patterson described Mr. Starr's behaviour as almost like an epileptic seizure.

[23] After calling for an ambulance, Constable Patterson joined Constable Bozic. Constable Cavanagh joined as well and the three officers together attempted to get Mr. Starr to calm down. When Mr. Starr failed to respond to their verbal directions, they worked to get him down on the floor, handcuffed and into the "recovery position." Once Mr. Starr was in the

recovery position, Constable Patterson began to monitor his breathing and pulse until the ambulance arrived. He noted Mr. Starr was “very, very hot” to touch.

[24] The officers removed the handcuffs when they heard the ambulance arrive, approximately two minutes later. They brought Mr. Starr out on to the sidewalk for the paramedics and he was then taken into the ambulance and on to the hospital.

[25] Constable Patterson testified that he and Constable Bozic arrived at the Lord Selkirk Hotel at approximately 10:05 p.m. and the paramedics loaded Mr. Starr into the ambulance at 10:14 p.m. Once Mr. Starr was taken away in the ambulance, Constable Patterson remained at the scene and checked in with his supervising officers. He had no further contact with Mr. Starr.

F. Kevin Cavanagh

[26] Constable Cavanagh was the third member of the R.C.M.P. at the scene of the Lord Selkirk Hotel on June 22, 2009. His testimony was consistent with that of Constables Bozic and Patterson but he did add additional detail.

[27] Constable Cavanagh was at the R.C.M.P. detachment on June 22, 2009 when the call came in from dispatch reporting a male was, in Constable Cavanagh’s words: “twitching and freaking out at the Lord Selkirk Hotel, or just outside it.” He took the call, said he would respond, and went to his car and drove to the hotel. He heard radio communication that Constables Bozic and Patterson would also respond, and an update from dispatch was received when he was en route to the hotel, indicating that the man was harming himself and others and attempting to poke out his own eyes. He was also advised that the man had taken three pills; the kind of pill was not known. Constable Cavanagh then assumed the call related more to a mental health crisis than a criminal matter. He expects it took him approximately five minutes to arrive on scene after taking the first dispatch call.

[28] When he arrived, Constables Bozic and Patterson were already there. Constable Patterson was outside the Lord Selkirk Hotel talking to a witness, and Constable Bozic was inside the hotel vestibule with a man Constable Cavanagh did not recognize. The man, later identified to Constable Cavanagh as Mr. Starr, was on the floor of the vestibule, and Constable Bozic was leaning over him. A third man was also there, described by Constable Cavanagh as a middle-aged Caucasian man, later identified as Greg Johnson. Constable Cavanagh told Mr. Johnson to leave the vestibule and described Mr. Starr on the ground, rolled toward his right side, and kicking violently. Constable Bozic was trying to gain control of him, but having trouble doing so. Mr. Starr’s fists were clenched and he seemed to be fighting back against Constable Bozic and wasn’t doing what he was told by the Constable. Mr. Starr was screaming and grunting; making a lot of noise but no intelligible words.

[29] Constable Cavanagh noted Mr. Starr to have a very odd skin colour, described as “light grey colour” and “not a colour that I’ve ever seen on anyone who is living.” He also noted some

abrasions – or “road rash” – to Mr. Starr’s left temple and left cheek. Constable Cavanagh assisted Constable Bozic in trying to gain control of Mr. Starr in the vestibule, which the witness estimated to be five feet in length and five feet in width. The officers decided to try to cuff Mr. Starr in order to control him so Constable Cavanagh grabbed his right arm by the elbow and wrist and Constable Bozic grabbed his left arm. They were, after some struggle, able to handcuff Mr. Starr’s hands behind his back but Mr. Starr continued to kick and act “extremely agitated” even once the handcuffs were applied. Soon he calmed down and was rolled on to his right side into the “recovery position.” Constable Cavanagh explained that it is common practice to put someone handcuffed behind his back onto his side as it is easier to breathe in that position than if one is face down. Mr. Starr “went from being awake and very aggressive to becoming more calm and almost unconscious.” Constable Cavanagh then left Mr. Starr in the custody of the other two constables and went out on the sidewalk where he talked to Cheryl Sprong. Once he heard her account, he walked up and down the sidewalk in front of the hotel to see if he could find any pills to assist in identifying what Mr. Starr had ingested. He did not find any, and returned to the vestibule where Constable Patterson was monitoring Mr. Starr. He was told that Mr. Starr was breathing and had a pulse but noticed some blood from his mouth.

[30] It was Constable Cavanagh’s recollection that once Mr. Starr calmed down and “it was clear that Mr. Starr was no longer a threat to harm anybody physically, either himself, or other people” the handcuffs were no longer required and were removed. The ambulance had just arrived and the handcuffs would make the paramedics job more difficult as well. Mr. Starr was taken out of the vestibule on to the sidewalk and then loaded onto a stretcher and taken inside the ambulance. Constable Cavanagh followed the ambulance to the hospital and remained there until later relieved by Constable Sloane. Mr. Starr was pronounced dead by Dr. Du Preez at approximately 11:02 p.m. and Constable Cavanagh was relieved at approximately 11:45 p.m.

[31] Constable Cavanagh had peripheral dealings with Mr. Starr on one earlier occasion, when he attended a call to assist with what was believed to be an overdose. Constable Cavanagh was the third R.C.M.P. to arrive on scene and the paramedics were already working on Mr. Starr who was almost immediately transported to hospital. Constable Cavanagh had no real involvement in that matter and did not recognize Mr. Starr when he saw him on June 22, 2009.

G. Joachim Du Preez

[32] Dr. Du Preez was an emergency room physician at Selkirk General Hospital in 2009 and he responded when Mr. Starr was brought in to the Emergency Room of that hospital by ambulance on June 22, 2009. He received his medical training at the University of Pretoria between 1983 and 1990, earning a degree in medicine and surgery. He worked in various hospitals and clinics in South Africa from 1990 to 1995 and was a senior medical officer in the South African Armed Forces. From 1995 to 1999, Dr. Du Preez was in private surgical practice. He started Emergency Room departments in two hospitals in South Africa and continued to

work in these hospital Emergency Rooms when in private practice. Dr. Du Preez also taught advanced trauma life support to physicians in South Africa.

[33] He moved to Canada in 1999 and took the position at Selkirk General Hospital. Dr. Du Preez lectures at the University of Manitoba Faculty of Medicine in areas of family medicine and emergency medicine and he is the Flight Physician for Life Flight, which was described as the only air ambulance in the country with a physician available 24 hours. He was qualified as an expert in emergency medicine for this Inquest.

[34] Dr. Du Preez testified that he was notified that an ambulance was on its way to hospital with a “Red Romeo patient” which to the doctor meant the patient coming in was in critical condition, unconscious and the paramedics were trying to resuscitate. He was advised the paramedics had tried but were unable to put in a “combi-tube” which would have helped support the patient’s airway, sealing off the esophagus and the back of the throat to protect the airway. The paramedics also advised that they had used two medications: atropine and epinephrine. Dr. Du Preez explained that atropine speeds up the heart and epinephrine is used to increase blood pressure. The patient, Mr. Starr, did not respond at all to these medications.

[35] Dr. Du Preez learned from the R.C.M.P. officer at the hospital that the police had been called because of the patient’s bizarre behaviour, and that he was apparently trying to poke out his eyes. A bystander also reported that he had taken three tablets. The doctor was advised that the officers had tried to calm the patient down, and after they had him in handcuffs, the patient suddenly stopped responding. They had arrived at the hospital with the patient at 10:35 p.m.

[36] Upon arrival, Mr. Starr was unconscious and his pupils were dilated. He was not breathing and had no blood pressure. He had asystole, which meant that there was no heart activity so Dr. Du Preez immediately inserted an endotracheal tube. The doctor noted Mr. Starr was very flushed and really hot to the touch. CPR was being administered at this time as well. Mr. Starr received another dose of Atropine and a few more doses of epinephrine.

[37] Because there was a report of drug use, Dr. Du Preez considered toxic overdose. Without knowing which drug the patient ingested, Dr. Du Preez administered bicarbonate of soda intravenously to lessen the effects of a tricyclic antidepressant overdose. He also gave Mr. Starr Narcan in case he was suffering from an overdose of opiates such as cocaine or any of the major painkillers, and lastly, Mr. Starr received medication to combat the effects of benzodiazepines such as Valium or other sedatives. Dr. Du Preez explained that those are the medications typically tried when one cannot be sure what kind of drug was taken.

[38] None of these medications had any effect on Mr. Starr’s condition.

[39] Dr. Du Preez noted “major scratches” on Mr. Starr’s corneas, but saw nothing of note when he examined Mr. Starr’s skull and spine. When he intubated Mr. Starr, he noted the throat to be dry so lubricant was used on the endotracheal tube. There was “not a drop of

blood in his throat” according to the doctor. Blood was drawn and sent to the hospital lab but the results were not available until approximately 20 minutes after Mr. Starr’s death. Those results showed Mr. Starr’s blood potassium levels were “really high” but the sample they took had clotted which produces an abnormally high potassium reading. Dr. Du Preez testified that even if he had received the results of the blood test before Mr. Starr died, it would not have changed the way he managed his patient.

[40] Dr. Du Preez had reviewed the autopsy report prior to his testimony and noted the cause of death to be diphenhydramine overdose. Having heard the report of Mr. Starr’s delirium, and noting his flushed face, really dry mucus membranes, dry and hot skin, and dilated pupils, Dr. Du Preez testified that these symptoms are consistent with diphenhydramine overdose. Dr. Du Preez explained that for diphenhydramine overdose, the best response would be gastric lavage (stomach contents are pumped out and the stomach then irrigated) but that is only effective if it is performed within an hour of ingestion.

[41] It was Dr. Du Preez’s expert opinion that three diphenhydramine pills would not have accounted for the levels of that drug in Mr. Starr’s post-mortem blood tests. Diphenhydramine is commonly sold as Benadryl and Dr. Du Preez explained that the standard tablet is usually 25 milligrams, with the maximum daily dose of 400 milligrams.

[42] Dr. Du Preez testified as well that he had noticed more patients attending to Selkirk General Hospital Emergency department due to diphenhydramine overdose in the two years prior to his testimony. He understands some people take these medications recreationally and he believes some pharmacies are no longer putting these medications on the shelf but rather are keeping them behind the counter in the pharmacy. These medications are intended to be used for allergies, motion sickness, and nausea.

H. Richard Thurmeier

[43] Richard Thurmeier is a Senior Pharmacist and Mental Health Liaison Pharmacist at the St. Boniface Hospital, as well as Associate Professor in Psychiatric Practice, University of Manitoba Faculty of Pharmacy. He has provided expert testimony in two prior inquests, and was qualified to provide expert evidence in this Inquest in the area of pharmacology. He prepared and provided a written report following his review of the documents filed in this Inquest, having been asked to consider the medications prescribed to Mr. Starr and the implications, if any, of combining those medications. He was also asked to report on the signs and symptoms associated with diphenhydramine overdose. His report is an exhibit in these proceedings and will be discussed in greater detail later. He had no direct contact with Mr. Starr.

IV. MEDICAL EVIDENCE AND EXPERTISE

A. Medical Records

[44] Mr. Starr's records from the Interlake Regional Health Authority Mental Health Crisis Services were considered in this inquest. Mr. Starr had contact with the Mental Health Crisis Services in the months prior to his death. These records indicate his diagnosis as Depression with Anxiety/Suicidal/Substance Abuse. He had a psychiatrist, a community mental health worker, and a CMHA worker.

[45] In February 2009, Mr. Starr sought assistance from Crisis Services because he was struggling with major anxiety and suicidal thoughts. He attempted suicide three times, the first time when he was only 17 years old. Mr. Starr disclosed that he started to cut himself with razor blades at age 15. Abuse, suicidal thoughts, and an absent father marked his childhood; Mr. Starr disclosed he was told his father was an "awful person" who killed some police officers and committed suicide in jail. Mr. Starr's sister also committed suicide when he was 14 years old.

[46] As related to the Mobile Crisis Unit, Mr. Starr started abusing substances such as alcohol when he was 14 years old. He admitted abusing "Xanax, Tylenol #3 and sleeping pills, even OTC sleep aids." ("OTC" understood to be an acronym for "over the counter" medications.) At one point, Mr. Starr was taking 10 Tylenol #3s in a day. He attended one addiction program in October 2008.

[47] The mental health workers who attended to Mr. Starr's home on February 12, 2009, encouraged Mr. Starr to attend to the Crisis Stabilization Unit (CSU) for a psychological re-stabilization in a safe and supportive environment and Mr. Starr agreed and attended the following day. He remained there until he was arrested by members of the R.C.M.P on February 16, 2009 and taken from the CSU to the Winnipeg Remand Centre.

[48] CSU records indicate that Mr. Starr contacted them again on February 18, 2009, wanting to return and complete his program. He said he was without his medication; some were not returned to him when he was released from the Winnipeg Remand Centre. He was re-admitted to CSU February 19, 2009. The following notation appears on the intake form under the heading 'Significant History to be Noted':

OD → sleeping pills bought off street in Wpg, drinking.

[49] Mr. Starr remained an in-patient until February 26, 2009 when he was discharged with various prescriptions. Mr. Starr was noted to be in bright spirits upon discharge with no safety concerns. He had attended group sessions but had not actively participated and refused most opportunities for 1:1 counselling. He did not complete the goal/action plan sheets or the safety plan sheets, and was encouraged to meet again with his community mental health worker and his doctor after discharge.

[50] On April 17, 2009, just two months prior to her brother's death, Marie Leslie called an ambulance to report Mr. Starr was "stoned on Unisom." Unisom is a trade name for diphenhydramine. She was frightened for him, and said he was "walking around like a marionette and not listening." His legs "weren't doing walking the proper way."

[51] Although not a witness in these proceedings, Ms. Leslie was interviewed by the R.C.M.P. and that recorded statement was filed as part of an exhibit in this Inquest. She told the R.C.M.P. she knew her brother to have "mental issues" and to abuse prescription and non-prescription drugs – specifically Unisom – and to mix drugs with alcohol.

B. Medications

[52] Richard Thurmeier reviewed Mr. Starr's Drug Program Information Network (DPIN) dispensing history for the six months prior to his death. Mr. Thurmeier noted that the frequency of dispensing medications was high but the quantities dispensed were small, suggesting to Mr. Thurmeier a goal of maintaining frequent patient contact while limiting the amount of medication the patient had access to at any given time.

[53] Seven types of medication were dispensed to Mr. Starr in the six months prior to June 2009, namely:

- Clonazepam, a central nervous system depressant that has sedative, anti-anxiety, hypnotic and muscle-relaxant properties. It may cause anticholinergic effects such as dry mouth and blurred vision;
- Fluvoxamine, a Selective Serotonin Reuptake Inhibitor, effective in the treatment of Major Depressive Episodes;
- Olanzapine, an anti-psychotic medication that has anticholinergic properties and in larger doses, may cause confusion, disturbed concentration, and disorientation;
- Zopiclone, used to short-term relief of insomnia that has central nervous system depressant effects. According to Mr. Thurmeier, it may aggravate the depressant effects of alcohol, Clonazepam, diphenhydramine and other sedating compounds;
- Methotrimeprazine, an antipsychotic medication and like diphenhydramine, is highly anticholinergic. Common side effects include drowsiness, dry eyes, dry mouth and postural hypotension;
- Quetiapine, a second generation antipsychotic medication with strong sedative and anticholinergic effects;

- And lastly, Venlafaxine, an antidepressant that can be effective for the treatment of anxiety and depressive disorders. It may also have anticholinergic effects.

[54] Many of the medications listed above have anticholinergic properties, as is the case with diphenhydramine.

[55] Diphenhydramine is a medication used to relieve allergic symptoms, cold symptoms, and nausea. Familiar brand names include Benadryl, Unisom, and Sleep-eze. According to Mr. Thurmeier, diphenhydramine is commonly used as a sleep-aid and is available without a prescription. Frequent side effects include drowsiness, dizziness, and sedation. As Mr. Thurmeier states in his report:

Product labeling indicates a recommended dosage of 25 – 50 mg, every 4-6 hours as needed. Consumers are advised to NOT exceed 200 mg per day. Under medical supervision, dosages up to 400 mg per day may be justified in some circumstances.

...

When taken in overdose, Diphenhydramine may cause a broad range of symptoms based on excessive Anticholinergic and Antihistaminic effects.

The patient who has overdosed on diphenhydramine will often appear agitated and delirious, and may be hallucinating. However, the antihistaminic side of Diphenhydramine may result in excessive sedation, drowsiness, and depressed feelings. A slowing of mental processes and overall cognitive decline is anticipated. Profound anxiety and panic attacks can also occur. Having seizures or becoming comatose is also possible.

Physical signs commonly observed include increased heart rate, blood pressure, and body temperature. Heart palpitations are often seen. The skin is expected to become very dry, warm, and flushed. Pupils are often dilated. Urinary retention and decreased bowel sounds are usually present.

...

Patients who have ingested a large overdose of Diphenhydramine (or other anticholinergic substances) may have a wide range of clinical features. They may appear to be uncoordinated (ataxic), may be shaking, and may be easily startled. They may exhibit muscular (myoclonic) jerking. Their delirium may feature: confusion, disorientation, agitation, memory problems, inability to concentrate, inability to sustain a train of thought, incoherent speech, irritability, illogical thinking, sensitivity to light, and visual disturbances.

[56] Medical professionals such as Dr. Du Preez and Mr. Thurmeier summarize the features of anticholinergic poisoning with a mnemonic: “blind as a bat, dry as a bone, red as a beet, mad

as a hatter, and hot as a hare” referencing the symptoms of dilated pupils, dry mucus membranes, dry and flushed skin, altered mental status and fever.

[57] Dr. Du Preez opined that Mr. Starr’s symptoms were consistent with anticholinergic poisoning, and Richard Thurmeier noted many of the observations made by Cheryl Sprong are also consistent with anticholinergic delirium. Both medical experts agreed that there is no specific antidote for diphenhydramine overdose and Mr. Thurmeier reported that medical studies indicate fatal outcomes can occur with levels less than 0.5 microgram/mL. The level of diphenhydramine in Mr. Starr’s blood was 3873 ng/mL or 3.873 microgram/mL.

[58] No evidence is available as to which prescription drugs, if any, were in Mr. Starr’s blood at the time of his death, and in what amounts, because those toxicology tests were not conducted. It is therefore impossible to consider whether a combination of different medications – prescription or OTC – contributed to Mr. Starr’s death. We do have photographs of his room at the Lord Selkirk Hotel and packages of Sleep-eze and Unisom were found in the room. We have no information as to whether Mr. Starr ingested any of those medications or if he did, when and how much. It is impossible to speculate.

V. CONCLUSIONS

[59] Rudolph James Starr died on June 22, 2009 in Selkirk, Manitoba because of an overdose of diphenhydramine. There is no evidence as to why Mr. Starr ingested that medication although it is clear he was struggling with mental health issues relating to anxiety, depression and insomnia. Nor is there evidence as to what form of diphenhydramine he ingested, or when, and no evidence as to whether he combined the diphenhydramine with any of the prescription medications dispensed to him.

[60] Nor is there evidence to suggest that Mr. Starr’s death was a sudden and unexpected death proximal to police restraint, often referred to as Excited Delirium.¹ It is clear that Mr. Starr’s death was as inevitable as it was tragic. Given the amount of diphenhydramine ingested, and the severity of the anticholergenic effects, Dr. Du Preez estimated that Mr. Starr would have had to attend to the Emergency Department within an hour of ingestion for the doctor to have a chance to prevent fatality. From the severity of the effects observed by the witnesses, Mr. Starr was already suffering severely from the side effects of the overdose when the first 9-1-1 call was made.

[61] The actions of the witnesses and R.C.M.P. constables in dealing with Mr. Starr on June 22, 2009 were clearly motivated by concern for him. Without exception, every one of the witnesses who had contact with Mr. Starr was concerned for his safety and the safety of those

¹ Each of the police officers in contact with Mr. Starr that night had been taught about Excited Delirium as part of R.C.M.P. training. Prior Inquest Reports have examined Excited Delirium in the context of sudden and unexpected deaths in police restraint, including the Draper and Gill Inquest Report of Judge Joyal (July 11, 2005) and the Stevenson Inquest Report of Judge Gregoire (October 25, 2006).

around him. No one ignored him in his distress; they each sought assistance despite not knowing what was wrong. The civilian witnesses tried to keep him safe and called 9-1-1 at 9:59 p.m. The R.C.M.P. responded immediately to the dispatch call, and the two Constables closest to the Lord Selkirk Hotel responded, even though it was not “their turn” in the evening’s rotation of assignments. The third Constable arrived almost simultaneously, only minutes after the call was received.

[62] Upon seeing Mr. Starr in his distress in the hotel vestibule, Constables Bozic and Cavanagh went to Mr. Starr in an effort to calm him and keep him safe. Constable Patterson immediately called for an ambulance, which arrived only a few minutes later. By that time, Mr. Starr had lost consciousness and despite the efforts of the paramedics, Dr. Du Preez and the medical staff at the Selkirk General Hospital Emergency Department, Mr. Starr died approximately an hour after Ms. Sprong saw him on the sidewalk in front of the hotel.

[63] That one hour was the subject of three days of testimony and volumes of documentary evidence were filed in this Inquest. I also had the benefit of able submissions from Inquest Counsel and counsel for the R.C.M.P. After a careful review of all evidence, and the circumstances surrounding Mr. Starr’s death, there are no recommendations regarding policies or programs that I can suggest would reduce the likelihood of deaths occurring in similar circumstances in the future.

[64] Mr. Starr was aware of and receiving treatment and support from mental health professionals. His prescription medication was being monitored and dispensed in small quantities. On the evening of June 22, 2009, neighbours intervened and called for assistance from 9-1-1. That help arrived in the form of R.C.M.P. officers and paramedics. Mr. Starr was very quickly taken to hospital where he received immediate treatment.

[65] The response of the officers to Mr. Starr was appropriate in these circumstances. They acted as quickly as possible to calm him and when that did not work, they managed to handcuff him and place him in the recovery position while they monitored his heart beat and breathing and then once Mr. Starr calmed down, they removed the handcuffs. Given the danger Mr. Starr presented to himself, the witnesses and the officers, their response was both measured and appropriate. The paramedics arrived within minutes.

[66] Dr. Du Preez testified that anecdotally he was aware of an increase in diphenhydramine overdoses at the Selkirk General Hospital in the past few years. Mr. Thurmeier explained that diphenhydramine is a Schedule III drug under the National Association of Pharmacy Regulatory Authorities (NAPRA) drug schedules. He explained that according to NAPRA criteria, “Schedule III drugs may present risks to certain populations in self-selection. Although available without a prescription, these drugs are to be sold from the self-selection area of the pharmacy which is operated under the direct supervision of the pharmacist, subject to any local professional discretionary requirements which may increase the degree of control.” The purpose of this regulation seems to be that the person interested in these kinds of medications has an easy

option of speaking to a pharmacist. Such a consultation is not mandatory, however; the customer is free to simply pick the medication from the shelf and proceed to the checkout.

[67] There was some discussion with the expert witness as to whether diphenhydramine should be moved behind the pharmacist's counter, thereby forcing the customer to interact with someone at the pharmacist's counter if he or she wants to buy any form of diphenhydramine. Dr. Du Preez believes some pharmacists have already voluntarily moved these medications behind the counter. However, because there was no evidence to clarify what form of diphenhydramine Mr. Starr ingested, or when, or where he got it, and no evidence as to what other medications, if any, he took at the same time, it is difficult to conclude that but for the availability of the diphenhydramine in the self-selection area of the pharmacy, Mr. Starr would have not been able to obtain so much of it.

[68] It is disappointing that this Inquest did not have the benefit of a full toxicology report. Dr. Du Preez explained that they took blood samples from the patient upon arrival at hospital and tested for the most common drugs in "overdose" cases, but Mr. Starr passed away before the results were available. According to Mr. Thurmeier, toxicology tests performed as part of the autopsy did not screen for other medications either. Despite Mr. Starr's DPIN dispensing history which showed that Mr. Starr had been dispensed seven medications, many of which have anticholinergic effects, no screening was done for those medications. I am therefore unable to determine whether Mr. Starr suffered from a combined effect of diphenhydramine and other anticholinergic prescription medication.

[69] While having complete toxicology reports available for the Inquest may not have the effect of reducing the likelihood of deaths in circumstances similar to those of Mr. Starr, it would improve the ability of future Inquests to fully consider the material circumstances surrounding each death. It is therefore recommended that the deceased's DPIN dispensing history for the six months prior to death form the basis for toxicology screening at autopsy when investigating the cause of death in an overdose – suspected or confirmed.

I respectfully conclude and submit this Report on this 22nd day of November 2013, at the City of Winnipeg, in the Province of Manitoba.

"original signed by Judge Roller"

Judge Carena C. Roller



Manitoba

THE FATALITY INQUIRIES ACT
REPORT BY PROVINCIAL JUDGE ON INQUEST

RESPECTING THE DEATH OF: RUDOLPH JAMES STARR

EXHIBIT LIST

Description

1. Letter from the office of the Chief Medical Examiner dated September 30, 2011
2. File folder of documents received by the Inquest Office: Section I and II
3. Audio recording of RCMP radio traffic (list)
4. RCMP radio traffic disk
5. *Curriculum vitae* of Joachim Jacoeus Du Preez
6. *Curriculum Vitae* of Richard Thurmeier
7. Report of Richard Thurmeier