



Report to the Minister of Justice and Attorney General Public Fatality Inquiry

Fatality Inquiries Act

WHEREAS a Public Inquiry was held at the _____ Courthouse

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

on the _____ 24 _____ day of _____ May to June 1 _____, _____ 2011 _____, (and by adjournment
year

on the _____ -- _____ day of _____ -- _____, _____ 2011 _____),
year

before _____ The Honourable Judge D. Greaves _____, a Provincial Court Judge,

into the death of _____ Janessa Lynn Toney _____ 5 _____
(Name in Full) (Age)

of _____ and the following findings were made:
(Residence)

Date and Time of Death: _____ Between September 27th and September 28, 2008 – exact time
unknown _____

Place: _____ Lake Newell _____

Medical Cause of Death:

("cause of death" means the medical cause of death according to the International Statistical Classification of Diseases, Injuries and Causes of Death as last revised by the International Conference assembled for that purpose and published by the World Health Organization – The Fatality Inquiries Act, Section 1(d)).

Drowning.

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

INQUIRY PROCESS:

1. Establishment of Inquiry

Pursuant to s. 35(1) of the *Fatality Inquiries Act*, (the “Act”) the Attorney General in and for the Province of Alberta, ordered a Public Fatality Inquiry (the “Inquiry”) into the death of Janessa Lyn Toney. Pursuant to s. 49(1) of the, the Minister of Justice appointed counsel, Nancy McCurdy and Christine Nugent, to appear on his behalf at the Inquiry and to cross-examine witnesses and present argument and submissions. In addition, counsels’ role included arranging for attendance and scheduling of witnesses.

Overriding Purpose of Fatality Inquiry

In addition to the specific statutory requirements, the overall purpose of a fatality inquiry is to assist and reassure the public by exposing the circumstances of a death. An inquiry dulls speculation, makes us aware of the circumstances which puts human life at risk and reassures all of us that public authorities are taking appropriate measure to protect human life. *R. v. Faber*, [1976] 2 S.C.R. 9 (S.C.C.).

2. Parties with Standing

Section 49(2) of the Act gives status to the next of kin of the deceased to appear at the Inquiry, and to cross-examine witnesses and present arguments and submissions. The family was represented by G. Darren Williams. In addition, the presiding judge may permit any other person who has a direct and substantial interest in the subject matter of the Inquiry, to have similar status. As a result, the following parties were given status:

- a) The R.C.M.P., represented by Bruce Hughson and James Elford (Department of Justice Canada Prairie Region);
- b) The City of Brooks, represented by Steven T. Connors;
- c) Shock Trauma Air Rescue Society of Calgary (STARS), represented by Michael Theroux and Matthew J. Macdonald;
- d) Tourism, Parks & Recreation, represented by Philipp Hofer;
- e) Southern Regions Parks Division, represented by Rob Hugill, Director;
- f) Sustainable Resource Development , represented by; and Henry Kujat
- g) Fish & Wildlife Division, represented by Murray Busch .

3. The Hearings

The evidentiary part of the Inquiry commenced on May 24, 2011. After several days of testimony, submissions were received on Wednesday the June 1, 2011. The Inquiry was open to the public.

4. Witnesses and Exhibits

The Inquiry heard testimony from those witnesses listed in Appendix A. Exhibits entered during the Inquiry are listed in Appendix B. Exhibit 4, the map of Lake Newell, does not reproduce

using this format, and its likeness is therefore attached as Appendix C.

CIRCUMSTANCES UNDER WHICH DEATH OCCURRED:

1. Yvonne Toney – (no testimony only written statement)

On September 17, 2008, the Toney family were cruising the western edge of Lake Newell (the “Lake”), when their boat’s propeller hit a rock. About 5:00 p.m. they called 9-1-1 saying they needed help but that “. . . no one was hurt . . . and not to rush because everyone was alright.” Thereafter a Fish and Wildlife boat arrived with three people in it: Constable Savoie of the RCMP; S/Constable Brown of the City of Brooks; and Officer Unreiner of Fish and Wildlife.

The rescue boat attempted to tow the Toney boat, but could not so the Toney boat was secured to the shore at the southwest corner of the Lake, near Pelican Island. The members of the Toney family and the three officers boarded the Fish and Wildlife boat and they departed for the marina at Kinbrook Provincial park, approximately eight kilometers away. The rescue boat began to take on water as it proceeded across the Lake. During the trip the men were first told to go from the bow to the stern and then were told to move to the bow. The boat capsized with Janessa apparently being caught under the boat. Her father could hear her scream. Jamie Brown had drifted away from the boat after it capsized.

Finally, a STARS helicopter located the capsized boat, and thereafter a local fireman’s personal watercraft appeared, taking the entire party, with the exception of Janessa, but including Jamie Brown, who had drifted some distance away, on board. This group then proceeded to the marina without further incident.

Some four hours later the rescue boat, capsized, was towed to their shore. Janessa was found and STARS flew the child to Calgary Foothills Hospital. She was declared dead by drowning.

2. Allen Toney

Mr. Toney’s recollection is essentially the same as his wife’s, adding that while waiting for assistance the family tried fishing to pass the time.

When the winds and waves increased, their boat’s anchor failed to hold and consequentially they drifted near shore about 6:30 or 7:00 pm. There was no panic because they were not taking on water and had extra clothes, blankets and food on board. “Finally” (the Fish and Wildlife) boat arrived, and “. . . against my better judgment . . . (they loaded) eight people in (the Fish and Wildlife) . . . boat”. It was near dusk, about 8:00 p.m. and there were, “. . . approximately two foot swells.” The boat was against the southwest shore and the wind was blowing from the northwest at about 30 K.P.H.

Mr. Toney accounted for his family’s weights as follows: himself (205 lbs.); his wife (125 lbs.); daughter Courtney (100 lbs.); his daughter, Rebecca (60 lbs.); and Janessa (from autopsy report was 44 lbs.)

After Darren Unreiner ordered the other two other officers to move from the bow to the stern, the waves (out in the middle of the lake as they were heading towards the eastern side), “. . . really began to throw us around and water began to enter the stern. Darren Unreiner turned on the bilge

pump to keep his boat from sinking. The pump however could not keep up and the motor got swamped and the boat capsized. Floating about, he and his wife thought Janessa was under the boat. Someone thought they heard a voice in the distance. Because Jamie Brown could not swim (he had fortunately a full body floatation dry suit) he drifted away. Mr. Toney found this to be a distraction from the effort of finding his daughter.

STARS appeared about 11:00 p.m., and then a rescue boat. Mr. Toney told the rescuers about Janessa and that they should get divers to check under the boat. Instead of doing so at this time, Constable Savoie offered to return later (which did happen albeit much later because their position was not ‘marked’ and had to be relocated). On shore at 12:00 midnight Mr. Toney, “. . . emphatically (told Staff Sergeant Haley) that Janessa was under the boat and we needed . . . to get divers to check it”. At 2:00 a.m. Staff Sergeant Haley told him, “. . . he couldn’t get divers to dive at night.” Some hours later, the capsized rescue boat was towed to the marina and, after it was hoisted right side, Mr. Toney found Janessa, having died, “all alone in the dark”, not likely of hypothermia because the water was perhaps 10-12 C, but rather of drowning.

Finally, no agency personnel, except this Court of Inquiry has ever communicated with him in any manner or for any purpose.

3. Keith Martin

Mr. Martin is one of two full-time firemen employed by the City of Brooks and, at the time of the incident, held the rank of Assistant Chief. While he has logistical and administrative training he had no specific training in search and marine rescue.

Because of a general alert resulting from the Toney’s 9-1-1 call, he and a number of local volunteer firefighters attended with a Zodiac, a smaller, inflatable-type boat with motor. The firefighters had access to full body ‘thermal/flotation ‘dry’ suits, ensuring that the firefighters were virtually unsinkable and completely safe from hypothermia.

Notwithstanding that there was no contract for services with the RCMP and being well outside of their corporate boundaries, Mr. Martin had three of his volunteers embark in the Zodiac to provide comfort, but not transportation, for the stranded family. The firefighters knew of the Toney’s approximate location near Pelican Island, and of their circumstances because Constable Savoie of the RCMP, who had just arrived, was in cell phone contact with Mr. Toney.

The waves at this time were three to four feet high and at some times, reached six feet. Mr. Martin described the Lake as being large and frequently very rough because it was a prairie reservoir with no land or tree protection from the wind.

About twenty minutes after the Zodiac was launched, Darren Unreiner arrived with Fish and Wildlife’s 18-foot Crestliner, accompanied by Special Constable Jamie Brown. Neither individual discussed his intent with Martin nor was there any review of equipment, capabilities, back up or communication. Constable Savoie, whom Mr. Martin considered to be in charge because of his RCMP status, left with Unreiner but before doing so gave Martin his police band radio because, “. . . it might get wet”. In the Zodiac, however, a fireman had such a radio, keeping it dry inside his suit. Constable Savoie was also equipped, like the firemen, with a dry suit which he wore throughout the entire tragic event. Constable Savoie did have his cell phone (but not keep it in a plastic baggy), and did at least once communicate with RCMP telecoms, Red

Deer, about locating the family, but he never phoned shore or responded to the many efforts of Martin to telephone him.

About the time the Fish and Wildlife boat departed, the Zodiac, which had left eighteen minutes earlier, discovered a windsurfer stranded on his board in the middle of the Lake. The firemen took him aboard and decided to discontinue the trip to the Toney's in favor of returning the man to the boat launch. Turning into the storm soon resulted in the wooden flat-bottom floorboard breaking because of the smashing of waves against the front. The Zodiac then began to fold. The Zodiac was unsinkable, but losing its shape, which in turn caused the motor and/or gas can to submerge and the firefighters found themselves stranded. Calling to shore on their radio, they had Martin mobilize other volunteer firefighters and their private vessels for their recovery.

Coincidentally, while the Zodiac was waiting for rescue, the occupants saw the Fish and Wildlife boat heading south towards the Toney's. Wave conditions at this time were between three to six feet by the firemen's accumulated descriptions.

Martin realized by 20:54 that a reasonable time line for the return of the Fish and Wildlife boat had been exceeded. At the same time, RCMP telecoms could not make contact with Constable Savoie. This resulted in an alert to Brooks RCMP NCO i/c Corporal Sutherland-Byers. She attended the boat launch at Kinbrook Park at 21:30 hrs. and upon learning from Martin the whole scenario suggested that Martin, "... take command." He declined but offered his help.

Both Sutherland-Byers and Martin tried, for some 2 hours, to commission people and equipment. Unbeknown to either of them a STARS Helicopter had been notified by Brooks EMS and, on its own initiative, arrived on scene at about 23:20. STARS was unable to communicate with the capsized boat or with volunteer firefighters in their private boats. STARS found the capsized officers and family at 23:25. S/ Constable Brown, was likewise located by STARS, some distance away.

STARS was never advised by command that Janessa was likely under the boat. Consequently, STARS continued a search of the Lake. It was only about 01:20 on the following morning that they learned from Brooks EMS about Janessa's likely whereabouts.

Martin was not interviewed by RCMP or Fish and Wildlife for their internal review purposes though all, including Alberta Parks, have otherwise frequently communicated and produced a very comprehensive Inter Agency Plan to respond to marine emergencies in the future. Brooks Fire has since September 28, 2008, acquired a ultra capable 'ZEBAC' rescue boat, a whole assortment of other necessary equipment (i.e. water proof marine radios capable of communication on many emergency frequencies/bands) and has trained many volunteers on this equipment (offers to RCMP and Fish and Wildlife Officer Darren Unreiner to participate in this training were declined in favor of their own departmental resources).

Today Martin would recommend a land-based recovery.

4. Allan Macdonald

Mr. Macdonald, a volunteer fireman with the City of Brooks fire department, who has considerable land, search, rescue and related emergency experience was in the Zodiac. He kept the department's radio safe under his dry suit and, as a consequence, was able to call for and direct

their own rescue. As previously noted, he saw the Fish & Wildlife boat go past them. The waves to his recollection were 1 meter to 1.7 meters high and of a force sufficient to incapacitate the Zodiac.

5. Corporal Sandra Sutherland-Byers

Corporal Sutherland-Byers on September 27, 2008 had 16 years experience with the RCMP and has since retired. She was not familiar with the dynamics or geography of the Lake, with boating or marine issues in general, and had no specific search and rescue training. She was tasked with NCO in charge duties for the City of Brooks and area throughout the evening of September 27, 2008.

The Corporal heard about the 9-1-1 call by Mr. Toney via telecoms about 17:30. Understandably, at this time, not viewing the situation as an emergency she dispatched Constable Savoie and another to the lake. Later she was informed that Constable Savoie was going to accompany Officer Unreiner of Fish and Wildlife, and subsequently that they had found the Toney family and, “. . . were leaving with them . . . for shore”. She was not, however, advised that the Toney family was on shore at the time of their departure for shore. At 21:00 she was advised by Telecoms, after a normal one-hour call back had failed to make contact with Constable Savoie, that he was deemed missing so she personally attended the marina, notifying her superior, Staff Sergeant Haley, of the missing member.

Corporal Sutherland-Byers was not aware of any availability or Memorandum of Agreement (MOA) with STARS, but fortunately STARS found out about the incident at Lake Newell and, on its own initiative made contact with Sutherland-Byers.

STARS departed Calgary about 22:30, and arrived at the Lake at 23:10. Within fifteen minutes, STARS personnel found the capsized boat.

About 23:00, Sutherland-Byers was contacted by the Calgary Fire Department about their ‘Dive team’, which had also taken the initiative to get involved, if possible. There were discussions about how much time had elapsed since capsizing and its effect; consequently, nothing was requested or offered.

Thereafter, Sutherland-Byers assisted in relaying radio communications between STARS and Brooks’ Fire boats, as well as dealing with many other details. However, Sutherland-Byers made no ‘command’ decisions

6. Staff Sergeant John Haley

Staff Sergeant Haley was the City of Brooks urban and district Detachment Commander. He is a police officer of considerable experience but not in marine search and rescue.

He considered his function as administrative and attended the marina only because of protocol requiring his attendance and report to his superiors when one of his RCMP officers “goes missing.” This occurred at 22:30. The Staff Sergeant relied on Sutherland-Byers to be incident commander. The RCMP are by contract as the Provincial Police Force and Government policy (per Alberta Municipal Affairs and Housing, Emergency Management Agency) to be “in charge” of all land and water rescues, excepting national parks, in Alberta. It is, however, expected that

they partner with other government departments and private sector resources.

Staff Sergeant Haley had been personally advised by Constable Savoie, about 00:30, on September 18 that there was a probability that Janessa was trapped under the capsized boat. It is unknown who initiated a return call to the Calgary Fire Department at 01:00 but it was then that Haley and a Calgary Battalion Fire Chief further discussed a dive team. Haley understood Calgary's advice to be that they could only assist (given the lapse of time from capsizing to the time when they could possibly muster manpower on water) in recovery of the body, not in Janessa's rescue. At this time Mr. Toney pleaded with the Staff Sergeant for divers to be resourced. Haley advised that diving efforts "were not advisable."

The towed capsized boat arrived at the marina at about 04:30. Thereafter, Janessa was found, deceased.

Haley acknowledged, that there had been another option, a land-based rescue, available earlier in the evening.

Haley has since been most co-operative in participating with Brooks Fire and local Parks official's in developing a "Inter-Agency Operational Plan" to deal with water emergencies. Regrettably, Haley also reported that while he has had at least three members trained to operate RCMP boats – none being in his district – no one has been locally trained to operate the Parks Whaler or the new Brooks Fire Department Rescue boat, or trained specifically in marine search and rescue.

7. Bryan Lloyd

Mr. Lloyd is a civilian member of the RCMP, who is now the Chief Occupational Health and Safety Officer for the RCMP for their North West Division.

For their 'own safety' purposes he obtained witness statements from Unreiner, Brown, Savoie and Sutherland-Byers, but for the most part did not interview others, including the Toney's. His (HOIT) report is an exhibit.

Without accounting specifically for courses and years of experience, Mr. Lloyd found that "... we lucked out" as regards the vast boating and emergency experience of officers Unreiner and Savoie concerned vis a vis ' their being able to operate the boat'. He did not, however, consider the advisability of conducting a water rescue rather than a land-based rescue.

Mr. Lloyd tendered six recommendations for improvement:

1. Develop a response process for inland marine-based search and rescue events in the Brooks area. This protocol should involve community and response stakeholders consultation. Roles and responsibilities should be clearly indicated, with an effective search and rescue ("SAR") response plan.
2. Explore additional SAR partnerships with other organizations in the Brooks area, including the Department of National Defence – CFB Suffield: It is recognized that DND SAR roles are clearly defined; however, the presence of a large military establishment may provide additional SAR resources.

3. Implement a process, and related training, for the establishment of a communication command post for SAR events, based on an Incident Command Model. The local RCMP Detachment possessed the ability to position a police cruiser at the Kinbrook Island boat launch, equipped with a transmitter, and maintain portable radio coverage with the SAR vessel throughout the operation, with a 15-minute radio response interval commonly used in marine SAR. (Here it was an hour between Constable Savoie and telecoms Red Deer, and none at all with shore incident command).
4. Research the procurement of positive buoyancy – thermal protection PFDs for use at the Detachment level. Constable Savoie was provided with a Mustang PFD from the Brooks Fire Department at the scene; however, future events may not always afford this same opportunity.
5. RCMP SAR Commander should hereafter conduct an assessment of all persons and safety-related equipment involved in the SAR, including volunteers to ensure that the appropriate number of responders, and safety related equipment are used, and all responders are competent for the task.
6. Identify and ensure that appropriate marine-related training is provided to all marine SAR responders for future events. RCMP members operating marine vessels must complete the internal RCMP Inland Water Transportation (IWT) course. The course is exemplary and includes marine SAR elements. Apparently, three members have apparently taken the IWT since this incident.

Mr. Lloyd's investigation revealed that:

1. The water temperature recorded at noon on September 27 was 54 Fahrenheit. After 17:00 the wind was from the northwest at 30 KPH and the temperature was 18.8 C.; at 18:00, the wind was from the north and the temperature was 12.9C.; at 19:00, the wind was from the north and the temperature was 11.1.C.; and at 20:00, the wind was from the north and the temperature was 9.1 C.
2. The waves throughout the day were four to five feet high and, anecdotally, the Staff Sergeant reported another member had been on the lake fishing during the day and had aborted because of conditions.
3. The Fish and Wildlife boat was a 2008 Super Hawk 1800 (18 ½ foot) Crestliner, with open bow seating, divided windshield, command seat/steering/control station, 2 fish water wells, internal gas tank (133 gallons), external 175 HP motor, and a MAXIMUM WEIGHT ALLOWANCE of seven persons (eight persons were on board) and/or 626 kg which includes all persons, fuel, water and cargo/equipment. Lloyd had estimated that, at 175 lbs per person, the vessel was near maximum). This differs from Unreiner, who believed that the boat was 200 to 300 lbs less than maximum, but Unreiner omitted reference to the weight of the equipment, live wells and a full tank of gas. Regardless, as Lloyd said, "... weight capacity affects the centre of balance and buoyancy", and the maximum weight is only prescribed for "FAIR WEATHER CONDITIONS".

8. Henry Kujat

Kujat was a Fish and Wildlife officer for 33 years, learned and trained in marine transportation,

and lead instructor for the Department of Sustainable Resources, Fish and Wildlife Division between 2002 and 2009.

Mr. Kujat provided evidence of the various levels and nature of Fish and Wildlife Officer's training which, however exemplary, does not include climatic 'crisis' and specialized 'rescue' operations. He and others testified it was not the business of his Department to put its members at serious risk or to exercise a mandate of search and rescue. They would however partner or assist for good purposes even in bad conditions.

Emphasizing that the best of boats and the best of operators cannot ensure success, Kujat did go on (not specifically to this incident) to generally testify that if conditions are hazardous "... don't go". If danger befalls "... get back to shore". And finally when taking on weight be "... very careful" in conditions less "... than ideal".

Kujat finally observed that the Fish and Wildlife boat used in this operation has a floor which obscures the fact of accumulating water, which could weigh up to 1000 lbs. Persons on board had seen water accumulating on the floor and I conclude that the space underneath was likely already flooded.) He declared that the bilge pump (which Unreiner had relied upon) would be of little use, given its rate of dispersal in emergent circumstances. Worse even than the accumulated weight of water is its movement – sloshing in one direction or another. The weight of the water and its movement was IN ADDITION TO the weight of the people and cargo being near the maximum allowable weight.

9. Leonard MacCharles

McCharles is now Deputy Fire Chief for the City of Calgary. During September 2008, he was the 'Duty' Chief to whom the Calgary dive team had to seek sanction to deploy.

Mr. MacCharles learned from STARS about 22:30 of the basic circumstances at Lake Newell. He and his Battalion Chief then had telephone communications with the 'incident commander' Sutherland-Byers about 23:00 and Staff Sergeant Haley about 01:00. Suffering from "very vague information" from the officers throughout, they resolved not to respond.

However, at the Inquiry, finding out for the first time of the probability that Janessa was under the capsized boat, McCharles testified that it could have been "possibly" beneficial to have deployed two persons for a search and rescue mission under the boat.

10. Michael Potter:

Potter is pilot and manager of flight operations for STARS, Calgary.

EMS of Brooks notified them at 22:15 of the unfolding circumstance at Lake Newell. STARS INITIATED communication with incident command and within ½ hour were en route.

Having discovered and directed rescue boats to the capsized vessel and to Mr. Brown (via a cumbersome radio linkage between RCMP and Brooks Fire Department), the helicopter went on to search the lake for Janessa. It was not until 00:24, while they were refueling at Brooks Hospital, that they found out from EMS of the probability of Janessa being under the boat. STARS at the Inquiry expressed frustration with incident commander, Sutherland-Byers

convinced that STARS never would have been on site except for their initiative.

This witness felt divers should have been resourced as an earlier alternative to towing the capsized boat (hence their frustration with finding out so late about Janessa's whereabouts).

STARS returned to Calgary with Janessa after at 05:00.

11. Nazar Hader

Hader was a Senior Inspector assigned by Transport Canada for purposes of s. 219 of the Canada Shipping Act (2001) to determine if there were any infractions “deserving an, “. . . administrative monetary penalty” in regards to the operation of the Fish and Wildlife boat. He concluded that there were not, but he also did not, in any way, consider the option of land recovery.

12. Philipp Hofer

Hofer is an Alberta Parks manager who is stationed at Dinosaur Provincial Park but is also responsible for Kinbrook Provincial Park (which is a small land mass located at the north east corner of Lake Newell versus the South West corner where the Toney's were stranded).

Alberta Parks anticipates that Lake Newell will be utilized for water recreation; therefore, they had a 19-foot Boston Whaler located on site. Mr. Hofer stated that their Whaler was a very seaworthy boat, designed for circumstances like September 27, 2008. Indeed, he emphasized that it is employed internationally by militaries and/or other emergency responders.

Mr. Hofer is trained in the operation of the boat and has participated in two previous significant search and rescue missions, one of which involved issues similar to the Toney circumstance. In that incident, the subjects were stranded by storm on an island, not a shore accessible by land. Because of health considerations transport was necessary, yet for reasons of ultimate safety, rather than routing the rescue expedition back across the open water of the Lake. Hofer's boat took to the safety of Jack Fish bay, and thereafter, to land. There they were met by vehicles from Kinbrook. Jackfish Bay is identified on the map of the Lake (attachment C).

Mr. Hofer observed that the Lake is routinely windy and rough, and conditions are subject to rapid change, although he has never in all his experience witnessed any rogue wave phenomenon.

On the night in question, all trained operators employed by Parks were on leave or course elsewhere leaving only a summer “temp”. While this summer employee responded to telephone enquiry by RCMP, he could not provide an operator for the Parks Whaler. Unreiner testified that he had previously been employed with Parks and had been trained in the operation of boats like the Whaler, but preferred, given considerable recent use, the Fish and Wildlife vessel on September 27th, 2008).

Since the tragedy all Park employees in the region are required to undergo an extensive six-day course into the general and specific issues related to the Whaler. Brooks Fire accepted the opportunity to accompany Parks personnel to this course. RCMP and Fish and Wildlife did not.

Additionally, Alberta Parks has been an enthusiastic co-author of the Inter Agency Agreement and would recommend in future, among other things that during any incident there be a risk

assessment done which possibly includes the feasibility of a land recovery.

13. Doug Rutherford

Rutherford is the District Manager for Fish and Wildlife, Department of Sustainable Resources. He produced an “Investigative ... Report” for his immediate supervisor (and inevitably for the Minister) about this tragedy.

Rutherford’s report indicated that the reason for the ‘rescue’ was “... (the Toney’s) had struck a rock and were taking on water. At the Inquiry, he stated “... I wouldn’t have done anything different.”

However, the contents of Rutherford’s report are contradicted by a number of key findings at the Inquiry:

1. Rutherford’s report indicates that the Toney’s situation was “dire”, as they were taking on water. However, while the Toney boat was disabled, the Toney family were otherwise, “...fine” Evidence reveals that they had coats, rain gear, blankets, food and water and were fishing to pass the time while waiting for assistance).
2. There is no mention in Rutherford’s report that all parties had been on the shore tying up the Toney boat.
3. Likewise, while Mr. Rutherford did not make mention of staying on dry land ...”. It must here be emphasized by this Court that the Toney were located only some 10 city blocks (of prairie grass) from Range Road #153 (constructed, all weather, gravel road). Additionally that there are a whole assortment of other land trails and roadways along the south and east of Lake Newell. (Refer to Appendix C, the road between Highway 36 and Pelican Island is R.R. #153). And finally that there are 2 major Primary or Secondary Highways around the lake which could have delivered transport from anywhere within a reasonable time frame. .
4. Most regrettably, Mr. Rutherford’s report only obtained statements from the police officers in the boat, not the other people. (i e. the Toney’s).

14. Jamie Brown

Brown is a special constable with the City of Brooks and was familiar with Unreiner.

Brown was not experienced in search and rescue, could not swim nor did he have significant boating experience: Going ‘along’ this fateful evening was coincidental to him calling Unreiner earlier in the day about the possibility of accompanying a boat patrol by Fish and Wildlife on the Lake that day. Unreiner advised him then that the Lake was, “... too rough.” It was some short time later when Mr. Brown got a return call from Unreiner offering him a ride-along pursuant to the 9-1-1 mission to recover the Toneys.

While trying to assist Unreiner and Savoie to launch the boat Mr. Brown observed, “the water was very rough ... and several of the Fire Department guys were keeping the boat from smashing against the dock.”

Brown was not informed of the object of the mission, including the plans to tow the Toney boat and/or the decision to bring the family on board, to leave shore, or to travel back eight kilometers across the lake to Kinbrook Island from where they had launched.

Brown testified that the lake conditions, coming and going, did not change much, though probably going back was worse.

Out in the main body of the Lake waves began coming over the bow. At some point in time Unreiner told Brown to go to the rear. After some sixteen to twenty minutes water swamped the rear of the boat, they turned sideways and capsized.

Mr. Brown soon drifted away from the capsized boat. Incredibly he was, much later, located by STARS, in the middle of the lake.

15. Gilles Savoie

Savoie is constable with the RCMP, stationed in Brooks. At the time of the incident, he had been with the RCMP for about three years.

Savoie had been a paramedic, but he had no search and rescue training, and little geographic understanding of the Lake Newell area. As well, he did not make enquiries of boat capacity (weight or operational) or take any directions from Martin – indeed, while he variously called RCMP telecoms on his cell phone, he never ‘reported’ back to shore, or answered Martin’s calls when on board.

The Toney’s 9-1-1 call was seemingly garbled (i.e. taking on water) but the distress was reduced to “fine” after phone calls between Mr. Toney and Constable Savoie well before the Fish and Wildlife’s boat’s departure to assist.

While times are not exact, it appears that Unreiner and Brown arrived at Kinbrook after Savoie and they all departed in the Fish & Wildlife boat about 19:00. Launching took about five to ten, the waves were, “...high”, “...quite choppy” but going with the wind, “... (he) had no concern.” They, “skimmed the waves” and arrived at the Toney’s location about 7:30 p.m. Savoie had only his cell phone. He left his ‘police’ radio on shore.

Savoie’s understanding was that Unreiner’s object was to tow the Toney boat, but after efforts to tow proved futile, this was abandoned and Unreiner instead had the family loaded onto the rescue boat and had the Toney boat secured to shore. Savoie emphasized that he had complete confidence in Unreiner, while at the same time confirming that these were Unreiner’s decisions.

On the way back, the rescue boat was heading into the wind/waves and the bilge pump was activated. Savoie heard Unreiner caution the children that this was, “... going to be a rough ride”.

Savoie confirms that there was fore and aft movement in the boat by the three males, other than Unreiner. This seemingly was at the direction of Unreiner for purposes of ballast.

Waves were still coming over the bow when they got to about three-quarters of the way back to the boat launch. Then they capsized.

Very soon thereafter all parties were accounted for except Janessa. Her screaming could be heard. The Toney's thought she was under the boat. Savoie, by holding onto the gunwale and trying to overcome his flotation suit, tried to look and reach with his arm under the boat but to no avail. Mr. Toney tried, but was disallowed by Constable Savoie from continued effort. There was also the probability, because the waves, "... were still quite high" that she was in open water. (i. e. that they could hear her but not see her). Janessa's exact whereabouts was not resolved until the very end of the evening.

Finally, at 23:25 the STARS helicopter identified their position. One of the firemen responding by water took off his safety gear and shirt to make an effort to dive under the boat. This would have been a dangerous maneuver. It certainly was Constable Savoie's opinion and he again disallowed the effort. Soon they were all picked up as well as Brown and got back to shore about 00:20. (They had been capsized for three or four hours. Radio communications, like with the firemen's rescue, could have greatly expedited rescue).

On shore, Savoie informed Haley of the possibility that Janessa was under the boat. Savoie had no evident discussions about divers or any "... plan to go under the boat". Savoie persuaded Haley to allow him to return to the capsized boat. Because the capsized boat had not been tagged and had drifted, it could not be relocated until 01:45 Then a decision was made to tow the boat. Savoie's rationale for towing was that this (now) was a, "... salvage operation, not a rescue", although no one can be certain of the time of Janessa's death nor the effect of the towing on her chance of survival, if any. It was not until 04:38 when the boat was finally towed to shore. Overturning the boat with winch, the rescuers located Janessa's body.

16. Darren Unreiner

Unreiner had been a full time Fish and Wildlife Officer for several years prior to September 27, 2008. Prior to this, he was employed by Alberta Parks for four or five years as a seasonal employee.

He has much personal boating experience as well as considerable training, including the proper operation of Boston Whalers. He had, however, "... never been on the Lake (or any lake) in conditions like that," although his later testimony seemed to suggest otherwise.

After being advised by cell phone by Savoie of the Toney's plight, Unreiner summoned Brown, who while not a very experienced boatsman or even a swimmer was thought to be of help unloading and securing the boat.

Once at Kinbrook, Unreiner preferred the Fish and Wildlife boat over the Park's Boston Whaler, which he had been trained to operate some years earlier, because of its readiness. It's not clear, however, why such a sense of urgency existed, because the Toney's were in "fine" condition. .

Going down the Lake to the suspected rendezvous point, Unreiner testified that the water did, "not concern him," the waves only being 1 ½ foot high."

His route, marked by GPS to be used to return to Kinbrook, was southerly, down the easterly side of Lake. When about three-quarters of the length of the Lake, the boat turned westerly, across open water, to the west shore of the Lake (from point A to B estimated to be 8 kilometers).

Once the Toney's were located, if there had been any consideration of a land recovery, it was quickly disregarded in favour of lake travel.

Unreiner acknowledged that from the shoreline where he loaded the Toney's there were some trails and roads as well as to the south and east, but that he choose a marine-based recovery. While describing worsening conditions, en route to the marina, Unreiner stated that it was when, "... mother nature threw a curve ball," that a large wave capsized the boat (more likely, the Court finds it is a result of an accumulation of factors).

Thereafter, Unreiner did his very best to assist, especially the other surviving children.

Since the morning of September 28, 2008, Unreiner has reasoned that, "...our decision making was for the best that night." In this regard, he testified, contrary to Savoie's testimony, that the decisions made on the boat were shared.

RECOMMENDATIONS FOR THE PREVENTION OF SIMILAR DEATHS:

1. STARS availability should be expanded if possible. In this particular incident, STARS is to be commended for their insight, initiative, expertise and heroics. But for STARS, all persons capsized on Lake Newell the evening of September 27th, 2008 might have perished.
2. In areas where there is a significant body of water, such as Lake Newell, a Community (Inter Agency) Emergency Marine Rescue Plan should be compiled. The Brooks and District Volunteer Firemen have taken on a stellar leadership role in compiling such a plan for Lake Newell. They have secured world class equipment (thanks to the corporate citizenship of the Eastern Irrigation District), and have extensively trained many of their members in boat operation and water rescue. In this particular incident, the Brooks and District Fire Department members, despite not being under any legal obligation to do so, risked their own lives and personal property, and should be recognized and commended for doing so.
3. The RCMP, being mandated by law and police to be in charge of all water rescue in Alberta must do that ... even if they partially delegate. Risk analysis, securing personnel and equipment, rationalizing not only deployment, but also continuation and finally ensuring constant radio communication are always to be guaranteed.

Leadership is not about one person making the decisions. It is about a process that requires structure. The RCMP must be committed to ensure the paradigm of expert, constantly informed, decision making in the future.

4. The Department of Sustainable Resources, Fish and Wildlife in particular, if it is going to launch into missions involving apparent risk to life should ensure the best selection of equipment, and the best decision making, which at the very least should include conferencing with a superior or better yet, a designated emergency response team.

DATED June 20, 2011

at Medicine Hat, Alberta.

Original signed by

Honourable D. Greaves
A Judge of the Provincial Court of Alberta

APPENDIX 'A
WITNESS

May 24, 2011

Sandra Sutherland-Byers - RCMP
John Haley - RCMP

May 25, 2011

Keith Martin - Assistant Fire Chief
Michael Potter – Captain/Aviation Base Manager STARS

May 26, 2011

Philipp Hofer – Tourism Parks & Recreation
Bryan Lloyd – civilian member of RCMP
Allan Macdonald – volunteer fireman

May 27, 2011

Henry Kujat – Department of Sustainable Resources

May 30, 2011

Allen Toney – Janessa Lyn Toney's father
Gilles Savoie - RCMP
Jamie Brown – City of Brooks Peace Officer

May 31, 2011

Nazar Hader – Senior Inspector – assigned by Transport Canada
Darren Unreiner – Fish & Wildlife Officer

June 1, 2011

Douglas Rutherford -
Leonard MacCharles Chief – Deputy

APPENDIX B
EXHIBITS

1. Department – Black 3 ring binder – labeled “Public Fatality Inquiry
2. Department – Black 3 ring binder – labeled “Public Fatality Inquiry
3. Department – Black 3 ring binder – labeled “Public Fatality Inquiry (Containing ‘Inter Agency water Search and Rescue for Lake Newell – TAB 9)
4. Department – Map of Lake Newell
5. Department – Map showing depth of Lake Newell
6. Department – Map from Environment Canada
7. Defence – Summary of Events
8. Crown – Stapled document labeled “PROTECTED “A”
9. Crown – Copy of an email headed “Bryan Lloyd”
10. Defence – Typed Statement of Allan Toney
11. Defence – Typed Statement of Yvonne Toney
12. Crown – 12 stapled packets
13. Defence – Steven Conners – Letter from City of Brooks
14. Crown – Transport Canada – Certificate of Designation
15. Crown – Stapled package headed “APPOINTMENT MEETINGS COURT APPEARANCES”
16. Defence – 1 page copy of letter with fax identification
17. Crown – Copy of email from Murray Busch
18. Crown – Event Chronology
19. Defence – Summation of the Toney Family

APPENDIX C

