

**INQUIRY HELD UNDER THE FATAL ACCIDENTS AND SUDDEN DEATHS INQUIRY (SCOTLAND) ACT
1976 INTO THE SUDDEN DEATH OF HAMISH WILSON
SHERIFFDOM OF SOUTH STRATHCLYDE, DUMFRIES AND GALLOWAY**

AT AYR

Inquiry held under the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976

**Certified Copy Determination by John McGowan, Sheriff for the Sheriffdom of South Strathclyde,
Dumfries and Galloway at Ayr following in Inquiry held at Ayr on Thirty First October Two
Thousand and Five into the death of Hamish Wilson, born 8 October 1963, who resided at
Kirkbank House, Eckford, Near Kelso**

AYR:

The Sheriff, having considered all the evidence adduced, Determines:-

1. In terms of Section 6(1)(a) of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 that Hamish Wilson, aged 40 years, born 8 October 1963 of Kirkbank House, Eckford, Near Kelso died on 19 April 2004 at about 1710 hours at Cloncaird Castle, Near Kirkmichael, Ayrshire in the District of Ayr as a result of an accident when a trench collapsed upon him.

2. In terms of Section 6(1)(b) of the said Act the cause of death was:-

(1a) Asphyxia; and

(1b) Crush injury.

The cause of the accident was that the said Hamish Wilson having entered a trench which had been dug to a depth of about two and a half metres, the trench collapsed upon him. The soil and earth engulfed him.

3. In terms of Section 6(1)(c) of the said Act that reasonable precautions whereby the said death and accident might have been avoided was for the said Hamish Wilson to refrain from entering the trench while it was unsupported because of the very high risk of collapse of such an unsupported trench. Trench supports should have been placed in position before anyone entered the trench.

4. In terms of Section 6(1)(d) of the said Act that no defects in systems of work emerged at the inquiry.

5. In terms of Section 6(1)(e) of the said Act that no other facts which are relevant to the circumstances of the death emerged at the inquiry.

NOTE

This inquiry arose out of the death of Hamish Wilson, aged 40 years, who lived at Kirkbank House, Eckford, Near Kelso. Mr Wilson died in the course of his employment as a Landscape Gardener, on 19 April 2004 at 1710 hours at Cloncaird Castle, Near Kirkmichael, Ayrshire.

The evidence indicated that Mr Wilson effectively owned and ran the company Teviot Water Gardens which took on work at Cloncaird Castle for the installation of quite substantial water features. This was work in which Mr Wilson specialised and he was very much the driving force in the company. As I understand it, he designed the water feature, prepared plans and tender which were accepted. Moreover he did the physical work personally along with his employees. He was effectively the site manager and very much in charge of the day to day work on the site.

It appears that a drainage pipe had been installed but before it had been led to its final outflow it had become covered up by the excavation works that continued on the site. As a result Mr Wilson was trying to locate the pipe, either to repair it because it was damaged, or to extend it to the point where it reached existing outflows.

It appears that the drainage pipe had inadvertently been covered over without being marked. This left Mr Wilson to try and uncover it.

Mr Wilson called his employee Simon McManus over to the trench which he had dug to expose the pipe. Mr Wilson made the comment that they should not be in the trench, indicating that he was aware that it was a dangerous place to be. At that time work stopped for lunch approximately 12.30 to 1.00 p.m. Thereafter Mr Wilson returned to the digger to continue his efforts to uncover the missing drainage pipe. He then shouted to Mr McManus again and Mr McManus went to the trench which had been dug. Hamish Wilson intended to enter the trench which was approximately ten feet deep at the deepest point. As he went to enter the trench Mr Wilson said to Mr McManus to keep an eye on the right hand side of the trench which was piled high with the soil which had been excavated. Mr Wilson then proceeded to enter the trench. He walked down the trench towards the deepest part. He had got about half way along the trench when the trench collapsed completely engulfing him.

Simon McManus ran to get the other workmen who were just out of sight. He got them to come and they all attempted to remove the soil by hand which they realised was impossible. They then used spades. They then realised that only by using the digger could they possibly reach Mr Wilson in time. The digger was used to take successive six inch layers away until Mr Wilson's fluorescent jacket was exposed. The workmen then used shovels and spades to

remove soil. It was clear to them when they uncovered Mr Wilson's head that he was already dead.

It is not possible to say exactly how long it took from Mr Wilson being buried to his head being uncovered but it probably took of the order of 15 minutes.

The evidence about the digging out of the trench by Mr Wilson, the circumstances whereby he came to enter the trench and the collapse of the trench engulfing him, came principally from Simon McManus. There was evidence from other workers and members of Mr Wilson's company Teviot Water Gardens. Thomas Waddell, Architect, gave evidence that on behalf of the owner of the property he had accepted the design and build offer from Hamish Wilson and that Mr Wilson was in charge of the site. I heard also from the Ambulance Technician. He arrived at the scene at the time when the workers were still trying to dig Mr Wilson out. He found that Mr Wilson's head had been uncovered but there was no pulse or breathing. He concluded that Mr Wilson was dead. Thereafter I heard from Fire Officer and witnesses from HM Inspectorate of Health and Safety. I heard that the workmen were withdrawn and the site made safe before the Doctor could examine Mr Wilson and certify that he was dead and his body be removed.

I heard evidence from Michael Thomson of HM Inspectorate of Health and Safety who is a Chartered Civil Engineer by profession.

He said that all that he had learned indicated that Mr Wilson was involved in the landscaping work at Cloncaird Castle. In connection with a drainage pipe he had carried out the excavation of a trench some two to two and half metres deep. He had then entered the trench and it had collapsed upon him causing his death.

Mr Thompson said that in general terms there is a very high risk that material at the side of a trench will collapse. He said that the soil at the site had a granular material which as it dries out loses binding. He gave the example that when sand is wet or damp it is possible to build castles but when it starts to dry it begins to collapse. He said that in the materials at the trench there was a mixture but the important matter was the existence of the granular materials. He said that the risk of collapse can be very sudden and can be instantaneous as appears in this case. The collapse would be from the base of the trench with the granular materials with any clay materials coming from above.

Mr Thompson spoke of the various ways to proceed safely either by ensuring that the trench is dug out safely having regard to "the safe angle of repose". If that is not possible then trench sheets can be put in as the excavation goes along. In this particular case he considered that a trench box could have been utilised without too much difficulty. These are ready made items which consist of two sheets of steel held apart by hydraulic jacks. They are about three metres high. The insertion of such trench boxes would have been the most obvious way to safeguard the trench from collapse. No such trench boxes were on site but they are available from plant hirers and could have been brought on site within a day or two. It did not appear that there was great urgency in the recovery of the water pipe which Mr Wilson was seeking and there was no obvious reason why trench boxes for example could not have been utilised.

It would appear from the comments which Mr Wilson made to Mr McManus that he was aware that he was placing himself in danger by entering what was a deep and unsupported trench. The impression I gained of Mr Wilson from the evidence was that he was a man who liked to get on with things. He was the boss and he made the decisions relating to how the job and the site were run. He knew that there was a risk of the trench collapsing but he took a chance with disastrous consequences for himself.

If it is any consolation to his family, the pathologist considered that death was relatively quick because it was a combination of asphyxia and a crush injury.

I have made no findings about work systems because the job on which Mr Wilson was engaged was something that cropped up in course of the construction work. No system was in place as a result. This was a case of a problem cropping up and Mr Wilson tackling the problem. Moreover while this inquiry was treated as a mandatory inquiry ie. a death resulting from an accident in course of employment, Mr Wilson was effectively the company. Moreover I learned in the inquiry that the company Teviot Water Gardens no longer exists. It has been wound up and does not operate.