

SHERIFFDOM OF GRAMPIAN HIGHLANDS AND ISLANDS AT
BANFF

DETERMINATION IN FATAL ACCIDENT INQUIRY INTO THE
DEATH OF ROBERT CUMMING

Banff December 2007

The Sheriff having resumed consideration of the evidence led at the inquiry finds that:

1. Robert George Cumming (date of birth 20/11/1946) of Hilton Farm, Boyndie, Banff died at said Hilton Farm on 19th March 2007 specifically within the cattle shed at said farm at approximately 11.25 am.
2. The cause of death was traumatic asphyxia as a result of him being frequently butted on the chest and abdomen by a cow.

Signed A. Graham Johnston

Note:

I have made a formal finding in this case since from the evidence I heard it is fairly clear what happened. Unusually in some of these cases, there was a direct eye witness in the form of Sarah Reid who had just started that day in the temporary employment of the deceased during her vacation from college.

Mr Cumming from what I was told by Sarah Reid was a careful and conscientious farmer and was familiar with the routines of his livestock. Sarah Reid told me that prior to any work being started that day on the farm Mr. Cumming had been meticulous in his instructions in relation to general health and safety aspects in his farm.

The actual operation which had been planned that morning was to tag certain calves in the shed. It is a statutory requirement that calves should be tagged with identification tags within 20 days of birth. This was an operation in which Mr. Cumming had probably frequently engaged and he was familiar with all the aspects of it. He explained to Sarah Reid that his routine was to try to separate the cow from the calf sufficiently to

enable the tags to be inserted in both ears. He was further aware that one or two of his stock were particularly maternalistic towards their offspring such that the attempt at physical separation even for short time might lead to agitation on the part of the mother and resultant aggressive behaviour from her. He explained carefully to Sarah Reid that since the other cattle were in the shed it would be better to start the procedure with this particular animal and its offspring since the mother and others watching similar things happen to the other cattle might become more agitated than would be comfortable for them and the rest of the stock. Both Sarah Reid and Mr. Cumming were armed with sticks which was fairly standard practice simply to ward off or control any cattle which showed signs of aggression. It was a routine with which Mr. Cumming was probably very familiar. He and Sarah Reid started into the cattle shed shortly after 10 am. He stated that it would be his task to keep the mother sufficiently away from the calf to enable Sarah Reid to operate the tagging device. Sarah Reid herself was brought up on a farm and had been involved in such task previously. Whilst she was not as experienced as Mr Cumming she was experienced in the general handling of livestock and especially in the circumstances of tagging the calves. She was aware of the risks that the operation engendered.

Mr. Cumming stepped forward between the mother and the calf in an attempt to isolate for a short time the cow from the calf. This took place rather close to the east gates of the cattle court and a concrete buttress being part of that structure. Immediately on the attempt to separate the cow from the calf the mother when Mr. Cumming went forward she became agitated and put her head down and as Sarah Reid described it “boxed” Mr. Cumming pushing him and butting him aggressively on the chest and abdomen a number of times propelling him closer and closer to the concrete buttress. Mr. Cumming and then Sarah Reid tried to distract the mother by hitting her sharply with the sticks on the nose which was the recognised and normally successful method of controlling a cow in such circumstances. This cow however did not respond but if anything increased the ferocity of the attack. The cow succeeded in pinning Mr. Cumming against the concrete buttress of the shed. Sarah Reid did the best she could to try to stop the attack but the cow had by this time pushed Mr. Cumming into the buttress and he initially fell to the ground with the “boxing” continuing for a short time. The cow then seemed to cease the attack and backed off. At this point Mr. Cumming was sitting on the ground with his back to the concrete buttress. Sarah Reid said that he staggered to his feet and I suspect Sarah thought that he had perhaps just been winded but he staggered forward two or three steps and collapsed on the floor of the court. Sarah Reid had some first aid

experience and immediately went to his assistance but she could not feel any pulse from his neck and concluded that the matter was serious. She had no means of communication having left her mobile phone behind but she had the presence of mind to get into the farm landrover and drive quickly down to the main road where she stopped a passing motorist, told her what had happened and summoned assistance. She then returned to the cattle court. About 10 – 15 minutes later Mr. Shearer, another employee of the farm who had been working on another farm nearby was alerted by his wife on his mobile and immediately attended at the cattle court. He also found no signs of life from Mr. Cumming and did his best to herd the cattle into the holding pen whilst the police and ambulance crew arrived. The ambulance personal arrived with proper speed and after managing to get assistance to get the cattle into the holding pen found no signs of life in Mr. Cumming.

A local general medical practitioner attended and at about 1125 pronounced life extinct. I have taken this as the time of certifiable death since normally a medical practitioner will be available to pronounce life extinct. Scene of Crime Officer from Grampian police then took a series of photographs which were produced. The only difference between these images and what Sarah Reid saw was that Mr. Cumming had been turned onto his back by the ambulance crew.

A post mortem report showed that he died from Asphyxia.

In my view there was nothing of a practical nature which could have been done to prevent this accident and Mr. Cumming was well aware of the procedure and risk associated with it. Such accidents are not common but they do occur and whilst there are structural alterations to cattle sheds which could be carried out to make the separation of mother and calf easier substantial alteration would have been required to this court. Many such courts exist on farms usually dating from a time prior to compulsory tagging where separation of mother from new calf was not usually required. This was a very sad and tragic accident and merely highlights the risks associated with the tending of livestock, risks which are often difficult to predict. With hindsight of course, it might have been possible to consider a different method but Mr. Cumming was very experienced and safety conscious farmer who had presumably weighed the risks and decided from experience that the method employed which had probably worked many times in the past carried no great risk if he and his assistant were careful. Whilst he knew that this particular cow could be aggressive towards anyone coming near her offspring he also knew that the methods

he employed were recognised as usually sufficient to enable the task to be carried out in safety.

I merely wish to add two things. Firstly I was most impressed by Sarah Reid who although having experienced a traumatic event was able to recall most of the circumstances with accuracy and fluidity. She acted entirely properly throughout and even if she had her mobile phone with her and had been able to summon assistance sooner it would not have availed Mr. Cumming since he was probably dead very quickly after the event. She gave her evidence succinctly and lucidly.

Secondly the post mortem report merely states that from the circumstances outlined to the pathologist he ascertained the cause of death as asphyxia. Now I appreciate that there is no difficulty with this as the cause of death it might have been more helpful if the pathologist had set out a more detailed report of the condition of Mr. Cumming – for example and it is merely that – it might have been helpful to know whether Mr. Cumming showed any physical signs of the injuries which he probably sustained if for no other reason other than to pinpoint if possible, the point of contact between the cow and the deceased. It did not, however, make any difference to the findings.

Sgn A. Graham Johnston