

FORM 37

Rule 60(1)

FINDING INTO DEATH WITH INQUEST

Section 67 of the Coroners Act 2008

Inquest into the Death of ANDRAS NAGY

Delivered On:	8 MARCH 2011
Delivered At:	CORONERS COURT, MELBOURNE
Hearing Dates:	27 AND 28 OCTOBER 2010
Findings of:	CORONER K. M. W. PARKINSON
Place of death/Suspected death:	ROYAL MELBOURNE HOSPITAL, GRATTAN STREET, PARKVILLE, VICTORIA 3052
Counsel Assisting	SERGEANT TRACY WEIR
Appearances	MR ARTHUR KAPANTZIAN ANTHONY RASO AND ASSOCIATES FOR THE FAMILY OF MR NAGY

FORM 37

Rule 60(1)

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In the Coroners Court of Victoria at Melbourne

I Kim M. W. Parkinson Coroner having investigated the death of:

Details of deceased:

Surname:	NAGY
First name:	ANDRAS
Address:	9027 Gyor Stadion U.3. 1/3 Hungary

1. An inquest was conducted into the death of Mr Andras Nagy on 27 and 28 October 2010 at Melbourne. The following witnesses were called to give evidence in the proceeding: Mr Attila Erdei, Mr Oyewale Omotoso, Mr Jason Delahunty, Mr Murray Thomson, Detective Senior Constable Cartagena and Detective Senior Constable Robin Hedin. Expert evidence was taken from Dr Shelley Robertson and Associate Professor Catriona McLean.

BACKGROUND AND REGULATION REGIME

2. Andras Nagy was born in Gyor, Hungary on 1 May 1986. He was a citizen of Hungary where he usually resided. He had arrived in Australia on a tourist visa on 7 April 2009. He was 23 years of age at the time of his death on 7 May 2009.

3. Andras was a professional boxer and until December 2008 had been registered as a professional boxer with the Croatian Boxing Federation. He had a lengthy and successful amateur history, with 144 amateur fights. He turned professional in May 2008, after he had been contracted as a professional boxer with The Hungarian All Stars who obtained a boxing licence on his behalf in Croatia. He had three professional fights, winning all three fights by technical knock out. His last professional fight was on 21 November 2008 and his professional registration had expired prior to him arriving in Australia on 7 April 2009.
4. The circumstances in which Andras came to Australia and how those arrangements were made remain unclear. Statements made by witnesses describe variously that he had come to Australia to try out as a boxer and that he had done so at his own initiative, or that he had come to Australia only as a tourist.¹ Others, including his brother and parents, state that it had been arranged prior to his attending Australia that he would be here to train and box professionally and that this was the purpose of his journey to Australia. I accept that the latter was the case.
5. Whilst in Australia he did not undertake paid employment. It appears that he was financially supported by persons with an interest in the boxing community. He resided rent free at a house owned by Mr Jason Delahunty, a person with an interest in the sport of boxing. He had initially resided with Mr Attila Erdei, the person who had established initial contact with Andras prior to his coming to Australia, however, after a week he moved to Mr Delahunty's home. This accommodation was arranged for him by Mr Murray Thomson, a licensed trainer and manager at whose gym, 'The Fighter Factory', Andras was training.
6. Mr Delahunty's evidence was that he was provided with cash from various persons in the community to assist with the expenses of accommodating Andras. Mr Erdei gave evidence that he contributed financially to Andras' expenses, both in cash and in the provision of food and supplies.

¹ Exhibit 1 - Statement of Mr Erdei dated 13 May 2009 at page 1. Evidence of Mr Delahunty T. 66. 11 and see Statement of Mr Attila Nagy dated 13 May 2009 pages 1 and 3 wherein contradictory statements of purpose are made.

7. Andras trained daily at Mr Thomson's premises. Whilst Mr Thomson did not provide any direct financial assistance, Andras did not pay any fee to use the gymnasium, or to participate in sparring or to receive instruction and direction from Mr Thomson, nor for any promotion made on his behalf. In a statement made to police on 11 May 2009, Mr Thomson described himself as Andras' Manager and trainer, however he gave evidence that there was no formal contract for Andras to be part of his boxing team. I am satisfied that this young man was under his supervision and participated in a training and sparring regime developed and supervised by Mr Thomson. He trained each day and sparred two or three times per week. Mr Thomson's evidence was that he had observed Andras in 27 sparring rounds during the period of his stay.

8. He was also advertised as scheduled to participate in a professional boxing match promoted by Mr Thomson on 22 May 2009 at Knox Basketball Centre, despite not being a registered professional boxer in Victoria and there having been no documentation or application for registration lodged with the regulatory body. The industry is regulated by the Professional Boxing and Combat Sports Act 1985 ("PB and CS Act 1985") and the Professional Boxing and Combat Sports Regulations 2008, ("the Regulations") made pursuant to that Act.

9. Detective Senior Constable Robin Hedin is a member of the Professional Boxing and Combat Sports Board of Victoria ('the Board'). Mr Hedin gave evidence that the Board regulates the professional boxing and combat sports industry, by imposing certain requirements as to the conduct and supervision of professional combat sports and its professional participants. That regulation is directed towards professional combatants and does not regulate amateurs or the training environment except in a limited manner. There is no requirement for any person participating in boxing to undergo medical or health clearance if they are not a professional boxer or seeking to be registered as such. There is some limited capacity in the board to make regulations for the supervision of gymnasiums, where the training of professional boxers takes place.

10. Sections 10 – 12 of Division 2 and Regulations 8 – 14 made pursuant to the PB and CS Act 1985, make provision for professional registration processes and the requirements associated with medical examination and other documentation. Medical examinations are required prior to registration and a certificate of fitness is required to be presented with any application to register. Thereafter, annual medicals are required to retain registration and pre and post fight medicals are also required. Blood testing is also specifically regulated.

None of this applied in relation to Andras as he had not made an application for registration and was not under the supervision of the Board. As at 1 May 2009, the day of the sparring contest, no notification or registration process had been undertaken by Andras or initiated by anyone on his behalf, including by those who were promoting the evening fight of 22 May, in which he was scheduled to appear. Nor had any medical examination taken place in Australia to ensure Andras' fitness for participation in the sport, either at a professional or even amateur level.

11. Mr Thomson's evidence was that despite having Andras listed to fight professional boxer, James Chan, that he was never intending to have Andras professionally fight on 22 May 2009. His evidence was:

“Now, that's a flier that you produced, this is a Fighter's Factory promotion, is that your promotion?---That's my promotion. Okay and it was in association with Victorian Plumber's Union? ---Yep.

And on that you've got Andras Nagy against James Chan?---Yep, but the situation with boxing is I've got to put the show - the posters out like five weeks before the show. A lot of the times the fights - there's not enough fights to make up a poster so that's sometimes you just make names up or put people on.

So was Andras going to fight on 22 May or he wasn't going to fight?---He wasn't going to fight, no, but he was here on a tourist visa, I was hoping for him to fight one day, yes, but he would have had to gone back to Hungary and then come back again.

Okay so this flier is printed up with his name on it saying that he was going to fight on 22 May but what you're telling the court is that he wasn't going to fight on that night?---He wasn't going to fight.

Ever?---Yes, he was going to fight.

But ever going to fight on 22 May?---No.

Okay. In this - so why did you do that, just to draw the crowds?---Not so much to

draw the crowds, just to get his name out there, I was very impressed with him - -

.Did he know that he wasn't going to fight?---Yeah.

He did? You told him I'm putting your name - - -?---He should have known, he knew he had to go back, he was only here on a tourist visa.

Okay, you're saying here that you're giving him the opportunity to fight, in your statement?---Yeah, he came out here to see if he liked it here under my training, um, if I can - - -

So what was he sparring for then, if you've got him in sparring with a professional like Wale, was Andras professional? ---Yeah, he'd had three pro fights."

12. Whilst it may have been Mr Thomson's unstated intention that Andras would not fight Mr Chan on that evening², his evidence is to be contrasted with the evidence of Andras's sparring partner professional boxer, Mr Oyewale Omotoso, the effect of which was that he and Andras both expected to fight as programmed on 22 May, although in different weight divisions. Mr Omotoso had recently come to Australia from Nigeria by arrangement with Mr Thomson to join his team of professional boxers.

13. It is also at odds with other evidence in the proceeding, including that the fight was scheduled; Andras was sparring in anticipation of the fight; associates including Mr Delahunty believed he was to fight that evening; the fight was advertised by posters and flyers and the advertising materials published by the promoter named Andras as one of the fighters on the evening³. It is clear that Andras expected that he would fight on 22 May and that he was directing his training and sparring to that end.

14. I do not accept that he was here merely as a tourist. Having established a reputation in Europe, he was here to try out as a fighter and was found to be very proficient. Arrangements had been made to board him at a house close to the gym to facilitate his training regime. It appears that quite an amount of effort, including financial, was being expended upon this young man and to suggest that it was not related to his prospects and talents as a professional boxer is disingenuous.

² As at 11 May, 2009 documents provided to the Board identifying fighters still included Mr Chan as a participant. Andras' name had been deleted however no replacement fighter had been added.

³ Exhibit 15.

THE EVENTS OF FRIDAY 1 MAY 2009

15. On Friday 1 May 2009, Andras was sparring with Mr Omotoso. Andras weighed approximately 85 kilograms and fought in the heavy weight division and Mr Omotoso weighing approximately 70 kilograms, fought as a welter weight.
16. There is no doubt that these two boxers were contesting at a very senior level of proficiency and that the sparring was being undertaken in a context of professional fights which had been scheduled in three weeks time and in which they both anticipated fighting. There is also no doubt that Andras was seeking to establish himself as a viable member of the boxing team and prove his capacity.
17. The evidence is that both boxers were wearing 16 ounce gloves, an appropriate weight for sparring and they were both wearing full head protection. During the course of this sparring contest, Andras received a number of blows to the head. The sparring was high intensity and was described by Mr Delahunty as hard hitting and that: "they were really going at it"⁴.
18. It appears that there were five rounds and in Round Three, he took a blow to the right side of his head in the jaw, which caused him to lose his footing. He was described as looking unsteady. He was bleeding from the nose (and one witness said possibly from the ear), although there was no evidence of this on autopsy. He returned to his corner, the bleeding was attended and he then resumed the session. Mr Delahunty described that he then observed 'Andras look at him strangely as if grinning and staring at him', then shortly afterwards he saw him collapse. This occurred in Round Five at approximately 5.40pm.

⁴ Exhibit 5 page 2 and evidence of Mr Delahunty T. 59.26 - 60.10.

19. Andras was supported by Mr Omotoso and Mr Thomson who removed his head protection and gloves. Ambulance Paramedics attended the premises at 5.49pm. He was transported to the Royal Melbourne Hospital arriving at the Emergency Department at 6.52pm. A CT scan of his brain was performed and Andras was transferred for emergency neurological surgery at 8.00pm. He underwent a craniotomy to relieve intracranial pressure as a result of the swelling from the brain trauma. Andras had suffered catastrophic brain injury. His prognosis for survival was poor. His family travelled to Australia from Hungary. Andras died at 7.15am on 7 May 2009.

20. Dr Shelley Robertson, Senior Forensic Pathologist of the Victorian Institute of Forensic Medicine reported the cause of death as head injury. Dr Robertson commented:

“On admission he had a Glasgow Coma Score of 5 and a CT scan showed acute left subdural haemorrhage and cerebral oedema. On the 2nd May 2009, he underwent a craniotomy with left frontoparietal decompression and insertion of an intracranial pressure monitor. He was managed in ICU where he had high ongoing intracranial pressure despite treatment. On the 4th May 2009 he underwent further neurosurgery with a right sided decompression hemicraniotomy, however his condition continued to deteriorate and he died on 7 May, 2009 at 0715 hours. At autopsy, no significant natural disease was identified. Toxicological analysis performed on post mortem specimens showed the presence of drugs administered in a therapeutic context. No underlying neurological conditions which would have predisposed the deceased to death from brain injury were identified on neuropathological examination.”

21. Associate Professor Catriona McLean, Neuropathologist gave evidence as to her examination and findings. Professor McLean stated⁵ :

“The brain was grossly swollen and enlarged and there was evidence, because the brain was so grossly swollen and enlarged, that it had pushed down into the skull in various places. When you say pushed down - -?---Where you have a hard surface, a swelling - a swelling will press down on it and this can tell us that the brain is swollen and is having what we call mass effect, it's trying to - the swelling is trying to go wherever it can so it just pushes down and as that occurs it can compress very vital structures, particularly if they're in a narrow part of the brain called the brain stem. So I saw this gross swelling and evidence that the brain was pushing down onto hard surfaces. In addition to that I saw that the brain had areas that had died that were present in several areas of the brain and that was consistent with the blood

⁵ Transcript 27 October 2010 pages 76 -79

supply to that area being affected - - - Because of the pressure?---Because of the pressure. In addition to that I saw areas of the brain on the surface of the brain, as opposed to the deep aspects, where there was evidence of trauma or haemorrhages in a pattern entirely consistent with trauma to the surfaces of the brain. In addition to that I saw evidence of death of a central area of the brain. Is that - I don't want to go into particularly the structures but there was also evidence of a central area of the brain being affected consistent with the blood supply to that central area also being shut off. So what I saw in summary was extensive evidence of brain injury and evidence that, in keeping with primary trauma to the brain, in addition to gross swelling and what we call mass effect, which is the effect of swelling of the brain on the hard structures of the skull. That's about as simple as I can make it.There's a pattern of injury in the brain that is classically seen where the brain has been traumatised because you see haemorrhage on the surface of the brain where it hits the hard skull structure in the - at the time of the trauma. So it's classic appearance.....Are you able to say whether the description in the statements provided by the witnesses is consistent with the injuries to the - or the (indistinct) assessed in your examination?---Yes, I think they're entirely consistent with the injuries and then the subsequent hospital course for the week following. Yes, okay. Now, are you able to say by looking - when you've examined the brain that if - had there been any previous scarring or injury to the brain, are you able to tell that from your examination?---Yes, I'm able to tell that there's been previous injury and I couldn't see any evidence that there was injury dating back prior to a short time course, approximately seven days. Okay, so there was - you couldn't see like any scar tissue or anything like that?---There was nothing else, there was no underlying pathology that I could see except for the findings that I described”.

22. Professor McLean was unable to comment upon the observations of his appearing to be wobbly or smiling strangely and whether this was consistent with an already incurred brain injury. She was also unable to identify from reading the witness accounts at what point in the sparring contest the brain injury was likely to have occurred. Professor McLean was asked what it was about the contact, which would cause the type of damage she identified in her examination. She was able to explain the mechanism by which the trauma is incurred by the brain in the context of boxing.

“---Direct head trauma. So whether that be falling to the ground or direct head trauma in the context of a punch, notwithstanding head protection?---Yes. Well I think that there are two things and one of them is beyond my domain but in the notes received from the Royal Melbourne Hospital the neurosurgeons have talked about an acute subdural haematoma on presentation, which is obviously not present seven days later at autopsy.

Because it's been drained?---It's been drained, it's finished with, so part of your question relates more to the findings of the acute subdural haematoma, which in this age group would be direct trauma related, whether it hits a surface or hits a thing, I can't - I can't answer that. But that's the acute event. I'm also seeing evidence of just a direct trauma but yes, I couldn't tell you, either it's the brain hitting a surface at speed

and I can't tell you whether that's a surface on the ground, with a hand, no, the effect is the same whatever the surface or the hand or whatever happens.

And it's - is it the connection of the brain to the skull which is causing the injury that you've observed?---Correct.

And is that because it's moving or shifting?---Yes. How do you describe that particular brain injury?---It's usually haemorrhaging so I just call it traumatic haemorrhage because of the pattern of injury, so that's how I'd word it."

CONCLUSIONS AS TO CAUSE AND CONTRIBUTION

23. There is no evidence of Andras suffering from any pre-existing illness or injury, other than the accounts given by Mr Erdei that Andras was suffering from headache in the day before the incident and appeared tired and drowsy and that he had reported to Mr Erdei that he frequently suffered from headache after sparring sessions in his homeland. Mr Andras brother also reported that Andras suffered with headaches and that there was a family history of migraine.
24. As there was no current clinical history available and no recent medical examinations undertaken prior to his commencing training as a boxer in Victoria, the capacity to assess these matters as they stood at the time of the incident is somewhat constrained.
25. Past medical history obtained for the coroner, including examinations undertaken in Croatia between 2004 and most recently in 2007 indicated that he was medically fit to participate in boxing at that time. Those medical tests included testing for infectious disease, including Hepatitis C and HIV and MRI examination. The evidence of the forensic pathologist and the neuropathologist in this inquiry was that there was no pre-existing medical condition identified on autopsy.

26. Boxing is a high risk sport and because of this Victorian regulation requires that this be acknowledged in writing by each participant at a professional level before they commence to fight professionally⁶. The risk is not only from accumulated brain injury, the brain can also be injured catastrophically as a result of a single blow or a number of blows in a single event. The latter is what appears to have occurred in this case.
27. I am satisfied that the death was caused by a brain injury sustained as a result of the blow to the head (jaw) delivered during the course of the sparring session on 1 May 2009. The sparring session was undertaken between two boxers of professional proficiency. There was nothing apparently unusual about the course of the sparring session. The boxers were wearing appropriate protective equipment and the sparring session was being supervised by an experienced trainer.
28. Whilst there had been earlier contact resulting in Andras bleeding from the nose and some reported unsteadiness on his part, this was not out of the ordinary for sessions such as this. The boxers were not ill matched from either an experience or capacity point of view and whilst the sparring has been described as intensive, it appears that this was not unusual at the level of proficiency of both Andras and his sparring partner, both being professional boxers.
29. There was nothing untoward in the actual training or sparring regime of the boxers. Nor was the sparring or training at the level of a novice or amateur, but at a professional level. I am entitled to conclude that Andras was aware of the inherent risk of boxing. He was a professional boxer in his homeland and had until recently held professional registration in Croatia. He also came to Australia with the intention of engaging in professional boxing.

1. ⁶ Professional Boxing and Combat Sports Regulations 2008 – Regulation 8(1)(a) Form 4.

30. Whilst Mr Omotoso delivered the punch which I have found was responsible for the brain injury, this death was unintentional in a circumstance of the usual risk associated with boxing as a sport, which is lawfully undertaken. There is no evidence before me which would suggest that the death was preventable, having regard to the inherent risk associated with the activity of boxing in which they were engaged.

31. Whilst Andras voluntarily exposed himself to the risk of the boxing ring, I am satisfied that the circumstances of this case raise public health issues in relation to medical supervision and more broadly, the supervision of boxers engaging in such high level training.

I make the following comment(s) connected with the death including matters relating to public health and safety pursuant to 67(3) of the Coroners Act 2008

32. Andras was not registered in Victoria and consequently was not medically assessed or supervised by any regulatory authority prior to commencing intensive training and sparring at a professional level. Nor had he read or signed the acknowledgment as to risk which is required by the regulations.

33. One of the difficulties in this inquest was the distinction (in my opinion illusory) drawn between a boxer who is in training and sparring with a view to fighting professionally and one who is actually registered to fight professionally. In this case, Andras fell into the former category and was effectively not subject to any regulation. His sparring opponent, Mr Omotoso fell into the latter category and was subject to the supervision of the Board and its medical supervision regimes.

34. The evidence in this inquest has identified that it is possible to bring young boxers into the country on a tourist visa to “try out” for the prospect of a professional career, without any formal requirement for supervision of them during this period. The evidence is also that boxing regulatory authorities do not officially know of their existence until such time as they make an application to be registered. It is entirely dependant upon whether the boxer is scheduled to ‘fight’ in a professional event or not. The registration process may take place in a very short time frame prior to any fight participation and can be accommodated in three weeks prior to the fight.
35. In this case despite the high intensity sparring, no boxing authority had any involvement in the supervision of this young man’s welfare. The regulation of the industry and the safety of all of its participants depend upon reporting and registering. Without this the medical oversight does not occur. No one in a responsible position knew anything of Andras’ health status before the sparring event or even during his stay in Victoria, because there were no medical checks undertaken and medical records from Croatia had not been obtained. Nor did the trainer have any information about his health status before he began to train at his gym as a professional boxer and to spar with other highly proficient professional boxers.
36. It would seem that the absence of health information when training and sparring with other professional boxers and involving blood spill should give rise to health concerns. It is to be anticipated that exchange of bodily fluids will occur in a contact sport such as boxing even if sparring, particularly when the sparring is between two professional boxers in training for an event. The absence of any regulation in relation to health surveillance in this context would appear to be problematic for participants.

37. Mr Hedin's evidence was that the Board was not advised of the injury to Mr Nagy, his hospitalisation, nor of his subsequent death by any person connected with his training. It came to Mr Hedin's attention by indirect means and he raised the matter with the Board. There is no requirement under the legislation or regulations for such advice to the control body and hence no capacity in the control body to supervise or to assess the extent of injuries sustained in a sparring or training capacity by professional boxers or those seeking to become professional.
38. Whilst it might be said that the imposition of additional regulatory standards and registration processes might impede the capacity of a young person to participate or compete in a sport, this concern must be balanced with the public interest in attempting to protect the health and safety of all competitors.
39. It is difficult to understand why any distinction is drawn between the need to protect registered professional boxers by ensuring safe blood results in the context of a competition, but not in the context of training or sparring by unregistered boxers, which carries a similar risk of blood spill.
40. Regulation 22 (1) (i) of the PB&CS Act 1985 provides:

*“the Governor in council may make regulations for or with respect to:
(i) the use, standards, facilities and inspection of gymnasiums.*

Section 5 of that Act defines ‘Gymnasium’ as:

“ any premises at or in which professional contestants train or receive instruction in boxing or in combat sport”; and

‘Professional contestant’ as: “a boxer who boxes in any professional boxing contest”.

41. I have assumed therefore that the existing power of the Board to regulate gymnasiums is in so far as it relates to professional contestant or the training of professional contestants.
42. Mr Hedin gave evidence that the board has not considered there was a need to so regulate to date and that there was insufficient funding available to be able to implement any such supervision.
43. The limitation upon the capacity to supervise those who have not boxed in any professional boxing contest or who have not made application for registration in anticipation of a contest in this jurisdiction is apparent. Any extension of the power to supervise other than registered boxers or applicants for registration may require legislative amendment.

I make the following recommendation(s) connected with the death including recommendations relating to public health and safety pursuant to 72(2) of the Coroners Act 2008:

1. That there be a system of regulation implemented which requires:
 - a) Mandatory application for professional registration of boxers proposing to participate in professional training or who are participating in sparring at a level directed towards professional contest or with a professional boxer; and
 - b) Mandatory medical certification as to fitness to compete, including blood testing, before a boxer participates in training or sparring at a level directed towards professional contest or with a professional boxer and that such blood testing be undertaken each 6 months.
 - c) Mandatory reporting of hospitalisation of any boxer of any status whether professional or amateur, for injuries sustained whilst participating in training, or sparring or competition.
 - d) That the Boxing and Contact Sports Board implement a level of supervision upon gymnasiums, when the training of boxers is occurring at a level directed towards professional participation to ensure compliance.

2. I direct that a copy of this finding and recommendations be provided to the family of the deceased; other interested parties; The Honourable Hugh Delahunty MP Minister for Sport and Recreation; the Secretary, Department of Planning and Community Development; The Registrar, Professional Boxing and Combat Sports Board (Victoria) for the attention of the Board.

Signature:



K.M.W. Parkinson

Coroner

8th March 2011



Additional Distribution list:

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