

Mr. Flysak also presented records setting out the daily temperature extremes for this time period.<sup>103</sup> This information can be summarized as follows:

Date	Maximum Temp. (Celsius)	Minimum Temp. (Celsius)
November 24, 1990	-15.3	-25.4
November 25, 1990	-14.9	-28.1
November 26, 1990	-13.1	-20.2
November 27, 1990	-14.4	-21.9
November 28, 1990	-7.3	-21.3
November 29, 1990	+4.7	-9.6

### 3 | The Saskatoon Police Service in 1990

In the next two sections I summarize the evidence of past and present members of the Saskatoon Police Service regarding the events of November 24/25, 1990 and the investigation that followed the discovery of Stonechild's body. Before proceeding with this review of the police witnesses, it will assist the reader to have some understanding of the history of the Saskatoon Police Service and its organization in 1990.

#### A Brief History of the Saskatoon Police Service<sup>104</sup>

The Saskatoon Police Service was formed in 1903. As the population of Saskatoon grew, so did the Service. In November of 1990, the Saskatoon Police Service was comprised of approximately 351 members providing service to a population of around 183,579.<sup>105</sup> The budget of the Saskatoon Police Service was around \$27 million. The Service received 77,821 complaints in 1990.<sup>106</sup> In 2003, the Saskatoon Police Service was comprised of 401 police officers<sup>107</sup>, providing service to a community with a population of approximately 213,000 citizens. There are three unions representing the police and non-police employees of the Saskatoon Police Service. C.U.P.E., Local 59, represents most non-police personnel. The Saskatoon City Police Association represents constables, special constables, sergeants, and staff sergeants, totalling 392 members. The Saskatoon Police Executive Officers Association represents directors, inspectors, and superintendents, totalling 8 members. The budget of the Saskatoon Police Service in 2003 was \$40,000,000. The total number of complaints for 2003 was not available at the time of the Inquiry hearings. In 2002, there were 90,412 complaints received by the Service.<sup>108</sup>

With the growth of urban populations and municipal police services, the Saskatchewan Legislature, in 1974, enacted modern policing legislation to regulate and provide consistency for municipal police agencies within the province in the areas of discipline, clothing and equipment, forms, recruiting, and training. *The Police Act*<sup>109</sup> provided each municipality with a Board of Police Commissioners that is responsible for the delivery of policing services within the municipality and for developing long term plans for the police service. The legislation gave the

<sup>103</sup> Surface Weather Record, Inquiry exhibit P-127 and P-128

<sup>104</sup> This history is based upon the evidence given by Deputy Chief Dan Wiks, Inquiry transcript, vol. 33 (January 9, 2004): beginning at 6371

<sup>105</sup> 1990 Annual Report of the Saskatoon Police Service, Inquiry exhibit P-81

<sup>106</sup> Report of Deputy Chief Wiks, Inquiry exhibit P-166

<sup>107</sup> Evidence of Deputy Chief Wiks, Inquiry transcript, vol. 33 (January 9, 2004): 6382

<sup>108</sup> Report of Deputy Chief Wiks, Inquiry exhibit P-166

<sup>109</sup> R.R.S. 1978, c.P-15, hereinafter referred to as "*The Police Act*"



## Part 4 – The Evidence

Chief of Police the ultimate responsibility for the management, administration, and operation of the police service, including the maintenance of law and order in the municipality.

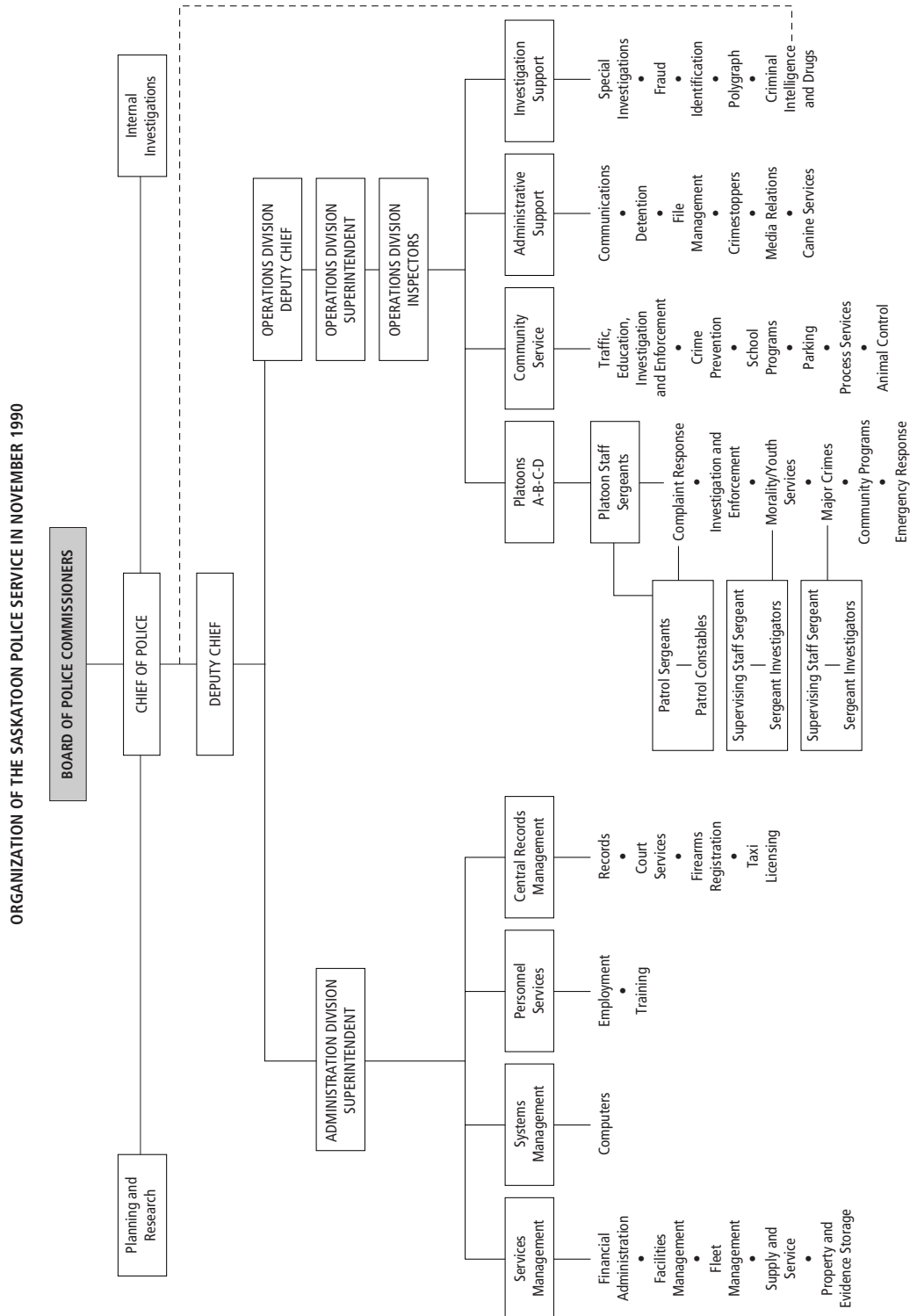
*The Police Act* also assigned to the Chief of Police the responsibility over the maintenance of discipline within the police service. The legislation and associated regulations provided a disciplinary code of conduct for members of a police service and a system for the investigation of complaints against members. In relation to complaints about members of a police service, the Act created a mandatory responsibility on the part of the Saskatchewan Police Commission, the local Board of Police Commissioners, the Chief of Police or a Municipal Council (in the absence of a Board) to make “sufficient inquiry” into the circumstances of a complaint and to inform the complainant of their findings. Part IV of the *Discipline Regulations* provided the following procedural steps must be taken as a result of a complaint. Upon receipt of a complaint, the Chief of Police was to assign a member to investigate and report back. Upon receipt of the report, the Chief of Police was required to consider: a) taking disciplinary action against the accused member, b) advise the member as to future conduct, or c) take no action against the member.

I note in passing that *The Police Act* was repealed and replaced in January of 1992 with *The Police Act, 1990*. This is the legislation that currently governs municipal police services in Saskatchewan, subject to some amendments passed over the years. *The Police Act, 1990* created a much more sophisticated system for the processing of complaints and discipline of members. With respect to complaints, *The Police Act, 1990* provides for the establishment of a Complaints Investigator appointed by the Lieutenant Governor in Council (s. 16). The powers and the responsibilities of the Investigator are set out in s. 39. Section 45(1) requires the Chief of Police, in consultation with the Investigator, to cause an investigation into public complaints against members. The Chief of Police can decide, based upon the investigation, that disciplinary charges or action is warranted (s. 48). Section 45 also provides that the Investigator can assume control and responsibility for the investigation when it is advisable. The Investigator may then report to the Chairperson of the Commission (s. 45(4)). The Chairperson has the power to order the Chief of Police to pursue discipline (s. 45(5)). The Investigator is not compellable to give testimony according to s. 39(7), except in discipline proceedings under the Act. With respect to the discipline process, the major change is the advent of the Hearing Officer. Hearing officers are appointed by the Lieutenant Governor in Council (s. 17). Hearing officers must be members of a law society in Canada for at least 5 years or must have been a member of the judiciary. The disciplinary charges brought against members are, for the most part, adjudicated by the Hearing Officer (s. 54-59). There are also various provisions addressing appeals to the Saskatchewan Police Commission.

There is no evidence that the Saskatoon Police Service received any formal written complaint against any of its members in relation to the Stonechild matter. However, I am satisfied that there were a number of disturbing complaints received by the Saskatoon Police Service, including information provided to members of the Saskatoon Police Service by Jason Roy; the complaints of the Stonechild family that were published on the front page of the StarPhoenix about the adequacy of the investigation; and, as will be discussed later, internal complaints by members of the Saskatoon Police Service. There is no evidence that the complaint process mandated under *The Police Act* was ever initiated by the Saskatoon Police Service in response to any of these complaints.

Organization of the Saskatoon Police Service in 1990

The structure of the Saskatoon Police Service in 1990 is summarized in the following Chart.





## Part 4 – The Evidence

As illustrated in the Chart, the Saskatoon Police Service in 1990 had a complex hierarchical paramilitary command structure. In order to best grasp the evidence of the police witnesses who testified at the Inquiry, a basic understanding of the relevant divisions and departments and the command structure in place within the Saskatoon Police Service in 1990 is needed.

### Departments and Divisions

In 1990, the Saskatoon Police Service was divided into two divisions; an **Operations Division** and an **Administrative Division**. The uniform and investigative services of the Saskatoon Police Service fell under the Operations Division. The members who worked within the Operations Division, including uniform and investigation officers, were divided into **Platoons**. Each uniform and plainclothes member was assigned to one of four Platoons; Platoon A, B, C, and D.<sup>110</sup> This alignment of personnel was a marked departure from the organization in place in past.

Throughout most of its history, the investigation services of the Saskatoon Police Service have been conducted through various specialized investigation sections or units, such as the Major Crimes Unit, the Criminal Intelligence Unit, and the Morality Unit. These investigative units were staffed by investigators who were experienced in those specialized areas. In 1988, however, the Saskatoon Police Service adopted a change of philosophy in regard to the conduct of investigations. This resulted in a significant change to the organization of the Saskatoon Police Service. The Saskatoon Police Service, for the most part, abandoned specialized investigation units for a generalized approach to investigations. The theory propounded at the time was that an Investigator should have or develop the skills to handle every kind of investigation. As a result, the investigators at the Saskatoon Police Service were taken out of the specialized units and disbursed amongst the platoons. It was hoped that by integrating plainclothes investigators with the uniformed officers in platoons, the lines of communication between investigators and front line members would be improved.<sup>111</sup> Once, however, this generalized approach was implemented, a concern arose that members assigned to investigate crimes did not have adequate experience especially in respect of serious crimes such as homicide.<sup>112</sup>

This generalized approach to investigations was still in place in 1990.<sup>113</sup> By November of 1990, however, the move back towards specialization was already occurring.<sup>114</sup> In November of 1990, the Saskatoon Police Service had such specialized departments as the Major Crimes Unit and a Morality Unit, though these investigation units were still administered through the platoons, and there was no clear separation between the uniform and the plainclothes divisions. It was not until 1992 that the uniform and the detective operations were separated and the return to specialized investigation units was complete. Under the current organization of the Saskatoon Police Service, the uniform and plainclothes divisions are separated and a specialized approach to investigations is followed. I will say more about this generalized approach to investigations that was in place in 1990, and the problems associated with this approach.

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<sup>110</sup> Evidence of Deputy Chief Wiks, Inquiry transcript, vol. 34 (January 9, 2004): 6568-6569

<sup>111</sup> Evidence of Deputy Chief Wiks, Inquiry transcript, vol. 33 (January 9, 2004): 6372-6376

<sup>112</sup> Evidence of Deputy Chief Wiks, Inquiry transcript, vol. 36 (March 9, 2004): 6734

<sup>113</sup> See Organizational Chart, page 67 (October 15, 2003): 3655

<sup>114</sup> See Evidence of Murray Montague, Inquiry transcript, vol. 19

The **Morality Unit**, sometimes referred to in the evidence as the Morality Section, was an investigative unit of the Saskatoon Police Service in place in 1990. The investigators in this unit, who typically held the rank of sergeant, were responsible to investigate offences against the person. Its mandate included liquor licensing laws, prostitution, harassing phone calls, family disputes, unified family court, suicides, accidental deaths, industrial deaths, and sudden deaths.<sup>115</sup> Around 1990, the Morality Unit operated closely with the Youth Section, which mainly investigated cases of sexual abuse.<sup>116</sup>

The **Major Crimes Unit**, sometimes referred to in the evidence as the Major Crimes Section, was another unit of the Saskatoon Police Service responsible for investigating the most serious crimes including, robbery, arson, and homicide. Major Crimes was responsible for investigating any death where foul play was suspected.<sup>117</sup>

The work of the Morality and Major Crimes Units was supported by the **Identification Section**. The role of an Identification Officer at a crime scene was to take photographs, and collect evidence to assist the Investigator.<sup>118</sup> The Identification Officer may also provide additional assistance to the Investigator, such as attending and photographing autopsies.

As portrayed on the above Chart, there were a number of other departments within the platoons and the Operations Division. As these departments have no direct bearing upon the matters at hand, they are not described in this Report.

### Command Structure

As indicated on the above Chart, the ultimate responsibility for policing within a municipality in 1990 was with the **Board of Police Commissioners**. Under *The Police Act*, the Board is responsible for providing general direction, policy and priorities and for developing long term plans for the Police Service. The ultimate responsibility for delivery of policing services within the City of Saskatoon rests with the Board.

The day-to-day management of the operations of a municipal police force fell to the **Chief of Police**. *The Police Act* gives the following general powers and responsibilities to the Chief of Police:

- a. the management, administration and operation of the Police Service;
- b. the maintenance of law and order in the municipality;
- c. the maintenance of discipline within the Police Service.

In carrying out these duties, the Chief of Police is only subject to the general direction of the Board and the provisions of *The Police Act*. The significant responsibilities and discretionary power of the office of Chief of Police were commented on by Lord Denning in *Regina v. Metropolitan Police Commissioners, Ex Parte Blackburn*:

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<sup>115</sup> Evidence of James Albert Brooks, Inquiry transcript, vol. 16 (October 9, 2003): 3077; Evidence of Keith Jarvis, Inquiry transcript, vol. 23 (October 22, 2003): 4431

<sup>116</sup> Evidence of Theodore Johnson, Inquiry transcript, vol. 18 (October 14, 2003): 3577

<sup>117</sup> Evidence of Bruce Bolton, Inquiry transcript, vol. 17 (October 10, 2003): 3230-31; Evidence of Theodore Johnson, Inquiry transcript, vol. 18 (October 14, 2003): 3362; and Evidence of Frank Simpson, Inquiry transcript, vol. 19 (October 15, 2003): 3582

<sup>118</sup> Evidence of Robert Morton, Inquiry transcript, vol. 13 (October 6, 2003): 2340-41

## Part 4 – The Evidence

“The office of Commissioner of Police within the metropolis dates back to 1829 when Sir Robert Peel introduced his disciplined force. The commissioner was a justice of the peace specially appointed to administer the police force in the metropolis. His constitutional status has never been defined either by statute or by the courts. It was considered by the Royal Commission on the Police in their report in 1962 (Cmd. 1728). I have no hesitation, however, in holding that, like every constable in the land, he should be, and is, independent of the executive. He is not subject to the orders of the Secretary of State, save that under the *Police Act 1964* the Secretary of State can call on him to give a report, or to retire in the interests of efficiency. **I hold it to be the duty of the Commissioner of Police, as it is of every chief constable, to enforce the law of the land. He must take steps so to post his men that crimes may be detected; and that honest citizens may go about their affairs in peace.** He must decide whether or no suspected persons are to be prosecuted; and, if need be, bring the prosecution or see that it is brought; but **in all these things he is not the servant of anyone, save of the law itself.** No Minister of the Crown can tell him that he must, or must not, prosecute this man or that one. Nor can any police authority tell him so. **The responsibility for law enforcement lies on him.** He is answerable to the law and to the law alone. That appears sufficiently from *Fisher v. Oldham Corpn.*, [1930] All E.R. Rep. 96, the Privy Council case of *A.-G. for New South Wales v. Perpetual Trustee Co. (Ltd.)*, [1955] 1 All E.R. 846.

Although the chief officers of police are answerable to the law, there are many fields in which they have a discretion with which the law will not interfere. For instance, it is for the Commissioner of Police, or the chief constable, as the case may be, to decide in any particular case whether enquiries should be pursued, or whether an arrest should be made, or a prosecution brought. It must be for him to decide on the disposition of his force and the concentration of his resources on any particular crime or area. No court can or should give him direction on such a matter.”<sup>119</sup> (Emphasis added)

The office of **Deputy Chief, Operations Division** was an administrative position involving planning, budgeting, discipline, and staffing of the operational division of the Saskatoon Police Service. The investigative units of the Saskatoon Police Service were the responsibility of the Deputy Chief of Operations. He reported to the Chief of Police.<sup>120</sup>

The **Superintendent of Operations Division** was the next senior ranking administrative position in the Operations Division.<sup>121</sup> The Superintendent of Operations was in charge of both uniform and plainclothes operations.

The position of **Inspector** was a junior commissioned rank between top administration and the working force. The inspectors were assistants to the superintendents.<sup>122</sup> An

<sup>119</sup> [1968] 1 All.E.R. 763 (C.A.) at 769

<sup>120</sup> Evidence of Murray Montague, Inquiry transcript, vol. 19 (October 15, 2003): 3646

<sup>121</sup> Evidence of Murray Montague, Inquiry transcript, vol. 19 (October 15, 2003): 3647; Evidence of Frank Simpson, Inquiry transcript, vol. 19 (October 15, 2003): 3580

<sup>122</sup> Evidence of Frank Simpson, Inquiry transcript, vol. 19 (October 15, 2003): 3577; Evidence of Joe Penkala, vol. 21 (October 20, 2003): 3908



Inspector was assigned to each Platoon to oversee the operations of the Platoon.<sup>123</sup> The **Inspector in Charge of Investigative Support** had the following responsibilities:

- a. to provide immediate supervision and direction of all subordinate unit heads;
- b. to maintain up-to-date knowledge of major investigations being handled, the progress made, any problems encountered, and to advise the Superintendent of Operations Division accordingly; and
- c. to ensure all personnel under his/her supervision promptly carry out their duties and responsibilities.<sup>124</sup>

A **Duty Inspector** was assigned to oversee each shift that was on duty. It was the responsibility of the Duty Inspector to oversee major incidents, major events and to address any problems that may arise during the shift. The Duty Inspector acted as the Chief of Police when the Chief or the Deputy was not present.<sup>125</sup>

The rank of **Staff Sergeant**, a non-commissioned officer position, was the next highest rank after Inspector. Staff Sergeants were the highest ranking members within the scope of the Saskatoon City Police Association. In 1990, **Platoon Staff Sergeants** were in charge of both uniform officers and plainclothes investigators. However, plainclothes investigators also reported to **Investigative Unit Staff Sergeants** who assigned and supervised investigation files within the investigation units such as the Major Crimes Unit and the Morality Unit.<sup>126</sup> While Investigative Unit Staff Sergeants supervised the investigative files assigned to investigators within the unit, the platoon staff sergeants controlled the deployment and the performance of investigators. This confusing distribution of responsibility proved inefficient and ineffective.<sup>127</sup> Officers with the rank of Staff Sergeant also filled the position of **Reader** in 1990.<sup>128</sup> The post of Reader was occupied typically by members who were referred to as **Operational Staff Sergeants**. It was the Reader's function to review occurrence and investigation reports dictated by officers and typed by Central Records. The Reader would then direct the report to the unit or section within the Saskatoon Police Service where the file was assigned. If the report reviewed by the Reader related to a file that had not yet been assigned, then the Reader had discretion to decide which unit or section should be assigned the file. Once the Reader assigned a file to a particular investigative unit, such as Morality, the Investigative Unit Staff Sergeant would assign an Investigator and supervise the conduct and conclusion of the file. The Reader's desk was staffed 24 hours a day. There was one Reader assigned to each of the four platoons.

The rank of **Sergeant** was the next highest rank in the Saskatoon Police Service after Staff Sergeant. The **Patrol Sergeant**, sometimes referred to as the Area Sergeant, was the senior officer on patrol during a shift. Patrol sergeants were routinely called to co-ordinate the

<sup>123</sup> Evidence of Deputy Chief Wiks, Inquiry transcript, vol. 34 (January 9, 2004): 6570

<sup>124</sup> Evidence of Joe Penkala, Inquiry transcript, vol. 21 (October 20, 2003): 3906, Inquiry exhibit P-95

<sup>125</sup> Evidence of Dave Wilton, Inquiry transcript, vol. 38 (March 11, 2004): 7384-7385; Evidence of Joe Penkala, vol. 19 (October 15, 2003): 3715

<sup>126</sup> Evidence of Deputy Chief Wiks, Inquiry transcript, vol. 34 (January 9, 2004): 6595

<sup>127</sup> Evidence of Deputy Chief Wiks, Inquiry transcript, vol. 34 (January 9, 2004): 6595

<sup>128</sup> For a description of the duties and responsibilities of the Reader position in 1990, see Evidence of Raymond Pfeil, Inquiry transcript, vol. 14 (October 7, 2003): 2539-2643; and Evidence of James Drader, Inquiry transcript, vol. 16 (October 9, 2003): 3045-3048

## Part 4 – The Evidence

efforts of constables at major incidents such as crimes scenes or the discovery of a body. The Patrol Sergeant delegates various tasks to the attending constables and determines what, if any, additional assistance is needed at the scene, such as Identification personnel and investigators.<sup>129</sup> The investigative units within the Saskatoon Police Service, such as Morality and Major Crimes, were staffed mainly by **plainclothes sergeants**. These plainclothes investigators were on a four day on, four day off, 12 hour shift rotation. This led to complaints that investigation files would sit too long without any investigation.<sup>130</sup> I will have more to say about the problems associated with this shift rotation later.

The position of **Constable** was the lowest rank in the Saskatoon Police Service in 1990. It would be a mistake, however, to conclude from the status of this rank that constables in the Saskatoon Police Service in 1990 did not wield significant authority. Police constables have considerable discretionary power bestowed upon them as officers of the law.<sup>131</sup> With this power comes a corresponding duty to the public. In *Jane Doe v. Toronto (Metropolitan Commissioners of Police)*, Mr. Justice Henry wrote: “At common law, a constable has not only a general duty to prevent crimes and arrest criminals, but also a general duty to protect the life and property of the inhabitants.”<sup>132</sup>

Police constables occupy a special position in a democratic state founded on the rule of law; as patrolmen and patrolwomen, police constables are the frontline officers. They are the peace officers who have the most contact with citizens, and they are often called upon to risk their personal safety to protect the lives of those they serve. The contribution that police constables make to society cannot be overstated. In light of this important role, the office of Police Constable must only be occupied by trustworthy and honest individuals.

### 4 | The Saskatoon Police Service Officers Dispatched to Snowberry Downs

On the night that Neil Stonechild was last seen alive, Cst. Larry Hartwig and Cst. Bradley Senger of the Saskatoon Police Service were dispatched to remove Stonechild from the Snowberry Downs apartment complex. This fact was irrefutably established by police records and the officers’ own notebooks.

<sup>129</sup> Evidence of Staff Sergeant Petty, Inquiry transcript, vol. 13 (October 6, 2003): 2486-2489

<sup>130</sup> Evidence of Deputy Chief Wiks, Inquiry transcript, vol. 38 (March 11, 2004): 7392; Evidence of Frank Simpson, Inquiry transcript, vol. 19 (October 15, 2003): 3602-3605

<sup>131</sup> *The Police Act* conferred upon constables, and all members of municipal police services, the following responsibilities and powers: a.) preservation of the peace; b.) prevention of crime and offences; c.) the apprehension of criminals, offenders and others who may lawfully be taken into custody; d.) execution of all warrants; e.) performance of all duties that may be lawfully performed by constables or peace officers in relation to the escorting and conveyance of persons in lawful custody to and from courts, places of confinement, correctional facilities or camps, hospitals or other places. The Oath of Office sworn by constables joining a police service was prescribed in *The Police Act*:

**“Oath of Office and Code of Conduct**

“I, \_\_\_\_\_, do swear that I will well and truly serve Her Majesty the Queen in the office of police constable for the \_\_\_\_\_(City) of \_\_\_\_\_, with no favour or affection, malice or ill will; that I will, to the best of my power, cause the peace to be kept and preserved and prevent all offences against the person and properties of all persons, and that I will to the best of my skill and knowledge discharge all the duties of my office faithfully and according to law. So help me God.”

<sup>132</sup> (1989) 58 D.L.R. (4th) 396 (Ont.H.C.) at 421