

witness to testify that he was aware that Cst. Hartwig and Cst. Senger's names were tied to the death of Neil Stonechild prior to the RCMP Investigation which began in 2000.

### **Constable Brett Maki<sup>280</sup>**

Cst. Maki's evidence does not directly relate to the investigation of the death of Neil Stonechild. However, I have concluded a summary of his testimony should be included, as the evidence he provided on two disparate subjects adds to my understanding of the facts.

Cst. Maki joined the Saskatoon Police Service in January 1989. He responded to a complaint of a robbery at Humpty's Restaurant on October 26th, 1990. He had no independent recollection of the event but he was able to refresh his memory from his notes and an Incident Report he filed at the time.

On November 10th, 1990, Cst. Maki recorded in his notebook that the suspects in the Humpty's robbery had been identified as Jason Roy and Elton Dustyhorn. He indicated that this information was likely read out at Parade so that other officers would be aware that these persons were wanted as suspects in the robbery.

On November 17th, 1990, Cst. Maki and his partner spoke with Elton Dustyhorn and Terrance Dustyhorn. A statement was taken from Terrance Dustyhorn implicating Jason Roy as the person responsible for the theft at Humpty's. Maki did not recall what he did with this information. He testified that he would normally attempt to contact the suspect. If he was unable to contact him he would normally place a warrant in the system for the arrest of the suspect. There is no evidence that a warrant was in fact issued for the arrest of Jason Roy. Maki stated that if he had encountered Jason Roy he would probably have arrested him.

On cross-examination, Cst. Maki acknowledged that from time to time he would arrest a person who was causing a disturbance and drop him off at a safe place several blocks away. He described this as "unarresting" the person.

Cst. Maki's testimony establishes that there is some basis for Jason Roy to believe that he was wanted by the Saskatoon Police on November 24th/25th, 1990.

## **6 | The Saskatoon Police Service at the Present Day**

### **Staff Sergeant Murray Zoorkan<sup>281</sup>**

Murray Zoorkan joined the Saskatoon Police Service in 1972. He has been a detective with the Saskatoon Police Service for approximately 15 years. His current rank is Staff Sergeant in the General Investigation Section.

In January of 2000, Zoorkan was assigned to Saskatoon Police Service Cold Squad. The Cold Squad was created in 2000 as a result of a former officer's complaint to the Department of Justice about the quality of Saskatoon Police Service investigations. Zoorkan's function in the Cold Squad was to gather and review all unsolved homicide and long term missing person's files.

<sup>280</sup> Evidence of Brett Maki, Inquiry transcript, vol. 11 (September 24, 2003): 2054-2098

<sup>281</sup> Evidence of Murray Zoorkan, Inquiry transcript, vol. 31 (January 6, 2004): 5914-6065

## Part 4 – The Evidence

In July of 2000, Zoorkan became aware that the RCMP investigators were looking for notebooks of certain Saskatoon Police Service officers. As a result of his experience on the Cold Squad, Zoorkan knew that there were some notebooks maintained in old murder files. He uncovered the notebook of Sgt. Keith Jarvis for the period of July 1990 to December 1990 in one such file. Jarvis's notebook was turned over to the RCMP on July 19, 1990.

In November 2000, Deputy Chief Dan Wiks formerly appointed S/Sgt. Zoorkan to assist the RCMP Task Force. As liaison, S/Sgt. Zoorkan was assigned to cooperate with the RCMP investigators in responding to their requests and the passing on of information. S/Sgt. Zoorkan did not conduct his own investigation of the matters under review by the RCMP. It was, however, his responsibility to advise Deputy Chief Wiks if he came across information that indicated Saskatoon Police Service members had committed an offence. S/Sgt. Zoorkan testified that the Saskatoon Police Service does pursue wrongdoers within the Service, and when members are wrongly accused, the Saskatoon Police Service defends its own. Under re-examination by Commission Counsel, Zoorkan candidly agreed that the objectivity of Saskatoon Police Service in reaching the conclusion that a member has been wrongfully accused is a potential concern.

### **Deputy Chief Daniel Wiks<sup>282</sup>**

Deputy Chief Daniel Wiks was the most senior member of the current complement of Saskatoon Police Service to testify at the Inquiry. He joined the Saskatoon Police Service in 1972 and became Deputy Chief in 1998. In November of 1990, he was a Corporal working in either Detention or Communications.

### **RCMP Task Force**

Deputy Chief Wiks was designated by Chief Dave Scott to be the administration liaison between the Saskatoon Police Service and the RCMP Task Force. He was instructed to cooperate fully with the RCMP Task Force and provide them any and all information that they might require. In this capacity, Wiks had a number of meetings with Chief Superintendent McFadyen of the RCMP in 2000 and 2001. Of particular significance was a meeting in August of 2000. At that meeting, the information the RCMP had acquired with respect to the death of Neil Stonechild, up to August 2000, was reviewed. Ken McKay, from the Department of Justice, attended the meeting. Wiks testified that the purpose of the meeting was to go through the file to establish whether or not there were reasonable grounds to believe that Cst. Hartwig and Cst. Senger had committed a criminal offence. In November 2000, the RCMP advised Deputy Chief Wiks that they had placed wiretaps on the telephones of Cst. Hartwig and Cst. Senger. In July of 2001, Wiks was advised that the RCMP had sent the file to Saskatchewan Justice for review. In August of 2002, Wiks was advised that the Justice Department had reviewed the file and were not recommending charges be laid. This evidence is significant in light of subsequent statements made by Deputy Chief Wiks to the press in March of 2003.

All of the briefings provided by the RCMP were verbal. At some of the briefings, Wiks and others were shown documents or photographs, but no copies were provided. Wiks did not

<sup>282</sup> Evidence of Deputy Chief Daniel Wiks, Inquiry transcript, vol. 33-38 (January 8/9, March 8/11, 2004): 6362-6899 and 7124-7381

receive any documents arising from the RCMP investigation until he received disclosure from Commission Counsel in July of 2003.

The Saskatoon Police Service made a conscious decision not to be involved in the RCMP investigation as they wished to avoid any suggestion that there was collusion between the Saskatoon Police Service and the RCMP.

In March 2001, Cst. Louttit turned over the copy of the Saskatoon Police Service Investigation File<sup>283</sup> on Stonechild's death to Deputy Chief Wiks. Wiks delivered it to S/Sgt. Zoorkan with instructions to provide it to the RCMP. Deputy Chief Wiks did not copy the file but he did read it when he received it from Cst. Louttit.

### **Changes Made By Saskatoon Police Service**

Deputy Chief Wiks outlined a number of changes made by the Police Service since 1990. Of significance to the issues before this Inquiry, was the establishment of a Suspicious Death Review Committee. The purpose of this committee is to review all cases of suspicious deaths where charges have not been laid to determine whether further investigation is required prior to closing the file.

Wiks also outlined a number of improvements in the training that has been made available to officers since 1990 and other policies and check-lists that have been implemented with respect to the investigation of sudden deaths and homicides. I am satisfied that significant improvements have been made in these areas since 1990.

Wiks reviewed the current process for handling complaints against the Police Service. He also outlined discussions taking place between Chief Russell Sabo, the Police Commission, and the Justice Department, aimed at revising the complaint process.<sup>284</sup>

### **The Stonechild Investigation**

Deputy Chief Wiks provided his assessment of the 1990 investigation into the death of Neil Stonechild. His assessment was based on his review of the file and his extensive experience as a police officer, including several years as a Major Crime Investigator. In his view, Cst. Lagimodiere, met the responsibilities of a first responder. He also felt that Sgt. Morton, the Identification Officer, properly carried out his duties. Deputy Chief Wiks was ambivalent in his assessment of the actions of the Patrol Sergeant, Michael Petty. In part, this is because it was not clear whether an Investigator had been called. Deputy Chief Wiks indicated it was the Patrol Sergeant's responsibility to call an Investigator. Wiks was also critical of the lack of efforts made to locate Stonechild's missing shoe. In the absence of the Investigator, this would be the responsibility of the Patrol Sergeant.

In reviewing Sgt. Jarvis's investigation, Wiks started by noting it was not Jarvis's fault that he did not get called to the scene. He assumed that if he had been called he would have attended. He noted that Jarvis was working the evening shift, 3:00 a.m. to 3:00 p.m., on November 29th, 1990. He suggested that Sgt. Jarvis could, and likely should have, requested to switch to a day shift on November 30th, so he could follow-up on the

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<sup>283</sup> Saskatoon Police Service Investigation File, Inquiry exhibit P-61

<sup>284</sup> These discussions are summarized in a memorandum from Chief Sabo to the Chairperson of the Board of Police Commissioners dated December 1, 2003, Inquiry exhibit P-168

## Part 4 – The Evidence

investigation. With respect to Sgt. Jarvis's report of November 30th, 1990, Wiks noted that there was no indication of how he came to the conclusion that the tips relating to Gary Pratt were unfounded and were the result of someone trying to get back at Pratt. He also noted that it is not clear how he knew that Stonechild was at Snowberry Downs on November 24th, 1990. He further observed that the report does not indicate how he learned that Cst. Hartwig had attended the residence at Snowberry Downs. He suggested a request should have been made of Cst. Hartwig to leave an Investigation Report detailing what Cst. Hartwig knew about his attendance at Snowberry Downs. There is no indication that this was done.

Deputy Chief Wiks noted that while statements were taken from Jason Roy and Trent Ewart, further statements should have been obtained. He also noted the lack of any record that Major Crimes had been contacted in response to Sgt. Jarvis's request that the matter be turned over to Major Crimes. Deputy Chief Wiks went so far as to suggest that Sgt. Jarvis should have contacted his Staff Sergeant the next day to confirm that the file had been transferred.

With respect to Sgt. Jarvis's report of December 5th, Deputy Chief Wiks again expressed his concern as to how Sgt. Jarvis formed the opinion that the Crime Stoppers tip was unfounded. Deputy Chief Wiks suggested statements should have been taken from a number of other people, including the two people that found the body, the ambulance staff, and all of the people noted in the report. Deputy Chief Wiks stated, unequivocally, that when the file was concluded on December 5th, there needed to be a lot more work done. He also noted there was a responsibility on the Staff Sergeant in charge of the section to review the files to ensure that the file was not concluded prematurely. S/Sgt. Bud Johnson did not do so.

### Public Response

In May 2003, Deputy Chief Wiks was the acting Chief of Police. He was interviewed by a reporter for the StarPhoenix, James Parker. In an article<sup>285</sup> published on May 2, 2003, the following statement was attributed to Wiks with respect to the RCMP investigation of the Stonechild death:

"The only reason we would suspend someone is if we had some indication that there was some wrongdoing. We had no indication of that whatsoever. And we still don't."

Deputy Chief Wiks acknowledged that he was correctly quoted and the statement was not accurate.

The article goes on to report that Wiks said the Department did not know Cst. Hartwig and Cst. Senger were considered suspects. Wiks acknowledged that, at that time, he knew they were suspects and the statement to the contrary was not accurate. What would prompt Deputy Chief Wiks to make such statements? No satisfactory explanation was provided.

At the time this article appeared in the StarPhoenix, it is likely that most members of the Saskatoon Police Service knew that Cst. Hartwig and Cst. Senger were suspected by the RCMP of involvement in the death of Neil Stonechild. What message is sent to the members about the importance of integrity and transparency in dealing with allegations of police misconduct when such misleading statements are made to the public by the senior ranking officer? The answer is clear, and it is significant that such message was sent on the eve of the commencement of the Inquiry.

<sup>285</sup> StarPhoenix Article of May 2, 2003, Inquiry exhibit P-140



### The Issues Team

Deputy Chief Wiks was instructed by Chief Sabo to assemble a group of people to address any needs or concerns relating to the Inquiry. This group became known as the “Issues Team”. The Issues Team was assembled in early July 2003. It consisted of Deputy Chief Wiks, S/Sgt. Penny, acting Inspector Constantinoff, Cst. Ballard, Supt. Brost, Cst. Maddiford, Superintendent Pennell, and Inspector Atkinson. Chief Sabo was described as an ad hoc member of the team who would drop in and get updates from time to time. S/Sgt. Penny was assigned as liaison to the Commission. Acting Inspector Constantinoff was assigned to media relations. Cst. Ballard was responsible for research and acted as recording secretary. Superintendent Brost was liaison with the RCMP. Cst. Maddiford was the Police Association representative on the team, and was responsible for dealing with any concerns of Cst. Senger and Cst. Hartwig. Superintendent Pennell was in charge of security. Inspector Atkinson was designated as the Inquiry observer, charged with attending the Inquiry hearings and providing updates to the members.

The stated purpose of the Issue Team was to deal with security issues surrounding the Inquiry, to assist the Commission by providing information as required, and to deal with communications issues. The communications issues involved both contact with the media and internal communications within the police force. The latter involved updating the platoons on a daily basis as to the evidence presented at the hearings.

As the evidence unfolded, and the Inquiry was provided with the minutes of the meetings of the Issue Team, it became apparent that the Issues Team assumed another role.

In early July, the Issues Team began looking for an expert to comment on the marks on Stonechild’s nose and right wrist. They first contacted Dr. Ernie Walker of Saskatoon who they identified as an expert in blunt trauma marks. Dr. Walker was provided with copies of the autopsy photographs which he apparently reviewed. He was not called to testify. Later, it seems, it was decided that Dr. Walker was simply a resource person to assist in identifying an expert in the area.

The Saskatoon Police Service, through the Issues Team, then contacted the FBI attaché in Ottawa, and obtained the name of Dr. Micheal McGee, a Pathologist in Minneapolis. Dr. McGee was provided with photographs and other information. A member of the Issues Team, together with legal counsel, went to Minneapolis to consult with him. A notation in the Minutes of August 25, 1993, states that Dr. McGee would testify “that the wounds were not consistent with an assault; consistent with fall on ice or snow; definitely not a blow.”

A request was made to Commission Counsel to call Dr. McGee. He was characterized as a crucial witness. Mr. Hesje interviewed Dr. McGee, but declined to call him. Mr. Rossmann was advised of this decision in a letter dated October 2, 2003. Mr. Hesje indicated that he did not believe his evidence was significantly different from that of Dr. Dowling. I quote from the letter:

“Based on my interview with Dr. McGee, I believe he only has two things to say that are somewhat different than Dr. Dowling. He indicates that he does not believe the abrasions to the nose are consistent with being caused by twigs or branches. He indicates that they are too straight and too parallel. He indicated they are most probably caused by a formed edge. He describes a formed edge as one that is prepared, created or machined such as a block of wood or a piece of metal.

## Part 4 – The Evidence

The second part where he is somewhat different from Dr. Dowling is respect to the imprint on the wrist. His opinion is that the imprints are most likely post mortem. You'll recall that Dr. Dowling testified that he could not tell whether they were post mortem or anti mortem."<sup>286</sup>

The letter went on to state that Dr. McGee would not rule out handcuffs as a cause of the abrasions. Mr. Hesje concluded the letter by pointing out that the Rules allow the Police Service to make application to me to call Dr. McGee. I received no such application. The Issues team later identified Dr. Lew as an expert in this area and requested she be called to testify. Mr. Hesje acceded to this request and called Dr. Lew. I review her evidence later in this Report.

Deputy Chief Wiks initially suggested that the purpose in contacting Dr. McGee was to assist in understanding the report of Gary Robertson and, in particular, photogrammetry. The minutes of the meetings of the Issues Team disclose that they were advised that Dr. McGee knew nothing about photogrammetry. I am satisfied that the real purpose was to obtain an opinion that the marks on Stonechild's nose and right wrist were not caused by handcuffs. They ultimately got such an opinion from Dr. Lew.

The Issues Team functioned as a defense team intent on rebutting any suggestion of wrongdoing on the part of members of the Service. Apart from the testimony of Jason Roy, the evidence viewed as potentially the most damaging, was that of Gary Robertson, a photogrammetrist who had provided a report to the RCMP indicating that the marks on the nose and the wrists of Stonechild were consistent with handcuffs. Discrediting his report became the focal point of the Issues Team.

When this evidence emerged at the hearing, I asked Deputy Chief Wiks why, if he had concerns about the evidence or opinions obtained by the RCMP, he did not ask the RCMP to look into the concerns. His curious response was that they thought the RCMP investigation was concluded unless new evidence came to light indicating criminal misconduct. At this point, a number of counsel came to the defense of Deputy Chief Wiks by arguing that any party was entitled to test and challenge evidence presented at the hearings and that is all the Issues Team was doing. The right of parties to test the evidence is unquestionable. It is a necessary part of the fact finding process, at least in an adversarial context. However, the objections failed to take into account the proper role of the Police Service.

The Police Service is charged with law enforcement and discipline of its members. Faced with evidence of possible police misconduct, its role is not to be an advocate for its members. The proper role of the Police Service is to remain objective and to carefully consider all evidence. Its role is fundamentally different from that of the Police Association and the individual members whose conduct is at issue. Counsel for those parties are expected to be advocates for their clients and to challenge any inculpatory evidence. Throughout the hearings, the position of the Saskatoon Police Service was indistinguishable from that of the Association and the individual members whose activities were brought into question.

The picture that emerges from a review of the Minutes of the meetings of the Issues Team is not one of objectivity. The focus is on how the Police Service can support Cst. Hartwig and Cst. Senger in light of the allegations being made against them, and how it can control

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<sup>286</sup> Letter from Commission counsel to Barry Rossmann, Q.C. dated October 2, 2003, Inquiry exhibit P-174



and respond to any damaging evidence. There is even a suggestion that if Cst. Hartwig and Cst. Senger are placed on leave, the public should be told that they have been reassigned. There is no indication of any consideration as to what can be done to determine if there has been misconduct on the part of their members.

S/Sgt. Zoorkan made the comment that in his experience, Police are defenders of their own if they have been unjustly accused. This exchange followed:

“Q. Now, I guess the problem or the potential concern though, is when and how do you come to the conclusion that one is unjustly accused?”

A. Oh, no doubt about it. You’re right.

Q. And if you come to that conclusion too soon you’re rallying around and defending your own when perhaps you shouldn’t be?

A. You’re right.

...

Q. You testified that you thought it was a positive thing when the RCMP were called in, in response to certain now well-known situations of bodies being discovered on the outskirts of town and the Darrell Night situation.

A. Yes.

Q. I suggest to you that part of the reason that’s positive is to have an outside force brought in is the potential problem for you, and by you I mean the force, the investigative arm of the force, to be objective in looking at their own people?

A. No doubt about it.

Q. That is a concern?

A. Always.

Q. That you could lose your objectivity?

A. Definitely.”<sup>287</sup>

I recognize that it is not easy to maintain objectivity. I also understand the natural tendency within an organization such as the Police Service to rally around and support fellow members. A sense of loyalty to other members can be beneficial, perhaps even necessary, in a police force. However, it can also lead to an “us versus them” mentality where loyalty to fellow officers is placed ahead of loyalty to duty. That must be guarded against.

I do not interpret the Terms of Reference as encompassing a general investigation into the Saskatoon Police Service. As such I do not intend to draw any conclusions as to general attitudes or culture within the Service.

However, a number of things came to light in the course of the Inquiry that raise concerns. The activities and posture of the Issues Team is but one. Why does Sgt. Jarvis not pursue the possibility that Neil Stonechild was last seen in the custody of the police? Why are both

<sup>287</sup> Evidence of S/Sgt. Zoorkan, Inquiry transcript, vol. 31 (January 6, 2004): 6063-6064

## Part 4 – The Evidence

Cst. Loutitt and Cst. Tarasoff told to stay out of the matter? Why does the Saskatoon Police Service state publicly in March of 1991 that the death had been thoroughly investigated when it clearly had not? On this point, it is significant that Cst. Loutitt testified he dropped the matter after the March article appeared in the StarPhoenix. He has a conviction that the matter has not been properly investigated. He hears a statement from the official spokesman for the Service that it was thoroughly investigated. Is it surprising that he dropped the matter? Why does Deputy Chief Wiks publicly state in May of 2003 that the Department did not know that Cst. Hartwig and Cst. Senger were considered suspects and that there was no indication of wrongdoing whatsoever? All of these matters should cause the administration to carefully consider its level of commitment to transparency and openness in the face of allegations of police misconduct.

### 7 | The RCMP Investigation of The Death of Neil Stonechild

#### **Chief Superintendent Darrell McFadyen<sup>288</sup>**

Darrell McFadyen joined the Royal Canadian Mounted Police in 1968. He became a Chief Superintendent for the RCMP in August of 2001. As Chief Superintendent, he is the second in command of RCMP “F” Division Saskatchewan.

The testimony of Chief Superintendent McFadyen provided the Inquiry with background concerning the RCMP investigation into the death of Neil Stonechild and the potential involvement of members of the Saskatoon Police Service.

He confirmed that on February 16, 2000, the Minister of Justice requested that the RCMP conduct an independent investigation of the allegation of Darrell Night that he had been taken by members of the Saskatoon Police Service to the outskirts of the City of Saskatoon and dropped off. The Minister of Justice also asked the RCMP to investigate the freezing deaths of two Aboriginal men in the south industrial area of the City and to determine whether or not the members of the Saskatoon Police Service had a practice of dropping individuals off at the outskirts of the City. The two men who had been found frozen were Rodney Naistus and Lawrence Wegner.

The RCMP formed a task force to conduct these investigations under the name Project Ferric. Inspector Darrell McFadyen (as he then was) was assigned as the overall Task Force commander. Sergeant Ken Lyons (as he then was) was placed in charge of the hands-on management of the investigations. At the height of Project Ferric, the RCMP had assigned around 32 investigators and support staff to work on the Task Force. McFadyen estimated that the RCMP expended on Project Ferric approximately \$749,000 on overtime, travel, and supplemental clerical expenses.

Shortly after the creation of Project Ferric, the Saskatoon StarPhoenix published an article describing the suspicious circumstances surrounding the death of Neil Stonechild. It was decided by the RCMP that this death fit within its mandate. On February 22, 2000, Project Ferric was extended to the investigation of the death of Neil Stonechild. Constable Jack Warner (as he then was) was assigned as the lead Investigator of the Stonechild file on February 25. Over the next 2½ years the RCMP interviewed approximately 200 witnesses in

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<sup>288</sup> Evidence of Darrell McFadyen, Inquiry transcript, vol. 32/33 (January 6/7, 2004): 6068-6235 & 6258-6266