

**Commission of Inquiry Into Matters
Relating to the Death of Neil Stonechild
Honourable Mr. Justice D.H. Wright, Commissioner**

**Written Submissions On Behalf of the Attorney General of Canada
Representing the Royal Canadian Mounted Police**

I. INTRODUCTION

1. On March 13, 2003, the Honourable Mr. Justice David H. Wright, Commissioner ruled on the various standing applications. He correctly determined that the interest of the RCMP was directed towards their subsequent investigation into the death of Neil Stonechild. The death was considered by the RCMP to be a potential homicide and was investigated as such. Consequently, the RCMP was granted standing limited to the date it was appointed to investigate the Stonechild matter. Part of the RCMP's purpose in seeking standing was to ensure full cooperation with the Inquiry and guarantee full access to the RCMP investigation. The participation of the RCMP in the Inquiry was also directed towards maintaining the integrity of its review of the original Saskatoon Police Service investigation and the RCMP investigation into the death of Neil Stonechild. RCMP counsel limited their cross-examination of witnesses called at the Inquiry to these narrow points. It is therefore appropriate to similarly limit the representations on behalf of the RCMP. The following areas will be addressed:

- a) RCMP dealings with Staff Sgt. Keith Jarvis;
- b) RCMP dealings with Mr. Gary Robertson and evidence concerning the marks found on Neil Stonechild;
- c) RCMP dealings with Cst. Larry Hartwig;
- d) Interviews conducted by Chief Supt. Darrell McFadyen, and
- e) RCMP dealings with Jason Roy.

II. SUBMISSIONS

a) RCMP dealings with Staff Sgt. Keith Jarvis

2. The RCMP commenced their investigation into the death of Neil Stonechild on February 22, 2000. It is well established that members of the RCMP had numerous contacts with Staff Sgt. Keith Jarvis between March 3, 2000 and May 23 of 2001. Initially, the RCMP was not able to obtain a copy of Staff Sgt. Jarvis's notes (Exhibit P106) or the Saskatoon Police Service Investigation report (Exhibit P61). It was not until October 11, 2000 that the RCMP were able to provide Staff Sgt. Keith Jarvis with a copy of his officer notes and it was not until May 23, 2001 that the RCMP reviewed the Saskatoon Police Service Investigation Report with Staff Sgt. Jarvis.¹
3. Officer Jarvis was the main investigator into the death of Neil Stonechild in November of 1990. In the circumstances, it was appropriate for the RCMP to contact Staff Sgt. Jarvis on numerous occasions to inquire as to whether he could help advance the RCMP investigation. As referenced, the investigation file and Officer Jarvis's notes were not available and consequently the RCMP was extremely limited on how and where they could gather information.
4. It has been suggested that the questioning of Staff Sgt. Jarvis and the number of contacts by RCMP members with him was somehow inappropriate. It is respectfully submitted that the evidence does not support this conclusion. In his testimony, Staff Sgt. Jarvis outlined his history as a police officer and investigator with approximately 27 years of experience. He conceded on numerous occasions that the manner in which the RCMP members interviewed him was completely appropriate and he had carried out similar types of interviews on numerous occasions during his career.²

¹ See Exhibits P-107 to P-110 and transcript, volume 23, pages 4524 - 4534

² See transcript, volume 27, pages 5216 - 5218

5. Staff Sgt. Jarvis agreed the RCMP members provided pieces of information to him during his interviews. He specifically indicated that the RCMP had not laid out a scenario to him concerning the events of November 24 – 25 of 1990.³ It was also evident that Staff Sgt. Jarvis had some independent recollection of events that occurred during his investigation.⁴
6. Officer Jarvis testified that the marks on Neil Stonechild's wrist could have been caused by handcuffs and agreed that there was no prompting from the RCMP on this particular point.⁵
7. Dr. Arnold gave expert testimony in this Inquiry with respect to memory formation and recall. He indicated that a person with experience in conducting investigations, interviewing people and taking witness statements was less likely to incorporate information passed on to them as their own memory.⁶
8. Dr. Yuille gave expert testimony in these proceedings with respect to the formation of memory and memory recall. He gave evidence that certain stimuli could cue memory. Dr. Yuille agreed that an officer's notes and the original investigation report would be significant documents that may cue memory about events that occurred at the time but were not recorded in the actual documents.⁷
9. Dr. Yuille also testified that although interview technique training generally teaches the avoidance of leading or suggestive questions, such questions might be appropriate. He indicated that if a person does not recall information it might be appropriate for some prompting to take place and pieces of information to be given. Where a person cannot recall a particular event at the outset it would be appropriate

³ See transcript, volume 27, pages 5226 - 5227

⁴ See transcript, volume 27, pages 5229 – 5230 and 5256 - 5257

⁵ See transcript, volume 27, pages 5241 - 5242

⁶ See transcript, volume 37, pages 7067 - 7068

⁷ See transcript, volume 39, pages 7622 - 7624

to provide them with some cue information to try and assist them in recalling what they know about a particular event.⁸

10. In light of the foregoing, it is respectfully submitted that the RCMP appropriately questioned Staff Sgt. Jarvis in the circumstances. For a lengthy period of time during the investigation, the RCMP did not have the SPS police investigation file, or any officer notes. The documentation that was available to them was very limited and consequently they contacted Staff Sgt. Jarvis as a resource person, as he had carriage of the original investigation. The evidence of Staff Sgt. Jarvis and of the experts, Dr. Arnold and Dr. Yuille, do not support the assertion that the RCMP's conduct was inappropriate in any manner. Furthermore, the notes (Exhibits P-107 to 110) prepared by the RCMP were obviously created for the purpose of carrying out a criminal investigation. These notes were utilized in the Inquiry process but were clearly not created for that purpose. Any complaint that all of the contacts with individuals questioned during the RCMP investigation, including Staff Sgt. Jarvis, were not tape-recorded is unfair. The notes were prepared in order for the individual RCMP members to have a reference as to what steps had been taken and needed to be taken during the investigation. They were never intended to be analyzed in an Inquiry process as a verbatim transcript.
- b) **RCMP dealings with Mr. Gary Robertson and Evidence Concerning the Marks Found on Neil Stonechild**
11. The credibility of Gary Robertson was called into question during the Inquiry. Mr. Robertson was qualified as an expert for the very specific and narrow purpose of providing opinion evidence as to measurements of imprints on the body of Neil Stonechild and a comparison of those measurements to measurements of a known object.

⁸ See transcript, volume 39, pages 7625 - 7626

12. Mr. Robertson explained the science of photogrammetry and the methodology he utilized. He proceeded to outline the mathematical formulae that were employed in arriving at his conclusions.⁹
13. During the course of the RCMP investigation, the question arose as to whether the marks on Neil Stonechild's nose and wrists could be as a result of the use of handcuffs. The evidence before this Inquiry showed that photographs were forwarded to Mr. Robertson for photogrammetric measurement without him being told what object could have caused the marks.¹⁰
14. In cross-examination, Dr. Graeme Dowling was asked whether the RCMP were encouraging on him a theory that some of the marks on Neil Stonechild had been caused by handcuffs. Dr. Dowling disagreed with the use of the word "encouraging" and indicated that the RCMP were simply presenting a direction that their investigation was looking at.¹¹ Dr. Dowling went on to testify that if Neil Stonechild had been struck on the nose by handcuffs one would usually see bruising. He, however, agreed that bruising was not always present and indicated that it was possible the injuries to the nose could have been caused by handcuffs.¹² Dr. Dowling also testified that there was a pattern injury to Mr. Stonechild's nose and it was possible that grass, crusted snow or handcuffs caused the injury. He indicated that as a forensic pathologist it would be improper for him to say that one cause of the injuries was more likely than another.¹³
15. Dr. Emma Lew, also a forensic pathologist, testified and concluded in her consultation report that the marks on Neil Stonechild were not caused by handcuffs.¹⁴

⁹ See transcript, volume 22, pages 4316 - 4335

¹⁰ See Exhibits P-100 – 102 and transcript, volume 22 at page 4170, 4329 – 4331 and 4334

¹¹ See transcript, volume 7 at page 1232

¹² See transcript, volume 7 at page 1237

¹³ See transcript, volume 7 at page 1243

¹⁴ See Exhibit P-189

16. There was also evidence in this Inquiry that the Saskatoon Police Service contacted other experts in an attempt to acquire an opinion on whether the marks on Neil Stonechild were caused by handcuffs. The evidence indicated that a Dr. McGee, although consulted by the Saskatoon Police Service, was not called to give evidence at this Inquiry.¹⁵

17. RCMP counsel does not see it as their role to argue which evidence should or should not be favored by this Commission. From the RCMP's perspective, the issue of whether the marks could have been caused by handcuffs simply had to be explored. The possibility of obtaining a precise measurement of the marks in question was a reasonable avenue of investigation to explore. It is, of course, conceded that various experts had different opinions on what could have caused the marks on Neil Stonechild.

c) **RCMP dealings with Cst. Larry Hartwig**

18. The comment by Cst. Hartwig in these proceedings that he felt he had been "raped" by the RCMP during his interview initially suggested the RCMP had somehow violated his rights. In cross-examination, Cst. Hartwig conceded that his comment was directed towards his personal feelings and frustrations because of the situation. He fairly admitted that, in the circumstances, it was appropriate for him to have been interviewed as a suspect.¹⁶

d) **Interviews conducted by Chief Supt. Darrell McFadyen**

19. Throughout the course of these proceedings an inference has been made that Chief Supt. Darrell McFadyen was providing a "scenario" to some people interviewed and that the RCMP accepted as "fact" that Jason Roy saw Neil Stonechild in the back of a police car. There is no evidence to support this assertion. Of the interviews conducted by Chief

¹⁵ See transcript, volume 38, at page 7344

¹⁶ See transcript, volume 41 at pages 8106 - 8110

Supt. McFadyen, filed as exhibit P-134, only four individuals gave evidence at this Inquiry. None of the individuals adopted the assertion that the scenario was visited upon them as fact. Furthermore, none of them had any independent recollection of such an assertion being made other than in a newspaper article (Exhibit P-72).¹⁷

20. Chief Supt. McFadyen testified about the interviews he conducted and what information he provided to individuals. He indicated the information concerning the “scenario” was gathered from contact with Jason Roy, the information contained in the Star-Phoenix newspaper article, information from Officer Ken Lyons concerning the investigation, information from Bruce Genaille and CPIC records.¹⁸ Chief Supt. McFadyen made it abundantly clear that the “scenario” was not provided to individuals as “fact” and simply as information that had been gathered by the RCMP. Inquiries were appropriately made as to whether individuals had heard this information before.¹⁹
21. Chief Supt. McFadyen testified as to his practice and when the RCMP would tape record interviews. He indicated that if a person was identified as a witness then their interview should be recorded. In relation to the interviews conducted by Chief Supt. McFadyen, it was determined that none of the individuals would be witnesses in any criminal proceedings and so no recorded statements were taken.²⁰
22. Chief Supt. McFadyen gave evidence that the RCMP investigation was encumbered by the fact that they did not have a copy of the Saskatoon Police Service investigation or appropriate officers’ notes. He indicated that as a result of not having a complete picture of what occurred in the investigation, the RCMP interviewed numerous people that would probably not have been interviewed had more documentation been available to

¹⁷ See Exhibit P-70 and transcript, volume 18, pages 3350 – 3353; Exhibit P-77 and transcript, volume 18, pages 3487-3488, 3497-3502; Exhibit P-79, transcript, volume 19, pages 3595, 3617, 3618; Exhibit P-176, transcript volume 40, pages 7668 - 7669

¹⁸ See transcript, volume 32, page 6162

¹⁹ See transcript, volume 32, page 6165 - 6166

²⁰ See transcript, volume 32, page 6227 - 6228

the RCMP at the outset of the investigation.²¹

e) **RCMP dealings with Jason Roy**

23. The RCMP investigated Jason Roy's allegation that he saw Neil Stonechild in the back of a police car. Mr. Roy advised that he had told many people, at the time, about seeing Neil Stonechild. The RCMP interviewed numerous witnesses that gave evidence at this Inquiry who confirmed Jason Roy had told them he saw Neil Stonechild in the back of a police car on or about November 24, 1990.²²

24. When the Saskatoon Police Service investigation file was finally located and provided to the RCMP, the witness statement of Jason Roy was reviewed. It was noted that Mr. Roy's statement to the Saskatoon Police Service did not include the assertion that he saw Neil Stonechild in the back of a police car. Mr. Roy was re-interviewed by the RCMP.²³

III. SUMMATION

25. The assertion has been made in these proceedings that the RCMP focused solely on the Saskatoon Police Service and whether certain members were somehow connected to the death of Neil Stonechild. The evidence does not support this conclusion. It is well established that the RCMP conducted an extensive investigation. All aspects of that investigation were not canvassed during the course of this Inquiry. There was, however, evidence from Mr. Gary Pratt who indicated that he was investigated as a suspect in the death of Neil Stonechild. Mr. Pratt gave testimony that he cooperated fully with the RCMP and was cleared as a suspect.²⁴ Furthermore, the RCMP mandate specifically stipulated that they were to investigate whether or not it was the practice of the Saskatoon Police Service to take individuals to the outskirts of the city and abandon

²¹ See transcript, volume 32, page 6232-6233

²² See transcript, volume 1, page 35, volume 6, pages 924-927, 966-970, 1070-1071, volume 7, pages 1323-1325, Exhibit P-55 and volume 12, page 2257

²³ See transcript, volume 32, page 6170

²⁴ See transcript, volume 32, page 6246

them.²⁵ It is unfortunate some may feel they were unfairly targeted. The RCMP was simply fulfilling their mandate.

26. The Inquiry heard from 63 witnesses over a 42-day period. At times, there were as many as a dozen counsel participating. It is, therefore, perhaps not surprising that some questions arose as to how the RCMP conducted their investigation. This fortunately did not detract from the main purposes of the Inquiry. The RCMP made every effort to cooperate fully with all counsel to ensure that the most complete information available was provided. Clearly, not all of the information gathered by the RCMP was utilised in the Inquiry. As previously referenced, the officers' notes taken during interviews were created for the purpose of a criminal investigation into the death of Neil Stonechild. They were never intended to be filed and/or viewed as verbatim statements. It is hoped they were of some assistance to the Inquiry.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED at Saskatoon, Saskatchewan, this 6th day of May, 2004.

THE ATTORNEY GENERAL OF CANADA

Per: 

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²⁵ See transcript, volume 32, pages 6072-6073