

COMMISSION OF INQUIRY INTO MATTERS RELATING TO
THE DEATH OF NEIL STONECHILD

FINAL SUBMISSION
ON BEHALF OF
THE SASKATOON CITY POLICE ASSOCIATION

Walker, Plaxton & Co.
Barristers & Solicitors
200 - 402 21st Street East
SASKATOON SK S7K 0C3

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A. Overview / Introduction

1. This has been a long Inquiry involving very serious matters. No one can dispute Mr. Stonechild's death was a tragedy and affected his friends and family deeply. This Inquiry has undoubtedly been difficult for Mrs. Bignell and her family.
2. Very serious allegations have been made against present and past members of the Association, both prior to and during the Inquiry process. The investigations of these allegations and the Inquiry itself have also taken a toll on the members and their families. Most notable of among these members are Constables Hartwig and Senger, who were under criminal investigation for a long period of time and have now met the same allegations before this Inquiry.

B. The RCMP Investigation

3. The task force formed to investigate the deaths of Mr. Stonechild and other persons was a massive investigation extending over a long period of time, involving thousands of personnel hours and a great expenditure of resources.
4. In relation to Mr. Stonechild's disappearance, the same was a criminal investigation apparently adopting the hypothesis that officers with the Saskatoon Police Service were involved with Mr. Stonechild's disappearance, most specifically officers Hartwig and Senger. The RCMP interviewed officers Hartwig and Senger on a great number of occasions, interviewed approximately 180 to 200 other witnesses, interviewed all or nearly all officers on shift when Mr. Stonechild disappeared, conducted wire taps of both officers Hartwig and Senger and conducted surveillance on their residences and families. Keith Jarvis was also interviewed on a number of occasions. The task force further interviewed a great number of witnesses apparently in an effort to bolster the story of Jason Roy.

5. It can be fairly said the RCMP investigated all and any leads that could possibly implicate the Saskatoon City Police Service and most specifically officers Hartwig and Senger in the disappearance of Neil Stonechild. It can further be said all reasonably relevant evidence which could possibly implicate members of the Service was also placed before this Commission of Inquiry.

6. One notes this was a criminal investigation aimed at possible criminal involvement by members of the Police Service and did not pretend to be a neutral survey of information available. Jason Roy's recounting of events surrounding Mr. Stonechild's death appears to have been central to the RCMP's hypothesis. The extraordinary measures employed in investigating the possible involvement of officers Hartwig and Senger were not employed in disputing or testing the veracity of Jason Roy's story.

C. Noncontentious Matters

7. Many of the facts before the Inquiry are highly contentious. There do appear to be a number of facts that are not really subject to much dispute.

1. Acquaintances and Lifestyle

8. Prior to the time Mr. Stonechild lost his life there had formed a certain sub community in Saskatoon involving members of a number of different groups whose central focus in life appears to be criminal activity. Drugs, guns, prostitution and violence, sometimes resulting in death, were unfortunately common occurrences in the lives of the members of this sub community.

9. Mr. Stonechild was a young man whose life appeared to be out of control, who had become involved with alcohol and criminal activity to support himself, apparently mostly break and enters. It appeared he was a fringe associate of the core sub community, most of whom were older than he was. He had been involved in at least one stolen gun sale prior to his death.

10. Mr. Stonechild undoubtedly had many good qualities. A number of witnesses expressed hope and belief he would have become disentangled with the lifestyle he seemed to be moving into. We hope this would have been the case.

11. Unfortunately it appears at this point alcohol was a major component in Mr. Stonechild's life.

12. The depth of his involvement with this community and the nature of same is largely irrelevant to matters before the Inquiry, however his involvement with this community could largely explain or help explain what may have occurred to him the night he went missing.

2. The Night in Question

13. Messrs. Stonechild and Roy were young persons who had known each other for a period of time. They had both had certain conflicts with the law in the past and appeared to be having some ongoing difficulties.

14. They had met earlier on the day in question and after a period of time had Neil's brother Marcel Stonechild buy them a bottle of Silent Sam vodka. They took the bottle to the Binning residence to party with a number of other persons. Roy and Stonechild left the party to walk to the 7-11 to get some food and/or travel to the Snowberry Downs apartments (across the street from the 7-11 and some four or five blocks from the Binning residence) to attempt to locate a former girlfriend of Neil Stonechild, Lucille Neetz.

15. It seems they stopped at the store to warm up and then proceeded to the apartment looking for Ms. Neetz. Their information was she was babysitting. They did not see a name they recognized and proceeded to push buzzers looking for her.

16. As a result of this disturbance, police were notified and officers Hartwig and Senger dispatched to the scene. It seems Mr. Roy became weary of the

search for Ms. Neetz and left his friend at or near the apartment buildings. The officers' notes and police records indicate that Mr. Stonechild was gone on arrival, the police did check Jason Roy, who gave them a false name of Tracy Horse.

17. It appears Mr. Stonechild found the apartment where Ms. Neetz was babysitting. He was not allowed to remain and presumably left. A few minutes after this, the police checked CPIC for the name Tracy Lee Horse and Neil Stonechild and shortly afterwards stopped and did a CPIC on another citizen, Mr. Bruce Genaille. A few minutes after this, the officers were dispatched to a suspicious person complaint filed by a Shelly Grigorovich. The location of the complaint was close to the Snowberry Downs.

18. Mr. Roy returned to the Binning party, Mr. Stonechild did not. Mr. Stonechild's body was found in the northern industrial area near the Hitachi Plant located at 57/58 Street East in Saskatoon on the 29th of November 1990, at approximately 11:30 a.m. Mr. Stonechild had frozen to death. It had been quite cold a few days prior to this.

D. Nature of the Evidence

19. This Commission enjoys a broad mandate both in the nature of its Inquiry and evidence it may receive in fulfilling its duties. Given the nature of the issues before the Inquiry evidence of varying degrees of reliability has been received.

20. Very serious allegations have been made against members of the Police Association and the Police Service. It is submitted, although the Commission is allowed to entertain evidence not normally receivable in Court, this should not detract from the cogency required to make findings concerning these serious allegations.

21. Given the extreme tragedy of Neil Stonechild's death, those who close to him may suffer the need to explain the same or somehow bring closure to the matter. Although this, of course, will in no way affect the deliberations of the

Commission, this could lead members of the public to attempt to affix blame more readily than should be done. Again, we are left with the facts as proven at the Inquiry.

E. The Evidence

1. Jason Roy

22. Mr. Roy's evidence does contain some elements of truth however, when comparing his alleged recollections of Neil Stonechild being in a police cruiser on the night he disappeared with other known and provable facts, it is quite evident this "sighting" is a fabrication. It may well be Mr. Roy believes or has convinced himself as to the truth of his alleged recollection, however when analyzed closely, it is submitted his version of events simply cannot be.

23. Mr. Roy presented as an evasive and contradictory witness. It is submitted demeanour alone speaks against his veracity, but when viewed critically and compared with proven facts, his story is simply not believable.

a) No Meaningful Corroboration

24. A large number of witnesses were called to recount Jason Roy repeating his tale as to what he claims he saw the night Mr. Stonechild went missing. One notes these witnesses have recounted Mr. Roy's tale growing and being embellished with the telling. It is submitted any statements made by Mr. Roy in alleged corroboration of his recollections of events are of no real value if the same occurred after Mr. Stonechild's death became known. It would appear at that time Mr. Roy either went about creating a story to try to explain his friend's disappearance or tried to "fill in the blanks" to ease his lack of memory of the incident.

25. The repetition of the Jason Roy story in no way makes it anymore true nor credible in that no matter how many witnesses were called, the evidence comes back to the same single point on the evening of November 24/25, 1990, when

Jason Roy claims he saw Neil Stonechild in a police cruiser. There were no other witnesses to this event and indeed it appears all credible evidence points to the contrary.

26. It is submitted the most pertinent statements made by Mr. Roy would be those prior to learning of Mr. Stonechild's death and his funeral. It would appear after this time Mr. Roy experienced the need to be able to explain his friend's disappearance and viewing his friend at the funeral provided some of the material for his false "recollections".

b) Changing Story

27. Jason Roy's story went through three major transformations: the first version being I don't know what happened, the second, he may have been picked up by the police, the third, I observed him the back of a police cruiser from behind some garbage cans behind apartment buildings on Confederation Drive and the fourth, with him in the back of the police cruiser. It is difficult to determine exactly what he said to whom and at what time. This is not surprising given the passage of time, the fact the various witnesses have undoubtedly spoken with each other and the fact that Jason Roy has recounted his story in various forms on a large number of occasions.

28. From reviewing the evidence of various witnesses who spoke with Mr. Roy over time the following progression appears apparent. When he returned to the Binning residence that night, it would appear there was no great urgency to what he was relating. When he returned without Mr. Stonechild, the occupants of the Binning house had to ask him "How did you lose Neil?". His response then being to the effect that "he might have been picked up by the police".¹

29. The story then evolved to Mr. Roy stating he had seen Neil in the back of a police cruiser but had observed this while hiding behind some garbage bins behind apartment buildings on Confederation Drive (believed to be Borden Place

¹ Evidence of Julie Binning – Vol. 12, pgs. 2123 - 2124

and Twin Gables).² There was no mention at this time of any discussions between Mr. Roy and the police nor anything being said by Mr. Roy. The contents of this disclosure would appear to indicate Mr. Roy was some distance from the police cruiser. The story then appears to have evolved to his final story of Neil being in the back of a car, a discussion with the police, Neil having a gash across his nose, bleeding significantly and crying out.

30. This progression is quite explainable given the facts as known to Mr. Roy. The statement that he probably got picked up by the police is logical given that Neil was absent without leave from the group home and it would be quite likely the police would be called, given the disturbance being created at Snowberry Downs.

31. The story then grew with the telling, with the final version involving Mr. Stonechild in the back of the police cruiser. This version likely came into existence after the funeral and as a result of viewing the mark on Mr. Stonechild's nose. Mr. Roy viewed Mr. Stonechild's body at the funeral. The scratches to his nose, due to processes occurring, approximate and after the time of death, would leave the impression that some sort of injury had occurred to his face prior to death. This apparent severity of these marks would then leave Mr. Roy to embellish the story with blood being on Mr. Stonechild's face.

32. It may well be Mr. Roy has not intentionally fabricated this version of events and the same is an effort to reconstruct history in an attempt to somehow explain his friend's death. He may have also convinced himself as to the accuracy of this recollection over the years undoubtedly enhanced by the repeated telling of the tale.

33. The statement given to Keith Jarvis on the 30th of November is likely the most accurate statement from Mr. Roy. It provides that he and Mr. Stonechild were arguing at the apartment building, Mr. Stonechild turned his back on him and made a comment, Mr. Roy then looked around, blacked out and woke up at

² Evidence of Lucille Horse - Vol. 5, pgs. 891 - 894

Julie Binning's. This is reasonably consistent with what was likely a speculation by Mr. Roy that Mr. Stonechild may have been picked up by the police. It is noted he was not at this point in time claiming he had seen him actually in the company of the police or had actual knowledge of Neil's arrest.

c) Mr. Roy's Condition at the Time

34. By all evidence available to us we know both Messrs. Stonechild and Roy were impaired on the night in question. Roy in his original statement to officer Jarvis explained they had consumed a 40 ounce bottle of vodka. It seems he now wishes to minimize this to a 26 ounce bottle. It is suggested the 40 ounce bottle is more likely. In any event, we know these were two young persons reasonably experienced with alcohol, who, given the information available to us were suffering from a degree of impairment that would in all likelihood effect judgment and recollection.

35. Mr. Roy by his own statement (that originally given to officer Jarvis) states he can recall nothing due to blacking out. It is noted that although he claims to have blacked out, he still had the wear with all to supply the police with a false name and birth date when stopped after he and Mr. Stonechild parted their ways.

36. By Mr. Roy's recollection he was "wired" or actively abusing alcohol and apparently doing some drugs during or about the period of Mr. Stonechild's death.³

d) The Statement to Jarvis

37. Perhaps the most telling piece of evidence to challenge the credibility of Jason Roy is the statement he gave to Keith Jarvis on the 30th of November 1990. This statement does not form part of Mr. Roy's story and it is suspected he probably forgot about same. It appears its existence was not known until March of 2001 when Cst. Louttit discovered a copy of the Stonechild file at home. Although, this statement appears to be totally contrary to Mr. Roy's latter

statements this matter, was apparently not pursued to any great lengths by the RCMP.

38. Mr. Roy invented two interviews, one at the residence of Dinah Sunshine with a statement being taken by two persons wherein he claims he mentioned Mr. Stonechild being in the back of the cruiser, he states one of these persons was male, the other was female and the statement was approximately three pages in length. There is nothing in the police file to support this story.⁴ Further the RCMP investigation showed the same did not occur.⁵

39. The second invented interview was the false statement at the station. Two factors make this statement especially important, the first is it appears at no time did Mr. Roy make any comment to any of his acquaintances or others concerning what he claimed to be a false statement obtained under threat by members of the Saskatoon Police Service. Evidence has shown he certainly was not hesitant to come forth with his story concerning his last sighting of Neil Stonechild. It seems wholly incongruous that he would not similarly complain about what he claims is a statement obtained by threats.

40. The second very notable feature of this statement is the story that was concocted to attempt to explain away its existence. The witness dates this statement by reference to his birthday. From other evidence lead, it was shown Mr. Roy was indeed arrested on the date in question for a theft of purse, however it is physically impossible for his story concerning the creation of the statement to be true given the fact it appears he was never at the station to give this statement and, in any event, there was insufficient time for such a statement to have been taken even if he were taken to the station.

³ Evidence of Jason Roy, Vol. 4, pgs. 723-725

⁴ see Exhibit P-41

⁵ Evidence of D. W. McFadyen - Vol. 32 pgs. 6139 - 6141

e) Contrary to the Facts

41. Mr. Roy's story concerning his sighting of Mr. Stonechild in the back of the police cruiser involves a number of improbabilities if not impossibilities.

42. As will be seen in the evidence of Doctor Lew and other medical witnesses, firstly, the scratches on Mr. Stonechild's nose are not the sort of injury that would produce any amount of bleeding. Secondly, if Mr. Stonechild were bleeding from the face as described by Mr. Roy, there would have been visible blood on the deceased's clothing and face. This is not the case. Again, it is submitted Mr. Roy has taken what he saw at the funeral and incorporated into his story of what occurred on the night in question.

43. Note that when Mr. Roy claims he saw Mr. Stonechild in the back of the police cruiser, he was claiming he was Tracy Horse, but had no identification. He advises Neil at that point said something to the effect of "Jason tell them who you really are", despite this, he claims the officers had no reaction or further inquires concerning his false identity.⁶ It is submitted this is highly improbable.

2. Working Conditions at the Time

44. In reviewing and reflecting upon the nature and quality of the police investigation in 1990, one must be cognizant of the conditions in the Service at the time. It is easy to criticize an isolated investigation a number of years subsequent to same, especially in light of what appears to be a multi-million dollar investigation and Inquiry concerning Mr. Stonechild's death. It is submitted at the time the matter was originally investigated members of the Service did not enjoy sufficient training, had a heavy workload and were working in a system that did not contain sufficient checks and balances to ensure matters were not closed prematurely.

45. Some parties will be quick to criticize then officer Keith Jarvis in his handling of the Stonechild investigation. This officer was not a sole actor but was

⁶ Evidence of Jason Roy - Vol. 4 pgs. 669 - 671

part of an organization responsible for policing and investigating matters in the city. It is submitted even if the investigation by Jarvis was not as complete as it could have been, the system ought to have detected this and mandated further investigation if the same could have achieved anything.

3. Keith Jarvis

46. Mr. Stevenson's brief will deal with matters concerning Mr. Jarvis in detail. It would be redundant to repeat the same here.

a) The Investigation

47. Although many parties have been quick to criticize Mr. Jarvis in his investigation, one must put the same in context and keep in mind the case load of the investigator's generally and Mr. Jarvis specifically, the training that was or was not available to officers such as Jarvis, the amount of backup available and the apparent lack of sufficient safeguards to ensure files are not closed prematurely. Over and above this however, one must be mindful of the fact that Mr. Jarvis was dealing with the file where his information was that there were no signs of trauma to the body and foul play was not evident.

48. Regard should also be made of the fact the Service was undergoing an experiment in "Community Policing" which in the end result appears to have proved unsuccessful in that he demanded members undertake tasks for which they were not well trained.

b) Jarvis' Recollection

49. Mr. Jarvis' recollections and matters surrounding the Stonechild investigation are obviously very vague. This is not surprising given the passage of time and the number of files handled by Mr. Jarvis while a police officer. The fact the matter involved a death is notable, however, regrettably, these files are not uncommon either.

50. It is obvious his recollection had to be assisted to a great degree. If one follows the progression of his interviews with the RCMP, it is obvious the vagaries of his recollection are being filled with information received from the RCMP. We do not know what exactly was said to Mr. Jarvis in these interviews, however it is suggested it would be fair to assume it would likely be the Jason Roy story was put to him as a factual basis, much as was done by officer McFadyen, numerous interviews conducted by himself.⁷

51. In the first statement of 3 March 2000, we see officer Warner comments "after considerable prompting he did recall doing an investigation ...", further "he knows nothing of any allegation then or now that Stonechild had been in custody of SPS on the night he was last seen".⁸

52. Again when speaking with officer Lyons (mistakenly referred to as Warner in the Exhibit) on the 3rd of April 2000, it is related "he is certain that there was never any suggestion of an SPS member involvement with Stonechild".⁹ This appears to be a long interview however the summary is very short and mentions nothing of police officers being involved.¹⁰

53. It appears there was a further interview with Mr. Jarvis on or about the 11th of October 2000, we do not have a memorandum of this meeting nor any indication as to what information the RCMP would have relayed to Mr. Jarvis.

54. In a taped interview on the 12th of October 2000, Jarvis' recollection was when speaking with Jason Roy, he was now not sure if Roy told him that or if this information had come as a result of conversations with the police, but in any event it would have been in his written statement.¹¹

⁷ Evidence of D.W. McFadyen, Vol. 32, pgs. 6159 – 6161, Exhibit P-134

⁸ Exhibit P-108

⁹ Exhibit P-109

¹⁰ Exhibit P-110

¹¹ Exhibit P-107, pgs. 8 & 9

55. It should be noted that he does state if Mr. Roy had said anything to him, it would be in his statement. At this point in time it appears his notes may have been located but the actual Roy statement was not located until March of 2001.

56. Lastly, it is respectfully submitted the Martell interrogation was of little value to the Commission. It appears the same was anything but an impartial information gathering from a potential witness but is aimed solely at attempting to affix liability to members of the Saskatoon Police Service. Large portions of the interview were not recorded and the tape recorder turned on and off on a very frequent basis during the interview. It is common knowledge amongst police investigators that proper procedure would have it that a tape is never turned off during an interview under normal circumstance and if it is, the same is commented on in the tape. From the reading the transcript and listening to the tape it is apparent that statements were made while the tape recorder was off and not recorded, an example of this may be found at page 52, where one hears a click of the machine being turned on and off with Mr. Martell then stating "okay say that again?".

4. Gary Pratt

57. Mr. Pratt has denied involvement in the death of Neil Stonechild. Although, this may have not been the typical type of violence connected to Mr. Pratt and his associates, but Mr. Pratt was a man of violence and had concerns with Mr. Stonechild which could have resulted in violence.

58. There was an altercation and issues outstanding as a result of the stolen gun transaction involving Mr. Rushton and others. In addition to this, Mr. Pratt was held on remand for a period of time awaiting the court proceedings where Mr. Stonechild was to testify. In the fullness of time, these proceedings did not proceed. Mr. Stonechild did however show to testify against Mr. Pratt. The probable fate of the "rat" in Mr. Pratt's society both then and now is not good.

The consequence of "rolling over" appears to often be suffer severe personal injury or death.¹²

5. Allegations of Police Involvement

59. The evidence of officers Senger and Hartwig will undoubtedly be covered fully by the Briefs to be filed by Messrs. Fox and Watson. The Association does not intend to reiterate all salient facts in relation to their evidence but takes the liberty of underscoring what it believes to be the most pertinent facts concerning their activities on the night in question.

60. The fact that neither has an exact memory of all details from that evening is hardly surprising, given the number of calls a patrol officer would normally take as well as the passage of time. To have a complaint of drunkenness and to show to have the subject of the complaint gone on arrival again is hardly remarkable. Mr. Stonechild was not found until a few days later, thus the connection would not be apparent to an officer who had shown merely to find the person not there.

61. The evidence shows from viewing the dispatch summaries and CPIC synopsis the following appears to be the chain of events occurring November 24 / 25, that may be relevant to the matter at hand. (All times Saskatoon time):

23:49 Complaint re Neil Stonechild being drunk from Trent Ewart

23:51 Hartwig and Senger dispatched

23:56 Grigorovich reports suspicious person

23:56 Hartwig and Senger at scene

23:56 Tracy Horse and Tracy Lee Horse queried by Senger

23:59 Neil Stonechild queried by Senger

¹² Evidence of Gary Pratt, Vol. 33, pgs. 6331 - 6332

00:04 Bruce Genaille queried by Hartwig

00:17 Hartwig and Senger clear Snowberry Downs

00:18 Hartwig and Senger dispatched to Grigorovich complaint

00:24 Hartwig and Senger arrive at Grigorovich complaint

00:27 Hartwig and Senger clear Grigorovich

00:30 Trent Ewart queried by Senger from MDT

62. From the description of the prowler by Ms. Grigorovich, it is entirely possible the person complained of was Neil Stonechild. The location of the complaint is quite close (if one travels back alleys and such) from the Snowberry Downs. Further, when Mr. Bruce Genaille was checked by Senger and Hartwig, there was no one in the back seat of the car.

63. By way of other relevant evidence we have Mr. Trent Ewart. His recollection of the night was not good, he did however adopt the statement he gave to Keith Jarvis in November of 1990. This statement provides he had been out that night with Lucille Neetz and Gary Horse. There was a buzzer ringing and later a knock on the door. Lucille said it was Neil Stonechild and that she was scared. Mr. Stonechild apparently wanted to party, was advised there was no party there and was told to leave before Mr. Ewart "called the cops". It seems Mr. Stonechild left and came back. Lucille then encouraged Mr. Ewart to call the police, and when the police arrived, his recollection was that he and Gary lied because they didn't want the police to give Neil their name.

64. Many different scenarios and possibilities have been posed as to the difference in timing from when matters actually occurred and when they were entered in CPIC as well as a host of other unsubstantiated theories.

65. Looking at the above scenario, what occurred is quite obvious, that being: at about 23:49, Mr. Ewart called the police to complain about Mr. Stonechild.

Contemporaneous with this, he advised Mr. Stonechild he was calling the police. It would be natural that not wanting to meet up with the police, being absent from the group home, he left and quite likely ended up on O'Regan Crescent where he was seen by Shelly Grigorovich. He then left the scene. At this same time, Jason Roy is giving the police a false name and is being queried as Tracy Horse. The officers are unable to locate Stonechild and query his name at 23:59. Prior to 00:04, Mr. Genaille is stopped by the officers believing he is Neil Stonechild. He identifies himself, gives his name and that is queried at 00:04. They cleared at 00:17 to proceed to Grigorovich complaint, being dispatched at 00:18.

66. From the above, it is obvious they did not come into contact with Neil Stonechild on the night of the 24th / 25th November 1990. If Mr. Roy's story is correct, the only time they could have had contact with Stonechild was immediately upon arrival at 23:56 which is the same time they are checking Mr. Roy. This leaves no time for Mr. Stonechild to be arrested but, in any event, it is impossible for him to have been arrested, apparently manhandled and put into the back of the vehicle.

67. Even if Mr. Stonechild were in the back of the vehicle prior to Mr. Roy being stopped, there is at most eight (8) minutes from that point in time until the officers are stopping Mr. Genaille. Given the distances involved, it is suggested it is impossible for them to have transported Mr. Stonechild anywhere near where he was later found and return to the vicinity of apartment buildings. Further, it would make no sense for them to be CPICing Mr. Stonechild at 23:59 if they were actively transporting him with a view of leaving him somewhere.

68. Upon this, it is submitted it is impossible for him to have been stopped, apprehended, handcuffed, placed in the cruiser, transported across town, had the cuffs taken off him and then left somewhere in the north industrial. Further, it would make no sense for members of the police service to drop Mr. Stonechild off if the theory is the same would to "teach him a lesson", in that he was actively

wanted or a warrant for being unlawfully at large. He would simply have to be arrested again later.

69. There has been suggestion that other members of the Saskatoon Police Service may have taken custody of Mr. Stonechild prior to him being dropped off. There was a specific suggestion of the patrol wagon being involved. There is absolutely no evidence to substantiate this allegation.

F. Expert Evidence

1. Medical / Technical Evidence

a) Mr. Robertson

70. It appears from early investigation the RCMP relied on the report of Mr. Robertson concerning marks on Mr. Stonechild's face and hands. This is unfortunate in that it is submitted Mr. Robertson's report and opinion are at best inaccurate.

71. Photogrammetry may well have a place and be of utility in certain fields of inquiry. It would seem forensic pathology is not one of them. It is submitted with respect Mr. Robertson's evidence is of no use to the Inquiry. His qualifications do not appear to be exactly as stated, his conclusions are well beyond what expertise he may possess, his parameters of testing are not done on a logical basis and it appears he is unable to explain any of the results he achieved. The most his evidence can show is a certain coincidence between measurements taken post mortem and other known objects. He has no expertise to be able to advise whether this coincidence would exist antemortem. One suggests his evidence was offered with a view to achieving the result he perceived his clients desired.

72. The evidence offered concerning handcuffs and markings to the face was simplistic at best and totally ignores such factors as the likely physical

impossibility of markings such as those on Mr. Stonechild's face being made by a round object, such as handcuffs without producing other discernible injury.

73. His evidence as to markings on Mr. Stonechild's hand is of no assistance in that he has no expertise whatsoever to advise how these markings would have come about. Most notable amongst his "findings" is the placement of what he suggests may be a handcuff mark in a place on Mr. Stonechild's thumb which obviously is not where the mark is to be found.

74. In short, it is suggested Mr. Robertson's evidence did nothing but confuse the issue.

b) The Pathologists

75. The origin and timing of the marks to Mr. Stonechild's face, hands and body are obviously within the purview of the pathologist. The Commission heard from Drs. Adolph, Dowling and Lew. As with most medical professionals, much of the evidence from the pathologist was phrased as "certain matters are consistent with" or "are not consistent with". The evidence of Doctor Lew was most definitive and it is suggested ought to be accepted. One notes, without in anyway detracting from the knowledge and experience of Doctorss. Adolph and Dowling, that she is a sub-specialist in forensic pathology, a sub-specialty apparently not common in Canada. She has vast experience in forensic pathology and did have the advantage of further enhanced photographs from the autopsy which were not available to the other experts.

76. Doctor Lew stressed the desirability of placing injuries and markings on a body in physical context. This was done in relation to Mr. Stonechild.

77. From Doctor Lew's testimony, we learn the following:

- The markings to Mr. Stonechild's nose were consistent with and could very well come from falling face down into the vegetation where he was found.

- The marks to his nose are not consistent with handcuffs.¹³
- Injuries to Mr. Stonechild's nose were sustained shortly before his death, ie. minutes rather than hours.¹⁴
- Marks on Mr. Stonechild's hand / wrist and abdomen were caused postmortem.¹⁵
- Marks on Mr. Stonechild's wrist are not consistent with handcuffs.¹⁶
- Marks on his hands are consistent with clothing.¹⁷
- The scrapes to Mr. Stonechild's nose were not likely to cause any significant amount of bleeding and if it did, one would expect to find blood on the lower part of his face and clothing.¹⁸
- She did not see any blood on the clothing or apparently at the scene.
- The scrapes to the nose in the photographs at the scene appeared different in the autopsy photograph due to postmortem changes.¹⁹

2. Memory / Alcohol

a) Alcohol Evidence

78. Doctor Richardson has provided excellent evidence to the Inquiry. One problem we have is an accurate estimate of the amount of consumption of alcohol by both Messrs. Stonechild and Roy. Given the possible ranges of consumption by the time Mr. Roy reached the apartment building, he could have been anywhere from somewhat to very impaired. In his statement to Keith Jarvis

¹³ Evidence of Doctor Lew, Vol. 42, pgs. 8160 - 8164

¹⁴ Evidence of Doctor Lew, Vol. 42, pgs. 8166

¹⁵ Evidence of Doctor Lew, Vol. 42, pgs. 8168 - 8169

¹⁶ Evidence of Doctor Lew, Vol. 42, pgs. 8169 - 8175

¹⁷ Evidence of Doctor Lew, Vol. 42, pgs. 8172 - 8174

¹⁸ Evidence of Doctor Lew, Vol. 42, pgs. 8179 - 8181

¹⁹ Evidence of Doctor Lew, Vol. 42, pgs. 8180 - 8181

he advised that he blacked out. This is consistent with a higher degree of alcohol consumption. Further his growing story as to what he believes he saw on the night in question is wholly consistent with the backfilling of a missing memory caused by alcoholic amnesia.²⁰

79. Mr. Stonechild's level of impairment appears to be approximately that shown in the laboratory analysis. It is suggested this would likely have created a fair degree of impairment and lack of judgment. This is borne out by his behaviour at the apartment buildings.

b) Evidence re Memory

80. In addition to the evidence received from Doctor Richardson, the Commission heard from Doctors Arnold and Yuille. By the evidence of Doctor Arnold it would seem the "growing memory" of Mr. Roy is entirely consistent with an implanted memory that becomes embellished with the telling, especially if put under pressure to be able to recall what had occurred.²¹

81. It is submitted Mr. Roy's "memory" of Mr. Stonechild being in a police cruiser on the night in question, if not pure fabrication to suit the moment, is quite possibly information received either by suggestion from others or quite possibly as a result of seeing Mr. Stonechild in a police cruiser on another occasion.

82. His comments concerning adapting information from others is equally applicable to Keith Jarvis.

83. Further from Doctor Yuille's evidence we see that one who fabricates (it is suggested either intentionally or by a created memory) will often weave the contents of this false memory into reality, such as the person can recall. It is suggested this is exactly what Jason Roy has done with his memories of the evening in question.

²⁰ Evidence of Doctor Richardson, Vol. 30, pgs. 5820 - 5823

²¹ Evidence of Doctor Richardson, Vol. 31, pgs. 7041 - 7046

84. Further from viewing the statement Mr. Roy gave to Keith Jarvis, it would appear the same is quite consistent with his memory fading due to alcohol consumption leading to a memory loss.²²

85. One must also be careful of misinterpreting Doctor Yuille's report. In viewing question six (6), a general question was posed to him concerning whether the RCMP and/or Martell interviews could have created a risk of false memory. Doctor Yuille did not answer that question in his report but rather answered a new question restricted to the taped interviews he reviewed, this in no way addressed the possibility of contamination in the non taped RCMP interviews nor the portion of time with Mr. Martell that was not tape recorded.

86. The full answer to the question posed by Mr. Hesje was that he is unable to say if the totality of interaction between the RCMP and Mr. Martell with Mr. Jarvis could have created false memories.²³

G. Miscellaneous Issues

1. Conspiracy Theory

87. There has been suggested there was some agreement or conspiracy amongst members of the Saskatoon Police Force to cover up evidence of police involvement with Mr. Stonechild contributing to his death. It appears these allegations first were made by counsel at the Inquiry. The RCMP in its investigation had no reason to believe there was a conspiracy afoot. There has been no evidence whatsoever of same and, as it proves, the somewhat ominous statements made by Mr. James Maddin to the press in June of 2003 had nothing to do with Neil Stonechild's disappearance but were related to Mr. Maddin's own actions in a totally unrelated matter.

88. A great deal was heard concerning the Force destroying old files and police officers' notebooks. This again was cited in supported of the conspiracy

²² Evidence of Doctor Yuille, Vol. 39, pgs. 7482 – 7485

²³ Evidence of Doctor Yuille, Vol. 39, pgs. 7617 – 7620

theory proffered. This destruction was done in the ordinary course of business due to space constraints. A number of officers' notebooks were destroyed but this in no way lends credence to the conspiracy theory, in that if indeed officers were moving to hide evidence the most obvious evidence that would have been destroyed would be those who are alleged to be the central actors, officers Jarvis, Hartwig and Senger. One notes their notebooks were preserved and available to the RCMP.

2. Allegations of Racism

89. Allegations will undoubtedly be made that the actions of the police were somehow affected by racism within the force or certain members of same. It is submitted this is not the case but in any event, the Association states there is no place for racism in modern society and even more so, no place for, nor should there be any tolerance for, racism within a police service or members of same.

90. The Association acknowledges the Service has made a number of efforts to combat any possibility of racism within the Service. The Association wholeheartedly approves of any initiatives undertaken to ensure the Service is and remains free of any prejudice, whether it be based on race or otherwise.

H. What became of Mr. Stonechild?

91. It is respectfully submitted the Jason Roy story is unbelievable. It was physically impossible for the officers in question to have apprehended Mr. Stonechild, processed him, transported him and returned to the scene in the timeframe available. Further we have the officers' evidence as to the same not occurring. The question then is, what did become of Mr. Stonechild on the night of 24 / 25 November.

92. We do not know exactly when Mr. Stonechild went missing. It would seem likely in the early morning hours of the 25th of November. We however have no accurate way of determining this. The best that can be said is he obviously went missing sometime prior to him being found. This being so, the time frame within

which he may have run into some person or persons who somehow contributed to his disappearance is quite broad.

93. It has been suggested the area of the Hitachi Plant is "remote". It is submitted this is an exaggeration, in that the same is quite proximate to some dwellings across the road and the "booze can" described in Mr. Pratt's evidence. It appears the latter by his evidence was some ten or twelve blocks away.²⁴

94. From the evidence of Mr. Pratt, we also know he and his brother and others had access to automobiles.

95. As to how Mr. Stonechild came to be in the field near Hitachi, there are of course a large number of possibilities, any one or more of which are not unreasonable. It would seem unlikely he would set out to walk from the Snowberry Downs given the weather and the apparent distance. It is submitted this is possible though.

96. It is more likely that he had either found a party in the Snowberry Downs or had been picked up by some other friends either at the 7-11 or otherwise, who could have dropped him off. It is also quite possible he was either at the "booze can" or a party in the dwellings mentioned above and wandered or was chased out to find himself in the field. Referring to the direction he was travelling at time he became immobile, it is quite probable he was disorientated either from the alcohol or the effects of cold then setting in. As to him heading off towards the Correctional Centre, it is submitted this is possible, not likely to turn himself in, but to seek refuge from the elements. Presumably at that time, his personal safety would take priority over a desire to avoid being returned to the group home.

97. It has been asserted by other parties to the Inquiry that members of the Association were guilty of wrongdoing in the disappearance of Mr. Stonechild. The concept of "onus" may not be appropriate to an Inquiry, but it is submitted it

²⁴ Evidence of Gary Pratt, Vol. 33, pgs. 6316 – 6317

is up to them to prove these assertions not upon others to disprove them. Regardless of this, it has been submitted the assertions have indeed been disproved.

98. It is entirely possible Mr. Gary Pratt and/or others associated with him could have become involved with Mr. Stonechild. In any event it is quite possible Mr. Pratt knows what happened to Mr. Stonechild and it is also possible Mr. Roy knows but the same is not the story he has been telling. If the person or persons responsible for Mr. Stonechild's death were those associated with the community involved with criminal activity, it is highly unlikely they, or indeed anyone else, will come forward in that the same would brand them as an informant or "the rat" which would lead to serious repercussions involving serious injury or death.²⁵

99. The great sadness however is despite the immensity of the RCMP investigation and the many days of hearing by the Inquiry, it remains and will likely always remain a mystery as to how Mr. Stonechild met his untimely and tragic death.

I. Recommendations

100. A number of matters have come up in the Inquiry which would be worthy of recommendations from the Commissioner, the Association respectfully submits the following would be appropriate:

- The Police Service continue to improve training and resources for all of its personnel, most especially those involved in investigations and other specialized areas of work;
- The Police Service continue to maintain its initiatives and programs to ensure sensitivity within the force toward racial and cultural issues;

²⁵ Evidence of Gray Pratt, Vol. 33, pgs. 6331– 6332

- The Police Service be encouraged to continue hiring practices that will ensure the compliment of personnel in the Police Service accurately reflects the racial and cultural composition of the community it serves;
- Programs and initiatives be established and continued to ensure meaningful communications between the force and sectors of society who may feel marginalized by the administration of justice;
- The Police Service continue to develop and maintain such procedures as may be advisable to ensure the speedy resolution of investigative files, especially those involving major crimes or similar matters, and ensuring the same are completed and reported on in a satisfactory fashion;
- The Police Service continue to develop and maintain such procedures as may be advisable to ensure all investigators have sufficient backup and support in investigations;
- The Police Service continue to develop and maintain such procedures as may be advisable to ensure files are fully reviewed prior to closure, and failsafe system be in place to ensure no matter gets overlooked; and
- Police equipment be modified and upgraded to provide better protection to both the officer and the public when allegations are made of questionable police conduct, included in these measures are such equipment as in vehicle video cameras and GPS systems.

101. As to findings concerning the circumstances that resulted in the death of Neil Stonechild, it is respectfully submitted all that has been shown is that Mr. Stonechild met his death some time between the 25th and 29th of November 1990 and the same was caused by freezing. It is further submitted the circumstances that lead up to his death remain unknown.

All of which is respectfully submitted.

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

Walker, Plaxton & Co.

PER: 

DREW S. PLAXTON