

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

FINAL SUBMISSIONS ON BEHALF OF DEPUTY CHIEF DAN WIKS

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1. These submissions are made on behalf of Dan Wiks, Deputy Chief of the Saskatoon Police Service (“Wiks”).

I. FACTS

2. Wiks was a witness before this Commission. He was called to provide testimony on behalf of the Saskatoon Police Service. He was the most senior active member of the Service to testify at the Inquiry, although former Chief Dave Scott also testified. It must be noted Wiks was not involved in the original investigation into the death of Neil Stonechild. He provided testimony on an historical basis, with a re-created chronology, and also testified as to matters occurring many years after the death and initial investigation of same.
3. Pursuant to an application made May 7, 2004, Wiks was granted standing on a limited basis to provide the Commissioner with submissions. In large part, Wiks sought standing as a result of being served with a Notice dated March 29, 2004 from Joel Hesje, Q.C., Counsel to the Commission. That Notice of Potential Adverse Finding is reproduced at Tab 1. That document advised Wiks that an adverse finding could be made against him with respect to statements made by Wiks to the media that were carelessly or deliberately misleading.

4. It is suggested that the evidence in this regard will consist of the statements themselves, as set out in Exhibit P-140 and as acknowledged by Wiks, as well as those portions of the cross-examination by Wiks wherein he acknowledged that his statements were incorrect.
5. As a result of his testimony, Chief Russell Sabo of the Saskatoon Police Service ordered an independent investigation into Wiks' conduct, and held a suspension hearing under the *Police Act*. Wiks was not suspended. The investigation, however, has not yet been concluded.
6. Wiks has been a Deputy Chief since 1998. At the time of the interview given to Parker (May of 2003), Wiks was Acting Chief. This was an assignment that was temporary in nature. In May of 2003 Wiks was one of two Deputy Chiefs. He was in charge of Support Services. His regular duties included supervising the Human Resources Division, Information Technology Division, Records Management Division and the Administration Support Section.

Transcript, Volume 33, pages 6369 to 6371.

7. In the spring of 2003, knowing this Inquiry had been ordered (in February), Wiks was contacted by James Parker for an interview. Wiks has been entirely candid in admitting the Star-Phoenix news story of May 2, 2003 (P-140 herein, reproduced at Tab 2) was an accurate account of what he had said to Parker. He further admitted his statements contained in the story were not entirely accurate.

Transcript, Volume 38, pages 7203 to 7211.

II. ISSUES

8. Is it within the terms of reference of this Inquiry to comment upon Wiks' statements to the media?
9. Does commentary on Wiks from the Commissioner affect the *Police Act* investigation, such that such commentary is inappropriate in these circumstances?
10. In any event, should an adverse finding be made with respect to Wiks in this regard, having regard to all the facts and circumstances before this Inquiry?

III. ANALYSIS

Is it within the terms of reference of this Inquiry to comment upon Wiks' statements to the media?

11. The terms of reference within which this Inquiry operates include the following:
 1. The Commission of Inquiry appointed pursuant to this Order will have the responsibility to inquire into any and all aspects of the circumstances that resulted in the death of Neil Stonechild, and the conduct of the investigation into the death of Neil Stonechild for the purpose of making findings and recommendations with respect to the administration of criminal justice in the province of Saskatchewan. The Commission shall report its findings and make such recommendations as it considers advisable.
 2. The Commission shall perform its duties without expressing any conclusion or recommendation regarding the civil or criminal responsibility of any person or organization, and without interfering in any ongoing police investigation related to the death of Neil Stonechild or any ongoing criminal or civil proceeding.

12. It is clear that the media statement of Wiks made in May of 2003 has no connection with the first aspect of the Inquiry; that is, it has nothing to do with “the circumstances that resulted in the death of Neil Stonechild.” That is a self-evident proposition.
13. It is further submitted that Wiks’ media statement is not connected to the second aspect, namely “the conduct of the investigation into the death of Neil Stonechild.” By the time the impugned statement was made, the Saskatoon Police Service investigation into this death had long since ended. The matter had already been through the hands of the RCMP. All interested parties were awaiting the commencement of this Inquiry in the fall of 2003.
14. When P-140 is examined, the article has to do with the RCMP probe into this matter, as opposed to the actual investigation of Mr. Stonechild’s death. This is more than merely a semantic distinction. This Inquiry has been given a broad mandate to inquire into the Saskatoon Police Service’s investigation into that death. The news story of last May deals with the fallout from the third-party review of that investigation, and with this Inquiry.
15. Notwithstanding the broad mandate to review the two matters set out in the terms of reference, it is submitted this particular matter falls outside those terms. The Inquiry is entirely the creation of an Order-in-Council, without inherent jurisdiction, and must therefore stay within the boundaries of the terms of reference creating it. Indeed, the Somalia Inquiry was terminated by the federal government in January of 1997, prior to it having completed its mandate. While seen by many as ill-advised, this was within the purview of the federal government and is

illustrative of the limits of the independent power enjoyed by legal tribunals of this type.

See: Report of the Somalia Commission of Inquiry, at: <http://www.dnd.ca/somalia/vol0/vOs1e.htm>.

16. It should be noted that Saskatchewan's *Public Inquiries Act* is different than the federal *Inquiries Act*. The former does not contain the equivalent of federal section 13, which requires that notice be given to any person about whom comment might be made which could be interpreted as "misconduct". In the Report of the Krever Commission on the Blood System in Canada, pages 21 to 22, it was acknowledged that "misconduct" included "improper or unprofessional behaviour" or "bad management".

See the Report at: http://collection.nlc-bnc.ca/100/200/301/hcan-can/commission_blood_final_rep-e/vol1-e.pdf.

17. The absence of such provision in the provincial legislation would tend to indicate that Saskatchewan Commissions of Inquiry must take care not to cross over into assigning blame or even commenting adversely upon persons or matters not at the heart of the Inquiry. Our province's legislation does not confer that authority nor impose that duty. Indeed, to quote Justice Krever's opening remarks from the first day of that inquiry, as to its purpose:

It is not and it will not be a witch hunt. It is not concerned with civil or criminal liability. I shall make findings of fact. It will be for others, not for the commission, to decide what actions if any are warranted by those findings. (. . .) As I interpret the terms of reference, the focus of the Inquiry is to determine whether Canada's blood supply is as safe as it could be and whether the blood system is sound enough that no future tragedy could occur. For those purposes it is essential to determine what caused or contributed to the contamination of the blood system in Canada in the early 1980s.

18. One sees that Inquiry self-assessing as to its purpose. In the case at hand, this Inquiry must clearly investigate and comment (if able) as to how the death of Mr. Stonechild occurred. It must also comment upon the Saskatoon Police investigation into that death, and whether it was poorly conducted or managed. It should not comment upon media events occurring years following those matters.
19. Wiks does not contest that this Inquiry was called for the public interest, and that the Commissioner must interpret the mandate broadly enough to adhere to the purpose for which it was originally called. It is acknowledged that at the root of this Inquiry is, fundamentally, the public's interest and concern as to the administration of justice in Saskatchewan. Mr. Stonechild's family, the citizens of this city, and indeed the people of this entire province, require answers as to what happened to Mr. Stonechild, whether the actual investigation into his death was flawed, and if so how to prevent such occurrences in the future. Yet to carry out that mandate, even in its fullest sense, does not necessarily include commentary on peripheral subsequent actors in this matter, such as Deputy Chief Dan Wiks. Further, for reasons discussed under the second issue, *infra*, it is inappropriate to do so in these particular circumstances.
20. Should this Inquiry ultimately comment upon all legitimate questions arising from Mr. Stonechild's death in 1990, and the subsequent police investigation? Necessarily, it must do so. Yet commenting upon Wiks' dealings with a news reporter some 13 years after those events does not have the effect of answering those questions, nor does it satisfy the overarching purposes of this Inquiry: to find out what happened to Neil

Stonechild, and to find out what happened with the investigation into his death.

21. It is appreciated that the Commissioner appears to have adopted a “broad relevance test” in allowing testimony, and that the choice to err on the side of inclusion is relatively common in Canadian Commissions of this type. That, however, does not inevitably draw the Commissioner to comment upon each and every aspect of testimony heard. Common sense is not left at the door. It would not be the reasonable expectation of the public for this Commission of Inquiry to comment upon something Wiks did while acting temporarily as Chief, outside his regular duties, which conduct does not bear upon either of the two main purposes of this Inquiry.
22. It is therefore respectfully submitted that for this Commission of Inquiry to comment, in its final report, upon the media contact with Dan Wiks in May 2003 is beyond the strict scope of this Inquiry.

Does commentary on Wiks from the Commissioner affect the Police Act investigation, such that such commentary is inappropriate in these circumstances?

23. The manner in which the testimony as to P-140 was elicited from Wiks raises several concerns.
24. **First**, unlike other current and former peace officers attending at this Inquiry, Wiks appeared without independent counsel. One must be clear that Barry Rossman, Q.C. appeared as counsel for the Saskatoon Police Service and not as Wiks’ lawyer. The interests of the Service are not in

all cases the same as the interests of any individual member, and Mr. Rossman could not be taken to have been representing Wiks in his personal capacity. Nevertheless, Wiks was testifying without anyone to protect his individual interests, not a common occurrence at this Inquiry.

25. **Second**, his testimony was not initially led by Commission Counsel, but by Mr. Rossman. In fact, Mr. Rossman specifically applied to lead Wiks' evidence in chief. Attached as Tab 3 is a copy of Wiks' "can say" statement, based on information compiled by Messrs. Hesje and Stack sometime in August of 2003. Paragraph 24 of that document clearly sets out that prior to this Commission even commencing, Wiks discussed Exhibit P-140 with Commission Counsel and candidly acknowledged that what he said was not entirely accurate, and the reasons therefor. Wiks took steps at the earliest juncture to advise the proper parties that his earlier media statement was in error. It is Wiks' understanding that this "can say" was circulated amongst all counsel.

26. With Mr. Rossman asking to lead Wiks' testimony, implicit in such action is a request to the trier of fact to accept and believe that evidence. Two matters emanate from that principle. First, Wiks cannot be faulted for not seeking standing with his own counsel earlier in this process. Second, one would reasonably expect counsel leading Wiks' testimony to cover this issue in chief, rather than leaving it to be explored in cross-examination. It is suggested it is a fundamental tenet of barristers' work that counsel exposes and deals with any controversial areas in chief, rather than leaving the misimpression that such matters are being elicited through cross-examination. This was not done, creating a situation whereby Wiks was questioned as to what he said and the accuracy of same, but not his intention behind the statement. Such intention is crucial

to an adverse finding, yet this Inquiry is not equipped with any evidence in this regard.

27. Further, once this issue was actually raised by Mr. Halyk, Q.C. and Mr. Worme, Q.C. one might have reasonably expected someone to canvass the issue again through re-examination, to clear up any misapprehension as to how the misstatement to the press was given. This did not occur. At pages 7357 to 7358, Mr. Hesje only asked Wiks about a second statement in P-140. He did not ask Wiks about his intention in making these statements to the press. He did not draw out the facts which were known to him through the “can say”, which sets out that Wiks merely overstated the position vis-à-vis Hartwig and Senger, when Wiks should have been accurate in stating the *Police Act’s* test to impose suspension could not have been met. Nor did Mr. Rossman draw out these facts. These facts are likely collateral to the purpose of this Inquiry; they are, however, crucial to the issue of Wiks’ ability to defend his integrity and reputation.

28. **Third**, and perhaps most importantly, Wiks is the subject of an ongoing investigation pursuant to the provincial *Police Act, 1990*. This investigation has not yet concluded. In light of both that fact and the terms of reference of this Inquiry, it is submitted that it is dangerous to provide gratuitous or extraneous commentary upon Wiks’ May 2003 interview, for the following reasons:

- (a) The questioning of Wiks regarding P-140 was neither extensive nor the focus of this Inquiry. There is no reason it should have been. Therefore, the *Police Act* investigation is more likely to be the appropriate vehicle to get at the underlying reasons for Wiks’ statements than is this Inquiry. Certainly, there is a marked difference between concluding that Wiks intended to deceive the media, and that he chose his words poorly and did not explain himself properly,

as he testified to. This Inquiry did not take on the task of diligently pursuing that issue, nor should it have. It is Wiks' argument that such a task is more properly left to the extensive investigative procedure enacted under the *Police Act, 1990*.

- (b) The terms of reference for this Inquiry do not support the need to comment on this matter. This has been discussed above, but must also be considered in the light of paragraph 2 of the terms of reference, which states:

2. The Commission shall perform its duties without expressing any conclusion or recommendation regarding the civil or criminal responsibility of any person or organization, and without interfering in any ongoing police investigation related to the death of Neil Stonechild or any ongoing criminal or civil proceeding.

The *Police Act* investigation into Wiks' conduct falls within the ambit of "any ongoing criminal or civil proceeding." Further, in expressing opinions on Wiks' statements to the media, the Commission could possibly influence that investigation, thereby affecting the internal civil findings of that investigation. Simply put, this is a good subject for the Inquiry to stay away from.

- (c) At the point where Wiks was being examined as to P-140 and he found his credibility or veracity being challenged, he was immediately facing the very real possibility that his testimony would trigger a *Police Act* investigation. The rules of natural justice would call for his being offered the opportunity to instruct and retain counsel to protect his interests within the Inquiry. For example, suggestions were made as to Mr. Pratt's involvement in Mr. Stonechild's death, yet at all times he had his own very capable counsel there to protect his interests. It is fair to say that Mr. Jarvis was challenged, and Mr. Stevenson Q.C. was present to protect his personal interests. As stated above, Mr. Rossman could not do this for Wiks, since Rossman represented the Police Service. Once other potential civil jeopardy arose for Wiks, he ought to have been able to immediately obtain personal counsel. He was not afforded that opportunity.
- (d) The *Police Act* process is presently at the investigation stage. Wiks has been thoroughly interviewed by an investigator outside the Saskatoon Police Service. It is trite to say that such an investigation should be free from any outside influences, whether intentional or inadvertent. It is submitted that on a practical level, it would be

difficult for any investigator to reach conclusions on Wiks which run contrary to comments expressed by the Commissioner.

29. **Fourth**, the testimony of Wiks has already attracted media attention. Further comment from this Inquiry will undoubtedly attract further attention. Some of the reporting has been entirely inaccurate, as with the National Post article of March 19, 2004 attached as Tab 4, by way of example. That article stated Wiks had been fired, when in fact a suspension hearing had not even occurred and Wiks was ultimately not suspended. The third-last paragraph states "Within days, Mr. Wiks was whacked." This is wholly untrue. Yet it illustrates that adverse findings by this Commission, without the benefit of a full and searching exploration of Wiks' intentions in speaking with the media, will directly and substantially affect Wiks and can have a detrimental effect upon his current and future employment. All this could occur without Wiks having had an opportunity to present full evidence and argument to defend his personal position before this Inquiry.

30. It is therefore submitted that comments from this Inquiry on Wiks' Star-Phoenix interview of May 2, 2003 would likely have a chilling effect on the *Police Act* investigation, as well as having a direct effect on Wiks without his having an opportunity to give full answer to the aspersions being cast. For these additional reasons, it is respectfully submitted that the Commissioner ought not to make any adverse findings regarding Wiks, either in the manner set out in Mr. Hesje's Notice or otherwise.

In any event, should an adverse finding be made with respect to Wiks in this regard, having regard to all the facts and circumstances before this Inquiry?

31. Irrespective of the arguments set out above, and supplemental thereto, it is submitted that there is not clear and cogent evidence that Wiks set out to mislead the media in May of 2003. As a result, there should be no adverse finding made with respect to him.

32. Wiks should have been clearer when speaking to Mr. Parker. He admitted this during his testimony. He admitted this during his interview with Commission Counsel back in August 2003. He was candid and forthright, rather than evasive, when questioned about both the accuracy of Parker's quote and the lack of accuracy of the statement itself. Clearly, he ought to have told the reporter that there is a particular onus to suspend an officer under the *Police Act, 1990*, and the Saskatoon Police Service did not have sufficient evidence to discharge that onus. He did not. He overstated the situation. As he said at page 7211, he "misspoke". To make an adverse finding against Wiks, one would expect there to have been some reluctance on his part to admit to these facts. There was none.

33. It is submitted that to make a finding such as that suggested in Mr. Hesje's Notice, that Wiks "deliberately misled the media", one would require clear and unequivocal evidence on point. That evidence does not exist. Not once was Wiks asked to explain why he made the statement in question. He was asked whether it was an accurate depiction of what he said; he admitted it was. He was asked if the statement was accurate; he

admitted it was not. Yet apparently it was on no one's agenda to find out **why** he made the statement in the way he did.

34. Indeed, Mr. Hesje's Notice sets out two alternatives: that Wiks misled the media either carelessly or deliberately. These are two very different propositions, carrying significantly different degrees of culpability and intention.
35. It is firstly submitted there is no evidence before this Inquiry that would reasonably support a finding that Wiks deliberately set out to mislead the media and the public. It is simply not there.
36. Secondly, there is also no suggestion in the evidence that Wiks was "careless" within the proper meaning of that word, and within the meaning that seems to accrue to it in the Notice of March 29, 2004. "Careless" is defined in the Concise Oxford Dictionary, Sixth Edition, as including terms such as "unconcerned", "taking no heed of", "light-hearted"; and "thoughtless". "Careless" connotes a disregard for the prevailing circumstances. Again, there is no evidence before this Inquiry that would reasonably support such a finding, and there is evidence to support a far more benign finding. As Wiks himself said, he misspoke; i.e., he made a mistake in speaking.
37. Despite the sensationalized media reporting of this aspect of the Inquiry, to "misspeak" does not mean you have lied. It means you have made an error. It means you have not been entirely accurate in what you have said. It is not a deliberate falsehood, conveyed to another party so as to deceive them. It is a genuine mistake, made through inadvertence. Wiks made a mistake.

38. Should Wiks be the subject of adverse comments that will impact upon the *Police Act* investigation, his career, and his personal integrity due only to his not choosing his words carefully? No. With respect, the inference required to make the adverse finding Mr. Hesje suggests in his Notice is too broad, based on these facts. As Justice Krever said, this is neither a witch hunt nor a pursuit of assignment of blame. It is a fact-finding and recommendation exercise, defined by the parameters of the Order-in-Council setting the terms of reference.

IV. CONCLUSION

39. It is therefore respectfully submitted that there should be no adverse finding made in relation to Deputy Chief Dan Wiks, either as set out in Commission Counsel's March 29th Notice, or otherwise.

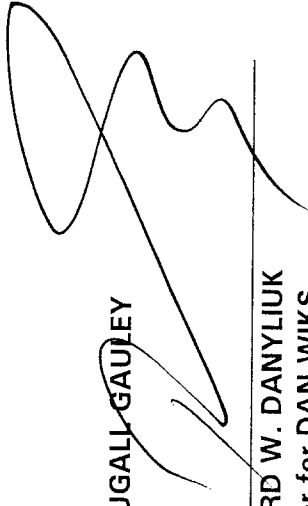
ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED at the City of Saskatoon, in the Province of Saskatchewan, this 13th day of May, 2004.

McDOUGALL GAULEY

Per: _____

RICHARD W. DANYLIUK
Solicitor for DAN WIKS.



This document was delivered by: McDOUGALL GAULEY, Barristers & Solicitors, 701 Broadway Avenue, Saskatoon, Saskatchewan, S7N 1B3. Address for service is: same as above. Lawyer in charge of file: RICHARD W. DANYLIUK, telephone number [306] 653-1212, facsimile number [306] 664-4431, File No: 508222.1.



Commission of Inquiry Into Matters Relating to the Death of Neil Stonechild

Honourable Mr. Justice D.H. Wright, Commissioner

NOTICE OF POTENTIAL ADVERSE FINDING

TO: DEPUTY CHIEF DANIEL WIKS FROM: JOEL A. HESJE
COMMISSION COUNSEL

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

TAKE NOTICE:

- 1) A Commission of Inquiry has been established in the Province of Saskatchewan pursuant to *The Public Inquiries Act* to inquire into the matters relating to the death of Neil Stonechild;
- 2) You are hereby notified that the Commission of Inquiry has heard evidence that may lead to a finding that you carelessly or deliberately misled the media and the public in relation to the death of Neil Stonechild by suggesting that Constable Senger and Constable Hartwig were not suspects in the RCMP investigation of the death of Neil Stonechild, and that there was no evidence of wrongdoing by Constable Senger and Constable Hartwig. The substance of the evidence that may lead to this finding is as follows:
 - i. Statements made by you in the May 2 2004, news article by James Parker, exhibit P140;
 - ii. Your testimony before the inquiry, in particular the questions and answers found on pages 7204 to 7212 and 7357 to 7358;
- 3) This notice is given without prejudice as to the ability of the Commission of Inquiry, through its Counsel, to modify the particulars of the substance of the evidence which may lead to an adverse finding against you.

Receipt of this notice entitles you full opportunity to be heard in person or through Counsel with regard to those issues or areas of evidence that affect your interest.

March 29, 2004


JOEL A. HESJE
Commission Counsel

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Officers stayed on the job during Stonechild probe

James Parker
The Star/Phoenix

Two Saskatoon police officers considered suspects in the 1990 freezing death of Neil Stonechild remained on the job while the RCMP conducted an investigation into the case.

Acting city police chief Dan Wiks said Thursday there was no reason to suspend or reassign the officers during the 2000 investigation, which was forwarded to the provincial Justice Department and resulted in no criminal charges.

Const. Larry Hartwig and Const. Bradley Raymond Senger will be key witnesses at a public inquiry into Stonechild's death to be held this fall.

"They remained on their regular duties," said Wiks.

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

In affidavits released Wednesday, the two officers say they were contacted by the RCMP regarding Stonechild in April 2000. Both officers say they were questioned 10 to 12 times and told they were suspects in the case. They have asked for standing before the inquiry and help to pay their legal bills.



(Dan) Wiks

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Stonechild was found frozen to death in the city's north end in November 1990. He was 17 when he died.

A special RCMP task force was established in 2000 after an aboriginal man, Darrell Night, said police dumped him on the outskirts of the city and left him there on a cold January night. Former constables Dan Hatchen and Ken Munson were jailed for unlawful confinement in the incident.

Two other Native men were found frozen to death in the same area at around the same time.

Under the Saskatchewan Police Act, a police chief can suspend an officer with pay for up to 30 days if there is reasonable grounds to believe the police act or an act of Parliament has been contravened.

Officers can also be suspended if a police chief believes it is necessary to maintain public confidence in the police service or the security of police operations. Suspensions are reviewed after 30 days.

Under the RCMP Act, the commanding officer in the province can suspend an officer in the event of a violation of the force's code of conduct, an act of Parliament or provincial legislation.

Wiks said Saskatoon police knew the RCMP interviewed several officers as part of the probe into Stonechild's death. But he said the department did not know Hartwig and Senger were considered suspects.

"This was an RCMP investigation. We co-operated with the RCMP totally. When they made requests, we attempted to accommodate them."

RCMP spokesperson Heather Russell said the mandate of the special task force required investigators to interview Saskatoon police officers. She said she couldn't discuss the nature of those interviews.

"As to the inquiry, that's a process we will certainly be co-operating with and we will have to wait and see," she said.

Robert Gordon, the head of the criminology department at Simon Fraser University, said it wouldn't have been unusual for the RCMP to give Saskatoon police limited information about its investigation.

He said if outside officers communicate regularly with the department they are investigating, they open themselves up to charges of collusion.

As for the employment status of the officers during the investigation, Gordon said the Hartwig and Senger were entitled to the presumption of innocence.

"They should not suffer the consequences of having their actions investigated until it is clear that they were responsible for whatever happened. That's the point where penalties should be imposed. The impact of a suspension is extreme because of the stigma. It's almost a finding of guilt."

Hatchen and Munson, who were fired after their convictions, were first suspended with pay after they came forward.

After a month, former police chief Dave Scott suspended them without pay. However, their salaries were later restored after they appealed to the provincial police commission. They are serving eight-month sentences.

Bernie Elswirth, executive officer with the Saskatchewan Federation of Police Officers, said it's important to let police chiefs use their judgment when it comes to suspensions.

"For example, a police officer can arrest someone and they can come in the next week and say they were assaulted during the arrest. The police officer could have done everything right, and yet he's going to be suspended. That's not the right way to go."

Don Worme, a Saskatoon lawyer who represents the family of Neil Stonechild, could not be reached for comment.

Federation of Saskatchewan Indian Nation (FSIN) vice-chief Lawrence Joseph said he couldn't comment until he was briefed on the matter.

Russell Sabo, the city's current police chief, is on a paid leave of absence after he was accused of making inappropriate comments to an employee.

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SUMMARY OF ANTICIPATED EVIDENCE

NAME: WIKS, Deputy Chief Dan

Document

BACKGROUND

1. Deputy Chief Wiks joined the Saskatoon Police Service on December 4th, 1972. During his career with the SPS Deputy Chief Wiks has had the following assignments: Patrol, Hit and Run Detail, Criminal Intelligence Unit, Communications and Detention Supervisor, Youth Investigations, and Major Crimes. He was promoted to Corporal on April 16th, 1989. On July 1st, 1995 he was promoted to Sergeant. On July 1st, 1997 he was appointed Superintendent in charge of Human Resources. He was promoted to the office of Deputy Chief on May 15th, 1998.

2. From May 15th, 1998 to June of 2000, Deputy Chief Wiks' responsibilities with the SPS included the overall administration and management of the Operations Division.

3. As of June of 2000, Chief Sabo implemented a second Deputy Chief position. At that time Deputy Chief Wiks became the Deputy Chief in charge of Support Services (ie: Human Resource Division, Information Technology Division, Records Management Division, and the Administration Support Section).

3.1 Dep. Wiks will give a brief description of the history of the SPS concentrating on staffing levels during his tenure, space issues (including that the SPS has opened the Little Chief Station, rented space in Saskatoon Square, at the U of S and in the Post Office) and will briefly touch on plans for additional space at the SPS.

3.2 Dep Wiks will describe some of his work in the Major Crimes section, including that he investigated approximately 7 murders and 2 freezing deaths, and will briefly touch on the procedures followed in the latter two investigations.

3.3 Dep. Wiks will testify that Chief Sabo assigned to him the task of co-ordinating the SPS work involved in preparing for and participating in the Neil Stonechild Inquiry.

Dep. Wiks will supply a "reconstructed" 1990 SPS

Organization chart and the positions held in 1990. This chart may not be complete, and may contain errors, but is from the best information available.

File Closure:

4. SPS records indicate that the investigation into the death of Neil Stonechild was closed on December 5th, 1990, with the approval of S/Sgt. Bud Johnson. The file was not reopened since the electronic records indicate that the last update for the file was entered on December 5th, 1990.

File Retention:

5. In 1992, the SPS began to electronically store all reports regarding investigations. Prior to this, the SPS only maintained paper copies of operational report. In regard to the retention and destruction of these operational reports, the SPS has a policy regarding file retention which was developed in 1993. This policy states that all operational reports that originated prior to 1992 will be held on file for a minimum of 10 years after which they will be destroyed. The SPS adhered to this portion of the policy until 1998 at which time the SPS reverted to the requirements as set out by *The Municipal Police Report Forms and Filing System Regulations, 1991*. Under these Regulations some files are not required to be kept for 10 years.

6. The SPS has limited storage space, and it was not until 2003 that the SPS was able to look at off site storage. As a result, an annual record review is conducted. At the end of every year the Central Records manager is given a computer generated report which specifically lists files that need to be retained for the year. If a file does not appear on the list, then Central Records is authorized to destroy it. The Stonechild file did not appear on the retention list in 1998.

7. There has been some suggestion that the Stonechild file was destroyed as part of a record purge that occurred in 1999. This is not correct. In preparation for renovations in 1999 SPS staff reviewed records in a file room on the main floor. It was found that the filing room contained occurrence reports, notebooks, and officers working files. Cst. Kuny in Central Records was assigned to review the old files to determine which could be destroyed and which should be maintained. He only got as far as files for the year 1989 when he was reassigned. Files in this room for years after 1989 have not been destroyed. In September of 2003 Deputy Chief Wiks

Incident Report,
P-59; Report of
Cst. Ballard, SI -
116

SPS Policy
SI - 55 (g)

Regulations
SI - 55 (f)

See also Wiks
Report, SI-158

See report of Cst.
F. Maddaford,
SI - 95

assigned four experienced personnel to go through the files in the second floor file room to determine if the Stonechild file may have been filed or misfiled in that room. The Stonechild file was not found.

8. Deputy Chief Wiks states that by today's standards a sudden death like that of Neil Stonechild would have been categorized as a homicide until determined otherwise. As a result, the file would be retained indefinitely as an unsolved homicide. Deputy Wiks will describe, very briefly, how this would be applied today by referencing the timing and investigation procedures employed in the death of Rodney Naistus (went missing AM of Jan 29, 2000 and found same date. Lawrence Wegner (went missing Jan 30, found early PM Feb 3, 2000) with reference to the complaint of Darrel Night (dropped off on Jan 28th, first complaint to SPS Constable evening of Feb 3, 2000).

Computer Technology:

9. As a result of advances in computer technology, the SPS was able to upgrade its computer system in 1992 to allow for the electronic storage of operational reports. This electronically stored data is maintained indefinitely.
10. The SPS has also invested in a system that employs GPS technology to monitor the movements of patrol vehicles. When this system is place, it will allow the SPS to record the movements of patrol vehicles and store this information indefinitely. The GPS system is expected to be fully operational in 2004.

Operations Review:

11. In the early 1990's an audit of the Criminal Investigation Division was conducted. Deputy Chief Wiks, who was a Corporal at the time, assumes that the administration of the day was not satisfied with the way CID was structured. One of the results of this operations review was the return to Specialized Investigation Units with officers who have training and experience in Specialized Investigations.

Sudden Death Investigation:

12. In 1990 the Saskatoon Police Service followed the Provincial Policy and Procedural Manual of the Saskatoon Police Commission with regard to the investigation of sudden deaths, suspicious deaths, and homicides. The SPS currently has its own policy with respect to the investigation of deaths.

See Operations Review Report dated November 29th, 1990, SI - 57(c); and Order of Deputy Chief dated December 19th, 1990, SI - 57(f)

See Policy SI - 57(a); See also SI - 56(c) Current Policy

Deputy Chief Wiks' experience was that in or around 1995 when Dave Scott became Superintendent of CID there was an enhancement of professionalism in the investigation of deaths. Front line members could expect to receive investigative support as soon as possible, if not immediately.

13. In April, 2003 a Sudden Death Review Committee was instituted to review all deaths attended by the SPS. The committee is made up of the Superintendent of CID, the Staff Sergeant in charge of Major Crime, and the Staff Sergeants in charge of Platoons. A suspicious death investigation can not be closed without first going to this committee.

Promotional System:

14. In 1990 officers promoted to the rank of Corporal, Sergeant, or Staff Sergeant were usually there as a result of seniority. As a result of the collective agreement at the time, seniority was the overwhelming factor in respect of promotions. During the last two rounds of negotiations, changes were made to the collective agreement to ensure that promotions were weighted more so towards knowledge, skills, and ability.

Training:

15. In 1990 the training available to investigators in Major Crime and Morality was largely on the job experience. During the time period when Dave Scott was Superintendent and Chief changes were made to ensure that all investigators had the training needed to do proper investigations. Courses such as Major Crime Investigation, Interviewing, Interpretation of Scenes, Major Case Management, and Blood Spatter were given to officers over the course of their time in these specialized sections.

16. When Deputy Chief Wiks was assigned to Major Crime he noticed a communication gap between the front line Uniform Officers and the Major Crime Investigators. He set up an in-service training course for senior Constables and Patrol Sergeants. The course was designed to provide instruction on the investigation of death scenes. The course was provided in 1997, 1998, 2001, 2002, and 2003. First responders to a scene of death are instructed to consider four criteria: (a) location; (b) age; (c) signs of violence; and (d) signs of intrusion.

SI-63, Forensic Pathology; see also SI 60, 61, 62

16.1 Reference will be made to the hours of training in 1987 and

See Report, SI-

17. The Policy and Procedure Manual, which went through a major overhaul in 1992-1993, has been condensed to a manageable size, and a copy is maintained in each supervisor's car. Further, the Policy and Procedure Manual is stored electronically and can be accessed by any officer from his or her patrol car. As a result, every first responder has access to the death and homicide provisions of the Policy and Procedure Manual. Reference will be made to D/C Wiks' report relating to policy with respect to articles seized at the scene of a death.

18. The SPS has a harassment policy which prohibits discrimination based on categories. SPS officers are trained in that policy. SPS officers also receive cross-cultural sensitivity training. This training is provided at the police college. Further, money is secured from the Federal Government to bring in experts on cross-cultural training to provide refreshers to members.

19. The SPS has maintained an employment equity policy since 1990. In 2002 the SPS was recognized as an employment equity employer by the Saskatchewan Human Rights Commission. Currently 9% of the SPS complement of officers is made up of aboriginal persons. Twenty percent of the force is female. The target that the SPS has set for 2020 is a force with 48% female officers, 13% aboriginal officers, and 6% officers of other visible minorities.

Public Complaints:

20. The procedure in place in 1990 for dealing with complaints of misconduct by SPS officers was set out in the former *Police Act*, R.S.S. 1978, c. P-15 and *The Municipal Police Discipline Regulations*.

21. Public complaints about the inadequacy of an investigation were treated somewhat differently. If a citizen attends the Service Centre to complain about the handling of an investigation, the Service Centre Constable will suggest that the individual write a letter to the Chief. When the Chief receives these letters he directs that an investigation be conducted and a response prepared.

If the media has questions about the adequacy of an investigation they will typically call the Media Liaison

Officer. The Media Liaison Officer will look into the matter, and if it is important enough he/she may take it directly to the Chief. A response to the inquiry would be sought from the Superintendent of CID who would consult with the Staff Sergeant in charge of the Investigation section. The investigation file would be reviewed during this process.

- 21.1 Dep Wiks will testify as to efforts made by the SPS and Saskatchewan Board of Police Commissioners with respect to improvements to the Public Complaint provisions of the Police act. Included in discussions with then Minister Eric Cline were items such as increased public awareness of the Public Complaints procedure, additional venues for members of the public to launch complaints, issues relating to the location of interviews of complainants, and providing the complainant with assistance throughout the process, and opportunities to appeal the decisions of the Public Complaint Investigator's Office.

R.C.M.P Investigation:

22. Deputy Chief Wiks conducted some initial investigation in relation to Darrel Night. When this matter was turned over to the RCMP, Chief Dave Scott made Deputy Chief Wiks the senior man responsible to coordinate with the RCMP. His instructions were to cooperate fully with the RCMP and to provide all information that was requested. It was understood that the RCMP were to be allowed to investigate the matters before them, and the SPS were not to attempt to direct the investigation.

23. The SPS did not receive complete disclosure of the RCMP investigation into the death of Neil Stonechild until it was disclosed through the Commission in June of 2003. While Deputy Chief Wiks was given progress reports by the RCMP, he was not provided, nor did he prefer to receive disclosure of specific information until the investigation was completed. At the outset of the RCMP's investigation it was decided by administration not to make any decisions until all the information was received from the RCMP. Nevertheless, if Deputy Chief Wiks received information that pointed to wrong-doing on the part of SPS members, he would have ensured that internal discipline proceedings were initiated.

- 23.1 Reference will be made to the RCMP Investigative Summary contained in the disclosure materials, and the decision of R. D. Laing, Q.C., as he then was, in Murray Grismer v. The Saskatchewan Police Service (December 1, 1993)

SI-167

24. In a May 2nd, 2003 article in the StarPhoenix, Deputy Chief Wiks is quoted as stating: "The only reason we would suspend somebody 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 believes that it would have been more accurate to say that the SPS did not have enough evidence of wrongdoing to warrant suspension. The level of proof needed to suspend an officer is the same level of proof needed to lay criminal charges.

Issue Team:

25. On July 7th, 2003 an Issue Team was created to prepare for the Inquiry. The Team included Staff Sergeant Rick Penny, Constable Shelley Ballard, Superintendent Gary Broste, Constable Farley Maddaford, Inspector Keith Atkinson, A/Inspector Constantinoff, and Deputy Chief Wiks. The Team was created to address security issues, prepare for media questions, and conduct research for the Inquiry.

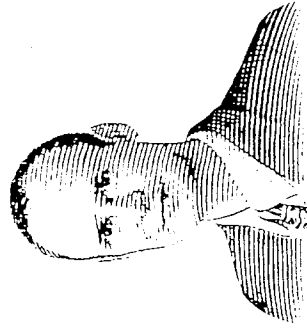
Additional Issues

- | | |
|--|------------------------|
| 25.5 <u>Dep Wiks will give evidence of the number of deaths reported to the SPS from 1990 to 2003.</u> | <u>SI-164</u> |
| 25.6 <u>Dep Wiks will testify as to the workload of the service's Major Crime section, and the call load of the SPS</u> | <u>SI-161</u> |
| 25.7 <u>Dep Wiks will testify as to the "GOA" statistics.</u> | |
| 25.8 <u>Dep Wiks will describe, briefly, the creation of the Aboriginal Liaison position and its duties, and the creation and operation of the White Buffalo Centre.</u> | <u>SI-166(d)</u> |
| 25.9 <u>Dep Wiks will describe changes to two Policies relating to Police Notebooks, specifically that members are to record the name of anyone taken into a police vehicle, and relating to retention of notebooks.</u> | <u>SI-55(a) to (e)</u> |
| 25.10 <u>Dep Wiks will submit "handcuff report" provided to him by Constable Ballard.</u> | <u>SI-104</u> |

...killed to protect marmots, B.C. wildlife official admits

Credibility shot for Saskatoon police force

Deputy chief fired
as probe into native
teen's death continues



BRIAN HUTCHINSON
Commentary

They are now likely gone, any lingering doubts that the Saskatoon Police Service knew more about the boy's death than it ever let on. Frased, like much of the police service's credibility.

Neil Stonechild was a 17-year-old aboriginal young offender who went missing from a downtown Saskatoon neighbourhood one winter's night 13 years ago.

Four days later, his battered, frozen corpse was discovered in a remote industrial park. At the time, Saskatoon police conducted a cursory investigation into the death. They quickly deemed it an "accident" and closed the file.

No one in the aboriginal community could swallow that. Skepticism turned to disbelief when, four years ago, two more aboriginal men were found dead and frozen on the outskirts of the city.

Disbelief turned to anger when two Saskatoon police officers admitted to having snatched another aboriginal man from the city streets. They dropped him off in the same industrial park. The man survived to tell the tale; the officers were identified, prosecuted and jailed.

The RCMP launched an investigation into the Stonechild case four years ago. They recommended charges be laid against the Saskatoon police, but Saskatchewan's Attorney-General declined.

Suspicion that Mr. Stonechild was murdered is widespread; even members of the Saskatoon police now say his death was likely no "accident." Murdered, but by whom? No suspects were ever apprehended.

On Wednesday, came news that Dan Wiks had been dropped from his post as Saskatoon's deputy police chief. This after he admitted to having provided media with

false information concerning the bungled Stonechild case.

News of Mr. Wiks' removal came as two Saskatoon police constables swore before a public inquiry looking into Mr. Stonechild's death that they had had no contact with the young offender just prior to his death. This despite an RCMP report that suggests their claim is false.

Last week, fragments of the RCMP report were made public at the Stonechild inquiry. According to police testimony delivered at the inquiry, the RCMP report concluded Neil Stonechild "was in [the] custody" of two Saskatoon constables, Lawrence Hartwig and Bradley Senger, the night the young man vanished.

It is a matter of record that constables Hartwig and Senger were called to a drunken disturbance involving Mr. Stonechild that night.

But the two officers have always insisted they never apprehended the young aboriginal man. They had nothing to do with his demise, they say. Even after they learned he had died, they did not feel the need to tell their superiors that they were the last officers to go looking for Mr. Stonechild.

Mr. Stonechild's case file was subsequently destroyed. His death might have been swept under the rug were it not for the other aboriginal fatalities that came later.

Jason Roy is a key witness at the Stonechild inquiry. He testified that he last saw a distraught and bloodied Mr. Stonechild pleading for his life in the back of a Saskatoon police cruiser around the time constables Hartwig and Senger had been dispatched to look for him.

This, plus other evidence, convinced RCMP investigators that constables Hartwig and Senger are not telling the truth when they claim they did not apprehend Mr. Stonechild the night of his disappearance.

Saskatoon police knew of the RCMP's conclusion well before the Stonechild inquiry began in September. Indeed, senior Saskatoon police officers, including former deputy chief Dan Wiks, discussed the RCMP report in a series of confidential strategy meetings held in a police boardroom last summer.

Excerpts of minutes from the secret meetings were read out at the inquiry last week. The min-



Constable Bradley Senger testified yesterday at the inquiry into the death of 17-year-old Neil Stonechild 13 years ago.

utes note the RCMP believed "a reasonable person will conclude there was police involvement" in the death of Mr. Stonechild.

The Saskatoon police construed this to mean the RCMP believed constables Hartwig and Senger had specific involvement. The minutes suggest that rather than finding what lay behind the failure of their investigation into Mr. Stonechild's death, Saskatoon police officials were more concerned with protecting themselves and constables Hartwig and Senger from civil lawsuits and media scrutiny.

"There will likely be lawsuits in the future," the police minutes read. "What are the legal ramifications of the SPS [Saskatoon Police Service] saying sorry [to Mr. Stonechild's mother]?... Can we be respectful of the process but not disrespectful of the media," the minutes read, "e.g. if the media distorts the truth, don't get into an argument with them, it's their job to cause alarm and a lot of what is stated, the general public are able to see through this.... How do we help Hartwig and Senger, how do we help prepare them for the possible fallout of the inquiry?"

Lawyers representing the Stonechild family and various aboriginal groups at the inquiry demanded Deputy Chief Wiks explain why the Saskatoon police officers, Const. Hartwig has already finished testifying before the inquiry. Const. Senger is expected to conclude his testimony today. Both men continue to work as Saskatoon police officers.

National Post
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organization responsible for protecting the marmots, the government agrees, which are a protected species under an international migratory bird treaty, were lured to the foot of a mountain near Nanaimo by a deer carcass placed there by ministry officials. The eagles were then shot and their bodies placed in a freezer. But it was only last month

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