

REPORT TO THE ATTORNEY GENERAL**PUBLIC INQUIRY*****THE FATALITY INQUIRIES ACT*****CANADA
PROVINCE OF ALBERTA**

WHEREAS a Public Inquiry was held at the City of Calgary, and at the Tsuu T'ina Nation in the Province of Alberta, from the 1st day of February, 1999 to the 16th day of March, 2000 before the Honourable Thomas R. Goodson, a Provincial Court Judge.

A jury was **not** summoned, and an Inquiry was held into the deaths of CONSTANCE BRENDA JACOBS, date of birth January 29, 1961, and TYUNDANAIIKAH JACOBS, date of birth July 8, 1988, both of the Tsuu T'ina Nation, Alberta, and the following findings were made:

	CONSTANCE BRENDA JACOBS	TYUNDANAIIKAH JACOBS
1. Date and Time of Death	March 22, 1998, at or about 7:24 p.m.	March 22, 1998, at or about 7:24 p.m.
2. Place	Residence off Range Road 40, Tsuu T'ina Nation, Alberta, (Sarcee Indian reserve) NW 31-23-3-W5	Residence off Range Road 40 Tsuu T'ina Nation, Alberta, (Sarcee Indian reserve) NW 31-23-3-W5
3. Medical Cause of Death	Shotgun wound to chest - 32 caliber pellet to the heart	Shotgun wound to chest - 32 caliber pellet to the aorta above the heart
4 Manner of Death	Homicide	Homicide
5. Circumstances	As follows - Pages 2-23	As follows - Pages 2-23

Circumstances**A. INTRODUCTION**

[1] The events surrounding the deaths of Tyundanaikah "Ty" Jacobs, age 9, and his mother, Constance Brenda "Connie" Jacobs, age 37, have the ingredients of a modern day tragedy. It may not be the greatest tragedy to occur in this country, but it may be one of the saddest. It is certainly one of the most complicated, involving three levels of government, three police forces, and a child welfare agency. One of the police forces, the Tsuu T'ina Tribal Police Service, operates through a complicated *tripartite* agreement of the three governments. The child welfare agency, Tsuu T'ina Child and Family Services, operates through an even more complicated four-part agreement. Further, these agencies, in particular the

police service, were in a period of transition from provincial to First Nation control. The child welfare agency had, in theory, passed through the transition period after several years of operation, but it was under funded and its staff overworked as conditions changed.

[2] The first purpose of a fatality inquiry is to set out the facts of an event as described in the leading case from the Supreme Court of Canada, *Faber v. The Queen (1976) 27 C.C.C. (2d) 171*, and in the Fatality Inquiries Act of Alberta. The second purpose is to make recommendations if appropriate; however, I make specific reference to Section 47(3) of the Act:

The finding of a judge or jury shall not contain any findings of legal responsibility or any conclusions of law.

Consequently, this Report seeks to set out the facts and to make recommendations pursuant to Section 47(2) of the Act without making findings of legal responsibility or drawing conclusions of law.

B. FACTS

[3] On Sunday, March 22, 1998 nine year old Ty Jacobs spent the morning playing with his brothers, ages four, two and four months, and his nieces, ages four and one, in the living room of his house at Patineau Plains just off Range Road 40, 2 kilometers south of Highway Number 8 on the Tsuu T'ina First Nation Reserve, Alberta. His parents Connie Jacobs and Hardy Jacobs, had been drinking liquor heavily the previous night with three guests who had come over. The friends left at about 10 or 11 p.m. and his parents continued to drink. There may have been an altercation between them during the night, the evidence is unclear, but if it did happen he would not have been surprised.

[4] In the morning his father, Hardy Jacobs, got up, had a cup of coffee and began to continue drinking beer. His mother, Connie Jacobs, also got up and eventually began cooking macaroni. At approximately noon he and the other children, along with his father, gathered around a desk, which was being used as a table, to eat the macaroni that had been cooked for them. When his mother began to serve his father, an argument ensued between his parents. His father was complaining about the macaroni, preferring to have a steak which was in the freezer upstairs. His mother became angry and threw the plate of macaroni at his father, striking him on the left eyebrow and causing a 10 centimeter gash that bled profusely. His father grabbed a white towel and held it against the wound. He then grabbed his jacket and headed out the door to seek medical attention.

[5] After a short period of time, Ty and his mother went down the road past two abandoned houses to Range Road 40, a distance of about 125 meters, to see what had happened to Hardy. They found him passed out along the side of the main road so they brought him back to the residence where he proceeded to go upstairs to have a shower. He was having difficulty walking and left bloodstains on the floor and walls of the living room and in the hallway leading upstairs to the bathroom. He also left smears of blood on the sink and bathtub.

[6] Ty Jacobs then set out to go to the nearest neighbor's house to call an ambulance for his father. There was no telephone service in the Jacobs' residence because of outstanding unpaid bills. The neighbors' house was located approximately 2 kilometers to the southwest of his home. As he was walking down Range Road 40, a vehicle driven by his cousin, Barry Otter, pulled up beside him and offered him a ride to his destination. There he made a telephone call. After the phone call, he sat in the living room fidgeting, undoubtedly wanting his cousin to drive him home but being too shy to ask. After a short time, his cousin, Barry Otter, offered to drive him home and he accepted. As they were pulling up to the Jacobs' residence, Hardy Jacobs stuck his head out of the bathroom window and called to Barry Otter asking him to call for an ambulance because he may have lost an eye. He was holding a towel to his head and it was fairly bloody.

[7] Barry Otter returned to his uncle's place and called 911. He spoke with a dispatcher named Don Sharp at about 3:05 p.m. Sharp then called Emergency Medical Services Calgary (E.M.S.) for an ambulance.

E.M.S. in turn called Chris Bigplume, the fire chief and first responder, on the Tsuu T'ina Reserve. Chris Bigplume and his wife, Tanya Bigplume, responded to the residence of Connie and Hardy Jacobs. Chris Bigplume called Calgary E.M.S. on his cell phone at approximately 3:35 p.m. advising that the injury was the result of a domestic dispute in which Connie Jacobs had thrown a plate at Hardy Jacobs causing the injury. At 3:39 p.m. E.M.S. called the R.C.M.P. dispatch to advise of the assault, and further to advise the R.C.M.P. that their attendance was not required.

[8] Chris and Tanya Bigplume noticed that the house was in complete disarray. The floor of the residence was cluttered with clothes, garbage and empty beer cans. Blood was observed on the floor of the living room and smeared on the walls. Hardy Jacobs was holding a towel to his head to stop the bleeding. Both Connie and Hardy Jacobs appeared intoxicated, however, there was no animosity between them and there was some joking about the incident. There was a number of young children in various states of dress and undress present in the house. There was broken glass on the floor and the children had no shoes. The children appeared hungry and the younger children appeared to need their diapers changed. Tanya Bigplume testified that she picked up the broken glass on the floor.

[9] The R.C.M.P. dispatch and telecommunications center at Red Deer (commonly known as "Red Deer telecoms") contacted Constable Powers of the Okotoks R.C.M.P. detachment advising of a domestic dispute at the Jacobs' residence and that Hardy Jacobs was being transported to hospital by E.M.S. Calgary by ambulance. Constable Powers was also provided the information (from E.M.S. to Red Deer telecoms) that there was no immediate need for R.C.M.P. attendance at the Jacobs' residence at that time. Having regard to the distance, the road conditions, and the weather and the fact that he was the only one on duty at the Okotoks detachment at the time, Constable Powers chose not to begin an immediate investigation of the assault. He did not contact any other member of the R.C.M.P. to assist. His intention was to open a file the next day and turn the matter over to the members who were working on the Tsuu T'ina Nation.

[10] At about 3:48 p.m. E.M.S. Calgary arrived at the Jacobs' residence provided first aid to Hardy Jacobs and left with him at about 4:00 p.m. for the Rockyview Hospital. During the preliminary attendance upon Hardy Jacobs inside the residence, the E.M.S. personnel testified that the parties were joking about the matter. After Hardy Jacobs had been loaded into the ambulance and E.M.S. was ready to leave, paramedic Trent Gahan returned briefly to the door of the residence and asked Connie Jacobs if she wanted R.C.M.P. assistance. Her reply was a very cold "No." Mr. Gahan testified that he was surprised by the cold response and her change in demeanor.

[11] Drawing the conclusion that the Jacobs children were being neglected and were at risk, Chris Bigplume called his mother, Sally Simeon, who was also the chairperson of the Board of Tsuu T'ina Child and Family Services (Child and Family Services) and told her what he had observed. Sally Simeon telephoned the number for Child and Family Services but there was no answer. She then spoke by telephone with one of the employees of Child and Family Services, Pat Whitney. At that time, it was approximately 4:25 p.m. Pat Whitney then called Connie Bish, a case worker with Child and Family Services, advising her that Sally Simeon had been trying to phone Child and Family Services. Connie Bish then phoned Sally Simeon who related to her the concerns of Chris Bigplume. Sally Simeon told Connie Bish that she would contact Chris Bigplume and ask him to phone her directly. In the meantime, Connie Bish phoned the director of Child and Family Services, Lorraine Duguay, who at the time was on call after hours. While talking to Lorraine Duguay, Connie Bish received a call waiting signal on her phone and answered the call. The call turned out to be from Chris Bigplume who then described to Connie Bish the circumstances that he had found at the Jacobs' residence.

[12] After Connie Bish finished her conversation with Chris Bigplume, she returned to her conversation with Lorraine Duguay and related the information to Ms. Duguay. Although Lorraine Duguay was the director and was on call on this particular day, she did not have front line experience as a case worker nor did she have a degree or diploma in social work. Connie Bish, on the other hand, although she didn't have a degree or diploma did have some experience in child apprehension, but she did not have a designation allowing her to conduct emergency apprehensions under the Child Welfare Act. The other case worker, Pat Whitney, was a recently hired employee who was not yet properly trained or qualified at the time to

conduct child emergency apprehensions under the Act. Child and Family Services did have a front line supervisor by the name of Carolyn Gordon, but she had been let go due to lack of funds on March 11, 1998, and the Tsuu T'ina Child and Family Services, according to the evidence, was understaffed and overworked at the time.

[13] Bish and Duguay knew from the Jacobs' file and from a prior child apprehension conducted by them in February, 1997 that the situation may be urgent. As a result of this prior apprehension and pursuant to a temporary guardianship order, both Connie and Hardy Jacobs had undergone alcohol counseling and treatment. Following the six month temporary guardianship order, there had been either a six month supervision order or a six month support agreement after which the file was closed by Tsuu T'ina Child and Family Services, and they were referred to the Early Intervention Program. The file was closed on or about February 13, 1998.

[14] At 4:35 p.m. Lorraine Duguay left her home for the offices of Tsuu T'ina Child and Family Services, and she arrived at approximately 5 p.m. Connie Bish was already there. She had met by chance an extended family member of the Jacobs family at the gas station across the road from the offices of Child and Family Services. This extended family member was requested by Connie Bish to assist, but the individual said that she couldn't at the time but that Connie Bish could call her if they took the children into care and if they needed any other assistance. Upon arrival at the office, Connie Bish attempted to retrieve information from the Child Welfare computer system and was unable to do so. She then found the file and reviewed the history of the family. In the meantime, Lorraine Duguay phoned several possibilities for placement of the children should they have to apprehend them. After gathering child apprehension material, Connie Bish phoned the R.C.M.P. in Okotoks and eventually spoke with Constable Powers some time prior to 6 p.m.

[15] At 5:30 p.m. Constable Powers was in his police vehicle southwest of Okotoks. He received a call from Red Deer telecoms advising him that Connie Bish wanted a member to assist in a child apprehension. Constable Powers had a cell phone, but he testified that the coverage was poor in the area he was in and decided to drive to the detachment office. He arrived 10 to 15 minutes later, and phoned Connie Bish. Connie Bish told Constable Powers that she wanted his attendance at the Jacobs' residence to apprehend six children. Constable Powers told Connie Bish he was the only one on duty at the time and that another member would be coming on duty at 6 p.m. and that she should wait for his phone call. He also told her that they would not be able to arrive until about 7 p.m. The case workers did not apply to a Judge for an apprehension order under the *Child Welfare Act*.

[16] At approximately 5:53 p.m. Constable Voller entered the building at the R.C.M.P. detachment at Okotoks. After Constable Voller was dressed and in uniform at approximately 6 p.m., he was advised by Constable Powers as to the earlier conversation with Connie Bish and about the child apprehension and about their wanting a member to attend. At that point both he and Constable Voller began phoning the number or numbers Connie Bish had provided but received no answer except for a recording. Constable Powers went off duty and Constable Voller decided at about 6:15 or 6:20 p.m. to head in the direction of the Tsuu T'ina Child and Family Services office. He had worked at Tsuu T'ina Nation for more than two years, and he knew all the routes including back roads. On the way he made another call and left a message on the answering system that he was en route.

[17] In the meantime Connie Bish, not happy with Constable Powers' response, had telephoned Tsuu T'ina Tribal Police Services with the result that she received a recording which referred her back to Okotoks R.C.M.P. Connie Bish then phoned Constable Tammy Dodginghorse of the Tsuu T'ina Tribal Police Service at home. Constable Dodginghorse had finished her shift on Friday and was on days off.

[18] At the time the Tsuu T'ina Tribal Police Service, in a period of transition, did not have a secure stand alone police station and worked out of a small office above the gas bar and commercial center located at the Reserve. There was no holding facility for prisoners, and the office was not equipped with police C.P.I.C. or P.I.R.S. computer information services.

[19] On this particular weekend the Tsuu T'ina tribal police were short staffed due the sudden resignation of Constable Bigcrow and the fact that Constable Mike Frank had been injured in a motor vehicle accident with a horse the evening before. Constable Dodginghorse did not have access to an equipped police vehicle at the time because Constable Bigcrow had not yet returned the one she was using, and Constable Frank's vehicle was damaged in the accident.

[20] Connie Bish told Constable Dodginghorse that she needed her to attend and assist in a child apprehension . Constable Dodginghorse was a relatively inexperienced tribal police officer who had recently completed training and was still under a Notice of Shortcomings. As a result of the Notice of Shortcomings she was required to consult with both Chief Barry Whistlecraft of the Tsuu T'ina Tribal Police Service and her supervisor with the R.C.M.P., Constable Terry Clovechok for permission to attend to assist any outside agency.

[21] Constable Dodginghorse telephoned both Police Chief Whistlecraft and Constable Clovechok and received permission to attend. Constable Clovechok told her to report into Red Deer telecoms and to wear her uniform and take her equipment.

[22] As the Tsuu T'ina Nation was in the process of setting up a police service which would work along with the R.C.M.P., their office in the commercial center was a temporary one. On Sundays the commercial center closed at 6 p.m., and because it had an alarm system Constable Dodginghorse was unable to enter the office to retrieve her radio phone. Constable Clovechuk and Constable Dodginghorse discussed the problem of the unavailability of the radio phone and police vehicle. Constable Dodginghorse indicated that the child welfare workers would be using their vehicles and Constable Clovechuk testified that he knew the child welfare workers had a cell phone. The portable police radios used by the Tsuu T'ina tribal police at the time had no ability to talk to the Red Deer telecoms because a crystal from the R.C.M.P. was required and although it had been requested it had not yet been provided. However, they were able to talk to other members of the R.C.M.P. if they were on the same channel.

[23] Constable Dodginghorse then telephoned Connie Bish and said she would attend but would need a ride as she was without a police vehicle. Shortly thereafter, Lorraine Duguay in her GMC Jimmy followed Connie Bish in her Ford Explorer over to Constable Dodginghorse's residence. Constable Dodginghorse accompanied Connie Bish in her vehicle to the Jacobs' residence. Connie Bish testified that she told Constable Dodginghorse about the earlier domestic dispute between Connie and Hardy Jacobs and that Hardy had been transported to the hospital after being injured by Connie with a plate and about the other observations Chris Bigplume had made at the Jacobs' residence. Constable Dodginghorse testified that Connie Bish told her about the earlier apprehension of the Jacobs' children in February, 1997 (a year prior) but not about the domestic dispute which occurred earlier that day.

[24] Upon arriving at the Jacobs' residence at about 6:30 p.m., Connie Bish parked her vehicle facing south with the headlights on (only one headlight was working) in the driveway in front of the door on the west side entrance of the residence, and Lorraine Duguay pulled her vehicle in behind. Prior to entering the residence no game plan defining roles had been discussed or agreed upon between Connie Bish, Constable Dodginghorse and Lorraine Duguay should Connie Jacobs be hostile or resistant. Connie Bish, Lorraine Duguay and then Constable Dodginghorse, in that order, then approached the residence on foot up the stairs and onto a railed landing at the top of the stairs in front of the west side entrance to the house. As Connie Bish began to knock at the door, Constable Dodginghorse asked her what authority she had to do an apprehension, and Connie Bish showed her a Notice of Apprehension form.

[25] A naked four year old boy answered the door. Upon entering the residence, it was observed that the house was in complete disarray. Blood was observed on the door frame of the entrance and on the floor and walls in the living room. Connie Jacobs was observed lying on the couch in the living room, obviously intoxicated, breast feeding a small child with another child at the foot of the couch. The children were not properly dressed, the house was cool, diapers needed changing and there was food on the living room floor. Clothing was strewn all over the floor along with empty beer cans. A young child in a sagging diaper appeared hungry and held up his empty bottle to Connie Bish to be filled.

[26] Connie Jacobs appeared to be passed out and needed to be awakened by the child welfare caseworkers. They attempted to make conversation with Connie Jacobs without much success. It was noticed that Ty Jacobs was not in the room and Constable Dodginghorse, intending to ensure that there were no other adults in the house, went upstairs to look for him as well as to clear the house. She did check the upstairs and found no adults, but she did not find Ty Jacobs. She came downstairs, and Connie Bish went upstairs to look for Ty Jacobs. Bish eventually found him hiding under blankets in a closet in an upstairs bedroom, but he refused to come down. Connie Bish then went downstairs, and Constable Dodginghorse went upstairs to get Ty and eventually convinced him to come down.

[27] In the meantime Constable Voller had arrived at the offices of Tsuu T'ina Child and Family Services, and finding no one there, called again to the cell phone number he had been given. This time the call was answered at 6:43 p.m. by Lorraine Duguay who told him that they were at the Jacobs' residence. He then asked to speak to Connie (meaning Connie Jacobs), and the phone was handed to the child welfare worker, Connie Bish, who told him that everything was fine and that his services were not needed. Constable Voller then asked if Constable Dodginghorse was there and was told that she was. When this call came in it is probable that Constable Dodginghorse was upstairs at the time because she knew nothing of the conversation. Thereupon, Constable Voller started on his way back to Okotoks because he had left the detachment unattended with only a highway patrol officer, Constable Clint Reynolds, covering for him.

[28] By this time the weather had begun to deteriorate, and daylight was beginning to fade. The climatologist testified that sunset that day was 6:52 p.m. and that normally there would be about another half hour of daylight but that on this day it would be less because of the heavy cloud cover and the snowfall. The temperature was minus 2.4 Celsius, wind 15 - 25 kilometers per hour from the southeast. It was snowing fairly hard, in fact, 14.6 centimeters that day. There was also 25 centimeters of snow on the ground from a previous storm.

[29] Connie Jacobs, observing the activity in her residence, arose from her position on the couch and became irritated. She told Connie Bish, "You are not taking my fucking children, you can't make appointments and you can't take my grandchildren." Sometime during this activity, Constable Dodginghorse had used Lorraine Duguay's cell phone to call Red Deer telecoms requesting backup and was advised that Constable Voller was on his way.

[30] Connie Jacobs then proceeded to pick up a broom handle and follow Connie Bish as she was leaving the living room area. Lorraine Duguay saw this and became afraid. Constable Dodginghorse slid the broom handle out of Connie Jacobs' hands without resistance from Ms. Jacobs and threw it through the doorway outside the residence. Sensing that Connie Jacobs was angered by the presence of both Bish and Duguay, Constable Dodginghorse told them that Hardy was a hunter and instructed them to leave the residence.

[31] While Constable Dodginghorse was getting them out, Connie Jacobs was in the process of rounding up all of the children and herding them through the kitchen and down the stairs into the basement of the residence. Constable Dodginghorse began to follow Connie Jacobs, but the basement door closed and Constable Dodginghorse decided to wait for Constable Voller. She remained at the entrance straddling the doorway watching for Constable Voller and also observing the kitchen through a mirror on the back wall. The door to the basement was in the kitchen. At this time Constable Dodginghorse made another call to the Red Deer telecoms and was advised that the road that Constable Voller was traveling on was worse than expected and that he would be about another 10 minutes.

[32] On his way back to Okotoks Constable Voller was contacted by radio at about 7:00 p.m. near Spruce Meadows by Red Deer telecoms relaying Constable Dodginghorse's call for backup, and he responded by turning around and heading west on Highway 22X. Constable Voller knew the area well and decided to take a shortcut to the residence, however, this shortcut was farther to the west, and it seemed to have snowed harder in that area. The roads were difficult, and he was required to keep both hands on the wheel.

[33] As he was driving to the Jacobs' residence with both hands on the wheel he switched the radio in his R.C.M.P. Suburban to A-4 channel which worked better in that area, however, because of the tough driving conditions he was unable to switch channels on the hand held unit. He also testified that he didn't think it was safe in those road conditions to make a cell phone call to Constable Dodginghorse, making a judgment that it was more important to ensure his arrival and to arrive quickly. The cell phone billing records indicate that Constable Dodginghorse was attempting to call a cell phone in a police vehicle which may have been the cell phone in his vehicle.

[34] Constable Dodginghorse remained posted at the doorway of the residence watching for Constable Voller on one hand ensuring that he didn't miss the turnoff to the subdivision and on the other hand ensuring that the door was kept open so that they could gain entrance if necessary. Eventually Constable Dodginghorse did see Constable Voller heading towards the entrance to the subdivision. When she glanced back to the mirror she noticed movement. She then glanced back to see if Constable Voller had entered the subdivision and she noticed him approximately halfway from the entrance to the Jacobs' residence. The Jacobs' residence was the last in a row of three houses from the entrance to the subdivision. That would mean that Constable Voller would be approximately 60 meters from the house but partially obscured by the other houses. When Constable Dodginghorse turned back, Connie Jacobs had the rifle raised to her shoulder and was aiming it at her about 2½ meters away. She appeared to Constable Dodginghorse to be staring at her uniform. Constable Dodginghorse immediately yelled, "Gun, gun" and jumped from the landing area at the top of the steps to the ground in the direction of the southwest corner of the house. She ran around the southwest corner of the building and there to her dismay found herself in front of another door. She went around the next corner and found herself facing a large picture window, so then she ran to a pump house about 20 meters southeast of the house and drew her pistol.

[35] While Constable Dodginghorse had been standing in the doorway, Lorraine Duguay had gotten into her vehicle and Connie Bish had gotten into the passenger side of the same vehicle. Connie Bish told Lorraine Duguay that Constable Dodginghorse had called for backup and that she should back her vehicle around so that the police would have room to park. Lorraine Duguay backed her vehicle around and faced it in the direction from which they had come.

[36] When Constable Dodginghorse yelled, Bish and Duguay looked toward the residence and observed Connie Jacobs through the living room window on the north side of the residence standing with the rifle shouldered and pointed at them. Constable Voller parked his R.C.M.P. Suburban alongside Ms. Duguay's vehicle in the driveway pointing toward the southwest corner of the house and upon exiting his vehicle heard Lorraine Duguay exclaim, "She's got a gun, she's got a gun." Constable Voller then turned to his right and saw Connie Jacobs step through the doorway onto the landing holding a rifle. Constable Voller then crouched down behind the Suburban and drew his R.C.M.P. 9 mm handgun. Connie Jacobs then shouldered what Constable Voller perceived to be a high powered rifle at him. After investigation, it was determined that Constable Voller's position behind the Suburban was approximately 16 meters from Connie Jacobs and at an angle of approximately 30 degrees to the wall and doorway of the house. According to expert evidence at this inquiry the rifle had a range of approximately 2 miles and could easily penetrate the body of the Suburban.

[37] At first he crouched behind the engine block, but the front of the Suburban was only about 12 meters from the house and the landing area was 1 ½ meters above ground level. He then moved to the back and took out his portable radio which was, unfortunately, still on A-2 channel. After fumbling with the radio and switching to A-4 he called Red Deer telecoms and requested backup. He then moved back to the front and she followed him with the rifle. At that point she lowered the rifle and took a step backward into the doorway. Constable Voller, thinking that a 9 mm shell might penetrate the walls of the Jacobs' residence and harm anyone inside if he was required to squeeze off shots and missed, opened the driver's door of the Suburban, and retrieved from its holder between the front seats the R.C.M.P. issue Model 870 Remington shotgun. At the same time he instructed Bish and Duguay to leave the scene immediately, which they did. He then yelled for Constable Dodginghorse and received no answer.

[38] Constable Voller did not attempt to leave himself because he felt he needed to provide cover for the two child welfare workers as they were leaving and there was no place for him in the immediate area to seek cover other than behind the engine block of his Suburban, but in particular, he did not know where Constable Dodginghorse was and whether or not she was in any immediate danger and needed help.

[39] Connie Jacobs stepped forward onto the landing area again pointing the rifle at Constable Voller. He called at her twice to put the gun down but she discharged the rifle missing him. She then lowered her rifle and appeared to be reloading. Constable Voller then yelled again, "Connie, it's Constable Voller, put the gun down." Constable Voller heard Connie Jacobs say something that was unintelligible except for the words "my babies." She raised the rifle again to her shoulder and pointed it at him again. Constable Voller, aiming at center of mass, fired one shot from the shotgun.

[40] He saw Connie Jacobs fall back into the open doorway of the residence. He did not see anyone else in the doorway, but Ty Jacobs was standing in the doorway behind and slightly to the side of Connie Jacobs. The "00" buck shell fired from the shotgun contained 12, 32 caliber pellets. Five pellets hit around the door frame on the outside of the residence. Three pellets struck Connie Jacobs in the chest one of which penetrated her heart. One pellet struck her in the face. Two pellets struck Ty Jacobs, one into the jaw and one into the upper chest which penetrated the aorta just above his heart. Three pellets entered the house and lodged in the south wall of the living room. One of these pellets had passed through Connie Jacobs and one of these pellets had passed through Ty Jacobs. Both Connie and Ty Jacobs died rapidly within seconds to a minute. No medical attention no matter how prompt could have saved their lives from such wounds.

[41] Connie Jacobs fell backward through the open doorway onto the foyer floor just inside the residence. Constable Voller knew that he had hit her, but because of several green garbage bags, a rug hanging over the railing of the landing and darkness or shadows in the foyer area he was unsure as to her position in the doorway of the residence, and did not know whether she was dead or wounded inside the residence.

[42] Constable Voller called Red Deer Telecoms on his portable radio and notified them that shots had been fired and requested an ambulance and backup. He called out several times for Tammy Dodginghorse who had eventually made her way around the back of the Jacobs' residence down through the gully and emerging behind Constable Voller to the northeast. Constable Dodginghorse and Constable Voller were unable to see into the residence to determine what had happened and decided to back the R.C.M.P. Suburban down the road to a position of safety. Constable Dodginghorse backed up the vehicle with Constable Voller covering her on foot behind the vehicle.

[43] Prior to all of this, Constable Carl Verge of the Turner Valley detachment of the R.C.M.P. was interviewing a witness on an unrelated matter at a location near Southland Drive and Macleod Trail in the City of Calgary. Constable Verge testified that he had been a communications specialist in the Canadian military and during the interview kept his radio on. He heard the radio transmissions between Constable Voller and Red Deer telecoms. He immediately ended the interview and began heading toward the Tsuu T'ina Reserve. On the way he noticed that Red Deer telecoms was having difficulty hearing the entire conversation from Constable Voller. He then entered into the conversation and began relaying Constable Voller's messages to Red Deer telecoms. At the same time he was asking Constable Voller and Red Deer telecoms for directions to the Jacobs' residence.

[44] At approximately 7:27 p.m. according to the Red Deer telecoms radio transcript Constable Verge relayed that Constable Voller "had returned fire and she's down." An instant later Red Deer telecoms was able to hear Constable Voller on the radio who advised that "I just had a shot fired at me, I've returned fire, the suspect is down." Red Deer telecoms replies, "10-4, suspect is down in the residence?" Constable Voller replies, "In the doorway, I can't see." Constable Verge then comes into the conversation, "Red Deer, you want to dispatch (indiscernible) that location?" Red Deer telecoms replies, "I'm sorry I couldn't copy, what - - dispatched?" Constable Verge replies, "Red Deer, 2-Alpha-30, copy uh...the...uh...transmission...uh...uh, Voller?" Red Deer telecoms replies, "I copied that he had a suspect down in a doorway, do you require - what do you require me to do?" Constable Verge replies, "Dispatch

E.M.S. He was fired upon, he returned fire. The suspect is down." At that point there is a short exchange between Constable Verge and Red Deer telecoms to contact an N.C.O. Constable Voller then says, "Yeah (indiscernible) around the outside of the residence is Tammy Dodginghorse, she attended with social services, she was not on duty and... Tsuu T'ina tribal... I'm unable to locate her." At that point there is an exchange between Constable Verge and Constable Voller giving direction to Constable Verge to the Jacobs' residence. Then Constable Voller says, "10-4 and uh...Constable Dodginghorse?" "Hey I found her, she's out in the field, she's fine, she's coming over here." At that point there is another exchange of conversation with Constable Verge and a request from Constable Voller for Calgary Police Service assistance. Red Deer telecoms says, "10-4, okay then we need C.P.S. with a dog?" Constable Voller replies, "10-4, I don't know the extent of her injuries, if she's in that house with that firearm uh...we're going to uh...have a bit of a problem." Thereafter Constable Voller continues to give directions to the scene and radio traffic begins to increase as other officers attempt to respond to the area.

[45] Earlier, Constable Dodginghorse had made her way to the pump house behind the house. She testified she could not see to the front but she could hear Constable Voller yell to Connie Jacobs to put the gun down. She then heard the sound of a high powered rifle followed by Constable Voller yelling again, "Connie put the gun down," and that was followed by the sound of the shotgun. She phoned Red Deer telecoms and advised of the shots and requested backup. She then made her way down into the gully and around to Constable Voller's position.

[46] At 7:44 p.m. Constable Verge arrived on the scene and found Constable Voller's R.C.M.P. Suburban backed up to within approximately 10 meters of Range Road 40 and approximately 110 meters away from the house and behind the two abandoned houses along the road leading up to the Jacobs' residence.

[47] At approximately 7:29 p.m. members of the Calgary Police Service (C.P.S.) canine team were dispatched to the Tsuu T'ina Reserve. Constables Nyberg, Medwid, Larson and McNeil arrived at approximately 8:03 p.m. and at 8:13 p.m. were deployed to set up a containment perimeter around the Jacobs' residence awaiting the arrival of the R.C.M.P. emergency response team.

[48] While waiting for C.P.S. and other backup, Constable Voller and Constable Verge made their way back toward the Jacobs residence using the abandoned houses as concealment moving from one house and then to the other. From either side of the closest house they attempted to see into the doorway of the residence but weren't able to locate or determine the condition of Connie Jacobs. As other R.C.M.P. and Calgary Police Service members arrived on the scene more attempts were made including attempts from the second storey of the abandoned house to the west of the Jacobs' residence. Despite the assistance of a spotlight and binoculars, Connie Jacobs' position on the floor inside the foyer could not be determined.

[49] By this time darkness had set in and it was snowing with a brisk wind. The R.C.M.P. emergency response team (E.R.T.) had been dispatched to the scene by Red Deer telecoms at about 7:55 p.m. Members of the E.R.T. responded from various points to their base at Calgary International Airport to retrieve their specialized equipment and then to a staging area set up in a garage at a private residence located near the Jacobs' residence at approximately 9:50 p.m. At about 11:01 p.m. after decisions had been made and a yard light which was southwest of the Jacobs' residence had been shot out with a silenced firearm, the emergency response team approached the Jacobs' residence in a stealth clear entry procedure. The plan was to move up alongside the house and attempt to look into the windows. As they approached the house in single file from the southwest direction, the second E.R.T. member and leader, Corporal Tim Head, saw a foot sticking out of the doorway and announced it by closed E.R.T. radio to the rest of his six man team approaching the residence. As they neared closer, the first in line, Constable Terry Scotland, noticed a gun and quickly went up the stairs and put his foot on the gun which was lying on the floor with the barrel sticking out pointing out towards the abandoned house to the west.

[50] Connie Jacobs was found lying on her right hip and her upper chest and face against the floor with an 1889 Winchester 303 lever action rifle underneath her. Her left hand was clutching the fore stock of the rifle and the handle of the stock and trigger area were under her head. Her right hand was underneath her head. There was a metal rod lying underneath Connie Jacobs, which according to the evidence, could

have been a rod found in the rifle and used to clean and lock it.

[51] Connie Jacobs' husband, Hardy Jacobs, his brother Harry Jacobs and their friend Patrick "Patch" Nadeau, had apparently found the rifle some time in July, 1997 on a road allowance on the Tsuu T'ina Reserve. After Nadeau's untimely death in a motor vehicle accident two weeks later, Harry Jacobs had assumed control of the rifle and after cleaning and test firing it, had hidden it along with five live 303 shells in the basement of the Jacobs' residence where he was living in September of 1997. Contradicting in part the testimony of Harry Jacobs, Hardy Jacobs testified that he did not know that the 303 rifle or the five live 303 shells were hidden in the basement of his house on March 22, 1998.

[52] Connie Jacobs was lying partially across the legs and lower portion of her son Ty Jacobs who was slightly behind her. Three live 303 shells were found on the floor in a fan shape around the body of Ty Jacobs. There was some evidence that a child's bloody footprint was found on the floor near the body of Ty Jacobs, leading to an inference that one or other of the children in the basement at the Jacobs' residence could have come upstairs and approached the bodies of Connie and Ty Jacobs after the shooting.

[53] After entering and clearing the house, members of the R.C.M.P. emergency response team gathered up the other five children found in the basement of the residence. The children were then transported to hospital under the care of Tsuu T'ina Child and Family Service case workers.

[54] An autopsy was performed by Dr. Lloyd Denmark, Deputy Medical Examiner, on both Connie and Ty Jacobs on March 24, 1998 at the Medical Examiner's office in Calgary. Samples of body fluids were taken from Connie Jacobs and showed a level of alcohol in her blood of 310 milligrams per 100 milliliters of blood. Connie Jacobs was also found to have grasped in her right hand a live 303 shell. The shell was not noticed by investigators at the scene who were careful not to move Connie Jacobs' body during the investigation. Her right hand was under her head and she was lying in the foyer which was a cramped area and darkened by shadows. When the time came to move the body, the investigators as is standard practice in gathering evidence to test for gunshot residue, slid paper bags over her hands and head, being careful at all times not to touch any part of the hands or head to avoid contaminating them.

[55] As soon as the emergency response team cleared the house the scene was taken over by Corporal Morrison of the major crime unit. Other major crime investigators including Corporal Ian Currie and Corporal Doug Taylor arrived shortly to conduct the investigation along with Corporal Morrison. The scene was thoroughly investigated by the major crime unit. To review all of the details of the investigation would be to render a report that is much too long and technical. The transcript which is available to the public on the Internet contains all of that material. The investigators did examine the rifle and found a spent 303 cartridge in the firing chamber. There were no bullets in the magazine. Particles consistent with gunshot residue were also found on the face and hands of Connie Jacobs.

[56] It appears that Connie Jacobs was struck by four of the 12 pellets. Photographs taken at the autopsy and an analysis using probes done by Dr. Denmark indicated that she was standing erect in a position consistent with the position of someone her size holding a rifle in a firing position and pointing it in the direction of Constable Voller, namely left hand on the forestock, right shoulder slightly raised and curled inward, and standing at an angle to the target, i.e. left side ahead of the right side.

[57] Taking into account these facts from the autopsy and the testimony of Constable Dodginghorse as she heard the shots and voices at the front of the house, I find that the testimony of Constable Voller that Connie Jacobs pointed the rifle at him after appearing to load it to be accurate despite the subsequent discovery by investigators that the rifle contained no live ammunition. I should also point out that I found Constable Voller to be a truthful, precise, accurate and therefore, reliable witness.

[58] Ty Jacobs was standing behind his mother and probably slightly to her right at the time of the shooting. When he was last seen alive by Constable Dodginghorse he was going downstairs with the other children. There is no evidence that might explain when, how or why he moved from the basement to

that location in the foyer.

[59] After contemplating the various possibilities, I feel compelled to offer what I believe to be the most likely explanation of how the end came to Ty Jacobs. The evidence is clear, from the testimony of both Constable Voller and Constable Dodginghorse, that there was a time lapse of a few seconds after Connie Jacobs fired the rifle. During that time she lowered the rifle and appeared to be loading it; Constable Voller yelled to her, "Connie, it's Constable Voller; put the gun down"; she said something about "my babies" and she raised the rifle again to the firing position. It is my opinion that during those seconds Ty Jacobs, who was described as a curious boy, and who was possibly playing with the cleaning rod and remaining three shells, heard the crack of the rifle shot and ran upstairs to the doorway to see what was happening, thus meeting his tragic death.

[60] As a postscript, when Lorraine Duguay and Connie Bish left the scene, it was with Connie Bish driving Lorraine Duguay's motor vehicle. When Lorraine Duguay saw Connie Jacobs in the window pointing the rifle, she went into a form of panic attack which paralyzed her. She described herself as hyperventilating. She crawled between the seats into the back with Connie Bish's assistance and Connie Bish slid over into the driver's seat and drove the vehicle. On December 3, 1999 Lorraine Duguay died of a heart attack.

[61] At the beginning of the inquiry, it was the desire of most counsel to avoid character evidence. I have sought to ignore comments on character that were made by witnesses and by counsel during the course of this inquiry and I have avoided comments on character in this report. As it turned out, I doubt if the characters of the persons involved (including Connie Jacobs) had much to do with the events that transpired.

Recommendations

A. POLICE

1. Tribal Police Forces

First Nations that are setting up police forces need to have the police service established with a secure stand alone and properly equipped police station and be staffed with properly equipped, trained and experienced police officers ready to operate along with the assistance of the R.C.M.P. and to retain the assistance of the R.C.M.P. as long as required.

[62] Recognition must be given on and off First Nations Reserves that tribal police officers like any other police officer can be involved in life and death emergency situations.

[63] A First Nations police force must be manned by qualified and experienced personnel to ensure the proper administration of justice on the Reserve, and they should be paid accordingly.

[64] In terms of personnel the minimum staff would be a police chief; a senior experienced police officer; and one or more junior officers in training:

(a) Chief of Police

[65] The Chief of Police ought to be a senior qualified experienced police officer, and during the transitional stage, from off the Reserve. In addition to his administration functions *vis-a-vis* the Police Commission and Police Implementation Committee, the Chief of Police ought to have extensive front line experience and be able to assist as a mentor to junior police officers in training. The Chief of Police must be completely independent from any outside influence on or off the Reserve and have complete charge and control of all police officers under him. It should be the duty/responsibility of the Chief of Police to

ensure that all necessary personnel and equipment are available 24 hours a day, seven days a week, in the event of an emergency on the Reserve, regardless of illness, accident or holidays.

(b) Senior Experienced Police Officer

[66] A senior qualified police officer with extensive front line experience from either on or off the Reserve is necessary to provide both the leadership and mentoring function necessary for junior officers in training on the Reserve.

(c) Junior Police Officers in Training

[67] Depending on the population on the Reserve, at least one or more junior police officers in training from either on or off the Reserve is required for the day to day administration of justice on the Reserve. The junior officers ought to receive the same basic training as an R.C.M.P. officer in training or a member of the Calgary and/or Edmonton Police Service in training. If the training is to be done at PORT (police officer recruit training - Alberta Justice Staff College), the standards of training at PORT ought to be commensurate with standards of R.C.M.P. basic training and Calgary/Edmonton basic training. In particular, it should be lengthened from 15 months to equal the 24 month period required for R.C.M.P. recruits, or at least, fashioned in some way as to accomplish the same result.

[68] A tribal police officer ought to be paid on a scale commensurate with an R.C.M.P. officer or member of the Calgary/Edmonton Police Service so as to obviate the defection of trained and experienced officers to other forces for monetary reasons.

(d) Office, Facilities and Equipment

[69] A stand-alone secure police station must be in place prior to the establishment of any First Nations Police Force. The police station must be adequately equipped with all standard police computer systems (i.e., CIPIC and PIRS) and have its own telephone and radio systems in place, with free access to R.C.M.P. telecoms in Red Deer. Constable Dodginghorse did not have a proper radio phone or police vehicle available to her at the time, nor did she have radio access to Red Deer Telecoms.

[70] The police station must have its own holding facility for persons taken into custody. There must be enough fully equipped police vehicles in place and available to provide any officer on duty, in the event of an emergency, with access to such vehicle. All police officers are to be fully equipped with all necessary police equipment (i.e., uniform, baton, handcuffs, pepper spray, 9 millimeter sidearm, communications equipment, etc.) in working order at all times. The equipment available to a tribal police officer ought to be the same equipment available to any R.C.M.P. officer or member of the Calgary or Edmonton Police Service.

(e) Transitional Issues

[71] Until is perceived by the Chief of Police through the Police Implementation Committee, that a First Nations Police Service is capable of operating on its own, the R.C.M.P. must function side by side with the Tribal Police. There ought to be clearly defined responsibilities put in place as to what a Tribal Police Officer can/cannot handle in the way of independent police work both on and off the Reserve. A transition to more independent responsibility ought only to be made by written decision of the Police Implementation Committee on recommendation from the Chief of Police. Until it is determined that a First Nations Police Service can function on its own, there ought to be at least one or more trained and experienced R.C.M.P. officers assigned to work with the First Nations Police Service at all times, and who would also be on call and readily available in the event of an emergency.

[72] Finally, there should be an association of members of First Nations police forces and ongoing police continuing education and upgrade training.

2. Domestic Violence

All domestic disputes requiring the attendance of emergency medical services also require the immediate attendance by police for investigative purposes.

[73] Chief Barry Whistlecraft was of the view that had the R.C.M.P. attended in conjunction with E.M.S. Calgary, in this case, at 3:48 p.m. to investigate the domestic dispute between Connie and Hardy Jacobs, the subsequent tragic shooting in this case would not have occurred.

[74] The evidence adduced at the Inquiry yet again confirms the policy of Alberta Justice that there be no tolerance of domestic violence. The R.C.M.P. should have attended with E.M.S. Calgary earlier in the afternoon in this case.

3. Police forces should ensure to have always more than one officer on duty per detachment.

[75] The days of the lone mounted policeman bravely patrolling the west are long past; it is unnecessary in modern Canadian police work. Corporal Powers in the afternoon of March 22, 1998 did not attend immediately to investigate the domestic assault that occurred on the Jacobs' residence because he was the only officer on duty on a day when the weather was extreme and it was a virtual certainty that there would be motor vehicle accidents occurring in the area. Later he advised the child welfare workers that he would not attend the child apprehension without backup. An on-duty officer should not have to wrestle with the decision of whether or not to call other officers on their days off.

4. Police Relations with Outside Agencies

All police forces should develop policies, procedures and systems to be employed when assisting outside agencies such as bailiffs, public health workers or child welfare workers, and training in this area should be a standard requirement of police training.

[76] The evidence shows that the two child welfare workers and the tribal police officers did not prepare a game plan and as a result each was unsure of her role in the operation. When Constable Dodginghorse requested the child welfare workers to leave the residence one of the child welfare workers may not have left immediately but may have gone upstairs to look for clothes for the children. Constable Dodginghorse did then speak to that worker in a firm authoritarian voice in order to get her to move quickly. Everyone should have been aware that when the police officer gave the signal there should be no hesitation. Police forces and child welfare agencies need to study this area carefully to determine policy and procedure. One of the main concerns in any child apprehension is the trauma that might be experienced by children, and this factor affected Constable Dodginghorse's ability to physically intervene immediately. This problem should have been discussed prior to the operation. Another component that is important in this process is the preparation of a game plan and the sharing of information between the child welfare workers and attending police officers. Information such as prior child apprehensions, criminal records, and the existence of firearms or other weapons within the residence should all be shared.

5. Police Weapons

Police issued shotguns should be supplied with the newly developed, R.C.M.P. approved, nine pellet "00" buck shot ammunition with 25 percent tighter spread pattern, and the rifle sights fitted on these shotguns should be replaced with bead sights.

[77] The R.C.M.P. have already approved and are making available the new ammunition, but are having difficulty with obtaining the ammunition from the United States due to problems of approval of export

licences by United States authorities. If this difficulty becomes unresolvable, it may be necessary at some point to begin manufacturing the ammunition in Canada. The benefit is, of course, obvious in that a tighter spread pattern would have decreased the likelihood of Ty Jacobs being struck by two of the pellets.

[78] There was some evidence adduced that the rifle sights on the shotgun had the effect of blocking the lower area of the target. Evidence was adduced that this could be remedied by a Mossberg ghost ring sight or the usual bead sight seen on most shotguns. The rifle sights had been placed on R.C.M.P. shotguns because of the necessity to use slugs from time to time in bear country. There is no rifling in shotgun barrels, and I would suggest that the rifle sights give a false sense of accuracy. The sensible move would seem to be to return to bead sights which were originally intended for shotguns.

6. Emergency Response Teams (E.R.T.)

(a) More efforts should be made to develop co-operative efforts between R.C.M.P. emergency response teams and local city police tactical teams in emergency situations.

[79] Evidence in the Inquiry indicated that the Calgary City Police tactical team could have arrived at the scene earlier than the R.C.M.P. E.R.T. squad, because among other things the event occurred at the exact opposite end of the city from the E.R.T. base. If the incident had occurred on a day when the city police TAC team was on duty, the response time would have been even quicker.

[80] In the circumstances of this case both Connie and Ty Jacobs were killed almost instantly. In other similar circumstances a person may be fatally wounded and bleed to death because of the simple passage of time.

(b) All Tactical Teams need to consider and adopt where appropriate the changes made by R.C.M.P. E.R.T. following this incident.

[81] The R.C.M.P. E.R.T., to its credit, have made a number of changes to speed up response time such as pre-loading emergency vehicles, having some members respond directly to the scene instead of to the base at the Calgary International Airport, (which did happen in this case), developing a camera that can be operated at the end of an extension to allow the team to see into areas that may be unsafe, carrying as part of the equipment the silenced firearm, and having two commanders instead of one. The R.C.M.P. have also instituted the policy of allowing officers in the field to call out the emergency response team without having to communicate through the hierarchy.

(c) As a corollary to the above changes, the specialty camera should be available to be carried by the first arriving E.R.T. members.

[82] All police officers in the predicament that Constables Voller, Dodginghorse, and Verge found themselves in should be able to call on this kind of equipment immediately. These officers, despite exposing themselves to considerable potential danger, were unable to determine if Connie Jacobs was alive, wounded, dead or unhurt because of obstructions blocking their line of sight.

7. The Use of Cell Phones by Police Forces

Police forces need to decide how cell phones are going to be used and need to develop policies and procedures in the use of cell phones, and further, to adapt them to the particular needs of police work.

[83] It is clear from the transcript from Red Deer telecoms that the police have decided to make cell phones part of their equipment. Such a decision is, of course, inevitable in view of the increasing sophistication of the technology and the increasing coverage geographically.

[84] Constable Voller had a cell phone in his police vehicle which, according to his testimony, he did not use because he needed to keep both hands on the wheel. Constable Dodginghorse had a cell phone that she held in her hand. At one point Constable Dodginghorse was standing in the doorway watching in both directions, watching for Constable Voller's arrival and watching for Connie Jacobs in the house. There is evidence that at one time she was using the cell phone. If she had been doing so when Connie Jacobs was approaching with the rifle, a cell phone in her hand would have been a definite liability interfering with her ability to draw her pistol. It is suggested that if the police forces intend to use cell phones that they adapt them to their needs by using hands-free equipment. If a cell phone is to be attached to an equipment belt there should be a capability of, firstly, talking on it without the use hands and secondly, an ability to speed dial pre-set numbers to Red Deer telecoms, the detachment headquarters, and fellow police officers on duty.

8. Investigation

[85] The work of an investigator is a difficult one and the gathering of large quantities of minute detail will always result in something being overlooked. However, I have some suggestions which I hope will assist in an investigation.

(a) It is recommended that officers at the beginning of their shift fully load their service firearms, or at least, have a system for accounting for all pieces of ammunition.

[86] There was some controversy as to what became of missing cartridges in Constable Dodginghorse's service pistol. The missing cartridges were fully explained, nevertheless, the missing bullets caused distraught next-of-kin seeking answers to engage in some disturbing speculation.

(b) It is recommended that investigators gather all cellular telephone billing records.

[87] A large amount of the communication done by the child welfare workers and police officers was by cellular telephones. Cell phone billing records, unlike land phones, contain a record of every single call including incoming calls. These records are useful in determining, firstly, times when calls were made, and secondly, the persons being called.

(c) Interview all witnesses including young children regardless of age, but only by qualified child interviewers, and it is further recommended that all police forces be made aware of the availability of such experts.

[88] Child witnesses were interviewed by qualified and experienced interviewers of child witnesses at the direction of Inquiry Counsel after the inquiry began approximately a year later. The evidence of these experts at the Inquiry clearly showed that such interviews can be done effectively and profitably by such qualified interviewers without any harm to the children. In fact, the videotape of one of the child interviews showed the child to be extremely intelligent and eager to be of assistance, although after the passage of more than 1 year (a long time in the life of a young child) that evidence had to be viewed with some caution. The practice of interviewing children has already been implemented by the major crime unit of the R.C.M.P. and is hereby recommended for all major crime investigators.

[89] As a corollary to the preceding, I also recommend that relatives of the deceased also be interviewed. They may be able to provide some insight into the mind of the deceased, but more importantly, they are given the opportunity to be heard as well as offer perceived theories or explanations. In effect, this ensures that all interested next of kin are satisfied with the efforts put into the investigation.

B. FAMILY AND CHILD WELFARE SERVICES

1. The Inquiry endorses the concept begun by the 3 levels of government to return control over child and family services to First Nations or other local communities and recommends that there be a formalized implementation plan and stable multi-year commitments of funding.

[90] Present funding commitments were described by one expert witness as stumbling along on year-to-year renewals. Long-term funding is necessary for attracting and retaining well-trained people, such as the supervisor who left Tsuu T'ina Child and Family Services in March, 1998. It is also necessary to develop and maintain successful preventative programs.

2. Child and family services societies require suitable offices with adequate office equipment, trained support staff, and be staffed by properly trained and experienced registered social workers.

[91] The child protection concern arose on a weekend and during severe weather conditions with only one worker on call and an off-duty worker assisting, and although they acted promptly and sincerely, the evidence adduced at the inquiry was clear that Tsuu T'ina Child and Family Services was understaffed with some minimally qualified, minimally trained and inexperienced personnel, incapable of functioning properly or responding to an ever increasing work load. There was also a lack of confidence on the part of the case workers to appear in court and obtain necessary orders including child apprehension orders. The evidence adduced at the Inquiry underlined the necessity of having in place at any child and family service on a First Nations Reserve or other small community child and family service qualified and experienced personnel to ensure the proper functioning of child protection services.

[92] In this case, the two child welfare workers were confused as to their roles in the operation on March 22, 1998, each thinking that the other was in charge. There is also evidence that in this and a prior apprehension they did not have a proper understanding of the *Child Welfare Act*.

[93] In terms of personnel the minimum required staff for an agency of this size should be: 1) director; 2) supervisor; 3) two child care workers; 4) adequate support staff. In a First Nation agency there should be a healthy mix of nation members and non-nation members to overcome the conflicts that are inevitable in a closely-knit community. The evidence adduced at the Inquiry would indicate that a director of child and family services in a decentralized or smaller agency such as a First Nation ought to have not only administrative skills but also practical front line experience as a child care worker.

[94] Ironically, although qualifications are required to be a child welfare worker or case worker, no such qualifications are required for a director. This is an anomaly, which although appropriate to the old system where child welfare services were centralized with the government department of social services, is no longer appropriate where child and family services have been decentralized to small agencies. In a small agency such as Tsuu T'ina Child and Family Services there will be times when the director is required to be on call and carry out an apprehension. The regulation should be amended.

[95] A supervisor ought to have at least a university Bachelor of Social Work degree. That person should also have considerable practical front line experience as a child care worker. A supervisor's primary function would be the monitoring of all ongoing files in the office and mentoring less experienced child care workers. If possible, the supervisor should not be carrying any kind of personal case load so as to interfere with their monitoring and mentoring functions.

[96] A child welfare agency must never find itself in a situation where it is without a supervisor or capable acting supervisor such as occurred at Tsuu T'ina Child and Family Services during the last 3 weeks of March, 1998.

[97] Child care workers should have at least a diploma in social work from a recognized community college and at least one of them should have some experience as a front line child care worker.

[98] The director, supervisor and at least one frontline worker should also be registered members of the Association of Professional Social Workers of Alberta pursuant to the new *Health Professions Act*. They would then be subject to the same discipline and Code of Ethics governing all registered social workers. Professional status serves to guarantee independence from outside influence that some might be tempted to pursue in a small First Nation.

3. All parties to the four-part child and family services agreements should implement a system of block funding.

[99] The benefit of preventative programs was dramatically demonstrated by expert witnesses testifying as to the consequences of inadequate early childhood development. According to the evidence, studies show that the return on money spent on preventative programs is sevenfold.

[100] The concept of block funding was advocated by a number of witnesses with respect to prevention programs. Some witnesses preferred that funding for preventative programs be separated from funding for child protection. The notion is that child protection tends to eat up the budget. On the other hand, there was evidence that one agency in Manitoba had block funding for both programs and tended to carry out fewer apprehensions and foster placements in order to enable more spending on preventative programs. It is suggested that a formula be developed whereby funding for preventative programs is commensurate with funding for child protection. For example, it could be a policy that funding for preventative programs shall be equal to funding for child protection.

4. Funding for First Nation child and family services needs to be re-examined and audited more closely.

[101] The evidence shows that the funding for child and family services did not keep up with the changing conditions. It appears that a system was set up which was appropriate but that periodic reviews were inadequate or too infrequent or perhaps simply unwilling to acknowledge changing conditions. There is some evidence that Provincial child services management and auditors were too fearful of overstepping their jurisdiction by overseeing child services on a First Nation territory. The Federal Government, for its part, has no child protection services administration or experience. As a result by March 22, 1998 the agency was overworked and under funded. If the three levels of government are going to make these agreements work they must be monitored after implementation. In the case of First Nation agencies, the lasting health of children has to take pre-eminence. Solving jurisdictional difficulties (and they are there) can be a long term goal, perhaps by working toward federal child welfare legislation or other statutory machinery that would be clearly free of jurisdictional or constitutional questioning.

5. The Inquiry recommends the implementation of a plan to encourage students, especially aboriginal students, to take training and careers in the field of social work, and the corollary to that is once child and family services agencies are set up there be a definite plan for the continuing education of child welfare workers.

[102] The evidence before the inquiry revealed a shortage of trained personnel to work in child and family services, especially in remote rural areas. The evidence presented at the Inquiry was that the birth rate of aboriginals was higher than the general population and that 35 - 40% of children in care are aboriginal children.

C. WOMEN AND CHILDREN

1. The Inquiry recommends that more be done to assist women, in particular, mothers, to be able to feel some power and control over their lives and feel a sense of independence.

[103] The Inquiry did not exhaust all of the potential evidence to be able to understand all of the problems

faced by Connie Jacobs, but we know enough to know she may have felt. Having been at one time a model and capable of managing a business in the city, she now, without doubt, felt failure and in the words of the experts, "helpless", "hopeless", and in "despair". The experts testified that these kinds of feelings tend to lead to violent behaviour. There was plenty in her life to give her these feelings and I will list them not in any order of importance, while bearing in mind that some may have been problems more in her perception than reality:

- to begin with, she herself was emotionally weak by having been abandoned by her mother to her grandmother during early childhood.
- She married into a perceived lower-class family on the Nation, many of whom suffered from alcohol dependence.
- Her husband suffered from severe alcohol dependence.
- She had lost a child that died of SIDS and felt guilty.
- She suffered from alcohol dependence.
- She had an unplanned newborn child.
- She was in a co-dependent, abusive relationship.
- She lived in an old house in a more remote corner of the reserve.
- She was from a different Aboriginal culture and language.
- She was from a different First Nation.
- In her own First Nation, she was not fully accepted, being an *Indian Act*, .6(2) (Bill C-31) member.
- She had no matrimonial property rights. Provincial matrimonial property laws do not apply on First Nations and there is no Federal legislation. Consequently, she would not be able to remove her husband from the home when he was drunk (and she complained about this). On divorce or separation, neither would she have legal grounds to keep the matrimonial home, despite being the primary care giver of the children.
- She had no job.
- She had no transportation.
- She had no telephone.
- She had no lawyer.

[104] The feeling of helplessness of a mother in such circumstances may not be easily removed, but some things can be done.

a) It is strongly recommended that a Notice outlining the availability of legal aid and the parent's or guardian's rights to counsel pursuant to *New Brunswick (Minister of Health and Community Services) v. G.(J.)* [1999] 3 S.C.R. 46 (S.C.C.), be served along with all Orders of

Apprehension and Notices of Apprehension, and that the Notice contain a list of those lawyers in the area who are available 24 hours daily.

[105] It should also be a requirement that such documents be served prior to commencing an apprehension where the parent or guardian is present with the children. The parent should also be afforded the opportunity to contact counsel by telephone, and they should be advised that such legal advice is provided through Legal Aid. This would serve to alert and remind the parent or guardian that there is another real and effective alternative to resorting to a physical and potentially dangerous confrontation.

[106] According to the evidence, Connie Jacobs got off the couch, walked toward the picture window of the residence and appeared to be staring out the window for a period of time while the case workers were gathering clothes for the children. No doubt she was considering what options were available to her, and made her decision at that point.

b) All child and family services agencies or authorities in the Province of Alberta should be able to maintain telephone contact with their clients at minimal cost. In the case of parents who are suffering from special problems such as alcohol dependence, that telephone contact should continue even after temporary guardianship orders, supervision orders, or support agreements have expired.

[107] Dr. El-Guebaly, a psychiatrist and an expert on the subject of alcohol dependence, testified that the minimum recovery period is 2 to 5 years. As indicated by the evidence the vast majority of child protection concerns arise in an environment of alcohol abuse or addiction. It is wildly unrealistic to assume that in such cases problems won't continue after one child protection intervention by child welfare authorities, regardless of the sincerity of the parents or guardians.

[108] A school teacher testified that after the birth of Connie Jacobs' newborn and after the supervision order or support agreement expired Connie Jacobs began to use regularly her son, Ty Jacobs, as a messenger via the teacher to the outside world.

c) In cases where the guardians of children are recovering alcoholics and the family is unable to obtain telephone service, the child and family service agency should arrange for the telephone company to install call gate telephone service in the name of the child and family service society.

[109] In the case of the Jacobs family, the family had outstanding unpaid telephone bills and their telephone service had been cut off. The service, however, could be restricted to local calls, no long distance calls, and no collect calls as well as any other restrictions that might be appropriate. This would allow the child and family service agency to contact the family at any time, and it would allow the family to contact someone in case of an emergency. Nine year old Ty Jacobs on the day in question was required to walk 2 kilometers to the neighbors to access a telephone to call an ambulance.

[110] The idea of providing basic phone service is not without precedent. The United States has recently announced such a proposal (Exhibit 180). This proposal is with respect to Indians on Reservations; however, such a service would be appropriate for all persons with child welfare problems and who live in isolated or remote areas.

d) First Nations must provide a minimum level of mobility to mothers with children in isolated areas.

[111] First Nations should have a bus, taxi or other form of transportation service to enable, in particular, single parents and families deemed by child welfare agencies to be high risk or isolated to acquire necessities of life and to have some contact with the outside world.

2. Aboriginal children need to be seen as not just children belonging to a particular family or First Nation, but as Canada's children, and women need to be seen as an investment in the well-being of those children.

[112] The evidence shows that the birth rate of Aboriginals is far higher than the general population and that 35% - 40% of children in care are aboriginal children. These children constitute a large part of the future of our country and need to be protected and nurtured for the overall benefit of our society.

3. The Inquiry recommends that other ideas for the protection of children and the empowerment of women be studied, and considered.

[113] There was evidence presented that suggested preventative measures such as the concept conceived by IAAW (Institute for the Advancement of Aboriginal Women), "Guardian Angels", who would be trained to assist mothers who are unable to cope with their situations from time to time. This is a concept that appears to have merit in that their work would give the parent(s) and children some concrete assurance that the goal is to keep the family functioning together.

[114] The concept of extended families in aboriginal culture might be used to provide services, and would serve to invite family, community and Nation involvement in child and family services.

[115] Alberta should pursuant to the Social Union Framework Agreement urge the Federal Government and First Nations to consider establishing in each First Nation an Ombudsman to enable Nation members, especially marginalized members to be heard in a meaningful way.

[116] Alberta should also pursuant to the same Agreement urge the Federal Government and First Nations to solve the problem of matrimonial property rights on First Nations reserves.

[117] Ideas to enable women to achieve economic independence, such as the Microcredit Summit concept, should be studied and implemented.

D. ALCOHOL DEPENDENCE

It is recommended that a concerted effort by child and family services and other agencies be directed toward the treatment and control of alcohol dependence.

[118] It appears from the evidence that alcohol abuse was generally viewed by most child and family services witnesses as being the primary cause of violence and neglect in homes requiring child apprehensions.

[119] Recognition must be given that alcohol dependence is a chronic disease in itself that must be controlled and government agencies should not be spending money on other valuable resources addressing other social or economic problems that flow from it without also addressing alcohol dependence itself.

[120] The evidence adduced at this Inquiry left no doubt that alcohol dependence by both the deceased, Connie Jacobs, and her husband, Hardy Jacobs, was a primary factor in the chain of events leading to the fatal shooting. According to expert evidence, alcohol in the body acts as a depressant of a person's restraint mechanisms and allows repressed feelings to surface and manifest.

[121] It appears from the evidence that Connie Jacobs had made considerable effort to address her alcohol dependence problem but without success. She complained that it was difficult because she was involved in a co-dependent relationship with a severe alcoholic. In the few months prior to her death, however, Hardy Jacobs began showing signs of a desire to address his alcohol dependence problem and, in fact, in

1998 had made considerable efforts, and although he has relapsed, according to expert testimony this is not abnormal in the recovery process.

[122] The testimony of an expert witness on the subject of alcohol dependence, Dr. El-Guebaly, indicated that alcohol dependence is a highly curable disease in terms of treatment. A good assessment at the outset is a prerequisite so as to determine biologically, psychologically, and socially what must be addressed for each individual and what type of treatment is required. According to the evidence, alcohol dependence is a chronic disease that must be addressed by a case specific recovery treatment plan for a minimum of two to five years. There are no immediate cures available.

[123] The testimony of Dr. El-Guebaly served to highlight two realities which are not always recognized or understood:

1) Each alcohol dependent person is an individual and must be individually assessed biologically, psychologically and socially by professionals who are fully qualified to make such assessments. There is no standard treatment for persons with alcohol dependence.

2) Recovery from alcohol dependency requires a treatment plan of a minimum of two to five years. During that span of time it is to be expected that the patient will relapse several times, and the implication is that treatment plans, health care workers, friends, relatives and child care workers need to accept this fact and work toward the long term goal.

E. GENERAL

1. The tripartite agreements to provide police services and child and family services on First Nations must contain provisions for extraordinary events such as this one, either by insurance or by contingency funds.

[124] I found it disturbing that the tribal police officer and 2 child welfare workers were left by the agreements to fend for themselves in a long inquiry to determine their roles in the homicide of a mother and her child. They appeared to be doing their jobs to the best of their abilities, not to mention their willingness to volunteer to work overtime on a weekend.

[125] They should have been provided with trauma counseling and legal counsel similar to that provided to the R.C.M.P. members involved.

2. The Inquiry recommends the practice of publishing daily transcripts on the Internet for long inquiries or trials.

[126] The practice introduced by this Inquiry, with thanks to counsel, Brad Enge, to publish the daily transcript of the evidence on the Internet, proved to be an invaluable tool for counsel and myself to review the evidence, and it allowed counsel unable to attend the bulk of the Inquiry, such as Mary Eberts, counsel for N.W.A.C.(Native Women's Association of Canada), to make valuable contributions.

F. SUMMARY OF PRINCIPAL RECOMMENDATIONS

Many of the recommendations will require thought, planning, resources and time to implement, however, the following recommendations could be implemented without much delay and some, in particular, the first two should be implemented immediately.

RECOMMENDATION - A, 2: All domestic disputes requiring the attendance of emergency medical services also require the immediate attendance by police for investigative purposes.

RECOMMENDATION - C, 1, (a): It is strongly recommended that a Notice outlining the availability of legal aid and the parent's or guardian's rights to counsel pursuant to *New Brunswick (Minister of Health and Community Services) v. G.(J.)* [1999] 3 S.C.R. 46 (S.C.C.), be served along with all Orders of Apprehension and Notices of Apprehension, and that the Notice contain a list of those lawyers in the area who are available 24 hours daily.

RECOMMENDATIONS - C, 1, (b) & (c): All child and family services agencies or authorities in the Province of Alberta should be able to maintain telephone contact with their clients at minimal cost. In the case of parents who are suffering from special problems such as alcohol dependence, that telephone contact should continue even after temporary guardianship orders, supervision orders, or support agreements have expired.

In cases where the guardians of children are recovering alcoholics and the family is unable to obtain telephone service, the child and family service agency should arrange for the telephone company to install callgate telephone service in the name of the child and family service society.

RECOMMENDATION - A, 3: Police forces should ensure to have always more than one officer on duty per detachment.

RECOMMENDATION - A, 5: Police issued shotguns should be supplied with the newly developed, R.C.M.P. approved, nine pellet "00" buck shot ammunition with 25 percent tighter spread pattern, and the rifle sights fitted on these shotguns should be replaced with bead sights.

RECOMMENDATION - A, 6, (b): All Tactical Teams need to consider and adopt where appropriate the changes made by R.C.M.P. E.R.T. following this incident.

The following is a list of recommendations which will require planning but the Inquiry considers equally important.

RECOMMENDATION - D: It is recommended that a concerted effort by child and family services and other agencies be directed toward the treatment and control of alcohol dependence.

RECOMMENDATION - B, 2: Child and family services societies require suitable offices with adequate office equipment, trained support staff, and be staffed by properly trained and experienced registered social workers.

RECOMMENDATION - A, 1: First Nations that are setting up police forces need to have the police service established with a secure stand alone and properly equipped police station and be staffed with properly equipped, trained and experienced police officers ready to operate along with the assistance of the R.C.M.P. and to retain the assistance of the R.C.M.P. as long as required.

RECOMMENDATION - A, 4: All police forces should develop policies, procedures and systems to be employed when assisting outside agencies such as bailiffs, public

health workers or child welfare workers, and training in this area should be a standard requirement of police training.

RECOMMENDATION - C, 1: The Inquiry recommends that more be done to assist women, in particular, mothers, to be able to feel some power and control over their lives and feel a sense of independence.

RECOMMENDATION - C, 2: Aboriginal children need to be seen as not just children belonging to a particular family or First Nation, but as Canada's children, and women need to be seen as an

investment in the well-being of those children.

RECOMMENDATION - C, 3: The Inquiry recommends that other ideas for the protection of children and the empowerment of women be studied, and considered.

RECOMMENDATION - B, 1: The Inquiry endorses the concept begun by the 3 levels of government to return control over child and family services to First Nations or other local communities and recommends that there be a formalized implementation plan and stable multi-year commitments of funding.

RECOMMENDATION - B, 3: All parties to the four-part child and family services agreements should implement a system of block funding.

RECOMMENDATION - B, 4: Funding for First Nation child and family services needs to be re-examined and audited more closely.

RECOMMENDATION - B, 5: The Inquiry recommends the implementation of a plan to encourage students, especially aboriginal students, to take training and careers in the field of social work, and the corollary to that is once child and family services agencies are set up there be a definite plan for the continuing education of child welfare workers.

RECOMMENDATION - A, 7: Police forces need to decide how cell phones are going to be used and need to develop policies and procedures in the use of cell phones, and further to adapt them to the particular needs of police work.

DATED this 15th day of May, 2000.

THOMAS R. GOODSON, Provincial Court Judge

ADDENDUM

The Inquiry had the benefit of extremely professional, competent and experienced counsel and wishes to thank them for their contributions and the professional manner with which they represented their clients. They are in order of seniority as follows, firstly for next of kin:

Eddy W. Onusko - counsel for Lambert and Applegarth families

Terence C. Semenuk, Q.C. - counsel for Hardy Jacobs

and:

Philip Lister, Q.C. - Inquiry counsel

Edward Molstad, Q.C. - counsel for Samson Cree Nation

James Shaw - counsel for Department of Justice Canada

Paul Brunnen - counsel for Tammy Dodginghorse

John McCarthy, Q.C. - counsel for Alberta Justice

Hersch Wolch, Q.C. - counsel for the Assembly of First Nations Don W. MacLeod - counsel for Tsuu T'ina Nation Services

Bryan D. Newton - counsel for Corporal Voller

Gary Teeling - counsel for Lorraine Duguay and Connie Bish

Marsha Erb - counsel for Tsuu T'ina Nation

Gina Ross - co-counsel for the Department of Justice Canada

Kathleen Mahoney - co-counsel for Assembly of First Nations

Paul Mason - co-counsel for Samson Cree Nation

Susan Hendricks - counsel for Alberta Department of Family and Social Services

Will Willier - counsel for Lorraine Duguay and Connie Bish

Scott Bower - counsel for Calgary Police Service

Brad Enge - counsel for Institute for the Advancement of Aboriginal Women

Max Baier - counsel for Corporal Powers and Constable Clovechok

Mary Eberts - counsel for Native Women's Association of Canada

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