



**Report to the Minister of Justice
and Solicitor General
Public Fatality Inquiry**

Fatality Inquiries Act

WHEREAS a Public Inquiry was held at the _____ Court House
in the _____ Town of _____ Stony Plain _____, in the Province of Alberta,
(City, Town or Village) (Name of City, Town, Village)
on the _____ 19th and 20th days of _____ November _____, _____ 2015 _____, (and by adjournment
year
on the _____ 13th, 14th and 15th days of _____ June _____ 2016 _____),
year
before _____ Kenneth E. Tjosvold _____, a Provincial Court Judge,
into the death of _____ Stoney Calvin Bearhead _____ 26 _____
(Name in Full) (Age)
of _____ House 3625, Paul Band First Nation, Alberta _____ and the following findings were made:
(Residence)

Date and Time of Death: _____ September 5, 2013 between 9:00 p.m. and 10:30 p.m. _____

Place: _____ House 3625, Paul Band First Nation, Alberta _____

Medical Cause of Death:

Statistical Classification of Diseases, Injuries and Causes of Death as last revised by the International Conference assembled for that purpose and published by the World Health Organization – The Fatality Inquires Act, Section 1(d)).

Hanging

Manner of Death:

("manner of death" means the mode or method of death whether natural, homicidal, suicidal, suicidal, accidental, unclassifiable or undeterminable – The Fatality Inquiries Act, Section 1(h)).

Suicidal

Introduction

This is the report of the Fatality Inquiry into the death of Stoney Calvin Bearhead made pursuant to s. 53 of the *Fatality Inquiries Act*. That provision requires me to make findings respecting:

- (a) the identity of the deceased;
- (b) the date, time and place of death;
- (c) the circumstances under which this death occurred;
- (d) the cause of death;
- (e) the manner of death (which means the mode or method of death, whether natural, homicidal, suicidal, accidental or undeterminable).

The report may also contain recommendations as to the prevention of similar deaths. However, this section prohibits me from making any findings of legal responsibility or any conclusions of law.

The evidence is very clear on the findings I must make, apart from the evidence of circumstances under which death occurred. On September 5, 2013 Stoney Calvin Bearhead hanged himself in his parents' home on the Paul Band First Nation. At the time of the hanging, several members of the Royal Canadian Mounted Police (RCMP) were near the home to assist with Stoney Bearhead's arrest for the first degree murder of Gregory Gannaw. When RCMP members entered the home, they found that Stoney Bearhead had already died.

Circumstances under which Death occurred:

I. Relevant Events Preceding Stoney Bearhead's Death

I am mindful of the fact that Stoney Bearhead was never tried for murder of Gregory Gannaw. At a trial, Stoney Bearhead would have been presumed innocent unless the case against him was proved beyond reasonable doubt. However, to understand the events of September 5, 2013, it is necessary to consider the information available to the RCMP (including information indicating criminal conduct) and Stoney Bearhead's activities over the preceding days

RCMP began an investigation into the death of Gregory Gannaw near Cold Lake, Alberta on September 2, 2013. The death had apparently occurred on September 1 or 2, 2013. RCMP investigations determined that Gregory Gannaw was employed in some capacity by or under Stoney Bearhead and Garrett Blackman operating a drug distribution scheme in Cold Lake. The RCMP also received information that Gregory Gannaw was beaten over the course of days and that Stoney Bearhead and Garrett Blackman then killed him on the side of a rural road using an axe and a machete. They left his body in the ditch.

After the killing, Stoney Bearhead, Garrett Blackman and at least one other travelled together to various locations, including Stoney Bearhead's parents' home. There they burned blood stained clothing. The group then drove to Drayton Valley where Stoney Bearhead left the others. The police also had information that this group had stopped numerous times to use cocaine.

Shirley Yellowbird, Stoney Bearhead's mother, testified that, two days before the police attended at her home, Stoney Bearhead's brother had picked him up at the golf course and brought him home. At that time, Stoney Bearhead was barefoot and had no belt. He was bruised and thin. He had a cut on his hand that he said was from a machete and had what he claimed was a bullet hole in his shirt. Stoney Bearhead claimed that someone had been shooting at him. His feet

were swollen and he was holding his arm as if it was injured. He was emotional, tired and hungry.

Stoney Bearhead told his mother that he had been jumped in a park. The attack, he said, involved an Asian or drug cartel. He said his attackers had dug a grave for him and that he fought them off. Shirley Yellowbird did not know whether to believe what her son told her.

Shirley Yellowbird did not believe that her son was under the influence of alcohol or drugs while he was at home but he was very depressed. He came with few clothes and was unlikely to have had drugs or alcohol with him. He said that he thought the police would be coming for him and that he did not want to go back to jail but that he would go with them. Stoney Bearhead said that, if he went to jail, he was “a goner” because the gangs were after him.

On the afternoon of September 5, 2013, Shirley Yellowbird and her husband, William Bearhead, left their son at their home and went into town to pay a bill, to get their son some clothes and to get some food. At about 7:30 p.m. their daughter, Billie Jean Yellowbird, attended at the home. Her boyfriend, Grant Rain, dropped her off and took their children with him to visit with his family. She had not seen her brother in some time and wanted to spend time alone with him. Billie Yellowbird did not want her children there because she was unsure of her brother's condition, given his history of drug abuse.

Shortly after Billie Yellowbird arrived, Csts. Verge and Hoeksema attended at the residence with a witness who pointed out a location where blood stained clothing was burned. While they were there a couple came looking for Shirley Yellowbird but they left. Billie Yellowbird and Stoney Bearhead were sitting in the living room at this point. Apparently the arrival of the vehicles startled Stoney Bearhead and he told Billie Yellowbird to find out who it was and tell them to “get the hell out” of there. She went out and waved her arms but the occupants of the vehicles did not acknowledge her presence and they left.

Billie Yellowbird testified that when she first arrived, her brother told her that he had just come to say goodbye and that he was going to kill himself. Based on her suicide awareness training, she tried to get her brother to tell her the details of his plan to commit suicide, hoping that she could then talk him out of that plan. She asked him whether, if she came on his birthday on September 11th, he would be there and he said that he didn't know. He told her that, if he had had a bottle the previous night, he would have killed himself then and suggested that he might do so during the present evening. At one point he also told Billie Yellowbird that, if the police came, he would go with them.

At 7:57 p.m. Shirley Yellowbird and William Bearhead returned but Csts. Verge and Hoeksema stopped them at the end of the driveway. When asked, they told the officers that their son was in the house when they left, which room he was sleeping in and the layout of the house. Shirley Yellowbird said that there was a firearm in the house but she thought it had no bolt or shells; and was hidden. Ms. Yellowbird also indicated that there were no phones in the house. She testified that she told the officers that Stoney was very tired and that he would come out to them.

A little later Grant Rain arrived with the children and told the officers that he had dropped off Billie Yellowbird to speak with her brother.

Billie Yellowbird testified that, at one point, she and her brother saw lights on the road in front of her parents' home and this caused her brother to panic. He hid an axe and a golf club in the couch. Stoney Bearhead went downstairs and seemed to be looking for something. She heard him yell, “Bill, I love you guys.” She then went outside onto the steps where she saw a shadow and heard movement and what she thought was a police radio. Billie Yellowbird called out to ask

who was there but got no response.

When Ms. Yellowbird went back into the house and down into the basement, she found that her brother had placed an extension cord around his neck, trying to choke himself. She pleaded with him to stop. He then took the cord from his neck and told her to leave; that he did not want her to see this. He also told her to lock the door when she left. Ms. Yellowbird went upstairs, got a sweater and left the house, locking the door behind her. She thought she left the house at about 9:25 or 9:30 p.m..

As she went down the driveway, Ms. Yellowbird demanded to know who was there and said, “I hope you guys are happy; he’s in there trying to kill himself.” She did not run because she was afraid and thought the police would come out and tackle her. As she proceeded down the driveway, she heard three “pops” which sounded to her like gunshots or slaps. She thought the police were kicking in the door and kept walking.

When Ms. Yellowbird got to the road, the police officers required her to put up her hands and they checked her for weapons. She testified that she did not know why they were there and did not trust them. They asked where Stoney was but she kept demanding to know why they were there. At that point she assumed Stoney was dead because he was going to hang himself shortly after she left and it had taken her some time to come up the driveway.

Ms. Yellowbird also testified that she looked for her boyfriend, children and parents but just saw the police. She said that she heard one officer say, “... there’s a fucking gun in there, and this dummy is going to hang himself?” Ms. Yellowbird thought it sounded like the officer was making fun of her brother and did not care. She did not feel that the police were going to help her.

II. Further Police Involvement

According to Sgt. (then Corporal) Carson Creaser, shortly after Csts. Verge and Hoeksema discovered that Stoney Bearhead had been at his parents’ residence, this information was passed on to the team commander and primary investigator in Cold Lake. They started to devise a plan for Mr. Bearhead’s arrest.

Sgt. Creaser was asked to oversee the recovery of evidence and Mr. Bearhead’s arrest. He was trained in the use of the incident management intervention model. This model is used for risk assessment and to determine the appropriate response to a perceived threat, ranging from simple communication through to lethal force.

Sgt. Creaser was aware that Stoney Bearhead was wanted for first degree murder and that he had a criminal record for manslaughter. He also considered that there was a firearm in the home, although it was reportedly inoperable. Further there was the possibility that Mr. Bearhead brought a firearm with him into the home, although he had no specific information to that effect.

The use of the Emergency Response Team (ERT) was considered but the Team was training in the Caroline area. It would take more than four hours for the Team to reach the Paul Band First Nation. Further, the Team would not be deployed unless there was confirmation that Mr. Bearhead was in the residence and Sgt. Creaser understood that Stoney Bearhead was last seen in the house at 5:30 p.m.. Even if the ERT had not been on training, it would have taken at least an hour for the Team to assemble, gear up and get underway from Edmonton.

The Yellowbird/Bearhead residence was at the end of a long driveway and could not be seen from the public road because of trees and bush. Sgt. Creaser also understood that Billie Yellowbird and Stoney Bearhead did not have access in the home to either a cell phone or a phone with a landline. Sgt. Creaser acknowledged that, at some point, members of Mr.

Bearhead's family had asked to attempt to communicate with Stoney Bearhead. Sgt. Creaser would not have permitted that to occur until the situation was under better control because of the dangers of introducing another person into a highly tense and emotional event before there was other communication with those in the house.

RCMP members were deployed in positions around the residence to isolate and contain the area. They then used cell phones to communicate because the radio system at that location was not working. Radio communications typically allow all affected members to hear. Texting by cell phone creates safety issues when the cell phone lights up in the dark or when the member is focussed on the screen. In addition the communications by cell phone might not be secure.

By about 9:35 or 9:40 p.m. RCMP members had formed a plan to proceed up the driveway in marked police vehicles and then to use a loudhailer to ask the occupants of the home to come out. Contrary to Shirley Yellowbird's testimony, Sgt. Creaser had heard from Cst. Verge that Shirley Yellowbird told Cst. Verge that Stoney Bearhead would not likely come out of the home. However, Sgt. Creaser felt that, if Billie Yellowbird would come out, she might help with information that could be used to assess the risk and deploy appropriate resources.

Just as RCMP members were about to drive down the driveway to the Yellowbird/Bearhead home, Billie Yellowbird approached on foot. There is some question as to exactly when Billie Yellowbird arrived at the end of the driveway. Cpl. (then Cst.) Brett Bignell was assigned the role of scribe and had the specific task of recording relevant times. The time he recorded for Ms. Yellowbird's arrival at the end of the driveway was 9:43 p.m. This seems consistent with Billie Yellowbird's evidence but I do note that S/Sgt. David Knibbs testified that, at 9:31 p.m., he received information that a woman was telling RCMP members that Stoney Bearhead was trying to kill himself. He confirmed that time by reference to his cell phone log. The difference of 12 minutes is not, in my view, particularly significant.

When Ms. Yellowbird arrived at the end of the driveway she was very upset. Sgt. Creaser asked her where Stoney was and she first answered that she would not tell him. Ms. Yellowbird then broke down in tears and said that Stoney was dead and that he had hung himself. Sgt. Creaser still had questions about Mr. Bearhead's condition that he felt needed to be answered before deploying officers. Csts. Verge and Hoeksma took Ms. Yellowbird to a police vehicle to obtain more information from her.

Sgt. Creaser concluded that the officers needed to take action to preserve Mr. Bearhead's life. A new plan was then created and Inspector Currie, the incident commander, was briefed on that plan by telephone at 10:03 p.m.. Sgt. Creaser was concerned that Ms. Yellowbird may have made incorrect assumptions or provided inaccurate information.

Sgt. Creaser felt that entry into the house had to be organized with a plan to deal with all contingencies so that entry could be made as safely as possible. Officers considered the possibility of some form of ambush or that Ms. Yellowbird was asked to leave the house so that she would be out of harm's way when Mr. Bearhead engaged the police. There was also the possibility of an intention to commit "suicide by cop".

At 10:09 p.m. the plan was communicated to the other officers. Three RCMP members including one with some tactical training were assigned to enter the home with a police dog. Other members were designated to approach the home in a police vehicle to take positions typically used for entries in exigent circumstances or to execute search warrants. All the members involved were equipped with body armour. They approached the house at 10:23 p.m..

Stoney Bearhead was found deceased in the basement of the home. His body was found hanging from a rafter by an extension cord around his neck. Mr. Bearhead had apparently knelt on the back of a couch to assist himself with the hanging. There was an axe and a knife found at his feet. Sgt. Creaser felt that, from the time he had the information that he needed from Ms. Yellowbird until Mr. Bearhead's body was discovered roughly 25 minutes elapsed.

III. Expert Evidence - Critical Incident Management

Supt. Terrence Michael Rocchio, Edmonton Police Service, was qualified to give expert testimony in critical incident management. Supt. Rocchio had prepared a report based on documents provided by inquiry counsel. He testified that, in the present case, police would have to consider Stoney Bearhead's violent history (his record for manslaughter and grounds to arrest for murder), indications of cocaine use and suggestions of paranoia. Officers would also have to consider that Mr. Bearhead might not come out for police and that he was possibly armed.

The first task of the officers would be to set up an inner perimeter to keep suspect contained and outer perimeter to keep others away. These steps are meant to protect the public, the officers and the suspect. Ideally a staging area or command post would be set up between perimeters.

Attempts would then be made to communicate with the subject and persuade him to come out. Since telephone contact was not an option here, the safest alternative would be a loudhailer. Officers would not be directed to enter the house absent exigent circumstances because of the high risk. The officers would not know the inside of the house while the suspect would. If someone other than the suspect came out of the house, as in this case, officers should stop the execution of the plan to get more information from that person.

Even with exigent circumstances a plan for entry would have to be developed. For example, the following questions would have to be addressed:

- Who is going to make initial entry?
- Who is going to have the capacity to use lethal force?
- Who would have non-lethal options?
- Would a police dog be used?
- Do officers have the right equipment?
- Has the building layout been determined?
- Where is the suspect in the building?
- How will officers deal with any weapons the suspect might have? Even if the suspect does not have firearms, the officers have to be concerned about other weapons.
- Is there an ambulance on scene?

Supt. Rocchio testified that he would not allow a family member into the inside perimeter absent appropriate consultation and probably not even then. Before any communication between the suspect and his family, there would have to be consultation with the negotiation team and,

ideally, a mental health expert. The family contact then would probably be by phone or recorded message. He would not allow a family member to communicate with the suspect before the police had communicated with him. Communications with a suspect in such a crisis must be conducted in a controlled manner to avoid escalation.

IV. Medical Examiner

Dr. Bernard Bannach, Assistant Chief Medical Examiner and expert in forensic pathology, examined Stoney Bearhead's body on September 6, 2013 at the Chief Medical Officer's office in Edmonton. He determined that an external examination of the body would allow him to ascribe the cause of death without an internal examination.

Dr. Bannach observed a ligature, an electrical cord with various knots in it, around Mr. Bearhead's neck. The ligature left impressions on the neck typical of hanging. The mechanism of death in such cases is most commonly compression of blood vessels in the neck and, in particular, the arteries that supply blood to the head. Once the blood vessels are blocked unconsciousness occurs within five to 15 seconds. In most cases death would then ensue within two to five minutes. Dr. Bannach concluded that the cause of Mr. Bearhead's death was hanging and the manner of death was suicide.

Recommendations for the prevention of similar deaths:

Section 53(2) of the *Fatality Inquiries Act* provides that a report "may contain recommendations as to the prevention of similar deaths." Justice Kent observed in *Silverberg v. Landerkin*, 1998 ABQB 1105, para. 13:

The *Fatality Inquiries Act* does not restrict a judge in terms of the recommendations that he or she makes to prevent future deaths. However, the most effective recommendations that an inquiry judge can make are those that deal with the specific facts surrounding the death. ... Moreover, when the recommendations go beyond the facts which can be directly linked to the death, there is a greater risk that the judge will exceed his or her jurisdiction which is to make recommendations to prevent future deaths.

Written submissions for Stoney Bearhead's family include the following: "The priority of RCMP focussed on the containment of the deceased and safety of its members, while the family's priority was the safety of their son and brother." I would add that the containment of the deceased was for the purpose of protecting the public, including the local community. I am satisfied as well that the RCMP officers were aware of their obligation to protect Stoney Bearhead's life.

I do not overlook the tragedy that Stoney Bearhead's family suffered. One can only imagine the anguish of the family as they waited to hear what had happened to their son and brother and then to find that he had died by his own hand. I do not minimize the need for police officers to keep family informed in this type of crisis or to be understanding of their feelings. However, the recommendations that I am empowered to make are only those that concern the prevention of similar deaths.

The following are the recommendations proposed for the Yellowbird/Bearhead family and my findings respecting those suggestions:

1. Once containment [is] effected in a rural/First Nation setting, a loudhailer [should be used] without delay to identify the RCMP being present and to communicate with the suspect where there is no other form of communication available.

The family submits that, *inexplicably* a loudhailer was not used as suggested by Supt. Rocchio. The evidence clearly explained that the original plan to approach the house and use a loudhailer was abandoned because Billie Yellowbird came from the house and, based on the information that she provided, the plan was changed to enter the house to attempt to prevent Stoney Bearhead from committing suicide. Once the decision was made to enter the house, the use of a loudhailer was no longer necessary. I am satisfied that the use of a loudhailer may be appropriate in many cases but will depend on the circumstances of any given crisis.

2. A loudhailer may be available and utilized by family members at a similar scene under the supervision and control of the RCMP who can control the loudhailer through electronic means.

It is submitted for the family that having a family member communicate with Stoney Bearhead was a viable option. Supt. Rocchio's opinion, which I accept, was that a family member using the loudhailer to speak with Stoney Bearhead would create the risk of escalating tension. Such a communication would only occur under controlled circumstances after communication between the police and the subject, if at all.

3. That RCMP maximize the use of available witnesses through an interview at the earliest opportunity to ascertain all necessary information on a subject, without the foregoing to location, useable firearms, state of health, prior whereabouts if known, etc..

It is suggested that, if RCMP members had obtained more information, particularly from Stoney Bearhead's mother, they would have acted differently. They would have been aware of her beliefs that the firearm in the home could not be used; that her son had not indicated to her that he was suicidal; that he was not in good physical or mental condition; that there was no vehicle available to him; that Stoney Bearhead could not have travelled by foot; that he had no access to drugs while at the home; and that he had no knowledge of the pending murder charge.

There is significant evidence that bears on these suggestions but I would first observe that, regardless of Ms. Yellowbird's desire to provide accurate information, it would be a mistake for a police officer not to recognize that her perceptions were made through the lens of parental love. The information should obviously not be disregarded but would have to be weighed with that in mind. It should also be remembered that the officers only had a need to proceed urgently once they heard from Billie Yellowbird that her brother was committing suicide. Absent exigent circumstance, the risks arising from Stoney Bearhead's arrest would be minimized by proceeding carefully and methodically. Obviously, it would often also be important to proceed in secrecy to effect the capture of a murder suspect.

Respecting the particular information that could have been obtained from Shirley Yellowbird, the following needs to be considered:

- Whether or not Shirley Yellowbird was aware that her son was suicidal, this fact was obvious from what Billie Yellowbird told the officers.
- The officers were also aware that Shirley Yellowbird indicated that the firearm would not be useable. They would not, however, be able to rule out altogether the possibility of a useable firearm being available.

- Further, information from Shirley Yellowbird that her son was not in good physical or mental condition or possessed of a firearm would not eliminate the risk of attempted flight or the use of a weapon other than a firearm, even if the weapon was used only to attempt “suicide by cop”. The evidence did not establish that Stoney Bearhead was incapable of physical resistance prior to his suicide.
- Given Stoney Bearhead’s history of drug abuse, it would not have been wise to assume that he did not have access to drugs in his parents’ home, even when his parents believed he had no drugs.
- A significant time had passed since Shirley Yellowbird had seen her son.

It seems to me that police officers faced with a crisis like the present one will inevitably want to obtain as much useful information as reasonably possible to create a safe plan. What they need to do to obtain that information will depend on the circumstances of the particular case. I do not believe that any recommendation would be useful on this point.

4. The RCMP utilize available Aboriginal/First Nation Officers or local detachment members to liaise with community members who may have a relationship with family members in similar situations to facilitate the transmission of necessary information to the RCMP for the safety of both the suspect and the RCMP.

The family’s submissions correctly point out the importance of service by Aboriginal RCMP members in Aboriginal communities and the need to enhance trust of the police through regular contact between Aboriginal officers and members of the community. The question that I must ask first, however, is whether greater involvement of Aboriginal members in the resolution of the present crisis might have prevented Stoney Bearhead’s death. I am not satisfied that it would have.

Once Billie Yellowbird provided the necessary information to RCMP members, which was well before the conclusion of her interview, members were able to formulate and execute a plan which was informed by the probability that Stoney Bearhead was attempting to commit suicide. I am not prepared to conclude that the use of Aboriginal RCMP members would have made a difference in the outcome here or, necessarily, in any similar case.

5. Upon the determination of exigent circumstances by the RCMP, to implement action including entry into a containment situation to address the exigent circumstances should be carried out as soon as possible.

While it would seem obvious that exigent circumstances create the need to move as quickly as possible, police officers must not act without regard to the risks to the public, the subject and the officers. Even in exigent circumstances those risks need to be addressed.

In this case the material time, is the period beginning with the receipt of reliable information from Billie Yellowbird that her brother was committing suicide until he was found. I repeat, until police became aware of a possible suicide attempt, the risk would be minimized by proceeding carefully and methodically. Here the alternative plan was created and executed as quickly as could reasonably be expected.

6. The development of a Suicide Policy and Procedure for dealing with high risk suspects including “suicide by cop” scenarios in a containment situation to

successfully extract the suspect. This may include the engagement of Mental Health professionals to [defuse] a similar situation.

The circumstances in this case do not demonstrate the need for policy respecting suicide by high risk subjects. I see nothing in the evidence that suggests that the officers would or should have acted differently based on such a policy. I note that Counsel for the RCMP has provided material from the RCMP Tactical Information Manual – ch. 3.3. Crisis Negotiation Operations which provides for use of “medical professionals, e.g. psychologists, psychiatrists, counselors”. No doubt, in appropriate circumstances, that type of assistance would be invaluable.

In oral submissions, counsel for the Yellowbird/Bearhead family mentioned two additional possible recommendations: the improvement of the radio communications system and the development of a speedier system to obtain a warrant to enter a building to effect an arrest.

As to the first, I understand that the Alberta First Responders Radio Communication System became operational on July 1, 2016. Hopefully, this new system provides better radio communication for police officers. In any event, I would not be prepared to find that the problems with radio communications had anything to do with Stoney Bearhead’s death.

As to the ability to obtain a warrant more speedily, the evidence does not indicate that this was a cause of delay from the point when police became aware that Stoney Bearhead was attempting to commit suicide. Again, it was only then that it became necessary or advisable to act quickly.

Although I have decided not to make recommendations, I want to make it clear that I accept that the members of the Yellowbird/Bearhead family are sincere in their belief that the actions they recommend might prevent deaths similar to that of their son and brother. However, I am mindful of the comments of Justice Kent cited above – the most effective recommendations deal with the specific facts surrounding the death and if I go beyond those facts there is a greater risk that I would exceed my jurisdiction. In my view, the evidence in the Inquiry does not justify any recommendation. While there are undoubtedly lessons that the RCMP should take from the handling of this incident, the evidence simply does not point to any type of policy or action that would help prevent similar deaths.

DATED June 2, 2017,

at Stony Plain, Alberta.

“K. E. Tjosvold”

A Judge of the Provincial Court of Alberta