

**REPORT TO THE ATTORNEY GENERAL  
PUBLIC INQUIRY  
THE FATALITY INQUIRIES ACT**

CANADA  
PROVINCE OF ALBERTA

WHEREAS a Public Inquiry was held at The Law Courts  
in the City of Edmonton  
(City, Town, etc.) (Name of City, Town, etc.)  
on the 8th, 9th, & 10th day<sup>s</sup> of September, 1992 (and by adjournment  
on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_), before  
Judge David J. Tilley, a Provincial Court Judge.

A jury  was  was not summoned and an Inquiry was held into the death of  
KENNETH WAGENSVELD 20  
(Name in Full) (Age)

of Edmonton and the following findings were made:  
(Residence)  
Date and Time of Death approximately 10:06 p.m. on September 6, 1991  
Place Edmonton

Medical Cause of Death ("cause of death" means the medical cause of death according to the International 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 Inquiries Act, Section 1(d))  
Blunt Cranial Trauma

Manner of Death ("manner of death" means the mode or method of death whether natural, homicidal, suicidal, accidental or undeterminable — The Fatality Inquiries Act, Section 1(g))  
Officially classed as accidental but closer to being homicidal in that  
the death was caused by the criminally negligent operation of a motor vehicle.

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### CIRCUMSTANCES UNDER WHICH DEATH OCCURRED

The deceased, Kenneth Wagenveld, was operating a vehicle northbound on 97 Street when the vehicle entered the intersection at 132 Avenue and was struck broadside from the left by a vehicle which ran a red light at that intersection and collided with the deceased's vehicle at a high rate of speed.

The driver of the offending vehicle was under the influence of cocaine and his erratic driving was first noted by a civilian in the area of 109 Street and 111 Avenue who reported a suspected impaired driver to police at 9:28 p.m. on the date in question. That report was made by cellular telephone.

The police first noted the accused's vehicle in the vicinity of 116 Street and 111 Avenue. After following the vehicle from that location to the vicinity of 124 Street and 116 Avenue, and after having observed the offending driver commit two red light violations, Cst. Demarco attempted to stop the offending vehicle by activating the emergency equipment on his police van. It first appeared that the driver was going to stop and, indeed, Cst. Demarco reported to police communications that the vehicle was stopping.

The offending vehicle travelled most of the way around one full city block at slow speeds before abruptly pulling away and then heading north on 124 Street and then east on 118 Avenue. A high speed pursuit then began.

Without detailing every movement of the offending vehicle, suffice it to say that the high speed pursuit covered approximately 11 kilometres and proceeded, generally, in a north-easterly direction.

The offending vehicle was travelling east on 127 Avenue and then north on 66 Street

when it collided with a trailer being towed by a truck at Fort Road. The pursued vehicle then started to proceed north in the southbound lanes of 66 Street causing the drivers of oncoming vehicles to have to take evasive action. The high speed pursuit was then terminated at 66 Street and 132 Avenue.

Thereafter, numerous police vehicles employed techniques such as paralleling and grid searching in an attempt to keep the vehicle in view without "spooking" the suspected impaired driver into a continued or new pattern of extremely dangerous driving.

Constable Coughell was travelling westbound on 137 Avenue at 90th Street when he observed the accused's vehicle turn left into Northtown Mall. The accused then headed east in Mall traffic toward the 93 Street exit.

The accused waited his turn to exit the Mall and then went east on 135th Avenue, which becomes 90th Street. The accused stopped at a red light, proceeded south to 127th Avenue and stopped at a stop sign.

The accused then went west on 127th Avenue, initially travelling at the speed limit, in traffic but started speeding up at 101 Street. At the time the accused turned to go west on 127th Avenue off 90th Street, Cst. Coughell was approximately 3 blocks behind the offending vehicle with about two cars between that vehicle and the police vehicle.

Cst. Coughell was asked why he did not use certain pursuit techniques to try to stop the offending vehicle while it was being driven in a normal manner. For example, he was asked about a "rolling block". He explained that that technique requires three police vehicles to accomplish (his was the only vehicle in the immediate area at the time) and is rarely used in the city.

He was asked about the use of a spike belt. Apart from the fact that he did not have one, Cst. Coughell noted that the accused's movements were random and unpredictable. It would have been impractical to attempt to lay down a spike belt in the circumstances.

Cst. Coughell was also asked why did not attempt to shoot out the tires of the offending vehicle or attempt to ram it with his police vehicle. He explained that either maneuver is inherently dangerous in moving traffic and that explanation accords with common sense.

Cst. Coughell was properly concerned, as well, that if he came too close to the offending vehicle he could be spotted by the accused who would then be "spooked" into speeding up. In his experience, approximately 90% of drivers in similar circumstances "ditch" the vehicle and flee on foot. Cst. Coughell had a tracking dog with him and believed he had a good chance of apprehending the driver if he fled on foot.

The only other police vehicle that might have had an opportunity to stop the accused's vehicle was that operated by Cst. Walkenden. In the earlier stages of the incident at 9:44 p.m., Cst. Walkenden had positioned his police vehicle so as to block the eastbound lanes of travel on 127th Avenue and 73rd Street. As a result of radio communications, Cst. Walkenden correctly anticipated that the accused might be headed in his direction. He saw the accused's vehicle heading eastbound on 127 Avenue when it was about 400 metres to the west of him. It was travelling at an estimated speed of 130 k.p.h. with its lights out.

Cst. Walkenden did not believe he had enough time to safely abandon his vehicle and rather than allowing his vehicle to be struck broadside by a vehicle bearing down on him at 130 k.p.h., he backed his police vehicle out of the way and let the offending vehicle pass. Mr. Jack Wagenveld was not critical of Cst. Walkenden for making that choice under the circumstances.

In general, and once the high speed pursuit was terminated, the police were attempting to keep track of the accused's vehicle in the hope that the driver would abandon the vehicle, flee on foot and then be apprehended.

In my view, the initial pursuit had become too dangerous and was wisely terminated at the point it was in fact terminated. The tactic worked for some time and some distance during which the accused drove in a normal manner before he inexplicably increased his rate of speed and again started driving erratically. He was clearly travelling at a very excessive rate of speed when the fatal collision occurred.

Although it is not my function to find fault or blame for these tragic deaths, I feel constrained to comment on the submissions made by Mr. Jack Wagenveld to the effect that the police failed to "do something" to prevent the fatal collision.

In my view this tragic occurrence leaves the police in a position where they are "damned if they do and damned if they don't". By that I simply mean that they would have been properly and severely criticized by the public had they continued the high speed pursuit and had fatalities or serious injuries occurred as a direct result of that continued pursuit. Mr. Wagenveld was critical of the police for not attempting to ram the pursued vehicle or shooting at it but either action would have been as potentially dangerous as the high speed pursuit itself and I cannot be critical of the police for declining to employ these theoretically possible methods. Indeed, I believe they were wise not to do so. I find that The Edmonton Police Service acted wisely and responsibly throughout.

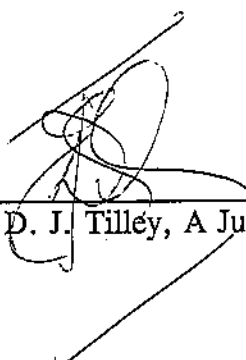
I invited Mr. Jack Wagenveld to suggest any recommendations he thought I might make in order to prevent similar deaths in the future. He suggested that I recommend that the police

employ a specially trained chase co-ordinator, that a special chase squad be created and that they employ special equipment such as high-powered chase vehicles in order to prevent similar tragedies. With respect, and based on the facts of this case, I cannot make those recommendations but suggest that they be passed on to the Police Commission for its consideration.

### RECOMMENDATIONS FOR PREVENTION OF SIMILAR DEATHS

In conclusion, and based on the considerable body of evidence presented to me, I find that even after considerable thought and deliberation, I am unable to make any recommendations to prevent similar deaths in the future.

DATED THIS 2<sup>nd</sup> day of March, 1993.



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Judge D. J. Tilley, A Judge of the Provincial Court of Alberta