

Release Date: June 4th, 2007



IN THE PROVINCIAL COURT OF MANITOBA

IN THE MATTER OF: ***THE FATALITY INQUIRIES ACT***

AND IN THE MATTER OF: **RACHEL LORI WOOD, Deceased**
(DATE OF DEATH: October 5, 2003)

APPEARANCES:

Counsel to the Inquest: Ms. Breta Passler

Counsel for the Nisichawayasihk Cree Nation: Ms. Kimberley Gilson

Counsel for the Federal Government: Mr. Joel Katz

For the Wood Family: Mrs. Judith Ann Wood

Release Date: June 4th, 2007



MANITOBA

The Fatality Inquiries Act

Report by Provincial Judge on Inquest

Respecting the death of: RACHEL LORI WOOD

An inquest respecting the said death having been held by me on November 20th, 21st, 22nd, 23rd, 28th and 29th, 2006 at Nisichawayasihk Cree Nation (Nelson House) in Manitoba, I hereby report as follows:

The name of the deceased is **Rachel Lori Wood**.

At the time of her death Rachel Lori Wood was 22 years old and living at Nisichawayasihk Cree Nation.

In the early morning hours of October 5th, 2003 Ms. Wood was arrested by the Nelson House Police for “disturbing the peace” and lodged in their cells. Less than an hour later she was discovered hanging from the bars of her cell door. Attempts at resuscitation were unsuccessful. A medico-legal autopsy confirmed that the cause of death was asphyxiation due to hanging. The manner of death was suicide.

I hereby make the following recommendations, as set out in the attached schedule.

Attached and forming part of my report is a schedule of all exhibits required to be filed by me.

DATED at the City of Thompson, in Manitoba, this 29th day of May, 2007.

Original signed by Judge M.P. Thompson, ACJ
Murray P. Thompson Associate Chief Judge
Provincial Court of Manitoba

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Introduction

[1] The deceased, Rachel Lori Wood, died while in custody at the Band Constable Police Station at Nisichawayasihk Cree Nation (Nelson House) in the early morning hours of October 5, 2003. Ms. Wood had spent the evening and night before socializing with friends in Thompson and later at a house party in Nelson House. Over the course of that night she had become highly intoxicated. She argued with her boyfriend and became quite distraught. Her close friends became alarmed when she appeared to be preparing to hang herself. They called the local Band Constables to intervene, believing she would be safe if lodged. She was detained for breach of the peace and lodged in a holding cell at the local Police Station at approximately 7:30 am. At about 8:15 am she was found hanging by a pair of jeans around her neck; one of the legs was tied around her neck and the other to the bars of the cell door. A resuscitation attempt was unsuccessful.

[2] The immediate cause of her death is not in issue. As determined by the medical examiner, (Exhibit 1), it was the result of asphyxiation that occurred when she hung herself with her blue jeans from the cell door in the Band Constable Police Station. The circumstances which contributed to her death are more complicated. A series of systemic failures, rather than one specific occurrence, failed to successfully prevent her suicide.

Scope of the Inquest

[3] In accordance with Section 19 (3) of *The Fatality Inquiries Act*, an inquest is mandatory as Ms. Wood died while in police custody. A copy of the relevant section is set out below:

Inquest mandatory

19(3) Where, as a result of an investigation, there are reasonable grounds to believe

(a) that a person while a resident in a correctional institution, jail or prison or while an involuntary resident in a psychiatric facility as defined in *The Mental Health Act*, or while a resident in a developmental centre as defined in *The Vulnerable Persons Living with a Mental Disability Act*, died as a result of a violent act, undue means or negligence or in an unexpected or unexplained manner or suddenly of unknown cause; or

(b) that a person died as a result of an act or omission of a Peace Officer in the course of duty;

the chief medical examiner shall direct a provincial judge to hold an inquest with respect to the death.

[4] On June 1, 2004, an inquest was called by the Chief Medical Examiner into the death of Rachel Lori Wood to address the following:

1. To determine the material circumstances surrounding her death;
2. To determine what, if anything, can be done to prevent similar deaths from occurring in the future.

[5] Section 33(1) of *The Fatality Inquiries Act* sets out the responsibilities of the presiding judge after the completion of an inquest:

Duties of provincial judge at inquest

33(1) After completion of an inquest, the presiding provincial judge shall

(a) make and send a written report of the inquest to the minister setting forth when, where and by what means the deceased person died, the cause of the death, the name of the deceased person, if known, and the material circumstances of the death;

(b) upon the request of the minister, send to the minister the notes or transcript of the evidence taken at the inquest; and

(c) send a copy of the report to the medical examiner who examined the body of the deceased person;

and may recommend changes in the programs, policies or practices of the government and the relevant public agencies or institutions or in the laws of the province where the presiding provincial judge is of the opinion that such

changes would serve to reduce the likelihood of deaths in circumstances similar to those that resulted in the death that is the subject of the inquest.

[6] In addressing those responsibilities, the presiding Judge must also be reminded of Section 33(2) (b) of that same Act which states:

In camera evidence and culpability

33(2) In a report made under subsection (1), a provincial judge ...

(b) shall not express an opinion on, or make a determination with respect to, culpability in such manner that a person is or could be reasonably identified as a culpable party in respect of the death that is the subject of the inquest.

[7] The issue of jurisdiction of a provincial inquest with respect to a death occurring on First Nation Lands has only recently been settled in Manitoba. Although First Nation Lands and First Nation peoples generally fall under Federal jurisdiction, the Inquest report into the death of Glenn Fiddler, a decision of my colleague and brother Judge, Sidney B. Lerner, clarifies the scope of a provincial inquest involving First Nation Lands, peoples and Federal government departments and agencies. As this is a complex issue which shapes the scope and recommendations of an inquest such as this one, a review of Judge Lerner's September 12th, 2005 decision is helpful. The relevant portion is set out below:

[285] In the time period between the date on which the jurisdictional concern was raised and formal submissions were ultimately made to the Inquest, the position of counsel to the Inquest evolved. The ultimate position of counsel to the Inquest was that there is in fact no threshold constitutional impediment to the convening of this Inquest, nor its continuation. The position of counsel in this regard is confirmed, inter alia, by the decision of the Supreme Court of Canada in *Cardinal v. Alberta (A.G.)*, [1974] S.C.R. 695, which stands for the principle that First Nation lands are

not enclaves of exclusive Federal jurisdiction, and provincial laws will apply unless they relate to matters integral to Indian status or lifestyle, or to the extent that they affect the use or management of First Nations lands.

[286] I also had the benefit of receiving the submission of the Federal Crown with respect to this aspect of the jurisdictional issue. The Federal Crown agreed that there is in fact jurisdiction for this Inquest to be convened, and to hear certain evidence with respect to the death of Glenn Fiddler.

[287] In other words, it is clear, and I found, that this Inquest has the jurisdiction to hear evidence with respect to a death occurring on First Nation land, as it had already done in part when the initial jurisdictional issue was first raised, and with respect to the circumstances of the death that occurred in this case; that is, with respect to the circumstances of the arrest and detention of Glenn Fiddler by Band Constables at Wasagamack First Nation, the conditions of the jail cell in which Mr. Fiddler was kept, the fire that ultimately claimed his life and its cause, as well as the unsuccessful efforts made to rescue him from that fire.

[288] However, both the Federal and Provincial Crown took an additional position with respect to the jurisdiction of a provincially convened Inquest as it relates to a subject matter under Federal jurisdiction, which I would summarize as follows: That an Inquest which derives its authority from provincial statute (as does this Inquest) may not make any inquiry, or recommendation, with respect to the rules, policies, procedures, management, organization, administrative decisions, and/or reasons for administrative decisions, of any Federal Department or Agency.

[289] The Federal Crown took its position in this regard from the decision of the Supreme Court of Canada in *Quebec (Attorney General) v. Canada (Attorney General)* [1979] 1 S.C.R., commonly referred to as “*Keable No.1*”, per Pigeon J. for the majority:

I thus must hold that an inquiry into criminal acts allegedly committed by members of the R.C.M.P. was validly ordered, but that consideration must be given to the extent to which such inquiry may be carried into the administration of this police force. It is operating under the authority of a Federal statute, the Royal Canadian Mounted Police Act, (R.S.C. 1970, c. R-9). It is a branch of the Department of the Solicitor General, (Department of the Solicitor General Act, R.S.C. 1970, c. S-12, s. 4). Parliament's authority for the establishment of this force and its management as part of the Government of Canada is unquestioned. It is therefore clear that no provincial authority may intrude into its management. While members of the force enjoy no immunity from the criminal law and the jurisdiction of the proper provincial authorities to investigate and prosecute criminal acts committed by any of them as by any other person, these authorities

cannot, under the guise of carrying on such investigations, pursue the inquiry into the administration and management of the force. The doctrine of colourability is just as applicable in adjudicating on the validity of a commission's term of reference or decisions as in deciding on the constitutional validity of legislation. As Viscount Simon said in *Attorney General for Saskatchewan v. Attorney General for Canada* [[1949] A.C. 110.], (at p. 124) "you cannot do that indirectly which you are prohibited from doing directly".

[290] Issues had, in fact, arisen in this Inquest that touched upon administration and management involving Federal Departments and Agencies; inter alia: the identification of Federal codes, regulations and standards that are applicable in respect of both buildings and fire prevention in First Nation reserves and at Wasagamack First Nation; clarification of the roles of the relevant Federal agencies or departments and Band Council respecting fire protection and inspection on First Nation Reserves; the role of Federal fire authorities with respect to inspection at Wasagamack First Nation specifically; and the funding, monitoring, and supervision of Band Constables and the Fire Department at Wasagamack First Nation.

[291] Given the above-noted finding with the constitutional issue to be determined in this case was no longer the constitutional validity of this Inquest per se, but rather the breadth of the inquiry that could be made in the course of the Inquest. In that regard, the Federal Crown also took a position with respect to compellability of witnesses employed by Federal Departments or Agencies, which I would summarize as follows:

A provincially constituted Inquest cannot compel the attendance of representatives of the Federal Crown to give evidence at this Inquest; that is, that there is no statutory authority for this Inquest to subpoena witnesses who would be called to give evidence in their capacity as representatives, or employees, of the Federal Crown/Government.

[292] The Federal Crown again took its position in this regard from the decision of the Supreme Court of Canada in "*Keable No.1*", per Pigeon J. for the majority: I do not find it necessary to review at great length the numerous authorities cited on the fourth constitutional question. Because, at common law, a commission of inquiry has no power to compel the attendance of witnesses and to require the production of documents, any jurisdiction for such purposes depends on statutory authority, and it seems clear that provincial legislation cannot be effective by itself to confer such jurisdiction as against the Crown in right of Canada.

[293] However, the Federal Crown also took the position that it was prepared to volunteer certain assistance to the Inquest, through Federal witnesses, as follows: Clarification of the existing roles of the relevant Federal agencies or departments

and Band Council respecting fire protection and inspection services on First Nation reserves; identification and explanation of codes, regulations and other standards that are applicable in respect of both buildings and fire protection on First Nations reserves and Wasagamack particularly; and clarification of the respective responsibilities of the relevant provincial and Federal agencies or departments and Band Council with respect to (a) and (b) above.

[294] The position of the Federal Crown in this regard was further clarified in the course of submissions to the Inquest on September 9, 2004. The Federal Crown agreed that its witnesses would also testify as to specific acts of its agents vis a vis Wasagamack First Nation, to the extent that this evidence did not enter into the areas set out in the summary of the Federal Crown's position above, and which areas may be generally described as involving the administration and management of Federal Departments and Agencies. Therefore, the Federal Government made its participation and cooperation in this Inquest contingent on the condition that no inquiry is made with respect to the administration and management of its Departments and Agencies, while agreeing that its witnesses may testify as to the specific acts of its agents, to the extent that this evidence did not enter into the aforementioned areas. Federal counsel took the position that Federal witnesses were prepared to testify, for example, both as to the nature of fire codes applicable at Wasagamack First Nation and whether inspections pursuant to those codes were conducted. If certain inspections were not conducted, Federal witnesses were prepared to testify as to the rationale for same, to the extent that such evidence would not intrude into the areas of administration and management of the Federal Department or Agency.

[295] As noted, both counsel for the Federal and Provincial Crown were ad idem on this aspect of the jurisdictional limitation of this Inquest. Both counsel recommended that the Inquest proceed on the basis of the inquiry proposed by counsel for the Federal Crown.

[296] Mr. Barga, as counsel for Wasagamack First Nation, also submitted a brief on this issue: Mr. Barga's submission, on behalf of Wasagamack First Nation, may be summarized as follows: that there is provincial jurisdiction to conduct this Inquest, and that the Inquest had coercive investigatory powers to compel the evidence of Federal witnesses.

[297] Having considered the submissions of counsel, as well as the decision of the Supreme Court of Canada in "*Keable No. 1*", I accepted the position of the Provincial and Federal Crown that this Inquest lacked jurisdiction to compel evidence from Federal witnesses in their capacity as representatives of the Federal

Crown. In other words, although witnesses employed by the Federal Crown may be compelled to give evidence in a proceeding with respect to matters that do not involve their positions as Federal employees (for example, as witnesses in a personal capacity, or in the course of a criminal proceeding,) they may not be compelled by a subpoena issued by a Provincial authority to give evidence specifically directed at their role as representatives of the Federal Crown. However, notwithstanding the lack of compellability of representatives of the Federal Crown in their capacity as such, the Federal Crown may, in certain circumstances, voluntarily provide such witnesses and evidence to a Provincial Inquiry.

[298] Given my findings re the issue of compellability, I concluded that given the circumstances described above, I did not have the ability to compel Federal evidence in the present proceeding, and that as a result the evidence I would hear with respect to the involvement of Federal Departments and Agencies in this matter would of necessity be limited to that which the relevant Federal agencies and departments were prepared to provide voluntarily. Therefore, in order to obtain all available and relevant evidence that would shed light on the material circumstances of the death of Glenn Fiddler, as per the mandate of this Inquest under s. 33 of *The Fatality Inquiries Act*, this Inquest was constrained to hear evidence from Federal witnesses on the basis of the conditions set out by counsel for the Federal Government. Counsel were advised that the Inquest would not, however, be fettered in its fact-finding role with respect to witnesses who were compellable to the extent of Provincial jurisdiction, and which would involve consideration of evidence from those compellable witnesses with respect to all acts or omissions that may be found to form part of the material circumstances of Mr. Fiddler's death.

[299] Following the interim decision with respect to the jurisdictional issue, witnesses from the Federal departments did voluntarily attend the Inquest to give their evidence. However, notwithstanding the initial position taken by counsel with respect to the limits that would be placed on their evidence, the Federal witnesses without exception provided full and complete evidence with respect to all aspects of their respective departments involvement in this matter, including the policy, procedure, and decision-making of those departments as it related to the subject matter of this Inquest. The Inquest received this evidence pursuant to its role, under s. 33 of *The Fatality Inquiries Act*, to determine the material circumstances surrounding the death of Glenn Fiddler.

[300] Given the noted development with respect to the evidence actually provided

by Federal witnesses at the Inquest, I have restricted the jurisdictional decision in this matter to the two issues that ultimately required the decision of the Court: the first, the issue of compellability of Federal witnesses at a provincial inquiry, is set out above.

[301] The second issue is the nature of the recommendations that may be made as the result of a provincial inquiry. Subsection 33(1) of *The Fatality Inquiries Act* states, in part:

33 (1) After completion of an inquest, the presiding provincial judge.... may recommend changes in the programs, policies or practices of the government and the relevant public agencies or institutions or in the laws of the province where the presiding provincial judge is of the opinion that such changes would serve to reduce the likelihood of deaths in circumstances similar to those that resulted in the death that is the subject of the inquest.

The Fatality Inquiries Act, as noted, is enacted by the provincial government, and the reference in section 33 to recommendations for change in the programs, policies, and practices of “the government” is clearly a reference to the provincial, and not Federal, government. As well, the doctrine of inter-jurisdictional immunity (see *Stoney Creek Indian Band v. British Columbia*, [1999] 1 C.N.L.R. 192) would also preclude an inquiry created by provincial legislation from making recommendations addressed specifically to a Federal undertaking. As a consequence, I find that a Provincial Judge presiding at a provincial Inquest is without jurisdiction to make recommendations to the Federal government specifically directed to the policies, procedures, and management of Federal departments and agencies.

[302] However, a provincial Inquest does have the jurisdiction to make inquiries into the material circumstances of the death of one of its citizens, including, as noted above, a death occurring on First Nation land. While there is a jurisdictional limitation with respect to the nature of the recommendations that may be made as a result of that inquiry, it does not restrict the fact finding aspect of the inquiry. Similarly, the jurisdictional limitation does not prevent the inquiry from identifying, without recommendation, the problems or deficiencies within Federal departments and agencies that may have formed a part of the material circumstances of death. It remains within the purview of the Federal government to determine what action it will take as a result of the findings of the provincial inquiry in that regard.

This principle informs the recommendation portion of this report.

[8] I adopt the reasons of Judge Lerner as set out above, and am guided by them in defining the scope of this inquest.

[9] The Fatality Inquiry regarding the October 5, 2003 death of Rachel Lori Wood was held for six days those being November 20th, 21st, 22nd, 23rd, 28th and 29th, 2006 at Nisichawayasihk Cree Nation.

[10] Formal standing, or the ability to ask questions and make formal submissions, was granted to the following parties: Nisichawayasihk Cree Nation, the Federal Government of Canada and to the Wood family. I was ably assisted by counsel to the Inquest, Ms. Breta Passler, and in turn by the Inquest Coordinator Betty Owen, whose assistance was greatly appreciated. I thank the Federal Government's counsel Mr. Joel Katz for his cooperation in volunteering a useful Federal witness to the Inquest. The closing submission of counsel for Nisichawayasihk Cree Nation, Ms. Kimberley Gilson was very helpful. The assistance of Rachel Lori Wood's mother, Judith Ann Wood, at the Inquest kept us focused on the issues of importance in a way that could not be duplicated by a lawyer. I thank her for her thoughtfulness and patience throughout this process. I also thank all of the witnesses and all other contributors who gave of their time, effort and emotion in such a tragic and difficult case.

[11] A total of 13 witnesses were called and numerous documents were filed as exhibits. The Inquest hearings concluded on November 29th, 2006.

Witnesses called at the Inquest:

WHAT FOLLOWS IS A SUMMARY OF THE TESTIMONIAL EVIDENCE CALLED AT THE INQUEST, IN ORDER OF APPEARANCE.

Judith Ann Wood

[12] The witness is the mother of the deceased, Rachel Lori Wood. Mrs. Wood testified as to the background of her 22 year old daughter. She described her daughter as a mother of two beautiful children and having one sister. She told us how special and thoughtful Rachel was and how she respected everyone. She would never hurt anyone. She was a generous person who did not value material possessions. She spoke of her as being a person who would bring strangers to her mother's home when they simply needed a meal. She loved children and hoped to find employment working with children. Her dream was to go to law school. She had collected law books to study and read. She told us that the loss of Rachel was not only a big loss for her, family and friends, but for the community. Rachel had a lot to give and she will be greatly missed.

Corporal Douglas Spencer

[13] The witness is an RCMP member currently stationed at Charlottetown, PEI. Between 2002 and 2006 he was posted to The Pas detachment as the forensic identification officer. Corporal Spencer was called at 9:20 am on October 5th, 2003 and attended the scene at 5 pm. He photographed and documented the scene. He presented

Exhibit No.'s 4, 5 & 6, a photograph index, a poster size plan drawing of cell area and five separate booklets of photographs of the scene and body respectively. He testified as to the state of the Band Police Station and holding cells. Deficiencies that he photographed and noted included:

- A general lack of cleanliness – the cells were filthy;
- The only closed circuit TV camera in the Police Station viewed the booking area, the front counter and main entrance and had no recording mechanism;
- Exposed wiring; no switch plates on the hallway light switch;
- A large jug of bleach in plain view;
- A metal gate preventing access to the basement stairs was secured shut by a screwdriver;
- Exposed plumbing and pipes in the holding cells;
- No firefighting equipment;
- Cells were marked with soot that appeared to have come from lighters;
- Cell doors were made of vertical and horizontal bars;
- Cell doors were secured by padlocks all of which used different keys;
- Cells were not clearly numbered;
- Cells were not visible from the guard desk and no video camera was present in the cell area;

[14] Corporal Spencer testified that in his 17 years in the RCMP and while at four different detachments, he never seen cell doors like these ones before. These cell doors, with vertical bars and horizontal rungs, provided an easy hanging, or ligature point. He advised that RCMP cell doors are solid steel doors and do not contain bars and rungs for that very reason. He also testified he had never seen padlocks on police cells before.

RCMP cells have one key that opens all doors for quick access in case of an emergency, rather than padlocks, each requiring a separate key.

[15] The inquest heard evidence that the Band Constable holding cells had been shut down upon Rachel Wood's death. For a period of time no holding cells were available locally. Prisoners were transported daily to Thompson, until an ATCO trailer containing holding cells was brought in on an interim basis from Cross Lake Manitoba. On October 13, 2005 this witness photographed the ATCO temporary RCMP holding cells in Nelson House. As the photographs in Booklet #5 (Exhibit 6) depict, these cell doors are solid steel sliding doors. There appear to be no ligature points either in the cells or on the cell doors. This RCMP ATCO trailer holding cell facility monitors each cell by way of closed circuit TV with monitors for each camera located at the guard desk. One key opens all cell doors.

Jessica Spence

[16] This witness, aged 24 years, is a first cousin to Rachel Wood. She gave us a first hand account of Rachel's activities on the evening prior to and the night of her death. On October 4th she and Rachel planned to meet in Thompson, located 85 kms south east of Nelson House and a 50 minute drive away. Rachel made plans to go out that night with her some friends and with her boyfriend Trenton Moose. Jessica Spence was the designated driver. She did not drink alcohol until after they returned to Nelson House later that night.

[17] Ms. Spence and a group of friends all met up with Rachel between 6 and 7 pm outside the Burntwood Hotel in Thompson. She testified that Rachel seemed really down and that she did not greet her friends the way she normally did. Rachel went to the Thompson Inn while Jessica Spence dropped the others at the River; both are night clubs. Later on she went to the Thompson Inn and brought Rachel to the River. In the bar, she observed that Rachel was dancing and having fun, apparently unaware that her boyfriend Trenton Moose had been “kicked out of the bar” and was waiting outside. According to Ms. Spence, this had angered him. After the bar closed at approximately 2:45 am Trenton and Rachel argued. Ms. Spence drove all involved back to Nelson House.

[18] Upon returning to Nelson House, the entire group went to Dolly Spence’s house. She testified that Trenton and Rachel “got into a really big fight outside there”, which I understood to mean an argument, not a physical fight. At some point Trenton left the group, which continued onto Rachel’s house. Ms Spence observed that Rachel had been drinking at the Thompson Inn and quite a bit more at the River. She was upset from fighting with her boyfriend. Ms Spence described Trenton Moose as “pretty drunk” and said he is “more loud and aggressive when he’s been drinking”.

[19] At Rachel’s house the drinking continued, now including Jessica Spence. She testified that Rachel was dancing with a man named Bryant and eventually they started kissing on the couch. Her boyfriend Trenton Moose was by this time passed out in the same room. One of his friends woke him up to tell him what was going on. Trenton and

Bryant fought with Trenton “beating up” Bryant. That’s when everything went wild. She testified that Rachel got really upset “going really crazy”. She said that she had never seen her that way before, yelling and swearing and getting mad at people. It was very chaotic and shocking for Ms. Spence. She found it was too much and went outside. She testified that Rachel was throwing everybody out and could hear her throwing things around inside the house. Rachel’s other first cousin, Jeremy Spence was trying to calm Rachel down. Ms. Spence testified that Jeremy Spence threw a rope outside that he had taken from Rachel and told me to “phone the locals”, which she explained to mean the Band Constables. Ms. Spence testified that it was obvious to her that Rachel was trying to hurt herself. Ms. Spence explained that Rachel’s sister was away in Thompson to have her baby, meaning she could not take her there. Feeling she had no other option, she phoned the local Police Station. She spoke to the dispatcher, Flossie Hart, whom she asked to send the Band Constables so Rachel would not harm herself. Ms. Spence thought Rachel would be safe at the Police Station and that they would keep an eye on her.

[20] She testified that during this chaotic time, she was not sure if Rachel said anything about suicide. However, she remembered that Rachel had mentioned the week before that she felt like killing herself, but that she did not take her seriously. Ms. Spence mentioned that in addition to Rachel fighting with her boyfriend that night, she had previously had a miscarriage, which led to tension in the relationship.

[21] Band Constable Jackie Kobliski arrived 20 minutes after the call. Rachel walked into the police van and that's the last Ms. Spence saw of her.

Jack (Jackie) Kobliski

His Auxiliary Constable work history and training:

[22] This witness is 40 years old and presently works as a rock truck driver on the Wuskwatim hydro-electric dam project near Nelson House. He testified that he had been a Band Constable for one and a half to two years. He has a grade nine education, but is functionally illiterate. He received no formal training to become a Band Constable other than on the job training from the other Band Constables. Later the Inquest heard evidence he was hired because he had a driver's license and was willing to work. He was never given anything in writing describing his job or its duties. He has no CPR or first aid training. He was too traumatized to go back to work as a Band Constable after Rachel Wood's death.

[23] He clarified that he had not obtained Peace Officer status. In fact he had been an Auxiliary Band Constable and first became one in approximately 2002. When asked what the difference was between a Band Constable and an Auxiliary Band Constable he testified that an Auxiliary Band Constable does not have as much authority and is limited in what they can do. However, he went on to say that they are expected to do pretty much the same work as a Band Constable. When asked what a Band Constable could or could not do, he said he did not know. Most of the time he said he would have a Band

Constable working with him. On October 5, 2003 he did not. He advised that there were six or seven Band Constables and six or seven Auxiliary Band Constables during the time of his employment.

[24] Mr. Kobliski described his typical duties as an Auxiliary Band Constable. He testified he was just called in as needed, but that was almost every day. Most shifts he worked on the road as a “check stop” person, checking vehicles coming onto the reserve for alcohol. He advised that the Band had limited the amount of alcohol people could bring onto the reserve to 24 bottles of beer or one 26 oz bottle of alcohol. If he caught people with more than was allowed, the excess would be seized and he would pour it out in front of them and take their name down. He advised that the first three or four months on the road he worked alone.

[25] While working as an Auxiliary Band Constable he would wear a yellow windbreaker marked “POLICE” in white letters. He would drive a Band Constable vehicle and carry a radio. He did not carry any weapons. His salary was \$9.00 per hour. He would be paid that same hourly rate for any overtime worked. There were no health or pension benefits. The shifts were 12 hours long but overtime was frequent, every weekend. Shifts could be as long as 48 hours without a break when others called in sick or simply did not show up to work their shift. As Mr. Kobliski saw it, he had no choice but to work. He advised that there was no limit on the number of hours he could work.

Participation in arrests and holding of prisoners:

[26] His evidence about his participation in actual arrests was contradictory. He first stated that *“a couple times I arrested prisoners”*. When asked how many arrests he would make in a week, he answered *“Quite a few. Usually they were walking around intoxicated. I lodged them for their own safety so they did not freeze to death.”* He said that if people were arrested because they were intoxicated they were lodged in cells until sober and released. He then clarified that arrests were done when he was with a Band Constable. He could not say he ever made an arrest by himself. He went on to say that most of the time the other person with him with an Auxiliary officer too. *“We would try to call the Chief of Police or a regular Band Constable but frequently were unable to do so. We either put them in cells or met the RCMP half way to Thompson and transferred prisoners to them.”* He stated that permission was needed from the Chief of Police to leave the Reserve, because if they did, no one was on duty to look after the Reserve.

[27] Mr. Kobliski told the inquest that the RCMP was aware that prisoners were being held at the police cells in Nelson House. He testified that every second day the RCMP would do a prisoner pick up. He went on to testify that they would just hold prisoners in their holding cells until a “half way meet” could be done with the RCMP. He clarified that the only time they called the RCMP in Thompson was when they had a MHA (mental health act); a person trying to hurt themselves. He said they would ask the

RCMP for a half way meet but sometimes the RCMP were too busy and the Band Constables had to drive all the way to Thompson, a forty-five minute drive each way.

The Band Constable cells:

[28] He testified that the local Police Station did not have cameras in the cell area. He advised that the door to the cell area once closed prevents anyone outside from hearing anything from the cells. When asked about fire fighting equipment, he said there was none there that he could see. Nor did he see any first aid supplies. He acknowledged that there were a number of different keys for the padlocks locking the cells. The keys were kept by the front desk, he believed the cells were numbered and the keys were marked but he could not recall where the numbers were marking the cells. There were ongoing problems with plumbing in the “population cell”, the largest cell. The toilet would not flush; once a week it would get plugged up.

The call:

[29] Mr. Kobliski testified about the events of October 5th, 2003. He was on shift at 7:30 am. As of 9:00 am it would have been thirty six straight hours he would have been working. He stated that he was able to stay awake without naps. He was working with Greg Swanson another Auxiliary Band Constable. The call came in at 7:30am. The Band Constables were wanted at Judy Wood’s regarding a fight. Mr. Kobliski was at the Police Station. *“Flossie Hart, the guard, just told me we were wanted at Judy Woods. I*

think she, (Flossie), just started. She worked if the guard did not show up. I think it was her first time.”

The scene:

[30] Auxiliary Band Constable Kobliski drove to Judy Wood’s. He described upon arriving he saw Rachel Wood walking outside in her sock feet, crying. *“I could not understand exactly what she was saying, because she was crying. I asked her what was wrong. She walked back inside the house and sat down at the table.”* He indicated he was told there had been fighting in the house and observed that there were beer bottles all over the place. He quoted Jeremy Spence as saying to him *“You should lodge her. She might do something she might hurt herself.”*

The arrest:

[31] He testified that he thought she was upset because of the fight in the house. He advised was the first time he had ever dealt with Rachel Wood. *“I asked her to put her shoes on and jacket. She got in the passenger side of the police vehicle. I lodged her so she would not do anything to harm herself. I could smell alcohol on her breath and she was staggering.”*

[32] When asked if he arrested her, Mr. Kobliski answered “yes”. When he took her out of the house, he told her he was going to take her into custody so she did not harm herself and that she would be released when sober. He said she was still upset, but came

with him willingly. He did not advise her of any rights she might have, saying he left that for the Band Constable or RCMP. When asked what happened if they are not available, he answered, *“I tell them they are being arrested for being intoxicated and once they sober up in eight hours they will be released.”* He advised there are no calls to a lawyer and no legal rights are advised. When asked if he had given any thought to sending Rachel to stay with family instead of lodging her, he replied *“I asked the guard if she knew where her sister or where Judy was. I made no calls. I did not know anyone’s phone number. I did not see Flossie make any calls.”*

[33] Mr. Kobliski testified that this was the first time he arrested someone MHA (Mental Health Act). It was a common occurrence for Band Constables. They would call the RCMP right away. Mr. Kobliski testified that the nursing station used to do assessments in Nelson House but they did not want to do them anymore, so the practice was to phone the RCMP in Thompson. He explained that he did not call the RCMP because he did not think Rachel Wood was the kind of person who would hurt herself. Although he said that he arrested her because of Jeremy Spence’s concern for her safety, he did not figure she was a MHA at the time. He testified *“I figured the safest place for her was in the cells.”*

The lodging:

[34] He described that it was a one to one and a half minute drive to Police Station with Rachel Wood. She was crying and he let her sit in the van for a couple minutes. She was

upset because of the fight. Mr. Kobliski told her to come inside and empty her pockets. He put her valuables away. She complied. Flossie Hart was still there. When asked if he gave any information to Flossie about the reason for the arrest, he answered “*Not that I recall. I told Flossie to take the valuables and put them in the bag and I lodged her in cells.*” He stated the holding cell where Rachel Wood was lodged was a holding cell for women. He described his interaction with her in the cell as follows: “*I asked her if she wanted coffee and couch cushions to sleep on. I got them both for her. She was still crying a little bit. She sat down at the corner and started talking about her kids. She came out with this on her own. I stayed there a couple minutes.*” It was his testimony that Rachel Wood did not say anything to him about suicide.

The hanging:

[35] Mr. Kobliski then testified that he left with Auxiliary Band Constable Greg Swanson on patrol. They were gone for ten minutes maybe longer. Flossie Hart was at the dispatch desk, she was inside the building alone. He remembered there were a few girls outside on the deck just sitting on the bench. He assumed they were friends of Flossie. When on patrol on the reserve, he got a radio call from Flossie. She was frantic, crying and really upset. He could not understand what she was saying, but testified they immediately returned to the Police Station.

[36] When they arrived he grabbed the cell keys and checked the cells. He checked Rachel’s cell first, saying “*I heard the guard saying Rachel and went running in there*

with Greg.” When he saw Rachel Wood, she had the jeans around her neck and tied to the top of part of the cell bars. He described what happened next: *“I lifted her up by the armpits while my partner untied the jeans from the cell door. They were tied to the top horizontal bar about four feet off the ground. Her behind was about five or six inches off the ground and her back was to the cell door. It took sometime for Greg Swanson to untie the knot. It seemed like a minute to a minute and a half. It was tied really tight and it was hard to take the knot out the blue jeans.”* He testified there was no sign of life while he was holding her. He also stated the door to the cell area closed behind them, although it was not locked. Because the door was closed he could not say what Flossie was doing while they were untying Rachel. He stated that he dragged her out and laid her on the floor and that Greg Swanson took the jeans off her neck.

Efforts to revive her:

[37] He described the efforts to revive her. *“I asked Greg if he knew CPR. I gave it a shot. I tilted her head back and blew into her mouth. I seen her chest rising (from my breath), her hands looked blue, and her lips were blue. My partner checked for a pulse. There was no pulse.”* When asked how long he performed CPR, he said a minute maybe a little longer. He later clarified that it might have been a couple of minutes and that he could not say exactly how long. It was clear to me as he testified that his estimates of time were just that, estimates and not an accurate recounting of how much time actually passed. He did not try to perform chest compressions on her heart, saying *“We could not revive her.”* He testified that Greg Swanson ran out and called the nursing station from

the reception desk. Someone came from the nursing station; two or three people. It took them five to ten minutes to arrive. *“We were just standing around in shock waiting for the nurses. The nurses did CPR for approximately five minutes, they checked for a pulse when they couldn’t find one I called Ryan Linklater, the Police Chief and he came over right away. I called the RCMP and they came. I was there when they arrived about forty to forty five minutes later.”*

Prisoner checks:

[38] He testified he did not see anyone else in the cell area with Rachel before he left on patrol. When asked, if he was concerned about Rachel’s life when he lodged her, why did he not tell the guard to check on her to make sure she was ok in the cell. He answered he did not think she would hurt herself. Further, he said he did not direct the guards, the Police Chief did. When asked if he logged the prisoner in, he said he had not and that was the guard’s job. He added that he was very tired having been up for 36 hours. He testified that Rachel did not say anything to him about her threat of suicide. When asked what the policy was regarding the frequency when checking prisoners, he answered “I would not know”. When asked if there was any way of recording what the prisoners were doing he answered “not that I know.” He did volunteer that while he was not sure, he thought the guards checked on prisoners every fifteen minutes. He said he would not tell them to do checks; that would be the Police Chief’s job. He stated he was not in the building much, because he spent most of his working hours out on the road.

Lack of critical incident stress debriefing or counseling:

[39] Jack Kobliski indicated he did not work another shift as an Auxiliary Constable saying “*this incident had affected me pretty bad ... they’d call me and I just refuse to work.*” He testified that no counseling or support services were offered to him after this death. He said that it would have probably been helpful to him.

Greg Swanson*His dispatch / guard work history:*

[40] This witness is thirty three years old and lives in Nelson House. He is not presently employed. He commenced working as a Band dispatcher, guarding prisoners and taking incoming calls for the Band Police Station starting in November of 2002. Mr. Swanson has a grade eleven education. His duties as dispatcher and guard included checking on the prisoners every fifteen minutes. Because there was no running water in the cells he would give them water. The toilets did not flush and he had to hose them down once a day almost every day. The fire hose was used to force flush the toilets. There were people in the cells most of the time and only when a cell was empty could the toilet be hosed down. His instructions as a guard included recording prisoner checks in the log book every fifteen minutes. Normally, the door to the cell area was left open. Occasionally at the request of a prisoner he could close it.

[41] Dispatch involved working long hours, twelve to twenty four hour shifts or sometimes longer than twenty four hours. Because he was not allowed to sleep while on dispatch, he often watched television and drank a lot of coffee to stay awake. There was

only one camera at the Nelson House Police Station which was pointed at the main entrance. The recording device attached to the camera never worked during his employment there. He had a regular shift as dispatcher with lots of overtime hours. Women would be lodged in the female cell, which was cell number one. Male guards would guard the females. There was no requirement of a matron or female guard. He worked long hours because no one else wanted to work. Pay was seven dollars per hour. Over time pay was the same hourly rate. He was told by Ryan Linklater, Chief of Police to hire anybody he could get to work dispatch and guard.

[42] Mr. Swanson did not have any training in first aid or CPR. He testified that the Police Chief told him to get his CPR but there were not courses being offered at the time. The fire department offered them once in awhile in Nelson House but conceded he did not make efforts to attend.

His Auxiliary Band Constable work history and training:

[43] Greg Swanson began working as an Auxiliary Band Constable at the request of Ryan Linklater, Chief of Police. Mr. Swanson described this as being a back up to the Band Constables. He said there was no job description, no policies, procedures, or rules. *“I was just told to work. It was on the job training. I would be driving with one of the Band Constables.”*

[44] There were ten Band Constables, six of whom had Peace Officer status when he started working. He believed those with Peace Officer status had gone to Brandon for training. There were quite a few Auxiliary Band Constables. He testified that he would get called in when Band Constables did not show up for work. *“I got called in lots. Pay days the Band Constables would not show up.”* Shifts were twelve hours long and frequently he had to work back to back shifts. Most times he worked with a Band Constable, sometimes just with an Auxiliary. He worked as an Auxiliary Band Constable off and on. He testified he got full time status the year before the Inquest, but quit three months ago. Reasons he cited he for quitting included poor wages (Auxiliary Band Constables get \$9.62 an hour) and partners who would not show up. He testified that sometimes he would not show up for work, in revenge to make his partners understand how it felt.

Participation in arrests and holding of prisoners:

[45] As an Auxiliary Band Constable, Mr. Swanson affected arrests. When asked what training or powers of arrest an Auxiliary Band Constable had, he said he believed he could arrest people for being drunk and when they would not leave a house. When asked what else, he responded “assaults and stuff like this”. He stated he believed he had the power to arrest but never had to do that.

MHA policy:

[46] Mr. Swanson testified if there was an MHA (Mental Health Act lodging) he understood the policy was to phone the RCMP right away and get an on call worker who would take them to Thompson right away to get them assessed. He testified that back in 2003 when you would call an on call worker to come and talk to an MHA, they would not come right away. Usually they would wait to talk to them in the morning. Police and on call workers would always be called right away for MHA. When asked if prisoners were advised of any rights he answered “not if charged for a breach of peace.” He went on to say “*I never heard of MHA’s getting advised of their right to talk to a lawyer. Not even for criminal charges, we usually throw them in right away and call the RCMP and tell them what’s going on.*”

The cells:

[47] Mr. Swanson testified that the cells are not individually numbered. He just knows which ones are which and which keys fit them. He stated that the dispatch person is never allowed to unlock the cells or go in them. Only a Band Constable or Auxiliary may do so. He described cell number one as the female cell. He stated eight hours is the length of time they lodge prisoners to sober up before releasing them. He described on welfare nights there would be over twenty people in cells. On festival weekends they were just crowded in. People lodged during those times were usually there for being drunk or a breach of the peace. In his words “*we just throw them in to sober them up.*” The RCMP would not be called unless there was an assault. The RCMP usually came the

next day. If it was a very serious offence they would come the same day but it was rare occasion that they would come the same day. The toilets in the cells did not flush. The cells were always filthy. When asked whose job it was to clean them. He said *“That’s the dispatcher’s duties; guarding, monitoring prisoners and cleaning for \$7 an hour.”* Mr. Swanson acknowledged photograph #44 of booklet #2 appeared to show the fire hose as missing. He was not sure where it had gone. He was pretty sure there was a fire extinguisher but no fire axe. He stated there were first aid supplies by the front desk. He said that he had always seen exposed pipes and exposed plumbing in the cells. Prisoners would be searched before lodging. He learned how to do searches by watching Band Constables do it.

The call:

[48] Mr. Swanson testified that he was sleeping in the office on the cushions on the floor. He was tired, having done a sixteen to eighteen hour shift. He had originally got the night off, but a person quit and Jack Kobliski needed someone to work with him. *“I was really exhausted so I told him to wake me up when he got a call. I got about one hour sleep. Bradley Spence had worked dispatch. When I went to the Police Station he wanted to leave right away. He got Flossie Hart to do dispatch. I was sleeping when Jackie went to arrest her.”*

Lodging of Rachel Wood:

[49] When Jack Kobliski brought Rachel Wood to the Police Station the dispatcher, Flossie Hart, had the prisoner report sheet. Flossie had not filled out why Rachel Wood was lodged, so Mr. Swanson filled it out. He testified that he put in “breach of peace”. He understood Jessica Spence wanted her lodged because Rachel had a fight with her boyfriend Trenton. He went on to say *“I wasn’t told Rachel was an MHA. Jack told me she was fighting and it was a breach of the peace.”* When asked if Jack Kobliski had ever filled out prisoner reports, Mr. Swanson responded “Jackie cannot spell”.

[50] He went on to say *“I went to Rachel’s locker because I had to write down her personal effects. I peeked into her cell. She was sitting on the floor in front of the toilet with her arms around her head. After I peaked at Rachel’s cell I went out on patrol with Jack. The door to the cell area was open when we left. Flossie hart was sitting in her chair at the front desk. Two visitors, Farrah Spence and Dana Walker were gone when I left. They had been visiting inside at the counter.”* He testified that he and Jack Kobliski patrolled the reserve for fifteen to twenty five minutes. *“We were on Hillside when the call came. She (Flossie) was screaming, I could not understand her. I just heard “Rachel”.”*

The hanging:

[51] He stated “*We floored it to the cells it did not even take a minute to get back. Flossie was standing outside on the deck, freaking out, crying, we could not understand her. I saw pants around Rachel’s neck in the cell area. I grabbed the key. She was slumped with her back partially visible through the door. Her bottom was on the ground as were her feet and legs. Jack was just coming.*” When asked if Rachel was checked every fifteen minutes Mr. Swanson could not say. He assumed that Flossie Hart had gone to check on her, when she found her hanging. Greg Swanson testified that he told Jack Kobliski to grab Rachel and hold her up so he could unlock the cell door.

Efforts at resuscitation:

[52] He testified he untied her and checked for a pulse but there was none. He told Jack to do CPR and phoned the nursing station. He went to pick them up. He initially estimated it took them five minutes to come out, but later testified it took less than five minutes total to get them to the Police Station. “*I unlocked it first then I undid the knot I just pulled it once and the knot around the bar came undone. Only one leg of the pants was knotted around her neck. Jack was doing mouth to mouth and was doing chest compressions when I took off to call the nursing station. When I returned with the nurses they did CPR for a few minutes then said “she’s gone.” I stayed around the Police Station for quite awhile. The RCMP came in right away. Police Chief Ryan Linklater arrived the same time as the nurses. “*

Critical Incident Stress Debriefing:

[53] Mr. Swanson testified that he was angry and upset about what had happened and that he had to get medication to help him go to sleep the next two nights. He testified that a few days after the suicide, a session was held at the Wellness Center to help cope with this incident, he attended and participated and thought that was sufficient.

Temporary cells:

[54] Mr. Swanson did return to work at the new temporary ATCO trailer cells in August of 2005. He testified that they had cameras in every cell which recorded prisoner activity. He worked there as a guard. He went to Thompson to receive training for the RCMP who showed him how to monitor people and how to search them. He acknowledged that the new building is an RCMP building and only Peace Officers, no Auxiliary Constables are permitted to lodge prisoners there.

Florence (Flossie) Hart*Dispatch / Guard work history and training:*

[55] This 25 year old witness was physically petite and appeared considerably younger than her stated age. She has a grade 12 education and has lived her whole life in Nelson House. She is not presently employed. She stated she was hired as a dispatch/guard, by Jackie Kobliski. She did not apply, "*He just came and asked me if I would work. The first day I worked there 9:00pm to 9:00 am shift. He just came and got*

me and I started work. There was no training.” She was told to answer the phones and write it down. She had no training on suicide intervention. She was not given a written job description. “I was just told to check on the prisoners and write the time and dates of who came in and who called into the log book. There were two separate log books. Jackie and those guys recorded the prisoner log book not me. I did not record anything on the prisoners. I understood I was to check on the prisoners every ten minutes to make sure they were ok there was no log, just to check to see if they needed water. I worked two days.” She was working her second shift from 9:00pm to 9:00 am when Rachel Wood died. She never went back to work as a guard after that happened. They were all males. She was not told anything about the prisoners when they were brought in.

The call;

[56] She testified that around 7:30am Jessica Spence called and asked police to come to her house on Bay road. “She did not really say why.” Mrs. Hart told the Jackie Kobliski to go to Jessica’s place to pick up Rachel. She testified that Jessica Spence told her that Rachel was going crazy and trying to take pills. She passed this on to Jackie. He was not gone long to get her, a couple of minutes.

Lodging of Rachel Wood;

[57] She testified when Rachel was brought to the Police Station her shoes were removed, her pockets were emptied, and her valuables were placed in the locker. Rachel was placed in the woman’s cell. “Rachel was all drunk in cells. She told me she came

from a party where a bunch of people were getting drunk and some were getting jealous of her. She did not want to be there no more. She was crying lots saying she was trying to take pills or something. I tried to calm her down. Jackie gave her some coffee and I gave her some Kleenex.”

[58] Mrs. Hart knew Rachel Wood; she had seen her before both when sober and when drunk. She described Rachel as drunk that night. She went on to say that she talked to Rachel for awhile while Jackie Kobliski and Greg Swanson were out doing their drive around. She said that the door to the cell area was open at all times and it was never closed while she was guarding. After talking to Rachel for a couple of minutes, she testified that Rachel seemed to calm down just a little bit. She went back to work at the main desk answering the phone. She advised that she was cleaning up (sweeping) and while she did it, it was not part of her job, the floor was dirty and she wanted to do it. Three of her friends had stopped to visit. She was visiting outside on a wooden deck in front of the door. They left not long after Jackie and Greg left. She did not hear anything coming from the cells. She said she checked on Rachel in her cell twice while Jack and Greg were out. The second time she checked on her she was sitting on a cushion beside the cell door still crying and sitting there. She was watching T.V for awhile when *“Something told me to go check on the people. As soon as I looked to my right, there were Rachel’s pants on the door. I did not know where the keys were because they did not tell me that information. I was in shock. I radioed the Band Constables to come back to the station right away.”*

Jeremy Spence

[59] This witness is 25 years old, he has lived in Nelson House most of his life. He testified that on October 5th, 2003 he was “partying” with Rachel Wood. His ex-girlfriend, Katie Linklater was one of Rachel’s best friends. He came from her house, which was next door to Rachel’s, arriving at 2 or 3 am. He had been drinking and was feeling a little buzz. He listed the following people as partying at Rachel’s house when he arrived: Jessica Spence, Rachel Wood, Trenton Moose, Bo, Bryant Linklater, and Ian Paupanekis. Later on his brother Derek Spence and Darwin Dumas arrived. They were all in the living room and everyone was drinking. He testified that Rachel got caught kissing another guy and Bo woke up her boyfriend Trenton. He said that *“Everything went haywire. Trenton started beating up Bryant and Ian. Trenton was holding Rachel by her shoulders, swearing at her, yelling and getting mad. He swung her onto the coffee table and it broke.”*

[60] He testified that Rachel started swearing at everyone. Eventually she came into the kitchen where he was sitting down. She tried to walk past him going into her bedroom. She was carrying a see-through plastic bag with a yellow rope in it. She was trying to hide it under her armpit. Mr. Spence testified that he grabbed it from her and she was freaking out and swearing. *“I figured she was trying to kill herself.”* He said, commenting why else would she be hiding the rope. Either he or Jessica called the Band Constables. He said that Jackie came. He told Jackie, *“You got to keep an eye on her.”*

She was trying to hang herself in her room. He said not to worry, they would look after her.” When asked why he called the Band Constables he said *“I thought they’d call a mental health worker and handcuff her till someone spoke to her.”* Mr. Spence stated he was pretty sure there was a mental health worker in the community. He testified that he had tried to kill himself once and said *“The cops picked me up once and took me to Thompson to talk to a doctor.”* He observed that Rachel must have been pretty drunk for her to try to hurt herself.

Ryan Linklater

His Policing work history and training

[61] This witness was hired as Chief of Police in 2001. He graduated from high school in Nelson House in 1993. He has one year of university credits. He began work as a dispatcher while a summer student sometime prior to 1995. From October 1995 to June 1997 he worked as an Auxiliary Band Constable and dispatcher.

[62] He was hired as a Band Constable on June 5th 1997. He testified there was no formal orientation offered to him when he was hired. His probationary period was three months. He was not given a written job description; everything was told to him verbally. When he first started the job he was teamed up with a senior Band Constable who had Peace Officer status. In addition to that he would ask questions of the RCMP officers.

[63] In 2001 he went to a three week training program in Brandon before coming Chief of Police. While there he studied powers of arrest, the criminal code, the Charter of Rights, and crown procedures. He testified he had not any refreshers or further training since that time. He testified that he had been aware of powers of arrest but that this training was much more detailed. He said it changed the way he did his job. He knew what steps to follow before an arrest and what rights to give people. He did not get his official Peace Officer status until sometime in 2003. He was not sure if he had obtained that status before or after Rachel Wood's death.

[64] He testified that he worked very long hours, sometimes working 48 hours in a row. Sometimes people would not show up to work their shifts, particularly after pay day weekends. He said that *"95% of the time I'm available. I carry a portable radio. At home I have a police truck. If there is a violent prisoner I will go and do the arresting and lodging."* Sometimes he worked shifts 36 to 48 hours long. When asked how he could function working long hours like that he said he would take cat naps of 1 to 2 hours every now and then. He explained the calls kept coming and coming and he did not want to not answer calls. He testified there was no job description for the Chief of Police; he had not put one together.

Hiring of Auxiliary Band Constables

[65] He testified that he did the hiring and firing but that he consulted with the CEO. When asked about standards he said an Auxiliary Band Constable should have a

grade twelve or equivalent, be a good role model and that a driver's license is a must. He qualified this saying that sometime the requirement for a driver's license is over looked so long as the person is making an effort to get it. He went on to say that sometimes Band Constables would sometimes hire an Auxiliary Band Constable but they would consult with him. Criminal record checks were mandatory if the person was hired. He described Jack Kobliski as always willing to work and help out and that he had a driver's license. He said two Band Constables did not have their driver's license but one of them had his learners permit. There exists a draft job description for Band Constables written in 2005; however it has not yet become effective.

Hiring of dispatch/guards

[66] He testified that hiring of dispatchers/guards was done either himself or by one of the Band Constables. He advised that at one point they had full time guards. But that due to lack of funding they had to lay them off and went to casual, on call guards. He could not recall the date of that change but advised that they only had casual guards at the time of Rachel Wood's death. If no one was available to work as a guard they would have to find someone willing to work. He advised there was an orientation session when they were given a rundown on what to do for example the phone log prisoner log etc... He advised either he or the Band Constables gave these instructions and that he just assumed the Band Constables did. He advised that the prisoners log included logging the time of lodging, checks every fifteen minutes on prisoners, logging whether they were awake or asleep and anything they were doing in the cells. He advised that the prisoner

log would go missing from time to time and in fact said the prisoner log from the night of Rachel's death has never been located. When asked if there was a requirement for people to have CPR and first aid he said there was after they were hired, but acknowledged that there was no deadline on when they had to get the training. There really didn't seem to be any mandatory requirement for either Auxiliary Band Constables or guards to have it.

Funding

[67] In October of 2003, Band Constables were paid \$9.00 per hour. Auxiliaries were paid between \$7.00 to \$8.65 per hour. Guards were paid \$7.00 to \$8.65 per hour. In the event of a funding shortage, the pay would be dropped to the lower end of the scale. He testified that funding was a big issue saying that "*We always went over our budget and the Band would have to pick up the deficit.*"

[68] He testified that presently Peace Officer pay was \$12.00 an hour, Band Constables are paid \$11.00 an hour and the two Auxiliaries are paid something less. He testified that there was pressure to work long hours because of the low pay. He testified that the policing program never got the full amount of funding requested. As a result they cut building maintenance, increments for officers, new uniforms, equipment such as portable radios, and training.

Lodging of prisoners

[69] Citing statistics, he testified the number of prisoners lodged between January and August of 2003 ranged between 129 to 206 prisoners per month. In the month of

January 2003 alone, there were eight persons lodged under MHA. He testified that prior to 2003 when people were lodged in cells the RCMP would not be notified unless it was a criminal code offense; otherwise they were just lodged until sober. There were no written policies or procedures for dealing with intoxicated people.

Powers of arrest

[70] Police Chief Linklater testified that before this death, he was not aware of any limitation of powers of arrest by Band Constables without Peace Officer status. He is now of the belief that Band Constables can arrest as civilian but that a Peace Officer must formalize it. Police Chief Linklater testified that the first time he saw circular #55 was one week ago. Prior to that he had never seen it before and had never heard of it before. When the following section was read to him “In cases where detention is required, the case should be referred to the responsible police force.”, he advised he was not aware of that policy until now.

Staffing

[71] When Police Chief Linklater first started as a Band Constable in 1997 he worked with two senior Band Constables who had Peace Officer status, Darren Linklater and Barb McDonald. Those two Peace Officers stopped working by 2001. Between 2001 and 2003 there were no Band Constables with Peace Officer status. There were four other non Peace Officers working, including Auxiliary Band Constables Jack Kobliski and Greg Swanson. Police Chief Linklater described the difference between

Auxiliary Constables and Band Constables. Speaking from his experience as a Band Constable he stated *“We did statements; the calls really. There were two Band Constables on shift all the time. If one did not show up an Auxiliary would cover for that person. The shifts were twelve hours long. During welfare week we’d call in an Auxiliary as a third man for extra help. I’d decide if it was necessary. The Band Constables would call them (Auxiliaries) in, then they’d let me know.”*

[72] During winter months calls averaged 1800 per month. During the summer they’d average between 2500 to 3000 calls per month. If needed, Auxiliary Band Constables could respond to calls on their own. He described that Auxiliary Band Constables would arrest and lodge prisoners but not take statements. When asked if there was any difference between a Band Constable and a Peace Officer the only difference he could think of was that Peace Officers had the power to release and Band Constables did not. He noted that this policy had changed and that now only Peace Officers are allowed to lodge in cells or release from the RCMP cells in Nelson House.

The cells

[73] The cells were not numbered on the outside. He testified he never saw any procedures for set up or maintenance of the Police Station building. He stated that he believed the cells were clean the majority of the time. Toilets would break down, parts would be on order; sometimes causing a cell to be shut down. He acknowledged that sometimes prisoners would be lodged in a cell when the plumbing was not working.

When asked who was responsible for keeping the cells cleaned he answered “I guess the Band Constables.” He went on to say “If we had time to clean them we would.” No janitor was ever hired and there was no regular schedule of cleaning or maintenance. Things were fixed as they broke down. The only camera at the Police Station showed the booking area but the recorder for it was broken. There were no cameras in the cell area and no attempts were made to obtain cameras for the cell area. The door to the cell area was normally kept open, sometimes at night it would be closed. There were no rules governing whether it was to be left open or closed.

[74] When asked why the photographs did not show the fire hose or fire extinguisher he could not really explain why they were not there. He conceded they always had plumbing problems with the sinks and toilets. Although there was a fire system installed there was no sprinkler system. The first aid kit was stored at the front desk. He explained to the guards where the first aid kit was. Sometimes he simply assumed the Band Constables did that task. Guards were not allowed to unlock cells but had access to keys.

[75] He agreed that the Chief and Council were responsible for maintaining the police building in 2003. He was apparently unaware that bars in cell doors were old technology. When asked if anyone had ever tried to hang themselves before in those cells he said there were “numerous attempts.” He said a few times it happened while he was on duty, prisoners were using the bars to try and hang themselves. He said he reported it

to Chief and Council but could not remember if he advised the RCMP. He said they needed a whole new building but the proposal for it was some way away.

MHA's

[76] When asked if there were any policies on suicides or mental health concerns he advised there was nothing in writing. He said the policy was to have the person assessed at the nursing station or by the on call mental health worker from the Nelson House Medicine Lodge and that the expectation was that guards would keep an eye on them. He went on to say they would have to be completely sober before a mental health assessment; an eight hour minimum stay. He said the RCMP was notified if the person threatened themselves. In such a case, notification of mental health and RCMP would take place immediately on lodging. The mental health worker would typically say "call me when they are sober." He estimated that there were one to three lodgings of suicidal persons per week on average. He testified there was no training for anyone regarding suicide intervention.

October 3rd 2005

[77] Police Chief Linklater testified he was not on duty but did become involved after learning of the hanging. He got a call on his answering machine from Greg Swanson while he was sleeping. The message said it was an emergency. *"I got up and phoned them. They told me Rachel had hung herself in cells."* He drove to the Police Station right away, once there he called the RCMP. He said that he did not even know

who was working. He was at home and both Auxiliaries were not scheduled to work that shift. When asked if it happened from time to time that Auxiliaries would work by themselves, he said it did happen when the Band Constables did not show up for work. He added that on pay day weekends it was not unusual for two Auxiliaries to be working. He testified he was not aware that Flossie Hart was working as a guard or even that she had been hired that weekend. He only became aware after the fact. He did not know if she had been trained or was made aware of her duties. He said that this emergency hiring of a guard would happen from time to time. He said he looked for the prisoner log and was surprised that he could not find it. He testified that he never was able to locate the prisoner log from the night of Rachel Wood's death.

Training

[78] Band Constable training was offered through D division in Winnipeg. It was limited to one Band Constable per reserve, however one cancelled at the last minute it might be possible to send a second Band Constable. When asked if there were any manuals or instructions for the Chief of Police there were not. He did advise that in September 2005 to April 2006 he had gone to law enforcement class in through UCN sponsored by the RCMP. He described it as preparation in order to go into the RCMP. The Solicitor General pays for training except for transportation. He testified that although he had been a Band Constable since 1997 he was not aware that free training was offered by the Solicitor General twice per year for Band Constables. He was also unaware that if other candidates dropped out at the last minute, there were open seats the

Solicitor General was having trouble filling. He stated he was not aware of that and if he knew he would have utilized them. When asked if he was aware that the Solicitor General encourages re-attendance every few years, he answered that he was not. He agreed when it was put to him that RCMP does not supervise Band Constables.

The new ATCO cells

[79] After Rachel Wood's death the Band Constable's building was no longer used to lodge prisoners. All prisoners were transported to and lodged in Thompson using half way meets with the RCMP. After October 5th 2003 and until the new ATCO cells opened, a total of 545 prisoners were transported from Nelson House to Thompson. If later released by the RCMP, they would be transported back to Nelson House, again on a half way meet. *"We did not transport everyone to Thompson. We looked for a place for them to stay with someone here where they could sober up, if not we would call the RCMP."* Police Chief Linklater testified that after Rachel Wood's death, a trailer was brought in from Cross Lake to be used as portable cells. This brought the holding cells up to code with RCMP standards. Peace Officers were taken to Thompson and trained by the RCMP in filling out C-13's and how to handle prisoners, before being permitted to lodge prisoners in the new cells.

The new detachment

[80] He testified that the new RCMP building and detachment in Nelson House would be opening any day now. This permanent detachment will replace the temporary ATCO cells brought in from Cross Lake.

Staff Sergeant William Ritchat*His work history with the RCMP*

[81] This witness has over 34 year's active service with the RCMP. Staff Sergeant Ritchat has been the administrative NCO (Non Commissioned Officer) at Thompson detachment for both city and rural subdivisions since 2002. Prior to that, from 1999 to 2000 he was in charge of rural division based out of Thompson, including Nelson House and other communities. Between 1980 and 1983 and while stationed in Thompson, he policed Nelson House.

Working relationship with Nelson House Band Constables

[82] He indicated that the RCMP worked closely together with the Band Constables in Nelson House. They were seen as a valuable resource for the RCMP. If there were any serious matters i.e. serious assaults or MHA's the Band Constables would call the RCMP. He reported there were five Band Constables designated with Peace Officer status in Nelson House in 2003. He was not sure how many of them were employed. He indicated the RCMP did not differentiate between Band Constables regarding whether or not they had Peace Officer status. He clarified that position, saying that it mattered if that

officer was assaulted, as the charge would be either simple assault or assault peace officer depending on their status. He was aware that Band Constables on occasion would arrest people basically for minor offenses and that intoxicated people were held for safe keeping. For minor incidents the Band Constables would handle the arrests on their own. If there was something more serious they would call the RCMP. When asked about circular #55 he advised that he was not aware of the direction given to Band Constables not to arrest people. He indicated that the RCMP would get calls almost every day from Nelson House Band Constables. He said *“I knew the number of people they arrested in their cells was in the thousands. It was numerous on a daily basis, minor arrests and intoxicated people.”* When the RCMP was called the immediate concern was to ensure safety of the people in the incident. If it was not seen as too serious and the call came after hours they would attend to Nelson House in the morning. *“We never inquired if the Band Constable who made the arrest had Peace Officer status.”* He indicated they were a huge assistance to the RCMP and they would not have been able to operate without their help.

The cells

[83] He described the cells in Nelson House which he had visited once or twice saying *“They reminded me of our cells in Thompson until 1999 but worse. They were terrible, there is no other word. It wasn’t a place to put a person in custody but there was nowhere else.”* He described deficiencies at the cells. They lacked in cleanliness. The building and walls were constructed of wood, making them flammable. There were

bars on the cell doors. He stated that older RCMP cells used to have bars but they were removed for safety reasons as they provided hanging or ligature points.

[84] He advised that after the Nelson House cells were closed in December of 2003, for the next five to six months prisoners were transported to Thompson. The impact was significant on the RCMP. In those six months prisoner transportation between Nelson House and Thompson alone accounted for 1.5 to 2.5 person years of RCMP manpower.

Replacement cells

[85] Eventually the RCMP moved a temporary ATCO trailer containing cells from Cross Lake to Nelson House. He advised there was a memo of understanding with the Band regarding the operation of the cells. The cells were RCMP property and the RCMP trained the guards employed there. They were trained by RCMP guards in Thompson for four days. Because the temporary cells were an RCMP owned facility this resulted in a change of responsibility making the RCMP responsible for hiring and training of the guards.

[86] When asked about the temporary ACTO trailer cells he stated that the guards regularly monitor people by doing a walk around check every fifteen minutes. As well, the monitor them on close circuit T.V. He indicated anyone lodged in the Nelson House cells now is a RCMP prisoner. When asked about the rate of pay he indicated guards in Thompson earn \$12.50 an hour, he believed it could be 30 cents an hour higher in Nelson

House. This new pay scale is significantly higher than the Band's old pay scale for guards.

[87] He went on to say that because of the tripartite agreement a new permanent RCMP detachment was being established in Nelson House. The plan is that once that new detachment opens, the temporary ACTO cells are to be moved to Split Lake, to replace the Band Constable operated cells there.

Other Band operated holding cells in the North:

[88] He acknowledged there are detention facilities in Split Lake, containing two or three cells. It was his evidence that the Band Constable cells in Split Lake are in a worse condition than the cells closed in Nelson House in 2003. He advised that the Split Lake cells are not up to par or any standard as far as he is concerned. He described them as being in a very poor state, dirty, with lots of ligature points. There are no monitoring cameras in those cells. He did not have any statistics for the number of prisoners held in Split Lake. In Nelson House it was approximately 150 prisoners per month. He estimated there may be 50 a month, or just under 1000 prisoners per year being lodged at the Split Lake Band Constable cells.

[89] When asked whether there were any other communities in the province operating holding cells which are not run by the RCMP he cited four communities that he

was aware of: Split Lake, Garden Hill, St. Theresa Point, and Wasagmack. He said he was told by others that the Wasagmack holding cells were in very poor condition.

Suicide Intervention Training:

[90] When asked about RCMP training for suicide intervention he stated that all RCMP members do get some training on this during their career. It's offered twice a year with a maximum of 32 people per session. This means a total of 64 members per year can access this training in Manitoba. Each session is 2 to 3 days long. It is not a mandatory course. It is offered to anyone including administrative staff. However, guards at RCMP stations do not attend. For them only CPR and first aid training are mandatory. Staff Sergeant Ritchat testified that he himself attended the training and that he found it useful. He learned that suicide can happen in a moment or a second. He is aware that resources in Thompson include the Mental Health Agency, the hospital, and the doctors. He indicated that if the RCMP got a call about a suicidal individual arrested by Band Constables, the RCMP advice would be to monitor them and take them to the nursing station.

Agnes Spence

Her background as a Councillor

[91] This witness has been a Band Councillor for NCN since 1998. Her portfolios have included the Community Wellness Center, Health, Elder Women and Children, NADAP, and Finance.

Funding

[92] Policing is under Band administration, there is no board of directors although there is a CEO. The Police Chief reports to the CEO. Funding in 2003 for the Band Constable program totaled \$518,042. The NCN trust office provided \$300,645 of that. The Band provided funding of \$131,706. The Solicitor General provided funding of \$87,086. She agreed that Band Constables were not paid enough and there was no funding for employment benefits through INAC (Indian and Northern Affairs Canada). There was supposed to be no overtime allowed as per Band policy because there was no money budgeted for overtime.

[93] She explained that the Band could not take transfer money from one federally funded program to another as that would be considered mismanagement. She testified that money for benefits could not be taken from the NCN Trust, as funding from that source must be community approved one year at a time and benefits cannot be offered for only one year at a time. She explained that the NCN Trust was a 40 million dollar fund that the Band holds as compensation from Hydro flooding to their community. They spend interest of approximately 4 million dollars per year which is where most of the police funding comes from.

Policing issues

[94] She testified that she never had the policing or justice portfolio's but was familiar with those issues as a Councillor. She herself had never gone inside the cell

area. She advised that on one occasion Wilson Hart reported that the toilets were in bad condition. They were always being plugged. She said she went to Jimmy Hunter Spence who had responsibility for the police portfolio. She was unaware if any action was taken.

[95] She knew that the Police Chief Ryan Linklater “works all the time”. She testified that she took it for granted that there were job descriptions, policies and practices in place for policing. She was aware there was lots of turn over and it was hard to attract and retain staff. It was difficult for people to transition from welfare to a job when there was no transition money for the month when no income was coming in. She said there was no way for a person to support there family until they got there first pay cheque. Hydro and housing cost would no longer be covered if a person was no longer on welfare. She was aware that every few years Indian Affairs would do an inspection of the Band Constable building and do an Asset Condition Report. When shown the Asset Condition Report for January 2003 of the Band Constable building, she though it looked familiar. She sated she probably briefly saw the April 5th 2000 letter with the fire and safety inspection report, which noted the following as deficiencies; fire alarm system, no switch plates, exit lights, emergency lights, and fire extinguishers. She said it would normally go to the CEO. To her knowledge it was never brought to the Council table.

[96] The CTA (Community Tripartite Agreement) was signed in April of 2006 regarding policing. Discussions on this issue had been going on for years. She said that many projects had been going on at the same time, the Wellness Center being one of

them. *“Rachel’s death moved it along. Everyone was devastated by what had happened. I don’t want that to happen again.”* She indicated that the funding for the new policing tripartite agreement is shared between Canada, the Province, and the First Nation. Councillor Spence advised that the current population of people living on NCN is 2,700. The contribution for policing in 2003 from the Solicitor General was \$87,000.

Winona Embuldeniya

Her background with the Federal Government

[97] This witness is the regional manager for the Aboriginal Policing Directorate for Manitoba, an arm of Public Safety and Emergency Preparedness Canada, formerly the Solicitor General’s Department. She began in this job in July of 2004. Ms. Embuldeniya obtained her law degree in 1997. Her job includes managing responsibility for the grants and files associated with the Community Constable Program, the First Nations Policing Program and the Band Constable Program in Manitoba and Northwestern Ontario on Behalf of the Federal government.

[98] Ms. Embuldeniya also testified as a witness in the Inquest into the death of Glenn Fiddler. The report and recommendations of my colleague, Judge Sidney B. Lerner in that Inquest to some degree intersect and overlap this Inquest. Mr. Fiddler also died in Band Constable operated cells on a First Nation in Northern Manitoba. In his report dated September 13th, 2005, Judge Lerner, neatly summarized the information provided by Ms. Embuldeniya on the Band Constable Program, Band Constable Training,

Band Constable Supervision and the First Nations Policing Policy. I set out his summary below:

The Band Constable Program

[71] As noted previously, Circular 55 is a set of provisions governing Band Constable policing services for First Nations Band Constables, published in 1971 by the Department of Indian Affairs (exhibit 23). The document sets out the role of Band Constables in First Nations policing, which was contemplated

[75] Winona Embuldeniya testified at the Inquest. Ms Embuldeniya is the regional manager for the Aboriginal Policing Directorate for Manitoba, an arm of Public Safety and Emergency Preparedness Canada, formerly the Solicitor General's Department. The Aboriginal Policing Directorate provides funding to 49 First Nations in Manitoba. One of the functions of the Aboriginal Policing Directorate is the management of Band Constable funding under the “Indian policing program”.

[76] It was Ms. Embuldeniya’s evidence that the base funding for each Band Constable in Manitoba is approximately \$33,000. The annual budget for Band Constables at Wasagamack First Nation is \$43,000: this amount is intended to cover non-capital costs relating to the operation of a Band Constable program, including salary and operations and maintenance. Ms. Embuldeniya testified that funding for the Band Constable program has been frozen since 1992. Implicit in Ms. Embuldeniya’s evidence is the position of the Federal government that no additional funds will be provided to First Nations policing services at Wasagamack unless under the umbrella of the First Nations Policing Policy (see below, para. 102 and following). As a result, the various requests for additional funding by Wasagamack for its police services in the years preceding the fire, and since, have been unsuccessful (see Exhibits 33, 34, 37-40).

[80] Ms. Embuldeniya conceded that the funding freeze for the Band Constable Program may have made an already difficult job as a Band Constable more difficult.

Band Constable Training

[81] The Aboriginal Policing Directorate currently makes yearly training

programs available to Band Constables (prior to 1999, training programs were offered twice yearly). The Federal government funds the cost of the course, as well as meals and accommodations; participants are required to pay only for transportation. The training is currently provided by the RCMP, under contract to the Aboriginal Policing Directorate. The programs are of three weeks duration, and involve training on the basics of law enforcement, including proper police techniques. The programs are open to all Band Constables, whether or not they have previously received training. Band Constables who have been in employment by their Band for two or three years are encouraged to return and take the course again, to receive additional training.

[82] As noted, the training course for Band Constables is of relatively short duration, in particular given the subject matter and its importance. Based on the evidence heard at the Inquest, it also appears that attendance at the training courses is essentially voluntary. Although the provincial government requires that a Band Constable be trained before they can be appointed a special constable/peace officer, there is no requirement that individuals receive that appointment as a condition of their employment as Band Constables. As noted, at Wasagamack First Nation one of the three Band Constables involved in the incident that is the subject matter of this Inquest had received no training prior to his employment, and was not a peace officer.

[83] The Inquest also heard evidence from Ms. Embuldeniya that her department has encountered difficulties in having Band Constables attend for training. She offered the example of the difficulty her department had in attracting participants to a training program offered in January of this year:

....we sent out registration forms in November, we didn't -- we received eight responses to potentially 39 openings, and we had to call each First Nation individually. We had to call the councillor -- portfolio councillor for justice, as well as the Band Constables, the ones that we could find, and we even contacted the RCMP detachments closest to those communities to then talk to the Band Constables themselves to say, "here's this opportunity, you know, don't lose out."

Band Constable Supervision

[92] The Inquest heard evidence that there is no effective external monitoring or supervision of a professional nature of the Band Constables at Wasagamack First Nation.

[93] Although Band Constables do periodically receive informal feedback from

the RCMP, much of the work that they perform is entirely independent of the RCMP, at times and locations not subject to the scrutiny of the RCMP. Although the RCMP is an informal resource for Band Constables, Band Constables are not accountable to the RCMP, and are not under the direct control or supervision of the RCMP, or any other policing agency.

The First Nations Policing Policy

[102] An additional function of the Aboriginal Policing Directorate is the management of funding in Manitoba for existing policing agreements under the First Nations Policing Policy (FNPP), as well as the negotiation of new First Nations policing agreements under the FNPP in Manitoba. The FNPP and the “Indian policing program” are of particular relevance for the purposes of this Inquest. The Inquest heard evidence from Ms. Embuldeniya that in 1992, the Federal government created the FNPP, which was to provide First Nations with professional and enhanced police services on reserve. The policy contemplated that those police services could be provided by way of an existing provincial police service provider - in Manitoba, the RCMP. However, the policy also provided the opportunity for First Nations to enter into negotiations for the implementation of self-administered policing services, such as, in Manitoba, the Dakota Ojibway Police Service.

[103] It was Ms. Embuldeniya’s evidence that the Federal government recognizes that many First Nation communities do not receive 24-hour policing services by the RCMP in Manitoba (the absence of 24-hour policing in Wasagamack is described elsewhere in this report), and that First Nations do not always receive policing from the RCMP that is culturally appropriate; the FNPP provides for both enhanced policing on reserve, and policing that is also culturally appropriate for First Nation communities. Depending on the needs and goals of each First Nation, the agreement negotiated with a First Nation under the FNPP may result in an enhancement of existing police services by way of a community tripartite agreement (CTA) involving the First Nation and the Federal and Provincial governments, and which provides for policing on reserve by the RCMP with a set number of officers assigned specifically to that First Nation; a self-administered First Nations police service; or a transitional form of police service, where the First Nation would initially contract with the RCMP, and, at some point thereafter transition to a self-administered police service.

[104] The Inquest also heard that the FNPP provides a mechanism for community

input with respect to police services. In the case of a self-administered police service, a police services board, or in the case of the RCMP-community tripartite agreement, a community consultative group, will hear community concerns and will then in turn engage with the police service provider to ensure that specific needs and specific concerns of the community are met.

[105] Ms. Embuldeniya testified that under the FNPP, members of First Nation police services are recognized under the Police Act of each province, and have the authority to enforce the Criminal Code, and related Federal and provincial statutes.

[106] The Inquest heard that an underlying assumption of the First Nations Policing Policy is that it would involve the phasing out of the Band Constable program. It was Ms. Embuldeniya's evidence that the basis for this approach was, in part, recognition by the Federal government that in some cases Band Constables were not provided with the ability to remain separate from the Chief and council, and the desires or the wishes of Chief and council. The First Nations Policing Policy is intended to create police organizations independent of Chief and Council. While the problem underlying this approach appears to have been political interference, it should be noted that inherent in the concept of an independent police agency is an agency independent of Chief and Council for its funding, as well as an end to the funding-freeze in place with respect to the Band Constable program.

[107] A self-administered or tri-partite agreement police agency would therefore appear to be a significant step towards addressing the problems identified in the course of this Inquest with respect to underfunding of the policing program at Wasagamack First Nation.

[108] It is also significant to note that the RCMP model under the FNPP would include a monitoring and supervision function. In that regard, I note that Exhibit 24, entitled "First Nations Policing Policy", contains the following description of examples of police service models eligible for Federal funding:

1. First Nations Administered Police Service organized on a band, tribal, regional or provincial basis, including arrangements providing for one First Nation to contract for the policing services of another.
2. Special Contingent of First Nations officers: within an existing police service, including:
 - (a) First Nations officers employed within a provincial or municipal police service with dedicated responsibilities to serve a First Nation community.
 - (b) a group of First Nations police officers employed through a contractual arrangement to provide a policing service to a First Nation community

(and)

3. Developmental Policing Arrangement: designed to smooth the transition from one type of policing arrangement to another."

[109] It was the evidence of the Community Justice worker for the ILTC, Stanley Manoakesick, that the ILTC envisioned Wasagamack First Nation along with the other constituent communities as adopting the third, or "transitional" model, beginning with an RCMP community tripartite policing service and moving to a First Nations Administered Police Service. This model would have the benefit, at least initially, of providing the ongoing support and supervision for the First Nations Police Service which the events surrounding Mr. Fiddler's death, and the evidence at this Inquest, have demonstrated are necessary.

[110] The Inquest heard that of the remaining Band Constables in Canada, fully 80 percent are to be found in Manitoba, including those at Wasagamack First Nation. On behalf of the Federal Aboriginal Policing Directorate, Ms. Embuldeniya attributed the absence of enhanced policing agreements for First Nations in Manitoba as a function of the shared Federal/Provincial jurisdiction for the administration of justice:

-- the First Nation Policing Policy was created to, to provide professional services on reserve, and there was a requirement that the province be a partner because of the shared jurisdiction between First Nations and Justice in the province... And so as a result, we do need the province to come in as a partner to move forward on providing professional and enhanced services to First Nations. In Manitoba... I can't really speak on behalf of the Government of Manitoba...but there has been some reluctance to come forward, to sit at the table in some cases. There has also been...some times where the province hasn't had the funding available to implement the First Nations Policing Policy... We provide 52 percent of the funding...and the province is supposed to provide 48 percent...they haven't been able to, to come up with the 48 percent...Other provincial jurisdictions, British Columbia, Alberta, Saskatchewan, Ontario, those provinces have come up with the funding, the 48 percent matching funding, to implement, for want of a better word, full policing by aboriginals.

[99] When Ms. Embuldeniya testified at the Inquest into the death of Rachel Wood, she provided additional background to these programs. The Band Constable Program began prior to 1968. Circular #55 set out governing policy for this program in September 1971. Under the heading "Band Administration and Supervision", circular # 55 states:

“7. In cases where detention is required, the case should be referred to the responsible Senior Police Force.”

[100] In Nelson House the responsible senior police force is the RCMP, which at the time of Ms. Wood’s death in 2003, was located some 85 kms away in Thompson. She related that First Nations that have a “Dry Reserve” i.e. a Band bylaw prohibiting alcohol have a high number of Band Constables and a correspondingly high number of arrests. She pointed out that the Band bylaws do not provide that a person can be detained when found intoxicated and do not confer any special powers to Band Constables. She advised that Band Constables do not receive training for MHA’s and that they should definitely be referred to the RCMP. What she was not asked, was how Band Constables are to do this if they have not been trained to recognize a MHA issue.

[101] Since the report of the Fiddler Inquest, Ms. Embuldeniya’s department has begun tracking Band Constables by receiving yearly reports. They maintain a list of Band Constables together with a list of anyone removed from employment on a yearly basis. She testified they use that list to screen for training of Band Constables. When asked what her department does if that yearly list is not provided by a Band, she answered that they could threaten to withhold funding until the appropriate documentation was received. She advised that would be a measure of last resort.

[102] She went on to say that of all of the Band Constables in Canada, 90% are employed here in Manitoba. She reported some gradual progress in Manitoba with Community Tripartite Agreements (CTA'S). Negotiations in Nelson House have recently successfully concluded in a CTA. Out of the 48 First Nations that have a Band Constable Program, 5 are negotiating CTA's.

[103] Ms. Embuldeniya testified that there is no current protocol in place for the reporting to her Agency of deaths of people while in custody of Band Constables. She acknowledged that such a reporting requirement would be helpful. She advised that the Federal government was looking at hiring another staff to assist her in her responsibilities for these programs in Manitoba and Northwest Ontario and advised that one person is not enough. She advised there are 62 First Nations in Manitoba alone. She sees the need to get out on the ground and see for herself what is going on regarding staffing issues and buildings in the Band Policing programs.

[104] She stated that detention facilities are not supposed to be operated by Band Constables. She testified that the federal government does not promote this or pay for it. She acknowledged that when circular #55 was written there were no Band operated detention facilities. She stated she was not aware of the existence of Nelson House Police cells until last summer. When she recently learned that Split Lake was operating Band Constable cells, she sent a letter to that First Nation advising them that they were not allowed to do so. She testified that since the Fiddler Inquest she has sent out 3 letters

advising that Band constable are not allowed to detain prisoners. She agreed that the only option available to her department if they continued to operate such facilities was to discontinue their funding contribution to the Band Constable Program. She stated that to her knowledge no organized inventory of such building has ever been done and there is no protocol for physical inspections. When shown the April 200 HRDC fire inspection deficiency report for the Nelson House Police Station she advised that she had not seen a copy of that document. There did not appear to be any established protocol for sharing of such information between federal government departments. Neither had she ever seen the INAC Assert Condition Report which would have disclosed the existence of the Band Constable cells in Nelson House.

[105] Ms. Embuldeniya also confirmed the Federal Government's contribution to policing. That contribution has been frozen since 1992. For Nelson house it is \$87,000 per year. It has not increased with population growth. It was her evidence that the Federal government does not monitor Band Constables. They do not assume responsibility for Band Constable standards. She acknowledged that the new agreements need clear roles and responsibilities defined and that more supervisory aspects are required. She indicated the federal government is hoping that the RCMP will play a greater role in supervision of First Nation Policing under these new agreements.

[106] When asked if the lack of funding for transportation to the Band Constable training program was an impediment to accessing the training, she agreed that was a possibility.

Sergeant William Tewnion

[107] This witness is a Sergeant with sixteen years experience with the RCMP. He has been previously posted in Churchill, Gimli, Portage La Prairie, and most recently in Winnipeg as a policy analyst in “D” division. His job description includes writing and keeping up to date with policy directives for the RCMP. National, Provincial and Divisional policies all must be consistent. It is his job to ensure that RCMP policy in Manitoba is up to date.

[108] An RCMP standards manual was filed as Exhibit #15. They were last amended February 1st 2006. They provide a detailed checklist of standards for prisoner cells construction, which include optimizing viewing of sight lines of prisoners in cells and eliminating ligature or hanging points. Their operations manual also sets standards and policies for guards employed by the RCMP. They require that as a condition of employment with the RCMP, all guards must have a valid First-Aid and CPR certificate. Guards are instructed to document any unusual behavior exhibited by a prisoner example suicidal tendencies. Prisoners are to be monitored frequently and irregular intervals to ensure their security and well-being. They are to be checked at intervals no more than 15 minutes apart. Prisoners who are known to have or suspected of having suicidal

tendencies are to be constantly monitored. Constant monitoring is defined as “watching or observing without interruption.” Use of close circuit video equipment can augment but not replace physical checks. Further, the RCMP member on duty is to ensure the cells are safe and habitable. Prisoner lodging forms (C-13) are to be highlighted when constant monitoring is required. He advised that RCMP cell guards are not given suicide prevention training. He indicated there was a protocol regarding shift change during which time guards are to check any notes on the C-13.

[109] He testified that a new memo had just issued last week documenting that it will not be common practice to lodge MHA people in cells. He indicated there was no authority to detain such people in cells; they are mental patients not prisoners. He said doctors or qualified mental health people must do assessments and declare them fit to be in cells. He indicated that he did not believe RCMP or any police force should be taking on the responsibility of mental health patients. He indicated there is no legal authority to detain MHA’s when taking them to a doctor. Nowhere does the legislation provide for holding MHA’s in jail until a doctor is available for assessment.

[110] He confirmed that there is a memorandum of understanding, that Band Constables with Special Constable Status can lodge prisoners in RCMP cells.

Dr. Charles Littman

[111] This witness is an anatomical pathologist. His C.V. was filed (Exhibit #17). Essentially he works in a hospital examining tissue biopsies and conducting autopsies. He has been an associate professor at the University of Manitoba since 1998. He has been employed by the medical examiners office since 1991. Dr. Littman has conducted more than 200 autopsies.

[112] Dr. Littman conducted the autopsy on Rachel Wood on October 7, 2003. His preliminary autopsy report, completed within 24 hours of the autopsy, was filed as an exhibit. His final report, once all the toxicology reports were completed, was also filed. His report referenced that Rachel Wood had past history of depression and attempted suicides. He testified that petechial, or pinpoint hemorrhaging had taken place on her upper eyelids. This was more frequently seen in asphyxia deaths. This was consistent with the finding of hanging. The photo #6 of booklet #4 depicted this effect. He explained it by saying that when the neck is compressed there is only one large vein that takes the blood out of the head area. Blood can continue to come in but cannot leave the head area which causes small vessels to engorge and then rupture and explode.

[113] His findings included acute alcohol intoxication. Alcohol is a known depressant. Rachel Wood's blood alcohol was .217, or 2.5 times the legal driving limit. Her vitreous fluid (the fluid in her eye) measured .247. Her urine measured .270. He

indicated her blood alcohol level would have been significantly higher before the autopsy. There were no drugs found in her system except nicotine and caffeine. The cause of death he determined was by hanging. The uneven patterns of abrasions on her neck were consistent with being hung by jeans. The abrasions were angled upwards, which was consistent from being hung from the cell bars.

[114] None of the other bruises on her body were life threatening and there were no significant injuries to bones or underlying tissues. Bruising on her hands he determined was offensive bruising consistent with her hitting something or someone. It did not appear to be excessive force because there was no sign of skin abrasion or splitting. Her lungs showed congestion which is common in this type of death. He stated that as the heart fails blood gets into the lungs but does not get out. He further commented that resuscitation efforts (i.e. CPR) would not have been useful because of her lung congestion.

[115] It seems clear from a review of the literature from other inquests on hanging fatalities, that death by hanging can come very quickly, in as little as a minute.

Review of Evidence / Conclusions

Not an isolated occurrence

[116] Counsel to the Inquest, Ms. Breta Passler, sent letters to the Coroner's Office in each of the provinces of British Columbia, Alberta, Ontario as well as to Nunavut and the Yukon Territory. She requested information concerning people who had hung themselves while in police custody. The relevant information is summarized below:

Richard William Allen: Dead at age 29 years on July 4th, 2001 after being lodged in police cells in Terrace BC. He was intoxicated. All his clothing, excepting his underwear was removed by the authorities out of concern that he threatened to hang himself. He was found hanging from the cell bars on the holding cell door using his underwear as a ligature. Jury recommendations included elimination of bars that prisoners could tie a ligature to as well as improved training and supervision of guards.

Bonnie Henry: Dead at age 39 years on December 5th, 1997 after being lodged in police cells in Vancouver. She was under the influence of drugs. She was found hanging from drainage holes in a metal bunk using her grey spandex leggings as a ligature. Jury recommendations included mandatory checks of holding cells at least every 15 minutes and that those checks are documented.

Thomas Karpuk: Dead at age 23 years on December 7th, 1996 after being lodged in police cells in Parksville BC. He was intoxicated. He was found hanging from the cell bar door using his "T" shirt as a ligature. Jury recommendations included eliminating hanging points and continuous monitoring of cells by video monitoring or direct visibility to be supplemented by physical checks.

Robert McDonald: Dead at age 33 years on September 9th, 1994 after being lodged in police cells in Victoria. He showed signs of drug and alcohol consumption. He was found hanging from the cell bars by a cloth ligature. Jury recommendations referenced that construction of a new police station had begun and that design of the new cells included video monitoring and the elimination of cell bars.

Brett Chambers: Dead at age 32 years on December 19th, 1993 after being lodged in RCMP cells in Kelowna, BC. He was found hanging from a metal vent grill above the prisoner's bunk using a strip from a blanket as a ligature. Jury recommendations included installation of video cameras in cells.

Darcy Dubeck: Dead at age 34 years on March 4th, 1997 after being lodged in RCMP cells in Boyle, Alberta. He was found hanging from cell bars using a piece of blanket as a ligature. Recommendations included a "Constant Monitoring Policy", increased training for guards as well as elimination of ligature points on the bars.

Harold Parks: Dead at age 78 years on August 31st, 1996 after being lodged in RCMP cells in Canmore, Alberta. He was intoxicated. He was found hanging from the cell bars using a sleeve of his shirt as a ligature. Recommendations included modification of the cell bars to eliminate hanging points.

Jesse Payne: Dead at age 14 on May 26th, 1996 after being lodged in police cells in Calgary. He was found hanging from one of the bars in his cell using a sock as a ligature. Recommendations included modification of the cell bars to eliminate hanging points and better observation of the cells.

Kevin Sparklingeyes: Dead at age 15 years on December 3rd, 1994 after being transferred to RCMP cells in Fort McMurray. He was found hanging from the cell bars using a “T”-shirt as a ligature. Recommendations included increased training and observation by guards.

John Tibbet: Dead on December 25th, 1999 in Whitehorse in the Yukon Territory. He hung himself while in cells. Jury recommendations included monitoring of cells by camera and a retrofit of a new cell door.

Krista Lauzon: Dead at age 21 years on September 11th, 1999 after being lodged in Sault Ste. Marie jail in Ontario. She was apparently experiencing withdrawal from alcohol and drug consumption. She was found hanging from the cells bars above the frame of her door using a bed sheet as a ligature. Jury recommendations included elimination of cell bars to eliminate hanging points, increased training and monitoring by staff.

Benjamin Mitten: Dead at age 25 on March 31st, 2003 after being lodged at the Brantford jail in Ontario. He was found hanging from the top of his cell door using a bed sheet as a ligature. Jury recommendations included suicide intervention training for all of the constables and guards and that the cell doors should be retrofitted to eliminate hanging points.

Steven Voss: Dead at age 33 years on November 14th, 2003 after being lodged at the Thunder Bay District jail. He was experiencing early drug withdrawal. He was found hanging from a cross piece of the cell door using a bed sheet as a ligature. Jury recommendations included increased monitoring of prisoners, including by closed circuit TV and eliminating hanging points in cells.

Patrick Montgomery: Dead at age 23 years on January 9th, 2005 after being lodged in cells at the Hamilton Wentworth Detention Centre in Ontario. He was found hanging from the smoke detector cage on the ceiling in his cell. Jury recommendations included eliminating such hanging points and improved monitoring of prisoners in cells.

Drew Diplock: Dead at age 36 years on February 20th, 2004 after being lodged at the Brantford jail. He was found hanging from a vent directly above the toilet using a “T”-shirt as a ligature. Jury recommendations included removal of ligature points and the possibility of use of video surveillance.

Kenneth Coaster: Dead at age 31 years on October 14th, 2004 after being lodged at police cells in Geraldton, Ontario. He was intoxicated. He was found hanging from a diagonal cross piece in the cell door using his “T”-shirt as a ligature. Jury Recommendations included a retrofit of the cells to eliminate hanging points, installation of video monitoring equipment and improved training and monitoring of guard which included suicide detection and assessment training for all staff including guards.

[117] The dramatic number of similar deaths suggests that a nation wide sharing of Inquest and Coroners reports in an organized data base might save a number of lives.

Band Constable cells

[118] The Band Constable cells where Rachel Wood died were deficient in many respects. After viewing photographs of them, I could only describe them as inhumane and disgusting. Dirty and worn; toilets that would not flush filled with human waste; they were not fit to house anyone, certainly not anyone who was feeling depressed or

suicidal. They were unsafe. Vertical and horizontal bars on the cell doors created obvious hanging points. There was no direct visual line of sight from the guard desk into the cell area. No cameras were used to monitor the cells. The building was constructed of wood, contained exposed wiring and electrical switches, yet the fire hose and some of the fire extinguishers were nowhere to be seen. No one Agency was tasked with the responsibility to ensure that proper standards were used or enforced.

Lack of funding

[119] Due to a lack of funding, full time guards were laid off prior to Rachel Wood's death. Casual or on call guards were used regularly. The guard on duty the night of this suicide was working just her second shift and had no formal orientation or training. Poor pay and a lack of benefits made it hard to retain and attract employees. Morale among the Band Constables was poor, leading to absenteeism, lack of experience and training. Those who chose to work, were overtaxed, working long hours without respite. Despite a significant increase in population in Nelson House since 1992, Federal funding for policing has remained frozen at 1992 levels. As noted in the Fiddler Inquest this is a situation that is not unique to Nelson House but to many First Nation communities in Manitoba.

Lack of oversight

[120] No one Agency is responsible to establish standards, fund or monitor Aboriginal policing. A lack of clearly defined responsibilities, primarily between the Federal government and the Province of Manitoba is the largest obstacle to proper policing.

Not Just a Nelson House problem

[121] The Inquest heard testimony that other First Nation communities in Northern Manitoba have established and operate their own unregulated holding cells and hire their own guards. Because there is no one Agency responsible for overseeing the safety and proper operation of these cells they operate in a vacuum of inspection and safety regulation. If this is allowed to continue others will die.

RECOMMENDATION NO. 1

The Province invite the Federal government establish a joint working group tasked with identifying Band operated holding cells in Manitoba and take immediate action to shut them down.

RECOMMENDATION NO. 2

Any replacement cells must meet RCMP standards of construction, operation and staffing.

RECOMMENDATION NO. 3

The Province initiate negotiations with the Federal government and the First Nations to achieve agreement to clearly define, properly enforce and regularly monitor standards for Band Constables and First Nations Policing Programs.

RECOMMENDATION NO. 4

The Province negotiate with the Federal government and the First Nations an agreement to fund transportation of Band Constables from remote areas to training sessions.

RECOMMENDATION NO. 5

The Province of Manitoba initiate negotiations to establish a national protocol and data base to share Inquest and Coroner's reports and their recommendations.

RECOMMENDATION NO. 6

The Province make specialized training in suicide prevention and recognition (i.e. the ASSIST program) mandatory for all cell guards in Manitoba, with periodic refresher courses.

RECOMMENDATION NO. 7

The Province make mandatory Closed Circuit TV monitoring of all holding cells in Manitoba.

RECOMMENDATION NO. 8

The Province inspect all provincial jails with the goal of ensuring all prisoner cells are ligature proof.

RECOMMENDATION NO. 9

The Province direct that its Chief Medical Examiner notify the Aboriginal Policing Directorate for Manitoba when a death occurs which directly involves First Nations Police.

Manitoba

The Fatality Inquiries Act

Schedule of Exhibits Attached to Provincial Judges' Report

Respecting the death of **Rachel Lori Wood**

<u>Exhibit No.</u>	<u>Description</u>
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1. Application for standing from Councillor Agnes Melinda Spence on behalf of Nisichawayasihk Cree Nation, dated March 1st, 2005.
2. Letter from the Chief Medical Examiner, Dr. Balachandra, dated June 1st, 2004 directing that an inquest be held into the death of Rachel Lori Wood.
3. Binder of documents received by Inquest Office and compiled by Inquest Coordinator, Betty Owen.
4. Duo tang containing photo indexes for the five booklets of photographs.
5. Poster sized diagram of cell area dated October 2003.
6. Five separate booklets of photos taken by RCMP Forensic Identification Services, numbered one through five.
7. Documents provided by counsel for the Nisichawayasihk Cree Nation, as complied by the Inquest Coordinator, i.e. Section III – C Documents.
8. Excerpt from Asset Condition Reporting System, dated January 2003, prepared by Ininew Project Management LTD for Nisichawayasihk Cree Nation.

<u>Exhibit No.</u>	<u>Description</u>
9.	Report and related correspondence from Human Resources Development Canada Labour Program re Fire Protection and Safety deficiencies to Nisichawayasihk Cree Nation Chief and Council, dated April to September of 2000.
10.	Terms and conditions for First Nation Policing Program, dated November 20 th , 2006.
11.	Band Constable Training Course syllabus, February 29 to March 17 th , 2000 at Brandon Manitoba.
12.	RCMP training syllabus for Band/Community Constables' Course Week 1 January 10-14 th , 2005.
13.	List of Special Constable Appointments for Nelson House Manitoba.
14.	Band Constable training history.
15.	RCMP standards/policy manual.
16.	Aboriginal Policing services and programs.
17.	Curriculum Vitae of Dr. Littman, Medical Examiner, Province of Manitoba.
18.	Letter from Val Horner R.N. Province of Manitoba training coordinator for the ASSIST Program (Applied Suicide Intervention Skills Training) dated November 27 th , 2006, together with suicide intervention handbook and pamphlets.
19.	Memo from RCMP Supt. Doug Lang to District Commanders dated November 20 th , 2006 re: Mental Health Act Escorts.
20.	RCMP Policy re Mental Health Act.
21.	Letter from W.D. (Drew) Goddard of Manitoba Justice, Aboriginal and Community Law Enforcement, dated November 27 th , 2006 responding to questions from Inquest Counsel.
22.	Handwritten recommendations of Jimmy Hunter Spence, former Justice Portfolio Councillor for Nisichawayasihk Cree Nation.

DISTRIBUTION LIST

1. Dr. A. Thambirajah Balachandra, Chief Medical Examiner (2 copies)
2. Chief Judge Raymond E. Wyant, Provincial Court of Manitoba
3. The Honourable Dave Chomiak, Minister Responsible for *The Fatality Inquiries Act*
4. Mr. Ron Perozzo, Deputy Minister of Justice & Deputy Attorney General
5. Mr. Don Slough, Director of Public Prosecutions
6. Ms. Breta Passler, Counsel to the Inquest (Provincial Crown)
7. Mr. Joel Katz, Counsel for the Federal Government
8. Ms. Kimberley Gilson, Counsel for Nisichawayasihk Cree Nation
9. Mr. Michael Anthony, Exhibit Control Officer, Provincial Court
10. Ms. Karen Fulham, Executive Assistant and Media Relations, Provincial Court
11. Ms. Betty Owen, Inquest Coordinator, Province of Manitoba
12. Mrs. Judith Ann Wood, party to inquest and mother of Ms. Rachel Lori Wood