

RELEASE DATE: July 23, 2015



Manitoba

THE PROVINCIAL COURT OF MANITOBA

IN THE MATTER OF: *The Fatality Inquiries Act, C.C.S.M. c. F52*

AND IN THE MATTER OF: An Inquest into the Death of:
CALVIN WAYLON McDOUGALL

Report on Inquest and Recommendations of
Judge Tracey Lord
Issued this 20th day of July, 2015

APPEARANCES:

Counsel to the Inquest: Mr. D. Knight Q.C.
Counsel for Department of Justice,
Community Safety Division: Mr. J. Koch

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***THE FATALITY INQUIRIES ACT*, C.C.S.M. c. F52**

**REPORT BY PROVINCIAL JUDGE ON AN INQUEST
INTO THE DEATH OF: CALVIN WAYLON McDUGALL**

On January 29, 2010 Dr. A. T. Balachandra called an Inquest into the death of Calvin Waylon McDougall having occurred on May 7, 2009.

On April 26, 2011 a Standing Hearing was held, at which no requests for standing were made.

The inquest respecting the death of Calvin Waylon McDougal (Waylon McDougall) was held before Judge P. Umpherville on April 11th and 12th, 2012 at Garden Hill First Nation, Manitoba. On April 12, 2012, the inquest was adjourned in order for inquest counsel to consider if any further evidence would be called or whether the proceedings would be concluded.

Subsequently, Judge Umpherville became unavailable to complete the inquest.

Section 34(4)(b) of *The Fatalities Inquiries Act* allows for the Minister to direct another Provincial Judge to complete the inquest, or conduct a new inquest if the presiding judge is unable to complete the inquest and the required report. By letter dated June 6, 2013 this direction was given, and on June 12, 2013, I was assigned to complete the inquest and prepare the report that follows.

Proceedings were concluded on October 9, 2013 with no further evidence being called.

On April 11, 2014, I asked that this Inquest be re-opened and further evidence heard on issues surrounding the Band Constable Program in

Garden Hill, Manitoba. As a result of the Inquest being re-opened, the Department of Justice, Community Safety Division requested, and was granted standing on July 9, 2014 for the remainder of the proceedings. Further evidence was heard on February 2, 2015 in Garden Hill and on March 23, 2015 in Winnipeg.

This report contains my findings and recommendations after having reviewed the evidence, exhibits filed, and submissions of counsel.

On April 11, 2012 Judge Umpherville and inquest counsel took an escorted, but unrecorded tour of the building where this death occurred. Judge Umpherville's observations of that tour are undocumented and therefore unavailable for my consideration.

Attached to my report is a schedule, Appendix A, of all exhibits required to be filed. Pursuant to the provisions of subsection 33(3) of *The Fatality Inquiries Act*, I am ordering that all exhibits be returned to the Exhibit Officer, Provincial Court of Manitoba, to be released only upon application with notice to any party with a privacy interest.

Dated at the City of Winnipeg, in Manitoba, this 20th day of July, 2015.

“Original signed by”

Judge Tracey Lord

Copies to: Dr. A. Thambirajah Balachandra, Chief Medical Examiner
Chief Judge Ken Champagne, Provincial Court of Manitoba
The Honourable Gord Mackintosh, Minister Responsible for *The Fatality Inquiries Act*
Donna Miller, Q.C., Deputy Minister of Justice & Attorney General
Russ Ridd, Director of Regional Prosecutions
Lorraine Prefontaine, Director of Special Prosecutions and Appeals
Mr. D. Knight Q.C., Inquest Counsel
Mr. J. Koch, Counsel to the Department of Justice, Community Safety Division

SCOPE OF INQUEST

[1] On January 18, 2010, Dr. A. T. Balachandra, Chief Medical Examiner (“CME”) directed an inquest to be held, as required by the provisions of section 19(3) of *The Fatality Inquiries Act, C.C.S.M. c. F52*. The inquest is to determine the circumstances relating to Mr. McDougall’s death and to determine what, if anything, can be done to prevent similar deaths from occurring in the future.

[2] Section 33(1) of *The Fatality Inquiries Act* sets out the duties of the presiding judge upon completion of the 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.

It is not the function of the presiding judge to lay blame with anyone who may have been involved in the death.

[3] In the 2005 Inquest Report into the death of Glenn Fiddler, prepared by Provincial Judge Sidney Lerner, the role of the inquest judge as it relates to deaths occurring on First Nation communities was examined. At paragraphs [301] and [302], Judge Lerner noted the following:

[301]...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 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.

[4] As such, any comments in my report regarding Federal departments, including the Royal Canadian Mounted Police (RCMP), are fact finding in nature or advisory only.

DESCRIPTION OF EXHIBITS REFERRED TO IN EVIDENCE

Exhibit 2- B20.5 Letter dated January 7, 2008 to Winona Embuldeniya Regional Manager, Manitoba Aboriginal Policing Directorate from Garden Hill First Nation Chief and Council indicating that Garden Hill First Nation will be fully responsible for operation and maintenance of the “Community Safety Centre”.

Exhibit 2-B20 Letter dated January 14, 2008 to Garden Hill Chief and Council from Winona Embuldeniya, Regional Manager, Manitoba Aboriginal Policing Directorate confirming that:

- Garden Hill First Nation will no longer be operating a detention facility for the Band Constable Program
- The First Nation will no longer be operating holding cells
- The First Nation will operate a Community Safety Centre for individuals unable to care for themselves due to intoxication, and

On this basis the Federal funding for the Band Constable Program will continue.

Exhibit 2-B14.1 and 14.2 Terms and Conditions of the Band Constable Program

Exhibit 2-B19 Letter dated July 30, 2008 to Garden Hill Chief and Counsel from Aboriginal and Community Law Enforcement, Criminal Justice Division, Manitoba Justice, advising of the revocation of Luke Keno's Special Constable status.

Exhibit 2-B19.1 Order of Revocation.

INTRODUCTION

[5] The focus of the evidence heard at the Inquest relates to the functioning of the Band Constable Program in Garden Hill Manitoba and the use of detention cells at a Band owned and operated facility.

[6] On May 7, 2009, Calvin Waylon McDougall, age 19, died while in a holding cell on the Garden Hill First Nation. This building is operated by the Garden Hill First Nation Band. In the early morning hours Garden Hill First Nation Band Constables were called to a residence regarding Mr. McDougall who was reportedly intoxicated and causing a disturbance. Mr. McDougall was taken by a Band Constable to the band holding facility where he was lodged in a cell at 2:38 a.m. The decision was made that he was to be detained there until sober. At 6:38 a.m. he was found unresponsive, in a seated position, hanging from the door knob of the cell door by a piece of fabric ripped from a blanket within the cell. Mr. McDougall was taken to the nursing station, where he was pronounced dead at 9:50 a.m. The cause of Calvin McDougall's death is not at issue and was determined to be due to hanging by suicide.

[7] Garden Hill is one of four First Nation communities that comprise Island Lake Manitoba. It is located approximately 500 km northeast of Winnipeg, and has a population of approximately 4000 people living in the community. Garden Hill is accessible by boat and helicopter in the summer months and by ice road in the winter months. The community is serviced year round by regular air flights which land at the Island Lake Airport located on Stevenson Island. The community of Garden Hill is policed by

the RCMP Island Lake detachment which is also located on Stevenson Island, a short boat ride or vehicle drive away, depending on the season.

[8] In 2009, Garden Hill also had a contingent of Band Constables who were employed by Garden Hill First Nation.

[9] In the time since Mr. McDougall's death and the completion of this Inquest, much has changed in Garden Hill in terms of the First Nation's policing response, as well as the structures governing the community's involvement in policing responsibilities.

SUMMARY OF INQUEST EVIDENCE

[10] The following are summaries of the testimony of the witnesses called at the Inquest. Their testimony is presented in a fashion that best represents the actual chronology of events, as opposed to the order in which they were called to give evidence.

Absalon McKay (evidence given on April 12, 2012)

[11] Absalon McKay is the grandfather of Calvin Waylon McDougall. He is a resident of Garden Hill First Nation at Island Lake Manitoba. He described his grandson Waylon as a "real nice boy", who loved fishing, hunting, sports and musical instruments. Waylon attended school over the years, but did not manage to finish his education as he often "dropped out". Since the break down of his parent's marriage, when he was 13 or 14, Waylon had been "abit" down. Waylon drank with his friends when he went out.

[12] Absalon McKay described an incident that occurred approximately a year and a half before Waylon's death. While Waylon was detained in cells, his girlfriend committed suicide by hanging herself at their residence. Mr. McKay indicated that Waylon had great difficulty getting over the death of his girlfriend.

[13] Although he was worried about him, according to Mr. McKay, his grandson had not indicated to him any desire to kill himself. He was surprised when his grandson committed suicide, as he felt that Waylon would be safe and taken care of while at the Public Safety Building.

Wesley Stuart McDougall (evidence given on April 11, 2012)

[14] Wesley McDougall aged 22, is the brother of Waylon McDougall and resides in Garden Hill with his mother, brothers, his wife and children.

[15] He returned to Garden Hill from Winnipeg on the evening of May 6th, 2009. He saw his brother Waylon at approximately 7:00 P.M. at their home. At approximately 10:30 P.M. Waylon said he was going out drinking at their uncle Marley Fiddler's and invited Wesley to come along. Wesley declined the invitation and stayed home. Waylon returned home between 2:00 a.m. and 3:00 a.m. with their cousin Kelly McDougall. Both were described as "drunk" and Waylon in particular, wanted to continue drinking.

[16] Wesley testified that Waylon was in his room playing his stereo loudly, and would not quiet down. As a result, Wesley asked his wife to call the Band Constables to come and get Waylon, which she did.

[17] Wesley asked the Band Constables to remove his brother from the residence and to keep him over night. Wesley did not recall any prior suicide attempts by his brother, nor had Waylon ever spoken to him about committing suicide.

Luke Keno (evidence given on April 11, 2012 and February 2, 2015)

[18] Mr Keno was a Band Constable in Garden Hill, in May of 2009. He had been in that position for approximately 2 ½ years at that time. He was on duty on May 7, 2009, the date of the death of Waylon McDougall. His shift started at 5:00 P.M. on May 6, 2009, and he was scheduled to work until 9:00 a.m. the following morning.

[19] While on patrol in the south end of the community, he received a call on his portable radio to attend to the Sylvia McDougall residence regarding Waylon McDougall. At the time he received the call he had his nephew Amos Keno with him, as well as another young man. These individuals were present because Band Constable Keno's partner was going to be late attending the shift, and he did not want to be alone on patrol. His belief is that this call came in early in the evening, between 7:00 and 8:00 P.M.

[20] On arrival at the residence, he knocked on the door, and had his first contact with Waylon McDougall, who he described as "really drunk". Band Constable Keno indicated that he had difficulty understanding what

Waylon was saying. He asked Waylon to come with him until he was sober, and described him as being cooperative. Despite describing him as being cooperative, the Band Constable felt it necessary to handcuff Mr. McDougall to prevent him from running away.

[21] Mr. McDougall was then transported to the Garden Hill Public Safety Building, which was about a five to ten minute drive, causing no trouble along the way.

[22] On arrival, Mr. McDougall's pockets were searched and he was placed into a cell. He asked Band Constable Keno how long he would have to stay, and was advised that if he was sober in four hours he could go, but if not it would be eight hours before he would be allowed to leave.

[23] According to the evidence of Band Constable Keno, Mr. McDougall went into the cell and sat down on the bench. He described him as being "fine" and "happy", not "sad" or "angry".

[24] Luke Keno was not aware of any of Mr. McDougall's history, and had no further contact with him after placing him in the cell.

[25] Band Constable Keno returned to cells approximately two hours later with another intoxicated individual. At this time he looked in on Mr. McDougall and noted him to still be seated on the bench in the cell. Mr. McDougall knocked on the cell window and asked how many more hours he had to stay.

[26] While on patrol later in the morning, Luke Keno received a radio call to return to the Public Safety Building immediately. When he arrived, there were already a number of people present. He went to the cell where he had lodged Mr. McDougall and saw his body on the floor.

[27] In terms of policies and procedures, Mr. Keno testified that a log book is kept to record pertinent times and the identities of all those who are lodged in cells. All entries in the log book are made by the guards. He was not aware of any specific policies that the guards are to follow.

[28] At the time of this incident, Mr. Keno believed that he was a Special Constable. He had received previous training in that capacity arranged by the Band. He was aware that a Special Constable had the authority to arrest and detain individuals in circumstances that a regular Band Constable did not.

[29] Mr. Keno was unaware that his Special Constable status had been revoked in July of 2008. He testified that he was not informed about the letter advising of the revocation that was sent to Chief and Council on July 30, 2008. (Exhibit 2-B19) He no longer works as a Band Constable.

[30] Mr. Keno testified that although he was never told not to use the cells at the Public Safety Building to detain people, he was aware that there was 'a problem' with the cells being used for this purpose. He indicated however, that frequently the Band Constables had no other choice but to use the cells to keep intoxicated people safe until they were sober.

[31] In such circumstances, Mr. Keno clarified that they did not always put intoxicated people in a locked cell. If the person was listening to the Band Constables instructions they would be allowed to simply sit in a chair under supervision. Otherwise they would be placed in a cell. He further indicated that if an intoxicated person wanted to leave the Public Safety Building while still intoxicated, they would not be allowed to do so.

[32] Mr. Keno also indicated that he was aware that the RCMP could be called upon to lodge intoxicated individuals in their cells if requested.

Amos Keno (evidence given on April 12, 2012)

[33] On May 7, 2009, Amos Keno assisted his uncle Luke Keno during his shift as a Band Constable. He was present when his uncle attended to the disturbance call regarding Waylon McDougall.

[34] He testified that Waylon's brother brought him outside, where he was handcuffed and put in the back of the truck. He was then taken to the "drunk tank". Amos testified that Waylon was drunk and that he could smell the odour of super juice. He said that Waylon did not speak and was not swearing.

Allison Celance McDougall (evidence given on April 11, 2012)

[35] Ms McDougall was a Band Constable in Garden Hill in May of 2009, holding Special Constable status. She had held that position for approximately two years prior to taking a leave, which she was just returning from at the time of this incident.

[36] She came into work at 10:00 P.M. May 6, 2009 and was to work until 9:00 a.m. the next morning with Luke Keno.

[37] Band Constable McDougall testified that she was unaware that Waylon McDougall had been brought into the Public Safety Building during her shift. She returned to the office at 6:15 a.m. to “have a cigarette and a coffee and to rest her eyes”.

[38] At 6:38 a.m. Ernie Harper came running to her repeating “emergency, emergency”. He was looking for something like a knife to cut something. By the time she got to Waylon McDougall’s cell, Ernie had already cut the rope, and Leslie McKay, another guard, was checking for a pulse.

[39] Band Constable McDougall testified that she instructed Leslie McKay to make the necessary calls, while she attempted to wake up a Band Councillor. She attended to the residence of Elvis Wood to wake him, as well as Jack Harper, and advise them that someone had hung themselves in cells.

[40] Upon her return to the Police station the medical vehicle was already there, as well as a number of other people.

[41] Ms McDougall testified that she has received first aid training.

Ernest Harper (evidence given on April 11, 2012)

[42] Mr. Harper is 46 years old and is a resident of Garden Hill First Nation. He was employed as a guard at the Public Safety Building on the morning of Mr. McDougall’s death. He had been a guard for approximately eleven months at that time.

[43] He was told to look after any prisoners that were in the cells, and was to check on them every fifteen minutes to half an hour, and keep a log of those checks. To conduct a check he would look through the window in the cell door.

[44] In addition, all the cells had cameras in them and he would also watch individuals lodged on the monitor. He noted however that the images were not clear.

[45] He was present on May 7, 2009 when Waylon McDougall was brought in by Band Constable Keno. He was placed into cell #1 at 2:38 a.m. and was to stay for eight hours. He said that Waylon McDougall seemed angry when he was first lodged.

[46] There was a pillow and blanket in cell #1 with Mr. McDougall.

[47] Mr. Harper also noted that unlike the other three cells, cell #1's door had a knob on the inside, as it had just recently been replaced.

[48] Mr. Harper indicated that when he checked on Waylon McDougall by looking in the window, he was sitting on the floor, and he could only see his left leg. On a subsequent check he could not hear any noise coming from within the cell, so he tried the door, and was only able to open it a few inches. This was because Mr. McDougall was sitting on the floor with a piece of blanket around his neck and around the door knob.

[49] Mr. Harper immediately went in search of something with which he could cut the fabric. He found a knife and returned to the cell and did so.

[50] Leslie McKay, the second guard on duty also went to the cell. When she returned, she advised Mr. Harper that Waylon McDougall "was gone". Mr. Harper then went to the radio and made notification calls.

[51] Mr. Harper made no notes in the log to document the times he checked on Mr. McDougall, or the observations he made.

[52] According to Mr. Harper he usually worked alone on guard duty. At the time of this incident, Mr. Harper indicated that the radios and phones were kept in a different room than the monitor on which to view the camera images. If a guard was taking phone calls or using the radio they would not be able to watch the monitor at the same time. When he worked alone, he normally stayed in the radio room and only left when doing checks on prisoners.

[53] In the eleven months that Mr. Harper worked as a guard, he did not receive any training regarding first aid or his job duties, nor was he provided with a manual setting out what his duties were. In the case of an emergency his instructions were to call Band Constable Samson Barkman and the nursing station.

Elvis Wood (evidence given on April 11, 2012 and February 2, 2015)

[54] Mr. Wood is a resident of Garden Hill First Nation and at the time of Mr. McDougall's death had been a Band Councillor for three months. His portfolio included overseeing the Band Constables. He testified that the Band Constables employed at that time had all received their training prior

to his taking the position. He was not aware of the nature of any of the training the guards may have received.

[55] He testified that the guards were there to take care of people that were drunk, and were told to look in on the prisoners every fifteen minutes. The guards were also to keep a time sheet noting the times of the checks they made. He did not know if this was actually done as a practice or not.

[56] At the time of Mr. McDougall's death the cells at the Public Safety Building had cameras in them, and there was a monitor for viewing the camera images. He did not know if the ability to record the images existed or not. Mr. Wood noted that one of the cameras was not working in May 2009, and that the images from the others were blurry. His information was that intoxicated prisoners had damaged the cameras by putting dirt on them.

[57] He remained a Band Councillor for over two years. During that time no changes were made to how prisoners were handled at the Public Safety Building.

[58] Councillor Wood was aware that some of the Band Constables in Garden Hill had Special Constable status, but indicated that there was no differentiation in terms of how they were scheduled for duties. He had never seen the document setting out the terms and conditions of the Band Constable Program (Exhibit 2- 14.1 and 14.2) He was also unaware of the letter (Exhibit 2- B19) to Chief and Council of July 30, 2008 revoking Luke Keno's Special Constable designation.

[59] Councillor Wood testified that Garden Hill is a "dry" reserve and that Band By-laws exist to address this. Further, that the main use of the cells at the Public Safety Building was to lodge intoxicated people for their own safety and the safety of others, and that some efforts were being made prior to Mr. McDougall's death to repair the facility.

[60] He could not remember if anyone had brought it to his attention that the cells were not to be used to detain people when he took over the responsibility for policing.

[61] According to Mr. Wood, during the course of his time as the Band Councillor in charge of policing in Garden Hill, changes and improvements were made to the Public Safety Building.

Jack Harper (evidence given on April 12, 2012)

[62] Mr. Harper is a Band Councillor in Garden Hill, and has been for between twelve and thirteen years. He was notified of Waylon McDougall's death at approximately 7:00 a.m. on May 7, 2009. He immediately attended to the holding cells, and observed the cell and the deceased. He inquired as to whether immediate family members had yet been notified, and at that time learned that Waylon McDougall's mother was also lodged in cells at that time. He did not make any notifications himself and had no further involvement in this matter.

Larry Beardy (evidence given on February 2, 2015)

[63] Mr. Beardy is the Band Councillor currently responsible for policing in the community of Garden Hill. He is in charge of general community safety and specifically the Band Constables. As in the case of his predecessor, he had not seen any of the documentation regarding the allowable use of the Public Safety Building, or the Terms and Conditions of the Band Constable Program. He was however aware of the situation in a general sense as of the fall of 2014.

[64] At the time of his testimony he indicated that there were only five regular Band Constables left and no Special Constables, as the Federal funding for the Program was coming to an end. The five remaining Constables were still looking after intoxicated people and lodging them in the cells, in the same building, now referred to as the Community Safety Centre.

Sergeant Combden (evidence given on April 11, 2012)

[65] Sergeant Combden is a Sergeant with the RCMP and was stationed at the Island Lake detachment between October, 2008 and June, 2009. He learned of Waylon McDougall's death on May 7, 2009 and attended to Garden Hill from Stevenson Island where the detachment is located, arriving at the Public Safety Building at 9:50 a.m.

[66] Constable Goslin, also with the RCMP, guarded the scene of the death until a member of the Identification Unit could attend from Winnipeg.

[67] Sergeant Combden and Constable Rolleau attended to the Nursing Station where Mr. McDougall's body was viewed and photographed. Mr. McDougall's body was then removed and taken to the RCMP detachment.

[68] Sergeant Combden made a number of observations about the Public Safety Building. He noted that none of the cell doors locked, but rather were held closed from the outside by two by four pieces of wood. He noted that the cameras located in the cells did not work well as the surfaces of the cameras were scratched and damaged. As a result, the available images on the monitor were cloudy.

[69] He noted that the fabric seized from around the neck of Mr. McDougall and from the door knob was the same as that of the blanket located in cell #1. He also noted what appeared to be belt loops from the deceased's pants on the bench in cell #1 with fabric from the blanket tied to them.

[70] Sergeant Combden seized what is referred to as the "log book" (Exhibit 9), but did not find anything documenting checks made by the guards on any of the individuals detained in cells.

[71] He was further aware that the door to cell #1 had been recently replaced due to damage and that the new door had a door knob on the inside of the cell. The other cell doors did not have door knobs.

[72] Sergeant Combden's evidence was that the RCMP attend to the Public Safety Building cells often to deal with people detained in cells who are intoxicated and who are also going to be charged criminally, as well as what he referred to as mental health patients.

[73] Further, the Sergeant indicated that while the RCMP do not generally get involved in assisting the Band Constables with intoxicated individuals, if their assistance is requested, they will attend. He said that the RCMP have a positive working relationship with the Band Constables and do their best to support them if they are having difficulty with someone.

[74] **Constable Colin Lindquist (evidence given on April 12, 2012)**

[75] Constable Lindquist had been stationed at Island Lake detachment for two years at the time of Waylon McDougall's death. Despite the fact that Garden Hill is a "dry reserve", meaning that intoxicants are not allowed, he had attended many calls regarding intoxicated individuals in Garden Hill.

[76] Most of the calls to the community of Garden Hill involve intoxicated individuals and relate to the consumption of "super juice". Super juice is made by mixing sugar, water and high potency yeast and allowing it to

ferment. Although it usually takes approximately two days for fermentation, super juice is often consumed as soon as it is made and before it has fermented. When this occurs, the fermentation process continues after consumption within the body resulting in higher levels of intoxication.

[77] Constable Lindquist described that after consuming super juice a person's demeanor often changes. They become belligerent, combative and generally violent, and often black out. He further opined that if regular alcohol were allowed in Garden Hill, residents would not resort to making super juice.

[78] In 2011, there were 2441 individuals lodged by the Band Constables due to intoxication in Garden Hill pursuant to the Band By-Law.

Cary Neil Wass (evidence given on April 11, 2012)

[79] Mr. Wass became Chief of Police in Garden Hill after Mr. McDougall's death. At the time of his testimony in April 2012, he had been the Chief of Police for approximately 26 months. In this capacity he was involved in renovations to the Public Safety Building and changes to the Band Constable Program in an effort to make it a more "professional operation". At the time of his testimony, the only individuals that the Band Constables were bringing to the Public Safety Building were those suffering from intoxication. On occasion, if requested, they would also hold someone for the RCMP until they could attend.

[80] By 2012 the cell area in the Public Safety Building had been renovated to make four cells with reinforced doors. None of the doors had doorknobs. The cells and building were cleaned regularly, and prisoner belongings were kept in secure lockers.

[81] Two of the cell cameras had been replaced. All cameras had been cleaned and were in proper working order. The recording system was in the process of being switched over from VHS recording to DVD recording.

[82] In addition the guard station had been relocated to the area where the camera monitors were located, and guard duty was being done in pairs. One guard was to monitor the phones and deal with dispatching, while the second guard's sole duty was to monitor individuals in cells. Checks were to be made every ten minutes and the results recorded.

[83] As of April 2012 when Mr. Wass testified there were ten Band Constables, five full time guards and one receptionist, as well as twenty two screened volunteers to help the guards. Shifts had been reduced to nine hours each from twelve and both the Band Constables and guards worked four days in a row followed by four days off.

[84] The Band Constables and guards had now all received both first aid and CPR training.

Raymond Levesque (evidence given on March 23, 2015)

[85] Mr. Levesque is a senior advisor with Public Safety Canada, and is responsible for the First Nations Policing Program. The First Nations Policing Program was implemented in 1991, and is a grants and funds program that provides dedicated services to First Nation communities across Canada. Part of Mr. Levesque's role is to support the implementation of the First Nations Policing Program. The mandate is to provide dedicated, responsive services to First Nation Communities, focusing on ensuring community satisfaction.

[86] Mr. Levesque identified two different models of policing under this Program, the first being a self administered police agency, also termed a "stand alone" police service. A police service under this model is considered a professional policing agency and its members are fully trained, fully appointed peace officers. An example of such a police force in Manitoba is the Dakota Ojibway Police Service.

[87] The second model identified by Mr. Levesque encompassed by the First Nations Policing is pursuant to a Community Tri-partite agreement (CTA). In this scenario policing services are provided to a community based on an agreement between the Federal and Provincial Governments and the First Nation. Under this type of agreement the First Nation community may also hire their own Band Constables to enforce Band By-laws and other civil matters that arise.

[88] In 2009, the Band Constable Program was also a federally funded but separate and distinct program from the First Nations Policing Program. The terms and conditions of the Band Constable Program are set out in a document entitled "Circular 55" which came into being in 1977. Under this Program First Nation Communities receive funding to enable them to hire Band Constables, some of whom have Special Constable status. Training

for these individuals is also federally funded. Special Constable status however, is granted by the Provincial Government.

[89] According to Mr. Levesque, in 2009 at the time of Mr. McDougall's death, First Nation communities were not to be using Band owned cells for the detention of people in any circumstances. In some regions funding for Band Constable Programs was stopped during this time period, due to issues relating to the conditions and use of Band owned and operated detention cells.

[90] During his testimony Mr. Levesque was shown correspondence from 2007 and 2008 regarding the Band facility being used for detention in Garden Hill. (Exhibit 2 B- 20 to 20.5)

[91] Mr. Levesque confirmed that as of January 7, 2008 the Garden Hill First Nation advised the Government of Canada that the Band would be responsible for operating what it referred to as the "Community Safety Centre" as a shelter for persons unable to care for themselves due to extreme intoxication. (Exhibit 2 B-20.5)

[92] He further confirmed, that in response (Exhibit 2 B-20) set out the understanding of the Regional Manager, Ms. Embuldeniya that the facility in question was not to be operating as a detention centre and that the holding cells would no longer be used.

[93] Mr. Levesque testified that it was his understanding that the "Community Safety Centre" referenced in Exhibit 2, B-20.5 was to be used by the Band on a voluntary stay basis only.

[94] In March of 2013 the Federal Government indicated that their involvement with the Band Constable Program would end as of March 31, 2015. Mr. Levesque testified that as of April 1, 2015, although the Federal Government will continue to contribute funding, the Provincial Government will take over the administration of Band Constable programming in Manitoba.

Glen Lewis (evidence given on March 23, 2015)

[95] Glen Lewis is the Executive Director of Policing and Public Safety, for Manitoba Justice, Criminal Justice Division. First Nations policing issues in Manitoba fall within his responsibilities.

[96] In addition to stand alone community police forces and those pursuant to Community Tri-partite agreements, Mr. Lewis testified about a third model that exists under the Federal First Nations Policing Policy. This third scenario is called a Provincial Police Service Agreement and is the structure of policing that was in place in Garden Hill Manitoba at the time of Mr. McDougall's death. In this case, the RCMP is the Provincial Police Service providing policing services to the community.

[97] Further, Mr. Lewis confirmed that at the time of Mr. McDougall's death the former federally administered Band Constable Program was also in place in Garden Hill. The Province of Manitoba was not involved with this Program except for the responsibility for the designation of and revocation of Special Constable status of Band Constables.

[98] Mr. Lewis testified that Special Constable status is necessary for a Band Constable to have access to RCMP cells and provides for additional powers of arrest and detention that a regular Band Constable does not have.

[99] In order to attain Special Constable status, a Band Constable would be required to have a successful criminal record check, have completed the required training program and be employed by the First Nation who provides indemnification. If a Special Constable's status is revoked by the Province of Manitoba, the Band Chief and Council, as the employer is notified of the revocation. No registry exists to track which Band Constables have Special Constable status and which do not.

[100] Mr. Lewis confirmed that it was his understanding that at the time of Mr. McDougall's death, Band Constables were not to be detaining individuals in Band owned and operated cells. He however acknowledged that at that time, and subsequently in Manitoba, the RCMP relied heavily on the Band Constables to in fact do so. This is largely due to the limited ability of the RCMP to quickly access remote First Nation communities.

[101] As of March 31, 2015 the Band Constable Program no longer exists, as it has been discontinued by the Federal Government. Mr. Lewis advised in his evidence that the Province of Manitoba will step in to fill the void created, and to this end has tabled Bill 5 (Exhibit 15) in the Provincial Legislature. As of the giving of his evidence, Bill 5 is still in draft form and awaits second and third reading.

[102] In its current format Bill 5, *The Police Services Amendment Act*, seeks to amend *The Police Services Act* to enable a First Nation or an entity representing a group of First Nations to establish a First Nation safety officer program to deliver services within a First Nation community.

[103] Bill 5 further contemplates that such a program would be the subject of an agreement between the First Nation, the Province, the Federal Government and the local policing authority. The agreement would address the management and financing of the program, the direction and supervision of the First Nation safety officers as well as the relationship between them and the local policing authority. The agreement would also address jurisdictional issues and provide for a complaint process.

[104] The legislation provides for the process of appointment of First Nation safety officers, the required qualifications and necessary training.

[105] It is contemplated that the First Nation safety officers would have peace officer status with authorization to enforce provincial statutes and regulations such as *The Intoxicated Persons Detention Act* and *The Mental Health Act* as well as First Nation By-laws.

[106] Upon request, First Nation safety officers would also provide assistance to the local policing authority, but not to the extent of assisting with criminal law enforcement activities.

[107] In addition, the legislation anticipates that First Nation safety officers would be involved in implementing crime prevention strategies and initiatives in the community, as well as ensuring those in need would be connected with the appropriate social service providers.

[108] According to Mr. Lewis, oversight would exist with the Provincial Government relating to the maintenance and use of any detention facilities, to ensure the safety of both those that are detained and the employees of the First Nation.

[109] Between April 1, 2015, when the Band Constable Program ends and the passing of governing legislation, the Province of Manitoba will be doing advance work regarding transition and funding issues affecting First Nation communities in an effort to address the void created by the end of the Band Constable Program.

[110] It is important to note that both Mr. Levesque and Mr. Lewis acknowledged in their evidence that the conflict created by the necessary safety compliance issues and related funding agreement resulted in a situation in which it was extremely difficult for both the Band Constables and the RCMP to deal with circumstances such as that of Mr. McDougall.

RECOMMENDATIONS

[111] It is recommended that the Province of Manitoba in partnership with the Garden Hill First Nation establish a public safety program in the community of Garden Hill, Manitoba to respond to the immediate needs of individuals who are suffering from intoxication by drug or intoxicants and/or suffering from mental health difficulties, who pose a danger to themselves or others.

[112] It is recommended that this program be staffed with trained Peace Officers authorized to enforce Provincial Statutes and Band by laws.

[113] It is recommended that the Province of Manitoba in partnership with the Garden Hill First Nation establish a community safety facility in the community of Garden Hill to lodge or detain individuals suffering from intoxication by drug or intoxicant and/or mental health difficulties while they pose a danger to themselves or others.

[114] It is recommended that the facility be staffed by individuals trained in first aid, and with specific training dealing with individuals who are intoxicated by drug or intoxicant or suffering from mental health difficulties.

[115] It is recommended that the facility contain safe sanitary detention cells that are secure but easily accessible by staff in an emergency.

[116] It is recommended that the cells be monitored by means of video equipment as well as frequent in person checks, and that a formal log be maintained of all video monitoring and in person checks.

[117] It is recommended that the facility be inspected regularly to ensure the continuing safety and security of staff and detainees.

[118] It is recommended that the Province of Manitoba in partnership with Garden Hill First Nation establish a community referral program to assist individuals who have been detained due to intoxication and/or mental health difficulties, to connect with required medical assistance and support

resources upon their release from detention at the community safety centre.

[119] It is recommended that a method for regular evaluation of the community safety program, community safety centre and the community referral program be included in the First Nation Safety Officer Program Agreement to ensure that the needs of the community continue to be met.

Dated at the City of Winnipeg, in Manitoba, this 20th day of July, 2015.

“Original signed by”

Judge Tracey Lord

**Appendix “A”
to Report of Judge Tracey Lord on the Inquest into the
Death of Calvin Waylon McDougall, dated July 20th, 2015**

Exhibit List:

<u>Exhibit No.</u>	<u>Exhibit Description</u>	<u>Filed by:</u>
1	Letter of Chief Medical Examiner	Crown
2	Documents received from Inquest Office contained in large brown folder chronologically numbered	Crown
3	CD of all of the aerial and site photos	Crown
4	CD of photos of autopsy	Crown
5	Cloth that was hanging from the door knob from Cell No. 1	Crown
6	Cloth that was cut off the deceased’s neck	Crown
7	Another piece of cloth that was seized from the floor of Cell No. 1	Crown
8	Two pieces of loose paper from a telephone log	Crown
9	Guard Book	Crown
10	Garden Hill Band Constable Program	Crown
11	Band Counsel Resolution	Crown
12	Synapse of a portion of Circular 55	Crown
13	Band Constable General Duties and Responsibilities	Crown
14	First Nation Policing Programs in Manitoba and Band Constable Program	Crown
15	Bill 5	Crown