

INQUIRY INTO THE INVESTIGATION AND PROSECUTION OF DEREK HARVEY-ZENK

The Honourable Roger Salhany, Q.C., Commissioner

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Transcript of Proceedings before the Commission sitting at the Winnipeg Convention Centre Winnipeg, Manitoba

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Monday, February 4, 2008

Standing Hearing

INQUIRY PROCEEDINGS

COMMISSION STAFF:

Mr. David M. Paciocco Commission Counsel
Mr. Vincent Clifford Associate Commission Counsel
Mr. R.L. Giasson Chief Administrative Officer
Ms. Melissa Braun Administrative Secretary
Ms. Wendy Bergmann Administrative Assistant
Ms. Sharleen Reid Clerk

APPEARANCES

Mr. G. Zazelenchuk and
Mr. I. Restall For Robert Taman
Mr. M. Green For Mr. Marty Minuk
Mr. J. Prober For Derek Harvey-Zenk
Ms. B. Bowley For R.M. of East St. Paul
Mr. H. Weinstein For Mr. Harry Bakema
Ms. S. Hanlin For Winnipeg Police Service
Ms. K. Clearwater For Winnipeg Police Association
Mr. G. McFetridge For the Province of Manitoba
Ms. S. Inness For the Manitoba Bar Association

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1 MONDAY, FEBRUARY 4, 2008

2 UPON COMMENCING AT 9:10 A.M.

3

4 THE CLERK: All rise. This Commission
5 is now open. Please be seated.

6 THE COMMISSIONER: Good morning.

7 First of all, I want to welcome all of you and
8 thank counsel for being here at 9:00. This will
9 be the last time you will be asked to be here at
10 9:00 o'clock. We will start the proceedings in
11 June at 9:30, so that you can get to your office
12 in the morning and do things that you normally
13 have to do before you come over here. We have had
14 a number of matters that we wanted to get resolved
15 today, so we thought it would be better if we
16 started at 9:00 o'clock.

17 I understand before we proceed today
18 with the applications for standing that the media
19 want to take some photographs, and it may be an
20 appropriate time now to adjourn for ten minutes.
21 Ten minutes enough? Then they can take the
22 photographs.

23 Before we do that, I want to introduce
24 the Commission Counsel, Mr. David Paciocco, and
25 Mr. Vincent Clifford, who you have already, I

1 understand, have had an opportunity to deal with.

2 We will take a short break now and then we will
3 start the standing hearings. Ten minutes.

4 THE CLERK: Order. All rise. The
5 Commission is recessed.

6 (RECESS TAKEN)

7 THE CLERK: This Commission is now
8 reopened.

9 THE COMMISSIONER: Mr. Paciocco, I
10 understand that you have a number of applications
11 for standing.

12 MR. PACIOCCO: I do, Mr. Commissioner.
13 There are three issues that I hope to dispose of
14 today. The first, of course, are the standing
15 applications. The second is the settlement of the
16 rules of procedure and practice that have been
17 circulated, and then I will say more about it
18 after we complete the standing matters. And the
19 third would be to outline the disclosure protocol
20 that's been established so those who received
21 standing will be able to get early documentation.

22 I have one document that I'm going to
23 be tendering as an exhibit today. It is "Hearings
24 on Standing and Preliminary Matters" book that has
25 been assembled. All of the applicants for

1 standing have received a copy of the document.
2 I'm going to hand it up to the Commission clerk
3 and ask that be made exhibit 1 in the Taman
4 Inquiry.

5 (EXHIBIT 1: Hearings on Standing and
6 Preliminary Matters)

7 MR. PACIOCCO: For the record,
8 Mr. Commissioner, that document contains a list of
9 appearances in tab A to assist in administering
10 the hearing today. I would urge you,
11 Commissioner, to call the applicants forward at
12 the appropriate time by referring to the name of
13 the applicant and not the name of counsel. The
14 appearances were drafted on the basis of
15 correspondence received, but in many cases other
16 lawyers from those firms have appeared to
17 represent the interests of the applicants.

18 The next tab contains the
19 Order-In-Council. If you feel it necessary to
20 refer to that order, Mr. Commissioner, you will
21 find it at tab B.

22 Tab C contains the calls for
23 applications for standing that were circulated in
24 the local press, and I will be referring to those
25 briefly at the appropriate point.

1 Then you have the nine applications
2 for standing that were received at tab D, number 1
3 through 9 with some sub documents where relevant.

4 And in the last tab, tab E, you have
5 the draft rules of procedure and practice which
6 have been provided in hard copy to all of the
7 applicants for standing, with the exception of the
8 Manitoba Bar Association. Those rules have been
9 posted on the website and also are referred to in
10 the ads that have been published. And it will be
11 necessary today to have final approval of the
12 rules of practice and procedures to enable us to
13 proceed.

14 To give context to the proceedings
15 today, Mr. Commissioner, so that the public can
16 understand the standing decisions that get made
17 and the submissions to be situated, I think it is
18 helpful to give a very brief outline of the event
19 that brought us here. It was, of course, the
20 horrible tragedy that occurred on the 25th of
21 February, 2005, and the death of young Crystal
22 Taman as a result of a motor vehicle collision
23 that occurred at approximately 7:00 o'clock in the
24 morning in the Rural Municipality of East St.
25 Paul. She was traveling southbound on highway 59

1 and had stopped at an intersection where vehicles
2 in the northbound lane cross over the southbound
3 lane in order to get on to the Perimeter Highway.
4 While at that stop light, her car was suddenly
5 struck with tremendous force by a truck driven by
6 Mr. Derek Harvey-Zenk, at the time an off-duty
7 police officer with the Winnipeg Police Service.

8 As a result of the collision and
9 Ms. Taman's death, and after some investigation,
10 Mr. Harvey-Zenk was charged with a number of
11 criminal offences, including the charge of
12 refusing to provide a breath sample, and with
13 three driving related offences, impaired driving
14 causing death, criminal negligence causing death
15 and dangerous driving causing death.

16 As you are aware, Mr. Commissioner, in
17 the ordinary course of events only one of those
18 three offences could result in conviction, so they
19 were in effect alternative charges. So he stood
20 the prospect of being convicted of the refusing to
21 provide a breath sample and one of those driving
22 offences.

23 An independent prosecutor was retained
24 in order to prosecute the case. It is the policy
25 in Manitoba not to have local prosecutors

1 prosecute cases against local police officers out
2 of concern for the apprehension of bias or
3 partiality. So Mr. Martin Minuk, a prominent
4 member of the local defence bar, was given the
5 assignment of prosecuting the case. And he
6 handled the initial appearances and a preliminary
7 inquiry was scheduled. And when that preliminary
8 inquiry was almost upon the court, it became
9 apparent that the investigation had some problems
10 from the point of view of Mr. Minuk, and he
11 arranged for further investigation to be done
12 which resulted in a very long delay before the
13 preliminary inquiry was rescheduled to take place
14 in the summer of 2007. That preliminary inquiry
15 never went ahead. Prior to that date arriving,
16 Chief Bakema, who was the Chief of Police of the
17 East St. Paul Police Service, where the accident
18 had occurred and who was ultimately responsible
19 for the investigation, lost his position as Chief
20 of Police or resigned. The evidence in this
21 hearing will clarify the circumstances of that.

22 And on July 17th, 2007,
23 Mr. Harvey-Zenk plead guilty to the offence of
24 dangerous driving causing death, forestalling the
25 need for a preliminary inquiry. The other charges

1 against him were stayed at that time by the
2 prosecuting Crown, including the refusal to
3 provide a breath sample charge.

4 Sentencing submissions were offered on
5 the 22nd of August, 2007. At that time, both the
6 prosecutor and the defence counsel presented a
7 joint position to the presiding justice, Chief
8 Justice Wyant. They took the same sentencing
9 position and called for a conditional sentence,
10 and they agreed on the terms that were appropriate
11 under that conditional sentence.

12 As you are aware, Mr. Commissioner, a
13 conditional sentence is notionally a sentence of
14 incarceration, but persons subject to those
15 sentences serve them in the community unless they
16 breach any of the terms and conditions that are
17 imposed.

18 It was evident that Chief Justice
19 Wyant was uncomfortable with the position that had
20 been offered to him, and he summoned the parties
21 back on the 12th of September, 2007, because it is
22 required, if a justice is considering not
23 following a joint submission, to give the parties
24 an opportunity to respond to that position.

25 On the 12th of September, Chief

1 Justice Wyant realized for the first time that the
2 position had been put before him not just by way
3 of a joint submission, but as a result of a plea
4 bargain arrangement. He was surprised by that on
5 the basis of his understanding of the submissions
6 that had been made on the August appearance. It
7 also became clear to him for the first time that
8 the defence counsel was not admitting the
9 consumption of alcohol in connection with the plea
10 arrangement. Again, Chief Justice Wyant had
11 understood from the initial submission that that
12 was an agreed fact, but it became clear that that
13 was not so.

14 He invited Mr. Minuk, the prosecutor,
15 to lead evidence, if Mr. Minuk chose to, to
16 establish that there was alcohol in the body of
17 Mr. Harvey-Zenk at the time of the collision.
18 After some deliberation, Mr. Minuk indicated to
19 the court that there would be no evidence coming
20 from the Crown.

21 As a result of the record before him,
22 Chief Justice Wyant gave endorsement to the joint
23 submission and imposed a conditional sentence, but
24 it is evident from his comment that this position
25 was one that caused him some discomfort. He

1 expressed some discomfort with the way in which
2 the facts were presented to him, and expressed
3 some discomfort with the lack of complete
4 disclosure of all information about the events
5 that lead to the prosecution.

6 The result of that event was that the
7 community, many members of it were distressed, as
8 of course was the family, and this was a very
9 controversial outcome. The public concern
10 ultimately gave rise to the appointment of your
11 Commission of Inquiry which was formalized on the
12 5th of December, 2007.

13 As indicated, the terms of reference
14 can be found in the first tab of the Hearing on
15 Standing and Preliminary Matters book. It would
16 be tab B after the appearances.

17 The commission that you have been
18 given requires you to inquire into the conduct of
19 the police investigation surrounding the tragic
20 death of Crystal Taman on the 25th of February,
21 2005. You are asked to look at issues including,
22 but not limited to, the correctness and adequacy
23 of the procedures and practices that were followed
24 during that investigation. And indeed you are
25 asked to inquire into the good faith,

1 objectiveness, and professional standards with
2 which the procedures and practices were applied
3 and the decisions made in this case. So there is
4 an invitation to you and a mandate to you to
5 conduct an intense inquiry into the investigation
6 that was conducted by the police.

7 You are also asked to inquire into all
8 aspects of the prosecution of Mr. Harvey-Zenk,
9 including the Crown's decision to ask for a
10 conditional sentence. And you are asked to
11 consider whether the decisions made by the
12 prosecutor were taken according to professional
13 and ethical standards expected of lawyers who act
14 as agents for the Attorney General.

15 You are also asked to inquire into the
16 services provided to the family of Crystal Taman
17 in connection with the Victims' Bill of Rights.
18 And you are then asked to give advice on whether
19 any of these findings give rise to a need for
20 further study, review, or even further
21 investigation.

22 As you are aware, Mr. Commissioner,
23 you will be asked to file a public report, and
24 that report can and should contain appropriate
25 recommendations relating not only to this specific

1 event, but also to any systemic issues that occur.

2 It is very clear from the nature of
3 the mandate that you have been given and from the
4 role of Commission counsel that this Commission is
5 not a fault-finding body. The mandate is to take
6 a constructive, forward looking approach, with the
7 overall objective of reaffirming public confidence
8 in the administration of justice, if in fact it
9 occurs that anything that transpired during this
10 case might undermine the confidence that members
11 of the public might have in either the
12 investigative or prosecutorial branches of their
13 government. Naturally, this is a matter that has
14 tremendous public interest.

15 My role as Commission counsel, as you
16 are well aware, Mr. Commissioner, is to assist
17 you. I am not to be partisan, I am to provide a
18 neutral and dispassionate presentation of the
19 evidence. And the overriding obligation that I
20 have is to assist you in uncovering the relative
21 truth about the facts that have occurred and to
22 marshal the evidence that is required in order for
23 you to discharge this Commission. It is not an
24 adversarial proceeding from this particular seat
25 that Mr. Clifford and I are occupying. It is our

1 function to ultimately contribute to a truthful
2 and complete record so that you can make
3 appropriate recommendations.

4 It has certainly been the experience
5 in the Canadian criminal justice system and the
6 civil justice system that having an adversarial
7 approach can contribute to the finding of the
8 truth. Since we are not in a position to do that,
9 it has become the practice of Commissions of
10 Inquiry to invite individuals who do have an
11 interest to come forward and to participate. It
12 would be those individuals who look after the
13 particular concerns of individuals who are
14 affected by the dispositions that you make. Even
15 though this is not a fact finding or fault finding
16 body rather, and even though we are prohibited
17 from recommending any civil or criminal liability,
18 the reputation of individuals involved in this
19 case are at risk. There will be public statements
20 and examination of the conduct of individuals in
21 the carriage of their positions. And it is
22 tremendously important, as a matter of fairness,
23 that they have an opportunity to participate and
24 let their positions be known and have advocates
25 who represent their interests.

1 So by granting standing to those who
2 have a direct interest in the matter will not only
3 allow them to protect themselves, they will also
4 contribute to a complete record and a balanced one
5 that considers the perspectives of everyone
6 concerned.

7 When you make your decisions to
8 provide standing to the applicants, the ultimate
9 agreement to give someone full standing would
10 authorize that person to cross-examine witnesses
11 to the extent of their interests. The rules of
12 practice and procedure that we are going to be
13 asking you to adopt and make the rules of this
14 Commission provide expressly that the right of
15 cross-examination exists to the extent of the
16 interests of the parties.

17 In addition, those individuals who
18 have standing will be entitled to propose
19 witnesses or to even make submissions to you,
20 Mr. Commissioner, that witnesses should be called,
21 if Commission counsel chooses not to take up that
22 invitation. Ultimately, the parties will also
23 have the opportunity, if they are given full
24 standing, to make submissions on the matters that
25 touch upon their own interests.

1 The legal criteria that has come to be
2 used to grant standing in proceedings such as this
3 require that applicants have a direct and
4 substantial interest in the proceedings. It would
5 not be possible to conduct proceedings of this
6 kind if everyone with any interest had the right
7 to a counsel to participate. It certainly is an
8 appropriate expenditure of time, but it does take
9 time to allow those with a direct and substantial
10 interest to provide submissions and question
11 witnesses. So you should be looking, Mr.

12 Commissioner, for those who do indeed satisfy that
13 requirement of direct and substantial interest.

14 In addition, you certainly have the
15 discretion to invite anyone else whose
16 participation could contribute to your ultimate
17 commission to come forward and participate. It is
18 not uncommon for non-governmental organizations or
19 other groups who have specialized expertise to
20 come forward and offer their participation in a
21 hearing such as the one you are about to conduct.

22 It is certainly within your
23 prerogative to impose limits or conditions on any
24 standing orders that you make. One of the
25 universal conditions that will be implicit in any

1 standing order that you make is that those granted
2 standing will agree to abide by the rules of
3 procedure and practice that you put in place.

4 Rule 4 in tab E of the document that I
5 put before you as exhibit 1 provides, in effect,
6 that individuals who have standing will be deemed
7 to undertake to comply with the rules of practice
8 and procedure. So without having to repeat it
9 formally for each applicant who receives standing
10 that is, in my respectful submission, a universal
11 condition that attaches to any order that you
12 might make inviting the participation of those who
13 have applied.

14 January 4, 2008, this Commission
15 advertised and issued calls for standing for those
16 interested. Again, I have referred to that
17 document at tab C in exhibit 1. In addition to
18 the advertisement there was a direct invitation
19 given by mail to those who, it seemed evident on
20 the basis of disclosure we obtained, would be
21 interested in potential participation. There was
22 a meeting held of counsel for those individuals
23 early on in order to try and set out some
24 parameters as to where the Commission might be
25 headed. All but one of the applicants before you

1 were invited to that meeting and all but one of
2 applicants before you had received that notice.
3 That additional applicant is the Manitoba Bar
4 Association who has responded to the ad that was
5 provided.

6 I indicated that an appearance list of
7 those who applied for standing is to be found at
8 tab A, and that given the change in counsel who
9 are here today relative to those who signed the
10 letters of standing application, when you do
11 summon them up, you may wish to do so by virtue of
12 the parties they represent, and they will at that
13 point identify themselves and spell their name for
14 the record, and make their submissions at that
15 point in time.

16 You will see that we have nine
17 requests. We have arranged for the hearing to be
18 conducted in two phases. Phase I, which is set to
19 begin on the 2nd of June and to last for five days
20 in June designated and familiar to those who have
21 applied to you, will deal with the victim's
22 issues. We felt that it would appropriate to hear
23 from the victims up front, and that is a discrete
24 issue that can be dealt with in an efficient
25 fashion at the very outset.

1 Phase II, which will deal with the
2 investigation and prosecution of the case, will
3 commence on July 2nd, and we have scheduled days
4 into the middle of August. We are hopeful that it
5 will proceed in an orderly fashion and that we can
6 complete it by that time. The reporting deadline
7 that you have been furnished of September 30th is
8 not realistic unless we can finish the evidence by
9 the middle of August. There is, in my respectful
10 submission, every reason to believe that, with the
11 cooperation of counsel which has been demonstrated
12 up to this point, that certainly can be done.

13 Your Honour, you may provide standing
14 for one phase only or you may provide standing for
15 both. The procedure that should be followed today
16 is, I understand that you wish to invite those who
17 have applied to come forward and invite their
18 submissions. They have all provided written
19 applications for standing. Some of those written
20 applications provide all of the information that
21 you could possibly need to make your decision.
22 Some of the others are a bit more cursory.

23 It is certainly very important for the
24 public record that the foundation for the direct
25 and substantial interest be demonstrated by those

1 who are given standing to participate in this
2 hearing. And I'm going to ask those who come
3 forward to provide sufficient information to
4 enable you to identify, not only that they have a
5 direct and substantial interest, but also the
6 particular nature of that interest, so that you
7 can make appropriate determinations as to what
8 parts of the inquiry they may want to have
9 standing for. Some of them have already indicated
10 that their interest may be confined to phase II,
11 but all parties coming forward should clarify
12 their position for you in that respect.

13 The parties who come forward will be
14 making submissions to you. Any of the other party
15 applicants will be entitled to make submissions if
16 they oppose the standing applications that have
17 been made by any of the other applicants.

18 I don't propose to make submissions
19 unless called upon by you, Mr. Commissioner. If
20 something occurs during the course of the
21 submissions that I feel makes it necessary for me
22 to participate, I would stand and ask to be
23 recognized.

24 At this time I would ask you,
25 Mr. Commissioner, to deal with the standing

1 issues. And after those are completed, we will
2 deal with the rules and with the disclosure
3 protocol. You can use tab A, and as I indicated,
4 call the parties forward at your pleasure.

5 THE COMMISSIONER: Thank you very
6 much. We will start with the first name on the
7 list of appearances, standing hearing, Mr. Robert
8 Taman.

9 MR. ZAZELENCHUK: Good morning,
10 Mr. Commissioner, my name is Zazelenchuk,
11 Z-A-Z-E-L-E-N-C-H-U-K, first name Gene. I'm
12 appearing this morning on behalf of Mr. Robert
13 Taman and his three children. Mr. Robert Taman
14 is, of course, the widower of Crystal Taman. He
15 is the victim as defined by the Victims' Bill of
16 Rights. He has three children, Tara and Kristin,
17 daughters, and Jordan, a son, are the next of kin
18 as defined by the Victims' Bill of Rights.

19 It is respectfully submitted that in
20 phase I of the inquiry, all of the Taman family
21 are potential and probable witnesses, but their
22 request is not just for standing in phase I, their
23 request is for standing throughout. And they
24 request for standing throughout for a variety of
25 reasons.

1 Firstly, it was their family that was
2 tragically torn apart, and for that reason alone
3 they have a substantial interest in how the
4 incident which lead to their wife and mother's
5 tragic death was handled by the authority. But,
6 Mr. Commissioner, there are other reasons as well.
7 Through an extremely cruel coincidence, three of
8 the Taman family are potentially witnesses to the
9 actual investigation, at least in part. The two
10 daughters left for work, the family live in a
11 rural setting outside of Winnipeg and the family
12 members worked in Winnipeg. And Mrs. Taman was
13 driving into Winnipeg to attend her place of
14 employment. Through, as I said, a tragic
15 coincidence, the daughters left for work as they
16 normally did about five minutes after their
17 mother, and at least as far where the collision
18 occurred, took the same route to work. So the
19 daughters were at the scene moments after the
20 tragic collision. And the daughters witnessed,
21 among other things, Mr. Derek Harvey-Zenk exiting
22 his vehicle. They witnessed interaction between
23 Mr. Harvey-Zenk and the East St. Paul Police. And
24 Mr. Taman, although he didn't witness that, by the
25 same tragic coincidence was at the scene a few

1 minutes after that because, as you will hear from
2 him, if he is called, when he is called, he would
3 normally leave for work, a few minutes, 20 minutes
4 15 minutes after his wife. So for that reason as
5 well, I respectfully submit, they should have
6 standing throughout.

7 Secondly, Mr. Taman and his son Jordan
8 met with the learned prosecutor on more than one
9 occasion to discuss the prosecution of the case,
10 as is not uncommon when you have the survivors of
11 somebody who has lost their life. And for that
12 reason as well, I respectfully submit they should
13 be given standing throughout.

14 Lastly, I think, I'm not sure about
15 one of the daughters, but at least one of the
16 daughters and the son Jordan and Mr. Taman had
17 conversations with the learned prosecutor about
18 the final disposition of the case. And I
19 respectfully submit that is something as well that
20 this Commission will have an interest in, and
21 certainly that the Taman family has an interest
22 in.

23 And lastly, I would just state that
24 although the application is on behalf of the
25 entire Taman family, the four of them, the father

1 and the three children, in most respects they will
2 be acting as one person. I have been meeting with
3 them and their interest is all in the same place,
4 it is not that there is any kind of conflict
5 amongst them. They would simply like, what they
6 told me they have never had, some answers if they
7 are possible.

8 That is my respectful submission,
9 Mr. Commissioner. If there are any points that
10 you would like me to deal with further, I would
11 gladly do so.

12 THE COMMISSIONER: Thank you very
13 much. Is there anybody who takes any objection to
14 the standing application? You will be granted
15 standing on both phases of these proceedings.

16 MR. ZAZELENCHUK: Thank you, Your
17 Honour.

18 THE COMMISSIONER: The next person who
19 has applied for standing is Mr. Martin Minuk,
20 counsel.

21 MR. GREEN: Good morning, Mr.
22 Commissioner. My name is Michael Green, I'm
23 appearing here this morning on behalf of
24 Mr. Minuk. Mr. Minuk is seeking full standing,
25 that is on all aspects of your mandate.

1 Obviously, the standards exhibited by the
2 prosecution is one of the main features of your
3 mandate that you will be looking at, which in
4 essence is Mr. Minuk's standards himself, he being
5 the independent prosecutor having been retained in
6 keeping with the practice that my friend referred
7 to earlier. He obviously has a substantial and
8 direct interest in that aspect.

9 Additionally, he has an interest in
10 the police investigation which was carried on
11 prior to his involvement. As I mentioned in the
12 letter which we sent asking for the right to
13 appear this morning and seek standing, it is
14 Mr. Minuk's position that his abilities as
15 prosecutor were somewhat compromised by the
16 quality of the evidence that was forthcoming from
17 the police investigation. He again has a direct
18 and substantial interest in demonstrating that.

19 The third part of your mandate, being
20 victims involved and their rights, as my friend
21 Mr. Zazelenchuk has alluded to, Mr. Minuk was
22 involved with the family in that regard and,
23 therefore, has an interest in that aspect as well.

24 As my friend has said, Mr. Minuk,
25 being an applicant, is interested in protecting

1 his interests and himself and, hopefully, in
2 contributing to a balanced record, as my friend
3 said.

4 Again, those are all of the remarks
5 that I have, but if you have any questions or
6 comments, I would be pleased to try and field
7 them.

8 THE COMMISSIONER: Thank you very
9 much. Is there anybody who takes objection to
10 Mr. Minuk's standing in these proceedings?
11 Granted standing with respect to both phases.

12 MR. GREEN: Thank you,
13 Mr. Commissioner.

14 THE COMMISSIONER: Next applicant for
15 standing is Derek Harvey-Zenk.

16 MR. PROBER: Good morning,
17 Mr. Commissioner, my name is Jay Prober and I'm
18 here on behalf of Derek Harvey-Zenk. He is
19 seeking standing. And as I indicated in my letter
20 to Commission counsel, he was of course the
21 subject of the investigation and the prosecution
22 in question, and is expected to be a witness. As
23 such, he is requesting standing.

24 I noted, though, in the book that was
25 provided to us, which is now exhibit 1, at tab A

1 there is an application noted for all issues. It
2 is my respectful submission that while I'm
3 obviously sensitive to the victims' issues and
4 rights, it will not be necessary to seek standing
5 on Mr. Harvey-Zenk's behalf with respect to phase
6 I.

7 There is one other issue I intend to
8 raise this morning, and I've alerted your counsel
9 to that. Hopefully, he has advised you of that.
10 I'm going to be asking you, Mr. Commissioner, on
11 behalf of Mr. Harvey-Zenk, to recommend to the
12 government that they fund his counsel so that his
13 rights and interests are properly protected.

14 Now, I have written the Province of
15 Manitoba. I have not received a response as yet.
16 I have, in fact, copied that letter to your
17 counsel. It would be difficult for any ordinary
18 citizen to fund counsel for an inquiry of this
19 nature, considering the number of witnesses that
20 will be called in phase II, and considering the
21 amount of preparation that will be involved. As I
22 say, it would impose an impossible duty on most --
23 impossible financial burden rather on most private
24 citizens. In fact, as I look around the room,
25 except for a couple of us, the parties, if

1 Mr. Harvey-Zenk gets standing, the parties who are
2 seeking standing and are likely to get standing,
3 are all being funded by the government of the day,
4 or by a professional association, or by the City
5 of Winnipeg, as the case may be, or the
6 Municipality of East St. Paul. Mr. Harvey-Zenk
7 does not have that luxury. He lost his job as a
8 police officer. And to be properly represented,
9 he simply cannot afford to pay for that.

10 I have consulted with and inquired of
11 the Winnipeg Police Association, whose position is
12 that they did not fund his defence, do not pretend
13 to fund counsel for this inquiry because he was
14 not on duty and the conduct does not flow from his
15 being on duty. So I ask you, respectfully, to
16 recommend to the government that they consider
17 paying his legal costs so that he can be properly
18 represented at this inquiry. Thank you.

19 THE COMMISSIONER: Do you want to just
20 stay there a moment?

21 MR. PROBER: Yes.

22 THE COMMISSIONER: Is there anybody
23 who takes any objection to Mr. Harvey-Zenk's
24 application for standing? You will be granted
25 standing with respect to phase II.

1 Now, dealing with the question of
2 funding, have you spoken with the counsel for the
3 government who is here today to see if he takes
4 any position or -- you have not had a response
5 from the government?

6 MR. PROBER: I have not had a response
7 from our government. And in fact, I can say that
8 I talked to the Deputy Minister of Justice on
9 Friday. They have not considered the issue, but
10 were waiting to see if Mr. Harvey-Zenk got
11 standing to even consider it. They didn't say one
12 way or the other. He made no commitment.

13 Now, in terms of talking to
14 Mr. Paciocco, all I have done is send him a copy
15 of the letter and discussed it very briefly with
16 him. If he can be of any help in this regard,
17 that would certainly be appreciated.

18 THE COMMISSIONER: Well now that you
19 have been granted standing with respect to phase
20 II, maybe counsel for government might know that
21 it would be -- I'm not prepared to respond at this
22 time to your request. I would like to see what
23 they have to say and their reasons for it. And
24 once I see their reasons, then I can indicate to
25 you what my position will be.

1 MR. PROBER: Thank you very much for
2 that.

3 THE COMMISSIONER: Thank you.

4 The next applicant for standing is the
5 Rural Municipality of East St. Paul and its police
6 service.

7 MS. BOWLEY: Good morning,
8 Mr. Commissioner. My name is Bernice Bowley. I'm
9 counsel for the Rural Municipality of East St.
10 Paul, although I expect my involvement may be
11 limited and rather Mr. Bob McDonald will be
12 primary counsel. The Rural Municipality seeks
13 standing for all three phases, or two phases,
14 depending on how you are dividing it, of the
15 inquiry.

16 I will speak first, Mr. Commissioner,
17 with respect to the Victims' Bill of Rights phase.
18 The Municipality seeks standing there for a number
19 of reasons. Primarily, because there are sections
20 of the Victims' Bill of Rights Act that impose
21 specific obligations on the head of a law
22 enforcement agency responsible for investigating
23 an offence. That agency at least, at the outset,
24 was the Rural Municipality of East St. Paul and
25 its police service. Therefore, since there will

1 be an examination of whether the police service
2 fulfilled its obligations, the municipality wants
3 counsel to be involved to ensure that that
4 question is fairly determined.

5 There are some sub issues as well.
6 Members of the Taman family attended to the East
7 St. Paul Police Service detachment hours and days
8 after the accident. Obviously that touches
9 directly on the municipality. And based on the
10 preliminary witness list that's been circulated,
11 it is anticipated that at least one current member
12 of the East St. Paul Police Service will be called
13 as a witness. And similarly the East St. Paul
14 Police Service also runs a Victim Services
15 Program, and again the preliminary witness list
16 indicates that someone from there will be called
17 to give evidence. So as a result, it is the
18 municipality's position that it does have a direct
19 and substantial interest in this phase of the
20 inquiry.

21 Turning then to the investigation
22 phase and the prosecution phase; the Rural
23 Municipality of East St. Paul and its police
24 service have many, many members who are expected
25 to give evidence during this phase or phases.

1 There are some past members as well that are
2 expected to give evidence. And there certainly
3 are some issues that will arise out of the
4 testimony of members, past and current, for which
5 the municipality wants to be involved, has a
6 direct interest, and perhaps may even have some
7 helpful information.

8 And I just note that members of its
9 fire department may also be called as witnesses as
10 well.

11 So to ensure that the people who will
12 be giving evidence, both with respect to the
13 investigation and the prosecution, the
14 municipality does want to have representation for
15 its own interests and for the interests of its
16 employees. And as a result we seek standing for
17 all of the phases.

18 And I just want to let
19 Mr. Commissioner know that with regard to the
20 victims' rights phase, the municipality will be
21 selective in its involvement, so to speak. And
22 there is certainly the obligation that it
23 cross-examine only on issues which directly affect
24 its interest.

25 So subject to any questions you might

1 have, that's the municipality's submission.

2 THE COMMISSIONER: Thank you very
3 much. Is there anybody who takes objection to the
4 East St. Paul application? Thank you. You will
5 be granted standing with respect to both phases.

6 MS. BOWLEY: Thank you.

7 THE COMMISSIONER: Next applicant for
8 standing is Mr. Harry Bakema.

9 MR. WEINSTEIN: Thank you,
10 Mr. Commissioner, my name is Hymie Weinstein.
11 They left the QC off my name card on my table, but
12 that's fine. Let me just indicate --

13 THE COMMISSIONER: How do you
14 pronounce the --

15 MR. WEINSTEIN: Bakema. Under D 5 is
16 my application on behalf of Mr. Bakema for
17 standing at the hearings. As I made clear in my
18 letter to you, sir, we are asking for standing in
19 phase II of these proceedings. It is my
20 submission that Mr. Bakema has a direct and
21 substantial interest, naturally, in these
22 proceedings. And also the participation of
23 Mr. Bakema may be helpful in fulfilling your
24 mandate in these proceedings.

25 Mr. Bakema was Chief of Police at the

1 time, Chief of Police of East St. Paul at the time
2 of this accident. In fact, he had attended, he
3 was one of the first peace officers who attended
4 the scene of the accident and had limited contact
5 with Harvey Morgan Zenk.

6 I can also indicate that we received
7 from Commission counsel a potential witness list,
8 and as I look through it, without going through
9 naturally the witnesses, but the headings and
10 followed by a list of witnesses, this accident
11 investigation, and that certainly will relate to
12 the Chief of Police role, the conduct of
13 Harvey-Zenk in hours leading up to the accident
14 and intensity of the police investigation, and
15 certainly Mr. Bakema will have a substantial and
16 direct interest in those proceedings. The
17 relationship between Chief Bakema and Harvey
18 Morgan Zenk, and the lay witnesses relating to the
19 conduct of Harvey-Zenk leading up to the accident,
20 and the intensity again of the police
21 investigation and then the RCMP/Bakema
22 investigation.

23 So on behalf of Mr. Bakema, we are
24 asking for standing again on phase II, commencing
25 on July 2nd of these proceedings.

1 Let me also indicate, and similar as
2 the request of Mr. Prober on behalf of his client,
3 my client wrote to the Rural Municipality of East
4 St. Paul asking for funding for counsel in these
5 proceedings. That was by way of a letter,
6 Mr. Commissioner, to the Reeve of East St. Paul.
7 He received a letter under date of January 21st,
8 2008, Mr. Commissioner, indicating that the RM of
9 East St. Paul is not obliged to pay any legal fees
10 in these proceedings. Subsequent, or also at the
11 time on January 16th, I, on behalf of Mr. Bakema,
12 wrote a letter to the Honourable Dave Chomiak,
13 Minister of Justice and Attorney General of
14 Manitoba, requesting funding. And I can advise
15 you, Mr. Commissioner, we have not heard directly
16 from the Honourable Minister. I did receive a
17 letter from his assistant indicating that my
18 letter would be brought to his attention.
19 Hopefully, it has been brought to his attention.
20 However, at this stage, I do not have a reply from
21 the Minister to our request. Perhaps, since
22 counsel for the government is here,
23 Mr. McFetridge, I would ask him to perhaps
24 expedite that consideration or request in this
25 matter.

1 THE COMMISSIONER: Anybody who takes
2 any objection to Mr. Bakema's standing in these
3 proceedings? You will be granted standing with
4 respect to phase II, which you request. And if
5 you wish to have my participation in the
6 application for funding, we will hold that back
7 until such time as I find out what position the
8 government takes.

9 MR. WEINSTEIN: Thank you very much,
10 Mr. Commissioner.

11 THE COMMISSIONER: Thank you. The
12 next applicant for standing is the Winnipeg Police
13 Service.

14 MS. HANLIN: Good morning,
15 Mr. Commissioner, Shannon Hanlin appearing for the
16 Winnipeg Police Service.

17 THE COMMISSIONER: I am sorry, I am
18 having difficulty hearing you.

19 MS. HANLIN: Shannon Hanlin appearing
20 for the Winnipeg Police Service, H-A-N-L-I-N, and
21 first name, Shannon.

22 Mr. Commissioner standing is sought on
23 all aspects of the hearing, phase I and II. That
24 is contrary to what is stated at tab A of exhibit
25 1.

1 The basis for this application is an
2 order of council. Members of the Winnipeg Police
3 Service were involved in this matter, both as
4 witnesses to the investigation as well they
5 assisted it --

6 THE COMMISSIONER: Excuse me, are you
7 seeking standing on both phases?

8 MS. HANLIN: That's correct.

9 THE COMMISSIONER: I see. Tell me
10 what involvement the police, Winnipeg Police
11 Service, had with respect to phase I?

12 MS. HANLIN: In respect of phase I,
13 members of the Winnipeg Police Service, and the
14 Winnipeg Police Service as a law enforcement
15 agency, have obligations and responsibilities
16 under the Victims' Bill of Rights. It is more of
17 a general interest.

18 THE COMMISSIONER: Yes, I understand
19 that. But I don't understand, and maybe you can
20 just assist me a little bit, I don't understand
21 the relationship with respect to the Winnipeg
22 Police Service in so far as they conducted the
23 investigation for East St. Paul. Can you explain
24 that to me?

25 MS. HANLIN: I don't believe there was

1 a specific relationship.

2 THE COMMISSIONER: I'm sorry, I'm
3 still having some trouble. I don't know, maybe
4 you are --

5 MS. HANLIN: I don't think there was a
6 specific relationship, it is more a matter of
7 general interest with respect to the Victims' Bill
8 of Rights and the potential -- if recommendations
9 were made, they could potentially affect
10 responsibilities and obligations.

11 THE COMMISSIONER: I understand that
12 the Winnipeg Police Department participated in the
13 investigation.

14 MS. HANLIN: That's correct.

15 THE COMMISSIONER: I don't know why
16 they investigated, participated in the
17 investigation, since it was within the
18 jurisdiction of East St. Paul. Can you explain to
19 me why they would have participated in the
20 investigation? Why did they get involved?

21 MS. HANLIN: It was a request by the
22 East St. Paul Police, and I believe it was a
23 matter of a smaller police department versus a
24 larger one with more resources, which the Winnipeg
25 Police Service has.

1 THE COMMISSIONER: I see. Is there
2 some sort of an agreement between the two police
3 services where one will help the other, or was it
4 simply because the East St. Paul asked for help on
5 this specific occasion?

6 MS. HANLIN: It is my understanding,
7 on this specific occasion, help was sought.

8 THE COMMISSIONER: Okay. That then
9 comes down to the Victims' Bill of Rights. What
10 do you say is the obligation of the Winnipeg
11 Police Service vis a vis the victims in this case,
12 since it was really an investigation that was
13 conducted by East St. Paul, within their
14 jurisdiction and their responsibility under the
15 Victims' Bill of Rights? Why would the Winnipeg
16 Police Service be required to do the informing, as
17 the Bill of Rights requires, why were they
18 obligated under the Act to perform certain
19 services? Wasn't that simply the obligation of
20 East St. Paul?

21 MS. HANLIN: I believe so,
22 Mr. Commissioner. But in terms of systemic
23 recommendations, there could be outcomes which
24 would affect the service.

25 THE COMMISSIONER: Anybody have any

1 objection? Certainly with respect to phase II --
2 my concern is with respect to phase I. Do you
3 have any comments, Mr. Paciocco?

4 MR. PACIOCCO: I do, Mr. Commissioner.
5 The position of the Winnipeg Police Service on the
6 Victims' Bill of Rights issues is entirely generic
7 and systemic, it doesn't pertain to the events
8 that occurred on this particular occasion. I
9 would not think it helpful to have their
10 participation in terms of presenting the evidence
11 or examining witnesses, given that the East St.
12 Paul Police Service will be adequately represented
13 by the municipality, and they will be addressing
14 and have the same basic interest in the systemic
15 questions that might arise. I think that under
16 the circumstances, the most that should be
17 granted, if anything, would be an opportunity to
18 perhaps provide some submissions on those generic
19 issues at the end of the day, but not an active
20 participation during the presentation of evidence.

21 THE COMMISSIONER: Thank you. Anybody
22 else wish to make submissions on this point? Yes,
23 would you come up? Do you have any response?

24 MS. HANLIN: I don't.

25 THE COMMISSIONER: I'm sure there are

1 systemic issues, but they don't directly involve
2 the Winnipeg Police Service. I mean, you could
3 say that, you could have every town in Manitoba
4 coming forward saying that the issues may affect
5 them as well. I'm going to grant you standing
6 with respect to phase II, and you will be entitled
7 to make oral submissions or written submissions,
8 whatever you want at the end of the day. Thank
9 you.

10 MS. HANLIN: Thank you.

11 THE COMMISSIONER: Next applicant for
12 standing is the Winnipeg Police Association.

13 MS. CLEARWATER: Good morning,
14 Mr. Commissioner. Karen Clearwater, appearing on
15 behalf of Winnipeg Police Association. I will be
16 co-counsel if we are granted standing today on
17 behalf of the Winnipeg Police Association along
18 with Mr. LaBossiere. We are seeking standing
19 today only in phase II of the hearings, as you
20 will note in our written submissions, which you
21 will find at D 7 of exhibit 1.

22 Our application for standing relates
23 to the interest of our members in the
24 investigation in two ways; in relation to the
25 involvement of our members as witnesses to the

1 event, and the direct and substantial interest of
2 any findings that the Commission may make in
3 respect of their conduct in these matters or
4 otherwise. And secondly, in the event that there
5 is any suggestion or consideration of issues with
6 respect to the members who were involved in the
7 investigative stage at the request of East St.
8 Paul police. These members all have a direct and
9 substantial interest in their professional
10 obligations and in their personal reputation in
11 some cases.

12 And finally, on sort of a more general
13 note, the association, along I believe with the
14 service, would have an interest in any issues
15 relating to standards of conduct of police
16 officers, and if those are raised in the second
17 half of the inquiry, we would be interested in
18 having standing in respect of those matters.

19 THE COMMISSIONER: So you are seeking
20 standing with respect to phase II only?

21 MS. CLEARWATER: Phase II only.

22 THE COMMISSIONER: Anybody take
23 objection to the application? Standing will be
24 granted with respect to phase II.

25 MS. CLEARWATER: Thank you.

1 THE COMMISSIONER: The Government of
2 Manitoba seeks standing.

3 MR. McFETRIDGE: Good morning, Glenn
4 McFetridge, M-C-F-E-T-R-I-D-G-E, on behalf of
5 Manitoba, Glenn with two N's.

6 THE COMMISSIONER: You have heard both
7 counsel who hare seeking funding. I take it that
8 you will get back to them very quickly?

9 MR. McFETRIDGE: Yes. I have no
10 instructions as of this time on the funding
11 issues.

12 THE COMMISSIONER: But you will get
13 back to them?

14 MR. McFETRIDGE: Yes, I will.

15 The Government of Manitoba seeks
16 standing on both phases, Your Honour. Our
17 standing application can be found at exhibit D 8.
18 In respect of the Victims' Bill of Rights, the
19 Government of Manitoba obviously is directly
20 involved in that issue. The prosecution services
21 has a role to play in providing -- has
22 responsibilities under that legislation. Also the
23 Victims' Services Branch has a direct
24 responsibility to deal with victims. Indeed, the
25 Victims' Services Branch was directly involved

1 with the Taman family in respect of this
2 particular matter.

3 We obviously have a position to take
4 in respect of the systemic issues as well, as to
5 whether this legislation has been properly
6 followed. I know Mr. Minuk will deal with
7 specifically how he has dealt with his
8 responsibilities under there, but clearly the
9 prosecution branch as well would like to take part
10 in that part of the phase in respect to making
11 sure that those responsibilities were properly
12 followed.

13 In respect to the second phase, we
14 also would like full standing on that issue as
15 well. Even though Mr. Minuk was the agent that
16 was appointed on behalf of the prosecutions branch
17 in respect to that matter, prosecution's general
18 policies will be at issue in this inquiry. And
19 indeed, although I anticipate that our role would
20 be limited in respect to the cross-examination of
21 particular witnesses in respect to police
22 investigation, sometimes matters come up during
23 the course of those issues that we may have some
24 issue on, and we would like full standing on that
25 phase as well, just to deal with issues as they

1 arise. We are not going to try and duplicate
2 cross-examinations, because I'm sure that
3 Commission counsel and indeed counsel for
4 Mr. Minuk will deal with a lot of the prosecution
5 issues, but we reserve the right to be able to
6 cross-examine witnesses if, in fact, we deem it
7 necessary at the particular time. So we certainly
8 seek full standing on both aspects of the inquiry.
9 Subject to any questions, that is our submission.

10 THE COMMISSIONER: Does anybody take
11 objection? Thank you very much. You are granted
12 standing on both phases.

13 MR. McFETRIDGE: Thank you.

14 THE COMMISSIONER: Thank you. The
15 last applicant for standing is the Manitoba Bar
16 Association.

17 MS. INNESS: Good morning, Mr.
18 Commissioner, my name is Sarah Inness and I'm
19 appearing on behalf of the Manitoba Bar
20 Association this morning. I'm the co-chair of the
21 criminal section of that association.

22 The Manitoba Bar Association is the
23 local branch of the Canadian Bar Association, and
24 our membership is comprised of members from all
25 segments of the legal profession, including the

1 judiciary, public and private sector lawyers,
2 academics and law students. The members of the
3 criminal sub section of our Manitoba Bar
4 Association are some of the most respected and
5 experienced criminal practitioners and judiciary
6 working in criminal law within the province. We
7 are a non-profit organization. Membership in our
8 association is voluntary. Our active members
9 devote their own time, hard work and commitment to
10 the activities of the association. The work of
11 the Manitoba Bar Association is designed to
12 improve the knowledge, skill, ethical standards,
13 and well-being of members of the profession.
14 Those are the objectives of the Manitoba Bar
15 Association.

16 Our members regularly and actively
17 participate in writing and presenting oral
18 submissions to the government, both at the
19 national and provincial levels. Our skill lies in
20 the expertise we collectively bring and the
21 strength of our association comes from being able
22 to provide a well balanced perspective. We are
23 comprised, as I said, from all members of the
24 legal profession and we draw on the collective
25 experiences from each of those aspects of the

1 profession to form our work and formulate
2 positions on policy or legislation that is
3 designed to try and advance the best interest of
4 the administration of justice as a whole.

5 Examples of the work done by the
6 Manitoba Bar Association include in 1996, the
7 creation of a legislative and law reform committee
8 which reviews bills introduced in the legislature
9 to determine if we should make an application for
10 standing and make submissions. We also regularly
11 intervene at the Manitoba Public Insurance Public
12 Utility Board rate application hearing, where it
13 has been acknowledged that we provide and
14 represent the public interest component in that
15 work.

16 We are seeking, Mr. Commissioner,
17 standing in all phases of the inquiry. We believe
18 that we can be of assistance to the inquiry in
19 that we are able to provide an examination, or
20 assist in providing an examination of issues in a
21 balanced and objective way. We are not advocates
22 with respect to a particular party or position
23 with respect to individuals directly involved in
24 this investigation; however, we are and have a
25 substantial interest in the administration of

1 justice as a whole.

2 We submit that we will be able to
3 provide and offer valuable assistance to the
4 Commissioner, particularly in dealing with any
5 systemic issues that may have existed both at the
6 investigatory and prosecution stages of this case,
7 and in particular make recommendations with
8 respect to what may need to be addressed in the
9 way of systemic issues.

10 The Manitoba Bar Association is
11 particularly concerned about the image of the
12 legal profession. We have worked very hard to try
13 and promote public confidence in the
14 administration of justice. And the issues that
15 are being examined in this inquiry directly go to
16 the heart of public confidence in our system.

17 With respect, Mr. Commissioner, I
18 submit that at the investigation stage, the police
19 investigatory stage, we will be able to offer some
20 assistance to the Commissioner in examining the
21 questions that arise from a systemic perspective
22 of the adequacy and guideline, practices, policies
23 that are in place with respect to police
24 investigating police, police agencies becoming
25 involved to assist other police agencies, but

1 particularly issues that will arise out of that
2 phase with respect to disclosure, disclosure of
3 the evidentiary record, notetaking procedures. It
4 is the bar that is ultimately responsible for the
5 prosecution, defending and trying of the matter,
6 and the evidentiary record that needs to be
7 preserved is dependent upon the processes and
8 procedures that were in place. We can assist in
9 that regard.

10 With respect to the second, subsection
11 1(b) of the Order-In-Council, the investigation,
12 or the examination of the ethical standards and
13 professional standards required of agents of the
14 Attorney General, with respect, we are very well
15 placed, we submit, to offer assistance in this
16 area. There are questions that no doubt will be
17 raised with respect to what types of cases, the
18 when, the where, the who, for the appointment of
19 the agents for the Attorney General, what
20 processes are in place with respect to that, in
21 what cases.

22 THE COMMISSIONER: How does that
23 affect the bar? How does that affect the Manitoba
24 Bar? Isn't that a matter directly between the
25 Attorney General's department and particular

1 members of the bar that may be appointed? How
2 does that affect the bar in general?

3 MS. INNESS: With respect to,
4 Mr. Commissioner, the appointment of agents for
5 the Attorney General, the question, certainly once
6 the media reported on this case, there was a lot
7 of interest by the public and concern by the
8 public on the part of the administration of
9 justice, the manner in which agents for the
10 Attorney General are appointed, in what particular
11 kinds of cases they are appointed, and the public
12 confidence in the administration of justice partly
13 arose out of that concern. In my respectful
14 submission, we would have some input, or we could
15 provide some assistance in providing to the
16 Commissioner situations for when agents are
17 appointed, and examination of the guidelines in
18 place, and whether or not there may need to be
19 some examination of that particular -- of those
20 particular guidelines.

21 THE COMMISSIONER: Hasn't there been
22 recently a report released by Judge Krindle on
23 that entire issue?

24 MS. INNESS: Mr. Commissioner, to
25 whatever --

1 THE COMMISSIONER: A very
2 comprehensive report.

3 MS. INNESS: To whatever extent that
4 may come out of the inquiry.

5 THE COMMISSIONER: But the report is
6 there. I'm trying to determine your involvement.
7 I guess my concern is this: I have a mandate to,
8 and an obligation to complete this hearing by the
9 end of August and to report by the end of
10 September. It is a lot of work. I want to be
11 able to finish at least the hearings by the end of
12 August, or earlier if I can. My concern is that
13 there not be a lot of repetitious
14 cross-examination. While I have some concern
15 about repetition, I want to give the bar every
16 opportunity to explore those issues that are
17 relevant to our mandate. You will understand that
18 if I do grant standing, grant standing to the
19 Manitoba bar, I will not permit counsel to go on
20 indefinitely, as I probably will not permit other
21 counsel as well, and to focus on the issues. You
22 appreciate that.

23 MS. INNESS: Absolutely,
24 Mr. Commissioner, and we certainly are desirous of
25 being helpful to the Commission and are prepared

1 to work with the Commission and other counsel to
2 ensure that, in fact, we don't duplicate the
3 efforts or the work of other participants. And it
4 is our hope that what we will be able to do is
5 bring back balance, or objective perspective, to
6 fill in the gap, particularly on the systemic
7 issues. So it is not our desire to duplicate or
8 extend the work of the inquiry; in fact, the
9 opposite.

10 THE COMMISSIONER: I understand as
11 well that you applied for funding if standing is
12 granted?

13 MS. INNESS: Yes, Mr. Commissioner.

14 THE COMMISSIONER: Have you heard from
15 the government?

16 MS. INNESS: No, we have not, Mr.
17 Commissioner. We have raised it in our
18 application, but we haven't formally met with any
19 individuals.

20 THE COMMISSIONER: You haven't
21 formally applied?

22 THE WITNESS: We have not formally
23 applied.

24 THE COMMISSIONER: Counsel for the
25 government is here today and he will probably be

1 very busy.

2 MS. INNESS: I'm sure there will be a
3 line up behind him.

4 THE COMMISSIONER: Make sure he
5 doesn't leave the room too quickly. All right.

6 Does anybody have any objections?
7 Looking down at counsel for the Manitoba
8 government, wondering whether he has any
9 objections? Nobody has any objections. Do you
10 have any submissions to make, Mr. Paciocco?

11 MR. PACIOCCO: I do, Your Honour.

12 MS. INNESS: Mr. Commissioner, before
13 I leave, I just want the Commissioner, I apologize
14 to note that I do have some comments to make with
15 respect to our participation in the victim phase
16 and in the recommendation phase, if
17 Mr. Commissioner or Commission Counsel have any
18 questions about our submission on our involvement
19 in those aspects. If not, then I will stand
20 aside.

21 THE COMMISSIONER: Okay.

22 MR. PACIOCCO: Mr. Commissioner, the
23 Manitoba Bar Association is certainly a very
24 credible organization, and along with the Canadian
25 Bar Association, has done tremendous work in a

1 whole number of areas. Notwithstanding that, and
2 notwithstanding the submissions that have been
3 presented to you, I am, as Commission counsel, not
4 enthusiastic of the prospect of full participation
5 by the Manitoba Bar Association during the
6 presentation of evidence. I understand that
7 lawyers can, of course, limit their involvement
8 and their questions according to their interests,
9 but the submissions that I heard provide an
10 interest in virtually every issue that is
11 potentially touched by this Commission. We
12 certainly, if we are going to complete our
13 mandate effectively, have to be open to the
14 participation of everyone who has something to
15 contribute, but at the same time, we need to
16 remain focused. And if this Commission becomes a
17 canvass of every potential area of law reform that
18 might be tangentially related to the issues that
19 we address, it will become an interminable and
20 impossible task that you have been assigned.

21 I certainly appreciate and respect the
22 offer to provide neutral and impartial
23 perspectives on the issues that are presented.
24 That, of course, is why Commission has Commission
25 counsel, to come forward and to perform that very

1 same function. It may well be that if standing is
2 granted, that whoever represents the Manitoba Bar
3 Association would limit their questioning and
4 their participation in a very disciplined way.
5 However, the difficulty arises that we don't know
6 where that might go.

7 And I see the participation of the
8 Manitoba Bar Association in the presentation of
9 evidence as being nothing more than a luxury.
10 There is adequate representation across the board
11 of the various interests, and my own role and the
12 role of Mr. Clifford in maintaining the impartial
13 or objective view. We are going to have expert
14 testimony on the issues that are presented, and
15 those experts will be subject to cross-examination
16 from every possible angle from those individuals
17 who you have already granted standing to.

18 So in my respectful submission, while
19 I'm certainly in your hands, the Manitoba Bar
20 Association application for standing to
21 participate actively in the hearing is not one
22 that I feel comfortable supporting. On the other
23 hand, if they are offering to provide submissions,
24 particularly in the written form with respect to
25 the systemic issues that arise for consideration

1 by the Commissioner at the time that you are
2 deliberating, that could be something that might
3 well be helpful to you. But beyond that, it is
4 not an application that I would stand here and
5 support.

6 MS. INNESS: Just a very brief
7 response, Mr. Commissioner. With respect to the
8 concerns made by Commission counsel, I reiterate,
9 we are certainly not here to try and duplicate
10 efforts, we are here to try and fill those gaps
11 where we see them, and bring the skill and
12 experience, particularly from a local perspective
13 and in an objective perspective to the inquiry.
14 With respect to legislative reform, in our
15 respectful submission, we see some assistance in
16 that regard with the examination of the Victims'
17 Bill of Rights. No doubt the Government of
18 Manitoba will have its position with respect to
19 the legislation, as they are the people tasked
20 with implementing it, but there are questions of a
21 systemic nature that will come out of that with
22 respect to training and adequacy of the training
23 for both Crown attorneys, for victim service
24 workers, and our skills come from, in filing that
25 submission, knowledge of the local policies in

1 place in respect of that, particularly
2 recommendations and the implementation of
3 recommendations arising out of the inquiry. So in
4 summary, we would ask that we be considered, we
5 would ask that be granted --

6 THE COMMISSIONER: I'm going to grant
7 you standing on both phases. I want you to
8 clearly understand that I don't want any
9 duplication. If there is, I will prevent it.

10 MS. INNESS: Thank you,
11 Mr. Commissioner.

12 THE COMMISSIONER: I'm going to rely
13 on your undertaking.

14 MS. INNESS: Thank you,
15 Mr. Commissioner.

16 THE COMMISSIONER: Right. We have now
17 completed all applications for standing. Shall we
18 move on, Mr. Paciocco?

19 MR. PACIOCCO: Thank you,
20 Mr. Commissioner. The next order of business is
21 the rules of practice and procedure. As
22 indicated, these draft rules have been provided to
23 the applicants directly, with the expectation of
24 the Manitoba Bar Association. So all of the
25 parties having standing now, with the exception of

1 that party, have had the rules in hand for some
2 period of time. They were posted as well on the
3 website, and alluded to in the ad that solicited
4 the application from the Manitoba Bar Association.

5 Those draft rules of practice and
6 procedure are in keeping with the practice of
7 commissions of inquiry to develop rules that will
8 facilitate the task that's been provided. These
9 rules are modeled on those that have been utilized
10 with other commissions and involve a minor
11 adaptation of the rules that were used in the
12 Driskell inquiry.

13 The responsibility at this point is to
14 invite those who have standing, and those who have
15 had an opportunity to look at those draft rules of
16 procedure and practice, to raise any issues that
17 they have with respect to the rules. Those rules
18 contain important provisions dealing with
19 everything from disclosure to presentation of
20 evidence and will ultimately prove to be our
21 guide. All those parties who have standing are
22 going to be bound by the rules, and they will
23 certainly be taking an undertaking to adhere to
24 them. So if there are questions or difficulties
25 with the rules, it would be wise to deal with them

1 at this point.

2 Mr. Commissioner, you do have the
3 authority to modify the rules as required, as
4 matters proceed. So we should not understand
5 these to be written in stone, but at this point in
6 time it is a good opportunity to settle parameters
7 in terms of how these proceedings will be carried
8 forward. So I would ask you, Mr. Commissioner, to
9 invite any submissions that there might be from
10 any of the parties that now have standing before
11 you.

12 MR. ZAZELENCHUK: Zazelenchuk,
13 Mr. Commissioner. Three very small comments.
14 Rule 13, line 4, about the middle of the sentence,
15 I respectfully submit it should read "witness
16 giving his or her" as opposed to "her evidence".

17 THE COMMISSIONER: How about her or
18 his?

19 MR. ZAZELENCHUK: That would be
20 acceptable to myself as well.

21 THE COMMISSIONER: Yes.

22 MR. ZAZELENCHUK: Rule 28, again, too
23 small comments. In the second last line, I
24 respectfully suggest that the fourth last word
25 should be "a" instead of "the".

1 THE COMMISSIONER: Read that to me?

2 MR. ZAZELENCHUK: That sentence will
3 read,

4 "Unless a party objecting demonstrates
5 on a balance of probabilities..."

6 instead of,

7 "...on the balance of probabilities."

8 And in that same line, Mr. Commissioner, I
9 respectfully suggest there should be a comma after
10 authentic.

11 THE COMMISSIONER: A comma after
12 authentic?

13 MR. ZAZELENCHUK: Yes.

14 THE COMMISSIONER: There is a comma,
15 at least in my mine.

16 MR. ZAZELENCHUK: There isn't in mine.

17 THE COMMISSIONER: Well, put one in.

18 MR. ZAZELENCHUK: Thank you. I had no
19 way of knowing what was in Mr. Commissioner's
20 copy. Those are my comments.

21 THE COMMISSIONER: Maybe you might
22 want to respond to that?

23 MR. PACIOCCO: I'm quite content to
24 make the changes that have been pointed out, if
25 they feel more comfortable.

1 THE COMMISSIONER: Thank you. Any
2 other counsel have objection to the rules, or any
3 aspects of the rules?

4 MR. GREEN: Michael Green. I'm not
5 really objecting, I'm seeking some clarification.
6 Under the evidence part 3 portion, specifically
7 paragraph 11.

8 THE COMMISSIONER: Let me get that,
9 please.

10 MR. GREEN: Sure.

11 THE COMMISSIONER: Oh, yes, 11.

12 MR. GREEN: Yes. I'm not
13 understanding what is meant by the second
14 sentence.

15 "Documents in the possession and
16 control of a party that are already in
17 the possession of the Commission shall
18 be listed but need not be produced."

19 What does "listed" mean?

20 THE COMMISSIONER: Mr. Paciocco?

21 MR. GREEN: Listed by whom?

22 MR. PACIOCCO: The expectation from
23 those rules is that the parties who have documents
24 that repeat documents that will be included in the
25 disclosure should not be providing them to the

1 Commission. The experience from other commission
2 of inquiries has been that it becomes burdensome
3 if documents are redundant. It is important,
4 however, for the Commission to know who has
5 possession of documents. Therefore, the request
6 is that documents in the possession of parties
7 that are not already provided to the Commission
8 should be forwarded, but documents that are
9 already in the hands of the Commission and have
10 been disclosed to those parties not be reproduced,
11 but we should be notified. So the term listed
12 connotes the undertaking on the part of parties to
13 advise us.

14 I have some comments to make about the
15 modalities of that at a later point in time, but
16 for the sake of responding to the question, what
17 is anticipated is that the photocopy of the
18 disclosure that we are providing, which lists all
19 of the documents, can simply be returned to us by
20 each of the parties. They can mark on the index
21 those documents that they have. They can do it
22 either by underlining them, putting a check mark
23 beside it, or highlighting them, so it is not a
24 major obligation on their part by any stretch. As
25 they go through their own information and compare

1 it to the index, they would be able to see those
2 documents that would be redundant. It is just to
3 give us a record so we know who has what.

4 THE COMMISSIONER: Does that answer
5 your question?

6 MR. GREEN: Not entirely. I'm still
7 not sure what is meant by a listing. Are we
8 expected to provide a list of all documents that
9 we have to counsel or -- I'm missing something, is
10 that --

11 MR. PACIOCCO: The expectation is that
12 those documents that are relevant to the
13 proceedings, which are in your possession, will be
14 provided to the Commission. There will be no need
15 to list those, they will simply have to be
16 provided. The documents that are duplicates in
17 your possession, duplicates relative to the
18 documents that we are going to give back to you,
19 should not be handed to us, but we should be
20 notified that you have copies of them. So the
21 list only contains those documents in your
22 possession that match documents that we will be
23 disclosing to you.

24 THE COMMISSIONER: All right. Thank
25 you.

1 MR. PROBER: Mr. Commissioner.

2 THE COMMISSIONER: Why don't you come
3 up here, Mr. Prober? I know your voice can reach
4 around the entire room but it would be better if
5 you were up here.

6 MR. PROBER: It is my view that we
7 should add a rule now that anybody who has
8 standing should be funded by the Government of
9 Manitoba, and that's for Mr. McFetridge's benefit,
10 not entirely serious though.

11 THE COMMISSIONER: Any other comments?
12 All right.

13 MR. PACIOCCO: Thank you, Mr.
14 Commissioner. Can we take it then that the rules
15 of procedure and practice that are in draft form
16 at tab E, subject to the changes by
17 Mr. Zazelenchuk, are taken as approved and will be
18 the rules that we will begin these proceedings
19 with?

20 THE COMMISSIONER: Yes, so ordered.

21 MR. PACIOCCO: The final order of
22 business, Your Honour, deals with the
23 administration of disclosure. We are ready to
24 provide initial disclosure to all of the parties
25 who have been granted standing here today. The

1 Commission counsel, co-counsel, and all of the
2 staff have organized the material for the purposes
3 of disclosure, and we have provided approximately
4 one banker's box worth of documents for each of
5 the individuals who applied for standing. Those
6 documents have been very carefully re-organized
7 and ordered according to the theme and the order
8 of presentation that we anticipate. All of the
9 documents pertaining to each witness are gathered
10 together, for the most part, in order to
11 facilitate the presentation of information.

12 As you know, in ordinary circumstances
13 there is an implied undertaking given with respect
14 to disclosure that the disclosure is being made
15 solely for the purposes of permitting
16 participation in the relevant hearing. The rules
17 of practice and procedure that have just been
18 approved make express that implied undertaking.
19 It is important for the public to understand that
20 the documentation given to the parties is to be
21 treated by them in confidence. Disclosure will be
22 made to the public of the contents of those
23 documents as and when those documents become
24 exhibits. We will be making those exhibits
25 available on line as well as physically here in

1 the courtroom on the days when they are tendered
2 to Your Honour.

3 The parties will be asked at the end
4 of today's proceedings to approach Commission
5 counsel, co-counsel, to sign a disclosure
6 agreement in which they undertake to use the
7 documents only for the purposes of the inquiry,
8 and to keep their contents confidential to
9 themselves or to the parties they represent,
10 unless and until those documents have been
11 admitted during the evidence phase.

12 The parties at that point in time will
13 receive the document we have prepared, which is an
14 initial disclosure index. The initial disclosure
15 index will list all of the documents that are in
16 our possession. Those documents came to our
17 possession from Manitoba Justice, and they contain
18 the original investigative file from the East St.
19 Paul Police. They contain the file that was in
20 the hands of Mr. Minuk. They contain court
21 transcripts and other documents that we have
22 gathered up until this point in time, including
23 relating to the RCMP investigation that was done
24 into this event. The initial disclosure index
25 describes the way we have organized the documents.

1 In order to make the proceedings
2 efficient, we will not be simply disclosing them
3 to the parties in the order that we received them.
4 We have re-organized them, as I indicated to you.
5 We have removed redundant documents. It is
6 important nonetheless for the parties to know the
7 shape in which those documents were in the hands
8 of those who were involved, for example, the
9 investigators or Mr. Minuk. So we have indexed
10 those documents in the form in which we received
11 them. So it will be an easy matter for the
12 parties in looking at any document to know who had
13 it at what point in time.

14 The index we provide as a master to
15 the disclosure is going to reference both its
16 location in the Taman inquiry disclosure book and
17 its origin, so that parties can very easily orient
18 themselves. This initial disclosure index also
19 contains an index from the original disclosure for
20 cross-reference purposes.

21 In addition, there is a synopsis of
22 the events to assist counsel in their initial
23 preparation. It is to be taken as the form of
24 synopsis that may accompany an investigative file.
25 It does not purport to be an evidentiary record.

1 It is not a document that will be put before this
2 Commission. It is not document that provides any
3 evidentiary findings. It is simply an outline of
4 the information to assist the parties in orienting
5 themselves to the case, and in knowing how to go
6 about looking at the disclosure that's going to be
7 provided.

8 In addition, all of the parties are
9 going to be provided with an initial order of
10 witnesses. We have anticipated the order in which
11 we want to call the case. Of course, the
12 investigation that we are conducting is not yet
13 complete. We will be conducting interviews of
14 relevant witnesses and attempting to gather
15 further relevant documentation. So that
16 professional witness list should be understood as
17 a proposed list. It is to assist the parties in
18 organizing their own schedule and anticipating
19 where it is likely to head, but it can not be
20 taken as a document written in stone.

21 Perhaps one of the most important
22 pages in the document that they will be receiving
23 today, the initial disclosure index and guide to
24 disclosure, is the reciprocal disclosure pages
25 which reproduce from the rules of procedure the

1 obligations on parties to make relevant
2 disclosure.

3 For the sake of completing the record,
4 I will indicate a general description of what the
5 Commission is hoping the parties will undertake
6 and perform in order to make this process
7 effective.

8 The first expectation is that the
9 concept of documents as defined in the rules
10 should be understood as extremely broad. It has a
11 request that documents should be disclosed having
12 any bearing on the subject matter of the inquiry,
13 and the reciprocal disclosure sheet notifies
14 parties that, without limiting the generality of
15 form, the disclosure should include
16 correspondence, police officer notes, internal
17 memos, emails, or other electronic records, notes
18 to file, written evaluations or opinions,
19 documents created in the preparation for testimony
20 or court appearances, expert reports and diary
21 entries that are not clearly irrelevant to the
22 investigation and prosecution of Mr. Harvey-Zenk.
23 We have affirmed in the reciprocal disclosure
24 guide that we are looking for disclosure in the
25 physical form only of those documents that we

1 ourselves have not given to the parties. It is
2 really important to avoid duplication, otherwise
3 we are going to have too much material to handle
4 and the parties are going to have difficulty
5 finding the document that is being referred to.
6 If it is located in more than one place in the
7 materials, we may not all be talking from the same
8 page.

9 The list of disclosure that we have
10 described already is simply a request that the
11 parties notify us that they have in their
12 possession documents that we have already
13 furnished to them. And I have invited the parties
14 in this document to simply photocopy our own index
15 and highlight it in some way to show us which
16 documents they have and they are not providing to
17 us. Any documents they have that are duplicate
18 but have additional endorsements of any kind are
19 not duplicate and should be forwarded to us as
20 well.

21 There are, of course, privilege issues
22 and the rules provide for the handling of
23 privilege, including, if necessary, applications
24 to the Superior Court. It is very important, of
25 course, for to us know what documents are being

1 withheld on the basis of privilege, so we are
2 asking for a list of any documents over which
3 privilege is claimed.

4 We are also requesting that enough
5 information be given to us as to the nature of the
6 privilege claimed, or the nature of the document,
7 to allow us to make a preliminary evaluation of
8 what our position will be. Obviously, that should
9 be done without defeating the privilege.

10 The disclosure deadline that we have
11 targeted is March 17th, 2008, some six weeks
12 hence. It is very important that the parties meet
13 that deadline, Mr. Commissioner, because the
14 documents that we receive will have to be vetted
15 and organized by us, and reproduced, and we are
16 going to try and put them into the same basic
17 order with the same basic tabbing system as the
18 initial disclosure. That's going to take us some
19 time. The longer it takes us to complete that
20 task and hand the disclosure out, the less time
21 everyone is going to have for preparation and the
22 more pressure there is going to be on us, with the
23 hearing dates coming shortly after that. So based
24 on the level of cooperation that has been
25 demonstrated today, I don't anticipate that we are

1 going to run into difficulties in having the
2 parties meet that ultimate disclosure schedule.

3 It is our intention to take the
4 documents that are organized in this fashion as
5 the disclosure and to use them as the working
6 copies during this Commission. That, of course,
7 requires us to furnish you with copies of the
8 disclosure as well. It is understood that the
9 copies of disclosure that are bound by us and
10 organized are not evidence in the proceedings.
11 They are not evidence until the documents have
12 been presented through witnesses to you, according
13 to the rules of practice. So for each document
14 that we will be referring to out of the
15 disclosure, we will formally be removing the
16 document from the file and tendering it as an
17 exhibit. At that point in time, the matching
18 document in the book will be available to each
19 party so that they can find it easily. And it
20 will be our practice to refer to the documents not
21 by exhibit number alone, but to the particular
22 location where they can be found in the books.
23 And in that way we think we can provide for a very
24 efficient presentation of the evidence.

25 Your Honour has observed that from now

1 on the expectation is that we will begin at 9:30,
2 and it is certainly my understanding from Ontario
3 with those that appeared before you that it is
4 your practice to start when you say you are going
5 to start. We anticipate going from 9:30 until
6 12:30 and breaking until 2:00 o'clock each day,
7 and going from 2:00 o'clock until 4:30.

8 THE COMMISSIONER: There will be an
9 appropriate break in the morning, and I indicate
10 that I will start on time whether counsel are here
11 or not. My interest is to move on, and if there
12 is some reason why counsel can't be here, please
13 let us know well in advance.

14 MR. PACIOCCO: The last order of
15 business, Your Honour, is simply that we have
16 indicated that we will not sit on Fridays, we will
17 sit a four day week. There are two exceptions to
18 that, and those are the first week in July and the
19 first week in August. Those weeks, of course,
20 have long weekends tagged on to their beginning,
21 and as a result we lose the Monday, so it is our
22 intention to sit on the Fridays on those weeks in
23 order to enable us to fill the schedule.

24 I have done a provisional time
25 estimate of the evidence that we anticipate

1 calling, and we are going to have to be
2 tremendously efficient in order to finish in the
3 time that has been presented.

4 I'm going to make an invitation to all
5 of the parties to come forward after today's
6 proceedings are completed, to sign the undertaking
7 with respect to confidentiality. At that time
8 they will get the initial disclosure index, plus
9 our proposed order of witnesses. Once we have all
10 left today, we will arrange to have the disclosure
11 delivered to them. And if they have any
12 information as to where they want that sent, which
13 is different from the correspondence addresses we
14 have been using to date, they can let us know and
15 we will arrange to have the disclosure shipped to
16 them.

17 Subject to any questions that you
18 have, Mr. Commissioner, that concludes any
19 business that Commission counsel has before you
20 today.

21 THE COMMISSIONER: Thank you. Do any
22 counsel have any matters that they want to raise
23 before we rise for the day?

24 MR. WEINSTEIN: One matter being
25 raised for information purposes.

1 THE COMMISSIONER: Can you raise that
2 microphone? It is going up and down depending on
3 height.

4 MR. WEINSTEIN: Thank you. Just
5 dealing with the Commission counsel's comments
6 about the exhibits and filing the exhibits, I'm
7 just inquiring whether or not the Commission clerk
8 will be preparing, at the end of the week or the
9 end of each day, an exhibit list as we get in a
10 criminal proceeding, an ongoing list of exhibits
11 being filed, exhibit numbers, and where they are
12 located?

13 THE COMMISSIONER: She says yes.

14 MR. WEINSTEIN: Thank you, Madam
15 clerk.

16 THE COMMISSIONER: Anything else?
17 Thank you very much. We've been able to get
18 through a great deal that we anticipated might
19 take much longer. We will now rise, and the next
20 date for the hearing is June 2nd.

21 THE CLERK: All rise. This Commission
22 is adjourned until June 2nd at 9:30 in the
23 morning.

24 (Adjourned at 10:45 a.m.)

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OFFICIAL EXAMINER'S CERTIFICATE

I, CECELIA REID, a duly appointed Official
Examiner in the Province of Manitoba, do hereby
certify the foregoing pages are a true and correct
transcript of my Stenotype notes as taken by me at
the time and place hereinbefore stated.

Cecelia Reid
Official Examiner, Q.B.

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