Summary of Oral Rulings

1. Disclosure to Non-Clients

The Rules of Procedure and Practice provided that counsel are entitled to provide documents or other information obtained from the Commission to their clients only on terms consistent with the undertakings given by a counsel and upon the clients entering into a written undertaking in the prescribed form. The Rules of Procedure and Practice further provided that the Commissioner may, upon application, release any party in whole or in part from the provisions of the undertaking in respect of any particular document or other information or authorize disclosure of documents or information to any other person.

The Commissioner ruled that applications for authorization to disclose documents or information to a non-client may be made ex parte by letter to the Commission. He directed the application should specify the documents or information sought to be disclosed, the identity of the non-client and the purpose of such disclosure. The Commissioner directed that it was not necessary to file an affidavit in support of such applications, and it was up to counsel to determine what they wished to have considered in support of the application.

2. Pre-Hearing Conference

The Commissioner conducted a management pre-hearing conference by telephone conference call with counsel for all parties with standing. The purpose of the conference call was to discuss procedural matters such as the order of examination of witnesses by counsel. Counsel were urged to come to some agreement as to the order of examination of witnesses. If they were unable to reach an agreement, the Commissioner would direct the order of examination of witnesses. Counsel were able to agree on the order for examination for each witness.

3. Objections in the Course of the Hearings and Request for Adjournments

The Commissioner advised counsel that he did not want to hear objections in the hearing room unless the objection was first raised with Commission counsel. The intent was that, as far as possible, counsel should attempt to resolve such matters amongst themselves. If counsel could not reach any consensus, they were encouraged to discuss with Commission counsel the appropriate procedure for raising the issue before the Commissioner. The Commissioner noted that there may be matters arising in the course of the hearing which counsel did not anticipate and that it may be necessary to raise an objection without prior notice. However, the Commissioner indicated that he expected consultation on matters that could reasonably be expected to arise.

The Commissioner also advised counsel that he would not look favourably upon any request for adjournment based on unavailability of lead counsel. If lead counsel was unavailable, he expected that alternate counsel would attend the hearing.

4. Ruling as to In-Camera Hearing and Publication Bans, August 25, 2003

The Commissioner delivered the following oral ruling on whether the preliminary hearing into the admissibility of polygraph evidence should be heard in-camera, and whether a publication ban should be imposed on such hearing:

"There are several preliminary matters I must address before considering the applications brought before the Commission today. Counsel for some of the parties have suggested this proceeding should be held in-camera. That is, with no spectators present. The same counsel have also suggested I should consider a publication ban on this proceeding. Counsel for other parties have taken a contrary position on both issues.

…

I am now prepared to deal with the preliminary matters raised by counsel in their earlier submissions. The restrictions suggested by counsel for the Applicants and supporting counsel have raised very serious questions. The objective of this Commission is to conduct hearings that are as open and transparent as possible. I set out that objective in the clearest possible terms at the commencement of the Commission's work. I believe that that has been achieved to date.

A direction that this matter be held in-camera would preclude members of the public from attending this hearing. No such restriction should be imposed unless I am convinced that the nature of the matter before me requires that it be conducted in a closed session. The matters to be discussed involve a possible admission of certain evidence. If I conclude that evidence is not properly admissible, then any reference to it would not be appropriate. The only way that I can assure that a spectator would not reveal the nature of the application and the proceedings which has taken place today is to direct that this hearing be held in-camera. I must therefore most reluctantly direct that the hearings be in-camera. We will take a short adjournment in a few minutes to permit any members of the public who are here to withdraw.

It seems to me the difficulty with excluding the public from this process may be offset by allowing the members of the media to attend the hearing. The media of this country have and continue to serve as surrogates of the Canadian public. They are professional and fully acquainted with the issues I have discussed and the need for safeguards to be imposed in some cases to ensure that a judicial proceeding or inquiry properly balances the interests of the public and those of the participants in the process.

I have concluded, therefore, that it would be appropriate to allow the representatives of the media to attend during the hearing to the end.

However, I have to be mindful that without more the journalists and reporters present would be entitled to publish a full account of these proceedings. That would not be logical or proper in light of the concerns I have expressed earlier. Weighing the right of media representatives to report and the interests of the participants affected by this application and the public, I have concluded that I should ban the publication of any report of these proceedings subject to the condition I set out hereafter. A publication ban will therefore take effect immediately and will apply to any preliminary matters dealt with in these applications and to the applications I am to hear.

> I point out to counsel and the media that in the event I allow the evidence which is subject of these applications to be provided to Commission during the Inquiry the ban will not apply to any evidence presented in the hearing. The media will then be free to report such evidence, subject to any other directions which I may give."

5. Ruling as to Hearsay Evidence

Stella Stonechild-Bignell was the first witness to testify. Counsel for the Police Association objected to her testimony as to what she had been told by her son, Marcel Stonechild, as a result of his inquiries as to the whereabouts of Neil Stonechild. The objection was based on such testimony being hearsay.

Commission counsel took the position that the strict rules of evidence do not apply and the proper test is one of reasonable relevance to the terms of reference. He further indicated that evidence as to what people were told about the disappearance of Neil Stonechild and what they did with such information was reasonably relevant to the terms of reference.

The Commissioner ruled as follows:

> "Well, as you know, I am not bound by the rules of evidence, including the exclusionary rules. But I must say that it seems to me that evidence as to what happened early on, at the beginning of these events, and what was said, including things that may have been said to the police, is extremely material because it bears, of course, on the early stage of the Inquiry and what happened after that. So that even if this was subject to the traditional rule of exclusion, I would not apply it in this case. And I must say with respect, I agree with the comments that have been made with Commission counsel. In the circumstances, I will certainly permit the evidence to be introduced."

6. Admissibility of Evidence of Incidents of Police Transporting and Dropping Persons Off at Places Other Than Detention Centre

Counsel for FSIN asked Cst. Lewis if he had any knowledge of any person detained or in custody of the Saskatoon City Police being taken to a location other than a place of detention. Objection was taken to such question on the grounds of relevancy. The Commissioner ruled that such question would be allowed provided it was limited solely to whether the witness had any knowledge of other instances and did not go into the specifics of any such incidents.

7. Objections to Evidence of Unrelated Police Misconduct

Erica Stonechild began to testify as to an unrelated incident of police misconduct. Objection was taken to this evidence on the grounds of relevance. It was argued that the evidence was relevant as it provided an explanation as to why she didn't go to the Saskatoon Police Service with information of possible police misconduct. The Commissioner ruled that a general explanation could be provided, but the witness should not go into the specifics of any prior incident, as that could require an investigation into those events.

8. Qualifications of Gary Robertson

Objections were taken to the qualifications of Gary Robertson as an expert in the area of image processing, image interpretation and the application of photogrammetry, which is the making of measurements from an image or photograph. Commissioner Wright made the following oral ruling (October 21, 2003 vol. 22, p. 4160-4163):

> "THE COMMISSIONER: Well, I've had an opportunity to consider this and I have three observations to make about this proposed evidence. It is obvious that photogrammetry is an area of investigation and analysis that is evolving, and that concerns have been expressed about the technical and scientific competence of a witness to express an opinion based upon that technique, and to express other opinions as to what conclusion should be drawn as a result of measurement observations and analysis.
>
> I have also had to consider Mr. Robertson's professional history and whether that supports the conclusion that he is competent to express opinions in the areas Mr. Hesje has outlined. And I say now that I have some reservations with respect to that, but at the moment they are not so significant that they affect my final decision.
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> I note that this is an inquiry, not a civil or criminal trial, and as I've observed before in my rulings on other issues, I have a good deal more latitude in determining what evidence I will receive, and indeed the thrust of the cases is that an inquiry should be as broad in scope as possible given its mandate, and that one need not have the same concern about rules of evidence and the like as might be the case in a civil or criminal case. Now, as I've said before, that's not an invitation to cast aside the rules of evidence. But there is no doubt in my mind that an inquiry does have a good deal more freedom and latitude. As I've said before, it is important in a proceeding of this kind that there be access to as much information as will be helpful to me as Commissioner in reaching a conclusion about the circumstances surrounding Mr. Stonechild's death.
>
> I may conclude after hearing Mr. Robertson's evidence and the questions that have been asked of him that he is not finally competent to give his opinion with respect to either the measurements or the comparison of the measurements with physical objects; but that lies ahead. And finally I might accept his evidence but decide what weight, if any, I will give to that.
>
> Having heard the questions asked of him and the submissions that have been made by counsel, I have concluded that within the scope of the inquiry it is appropriate to hear his testimony. I cannot say what use I will make of it, if any, until I have heard all of his evidence and the questions asked of him on cross-examination. I note that counsel will have a full opportunity to test that evidence in cross-examination and there are a number of experienced counsel here who can address their minds to that issue, so I'm sure that it will be fully examined. As a consequence of the questions they ask him, they may finally be successful in discrediting him as a witness. I don't know, that lies ahead. However, I find for the purposes of the inquiry at this juncture that Mr. Robertson is qualified to testify on the limited questions outlined by Mr. Hesje."

9. Scope of Questioning of Expert Witness

The Commissioner provided the following oral ruling (January 6, 2004 vol. 31 p. 5878-5879):

> "THE COMMISSIONER: Very well. Now, are there any – I think that it's helpful for me just to make a comment here about questions asked of expert witnesses, because there may be a temptation for any expert – and I'm not singling out the Doctor – to express an opinion in an area that he or she has done some research and reading in, but has not really concentrated in that area of investigation to the extent that they're entitled to be treated as an expert. And I think that all of you need to resist the temptation to draw experts into expressing opinions in areas where they are not really qualified to testify, even if they have opinions about them. I have an opinion about recovered memory, but that doesn't make me an expert, let me assure you. And I couldn't utilize my own beliefs about this in reaching a conclusion about recovered memory or something in that area. It would be inappropriate for me to do that because I don't have the qualifications. So I just remind all counsel that, bear in mind always the purpose for which the expert has been called and that implicit when qualifying the expert is the idea that that individual will only be asked questions about the area in which he or she is qualified."

10. Application to Call Various Witnesses

Counsel for the Saskatoon Police Service brought an application to call, as a witness, Dr. James Arnold, a clinical psychologist. The Saskatoon Police Service desired to call Dr. Arnold as a witness to provide evidence on memory formation and recovery and the therapeutic technique of visualization. It was also submitted that Dr. Arnold should have an opportunity to respond to evidence by another witness, Brenda Valiaho, who gave evidence that she may have obtained advice from him in 1991 prior to performing a visualization exercise with Jason Roy.

The Saskatoon Police Service also applied to the Commissioner to call Brian Beresh to give evidence regarding Gary Robertson, a witness who provided expert evidence to the inquiry. Gary Robertson testified that he provided some expert assistance in regard to a particular court case. Mr. Beresh was one of the counsel in that case. His testimony was intended to clarify the nature and scope of Mr. Robertson's assistance in that case.

The Federation of Saskatchewan Indian First Nations applied to call Dr. John Charles Yuille and Dr. Elizabeth Loftuss to provide expert evidence on memory formation and memory recovery. The Federation of Saskatchewan Indian First Nations submitted that the evidence of these two witnesses was needed to provide balance to the evidence of Dr. Arnold, a memory expert proposed by the Saskatoon Police Service.

The Saskatoon City Police Association applied to the Commissioner to call two witnesses who were, at the time, serving custodial sentences. As a result of potential safety concerns, the Commissioner made an interim order preventing the publication of these two witnesses identities. The Police Association submitted that both of these witnesses had information that would benefit the Inquiry. The Police Association submitted that Mr. H had made statements suggesting that Jason Roy admitted to fabricating his evidence regarding police

involvement in the death of Neil Stonechild, and that Gary Pratt had admitted to him that he was involved in Stonechild's death. Mr. H refused to provide the RCMP with a statement and refused to be interviewed by Commission Counsel. The other proposed witness, Mr. A initially informed the RCMP that he had no information about the death of Neil Stonechild. Subsequently, he was arrested and under suspicion for murder. He then indicated to the authorities that he knew exactly what happened to Neil Stonechild, but he refused to testify unless he was given a "deal".

The Saskatoon City Police Association also applied to call two Saskatoon Police Service members: Constable Geoffrey Brand and Constable Ted Sperling. Cst. Brand had walked a number of distances between locations that the Police Association submitted were relevant to the Inquiry. The Police Association applied to call Cst. Brand to provide the periods of time it took to walk between each location. Cst. Sperling was one of the officers operating the "Paddy Wagon" on November 24/25, 1990. The Police Association desired to call Cst. Sperling as a witness because of perceived suggestions by other counsel that the "paddy wagon" may have had some involvement in the disappearance of Neil Stonechild.

The Saskatoon City Police Association also applied to call as witnesses Staff Sgt. Ken Lyons and Corporal Jack Warner of the Royal Canadian Mounted Police. Lyons and Warner were the lead investigators in respect of the RCMP investigation into the death of Neil Stonechild. The Police Association submitted that the interaction between these officers and certain witnesses who later testified at the Inquiry was evidence that should be presented.

Commissioner Wright made the following oral ruling on these applications (January 9, 2004 vol. 34 p. 6533-6537 and March 18, 2004 vol. 34 p. 8501):

> "THE COMMISSIONER: Mr. Rossmann, before you begin – and I will come to the question of the report in a few minutes. I want to advise counsel that I had an opportunity over the lunch hour to review the applications and it's important, in my view, and before we disperse, that as much as possible I indicate to you what my inclinations are with respect to the applications.
>
> The advantage is that you will have as part of the transcribed proceedings, your submissions and my ruling, and available to you quickly, so you can make whatever arrangements you need to make with respect to future witnesses or other evidence. And I'm going to go through them and deal with each one separately.
>
> Firstly, with respect to the application brought in connection with Dr. Arnold. After weighing the positions of counsel, and they are in conflict in some instances, it seems to me that it is appropriate that Dr. Arnold be called. I am not very worried by the suggestion that in some way his reputation has been sullied because of the suggestion made – tentative suggestion made by Ms. Valiaho that she spoke to him. I agree with the observations of counsel that her reference to that was tentative, to say the least. Be that as it may, it strikes me that if he's to be called for other purposes, he will have an opportunity to address that question too, and to express his outrage for what was said.
>
> It occurred to me that there is a parallel issue here. Depending on what the proposed evidence of Dr. Arnold contains – refers to, Commission counsel may want to consider, on his own initiative, whether he wants to call Loftus and/or

Yuille. And Mr. Hesje, I think that you should have the option to make that determination in the first instance. It's not to say that you diligent counsel can't make your views known about it in due course, once you have a sense of what's going to happen, but I thought that was an appropriate caveat to attach to this.

The next matter I dealt with this morning, and that is the matter of Brian Beresh, and I dismissed that application for the reasons mentioned. And I understand Mr. Rossmann understands that.

With respect to the Loftus and Yuille applications. I indicated to you that I was going to adjourn both of those and give leave to counsel to renew their respective applications as they may be instructed and subject to what happens with respect to Dr. Arnold.

With respect to H and A – and I'm not faulting counsel in any way for the actions of these two persons, but their suggestions that they have evidence material to the Inquiry, is, in my respectful view, very curious – and I say curious in the sense that they're unwilling to share that information with the persons who must make the initial analysis and assessment of the evidence and its reliability. And I refer, of course, to the RCMP and to Commission counsel. And as I say, I don't fault Mr. Plaxton for bringing the applications, but in light of the circumstances and the conditions surrounding both these persons, I do not see any need to have them called to testify before the Inquiry.

With respect to Lyons and Warner. I want to give that more thought and so those two matters are reserved, and I will with that as promptly a I can.

With respect to the application of Constable Brand, the walker. I consider that evidence very speculative and of very marginal relevance. And I don't see any need for that evidence to be introduced before the inquiry and that application is dismissed.

For the reasons mentioned to counsel this morning with respect to Constable Sperling and the comments I made about my views as to Brand and Sperling's involvement with the paddy wagon and my conclusion that there isn't anything in the evidence connecting them with Stonechild, I see no need for Sperling to testify and that application is dismissed.
…

THE COMMISSIONER: Well, we're referring to the two RCMP officers and I indicated to you – who were investigators – I indicated to counsel earlier that I could see no reason why they should be called, but that if there were a need I could revisit the question again after the two constables had testified. I must say I see no reason for calling them."

11. Objections to Qualifications of Dr. James Arnold

Commission counsel sought to qualify Dr. Arnold as an expert on the following issues:

(a) memory formation and recovery;

(b) the impact of alcohol on memory and the recovery of alcohol-impaired memory;

(c) the use of interview techniques such as hypnosis, guided imagery, relaxation training and mediation, and in particular, the risks of created or false memory associated with such techniques.

Objection was taken to Dr. Arnold's qualifications to provide expert opinion on these issues. The Commissioner's ruling is contained in the following exchange (March 10, 2004 vol. 37 p. 6982-6989):

"THE COMMISSIONER: Mr. Hesje, I'm going to invite some comments from you. But I just want to know – excuse me for a moment – before I do invite Mr. Hesje to answer my questions, whether any of you have any submissions to make with respect to Dr. Arnold's qualifications and the scope of his evidence. Because I confess to you, at the moment I have some concerns about the scope of his evidence and what I intend to do now is address these and discuss them with Mr. Hesje inasmuch as he's put forward the areas where he thinks Dr. Arnold might testify. Then, I guess, if need be I'll invite any of you to make any submissions apropos of that. But I think we need to review now, Mr. Hesje, just how far Dr. Arnold might go.

MR. HESJE: Certainly. Now Mr. –

THE COMMISSIONER: But let me begin by saying that my present impression is that the memory feature that is talked about here is something that Dr. Arnold possesses really as, presumably, all clinical psychologists would, it's an integral part of his life and work as a clinical psychologist. But I don't detect, no do I understand him to make any claims that he has any special skills or special knowledge in this area.

MR. HESJE: Mr. Commissioner, I must say that I would be much more comfortable if those questions were put to Mr. Rossmann and Mr. Stevenson. You will recall that I declined to call Mr. Arnold. And I'm trying to be fair about this, but I think they should likely address those issues. The areas I sought to have him qualified for were based on the summary, the points that I drew from the summary that had been provided to Mr. Rossmann. I simply worked backwards from that and said, well, if he's going to testify in this area he needs to be qualified in this area.

THE COMMISSIONER: Well, I can do that. And perhaps I'll ask Mr. Rossmann, then, to respond.

Before you begin, Mr. Rossmann, let me just, I hope, make some helpful comments that will guide you in your response and assist me in this process. The first general observation I would make, aside from the fact that Dr. Arnold wants to address a particular factual situation and he would be here in any event, I suspect, for that, is that it's helpful to me, even if Dr. Arnold's qualifications are simply those of the average clinical psychologist, to have his expertise in that respect available to flesh out what I've heard and what has gone before. The fact that he, I may decide, does not have any special skill or extraordinary qualifications in the area of memory, memory recovery and whatever, doesn't seem to me, and I say this for your comfort, to be an impediment to him testifying, because in the final analysis it's a question of weight: firstly, what may I extract from what he's able to tell me, and what weight

do I attribute to it. So having said that, but it seems to me, with respect, that Dr. Arnold's been quite forthcoming about the areas that he is qualified in and the areas that he's not qualified in, and as it stands at the moment it seems to me that what he's essentially talking about is what any clinical psychologist would be capable of dealing with, especially if that person has had counseling experience and the like, and that in the area of memory his qualification don't transcend those of the ordinary clinical psychologist, and maybe no clinical psychologist is ever ordinary, but in any event the usual clinical psychologist practice. On that first note, what do you say?

MR. ROSSMANN: Well, My Lord, I think that the starting proposition for expert testimony, of course, is there will be different levels of expertise. What we're talking about in terms of qualifying an expert is does the person called to testify have knowledge over and above that of what the average person does, and I think certainly Dr. Arnold meets that test. Whether Dr. Arnold would claim to be the premier expert in North America, I don't know. He may or may not be. I see him shaking his head. But it's – it's a relative question, I suppose.

Bear in mind that the whole purpose of Dr. Arnold's testimony was twofold, one on the factual issue and the second on general background. As Mr. Winegarden pointed out in his questions, Dr. Arnold has not examined Mr. Roy, Dr. Arnold has not examined Mr. Jarvis or any other person about memory or other issues. He is not here to give an opinion on a person. He's here to provide some general background in memory – memory and recovery of memory for the assistance of the Commission and those of us participating, I suppose. It's – it's ultimately up to you, Mr. Commissioner, as to whether or not you find one witness more credible or less credible than another. Dr. Arnold is not here to fulfill that function. I think he's here to simply point out some of the pitfalls. And in terms of the areas we sought to call him, specifically relating in – for my purposes, relating to Mrs. – Ms. Valiaho's testimony was were the techniques employed by her generally accepted or not, and I suppose I would probably want to go farther and say, to the extent that she described them, were they properly applied or appropriately applied, and quite frankly she indicated she was not an expert and on cross-examination by Mr. Plaxton it turned out that she had very little training and, indeed, referred at one point to her technique as being somewhat holistic. So, in that respect I think Dr. Arnold can be qualified.

THE COMMISSIONER: That's another issue, though, and I agree that having had his answer to my last question clearly there's some divergence here, or it appears there may be some divergence, but I heard him carefully say that he uses the techniques that have been impugned by some, but he says they must be employed in a certain way –

MR. ROSSMANN: Right.

THE COMMISSIONER: – in order to get a reasonably accurate result, if I understand his response. I think we're agree that he does not claim expertise in the area of the effects of alcohol and recovery of memory as a consequence of alcohol. That seemed to me to surface from the answer given Ms. Knox during her cross-examination.

MR. ROSSMANN: M'hm.

THE COMMISSIONER: So we are, I think, a good deal more confined as to what he may be asked about in the course of giving his evidence. I say these things to you now in order to alert you to what my views are about how far he may go in his evidence, but it still would be helpful to me to have that evidence and, frankly, I think it's quite important that I also have his evidence on his views about visualization and those techniques and how they're utilized from at least the viewpoint of a clinical psychologist.

MR. ROSSMANN: M'hm.

THE COMMISSIONER: So on the factual basis, on his general knowledge as a clinical psychologist, and on the matter of the application of visualization, for example, I think his evidence is important.

MR. ROSSMANN: M'hm. That's –

THE COMMISSIONER: Now –

MR. ROSSMANN: I don't know if you have any other –

THE COMMISSIONER: No. What I'm doing is, and – and I hope you won't mind, I am literally sketching out what I think the parameters will be of this witness's evidence, and

MR. ROSSMANN: I understand.

THE COMMISSIONER: – unhappily for you you're standing there while I'm doing it, but I just wanted to explore with you what I think should happen. Now, I need to know now because I'm going to adjourn for a few minutes, I need to know now if with the three definitions I've put before you you have any particular difficulty with any of those.

MR. ROSSMANN: I don't.

THE COMMISSIONER: Does anybody else? Because – my thanks to you for that.

MR. ROSSMANN: Thank you.

THE COMMISSIONER: I'm going to adjourn for a few minutes because I want counsel to have a chance to review what's happened so that when you come to ask your skilful questions in cross-examination you'll be able to focus on the areas that we've talked about, and that will be of assistance to Dr. Arnold as well, I'm sure, as we go through this process. So, Mr. Hesje, is there anything you wanted to add?

MR. HESJE: No.

THE COMMISSIONER: Right. Well, I'd suggest that we take 15 minutes and if you will check with counsel and if they need a bit more time to review this, that's fine. And my thanks to you, Doctor, for your candour in this and your assistance. Very well."

12. Interference With Witness

During a break in his testimony, Cst. Hartwig was approached by an individual and spoken to in an aggressive fashion. The Commissioner was informed of this incident and provided the following directions (March 16, 2004 vol. 41 p. 7886-7888):

> "THE COMMISSIONER: Well, before we proceed with that, I have one other comment to make. It's been reported to me that at one of the breaks someone spoke to Constable Hartwig and in a fairly aggressive fashion. Now I express no opinion about that, I don't know the circumstances. But I need to say to everybody in this room that I will not tolerate any interference with the witnesses that are appearing before this inquiry under any circumstances. It's essential that every witness be accorded respect and an opportunity to tell his or her story fully and accurately.
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> Now I appreciate that emotions run high, there are people who have strong feelings about what happened and about the issues in this case, and I am fully aware of that. But I have to say to you, ladies and gentlemen, please be mindful that the purpose of the inquiry is, to the best of my ability, to get the facts and to draw what conclusions are proper in the circumstances.
>
> So even if you have some strong views one way or the other about any of the participants in the inquiry, please respect the process and please do not speak to the witnesses. If there is something you need to talk about, the witnesses are represented by counsel and Commission counsel is here, and if you have strong views about things, I understand that, but please keep them to yourselves, at least until the adjournment, so that you can go outside and chat with your friends or whoever you wish.
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> I must say to you all that everyone involved in this process has been extraordinarily respectful and patient, and that includes the gallery, the people who are present here and have been present here have been very respectful of the process, and I greatly appreciate that.
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> So let's maintain the environment we've had and ensure, as matters go forward, that we continue it and that we reach the appropriate conclusion without any unfortunate events, or any person feeling in the course of this, whoever she or he may be, that they have been set upon or in any way disturbed by something that someone may have said or done."

13. Second Application to Call Additional Witnesses

The Saskatoon City Police Association applied to call three witnesses: Maggie Bluewaters, Judy Butler and Lucinda Smith-Pratt. The application was based upon information gathered by the RCMP from Ms. Butler and Ms. Bluewaters. These individuals informed the RCMP of statements that Lucinda Smith-Pratt had allegedly made in the past which suggested that her husband, Gary Pratt, had admitted to her that he was involved with the death of Neil Stonechild. In her interview with the RCMP, Lucinda Smith-Pratt denied making such statements.

Commissioner Wright made the following oral ruling (March 16, 2004 vol. 41 p. 7901-7903):

> "THE COMMISSIONER: Very well. Well, I am going to deal with this matter now. I say initially, and I say this with the greatest of respect, that I don't think in my time as a judge I've ever had counsel proffer evidence that was triple hearsay. That's the case here.
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> Judy Butler, who is one of the proposed witnesses, says that she was told by a friend, Maggie Bluewaters, another proposed witness, that Gary Pratt's present wife, Lucinda Smith-Pratt, had told Bluewaters earlier that Gary Pratt had admitted to his wife that he had killed his earlier wife, Marie Lamothe, and Neil Stonechild. The evidence is that Maria Lamothe died of alcohol overdose.
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> The report was that Pratt was – had beaten up Neil Stonechild and left him in the bush. As I noted already, that does not accord with the evidence at this inquiry, evidence which has established independently the nature and scope of his injuries and where he was found.
>
> Bluewaters refuses to repeat what Gary Pratt's wife, Lucinda, is alleged to have told her. Lucinda, when she is alleged to have made the statements implicating her husband, was mentally distressed. She was arrested under *The Mental Health Act.* Mr. Pratt's wife now says that she falsely accused her husband. Her statements were made in anger. She stated to the RCMP that that was the case and that she does not believe Gary Pratt was responsible for Neil Stonechild's death. The RCMP has accepted that retraction or correction, as I understand their report.
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> In any event, it seems to me, on the face of it, at least, that she could not be obliged to testify because of spousal privilege
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> I cannot imagine evidence which would be more dubious or suspect than the testimony that is proposed to be given in this application. It is third-hand evidence, and in my respectful view absolutely unreliable and is inadmissible, even under the most expanded rules that I might apply.
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> I add as an afterthought, that there is a certain element of mischief in the suggestion that this kind of evidence be proffered at this late date, and I can't say more than that, but to express my unhappiness that this has been offered at this late point, late time.
>
> In any event, the application is dismissed as to the proposal to call all three witnesses."

14. The Cross-Examination on Wire-tap Evidence

Counsel for Stella Bignell sought to cross-examine Cst. Senger on statements made by him in wire-tapped evidence. It was conceded that the statements were not inculpatory. Commissioner Wright made the following oral ruling (March 18, 2004 vol. 43 p. 8440-8442):

> "THE COMMISSIONER: Right. Then that assists me. Because let me say that during the interval, when we adjourned over the lunch hour, I had a chance to consider this on a more global basis and I'm very troubled by the thought that information obtained on an interception, authorized interception might be

utilized for the purpose of asking one of the people involved in the conversation questions that are not related to any inculpatory admissions, statements or evidence. Over the years as a judge, I've granted a number of interception orders, mostly in drug cases, but the secret interception and recording of the conversations of Canadian citizens is a very, very serious violation of one's privacy and one's rights as a citizen in this country. In my respectful view, a wiretap is obtained for a focussed, specific purpose: do the conversational exchanges between the persons targeted in the interception reveal evidence of guilt, criminal activity or unlawful conduct? Wiretaps, in my respectful view, were never intended to be used for other purposes. And frankly, and I only speak for myself, if I were asked to grant an interception order or a wiretap and I thought that the substance of the conversation might be utilized somewhere else for another purpose, I would impose strict conditions on the granting of the interception.

And I must say, Mr. Worme, that I am not at all comfortable with the suggestion that because the persons involved in the exchange of comments here may have made comments that were derogatory or critical of others should be a basis for having the document produced and questions asked about the contents of it, of one of the persons who was the target, or subject of the interception. And I'm not convinced at all that it's appropriate that it be used for that purpose here, absent any evidence of any inculpatory statements or admissions of guilt or responsibility as to Neil Stonechild. And as a consequence of that, I'm not prepared to allow you to ask questions of Constable Senger about the interception."

15. Directions on Closing Submissions

The Commissioner ruled that parties may file written submissions subject to the following guidelines:

(a) written submissions should not exceed 50 pages;

(b) case citations should be provided in footnotes;

(c) copies of cases are not required;

(d) references to evidence contained in the transcripts or exhibits should be set out in footnotes and should include the transcript volume and page numbers, the exhibit number, and if applicable, page number;

(e) lengthy excerpts from the transcripts or documents (more than 2 or 3 sentences) should not be included in the written submissions; a footnoted reference to the evidence is sufficient.

The Commissioner also imposed time limits on all submissions. The following parties were allowed 90 minutes for closing submissions: Stella Bignell, Federation of Saskatchewan Indian Nations, Saskatchewan Police Service, Larry Hartwig, Bradley Senger, Saskatoon Police Association, and Keith Jarvis. The remaining parties were allowed 60 minutes, namely: RCMP, Gary Pratt, Jason Roy.

Summary of Oral Rulings

At the conclusion of the evidentiary phase of the hearings, Commissioner Wright issued the following directions for the preparation of written submissions (March 18, 2004 vol. 43 p. 8504-8505):

> "THE COMMISSIONER: I should just say, Mr. Hesje, and without in any way anticipating, that it seems to me that I need to set down some guidelines, some parameters with respect to submissions. I want to say to counsel that when the time comes I do not need another set of Encyclopaedia Brittanica. I expect you to be disciplined in the text of your submissions and the kinds of things I'm talking about are that if, for example, you want to make references to portions of the evidence, and you certainly will be doing that many times, I presently think that that can be accomplished more conveniently by footnotes, and so it is with respect to documents unless there's a reference to a particular line or a passage, but I implore you not to – how can I put it – further impact on my ability to understand and follow what's happening here by blitzing me with paper. Please make your points and where you have to, make references to the evidence. I don't expect there will be any cases referred to here, but similarly it's never helpful to have two or three volumes of photocopies cases when a reference to a particular decision, and even the extraction of one page marked with highlighter will serve. I'm going to rely enormously on your good judgment and your self-discipline as you approach this task, because if you're prolix or unclear in your writing it's going to prolong the process and you run the greater risk that I won't understand, I won't get your point, and that would be very unfortunate because you've all worked very hard to get us where we are today. But this lies ahead and, Mr. Hesje, I'll try to map out some thoughts about this and ask you in due course to relay them to counsel. And I might say that this is a two-way street. If, when you get the guidelines, you're uncomfortable with something or you think it could be improved on, for heaven's sake, say so. I'm not so thick-skinned that I can't accept some criticism or some help, suggestions, as to how we can go about this more effectively."