COMMISSION OF INQUIRY

INTO MATTERS RELATING TO THE DEATH OF NEIL STONECHILD

RULING ON JASON ROY'S SECOND APPLICATION FOR STANDING AND FUNDING

Jason Roy was granted funding for legal counsel to represent him while he gave testimony before the Inquiry. He also applied for standing as a full participant. In written reasons dated June 13th, 2003 I concluded that it was unnecessary and inappropriate to add Mr. Roy as a party to the Inquiry and dismissed the application for full standing. Jason Roy now applies to vary my ruling as to his standing and funding. He does so on the basis that he was extensively cross-examined and that other witnesses may cast doubt on his account of events surrounding the death of Neil Stonechild. That possibility was entirely foreseeable in June.

Mr. Parsons also argues that Mr. Roy's position is "analogous" to Mr. Jarvis. I do not agree. Mr. Jarvis was granted standing because of the possibility that, after hearing all of the evidence, I may make findings which impact negatively on his role in the investigation. Procedural fairness dictates that a person in such position be allowed to fully prepare for and respond to any possible adverse findings. Mr. Roy is not in the same position. The fact that his account of Mr. Stonechild's activities may be contradicted goes to the question of credibility. There are many other witnesses subject

to the same scrutiny and whose evidence may not ultimately be accepted. To grant witnesses full standing on this basis would render the Inquiry unworkable.

This point has been raised by The Federal Court of Appeal in Morneault v Canada [2001] 1 F.C. 30. In that case it was argued that the Commission of Inquiry was required to give prior notice of a potential adverse finding as to the credibility of a witness. The Federal Court of Appeal concluded that the requirement of prior notice in such case "could well impose on a Commission of Inquiry an unduly onerous standard of procedural fairness."

Mr. Parson's requested that I stay the Inquiry. What he means by this I assume is that I adjourn the Inquiry. I understand that his client has a particular concern about the evidence of Mr. Jarvis. Commission Counsel has offered to delay calling Mr. Jarvis to the week commencing October 20th, 2003 in order that the other witnesses can be heard and work of the Inquiry can continue. Mr. Parsons stated he is still unwilling to proceed. I adjourned the Inquiry until 2:00 p.m. today in order that I could reduce my rulings to writing and advise Counsel before we resume. I am instructing Commission Counsel to circulate this ruling prior to the resumption of the hearings. Mr. Parsons, is of course free to take such steps as he may think appropriate.

For the reasons outlined above I can see no basis for revising my original ruling as to Mr. Roy's request for standing and funding, nor to adjourn the Inquiry. I must add that I do not understand why the application was not made months ago. I did not receive a satisfactory explanation for this from Mr. Parsons.

The application for disclosure is essentially an element of the application for standing and funding and similarly fails. However, Commission Counsel will disclose to Mr. Roy's legal counsel, summaries of anticipated evidence with respect to future witnesses who may impact directly on Mr. Roy's account of events.

I have no indication as to what future evidence may be called. Commission Counsel has the initial obligation to interview witnesses and determine if they should be called. If a witness is identified who directly attacks Mr. Roy's testimony, Mr. Roy's counsel will be informed in advance if that person is to testify in order that he can attend the hearing. My previous ruling provides for funding for legal counsel for Mr. Roy for time spent at the request of Commission Counsel.

Dated at the City of Saskatoon, in the Province of Saskatchewan, this _____ day of October, 2003

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Commissioner David H. Wright