



*Taman Inquiry*  
*into the investigation and prosecution of Derek Harvey-Zenk*  
Honourable Roger Salhany, Q.C., Commissioner

**Hearings on Standing and Preliminary  
Matters**

**February 4, 2008**

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*Taman Inquiry*  
*into the investigation and prosecution of Derek Harvey-Zenk*  
Honourable Roger Salhany, Q.C., Commissioner

**Standing Hearing**  
**List of Appearances**

<b>Applicant</b>	<b>Counsel</b>	<b>Application For</b>
Mr. Robert Taman and Family (victim and next of kin)	Mr. Gene G. Zazelenchuk	All issues considered
Mr. Martin Minuk (independent prosecutor)	Mr. Michael T. Green	All issues considered
Mr. Derek Harvey-Zenk (subject of prosecution)	Mr. Jay Prober	All issues considered
The Rural Municipality of East St. Paul and its Police Service (investigating police service)	Mr. Robert D. McDonald	All issues considered
Mr. Harry Bakema (Chief of East St. Paul Police Service during investigation)	Mr. Hymie Weinstein	All of Phase 2
Winnipeg Police Service (participated in investigation/employer of off-duty police witnesses)	Ms. Kimberly D. Carswell	All of Phase 2

## **Applicant**

Winnipeg Police  
Association

Mr. Keith D. LaBossiere

All of Phase 2

Government of  
Manitoba  
(employer of  
independent prosecutor;  
administers Victim  
Assistance Program)

Mr. W.G. McFetridge

All issues

Manitoba Bar  
Association  
(affiliate of Canadian  
Bar Association)

Michael J. Law  
(President)

All issues



# ORDER IN COUNCIL

## ORDER



1. The Honourable Roger Salihy, Q.C. is appointed as commissioner to do the following:
  - (a) To inquire into the conduct of the police investigations surrounding the death of Crystal Taman on February 25, 2005, including, but not limited to,
    - (i) the correctness and adequacy of the procedures and practices that were followed, and
    - (ii) the good faith, objectiveness and professional standards with which the procedures and practices were applied and decisions made.
  - (b) To inquire into whether all aspects of the prosecution of Derek Harvey-Zenk, including the Crown's position on sentence, were conducted in accordance with the professional and ethical standards expected of lawyers and agents of the Attorney General.
  - (c) To inquire into whether the services provided to the family of Crystal Taman were sufficient having regard to the requirements of *The Victims' Bill of Rights*.
  - (d) To give advice on whether findings on any of the above matters gives rise to a need for further study, review or investigation and, if so, by whom.
2. The commissioner must report his findings on these matters — including any findings respecting practices or systemic issues that may have contributed to or influenced the course of the investigations or resulting prosecution in this matter — and make such recommendations as he considers appropriate to help restore public confidence in the justice system in Manitoba.
3. In keeping with the principles summarized by the Supreme Court of Canada in *Canada (Attorney General) v. Canada (Commissioner of the Inquiry on the Blood System)*, the commissioner must perform his duties without expressing any conclusion or recommendation about the civil or criminal liability of any person or organization.
4. The commissioner must complete his inquiry and deliver a final report containing his findings, conclusions and recommendations to the Attorney General by September 30, 2008. He may also give the Attorney General any interim reports that he considers appropriate to address urgent matters. All reports must be in a form appropriate for public release, but release is subject to *The Freedom of Information and Protection of Privacy Act* and other relevant laws.
5. Nothing in paragraph 1 limits the commissioner's right to request the Lieutenant Governor in Council to expand the terms of reference to cover any matter that he considers necessary as a result of information that comes to his attention during the course of the inquiry.
6. To the extent the commissioner considers it advisable, he may rely on a transcript or record of proceedings before any court relating to the prosecution against Derek Harvey-Zenk or relating to any other matter the commissioner considers relevant.
7. Government departments and agencies and other bodies established under the authority of the Manitoba Legislature, and the various police services involved in the investigations referred to in paragraph 1(a), must assist the commissioner to the fullest extent permitted by law. The commissioner may review all records maintained by Manitoba Justice and the various police services, and any reports or analyses about the matters referred to in paragraph 1 whether prepared by Manitoba Justice or others.

RECOMMENDED:

Minister of Justice

APPROVED BY EXECUTIVE COUNCIL:

Presiding Member

ORDERED:

Lieutenant Governor

December 05, 2007

Date



8. Before public hearings take place, the commissioner may interview any person connected with the matters referred to in paragraph 1, including employees of Manitoba Justice and of any police services involved. On the commissioner's behalf, interviews may be conducted by counsel for the commissioner, either alone or in the commissioner's presence. If conducted alone, counsel must give the commissioner a transcript or a report of each interview.
9. The Minister of Finance may pay the following amounts from the Consolidated Fund, at the request of the Attorney General:
  - (a) travelling and other incidental expenses that the commissioner incurs conducting his inquiry;
  - (b) fees and salaries of any advisors and assistants employed or retained for the purpose of the inquiry;
  - (c) any other operational expenditures required to support the inquiry.
10. This Order is effective immediately.

### AUTHORITY

Subsection 83(1) and section 96 of *The Manitoba Evidence Act*, C.C.S.M. c. E150, state in part:

#### Appointment of commission

**83(1)** Where the Lieutenant Governor in Council deems it expedient to cause inquiry to be made into and concerning any matter within the jurisdiction of the Legislature and connected with or affecting

...

(c) the administration of justice within the province;

...

(f) any matter which, in his opinion, is of sufficient public importance to justify an inquiry;

he may, if the inquiry is not otherwise regulated, appoint one or more commissioners to make the inquiry and to report thereon.

#### Power to make rules

**96** The Lieutenant Governor in Council may make provision, either generally in regard to all commissions issued and inquiries held under this Part, or specially in regard to any such commission and inquiry, for

(a) the remuneration of commissioners and persons employed or engaged to assist in the inquiry, including witnesses;

(b) the payment of incidental and necessary expenses; and

(c) all such acts, matters, and things, as are necessary to enable complete effect to be given to every provision of this Part.

### BACKGROUND

1. Crystal Taman was killed in an automobile collision on February 25, 2005, and Derek Harvey-Zenk was subsequently charged with criminal negligence causing death, impaired driving causing death, dangerous driving causing death and refusing a breathalyzer test.
2. The charges of impaired driving causing death, criminal negligence causing death and refusing a breathalyzer test were subsequently stayed by independent counsel acting for the Attorney General. Following a joint sentencing recommendation, Derek Harvey-Zenk received a conditional sentence of two years less a day for a single charge of dangerous driving causing death.



*Taman Inquiry  
into the investigation  
and prosecution of  
Derek Harvey-Zenk*

**Calls for Applications for Standing**

The Honourable Roger Salhani, Q.C. has been appointed Commissioner of an Inquiry into certain issues surrounding the investigation and prosecution of Derek Harvey-Zenk relating to the tragic traffic death of Crystal Taman on February 25, 2005, at the intersection of Hwy 59 and the north Perimeter Highway near Winnipeg. At the time of the accident, Mr. Harvey-Zenk was a police officer with the Winnipeg Police Service. Commissioner Salhani is to consider the correctness and adequacy of the police investigation, as well as the good faith, objectivity, and professionalism with which the investigation was conducted. The Commission will also examine whether the prosecution of Mr. Harvey-Zenk complied with the professional and ethical standards expected of lawyers and agents of the Attorney General. The Commission will also inquire into whether the services provided to the family of Crystal Taman satisfied the requirements of The Victims' Bill of Rights. The Commissioner will be considering whether to make any systemic recommendations arising from the facts of the case.

Applications for standing are being invited from any person or group with a substantial and direct interest in the subject-matter of the inquiry or whose participation may be helpful in fulfilling the Commissions mandate. Standing before a Commission of Inquiry gives the person or organization the right to take part in the proceedings and/or make submissions, on terms set by the Commissioner.

Written requests for standing, setting out the reasons why standing is being requested and why the applicant should be granted standing, should reach the Commission no later than Monday, January 21, 2008. The Commission's Office is located at Room 30 - 200 Vaughan St. Winnipeg, MB R3C 1T5; Phone: (204) 945-7544; Fax: (204) 948-2522; E-mail: [tamaninquiry@gov.mb.ca](mailto:tamaninquiry@gov.mb.ca); Website: [www.tamaninquiry.ca](http://www.tamaninquiry.ca).

Should the written requests disclose a reasonable prospect that standing may be granted, applicants will be invited to attend standing hearings. Those hearings will commence at 9:00 a.m. on February 4, 2008 in the Pan Am Room at the Winnipeg Convention Centre and are scheduled to last for the balance of the week, until standing issues are resolved. Submissions will also be received in relation to draft Rules for the Inquiry and scheduling will be formalized at this time. No evidence will be heard during these standing hearings. Evidence will be heard in public hearings, provisionally scheduled for June 2, 3 and 9, 10, 11, and on most days between June 30 and August 14, until the Commission hearings are concluded. Copies of the draft Rules will be available from the Commission Office or the Inquiry website: [www.tamaninquiry.ca](http://www.tamaninquiry.ca) on or before Monday January 17, 2008.

David M. Paciocco  
Commission Counsel

The Honourable  
Roger Salhani, Q.C.  
Commissioner

W. Vincent Clifford  
Assistant Commission Counsel

Calls For Applications for Standing  
Publication: Selkirk Journal  
Ad Size: 3 columns (3 3/4") wide x 176 lines deep



*Taman Inquiry  
into the investigation  
and prosecution of  
Derek Harvey-Zenk*

**Calls for Witnesses**

Anyone who believes that they have relevant evidence to give before a Commission of Inquiry being conducted by The Honourable Roger Salhani, Q.C. into certain issues surrounding the investigation and prosecution of Derek Harvey-Zenk relating to the tragic traffic death of Crystal Taman on February 25, 2005 at the intersection of Hwy 59 and the north Perimeter Highway near Winnipeg, is invited to contact Commission Counsel. At the time of the accident, Mr. Harvey-Zenk was a police officer with the Winnipeg Police Service. Commissioner Salhani is to consider the correctness and adequacy of the police investigation relating to Mr. Harvey-Zenk, as well as the good faith, objectivity, and professionalism with which the investigation was conducted. The Commission will also examine whether the prosecution of Mr. Harvey-Zenk complied with the professional and ethical standards expected of lawyers and agents of the Attorney General. The Commission will also inquire into whether the services provided to the family of Crystal Taman satisfied the requirements of The Victims' Bill of Rights. The Commissioner will be considering whether to make any systemic recommendations arising from the facts of the case.

If you do believe that you were in contact with Mr. Harvey-Zenk during the evening hours of February 24, 2005 or during the night and early morning hours of February 25, 2005, or if you have relevant information about the accident, the police investigation, the prosecution, or the operation and implementation of the Manitoba Victims' Bill of Rights Act as it relates to the family of Crystal Taman, please contact the Taman Inquiry's Chief Administrative Officer, Mr. Robert Giasson, through the Commission's Office located in the Archives Building, Room 30 - 200 Vaughan St. Winnipeg, MB R3C 1T5; Phone: (204) 945-7544; Fax: (204) 948-2522; E-mail: [tamaninquiry@gov.mb.ca](mailto:tamaninquiry@gov.mb.ca); Website: [www.tamaninquiry.ca](http://www.tamaninquiry.ca). At that time you will be put in touch with Commission Counsel.

David M. Paciocco  
Commission Counsel

The Honourable  
Roger Salhani, Q.C.  
Commissioner

W. Vincent Clifford  
Assistant Commission Counsel

Calls for Witnesses  
Publication: Selkirk Journal  
Ad Size: 3 columns (3 3/4") wide x 150 lines deep

# GENE G. ZAZELENCHUK

B.A., LL. B., LL.M. (London)  
Barrister-at-Law

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Winnipeg, MB, R3C 0E2  
(204) 943-1303

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January 21, 2008

The Honourable Roger Salhany, Q.C.  
Commissioner, Taman Inquiry  
Room 30, 200 Vaughan Street  
Winnipeg, MB R3C 1P5

Dear Sir:

Re: Application for Standing

Please be advised that I am counsel for Robert Taman, widower of the late Crystal Taman, in both his personal capacity and in his capacity as Administrator of the Estate of Crystal Taman, Tara and Kristin Taman, daughters of the late Crystal Taman and Jordan Taman, son of the late Crystal Taman. The aforementioned individuals, collectively referred to as the "Taman family" hereby request standing before the commission; the request is for full standing for the entire inquiry.

It is respectfully submitted that the following factors are relevant in considering whether or not the Taman family ought to receive standing:

1. Robert is the victim as defined by *The Victims' Bill of Rights*;
2. The Taman children are next of kin as defined by *The Victims' Bill of Rights*;
3. All 4 members of the Taman family will likely be called as witnesses during that part of the inquiry that deals with *The Victims' Bill of Rights*;
4. Tara and Kristin Taman were at the scene of the collision moments after it occurred. They observed the position of the 2 vehicles, Mr. Harvey-Zenk exiting his vehicle, the arrival of the paramedics as well as some interaction between Mr. Harvey-Zenk and the attending East St. Paul police officers;
5. Mr. Robert Taman and his son, Jordan, met with the learned prosecutor on more than one occasion to discuss the prosecution of the case;

The Honourable Roger Salhani, Q.C.

January 21, 2008

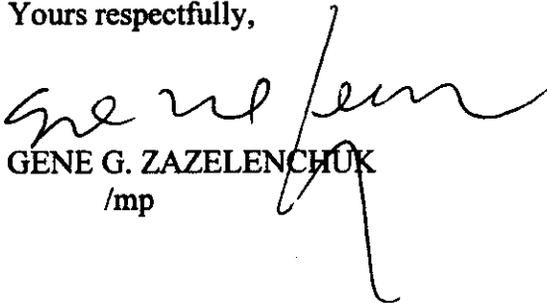
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6. Robert Taman, as well as other members of the Taman family, had interaction with the East St. Paul Police in regards to the investigation;
7. Members of the Taman family had discussions with the learned prosecutor with respect to the final disposition of the case.

It is respectfully submitted that the entire Taman family has a substantial and direct interest in the entire subject matter of the inquiry and should be granted full standing before the commission.

Yours respectfully,



GENE G. ZAZELENCHUK

/mp

# GREEN & DIXON

BARRISTERS AND SOLICITORS

1120-161 St. Mary Avenue

Winnipeg, MB, Canada R3C 3T4

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January 3, 2008

The Honourable Roger Salhani, Q.C.  
Commissioner  
Room 30-200 Vaughan Street  
Winnipeg, MB R3C 1T5

Dear Mr. Commissioner:

RE: Taman Inquiry  
Into the investigation and prosecution of  
Derek Harvey-Zenk  
Our Matter No. 10803-195 MTG

We are lawyers for Mr. Martin Minuk and on his behalf hereby request that standing be granted to him.

Having been prosecution counsel in the charges against Mr. Zenk it is submitted that Mr. Minuk has a substantial and direct interest in the subject matter of the Inquiry.

Thank you for your attention.

Yours truly,

GREEN & DIXON

Per:   
Michael T. Green

MTG\*KB

cc: PRIVATE & CONFIDENTIAL  
Mr. Martin Minuk

*Received & filed  
Jan 7/08  
KB*

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Partner

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# GREEN & DIXON

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January 23, 2008

The Honourable Roger Salhany, Q.C.  
Commissioner  
Room 30-200 Vaughan Street  
Winnipeg, MB R3C 1T5

Dear Mr. Commissioner:

RE: Taman Inquiry  
Into the investigation and prosecution of  
Derek Harvey-Zenk  
Our Matter No. 10803-195 MTG

We acknowledge receipt of Mr. Paciocco's letter of January 11, 2008 which was received by us yesterday.

One of the terms of reference is to inquire whether the prosecution of Mr. Harvey-Zenk complied with the professional and ethical standards expected of lawyers and agents of the Attorney General.

Since our client Mr. Minuk was the individual having conduct of the prosecution of Mr. Harvey-Zenk it is Mr. Minuk's conduct which you will be examining to determine whether expected standards were met. It has always been and will continue to be Mr. Minuk's strong belief that he met acceptable standards. Judging by media reports others apparently disagree with that position and it is therefore imperative that Mr. Minuk be afforded the opportunity - through active participation in the Inquiry proceedings - to justify and explain the recommendations and decisions made by him.

Mr. Minuk also has a substantial and direct interest in the other two broad aspects of your mandate, namely the quality of the police investigation which formed the basis for the prosecution and in the observance of the rights and interests of the victims.

It is Mr. Minuk's position that the likelihood of conviction on the charges against Mr. Harvey-Zenk were compromised by the quality of the evidence which was forthcoming from the police investigation.

It is Mr. Minuk's further position that he fulfilled any and all obligations imposed on the prosecution by the Victims' Bill of Rights and that standing, with the attendant right to question witnesses who will appear at the Inquiry, is necessary to demonstrate this.

Michael T. Green  
Partner

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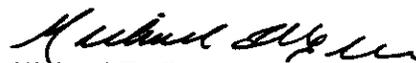
advise.

We trust that the foregoing is satisfactory but if anything else is required, please

Yours truly,

GREEN & DIXON

Per:



Michael T. Green

MTG\*KB

**PROBER LAW OFFICES**

**JAY PROBER, B.A., LL.B., LL.M. (LOND)**  
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File No.- 08-01-JP

January 16, 2008

Taman Inquiry into the  
Investigation and Prosecution  
of Derek Harvey-Zenk  
Rm 30-200 Vaughan St.  
Winnipeg MB  
R3C 1T5

Via Facsimile 948-2522  
Original Via Regular Mail

Attention: Mr. David M. Paciocco  
Commission Counsel

Dear Mr. Paciocco:

**RE: Request For Standing On Behalf of Derek Harvey-Zenk**

I am writing to confirm my verbal request for standing on behalf of Mr. Harvey-Zenk at the Taman Inquiry Hearings.

As Mr. Harvey-Zenk was the subject of the investigation and prosecution in question, and is expected to be a witness, it is submitted that he has a "substantial and direct interest" in the subject matter of the Inquiry.

Thank you.

Yours truly,

**PROBER LAW OFFICES**

Per: 

**JAY PROBER**  
JP/df

# FILLMORE RILEY

FILLMORE RILEY LLP • BARRISTERS, SOLICITORS AND TRADE MARK AGENTS  
A MEMBER OF RISK MANAGEMENT COUNSEL OF CANADA

**R. D. McDONALD**  
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Our File Number: 416690-1/RDM  
FRDOCS\_1023243.1

January 17, 2008

DELIVERED

The Honourable Roger Salhany, Q.C.  
Commissioner for the Taman Inquiry  
Room 30 – 200 Vaughan Street  
Winnipeg, MB R3C 1T5

Dear Sir:

**Re: Standing Application – Taman Inquiry into the  
Investigation and Prosecution of Derek Harvey-Zenk**

Please consider this letter as a formal application for standing at the above captioned Inquiry on the part of my client, The Rural Municipality of East St. Paul and its Police Service (the East St. Paul Police Service).

Pursuant to Order in Council dated December 5, 2007, there are four main components to the planned Inquiry. The first is to inquire into the conduct of the police investigations surrounding the death of Crystal Taman on February 25, 2005 including the correctness and adequacy of the procedures and practices that were followed and the good faith, objectiveness and professional standards with which the procedures and practices were applied and decisions made. The second is to inquire into whether all aspects of the prosecution of Derek Harvey-Zenk were conducted in accordance with the professional and ethical standards expected of lawyers and agents of the Attorney General. The third is to inquire into whether services provided to the family of Crystal Taman met the requirements of the *Victims' Bill of Rights*. The fourth relates to advice on whether findings on any of the other issues give rise to a need for further study, review or investigation and, if so, by whom.

The Rural Municipality of East St. Paul established and administers the operation of the East St. Paul Police Service. The basis of this standing application is:

1. The tragic accident giving rise to the death of Crystal Taman occurred within the geographic boundaries of the Rural Municipality of East St. Paul. Accordingly, the first Police Service on the scene which took responsibility for initial investigations was the East St. Paul Police Service. Many of its members, past and current, will be called to testify about the investigation at the Inquiry.



Practicing Excellence  
ISO 9001

2. Members of the East St. Paul Police Service, past and current, were also involved in the prosecution of Derek Harvey-Zenk in the sense that they were potential witnesses who dealt with Special Prosecutor Martin Minuk prior to an agreement being reached between Mr. Minuk and counsel for Derek Harvey-Zenk. It is anticipated that members of the East St. Paul Police Service, past and present, will be material witnesses in respect to this segment of the Inquiry.
3. The *Victims' Bill of Rights* imposes certain obligations on the head of a law enforcement agency responsible for investigating an offence. It is anticipated that members of the East St. Paul Police Service, past and present, may be material witnesses in respect to this component of the Inquiry.

The Rural Municipality of East St. Paul and its Police Service have a substantial and direct interest in the subject matter of the Inquiry. Accordingly, it is in their interests to have standing and counsel at the Inquiry to ensure that their positions are fully and fairly advanced and protected.

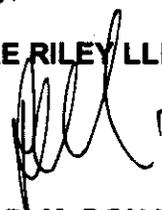
Should you require anything further by way of formal written application, please let me know. Otherwise, we will attend on the oral standing hearing currently scheduled for February 4<sup>th</sup> and, if necessary, February 5<sup>th</sup>, 2008.

Respectfully submitted.

Yours truly,

**FILLMORE RILEY LLP**

Per:

  
**R. D. McDONALD**

RDM/kmh

cc: Rural Municipality of East St. Paul  
Attn: Jerome Mauws

C.C.S.M. c. V55

## The Victims' Bill of Rights

## Table of Contents

## Regulations

(Assented to June 29, 1998)

WHEREAS victims of crimes and other offences have needs, concerns and interests that deserve consideration in addition to those of society as a whole;

AND WHEREAS all victims should be treated with courtesy, compassion and respect;

AND WHEREAS victims should have access to appropriate protection and assistance, and should be given information regarding the investigation, prosecution and disposition of crimes and other offences;

AND WHEREAS it is in the public interest to give guidance and direction to persons employed in the justice system about the manner in which victims should be treated;

AND WHEREAS persons employed in the justice system should consider the rights and views of victims in a manner that does not unreasonably delay or prejudice investigations or prosecutions, that is consistent with the law and the public interest, and that is reasonable in the circumstances of each case;

S.M. 2000, c. 33, s. 3.

THEREFORE HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

## PART 1

## DECLARATION OF VICTIMS' RIGHTS

## DEFINITIONS

## Definitions

1(1) In this Part,

"**Commissioner of Correctional Services**" means the person so designated under *The Correctional Services Act*; (« commissaire des Services correctionnels »)

"**Director of Prosecutions**" means the person in the Department of Justice who is responsible for the prosecution of offences; (« directeur des poursuites »)

"**family**" in relation to a victim includes an individual, other than the offender or the alleged offender, who, not being married to the victim, is cohabiting with him or her in a conjugal relationship of some permanence; (« famille »)

"**minister**" means the minister appointed by the Lieutenant Governor in Council to administer this Act; (« ministre »)

"**nearest relative**" means, with respect to a deceased victim, the adult person who is related to the victim and is first described in the following list:

- (a) child,
- (b) grandchild,
- (c) great-grandchild,
- (d) parent,
- (e) sibling,
- (f) niece or nephew; (« parent le plus proche »)

"**offence**" means a contravention of

- (a) *not yet proclaimed*;
- (b) an Act or regulation of Canada or Manitoba prescribed by regulation; (« infraction »)

"**victim**" means an individual, or a corporation, organization or other entity, against whom an offence is committed or is alleged to have been committed, and

(a) where the victim is an individual who is deceased, means an individual — other than the alleged offender — who, at the time of the offence,

(i) was

- (A) married to and living with the victim,
- (B) cohabiting with the victim and together with the victim had registered their common-law relationship under section 13.1 of *The Vital Statistics Act*, or

- (C) cohabiting with the victim in a relationship for not less than one year, or
  - (ii) where no person qualifies under subclause (i), is the victim's nearest relative, or
- (b) where the victim is an individual who is a minor or is incapable of handling his or her affairs, means the person — other than the alleged offender — who is the victim's parent, guardian, committee or substitute decision maker. (« victime »)

#### **Exercise of rights by corporation or other entity**

1(2) When a corporation, organization or other entity is a victim, its rights under this Part may be exercised by an individual authorized by the entity.

#### **Registered common-law relationship**

1(3) For the purposes of this Act, while they are cohabiting, persons who have registered their common-law relationship under section 13.1 of *The Vital Statistics Act* are deemed to be cohabiting in a conjugal relationship of some permanence.

S.M. 2000, c. 33, s. 4; S.M. 2002, c. 24, s. 53; S.M. 2002, c. 48, s. 22.

### VICTIMS' RIGHTS AND ACCESS TO SERVICES

#### **Victims' entitlement to services by request**

2(1) A victim is entitled to the services described in this Part and may obtain services from the Department of Justice or an agency referred to in this Part at any time by

- (a) requesting services from the Department or agency; or
- (b) filing a general request for information with the Department or a law enforcement agency designated by the minister.

#### **Minister may approve a form of request**

2(2) The request referred to in clause (1)(b) may be in a form approved by the minister.

#### **Reasonable effort to be made to locate victim**

2(3) If the whereabouts of a victim who requests information under this Part is unknown to the person responsible for providing it, the person must ensure that a reasonable effort is made to locate the victim.

S.M. 2000, c. 33, s. 4.

### LAW ENFORCEMENT AGENCIES

#### **Right to information from police agency**

3 The head of a law enforcement agency responsible for investigating an offence must ensure that the agency gives the victim the following information:

- (a) the rights and remedies of victims under this Act, including Part 5 (Compensation for Victims of Crime);
- (b) the agency's name, address and telephone number, and the number of its file about the offence;
- (c) a copy of any form approved by the minister under subsection 2(2);
- (d) after a charge is laid, the form of victim impact statement designated under section 722 of the *Criminal Code* (Canada);
- (e) how to obtain information about
  - (i) services available for victims, including medical, financial, housing, counselling, legal and emergency services, and
  - (ii) crime prevention and safety planning;
- (f) how a court order of restitution may be made for any loss, damage or bodily harm suffered as a result of an offence, where the amount is readily ascertainable;
- (g) how to obtain the return of any property taken as evidence by the agency in an investigation;
- (h) how to obtain information about the release from custody of a person charged with an offence, and how to report a breach of a condition of release.

S.M. 2000, c. 33, s. 4.

#### **Right to give opinion on alternative measures and release**

4 The head of a law enforcement agency responsible for investigating an offence must ensure that, where

reasonably possible and at an appropriate time, the agency consults the victim on

- (a) the use of pre-charge alternative measures to deal with a person alleged to have committed the offence, if alternative measures are reasonably possible in the matter; and
- (b) whether a person accused of the offence should be detained to ensure the safety and security of the victim or another person, and if the accused person is released, whether he or she should be subject to any conditions.

S.M. 2000, c. 33, s. 4.

#### **Right to interview by same gender in sexual offence**

5 If a victim of a sexual offence requests to be interviewed by officers of his or her own gender, the head of the law enforcement agency responsible for investigating the offence must ensure that the request is accommodated, if reasonably possible.

S.M. 2000, c. 33, s. 4.

#### **Right to confidentiality**

6 If a victim requests confidentiality, the head of the law enforcement agency investigating the offence must ensure that the residential address, telephone number and place of employment of the victim and members of his or her family are not disclosed by the agency, except to the extent required

- (a) by law, or for the purpose of law enforcement or prosecution or other legal proceedings; or
- (b) to ensure the safety and security of any person.

S.M. 2000, c. 33, s. 4.

#### **Right to information about investigation of offence**

7 If a victim requests information about the investigation of the offence, the head of the law enforcement agency must ensure that the agency gives the victim the following information, unless doing so could unreasonably delay or prejudice an investigation or prosecution or affect the safety or security of any person:

- (a) the status of the investigation;
- (b) the name of any person charged with committing the offence, and whether the person is detained in custody;
- (c) if an accused person is released from custody by the agency, any conditions attached to the release;
- (d) a decision not to lay a charge, and reasons for the decision.

S.M. 2000, c. 33, s. 4.

#### **Right to information about escape from police custody**

8 If a person charged with an offence breaches a condition of his or her release from custody or escapes from the custody of a law enforcement agency, the head of the agency must ensure that the victim is promptly notified if

- (a) there are reasonable grounds to believe that the person is or could be a threat to the safety or security of the victim or the victim's family; or
- (b) the person is accused of, or is under investigation in respect of, a contravention of section 264 (criminal harassment) of the *Criminal Code* (Canada).

S.M. 2000, c. 33, s. 4.

#### **Right to return of property**

9 If a law enforcement agency is in possession of a victim's property and the victim requests its return, the head of the agency must ensure that the property is returned to the victim promptly when the agency is satisfied it is no longer needed as evidence for an investigation or prosecution.

S.M. 2000, c. 33, s. 4.

#### **Minister may make agreement for services**

10 The minister may make an agreement with an agency or department of the Government of Canada for a law enforcement agency under the control or supervision of the government of Canada to provide services under this Part.

S.M. 2000, c. 33, s. 4.

#### **Right to information about prosecution office**

11 When a charge is laid in respect of an offence or the matter is referred to a Crown attorney, the head of the law enforcement agency investigating the offence must ensure that the agency gives the victim, on request, the name,

address and telephone number of the office responsible for prosecuting the offence.



A. Lionel Weinberg, Q.C.  
Jeffrey F. Harris  
Paul R. McKenna  
Loretta Ross  
Michael J. Clark

Hymie Weinstein, Q.C.  
Garth H. Smorang, Q.C.  
Kathy A. McIntroy  
Josh Weinstein  
Shannon Carson

Joel J. Dudeck  
Sherie I. Walder  
Randie N. Kushnier  
Trevor Ray  
Karin Linnebach

Michael D. Kay  
Douglas E. Johnston  
Pierre Denisot  
Darryl R. Buxton  
Lisa LaBossière

Tony Marques  
John B. Harvie  
Marietta Pelletieri  
Susan Dawes

Mel Myers, Q.C. (Retired)  
Robb Tonn (Counsel)

File No. 31070-003 HW  
Reply to Hymie Weinstein, Q.C.

WRITER'S DIRECT LINE  
(204) 926-1521  
Email: [hweinstein@myersfirm.com](mailto:hweinstein@myersfirm.com)

January 14, 2008

The Honourable Roger Salhany, Q.C.  
Commissioner, Taman Inquiry  
Room 30 - 200 Vaughan Street  
Winnipeg, MB R3C 1T5

Dear Mr. Commissioner:

**Re: Taman Inquiry - Application for Standing**

Please be advised that I represent Mr. Harry Bakema. Mr. Bakema was Chief of Police of the East St. Paul Police Department on February 25, 2005.

The professionalism and competence of the investigation and the professionalism and propriety of the prosecution are two of the primary issues of the terms of reference. Mr. Bakema has a direct and substantial interest in the subject matter of the Inquiry, and on his behalf, I am requesting standing.

In our meeting with Commission Counsel on January 13, I indicated that I did not feel it was necessary to participate in the hearings at the beginning of June dealing with the Victims' Bill of Rights.

January 14, 2008  
Page 2

I will be in attendance on February 4th.

Yours truly,

**MYERS WEINBERG LLP**



**HYMIE WEINSTEIN**

HW/d

*Via Facsimile - 948-2522*

cc: *David M. Paciocco,  
Commission Counsel  
Via Facsimile - 948-2522*



**Winnipeg Police Service • Service de Police de Winnipeg**  
 "Community Commitment" « Au service de la collective »

January 21, 2008

***Taman Inquiry into the Investigation and Prosecution of Derek Harvey-Zenk***

Honourable Roger Salhani, Q.C., Commissioner  
 30 – 200 Vaughan Street  
 Winnipeg, Manitoba  
 R3C 1T5

Dear Sirs:

Re: Application for Standing

Please accept this letter as an Application for Standing on behalf of the Winnipeg Police Service, its employees involved in the investigation of Derek Harvey-Zenk.

In support of our Application for Standing, the Order in Council No. 4(13/2007 (the "Order") raises issues of concern for the Winnipeg Police Service. These are areas upon which the Honourable Commissioner may make comment, and which are matters having a direct and substantial impact on the Winnipeg Police Service, its involved employees and the Winnipeg Police Service generally. These matters include the following:

1. To inquire into the conduct of the police investigations surrounding the death of Crystal Taman on February 25, 2005, including, but not limited to:
  - (a) The correctness and adequacy of the procedures and practices that were followed, and
  - (b) The good faith, objectiveness and professional standards with which the procedures and practices were applied and decisions made;
2. To inquire into whether all aspects of the prosecution of Derek Harvey-Zenk, including the Crown's position on sentence, were conducted in accordance with the professional and ethical standards expected of lawyers and agents of the Attorney General;
3. To give advice on whether findings on any of the above matters gives rise to a need for further study, review or investigation and, if so, by whom.

The Honourable Commissioner, in accordance with the Order, must report his findings, including reporting any findings "respecting practices or systemic issues that may have contributed to or influenced the course of the investigations or resulting prosecution of this matter."



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<http://www.winnipeg.ca/police/>

***Taman Inquiry into the Investigation and Prosecution of Derek Harvey-Zenk***  
Honourable Roger Salhani, Q.C., Commissioner  
January 21, 2008  
Page 2

Winnipeg Police Service assisted the East St. Paul Police in conducting witness interviews. Those interviews were restricted to witnesses who were members of the Winnipeg Police Service. Members of the Professional Standards Unit conducted the interviews, providing disclosure of the fruits of the investigation to the Crown Attorney who prosecuted Mr. Harvey-Zenk.

As such it is our position that the Winnipeg Police Service and its employees involved in the investigation into Derek Harvey-Zenk have a substantial and direct interest in the subject matter of the Inquiry established by Order-in-Council 403/2007. In addition, the Winnipeg Police Service would be affected by any systemic recommendations made by the Commissioner.

Yours truly,



Kimberly D. Carswell  
Legal Counsel

**THOMPSON**  
**DORFMAN**  
**SWEATMAN**  
**LLP**  
BARRISTERS & SOLICITORS

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January 21, 2008

VIA FACSIMILE

Honourable Roger Salhany, Q.C., Commissioner  
Room 30 - 200 Vaughan Street  
Winnipeg MB R3C 1T5

Dear Sir:

Re: Standing Application of the Winnipeg Police  
Association in the matter concerning the  
Taman Inquiry Into the Investigation and Prosecution of  
Derek Harvey-Zenk (the "Inquiry")  
Our Matter No. 0088195 KLC/KDL

We represent the Winnipeg Police Association (the "Association"). The Association is the exclusive bargaining agent for all Winnipeg Police Service staff members and police members from the rank of Constable up to and including the rank of Staff Sergeant (the "Membership").

We are hereby applying, by way of this letter, to seek standing at the Inquiry on behalf of the Association, to represent any Winnipeg Police Service member who has been, or may become involved in the Inquiry as a witness, party or otherwise, with the exception of former Association member Mr. Derek Harvey-Zenk, and to represent the interests of the Membership generally. As outlined below, it is our respectful submission that the Association, its involved members and the Membership generally have a direct and substantial interest in the above-noted proceedings and therefore, ought to be granted standing herein.

In support of our Application for Standing, we submit that the Order in Council No. 403/2007 (the "Order") under which this Inquiry has been called raises three main issues of concern for our client. These are areas upon which the Honourable Commissioner may make comment, and which are matters having a direct and substantial impact on the Association, its involved members and the Membership generally. These matters specifically include the following:

**THOMPSON****DORFMAN****SWEATMAN****LLP****BARRISTERS & SOLICITORS**

- 2 -

1. To inquire into the conduct of the police investigations surrounding the death of Crystal Taman on February 25, 2005, including, but not limited to:
  - (a) The correctness and adequacy of the procedures and practices that were followed, and
  - (b) The good faith, objectiveness and professional standards with which the procedures and practices were applied and decisions made;
2. To inquire into whether all aspects of the prosecution of Derek Harvey-Zenk, including the Crown's position on sentence, were conducted in accordance with the professional and ethical standards expected of lawyers and agents of the Attorney General;
3. To give advice on whether findings on any of the above matters gives rise to a need for further study, review or investigation and, if so, by whom.

The Honourable Commissioner, in accordance with the Order, must report his findings, including reporting any findings "respecting practices or systemic issues that may have contributed to or influenced the course of the investigations or resulting prosecution of this matter." In this regard, findings which may comment on the specific involvement of any Association member, whether as a witness or as a participant in the investigation in some other way, or any findings which may comment on the requisite standards of police officers generally, will inevitably have a direct and substantial impact on the Association, the individual officers and the Membership as a whole.

With regard to specific Association members, it is likely that the Inquiry will be looking at two separate categories of involvement. Firstly, there are a number of members who participated in the investigation solely as witnesses to the events of the evening in question, and secondly, other members may be involved in the Inquiry as a result of their role in assisting with the investigation. We respectfully submit that both categories of members have direct and substantial interests in these proceedings and as such, we are seeking standing on their behalf.

Respecting the large number of Association members involved in the investigation as witnesses to the events leading up to the tragic accident, we understand that these members provided statements and/or information to investigators and were involved as witnesses or potential witnesses in the trial of Mr. Harvey-Zenk. Immediately

**THOMPSON****DORFMAN****SWEATMAN****LLP****BARRISTERS & SOLICITORS****- 3 -**

following the tragedy and continuing to date, these members have been the subject of a number of negative public comments concerning their conduct on the night in question, and during the ensuing investigation. Although in our view none of these comments are factually accurate or fair, to the extent that the Honourable Commissioner may be asked to make findings of fact in relation to those matters, the findings would have a direct and substantial impact on the member. That impact could conceivably include internal investigations or other disciplinary action being taken against them as a result. As such, we respectfully submit that these members have a direct and substantial interest in these proceedings and accordingly, we are seeking standing on their behalf.

Similarly, with regard to any Association member who assisted with the investigation in any way, should the Honourable Commissioner be called upon to make any findings which may impact on their role, those findings could have a direct and substantial impact on those members. As such, we respectfully submit that these members have a direct and substantial interest in these proceedings and we are seeking standing on their behalf.

In addition to the interests of any individual Association member who falls within either of the categories outlined above, to the extent to which the terms of this Inquiry may require the Honourable Commissioner to make findings relating to professional standards of policing and/or any systemic police issues relating to on or off duty conduct of police officers generally, we submit that the Association and the Membership generally have a direct and substantial interest therein. On a very regular basis, the Association deals with matters relating to standards of conduct of its members both on and off duty and as a result, would have a direct interest in any such findings. In this regard, the Association respectfully seeks standing in order to cross-examine witnesses and/or make appropriate representations on these matters to this Commission.

Finally, as we understand the process, the Honourable Commissioner will be holding the hearings of the Inquiry in two stages. The first stage of the Inquiry will be focused on a review of issues surrounding the services provided to the victim having regard to the requirements of *The Victims' Bill of Rights*. This stage of the Inquiry is scheduled to take place on June 1, 2, 3, 9, 10 and 11 as required. In this regard, we wish to advise the Honourable Commissioner that the Association does not seek any involvement in this stage of the Inquiry, as we do not anticipate the requirement of any Association member to participate in any portion thereof. It is only in the second stage of the Inquiry, and then only to the extent we have outlined above where we see our role as being more prevalent.

**THOMPSON**

**DORFMAN**

**SWEATMAN**

**LLP**

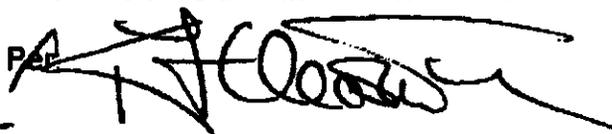
**BARRISTERS & SOLICITORS**

- 4 -

In light of all of the above, we respectfully request that standing be granted to the Association on behalf of its members during the second phase of the Inquiry.

Yours truly,

THOMPSON DORFMAN SWEATMAN LLP

Per 

For: Keith D. LaBossiere

KLC/jjf



---

**Justice**

**Civil Legal Services  
SOA**

Room 730  
Woodsworth Building  
405 Broadway  
Winnipeg MB R3C 3L6

Phone: (204) 945-2843  
Fax: (204) 948-2826  
Glenn.McFetridge@gov.mb.ca  
File No: JU0200(50)  
In reply, please refer to:  
**W. G McFetridge**  
**General Counsel**

January 18, 2008

Taman Commission of Inquiry  
Room 30-200 Vaughan Street  
Winnipeg MB R3C 1T5

**Attention: Mr. David Paciocco**  
**Commission Counsel**

Dear Mr. Paciocco,

**Re: Taman Inquiry – Standing Application – Government of Manitoba**

1. As you are aware, I am counsel for the Government of Manitoba ("Government") and in particular the Prosecution Services Branch and the Victims Services Branch of the Department of Justice ("Manitoba Justice").
2. Prosecution Services is responsible for the performance of the duties imposed on the Attorney General for Manitoba and Crown attorneys acting on behalf of the crown in respect of the enforcement of, or prosecution for breaches of the criminal law, or any statute or other laws in force in the province, that are not within the jurisdiction of the Government of Canada. The statutory duties of the Attorney General and Crown attorneys are set out in *The Department of Justice Act*, C.C.S.M., c. J35 and *The Crown Attorneys Act*, C.C.S.M. c. C330.
3. Furthermore, under *The Victims' Bill of Rights*, C.C.S.M., c. V55, Prosecution Services, under the direction of the Director of Prosecutions, has certain responsibilities to ensure information is given to a victim, as that term is defined in the legislation, respecting the prosecution and its status and to ensure, at a victim's request, that a victim is consulted on certain aspects of a prosecution.
4. The Victims Services Branch, under the direction of the Director of Victims Services, is responsible for administering Part 3 of *The Victims' Bill of Rights*.

5. The Minister of Justice is also responsible for *The Provincial Police Act*, C.C.S.M., c. P150.

6. This Inquiry is to inquire into the conduct of the police investigations surrounding the death of Crystal Taman, including an examination of the professional standards with which procedures and practices were applied; all aspects of the prosecution of Derek Harvey-Zenk, including whether the prosecution was conducted in accordance with the professional and ethical standards expected of lawyers and agents of the crown; and whether the services provided to the family of Crystal Taman were sufficient having regard to the requirement of *The Victims' Bill of Rights*.

7. It is submitted that the Government has a real and substantial interest in all aspects of this Inquiry and for that reason requests full standing from the Commissioner to examine witnesses and to make representations.

8. If you require any further information, please let me know.

Yours truly,



**W.G. McFetridge**  
**General Counsel**

- c. R. Perozzo, Q.C. Deputy Minister of Justice and Attorney General
- D. Slough, Assistant Deputy Attorney General
- S. Gervais, Director of Victims Services

WGM/em



**MANITOBA BRANCH OF THE CBA / DIVISION MANITOBAINE DE L'ABC**

**2007/2008  
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**Executive Director /  
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*Manitoba Bar Association/  
Association du Barreau  
du Manitoba*

January 21, 2008

The Honourable Roger Salhany, Q.C.  
Commissioner  
The Taman Inquiry  
Room 30-200 Vaughan Street  
Winnipeg, MB R3C 3T1

Commissioner:

On behalf of the Manitoba Bar Association, Criminal Justice Section, we are requesting that our organization be granted standing at the inquiry into the traffic death of Crystal Taman.

The Manitoba Bar Association, a branch of the Canadian Bar Association, is an organization of lawyers formed to provide support to the profession, so that it may better serve its members and the public. The MBA works to improve the law, strengthen the administration of justice, encourage access to justice for all citizens, and promote equality.

Although the bulk of the advocacy work and law reform efforts are done at the national level, MBA members have experience in working with the CBA to prepare submissions to the government on policy and law reform. The strength of the MBA is its balanced perspective. We represent diverse interests among the bar, including the judiciary, lawyers, and academics. We strive to put forward positions that are sound, logical, and which enhance the administration of justice as a whole.

The MBA presents submissions to the Manitoba Legislature on law reform and regularly meets with representatives of the judiciary and government on issues that directly affect the administration of justice in the Province. The MBA reflects the views of those who work in the trenches of the law on a day to day basis. It is well placed to provide insightful and critical submissions and suggestions on systemic issues within the criminal justice system in Manitoba.

1450 - 363 Broadway  
Winnipeg, Manitoba R3C 3N9  
Ph: (204) 927-1210 • Fax: (204) 927-1212  
e-mail: admin@cba-mb.ca

It is our submission that the involvement of the MBA will be helpful to the Inquiry. We are stakeholders in the system which affects us directly as participants and indirectly through the public's perception and confidence in the integrity of the system.

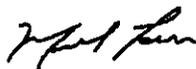
This inquiry will examine issues that have far-reaching implications beyond the circumstances of this particular tragic case. For instance, the manner in which police investigate police; the policies dealing with the appointment and conduct of agents of the Attorney General; and the role of victims and their families in a prosecution.

It is our understanding that the role of the commissioner is to report on any findings respecting practices or systemic issues that contributed to the course of the investigation and prosecution and make such recommendations to government as appropriate in order to restore the public confidence in the justice system in Manitoba. The MBA would invite the opportunity to participate in the exploration of the systemic issues that are raised in the Terms of Reference set by the Manitoba Order in Council, dated December 5, 2007 and provide a valuable contribution to recommendations designed to address those issues.

In the event that the MBA receives standing we will be requesting funding to assist us in being able to participate. It would appear from section 9(c) of the Order in Council that the inquiry has access to monies for "operational expenditures". It is our understanding a similar provision was utilized to provide funding for AIDWYC in the Driskell Inquiry.

Thank you very much for your consideration of our request.

Yours truly,



Michael J. Law  
President  
Manitoba Bar Association

cc Sarah Inness, Co-Chair, MBA Criminal Justice Section  
Stacy Nagle, Executive Director

**THE MANITOBA  
BAR ASSOCIATION***The voice of the legal profession***L'ASSOCIATION DU  
BARREAU DU MANITO***La voix de la profession juridique*

## Press kit

### About the Manitoba Bar Association

The Manitoba Bar Association is a branch of the Canadian Bar Association, which is an organization of lawyers formed to provide support by the profession to the profession, so that it may better serve its members and the public.

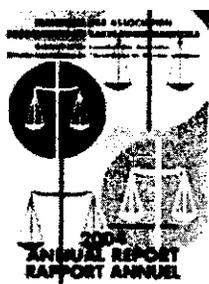
As a non-profit professional organization, the MBA provides educational and networking opportunities for its members who number approximately 1,200 across Manitoba, including lawyers, articling students, law students, and law professors.

The MBA also works to improve the law, strengthen the administration of justice, encourage access to justice for all citizens, and promote equality.

### About the Manitoba Bar Association President (2006 – 2007)

Antoine F. Hacault is the current president of the Manitoba Bar Association, having assumed the office in September 2006. He was called to the Manitoba Bar in 1985 and practices as a partner in the Winnipeg law firm of Thompson Dorfman Sweatman LLP.

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**MBA (and Canadian Bar Assoc.) logo**

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**MBA President (2007-2008)**

Michael J. Law

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## **TAMAN INQUIRY**

### **DRAFT RULES OF PROCEDURE AND PRACTICE**

#### **PART I: GENERAL**

1. The Commission's mandate, established by Order-in-Council #, 403/2007 is:
  - To inquire into the conduct of the police investigations surrounding the death of Crystal Taman on February 25, 2005, including, but not limited to.
    - the correctness and adequacy of the procedures and practices that were followed, and
    - the good faith, objectiveness and professional standards with which the procedures and practices were applied and decisions made.
  - To inquire into whether all aspects of the prosecution of Derek Harvey-Zenk, including the Crown's position on sentence, were conducted in accordance with the professional and ethical standards expected of lawyers and agents of the Attorney General.
  - To inquire into whether the services provided to the family of Crystal Taman were sufficient having regard to the requirements of the Victims' Bill of Rights.
  - To give advice on whether findings on any of the above matters gives rise to the need for further study, review or investigation and, if so, by whom.
2. Public hearings will be convened in Winnipeg at the Winnipeg Convention Centre, 375 York Avenue, Winnipeg, Manitoba at a date and time to be finalized by the Commissioner.
3. In these Rules:
  - (i) the term "documents" is intended to have a broad meaning, and includes the following forms: written, electronic, audiotape, videotape, digital reproductions, photographs, maps, graphs, microfiche and any data and information recorded or stored by means of any device.
  - (ii) "party" means a person, group of persons or organization who has been granted standing by the Commissioner under Part II of these Rules.
  - (iii) "Commission counsel" refers to counsel appointed by the Commissioner and retained by the Government of Manitoba to acts as Commission counsel, and includes any co-counsel appointed by "Commission counsel" with the approval of the Commissioner and under the authority of Commission counsel's retainer.

4. All parties and their counsel shall be deemed to undertake to adhere to these Rules. Any party may raise any issue of non-compliance with the Commissioner. The Commissioner shall deal with a breach of these Rules as he sees fit including, but not restricted to, revoking the standing of a party, and imposing restrictions on the further participation in or attendance at the hearings by any party, counsel, individual or member of the media.

5. The Commissioner may amend these Rules or dispense with compliance with them as he deems necessary to ensure that the hearing is thorough, fair and timely.

## **PART II: STANDING**

6. The Commissioner has appointed counsel to represent him and the public interest during the Inquiry. Commission counsel will assist the Commissioner throughout the Inquiry and are responsible for ensuring that the Inquiry is conducted in an orderly fashion, and that all matters bearing on the public interest and falling within the scope of the Commissioner's mandate are brought to the Commissioner's attention. Commission counsel has standing throughout the Inquiry.

7. Persons, groups of persons or organizations who wish to participate in the Inquiry may seek standing before the Inquiry. The Commissioner may grant standing if he is satisfied that an applicant has a substantial and direct interest in the subject-matter of the Inquiry or that the applicant's participation in the Inquiry may be helpful to the Commission in fulfilling its mandate. Persons, groups of persons or organizations that are granted standing are referred to in these Rules as "parties". An application for standing shall be made in writing pursuant to the terms set out in the Call for Applications for Standing issued by the Commission on Friday, January 4, 2008. Applicants whose standing requests have not been rejected based on their

written applications will be required to make oral submissions in support of their applications, provided that the Commissioner has the discretion to approve Standing without the need for such oral submissions.

8. The Commissioner will determine on what terms a party may participate in the Inquiry, and the nature and extent of such participation.

9. As provided for in Part III (Evidence), counsel representing a witness who is called to testify before the Commission may participate during the hearing of that witness's evidence without the necessity of applying for standing.

### **PART III: EVIDENCE**

#### **A. General**

10. The Commissioner may receive any evidence that he considers to be helpful in fulfilling his mandate whether or not such evidence would be admissible in a court of law. Without limiting the generality of the foregoing, pursuant to s.6 of Order in Council #403/2007, to the extent the commissioner considers it advisable, he may rely on a transcript or record of proceedings before any court relating to the prosecution against Derek Harvey-Zenk or relating to any other matter the commissioner considers relevant.

#### **B. Preparation of Documentary Evidence**

11. All parties granted standing under Part II of these Rules shall, as soon as possible after being granted standing, produce to the Commission true copies of all documents in their possession or control having any bearing on the subject-matter of the Inquiry. Documents in the possession or control of a party that are already in the possession of the Commission shall be listed but need not be produced, unless specifically requested by Commission counsel. Upon the

request of Commission counsel, parties shall also provide originals of relevant documents in their possession or control for inspection.

12. Upon the request of Commission counsel, any non-party shall produce to the Commission true copies of all documents in their possession or control having any bearing on the subject-matter of the Inquiry. Documents in the possession or control of a non-party that are already in the possession of the Commission shall be listed but need not be produced, unless specifically requested by Commission counsel. Upon the request of Commission counsel, such non-parties shall also provide originals of relevant documents in their possession or control for inspection.

13. All documents received by the Commission will be treated by the Commission as confidential, unless and until they are made part of the public record or the Commissioner otherwise directs. This does not preclude Commission counsel from producing a document to a potential witness prior to the witness giving her testimony, as part of Commission counsel's investigation, nor does it preclude Commission counsel from disclosing such documents to the parties to this Commission of Inquiry, pursuant to and subject to the terms and limitations described in para. 19 below.

14. Any party or non-party required to produce a document or documents pursuant to paras. 11 or 12 or pursuant to a subpoena or summons issued pursuant to s. 88(1) of the *Manitoba Evidence Act* (see para. 23) and who claims privilege over any such document shall produce a list of the documents over which privilege is claimed stating the basis and reasons for the claim of privilege.

15. If Commission counsel wishes to challenge a claim of privilege, Commission counsel shall apply as follows:

(i) to the Commissioner, or

(ii) to the Court of Queen's Bench of Manitoba, in relation to a claim of solicitor-client privilege, if the party claiming the privilege requests that the issue be adjudicated by the Court.

During the argument of a privilege claim under para. 14(i) the Commissioner shall not disclose any disputed document to Commission counsel or to the other parties, but may, with the assistance of the party or non-party claiming privilege, prepare and produce a summary of the document. If the party or non-party claiming solicitor-client privilege requests that Commission Counsel apply for a ruling to the Manitoba Court of Queen's Bench under para. 15(ii), the party or non-party shall make this request in an expeditious manner.

**C. Witness Interviews and Disclosure**

16. As provided in s. 8 of Order in Council #403/2007, Commission counsel may interview people believed to have information or documents bearing on the subject-matter of the Inquiry, including employees of Manitoba Justice and of any police services involved. The Commissioner may choose whether or not to attend an interview, and Commission counsel will provide the Commissioner with a transcript or report of all interviews conducted in his absence. Persons interviewed by Commission counsel may choose to have legal counsel present during the interview, but are not required to do so. Persons whose interview is requested by Commission counsel shall answer all relevant questions and produce any relevant document. A subpoena or summons may be issued pursuant to para. 23 if the person to be interviewed

requests one, or if Commission counsel deems it advisable to compel the attendance of the witness.

17. If Commission counsel determines that a person who has been interviewed should be called as a witness in the public hearings referred to in Part I, Commission counsel will prepare a statement of the witness's anticipated evidence or a transcript of their interview, and will provide a copy of this statement or the interview transcript to the witness before he or she testifies in the hearing. After the statement or transcript has been reviewed by the witness, copies shall be disclosed to the parties on their undertaking to use it only for the purposes of the Inquiry, and on the terms described in para. 19 below.

18. If Commission counsel determines that it is not necessary for a person who has been interviewed to be called as a witness in the public hearings referred to in Part I, Commission Counsel may tender the witness statement or transcript to the Commissioner at the hearing, and the Commissioner may consider the information in the witness statement or transcript when making his final findings, conclusions and recommendations. If Commission counsel interviews a person and decides not to call that person to testify at the public hearings, Commission counsel will provide the parties with a transcript of the interview, if available, or a summary of the relevant information provided by that person. As provided in para. 27, a party may apply to the Commissioner for leave to call any person as a witness or for a direction that Commission counsel shall call that person as a witness.

19. Unless the Commission orders otherwise, all relevant non-privileged documents in the possession of the Commission shall be disclosed to the parties at a time reasonably in advance of the witness interviews and/or public hearings or within a reasonable time of the documents

becoming available to the Commission. Before these documents are provided to a party or the witness, he or she must undertake to use these documents only for the purposes of the Inquiry, to keep their contents confidential to himself or herself and their counsel before the Commission unless and until those documents have been admitted into evidence during a public phase of the Commission of Inquiry, and to abide by such other restrictions on disclosure and dissemination that the Commission considers appropriate. All documents provided by the Commission of Inquiry to the parties and witnesses that have not been admitted into evidence during a public phase of the Commission of Inquiry, and all copies made of such documents, are to be returned to the Commission, in the case of witnesses on completion of their testimony, and in the case of parties within seven days of the Commissioner issuing his final Report. The Commission may, upon application, release any party or counsel in whole or in part from the provisions of an undertaking regarding the use or disclosure of documents or information.

**D. Witnesses**

20. Witnesses who testify will give their evidence under oath or upon affirmation.
21. Witnesses are entitled to have their own counsel present while they testify. A witness's counsel has standing in the Inquiry for the purposes of that witness's testimony, and may examine the witness as provided in paras. 24 and 25.
22. Witnesses may be called to give evidence in the Inquiry more than once.
23. Where he considers it advisable, the Commissioner may issue a summons or subpoena pursuant to s. 88(1) of the *Manitoba Evidence Act* requiring a witnesses to give evidence on oath or affirmation and/or to produce documents or other things. A summons or subpoena may be

issued in relation to either the pre-hearing interviews conducted by Commission counsel, the pre-hearing requests for documents or the public hearings.

**E. Oral Examinations**

24. The order of examination of a witness will ordinarily be as follows, subject to para. 25, below:

- (a) Commission counsel will examine the witness. Except as otherwise directed by the Commissioner, Commission counsel may adduce evidence from a witness by way of both leading and non-leading questions;
- (b) The parties who have been granted standing to do so will then have an opportunity to cross-examine the witness to the extent of their interest. If these parties are unable to agree on the order of cross-examination, this will be determined by the Commissioner;
- (c) Subject to para. 25, counsel for the witness will examine the witness last, regardless of whether or not counsel is also representing another party;
- (d) Commission counsel will then have the right to re-examine the witness. Except as otherwise directed by the Commissioner, Commission counsel may adduce evidence from a witness during re-examination by way of both leading and non-leading questions.

25. A witness's counsel may apply to the Commissioner for permission to present that witness's evidence-in-chief. If permission is granted, the witness will be examined in the following order:

- (a) counsel will examine the witness in accordance with the normal rules governing the examination of one's own witness in court proceedings, unless otherwise directed by the Commissioner;
- (b) Commission counsel will then be entitled to examine the witness
- (c) The other parties with standing will be in entitled to cross-examine the witness, as provided for in para. 24(b);
- (d) Counsel for the witness will then be entitled to re-examine the witness;
- (d) Commission counsel will then be entitled to conduct a final re-examination of the witness, as provided for in para. 24(d).

26. After a witness has been sworn or affirmed at the commencement of his or her testimony, no counsel other than Commission counsel may speak to that witness about the evidence he or she has given until the witness has completed his or her evidence, except with the permission of the Commissioner. Commission counsel may not speak to the witness about his or her evidence while the witness is being cross-examined by other counsel, except with the permission of the Commissioner.

27. Once Commission counsel has indicated that they will not be calling a particular witness to testify at the public hearings referred to in para. 2, a party may apply to the Commissioner and request that the witness be called to give evidence. If the Commissioner is satisfied that the witness's testimony is needed, the Commissioner may direct Commission counsel to call the witness (in which case para. 24 applies) or may allow the requesting party to call the witness and adduce his or her evidence in chief (in which case para. 25 applies, with suitable modifications).

**F. Use of Documents at Hearings**

28. Copies of all documents received by Commission counsel from the Government of Manitoba, including copies of documents received for Government departments, agencies and other bodies established under the authority of the Manitoba Legislature, and the various police services involved in the police investigations surrounding the death of Crystal Taman, as well as copies of transcripts of proceedings before any Court or Commission of Inquiry, shall be presumed to be authentic unless a party objecting demonstrates on the balance of probabilities that they are not authentic, and original documents need not be produced.

29. Before a witness testifies at the Inquiry, Commission counsel may, where practicable and appropriate, provide the witness and the parties with a binder or a list of those documents that are likely to be referred to during that witness's testimony.

30. Without leave of the Commissioner, no document shall be used in cross-examination or otherwise unless copies of the documents have been provided to Commission counsel in a timely manner pursuant to paras. 11 and 12.

**G. Access to Hearings and to the Evidence**

31. Subject to para. 32, the hearings referred to in para. 2 will ordinarily be open to the public. The use of fixed camera(s) in the hearing room will be permitted on terms and conditions to be determined by the Commissioner after hearing submissions from interested parties.

32. Where the Commissioner is of the opinion that it is necessary in the interests of the maintenance of order or the proper administration of justice to exclude all or any members of the public from the hearing room, he may, after hearing submissions from interested parties, direct that portions of the hearing be held in the absence of the public or on such terms and conditions as he may direct.

33. Applications from witnesses or parties to hold any part of the hearing in the absence of all or any members of the public should be made in writing to the Commission at the earliest possible opportunity.

34. The transcripts and exhibits from the hearings will be made available as soon as practicable for public viewing. Transcripts will be posted on the Commission's web site as soon as is reasonably practical and will be available to both the parties and the public. Transcripts of

any portions of the hearing that are held in the absence of the public pursuant to para. 32 will be made available for public viewing on such terms as the Commissioner may direct if, after hearing the evidence and any submissions, the Commissioner concludes that it is in the public interest to release these transcripts.

#### **PART IV: NOTICES REGARDING ALLEGED MISCONDUCT**

35. The Commissioner will not make a finding of misconduct on the part of any person unless the person or, if the person is deceased, his estate has had reasonable notice of the substance of the alleged misconduct and has been allowed full opportunity during the inquiry to be heard in person or by counsel.

36. Any notices of alleged misconduct will be delivered on a confidential basis to the person to whom the allegations of misconduct refer.

37. As expressed in Section 3 of Order in Council 403/2007, "in keeping with the principles summarized by the Supreme Court of Canada in *Canada (Attorney General) v. Canada (Commissioner of Inquiry on the Blood System)*, the Commissioner must perform his duties without expressing any conclusion or recommendation about the civil or criminal liability of any person or organization.

#### **PART V: AMENDMENTS TO THE RULES**

38. These Rules may be amended and new Rules may be added if the Commissioner considers it advisable to do so in order to fulfil his mandate and ensure that the process is fair and thorough.