PART C
THE PROSECUTION OF DEREK HARVEY-ZENK

1. The appointment of Martin Minuk to prosecute Zenk

Martin Minuk (Minuk) is a barrister and solicitor practising law in the City of Winnipeg. He was one of the four, independent, special prosecutors retained by Manitoba Department of Justice to conduct special prosecutions. By letter, dated August 26, 2004, from the Deputy Minister of Manitoba Department of Justice, Minuk had been retained to conduct prosecutions, inquests and provide opinions, on a case-by-case basis, as requested from time-to-time by Brian Kaplan (Kaplan), Director of Regional Prosecutions and Legal Education or Rob Finlayson, Assistant Deputy Attorney General. His retainer was effective from July 1, 2004 to March 31, 2005, inclusive.

At 10:04 a.m. on February 25, 2005, Carter contacted the Crown's office and spoke to Russ Ridd (Ridd), the duty Crown, briefing him on the accident. Ridd said that he would have an independent prosecutor call back and called Minuk to contact Carter. At 10:35 a.m., Carter received a call from Minuk and briefed him on the investigation. Minuk advised Carter on the charges and on the release of Zenk. On March 1, Minuk gave advice to the Winnipeg Police Service PSU relating to the investigations of Zenk's activities prior to the accident. On March 3, 2005, Kaplan sent Minuk a letter, by courier, formally retaining him to handle the Zenk prosecution. Included in that letter was the file that Kaplan had received from Carter.

2. The allegations of conflict of interest by Martin Minuk

The appointment of Minuk to prosecute Zenk was controversial. There was a complaint by Sveinn and Victoria Sveinson (and repeated in the media) that Minuk was in a conflict of interest in prosecuting Zenk, because Minuk had acted for police officers in the past. There was also a complaint that a conflict of interest existed between Minuk and Zenk's trial counsel, Richard Wolson because both had acted for co-accused in a joint trial on a previous occasion.

Dealing with the first complaint, this Inquiry was fortunate to have the expert opinions of Richard Peck, Q.C, (Peck) a member of the Law Society of British Columbia, who has acted as an independent prosecutor in the Province of British Columbia and Brian Gover (Gover), a member of the Law Society of Ontario, who has acted as an independent prosecutor in the Province of Ontario. Both testified before this Inquiry and provided written opinions. Peck expressed the following at page 8 of his opinion:

> "In my mind, the fact that a private practitioner retained to prosecute a police officer has, from time to time, defended police officers is entirely irrelevant. No conflict arises on the basis of class or occupation. Where a conflict might arise is in circumstances where the lawyer has previously represented the very person he or she is called upon to prosecute. There could also be an appearance of conflict if the lawyer has worked closely with the police officer who is the subject of the prosecution, or if the lawyer's practice

> consists entirely of representing police officers such that his or her livelihood depends on the continued business of police officers. With these three exceptions stated, I see no conflict arising where a lawyer who has previously represented police officers is retained to prosecute a police officer with whom he has not had any direct representational or working relationship."

Gover expressed a similar opinion. As far as he was concerned, the issue depends upon the degree to which the lawyer devotes his practice to the defence of police officers and how recently he had done so. Minuk testified that he had last acted for police officers 15 years ago and has only represented three police officers in the past. I agree with the opinions of Peck and Gover. I am satisfied that in accepting the brief to prosecute Zenk, Minuk was not in a conflict of interest based on his past representation of police officers.

The second complaint of conflict, that Minuk was in a conflict of interest because he and Richard Wolson had acted for co-accused in a joint trial on a previous occasion, is also without merit. It stems from an unfortunate misunderstanding of the relationship of members of the Bar to one another. Peck expressed the following at page 9 of his letter of opinion:

> "In the absence of these two lawyers working out of the same firm at the time of the prosecution, there is no conflict in my view. As members of the private Bar, we are often required to work with each other, and, sometimes, against each other. This is not a matter peculiar to the criminal Bar. Civil litigators often act on the same side of a *lis* (sometimes even for the same client) and then find themselves on opposite sides of a different brief. To my knowledge, no one has ever suggested that there is anything wrong with this."

Gover saw no conflict of interest arising where lawyers have acted in the past for co-accused in a joint trial and where one lawyer acts later as a prosecutor and the other as defence counsel. As he pointed out:

> "It is rightly assumed that members of our profession will act in accordance with ethical standards regardless of their acquaintance with opposing counsel."

I agree with both opinions on both questions. In my view, no conflict arose because Minuk and Wolson had acted for co-accused in a joint trial on a previous occasion.

3. The decision by Martin Minuk to release Zenk on a Promise to Appear without conditions

Minuk testified that when he spoke to Carter on February 25, he was told by Carter that Zenk's lawyer was coming to the station and that Zenk would be processed before noon. Minuk instructed Carter to release Zenk on a Promise to Appear (PTA) without conditions. Minuk said that before instructing Carter to release Zenk on a PTA without conditions, he was aware that Zenk was employed as a WPS officer and likely living within the geographic area of Winnipeg and therefore had roots in the community. He felt that there was no risk that Zenk would not appear for his trial. He said that it was the practice in Manitoba to release someone into the care of someone else. He said that he

knew that Zenk's lawyer was coming, would take care of him and "get him to the point where he is going to be at home" and "the offence won't be repeated by the offender because he is being taken charge of by another." He did not check into Zenk's recent psychological state or potential history for alcohol abuse because that was probably privileged. He did not consider the need to impose conditions on Zenk that would inhibit repetition of the offence because his employment as a police officer would make it unlikely that he would repeat the offence. He said that it was not uncommon in Manitoba for an officer in charge to release a person on a PTA without conditions after a fatality.

Section 498 of the Criminal Code authorizes an officer in charge to release an accused unless the officer has reasonable and probable grounds to believe it is necessary *in the public interest* to detain him in custody, or if released, he will fail to attend in court. Section 498(1)(i) of the Code provides that *in determining the public interest,* the officer shall consider three things: the need to establish the identity of the accused; the need to secure or preserve evidence of or relating to the offence; or the need to prevent the continuation or repetition of the offence or the commission of another offence. Carter was an officer in charge for the purposes of the Criminal Code and was authorized to release Zenk pursuant to provisions of section 498 of the Code.

Carter said that he had made a demand to Zenk to provide a breath sample because he had reasonable grounds to believe that Zenk had committed the offence of impaired driving within the preceding three hours. Carter said that the "reasonable grounds" he relied upon were based on information from the dispatcher who called him from the station; information he had received from Woychuk who told him that he had a male subject involved in the fatality in the rear of his vehicle; the smell of alcohol from Zenk; and his observations that Zenk was unsteady on his feet walking on the tile and carpeting. The observations of Zenk's impairment were made shortly after 8:12 a.m. when Woychuk brought Zenk to the station. In determining whether Zenk should be released at noon, Carter was required to consider whether Zenk was still impaired and, if released, whether he might repeat the offence. Carter said that he was not concerned that Zenk might repeat the offence because he would be driven home by his counsel, Katherine Beuti.

It was Peck's opinion that it was entirely appropriate and well within acceptable prosecutorial standards to release Zenk on a PTA without conditions. He said that "one possible exception might be where the person has a significant drinking history." In that case it would have been appropriate for the Crown to have asked for a condition that Zenk abstain from the consumption of alcohol during the term of the recognizance and seek such counselling as directed by a Bail Supervisor. Wolson and Minuk said that in Manitoba, it is not unusual for a PTA release without conditions in impaired driving cases. On the other hand, Gover testified that the gravity of the alleged offences and public interests concerns called for a more restrictive form of release. Conditions should have reflected both the nature of the alleged offences and the gravity of the consequences of the alleged conduct of the accused. This could include a prohibition on the consumption of alcohol and attendance at any place licenced to sell alcohol beverages, or even driving. I am persuaded by Gover's opinion. When one considers the fact that Zenk had just been involved in the death of an innocent woman in a horrendous car accident, I find that the decision to release him without conditions is troubling. Only four hours

earlier, Carter had charged Zenk with impaired driving on the basis of the symptoms he had observed. It is disturbing that Zenk would be released without any conditions related to the consumption of alcohol or driving. While Minuk cannot be faulted for observing local practice, it is, in my view, a practice that should be reconsidered.

4. Testimony about the contact between Martin Minuk and Manitoba Department of Justice

When Kaplan formally retained Minuk on behalf of Manitoba Department of Justice, he asked Minuk to keep the office apprised as to the status of the matter and to advise of all court dates, if necessary. Minuk's time docket (Exhibit 218) indicates that he docketed 30 contacts with Kaplan, seven contacts with Colleen Ireton (Ireton), Kaplan's assistant, and nine with Donald Slough (Slough) the Assistant Deputy Attorney General.

Minuk said that he discussed all of the issues in connection with the Zenk prosecution with Kaplan and Slough for many months leading up to the ultimate decisions. He said that he had contact with them around the time of his resolution discussion with Wolson; the time he was going to make his submissions on sentence on August 22, 2007; and the time he was going to make his submissions on September 12, 2007. In particular, he had discussions with them when Chief Judge Wyant asked him whether he was going to prove alcohol consumption on the part of Zenk. He said that he had vetted the resolution discussions with Kaplan and Slough. He did not think it was inappropriate to discuss the Zenk prosecution with them. He gave these reasons:

> "Of course, there are two issues that I always need to be mindful of, which is that issue of the fact that I am the independent prosecutor, but also perhaps – and whether this is a function of being in private practice or not, I don't know – but I also perceive this other function or other contact, that this is the client in some ways, and I am keeping them informed on a regular basis as to what's going on. Some cases require more information than others because they may be more serious. Others, they may have a particular interest in where they are asking me to update them on certain things. And as well, because the structure of the prosecution branch allows for meetings and file discussions with senior management group, where lawyers handling files can go and speak to others, although I do know that the ultimate decision on a matter is that of counsel – well, independent counsel who has it – there's no group, so to speak, that the independent counsel can go to in a way that the in-house counsel can go to. And to some extent, Mr. Kaplan and Mr. Slough form that group. They don't instruct, they don't tell you what to do, but they listen, they have experience that can be drawn upon. They can, you know, relate other cases and remind you of government policies, Crown policies. And I don't think that the contact is inappropriate."
> Evidence, p. 5711-13, l. 24-25, 1-25, 1-2

Minuk was asked whether he could see a perception problem that might arise by regular contact with Kaplan and Slough. He expressed this view:

"Well, perhaps there may be a perception problem, but to understand and to explain what the nature of the contact is and the purpose of it, in my view, clarifies the perception. There is a perception that might be by those who are members of the bar, and there's the public perception which might be different. And I can only see that from my perspective, as a lawyer, I don't see this as a problem, I do appreciate that you may raise this as a public issue, and it's a good thing that I'm telling the Commissioner that this is how it works and the public can understand it. And they would then, I hope, not come to a wrong conclusion about it."
Evidence, p. 5713-14, l. 18-25, 1-6

On September 21, 2005, Minuk received a fax from Ireton containing a letter from Sveinn and Victoria Sveinson with a request that he draft a response and forward it to her for Kaplan's signature. The letter was a strong criticism of the justice system. Minuk said that in his opinion, the request from Kaplan was not appropriate. He thought that the best way to deal with it was to contact and meet with the Sveinsons and advised Kaplan's office. He said that he never thought about the propriety of an independent prosecutor being asked to write the letter, but believes his decision not to write the letter was probably the right thing to do. On September 28, Minuk received a call from the Sveinsons. He arranged to meet them at his office on October 3. He then called Kaplan and advised him that he was meeting with the Sveinsons and met with them as arranged. What happened at that meeting is discussed in Part D.

Over the next two years, Minuk sent reports to Kaplan updating him on the progress of the file. Minuk contacted Kaplan when Carter revealed that he had been told by Woychuk that Bakema had instructed him what to put in his notes. Kaplan brought in the RCMP to conduct an investigation. A meeting took place May 12, 2006 between Minuk, Kaplan and Gregg Lawlor (Lawlor), general counsel to the Province of Manitoba. They discussed how to frame a letter to Wolson requesting an adjournment, during the investigation of Bakema by the RCMP, without revealing to Wolson the real purpose of the adjournment. Kaplan testified that Lawlor "came up with a sentence or wording or two that might assist Minuk."

On Thursday, July 12, Kaplan received a telephone call at his home around 8:00 p.m. or 9:00 p.m. from Minuk advising that Zenk was prepared to plead guilty to dangerous driving for an agreed-upon joint recommendation for a conditional sentence. He told Minuk that he wanted to sleep on it and to call him in the morning. Kaplan explained:

"...I just wanted to sleep on it. And in the early morning hours, because I know that Mr. Minuk is an early morning person, that I'd like to rehear more of the information in case I wanted to ask a question or two, just to understand what he was basing everything on."
Evidence, p. 6600, l. 4-10

"To me it means I just want to hear it in the light or morning when I am thinking perhaps better to understand what it was."
Evidence, p. 6601, l. 19-21

Kaplan met with Minuk for an hour the next morning. In a memo that day to Slough about the meeting, Kaplan wrote:

> "The Friday meeting allowed a better understanding of outside counsel's position and his recommendation that the offer should be accepted. I advised him I wanted to run the background by a couple of senior crowns for their opinion."

Kaplan said that in using the word "recommended", he meant that it was outside counsel's recommendation. He also said that he wanted to run it by two of his senior colleagues, because the Zenk prosecution had a great deal of publicity. He said: "I wanted to make perfectly sure, even in my own mind, that this was the proper route." If the recommendation had been "in the realm of egregious," as he described it, he would have interfered with Minuk's recommendation. He did not feel that this was one of those egregious cases. Kaplan did not recall whether he said anything further to Minuk, since this was his decision and he was to go ahead with it. However, Minuk was instructed to deal with Robert Taman and explain "all the circumstances at his arranged meeting Friday morning." It was Kaplan's understanding that the proposal Minuk had put forward was a plea bargain.

> A. I would have concluded that it was plea bargain.
> Q. So what in your understanding did Mr. Minuk trade in order to accomplish the outcome that he secured?
> A. I believe, based on the case law, he would have agreed to the joint recommendation as far a conditional sentence for the offer of that plea by Mr. Wolson's client to the offence of drive dangerous causing death.
> Evidence, p. 6624-5, l.25, 1-9

In other words, the trade-off was Minuk's readiness to agree with precedent that a conditional sentence was the appropriate sentence.

On Sunday, July 15, Minuk sent an e-mail to Kaplan and Ireton setting out his reasons for the position he proposed to take. The next morning, Ireton sent an e-mail to Minuk at 7:00 a.m. inquiring: "What is happening?" Minuk responded that he expected that the plea would be entered the next morning before Chief Judge Wyant. On July 17 the plea to dangerous driving was entered and the matter was adjourned to August 22 for submissions as to sentence. Minuk prepared his submissions as to sentence and sent them to Kaplan. Kaplan said that it was unusual for an independent prosecutor to send his submissions to Manitoba Department of Justice. He did not know why Minuk sent them. Minuk said that he sent them to Kaplan and Slough for any changes or amendments they would have asked or suggested.

On August 28, Ireton sent an e-mail to Minuk asking for his response to articles in the newspapers about victim-impact statements. Kaplan said that the request probably came from the deputy minister's office for information. On September 9, Minuk sent to Kaplan a draft of his proposed submissions to Judge Wyant on September 12 with the note: "Here is a draft for you to look at – any comments or suggestions." Kaplan said that he made no comments or suggestions. On September 12, Minuk called and spoke to Kaplan and Slough during a recess that Minuk had requested when Judge Wyant asked whether

he was going to prove the consumption of alcohol. Kaplan said that Minuk told him what had happened and he asked Minuk: "What do you think?" Minuk replied: "I don't believe we should call any evidence." Kaplan said that he told him: "That's fine." He meant he was okay with that and that was the end of the conversation. Minuk testified that his call to Kaplan and Slough was to tell them what he was doing:

> "...and get a sort of second look, so to speak, just to make sure that I was not, in the stress of the moment, not thinking clearly.
> Q. And you might change your mind as a result of the conversation with them? You wanted their input because you might change your mind?
> A. If I wasn't thinking clearly, perhaps that would be a good point to get some advice on."
> Evidence, p. 6091, 2-10

5. The decision of Martin Minuk to enter into a plea bargain with Wolson

The investigation conducted by the ESPPD and the PSU left Minuk with what Peck aptly called as a "prosecutor's nightmare." Slough fittingly described the case as a "train wreck." Minuk was justifiably concerned that he would be unable to prove the charges of impaired driving causing death and refusal to provide a breath sample, because of the investigative errors. It is also clear that he would have difficulty proving criminal negligence causing death.

Many of the problems of proof that Minuk noted with respect to the charges of criminal negligence, impaired driving and refusing to provide a breathalyzer sample did not apply to the dangerous driving causing death charge. Minuk, however, had never conducted a thorough investigation of the evidence that supported this charge. For example, although Carter did not follow his instructions to apply for a search warrant to seize the Brannigan's sales records, Minuk did not pursue the records on his own. He never interviewed any of the lay witnesses, such as Bukowski, Beattie or Shaw before he entered into discussions with Wolson. The only WPS members that he interviewed were Black, Anderson and Humniski. He did not adequately assess all of the accident reconstruction evidence of Blandford. In particular he did not assess that Zenk would have had a 15-second warning of the advance lights; that there was flashing yellow light and a red light at the intersection; that cars were stopped at the intersection; that the roadway was straight and the weather clear; that the Zenk vehicle travelled in a straight line without variation in speed from the estimated 80 kilometres per hour; that there was no braking; and the Zenk vehicle was able to stay on the road after the accident. All of this evidence was inconsistent with Minuk's concession that the accident could have been caused by a momentary lapse of attention. He also failed to adequately assess all of the evidence, of both police and lay witnesses, in concluding that he was unable to prove that Zenk had consumed alcohol before the accident.

Minuk said that as he started to prepare for trial, he realized that he would have difficulty proving criminal negligence causing death, impaired driving causing death and refusal to provide a breathalyzer sample. He said that when Wolson called and proposed that Zenk should plead guilty to dangerous driving causing death and that there should be a joint recommendation for a conditional sentence, he felt that it was a good resolution of the

case. It was his evidence that, prior to accepting Wolson's proposal, he had reviewed all of the cases from the mid-1990s to 2007, dealing with both dangerous driving causing death and impaired driving causing death. He concluded that the range of sentence proposed by Wolson was similar for both cases. If I understand Minuk's evidence correctly, he was prepared to enter into an agreement with Wolson to accept a plea of guilty to dangerous driving causing death with a joint recommendation for a conditional sentence because he did not feel that the court would impose a harsher sentence because of Manitoba Court of Appeal precedent.

6. The nature of a plea bargain and a joint submission or recommendation

In the Province of Manitoba, the Court of Appeal has drawn clear distinction between a joint submission as to sentence, which is part of a plea bargain, and a joint submission not based on a plea bargain.

A plea bargain by its very language is a bargain with respect to a plea to a charge or a series of charges. It may involve three areas of negotiation. It may involve negotiating the charge or charges to which the accused will plead guilty in exchange for a withdrawal or stay of another charge or charges. It may involve an agreement by the accused to plead guilty to a certain charge or charges in exchange for a recommendation by the prosecutor for a specific sentence. While there may be ethical limitations on the practice, a plea bargain may also involve an admission to certain facts, thereby eliminating the need for the Crown prosecutor to prove them, in return for an agreement not to introduce certain other facts into evidence. Regardless of what has been agreed upon, there will only be a true plea bargain where each side, the Crown and the defence, gives up something in exchange for something, a *quid pro quo*.

There may be many reasons why the Crown and defence may decide to enter in to a plea bargain. For example, the Crown may have concluded that it will have difficulty proving a particular charge and has agreed to accept a guilty plea to a lesser charge, or the accused has agreed to plead to the greater charge upon the understanding that the Crown will recommend a lesser sentence than the one usually imposed for the offence. Where there has been an exchange of a *quid pro quo*, there is a true bargain.

It follows that not all joint submissions for a specific sentence are a true plea bargain. An simple agreement between the prosecutor and the defence that they will make a certain recommendation to the trial judge as to the sentence to be imposed, because each believes the sentence is an appropriate one, is not a true plea bargain because nothing has been exchanged to achieve that agreement or bargain. The prosecutor and the defence have simply agreed to make a joint recommendation as to what they believe is the appropriate sentence that should be imposed on the accused.

The trial judge has no jurisdiction to accept or reject a plea bargain. The trial judge has no control over what charges the prosecutor presents to the court; what facts the Crown presents in support of the plea; or to what charges an accused pleads guilty. The prosecutor has the absolute right to decide what charges he or she will prosecute and the accused has the right to decided to what charges he or she will plead guilty. On the other hand, the sentencing judge is not bound by the terms of any plea bargain that has an

agreement between the Crown prosecutor and the defence as to the sentence that the judge will impose on the accused. The question of sentence has always been regarded as a matter within the domain of the trial judge.

The Manitoba Court of Appeal has said that where there has been a *quid pro quo*, a true exchange of something for something between the prosecutor and the defence, the trial judge should not depart from a joint recommendation of sentence unless the judge concludes that the sentence is unreasonable; is unfit; would bring the administration of justice into disrepute; or would be contrary to the public interest: *Sinclair* (2004), 185 C.C.C.(3d) 569 (Man.C.A.). On the other hand, where there is simply a joint recommendation as to sentence, there has been no plea bargain. There has been no *quid pro quo* in exchange for the sentence. Since there has been no bargain, the sentencing judge is not required to give the same consideration to the recommendation.

Kaplan was asked if he considered whether there was a distinction between two counsel, senior or otherwise, each agreeing that the proper outcome of a case is a plea to one charge and a conditional sentence on the one hand, and on the other hand the parties trading something by way of *quid pro quo* in order to accomplish some type of compromise. Kaplan was of the view that it was a distinction without a difference. With due respect, he is wrong in that view. It is accepted that, in Manitoba, only the latter is a plea bargain and the former is a joint recommendation.

Given the importance of the distinction between true plea bargained sentences and simple joint recommendations, it is important to understand the nature of the agreement that was reached by Wolson and Minuk. Was the agreement a plea bargain with a joint submission as to sentence or was it simply a joint submission as to sentence. As we will see, the transcript of the evidence of the proceedings on September 12, 2007, indicates that Chief Judge Wyant was clearly aware of the distinction between a joint submission following a plea bargain and a joint submission where there was no plea bargain. He was troubled by the way the case had been presented to him by the prosecutor and counsel for the defence. The way the sentencing position was put to him by Minuk and Wolson left Chief Judge Wyant in the dark.

7. The events leading up the plea of guilty by Derek Harvey-Zenk to dangerous driving causing death and the staying of the other charges

Wolson was retained as counsel to defend Zenk. He is a prominent defence counsel practising in Winnipeg. He was called to the Bar in Manitoba in 1973 and has practised as criminal defence counsel since his call to the Bar. He said that in the past 25 years, he has tried over 1,000 impaired driving cases. He has been a lecturer for the Federation of Law Societies' summer criminal law program since 1985, delivering papers and sitting on panels dealing with alcohol related offences. He testified that, after receiving disclosure from the Crown, he realized that there were many investigative difficulties in the Crown's case with respect to the charges of criminal negligence causing death; impaired driving; and refusal to provide a breathalyzer sample. However, he felt that he only had a 20 per cent to 25 per cent chance at the most in defending the charge of dangerous driving causing death. On the other hand, if the Crown proceeded only with the dangerous driving charge, thereby making the evidence a simpler case and less

controversial, it was his view that his chance of success would be reduced to 10 per cent to 12 per cent.

Wolson recalled that Minuk wrote him a letter May 18, 2006 advising that he was seeking an adjournment of the preliminary inquiry to permit further investigation. He presumed that it was to further investigate the case they were litigating and made no further inquiries. He agreed so that he might have the availability of further evidence that the investigation might uncover that might assist the defence. In fact, the request for an adjournment had nothing to do with an investigation of the case. Minuk had asked the RCMP to investigate the information that had been related to Minuk by Carter that Bakema had possibly committed the offence of obstruction of justice by directing Woychuk to alter his notes. Wolson left Minuk a telephone message agreeing to an adjournment, but advised Minuk that the case would have to be scheduled for the following year, because he was busy with other cases. Minuk agreed and the case was adjourned to Monday, July 16, 2007 for a preliminary inquiry.

Wolson said, that while preparing for the preliminary inquiry, he realized that he might have difficulties in defending the dangerous driving causing death charge. However, he was confident that he could successfully defend the other charges. On Thursday or Friday, prior to the preliminary inquiry date on July 16, Wolson said that he called Minuk. He told him that he thought that Minuk was going to have a lot of difficulties in his case around alcohol-related charges, but did not tell him what those difficulties were. Minuk replied: "I know."

Wolson asked whether Minuk would agree to accept a plea of guilty to dangerous driving causing death; stay the remaining charges; and jointly recommend a conditional sentence with no order, under the Criminal Code prohibiting driving. Minuk said that he would "put it to his client," the Manitoba Department of Justice. Wolson wanted Minuk to go to his client before he went to Zenk to suggest that he plead to the dangerous driving charge. Wolson said that Minuk called him back, indicating that he had vetted the matter with his clients and would accept the plea and the conditions suggested by Wolson.

Wolson met with Zenk over the weekend and received his instructions to plead guilty in accordance with their resolution discussions. Wolson said that he understood that the resolution was a plea bargain both as to plea and as to sentence. He had also asked Minuk whether the Taman family was agreeable to the bargain. Minuk wrote him a confirming letter adding that: "...there is a militant father and mother of the deceased. The husband and children are on side." Wolson wanted to meet with Chief Judge Wyant to see whether he would be favourable towards the plea bargain and asked Minuk to set up a meeting. He also dictated a memo to his file, confirming the arrangement.

A meeting with Chief Judge Wyant was arranged for July 16, 2007. Minuk and Wolson met with Chief Judge Wyant and advised him that Zenk would plead guilty to dangerous driving causing death and that Minuk would stay the remaining charges. Chief Judge Wyant was told by Wolson that Zenk was a police officer and would either be forced to retire or would be fired. Minuk provide him with a brief outline of the facts. Chief Judge Wyant asked Minuk what the feeling of the victim's family towards the plea was and Minuk advised him that they were okay with the resolution. Chief Judge Wyant said that

he would give serious consideration to the submission of senior counsel. Both Minuk and Wolson left the meeting with the feeling that their recommendation would be accepted.

On the day scheduled for the beginning of the preliminary inquiry, Judge Stewart, the presiding judge, was advised that the matter was to be adjourned to the following day before Chief Judge Wyant for plea. The matter was therefore adjourned at the request of Minuk and Wolson. On Tuesday, July 17, 2007, Zenk was arraigned on a charge of dangerous driving causing death before Chief Judge Wyant and pleaded guilty. Minuk did not read into the record the facts that the Crown relied upon in support of the plea. Chief Judge Wyant accepted the plea and indicated that he was recording: "a guilty plea to the charge of dangerous driving cause death." Minuk then stayed the charge of refusing to provide a breath sample, impaired driving causing death and criminal negligence causing death. The case was adjourned to August 22, 2007.

On August 22, 2007, Minuk and Wolson made their submissions on the facts and jointly recommended that the sentence should be a conditional sentence of two year less a day with terms, but there should not be a driving prohibition under the Criminal Code. Chief Judge Wyant indicated that he wanted some time to consider the submissions and adjourned the case to September 5, subject to the availability of counsel.

On August 31, Chief Judge Wyant wrote a letter to both Minuk and Wolson indicating that he was:

> "contemplating rejecting the plea bargain ...on the basis that this offence was committed by a police officer and that a higher standard of conduct is expected of a person in this position."

In his letter, Chief Judge Wyant indicated that it was critical that both counsel be afforded the opportunity to make further submissions "respecting the joint sentence." Both counsel were directed to contact the trial co-ordinator to arrange for a hearing date. The date of September 12 was selected.

8. The confusion as to the agreement between Martin Minuk and Richard Wolson

As will be seen shortly, the transcript of the proceedings on September 12 reveals that Chief Judge Wyant had some justifiable concerns about the nature of the agreement that had been reached by Minuk and Wolson. What he wanted to know was whether there had been a plea bargain as to the plea and sentence to be recommended or was it simply a joint submission as to sentence. If it was a plea bargain, he wanted to know what the *quid pro quo* or "exigencies" as he called them were. He was concerned about the joint recommendation that had been made to impose a conditional sentence of two years less a day on a police officer. The sentence that he was considering imposing depended upon whether it was a true plea bargain with a joint recommendation as to sentence or simply a joint recommendation as to sentence. If it was a plea bargain, he was constrained by the case law. If it was not a plea bargain, then there were not the same constraints upon him to reject the sentence that had been recommended.

Minuk was asked whether his decision to stay the charges of criminal negligence causing death; impaired driving causing death; and refusal to provide a breath sample were part of the bargain. Minuk said that they were not. Those charges were stayed:

> "not because the accused pleaded guilty to danger driving, but because of the Crown's obligation I described to you in my earlier remark. That obligation is to have and to be able to present to the court legal proof."
> Evidence, p. 15

Minuk then explained to Chief Judge Wyant the difficulties that arose for the Crown in proving the charges of impaired driving and refusal to provide a breathalyzer sample against Zenk. He had stayed these charges because of the investigation conducted by the ESPPD:

> "In short, no evidence capable of meeting the required standard for prosecutions, a reasonable likelihood of conviction and all the moreso, no evidence resisting a Gardiner challenge was available to the Crown in respect of the offences of impaired driving and refusing the breathalyzer."
> Evidence, p. 16

Minuk went on to explain (Evidence p. 16-17) that the "exigencies" of this case are such *that a guilty plea to any charge* the accused faced would not have been anticipated by the Crown. He offered this explanation:

> "In this regard the Crown is very mindful that the accused, who at the time of the offence was a police officer offered to plead guilty to a very serious indictable offence and give up his rights to a preliminary inquiry and a trial on a matter fraught with issues more difficult for the prosecution than the defence."
> Evidence, p. 16-17

What were the issues that were difficult for the Crown in proving the charge of dangerous driving? After a lengthy review by Minuk of the cases on sentencing, Chief Judge Wyant was still not satisfied as to what had been exchanged in the bargain:

> "All right. Well let's, let's move to that. And so for the record, only the facts presented in this courtroom will be a consideration in my judgment, so that that's very clear for the record. But let's move on to the issue of joint recommendations because I have to say, candidly, Mr. Minuk, I'm somewhat confused by your submissions in one regard, and in a sense taken aback because I now have more information from you on the basis of the joint recommendation that was being presented in these initial submissions. And, let me elaborate.
>
> As I heard you say and I, I may have to review the transcript, you indicated and clearly stated, and of course I clearly accept this that charges were not stayed because the accused pled guilty. *They were stayed because the Crown did not have – was satisfied it did not have the legal proof.* Correct?
> Mr. Minuk: Correct."
> Evidence, p. 23

Chief Judge Wyant then went on to point out that he was confused with Minuk's submissions because he understood the case was presented as a plea bargain. He now understood that it was not really a bargain, and that Minuk had stayed the other charges, not because they were part of the bargain, but because the Crown could not prove them. He pointed out that Minuk had said:

> "You also I thought I heard you say in the beginning, that the Crown was satisfied that it did have proof of dangerous driving cause death, that, that you had – hang on—that, that's what I heard you say, that there was evidence available for that charge, not clearly for the other charges."
> Evidence, p. 23-24

Minuk, however, went on to explain what he meant by proof of dangerous driving:

> "I told you, if the language that I've used was that on the test for the prosecution and the laying of the charge was there a reasonable likelihood of conviction, the answer to that is yes. Can I, I said to you and further a trial is conviction or is the evidence sufficient beyond a reasonable doubt, that can never be a certainty."
> Evidence, p. 24

Quite understandably, this only confused Chief Judge Wyant more. What Minuk was saying was that although he was satisfied that there was a reasonable likelihood of conviction, he could not be certain. "Well, of course it can never be a certainty…" But exactly what did Minuk mean? Chief Judge Wyant was obviously confused with this answer:

> "But now, now you you're coming back and now as I first heard you say, we couldn't prove these other cases but we could prove this and the accused came forward and said that he was prepared to plea to that. That doesn't, it seems to me in that description speak of a plea bargain or exigencies or quid pro quo. But then you went further and then said, the exigencies of this case, the guilty plea, gave up his rights to trial, you quoted basically what the Court of Appeal has said.
>
> And I'm confused. I'm confused for a number of reasons. I have never heard this before, never, and it's clearly a very, very, very, significant part of the sentencing process. Now I'm hearing it the second time around when I called you back. And secondly, I'm not quite sure that what you said in the beginning really is in line with, with your comments that there's a plea bargain. Is there a plea bargain or not. That's, that's really the question. Could you prove dangerous driving cause death? And if you could, which is what I thought you said, then is there really a plea bargain because the accused offers to plead guilty because he accepts the fact that the factual basis for that plea is there? I mean, you have to be careful how you define plea bargain and exigencies."
> Evidence, p. 25

As noted in the previous section, a plea bargain involves an exchange of a *quid pro quo*, something for something. If Minuk and Wolson had entered into a plea bargain, what

had the defence given up in exchange for a stay of proceedings on the other three charges? Minuk explained that the Crown had given up the uncertainty of obtaining a conviction on the dangerous driving causing death charge, even though he was confident of the Crown's evidence. But, as Chief Judge Wyant pointed, there is never any certainty in a conviction even with the strongest cases. Minuk attempted to explain what he meant but only repeated what he said earlier, that he believed he could prove the dangerous driving causing death case:

> "I, I don't know and cannot predict the outcome of the case, but I can tell you that the Crown did believe, does believe, always believed that we could prove dangerous driving. Wouldn't accept a plea of guilty to it if we didn't think we could prove it. That in itself would be wrong."
> Evidence, p. 26-27

Chief Judge Wyant was not satisfied with Minuk's explanation for calling the agreement, which he reached with Wolson, a plea bargain. What had Minuk given up in exchange for staying the charges and entering into a joint recommendation for a conditional sentence, when Minuk said that he felt that the Crown could prove dangerous driving causing death?

Chief Judge Wyant stated:

> "I guess I'm probably not making myself clear. There is, it seems to me, a difference to me between what is a meeting of minds, in other words both counsel saying we believe the factual basis for a plea is here. We believe the, the recommendation is appropriate and making that joint recommendation. And counsel – or as opposed to counsel making a plea bargain where there are exigencies, and therefore, that forms part of the, of the recommendation. And as I said, I never heard any of that. In fact, the transcript's pretty clear that both counsel felt the factual basis was there, and both counsel also felt, in the meeting of the minds that the, that the sentence recommended was appropriate. And it seemed in your comments today seemed to bear that out for a while until you then said there were exigencies in the case. There's always uncertainty in the criminal case. There's no question. You can never predict the outcome of a, of a trial. That's different than exigencies and *quid pro quo* and what the Court of Appeal has said on many occasions, so..."
> Evidence, p. 27

Chief Judge Wyant went on to point out, quite correctly, that Minuk was confusing a true plea bargain with the situation where an accused pleads guilty and throws himself on the mercy of the court and shows remorse. (Evidence, p. 28). A plea bargain was different because the accused had to give up something. Giving up something did not mean pleading guilty to a charge the Crown could prove.

Faced with Chief Judge Wyant's questions, Minuk then referred to some cases where an accused had been acquitted. He then stated that his case was "not the clearest of cases where the evidence is so overwhelming." This was an expression which Chief Judge Wyant said that he had not recalled him using before (Evidence, p. 30). Minuk then

changed his earlier position as to the strength of the case and told Chief Judge Wyant that "the case was weak" (Evidence, p. 32) and was "a case which was not very strong on the facts..." (Evidence, p. 33). Now that Minuk was telling the court that the case was not a strong one but in fact a weak one, Chief Judge Wyant was prepared to accept that "this was a plea bargain as you've described..." (Evidence, p. 35).

When Wolson was given an opportunity to make submissions, he stressed that this was a case where alcohol did not play a part in the plea of the accused, that it was a case of "in effect not keeping a proper lookout, that there was a departure from the norm" and that was the basis for the plea. He did not accept the consumption of alcohol as any part of the plea. The issue was an unexplained accident. Wolson referred to a head injury saying: "I would expect that he did fall asleep, I don't know." He stressed that it was a joint recommendation. He then referred extensively to the sentencing authorities and submitted that the only issue is whether an off-duty police officer should be treated more severely and is disentitled to a conditional sentence.

Chief Judge Wyant then put to Wolson the very issue that bothered him and that was raised with Minuk. Was it or was it not a true plea bargain? Chief Judge Wyant needed an answer because it was one of the factors that the Court of Appeal considered in determining whether or not the trial judge was correct in rejecting a joint submission as to sentence.

Chief Judge Wyant stated:

> "And of course you're aware, and I've canvassed this with Mr. Minuk earlier, that there are joint submissions and there are joint submissions as a result of plea bargains. The two things are actually different. A joint submission is where counsel have a meeting of the mind, because they accept the factual basis for the plea, and in fact based on sentencing precedents accept that a certain sentence or something within the range of a certain sentence is appropriate.
>
> A joint recommendation based on a plea bargain is where there are exigencies. Where there are difficulties in the case, not where there's just an acceptance that there's factual proof, but difficulties in the case such so that the extreme uncertainty of the subsequent trial, and there's always uncertainty, as I've pointed out to Mr. Minuk, but the extreme uncertainty based on the exigencies cause counsel to engage in a *quid pro quo* and arrive at a plea bargain. And last time that was never presented, and Mr. Minuk now says that this was in fact a true plea bargain. And I just, I need to canvass that with you, because there's no question it's a joint submission. The two of you have a meeting of minds not only with respect to the, the fact that the plea is justified, but on the basis of the sentencing precedents what the court ought to consider. *But is it a plea bargain? That's the question."*
> Evidence, p. 54

Wolson did not answer directly whether it was or was not a plea bargain. What he said was:

"Well, I think when experienced counsel discuss cases and they point out as defence would do that there's some weakness here, but in return for that not contesting the matter and believing that a, a plea can be made justifiably, as I have and as I've said to you earlier today, then in my view, you ought to accept that two counsel who know the case advance a position of a recommendation, obviously we take into account what our positions are. We take into account that there may be some issues of, of – that are contested because of I might say issues as to the nature of the investigation, it's just part of the process. I didn't. I didn't put it on the record before, quite frankly. I, I simply indicated to you the basis of the plea, the fact that the plea is not as a result of impairment as I stated before, but as a result of, *of momentary lapse* and not – I ought to have said not keeping a proper lookout in the circumstances. That's the nature of the plea.

Now, I don't think that I can go further than that. I think when counsel look at the case and they see difficulties with the case, it's part and parcel of the process of the discussion that led to the joint recommendation."
Evidence, p.55

Chief Judge Wyant then asked Wolson whether alcohol was a factor in the plea and Wolson stressed that it was not. Wolson said to Chief Judge Wyant that the plea was entered on the factual basis that it was a momentary lapse of attention or the failure to keep a proper lookout by Zenk. He said that this constituted the ingredients of the charge of dangerous driving causing death. Chief Judge Wyant then indicated that he was obliged to ask Minuk whether he intended or wished to call evidence on alcohol consumption as part of the plea. Minuk asked for a five-minute adjournment and left the courtroom. During that five-minute adjournment, Minuk placed a call to call Kaplan and Slough. When court resumed, Minuk told Chief Judge Wyant that he was not going to call any evidence of alcohol consumption. Chief Judge Wyant then adjourned the case to October 22. On that day, Chief Judge Wyant imposed a conditional sentence of two years less a day on Zenk. He did not impose a driving prohibition pursuant to the Criminal Code as had been agreed upon by Minuk and Wolson.

9. What the cause of the confusion was for Chief Judge Wyant

In my view, there were two reasons why Chief Judge Wyant was confused in attempting to determine whether Minuk and Wolson had reached a plea bargain on the charges that the Crown would prosecute and, if so, what the underlying facts of the bargain were. The first reason is the practice that is followed in Manitoba Provincial Courts as described by Wolson to this Inquiry. The second is the failure of Minuk and Wolson to present a formalized statement of the terms of their plea agreement to Chief Judge Wyant.

Wolson advised this Inquiry that, where an accused intends to plead guilty in the Manitoba Provinical Courts, the accused or his counsel will waive arraignment and the reading of the charge, and indicate that the accused intends to plead guilty to one or more specified offences. The judge will then inquire of the accused whether he understands the significance of his plea and the accused will be asked how he pleads. The accused will then enter his or her guilty plea, the judge will record a conviction and the matter will be adjourned to another day for sentence while a pre-sentence report is obtained.

If the Crown does not intend to proceed with any additional charge or charges, the Crown will ask that the charge be stayed instead of withdrawing the charge. At the time that the guilty plea is entered, the Crown does not read into the record the facts relied upon in support of the plea. Those facts in support of the plea are presented to the judge on the date of sentencing. Wolson said that if the accused or his counsel indicates, at any time before sentence is imposed, that he or she disagrees with an allegation of the Crown in support of the plea, the judge will strike the plea of guilty. He indicated that even a comment by the accused to the probation officer preparing a pre-sentence report that the facts are not admitted will cause the case to be referred back to the judge who accepted the plea, who may then strike the plea.

The Criminal Code is clear that there should be an election by the accused as to his or her mode of trial (where there is a right to an election); the accused should be arraigned upon the charge that the Crown is proceeding with; and the accused's plea of guilty should be taken and recorded by the clerk of the court. The authorities are clear that the Crown should then be required to state the facts upon which the Crown relies in support of the plea. The defence counsel or the accused where he or she is unrepresented should acknowledge acceptance of those facts. Although subsection 606(1.1) (a) and (b)(i)) of the Criminal Code imposes upon a trial judge the obligation to be satisfied that the accused is making the plea voluntarily and that he understands that the plea is an admissions of the essential elements of the offence, the duty upon the judge does not stop there.

The judge should not accept the plea unless he or she is satisfied that the facts, read by the Crown and acknowledged by the accused, support the plea. There is a duty upon the judge to reject the plea if the facts alleged by the Crown and accepted by the defence, do not support the plea: *Johnson and Creanza* (1945), 85 C.C.C. 56 (B.C.C,A.); *Hand (No.1)* (1946) 85 C.C.C.388 (B.C.C.A.), *Gordon* (1947), 88 C.C.C. 413 (B.C.C.A.); *Doiron* (1958), 124 C.C.C. 156 (N.B.S.C. App. Div.).

If the Crown alleges acts committed by the accused in aggravation of the offence, which the accused denies, the Crown is required to adduce evidence to prove those facts. In *Gardiner* [1982], 2 S.C.R. 368 which Minuk referred to in his submissions, the Supreme Court said that the Crown must establish the commission of those aggravating acts by the accused beyond a reasonable doubt. Unless those alleged aggravating acts are established beyond a reasonable doubt, the trial judge must ignore them when imposing sentence.

It was suggested by Peck and Gover that the problem of uncertainty on the part of Chief Judge Wyant over what had been admitted could have been avoided if Minuk and Wolson had entered into a written, agreed, statement of facts which had been presented to Chief Judge Wyant. While an agreed statement of fact would have gone a long way to avoiding the problem that occurred in this case, a written, agreed, statement of fact is not always necessary. What is important is for the Crown to advise the presiding judge in open court exactly what facts he or she is relying upon in support of the plea. Also the Crown court should obtain the acknowledgement, in open court, of counsel for the

defence or the accused that they accept those facts in support of the plea. Here, Minuk failed to set out clearly the facts that supported the plea.

Minuk also failed to alert Chief Judge Wyant on August 22, 2007 that the joint position, arrived at by him and Wolson, was as a result of plea bargain, which he had a responsibility to do as prosecutor.

It was recommended by Commission counsel that I should recommend to the Minister of Justice that he cause a Ministerial Policy to issue relating to the presentation of guilty plea requiring that:

> (a) at the appearance where the plea of guilty is made, prosecutors must present the presiding judge with the factual foundation for the criminal charge, and call for a clear admission of the facts to be made by the accused, and further requiring that
> (b) in complex or serious cases [as defined by Manitoba Department of Justice] that prosecutors shall attempt to secure in writing, the agreed statement of facts that will form the foundation for the plea

I agree with, and adopt that recommendation.

In the early 1990s, the late Honourable G. Arthur Martin, Q.C., considered by many as Canada's pre-eminent expert on criminal law, was asked by the Attorney General of Ontario to conduct a study on Charge Screening, Disclosure and Resolution Discussion. On page 323 of his report, released in 1993, he made the following recommendation:

> "It is improper for the Crown to withhold from the Court any relevant information in order to facilitate a guilty plea. In cases where not all matters are admitted, the Crown should advise the Court of the allegations and then proceed upon the admitted facts. In such cases, the Court will sentence on the admitted facts only."

The basis of his recommendation was as follows:

> "The recommendation is made in the interests of ensuring that there is placed on the record in open court all information that assists the public, victims, and witnesses in understanding how the charges initially laid by the police following a criminal act resulted in the plea and the disposition proposed by counsel following resolution discussions. There is a risk of undermining public confidence in the administration of justice if an offence which appeared grave at the time of the arrest is, when disposed of by an agreed-upon plea, treated as a less serious offence with no explanation offered for the change in position."

That judge found support for his recommendation in a report prepared by the Honourable A.S. Dewar at the request of the Attorney General of Manitoba, October 1988 (p. 52-53) known as the Dewar Report:

I would therefore make the following recommendation:

> "That the Minister of Justice cause a Ministerial Policy to issue requiring all prosecutors to recognize that it is improper for the Crown to withhold from the court any relevant information in order to facilitate a guilty plea and, where not all matters are admitted, to advise the court of the allegations and then proceed upon the admitted facts."

Commission counsel recommended that I recommend to the Minister of Justice that he cause a Ministerial Policy to issue requiring all prosecutors who resolve charges through resolution discussion to state clearly for the record the basis upon which the resolution was reached, including by:

(a) stipulating any compromises or concessions that have been made by the prosecutor in securing the guilty plea

(b) explaining, with specificity, any exigencies that motivated the prosecutor to refrain from proving aggravating facts, or to agree to the sentence being proposed, or to stay any related charges

I agree with, and adopt, that recommendation.

Exhibit 252, is a letter (dated August 8, 2008) from Slough to Mr. Paciocco indicating that it was the intent of policy directive Laying and Staying of Charges (Exhibit 216) that "it is not the normal practice to formally disclose on the court record why charges have been stayed, unless the decision has been made to stay or withdraw the charges pursuant to the public interest factor." No reason was provided why disclosure should be restricted to the public-interest factor. Surely, it is always in the public interest to know why a charge has been stayed.

I therefore make the recommendation requested.

10. Was the agreement reached between Minuk and Wolson a true plea bargain

The agreement reached by Minuk with Wolson must be recognized to be a plea bargain, although a lopsided one in favour of the defence. As already noted, and Chief Judge Wyant explained to Minuk and Wolson, a plea bargain is an exchange of a *quid pro quo,* something for something. Chief Judge Wyant had some legitimate concerns as to whether there had been a true plea bargain. I share those concerns. What did Wolson give up in exchange for a plea of guilty to a charge of dangerous driving and a conditional sentence? Kaplan said that the trade off was the agreement by Minuk, that as a matter of precedent, the case falls with the realm of a conditional sentence. Minuk told Judge Wyant at the beginning of their colloquy on September 12, 2007 that he had a strong case of dangerous driving. As the discussion continued, Minuk attempted to justify the bargain on the basis there was a risk that the Crown could not succeed on the dangerous driving charge. When Judge Wyant responded that there was always a risk that a prosecution would fail, the dangerous driving charge which was once considered by Minuk to be a strong case, it became weaker and weaker until Judge Wyant was told that the case was now a "weak one" and "not very strong on the facts."

Peck was of the view that it was consistent with the Manitoba Crown's policy directive for Minuk to agree to accept a plea of guilty to dangerous driving causing death and a joint recommendation for a condition sentence of two years less a day. It was Peck's opinion that given the state of the investigatory record, Minuk was acting within acceptable prosecutorial standards in deciding not to prove the consumption of alcohol in this case. His opinion was also based on the fact that courts often imposed conditional sentences for dangerous driving causing death. He relied upon the directive of January, 2005, requiring an independent prosecutor to be guided by the prosecution policies issued on behalf of the Attorney General of Manitoba and applicable to all prosecutions undertaken by the Province. This directive reads in relevant part:

> "It is proper for Crown counsel to make agreements respecting pleas or sentence with a view to avoiding an unsuccessful prosecution. Thus, for example, where the deficiencies in the available evidence create a substantial likelihood of acquittal, it is appropriate for Crown counsel to agree to pleas of guilty to lesser but related charges or agree to recommend a less severe sentence than would otherwise be sought provided such agreement does not bring the administration of criminal justice into disrepute."

Gover disagreed. He was of the view that it was not within acceptable general prosecutorial standards to agree to this plea bargained arrangement. He regarded a conditional sentence of two years less a day for the offence of dangerous driving causing death as extraordinarily lenient for two reasons. The first was the fact that Parliament had expressed the view that conditional sentences should not be available for the defence of dangerous driving causing death. On December 1, 2007, an amendment to section 742.1 of the Criminal Code came into effect. The amendment provided that conditional sentences would no longer be available for offences involving serious personal injury (as defined by section 752) and those offences punishable by maximum terms of imprisonment of 10 years or more. Dangerous driving causing death is a serious personal injury offence and is punishable by a maximum term of imprisonment of 14 years.

Gover recognized that section 11(i) of the Charter of Rights and Freedoms guarantees an accused the benefit of a lesser sentence if sentenced after December 1, 2007. But it was still open for the Crown to cite the amendment as evidencing Parliament's intention that conditional sentences not be granted for this offence. His second reason was that, given the available evidence of alcohol consumption; the presence of some indicia of impairment; and the absence of any explanation for Zenk's failure to stop, the submission by Minuk that a conditional sentence for the offence of dangerous driving causing death was so lenient as to be outside the range of sentence and to bring the administration of justice into disrepute.

I agree with Gover's opinion. The case was not "a case which was not very strong on the facts" or a "weak case" as Minuk portrayed to Chief Judge Wyant at the end of his submissions. Nor was it just "a good case," as he told Chief Judge Wyant at the beginning of his submissions. In my view, the dangerous driving causing death case was very strong on the facts and on the evidence. Even Wolson testified before this Inquiry that he felt that he had no more than a 10 per cent to 12 per cent chance of obtaining an acquittal. Zenk had driven his truck, under ideal weather conditions on a straight highway

that was marked with yellow caution lights and with a red light at the intersection, in a straight line into the back of Crystal Taman's vehicle. There was evidence that Zenk's vehicle never wavered all over the road. There was evidence that Zenk never attempted to avoid the collision or applied his brakes before the collision.

The report of Blanford, the RCMP Forensic Traffic Collision Reconstruction (Exhibit 60), which was part of the Crown brief sent to Minuk, indicated that Zenk, if driving at 80 kilometres, as Shaw estimated Zenk's speed to be, would have had at least 15 seconds warning before the lights at the intersection changed to red. A period of 15 seconds without an appropriate response can hardly be considered a momentary lapse of attention as was suggested by Minuk and Wolson. Minuk's only justification for the agreement, as he told Chief Judge Wyant on several occasions, was that he could not predict the outcome of the case. However, as Chief Judge Wyant reminded him, no prosecutor can ever predict a conviction with certainty.

In my view, Minuk gave up the opportunity to try to prove alcohol consumption without any *quid* in return. He also gave up the opportunity, without any *quid* in return, to call a number of witnesses who made observations that, after the accident, Zenk smelled of liquor and had other symptoms consistent with impairment. He gave up the opportunity without any *quid* to argue that Zenk should have been sentenced to jail and not given a conditional sentence. He gave up the opportunity to seek a driving prohibition.

This was not a case which fell within Manitoba Department of Justice's policy directive (referred to above) that authorized a prosecutor to make an agreement "respecting pleas or sentence with a view to avoiding an unsuccessful prosecution." It was not a case "where the deficiencies in the available evidence create a substantial likelihood of acquittal." In my view, the agreement reached by Minuk with Wolson brought the administration of criminal justice into disrepute.

11. Was the agreement consistent with Manitoba Crown policy directives and acceptable prosecutorial standards for Minuk to stay the charges of criminal negligence causing death, impaired driving causing death and refusal to provide a breath sample

The directive, dated April 2001, provides as follows:

> "In the assessment of the evidence, a bare prima facie case is not enough: the evidence must demonstrate that there is a reasonable likelihood of conviction. This decision requires an evaluation of how strong the case is likely to be presented at trial. Crown Attorneys are to make this evaluation impartially and according to law.
>
> A proper assessment of the evidence will take into account such matters as the availability, competence and credibility of witnesses and their likely impression on the trier of fact, as well as the admissibility of evidence implicating the accused. Crown Attorneys should also consider any defences that are plainly open or have been indicated by the accused, and any other factors which could affect the likelihood of conviction."

Both Peck and Gover expressed the opinion that the decision to stay these charges was consistent with the Manitoba directive and within acceptable prosecutorial standards. As they both point out in their opinion, there were significant impediments because of the quality of the investigation in proving the impaired driving causing death and the refusal to provide a breath sample charges. Having reviewed the investigative evidence of the ESPPD and the PSU, I share their opinion. The charge of criminal negligence causing death imposed on the Crown the obligation to prove that Zenk showed a wanton and reckless disregard for the lives and safety of others on the highway. There would have had to be evidence of driving by Zenk that was such a marked and substantial departure from ordinary prudent standards of driving that it would have been said that his act or omissions showed a wanton and reckless disregard for the lives and safety of others on the highway. In the absence of such evidence, I agree that it was a reasonable exercise of discretion for Minuk to stay the charge of criminal negligence.

12. Did Minuk act independently of Manitoba Department of Justice in the exercise of his discretion to enter into a plea bargain

The Attorney General, as the chief law officer of the Crown, is answerable to the Manitoba Legislature for the conduct of prosecutions by his or her Crown counsel. It is therefore essential, in order to carry out the duties entrusted, that the Attorney General be apprised regularly of the prosecutions that are being conducted by his or her staff. The appointment of an independent special prosecutor places the Attorney General on the horns of a dilemma. While the Attorney General is answerable to the Legislature, he or she must also ensure that in obtaining up-to-date information on how special independent prosecutors are conducting their prosecutions, those enquires do not compromise the independence of the special prosecutor.

At the same time, it is clearly inconsistent with the duty and responsibility of an independent prosecutor to seek advice from, and the consent of, an employee of the Attorney General in their conduct of a prosecution. Since the purpose of appointing an independent special prosecutor is to ensure public confidence that the government will not interfere in the prosecution of a government employee (in this case a police officer employed by a municipal government), and that the prosecution will be independent of any government influence, seeking the consent of the Attorney General's department flies directly in the face of the purpose of the appointment. However, it is also recognized that independent special prosecutors need to have access to experienced counsel for consultation and advice, just as any government prosecutor has the opportunity to consult with the Crown or other colleagues in his or her department.

This dilemma faced the staff of the Attorney General. Minuk had been retained by Manitoba Department of Justice to conduct prosecutions where a prosecution required a prosecutor who was independent of them. As Minuk's client, Manitoba Department of Justice was entitled to an update from time to time of the status of the prosecutions Minuk was conducting. The staff needed that information so that they could report to and brief the Attorney General. Although an independent prosecutor, it was still incumbent upon Minuk to keep the Attorney General informed so the Attorney General could respond to questions raised in the Manitoba Legislature. The difficulty, however, arises

where the independent prosecutor does more than merely report to the Attorney General. The difficulty arises where the independent prosecutor also seeks approval by the Attorney General's staff of the decisions that he has made.

During the course of the prosecution of Zenk, the question arose whether Minuk had crossed the line from merely keeping Manitoba Department of Justice advised, to actually seeking the approval of the Attorney General's staff of his conduct of the prosecution, including the plea bargained agreement he had made with Wolson. As already noted, the evidence revealed that Minuk had contact with Kaplan on 30 occasions, with Ireton on seven occasions and with Slough on nine occasions. Kaplan did not consider these contacts compromised the appearance of independence. He said:

> "In this particular case, Mr. Paciocco, the contacts of approximately 30 or 40 times, whether by e-mail or whether by phone, over a period of 32 months, my view is, no, it doesn't show any interference. The decision and the end result was always outside counsel and that's why we go to outside counsel."
> Evidence, p. 6644, l. 9-16

I am satisfied on the evidence that Minuk did not seek the consent or approval of Kaplan and Slough to his decision to plea bargain with Wolson. I am convinced that he spoke with them for the purpose of advising them what he intended to do and, to use his words "ensure that he was thinking clearly." I am also satisfied that Kaplan and Slough did not instruct Minuk on how they expected him to proceed in this matter, nor did they indicate to him that they consented to his entering into the plea bargain. I am further satisfied on the evidence that Minuk's contact with Kaplan and Slough throughout this prosecution was for the purposes of keeping them and, in turn, the Attorney General, advised of the status of the prosecution.

Although Minuk's e-mail (dated September 9, 2007) to Kaplan, attaching the proposed submissions he intended to make when court resumed on September 12, 2007 requests Kaplan to provide "any comment or suggestions," I am not convinced that it was sent to obtain Kaplan's approval. The memorandum (dated September 20, 2007) was in response to an e-mail request (dated September 19, 2007) from Slough to Minuk that he provide "the most complete information" so that he could do a briefing note for the Premier. There is no suggestion in that e-mail that the briefing be for any other reason.

Nevertheless, I must respectfully disagree with Kaplan when he says there has not been a public perception that Minuk sought his and Slough's approval as to his conduct of the prosecution and, in particular, his plea bargain with Wolson. It is inevitable that the public, if apprised of the nature, frequency and intensity of the contact between Minuk and Ministry officials, would consider that Minuk did not have the independence expected of an independent prosecutor. It is inevitable that the public would not consider Minuk independent, because he frequently sought their comments and suggestions.

An independent counsel cannot be considered independent of government if he is sending drafts of sentencing submissions to government counsel asking for their comments or suggestions. It is this public perception that has, in my view, led to the public's view that the prosecution of Zenk has not been conducted independently of government influence.

It is that public perception that can cause a lack of confidence that an independent prosecutor will be the willing tool of the government.

The independent prosecutor, for obvious reasons, does not have the opportunity to consult with and discuss his case with other colleagues. For example, Kaplan spoke of the conditional sentence policy within Manitoba Department of Justice:

> "A case conference is available to the line Crown Attorneys, where they have a matter of obviously import that they'd like to discuss, and usually it falls within the realm of murder, manslaughter, these type of cases primarily, to meet with, to request to meet for a case conference with that particular Crown, and hopefully with a bit of background, with that Crown, supervising senior Crown, and together with, on average, two directors from our office, set up the meeting and to discuss and receive the benefit of experience and input as far as decision making." Evidence, p. 6592-3, l. 17-25, l. 1-4

Commission counsel recommended that I recommend to the Minister of Justice the following amendment to Guideline No 5: COU: 1 "Appointment of Independent Counsel: February 2008" by replacing Terms and Condition of Appointment "d" with the following:

> "Independent prosecutors are required to keep the Department of Justice advised of all significant decisions that they propose to take in connection with the cases they are assigned. This is done solely to keep Department of Justice officials apprised of the status of the case, and to enable the Attorney general or the Deputy Attorney General to give direction as contemplated by "c' of this policy. Independent prosecutors should not consult with Department of Justice officials before making decisions but may secure legal assistance from Department of Justice officials who have special expertise in the area being prosecuted on strategies for implementing the decisions that have been taken by independent counsel. Should the legal advice rendered cause the independent counsel to change their strategy or position, this must be publicly disclosed on the Manitoba Department of Justice website after the trial judge has rendered a verdict in the case or the charge has been stayed. Subject to this policy, independent counsel has full access to all parties within, and all documents and information held by the Department of Justice for the Province of Manitoba. The Director of Regional Prosecutions and Education or any one designated shall facilitate contact between the departmental prosecutor and employees and the independent counsel and assist in accessing any documentation held by the Department of Justice."

I endorse this recommendation.

As already noted, independent special prosecutors need to have access to experienced counsel for consultation and advice just as any departmental prosecutor has the opportunity to consult with the Crown attorney or other colleagues in his or her department. It was recommended by Commission counsel that I also recommend to the Minister of Justice that:

> He establish a standing group of experienced criminal lawyers who are independent of Manitoba Department of Justice and who are able and prepared to provide advice and counsel to any independent prosecutor in making or implementing their decisions, and that when that system is established, to make relevant amendments to Guideline No. 5: Cou: 1 "Appointment of Independent Counsel.

I also endorse this recommendation.

In endorsing these recommendations, I am aware that Madam Justice Ruth Krindle conducted an extensive and thorough Canada-wide review of the Appointment of Independent Counsel on behalf of Manitoba Department of Justice and delivered her report on December 18, 2007. In that report, she stated (p. 14):

> (v) I understand that independent prosecutors meet periodically with the Director of Regional Prosecutions and Education to brief the Department on the progress of referrals, principally to assure the Department that none of the referrals is being neglected. This type of administrative meeting at the call of the Department is necessary and reasonable and in no way diminishes the independence of the prosecutor. However, the policy should acknowledge the fact of these meetings and state the administrative purpose in order that they are not misconstrued.

I am also aware that judge's recommendations have been incorporated into the February 2008 Guideline No. 5: Cou: 1 "Appointment of Independent Counsel." The two recommendations I have made to the Minister are intended to build on the recommendations made in her report.

PART D
COMPLIANCE WITH THE MANITOBA *VICTIMS' BILL OF RIGHTS*

1. The historical role of a victim in a prosecution

In preparing this historical note for me, I am indebted to Professor Alan Young (Young) for his helpful memorandum: Victims' Bills of Rights in Canada.

Prior to the Norman Conquest of England in 1066, Anglo-Saxon law placed the administration of criminal law in the hands of victims. From the seventh to the tenth century, criminal prosecutions were almost entirely private and partially motivated by the possibility of monetary compensation. An offender found guilty owed the victim a money payment, called the *bot.* In a homicide case, the offender was required to pay the victim's family a *wergild,* a monetary payment that depended upon the deceased's social status. Payment of monetary compensation could satisfy the desire for vengeance that was created by the wrongdoing of the aggressor, whether the injury or damage caused was intentional or accidental.
(Sir James Stephen, *History of the Criminal Law of England*, Volume 1, pp.51-74)

By the late tenth century, Anglo-Saxon kings began to require 12 nobles of a district to accuse and arrest those suspected of committing crimes in their locality. Penalties also began to change. The *bot* was now payable to the King or the church, or the community at large, rather than the family of the injured person. Two centuries later, during the reign of Henry II, the concept of "presentment" (by which leading men of a community were required to prepare a report of crimes committed in their community) had taken hold and was the ancestor of the grand jury proceedings that continued in Canada until the mid-twentieth century. Punishments also began to change. In the royal courts, hanging, fines payable to the King and forfeiture of property were the only punishment. However, presentments were almost exclusively confined to homicide and theft. Nearly all accusations of rape, mayhem, wounding, false imprisonment, assault and battery were still brought by private prosecutions called "appeals." This meant that although the legal sanction for crime was death or fines payable to the King, victims and their families could appeal and use the threat of legally imposed hanging or fines to induce compensatory monetary settlements.

By the fifteenth century, the grand jury assumed less and less an evidence gathering role and more a screening-body role. The juries assembled to try cases now began to rely more and more on evidence that the parties presented in court. Although all prosecutions were formally brought in the name of the Crown, victims assumed a predominant role in prosecutions with assistance from royal officials such as coroners and justices of the peace. However, by the nineteenth century, the growing problem of urban crime and the inefficiency of private prosecutions pressured governments to assume the conduct of public law enforcement and prosecutions. At that time, there were few benefits to victims other than the satisfaction of justice being done. By the mid-nineteenth century, most prosecutions were initiated by policeman.

It was during the reign of Henry II, that the concept of the King's peace began to take hold. At that point an act of aggression was no longer a personal thing between the victim and the offender. It was a breach of the King's peace – a crime against the state. Initially criminal matters and offences against public order were within the jurisdiction of local lords and local courts, while the King's court had jurisdiction over offences committed within the vicinity of the King himself. Eventually the King's peace was extended to the whole realm so that the King's court finally acquired a comprehensive jurisdiction.

As Professor Young writes:

> "In the historical evolution of the modern criminal process, the victim was transformed from prosecutor to mere witness, and the common law provided little or no procedural rights for witnesses."

He notes that the relegation of the victim to the role of witness has been supported by four fundamental principles which define the nature and function of an adversarial criminal process:

1. The prosecution is undertaken by the state, not the victim, in the name of Her Majesty the Queen.
2. The prosecutor is a quasi-judicial officer and a minister of justice, not the victim's lawyer.
3. The victim does not have standing in the criminal trial.
4. During the prosecution, the accused enjoys the presumption of innocence and due process.

Professor Young argues that case law has held that the prosecutor does not owe any fiduciary duty to the victim with respect to the exercise of his or her discretion. For example, he points to *K.P. v. Desrochers* (2000) 52 O.R.(3d) 742 (Ont.S.C.), where it was held:

> [27] The Attorney General represents society at large and the public interest. The Attorney General is not counsel to victim nor accused. The exercise of the Attorney General's discretion is reviewable in Parliament and the individual legislatures of each province. In that regard, the Attorney General occupies a special and time honoured position as chief law officer of the Crown, and answers critics within the precincts of Parliament and the legislatures. The Attorney General should not be required to answer critics in the Courts of law, save and except where the conduct complained of has been the result of the exercise of bad faith.

Professor Young also referred to *Levy* (2004), 184 C.C.C.(3d) (3d) 427 (Ont.S.C.J.). There the court held:

> [20] Restricting access to a criminal prosecution does not merely serve the Crown's convenience. Rather, it serves the public interest, protects the rights of the accused and furthers the proper administration of justice. Fairness to the accused demands that anyone who speaks in opposition to his or her

> interests in a criminal prosecution does so bearing the duties and restraints placed on Crown counsel: to be a minister of justice; to conduct the prosecution fairly; to refrain from inflammatory tactics and unsupportable positions: to make full disclosure – the list goes on.

The first recognition of the rights of victims or their families to express their feelings as victims about the conduct of an offender was the enactment in 1985 of section 722 of Canada's Criminal Code. Section 722, authorized a trial judge to permit a victim to file a victim impact statement, describing the harm done to, or loss suffered by, the victim arising from the commission of the offence. However, section 722 was only permissive and depended upon the discretion of the judge. In 1996, section 722 was finally amended to give the victim the absolute right to present a victim impact statement in writing or orally to the court. It also imposed a duty on the court to ensure that the victim was informed of his or her right to make this statement. Section 722(2) requires the victim impact statement to be in writing in the form and in accordance with the procedures established by a program designated for that purpose by the Lieutenant Governor in Council of the province in which the court is exercising its jurisdiction, and filed with the court.

2. Duties and obligations imposed upon a law enforcement agency by the Manitoba *Victims' Bill of Rights*

In 1985, the Province of Manitoba enacted *The Justice for Victims of Crime Act.* In 2001, the Manitoba Legislature passed *The Victims' Bill of Rights Act* (VBR) requiring the investigative and prosecutorial branches of Manitoba Department of Justice during the Crown's course of exercising their duties to consult with victims of certain crimes as defined by the act. The preamble to the bill recognizes that victims of crime have certain needs and the province has certain obligations towards providing those needs to victims. The preamble states:

> "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."

Section 1 of the bill defines a victim as the individual against whom an offence is committed, or the individual who was married to and living with the victim where the victim is deceased. Section 2 provides that the victim may obtain services from Manitoba

Department of Justice or an agency referred to in this part at any time by requesting services from Manitoba Department of Justice or agency or filing a general request for information with Manitoba Department of Justice or a law enforcement agency designated by the Minister.

Sections 3 to 11 recognize the obligation upon a law enforcement agency to provide certain information to a victim. This obligation includes the right to information from the agency about:

> (a) the rights and remedies of victims under the act, including compensation for victims
> (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 for obtaining services
> (d) the form of victim impact statement designated under section 722 of the Criminal Code
> (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

Section 4 imposes an obligation upon the head of the law enforcement agency responsible for investigating the offence to ensure that, where reasonably possible and at an appropriate time, to consult with the victim on 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. The agency must also attempt to consult about whether the 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.

Under section 7 of VBR, a victim is entitled, upon request, to the following information about the investigation of the offence, 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

A victim is also entitled to be interviewed by someone of the same gender in sexual offences (section 5); to confidentiality (section 6); to information about any breach of the accused's term of release or any escape by the accused from police custody (section 8); and the right to the return of property when the agency is satisfied it is no longer needed as evidence for the investigation or prosecution (section 9).

3. Contact by the East St. Paul liaison officer with the victim

Robert Taman, as the husband of Crystal Taman, was the victim (as defined by section 1 of the VBR). He learned about the accident from his daughter, Tara who called him on her cell phone at about 7:20 a.m. the morning of the accident. Tara and Kristin had been on their way to work and had come upon the accident. Graham took Tara's cell phone from her and told Robert the location of the accident.

Robert Taman drove to the scene of the accident in 10 minutes. Upon his arrival, Graham, who was standing by his cruiser, began speaking to him. Robert Taman noticed that his two daughters were in the back of the police cruiser waving frantically to him, and told Graham to let them out of the cruiser. Robert asked Graham if his wife was alive and where she was. Graham told him that she was alive and had been taken to the Concordia Hospital. Robert and his two daughters then got into Robert's automobile and set off in the direction of the hospital. Although the hospital is a short distance from the scene of the accident, Robert was directed by Graham to take a detour which led him through some back roads. It took him 40 to 45 minutes to reach the hospital. Robert, understandably, was angry and distraught because of the delay. He asked Tara to call her brother Jordan and other members of the family to meet them at the hospital. They also called Crystal's sister, Cory; Robert's brother, Randy; and Robert's parents, who were already at the hospital when Robert arrived.

Pedersen was the victim liaison officer for the Victims' Services Unit (VSU) of the ESPPD. She had learned about her obligations under the VBR from information given to her by Carter and had reviewed the material set out in the pamphlets provided by the Province. Bakema asked her to leave the accident scene and go to the Concordia Hospital to get particulars on both victims of the accident, Crystal Taman and Beattie. Pedersen arrived at the hospital at 8:48 a.m. and spoke to the Taman family. They wanted answers to what had happened. She told them that she would try to get the information and pass it on. She also told them that she could offer them information about where they could get grief counselling or other information they would want about the VSU.

Pedersen left the hospital and returned to the ESPPD station where she assisted in photographing and fingerprinting Zenk. Around 2:15 p.m. she went to the residence of Robert's parents with Justin Hall (Hall), a young person, who was a volunteer with the VSU. Pedersen and Hall were there for about an hour. It was the first time that Hall had attended as a VSU volunteer. Pedersen conceded that it was not the best time for Hall's first visit as a volunteer, but he was the only volunteer available at the time. Robert and the other members of the Taman family wanted to know what had happened and who had struck Crystal's vehicle. Pedersen told them that she did not know instead of telling them the truth – that she was not allowed to reveal details of the investigation until authorized

to do so. While at the Taman residence, Pedersen provided the family with a couple of pamphlets and brochures dealing with the rights of victims.

At around 3:55 p.m. the following day, Pedersen called the Taman home and spoke to Robert's brother, Randy. She called again around 7:00 p.m. and spoke to Robert, explaining that charges would be laid but she did not know what they would be. She also updated him about their attempt to locate Crystal's cell phone which had gone missing. The following morning, she spoke by telephone to Jordan advising him that she was going to be away for a brief period of time and that he had the option of following up with someone else from the VSU. She detected that he was frustrated by the fact that the family had not been told much about the investigation. That was her last contact with the Taman family.

Robert Taman recalled that Pedersen's visit on February 25 was not very productive. The family was suffering from the emotional shock of the accident and wanted details of what had happened. Robert said that Pedersen was very abrupt and officer-like, and would not give him any details. Pedersen told him that she could not comment because the matter was under investigation. She gave them a couple of pamphlets on how to deal with grief. He felt like talking, not reading a pamphlet. Robert could not understand why Hall, whom he described as a young kid, was there. Robert felt that the presence of Pedersen and Hall was intrusive and disturbing "almost breaking through this family bond" and said it "would have been better if they didn't come at all."

The first details Robert Taman received about the accident were provided by Cecil Sveinson, Crystal Taman's cousin. On the day of the accident Cecil, a Winnipeg police officer, attended at the accident scene upon hearing of Crystal's death in order to perform a religious ceremony. While there, he spoke to Bakema, and learned certain details of the accident. He then attended the Taman home and advised the family that the vehicle that struck Crystal's car had been driven by an off-duty police officer and that alcohol was involved. A couple of days later, Cecil filled in the Taman family with more details. He said that it was a "shifter" meaning "an officer who, at the end of a shift, gets together with other officers to wind down and release their inner stress with a few hundred beers." He relayed that a friend, Ron Glass, told him a few days later that a buddy who was talking to the tow-truck driver, was told that the truck "just reeked of alcohol" and he was sure that "this guy was drunk."

Robert Taman was never told by any member of ESPPD about what happened until March 5, 2005 when Bakema and Carter met with his family and Crystal's family at his in-laws' home. At that meeting, Bakema and Carter explained that they were going to have a press conference announcing that the driver of the vehicle that struck Crystal would be charged with four offences: dangerous driving causing death, impaired driving, refusing to give a breath sample and criminal negligence causing death. This was the first time that they learned the name of the driver. Bakema tried to console them by saying "there is nothing to worry about, we got him."

Robert remembered that Bakema said that "he is going to jail." However, Bakema said that he could only tell them about the charges but "nothing about the actual scene." Robert felt that they should have been given details to "help put together the puzzle of

why Crystal had died that day." He felt that details of the scene would have been helpful. There was no explanation why they could not be given more information about what had happened. He said that he and his family never discovered what had happened until two months before this Inquiry began.

Robert Taman felt that the police should have told him as much as he and his family were allowed to know and "then to go through the details of everything that is going on in the process so that we can actually understand it."

He said: "there is not enough information given, and when the information comes out, there are not enough details or explanations to actually help us understand." Robert could not understand how somebody like Zenk could kill somebody and "then be out and walking on the street" and to be able to go into a bar inside of four hours. Robert did not feel that ESPPD gave him information as to his rights and remedies under the VBR.

4. Whether there was compliance by the East St. Paul liaison officer with *The Victims' Bill of Rights*

The ESPPD was the law enforcement agency as defined in the VBR. Section 3 of the VBR imposed a duty upon the head of the law enforcement agency to ensure that the agency provided Robert Taman with the information listed in that section. Section 4 imposed a duty on the agency to consult with Robert about Zenk's terms of release. Section 7 imposed a duty upon the agency to give the Robert information about the investigation. Section 11 imposed a duty upon the agency to give Robert the name, address and telephone number of the prosecutor.

It is clear from the evidence that the ESPPD failed to comply with the provisions of the VBR. Robert was never given an application form to register as a victim. (section 2(1)). He was never given information about the rights and remedies of victims under the VBR (section 3(a)). The right to file a victim impact statement was not explained to him. (section 3(d)).

Robert was never given information about services available for victims (section 3(e)(i) or how to obtain information about the release of Zenk (section 3(e)(ii)(h). He was never consulted about Zenk's release from custody (section 4(b)). He was never told of his right to information about the status of the investigation. (section 7). He was not given the name and contact number of the prosecutor (section 11). It is easy to understand why he felt that he and his family were not treated with courtesy, respect or compassion as stated in the preamble of the VBR.

5. Duty and obligations of the prosecution to victims under The Manitoba *Victims' Bill of Rights*

Sections 12 to 14 of the VBR impose an obligation upon the director of Prosecutions to ensure that a victim, *who requests information about the prosecution of an accused,* is given certain information. Section 12 provides that a victim is entitled to information about:

(a) the court process, including the role of the victim, prosecutor and other persons involved in the process
(b) the right of the victim, and a person providing support to the victim, to be present during any court proceeding relating to the alleged offence, subject to any court order of exclusion
(c) how to obtain the dates, times and places of proceedings relating to a prosecution
(d) the process for entering a plea of guilty or not guilty, including the possibility of discussions between the Crown attorney and an accused person, or his or her legal counsel, on a resolution of the charge
(e) the process for sentencing a person convicted of an offence
(f) the right to file a victim impact statement, and to add to it any time before the sentencing of the accused person
(g) how to obtain assistance to complete a victim impact statement
(h) the use of victim impact statements and pre-sentence reports in sentencing

Where the victim requests information about the status of a prosecution, section 13 imposes an obligation upon the director of Prosecutions to provide 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 charge laid against the accused person
(b) the name, address and telephone number of the office or Crown attorney that has conduct of the case
(c) the date, time and place of a proceeding that relates to the prosecution
and is likely to affect its outcome, including a preliminary hearing, trial and sentencing hearing
(d) the outcome of the prosecution

Finally, and most importantly for the purpose of this Inquiry, section14 requires the director of Prosecutions, at the victim's request, to *consult* the victim, if it is reasonably possible to do so without unreasonably delaying or prejudicing an investigation or prosecution on:

(a) a decision on whether to lay a charge
(b) staying the charge against the accused person
(c) any agreement relating to a disposition of the charge
(d) any position taken by the Crown in respect of sentencing, if the accused person is found guilty

6. Contact by the Prosecution liaison officer with the victim

Lesley McCorrister (McCorrister) was one of the two Winnipeg VBR workers, from 2001 to January 2006. She was assigned by the director of Prosecutions to provide services on behalf of the prosecution to the Taman family. The other victims' rights worker was Monica Dyck (Dyck), who provided services when McCorrister was on vacation. McCorrister described her work as a messenger between the Crown attorney and the family or victim.

It was the practice of McCorrister and Dyck to check daily through the prosecutions records information management system (PRISM) to find out whether there had been any incidents tagged under the VBR. She and Dyck would pull the report and share the cases. They initiated contact with a form letter that comes with information sheets about the VBR whenever there was a prosecution. Included as well was information for the victim impact program. It was McCorrister's responsibility to explain to victims her role and the role of the prosecutor; inform the victims of court dates; meet with victims in her office on a court date; walk the victims to the courtroom; and explain the process to them, including where they were to sit during the hearing. McCorrister would also be the go-between to schedule meetings between the victims and the Crown attorney, and attend the meeting if she could. She understood that victims want information about the facts behind the case; about delays in the case; about resolutions and how the case might end; whether there might be a plea bargain or a trial; and whether there is going to be a conviction. She said that victims do not know how the system works; what is going to happen in the courtroom; or what everybody's role is; and that victims are also emotional because of their tragic loss.

McCorrister's first communication with Robert Taman was a letter she sent to him on March 4, 2005. Included in that letter were fact sheets: *The Victims' Bill of Rights Overview, Understanding the Victims' Bill of Rights, Manitoba Victim Impact Statement and The Role of the Prosecutions Division.* Her first contact with Robert was when he called her on March 17, 2005 and told her that he had received the VBR information that she had sent him. She explained what the VBR was, what she did and how she could assist him.

McCorrister advised Robert that Zenk's first court appearance was March 30, 2005 and that it was a waste of time for him to attend. Robert told her that he would like to be in contact with her on a bi-weekly basis. He testified that he understood from their conversation that she was to be his source of information and that she would provide him with updates bi-weekly.

McCorrister understood from their conversation that she would not be contacting Robert bi-weekly unless she had something to report, although it would have been open for him to call her if he wanted information from her. Robert provided her with his cell phone number to contact him. He said that he had to call her periodically for updates.

On March 18, McCorrister received a call from Jordan Taman inquiring why her letter of March 4 did not refer to a charge of refusing a breathalyzer sample. She explained that it was an error. She told him that the case could take two years before any resolution. On March 31, she received a call from Tara Taman expressing her concern about the delay in the proceedings and inquiring whether the fact that Zenk was a police officer would have an impact on the case.

McCorrister explained that the delay was a normal process in the court system. Robert called McCorrister on April 5 inquiring how soon she needed his victim impact statement. She told him that statements were used only at sentencing hearings. On May 26, McCorrister spoke to Robert about his concern whether a plea bargain would take

place without his knowledge. She told him that the Crown attorneys were good at keeping families informed about talks taking place with the defence.

Zenk's first appearance on March 30 was adjourned to April 27. On that date, a preliminary inquiry was set for June 5, 2006.

On June 1, 2005, McCorrister sent Robert Taman a letter advising him that the preliminary inquiry had been again adjourned – to June 16, 2006. Unfortunately, this letter had been sent to his old address and had been returned. On June 1, 2005, Robert called her. She told him about the new date and said that she would be in touch with him in April to arrange a meeting with the Crown. The next time she spoke to Robert was 11 months later on May 1, 2006 when he called her. Robert said that he wanted to meet the Crown. He told her that he had heard that his in-laws had met with Minuk, the independent prosecutor. He was upset because he felt that as the registered victim, he should have been contacted first and felt that he had been kept out of the loop. She then arranged for a meeting with Minuk on May 3 and called Robert to tell him. Robert told her that he wanted her to go with him to the meeting.

7. Whether there was compliance by the liaison officer with *The Victims' Bill of Rights*

I am satisfied that McCorrister and Dyck made genuine efforts to comply with the responsibilities imposed on them under the VBR, although some communication difficulties arose when Robert changed his address and telephone numbers were lost. McCorrister attended most meetings with Minuk, except, unfortunately, the one where resolution of the charges was discussed. She advised them of court dates and attended court with them and showed them where they were to sit. Both Jordan and Tara said that McCorrister treated the family with respect, courtesy and professionalism. Kristin said that she was always extremely nice and pleasant to be around. Robert described McCorrister as a good-hearted woman and said that he had respect for her. His main complaint was this:

> "I like Lesley, I think that she does a good job, to the best of her ability, but I just don't believe she has the tools to be an independent person dealing with a victim. Somebody who is just an extension of the prosecution, is the prosecution. And if there is a situation that comes up with the prosecution that Lesley has to deal with, she doesn't deal with it as an independent, she deals with it like she is the prosecution. And that's difficult. And I sympathize with her and her job, but in the end I have to say no. And I am saddened to say that, because Lesley I believe is a good person, but I have to say no."
>
> Q. Sir in fairness to Ms. McCorrister, just so we are clear, when you talk about her not having the tools, do you mean her job function doesn't allow her to do what you think needs to be done by a victim support worker, or are you commenting on her ability to discharge the function that she has?
> A. No, I am commenting on what she is allowed to do.
> Evidence, p. 211-2, l. 20-25, 1-8

Robert had not been given any assistance in preparing his victim impact statement. He made the following comments about the victim impact statement documents that had been given to him by McCorrister:

> Q. Did you find the document clear and helpful?
> A. That's a difficult question to answer. If somebody going through or not going through an emotional time like we were, if somebody was just a regular person, picked up the document to read it, they might find it extremely clear and, yeah, it's not a problem. But when you are in an emotional state and you have got to write something of this nature, things aren't quite as clear all of the time. And so I wouldn't find it that clear at that time, no.
> Q. Would you have any advice or recommendations to the crime victim service workers about how to handle that situation?
> A. I would suggest a lot more communication with the victims, and a definite layout of writing the statement, and possibly even a visit, either in their office or your home. It is not like it is going to take four or five hours, just you have to be there to sort of present the guideline. None of this takes a long time, just a matter of explaining it properly, so just better communication.
> Evidence, p. 210-11, l. 16-25, 1-14

8. Contact by the independent prosecutor with the victim

On May 3, 2006, Robert and Jordan Taman and McCorrister met with Minuk at his office. Robert expressed concern that he was not the first member of the family to meet with Minuk. He testified that Minuk told him that he had met with his father and mother in-law "on a matter not related to the charge." Minuk denied this and said that he told them he had met with them because of a request by the Victims' Service Unit. However, McCorrister confirmed Robert's evidence in her memo to PRISM and I accept Robert's testimony on this issue.

Robert testified that Minuk told them that the issue of sentencing was not consistent and, quite often, any jail time was spent as house arrest. Minuk denied discussing specifics of sentencing. However, McCorrister also confirmed Robert's testimony in a memo to PRISM and I accept Robert's evidence on this issue.

Robert raised the issue of the victim impact statements and was told that they were only read at sentencing. Minuk told him that the preliminary inquiry would show any weaknesses or strength in the case. McCorrister said that she felt that Robert was having difficulty understanding how anybody could spend jail time in his own house.

Minuk told McCorrister that he wanted to meet with the Tamans again. On May 26, she called Robert to tell him that she had arranged a second meeting on May 29, 2006 with Minuk. At the meeting, Minuk told the Tamans that there were problems with the case, that he was sending out his investigators to double check his information and that he would have to delay the preliminary inquiry.

Robert said that he understood that the delay was "to close some holes" in the prosecution of Zenk, but he was not told what those holes were. He was hoping that

Minuk was going to do a proper investigation, find the information and get the matter back into court. Minuk did not inform Robert of the true nature of the problems – that it was the RCMP investigation into the conduct of Bakema. The issue of Robert's in-laws also came up at that meeting. Minuk told Robert that he was only listening to his in-laws "rail against the system" and that he was frustrated with them. Minuk said that "they were crazy" and was not going to meet with them again.

The following day, McCorrister called Robert Taman and advised him that it was going to be a year before the case was heard. This was followed by a letter advising him that the new court was July 16, 2007. However, the letter was returned because Robert had moved. She called October 18, 2006 to straighten out the matter of his new address and she entered the address in her PRISM system.

The next contact between McCorrister and Robert was on June 12, 2007, eight months later. Robert called her to find out if the July 16, 2007 preliminary inquiry date was still on. He was concerned whether there was going to be graphic pathology evidence and how that might affect his children. He was also concerned that the Crown and defence counsel might be plea bargaining. She suggested that he meet with Minuk to discuss the matter and arranged a meeting for the following day.

Robert and Jordan Taman met Minuk at his office on July 13, 2007. McCorrister had another engagement and was not present. Robert testified that Minuk told them that he was going to have to stay the charges of refusal to provide a breath sample and impaired driving because the East St. Paul Police had "screwed up the investigation."

Robert told Minuk: "I believe East St. Paul screwed up the investigation and I think everybody screwed up right up into your office." Minuk responded: "Sir, I suggest you choose your words carefully in this office." Minuk also told him that it was a good thing that "we are going to go with dangerous driving because that's the most serious of all the charges."

Robert disagreed, saying that he understood that impaired driving causing death was the most serious of all charges and that having alcohol with the charges made it a serious offence. Minuk repeated that dangerous driving was the most serious charge. Robert said that Minuk assured them that he could prove the dangerous driving charge but not the impaired driving charge. Robert told him he would rather fight and lose: "I would rather him just go to court, and if he is found not guilty and walks out a free man, than just dropping the charges."

There was also discussion about the sentence. Robert said that Minuk produced a three-ring binder with cases in it and read some of the decisions. Minuk told him that he was looking at two years less a day conditional sentence. Robert said he told Minuk: "so he is going to go home and sit on his couch and that's his punishment." Minuk told him "...oh, no, it is a very tough sentence." Robert was asked what, in his view, was the appropriate sentence and replied that if alcohol was involved, Zenk should go to jail for three to five years. Minuk assured him that it was not a plea bargain.

Robert Taman said that he, Tara, Kristin and Jordan met Minuk on July 16, 2007 outside the courthouse and were told by Minuk that the preliminary inquiry was being adjourned to the next day. McCorrister met Tara, Kristin and Jordan and she took them to the courtroom. The next day, the Tamans again met Minuk outside the courthouse. Minuk advised them that Zenk was pleading guilty to dangerous driving causing death. They were shocked. Minuk told them that if he was Zenk's lawyer, he would have gotten him off on all charges. Jordan was confused because Minuk had told them in his office on July 13 that he could absolutely prove the dangerous driving charge. Jordan again asked Minuk whether it was a plea bargain and was told that it was not.

Zenk was arraigned on the charge of dangerous driving causing death, pleaded guilty and Minuk stayed the three other charges. The case was then adjourned until August 22 for sentencing. Since August 22 was Crystal's birthday, Robert initially wanted to change the date for sentencing. He felt that it would be hard for him and his children to stand up and read their victim impact statements. However, he was concerned that it would only cause further delay, and after speaking with his children, it was decided that they would go ahead on August 22.

On August 22, the Tamans met Minuk outside the courtroom. Minuk told them that "the defence and I are recommending jointly that Zenk will plead guilty to dangerous driving causing death, and we are recommending two years less a day conditional sentence." Robert said that he was flabbergasted. He asked Minuk if there was any place on the document that Minuk had in his hand that he could write that the family did not agree. Minuk replied "no" and turned and walked away. Robert was astounded and felt insulted during the Inquiry when presented with a memo dated July 18 prepared by Wolson which read:

> "There is a militant father and mother of the deceased. The husband and the children are on side. Having said all of that, we will meet with Judge Wyant and discuss these issues with him."

On August 27, 2007, Robert Taman called McCorrister and expressed his anger about the hearing because all of the facts had not been read in and that Minuk had not sought a heavier sentence. She offered to call Minuk and set up a meeting. McCorrister called Minuk who said that he would meet with Robert but not until after the sentencing was completed. She communicated this to Robert in a telephone conversation on August 28.

Chief Judge Wyant had called counsel back for further submissions on September 12. Robert said that he was shocked when he heard Wolson advise the judge that his client was not agreeing that he had alcohol in his blood at the time of the accident. Chief Judge Wyant asked Minuk whether he was going to lead evidence of alcohol consumption. Minuk asked for a short adjournment and left the courtroom. Upon his return, he told the Taman family that he had requested the adjournment so that he could use the washroom. When court resumed, Minuk told Chief Judge Wyant that he was not leading any evidence of alcohol consumption.

After court, Robert Taman asked Minuk why he did not bring up anything to do with the crime scene. Minuk told him "if you really want to know about the crime scene, ask your

daughters, they were there, they know everything. They are the ace up your sleeve." He didn't know what Minuk was talking about. He testified that Minuk said "this all with a smile on his face, like I would be happy."

On the day of sentencing, Robert Taman recalled hearing the judge explain why he had to go along with the recommended sentence. After court adjourned, he and his children waited about five minutes to speak to Minuk who remained by the counsel table. The sheriff's officer then came over to them and told them that they would have to leave the courtroom, which they did. Robert said that while they were waiting for Minuk in the hallway, the sheriff's officer opened the courtroom door twice and looked out in the hallway as if he was looking for somebody. Later, he received a telephone call from a reporter that the sheriff officer had exited Zenk through the back door because of possible threats from the family. He was extremely insulted that "the killer is being lead through the back door and the law-abiding citizens are the ones being accused of being threatening."

Robert said that he presented a victim impact statement on August 22 even though he knew it was going to be a joint recommendation. He did so out of respect for Crystal. He felt that everything up to this time had been about the laws and that Crystal had been forgotten. However, his family were determined not to forget her and stood up and read aloud their statement.

Robert was asked whether he felt that victims' service had fulfilled its obligation under the VBR to make every reasonable effort to tell him about important events and consult with him at various stages during the prosecution. He testified that he felt that he was not adequately informed about court dates because the service kept calling him at his old telephone number and sending letters to his old address although he had given them his new number and new address. Robert said he did not feel that he was given a full explanation of the VBR although he was given some information. It was his recommendation that the victims' services have more communication with victims, and a definite, defined layout of writing the statement, and possibly even a visit. He felt that victim service workers should deal with victims independently and not as an extension of the prosecution.

Nevertheless, within the limited framework of the job functions, he felt that McCorrister treated him in a decent way. Similar comments were echoed by Tara, Kristin and Jordan about McCorrister. They felt that she was polite, respectful and seemed to understand their position. However, they all felt that Minuk had not treated them with courtesy, compassion and respect. Robert summed up his view of the VBR in these words: "It is difficult when you don't trust your prosecutor, and your victims' services is the extension of your prosecution."

Sveinn Sveinson (Sveinn) and his wife Victoria Sveinson (Victoria) are the parents of Crystal Taman. Although they are not defined as victims under the VBR, it is important to relate their involvement in this matter. Sveinn described their family as a very close one. He said that he worked in the justice system as a correctional officer and had spent the last 13 years before his retirement managing the laundry department at Stony Mountain Prison.

He and Victoria were on vacation in Victoria, British Columbia, visiting Victoria's sister when he received an early morning telephone call advising that Crystal had been killed in an accident. Victoria, who was sitting on the bed, knew something was wrong because of the conversation and he knew that he would have difficulty telling her what had happened. Victoria, who was very close to her daughters, Crystal and Cory, was devastated by the news. The Sveinsons drove their car to the mainland and arranged to fly home, arriving in Winnipeg at around 11:00 p.m. where they were met by members of the family.

Sveinn said that he spent the next two days trying to see Crystal but was "sloughed off" by the Medical Examiner's Office. Finally, he and his wife were permitted to see her. He said that when he asked to see the autopsy report, he was told that it was only available to the Crown and defence and that he could not see the report until the case was over. Sveinn said that he had five contacts with ESPPD to find out court dates, who the prosecutor was and how the investigation was progressing. He was told that the RCMP were heavily involved in the investigation and the Crown prosecutor was also investigating. On August 16, 2005, he met with Carter who gave him Minuk's name and number and supplied him with victim impact statement forms. He found ESPPD very polite but he really didn't get much information from them.

The Sveinson's became concerned about the case very early on. On August 31, 2005, wrote a letter to the Provincial Minister of Justice, Gordon McIntosh, expressing concern about the justice system and another letter date April 3, 2006 to the Federal Minister, Vic Toews, expressing the same concern.

Sveinn said that he and his wife had three meetings with Minuk. The first was on October 3, 2005 as a result of a telephone call he made to Minuk on September 28. Minuk said that he was wondering how to get in contact with them. Minuk said he understood that his wife had written to the Minister of Justice. Victoria testified that Minuk said that he had not read the letter. Minuk denied this and said that he had the letter in front of him. Sveinn said that they discussed the investigation but Minuk denied this. Sveinn said that Minuk was already talking about a conditional sentence and said it was the law.

Minuk said that he was attempting to prepare them for the outcome. Sveinn told Minuk: "It was not the law, only part of the law, and so was a 14-year sentence." Minuk also said: "Everybody who goes out for supper has a bottle of wine and drives home." Sveinn said that Minuk was already condoning breaking the law and it didn't make sense to him. He also felt that he was being talked down to by Minuk. Minuk told them that he couldn't divulge anything; that there were lots of witnesses being interviewed; and that he had been appointed prosecutor to avoid the appearance of conflict. After the meeting, Sveinn was skeptical, but hopeful, about the prosecution of Zenk.

At a second meeting with Minuk, on May 25, 2006, Sveinn said that he and his wife were told that two weeks had been set aside for the preliminary inquiry. Minuk also said that he was concerned about proving the dangerous driving charge because they needed evidence to prove how fast he was driving and they had a specialist from the RCMP conducting tests.

Minuk denied telling the Sveinsons that he would have problems proving dangerous driving. However, Sveinn's testimony was consistent with the testimony of Bukowski, Shaw and Beattie who said that after Zenk pleaded guilty on July 17, 2007, Minuk told them that he "was surprised and could have gotten him off." I accept Sveinn's testimony.

At a third meeting on May 31, Sveinn said that Minuk told them that there was going to be a two-to-six month adjournment of the preliminary inquiry. After that meeting, he and his wife prepared a letter to Minuk expressing their frustration with the prosecution and the delay in the proceedings. He said that the letter was not sent until December 14, six months later, because they hoped that in the meantime Minuk would look into their concerns. He received no reply from Minuk.

Sveinn testified that during the court proceedings on July 16, 2007, Minuk came over to him and his wife and daughter and said that Zenk was going to plead guilty to dangerous driving and that the case had been adjourned to the next day to be heard by Chief Judge Wyant. The next day, Sveinn heard Minuk tell Chief Judge Wyant that Zenk was pleading guilty to dangerous driving causing death and the other charges were being dropped. The plea did not make sense to Sveinn considering that he had been told by Bakema that it was a "slam dunk." After the hearing, Sveinn approached Minuk in the hallway and asked him whether he was now going to plea bargain for sentence after giving away three charges. He said that Minuk replied: "Oh, no, that's the judge's job. He is the one who decides sentence."

On August 22, 2007, Sveinn, Victoria, their daughter, son-in-law and grandchildren attended court. Victoria read her victim impact statement. He did not read his statement out of respect for his wife, who is close to their daughters. Sveinn felt that Victoria would get a benefit from reading it and voicing, in her own words, how she felt. He said that when she mentioned alcohol, Chief Judge Wyant asked the lawyers why they had not mentioned it. He said that the lawyers became concerned and told the judge to disregard it. Sveinn said when joint submissions were then made for a conditional sentence, he and his wife felt that they had been lied to by Minuk. Victoria then wrote a letter to the Attorney General on August 25, 2007 complaining about Minuk's handling of the case and stating that Minuk had told them that the dangerous driving offence was more serious than the impaired driving offence and would bring a greater sentence. The Sveinsons were hoping that something could be done before it was too late. Sveinn said that at the Sept 12 hearing, the issue of alcohol came up but Wolson said that the accident was caused by a momentary lapse of attention; that there was no proof that he had been drinking; and that there were no drinking charges. Sveinn said that Minuk agreed and said that it was a joint submission.

The Sveinsons did not receive a response to their letter to the Attorney General. They sent a second letter on September 12, 2007 and a third on October 1, 2007. The Sveinsons then received a letter (dated October 5, 2007) from Slough, responding to their complaints about Minuk. The Sveinsons met with the Attorney General on October 5 who listened to their complaints. They were hoping that the proceedings could be stopped before it was too late. A fourth letter dated October 15, 2007 was sent to the Attorney General complaining about the prosecution. A letter dated September 27, 2007 was sent

to the Law Society of Manitoba complaining of Minuk's conduct of the prosecution. The Law Society replied, indicating that they did not have jurisdiction to remove counsel on any given matter. The Sveinsons attended the sentencing decision by Chief Judge Wyant on October 29, 2007 and were deeply devastated by the outcome. Sveinn looked for Minuk to speak to him after the decision was rendered, but Minuk had disappeared.

Sveinn expressed frustration with the fact that he and his wife were not considered victims: "Parents and siblings, without question, are victims. Their hearts get ripped out just like that of a husband and wife." He felt that the law concerning victims must change. Victoria said the she was also deeply distressed by the administration of justice and what had happened in this case. They had to drag out any information they received, felt put off, and, when they finally got to the court case, there was a deal. Victoria said: "To me, there was absolutely nothing." She felt "betrayed by a system that is supposed to provide justice, supposed to protect the public, and it doesn't."

Victoria felt that it was immoral that parents and siblings are not named as victims. As she said: "I'm Crystal's mother, my husband and I are her parents, that's a biological fact, it will never change." She felt that a policeman should be required to take a breathalyzer. She had expressed this earlier to Bakema, who had said that they had a lot of other evidence to prove impairment, otherwise they would not have laid those charges. She was happy at the time to hear that they did have evidence. She did not question what the evidence was and took Bakema at his word.

Victoria said at that the meeting with Minuk on October 3, 2005, they were made to made to feel that they had no right to information about the progress of the prosecution. Minuk told them that he had not read the letter they had sent to the Minister of Justice. She also confirmed that Minuk said that a conditional sentence was the law. When Victoria told Minuk that they would have to work hard to get a longer sentence than two years less a day, she said that he looked the other way. When she challenged his information, he reacted as if she did not know what she was talking about.

At their second meeting, Minuk told them told the Sveinsons that he needed some time to plug holes and the adjournment would be two to six months. At their last meeting, the charge of dangerous driving was discussed. Minuk said that it would be difficult to prove dangerous driving and gave an example that the driver could have been momentarily distracted by reaching down to pick up a CD. Minuk also said that they couldn't tell the speed Zenk was driving because there were no skid marks.

Victoria said that at the July 16, 2007 hearing, Minuk came into court and told them that Zenk was going to plead to dangerous driving. Minuk then told the presiding judge that Zenk was going to plead guilty to dangerous driving because the Crown had 33 witnesses scaled down to 12 for the preliminary inquiry. She felt that now there would be no difficulty proving dangerous driving as Minuk had said. Later that day, she phoned Minuk to inquire about the other charges and was told they were stayed. She told him it sounded like a plea bargain, but he would not admit it. She asked Minuk if he was going to bargain the sentence, but he would not give her an answer. She asked him about putting in a victim impact statement and Minuk said he would get McCorrister to call her.

After Zenk pleaded guilty on July 17, McCorrister gave Victoria copies of a victim impact statement form. At the hearing on August 22, Victoria heard Minuk mention that Zenk had something to drink, but was not drunk. She felt that Minuk had not really prosecuted the case; was surprised to hear him offer a conditional sentence; and never heard any explanation why he stayed the other charges. She felt that it was either a cover-up or incompetence on Minuk's part. She said that she had no understanding of what had taken place.

Victoria was frustrated in preparing her victim impact statement because of the many things she could not say. She said that she prepared one because she felt that it "may be the only say I will ever get." She spoke to Dyck on August 1, 2007 who told her about the guidelines and parameters of a victim impact statement. She prepared the statement and dropped it off a Minuk's office. On August 15, she received a letter from Minuk indicating that he had highlighted portions of her statement that did not meet the requirements for victim impact statements. He stated that once she deleted them, he would file it with the court. Included in the letter was a picture of Crystal and a picture of her vehicle after the collision that she wanted to file with her statement. Victoria called Minuk and asked him for an explanation about why he had made deletions. She said that she was not satisfied with his explanation, but realized that she had no choice in the matter. Notwithstanding her disappointments, she felt that it was worthwhile for her to read out her statement in court: "Just to be able to express how you have been feeling, pretty much like writing in the diary perhaps, or maybe even talking to a psychiatrist, it gives you an out." It was also important to make the judge understand who Crystal was and what she meant to her.

Victoria was also frustrated with the way victims are treated. She expressed herself this way:

> "The victim is pushed aside somewhere under the carpet, she is a number, nobody sees her. And only the defendant is there to get all of the attention, poor guy, we have to look after him now. That's the way I see our justice system, and it's not very good."
> Evidence, p. 711, l. 14-19

Dyck said that she took a call from Victoria on August 1, 2007 while McCorrister was away on holidays. She spoke to Victoria about the guidelines and parameters of a victim impact statement. She later had contact with Victoria about putting photographs in the statement. Dyck testified that she did not understand why photographs were not permitted to be presented to the court with a victim impact statement.

9. Whether there was compliance by the independent prosecutor with *The Victims' Bill of Rights*

I am satisfied that Minuk failed to comply with the provisions of *The Victims' Bill of Rights*. Section 12, 13 and 14 of the bill impose a duty upon the prosecutor to provide the victim with the status of the prosecution. Implicit in that duty is the obligation to provide accurate information to the victim and his or her family. Minuk provided inaccurate information to Robert and his family. He told them that the purpose of the RCMP

investigation was to "fill the holes" in his case, when it was not. He led them to believe that it was the RCMP investigation that was the reason why the preliminary inquiry had to be adjourned. That information was inaccurate. He told them that a dangerous driving charge causing death was a more serious charge than impaired driving causing death. That information was inaccurate.

Minuk told the family that he was not plea bargaining with Wolson. That information was not true. He told them that it was up to Chief Judge Wyant to decide the question of sentence. That information was accurate but misleading. It is true that the final decision as to sentence is a matter within the domain of a the judge but as noted in Part C, the Manitoba Court of Appeal made it clear in the *Sinclair* case that a trial judge should not depart from a joint recommendation unless the proposed sentence would bring the administration of justice into disrepute or would be contrary to the public interest. Finally, Minuk misrepresented to the court and Wolson that the Taman family were onside with the plea bargain when, in fact, he knew that they were not.

It is important to recognize and acknowledge that Minuk did spend some time with the Tamans and with the Sveinsons, although he had no obligation under the VBR to meet with the Sveinson family. There is no suggestion that he intended to be anything other than courteous and respectful. Moreover, it is clear that his task was not an easy one considering that the Tamans and the Sveinsons were quite emotional and, at times, probably difficult to deal with. However, in accepting the retainer to prosecute Zenk, he also accepted the duty and responsibility to comply with the VBR, and all that such responsibility entails dealing with a victim who has suffered such a terrible loss. The question, therefore, is whether his meetings with the Tamans and the Sveinsons were productive in the sense that he provided them with the information that the VBR required him to provide.

I agree with Mr. Clifford that Minuk failed in fulfilling his obligations under the VBR. Why did Minuk provide false and inaccurate information? In my view, he did so because he realized from his discussions with the Tamans and the Sveinsons that they would not accept his assessment that it was unlikely that he could prove the three charges that he eventually stayed. Why else would he say that dangerous driving was the most serious offence? Minuk also realized that the family wanted Zenk to go to jail and that there was a possibility that Zenk might be given a conditional sentence. Why else would he tell them that he had not plea bargained? Why else would he have told them that the sentence was up to the judge when he knew that Chief Judge Wyant would have to follow the joint recommendation unless he concluded that it would bring the administration of justice into disrepute or would be contrary to the public interest.

10. Recommendations

Commission counsel recommended that I make the following recommendation to the Minister of Justice:

> "That he take steps to promote an amendment to *The Victims' Bill of Rights* that would enable parents and children of a deceased victim to enjoy the informational rights provided for in *The Victims' Bill of Rights* in cases where the parents or

children request access to those rights on the basis that the spouse of the victim may be unable or unwilling to disseminate information to them."

The evidence of Sveinn and Victoria was so compelling and persuasive that such a recommendation should be made. I concur in the recommendation.

The second recommendation of Commission counsel was that I recommend to the Minister of Justice:

> "That he take steps to promote an amendment to section 14 of *The Victims' Bill of Rights* that would replace the overreaching promise to "consult" victims on the matters enumerated in that provision, with the right of victims to have their views "listened to and seriously considered."

This recommendation arises out of testimony by witnesses who have expertise in the bill and have worked with victims. Jacqueline St. Hill (St. Hill) is one of the Directors of Prosecutions and responsible for Winnipeg Prosecutions. She testified that the term "consultation" is problematic because:

> "I think that's the area where we get most concerns being expressed by victims about their case and about the communication. And people either think that they can direct the prosecution, and the Crown is to do what they say, or they hear what is being said and they don't like it. And it may affect the reality of the case, but it doesn't take away from the fact that the obligation has been met in terms of provision of information, the opportunity to discuss, what does it mean, why, to have the explanation given as to why the case is going in a particular direction. But at the end of the day, it may not meet what the victim is looking for. And as a result it does cause grief for everyone, because the Crown has to deal with it as well, if someone is very upset about why things are happening. So it is a troublesome word."
> Evidence, p. 887-8, l. 13-25, 1-9

And later, St. Hill was asked:

> Q. Would be better if that section 14, instead of using the word "consult" used the term that is found in the policy, "listen to and seriously consider?"
> A. Well, that phrase "listen to and seriously consider" is reflective of what should be occurring and what does occur.
> Evidence, p. 894, l. 3-9

Suzanne Gervais the Acting Director of Victims Services with Manitoba Justice echoed similar views:

> "...the thing that pops out for me most is around the issue of consult, and victims feeling like they – I don't want to use the word direct the prosecution, because I don't think that that is the case, but it can be misleading, that word, for victim's families."
> Evidence, p. 997, l. 16-22

McCorrister was asked if the word "consult" should be changed to "listen and consider" and she agreed that "that would be much better."

Dyck said:

> "I think we have always had concerns with respect to the provision around consultation and what that means, and what that looks like, and how we operationalize that. And I think we have more work to do in that area."
> Evidence, p. 1194, l. 1-5

Manitoba Department of Justice Prosecutions Police Directive Guideline No 2.:VIC: 1 under the heading "Consultation with Victims" on page 2, provides that "Crown Attorneys are required to listen to and to seriously consider any information the victim, has to offer."

In view of the evidence that the term "consult" is problematic, raising misleading expectations in the mind of victims who feel that it gives them the right to direct prosecutions, and in view of the Crown directive, I concur with the recommendation which is reflective of the actual practice.

Commission counsel also recommended that I make the following recommendation to the Minister of Justice:

> That he examine methods for ensuring that victims are offered and, on request, are provided with personal assistance in preparing victim impact statements.

Robert Taman testified as to the emotional difficulties faced by victims who need some assistance in preparing their victim impact statements. Tara Taman testified that:

> "I really think there needs to be some more guidance on how to write it. You sit there for hours upon hours, and you have no clue what to put in there. And then you look at their guidelines as to what you can't put in there, and it makes it even tougher."
> Evidence, p. 343, l. 1-6

Jordan Taman made similar comments about the need for help in expressing yourself – how you are feeling. McCorrister said that arrangements could be made for victims to speak with victims rights workers. Dyck also testified that it was an emotional and difficult process for people to provide a victim impact statement.

I agree with the recommendation of Commission counsel.

Commission counsel further recommended that I make the following recommendation to the Minister of Justice:

> That he examine whether there are means to furnish independent prosecutors with complete access to the PRISM system, and if so, to make the PRISM system available to independent prosecutors.

Minuk was asked by Mr. Paciocco whether he had any recommendations that he might make with respect to access to information and participation in the PRISM system. He replied:

> "Two things I would say. One, PRISM should be available because – just as an example now, Mr. Paciocco, where matters are on remand to the new courts we have, which are not presided over by judges, and presided over by magistrates and assistants, not all Crown Attorneys and defence lawyers go to these courts, but messages get sent to what would be the Crown paralegals and it gets into the PRISM. I can put them in myself instead of having to write an e-mail to somebody to then put it in, and then wait for an e-mail back to find out whether or not the instruction was carried out. So, yes, access to PRISM would be good.
> And on the systemic issue, I would say that I don't understand why the Provincial Court does not have access electronically to me and to the public the way the Court of Queen's Bench does, where you can go in and look at a file and see the documents that had been filed, and the status of the case and matters of that sort. I would think that it should happen in the Provincial Court as well."
> Evidence, p. 5679-80, l. 17-25, 1-14

I agree with the recommendation of Commission counsel.

Commission counsel further recommended that I make the following recommendation to the Minister of Justice:

> That he take steps to ensure that independent prosecutors are provided with training in the requirements and the ethic of *The Victims' Bill of Rights*, and that they be required to attend any training sessions that may be offered to line Crowns dealing with the provisions of victims' services.

For the reasons that I have already given about the failure of independent counsel to comply with the provisions of *The Victims' Bill of Rights*, I agree with the recommendation of Commission counsel.

7. SYSTEMIC ISSUES RELATING TO NOTE-MAKING BY THE POLICE

One of the core difficulties that contributed to the unsuccessful prosecution of Zenk on the charges of impaired driving causing death, and refusing to provide a breath sample, was the manner in which notes were made by Pedersen, Bakema, Graham, Woychuk and Carter. The preparation of notes was approached by all five officers as if it was a burdensome task, although all professed to understand the importance of note-making. Indeed, as counsel for the ESPPD suggested to Carter:

> Q. Listening, as I have, to the evidence unfold, it seems to me that there's expectations on the part of some in this room, at least, that police officers spend their lives making notes?
> A. That is correct, sir, yes.
> Q. Would the requirement that you constantly, continuously make detailed notes, in addition to narratives, encumber your ability to discharge your duty?
> A. It would be – it would be very difficult, sir, to discharge my duty.
> Q. And it's up to each individual officer to decide how he or she spends their time, whether they do it making notes or making incident reports, or both?
> A. That's correct, sir.
> Evidence, p. 3129, l. 5-21

This exchange represents an unfortunate and significant failure to understand the importance of note-taking. It is not a burdensome task that police officers must reluctantly undertake because they were taught to do so at their police college. It is an integral part of a successful investigation and prosecution of an accused. It is as important as obtaining an incriminating statement, discovering incriminating exhibits or locating helpful witnesses. The preparation of accurate, detailed and comprehensive notes as soon as possible after an event has been investigated is the duty and responsibility of a competent investigator. The evidence is uncontradicted that Pedersen, Bakema, Graham, Woychuk and Carter were grossly negligent and incompetent in the preparation of their notes of the accident investigation.

It is an unfortunate fact that the administration of criminal justice in Canada does move with relative expedition, although section 11(b) of the *Canadian Charter of Rights and Freedoms* purports to guarantee any person charged with an offence "the right to be tried within a reasonable time."

Wolson, who represented Zenk, indicated that it was not uncommon to take up to a year or more for a trial to take place in the Provincial Courts of Manitoba. The delay in the Provincial Courts of Manitoba is not unique. The same situation occurs in almost every province of Canada. Delays are much longer in the superior courts because of the requirement that there be a preliminary inquiry where an accused requests it.

This means that police officers, who are usually the main witnesses in the criminal courts, are expected to recall events of an investigation long after their memory of the investigation has faded or, in some cases, even disappeared. In the meantime, a police

officer will usually have been involved in new investigations that will only add to the concern of the court about the reliability of the officer's evidence. Woychuk candidly admitted that he had difficulty remembering many events and conversations without referring to his notes.

Judges recognize that memory becomes notoriously unreliable as time passes and other investigations and events take place. Judges also recognize that a police officer must refer to his or her notes when testifying if the officer's testimony is going to be reliable. Officers need to refer to notes while testifying to assist in recalling events that occurred long in the past. Accurate, detailed and comprehensive notes are essential if officers expect to be believed by the court.

An illustrative example of the notoriety of memory and the need to make accurate, detailed and comprehensive notes arose during the examination of Woychuk by Mr. Paciocco. It was critical to the investigation when Woychuk had smelled alcohol coming from Zenk. However, Woychuk had little memory of the events surrounding the investigation of Zenk without referring to his notes. Yet his notes were sparse and selective. Mr. Paciocco was asking him when he smelled alcohol on Zenk. His answers about when he smelled alcohol on Zenk had varied from interview to interview.

> Q. And then, of course, you are indicating there that you don't know exactly when it is. So you had access to your incident reports and notes before you spoke to the RCMP?
> A. Yes, I -- yes, I did.
> Q. And why is it that you didn't have confidence in those documents when you were speaking to the RCMP?
> A. I don't know. I guess it was just my – I didn't recall, my memory.
> Q. Sir, that's why we take notes, isn't it?
> A. Yes.
> Q. And if you don't trust your notes, then doesn't that tell you something more about your note-taking than it does about your memory?
> A. Yes.
> Evidence, p. 2274-5, l. 14-25, l. 1-5

Another glaring example occurred when Woychuk was having difficulty explaining what he told Carter when he brought Zenk to the station:

> Q. And, sir, how confident are you that you communicated those three pieces of information; that you had a driver, that you had an odour of liquor, and that he, indeed, was a police officer?
> A. I don't know. I don't have a -- an independent recollection of that conversation.
> Q. Nor do you have a note about that conversation, do you, sir?
> A. No.
> Evidence, p. 2300, l. 6-15

At one time, an officer was only required to produce the notes to the cross examiner if he or she relied upon the notes while testifying in court. However, if the witness used the

notes to refresh his memory before entering the witness box, the witness did not have to produce them to the cross-examiner: *Kerenko* (1965), 45 C.R.291 (Man.C.A.).

The logic of this distinction was difficult to understand. All it did was to encourage witnesses to memorize their notes before they came to court. Today, any witness who refreshes his or her memory from notes or any statement prepared prior to trial must produce them to the cross examiner: *Catling* (1986), 29 C.C.C.(3d) 168 (Alta.C.A.); *Morgan* (1993), 80 C.C.C.(3d) 16 (Ont.C.A.).

A cross examiner is entitled to examine the notes to consider whether they are consistent with the witness's oral testimony; to attack the accuracy of the notes by questioning the timeliness of the record; or to raise the possibility of invention. Moreover, a police officer is required to produce his or her notes to the defence as part of the defence's right of disclosure: *Stinchcombe* (1995), 96 C.C.C.(3d) 318 (S.C.C.).

The notes should be accurate. The notes of Carter are a good example of notes that were inaccurate and resulted in the failure of the prosecution of Zenk on the charges of impaired driving and refusal to provide a sample. Although Carter knew that he had made a breath demand and was backed up by Woychuk, insertion of the word "blood" for "breath" demand in his notes made the accuracy of Carter's evidence that he made a breath demand suspect. That Carter inserted the word "blood" for "breath" several times in his incident narrative clearly indicated that he did not read what he had put into computer even though it was, according to Pedersen, the responsibility of the reader to correct errors. Inaccuracy in the notes also gives counsel for the defence the opportunity to question the reliability of other notes prepared by the officer as well as the testimony of the officer in the witness stand.

The notes should be detailed and comprehensive. Here, the notes of all of the officers failed to include information that was relevant and would have assisted in the investigation and prosecution of Zenk. Pedersen failed to note that she smelled alcohol while fingerprinting and photographing Zenk. Carter failed to indicate in his notes the basis upon which he formed the belief based on reasonable and probable cause that Zenk had been involved in the accident.

Notes that are not detailed and comprehensive leave the officer's testimony open to attack by the cross examiner. For example, Graham had testified that Bakema had told him that he could not smell alcohol on Zenk. Graham had not recorded that conversation in his note book. He was questioned by Mr. Paciocco:

> Q. Sir, did you not feel that was an important enough piece of information to communicate during these interviews?
> A. It could have been, yes.
> Q. And yet you didn't?
> A. No, I didn't.
> Q. And you are coming here, for the first time today, and providing this information, sir?
> A. Correct

Q. And nowhere in your notes do you indicate that Chief Bakema could not smell alcohol?
Evidence, p.1995-6, l. 16-25, l. 1-2

It is also too often forgotten that detailed and comprehensive notes serve another purpose. The notes themselves may be admitted in evidence in certain circumstances where an officer has absolutely no memory of an event. This is recognized in law and called "past recollection recorded." To be admissible, the past recollection must have been recorded in some reliable way. It must have been sufficiently fresh and vivid to be probably accurate at the time; the witness must be able now to assert that the record accurately represented his or her knowledge and recollection at the time (the witness must be able to affirm that "he knew it to be true at the time."); and the original record itself must be used, if procurable: *Wigmore on Evidence* (Chadbourn rev. 1970), vol. 3, c.28, para 744 et seq. See also *Meddoui (1990), 61 C.C.C.(3d) 345 (Alta.C.A.); B.(A.J.) (1994), 90 C.C.C.(3d) 210 (Nfld.C.A.) and F.(C.) (1997), 11 C.R.(5th) 209, 120 C.C.C.(3d) 225 (S.C.C.).*

The notes should be made as close as possible in time to the event witnessed. At one time, witnesses were only permitted to refer their memory from notes if they could swear that they made the notes at the time or shortly after the event being recorded. *Gwozdowski* (1973), 10 C.C.C.(2d) 434 (Ont.C.A.). However, the strictness of this rule has been relaxed for many years. The courts no longer require that the note be made by the witness shortly after the event. What now appears to be required is that the note be made either by the witness *when the event was fresh in the witness's mind*: *Coffin (1956), 114 C.C.C. 1 (S.C.C.); Shergill (1998), 13 C.R.(5th) 160 (Ont.G.D); B.(K.G.) (1998), 125 C.C.C.(3d)61 (Ont.C.A.)*. Common sense tells us that unless the note was made at least when the event was fresh in the witness's mind, there is a serious risk that the note will contain errors that the witness will probably rely upon when giving testimony.

Sgt. James Anderson of the Winnipeg Police Service understood that an officer is only entitled to refer to a note that was made shortly after the incident recorded. He seemed to believe that unless the note was made on the same day or the day following day of the event recorded, the officer was not allowed to look at his or her notes. This would mean that an officer who, for some good reason, had not made the notes shortly after an incident would suddenly become of little use to an investigation where he or she was called to testify months or years later.

This does not mean that officers are entitled to delay preparation of their notes. They should do so as soon as possible after an incident. There was a suggestion by some witnesses that if an officer has been unable to complete his or her notes before the shift has ended, the practice is to delay completing the notes until their next shift. Pedersen said that she did not make her notes until the following day because she did not have the time to write it at the end of her shift, adding that it was still very fresh.

Woychuk said that he prepared his notes the following day during his shift. Carter said that he did not make his notes until the following Monday, when he was scheduled to work next. This practice should be condemned by superior officers. A police officer who is questioning a witness or photographing a crime scene does not stop in the middle of

taking a statement or photographing the scene because his or her shift has ended. The preparation of notes, where possible, should be completed before the officer leaves his or her shift.

There was testimony that Bakema, Graham and Woychuk collaborated in the preparation of their notes. For many years, police forces in Canada, relying upon a British decision (*Bass (1953), 37 Cr.App.R. 51.* See also *Archibald (1956), 116 C.C.C. 62 (Que.S.C.))*, encouraged police officers to collaborate when making notes of the event provided that the notes were made while the events were fresh in their minds and provided that the notes contained only what each has observed. That practice is no longer considered by British authorities to be proper. (See *[1985] Crim. L.R. 781* and the Metropolitan Police Officers Instruction Books, Chapter 6, paragraph 9.)

The practice is now considered improper: *Barrett* (1993), 82 C.C.C.(3d) 266 (Ont.C.A.). The proper practice is for each officer to make his or her own independent set of notes. When officers collaborate in preparing notes, there is a serious risk that one officer may unconsciously supplement something from the other officer's recollection which he or she never observed. If it is then written down in the officer's notebook to be used to refresh his or her memory, it will become part of the officer's recollection even though he or she never saw it. Once combined memories are committed to a uniform set of notes, each officer will later refresh his or her memory as to an event that they never saw.

Finally, there was evidence that Bakema jotted down rough notes at the accident scene which were later transferred to his duty notes. There is nothing wrong with an officer doing this if he or she is unable enter the notes directly in the duty book because the notebook is not available during the investigation. In such instances, notes should be made on any piece of paper that is available and transferred to the duty book. The rough note must then be kept and attached to the duty book so that court can be satisfied as to the accuracy and reliability of the notes. The defence is entitled to production of all investigatory notes made by the police subject to claims of privilege: *Stinchcombe* (1995), 96 C.C.C.(3d) 318 (S.C.C.).

Poole did this on February 25 when he was called by Superintendent Scott while having coffee in a restaurant. He wrote his note of the conversation on a napkin and put it in his duty book. Graham did not do that in this case. He testified:

> Q. Do you keep a little jotter, note pad, or anything where you record times, or do you put them right into your notes?
> A. Sometimes just on a scrap paper, yeah.
> Q. And do you know what you did on this occasion?
> A. Probably scrap paper in the vehicle, a notepad, or something.
> Q. What do you do with the scrap paper after you take your notes, sir?
> A. I throw it out.
> Q. So you don't keep a record, your initial, original record of your times in case that falls into issue later?
> A. No.
> Evidence, p. 2020, l. 1-14

8. SUMMARY OF RECOMMENDATIONS

1. That there be such further investigation of the conduct of Harry Bakema and Kenneth Graham as the Attorney General of Manitoba may consider advisable;

2. That there be an investigation into the investigative training available to, and the qualifications required of East St. Paul police officers.

3. That the Minister of Justice give consideration to creating a provincial special investigative unit independent of all police enforcement agencies in Manitoba for the purpose of investigating any alleged criminal activity of a member of a police service.

4. That regardless of what form that independent investigative agency takes, the Minister of Justice cause appropriate measures to be taken to prevent police investigators in the province from giving police witnesses special procedural concessions in criminal investigations before they are interviewed, including the right to consult with their police association, the right to have interviews scheduled during shift hours, or the right to be warned about the criminal, civil or administrative implications of the statements they give.

5. That Minister of Justice cause the amendment of Guideline No 5: COU: 1 "Appointment of Independent Counsel: February 2008" by replacing Terms and Condition of Appointment "d" with the following:

> Independent prosecutors are required to keep the Department of Justice advised of all significant decisions that they propose to take in connection with the cases they are assigned. This is done solely to keep Department of Justice officials apprised of the status of the case, and to enable the Attorney general or the Deputy Attorney General to give direction as contemplated by "c' of this policy. Independent prosecutors should not consult with Department of Justice officials before making decisions but may secure legal assistance from Department of Justice officials who have special expertise in the area being prosecuted on strategies for implementing the decisions that have been taken by independent counsel. Should the legal advice rendered cause the independent counsel to change their strategy or position, this must be publicly disclosed on the Manitoba Justice website after the trial judge has rendered a verdict in the case or the charge has been stayed. Subject to this policy, independent counsel has full access to all parties within, and all documents and information held by the Department of Justice for the Province of Manitoba. The Director of Regional Prosecutions and Education or any one designated shall facilitate contact between the departmental prosecutor and employees and the independent counsel and assist in accessing any documentation held by the Department of Justice.

6. That the Minister of Justice,

> Establish a standing group of experienced criminal lawyer who are independent of Manitoba Justice and who are able and prepared to provide advice and counsel to

any independent prosecutor in making or implementing their decisions, and that when that system is established, to make relevant amendments to Guideline No. 5: Cou: 1 "Appointment of Independent Counsel"

7. That the Minister of Justice cause a Ministerial Policy to issue relating to the presentation of a guilty plea requiring that:

(a) at the appearance where the plea of guilty is made, prosecutors must present the presiding judge with the factual foundation for the criminal charge, and call for a clear admission of the facts to be made by the accused, and further requiring that
(b) in complex or serious cases [as defined by Manitoba Justice] that prosecutors shall attempt to secure in writing, the agreed statement of facts that will form the foundation for the plea.

8. That the Minister of Justice cause a Ministerial Policy to issue requiring all prosecutors who resolve charges through resolution discussion to state clearly for the record the basis upon which the resolution was reached, including by:

(c) stipulating any compromises or concessions that have been made by the prosecutor in securing the guilty plea; and
(d) explaining, with specificity, any exigencies that motivated the prosecutor to refrain from proving aggravating facts, or to agree to the sentence being proposed, or to stay any related charges.

9. That the Minister of Justice cause a Ministerial Policy to issue requiring all prosecutors to recognize that it is improper for the Crown to withhold from the court any relevant information in order to facilitate a guilty plea and, where not all matters are admitted, to advise the court of the allegations and then proceed upon the admitted facts.

10. That the Minister take steps to promote an amendment to *The Victims' Bill of Rights* that would enable parents and children of a deceased victim to enjoy the informational rights provided for in *The Victims' Bill of Rights* in cases where the parents or children request access to those rights on the basis that the spouse of the victim may be unable or unwilling to disseminate information to them.

11. That the Minister of Justice take steps to promote an amendment to section 14 of *The Victims' Bill of Rights* that would replace the overreaching promise to "consult" victims on the matters enumerated in that provision, with the right of victims to have their views "listened to and seriously considered."

12. That the Minister of Justice examine methods for ensuring that victims are offered and, on request, are provided with personal assistance in preparing victim impact statements.

13. That the Minister of Justice examine whether there are means to furnish independent prosecutors with complete access to the PRISM system, and if so, to make the PRISM system available to independent prosecutors.

14. That the Minister of Justice take steps to ensure that independent prosecutors are provided with training in the requirements and the ethic of the Victims Bill of Rights, and that they be required to attend any training sessions that may be offered to line Crowns dealing with the provisions of Victims' services.

MANITOBA

ORDER IN COUNCIL

DATE: **December 5, 2007**

ORDER IN COUNCIL NO.: **403/2007**

RECOMMENDED BY: **Minister of Justice**

ORDER

1. The Honourable Roger Salhany, 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.

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;

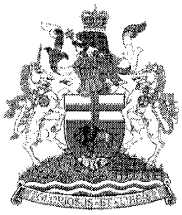
(b) the payment of incidental and necessary expenses; and

(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

Witness List

The following are the witnesses that testified at the Inquiry.

First week: June 2, 2008

1. Robert Taman
2. Tara Taman
3. Kristin Taman
4. Jordan Taman

Second week: June 9, 2008

5. Sveinn Sveinson
6. Victoria Sveinson
7. Glenda Pedersen
8. Jacqueline St. Hill
9. Suzanne Gervais
10. Lesley McCorrister
11. Monica Dyck

Third week: July 2, 2008

12. Kathy Beattie
13. Garth Shaw
14. Tara Taman
15. Denise Bukowski
16. Cecil Sveinson
17. Edward Rosser
18. Rolland Fontaine
19. Glenda Pedersen
20. Ken Graham

Fourth week: July 7, 2008

21. Ken Graham
22. Cst. Jason Woychuk
23. Bryan Maloney
24. Chief Norm Carter

Fifth week: July 14, 2008

25. Chief Norm Carter
26. Harry Bakema
27. Chelsea O'Halloran
28. Darcey Gerardy
29. Rodrigo Bravo
30. Chief of Police, Keith McCaskill
31. Sgt. Sean Black

Sixth week: July 21, 2008

32. Sgt. Sean Black
33. Cst. Ken Azaransky
34. Cst. David Harding
35. Sgt. James Anderson
36. Cst. Chris Humniski
37. Cst. McLure
38. Cst. Ted Michalik
39. Cst. Jay Nolet
40. Cst. Theodore Spruyt
41. Inspector James Poole
42. Det. Sgt. Girard

Seventh week: July 28, 2008

43. Det. Sgt. Girard
44. Richard Wolson
45. Martin Minuk
46. Richard Peck

Eighth week: August 5, 2008

47. Brian Kaplan
48. Brian Gover
49. Don Slough
50. Derek Harvey-Zenk

TAMAN INQUIRY

Exhibit List

Exhibits may be viewed on the Inquiry website at: **www.tamaninquiry.ca**

EX ID.	EX. NO.	DISCLOSURE REFERENCE	EXHIBIT DESCRIPTION	FILED BY
			February 4th, 2008	
	1		Hearings on Standing and Preliminary Matters Book	D. Paciocco
			June 2nd , 2008	
	2	**Z-2**	Photograph of Crystal Taman	D. Paciocco
	3	**A-1**	Order in Council	D. Paciocco
	4a	**G-39.a**	Information in Prosecutorial File (Information charging Derek Harvey-Zenk)	D. Paciocco
	4b	**G-39.b**	Endorsed Information and Court File (Information charging Derek Harvey-Zenk)	D. Paciocco
	5	**E-1.23.j**	Promise to Appear(HARVEY-ZENK, Derek)	D. Paciocco
	6	**J.60**	July 16, 2007 Proceedings Before The Honourable Judge Stewart	D. Paciocco
	7	**J.61**	July 17, 2007 Proceedings Before The Honourable Chief Judge Wyant	D. Paciocco
	8	**J.62**	Transcript of Sentencing Submission August 22, 2007	D. Paciocco
	9	**J.63**	Transcript of Hearing Directed by Chief Judge Wyant Relating to Appropriateness of Joint Submission - September 12, 2007	D. Paciocco
	10	**J.64**	Transcript of Sentencing Decision October 29, 2007	D. Paciocco
	11	**L-74**	PRISM Victims Communications with Robert Taman	D. Paciocco
	12	**R-3.92.6**	Complete package of Victims' Bill of Rights forms and brochures as described in the memos from Tab R-3.92.5	D. Paciocco
	13	**R-2.91.62**	File copy of letter to Robert Taman dated September 5, 2007	D. Paciocco
	14	**K.66**	Manitoba Justice Request for RCMP to Investigate - May 5, 2006	D. Paciocco
	15	**K.67**	RCMP Response to Request to Investigate - May 23, 2006	D. Paciocco
	16	**K.68**	Executive Summary	D. Paciocco
	17	**K.69**	Investigative Report RCMP File 2006-633220	D. Paciocco
	18	**S.100**	Wolson's Memo to File - July 18, 2007 Outlining Discussions with Mr. Minuk Concerning Plea Bargain	D. Paciocco
			June 9th, 2008	
	19	**O.81.a.12**	Letter to Minister of Justice Gord MacIntosh dated August 31, 2005	D. Paciocco

EX ID.	EX. NO.	DISCLOSURE REFERENCE	EXHIBIT DESCRIPTION	FILED BY
	20	**O.81.a.10**	Letter to Federal Minister of Justice Vic Toews dated April 03, 2006	D. Paciocco
	21	**R-2.91.61**	File copy of letter to Victoria and Sveinn Sveinson dated September 5, 2007	D. Paciocco
	22	**R-1.91.33**	Memo from Andrea dated September 13, 2006	D. Paciocco
	23	**O.81.a.8**	Letter to Crown Attorney Martin Minuk September 2006	D. Paciocco
	24	**R-1.91.34**	Letter from Victoria Sveinson and Sveinn Sveinson dated December 14, 2006	D. Paciocco
	25	**O.81.a.7**	Letter to Attorney General Dave Chomiak dated August 25, 2007	D. Paciocco
	26	**O.81.a.6**	Letter to Attorney General Dave Chomiak dated September 14, 2007	D. Paciocco
	27	**O.81.a.5**	Letter to Attorney General Dave Chomiak dated October 1, 2007	D. Paciocco
	28	**O.81.b.2**	Letter from Assistant Deputy Attorney General Don Slough Dated October 5, 2007	D. Paciocco
	29	**O.81.a.4**	Letter to Attorney General Dave Chomiak dated October 15, 2007	D. Paciocco
	30	**O.81.a.14**	Letter to The Law Society of Manitoba Conflict of Interest Complaint Dated September 24, 2007	D. Paciocco
	31	**O.81.b.5**	Letter from the Law Society of Manitoba September 25, 2007 & (addition submitted April 15, 2008) Letter from Law Society of Manitoba dated November 5, 2007	D. Paciocco
	32	**O.81.b.4**	Letter from the Law Society of Manitoba October 5, 2007	D. Paciocco
	33	**O.81.a.11**	Letter to Minister of Justice Gord MacIntosh October 2005	D. Paciocco
	34	**O.81.a.9**	Letter to Federal Minister of Justice Vic Toews August 29, 2006	D. Paciocco
	35	**R-2.91.57**	Hard copy of email from Martin Minuk to Brian Kaplan sent August 28, 07 at 10:17 am with attached file copy of letter to Mr. and Mrs. Sveinson dated August 15, 2007	D. Paciocco
	36	**O.81.a.3**	Victim's Impact statement of Victoria and Sveinn Sveinson	D. Paciocco
	37	**R-2.91.52**	Memorandum from Monica Dyck to Martin Minuk dated August 8, 2007	D. Paciocco
	38	**R-2.91.69**	File copy of letter to Victoria Sveinson and Sveinn Sveinson Dated September 11, 2007	D. Paciocco
	39	**O.81.a.2a**	Letter sent to Judge Ray Wyant with letter #2 after the trial	D. Paciocco
	40	**O.81.a.2**	Letter sent to Judge Wyant after the trial	D. Paciocco
	41	**L.75**	PRISM Victims Communications with Victoria Sveinson	D. Paciocco
	42	**E-2.26.a**	Officer's Notes - Cst. Pedersen (pp 90 - 97)	W. Clifford
	43	**E-2.26.b**	Narrative Police Report - Cst. Pedersen	W. Clifford
	44	**E-2.26.c**	Statement to R.C.M.P. - May 31, 2006 (Cst. Pedersen)	W. Clifford
	45	**P-3.86**	Correspondence from Fillmore & Riley to commission Counsel Dated March 18, 2008	W. Clifford
			June 10th, 2008	

EX ID.	EX. NO.	DISCLOSURE REFERENCE	EXHIBIT DESCRIPTION	FILED BY
	46	**R-1.91.22**	Hard copy of email trail, last message from Brian Kaplan to Jacqueline St. Hill sent May 19, 2006 at 7:50am	D. Paciocco
	47	**R-3.92.1**	Hard copy of email dated February 7, 2002 from Tammy Padoba to Jacqueline St. Hill attaching memo dated February 6, 2002	D. Paciocco
	48	**R-4**	Disclosure Relating to the Prosecution (Further Disclosure from the Government of Manitoba)	D. Paciocco
	49	**R-3.92.7**	Hard Copy of email dated March 17, 2008 from Jacqueline St. Hill to Glenn McFetridge attaching copies of Victim Services Policy	D. Paciocco
	50	**R-3.92.5**	Memos dated February 19, 2008 from Monica Dyck to Glenn McFetridge	D. Paciocco
	51	**U.B**	Book of Statutes (B - The Victims' Bill of Rights)	D. Paciocco
	52	**R-3.92.4**	Hard copy of email dated July 8, 2004 from Rachelle Dupuis to Jacqueline St. Hill attaching memo to All Prosecution Staff	D. Paciocco
	53	**R -5**	Prosecutions Policy Manual	D. Paciocco
	54	**G.43.a**	Retainer for Mr. Minuk dated March 3, 2005	D. Paciocco
	55	**G.43.b**	Letter from Minuk to Kaplan dated October 3, 2007	D. Paciocco
			June 11th, 2008	
	56	**M-77**	Additional Media Search Conducted by the Commission (pages 1-36), Additional Media Search Conducted by the Commission (pages 37-73), Additional Media Search Conducted by the Commission (pages 74-107)	G. Zazelenchuk
	57	**Z-3**	Photograph of Crystal Taman as provided by the parents	D. Paciocco
	58	**M-76.g**	Media Article - Winnipeg Sun - Feb 26, 2005 - Woman killed fatal rear end	D. Paciocco
	59	**I-50**	Photos of Victim with Family	D. Paciocco
			July 2, 2008	
	60	**B.6.a**	Forensic Accident Report dated August 18, 2005	D. Paciocco
	61	**B.7**	Environment Canada Report for February 24 & 25, 2005	D. Paciocco
	62	**B.8.a**	Accident Photos	D. Paciocco
	63	**D.18.a**	E. St. Paul Fire Department Rescue Report for February 25, 2005	D. Paciocco
	64	**D.19.e**	Letter to Corp. T. DOYLE from N. TYNSKI dated June 12, 2006 Re: Interlake EMS Manager Times	D. Paciocco
	65	**D.20.e**	WPS Fire Paramedic Services Dispatch Sheet for February 25, 2005	D. Paciocco
	66	**B.8.b**	Overhead Photo (blow up)	D. Paciocco
	67	**B.8.c**	Traffic Signal Surface Plan (blow up)	D. Paciocco
	68		Background Narrative of Fact Surrounding the Accident	D. Paciocco
	69	**Z - 1**	Statement of Facts Pertinent to the Rural Municipality of East St. Paul Agreed to by Commission Counsel	D. Paciocco

EX ID.	EX. NO.	DISCLOSURE REFERENCE	EXHIBIT DESCRIPTION	FILED BY
	70	**E-1.23.n**	Statement by Kathy Beattie Traffic Report	V. Clifford
	71	**C.11**	Statement by Kathy Beattie to R.C.M.P.	V. Clifford
	72	**C.12.a**	Statement by Garth Shaw to E. St. Paul Police	D. Paciocco
	73	**C.12.b**	Statement by Garth Shaw to R.C.M.P.	D. Paciocco
	74	**F-3.37**	Gallery Photo Pack Shown to Branigan's Waitress	G. Zazelenchuk
			July 3, 2008	
	75	**C.13.a**	Denise Bukowski – Statement to E. St. Paul Police – March 7, 2005	D. Paciocco
	76	**C.13.b**	Denise Bukowski – Statement to R.C.M.P. – May 30, 2006	D. Paciocco
	77		Ted Rosser's Ambulance Patient Care Report on Derek Harvey-Zenk	D. Paciocco
	78	**D.19.c**	Edward Rosser – Statement to E. St. Paul Police – March 24, 2005	D. Paciocco
	79	**D.19.d**	Edward Rosser – Statement to R.C.M.P – May 25, 2006	D. Paciocco
	80	**D.19.a**	Roland Fontaine – Statement to E. St. Paul Police – March 29, 2005	V. Clifford
	81	**D.19.b**	Roland Fontaine – Statement to R.C.M.P. – May 29, 2006	V. Clifford
			July 4, 2008	
	82	**B.8.a**	4 additional pictures of Accident Scene (23,26,27,28)	G. McFetridge
	83	**E.1.24.a**	Cst. Graham - Duty Book Notes (pp. 34 – 45 + 131 – 135)	D. Paciocco
	84	AMENDMENT TO **E.1.24.d**	Initial Disclosure – E. St. Paul Police Witnesses (Amendment)	D. Paciocco
			July 7th, 2008	
	85	**E-1.24.b**	Incident Narrative - March 3, 2005 (Cst. GRAHAM)	D. Paciocco
	86	**E-1.24.c**	Incident Narrative - April 1, 2005 (Cst. GRAHAM)	D. Paciocco
	87	**E-1.22.a**	Officer's Notes (BAKEMA, Arend) - pages 76 - 89	D. Paciocco
	88	**E-2.25 a**	Duty Book Notes - Cst. WOYCHUK – pages 38 - 43	D. Paciocco
	89	**E-2.25 b**	Incident Narrative - Cst. WOYCHUK	D. Paciocco
	90	**E-2.25 d**	First Statement to R.C.M.P. - dated May 24, 2006 (Cst. Woychuk)	D. Paciocco
	91	**E-2.25 f**	Second Statement to R.C.M.P. of June 9, 2006 (Cst. Woychuk)	D. Paciocco
	92	**P-3.88**	Harry Bakema – Statement prepared for counsel	D. Paciocco
	93	**P-2.85.1**	(Pages 2574-2613) Excerpts from East ST. Paul Police Policies and Procedures Manual (Pages 2614-2657) Excerpts from East ST. Paul Police Policies and Procedures Manual cont'd	D. Paciocco

EX ID.	EX. NO.	DISCLOSURE REFERENCE	EXHIBIT DESCRIPTION	FILED BY
	94	**P-1.83**	(Pages 2185-2225) Correspondence from Fillmore Riley March 6 2008 and Incident report and development log (Pages 2226-2265) Incident Report and Development Log cont'd (Pages 2266-2304) Incident Report and Development Log cont'd (Pages 2305-2344) Incident Report and Development Log cont'd (pages 2385-2442) Incident Report and Development Log cont'd	D. Paciocco
	95		Changes to Text found in versions at 2212-2213	D. Paciocco
	96		Feb 26 version of Incident Report 2212-2213	D. Paciocco
	97		Feb 27 version of Incident Report alcohol additions	D. Paciocco
	98		Feb 26 version of Incident Report 2212-2213 – Reason for Transportation	D. Paciocco
	99		Feb 27 version of Incident Report – Reason for Transportation	D. Paciocco
	100	**P-2.85.8**	Handwritten note of N. Carter made on March 5, 2006	D. Paciocco
	101	**P-2.85.9**	Handwritten note of N. Carter dated April 10, 2006	D. Paciocco
	102	**P-3.85.12**	Handwritten note of N. Carter dated April 21, 2006	D. Paciocco
			July 8th, 2008	
	103	**P-3.85.13**	Handwritten note of N. Carter dated April 27, 2006	D. Paciocco
	104	**P-3.85.14**	Handwritten note of N. Carter dated May 18, 2006	D. Paciocco
	105	**B.10.c.i**	Manitoba Driver Licence (copy) - HARVEYMORDENZENK	G. Zazelenchuk
	106	**E-1.23.i**	E. St. Paul Police Prisoner Log Sheet (HARVEY-ZENK, Derek)	G. Zazelenchuk
			Application by Commission Counsel to Exclude Ken Graham	
	1		Bryan Maloney's handwritten statement of incident dated July 8,2008	D. Paciocco
	107	**T.4.b**	East St. Paul Witnesses - Cst. Jason Woychuk	H. Weinstein
	108	**E-1.23.e**	Notice of Forfeiture to Alleged Offender dated February 25, 2005	J. Prober
	109	**E-1.23.f**	Notice of Intention to Seek Greater Punishment dated February 25, 2005	J. Prober
	110	**E-1.23.g**	Suspension or Disqualification for 24 Hours (HARVEY-ZENK, Derek) Dated February 25, 2005	J. Prober
	111	**E-1.23.h**	Notice of Seizure and Impoundment of Motor Vehicles dated February 25, 2005	J. Prober
	112		Bryan Maloney's handwritten statement of incident dated July 8, 2008	V. Clifford
	113	**E-2.30**	Cst. Maloney - Statement to R.C.M.P. - dated June 1, 2006	V. Clifford
			July 9th, 2008	
	114	**E-1.23.k**	Incident Narrative - February 27, 2005 (CARTER, Norman)	V. Clifford
	115	**E-1.23.b**	Officer's Notes(CARTER, Norman) February 25 - May 29, 2005	V. Clifford

EX ID.	EX. NO.	DISCLOSURE REFERENCE	EXHIBIT DESCRIPTION	FILED BY
	116	**E-1.23.a**	Officer's Notes(CARTER, Norman) February 25, 2005	V. Clifford
	117	**E-1.23.r**	Statement to R.C.M.P. - May 23, 2006 (Chief Norm CARTER)	V. Clifford
	118	**E-1.23.c**	Breathalizer Demand and Refusal Warning Card	V. Clifford
	119	**P-2.85.9**	Correspondence from Fillmore & Riley dated May 28, 2008 Re: Forwarding further disclosure	V. Clifford
	120	**P-2.85.5**	Notice from East St. Paul Police to Brian Kaplan dated March 1, 2005	V. Clifford
	121	**E-1.23.l**	E. St. Paul Police Exhibit Report dated February 25, 2005	V. Clifford
	122	**P-2.85.6**	Letter from Aikins MacAulay to Sgt Carter dated march 17, 2005	V. Clifford
	123	**E-1.23.o**	Report to Marty Minuk and Covering Letter (including Sgt. Carter's Incident Narrative)	V. Clifford
	124	**R-1.91.7**	Photocopy of letter from Martin Minuk to Sgt. Norm Carter dated December 20, 2005	V. Clifford
	125	**R-1.91.13**	Photocopy of letter from Martin Minuk to Chief Norman Carter dated April 10, 2006 attaching Witness List	V. Clifford
	126	**R-1.91.14**	Photocopy of letter from Martin Minuk to Chief Norman Carter dated April 20, 2006	V. Clifford
			<u>July 10th, 2008</u>	
	127	**P-3.85.15**	Miscellaneous notes of N. Carter between May 15 and 31, 2006	V. Clifford
	128	**E-1.23.q**	Fax cover sheet to Marty Minuk re: Bakema's second set of notes	V. Clifford
	129	**E-1.23.p**	Fax Cover Sheet to Marty Minuk re: Cst Krawchuk's notes	V. Clifford
	130	**P-3.85.19**	Risk Management notice dated June 12, 2006 prepared by Norman D. Carter	V. Clifford
	131	**P-3.85.24**	Handwritten note of N. Carter dated July 15, 2007 re: call from M. Minuk	V. Clifford
	132	**P-3.85.25**	Handwritten note of N. Carter (undated) re: Jason Woychuk meeting with M. Minuk	V. Clifford
	133	**P-2.83**	(Page 2443-2482) Incident Report and Development Log cont'd (Pages 2483-2522) Incident Report and Development Log cont'd (Pages 2523-2568) Incident Report and Development Log cont'd	V. Clifford
	134	**P-2.83**	Pages 2564-2568 N. Carter – Incident Report – February 27, 2005	V. Clifford
	135	**P-2.83**	Pages 2552-2557 N. Carter – Incident Report – March 1, 2005	V. Clifford
	136	**E-1.23.s**	Correspondence January 24, 2008 Re: Identification of Criminal Act Photo of Derek HarveyZenk	V. Clifford
	137	**Q-1.89.b.4**	Acting Inspector J. Poole (notes) **(NOTE: Original exhibit stricken. Replaced July 24, 2008 with a clear copy of document Q-1.89.b.4)**	M. Jack
	138	**Q-2.89.b.17**	Winnipeg Police Service Supplementary Report, Girard reporting, PSU # 05-019	M. Jack
			<u>July 14th, 2008</u>	
	139	**N.78**	R.C.M.P. Management Review Document dated 2007 11 27 to 2007 11 30	B. McDonald

EX ID.	EX. NO.	DISCLOSURE REFERENCE	EXHIBIT DESCRIPTION	FILED BY
	140	**G.41**	E. St. Paul Prosecutors Information Sheet dated March 1, 2005	B. McDonald
	141	**E-2.25.c**	Winnipeg Police Service ID - HARVEY-ZENK	B. McDonald
	142	**R-2.91.73**	Hard copy of email from Don Slough to Martin Minuk sent September 20, 2007 at 9:21 am with draft memorandum from Martin Minuk - undated	B. McDonald
	143	**R-2.91.74**	Hard copy of email from Martin Minuk to Don Slough sent September 20, 2007 at 11:12 am with attached memo dated September 20, 2007	B. McDonald
	144		First 2 pages of N. Carter's file with a date stamp of August 30, 2005 Re: WPS Professional Standards Unit PSU - #05-019	D. Paciocco
	145	**E-1.22.c**	E. St. Paul Police Incident Report - created February 25, 2005	D. Paciocco
	146	**E-1.22.b**	Officer's Notes - H. BAKEMA - pages 64 - 74	D. Paciocco
			July 15th, 2008	
	147	**P-3.87.2**	Correspondence from Fillmore & Riley dated April 2, 2008 – Cell Phone Call Records of E. St. Paul Police Service	D. Paciocco
	148		Bakema notes – details found in final notes not found in original on scene notes	D. Paciocco
	149		Coincidental details found in Graham's on-scene notes and not found in Bakema's on-scene notes at pages 395 - 400	D. Paciocco
	150	**Q-1.89.b.9**	Deputy Chief D. Webster – Notes of Tuesday, March 1 Morning Briefing	D. Paciocco
	151	**R-1.91.30**	Letter from H. Weinstein to M. Minuk dated June 27, 2006	H. Weinstein
			July 16th, 2008	
	152	**W** **(W.1 – W.8)**	Documentary Evidence from Branigan's Restaurant Dated February 23 & 24, 2005	D. Paciocco
	153	**W.9**	18 Photos of Branigan's Bar (Garden City Location, 787 Leila Avenue) and CAD Floor plan of the Bar	D. Paciocco
	154	**F-3.38.b**	Interview of C. O'Halloran dated March 11, 2005 by P.S.U.	D. Paciocco
	155		Email from Shannon Hanlin sent July 2, 2008 at 6:58pm with blank WPS Photo Line Up Form and WPS Line Up for Operations/Div 13 – February 25, 2005	D. Paciocco
	156	**T.5.a**	Chelsea O'Halloran - Commission Interview March 12, 2008	M. Jack
	157	**F-3.38.a**	P.S.U. Interview of Darcey Gerardy & Rodrigo Bravo dated March 11, 2005	V. Clifford
			July 17th, 2008	
	158	**Q-1.89.b.11**	Handwritten Notes of Inspector K. McCaskill February 28, 2005 (2 pages)	D. Paciocco
	159		Handwritten Note of Inspector McCaskill dated February 28, 2005 at 17:50 hrs	D. Paciocco
	160	**Q-2.89.b.35**	WPS Interoffice Memo dated February 25, 2005 of Inspector Keith McCaskill Re: Harvey-Zenk/2180-13	G. Zazelenchuk
	161	**Q-1.89.b.10**	Superintendent C. Scott Notes dated February 25, 2005	G. Zazelenchuk
	162	**Q-2.89.b.25**	Statement of Sean Kevin Black – File: 05-9749 01	D. Paciocco

EX ID.	EX. NO.	DISCLOSURE REFERENCE	EXHIBIT DESCRIPTION	FILED BY
	163	**F-1.33.b**	Line-up for Operations / Div 13 – E Shift for February 24, 2005 (1 page)	D. Paciocco
	164	**F-1.35.c**	P.S.U. Transcript of Interview of Cst. Sean Black dated March 11, 2005	D. Paciocco
			July 21st, 2008	
	165		Hand-drawn diagram of Sean Black's kitchen	D. Paciocco
	48b	**R-4**	Additional Disclosure provided by Glenn McFetridge at the June 2 Hearings	G. Zazelenchuk
	166	**F-1.35.a**	P.S.U. Transcript of Interview of Cst. Ken Azaransky dated March 11, 2005	V. Clifford
			July 22nd, 2008	
	167	**F-1.35.e**	P.S.U. Transcript Interview of Cst Tracy Fudge dated March 25, 2005	D. Paciocco
	168		Transcript of Proceedings July 21, 2008 – Evidence of Tracey Fudge	D. Paciocco
	169	**F-1.35.g**	P.S.U. Transcript of Interview of Dave Harding dated March 2, 2005	V. Clifford
	170	**F-2.35.r**	P.S.U. Transcript of Interview of Jim Anderson dated February 28, 2005	D. Paciocco
	171	**Q-1.89.b.3**	Detective Sergeant R. Girard (notes)	D. Paciocco
	172	**F-1.33.c**	Winnipeg Police Service Overtime Time Exception Sheets	D. Paciocco
	173	**F-1.35.i**	P.S.U. Transcript of Interview of Cst Kelly McLure dated March 3, 2005	V. Clifford
			July 23rd, 2008	
	174	**F-2.35.s**	P.S.U. Transcript of Interview of Sgt Chris Humniski dated February 28, 2005	D. Paciocco
	175	**Q-1.89.b.12**	Superintendent A. Stannard (notes) dated February 28, 2005	D. Paciocco
	176	**S-98.b**	R. Wolson's Handwritten Notes - List of witnesses that were going to be called	G. Zazelenchuk
	177	**F-2.35.j**	P.S.U. Transcript of Interview of Cst Ted Michalik dated March 3, 2005	V. Clifford
	178	**F-2.35.l**	P.S.U. Transcript of Interview of Cst Jay Nolet dated March 3, 2005	V. Clifford
	179	**F-2.35.n**	P.S.U. Transcript of Interview of Cst Theodore Jack Spruyt dated March 3, 2005	V. Clifford
	180	**Q-2.89.b.19**	WPS Shift Schedule December 2004 – April 2005	S. Hanlin
			July 24th, 2008	
	137	**Q-1.89.b.4**	Acting Inspector J. Poole (notes) **(Clear copy of original document Q-1.89.b.4 filed July 10, 2008)**	D. Paciocco
	181	**Q-2.89.b.26**	Email from Jim Poole to Jennifer Smeets sent February 28, 2005	D. Paciocco
	182	**Q-2.89.b.28**	Email From Doug Webster to Jim Poole sent March 2, 2005	D. Paciocco
	183	**Q-2.89.b.20**	Suspension Hearing Brief of Cst. Derek Harvey-Zenk#2180 dated March 22, 2005	D. Paciocco
	184	**F-1.33.a**	Supplementary Report - Sgt. Roger Girard dated April 11, 2005	D. Paciocco

EX ID.	EX. NO.	DISCLOSURE REFERENCE	EXHIBIT DESCRIPTION	FILED BY
	185	**Q-2.89.b.31**	Email from Jim Poole to Doug Webster sent May 6, 2005	D. Paciocco
	186	**Q-2.89.b.36**	Winnipeg Police Service Inter Office Memorandum dated March 2, 2005	G. Zazelenchuk
	187	**F-1.34**	Supplementary Report (ROXBURGH, Douglas)	G. Zazelenchuk
	188	**F-2.35.p**	P.S.U. Transcript of Interview of Cst Werner Toews dated March 15, 2005	G. Zazelenchuk
	189		Witness preamble - Police/Staff	D. Paciocco
	190		Witness preamble - Non-police	D. Paciocco
	191		Email response from Doug Webster to Jim Poole sent May 6, 2005	D. Paciocco
	192	**F-1.35.h**	P.S.U. Transcript of Interview of Jacek Kapka dated March 2, 2005	D. Paciocco
	193	**F-2.35.u**	P.S.U. Transcript of Interview of Cst Daniel Mikawoz dated March 2, 2005	D. Paciocco
	194	**F-2.35.v**	P.S.U. Transcript of Interview of Cst Christian Guyot dated March 2, 2005	D. Paciocco
	195	**F-2.35.w**	P.S.U. Transcript of Interview of Cst Al Williams dated March 3, 2005	D. Paciocco
	196	**F-2.35.x**	P.S.U. Transcript of Interview of Cst Marnie Nechwediuk dated March 3, 2005	D. Paciocco
	197	**F-2.35.o**	P.S.U. Transcript of Interview of Cst Lloyd Swanson dated March 3, 2005	D. Paciocco
	198	**F-2.35.k**	P.S.U. Transcript of Interview of Cst Brian Neumann dated March 10, 2005	D. Paciocco
	199	**F-2.35.q**	P.S.U. Transcript of Interview of Cst Shaun Veldman dated March 11, 2005	D. Paciocco
	200	**F-1.35.d**	P.S.U. Transcript of Interview of Cst Jules Buors dated March 11, 2005	D. Paciocco
	201	**F-1.35.f**	P.S.U. Transcript of Interview of Cst Sammi Haddad dated March 15, 2005	D. Paciocco
	202	**F-2.35.m**	P.S.U. Transcript of Interview of Cst Gord Schneider dated March 15, 2005	D. Paciocco
	203	**F-1.35.b**	P.S.U. Transcript of Interview of Cst Norbert Bauer dated March 23, 2005	D. Paciocco
	204	**F-2.35.t**	P.S.U. Transcript of Interview of Cst Paul Isaak dated March 22, 2005	D. Paciocco
	205	**Q-2.89.b.37**	Winnipeg Police Service Inter-Office Memorandum - to Constable B. Neumann	D. Paciocco
	206	**Q-1.89.b.6**	Detective Sergeant A. Epp (notes)	D. Paciocco
			July 28th, 2008	
	207		WPS Photo Line-up Form dated 05-03-22 11:40 hrs Incident Number 05-017	D. Paciocco
	208		Table 1 - Personal Alcohol Consumption Chart 1	D. Paciocco
	209		Table 2 - Harvey-Zenk Alcohol Consumption Chart 2	D. Paciocco
	210	**S-99**	Correspondence	V. Clifford
	211		Curriculum Vitae – Richard J. Wolson, Q.C.	V. Clifford
	212	**R-2.91.59**	Letter from Chief Judge Wyant to Martin Minuk and Richard Wolson dated August 31, 2007	V. Clifford
	213	**R-2.91.79**	Email from Martin Minuk to Richard Wolson sent October 19, 2007 4:54 pm	V. Clifford
	214	**S-95**	Remand Memos	V. Clifford

EX ID.	EX. NO.	DISCLOSURE REFERENCE	EXHIBIT DESCRIPTION	FILED BY
			July 29th, 2008	
	215	**G.44**	Manitoba Department of Justice Prosecutions - Policy Directive Subject: Appointment of Independent Counsel (January 2005)	D. Paciocco
	216	**G.46**	Manitoba Department of Justice Prosecutions - Policy directive Subject: Laying and Staying Charges	D. Paciocco
	217	**G.45**	Manitoba Department of Justice Prosecutions - Policy Directive Subject: Conditional Sentencing (April 2005)	D. Paciocco
	218		Contacts made by Marty Minuk to D. Slough, B. Kaplan From February 25, 2005 – November 30, 2007	D. Paciocco
	219	**R-1.91.4**	Fax from Brian Kaplan to Martin Minuk dated September 21, 2005 with attached Action Route Slip	D. Paciocco
	220	**R-1.91.5**	Hard copy of email trail, last message from Brian Kaplan to Martin Minuk sent September 27, 2005 at 11:51am	D. Paciocco
	221	**R-2.91.83**	Hard copy of email trail, last message from Ron Perozzo to Martin Minuk sent October 29, 2007 at 3:57 pm	D. Paciocco
	222		Status of the Case Chart	D. Paciocco
	223	**R-1.91.10**	Letter from Provincial Judge Meyers to Martin Minuk and Richard Wolson dated February 10, 2006	D. Paciocco
	224		Section 254 of the Criminal Code	D. Paciocco
	225	**R-1.91.16**	Hard copy of email trail, last message from Brian Kaplan to Colleen Ireton sent May 12, 2006 at 3:42pm	D. Paciocco
	226	**Y-2.A** **Y-2.B** **Y-2.C**	C.V. of Brian Gover Correspondence Dated March 26, 2008 from Commission Counsel to Brian Gover Correspondence Dated June 17, 2008 constituting Brian Gover's Expert Witness Report	D. Paciocco
	227	**R-2.91.49**	Hard copy of email trail, last message from Martin Minuk to Colleen Ireton sent July 16, 2007 at 8:54 am	D. Paciocco
	228	**Y-1.A** **Y-1.B** **Y-1.C** **Y-1.D**	C.V. of Richard Peck, Q.C. Correspondence Dated March 26, 2008 From Commission Counsel to Richard Peck Enclosing Prosecutorial Standards and Ethics Materials and Soliciting Opinion Correspondence Dated June 10 from Richard Peck, Q.C., Attaching His Opinion. "Taman Inquiry Opinion" from Richard Peck, Q.C.	D. Paciocco
			July 30th, 2008	
	229		Submissions on Nature of Resolution Discussions	D. Paciocco
	230	**I.58**	Zenk Sentencing Submissions (typed notes) #1 - 9 pages	D. Paciocco
	231	**X-1.1** **X-1.2** **X-1.3** **X-1.4**	The Role of the Crown as a Minister of Justice and Officer of the Court The Role of the Attorney General and Delegation of Authority The Role of the Independent Prosecutor The Role of the Ministerial Polices	D. Paciocco

EX ID.	EX. NO.	DISCLOSURE REFERENCE	EXHIBIT DESCRIPTION	FILED BY
		X-1.5 **X-1.6** **X-1** **X-2.7** **X-2.8** **X-2.9** **X-2.10**	The Prosecutor and Investigations The Prosecutor and Staying Charges Prosecutorial Standards and Ethics Table of Contents The Prosecutor and Conflicts of Interest The Prosecutor and Plea Bargaining Overseeing Prosecutorial Discretion The Dewar Review	
	232	**P-3.88.a**	Letter from D. Abra to B. Kaplan dated September 8, 2006	G. Zazelenchuk
	233	**R-2.91.72**	Hard copy of email from Don Slough to Martin Minuk sent September 19, 2007 at 10:52 am	B. McDonald
	234	**R-1.91.3**	Hard copy of email from Martin Minuk to Hymie Weinstein and Richard Wolson sent May 27, 2005 at 11:23am	G. Zazelenchuk
			July 31st, 2008	
	235	**Y-3.A** **Y-3.B**	Letter dated February 22, 2008 to Richard Peck Letter dated March 4, 2008 to Brian Gover	V. Clifford
	236	**P-1.82**	Correspondence from Fillmore & Riley to Commission Counsel dated Feb. 28/08 Re: Tramley Report with Attachments of Relevant Excerpts	B. McDonald
	237		C.V. of Paul A. Lobsinger along with his Opinion Evidence Relating to East St. Paul Police Investigative File and his Report Addendum dated May 8, 2008	D. Paciocco
			August 5, 2008	
	238	**G.40**	Fax charge sheet to Brian Kaplan for East St. Paul Police – dated March 1, 2005	D. Paciocco
	239	**R-1.91.27**	Letter from Darrell Madill to Mike Horn dated May 23, 2006	D. Paciocco
	240	**R-2.91.65**	Hard copy of email from Martin Minuk to Brian Kaplan sent September 9, 2007 at 10:11pm attaching draft submission	D. Paciocco
	241	**R-2.91.80**	Copy of email from Martin Minuk to Brian Kaplan sent October 20, 2007 at 4:17 am attaching letter of Richard Wolson dated October 19, 2007	D. Paciocco
	242	**N.79**	Appointment of Independent Counsel Review (Ruth Krindle, December 18, 2007)	S. Nozick
	226	**Y-2.d**	Supplementary Expert Witness Report on Prosecution Ethics and Standards dated July 9, 2008	V. Clifford
			August 6, 2008	
	243	**R-1.91.15**	Fax from East St. Paul Police dated 2006 04 26 attaching letter dated April 25, 2006	V. Clifford
	244	**R-2.91.51**	Hard copy of email from Colleen Ireton to Martin Minuk sent July 16, 2007 at 9:43 am attaching two page document title Controversial Issues Alert July 16, 2007	V. Clifford
	245	**R-2.91.71**	Hard copy of email from Martin Minuk to Don Slough sent September 14, 2007 at 7:48 am	V. Clifford

EX ID.	EX. NO.	DISCLOSURE REFERENCE	EXHIBIT DESCRIPTION	FILED BY
	246	**R-1.91.9**	Action Route Slip dated January 13, 2006 with attached letter from Victoria Sveinson	V. Clifford
	247	**M.76.a**	Media Article-Canoe - Cnews dated March 2, 2005 - Cop faces charges	G. Zazelenchuk
	248	**M.76.c**	Media Article-Canoe - Cnews dated March 3, 2005 - Crash victim	G. Zazelenchuk
	249	**Q-2.89.b.30**	Email From Art Stannard to Doug Webster, Corrine Scott sent March 11, 2005	D. Paciocco
	250	**I.54**	Medical Report- Letters of Reference - Written Material filed by R. Wolson	D. Paciocco
	251		Statement of Jerome Mauws	D. Paciocco for B. McDonald
			August 12, 2008	
	252		Letter from D. Slough to Commission Counsel dated August 8, 2008	G. McFetridge

If unable to view the exhibits online, please contact the Department of Justice in writing at:

Department of Justice
Administration and Finance
1110 – 405 Broadway
Winnipeg, MB R3C 1L6

TABLE 1 Winnipeg Professional Standards Unit Interviews on Personal Alcohol Consumption

OFFICER	BRANIGANS	BLACKS
Jim Anderson **Volume F-2.35.r**	**Page 1130 – Line 14:** I consumed some beer there, and then over a period of time, I would say this is, I believe it **was three, it may have been two, but it was probably three beer**, interspersed each one with a glass of water.	**Page 1131 – Line 16:** There was alcohol there. Speaking for myself, **I believe I had a couple of drinks**, two or so, again, over that period of time.
Ken Azaransky **Volume F-1.35.a**	**Not Asked**	**Page 863 – Line 4:** **I had rye and** **Coke.** **Page 863 – Line 15:** So no one, I don't think anybody gave me an open offer, but it was assumed if I wanted to have a drink, I could have a drink. So I grabbed a glass and had a drink.
Norbert Bauer **Volume F-1.35.b**	**Page 882 – Line 13 :** I sat at the table on the side, had some chicken wings, **had a drink**, and then a group of us went over to Sean Black's later -- went over to Sean's.	**Page 882 – Line 18:** So I went over to Sean's **and had a drink over at** Sean's place, and I left at about, I don't know, 5:00, 5:30 in the morning, something like that, from Sean's place.
Sean Black **Volume F-1.35.c**	**Not asked**	**Page 909 – Line 23:** At my place **I had a couple of drinks.** Maybe -- I wasn't drinking heavy, we had work the next day and we were coming in to do an overlap, so I wasn't interested in drinking lots there.
Tracy Fudge **Volume F-1.35.e**	**Not asked**	**Not asked**
Dave Harding **Volume F-1.35.g**	**Not asked**	**Page 963 – Line 16:** I had a couple of ryes.
Chris Humniski **Volume F-2.35.s**	**Page 1149 – Line 16:** And I attended at Branigan's just after 1:00, so I was there maybe an hour, and had some wings **and a couple of drinks**.	**Page 1147 – Line 21:** And for myself, I **had a couple of drinks** and then I ended up leaving.

Kelly McLure **Volume F-1.35.i**	**Page 993 – Line 10:** And we had wings and a couple of drinks, or I had wings **and a couple of drinks**. **Page 1001 – Line 6:** I wasn't drinking that much that night. **Like I had a beer and a half at Branigan's, and then I had a little drink there.**	**Page 1001 – Line 4:** When I was at Sean Black's, **I know I had one drink of, like a little bit of Bailey's with milk**. I wasn't drinking that much that night. **Like I had a beer and a half at Branigan's, and then I had a little drink there.**
Jack Spruyt **Volume F-2.35.n**	**Page 1076 – Line 15:** I went there**, had a few beers**, some wings.	**Not asked**
Jay Nolet **Volume F-2.35.l**	**Not asked**	**Not asked**
Jacek Kapka **Volume F-1.35.h**	**Not asked**	**Not present**
Sammi Haddad **Volume F-1.35.f**	**Page 948 – Line 16:** **I just had water** and that's it.	**Not present**
Christian Guyot **Volume F-2.35.v**	**Page 1205 – Line 3:** Approximately **four beers**.	**Not present**
Ted Michalik **Volume F-2.35.j**	**Page 1015 – Line 24:** I had **a few beers** and some wings, and then would have left at about 2:00, or just prior to 2:00 in the morning.	**Not present**
Daniel Mikawoz **Volume F-2.35.u**	**Page 1188 – Line 5:** I **had three**. [beers]	**Not present**
Jules Buors **Volume F-1.35.d**	**Page 922 – Line 11:** **I ordered a beer** and some wings. There was some other	**Not present**
Marnie Nechwediuk **Volume F-2.35.x**	**Page 1235 – Line 21:** And I ordered **a Diet Coke** because I wasn't drinking that night… **Page 1235 – Line 25:** I had ordered **one beer that night, which I had actually bought for a fellow officer**, Constable Azaransky.	**Not present**

Brian Neumann **Volume F-2.35.k**	**Page 1028 – Line 15:** While I was there I had, I'm not a drinker at all, so I just had **a couple of cokes** and 20 wings, and I was there for approximately an hour and left shortly after 1:00 o'clock.	**Not present**
Gord Schneider **Volume F-2.35.m**	**Not asked**	**Not present**
Lloyd Swanson **Volume F-2.35.o**	**Page 1095 – Line 14:** I was going to buy a jug for the table, top up whoever needed some, but the staff there said it was cheaper if you bought individual glasses. So I bought a number of glasses, and I ordered some wings, sat down. **The glasses were all put on the table. I took one of them**.	**Not present**
Werner Toews **Volume F-2.35.p**	**Not asked**	**Not present**
Shaun Veldman **Volume F-2.35.q**	**Page 1124 – Line 2:** My partner, **Dan, paid for my drink** and I had a plate of wings, and he paid for that, so he looked after my tab.	**Not present**
Al Williams **Volume F-2.35.w**	**Page 1219 – Line 5:** Every time it is **the same thing, every time I go there, three beer**, 20 wings.	**Not present**

TABLE 2 Winnipeg Professional Standards Unit Interviews on Derek Harvey-Zenk / Alcohol Consumption

OFFICER	BRANIGANS	BLACKS
Jim Anderson **Volume F-2.35.r**	**Not asked**	**Page 1135 – Line 14:** I know what I drank, and I wasn't aware of what anyone else drank.
Ken Azaransky **Volume F-1.35.a**	**Page 859 – Line 25:** You know, I didn't see what he was drinking and, you know, aside from knowing that we usually go there for wings, I didn't see him eating them.	**Page 869 – Line 10:** Well, at the end I know he wasn't drinking, we were just sitting around sort of at the kitchen table, sort of shooting the shit, so to speak.
Norbert Bauer **Volume F-1.35.b**	**Page 884 – Line 13, 16:** No... No. Like I said, I couldn't even tell you. Like I don't know him very well and he wasn't at my table, so I have no idea.	**Page 886 – Line 8:** You know, I'm not really paying attention to what everyone else does, but if someone was stumbling around and tipping over chairs and things like that, that would make me take notice, no.
Sean Black **Volume F-1.35.c**	**Page 900 – Line 3:** No. No, I was – most of us go there for wings, so I would assume he had probably been eating chicken wings. But drinking, no, no idea.	**Page 911 – Line 23:** No. [In response to question, do you know how much Derek had to drink.]
Tracy Fudge **Volume F-1.35.e**	**Page 933 – Line 21:** I have no idea.	**Page 936 – Line 2:** There was some rye out and Bailey's out. There was people drinking, but again I wasn't paying attention to that, what everyone else was drinking.
Dave Harding **Volume F-1.35.g**	**Page 959 – Line 17 to 24:** 17 - No idea. [number of drinks] 20 - No idea. [what he was drinking] 23 – Food, I could tell you he had 40 wings. **Page 960 – Line 22:** No, I couldn't tell you that.	**Page 963 – Line 21:** I didn't notice.
Chris Humniski **Volume F-2.35.s**	**Page 1152 – Line 24:** At Branigan's definitely not, because I wasn't there with him. [in response to question would you have any idea how much he had to drink at Branigans and Sean Blacks]	**Page 1153 – Line 15:** I really didn't even notice him there in the group. [in response to question how much he drank at Sean Black's while the witness was there]

Kelly McLure **Volume F-1.35.i**	**Page 997 – Line 19:** No, you know what, I don't know, I wasn't paying attention. I know he had wings because, I just remember, I'm pretty sure I saw him have wings, because, yeah, pretty sure. But I don't recall if he had any – I don't recall if he had any alcoholic beverages in front of him.	**Page 998 – Line 25:** And I do recall at that point he was fine and I didn't notice if he was drinking or not, I couldn't say one way or another at Branigan's. **Page 999 – Line 18:** Fine. It was an intelligent conversation, I wouldn't have even – like I said, I didn't see him specifically with any drinks, but at that point I wouldn't have, you know, if we would have been anywhere, it would have been just like any conversation that I ever had with him at work or anywhere so—
Jay Nolet **Volume F-2.35.l**	**Page 1046 – Line 16:** I have no idea. I don't know. I didn't pay attention to how much he was drinking. I know he did consume alcohol, but I don't know how much. I wasn't keeping track. As for wings, I could say he holds the record for 62 wings, so he probably consumed a lot of wings.	**Page 1049 – Line 24:** I don't know, I wasn't paying attention to who was drinking and who wasn't.
Jack Spruyt **Volume F-2.35.n**	**Page 1081 – Line 16:** No, I did not, no. [in response to question did you know or see what he was drinking] I have no idea. [in response to the question about the amount he drank]	**Page 1084 – Line 20:** Not that I noticed. Like I don't know, I'm not going to say so and so was drinking because I don't know if they were or not. **Page 1085 – Line 1:** In general? There were glasses out and I honestly couldn't tell you if there was alcohol in them or not. **Page 1085 – Line 10:** I really wasn't paying attention
Ted Michalik **Volume F-2.35.j**	**Page 1018 – Line 22:** I couldn't see how many, how much he was drinking. I noticed he had a beer in front of him, and also noticed that he ate about 40 wings.	**Not present**
Daniel Mikawoz **Volume F-2.35.u**	**Page 1189 – Line 7:** No idea actually, I believe it was beer, but I don't know. [in response to question can you tell us what he was drinking] **Page 1189 – Line 14:** No. [in response to question do you know haw many beverages he had that evening]	**Not Present**
Jules Buors **Volume F-1.35.d**	**Page 922 – Line 18:** And I'm guessing at what was in front of him as far as liquor goes, and I believe it was some kind of draft beer. **Page 925 – Line 4:** I remember from past times we have been there and other places he always drinks beer, so I'm leaning towards the draft beer. I can honestly say that I don't think he finished a full glass	**Not present**

	the whole time I was there, It is hard to believe but I can't remember. I can't remember any -	
Marnie Nechwediuk Volume F-2.35.x	**Page 1240 – Line 8:** I know for sure there was a beer in front of him, but I don't know how many he had, and that he ordered 20 wings for sure. [in response to question do you know if he was consuming alcohol] **Page 1240 – Line 22:** It was in a glass. [in response to question whether it was bottles or draft]	**Not present**
Jacek Kapka Volume F-1.35.h	**Page 980 – Line 19:** No. [In response to question did you notice what Derek was drinking.]	**Not present.**
Sammi Haddad Volume F-1.35.f	**Page 946 – Line 21:** No clue.	**Not present**
Christian Guyot Volume F-2.35.v	**Page 1205 – Line 10:** No. [in response to question were you sort of able to see what he consumed] **Page 1210 – Line 25:** I have no idea [in response to question, what was he drinking]	**Not present**
Brian Neumann Volume F-2.35.k	**Page 1030 – Line 22:** I didn't see Derek eating anything, but I did notice that he had a large plate in front of him, already eaten chicken wings. **Page 1031 – Line 3:** During the period of time I was there I didn't see him drink anything, and I am sure I didn't see him order a drink during that period of time.	**Not present**
Gord Schneider Volume F-2.35.m	**Page 1067 – Line 2:** You know, I have gone over this earlier, just to try to remember seeing him drinking and that. And to be honest, I only saw a glass in front of him. I didn't actually ever see him touch it. I am sure he probably had a drink there, but I did not ever see him raise a glass, because he was eating chicken wings all night there, and they were joking about how he had eaten 60 chicken wings one previous evening. And I can honestly say I never saw him raise a glass to his lips there. Even though I know there was a glass in front of him. No, I don't know what he was drinking.	**Not present**

Lloyd Swanson **Volume F-2.35.o**	**Page 1098 – Line 17:** When I got there, sat down, got my wings, Harvey had a plate of wings with him and what appeared to be, I'm guessing, a draft. It was in a draft glass and it looked like draft so.	**Not present**
Werner Toews **Volume F-2.35.p**	**Page 1111 – Line 19:** As far as drinking goes, again, his back was towards me and I was sort of facing off to the side, so I am not sure, I can't say 100 per cent sure what he was drinking. There were some beer glasses on the table, but I can't say that I saw him drinking.	**Not present**
Shaun Veldman **Volume F-2.35.q**	**Page 1123 – Line 6:** No, I don't [in response to the question do you know what he was drinking that night]	**Not present**
Al Williams **Volume F-2.35.w**	**Page 1224 – Line 14:** Beer [in response to question what was he drinking] **Page 1226 – Line 13:** No, I have no idea. [in response to question any idea how many he consumed]	**Not present**

TAMAN INQUIRY

Members of the Commission

The Commissioner

Honourable Roger Salhany, Q.C.

After obtaining a law degree from Osgoode Hall in 1961, the Honourable Roger E. Salhany, Q.C. attended Cambridge University for post graduate studies in criminal procedure under Professor Glanville Williams, where he obtained a diploma in Comparative Legal Studies in 1962.

For 16 years he practised general litigation, specializing both in criminal defence and acting as a Federal prosecutor. In 1975 at the age of 37, he was elected the youngest Bencher of the Law Society at the time. He was a sessional lecturer in criminal procedure at the University of Windsor from 1977 to 1979, a lecturer in the Bar Admission course from 1968 to 1978 and a lecturer for the Federation of Law Societies from 1972 to 1979.

In 1978, he was appointed a judge of the Ontario County Court and became a judge of the Ontario Superior Court in 1990 when the two courts merged. From 1979 to 1999, he was a lecturer on criminal law, procedure and evidence for the Ontario Provincial Police, the Conference of Ontario Boards and Agencies, the Canadian Judicial Council and the National Judicial Institute.

He is the author of eight books on criminal procedure, criminal evidence, the Charter of Rights and Freedoms, arrest, seizure and interrogation by the police and civil practice.

He retired in 1999 and subsequently became a member of the Pension Appeals Board which hears appeals under the Canada Pension Plan.

Commission Counsel

David M. Paciocco

David M. Paciocco (LL. B.,Western 1979; B.C.L., Oxford, 1981; LL.D (hon. causa) Laurentian University, 2005) is a Professor of Law at the University of Ottawa where he teaches Evidence, Criminal Law and Trusts.

Professor Paciocco was a part-time assistant prosecutor in Ontario from 1986 to 1990, and a full-time prosecutor, on leave from the University of Ottawa, from 1991 to 1993. Since 1993, he has continued full-time at the University of Ottawa while acting as counsel to the criminal law defence firm of Edelson and Associates. He has acted in many high profile cases, specializing in complex motions and appeals.

Professor Paciocco has appeared before the Supreme Court of Canada, the Ontario Court of Appeal, the British Columbia Court of Appeal, the Saskatchewan Court of Appeal, and the International Criminal Tribunal for Rwanda.

The author of several books and more than 100 legal articles, he is the recipient of a number of teaching and writing awards, including a 1999 Donner Prize for writing in public policy and the Attorney-General of Ontario's Mundell Medal 2002 for his contribution to law and letters. He also served as the Chief Justice J.V. Milvain Visiting Chair in Advocacy at the University of Calgary, Faculty of Law, 2004. His research has been cited on numerous occasions by the Supreme Court of Canada and other Canadian courts, by the Privy Council, and by courts in New Zealand and Australia.

He is legal counsel to the Ombudsman of Ontario, and has acted as a consultant to the government and to media on criminal law matters, and is a frequent lecturer at judicial and professional education seminars. Most recently Professor Paciocco acted as the section 696.3(3) delegate of the Minster of Justice conducting the review into the wrongful conviction of David Mullins-Johnson.

Associate Commission Counsel

W. Vincent Clifford

W. Vincent Clifford (B.Sc. Honours, 1986, Saint Mary's University; LL.B. 1989, Dalhousie Law School) was admitted to the Law Society of Upper Canada in 1991. He is the senior associate in the law firm of Edelson and Associates where he conducts a criminal litigation practice that includes the defence of charges under Canadian Federal statutes, including the Criminal Code of Canada. He also acts as counsel in Provincial regulatory proceedings and Coroner's inquests.

His practice focuses primarily on trial advocacy. He has acted as counsel in many high profile and complex criminal cases. He also has extensive experience and expertise in successfully arguing constitutional issues that involve the violation of rights and freedoms guaranteed under the Canadian Charter.

He was a senior instructor for the Criminal Law component of the Law Society of Upper Canada Bar Admission Course (Ottawa) in 2001 through 2005. He has been a frequent guest lecturer at the University of Ottawa Law School, Carleton University Law program and Algonquin College. He has presented numerous papers on criminal law matters to various legal and academic audiences. He has also been designated by the Law Society of Upper Canada as a Certified Specialist in Criminal Law.

He is currently enrolled in the Faculty of Graduate Studies at Osgoode Hall Law School, York University, where he is completing his Masters Degree, specializing in criminal law.

Chief Administrative Officer

R. L. (Bob) Giasson

Retired from Manitoba Department of Justice on December 31, 1999 as the Acting Assistant Deputy Minister, Courts Division. He was responsible for the management and leadership of the Courts Division by promoting the effective, impartial and efficient administration of the judicial process to serve the needs of Manitobans involved in criminal, civil and family disputes before the courts.

With over 35 years of service in Courts he held various positions including Registrar Court of Queen's Bench, Executive Director of Winnipeg Courts, Magistrate, Inspector of Courts of Manitoba and French Language Services Co-ordinator for the Manitoba Court system. He is an honorary life member of the Association of Court Administrators of Canada [ACCA].

In 2006 he was appointed Chief Administrative Officer of the Driskell Inquiry.

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