

Creation of the Inquiry



The Public Inquiries Act

The Commission of Inquiry was established pursuant to *The Public Inquiries Act*.¹ The provisions of *The Public Inquiries Act* are reproduced below:

“Short title

1 This Act may be cited as The Public Inquiries Act.

Commissions of inquiry

2 The Lieutenant Governor in Council, when he deems it expedient to cause inquiry to be made into and concerning a matter within the jurisdiction of the Legislature and connected with the good government of Saskatchewan or the conduct of the public business thereof, or that is in his opinion of sufficient public importance, may appoint one or more commissioners to make such inquiry and to report thereon.

Power to summon witnesses

3 The commissioners shall have the power of summoning before them any witnesses, and of requiring them to give evidence on oath, or on solemn affirmation if they are persons entitled to affirm in civil matters, and orally or in writing, and to produce such documents and things as the commissioners deem requisite to the full investigation of the matters into which they are appointed to inquire.

Power to compel attendance of witnesses

4(1) The commissioners shall have the same power to enforce the attendance of witnesses and to compel them to give evidence as is vested in any court of record in civil cases.

(2) The commissioners and any counsel engaged pursuant to section 5 shall have the same privileges and immunities as a judge of the Court of Queen’s Bench.

Services of experts

5(1) The commissioners, if thereunto authorized by the Lieutenant Governor in Council, may engage the services of such accountants, engineers, technical advisers or other experts, clerks, reporters and assistants as they may deem necessary or advisable, and also the services of counsel to aid and assist the commissioners in the inquiry.

(2) The commissioners may authorize and depute any such accountants, engineers, technical advisers or other experts, or any other qualified persons, to inquire into any matter within the scope of the commission.

¹ R.S.S. 1978, c. P-38



(3) The persons so deputed when authorized by the Lieutenant Governor in Council, shall have the same powers as the commissioners have to take evidence, issue subpoenas, enforce the attendance of witnesses, compel them to give evidence and otherwise conduct the inquiry.”

Order-in-Council

The Commission of Inquiry was created on February 19, 2003, by Order-in-Council.² The Order in Council reads:

“ 19 February 2003

114/2003

TO THE HONOURABLE

THE LIEUTENANT GOVERNOR IN COUNCIL

The undersigned has the honour to report that:

1 Sections 2 and 5 of *The Public Inquiries Act* provide, in part, as follows:

“2 The Lieutenant Governor in Council, when he deems it expedient to cause inquiry to be made into and concerning a matter within the jurisdiction of the Legislature and connected with the good government of Saskatchewan or the conduct of the public business thereof, or that is in his opinion of sufficient public importance, may appoint one or more commissioners to make such inquiry and to report thereon.

5(1) The commissioners, if thereunto authorized by the Lieutenant Governor in Council, may engage the services of such accountants, engineers, technical advisors or other experts, clerks, reporters and assistants as they may deem necessary or advisable, and also the services of counsel to aid and assist the commissioners in the inquiry.”

2 It is deemed advisable and in the public interest that an inquiry be made into the circumstances that resulted in the death of Neil Stonechild and the conduct of the investigation into the death of Neil Stonechild for the purpose of making findings and recommendations with respect to the administration of criminal justice in the Province of Saskatchewan.

The undersigned has the honour, therefore, to recommend that Your Honour’s Order do issue pursuant to sections 2 and 5 of *The Public Inquiries Act*:

- (a) appointing The Honourable Mr. Justice David Wright as a Commissioner of a Commission of Inquiry into the circumstances that resulted in the death of Neil Stonechild and into the conduct of the investigation into the death of Neil Stonechild, as set out in the terms of reference attached hereto as Schedule A;
- (b) establishing the terms of reference of the Commission of Inquiry as set out in Schedule A, attached hereto;

² O.C. 114/2003



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(d) authorizing the Commission to engage:

- (i) the services of such experts, clerks, reporters and assistants as the Commission deems necessary or advisable; and,
- (ii) the services of counsel to aid and assist the Commission;

to be paid by the Department of Justice as approved by the Minister of Justice and Attorney General;

(e) authorizing reimbursement by the Commissioner by the Department of Justice for reasonable travelling and sustenance expenses incurred by him in the performance of his duties;

(c) directing the said Commission to make its report to the Minister of Justice and Attorney General in accordance with those terms of reference;

(f) authorizing payment by the Department of Justice of expenses incurred in the administration of the Commission of Inquiry.”

Terms of Reference

The Terms of Reference for the Commission of Inquiry are appended to the Order-in-Council. The Terms of Reference state:

“TERMS OF REFERENCE

1. The Commission of Inquiry appointed pursuant to this Order will have the responsibility to inquire into any and all aspects of the circumstances that resulted in the death of Neil Stonechild and the conduct of the investigation into the death of Neil Stonechild for the purpose of making findings and recommendations with respect to the administration of criminal justice in the province of Saskatchewan. The Commission shall report its findings and make such recommendations, as it considers advisable.

2. The Commission shall perform its duties without expressing any conclusion or recommendation regarding the civil or criminal responsibility of any person or organization, and without interfering in any ongoing police investigation related to the death of Neil Stonechild or any ongoing criminal or civil proceeding.

3. The Commission shall complete its inquiry and deliver its final report containing its findings, conclusions and recommendations to the Minister of Justice and Attorney General. The report must be in a form appropriate for release to the public, subject to *The Freedom of Information and Protection of Privacy Act* and other laws.

4. The Commission shall have the power to hold public hearings but may, at the discretion of the commissioner, hold some proceedings *in camera*.

5. The Commission shall, as an aspect of its duties, determine applications by those parties, if any, or those witnesses, if any, to the public inquiry that apply to



the Commission to have their legal counsel paid for by the Commission, and, further determine at what rate such Counsel shall be paid for their services.”

Minister’s Press Release

On February 20, 2003, Justice Minister Eric Cline, Q.C. announced the Commission of Inquiry through a press release. The press release stated:

“February 20, 2003

Justice - 092

INQUIRY CALLED INTO DEATH OF NEIL STONECHILD

Justice Minister Eric Cline, Q.C., today announced the appointment of the Honourable Mr. Justice David Wright of the Court of Queen’s Bench to conduct an inquiry into the death of Neil Stonechild.

‘The head office of the Public Prosecutions Division reviewed the RCMP investigation into the death of Neil Stonechild and determined that there is not sufficient evidence to lay charges,’ Cline said. ‘There is, however, evidence that Neil Stonechild had contact with members of the Saskatoon Police Service on the day he was last seen alive.’

The appointment was made by Order-in-Council, which also outlines the terms of reference for the inquiry. The inquiry will have the responsibility to inquire into any and all aspects of the circumstances that resulted in the death of Neil Stonechild, and the conduct of the investigation into the death of Neil Stonechild.

Joel Hesje, of Saskatoon, has been designated by the Inquiry Commissioner as Commission Counsel. Hesje indicated that over the next few weeks the Commission will establish the infrastructure and processes required to complete the inquiry.

The Commission will deliver its final report and recommendations to the Minister of Justice.”

Standing and Funding Guidelines

Under the Terms of Reference, the Commission was given the power to hold public hearings. It was left to the Commission to decide what parties should have legal representation at the hearings and what amount of funding these parties should receive for legal representation at the hearings. The Commission developed the following Standing and Funding Guidelines to address these issues:

“STANDING AND FUNDING GUIDELINES

The Terms of Reference provide that the Commission shall have the responsibility to inquire into all aspects of the circumstances that resulted in the death of Neil Stonechild, and the conduct of the investigation into the death of Neil Stonechild for the purpose of making findings and recommendations with respect to the administration of criminal justice in the Province of Saskatchewan.



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I. PRINCIPLES

Commission counsel has the primary responsibility for representing the public interest at the Inquiry including the responsibility to ensure that all interests that bear on the public interest are brought to the Commission's attention.

1. Parties are granted standing for the purpose of ensuring that particular interests and perspectives, that are considered by the Commission to be essential to its mandate will be presented; these include interests and perspectives that could not be put forward by Commission counsel without harming the appearance of objectivity that will be maintained by Commission counsel and which the Commission believes are essential to the successful conduct of the Inquiry.
2. The aim of the funding is to assist parties granted standing in presenting such interests and perspectives but is not for the purpose of indemnifying interveners from all costs incurred.

II. CRITERIA FOR STANDING

The Commissioner will determine who has standing to participate in Commission proceedings and the extent of such participation. The Commissioner will determine applications for standing based on the following criteria:

- a. the applicant is directly and substantially affected by the Inquiry; or
- b. the applicant represents interests and perspectives essential to the successful conduct of the Inquiry; or
- c. the applicant has special experience or expertise with respect to matters within the Commission's terms of reference.

III. CRITERIA FOR FUNDING

The Terms of Reference provide that the Commissioner shall determine applications by those parties, if any, or those witnesses, if any, to the public inquiry that apply to the Commissioner to have their legal counsel paid for by the Commission, and further, determine at what rate such counsel shall be paid for their services. The Commissioner will determine applications for funding based on the following criteria:

- a. the applicant has been granted standing or is a witness whose counsel has been granted standing for the purpose of that witness's testimony;
- b. the applicant has an established record of concern for and has demonstrated a commitment to the interest they seek to represent, they are directly or substantially affected by the Inquiry, or they have special experience or expertise with respect to matters within the Commission's terms of reference;
- c. the applicant does not have sufficient financial resources to enable them adequately to represent that interest and require funds to do so; and
- d. the applicant has a clear proposal as to the use they intend to make of the funds, and appears to be sufficiently well organized to account for the funds.



IV. APPLICATIONS

Applications for standing shall be made in writing and shall include a statement of how the applicant satisfies the criteria for standing set out in these Guidelines.

1. Applications for funding shall be made in writing, supported by affidavit, and shall include the following:
 - a. a statement of how the applicant satisfies the criteria for funding set out in these Guidelines;
 - b. an explanation as to why an applicant would not be able to participate without funding;
 - c. a description of the purpose for which the funds are required, how the funds will be disbursed and how they will be accounted for;
 - d. a statement of the extent to which the applicant will contribute their own funds and personnel to participate in the Inquiry; and
 - e. the name, address, telephone number and position of the individual who will be responsible for administering the funds and a description of the controls put in place to ensure the funds are disbursed for the purposes of the Inquiry.”

Based upon these Guidelines, the following parties applied for and were granted standing at the Inquiry.³

Stella Bignell: Mrs. Bignell, the mother of Neil Stonechild, was granted standing in light of her relationship to the deceased and her role as representative of the Stonechild family. She was also granted funding for legal representation. Mrs. Bignell’s Counsel at the Inquiry were Donald Worme, Q.C. and Gregory Curtis.


Constable Hartwig and Constable Senger: Constable Hartwig and Constable Senger were granted full standing as they were considered suspects in an earlier investigation of Mr. Stonechild’s death by the RCMP. The officers were also granted funding for legal representation. Counsel for Cst. Senger was Jay Watson. Counsel for Cst. Hartwig was Aaron Fox, Q.C.

Federation of Saskatchewan Indian Nations (F.S.I.N.): I concluded that the F.S.I.N. had sufficient interest in this matter to participate as a full party in the Inquiry. The F.S.I.N. was also granted funding for legal representation. The Counsel for the F.S.I.N. was Silas Halyk, Q.C. and Catherine Knox.

Saskatoon Police Service: The Service was given full standing. Funding was not granted. Barry Rossmann, Q.C. was Counsel for the Saskatoon Police Service.

Saskatchewan City Police Association: The Association was given full standing as it represents the interests of the bulk of the Police Service membership. The Association was not granted funding for legal representation. Counsel for the Association was Drew Plaxton.

³ The standing and funding rulings are posted on the Inquiry website: www.stonechildinquiry.ca/parties.shtml and are reproduced in the Report at Appendix “U”



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Gary Pratt: Mr. Pratt was at one time considered a possible suspect in the death of Neil Stonechild. Mr. Pratt applied for standing part way through the hearings. He was granted full standing. He was also granted funding for legal representation. Mr. Pratt's Counsel was Mark Brayford, Q.C.

Keith Jarvis: Mr. Jarvis was the Investigator in charge of the 1990 Saskatoon Police Service investigation into the death of Neil Stonechild. Mr. Jarvis applied for standing part way through the hearings. He was granted full standing. He was also granted funding for legal representation. Kenneth Stevenson, Q.C. was Counsel for Mr. Jarvis.

Royal Canadian Mounted Police (RCMP): The standing granted to the RCMP was limited to the date it was appointed to investigate the Stonechild matter. Funding was not granted. Counsel for the RCMP was Bruce Gibson.

Jason Roy: Mr. Roy was a friend of Neil Stonechild. Mr. Roy indicated, on several occasions, that he has personal knowledge of Neil Stonechild's involvement with members of the Saskatoon Police Service on the night that Stonechild was last seen alive. He was given standing as a witness. He was also granted funding for legal representation. Darren Winegarden was his Counsel. John Parsons also appeared as Counsel for Mr. Roy on occasion.

Deputy Chief Dan Wiks: Deputy Wiks was a witness who testified on behalf of the Saskatoon Police Service. Wiks was cross-examined on the veracity of comments he made to the press concerning Cst. Hartwig and Cst. Senger. At the conclusion of the evidentiary phase of the hearings, Deputy Wiks applied for standing. Wiks was granted standing to make closing submissions to the Commission in respect of these comments. He was granted funding for legal representation. Richard Danyliuk was Counsel for Deputy Wiks.

Rules of Practice and Procedure

The Commission of Inquiry established the following rules of practice and procedure:

"RULES OF PROCEDURE AND PRACTICE

I. The Terms of Reference provide that the Commission shall have the responsibility to inquire into any and all aspects of the circumstances that resulted in the death of Neil Stonechild, and the conduct of the investigation into the death of Neil Stonechild for the purpose of making findings and recommendations with respect to the administration of criminal justice in the Province of Saskatchewan.

II. HEARINGS

Public hearings will be convened in Saskatoon to address issues within the Terms of Reference. Persons or groups granted standing are referred to in these Rules as parties. The term 'party' is used to convey the grant of standing and is not intended to convey notions of an adversarial proceeding.

1. The Commissioner may amend or dispense with these Rules as he sees fit to ensure fairness.



2. All parties and their counsel shall adhere to these Rules, and non-compliance with the Rules may result in loss of standing or such other sanction as the Commissioner may determine as appropriate.
3. Any party may raise any issue of non-compliance with these Rules with the Commissioner.
4. The Commission is committed to a process of public hearings. However, the Terms of Reference provides that the Commission may, at the discretion of the Commissioner hold some proceedings in camera. Any party or witness wishing to have any portion of the proceedings in camera, shall apply in writing at the earliest possible opportunity pursuant to the provisions of paragraph 32 below.
5. Counsel for parties and counsel representing witnesses called to testify before the Commission may participate during the hearing of such evidence as provided in these Rules.

III. EVIDENCE

i. General

In the ordinary course Commission counsel will call and question witnesses who testify at the Inquiry. Counsel for a party may apply to the Commissioner to lead a particular witness's evidence in-chief. If counsel is granted the right to do so, examination shall be confined to the normal rules governing the examination of one's own witness.

1. The Commission is entitled to receive any relevant evidence that might otherwise be inadmissible in a court of law. The strict rules of evidence will not apply to determine the admissibility of evidence.
2. Parties shall provide to Commission counsel the names and addresses of all witnesses they feel ought to be heard, and shall provide to Commission counsel copies of all relevant documentation, including statements of anticipated evidence, at the earliest opportunity.
3. Commission counsel have a discretion to refuse to call or present evidence.
4. When Commission counsel indicate that they have called the witnesses whom they intend to call in relation to a particular issue, a party may then apply to the Commissioner for leave to call a witness whom the party believes has evidence relevant to that issue. If the Commissioner is satisfied that the evidence of the witnesses is needed, Commission counsel shall call the witness, subject to Rule 8.

ii. Witnesses

Anyone interviewed by or on behalf of Commission counsel is entitled, but not required, to have one personal counsel present for the interview to represent his or her interests. If a person is employed or holds office with someone who holds standing as a party, Commission counsel will interview that person only after



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informing counsel for the party, unless the witness says they have independent counsel or instructs Commission counsel that they do not wish counsel for the party to be present or notified.

1. If a witness has held prior employment with one or more of the parties, Commission counsel will tell the witness that they are free to have the benefit of counsel for that party, but Commission counsel will proceed with the interview if the witness indicates that they do not wish counsel for the party by whom they were employed to be notified or be present during the interview.
2. Witnesses will give their evidence at a hearing under oath or affirmation.
3. Witnesses may require that the Commission hear evidence pursuant to a subpoena in which case a subpoena shall be issued.
4. Witnesses who are not represented by counsel for parties with standing are entitled to have their own counsel present while they testify. Counsel for a witness will have standing for the purposes of that witness' testimony to make any objection thought appropriate.
5. Witnesses may be called more than once.
6. Before a person gives evidence to the Inquiry, such person shall be advised that he or she has the protection of section 37 of the Saskatchewan Evidence Act and section 5 of the Canada Evidence Act.

iii. Order of Examination

1. The order of examination will be as follows:
 - a. Commission counsel will adduce the evidence from the witnesses. Except as otherwise directed by the Commissioner, Commission counsel are entitled to adduce evidence by way of both leading and non-leading questions;
 - b. parties granted standing to do so will then have an opportunity to cross-examine the witness to the extent of their interest. The order of cross-examination will be determined by the parties having standing and if they are unable to reach agreement, by the Commissioner;
 - c. counsel for a witness, regardless of whether or not counsel is also representing a party, will examine last, unless he or she has adduced the evidence of that witness in-chief, in which case there will be a right to re-examine the witness; and
 - d. Commission counsel will have the right to re-examine.
2. Except with the permission of the Commissioner, no counsel other than Commission counsel may speak to a witness about the evidence that he or she has given until the evidence of such witness is complete. Commission counsel may not speak to any witness about his or her evidence while the witness is being cross-examined by other counsel.



iv. Access to Evidence

1. All evidence shall be categorized and marked P for public sittings and, if necessary, C for sittings in camera.
2. Electronic copies of the P transcript of evidence will be provided to parties by the court reporter. Hard copies of the transcript may be ordered by anyone prepared to pay the cost. One copy of the P transcript and the P exhibits of the public hearings will be made available for public review.
3. Another copy of the P transcript of the public hearings and a copy of P exhibits will be available to be shared by the media.
4. Only those persons authorized by the Commission in writing shall have access to C transcripts and exhibits.

v. Documents

1. All relevant documents, including statements of anticipated evidence, are to be produced to the Commission counsel by any party with standing at the earliest opportunity.
2. Originals of relevant documents are to be provided to Commission counsel upon request.
3. Counsel to parties and witnesses will be provided with documents and information, including statements of anticipated evidence, only upon giving an undertaking that all such documents or information will be used solely for the purpose of the Inquiry and, where the Commission considers it appropriate, that its disclosure will be further restricted. The Commission may require that documents provided, and all copies made, be returned to the Commission if not tendered in evidence. Counsel are entitled to provide such documents or information to their respective clients only on terms consistent with the undertakings given, and upon the clients entering into written undertakings to the same effect. These undertakings will be of no force regarding any document or information once it has become part of the public record. The Commissioner may, upon application, release any party in whole or in part from the provisions of the undertaking in respect of any particular document or other information, or authorize the disclosure of documents or information to any other person.
4. Counsel to parties and witnesses will as soon as reasonably possible after disclosure of documents or information to their clients, or other persons as authorized by the Commissioner, provide to the Commission a copy of the undertaking of such person, together with a list of the documents or information disclosed.
5. Documents received from a party, or any other organization or individual, shall be treated as confidential by the Commission unless and until they are made part of the public record or the Commissioner otherwise declares. This does not preclude the Commission from producing a document to a



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proposed witness prior to the witness giving his or her testimony, as part of the investigation being conducted, or pursuant to Rule 26.

6. Subject to Rule 30 and to the greatest extent possible, Commission counsel will endeavor to provide in advance to both the witness and the parties with standing relating to issues with respect to which the witness is expected to testify, documents that will likely be referred to during the course of that witness' testimony and a statement of anticipated evidence.
7. Parties shall, at the earliest opportunity, provide Commission counsel with any documents that they intend to file as exhibits or otherwise refer to during the hearings, and in any event shall provide such documents no later than the day before the document will be referred to or filed.
8. A party who believes that Commission counsel has not provided copies of relevant documents must bring this to the attention of Commission counsel at the earliest opportunity. The object of this rule is to prevent witnesses from being surprised with a relevant document that they have not had an opportunity to examine prior to their testimony. If Commission counsel decides the document is not relevant, it shall not be produced as a relevant document. This does not preclude the document from being used in cross-examination by any of the parties. Before such a document may be used for the purposes of cross examination, a copy must be made available to all parties by counsel intending to use it not later than the day prior to the testimony of that witness, subject to the discretion of the Commissioner.

vi. Confidentiality

1. If the proceedings are televised, applications may be made for an order that the evidence of a witness not be televised or broadcast.
2. Any witness may apply to the Commissioner to be granted "Confidentiality" which shall be at the discretion of the Commissioner, and on such terms as the Commissioner shall determine. For the purposes of the Inquiry, Confidentiality shall include the right to have the witness's identity disclosed only by way of non-identifying initials, and, if the witness so wishes, the right to testify before the Commission in private. Subject to the discretion of the Commissioner, only the Commissioner, Commission staff and counsel, counsel for parties with standing, and counsel for the witness who has been granted Confidentiality may be present during testimony being heard in private. With leave of the Commissioner, media representatives may be present during testimony being heard in private.
3. A witness who is granted Confidentiality will not be identified in the public records and transcripts of the hearing except by non-identifying initials. Any reports of the Commission using the evidence of witnesses who have been granted Confidentiality will use non-identifying initials only.
4. Media reports relating to the evidence of a witness granted Confidentiality shall avoid references that might reveal the identity of the witness. No



photographic or other reproduction of the witness shall be made either during the witness' testimony or upon his or her entering and leaving the site of the Inquiry.

5. Any witness who is granted Confidentiality will reveal his or her name to the Commission and, subject to the discretion of the Commissioner, to counsel participating in the Inquiry in order that counsel can prepare to question the witness. The Commission and counsel shall maintain confidentiality of the names revealed to them. No such information shall be used for any other purpose either during or after the completion of the Commission's mandate.
6. Any witness who is granted Confidentiality may either swear an oath or affirm to tell the truth using the non-identifying initials given for the purpose of the witness's testimony.
7. All parties, their counsel, and media representatives shall be deemed to undertake to adhere to the rules respecting Confidentiality. A breach of these rules by a party, counsel to a party or a media representative shall be dealt with by the Commissioner, as he sees fit."