

COMMISSION OF INQUIRY
INTO MATTERS RELATING TO THE DEATH OF NEIL STONECHILD

APPLICATION FOR ADDITIONAL FUNDING

I have received two applications for additional funding. I also wish to deal with funding for closing submissions.

I. Application on Behalf of Stella Bignell

Counsel for Stella Bignell applies for additional compensation for their services as her counsel.

On May 16, 2003 I granted Ms. Bignell full standing at the Stonechild Inquiry and set Mr. Worme's compensation as follows:

Stella Bignell. I expect Ms. Bignell will be a witness at the Inquiry and certainly I anticipate she will be present throughout the Inquiry. She does not have any resources to retain and instruct counsel. She lives in northern Manitoba and must travel by public transportation for some distance. The fees and disbursements of her counsel, Mr. Worme, will be provided at no cost to her. I fix Mr. Worme's hourly rate at \$192.00. Mr. Worme's compensation will apply on the basis of one hour's preparation for each hour of attendance at the Inquiry. Counsel will submit an invoice to Commission counsel on a monthly basis, the invoice to set out the nature of the work done and disbursements.

Time spent by counsel at the request of the Commission including Commission counsel or in attending with his client while the client is being interviewed by Commission counsel may also be billed as preparation time. I am not disposed to allow funding for second counsel for any of the applicants.

On June 25, 2003 I provided for alternate counsel for Ms. Bignell as I had done for other parties.

I subsequently made a further order amending the compensation to be paid to her counsel to allow two hours of preparation time for each hour of attendance at the inquiry. I point out that only one other party, FSIN, was granted this additional compensation.

By December 2003 Mr. Worme's firm had submitted accounts for their fees totalling \$117,843.26. This figure included fees the solicitors anticipated they would earn for future preparation and appearances before the Commission. The fees allowed for the January and March hearings of the Commission were calculated as follows:

Hearing Date	Hearing hrs	Prep hrs	Total	Rate of Pay	Total Allowed
05-Jan	6	6	12	192	2,304
		6	6	125	750
06-Jan	6	6	12	192	2,304
		6	6	125	750
07-Jan	6	6	12	192	2,304
		6	6	125	750
08-Jan	6	6	12	192	2,304
		6	6	125	750
09-Jan	6	6	12	192	2,304
		6	6	125	750
08-Mar	6	6	12	192	2,304
		6	6	125	750
09-Mar	6	6	12	192	2,304
		6	6	125	750
10-Mar	6	6	12	192	2,304
		6	6	125	750
11-Mar	6	6	12	192	2,304
		6	6	125	750
12-Mar	6	6	12	192	2,304
		6	6	125	750
15-Mar	6	6	12	192	2,304
		6	6	125	750

16-Mar	6	6	12	192	2,304
		6	6	125	750
17-Mar	6	6	12	192	2,304
		6	6	125	750
18-Mar	6	6	12	192	2,304
		6	6	125	750
19-Mar	6	6	12	192	2,304
		6	6	125	750

The total amount which would be allowed to counsel to the last day of the March hearings was \$130,304.00.

Ms. Candace Congram is the Executive Director to the Inquiry. She is responsible for reviewing and authorizing, initially, the claims submitted by various counsel funded by the Commission.

On December 8, 2003 Ms. Congram wrote to Ms. Bignell's counsel as follows:

This is to advise you of the current status of the funding arrangement granted to Ms. Stella Bignell by the Commission of Inquiry Into Matters Relating to the Death of Neil Stonechild.

In his ruling on Standing and Funding, Commissioner David Wright set your hourly rate at \$192.00 and an alternate counsel hourly rate of \$125.00. Compensation applies on the basis of two hours of preparation time for each one hour of attendance at the Inquiry. The first hour of preparation time is to be billed at \$192.00 per hour and the second hour of preparation time is to be billed at \$125.00 per hour.

The Commission has allowed you a maximum billable amount of \$125,214.00, plus disbursements, based on the attached anticipated schedule of hearings. To date, invoices submitted by you to the Commission have totalled \$117,843.26 before tax and disbursements. Thus, your remaining allowable billable amount based on the current

anticipated schedule is \$7,370.74.

Any questions regarding this matter should be directed to Candace Congram, Executive Director of the Commission of Inquiry Into Matters Relating to the Death of Neil Stonechild.

Ms. Congram pointed out that she had, in effect, authorized the prepayment of Mr. Worme's legal fees in anticipation of his attendance at the hearings in January and March. By pre-billing and obtaining payment counsel had exhausted virtually all of the funds to which they would have been entitled to the end of the March 2004 hearings.

Mr. Worme's partner, Mr. Curtis, wrote to the Commission on February 16, 2004. I refer to that letter:

We write further to the above noted matter and the correspondence from Ms. Congram recently received.

Kindly take this to be our application to amend or dispense with all together the so called "funding cap". While we find that such cap allows for sufficient preparation time insofar as reviewing the disclosure materials and preparing for examination of witnesses, we find that the time required to attend to the blizzard of correspondence received from other counsel, who are not constrained by any funding cap, and matters relating to the calling of new witnesses and attending to controversial issues, most specifically the polygraph issue exceeds the arrangement allowed under the cap.

We would suggest the cap be dispensed with all together and that any issue that the Commission has with our billing can be addressed through other means. Having said that, we are open to suggestions regarding alternate arrangements.

We trust this matter can be addressed in a prompt fashion.

On March 2, 2004 Commission counsel advised Mr. Curtis, on my instructions, that I was not disposed to grant additional funding in light of the particular circumstances. Counsel was advised, however, that he could make a formal application to me at the Inquiry to the same end. He did so.

The material filed by Mr. Curtis contained these observations:

As well, we have reviewed the various rulings on funding handed down by Mr. Justice Wright and note that the gist of such decisions is that the funding should be satisfactory and sufficient to provide for any matters that might be anticipated during the course of the inquiry. We would suggest that such a phrase, "might be anticipated" is somewhat deceptive, given obviously that not all things can be anticipated. We would suggest that this was acknowledged at some time during the course of the hearing in November by Mr. Justice Wright when, in referring to the length the hearing was appearing to run, stated that "my life is not my own any more", which we suggest is confirmation that the hearing is proceeding much longer than anticipated and in fact has taken on a life of its own.

We would suggest the reasons extending the length of the hearing cause a somewhat geometrical extension of the time for preparation for each hour of hearing. Such reasons are, *inter alia*, as follows:

- the blizzard of correspondence and applications, primarily emanating from counsel for the Police Association, who are funded by their client and obviously have no cap in that regard that we are aware of, and which correspondences and applications are invariably concurred in by counsel for the City of Saskatoon, and Constables Hartwig and Senger. It is quite evident all such counsel and their clients have common interests. While we acknowledge that all such counsel and

clients are stakeholders in the inquiry, (albeit the granting of standing to the Police Association remains somewhat curious), they are no more so in this regard than the family of Neil Stonechild;

- an inordinate amount of time was devoted to advocacy with respect to the issue of whether or not polygraph evidence was to be admitted at the inquiry. This required a tremendous amount of research some of which had to be contracted out by this office;
- the number of expert witnesses applied for by police lawyers to counter any expert evidence that suggests police involvement in the death of Neil Stonechild. Primary examples of this are Dr. Arnold and Dr. Lew wherein a considerable amount of time has been spent and will be spent yet assessing such witnesses' credentials and conducting background research. This is nothing more or less than a battle of experts with which the courts are all too familiar and which could be an endless process given that there can always be found an expert to contradict that of another;
- the veritable blizzard of disclosure which has certainly expanded markedly since the initial disclosure provided prior to the commencement of the proceedings in September. Noteworthy in this regard is the disclosure provided prior to the hearing dates in January where counsel were compelled to scrutinize interviews with numerous witnesses coming forth with new evidence, primarily setting out evidence adverse to any police involvement with Neil Stonechild's death and primarily from witnesses who had obvious and suspicious self interests at heart in coming forward with their information. Applications were made by the counsel for the Police Association, supported by counsel for Constables Hartwig and

Senger and the City of Saskatoon, which applications were denied. Nevertheless, all such witness interviews and applications had to be carefully reviewed and researched by counsel;

- more recently the receipt of considerable disclosure received from your office March 2, 2004, being a “vetted” document bundle relating to what can be viewed as a Saskatoon police shadow investigatory team. Undoubtedly, this disconcerting information will trigger further controversy and will require further time of the Commission. Furthermore recent receipts of disclosure compact discs containing voluminous materials will result in our further expenditure of preparatory time;
- the prolonged cross-examination of Jason Roy, which admittedly was not unanticipated. However, the seemingly endless parade of expert witnesses that we now face in relation to Mr. Roy’s testimony and any expert evidence that has been called in that regard are requiring an inordinate and unanticipated amount of scrutiny and research;
- noteworthy as well is the inordinate amount of correspondence surrounding document SI-88. Such document was proposed by the counsel for the Police Association to be put into evidence through a witness other than the maker of such document, a proposal which required considerable resistance, which resistance was well placed given that the maker of such document, Mr. Harker, admitted that the document was in error only when pressed to come to the inquiry to testify with respect to such document and to bring with him supporting documents which would verify his testimony. This is a rather classic example of the adversarial nature of this inquiry and the effort

being made by certain counsel to supply the inquiry with any and all evidence which would tend to obfuscate the process and minimize the possibility of police involvement in Neil Stonechild's death, however without substance such evidence might be.

...
We submit that we have made our best efforts to work within the confines of the funding cap but have found such to be impossible. We could not reasonably have been expected to anticipate the range and depth of evidence and explanations summoned for and provided to this inquiry by counsel for the police.

We submit that it is unreasonable to expect counsel for Stella Bignell to participate in 2, 3 more weeks of this inquiry without funding and, as previously stated, expect our client to subsidize this very public proceeding. While we appreciate that some funding limit is required, and while we are not asking that the cap be removed entirely, we are requesting that it be modified at this very crucial stage of the proceedings in order to provide funding for the balance of the inquiry at the same rate as previously allowed.

The conundrum faced by Messrs. Worme and Curtis does not, with respect, result from the additional work they have had to do. Rather it flows from the fact that they applied for and received payment in advance for their services. In retrospect it would have been better perhaps if Ms. Congram had refused their request. I appreciate, however, that she has some flexibility in dealing with solicitors' accounts.

I am not prepared to amend or abandon the funding guidelines I have established for the hearings. The funding formula was determined at the outset of the Inquiry and adhered to by all counsel.

II. Application on Behalf of Larry Hartwig

Counsel for Larry Hartwig has also applied for additional funding for his representation of Constable Hartwig. This application was made to me in writing and Mr. Fox has indicated that he is satisfied to have his application determined on the written material without the necessity of a hearing. Briefly stated, Mr. Fox's submission is that the funding guidelines have not provided for adequate compensation for time spent on various applications including the standing applications, the application to remove Mr. Axworthy as counsel for FSIN, the application with respect to polygraph evidence, and other various interim applications. As I have indicated, I am not prepared to amend or abandon the funding guidelines I have established for the hearings. Accordingly, I also dismiss this application.

III. Funding for written submissions

I have invited counsel to provide written submissions in advance of hearing closing or oral submissions. In light of the length of the Inquiry and the number of additional issues that emerged as the hearings proceeded, I recognize that the funding formula established for the hearings would not adequately compensate counsel for the considerable work that may be involved in preparing written submissions. This is particularly so as I intend to impose time limits on the oral submissions. All parties with full standing and funding will be allowed up to forty hours for preparation of written and oral submissions. Counsel for Jason Roy, who has limited standing, will be allowed twenty hours of preparation time on the understanding that his submission should be restricted to issues directly impacting on Jason Roy.

Invoices for this preparation time, and attendance at the hearing of closing submissions should be submitted as a final invoice at the conclusion of the hearing of submissions.

Dated at the City of Saskatoon, in the Province of Saskatchewan, this 18th day of March, 2004.

Mr. Justice David H. Wright
Commissioner