

**Commission of Inquiry into certain aspects of the
trial and conviction of James Driskell**

**Response on behalf of the Winnipeg Police
Service to the Submissions on Systemic
Recommendations made by James Driskell and
the Association in Defence of the Wrongly
Convicted**

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I. Introduction

1. The Winnipeg Police Service, in response to the submission on systemic issues made on behalf of James Driskell and the Association in Defence of the Wrongly Convicted, will address two distinct areas of concern. First, each of the suggested recommendations will be listed and a specific response provided to each recommendation.

2. Second, a number of statements were made in the body of the document, which do not accord with the facts or are inflammatory in nature. In addition, suggestions were made that were not given a specific number. These two matters will be addressed under a separate heading.

II. Response to Suggested Recommendations Contained in the Brief filed on behalf of James Driskell and the Association in Defence of the Wrongly Convicted

1-1 Note-Taking and Statement Taking – The Winnipeg Police Service should review its policies on note-taking, interviewing and statement taking, and make the Driskell Inquiry Report required reading for all members of the Service.

3. During the evidence of Chief Ewatski a number of Winnipeg Police Service policies were filed [located at Exhibit 43(d)]. These include policies on: Note-taking; Interview and Interrogation; and, Police Reports.

4. The “Manual Rewrite”, a review of all Winnipeg Police Service Policies, began in 2005 and is continuing in present day. The Notebooks Policy [located at Tab 1 Exhibit 43(d)] was last revised on May 24, 2006, as part of the Manual Rewrite.

5. The Interviews and Interrogations Policy [located at Tab 8 Exhibit 43(d)] was last revised on February 8, 2000. This policy is currently being reviewed as a part of the Manual Rewrite.

6. The policy on Police Reports [located at Tab 9 Exhibit 43(d)] was most recently revised on July 14, 2006.

7. All of the above policies [located at Exhibit 43(d)] have either been reviewed within the last 6 months or are currently under review. In light of this fact, the Winnipeg Police Service does not believe that a recommendation to conduct a review of these policies is necessary. Should the Commissioner have any concerns about the policies, the Winnipeg Police Service would address those concerns.

8. The Winnipeg Police Service also maintains a "Case Law" resource page on Intranet, for the benefit of its members. Case Law contains the reports of recent Inquiries and Inquests: The Sophonow Inquiry Report; The Lamer Commission of Inquiry Pertaining to the Cases of Ronald Dalton, Gregory Parsons and Randy Druken; The Heads of Prosecution Report on Wrongful Conviction; and, The Aboriginal Justice Inquiry Report. All members can access Case Law on any Winnipeg Police Service computer or on the laptops located in Winnipeg Police Service vehicles.

9. The Winnipeg Police Service will be placing the report of the Commission of Inquiry into Certain Aspects of the Trial and Conviction of James Driskell on Case Law. In addition, a Routine Order will be issued to all members to advise them that the Report has been placed on Case Law, and encouraging them to read it.

1-2 Disclosure to the Crown – The police manual should be amended to include a provision that it is a disciplinary offence to withhold material information about a case from the Crown, whether the material is obtained or compiled pre-conviction or post-conviction. Relevant information should always be reduced to writing. Further, the police shall, in all cases, provide any information to the Crown on demand whether or not they believe that the Crown is already aware of the content of the information.

10. The Winnipeg Police Service's material on disclosure [located at Tab 10 of Exhibit 43(d)] includes the Protocol entered into between Manitoba policing agencies and the Crown. The Protocol requires that all information must be provided to the Crown, whether or not it is relevant. Furthermore, Winnipeg Police Service Routine Orders [located at Tab 10 of Exhibit 43(d)] direct members that disclosure to the Crown must follow the Protocol. Routine Order 043 [located at Tab 10 of Exhibit 43(d)] also stipulates that a General Order regarding disclosure will follow in conjunction with the Manual Rewrite project.

11. Disciplinary offences are dealt with in The City of Winnipeg – Winnipeg Police Service Regulation By-Law No. 7610/2000 [located at Tab1]. They are not dealt with in the police manual. These Regulations contain the disciplinary offence of Neglect of Duty 20.04, which is available to sanction a member who withholds information from the Crown. Given that the duty to disclose information is dealt with by Winnipeg Police Service orders, non disclosure may also be contrary to Section 20.09 of the Regulations as a breach of an order of the Chief of Police. As the consequences of failure to disclose are already addressed in the Winnipeg Police Service Regulations and in policy, the Winnipeg Police Service respectfully submits that a recommendation is not necessary.

12. Finally, there is full agreement that relevant information should be reduced to writing. Furthermore, there is little disagreement this was the expectation at the time of the Perry Dean Harder homicide investigation. The current Notebooks Policy and Police Reports Policy, as well as current training materials [located at Tab 3 of Exhibit 43(d)], require relevant information to be recorded. As this matter has already been addressed, the Winnipeg Police Service respectfully suggests that such a recommendation is not necessary.

1-3 Wrongful Conviction Training – Police training and refresher courses should include training on wrongful convictions, how they can occur, and the role that police officers may play in their creation, their prevention and their detection.

13. Current Winnipeg Police Service training addresses issues which often arise in wrongful conviction cases. For example, current recruit training focuses on the need to obtain the truth and to be thorough and objective in investigations. This requires following up on all leads, suspects and potential alibis to prevent tunnel vision. The Interview and Interrogation course covers the causes and “cures” for false confessions as well as the dangers of tunnel vision. Eyewitness identification and the inherent problems with eyewitness identification are included in the Sex Crimes curriculum, which uses the Sophonow investigation

as an example. Finally, the Criminal Investigators course also covers issues of tunnel vision, again using the Sophonow investigation as an example, as well as issues regarding informants.

14. As Chief Ewatski testified, at the 2006 Canadian Association of Chiefs of Police annual general meeting it was resolved that the recommendations contained in the Report of the Heads of Prosecution on Wrongful Convictions be adopted by member police agencies. The Report of the Heads of Prosecution suggests appropriate training, and the Winnipeg Police Service is committed to including such training for its members.

2-1 Direct Indictments – Manitoba Justice must provide the defence with reasonable notice of an intention to seek a preferred indictment, and the reason that the preferred indictment is being sought, and provide the defence with the opportunity to make written submissions to the Minister. Written reasons should be given when a request for a preferred indictment is approved by the Minister. Their use should be reserved for exceptional cases.

15. As this suggestion does not impact the Winnipeg Police Service the Service has no position on this suggestion.

2-2 An Independent Review of Manitoba Justice – The Minister of Justice should establish an independent review of Manitoba Justice with a view to ensuring that steps have been taken, or will be taken, to eliminate the Crown culture that contributed to the wrongful conviction of James Driskell.

16. As this suggestion does not impact the Winnipeg Police Service the Service has no position on this suggestion.

2-2 An Independent Review of Manitoba Justice – The Minister of Justice should establish an independent review of Manitoba Justice with a view to ensuring that steps have been taken, or will be taken, to eliminate the Crown culture that contributed to the wrongful conviction of James Driskell.

17. As this suggestion does not impact the Winnipeg Police Service the Service has no position on this suggestion.

2-3 A Criminal Justice Committee – A Criminal Justice Committee should be established with representatives of the Chief Justice, Minister of Justice, Defence Bar, Manitoba Justice, Legal Aid and the Winnipeg Police Service to identify problems, engage in dialog and seek improvements to the administration of justice on an ongoing basis.

18. Although the Winnipeg Police Service currently has regular meetings with a number of the stakeholders listed, there is currently no group which includes all of these parties. The Winnipeg Police Service believes that increased communication results in better understanding, which is beneficial to all parties in the criminal justice system. The Winnipeg Police Service would welcome such a recommendation from the Commissioner.

2-4 Audit of George Dangerfield's Homicide Prosecutions – There should be an audit of all homicide trials conducted by George Dangerfield in which a conviction was entered and the convicted person has continued to maintain his/her innocence to the present day.

19. As this suggestion does not impact the Winnipeg Police Service the Service has no position on this suggestion.

3-1 Post Conviction Disclosure – Manitoba Justice should develop a procedure in its Crown policy manual for dealing with post-conviction disclosure. A Crown, or Crowns, should be appointed as recipients of post-conviction disclosure in all cases, whether pre- or post-appeal. Police forces across the Province should be notified of their identity. It is recommended that inventories of material provided by the police to the Crown, and the Crown to the defence, be prepared so that there will be a record of all disclosed and undisclosed material in each case.

20. The Winnipeg Police Service currently tracks disclosure provided to the Crown. The Winnipeg Police Service's Record Management System (RMS) imports documents for disclosure into a Court Brief. The Winnipeg Police Service Court Unit provides a hard copy of the Court Brief to the Crown office.

All material provided to the Crown is diarized in the RMS system. Additional requests received from the Crown are forwarded to the Disclosure Unit contained within the Court Unit. The Disclosure Unit is responsible to request the material and to record in the RMS when the material is sent to the Crown.

21. In addition, Manitoba Justice has access to the Winnipeg Police Service RMS system through two terminals located at their offices at 405 Broadway. If both of the parties, Crown and police, follow the established procedure by requesting material through the Winnipeg Police Service Court Unit, a complete inventory of material provided to the Crown can be generated.

22. Regular meetings of an Advisory Group with representatives from Manitoba Justice and the Winnipeg Police Service also take place to address both systemic and individual problems relative to disclosure. The Winnipeg Police Service will continue to remind its members that all disclosure requests must be processed through the Court Unit to ensure that an accurate inventory can be maintained. As this suggestion is already the practice of the Winnipeg Police Service, it is respectfully suggested that such a recommendation is not necessary.

3-2 Appeal Crown – The Crown who conducted the trial should not be the Crown to conduct the appeal. The appeal Crown should be aware of his post-conviction obligations and should keep the appellant's counsel up to date by disclosing newly discovered materials in a timely manner.

23. As this suggestion does not impact the Winnipeg Police Service the Service has no position on this suggestion.

3-3 Assignment of a Crown – Whenever Manitoba Justice is notified that a wrongful conviction claim is being advanced, a senior Crown who has had no previous involvement in the case should be assigned to review it forthwith. In appropriate cases, the services of counsel outside Manitoba Justice should be retained for this purpose. Assigned counsel must approach the case in a non-adversarial manner, and with an open mind.

24. As this suggestion does not impact the Winnipeg Police Service the Service has no position on this suggestion.

4-1 Recording of All Dealings with Unsavoury Witnesses – Insofar as possible, all dealings with unsavoury witnesses should be recorded on tape and, in the case of the taking of statements, video-recorded. The witnesses should be explicitly told on videotape of the benefits that they will, and will not, receive and of any other considerations that they will, or will not, receive, and asked to respond to this on video and explicitly acknowledge that they understand that these are the only benefits that they will (and will not) receive. Requests made by the witness, whether accepted or rejected, must be documented and confirmed in videotaped interviews.

25. Should the Commissioner adopt any of the recommendations numbered 4-1 to 4-7 it is the position of the Winnipeg Police Service that it will be essential that context be given to the term "unsavoury witness" in order to provide direction and meaning to any recommendation that might be made.

26. The Winnipeg Police Service agrees that, wherever possible, police interaction with unsavoury witnesses should be video recorded in homicides and other serious offences. The current practice of the Winnipeg Police Service is to take video statements from such witnesses in homicides and other serious offences.

27. Adoption of such a recommendation would require that any dealing, not only statements, with an unsavoury witness be recorded. The adoption of such a recommendation would increase, perhaps significantly, the Winnipeg Police Service use of the current video interview rooms. Any recommendation should recognize the effect of increased use on limited resources. Many of the current Winnipeg Police Service facilities are of such construction that the existing interview rooms cannot be easily adapted for video recording.

28. Another concern is that some witnesses have refused to provide video recorded information, as a result of the recent broadcasting of such recordings

(entered as court exhibits) on the local news. Furthermore, interactions with witnesses often take place outside of police facilities, and as such cannot be video recorded.

29. The Winnipeg Police Service suggests that wherever possible, in homicide and other serious offences, interaction with unsavoury witnesses should be video recorded. If the interaction is not recorded on video, the reason for the lack of video record should be included in the member's notes and in the report.

4-2 Payments to Unsavoury Witnesses – Payments to unsavoury witnesses must be fully documented and signed for by the witness and an official.

30. This suggestion is consistent with current Winnipeg Police Service policy.

4-3 Disclosure Involving Unsavoury Witnesses – There shall be full disclosure of all dealings with, and payments to, and considerations requested by or provided to, unsavoury witnesses. If the unsavoury witness has counsel, the witness and his counsel should be advised, in writing, from the outset that their negotiations with the authorities are not privileged, that they will be recorded on tape, and that they will be fully disclosed to the defence. A witness who refuses to accept these terms should not be called to testify for the Crown.

31. The Winnipeg Police Service agrees that all dealings with, and consideration provided to, an unsavoury witness should be disclosed to defence. However, should the unsavoury witness and their counsel decline to have their interactions with authorities recorded, the police members should record this refusal and the reasons for the refusal. The Crown, having all of the information, should then be able to exercise discretion on whether or not to call the witness.

32. The recommendation of an absolute requirement is, respectfully, unnecessary and may result in increased reluctance by some witnesses to speak to authorities.

4-4 Negotiations Between Police Forces or Crown Officials – All negotiations and dealings conducted between police offices and other police forces, and between Crowns or outside Crown officials, regarding the unsavoury witness must be disclosed pursuant to the Stinchcombe rules, whether they take place in, or outside, the Province, or between different Provinces.

33. The evidence heard during the Inquiry was that this was the proper practice at the time of the Perry Dean Harder homicide investigation. The Winnipeg Police Service's current practice is that all information of this nature must be recorded and provided to the Crown.

4-5 Psychiatric and Other Records – Unsavoury witnesses should be requested to sign releases for their psychiatric, their criminal records, records of their contacts with police, prison records, and any other relevant record so they can be disclosed to defence. If the witness refuses to sign releases, the prosecution should provide the utmost co-operation in obtaining these records for the defence, including supporting third party record applications brought by defence.

34. The Winnipeg Police Service respectfully suggests that this recommendation should not be adopted.

35. Both *The Criminal Code* R.S.C. 1985, Chap. C-46, and the decision in *R. v. O'Connor* (1995) 103 C.C.C. (3d) 1, provide a mechanism for defence to access relevant third party records. Neither of these provisions was in place when Mr. Driskell was tried. These statutory and common law regimes provide a means for defence counsel to obtain the type of record in the suggested recommendation. Should the Crown take the position that the records are relevant, they could join defence counsel in a motion to obtain the records. As this situation has been addressed by legislation and the common-law there it is respectfully submitted there is no need for a recommendation in this area.

36. In the alternative, there are other difficulties with suggestion 4-5. For example, *The Personal Health Information Act* C.C.S.M. c.P33.5, prevents any

investigation into the health background of any individual, without their consent. *The Freedom of Information and Protection of Privacy Act* C.C.S.M.c.F175 also provides legislated protection of individual privacy interests. Furthermore, prison records are in the control of Corrections Canada, and their release is restricted.

37. Any release for the records could only be obtained from the unsavoury witness, and as the decision whether or not a witness will be called at trial lies with the Crown, it seems appropriate that the Crown would be required to obtain any such release.

38. Even if a release was obtained for the material, limitless access may be inappropriate. There may be records regarding the unsavoury witness which are irrelevant and extremely personal. Allowing defence to have unfettered access to irrelevant records seems unfair to the witness, no matter how unsavoury they may be. The result of such a requirement may be uncooperative witnesses. Only where defence can demonstrate there is or may be a relevance to the records, should the Crown seek a release. Those records should then be subject to review by the Crown and disclosed only if they are relevant.

4-6 Post-Conviction Dealings with Unsavoury Witnesses – All post-conviction dealings with unsavoury witnesses must be fully documented including, for example, the provision of information to a Crown official or Court regarding a criminal charge that the witness is facing, or has since been charged with. These documented post-conviction dealings must then be disclosed to the convicted pursuant to a Stinchcombe regime of disclosure.

39. This suggestion would seem to require that all dealings with the unsavoury witness must be tracked and disclosed, whether or not they relate to the trial in which the witness testified. While any dealings between the authorities and an unsavoury witness related to his testimony should be documented and disclosed, further documentation and disclosure should not be required.

4-7 Intended Further Consideration for Unsavoury Witnesses – Neither the police nor Crown may conceal intended post-conviction benefits from an unsavoury witness, nor purport to do this.

40. The evidence heard during the Inquiry was that this was the proper practice at the time of the Perry Dean Harder homicide investigation. The Winnipeg Police Service's current practice is that all information of this nature must be recorded and provided to the Crown.

5-1 The Minister Should Give Reasons – The Minister of Justice is urged to give reasons for all decisions that he makes in response to an application for ministerial review under Part XXI.1 of the Criminal Code.

41. As this suggestion does not impact the Winnipeg Police Service the Service has no position on this suggestion.

5-2 The Only Possible Use of the Stay Power under Section 579 of the Criminal Code – In a case in which the person has continued to claim innocence after his conviction, and his conviction is subsequently quashed whether by the Minister or an appellate court, and the Crown elects not to proceed with a new trial, the Crown shall elect to offer no evidence and ask for an acquittal to be entered unless the Attorney General is satisfied that a Stay of Proceedings is necessary because of a reasonable likelihood of additional incriminating evidence coming to light.

In a case in which an acquittal is entered, the Crown should consider apologizing to the person concerned in open court, and requesting the presiding justice to make an apology to the person on behalf of the administration of justice.

42. As this suggestion does not impact the Winnipeg Police Service the Service has no position on this suggestion.

5-3 Federal and Provincial Study for an Innocence Hearing Model – A joint study should be undertaken at the Federal and Provincial levels for the creation of an Innocence Hearing model for persons who have been wrongly convicted.

43. As this suggestion does not impact the Winnipeg Police Service the Service has no position on this suggestion.

5-4 A Pilot Project in Manitoba for an Innocence Hearing Model – A pilot project for an Innocence Hearing model should be set up by the Government of Manitoba in cooperation with representatives of Manitoba Justice and the defence bar, and other interested parties including a representative of the Association in Defence of the Wrongly Convicted (AIDWYC). Following are some proposals for guidelines for the model:

- 1. An innocence hearing shall be held at the request of a person who is seeking a declaration that he/she was wrongly convicted.***
- 2. The person must have met a qualification threshold (see paragraph 46 supra).***
- 3. The decision-maker (Commissioner) shall be a person approved by the claimant and Manitoba Justice.***
- 4. The Commissioner will choose the procedure to be adopted at the hearing on a case by case basis.***
- 5. The burden will be on the Crown to prove on a balance of probabilities that the claimant should not be found factually innocent.***
- 6. In a case of past egregious Crown conduct which the Commissioner finds has substantially interfered with the claimant's ability to demonstrate his innocence, including the means to identify the actual perpetrator(s) of the crime, the Crown will presumptively be unable to meet its burden.***
- 7. The proceedings will be conducted in camera unless the parties agree otherwise.***
- 8. The Commissioner may hear evidence viva voce within his discretion. In such circumstances, the parties will have a right to attend, and the Commissioner may, in his discretion, allow the opposing party to cross-examine witnesses.***
- 9. Funding should be provided to the claimant through (sic) the Legal Aid Plan.***
- 10. If a declaration of wrongful conviction is made, the Commissioner shall announce it to the public. Otherwise, he will transmit his decision in confidence to the parties.***
- 11. If a wrongful conviction is found, the Commissioner may make a recommendation for compensation.***

44. Should the Commissioner consider the recommendation to either adopt a pilot project for an Innocent Hearing Model or to recommend that further study be given to the adoption of an Innocence Hearing Model, the Winnipeg Police Service should be invited to participate in the development of the model to address issues that may affect it.

6-1 An Independent Review of the RCMP Forensic Laboratory Services – An independent review Committee of interested parties should be established to examine and make recommendations for the improvement of the system of RCMP Forensic Laboratory Services across Canada. Its mandate should include both the scientific practices and the institutional culture of the Laboratory. The same Committee should consider whether it is in the public interest, and the interests of the administration of justice, for the Laboratory to move out of the jurisdiction of the RCMP.

45. As this suggestion does not impact the Winnipeg Police Service the Service has no position on this suggestion.

6-2 A National Audit of Hair Microscopy Comparison Cases – A national audit of cases in which the accused was convicted of murder, and the prosecution rested, in whole or in part, on hair microscopy evidence presented by analysts employed by the Forensic Laboratory Services, should be conducted. A Committee should be established, nationally or province by province, to examine all cases of culpable homicide:

- **Prosecuted in Canada during the past 20 years**
- **In which the Crown tendered and relied upon microscopic hair comparison evidence**
- **Where the accused pleaded not guilty at trial, asserting factual innocence, but was found guilty**

To consider whether there is a reasonable basis to believe that, by virtue of this evidence, a miscarriage of justice has taken place.

46. This Inquiry heard evidence of the Hair and Fibre review conducted in the Province of Manitoba. The Winnipeg Police Service participated in this review, which was broader than the suggestion in 6-2. Therefore, as this suggestion does not impact the Winnipeg Police Service the Service has no position on this suggestion

6-3 The Elimination of Hair Microscopy Comparisons from the Criminal Trial – Hair microscopy comparison evidence does not have the necessary probative value to be admissible at a criminal trial, and its value in the criminal justice system should be limited to its use as an investigative tool.

47. This inquiry heard evidence that the RCMP Laboratory no longer conducts such testing. Although the evidence of the panel of experts suggested that this evidence still had value at a criminal trial, the Winnipeg Police Service no longer requests such testing. As this suggestion does not impact the Winnipeg Police Service the Service has no position on this suggestion.

III. Additional recommendations

Compensation

48. At page four of the materials, filed on behalf of James Driskell and the Association in Defence of the Wrongly Convicted, a suggestion is made that the Commissioner address the issue of compensation for Mr. Driskell and not leave that issue to the process of the outstanding civil litigation.

49. The Order in Council states in paragraph 2:

“The Commissioner must perform his duties without expressing any conclusion or recommendation about the civil or criminal liability of any person or organization ...”.

50. It is respectfully submitted that this suggestion regarding compensation is outside the jurisdiction of the Commission.

51. If the Winnipeg Police Service had expected the issue of compensation to be addressed it would have adduced evidence in this area. It is submitted, with respect, that to make such a recommendation in the absence of notice to the parties is highly prejudicial to the parties.

Creation of an Independent Tribunal

52. At paragraph 73 the brief states: “ We therefore request that the Commissioner add his voice to those who have already considered this issue in past inquiries, and recommend the creation of an independent tribunal to receive, assess and adjudicate wrongful conviction claims in the same, or similar, manner as the Criminal Cases Review Commission in the United Kingdom.”

53. The Winnipeg Police Service, through the evidence of Chief Ewatski, recognized that the current system for Criminal Conviction Review created some difficulties for those seeking a review of their conviction. The Winnipeg Police Service is committed to following the process available for review. The Winnipeg Police Service also believes that it is necessary to work towards solutions that will improve the Criminal Justice System. The Winnipeg Police Service would welcome changes to improve the process of Criminal Conviction Review and will continue to participate in the process that is available.

IV. Materials in Brief filed on behalf of James Driskell and the Association in Defence of the Wrongly Convicted and References to the Evidence

54. The material filed on behalf of Mr. Driskell and the Association in Defence of the Wrongly Convicted contains numerous editorials from the Winnipeg Free Press. Although those materials provide an indication of the position of one of the local papers, they have no probative value and should not form the basis of any of the considerations for change.

55. This material should not have been included and cannot be considered as a foundation upon which any systemic recommendation could be built. The material only represents the opinion of a party not called at the Inquiry, and therefore not subject to examination of the accuracy of any of the editorials.

56. At page seven, counsel suggests that it was because of the frankness of the concerns laid out in the 1993 Perry Dean Harder Review that it was not released to either Manitoba Justice or counsel for Mr. Driskell. The evidence is clear that this was not the reason the report was not released. See, in particular, the Statements of Chief Ewatski and Inspector Hall [located at Exhibit 28a], and the evidence of Chief Ewatski.

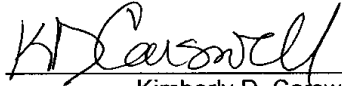
57. Also on page seven, there is a suggestion that the law is settled on the issue of the police obligation to disclose all information relevant to an investigation to the Crown. While this is certainly the case where the matter is before the court, it is not the case in post appellate matters. The material later deals with post appeal disclosure and points out the lack of authority in this area.

58. At page 16 of the material filed on behalf of Mr. Driskell and the Association in Defence of the Wrongly Convicted, it is suggested that Manitoba Justice and the Winnipeg Police Service failed to fulfill their professional and ethical responsibilities in responding to concerns raised about the conviction of James Driskell. It is further suggested that as the pressure increased from the media and supporters of Mr. Driskell, people became more resistant to carrying out their duties. The evidence given during the Commission was that counsel for Mr. Driskell were repeatedly advised to file an application for review pursuant to section 696 of *The Criminal Code*.

59. Finally, at page 24 it indicates that police and Crowns attempted to justify the nondisclosure of financial payments to and on behalf of Zanidean as merely compensatory payments. The material goes on to suggest they were prepared to deceive the jury, behaviour which the brief suggests leads to the conclusion that "noble cause corruption" was at work. The evidence given during the Commission is clear: the witnesses all agreed that the payments should have been disclosed, but disagreed with the characterization of them as reward. To suggest an indication of "noble cause corruption" is without factual foundation.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated the 10th day of November 2006.



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and certain members



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