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Notre dossier:

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March 4th, 2005

"Delivered via Facsimile"

Commission of Inquiry Into The
Wrongful Conviction of David Milgaard
Suite 1020, 606 Spadina Crescent East
Saskatoon, Saskatchewan
S7K 3H1

**Attention: The Honourable Mr. Justice E. P. MacCallum
Commissioner**

Dear Sir:

Re: Application for Standing by the Attorney General of Canada

Please accept this letter as our application on behalf of the Minister of Justice (Canada) for standing at the Commission of Inquiry into the Wrongful Conviction of David Milgaard ("the Commission").

It is our understanding that, in recent weeks, the Commission has heard testimony from several witnesses who have made reference to Mr. Eugene Williams. Mr. Williams worked in the departmental unit which assisted the Minister on Mr. David Milgaard's two applications under section 690 of the Criminal Code and its predecessor section. Each of those applications was submitted to the Minister of Justice (of the day) who exercised the powers conferred upon the Minister by the legislation, as set out in the section. Since it appears that the Commission may hear further testimony and submissions concerning those applications, the Minister of Justice (Canada) can safely be said to be "directly and substantially affected by the Inquiry".

We have received correspondence from Commission counsel indicating his intention to call possibly several potential witnesses who were employed in the service of the Minister of Justice on the aforementioned applications, as well as the reference to the Supreme Court of Canada. We had not previously been aware of the potential of these witnesses being called. For that reason, we had not applied for standing when the Commission began its work.

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We respectfully submit that we meet the Criteria for Standing as set out in Schedule A of the Rules of Procedure and Practice for the Commission of Inquiry. We also submit that standing should be accorded to us at this time, notwithstanding the timing of this application.

We are not applying for funding. For that reason, we have not provided an affidavit in support of this application. As we read the provisions to Schedule A, an affidavit is required only if an applicant is seeking funding.


The question of whether the terms of reference for the Inquiry are broad enough to encompass a review of the two applications made by Mr. Milgaard under Section 690 of the Criminal Code and its predecessor as well as the reference to the Supreme Court of Canada is important. As we understand it, such questions will be addressed by the Commission later on, when it moves closer towards calling the potential witnesses who dealt with the applications and the reference. The Commission may well find it of benefit to hear submissions from the Attorney General of Canada in this regard.

We are willing to provide oral submissions for our application for standing, if you require them. We understand that you are intending to hear the application by Mr. Calvin F. Tallis on the morning of Monday, March 7th, 2005. We would be happy to make any necessary submissions at that time. Please advise whether you require oral submissions on the question of standing.

I should also explain that the counsel of record for the Minister of Justice (Canada) in this matter will be Mr. David G. Frayer Q.C. of our Winnipeg Office. Because of other commitments, Mr. Frayer is not available until the April sittings of the Commission. I will be present at the March sittings of the Commission, as and when required. From April onwards, I hope to assist Mr. Frayer.

I would be happy to provide you with any further information that you require or, alternatively, to provide such information to your counsel, Mr. Hodson.

Yours truly,



Stephen A. McLachlin
Counsel, Department of Justice (Canada)
Saskatoon Office, Prairie Region
Civil Litigation and Advisory Services

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