

Q.B. No. 1051 of 2006

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IN

**THE COURT OF QUEEN'S BENCH
FOR THE PROVINCE OF SASKATCHEWAN
JUDICIAL CENTRE OF SASKATOON**

BETWEEN:

THE ATTORNEY GENERAL OF CANADA

APPLICANT

- AND -

**THE HONOURABLE MR. JUSTICE EDWARD P. MacCALLUM,
COMMISSIONER OF A COMMISSION INQUIRING INTO ANY AND ALL
ASPECTS OF THE CONDUCT OF THE INVESTIGATION INTO THE DEATH OF
GAIL MILLER AND THE SUBSEQUENT CRIMINAL PROCEEDINGS
RESULTING IN THE WRONGFUL CONVICTION OF DAVID EDGAR MILGAARD
ON THE CHARGE THAT HE MURDERED GAIL MILLER**

RESPONDENT

- AND -

DAVID ASPER

RESPONDENT

**AFFIDAVIT
OF THE RESPONDENT
DAVID ASPER**

I, David Asper, Businessman, of the City of Winnipeg, in the Province of Manitoba,

MAKE OATH AND SAY AS FOLLOWS:

1. I am a witness before and, as of February 22, 2006, a Party with Standing before the Respondent Inquiry into the Wrongful Conviction of David Milgaard ("the Inquiry") and as such have personal knowledge of the facts and matters hereinafter deposed to, save and except what is stated to be on information and belief, and where so stated, I verily believe the facts and matters hereinafter deposed to be true.
2. I have been served with Notice of the Application for Judicial Review herein as a Party with Standing before the Respondent Inquiry into the Wrongful Conviction of David Milgaard and a person interested or likely to be affected by the application within the meaning of Rule 667(1) of the Queen's Bench Rules.

3. My involvement in this matter began in March of 1986 when, as a junior lawyer with the Wolch Pinx Tapper Scurfield law firm, I was legal counsel representing David Milgaard, which representation extended to June of 1992, except for a ten-month period in 1987 and 1988 when I left the practice of law,.
4. After my departure from the private practice of law in June of 1992, I did not have any direct dealings relating to the representation of Mr. Milgaard.
5. Attached as Exhibit "A" to this my affidavit is a document entitled "Outline of Evidence of David Asper" which was prepared by Commission Counsel, Mr. Douglas Hodson, and filed by Mr. Hodson as Inquiry document 335470, which document outlines the evidence led from me by Commission Counsel in the Inquiry proceedings.
6. The evidence led from me focused upon my dealings, on behalf of Mr. Milgaard, with the federal Department of Justice with respect to David Milgaard's first application to the Federal Minister of Justice under section 690 of the *Criminal Code* in December 28, 1988 which led to the Minister's decision on February 28, 1991 and David Milgaard's second application to the Federal Minister of Justice on August 14, 1991 which led to the Minister's decision of November 27, 1991. I have already been asked and have answered a number of questions relating to the section 690 process.
7. I also served as junior counsel representing David Milgaard on the Supreme Court of Canada Reference which was held pursuant to the terms of the federal Order-in-Council dated November 27, 1991 which flowed from the decision of the Federal Minister of Justice.
8. I commenced testifying before the Inquiry on February 21, 2006 with my testimony continuing on February 22, 23, 14, April 17, 18, 19, 20, 21, 27 and 28. Unlike many of the other Inquiry witnesses who are retired and live in Saskatchewan, my attendances have been especially onerous to me since travel time from Toronto has added to the time I must devote to the Inquiry. My evidence led on direct by Mr. Hodson has concluded as has the cross-examination by all Parties to Inquiry, with the exception of cross-examination by counsel representing the federal Department of Justice. This cross-examination is scheduled to take at least two days.
9. I first met Commission Counsel, Mr. Hodson at the "Unlocking Innocence" Conference in Winnipeg, Manitoba during the weekend of October 21-23, 2005 at which time Mr. Hodson and I informally discussed the proceedings of the Inquiry, when Mr. Hodson would be wanting me to testify and for how long.
10. Following those discussions I wrote an email to Mr. Hodson on November 1, 2005 indicating that my schedule after the New Year 2006 was filling up and I requested dates from him that I could lock into my schedule, which is a very busy one.
11. A few days later, Mr. Hodson wrote back to me and advised that he thought I should block off two consecutive weeks for my evidence and that he would assist as much as necessary in helping me to prepare for my testimony.

12. I wrote back to Mr. Hodson expressing surprise at the amount of time that he said would be required and I offered him a number of dates in January of 2006 which would fit into my schedule.
13. I also asked Mr. Hodson that I be provided with preparatory material prior to Christmas 2005 so I could use that break period to refresh my memory since I would have no other time available in my schedule to go over the voluminous material that Mr. Hodson advised I should review and since I had in fact not had reviewed or in any way looked at the material Mr. Hodson was referring me to for in excess of ten years.
14. At this same time, I did a cursory scan of some of the transcripts of the Inquiry proceedings and became aware that my conduct in representing Mr. Milgaard was under some scrutiny and comment by other Parties to the Inquiry. I determined that it would be prudent to retain counsel in the matter. I retained Mr. Donald J. Sorochan, QC from Vancouver and he commenced communication with Mr. Hodson thereafter.
15. On November 23, 2005 Mr. Sorochan wrote to Mr. Hodson expressing concern about the precise timing and length of my attendance as a witness. Mr. Sorochan also noted to Mr. Hodson that the transcripts of the Commission's hearings note frequent references to me, some with a critical connotation, by counsel for other parties to the Commission's hearings and that these references cause concern that my rights may require more protection from counsel than would be the case of counsel representing a "mere witness". I was eventually granted Standing as a Party to the Commission so that my rights could be protected.
16. Mr. Sorochan also advised Mr. Hodson that he did not have access through the Inquiry's publicly accessible data to the documents that counsel was referring to in the transcripts, which access was required to properly represent me. He suggested that he be granted access to the needed documents through the Inquiry's CaseVault server, which is accessible over the internet.
17. In response to Mr. Sorochan's request, Mr. Hodson replied by e-mail on November 25, 2005 that the CaseVault server is not available to the public nor to any witnesses but the he was prepared to provide a complete and organized set of all documents that I required to prepare for my testimony in an organized and timely manner.
18. I was not provided with any material to review over Christmas, when my schedule gave me an opportunity to do so.
19. Mr. Hodson and Mr. Sorochan met in Vancouver in early January, 2006 to discuss the extent of my testimony and obtain some documents to assist me in my preparation.
20. I met with Messrs Hodson and Sorochan in Toronto on January 27, 28 and 29 and again on February 16. At these meetings I reviewed a number of documents provided by Mr. Hodson, that were in evidence on the Inquiry.
21. During these meetings, Mr. Sorochan in my presence raised with Mr. Hodson the issue of the Commission of Inquiry going beyond its Terms of Reference, not only with respect to my personal involvement but also with respect to issues related to the federal

government. Mr. Hodson advised that the Commission was aware of the issues but that the constitutional issues had been identified at the outset in what I no know to be the Commission's revised position paper dated December 7, 2004, and that they would be resolved in due course.

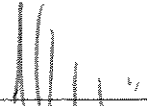
22. Mr. Sorochan's position was that this approach meant that a great deal of evidence, including evidence proposed by Mr. Hodson to be led from me relating to federal issues, was being tendered before the inquiry which was of doubtful relevance given the constitutional limits of a provincial inquiry and the Terms of Reference of this inquiry, with the result that the proceedings were taking much longer than they should if the Commission restricted itself to its appropriate jurisdiction. Mr. Hodson did not agree with Mr. Sorochan's position.
23. Mr. Sorochan repeated his position during the Inquiry Proceedings on Friday, April 21st, 2006, when I was testifying. Attached as Exhibit "B" to this my affidavit is an extract from pages 27465 - 27470 of the Friday, April 21st, 2006 transcript of the Proceedings of the Inquiry. Both Mr. Hodson and the Commissioner rejected Mr. Sorochan's submissions.
24. By way of background to the concerns expressed about the effect upon me of the Inquiry extending my testimony by delving into matters beyond its jurisdiction, I say as follows:
 - (a) I traveled to Saskatoon on February 19, 2006 to commence giving evidence on February 20, 2006. When I appeared at the Inquiry I was advised that the previous witness Mr. Tallis had not yet finished and that I would have to wait. I was stood down all of that day and essentially half of the next day, February 21 before actually beginning to give evidence.
 - (b) I have given ten further days of my time to the Commission, and have done so willingly. I have done my best although with essentially no free time to do so, to prepare myself and assist the Commission in its work, and this has been done basically late at night and early in the morning when I have been in Saskatoon.
 - (c) My time commitment to the Commission thus far, including preparation time and travel is in excess of three weeks and has become unreasonable given my other full-time business commitments.
 - (d) I am employed by CanWest Global Communications Corp as an Executive Vice President and also serve as Chairman of the National Post Newspaper.
 - (e) I am also a 1/3 owner of the controlling shareholding group of CanWest Global Communications Corp. (my family) and serve on the company's Board of Directors and the Pension Committee thereof.
 - (f) CanWest Global Communications Corp. also owns approximately 75% of the units of the Canwest Mediaworks Income Fund and I serve as member of the Board of Directors of that Company.

- (g) CanWest Global Communications and CanWest Mediaworks Income Fund are both publicly traded companies on the Toronto Stock Exchange.
- (h) The National Post is an important asset for the company and it has lost a substantial amount of money since its inception. I have overall corporate responsibility to oversee the turnaround of the National Post and that job alone requires my full time and attention. In order to continue our progress toward financial success, we have undertaken a significant strategic planning effort which has added to the time I am required to commit to the National Post. This involves my having to be prepared for and participate in a very important weekly internal management board meeting. My duties also require ongoing communication with internal management, major advertising agencies and their clients and also require that I participate in a major way with community and public relations efforts being undertaken particularly, but not limited to, the Toronto and Southern Ontario market.
- (i) In addition to my role with the National Post, as Executive Vice President of CanWest Global Communications Corporation I am responsible for all of the company's corporate affairs activities. This includes oversight of the company's community and public relations, government and regulatory affairs and investor relations .
- (j) Without going into too much detail, each of these areas of corporate responsibility is substantial and I have a Vice President level executive reporting to me for each. However, planning, budgeting and execution of the company's activities are my ultimate responsibility. As an example, in the area of community and public relations, I have responsibility for the company's literacy programs including CanWest Canspell, which this year involved almost 200,000 children across the country in a spelling bee. In the midst of may having to prepare to testify I was required to be in Ottawa so as to host the winning children and their families, and represent our company in the presence of the Prime Minister, Governor General and other national dignitaries.
- (k) As an example of my duties in the area of government and regulatory affairs, I am overseeing a number of important civil and criminal matters regarding important constitutional issues affecting the freedom of the press and the company or its employees and have been overseeing several initiatives regarding lobbying to effect substantial changes to federal broadcasting and advertising policies.
- (l) As a general proposition, my duties also include playing an intimate role on the company's executive management committee which oversees and drives all major strategy for the company. This group is in the midst of a substantial transformation of the company and has spent and will continue to spend a huge amount of time on human resources leadership development and overall corporate strategy.
- (m) My National Post and day to day corporate office duties require an enormous personal sacrifice in terms of time commitment, and that is exacerbated by the

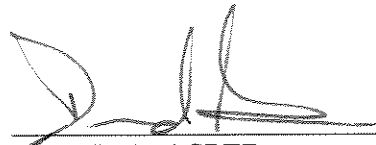
intense level of broader strategic planning over the past several months. I travel extensively and have basically been living in Toronto since the beginning of 2006. My attendance at the Commission hearings has been an extreme inconvenience but I have appeared willingly in aid of the important work that is under way.

- (n) In addition to my corporate commitments, I also serve on a number of community boards.
 - (o) I am Co-Chairman of the 2006 Grey Cup Festival that will occur in Winnipeg this November. This obligation requires me to be available for a weekly meeting or conference call with our Festival Manager in order to ensure that our plan is tracking properly, and to be available on a regular basis for routine problem solving. Because of my involvement as a witness before the Inquiry I have been forced to meet several meetings of this committee.
 - (p) I serve as a Trustee on the Board of Governors of St. John's Ravenscourt School and have missed two important Board meetings as well as committee meetings as the result of my having to be in Saskatoon to testify.
 - (q) Starting in the first week of September, I am enrolled to study at the University of Toronto toward a Master of Laws in the course work intensive program. This will be in addition to all of my other responsibilities, and the first term is especially busy for me.
 - (r) Prior to becoming basically fully engaged in Toronto, and likely not seeing my family until Thanksgiving, I have planned a family vacation during the week of August 28, through the Labor Day weekend. My children will be at camp for most of the time prior to that and it is truly the only sustained time I will have with them. The Commission proposes that I should be cross-examined by counsel for the federal government during that time period.
 - (s) My counsel has proposed methods of completing my evidence by, in essence, a video deposition during July and August when the Commission was not sitting but I could free up time. These offers were rejected with no reasons given by the Commissioner.
 - (t) I am spending the summer trying to get as much as I will be required to accomplish in the fall done before then, including my Grey Cup responsibilities. This is in addition to being intensely involved in the budgeting process of CanWest Global, and making numerous advertising agency presentations.
25. I swear this my affidavit in support of submissions on my behalf that the Respondent Commissioner exceeded his jurisdiction by failing to limit the matters with respect to which I may be required to give evidence to matters properly within the jurisdiction conferred upon the Respondent by the terms of Saskatchewan Order in Council 84/2004 dated 18 February 2004 and to matters properly within the jurisdiction of a provincially-constituted commission of inquiry.

SWORN BEFORE me at the City of
Winnipeg, in the Province of Manitoba,
this 31st day of July, 2006.



A Notary Public in and for the
Province of Manitoba



DAVID A. ASPER

RICHARD MARC LEIPSIC
A NOTARY PUBLIC
IN AND FOR THE PROVINCE OF MANITOBA

This is Exhibit A to the affidavit of David Asper sworn before me this 31st day of July 2006 at Winnipeg Manitoba

Outline of Evidence

David Asper

(Prepared by Commission Counsel)


RICHARD MARC LEIPSIC
A NOTARY PUBLIC
IN AND FOR THE PROVINCE OF MANITOBA

I. The Section 690 Process

1. Understanding of s.690 of the *Criminal Code*
 - a) Onus on Applicant (test to be met)
 - b) Evidence required
 - c) Role of Federal Justice Minister upon filing of application
 - d) Role of Applicant upon filing of application
 - e) Research conducted on s.690 (previous applications)
 - f) Discussions with Federal Justice regarding operation of s.690

II. Sources of Information

1. Court File
 - a) Preliminary hearing and trial transcripts
 - b) Exhibits
 - c) Opening and closing addresses by counsel
 - d) Judge's charge to jury
 - e) Court of Appeal factums
2. Transcripts and Tapes of Previous Interviews Conducted by Joyce Milgaard:
 - a) Nicole John interview with Tony Merchant
 - b) Ron Wilson telephone calls
 - c) George Lapchuk telephone calls
3. Transcripts and Tapes of Previous Interviews Conducted by Peter Carlyle-Gordge
 - a) T.D.R. Caldwell
 - b) Albert Cadrain
 - c) Dennis Cadrain
 - d) Estelle Cadrain
 - e) Ray Mackie
 - f) Other witnesses/people
4. Peter Carlyle-Gordge File Materials
 - a) Notes From Review of Caldwell File
 - b) Notes on locating Larry Fisher/Linda Fisher
5. Chris O'Brien

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- a) Deborah Hall
- 6. Sandra Bartlett (CBC)
- 7. Interview of David Milgaard
 - a) Recollection/Reliability of memory
 - b) Scribbler notebook
- 8. Calvin Tallis
 - a) Three file memos (1969)
 - b) David Milgaard's version of events provided to Calvin Tallis in 1969:
 - (i) possession of knife
 - (ii) traveling in vicinity of where Gail Miller was found
 - (iii) intention to rob women stopped for directions
 - (iv) vehicle getting stuck shortly after and David Milgaard leaving the car
 - (v) admission that he threw out the compact
 - (vi) motel re-enactment
 - c) Concerns with respect to first statements of Nichol John, Ron Wilson and David Milgaard
 - d) Evidence and argument on frozen semen being exculpatory
 - e) Timing/Impossibility argument
 - f) Importance of Danchuk evidence
 - g) Prejudicial effect of s.9(2) procedure employed by trial judge
 - h) Concerns about Inspector Roberts and polygraph
 - i) Motel room re-enactment and Ute Frank interview
- 9. Gary Young Files and Information
- 10. Tony Merchant Files and Information
- 11. Prosecutor Files
- 12. Police Files

III. Information Provided to Authorities in Support of Re-Opening

- 1. David Milgaard's Affidavit
 - a) Denial of murder
- 2. Unreasonable Verdict
 - a) Timing doesn't fit
 - b) Gail Miller on Avenue N
 - c) Observations of David Milgaard by Danchuks and

Rasmussen

d) No observation of stuck vehicle

3. Evidence of Motel Room Re-Enactment
 - a) David Milgaard did not re-enact the murder or make admissions
 - b) Melnyk and Lapchuk lied at trial when testifying that David Milgaard re-enacted and admitted committing the murder
 - c) Crown deliberately failed to call Deborah Hall and Ute Frank who would have refuted the evidence of Melnyk and Lapchuk
 - d) Crown granted favours to Melnyk and Lapchuk (lighter sentences and money) in exchange for their favourable evidence
 - e) Luana Edwards and Bobbi Stadnyk evidence regarding reliability of George Lapchuk
 - f) If David Milgaard re-enacted the murder or made any admissions in the motel room, it was a crude joke and it was taken as such by everyone in the room

4. Frozen Semen
 - a) Frozen Semen was evidence used to link David Milgaard to the crime and evidence that the jury relied on to convict him
 - b) Dr. Ferris states the semen exonerates David Milgaard
 - c) Dr. Markesteyn states the semen exonerates David Milgaard or is dog urine
 - d) Dr. Merry states the frozen semen is likely dog urine

5. DNA
 - a) Efforts by Dr. Ferris to test exhibits

6. Larry Fisher
 - a) Information from Linda Fisher
 - b) Information from Cliff and Roy Pambrun
 - c) Information from Jake Ketlar
 - d) Information on other rapes committed by Larry Fisher
 - e) Inclusion of Eileen Farkas in the second application
 - f) Jailhouse informants
 - g) Information on Larry Fisher offences and convictions not disclosed to defence
 - h) Police theory of connection between rapes and murder not disclosed to defence

7. Albert Cadrain
 - a) Statements from Dennis and Albert Cadrain (May, June 1990)
 - b) Albert mentally unstable in 1990 and unreliable in 1969/70
 - c) Police coercion of Albert Cadrain in 1969

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d) Influenced by reward money

8. Ron Wilson

- a) Recantation of some incriminating evidence in 1990
- b) Police coerced and manipulated Ron Wilson in 1969 to provide false and incriminating testimony
- c) Crown failed to disclose his first statement to defence or defence failed to use it properly
- d) First statement of Ron Wilson true, everything else fabricated and coerced by police

9. Nichol John

- a) Events in May 24, 1969 statement not possible
- b) Police coerced and manipulated Nichol John in 1969 to provide false and incriminating statement
- c) Compact story fabricated
- d) First statement true, everything else fabricated and coerced by police
- e) Section 9(2) proceedings prejudicial

10. Margaret Yanicki Incident

- a) Statement should have been disclosed to defence
- b) Larry Fisher was perpetrator
- c) Pambrun car theory

11. Boyd/Rossmo Report

12. Video Re-Enactment

13. Allegations Against Police

- a) Tunnel vision
- b) Coercion and manipulation of witnesses (Wilson, John and Cadrain)
- c) Favours and Influence provided to Melnyk and Lapchuk
- d) Role of Art Roberts – polygraph
- e) Police framed David Milgaard
- f) Deliberate cover-up and conspiracy
- g) Missing police files on Larry Fisher part of cover-up

14. Allegations Against Prosecutor

- a) Failure to disclose information on rapes and Larry Fisher convictions
- b) Failure to disclose first Ron Wilson statement
- c) Deliberate hiding of bone-handled hunting knife
- d) Deliberate cover-up and conspiracy

15. Calvin Tallis
 - a) Failure to cross-examine on first statements of Wilson and John
 - b) Failure to call David Milgaard as a witness
 - c) Failure to follow up and call defence witnesses
16. Cover-Up and Conspiracy
 - a) Missing Saskatoon police files on Larry Fisher offences
 - b) Breckenridge allegations
 - c) McCloskey assertion of frame

IV. Communication of Re-Opening Information to Authorities

1. Direct communication (telephone, meetings and correspondence) between Asper/Wolch and Federal Justice representatives (Williams/MacFarlane/Corbett/Rutherford/Pearson)
2. Direct communication between Joyce and David Milgaard and Federal Justice regarding family presentation
3. Communication of information via the media
4. Public supporters of David Milgaard
 - a) David Milgaard Justice Group
 - b) Public Support
5. Politicians
 - a) John Harvard
 - b) Lloyd Axworthy
 - c) Senator Nurgitz
 - d) Speaker John Fraser
6. Joyce Milgaard contact with Kim Campbell and Brian Mulroney

V. Allegations/Issues Arising During Section 690 Process


1. Allegations against Federal Justice/Eugene Williams/Kim Campbell
 - a) Biased Against David Milgaard
 - b) Improper Questioning/Treatment of Deborah Hall and Linda Fisher
 - c) Only witnesses favourable to David Milgaard were questioned under oath

- d) Failing to let David Milgaard's counsel attend interviews
- e) Acted in adversarial fashion
- f) Deliberate delay
- g) Failure to disclose police and prosecution files to Milgaards
- h) Improper to obtain opinion from William McIntyre
- i) Improper to use T.D.R. Caldwell in review process

2. Review of Kim Campbell's February 27, 1991 letter dismissing first application

Exhibit "B" to the
Affidavit of David Asper

sworn before me this 15th
day of July 2006 at Winnipeg
Manitoba


RICHARD MARC LEIPSIC
A NOTARY PUBLIC
IN AND FOR THE PROVINCE OF MANITOBA

Transcript Page 27465, Friday, April 21st, 2006

5 MR. SOROCHAN: Oh, there was one other
6 matter I wanted to raise, and that was that the
7 entirety of Mr. Asper's testimony has been in
8 relation to the 690 process.
9 You received a letter from the
10 Federal Government recently that deals with an
11 issue that I have talked to Mr. Hodson about
12 almost within the first ten minutes of our
13 meeting, and that is my experience in commissions
14 of inquiry -- and I've done quite a few of them
15 -- is that the Federal Government will not
16 tolerate any commission of -- in -- with
17 provincial jurisdiction making findings against
18 federal functionaries. And so when Mr. Hodson
19 said that he was going to be questioning Mr.
20 Asper about his relationships with Mr. Williams
21 and the Justice Minister I said, "well, how is
22 that within the jurisdiction of this Inquiry,
23 surely our -- surely the testimony from Mr. Asper
24 can be done in approximately two days", because I
25 had asked him, "is the Federal Government

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1 committed that you may make findings with respect
2 to the Federal Government's conduct of the 690
3 process or have you got a joint warrant from the
4 Federal Government giving this Commission
5 authority to inquire into federal aspects", and
6 Mr. Hodson's response was the same thing we heard
7 the other day, that they will have to come to
8 that some day. Well that's all very well and
9 good, but the entirety of Mr. Asper's testimony
10 relates to the 690 process, that's all he did.
11 If the -- in my respectful submission, that's
12 something should have been sorted out right at
13 the start of this Inquiry, whether you're going
14 to be able to delve into the federal matters,
15 because if the Federal Government came out of the
16 woods finally and said, "no, you can't make
17 findings with respect to how Mr. Williams
18 conducted the 690 process, no, we're gonna" --

19 I've heard Mr. Hodson say something about calling
20 Ms. Campbell, the Minister of Justice. In my
21 experience that will be a frosty Friday when that
22 happens.
23 COMMISSIONER MacCALLUM: Well, Mr.
24 Sorochan, surely the Federal Government can speak
25 for themselves.

Transcript Page 27467

1 MR. SOROCHAN: Pardon me?
2 COMMISSIONER MacCALLUM: Surely the Federal
3 Government can speak for themselves.
4 MR. SOROCHAN: But they never do, they wait
5 until --
6 COMMISSIONER MacCALLUM: Well, you don't
7 have any standing to do it, do you? I mean we're
8 going to delve into what we think is relevant, if
9 somebody -- unless and until somebody objects to
10 it.
11 MR. SOROCHAN: Well, let me give you, let
12 me tell you why it's my business; because my
13 client has been sitting on the stand for two
14 weeks talking about matters relating to the
15 Federal Government.
16 I was involved in a commission
17 of inquiry in British Columbia, tangentially,
18 because I was special prosecutor. By the, when
19 the notices finally went out -- and that was the
20 Stupich case, I prosecuted Mr. Stupich, there was
21 an inquiry that went parallel to it. When the
22 notices finally went out to the RCMP by the
23 Commissioner at the end of the process, after
24 spending millions of dollars the RCMP went off to
25 Court and said that there was no jurisdiction to

Transcript Page 27468

1 make findings with respect to the RCMP, and the
2 government disbanded the Inquiry.
3 Now why -- that's what -- I've
4 suggested to Mr. Hodson that, and I'm told by the
5 Federal Government they propose to spend a day
6 cross-examining Mr. Asper, and then -- and yet at
7 the same time, in the letter they sent to you,
8 they didn't just say that they were objecting to
9 producing the documents on the grounds of
10 privilege, they said they objected to producing
11 the documents on the ground that this was a

12 provincial inquiry and that it could not inquire
13 into matters touching upon the Federal
14 Government, and yet that's all that Mr. Asper's
15 testimony has been about.

16 So I -- I -- in my respectful
17 submission, I understand there's going to be some
18 folks that will be cross-examining Mr. Asper
19 today, before Mr. Asper has to be subjected to a
20 full day of cross-examination by the Federal
21 Government you should make them come out of the
22 weeds and tell you whether they will be agreed to
23 you making findings with respect to the Federal
24 Government. Otherwise, my client shouldn't have
25 to waste his time being cross-examined by a party

Transcript Page 27469

1 that does not -- that says that you can't make
2 any findings about them.

3 Now that, that's my submission,
4 and it touches upon Mr. Asper, not just upon --
5 it's not -- it's got -- I'm not raising the
6 objection for the Federal Government, I can make
7 arguments against their position. But I think
8 it's, in my respectful submission, it's something
9 that I would have hoped would have been decided
10 at day one of this Inquiry rather than now.

11 COMMISSIONER MacCALLUM: Well, to start
12 with, your objection is not timely, Mr. SoroChan.
13 We've already heard all the evidence relating
14 to -- practically all of it -- relating to the
15 so-called Section 690 issue inasmuch as it
16 relates to Mr. Asper.

17 MR. SOROCHAN: Well, it's not my fault it's
18 not timely --

19 COMMISSIONER MacCALLUM: To deny -- well,
20 it is your fault if you didn't get up and object
21 when you should have.

22 MR. SOROCHAN: That's not -- that is
23 completely not factual.

24 The only time the Federal
25 Government has come out of the weeds in saying

Transcript Page 27470

1 that they are not, that they're objecting to this
2 Inquiry is when Mr. Frayer sent Mr. Hodson a
3 letter, which was tendered this week when we
4 started these hearings.

5 COMMISSIONER MacCALLUM: Well I assume that
6 you are trying to be helpful, sir, thank you for
7 your submission.