

***Appendix C***  
***Rules of Practice and Procedure***

# **Commission of Inquiry into the Investigation of the Death of Barbara Stoppel and the Subsequent Prosecution and Conviction of Thomas Sophonow**

## **RULES OF PRACTICE AND PROCEDURE**

### **Hearings**

On dates to be determined by the Commissioner, including November 7 – 10, 2000, the week of November 13<sup>th</sup>, 2000, the weeks of December 11<sup>th</sup> and 18<sup>th</sup>, 2000, the weeks of January 15 and January 22, 2001, and continuing thereafter on March 12, 2001, the Commission will hold public hearings at 373 Broadway Avenue in the City of Winnipeg, in the Province of Manitoba, or at such other place as it directs. Hearings will generally commence at 9:30 a.m. and conclude at 5:00 p.m. or later if required, with a break for lunch between 1:00 p.m. and 2:30 p.m.

The Commission is committed to a process of public hearings. The Commissioner may, in his discretion, in appropriate circumstances, conduct hearings in camera where he is of the opinion that matters involving public security may be disclosed, or if considering intimate financial, personal, or other matters that are of such a nature, having regard to the circumstances, the desirability of avoiding disclosure outweighs the desirability of adhering to the general principle that the hearings should be open to the public. More particularly, in his discretion, the Commissioner may conduct hearings in camera where he is of the opinion that the matters are so sensitive that they may interfere with the ongoing police investigation.

Further, the Commissioner may, in appropriate circumstances, direct that measures be taken to minimize the adverse affects of publicity and publication and to protect individual rights, including refusing permission to televise certain portions of the proceedings. Where the Commissioner decides to conduct hearings in camera, he will determine who will be permitted to attend the in camera hearings, and what conditions will be imposed upon anyone in attendance.

### **Preparation of Evidence**

Parties should at the earliest opportunity, and by October 17, 2000 in respect of the aspect of the hearings that relate to compensation issues, provide to Commission Counsel the names and addresses of all witnesses who they consider may have information relevant to the Inquiry, together with copies of all relevant documentation which is not already part of the public record.

In addition, at the earliest opportunity, and by October 17, 2000 in respect of the aspect of the hearings dealing with compensation issues, parties shall provide Commission Counsel with “will says” of any witnesses whom they intend to call and with any documents which they intend to file as exhibits or to which they intend to otherwise refer during the hearings, and in any event no later than 2 business days prior to the day that the witness will be called or the document will be referred to or filed.

Production of documents emanating from the original police investigation will be made by the 4<sup>th</sup> of December, 2000. If any of these documents are considered to be relevant to and sensitive in the present ongoing investigation they may be edited to delete the sensitive portions. However, the original documents may be reviewed by counsel provided that an undertaking as to confidentiality is given.

All documents are to be produced by the parties by the 15<sup>th</sup> of January, 2001.

Commission Counsel may receive or examine documents subject to such confidentiality as they in their discretion may determine is consistent with the rules of natural justice and the provisions of Order in Council 232/2000.

Commission Counsel will provide reasonable access to any documents not already part of the public record which they intend to file as evidence before the Commission.

### **Witness Interviews**

Any prospective witness interviewed by or on behalf of Commission Counsel is entitled to have his or her own counsel present.

### **The Evidence**

The Order in Council provides that the Commission may rely on any transcripts or record of pre-trial, trial or appeal proceedings before any Court in relation to the proceedings and prosecution and on such other related materials as the Commission considers relevant to its duties. At the commencement of the public hearings, a list of the documents to which the Commission may refer at any time without further notice will be filed.

Witnesses will give evidence under oath or affirmation.

Counsel may adduce evidence both by way of leading and non-leading questions.

All evidence will be presented by Commission Counsel except with leave of the Commissioner as hereinafter provided.

Except as otherwise directed, the order of examination for witnesses will be as follows:

- (a) Parties who have standing and are represented by Counsel may be examined by their own counsel.
- (b) Subject to limitations arising out of the nature of their standing, other parties will then have an opportunity to examine the witness. Subject to further direction of the Commissioner, the order of examination will generally be as follows:
  - + Counsel with a substantial commonality of interest will examine next,
  - + Remaining counsel will examine next,
  - + Counsel for the witness will then re-examine,
  - + The Commissioner, or on his direction, Commission Counsel may then pose questions. Thereafter, any counsel may examine the witnesses on issues arising from questions posed by or on behalf of the Commissioner.

Commission Counsel have the discretion to decline to call any witnesses whose evidence would not appear to them to be relevant or to be within a subject area to be covered by other witnesses or where the evidence of the witness appears in a transcript filed at the inquiry. If, at the end of the phase of evidence, there are witnesses who parties believe should be heard from, parties may request and the Commissioner may direct that Commission Counsel call them as witnesses.

### **Notices before Possible Findings of Misconduct**

Notices will be delivered by the Commission after information about alleged misconduct has come to the Commission's attention which may give rise to findings of misconduct. These will be delivered on a confidential basis to the persons or parties to whom they relate. Supplementary notices may be delivered from time to time by the Commission as warranted by the information before it. Notices may be issued to persons who are not called as witnesses before the Commission.

At a specified phase of the Inquiry to be determined by the Commission, if any party believes that it is necessary to adduce documentary evidence or to call evidence to respond to allegations of possible misconduct for which a Notice has been received, then that party may apply for leave to call that evidence or may request that Commission Counsel call such evidence. If relevant and responsive to issues raised in the Notice, leave will be given. Cross-examination of the witness by counsel for other parties shall be limited to matters adduced in evidence during the examination in chief of the witness except with leave of the Commissioner.

### **General Provisions**

The use of the term "party" is intended to refer to those granted standing and is not intended to convey notions of an adversarial context.

The Commission is entitled to receive evidence which might otherwise be inadmissible in a court of law. The strict rules of evidence will not apply to determine the admissibility of evidence.

Nothing is admissible in evidence that would be inadmissible in a court by reason of any privilege under the law of evidence.

Witnesses may be called more than once in the discretion of the Commissioner.

Counsel shall produce originals of relevant documents to Commission Counsel upon request.

### **Attendance of Witnesses**

Where the Commission requires the attendance of any witness either on its own motion or as a result of any application, a subpoena or summons may be sent to the witness.

Witnesses may request that the Commission hear their evidence pursuant to a subpoena or summons in which event a summons shall be issued to them.

The Commission may require any person by subpoena or summons:

- (a) to give evidence on oath or affirmation at the inquiry; or

- (b) to produce in evidence at the inquiry such documents and things as the Commission may specify relevant to the subject matter of the inquiry and not inadmissible in a court, by reason of any privilege under the law of evidence.

### **Submissions by Counsel**

When all the evidence has been adduced at the inquiry, Commission Counsel and other parties shall have the right to address the Commission as the Commissioner directs. The Commissioner may direct that written submissions be made by counsel in addition to their oral submissions.

### **Access to Evidence in the Hearing**

All evidence shall be classified as public or private. Evidence from the hearings in camera will be classified and marked "C".

One copy of the transcript of the evidence, when available, and a list of the exhibits of the public hearings, will be available for the use of counsel for the parties at 373 Broadway Avenue in the City of Winnipeg, in the Province of Manitoba. A disk version of the transcript or an additional copy may be ordered by any one prepared to pay its costs.

### **Amendments**

These rules may be amended from time to time by the Commission.