Commission of Inquiry on Hormone Receptor Testing

Applications for Standing and Funding

(Before the Honourable Justice Margaret A. Cameron - Commissioner)

Ms. Sandra R. Chaytor, Q.C., Co-Counsel
Mr. Bernard M. Coffey, Q.C., Co-Counsel

St. John's, NL
September 19th, 2007

Appearances:

Mr. Rolf Pritchard ..... Her Majesty in Right of Newfoundland and Labrador

Mr. Daniel W. Simmons ..... Eastern Regional Integrated Health Authority

Mr. John V. B. O'Dea ..... Central, Western and Labrador-Grenfell Regional Integrated Health Authorities

Mr. Peter N. Browne ..... Drs. Kara Laing et al.

Mr. Richard S. Rogers ..... Firm Clients

Ms. Gerry Rogers ..... Self-Represented

Mr. Daniel M. Boone ..... Health Care Insurance Reciprocal of Canada

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September 19, 2007

THE COMMISSIONER:

For those of you I haven't met, my name is Margaret Cameron, and on July 3rd, 2007, I was appointed as Commissioner of the Inquiry on Hormone Receptor Testing. I am also a Justice of the Supreme Court of Newfoundland and Labrador, the Appeal Division. On this, the first of our public sessions, I wanted to tell you about what's been happening since the Commission was established, and to tell you about how I plan to proceed with the work of the Commission in the future. Let me begin by saying a little about the nature of the Commissions of Inquiry.

In this Province, Commissions of Inquiry are established by Orders-in-Council issued under the authority of the Public Inquiries Act, 2006. While the Government makes the decision to appoint a Commission of Inquiry, the Commission is independent of Government.

Public Inquiries are designed to expose certain events to public scrutiny. Usually, a commission is

asked to determine what went wrong in the past and how to avoid such errors in the future.

A word about what public inquiries do not do. The Commission may determine wrongdoing but it does not find anyone guilty of a crime. Nor does it establish civil responsibility for monetary damages. However, the fact that we may find, in the course of our deliberations, wrongdoing on behalf of an individual or a group, means that their reputations are at risk. Consequently, the principles of natural justice require that due process safeguards be in place. Those safeguards will be observed by this Commission.

The precise tasks of this Commission are set out in the Terms of Reference. Broadly speaking, its purpose is to find out why there were a high number of different results when certain hormone receptor tests done between 1997 and 2005 were retested in 2005 and 2006, and to consider what could be done to avoid similar occurrences in the future. In that sense, the mandate of the Commission is directed, in part, to the past and, in part, to the future. I am to examine the response of authorities when the

problems were discovered, including the communications with affected patients and others. I am also asked to examine the present practices related to estrogen and progesterone hormone receptor testing systems, a task which is no doubt designed to restore public confidence in the current testing. In addition, there is a policy development role for this Inquiry. I am asked to make recommendations as to how matters of this nature should be handled in the future.

The Order-in-Council which created the Commission provided its Terms of Reference. It is that document which states the parameters of the work which may be performed by the Commission. It also sets the time frame in which the work is to be done. Since the creation of the Commission, key members of the team have been put in place. Of the administrative side, they have been working to obtain and set up our offices. Commission Counsel have begun the task of gathering the evidence and identifying potential witnesses. Rules of procedure and practice have been developed and are published on our website. For those of you who haven't had the opportunity to visit

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it, it's www.cihrt.nl.ca. The rules of procedure and practice, of course, are particularly relevant to those who will receive standing to participate in the hearings.

The Inquiry will be divided into two parts. In Part I, the Commission will inquire into problems with estrogen and progesterone hormone receptor tests conducted between 1997 and 2005 in the Newfoundland and Labrador health care system. This will include inquiry into what happened to cause or contribute to the problems, when the problems came to light and whether they could have been detected earlier. Part I will also examine any protocols in place during the relevant time frame, and what steps, if any, were taken by responsible authorities when they became aware of the problems. In addition, there will be evidence respecting the current systems and processes and quality assurance systems.

Part II of the Inquiry will have a policy focus and will include a review of both policy and legal issues raised by the Terms of Reference. Part II is expected to canvass the duties, if any, of the

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responsible authorities to patients, to other parties within the health care system and to the public respecting differences in the test results on re-testing. Part II will also examine whether the estrogen and progesterone hormone receptor testing systems and process and quality assurance systems currently in place are reflective of "best practices".

Part I of the Inquiry will be conducted in the traditional method of public inquiries. Witnesses will be called, examined by Commission Counsel, and, if necessary, cross-examined by the parties who have standing. Part I hearings, which will commence early in January 2008, will be held in this building at 50 Tiffany Lane in St. John's. The public is welcome and indeed encouraged to attend. In addition, the hearings will be webcast. So for those who cannot attend in person what happens at the Inquiry will be available in another forum. Prior to the commencement of the hearings our website will provide further information regarding the webcasting of the hearings.

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Part II, on the other hand, will take a different approach. The Commission is in the process of engaging a number of experts who will be preparing papers considering the legal and ethical issues raised by the Terms of Reference. These papers will be placed on our website in the spring of 2008. As well, in April of 2008 there will be a symposium which will include presentations by the persons who have prepared papers and others on relevant topics. There will also be an opportunity for Commission Counsel and those with standing to ask questions of the presenters.

While those who have standing for Part II will be expected to make written submissions to the Commission, the public is also invited to make written submissions respecting the issues raised in Part II. All submissions respecting Part II must be made on or before May 15th, 2008.

Shortly after I was appointed I began to assemble a team to assist me in the work of the Commission. Ms. Virginia Connors who is seated at the back of the room - Virginia, would you mind standing so those who

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are present can see you - is our Chief Administrative Officer who oversees our staff of four. I'm sure in the course of events you will -- those of you who will be here on a regular basis will meet them all.

Co-counsel are Bernard Coffey, Q.C. and Sandra Chaytor, Q.C. Both are experienced barristers and are known to most of the people in this room. As I have already said, they have begun the process of meeting with persons who can provide us with information and gathering documentation. Not with us this morning is Timothy Caulfield who is our Director of Research. Mr. Caulfield is the Research Director of the Health Law Institute at the University of Alberta. His work will primarily relate to Part II. More detailed biographies of Mr. Coffey, Ms. Chaytor, and Mr. Caulfield are available on our website. We expect others to be added to our team as we move through the various phases of the Inquiry.

Now to the task of today. Section 5(2) of the Public Inquiries Act says, and I quote, "A commission shall determine whether a person may participate in an inquiry, and how he or she may participate, after

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considering: (a) whether the person's interest may be adversely affected by the findings of the Commission; (b) whether the person's participation would further the conduct of the inquiry; and (c) whether the person's participation would contribute to the openness and fairness of the inquiry.

When I refer to persons who are granted standing, I am, of course, referring to those who, after consideration of these three factors enumerated in the Act, are permitted to participate. Today is the first of two days in which we will be hearing applications for standing. It is through the participation of other parties who are interested that this Commission is able to get the benefit of the different perspectives on the information which we will be receiving over the course of the Inquiry. I would add that the Commission is charged with completing its work by July of 2008. It is, therefore, desirable to avoid duplication where possible.

It is possible that some of the decisions respecting standing will be made immediately. Others

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will be reserved. It is also possible that an applicant will be granted standing for only one part of the Inquiry. Please do not read anything more into it if I reserve a decision than my need to consider the application further, perhaps in light that the existence of other applications from other groups or persons who might be expected to provide similar assistance to the Commission and its work.

Three of the applications for standing also seek funding. Under the Public Inquiries Act I do not determine who receives funding. I may, however, for persons or organizations which have been granted standing make recommendations that fundings be provided by the Government. The Government may or may not accept the recommendation. On questions of funding, I will not be making my recommendations known today. Rather, these will be made in writing and communicated to the parties and to Government. Where decisions on either standing or funding are reserved, the applicants will be notified in writing of the decision or recommendation. This information will also be posted on our website.

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Prior to the hearing for Part I Commission Counsel and our advisers on technology in particular will be meeting with those who have been granted standing to discuss the Rules of Practice and Procedures, as well as some of the practical measures we propose to take (largely through the use of technology), and you'll notice all these screens in front of you, to try to have the hearings conducted as efficiently as possible.

So, the preliminaries out of the way, we will move now to the first of the standing applications. Would you call the first matter, please?

THE CLERK:

Application No. 1, Her Majesty in Right of Newfoundland and Labrador, please come forward.

THE COMMISSIONER:

Now I'm going to ask you, because we record our proceedings, to first identify yourself, Mr. Pritchard.

MR. PRITCHARD:

Good morning, Madam Commissioner, Rolf Pritchard for Her Majesty in Right of Newfoundland and Labrador.

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THE COMMISSIONER:

Thank you. Now, you have an application for standing, as I recall, for both Parts I and Part II?

MR. PRITCHARD:

That's correct.

THE COMMISSIONER:

Okay.

MR. PRITCHARD:

Madam Commissioner, it's probably an understatement to say that the Province is involved in the circumstances that gave rise to this Inquiry. Speaking initially, very broadly, of course everyone understands that the Province undertakes a range of tasks through the various departments that it has, and one such department, of course, is Health and Community Services. Health and Community Services in turn administers the Hospitals Act which in turn creates the Regional Health Authorities - Eastern, Central, Western and Labrador-Grenfell. So from one perspective, beginning first with the patient and moving backwards to the frontline treatment of nurses, doctors and the labs we then have the hospitals and in turn the hospital authority, then Health and Community Services and then, of course,

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the Executive of Government. And I suspect as things move forward with this Inquiry that at some point we will hear evidence about the degree of involvement that these various steps have had in the events that unfolded and necessitated this Inquiry. I further suspect that that means that there will be representatives of Health and Community Services and the executive who may be called upon to testify as to what they knew, when they knew it, what they did about it and the relevant policies that they may have put in place before these events unfolded or in response to these events as they unfolded. How those policies have changed over time, whether or not those policies gave rise to systemic issues that may or may not be found to be at issue, and that may have emanated from Government decisions, I suspect will all be issues that will be of concern to this Inquiry.

It follows then, if that is correct, if those assumptions are correct, that the Province is an integral part of the events as they unfolded and as they continue to develop, and, therefore, I would submit that it's appropriate that the Province should

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be entitled to participate and to have standing, and that in so doing this would contribute to the inquiries goals - openness and fairness.

I think it further follows that the Inquiry ultimately may draw conclusions about the activities and the decisions and the policies that were made at various levels of Government, and perhaps some of those findings may be adverse in nature and have an adverse impact upon those players. I would suggest that that alone would satisfy another of the criteria that's laid both in the Act and also in the Commission rules. So because the province, through its department and ultimately through the regions, has been so integral to be involved in this event and continues to involved, it's submitted that it's appropriate for the Province to be involved in both Part I and II of the Inquiry.

I haven't prepared lengthy this morning, Madam Commissioner, but certainly if you have any questions I'd be happy to answer them.

THE COMMISSIONER:

No. On the basis of the material that you have

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submitted and your comments, I am quite satisfied that Her Majesty in Right of Newfoundland and Labrador should and, indeed, is hereby granted standing in respects to both Parts I and Part II. Thank you, Mr. Pritchard.

MR. PRITCHARD:

Thank you.

THE COMMISSIONER:

Would you call the next matter please or the next person?

THE CLERK:

Application No. 2, Eastern Regional Health. Eastern Regional Integrated Health Authority, please come forward.

MR. SIMMONS:

Good morning, Madam Commissioner, I am Dan Simmons. I am with White Ottenheimer & Baker. Beth Whalen from our firm has also been involved with me in acting for the Eastern Regional Integrated Health Authority. She is not here today but assuming that standing becomes available for our client, I expect you will see her as the matter progresses.

The application for standing from the Eastern

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Regional Integrated Health Authority, more commonly known as Eastern Health, is for standing in both Parts I and Parts II. Madam Commissioner, you've already referred to the Terms of Reference for this Inquiry which include an inquiry into the estrogen and progesterone receptor testing carried out in the Newfoundland and Labrador health care system between 1997 and 2005, the Inquiry into the responses of responsible authorities and the communications by them, the inquiry into whether the ER and PR and quality assurance now in place for that testing is reflective of current best practices and the power to make recommendations. All these matters of inquiry are ones which will involve Eastern Health in all aspects. Eastern Health --

THE COMMISSIONER:

Mr. Simmons, just as a matter of clarification, if you would. Is it correct that the laboratory work for the tests under consideration between 1997 and 2005 would have been conducted in a facility or facilities, I don't know which it is, under your client's auspices as it were?

MR. SIMMONS:

Yes. Eastern Health itself is an organization that's

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a successor to a number of other health authorities, including the Health Care Corporation of St. John's. The testing that is going to be the subject of the Inquiry, which I'm sure we'll come to refer to as the EP/PR testing --

THE COMMISSIONER:

It will be a lot shorter and I am sure I, for one, would be very happy if we very quickly move to ER/PR testing.

MR. SIMMONS:

It's really a process and it runs from the collection of tissue samples through to the making of treatment decisions by care givers. In that process there is a laboratory component. It is an example of something more generically called immuno-histochemical testing which was performed in the laboratory at the Health Science Center under the jurisdiction of first the Health Care Corporation of St. John's and now Eastern Health. Eastern Health, therefore, has played a role through that laboratory in all the ER/PR testing under the time period in review. For some of the testing, the beginning parts of the process, collection of tissue samples, the preservation of tissue samples and the concluding parts of the

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process, treatment decisions and communication of information, may have been carried out by -- under the authority of other health authorities in the province, but Eastern Health has a role in the laboratory testing for all the samples from that time period.

THE COMMISSIONER:

So there are really, there are no -- there were no tests performed during the operative time frame which your client does not have -- in which your client doesn't have a part to play as it were. It may be greater or lesser but there's a part?

MR. SIMMONS:

That's correct, my lady. The part played by Eastern Health will vary depending on the time, where the samples originated from and other circumstances, but there is a part played by Eastern Health in, as far as we're aware, all of the testing carried out in the time period. And that is obviously a matter that's of key importance and subject of inquiry in this Commission.

It was Eastern Health that also, in 2005, initiated the re-testing program to review the ER/PR

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tests done between 1997 and 2005 that had produced negative results. There had been several cases identified where a sample had originally been tested to be negative but on re-testing had produced a positive result which indicated that the patients might benefit from a change in their ongoing treatment. The re-testing program initiated within Eastern Health was for the purpose of identifying any other patients who might similarly benefit. Eastern Health personnel then also played a role in the communication of the results of that re-testing both to patients who had been treated within the Eastern Health system and its predecessor boards and also a role in working with three other health authorities in the province whose patient samples were retested as part of that program.

The Terms of Reference mandate this Inquiry to look into all those activities and its Eastern Health's intention, should standing be granted, to provide, to continue to provide all the assistance that it can to ensure that this Commission has full, open and complete access to the information it needs to carry out its mandate.

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It's also Eastern Health that continues to be responsible for ER/PR testing in this province. Eastern Health is confident that the practices and procedures that are in place today are the best available and that the public can have complete confidence in that testing, but this Commission must inquire into the adequacy of those practices and whether improvement is still possible. It is in Eastern Health's interest and in the interest of all members of the public that it serves to help the Commission in any way it can to satisfy that mandate.

The final Term of Reference addresses the power of the Commission to make recommendations. In the complex and technological world of health care today no one has all the answers and no one is always right. Constant improvement is the name of the game and the goal is always to be better. Eastern Health, therefore, welcomes the opportunity to participate in this Inquiry and the constructive approach to be taken in Part II and looks forward to the learning opportunities that the coming months will present.

The Commission of Inquiry Rules of Practice and

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Procedures stress that that is not an adversarial proceeding, and that interested parties are not adversarial parties in the sense that lawyers are used to.

Eastern Health is aware that, if given standing, there are rights of participation in the Inquiry but also important obligations to participate in a way that gives priority to the objectives of the Inquiry and not priority of those of interested parties.

Eastern Health understands that the extent of its and other parties' participation may sometimes be limited, and that the prerogative of the Commissioner is to decide on those limits. In particular, there are matters arising out of these events that are to be examined elsewhere and Eastern Health and others will have to respect that.

Finally, Madam Commissioner, there are important positive aspects and opportunities in this story. In many ways this re-testing program was an unprecedented process. It began entirely within Eastern Health driven by concerned and professional

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staff who saw an opportunity to do good by finding patients who might benefit from a change in treatment. Eastern Health hopes that in Part II, in particular, this aspect can be explored for the benefit of its organization and for others who might in future have a similar opportunity. Thank you, Madam Commissioner.

THE COMMISSIONER:

It's quite clear to me that the Eastern Health Integrated Health Authority should be granted standing in this case, and I grant standing in respect to both Parts I and II. Thank you, Mr. Simmons.

MR. SIMMONS:

Thank you.

THE COMMISSIONER:

Next matter or next person?

THE CLERK:

Application No. 3, Central, Western and Labrador-Grenfell Regional Integrated Health Authorities please come forward to the podium.

MR. O'DEA:

Good morning, Madam Commissioner, my name is John O'Dea and I am here on behalf of David Eaton who is

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unable to be here. He is in court today. You will note from the record that a letter was sent in on September the 5th by Dan Simmons indicating that he would be seeking, or that the Central Regional Integrated Health Authority, the Western Regional Integrated Health Authority and the Labrador-Grenfell Regional Integrated Health Authority would be seeking standing, and that separate legal counsel would be representing them and seeking that standing. We were contacted recently, and on September 14th Mr. Eaton sent a letter of request to the Commission seeking standing and I'm here this morning on his behalf.

Very briefly, I echo the remarks made by Mr. Simmons with respect to the reasons for standing with one exception, and that is that the Central, Western and Labrador-Grenfell authorities were not involved in the laboratory testing with respect to those test samples that were gathered from the respective health authorities. So the reason for seeking standing is that each of these health authorities collected samples for testing on behalf of their respective patients and the samples originating at their health authorities were sent to

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Eastern Health laboratories for testing. As I understand it, the slides were then prepared by Eastern Health's laboratories and sent back to the Central, Western and Labrador-Grenfell authorities. These slides were then read at the respective authority and determinations were made at the sites with respect to whether the samples were positive or negative for, receptor positive or negative. So the roles of Central, Western and Labrador-Grenfell health authorities is somewhat similar to Eastern except for the fact that they were not involved in the laboratory testing.

So for that reason, there is -- the application is being made very much on the same grounds as being made by Eastern Health Authority.

THE COMMISSIONER:

Mr. O'Dea, how do you -- I have no difficulty seeing the relationship into Part I. I'm just wondering how you see your client's participation in Part II, that is sort of the policy examination in the piece, as being different from Eastern Health's, if at all?

MR. O'DEA:

I have not had an opportunity to discuss this with

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the clients involved but I do not see that that is entirely different except for the issue around testing. I would suspect that anything in that area would not be within the purview of the Central, Western or Labrador-Grenfell authorities. But I must caution you that my instructions are not that specific this morning because of the short time of which we were given notice of appointment.

THE COMMISSIONER:

Okay. Anything else to add?

MR. O'DEA:

Not at this time.

THE COMMISSIONER:

Thank you, Mr. O'Dea.

MR. O'DEA:

Thank you.

THE COMMISSIONER:

Mr. O'Dea, I'll reserve on this application until I have had an opportunity to consider the matter further, particularly in respect of Part II.

MR. O'DEA:

Thank you.

THE COMMISSIONER:

You'll be notified in writing. Thank you. Next

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application.

THE CLERK:

Application No. 4, physicians Dr. Kara Laing et al., please come forward.

MR. BROWNE:

Good morning, Madam Commissioner, Peter Browne on behalf of Drs. Kara Laing et al.

THE COMMISSIONER:

Mr. Browne, you walk faster than my little mouse moves here, so could you just give me a moment to pull up your application.

MR. BROWNE:

It's probably all that running I do, Madam Justice.

THE COMMISSIONER:

Yes, maybe I should have said you run faster than my mouse moves, but I will be right with you, I think. This is a learning process for me as well, so. Okay.

MR. BROWNE:

Madam Commissioner, on September 4th I sent correspondence to the Commission outlining the basis for our application this morning, and that followed on the heels of a discussion with Commission Counselor Mr. Coffey. At that time, Mr. Coffey identified several physicians, Drs. Laing, McCarthy,

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Carter, Cook and Kwan. All of these physicians, I think is fair to say, served on the tumor panel which was the body that vetted the results from Mount Sinai and compared them with the original results from Eastern Health. Throughout the course of that discussion and a previous meeting, it is apparent, and I think it is obvious, that physicians play an important facet in this Inquiry from the very beginning of the program in 1997 forward, even to the point of dissemination of information following the review, and in that regard we believe, under the provisions of the Terms of Reference, physicians have an interest that needs to be addressed and can offer information to the Inquiry that would be useful to the Inquiry and to the public generally, and accordingly, have asked for standing in both Part I and Part II.

I would add some additional comments. As the investigation moves forward is it likely that other physicians will be identified? And I've had some discussions with Commission Counsel in that regard, and what I would propose is as those physicians are identified that Commission Counsel notify me of the

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identities of those individuals, I will ensure that those individuals are placed in my hand, and then I would ask this morning, potentially, for the Inquiry to grant me leave for additional additions of physicians' names for standing as the matter moves forward.

Finally, with regard to Part II, given the nature of the focus being the policy aspect of it and the important aspect of "best practice" and so on, I do believe physicians, both pathologists and oncologists, who have had a major role in this review will have the ability to offer some information that would be of some benefit to the Inquiry.

THE COMMISSIONER:

I agree, actually, in respect of the point you make in respect to Part II. As to Part I, the persons who are currently listed are certainly persons who the Inquiry would be interested from hearing -- in hearing from, and I'm satisfied that standing should be granted for all of those who are currently on the list. I recognize there may be a problem in the event that others are identified along the way, and the proposal that you've outlined for adding further

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physicians to the list is acceptable. So that on an ongoing basis if it becomes evident that other physicians need to be added to the list we can do that as that occurs.

MR. BROWNE:

I would propose that we do that in writing, Madam Commissioner?

THE COMMISSIONER:

Yes, thank you. You are writing to the Commission to confirm that you represent the particular person who would have been by then identified by the Commission.

MR. BROWNE:

Correct.

THE COMMISSIONER:

Would be sufficient, and I will respond in writing to indicate that you are in a position to represent that particular physician or physicians as the case may be. So standing is granted for both Parts I and II in respect of those persons you now represent, and we will deal with any other physicians whose names might arise in the future in the manner we just indicated.

MR. BROWNE:

Thank you, Madam Commissioner.

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THE COMMISSIONER:

Thank you, Mr. Browne. Next?

THE CLERK:

Application No. 5, Rogers Bussey Applicants on behalf of firm clients, please come forward.

THE COMMISSIONER:

Now, for the record, Mr. Rogers, if you wouldn't mind identifying yourself.

MR. ROGERS:

Good morning, Madam Justice. I suppose I'm the first applicant here who's speaking on behalf of patients who are clients. At present, my firm has eight of the people who have been affected by the subject matter of this Inquiry and the whole hope, of course, of my position here today is that I would be allowed on their behalf to ask questions of both Phase I and Phase II of the Inquiry. As a matter of coincidence, as well, I am the Newfoundland branch of the CBA representative for the Health Law subsection.

If I'm granted standing, I can't say that I would be attending for the complete Inquiry. There may be a witness which may be of more importance to my clients than perhaps others. In addition, because I

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have a practice which is very litigation based, which means that I may be required to attend to outside court activities, I'd also ask that in my place I'd be allowed to have Kim Horwood, who is also with my firm. So we would try to keep our emphasis very narrow in the sense that our questions would be more specific.

The other interesting part is that we've also asked for funding. If funding is not granted, it won't prevent us from coming. I mean I have to be honest. The funding would be helpful. Our clients are very limited in the sense of their monetary ability to pay for us to be here, but it wouldn't be critical.

THE COMMISSIONER:

Mr. Rogers, you have not provided what I would call the customary detail about the funding application. You have merely indicated in your application that funding is being requested. Others who have applied for funding have given us much more information about the circumstances of their clients or their organization to enable one to really look at the issue of funding.

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MR. ROGERS:

I could re-look at the issue, sure.

THE COMMISSIONER:

You indicated that in your material filed that you wanted to do that. Do you still wish to do that or are you just relying on the submission that you're making now?

MR. ROGERS:

It's sort of an interesting subject, my lady. Like I say, the funding issue wouldn't prevent me from being here or not attending. I guess the only question is, and all of us are trying to come to grapple with the idea of how long this might be. Obviously, if I'm here for a short --

THE COMMISSIONER:

You're not the only one.

MR. ROGERS:

Yeah.

THE COMMISSIONER:

But may I say that we do anticipate that we're spending the winter in this room.

MR. ROGERS:

Okay. In that case it might be prudent for me to consider putting forward some more information for

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your consideration on that subject.

THE COMMISSIONER:

Our current estimate is that, you know, it will be at least January, February and a portion of March.

MR. ROGERS:

Okay, okay. The other interesting thing which is arising, one of my clients, who is also my sister, Ms. Gerry Rogers, is going to ask for standing. I would like to endorse her application, my lady. I do that because even though she is a client of mine, in some way or another she's become somewhat of a focal point for many of the victims or, I should say, patients of this Inquiry, and I think that she would be a very good voice and a force in the sense of acting on their behalf in some manner.

There was also question as to whether or not perhaps I should be making a joint application with other counsel who have similar clients and similar interests. I spoke with Mr. Crosbie on this matter last week and it was determined that the logistics would not make it possible from his standpoint. I mean I'm very flexible in that regard but he felt it

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wouldn't work from his standpoint. So if there's any question in that regard I suppose you can ask him for his further explanation. So I suppose that's all I have to say now, my lady, subject to any further questions.

THE COMMISSIONER:

On that point, do I take it that your clients are part of the group included in the class action which Mr. Crosbie is involved in? Because his application is on behalf of really the group that is involved in the class action. So do I take it your clients would be among that group as well?

MR. ROGERS:

Yeah. Well what happens, my lady, and the class action, my experience with them across the country for different subjects, is that although there might be a law firm which spearheads the class action in name, that other law firms will likewise have their own clientele, and that when the class action comes to a resolution point then what we do is we provide information to the law firm which is spearheading the class action but we still are completely representing our clientele in terms of giving advice, collecting information and so on. So the class action lawyer

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actually is almost more like a representative but not the actual lawyer who represents my clients.

THE COMMISSIONER:

Well my next question was just in terms of what do you bring to the table that is not being brought to the table by the presence of Mr. Crosbie?

MR. ROGERS:

The difference?

THE COMMISSIONER:

In terms of the representation of persons who may have been affected.

MR. ROGERS:

Yeah. There is no doubt that I see that there might be some overlap; however, I think that you would be able to, if you felt that the question was becoming duplicitous, that you would be able to say, well, that question had already been asked and so on. And the other thing I find is that when I look around the room here, these are very good qualified counsel and I actually feel very good about that, and that leads me to believe that this Inquiry is going to be very successful in its goals. And I think the added bonus that I might be able to bring is my past experience with another large inquiry that happened here a

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number of years ago with the Mount Cashel Inquiry. So perhaps in some way one of the goals that the Inquiry is trying to do is be very successful and bring out information, and maybe my experience in that way might also be able to assist this Inquiry.

THE COMMISSIONER:

And the other point that raises from the application that you have filed, as I read it you seem to be applying really for your firm or yourself and in addition to applying for your clients. Do I have that wrong? Have I misinterpreted what you said?

MR. ROGERS:

Well ideally it's for myself, my lady. I would be the main person. I only say -- and I say Rogers Bussey simply because that is my firm, but I would be the counsel that would be attending. If I could not, due to court scheduling and other matters that I couldn't put to the wayside, I would only ask that Kim Horwood be able to attend in my place.

THE COMMISSIONER:

But my point being, Mr. Rogers, is that, as you've noted, counsel who are here are here representing a particular client. They are here on the behalf of their client. When I read your application I'm

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saying to myself is Mr. Rogers seeking to be here because of what he brings to the table or his own interests, or is he seeking to be here on behalf of those of his clients who have been affected by the testing?

MR. ROGERS:

Most definitely, my main purpose is to represent my eight clients, without a doubt. I only suggest that my experience in other types of inquiries could be an added bonus, my lady.

THE COMMISSIONER:

All right then. Anything else you want to add?

MR. ROGERS:

I'm sorry?

THE COMMISSIONER:

Anything else you wish to add?

MR. ROGERS:

Nothing to add, my lady.

THE COMMISSIONER:

And do I take it you do not wish to add anything, further information regarding the funding then?

MR. ROGERS:

No, not at this point, my lady.

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THE COMMISSIONER:

Well, except I have to make the determination.

MR. ROGERS:

Okay.

THE COMMISSIONER:

So it's either at this point or you submit it in writing in the next couple of days or not at all.

MR. ROGERS:

No, I don't think I'll submit any further information. I can make that determination now.

THE COMMISSIONER:

All right, thank you. I'm going to reserve on this application. I have several which are related you can appreciate. So I will reserve and make this determination which will be given in writing and communicated to you.

MR. ROGERS:

Thank you, my lady.

THE COMMISSIONER:

Thank you, Mr. Rogers. Next application?

THE CLERK:

Application No. 6, Gerry Rogers. Please come forward.

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THE COMMISSIONER:

Good morning, Ms. Rogers.

MS. ROGERS:

Good morning, Commissioner Cameron. My name is Gerry Rogers. First, I would like to thank the Province of Newfoundland and Labrador for establishing this Inquiry, and I would like to thank you, Madam Justice Cameron, for accepting the role of Commissioner for this very important task. And I also would like to thank the team who has agreed to work with Madam Justice Cameron on this Inquiry. Thank you.

In July 19, 1999, I was diagnosed with Infiltrating Ductal Carcinoma of the left breast. My pathology indicated that the tumor was 2.5 centimeters. That four of the 16 lymph nodes were taken had cancer in them, and that the hormone receptor status was estrogen negative and progesterone positive for 30 percent. I was staged at 2B. I under went an mastectomy followed by six months of chemotherapy and five weeks of radiation therapy. Following this, I did not take Tamoxifen because I was told I was estrogen negative.

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Throughout that year of treatment, I was treated with compassion, respect and professionalism and felt I had received the best care available. I was totally new to the health care system, having never been sick before. I was given information in a timely and accessible manner. Any tests or treatments were given in a timely manner. Although the current treatment for breast cancer may seem barbaric ten years from now, the treatment I received at the time was to my knowledge the best. I felt well taken care of and a full participant in my health care. For that, I am thankful. However, there was a nagging doubt in my mind. In a teleconference led by cancer research scientist here in St. John's, Dr. Jon Church, we were told that Newfoundland and Labrador had, if not the highest, pretty near the highest mortality rate for woman with breast cancer in Canada. I often wondered why. Was it our lifestyle? Probably not. We're probably not that different than anywhere in Canada except for maybe those in BC. Was it that our doctors were not well trained? I felt that my oncologist, Dr. Kara Laing, was the best anyone could have. Was it the equipment? I got pretty fried from radiation,

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probably more than was really acceptable at the time. So were our machines more state of the ark rather than state of the art? Were we less likely to live as -- why were we less likely to live as long as elsewhere in Canada if you were diagnosed with breast cancer in Newfoundland and Labrador?

In 2005, there was an article in The Independent about the problems with the hormone receptor testing. I tried for months to get information through Eastern Health. I called every number that was publicized and even tried other numbers. No one ever returned my calls. My own family doctor asked me if I knew anything about what was going on, as even doctors hadn't been notified about what was happening. Their patients were worried, in some cases panicking and frightened. Many women I knew were confused and not sure what it meant for them; whether maybe they hadn't had breast cancer at all or whether they were going to die because they got wrong treatment. Rumors were abounding about the state of the pathology labs and how they were in chaos. I couldn't understand why no one was communicating directly to those of us affected, either in person or

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through a letter. I finally spoke with my oncologist several months later and then finally, when all the retests were in, I met with my oncologist again who told me that my pathology had changed and my hormone receptor status was now estrogen positive. That was almost seven years after my initial diagnosis. I am one of the lucky ones. I am well and I am healthy.

I was somewhat philosophical about the whole issue for a while but became very alarmed after reading a number of memos from Dr. G. Ejeckam, a counseling pathologist engaged by Eastern Health in early 2003, to address some of the problems evident regarding the hormone receptor testing and, in particular, immuno-histochemistry and pathology labs in Eastern Health will include excerpts from some of his memos following.

As a citizen of Newfoundland and Labrador, and consequently Canada, I have a number of questions and issues that I would like to see addressed in this Inquiry. I am aware that this particular test is complex and some standards and interpretation guidelines may have changed even over the past seven

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years. However, in Part I these are some of the questions I would like to have answered. As a province in Canada we have the same right to excellence in health care. It is known how important accurate pathology is to successful treatment of cancer. Why is it that in Newfoundland and Labrador we had what appears to be substandard pathology for immuno-histochemical stains. Why did we have such a high rate of error when we, as a province, should have access to the same level of excellence as anywhere else in the country?

Number two, April 4th, 2003, Dr. Ejeckam stated that, "The immuno-histochemical stains with the following antibodies," and there are a number, including ER and PR, "have remained unreliable erratic and therefore unhelpful for diagnostic purposes."

In a memo dated June 19th, 2003, he states once again that the situation of the immuno stain at the General Hospital, Department of Laboratory Medicine and Pathology is still unsatisfactory. He states a number of reasons saying to not rectify it would

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spell disaster. Strong words for a scientist. He then goes on to say, "diagnosis based on inappropriate immuno stain will surely jeopardize patient care and may even expose the Health Sciences Corporation of St. John's to litigation".

How was it that re-testing was not done at that time? Why were I and every other woman with breast cancer not notified then that there could be a problem with our pathology? Why was no action taken? That was an extra two years that women could have been put on the proper treatment. If action had been taken could lives then have been saved or prolonged? I have no technical expertise and perhaps it is not that simple. Perhaps it is not that simple. Perhaps it would not have made a difference. Perhaps there was no clear indication at that time that re-testing should have been done, but I need to know and the women of this province need to understand and know why the decision was made not to re-test at that time. Perhaps there is a valid reason but as a citizen and a patient I need to know and understand. Excuse me, could you get me a glass of water, please?

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THE COMMISSIONER:

Ma'am, would you like to take a few moments?

MS. ROGERS:

No, I'm fine. I didn't expect this, I'm sorry.

THE COMMISSIONER:

No, not at all.

MS. ROGERS:

Thank you.

THE COMMISSIONER:

Ms. Rogers, you're the one in the room with the direct experience. Don't apologize.

MS. ROGERS:

In Dr. Ejeckam's memo, he also states, "Finally, it is pertinent to mention that results of immuno stains are extremely important in histopathological diagnosis, especially where classifications of lymphomas and determination of benign or malignancies of certain lesions, for example, in the prostate biopsies depend on crisp, reliable and reproducible staining results. Diagnosis based on inappropriate immuno stain will surely jeopardize patient care and, again, even expose the Health Sciences Corporation of St. John's to litigation."

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Is there, therefore, a need for re-testing for other cancers? Are some of the testings for prostate in question? Again, I have no idea. I would like the Inquiry to raise that question. Why did no one at any time pick up on the unusual number of high ER negatives in the breast cancer population in Newfoundland and Labrador? They were unusually high. Why was that not picked up on? How could so many of the same errors continue to recur over a seven- to nine-year period? Where were the checks and balances? What were and are the management structures that ensure the best use of science and technology in cancer treatment in the province?

Dr. Ejeckam states poor physical facilities, lack of training and experienced personnel and the particulars of immuno-histochemical stains, the physical location -- "The physical location of this facility is unsatisfactory." He also talked about overworking personnel in the pathology labs, and says that, "The staff arrangement as it stands now is grossly inadequate and unacceptable for problem free or minimal problem operations. There has to be a dedicated staff to take over this special procedure."

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This again was in 2003. He also states that, "The volume of immuno-histochemical procedures continues to increase" and these problems must be solved. And, he said, "The present staff performing this procedure are doing the best they can with myriads of other duties that take them away from the immuno stain fairly regularly. It is virtually impossible for them to devote the time required to master the intricacies of this procedure. The fairly good stain we have now is a credit to them but they do not have enough time to spare. It is my understanding, too, that some of them have less than two or three years in the establishment and their exit will create a vacuum and another period of uncertainty in immunochemistry", which calls into question all the testing that had been done prior to 2003.

I just lost my place, I'll find it. He also states that, "The volume of immuno-histochemical procedures continues to increase" and that these problems must be solved. "To do less simply becomes a gamble where you may win or lose. This obviously will spell disaster." Why were the appropriate resources needed to meet their mandate not allocated

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to the pathology lab when it is so clear their role is so absolutely vital to the successful treatment of cancer? The way Eastern Health handled those of us who have been patients was cold, callous and disrespectful. There was no direct communication with us once the news broke through the media. It created a climate of confusion, fair and mistrust. Many women I spoke with felt betrayed and felt like they could no longer trust the medical system. When someone from Eastern Health finally did speak to me, after I called the Minister of Health, I asked why they hadn't communicated with us directly, and she said they didn't want to frighten woman unnecessarily. We are adults. Many who have undergone surgery, grueling chemotherapy and radiation, often with courage, grace and with gratitude for the wonderful health system we have and the fabulous medical personnel who have taken care of us. We are partners in our health care. Often we have had to make informed decisions about our health care in consultation with our doctors. Such difficult decisions as to lumpectomy or mastectomy; whether to do chemo or not; what kind; radiation or not. Because it's not always black and white in

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cancer treatment. And cancer treatment can sometimes be still a bit of a crap shoot. All women affected by this were adults and we needed to get clear, accessible, reliable information from Eastern Health about what was going on. In Part II these are some of the questions I would like answered: Why did we only find out about a health care problem directly affecting us through the media and not through our health care providers? Why and how was a decision made to not contact every patient individually to notify us about the problem once it was made public by the media? Why did a health care issue become a legal one? What is being done to establish a forward looking and responsive regulatory environment that will ensure best practices in this area? What is being done to ensure that the people of Newfoundland and Labrador will have the same access to the best care as citizens across the whole country? What will Eastern Health do to enhance transparency, openness and accountability to strengthen public trust? What will Eastern Health do to help the public feel confidence in our health care system once again?

In conclusion, as a citizen I value our health

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care system. It is a national and provincial treasure, and as citizens we have right to safe, accessible and universal health care and excellence. It is imperative that the appropriate resources be allocated to all aspects of health care so that our health care providers and healers can fulfill their mandated roles and responsibilities. The Canadian Strategy for Cancer Control states that by the year 2015 one in three people in Canada will be diagnosed with cancer at some time in their life. That is a lot of strain on the system. It strikes me that one of the contributing factors in the problem we have faced has been the lack of adequate resources. Insufficient financial, the lack of enough qualified personnel, the lack of support for personnel who have been working with dedication and concern. We, as a society, cannot afford to allow our health care system to deteriorate. It is my hope that this Inquiry will look at all these contributing factors and take a forward-looking approach in its recommendations that goes simply beyond the issues of immuno-histochemical stains but rather speaks to the heart and soul of what makes our health care system the treasure it has been. Thank you, Madam Commissioner.

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THE COMMISSIONER:

Now, Ms. Rogers, how do you see your role were you to be granted standing? This is going to be a long hearing. Of necessity, we have determined, just given the volume of people who must be asked questions, the volumes of documents that have to be examined, so as I've already indicated I think there are going to be a fair number of people in this room for the winter as it were. I'm just wondering if you --

MS. ROGERS:

My condolences to you.

THE COMMISSIONER:

But do you see, if you're granted standing, wanting to be here with that role, in the sort of traditional lawyer's role for two and a half months?

MS. ROGERS:

Absolutely not, Madam Commissioner.

THE COMMISSIONER:

I'm listening to you, I'm just wondering if you, what you really want to do is to ensure -- I recognize you're making a plea that certain things be examined.

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I think I've already indicated, there is a limit to what I can examine under the Terms of Reference and I have to be guided by that. But certainly mostly what you have referred to is within the frame of the kinds of things that people will be asking questions about during next winter. But it seems to me that in part you are saying the story of the people whose tests were -- whose test results were different following re-testing has to be examined or has to be told, and that a major concern is how the communication piece of -- I'm not to say that you're not concerned about the medicine end of it, but from the perspective of the patient, the communication of the problem when it became known that it had arisen, the test results, when those were received was handled in a manner that you felt was, let us say, lacking. So your primary interest seems to be on that aspect of the Inquiry. Am I right? I'm not suggesting that you're not interested in ensuring that the Inquiry examine fully the science end of it but your emphasis in your remarks on how patients were treated seems to me to indicate a more extensive interest in that aspect of it. Is that correct?

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MS. ROGERS:
No, I believe I have two primary -- I'm not so sure I even want standing, and God forbid, the last thing I'd want to do is to be stuck in this room all winter. I really -- you do really do have my condolences, and I know that that's going to be a real difficult job.
THE COMMISSIONER:
Well that's what I'm trying to explore with you.
MS. ROGERS:
Yes, yeah.
THE COMMISSIONER:
Is whether you really want to be here all winter.
MS. ROGERS:
No, I don't.
THE COMMISSIONER:
But let me say, that, well, part of the role of counsel here is to be open to people like you and to hear from you as to what you think is important on terms of the questioning of the witnesses. So that I'm wondering if standing is what you really want or there's something, another way of participating. I'm not suggesting that you not participate, I'm just wondering if it's standing that you want.

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MS. ROGERS:
Right. When I arrived this morning I spoke to some of your staff and said I'm not so sure that standing is what I want. There are a number of issues that I feel really need to be addressed, and I'm not sure if the inquiry, for instance, would address the issue of why is it that it seems that re-testing wasn't started in 2003 when Dr. Ejeckam's findings clearly indicated that there was a problem with the testing that had been done prior to 2003? And why is it that testing only began then in 2005? And then again, the issue of how decisions (a) are made. Why were there so few checks and balances in place? And then how Eastern Health then dealt with those of us who were affected by this issue of retesting.
THE COMMISSIONER:
Yes, okay. And you understand that in respect of Part II, for example, there is an anticipation that those who are granted standing will make submissions in writing to the Commission on Part II because that's the policy end of the matter which will deal with going forward, which will deal with ethical and legal issues as to what responsibilities there are with various players in the piece, if you will. But

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the public also can make submissions in writing. So whether you have standing or not in respect of Part II you would be in a position to make submissions on the issues that relate to Part II. Those can -- that's clearly indicated in our Rules of Procedure and Practice. So that's another avenue that's open to people who are not necessarily granted standing.
MS. ROGERS:
And then for the issue of exploring what happened after Dr. Ejeckam's consultation and what happened, how can we get those kinds of questions answered?
THE COMMISSIONER:
Well Commission Counsel's job is to place before the Commission the full picture of what is important to meet -- to enable me to and effectively deal with all of the Terms of Reference. So that not only a citizen but I would expect lawyers who have been granted standing for other parties may have conversations with our counsel about the nature of the evidence that can be brought out from a particular witness. The advantage of having standing is if at the end of the examination by Commission Counsel there are still questions which one or the other of the parties feel that ought to be put to a

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particular witness, then those who have standing have the opportunity to do that. But it's confined in the sense of what is relevant to the determination to be made given the Terms of Reference. So it's not a general, broad inquiry and because a particular witness might be on the stand who may have some information that somebody would like to get, my job is to ensure that we concentrate on the information which is relevant to the determination that I may make at the end of the day with respect to the Terms of Reference. Most of what you've raised, of course, would be within that broad parameters but not all.
MS. ROGERS:
And the other issue that is of great concern to me is again that so much of the information that we got as women who were affected we got through the media, and sometimes -- and there was no chance to ask questions, and it is my hope that the Commission, as well, will either have a public meeting with women or families that have been affected so that there is a possibility for two-way communication. And again, I think the rupture in the trust that so many people felt in the health care system has somehow have to be healed, and I think that that can only happen with

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direct communication rather than just simply through third party communication.

THE COMMISSIONER:

Yes, okay, thank you.

MS. ROGERS:

Thank you.

THE COMMISSIONER:

Anything else you wish to add?

MS. ROGERS:

Thank you, and good luck.

THE COMMISSIONER:

Thank you very much now. I'm going to reserve on your application.

MS. ROGERS:

I even wonder if I should withdraw my application for standing so that you don't have to deny me?

THE COMMISSIONER:

Well why don't you think about that for the next couple of days?

MS. ROGERS:

Okay.

THE COMMISSIONER:

There is another day which we're dealing with applications, that's on Monday. And if by Monday you

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conclude that there are other ways to participate and you'd prefer to do it that way, then you can let our staff now and they'll communicate that to me. All right?

MS. ROGERS:

Thank you.

THE COMMISSIONER:

Thank you very much. Now, the next applicant.

THE CLERK:

Application No. 7, Health Care Insurance Reciprocal of Canada, please come forward.

THE COMMISSIONER:

Good morning, would you just once again give me a moment to catch up with you. You didn't have far enough to walk obviously. I'm obviously trying my very best to become proficient with dealing with these things via the computer. This is practice for next January but I'm not quick enough yet. Here we go. Now, I do have your application before me. Thank you. Yes, could you for the record please identify yourself, Mr. Boone?

MR. BOONE:

Yes, good morning, Madam Commissioner, I'm Dan Boone and I represent the Health Care Insurance Reciprocal

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of Canada. And for the sake of brevity, if it please the Commission I will refer to it by its acronym by which it's normally is referred to is HIROC, H-I-R-O-C.

THE COMMISSIONER:

Yes.

MR. BOONE:

HIROC, Madam Commissioner, is an insurance reciprocal exchange. It operates on a subscription and a not-for-profit basis. It has, at present it has about 500 health care facilities as members and subscribers in provinces across Canada. Through its programs it provides, among other things, a program of liability insurance. At the material times under which -- for which the issues that the Commission will be examined has developed, HIROC was the liability insurance provider both for the Health Care Corporation of St. John's and its successor Eastern Health. As a consequence, HIROC is responsible to defend and indemnify both the Health Care Corporation of St. John's and now Eastern Health in respect of civil actions for damages that have been brought and are brought now before the courts of Newfoundland with respect to the issues which are also under

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consideration in the Inquiry. The issues which are in consideration in the civil actions put in issue by the pleadings are very much the same issues which will be considered pursuant to the Terms of Reference of the Inquiry. And as a consequence, HIROC takes the position that with respect to Part I it is a person whose interest may be affected, adversely affected by the findings of the Commission.

THE COMMISSIONER:

Well surely it's the findings of the judge that adversely affects your (inaudible).

MR. BOONE:

That could be. That could be, my lady, but if we look at the issues they're largely coincident with the issues in the civil action. A lot of what will happen here will -- just by nature of what will happen in this proceeding will find its way into the civil action. A lot of the evidence that we have brought here will also be evidence in the civil action. The issues are very much similar because the issues here go beyond, for instance, according to the Terms of Reference of the Commission, beyond findings of fact. They get into questions such as whether or not the practices of Eastern Health at the relevant

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time were reasonable and appropriate, which is very much coincident with the question as to whether or not Eastern Health met the standard of care which will be at issue in the civil proceeding. As a consequence, the thing, the findings of fact in the conclusions and the inference from those facts that the Commission will draw pursuant to its Terms of Reference will very much be the issues which will be always in play in the civil actions.

Now with all that said, and I think it's in our submission, at least, it is clear that our interest may be adversely affected by the findings of fact made here. Eastern -- or sorry, HIROC recognizes that the Commission has to control its own process. It is going to be very interested in the efficiency of its process and is not going to want any kind of duplication of effort or anything of that nature. Our interest --

THE COMMISSIONER:

Well that's my concern. When I'm reading the material which you've filed, frankly it seems to me that in respect of Part II your client plays a role and can very much contribute to the work of the

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Commission. In respect of Part I that's what concerns me as to whether or not there's a duplication between what you would propose to do and what would be done by Eastern Health in any event.

MR. BOONE:

I think that's so, Madam Commissioner, and we recognize that in our application. And in fact we have been instructed to give assurances to the Commission that we would not take any effort to engage in what we would consider to be unnecessary duplication. However, as Madame Commissioner will remember, especially from your time as a trial judge, one can't always anticipate where things will go and what positions each of the parties will take with respect to some of the issues.

THE COMMISSIONER:

No, but our days would be so much duller if we --

MR. BOONE:

Wouldn't they be? I agree. And for that purpose, in terms of expanding upon the role that we anticipate playing, at the end of it all it would be our hope if we sat here and never asked a question. It would be our hope if we sat here and never presented any evidence. On the other hand, I'm deterred by the

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specter of having to come in and seek standing because something has occurred within the Commission which could adversely affect our interest and nobody is seeking to protect those interests in a way that we would think would be coincident with what we would want to do. And as a consequence we will be willing to take whatever restrictions or limitations that the Commission wished to put on us, either in advance or ad hoc, in terms of what evidence we're able to present, what questions we're able to ask. And we also will commit that we will work in cooperation with Mr. Simmons to the greatest degree possible to ensure that there is no duplication. And we won't ask questions that nibble or quibble about things that perhaps are not particularly important to the Terms of Reference of the Commission but may be important to us.

So although in fact at this particular time I can't anticipate and my client can't anticipate where its interest might diverge with the interest of others before the Commission already, that could occur, and because it could occur we would seek to have standing and with the commitment that we will

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not duplicate and that we will cooperate with others to avoid that. And that we will only speak when necessary.

THE COMMISSIONER:

All right. Anything else you wish to add, Mr. Boone?

MR. BOONE:

No, Madam Commissioner, except with respect to Part II, of course. Just for the record, and our application just covered this, is that HIROC, as well as providing liability insurance programs to its members and subscribers across the country, is also a well-known advocate and promoter of health care interest within the country. It is one of the earlier members of the Canadian Patient Safety Institute. It has provided educational programs to its subscribers and to others within the health care community from the time of its inception in the early 1990s or late 1980s, and it has on staff risk management experts. It has available to it experts in risk assessment and in issues such as disclosure and those kinds of things which will be under consideration in Part II and, therefore, we are, on behalf of HIROC, seeking standing for both Part I and Part II.

THE COMMISSIONER:

Yes. Well I think, as I've already indicated, I am quite convinced that there is a benefit to having your organization here in respect of Part II, but I'm going to reserve on the issue because I want to think a little further about the duplication problem. So I reserve in respect of standing for your client. You will hear from us in writing.

MR. BOONE:

Well thank you, Madam Commissioner. Thank you.

THE COMMISSIONER:

Thank you, Mr. Boone. That's it?

THE CLERK:

That's it.

THE COMMISSIONER:

Those are the applications for today. We will continue with, I think, three other applications on Monday of next week. And for those where there have been a reservation of the question, you will hear from us in writing in due course. Thank you.

(Adjourned to September 24, 2007)

C E R T I F I C A T E

I, Beverly Guest, of Elite Transcription, of Goulds in the Province of Newfoundland and Labrador, hereby certify that the foregoing pages, numbered 1 to 64, dated September 19, 2007, are a true and correct transcript of the proceedings which has been transcribed by me to the best of my knowledge, skill and ability.

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