

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 24th, 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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1 THE COMMISSIONER:
 2 I understand, Mr. Ritter, that your organization
 3 seeks standing for Part II only, is that correct?
 4 MR. RITTER:
 5 Yes, that's correct.
 6 THE COMMISSIONER:
 7 Could you just elaborate as to why you feel that
 8 that's an appropriate role?
 9 MR. RITTER:
 10 Sure. Well I must say, we're very pleased to hear
 11 that there was going to be a Part II. It's our view
 12 that there are a number of systemic considerations
 13 within the health care sector that need to be
 14 examined and with a view towards reform and
 15 innovation that would, we believe, help reduce the
 16 risk of the kind of episode that occurred with the
 17 hormone receptors. I don't think you can necessarily
 18 make a cause-effect connection at this stage of the
 19 game, but we believe that there are certain risk
 20 considerations that do need to be taken into account
 21 in terms of how the health care delivery system
 22 works. I can give you a couple of examples. For
 23 instance, the matter of quality control and patient
 24 safety is something I think that everybody gives some

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1 September 24, 2007
 2
 3 THE COMMISSIONER:
 4 This is a continuation of the applications for
 5 standing and funding in respect of the Commission of
 6 Inquiry. Would you call the first application
 7 please?
 8 THE CLERK:
 9 We call the Newfoundland and Labrador Medical
 10 Association. Please come forward to the podium.
 11 MR. RITTER:
 12 This is the podium?
 13 THE COMMISSIONER:
 14 Yes. Yes, indeed.
 15 MR. RITTER:
 16 Thank you.
 17 THE COMMISSIONER:
 18 Now for the record would you identify yourself,
 19 please, sir?
 20 MR. RITTER:
 21 Yes, my name is Robert Ritter, R-i-t-t-e-r, and I'm
 22 the Executive Director of the Newfoundland Labrador
 23 Medical Association.
 24

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1 credence to but whether or not that translates into
 2 the right people developing the right policies and
 3 monitoring the implementation of those policies is
 4 actually in place. We believe also that there are
 5 risks that occur with respect to shortages of
 6 manpower. So, for example, if there is a chronic
 7 shortage of physician expertise, and those people are
 8 working on an ongoing basis at higher than normal
 9 levels, that poses a risk. Again, I'm not saying
 10 that that's necessarily what happened in this
 11 particular instance but this is very much an exercise
 12 in risk management, and so I think it's important.
 13
 14 In any event, from our perspective the kind of
 15 thing that happened with laboratory diagnostics could
 16 happen in other sectors as well. So I think the
 17 review of how the system works and where there may be
 18 elevated risks is worth examining and is worth having
 19 some discussion about.
 20 THE COMMISSIONER:
 21 You do understand that there is a focus to this
 22 particular Inquiry which has been laid out in the
 23 Terms of Reference by which I am bound that sets out
 24 the parameters of the work which I do. So any

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1 recommendations which might come out of this Inquiry
 2 would, therefore, relate to the laboratory or medical
 3 end of the particular testing that was involved in
 4 this case and which continues into the future. So
 5 that it isn't -
 6 MR. RITTER:
 7 More general.
 8 THE COMMISSIONER:
 9 - a very wide, shall we say, examination. So that,
 10 for example, any recommendations I would make would
 11 have to do with the parameters set by the terms of
 12 Inquiry. Any submissions made which would be wider
 13 than that would be beyond what I might be involved
 14 in. There may, I am not in a position to tell, there
 15 may be some benefits to other areas from the
 16 recommendations which I might make in relation to the
 17 matter which is within the Terms of Reference. But I
 18 just wanted to warn you, it isn't going to be a sort
 19 of wide examination of the system.
 20 MR. RITTER:
 21 I do understand that. And having looked at the
 22 methodology that's being considered, which would
 23 include things like symposia, interested parties
 24 submitting briefs, we would be more than happy to do

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1 that. Again, we believe that there is merit in
 2 examining some of those systemic issues as they would
 3 relate to the hormone receptor issue but that also
 4 would have some relevance to other potential risk
 5 areas, and if it becomes a matter of the public
 6 record we will have at least accomplished something
 7 even if within the mandate, within your mandate you
 8 don't necessarily or will not necessarily make
 9 specific recommendations based on the information
 10 that we submit.
 11 THE COMMISSIONER:
 12 Okay. Now in the material which you have submitted
 13 to have acknowledged that there are doctors
 14 represented before the Commission as another group,
 15 they are to date doctors we've identified as persons
 16 who can give us information which we need in the
 17 course of completing the Inquiry. Can you tell me
 18 how you see your role being different from the role
 19 of those individuals?
 20 MR. RITTER:
 21 Well I believe that all, most if not all of the
 22 physicians that have been identified for Part I are
 23 dealing with the specifics around the case that
 24 you're dealing with here; whereas, our role we see as

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1 being more dealing with the, as I say, the broader
 2 systemic and policy issues that come into play.
 3 THE COMMISSIONER:
 4 Okay.
 5 MR. RITTER:
 6 I guess our thinking is, if I may, our thinking is
 7 that the idea of when you get to the point in society
 8 where a commission like this is required, I guess one
 9 of the hopes you have is that it will preclude the
 10 necessity for another one having to take place in
 11 another sector. And so we feel that there are
 12 certain issues related to the hormone receptor
 13 scenario that have serious relevance to other
 14 possible risk situations that are worth noting, if
 15 for no other reason that they're given some
 16 consideration with a view towards enhancing the risk
 17 or improving the risk situation of the future in
 18 other areas of medical care delivery.
 19 THE COMMISSIONER:
 20 All right. Now do I understand that you would be
 21 representing the association throughout the piece?
 22 MR. RITTER:
 23 As it stands now, it would probably be myself and
 24 possibly our president as well. We haven't made a

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1 decision yet. If you require more precise
 2 information --
 3 THE COMMISSIONER:
 4 Well your application is in respect of Part II.
 5 MR. RITTER:
 6 Correct.
 7 THE COMMISSIONER:
 8 Much of what we will be doing in the earlier stages
 9 relates to Part I.
 10 MR. RITTER:
 11 Right.
 12 THE COMMISSIONER:
 13 There is one complicating factor which I should
 14 advise you about, and that is your organization is
 15 the only one which is seeking solely to be involved
 16 in Part II. We anticipate that there will be some
 17 evidence in Part I which will be relevant to Part II.
 18 MR. RITTER:
 19 Right.
 20 THE COMMISSIONER:
 21 It would be really inefficient to have somebody in
 22 this room for the purpose of giving evidence largely
 23 related to Part I and then not ask that one or two
 24 questions about present practice or something of that

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1 nature. So to avoid duplication of effort and
 2 inefficiencies there will be questions asked of
 3 witnesses -
 4 MR. RITTER:
 5 In Part I.
 6 THE COMMISSIONER:
 7 - in Part I which will be relevant to what will occur
 8 in Part II. The important thing for us then would be
 9 to make sure that anybody who is only participating
 10 in Part II knows about that.
 11 MR. RITTER:
 12 Fair enough. Fair enough.
 13 THE COMMISSIONER:
 14 So I'm just, on the practical side of things, I see
 15 that there might be occasions when, for example,
 16 during the hearings in Part I, anybody who's involved
 17 only in Part II, which means you, because you're the
 18 only one who seeks that, would have to be given
 19 notice that we have a witness who we expect to give
 20 evidence that would be relevant to Part II. I think
 21 on a practical level that can be established but I
 22 just wanted to give you notice that that might mean
 23 that you would receive something, we'd suggest, that
 24 if you wished to do so you might have to be in this

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1 room at some point during January, February or March.
 2 MR. RITTER:
 3 Yeah, that would be fine.
 4 THE COMMISSIONER:
 5 All right. Anything else you want to add?
 6 MR. RITTER:
 7 No. I just wish you well. As I say, we feel very
 8 strongly about the need to look at the policy and
 9 systemic aspects of this, recognizing the limitations
 10 of your mandate, and, as I say, and we hope that this
 11 undertaking will allow the public and the people
 12 involved in providing services to look at the system
 13 and to take whatever hard lessons we're learning from
 14 this experience for the benefit of improving the
 15 system and preventing similar occurrences in other
 16 areas.
 17 THE COMMISSIONER:
 18 All right, thank you. I'm satisfied that this
 19 application should be granted. That the group which
 20 you represent would bring a perspective to the
 21 examination of the systemic issues that you've
 22 identified and which are within the mandate of the
 23 Commission that I would like to have for the
 24 considerations in the mix as it were. So standing is

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1 granted for Part II.
 2 MR. RITTER:
 3 Thank you.
 4 THE COMMISSIONER:
 5 You'll hear from counsel from time to time and indeed
 6 certainly prior to the seminar about the details and
 7 how it is expected to work. In other words, we will
 8 keep you advised as to what's happening in Part I so
 9 that you're better prepared for Part II. All right?
 10 MR. RITTER:
 11 It sounds good.
 12 THE COMMISSIONER:
 13 Thank you.
 14 MR. RITTER:
 15 Thank you very much.
 16 THE COMMISSIONER:
 17 Could you call the next?
 18 THE CLERK:
 19 The next application on the members of the Breast
 20 Cancer Testing Class Action please come forward.
 21 CROSBIE, Q.C.:
 22 Good morning, Ms. Commissioner.
 23 THE COMMISSIONER:
 24 Good morning, Mr. Crosbie. Would you, for the

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1 record, please identify yourself?
 2 CROSBIE, Q.C.:
 3 Yes. My name is Chesley Crosbie and I'm appearing on
 4 behalf of the members of the Breast Cancer Testing
 5 Class Action.
 6 THE COMMISSIONER:
 7 Now, you just, if you wouldn't mind just give me a
 8 moment because with this move to technology I have to
 9 pull up your file in this manner. So just give me a
 10 moment to pull that up.
 11 CROSBIE, Q.C.:
 12 You have a file on me already?
 13 THE COMMISSIONER:
 14 Already. No, no, Mr. Crosbie, we're just --
 15 CROSBIE, Q.C.:
 16 Good morning, Mr. Coffey.
 17 COFFEY, Q.C.:
 18 Good morning, Mr. Crosbie.
 19 THE COMMISSIONER:
 20 Now, Mr. Crosbie, do you wish to proceed?
 21 CROSBIE, Q.C.:
 22 Thank you. I was given 10:10 as a time to make a
 23 presentation, so I assume that meant I had ten
 24 minutes, so.

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1 THE COMMISSIONER:
 2 No, that doesn't mean you have ten minutes. In
 3 actual fact, the next one is scheduled for 11:10. So
 4 I'm not inviting you to use the whole hour if you
 5 don't feel it necessary, Mr. Crosbie, but you have
 6 what time you need.
 7 CROSBIE, Q.C.:
 8 You may be pleased to know that I don't feel it
 9 necessary. In fact, Mr. Coffey told me last Friday
 10 that I actually did have an hour. As you're aware,
 11 and I'm sure you've read it, we have filed a
 12 reasonably comprehensive brief as well as affidavit.
 13 The affidavit being mandated by the rules which
 14 require affidavit evidence should an applicant be
 15 seeking funding as well as standing, and, as you are
 16 aware, we are in fact seeking funding as well as
 17 standing.
 18
 19 At this point perhaps I could introduce Ms. Pamela
 20 Taylor from my office who, if we are accorded
 21 standing, will be involved in the matter. And
 22 perhaps I could update you.
 23
 24 The class period expired on September 17th, and we

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1 have received in my office 13 opt outs. One hundred
 2 and ninety individuals have registered with us to
 3 indicate their positive decision that they want to be
 4 part of the class action. So perhaps I should
 5 mention that opt outs were notified that they could
 6 communicate with counsel for the class or with
 7 defendant or counsel for the defendant. So I don't
 8 actually know right now the total number of opt outs,
 9 I only can tell you how many have opted out through
 10 notifying us.
 11
 12 There are, in the 190 that we've communicated
 13 with, there are 89 false negatives. At least they're
 14 self-identified that way. There are 54 who don't
 15 know if they were false negatives. And by that,
 16 Commissioner, I mean people who were originally
 17 tested by Eastern Health and then subsequently
 18 tested -- sorry, tested negative and subsequently
 19 tested positive.
 20 THE COMMISSIONER:
 21 Wait now. We had --
 22 CROSBIE, Q.C.:
 23 False negatives. Eighty-nine false negatives.
 24

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1 THE COMMISSIONER:
 2 We have 89 false negatives, you indicated, of the
 3 190.
 4 CROSBIE, Q.C.:
 5 Yes.
 6 THE COMMISSIONER:
 7 Who are registered as part of the class. Eighty-nine
 8 of them you classified as false negatives.
 9 CROSBIE, Q.C.:
 10 Yes.
 11 THE COMMISSIONER:
 12 And the 54 who don't know.
 13 CROSBIE, Q.C.:
 14 Fifty-four don't actually know what their status was
 15 that way.
 16 THE COMMISSIONER:
 17 Okay, so what they know is that originally they were
 18 negative?
 19 CROSBIE, Q.C.:
 20 I'm not sure that -- I'm not sure what they know.
 21 THE COMMISSIONER:
 22 Okay.
 23 CROSBIE, Q.C.:
 24 I'm not sure how helpful these statistics are but I

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1 just thought I'd give you an update.
 2 THE COMMISSIONER:
 3 So this is 54 people who you have not yet been able
 4 to determine whether or not they were part of those
 5 who were identified as being negative in the first
 6 place but have expressed some interest?
 7 CROSBIE, Q.C.:
 8 Yes. They're not really sure whether they were or
 9 weren't and we haven't accessed the charts.
 10 THE COMMISSIONER:
 11 All right.
 12 CROSBIE, Q.C.:
 13 Of the total of 190, 34 contacts have been from
 14 family members of deceased patients. I'm not going
 15 to belabor what's already set out in writing. At
 16 paragraph 17, in relation to the criteria for
 17 standing, we've set out why we think that we have a
 18 case to be made to be granted standing. We've
 19 summarized that in terms of the language of the Act
 20 itself, I suppose. I'm not going to bother reading
 21 that, Commissioner. I am sure you're well familiar
 22 with it. As the criteria for funding, I can update
 23 you a little bit there. I have spoken to - well, as
 24 set out there - the Canadian Cancer Society. My last

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1 communication with them was about a month ago before
 2 I went on vacation which is why the brief was in so
 3 early because I didn't think I'd have a chance to
 4 deal with this properly when I got back. So there
 5 were communications back and forth with them about
 6 doing a joint submission, and I haven't heard from
 7 them since over a month ago, and so I can't tell you
 8 anything more than what's already in the brief.

9 THE COMMISSIONER:

10 Well I can tell you that they are applicants, so.

11 CROSBIE, Q.C.:

12 That they are?

13 THE COMMISSIONER:

14 They are applicants.

15 CROSBIE, Q.C.:

16 Yes.

17 THE COMMISSIONER:

18 Canadian Cancer Society.

19 CROSBIE, Q.C.:

20 Well, so obviously they've not thought it fitting to
 21 combine forces with us, and I can't tell you what
 22 their reasoning is. Gerry Rogers I spoke to on
 23 Thursday, I believe it was, and she appeared before
 24 you last, maybe it was Wednesday. I wasn't able to

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1 be here myself. I don't know if she's intending to
 2 come in or whether she's scheduled to come in, but I
 3 think where you left it was that the suggestion was
 4 made that it might be more appropriate and she might
 5 obtain her objectives as a witness rather than as a
 6 participant with standing. And I had a chat with her
 7 about that, and my understanding from her is that she
 8 is content and willing, as a member of the Breast
 9 Cancer Testing Class Action, to be on the, I
 10 suggested a five-person committee which could give me
 11 instructions and, if granted, standing, the conduct
 12 of my mandate on behalf of the Breast Cancer Testing
 13 Class Action members. In other words, she would --
 14 she's satisfied to serve as a member of the
 15 five-person committee, along with four others, of
 16 course. And the reason I, in the brief, mentioned
 17 doing it that way is I fully recognize that the
 18 mandate of the Commission is as set out in the Terms
 19 of Reference, and the mandate of class counsel in the
 20 context of the Breast Cancer Testing Class Action are
 21 certainly different. For example, one of my
 22 objectives is to obtain appropriate financial
 23 compensation for members. But as I point out in the
 24 brief, that's not the only one. And in pursuit of

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1 that, in any event, because the committee or, rather,
 2 Commission has to find out the background facts of
 3 the matter, so do we, as a class action, have to find
 4 out the background facts of the matter. But our
 5 mandate as a class action is somewhat wider than
 6 that. One of the recognized purposes is behavior
 7 modification, and that mandate involves taking an
 8 interest in more than purely commercial or I should
 9 say financial interests.

10
 11 And so Gerry Rogers has told me, and I guess she
 12 can confirm that to you, that she seems to be
 13 satisfied to work through me and to be one of the
 14 individuals giving me instructions. I have also
 15 spoken with Richard Rogers and I've made it clear to
 16 him that I'm happy to receive input from him as to
 17 concerns that his clients may have. I believe he
 18 represents eight of the members of the class.

19 THE COMMISSIONER:

20 That's what he advised last week.

21 CROSBIE, Q.C.:

22 That's what he advised me. And, of course, I'm happy
 23 to receive input from him on behalf of his class, the
 24 individuals that he represents as individuals who are

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1 class members. And I believe the Commission would
 2 have a copy of an e-mail from Colin Feltham at
 3 Roebothan McKay who states that he represents two
 4 dozen, approximately, members of the Breast Cancer
 5 Testing Class Action. In my brief, I suggested it
 6 would be of assistance to the Commission to hear from
 7 a selection of members of the class who are obviously
 8 people who have been affected in one way or another
 9 by the background facts of this matter, by any
 10 failures in testing there may have been, and
 11 Mr. Feltham sets out that some of his members may
 12 wish to testify. He's going to inquire with them.
 13 And if -- I told him I'd pass on to you that if some
 14 of them were accorded that privilege that he would
 15 like to attend as their individual lawyer to assist
 16 them.

17 THE COMMISSIONER:

18 And that's possible under our Rule. So if an
 19 individual is giving testimony they're entitled to
 20 legal representation during their period of testimony
 21 and cross-examination.

22 CROSBIE, Q.C.:

23 Sure, yes. Well that would be quite reasonable. And
 24 also, that he supports standing and funding for

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1 myself on behalf of the members of the class.
2
3 So there is an affidavit set out in a separate
4 bound document with a yellow cover. The affidavit of
5 Pamela Taylor, August 24th. There we've attempted to
6 set out, in a chronological fashion, the various
7 things. Some of the information I think will be of
8 use and interest to the Commission itself, such as
9 affidavits of experts and whatnot, just as a
10 chronological background to what's gone on with
11 respect to the class action.

12
13 And so in terms of the application for funding, I
14 have some background. It's set out in the
15 application as a lawyer who deals with claims which
16 have a medical negligence or hospital negligence
17 background to them, and it's been my experience and
18 the experience of those who've taught me and who have
19 written about this to be truly effective in a matter
20 like this you need the support of experts, experts in
21 relevant areas. And so our funding application has
22 also included a preliminary budget for expert
23 support. The experts would be from the fields of
24 Pathology with particular expertise in the

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1 immuno-histochemical testing which is -- forms the
2 background for the Inquiry of this Commission, and
3 also Oncology. So experts in these two areas. I
4 have retained an expert in Oncology, a Dr. Goodyear
5 in Halifax, and the expert in Pathology I'm still
6 negotiating or searching for. So --
7 THE COMMISSIONER:
8 So I'm sorry, you said Dr. Goodyear's specialty was?
9 CROSBIE, Q.C.:
10 Dr. Michael Goodyear is a specialist in Oncology.
11 THE COMMISSIONER:
12 Oncology, okay. Thank you.
13 CROSBIE, Q.C.:
14 The specialist in Pathology is still under
15 consideration. And so I've set out that part of the
16 rationale is there's going to be obviously months of
17 inquiry and testimony here. It would be difficult
18 for any lawyer or combination of law firms to both
19 fund expert support and expend the professional time,
20 legal time necessary to do a truly effective job on
21 behalf of the patients and victims who are involved
22 in this matter unless funding was provided. If
23 funding were not provided, then on behalf of my class
24 members then I think what I'd have to do is appear at

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1 certain points in time, which I couldn't tell you
2 about right now because I don't know the program of
3 witnesses, the list of witnesses, who's testifying
4 when or who is testifying for that matter. I would
5 have to be selective. I am aware that you're going
6 to be posting up, or I think I'm aware, that you'll
7 be posting up, on a daily basis on the internet,
8 transcripts of testimony. And so I guess I'd have to
9 do the best I could between that.

10 THE COMMISSIONER:

11 The hearings will be webcast and we're also going to
12 be posting the transcripts.

13 CROSBIE, Q.C.:

14 Sure. Well that would make for some efficiencies
15 but, of course, there's nothing like actually being
16 there. And so my submission is to do a truly
17 effective job for the victims and the patients caught
18 up in this matter that funding would be required both
19 for experts and for counsel. And as set out, class
20 counsel will be responsible for financial
21 administration of such funding subject to the
22 financial oversight of the funding authorities, which
23 is not yourself, of course, it's Government.
24

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1 THE COMMISSIONER:

2 Yes.

3 CROSBIE, Q.C.:

4 And that's all I'd care to say right now.

5 THE COMMISSIONER:

6 All right. Thank you, Mr. Crosbie. If -- I believe

7 Ms. Taylor might have been here on the last occasion,
8 am I correct?

9 CROSBIE, Q.C.:

10 She is here to observe, yes.

11 THE COMMISSIONER:

12 Yes. Well in that case you probably heard that I
13 indicated at that time, I'm reserving all
14 applications which include applications for funding.
15 The response will be given in writing and
16 communicated to the applicants and Government, since,
17 as you've pointed out, it's the Government who
18 actually makes the final determination in respect of
19 the issue of funding. I may recommend, it's the
20 Government who determines whether or not my
21 recommendation is accepted. So you'll hear from me
22 in writing in a relatively short timeframe. Thank
23 you.
24

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1 CROSBIE, Q.C.:

2 Thank you. Thank you, Commission.

3 THE COMMISSIONER:

4 Our next application, I believe, is scheduled for

5 11:10. Would you mind checking to see whether the

6 applicant is in the building, so we don't need to

7 adjourn? No?

8 THE CLERK:

9 Yes. The next applicant is the Canadian Cancer

10 Society, Newfoundland and Labrador Division. Please

11 come forward to the podium?

12 THE COMMISSIONER:

13 Short delay, I think. Here we go. Are they not

14 ready to proceed?

15 THE CLERK:

16 She is here. She thought she was scheduled for 11:10

17 and she's meeting with Peter Dawe right now. She

18 would need approximately ten minutes, if that's fine.

19 THE COMMISSIONER:

20 That's quite all right. We'll adjourn for ten

21 minutes. Thank you.

22

23 (Off the record)

24

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1 THE COMMISSIONER:

2 Thank you, please be seated. Now call the next

3 applicant please.

4 THE CLERK:

5 We call the next application, the Canadian Cancer

6 Society, Newfoundland and Labrador Division. Please

7 come forward.

8 THE COMMISSIONER:

9 Good morning.

10 MS. NEWBURY:

11 Good morning.

12 THE COMMISSIONER:

13 Could you, for the record, identify yourself please?

14 MS. NEWBURY:

15 Jennifer Newbury appearing for the Canadian Cancer

16 Society, Newfoundland and Labrador Division.

17 THE COMMISSIONER:

18 Thank you, Ms. Newbury. Now.

19 MS. NEWBURY:

20 First of all, thank you for allowing an adjournment.

21 THE COMMISSIONER:

22 Oh, not at all. We were the ones that told you, you

23 were not going to be on till 11:10, so.

24

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1 MS. NEWBURY:

2 We have filed an application on behalf of the

3 Canadian Cancer Society which sets out in some detail

4 our reasons for applying for standing and funding for

5 both Parts I and Part II. And I don't need to repeat

6 the content of that application. I think it sets it

7 out. Of course, if there are any questions we'd be

8 pleased to answer those.

9

10 Just an overview of, I guess, the framework of the

11 application. We've set out the organization of the

12 Canadian Society Newfoundland and Labrador Division

13 just to show its relationship with the national

14 organization, the connection between the national

15 organization and other groups, such as the Canadian

16 Breast Cancer Alliance Research, Research Alliance,

17 the partner with the National Cancer Institute of

18 Canada, and also the Newfoundland and Labrador's

19 division with the involvement with Provincial Cancer

20 Control Action Plan, and the involvement by Peter

21 Dawe who is Executive Director with an ad hoc

22 committee on the national standards for histology

23 testing which is a committee implemented by the

24 Canadian Association of Pathologists.

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1 THE COMMISSIONER:

2 How long has that committee been in existence, just

3 as a matter of interest?

4 MS. NEWBURY:

5 That's very recently been formed. Since, I believe,

6 the media reports regarding the problem here in the

7 province. I think that really has been part of the

8 reason for the inception of that particular

9 committee. So I spoke with Mr. Dawe this morning

10 just to get an update on the progress of that

11 committee, and they're still in the very early stages

12 determining the agenda for where to go with that.

13 THE COMMISSIONER:

14 Thank you.

15 MS. NEWBURY:

16 But again, the Canadian Cancer Society, I think, as

17 shown by the written application, has significant

18 ties with other groups in the country and in this

19 province who are involved in issues related to

20 cancer, including treatment and prevention. The

21 second part of the application, which really deals

22 with the application for funding, sets out in some

23 detail the Canadian Cancer Society's Newfoundland

24 Division's involvement in the community. And there's

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1 some detailed information about various community
 2 activities and initiatives, and the information was
 3 set out in that part of the application to
 4 demonstrate how the budget for this organization is
 5 spent, the types of activities, the geographical
 6 areas where this money is spent. However, I think
 7 that the information there, some of which can be seen
 8 in the community report that's attached, is important
 9 not only to show why funding would be required but
 10 also to show that the Canadian Cancer Society,
 11 Newfoundland and Labrador Division has a significant
 12 ongoing involvement in the community throughout this
 13 province. And it is our position that it's through
 14 this community involvement that the society has built
 15 a relationship with cancer patients, family members
 16 of cancer patients and volunteers. And it believes
 17 that this is a significant reason why the Canadian
 18 Cancer Society, Newfoundland and Labrador Division is
 19 looked upon as a trusted organization by residents in
 20 this province on matters affecting their health,
 21 particularly as it relates to cancer issues.

22 THE COMMISSIONER:

23 A couple of things that came to my mind as I was
 24 reading the application. I understand the interest

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1 in Part II. I'm not sure I understand the role that
 2 the Canadian Cancer Society sees for itself in Part
 3 I. Would you expand on that for me?

4 MS. NEWBURY:

5 Yes. And that was the next thing that I planned to
 6 address, actually.

7 THE COMMISSIONER:

8 Oh good.

9 MS. NEWBURY:

10 Again, it seems, I think, a natural question why is
 11 the Canadian Cancer Society not seeking a more
 12 limited involvement and, particularly, in Part II
 13 only, or through some other mechanism like a source
 14 of expertise or written submissions. But our
 15 organization feels it can contribute to the
 16 Commission of Inquiry for two key reasons.

17
 18 First of all, I think that its involvement could
 19 further the conduct of the Inquiry, and while it
 20 might seem a more natural fit for Part II, which has
 21 the policy focus, the Newfoundland organization is
 22 quite interested and has long been interested in some
 23 of the topics slated for this particular Part II;
 24 such as, the best practices, quality assurance

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1 systems and duties to patients are three particular
 2 areas of interest. However, the organization
 3 believes that the findings, recommendations and
 4 outcome of Part II will, to a great extent, depend
 5 upon determinations made in Part I of the Inquiry.
 6 The organization believes that its participation in
 7 Part I of the Inquiry will help to shape and direct
 8 the conclusions made in that part of the hearing
 9 through its background knowledge of the issues. And
 10 this organization has a unique perspective. It feels
 11 it has -- first of all, it's not a party that stands
 12 to be adversely affected by the findings of the
 13 Commission and by virtue of that I think could be
 14 considered an independent party, but it is also one
 15 that's knowledgeable about many of the pertinent
 16 issues. So I think the fact that it could attend in
 17 Part I could help to probe and delve into issues that
 18 would help come up with a more comprehensive analysis
 19 of those issues, and by virtue of that, when it comes
 20 to the Part II, it would certainly help to develop
 21 appropriate useful policy.

22
 23 Another feature I think that could provide some
 24 assistance in furthering the conduct of the Inquiry

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1 in Part I, and this is something that it's an idea
 2 that the Newfoundland Division has just thought about
 3 over the last couple of weeks and has had some
 4 discussions. Mr. Dawe has just briefed me on it this
 5 morning. He has had some discussions with his
 6 counterparts during a national meeting in British
 7 Columbia this past week. And we were thinking,
 8 trying to think of how we could maximize a
 9 participation of this organization during Part I
 10 and/or Part II of the Inquiry. And, of course, the
 11 Canadian Cancer Society, I think from the information
 12 here, has a lot of expertise across the country, and
 13 one of the suggestions that has been given some
 14 thought is how the consultation group for to assist
 15 the Canadian Cancer Society, Newfoundland Division in
 16 its participation and this Inquiry. So basically,
 17 there would be a few key people across the country
 18 who would, on a volunteer basis, be available to
 19 update or to provide feedback on the Newfoundland
 20 Division's involvement in the Inquiry. So perhaps by
 21 e-mail or phone calls, if necessary we could have a
 22 group of three or four or five people who are
 23 knowledgeable about some issues and who could point
 24 out perhaps an area of inquiry that might arise

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1 during some of the part of the hearing, during a
 2 witness's testimony, for instance, whether there
 3 might be some research that the Canadian Cancer
 4 Society is knowledgeable about which could be brought
 5 to the attention of the Commission at that time, and
 6 that might be useful during the questioning of that
 7 particular witness. So it would basically be a
 8 feedback group to assist counsel and the executive
 9 director for the Newfoundland and Labrador Division.
 10 And I'm told that in discussions with an appropriate
 11 person on the national - it is actually the
 12 vice-president for cancer control - the national
 13 office has been quite keen about this idea. So that
 14 is, I think, a concrete way that the Newfoundland and
 15 Labrador Division of the Canadian Cancer Society
 16 could assist in the questioning part of Part I and
 17 Part II of the Inquiry.

18
 19 A second reason why I believe it would be
 20 beneficial to have the Canadian Cancer Society
 21 participate in Part I, as well as Part II of the
 22 Inquiry, is that its full participation would,
 23 throughout the Inquiry, would contribute to the
 24 openness and fairness of the Inquiry. This

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1 organization believes it is a trusted organization by
 2 cancer patients and families, and to the public
 3 generally. The Canadian Cancer Society, Newfoundland
 4 and Labrador Division is well informed on many of the
 5 issues, and it has in fact informed itself on many of
 6 the issues after media reports alerted it to some of
 7 the problems that were being experienced. And the
 8 Canadian Cancer Society, Newfoundland and Labrador
 9 Division has an appreciation of the concerns and
 10 challenges of the other parties involved, not just
 11 the cancer patients and families but also regional
 12 health authorities. It's familiar with the
 13 parameters that these other parties and organizations
 14 find themselves in. So I think having that
 15 appreciation would certainly provide them with a
 16 unique perspective and would allow them to
 17 participate in the Inquiry in a way that would help
 18 to contribute to the openness and fairness of the
 19 Inquiry. The Canadian Cancer Society I believe has
 20 provided a measured fair and balanced approach.
 21 There is reference to some of the comments or
 22 communications made following media reports, and
 23 Peter Dawe, the Executive Director, was asked to
 24 comment and did, of course, within the limits of the

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1 information that was available to him. And again,
 2 always attempting to provide a measured fair comment.

3
 4 In its continual efforts to improve prevention and
 5 treatment of cancer this organization is eager to
 6 delve into issues to the fullest extent possible to
 7 determine how improvements can be made for the
 8 future. So again, I think the fact that it is a
 9 trusted organization, it is familiar with the issues
 10 and it is a fair-minded organization, it would
 11 contribute, in our view, to the openness and fairness
 12 of the Inquiry. And I think it's somewhat unique.
 13 You know, I don't see on the list of other
 14 participants or other people seeking standing a
 15 comparable organization. So I think it would be
 16 important to have an organization of this type
 17 present during both Parts I and Parts II of the
 18 Inquiry.

19
 20 As part of the application, we've set out the
 21 finances of the organization, and perhaps it's not
 22 surprising that this organization operates on a
 23 fairly tight budget and relies very significantly
 24 upon the community for donations in order to obtain

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1 the revenue that it requires for its activities.
 2 There is also a tremendous amount of volunteer
 3 support throughout this province which allows the
 4 organization to deliver its programs. To divert
 5 funds away now from activities which are already
 6 planned, which are outlined in the budget attached in
 7 the schedules, would obviously detract, you know, and
 8 be detrimental to people in this province who are
 9 relying upon those programs. Some of these programs
 10 are already underway for this year, others are
 11 long-term programs that operate year after year, and
 12 again it would be a detriment to the cancer patient
 13 families and the public generally to divert funds
 14 from those particular programs.

15 THE COMMISSIONER:

16 Can you, as I look at, I am looking at now Schedule
 17 "A" to the application, which includes a Summary of
 18 Expenditures in terms of classifications. You know,
 19 research, prevention, that type of thing?

20 MS. NEWBURY:

21 Yes.

22 THE COMMISSIONER:

23 And one of those is advocacy.

24

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1 MS. NEWBURY:
 2 Yes.
 3 THE COMMISSIONER:
 4 And what does that refer to?
 5 MS. NEWBURY:
 6 And I've outlined in the application some of the
 7 advocacy-type issues. If you look at paragraph 44 of
 8 the application that refers to some of the advocacy
 9 issues that are underway in this province, and items
 10 such as they're looking at implementing a patient
 11 navigator program to assist cancer patients through
 12 the health care system, and that was something that
 13 came up recently at the Provincial Cancer Control
 14 Action Plan forum, which is a recent endeavor by the
 15 Newfoundland and Labrador Division of the Canadian
 16 Cancer Society. Basically, both the national
 17 Canadian Cancer Society and the provincial branch
 18 have developed a cancer control action plan and are
 19 working towards various aspects of battling cancer
 20 and trying to improve research, treatment, et cetera.
 21 And this is one activity that's recently been
 22 implemented here in this province.
 23 THE COMMISSIONER:
 24 So what does this mean, in a little more concrete

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1 terms?
 2 MS. NEWBURY:
 3 Well the --
 4 THE COMMISSIONER:
 5 Give me an example, if you would, of how, if I were a
 6 cancer patient, I would see the benefit of this
 7 particular expenditure.
 8 MS. NEWBURY:
 9 Well the, I mean the province, the provincial
 10 organization is continually spending resources in
 11 various ways to advocate against things that might be
 12 contributing to cancer incidents in the province as
 13 well as trying to advocate for other ways that helps
 14 to improve the quality of life of cancer patients or
 15 that would improve treatment of cancer patients. And
 16 I thought I had some other examples here.
 17 THE COMMISSIONER:
 18 So the Canadian Cancer Society's advocacy section
 19 might, to pull the most obvious one out of the air,
 20 be involved in a program which discouraged young
 21 people from smoking?
 22 MS. NEWBURY:
 23 Yes. Lobbying of government and also not just to
 24 discourage the individuals from smoking, because that

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1 might be covered off with the prevention aspect of
 2 their funding, but also to advocate for, I guess,
 3 healthy public policies by those who can help to
 4 control that. Government, for example. And I
 5 think items --
 6 THE COMMISSIONER:
 7 So it would be telling young people not to smoke
 8 might fall into prevention but asking Government to
 9 prevent smoking in a particular building might fall
 10 into advocacy?
 11 MS. NEWBURY:
 12 Exactly, yeah. And trying to lobby against those
 13 people who can take steps. And I think the example
 14 of the patient advocacy program that came up -- well
 15 just the very fact of having a Provincial Cancer
 16 Control Action Plan is, in part, an advocacy program,
 17 and within that the patient navigator program to
 18 assist cancer patients to lobby to have something
 19 like that implemented would again be an advocacy
 20 activity of this organization. Basically, a lot of
 21 times that you're involved in advocating towards a
 22 government or a municipality to implement smart
 23 policies, could be use of pesticides or limiting
 24 tobacco advertising, those type of activities would

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1 be considered advocacy; whereas, communicating
 2 directly with the individuals might be considered
 3 information or prevention.
 4
 5 I also mention in the application that the, and I
 6 think it's reflected in Schedules "C" and "D" of the
 7 application, which has the financial statements of
 8 the organization, that there is no big pot of money
 9 available to it to put towards this activity or in
 10 participation in the Inquiry; albeit, it could use
 11 resources indirectly by having staff allocated to it,
 12 but to incur additional expenditures would be very
 13 difficult. And one method, I guess, of measuring
 14 that is the fact that it falls below the national
 15 recommended guideline of having as a reserve a 25
 16 percent of its annual operating budget. And just to
 17 work through that. If you look at Tab "A" which has
 18 the budget essentially for 2007, the total
 19 expenditures are set out at the bottom. It is
 20 \$2,250,000. Twenty-five percent of that -- actually,
 21 I think you would, from an accounting perspective,
 22 not consider the contributed materials and services,
 23 but that's \$144,000. So the math doesn't work out
 24 too significantly differently. So if you take 25

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1 percent of that figure, you come up with a figure of
 2 about \$526,000 as the -- what 25 percent of the
 3 operating budget would be. And then if you turn to
 4 Tab C of the financial statements for 2007, then the
 5 assets less the liabilities would be \$473,000 less
 6 \$292,000 which is approximately \$180 --

7 THE COMMISSIONER:

8 Sorry, I haven't gotten to your Tab C yet. I
 9 haven't.

10 MS. NEWBURY:

11 Oh, sorry. It's on page, if you go to Tab C it's --

12 THE COMMISSIONER:

13 Appendix "C", I guess.

14 MS. NEWBURY:

15 The fourth page.

16 THE COMMISSIONER:

17 The fourth page of "C"?

18 MS. NEWBURY:

19 Yes.

20 THE COMMISSIONER:

21 Okay.

22 MS. NEWBURY:

23 So the assets less the liabilities would be \$473,000
 24 approximately, less \$292,000 approximately, which

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1 works out to be \$180,000 approximately. So that is
 2 less than the 25 percent operating reserve. This
 3 does change from year to year but it's generally, you
 4 know, somewhat less than the recommended operating
 5 reserve. And I think that's a standard protocol for
 6 many organizations, especially volunteer
 7 organizations, nonprofit organizations to have a
 8 certain percentage available in case, you know, there
 9 was a catastrophic event faced by the organization
 10 and it had to meet its obligations.

11 THE COMMISSIONER:

12 Now tell me, is the Newfoundland branch of the
 13 Canadian Cancer Society completely independent
 14 financially from the Canadian Cancer Society?

15 MS. NEWBURY:

16 Yes, that's my understanding. The funds that are
 17 raised here stay in the province. There is, I guess,
 18 a national element in the sense that the research
 19 funds are all contributed to the national
 20 organization which turns over funds to the National
 21 Cancer Institute of Canada which is basically
 22 considered a research arm of the Canadian Cancer
 23 Society, and then those funds are allocated by the
 24 National Cancer Institute of Canada through a peer

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1 review, strict peer review process. But anecdotally,
 2 I guess as it turns out, I'm not sure the basis for
 3 this, but the trend has been that Newfoundland
 4 actually receives more money back in this process to
 5 conduct research than it allocates to the national
 6 organization.

7 THE COMMISSIONER:

8 So if I understand what you're saying, in respect of
 9 the Canadian Cancer -- I'm sorry, the Newfoundland
 10 branch of Canadian Cancer Society, the funds that are
 11 raised in this province would stay in this province
 12 except that what is dedicated to research goes to an
 13 national body which determines research which may in
 14 fact funnel money back into Newfoundland, and you
 15 believe we get more funnelled back into Newfoundland
 16 than is actually paid into the fund?

17 MS. NEWBURY:

18 Yeah. My understanding is that for every two dollars
 19 that's contributed from this province for research we
 20 receive three dollars back, approximately. There is
 21 no strict requirement for that, I think that's just
 22 how it evolved.

23 THE COMMISSIONER:

24 That just happened that way with applications for

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1 funding?

2 MS. NEWBURY:

3 Yes.

4 THE COMMISSIONER:

5 All right. Anything else you wish to add?

6 MS. NEWBURY:

7 No, that's it, unless you have any questions.

8 THE COMMISSIONER:

9 I have no further questions. Thank you. On
 10 Wednesday, I guess it was last when we met, I
 11 indicated that at that time any applications which we
 12 received for standing and funding would be reserved.
 13 As you're no doubt aware, I make recommendations
 14 respecting funding. The decision regard funding
 15 actually comes from Government, and because it's a
 16 recommendation process I felt it important to fully
 17 set out my reasons for the recommendation. So I'll
 18 reserve on this application and decision will be
 19 given in writing, communicated to the parties and
 20 then also it'll be placed on our website which is the
 21 voice that we use to communicate to the public,
 22 generally speaking. Thank you.

23 MS. NEWBURY:

24 Thank you very much.

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1 THE COMMISSIONER:
2 That completes the applications for today and thank
3 you all.

4
5 (Conclusion of Applications)

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CERTIFICATE

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