

IN THE MATTER OF AN APPLICATION

BY

JOYCE MILGARD

FOR

FUNDING FOR SECOND COUNSEL

RULING

James Lockyer, counsel for Joyce Milgaard, has applied for funding for second counsel which goes beyond the Funding Guidelines in Schedule B of the Rules of Procedure and Practice in that second counsel could be paid in addition to Mr. Lockyer himself when the two were working on matters at the same time.

Mrs. Joanne McLean has already been approved as alternate counsel to Mr. Lockyer pursuant to Schedule B of the Guidelines:

6. Where funding of second counsel is approved, funding will not be provided for any duplication of work. In particular, only one counsel will be funded for attendance at hearings and the preparation required for that attendance. Only one counsel will be attendance at any witness interview.

Mr. Lockyer has requested that his application be handled through correspondence and by my Ruling in writing as opposed to having an oral hearing.

Mr. Lockyer's initial request was by letter dated December 6, 2004 – Schedule A.

Commission Counsel replied December 15, 2004 – Schedule B.

Mr. Lockyer concluded his application by letter dated December 17, 2004 – Schedule C.

Further by way of background I quote from the affidavit of Joanne McLean dated April 6,

2004 filed in support of the initial application for funding:

8. The funding requested is limited to her counsel James Lockyer and his agents, and his travel, accommodation, and other expenses justifiable in his representation of Mrs. Milgaard.

In response to that application for funding I ruled:

Joyce Milgaard is directly and substantially affected by this Inquiry... . As well, she meets the criteria for funding with the same proviso applying to AIDWYC namely that she share the services of one counsel for the fact-finding stage of the Inquiry, both preparation and hearing... .

Mr. Lockyer asks for approval for two funded counsel acting together because of:

1. The voluminous materials.

The materials are indeed voluminous and I have had occasion in the past to point out to counsel for parties with standing what is expected of them.

The primary responsibility for the presentation of evidence rests with Commission Counsel, and he has a team to assist him.

The process is not an adversarial one. Counsel for a party with standing is concerned, not with the totality of the evidence, but with only that part of it which engages his or her client's interest. Such counsel are not in place to compete with Commission Counsel in the gathering and presentation of evidence, but rather are there to protect their clients' interests and, where possible, to augment the efforts of Commission Counsel.

2. The narrative/systemic parts of the Inquiry

Reference is made to the second page of Mr. Lockyer's letter of December 6, 2004, under numbers 2 & 3.

The reasons advanced here speak to Ms. McLean's qualifications and these are not in dispute.

Items 3 & 4 also on page 2 also refer to Ms. McLean's computer skills and Mr. Lockyer's lack thereof as well as her history of collaboration with Mr. Lockyer in major cases of wrongful conviction.

A high degree of computer skill will not be needed to access the data during the public hearings but the documentary material introduced by Commission Counsel will be offered electronically. Counsel representing parties with standing must either have or acquire the necessary computer familiarity to follow the documentary evidence, because hard copies will not be provided to counsel. There are some 52,000 documents to access. Training has been made available to counsel and a resource person will see to the presentation of the electronic files during the hearings.

If money were no object, every party with standing would welcome representation by a team, as opposed to single counsel. But money most definitely is an object. Counsel fees are by far the most expensive component in this expensive process and I simply cannot justify doubling the cost for either preparation or hearing time.

Joyce Milgaard's initial application for funding was approved in accordance with the Guidelines as were those of the other successful applications. She has not shown sufficient reason in this application to justify additional funding, which would be a departure from the Guidelines.

Her application is dismissed.

ISSUED at the City of Saskatoon, in the Province of Saskatchewan, this _____
day of January, 2005.

COMMISSIONER

Schedule A**Lockyer Campbell**

BARRISTERS AND SOLICITORS

CRIMINAL TRIALS AND APPEALS

Counsel

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December 6, 2004

Fax: 306-933-8305

Douglas C. Hodson
Barrister and Solicitor
1500-410 22nd St. E.
Saskatoon, SK,
S7K 5T6

Dear Mr. Hodson:

RE: Milgaard Inquiry
re: application for second funding by Ms. Joyce Milgaard

In June, 2004, I sought and received funding for one of my firm's then associates, Brian McAllister, to assist me with the research and preparation of a response to the Position Paper on the Terms of Reference. That assistance was invaluable to me due to my heavy schedule this past summer.

Mr. McAllister has recently left the firm. I am now formally requesting funding for second counsel. I would like to have Ms. Joanne McLean as my assisting counsel through the Inquiry. She and I have been co-counsel on a number of wrongful conviction cases since 1993. Ms. McLean was one of three defence counsel at Guy Paul Morin's second trial in London, Ontario in 1991-1992. From 1993 to 1995, we worked together on the Morin appeal which culminated in his DNA exoneration in January, 1995. We were co-counsel representing Guy Paul, and his parents, at the Morin Inquiry from 1996 to 1998,

From 1995 to 1997, we worked together to obtain the DNA results which cleared David Milgaard himself.

More recently, since 1999, Ms. McLean and I have represented Robert Baltovich in his appeal to the Ontario Court of Appeal.

Ms. McLean swore the affidavit in support of the initial funding request for your Inquiry. I would have requested her assistance on this file this summer but for the fact that her scheduling difficulties were the same as mine - we were preparing the Baltovich fresh evidence facts.

I realize that this application goes beyond the Funding Guidelines in Schedule "B" of the Terms of Reference, but I am requesting that Ms. McLean be funded as second counsel, including attendance in Saskatoon, and at the Inquiry, even on days when I am appearing (because I am a single parent of a 5 year old boy, I only expect to attend two of every three weeks myself). There are a number of reasons for this:

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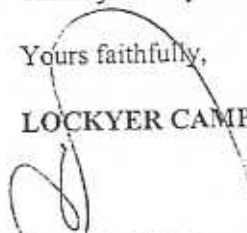
1. The materials in this file are voluminous. Due to my own schedule, I requested that the commencement of the public hearings be delayed until February. I understand that this request could not be accommodated, but I simply cannot prepare for hearings in January unless I have a substantial input from Ms. McLean to split the workload.
2. For the narrative portion of the Inquiry, the Commissioner, at AIDWYC's suggestion, has ordered that AIDWYC share a counsel with Ms. Milgaard, with its own separate counsel for the systemic portion of the Inquiry. Ms. McLean and I are both AIDWYC directors and have been heavily involved in the organization since its inception. Ms. McLean also acted for Thomas Sophonow on behalf of AIDWYC in his exoneration in 1999 and 2000.
3. Thus far, we are only in possession of the CD containing the court record. Ms. McLean has some familiarity with that record already. She is also computer-literate and able to work with the electronic data, a skill I sadly and inexcusably lack. Her abilities in this regard will speed up the preparation, and be a tremendous time-saver at the Inquiry as I shall otherwise have to work from hard copies while the Inquiry proceeds on the electronic version. I am unaware at this point what additional material will be provided as received from the parties, but anticipate it will be substantial, and on CD.
4. As outlined above, Ms. McLean and I have a long history of working together on major cases of wrongful conviction. We work together, and compliment, rather than duplicate, each other's work.

I believe that Ms. McLean's attendance at the Inquiry would be of assistance to the efficient conduct of my representation of Ms. Milgaard, and essential for the narrative portion of the Inquiry. I want to be as familiar as possible with all of the evidence, issues, and potential issues, and prepare cross-examinations which will result in a helpful contribution to the Inquiry. In my view, this would best be achieved by having Ms. McLean work with me as we have done in the past. The attendance of both of us would allow us to work together during down time and during breaks, and with nightly preparation without the necessity of one of us reading transcripts to become familiar with what took place on prior hearing dates. The alternative, funding Ms. McLean to attend in Saskatoon and help me prepare the cross-examinations and submissions for those witnesses where it is necessary, while not attending the Inquiry itself, would probably not result in a substantial savings, since we would have to spend a good part of our time catching each other up.

Thank you for your consideration of this request.

Yours faithfully,

LOCKYER CAMPBELL


James Lockyer

/kmd

Schedule B

December 15, 2004

James Lockyer
Lockyer Campbell
Barristers and Solicitors
481 University Ave., Suite 510
Toronto, ONT M5G 2E9

Via: Facsimile

Attention: James Lockyer

I am responding to your letter dated December 6, 2004 requesting approval for funding of second counsel.

The commissioner is prepared to approve funding for Joanne McLean as second counsel, in accordance with the Legal Counsel Funding Guidelines. Ms. McLean would replace Mr. McAllister as second counsel. As noted in your letter, your application for second counsel funding goes beyond the Funding Guidelines in Schedule B of the Rules of Procedure and Practice. As such, the Commissioner does not wish to deal with this aspect of the application in an informal matter.

The Commissioner has asked me to advise you that he is willing to make a written ruling on the basis of your letter of December 6, 2004, provided that you authorize, in writing, publication of your letters and the Commissioner's Ruling as part of the official record.

Alternatively, the Commissioner has advised that you can make an oral application before the Commissioner on January 10, 2005. In this case your letters will be filed as information only, and without prejudice to the contents of the argument you present at the oral hearing. This hearing will be public.

Please advise of how you would like to proceed.

Yours truly,

DOUGLAS C. HODSON
Commission Counsel

DCH/mjo

Schedule C**Lockyer Campbell**

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December 17, 2004

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Douglas C. Hodson
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Dear Mr. Hodson:

RE: Milgaard Inquiry
re: application for second funding for second counsel

Thank you for your letter of December 15, 2004.

I do, of course, authorize you to publish my December 6, 2004 letter (and this letter) and the Commissioner's Ruling thereon as part of the official record. I am, therefore, requesting a written ruling from the Commissioner.

Since writing to you on December 6, Hersh Wolch has also agreed to use Ms. McLean as a second counsel. I hope this demonstrates our commitment to keep costs to a minimum and, more importantly, enhances Ms. McLean's potential contribution to the Inquiry as a common thread for myself and Mr. Wolch when either of us are absent. We are convinced that we can function very effectively as a trio and for this reason ask that Ms. McLean be fully funded for her participation even if that means on occasion that she is present at the Inquiry as a 'third' counsel to Mr. Wolch and myself.

The Commissioner can always revisit a favourable decision depending on how things develop. We doubt, however, that there would be a need for this.

Best wishes for the season to you and the Commissioner.

Yours faithfully,

LOCKYER CAMPBELL
James Lockyer