

## RESPONSE ON BEHALF OF THE FEDERAL MINISTER OF JUSTICE TO THE CONSTITUTIONAL SUBMISSIONS OF THE GOVERNMENT OF SASKATCHEWAN

The Attorney General of Canada has reviewed the written submissions of the Government of Saskatchewan dated the 30<sup>th</sup> day of May, 2006 and submits the following responses.

### I. In response to paragraph 8

The Attorney General of Saskatchewan is submitting that the Attorney of General of Canada is blurring the issue of privilege with the constitutional limitations of a Provincial Inquiry.

The Attorney General of Canada submits that privilege and constitutional limitations are separate and distinct issues. The issue before this Commission of Inquiry today is what constitutes the **administration** and **management** of the Federal Department of Justice. Whether or not a matter is privileged is not relevant to a determination of the constitutional limitations upon this inquiry, even though the two may overlap.

### II. In response to paragraph 10

The Government of Saskatchewan is suggesting that the only limits upon this Inquiry are the claims of solicitor client privilege.

The Attorney General of Canada submits that this proposition ignores the limitations as set out in Keable.

### III. In response to paragraph 11

The Government of Saskatchewan submits that the Commission of Inquiry only "lacks the constitutional authority to embark upon a general systemic inquiry into the Department of Justice (Canada)'s policies, procedures and protocols respecting the operation of section 690 applications either at the time of Mr. Milgaard's two applications or at the present."

The Attorney General of Canada takes the position that the terms from Keable such as the **administration** and **management** of a Federal institution encompass more than general policies or procedures. Further, constitutional limitations are not qualified or confined in Keable to the type of Inquiry (a general systemic Inquiry) but rather whether the issue or facts sought to be inquired into are within the administration and management of the Federal Department of Justice. The Attorney General of Canada restates its position by saying that activities which go beyond an investigative or fact finding level within the Department of Justice, are activities which are within the administration and management of the Federal Department of Justice.

Surely if the Supreme Court intended the constitutional limits to extend only to the general policies and procedures of a Federal entity such as Justice, it would not have included the terms administration and management in the prohibited areas along with policies, procedures and rules.