

**COMMISSION OF INQUIRY INTO THE SPONSORSHIP PROGRAM AND
ADVERTISING ACTIVITIES**

**MOTION RECORD
OF THE CONSERVATIVE PARTY OF CANADA
(returnable October 20, 2004)**

October 14, 2004

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NOTICE OF MOTION

The Conservative Party of Canada (the "Conservative Party") will make a motion to the Commission of Inquiry into the Sponsorship Program and Advertising Activities (the "Commission"), pursuant to the Commission's *Rules of Procedure and Practice*, to be filed on or before October 14, 2004, and heard October 20, 2004.

This motion requests that the Conservative Party be granted additional funding to enable it to participate as an Intervenor before the Inquiry by the Honourable Mr. Justice Gomery of the Superior Court of Quebec, Commissioner appointed by Order in Council P.C. 2004-100 (the "Commissioner").

THE GROUNDS FOR THE MOTION ARE:

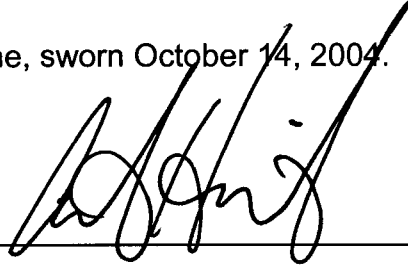
1. By ruling dated July 19, 2004, the Commissioner recommended "limited funding" for the Conservative Party.
2. The funding recommended for the Conservative Party for pre-hearing preparation was limited to 40 hours for each of one junior and one senior lawyer.
3. The documentary disclosure made to the Conservative Party pursuant to the undertaking its counsel executed is staggering, with actual documents produced being hundreds and hundreds of thousands of pages.
4. The scope of the documentary disclosure was not known to the Commissioner at the time his initial recommendations on funding were made in July of 2004.

5. Throughout the first weeks of the Commission's hearing, additional documentary production has been, and continues to be, made to the Conservative Party pursuant to the signed undertaking.
6. The minimal preparation time recommended by the Commissioner in his July 19 ruling on funding has proven insufficient to permit the Conservative Party to meaningfully participate in the Inquiry as an Intervenor.
7. Additionally, the limited funding recommended for review of daily transcripts and documents recommended by the Commissioner requires modification to permit counsel for the Conservative Party to participate in the Inquiry, as an Intervenor.
8. The ruling on funding dated July 19, 2004 permits the possibility of subsequent amendment, on application, where circumstances dictate.
9. Given the overwhelming documentary material which has and continues to be disclosed, and given the challenges facing the Conservative Party as it attempts to review daily transcripts and mark the documents distributed at the hearing, a reasonable increase in the recommended funding is appropriate.
10. The Conservative Party further repeats and relies upon the grounds contained in its funding application dated July 12, 2004.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used in support of this motion:

1. The affidavit of Laurie Livingstone, sworn October 14, 2004.

October 14, 2004

A handwritten signature in black ink, appearing to read 'Arthur Hamilton', is written over a horizontal line.

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**COMMISSION OF INQUIRY INTO THE SPONSORSHIP PROGRAM AND
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**AFFIDAVIT OF LAURIE LIVINGSTONE
(sworn October 14, 2004)**

I, Laurie Livingstone, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am an associate at Cassels Brock & Blackwell LLP, solicitors for the Conservative Party of Canada (the "Conservative Party"), an Intervenor before the Commission of Inquiry into the Sponsorship Program and Advertising Activities (the "Commission") before the Honourable Mr. Justice Gomery (the "Commissioner"). I am the junior counsel for the Conservative Party in this matter. In that respect, my responsibilities include reviewing the documents that have been disclosed pursuant to my signed undertaking, reviewing and summarizing the daily transcripts and other evidence referred to and identifying the documents marked as exhibits from time to time during the hearing. As such, I have knowledge of the matters hereinafter deposed to.

Documentary Disclosure

2. By ruling dated July 19, 2004, the Commissioner recommended that the Conservative Party, among others, receive funding to participate in the Commission's hearings. The ruling expressly noted that the recommendation was for "limited funding" for the Conservative Party. A copy of the full text of the funding decision of July 19, 2004 is found on the Commission's website.

3. The Commissioner's July 19, 2004 recommendation for funding in respect of the Conservative Party provided as follows:

It is this contradiction that has persuaded me to exercise my discretion to recommend limited funding to the applicant, generally but not entirely in accordance with its Plan for Use and Accounting which forms part of its Submissions, and which is attached as Appendix B. Accordingly:

- (a) Funding is recommended for one junior and one senior lawyer, to work separately, the bulk of the work to be performed by the junior lawyer, under supervision by the senior lawyer who will make decisions and present closing submissions to the Inquiry;
- (b) Funding is recommended for pre-hearing preparation limited to 40 hours of work for each lawyer, and for suggestions from time to time to Commission counsel and related representatives limited to 40 hours of work by the senior lawyer;
- (c) Funding is recommended for review of daily transcripts and documents limited to three hours per day by the junior lawyer and one hour per day by the senior lawyer;
- (d) Funding is recommended for necessary expenses and travel, it being taken for granted that in most instances the applicant's lawyers will not have to incur costs for copies of documents or transcripts, and will not need to travel to Ottawa or Montreal to take cognizance of exhibits;
- (e) Funding is recommended for the preparation and presentation of closing submissions limited to 30 hours for each lawyer.

I will remain open to the possibility of amending these recommendations as circumstances dictate, on application.

4. At the time the Conservative Party applied for funding, and indeed at the time the recommendation for funding was made by the Commissioner, the extent of the documentary disclosure to be made by the Commission was not known.

5. Subsequent to the release of the funding decision, and pursuant to the signed undertakings, the Commission has, thus far, disclosed 42 compact discs containing many hundreds of thousands of pages of documents. A significant portion of this documentary production has been made subsequent to the commencement of the public hearings on September 7, 2004. I expect, given the continuation of the investigative function by Commission counsel, that documentary disclosure will continue as the hearings progress.

6. The July 19 recommendation for funding provided forty hours of pre-hearing preparation for each of myself and Mr. Hamilton, who is senior counsel for the Conservative Party before the Commission. No additional time was recommended for preparation and document review during the course of the public hearings, save and except for the preparation and presentation of closing submissions once the evidentiary record of the hearing is closed. The funding recommended for the hearing phase is

limited to junior counsel monitoring of the daily transcripts and any documents being discussed, and to senior counsel's function of making suggestions to Commission counsel. No funding has been recommended to permit a review of the continuing and voluminous documentary disclosure being made by the Commission.

7. As an Intervenor, the Conservative Party is to assist the work of the Commission, at least in part, by exercising its opportunity under Rule 8 (ii) to suggest areas of examination for certain witnesses to Commission counsel. The volume of continuing documentary disclosure and the lack of funding to permit its review has, and continues to, impaired the ability of Mr. Hamilton and I to suggest areas of examination to Commission counsel. While we recognize that Intervenors should not duplicate the work already being done by Commission counsel, absent the opportunity to review the documents being disclosed, the Conservative Party cannot exercise its rights and discharge its responsibilities as an Intervenor to suggest areas of examination to Commission counsel.

8. The number of documents to be disclosed was not known to either the Commissioner or to the Conservative Party when the funding application was made and decided in July of 2004. Now that the volume of documentary disclosure is better understood, it has become clear that significant additional time is required to permit even a general canvass of the documents, such that the Conservative Party can meaningfully participate in the proceeding, and prepare closing submissions which will assist the Commissioner in fulfilling his mandate.

9. It is difficult to estimate the number of hours that would be required to complete even a cursory review of the disclosure provided. While the searchable compact discs the Commission has provided greatly assist in reducing the number of hours required to canvass the documents, and the Conservative Party does not seek unlimited funding such that a detailed review of each document could be undertaken, significant additional funding is necessary to canvass these documents and to isolate those which are of particular importance to the issues and concerns arising from the Conservative Party's participation as an Intervenor.

Daily Review of Proceedings

10. In the July 19 funding recommendation, the Commissioner proposed three hours per day by the junior lawyer and one hour per day by the senior lawyer to review and summarize the daily transcript of proceedings.

11. In the three plus weeks since the commencement of the hearing, I have diligently attempted to monitor the proceedings remotely via the CPAC web-broadcast and/or review the daily transcripts and exhibits referred to. These efforts have been hampered to a large degree by few exhibits being provided in advance and hard copies of the various exhibits being left on the counsel table, when we do not have funding to attend in person and are therefore often unable to understand what documents are being referred to. The marking of exhibits in real time at the hearing, coupled with the delay in my receipt of the exhibits is proving to be challenging as I need to conduct searches of the compact discs in order to find the documents being referred to in order to put the testimony in context. In addition, beyond the issue of reconciling exhibit numbers with the documents on the compact discs, three hours is proving not to be sufficient time to review the transcripts and the voluminous exhibits.

12. An increase in the time allotted for junior counsel to review the daily transcripts and exhibits would permit me to actually read an entire transcript and cross-reference the exhibits referred to in the testimony. In consultation with Mr. Hamilton, we agree that no additional time is required for senior counsel to review transcript summaries beyond the one hour per day recommended in the July 19 funding decision. However senior counsel does require additional time for review of documentary disclosure and exhibits.

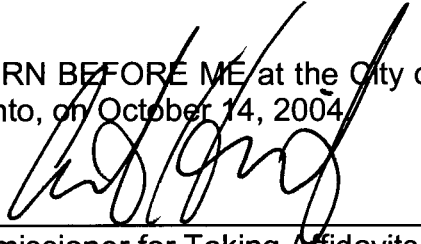
Conclusion

13. Based upon my experience from the first weeks of this hearing and the documentary disclosure made to date, I believe that an increase in the Commissioner's funding recommendation for junior counsel, from 3 hours per hearing day for transcript and exhibit review, to 40 hours per week for transcript review and review of continuing documentary disclosure would allow for a sufficient, if not complete, review of the daily transcripts, exhibits and continuing documentary disclosure.

14. Based upon my experience from the first weeks of this hearing and in consultation with Mr. Hamilton, I believe that an increase in the Commissioner's funding recommendation for senior counsel, from 4 hours per week for review of transcript summaries, to 10 hours per week for review of transcript summaries, exhibits and continuing documentary disclosure would allow senior counsel to fulfil his role as envisioned in the Commissioner's July 19, 2004 funding recommendation.

15. I make this affidavit in support of the application by the Conservative Party for an amendment to the funding recommendations contained in the July 19, 2004 funding decision of the Commissioner, and for no improper purpose. My evidence is based on my personal experience as the junior lawyer for the Conservative Party to this proceeding, as it has progressed through its first month, and is not the result of a concern raised by an isolated event during the hearing or challenges which presented themselves with only one particular witness or witness panel. Rather, as the scope of the documentary disclosure continues to expand, and as the issues being raised in the hearing continue to generate additional exhibits and points of cross-reference, the extent of the requirements of the Conservative Party as an Intervenor have simply become more pronounced.

SWORN BEFORE ME at the City of
Toronto, on October 14, 2004.



Commissioner for Taking Affidavits



LAURIE LIVINGSTONE

ARTHUR HAMILTON

**COMMISSION OF INQUIRY INTO THE
SPONSORSHIP PROGRAM AND
ADVERTISING ACTIVITIES**

In the Matter of Funding for Participation
Before the Commission Inquiry into the
Sponsorship Program and Advertising
Activities

**MOTION RECORD
OF THE CONSERVATIVE PARTY OF CANADA**

(Filed this 14th day of October, 2004)

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