

NOV 7/05  
Exhibit # 7

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OCT 25 2005

IN THE MATTER OF THE PUBLIC INQUIRY INTO THE ~~EVENTS~~-----  
SURROUNDING THE ALLEGATIONS OF ABUSE OF YOUNG  
PEOPLE IN CORNWALL, ONTARIO

AND

IN THE MATTER OF THE APPLICATION FOR STANDING AND  
FUNDING FOR THE VICTIMS OF THE ABUSE

**STANDING & FUNDING SUBMISSIONS**

**A. INTRODUCTION**

1. This is an application for standing, by the victims of sexual abuse in the Cornwall area, to participate fully in all aspects of the Cornwall Inquiry into the events surrounding the allegations of abuse of young people in Cornwall (the "Inquiry").
2. This is also an application for funding by the victims of sexual abuse to make it possible for them to fully participate in the Inquiry.
3. The victims of sexual abuse in Cornwall, having been those individuals most traumatically affected by the abuse and the response of local institutions, seek full participation in the Inquiry and adequate funding to allow them to do so.

**B. THE APPLICANTS**

4. The applicants are the group of 48 victims from the Cornwall area who have come together under the name of *Victims Group* to participate in the Inquiry. Attached hereto and marked as **Exhibit "A"** are the

names of these victims.

5. The Victims Group is made up of victims who were sexually abused by various individuals in the Cornwall area. The perpetrators included a local lawyer, a teacher, two probation officers, two federal employees, a dozen priests, several Christian Brothers, a Bishop and many other residents of the Cornwall area.

**C. PART I OF THE INQUIRY**

6. Part I of the Commission proceedings will focus on the institutional response of the justice system and other public institutions, including the interaction of that response with other public and community sectors, in relation to:
  - a. allegations of historic abuse of young people in the Cornwall area, including the policies and practices then in place to respond to such allegations; and
  - b. the creation and development of policies and practices that were designed to improve the response to allegations of abuse

in order to make recommendations directed to the further improvement of the response in similar circumstances.

**D. STANDING FOR PART 1 OF THE INQUIRY**

7. The Victims Group respectfully submits that it is essential for the effectiveness, comprehensiveness, thoroughness and credibility of the

Cornwall Inquiry that they are granted standing as a full party in the Inquiry. This standing is vital for the establishment of the truth into the events surrounding the allegations of abuse of the Victims Group and the creation of meaningful recommendations for dealing with future allegations of sexual abuse.

8. Section 5 of the *Public Inquiries Act*, provides as follows:

A commission shall accord to any person who satisfies it that the person has a substantial and direct interest in the subject-matter of its inquiry an opportunity during the inquiry to give evidence and to call and examine or to cross-examine witnesses personally or by counsel on evidence relevant to the person's interest.

**Reference: Section 5 of the *Public Inquiries Act*, R.S.O. 1990, c. P.41,**

**Victims Group Application for Standing and Funding [Tab 1] of Brief of Authorities.**

9. In *Gosselin v. Ontario (Royal Commission of Inquiry into Certain Deaths at the Hospital for Sick Children - Grange Commission)*, the applicants who sought standing were parents of babies who died at the Hospital at a time relevant to the inquiry. All were granted standing at the commission hearings, most at the outset of the hearing, as persons having a direct and substantial interest in the subject matter of the Inquiry.

**Reference: *Gosselin v. Ontario (Royal Commission of Inquiry into Certain Deaths at the Hospital for Sick Children - Grange Commission)*, [1984] O.J. No. 1302 (H.C.J.) at para. 4.**

**Victims Group Application for Standing and Funding [Tab 2] of Brief of Authorities.**

10. If a person has vital information to give or has made the charges that the Commission is inquiring into, then that person may be considered to have a substantial and direct interest.

**Reference: *Re Public Inquiries Act and Shulman* [1967] 2 O.R. (2d) 375, 63 D.L.R. (2d) 578.**

**Victims Group Application for Standing and Funding [Tab 3] of Brief of Authorities.**

11. The recent *Ipperwash Inquiry* was mandated to
  - a. inquire into and report on the events surrounding the death of Dudley George; and
  - b. make recommendations directed at the avoidance of violence in similar circumstances.
12. In his Funding and Standing Ruling, issued on May 7, 2004, The Honourable Justice Sidney B. Linden as Commissioner allowed standing in both Parts I & II of the *Ipperwash Inquiry* for a total of 15 parties. Standing was granted only in Part I to an additional two parties and only in Part II to another 12 parties.
13. Four specific groups which are akin to victims of the events leading to the *Ipperwash Inquiry* were granted full standing in both parts. These parties were:
  - a. The Estate of Dudley George and George Family Group;
  - b. Aazhoodena and George Family Group;
  - c. Residents of Aazhoodena; and
  - d. Chippewas of Kettle and Stony Point First Nations;

**Reference: Ipperwash Inquiry, Ruling on Standing and Funding, May 7, 2004, p. 3-5**

**Victims Group Application for Standing and Funding [Tab 4] of Brief of Authorities.**

14. The specific basis for the abovementioned four parties to participate was (a) that they were witnesses to the events; (b) their participation through submissions, and as witnesses, will assist the Commission in the fulfillment of its mandate; and (c) their members have been and continue to be significantly affected by the events forming the subject matter of the *Ipperwash Inquiry*.
15. These three specific bases for full participation are equally valid with respect to the Victims Group in this Inquiry.
16. The Victims Group is composed of the individuals whose traumatic and life-altering experiences when children constitute the very subject matter of the Inquiry. As such, they have a direct and substantial interest in this Inquiry and its recommendations.
17. The Victims Group has a significant interest in the reasons for the lack of institutional response, by the justice system and other public institutions, to the historical abuse that they suffered firsthand.
18. The victims of sexual abuse in Cornwall have suffered long-lasting detrimental effects to their own lives and the lives of those around them. These effects have been greatly compounded by the lack of institutional response to their cries for help. Attached hereto and marked as **Exhibit "B"** is a collection of Affidavits sworn by the applicants detailing the specific effects of abuse and how the institutional response was inadequate.

19. Many of the victims have witnessed the poor treatment of other victims and this has negatively affected their confidence in the institutional systems from which a victim might seek help in the Cornwall area, including but not limited to:
  - a. Cornwall Police Services;
  - b. Ontario Provincial Police;
  - c. Attorney General's Office;
  - d. Diocese of Alexandria-Cornwall;
  - e. Solicitor General's Office;
  - f. Children's Aid Society;
  - g. Cornwall medical community;
  - h. Cornwall education services; and
  - i. The Courts.
20. As a result, many of the victims have poor coping mechanisms which perpetuate the vicious cycle of destruction in their lives and the lives of those around them.
21. The subject matter of the Inquiry involves a question of fact since its mandate is to determine what procedures were in place and how the justice system and other public institutions have failed these victims.
22. Therefore, it is respectfully submitted that the role of the Commission is to investigate the facts and report on such in order to make meaningful recommendations. As such, the Commission requires the full participation of the actual victims of sexual abuse. Their input goes beyond a mere useful perspective.
23. Furthermore, the Victims Group wishes to express to the Inquiry the scope of the sexual abuse and the impact, in terms of the physical, personal and economic effects, that the abuse has had on their lives

- and how the institutional responses in place failed to deal with these effects of abuse.
24. The Victims Group does not view the Inquiry as a public platform in which they can share their views. They view the Inquiry as a process to help them understand why they experienced a lack of institutional response and how they can participate in ensuring their experiences are not repeated in the future.
  25. Therefore, without the vital perspective of the Victims Group, it is respectfully submitted that the Commission will be unable to meet its important mandate.
  26. It is respectfully submitted that, pursuant to s. 5.1 of the *Public Inquiries Act, supra*, the Victims Group manifestly has an interest which is directly and substantially affected by the subject matter of the Inquiry. The Victims Group also represents distinct perspectives that are essential to the discharge of the Commissioner's mandate. These interests and distinct perspectives ought to be represented before the Inquiry as their participation would result in their ability to act as advocates for the systemic improvement of future treatment of victims of sexual abuse.
  27. The Victims Group is distinguishable from any Cornwall Citizen's group in that its membership both experienced sexual abuse and in many cases then endured the institutional failings which have led to this Inquiry. The Victims Group is the most motivated element of the Cornwall Community to see positive change in this area.
  28. In the Walkerton Inquiry the subject matter of that Inquiry, being the contamination of drinking water, caused extensive suffering amongst the people of Walkerton. Those affected residents were again akin to

victims. The Honourable Dennis R. O'Connor as Commissioner granted full standing in Parts I & II for two groups representing the residents of Walkerton who were affected by the subject matter of the Inquiry.

**Reference: Walkerton Inquiry, Ruling on Standing and Funding, October 3, 2000, p. 70.**

**Victims Group Application for Standing and Funding [Tab 5] of Brief of Authorities.**

29. However, if the Commission is yet unable to determine if the Victims Group is directly and substantially affected by Part I of the Rules of Practice and Procedure of the Cornwall Public Inquiry, then by analogy it is respectfully submitted that the Victims Group would meet the lower threshold of intervenor status having an "interest" in the subject matter of the proceedings pursuant to Rule 13.01(1) of Ontario *Rules of Civil Procedure*.

30. Rule 13.01(1) of Ontario *Rules of Civil Procedure* provides as follows:

13.01(1) A person who is not a party to a proceeding may move for leave to intervene as an added party if the person claims,

- (a) an **interest** in the subject matter of the proceeding;
- (b) that the person may be adversely affected by a judgment in the proceeding;
- (c) that there exists between the person and one or more of the parties to the proceeding a question of law or fact in common with one or more of the questions in issue in the proceeding.

**Reference: Rule 13.01(1) of Rules of Civil Procedure, R.R.O. 1990, Reg. 194.**

**Victims Group Application for Standing and Funding [Tab 6] of Brief of Authorities.**

31. Rule 13.01(2) of the *Rules of Civil Procedure* provides as follows:

(2) On the motion, the Court shall consider whether the intervention will unduly delay or prejudice the determination of the rights of the parties to the proceeding and the court may add the person as a party to the proceeding and may make an order as is just.

**Reference: Rule 13.01(2) of the *Rules of Civil Procedure, supra.***

**Victims Group Application for Standing and Funding [Tab 7] of Brief of Authorities.**

32. Rule 13.01(1) generally envisages that the intervenor will become involved in the fact-finding process, although a court has the power to impose terms governing the procedural rights of the intervenor and may direct less than full participation.
33. While it is acknowledged that the language of Rule 13.01(1) differs from the "direct and substantial interest in the litigation" as required for a party to obtain standing at a provincial inquiry under the *Public Inquiries Act, supra*, there is a paucity of reported decisions relating to the issue of obtaining standing at a provincial inquiry in Ontario. Therefore, it is respectfully submitted that the case law speaking to the level of "interest" required to intervene in a proceeding ought to inform the interpretation of "direct and substantial interest in the litigation" as required under Ontario's *Public Inquiries Act, supra*.
34. A person seeking to intervene as a party and claim an interest in the subject-matter of the proceedings must meet one of the three criteria specified in subrule 13.01(1) of the *Rules of Civil Procedure, supra*, to be granted leave to intervene. According to this rule, to be an interested party the person must have an actual interest in the *lis*

between the parties and this interest must be greater than that of a member of the public.

**Reference:** *John Doe v. Ontario (Information & Privacy Commissioner)* (1991), 7 C.P.C. (3d) 33, [1991] O.J. No. 2334 additional reasons (1992), 7 C.P.C. (3d) 33 (Div. Ct.).

**Victims Group Application for Standing and Funding [Tab 8] of Brief of Authorities.**

35. A person has an interest in a matter when the matter affects legal rights or financial affairs.

**Reference:** *Vachliotis v. Exodus Link Corp.* (1987), 23 C.P.C. (2d) 72, [1987] O.J. No. 1149 (Ont. Master).

**Victims Group Application for Standing and Funding [Tab 9] of Brief of Authorities.**

36. Intervenor status may be granted where a party would provide a different perspective and additional legal analysis not duplicated by the present parties.

**Reference:** *Straka v. Humber River Regional Hospital* (1999), 45 O.R. (3d) 414, [1999] O.J. No. 5741 (S.C.J.).

**Victims Group Application for Standing and Funding [Tab 10] of brief of Authorities.**

37. In *Halpern v. Toronto (City)*, the applicants were same-sex couples who brought an application for an order directing the city clerk to issue marriage licences. The court granted intervenor status to a national gay and lesbian organization as it had an interest in the proceeding

and could make a useful, unique contribution to specific issues raised.

**Reference:** *Halpern v. Toronto (City)*, (2000), 51 O.R. (3d) 742 (sub nom. *Halpern v. Wong*) [2000] O.J. No. 4514, 2000 CarswellOnt 4504, 3 C.P.C. (5th) 299 (S.C.J.).

**Victims Group Application for Standing and Funding [Tab 11 of Brief of Authorities.**

38. However, intervenor status may not be permitted by the court where little likelihood exists that the proposed intervenor could make a useful contribution to the resolution of the issues and would extend and complicate the proceedings unnecessarily.

**Reference:** *Canada (Attorney General) v. Anishnabe of Wauzhushk Band* (2001), 9 C.P.C. (5th) 374, 2001 CarswellOnt 2372 (S.C.J.).

**Victims Group Application for Standing and Funding [Tab 12] of Brief of Authorities.**

39. The focus of the court should be on determining whether the contribution that might be made by the intervenor is sufficient to counterbalance the disruption caused by the increase in the magnitude, timing, complexity and costs of the proceeding.

**Reference:** *M. v. H.*, 1994 CarswellOnt 473, (1994), 20 O.R. (3d) 70 (Gen. Div.) at para. 37.

**Victims Group Application for Standing and Funding [Tab 13] of Brief of Authorities.**

40. The members of the Victims Group are not mere spectators in the outcome of the Inquiry. As victims, they have an actual and profound interest in the prior lack of institutional response to the allegations of

sexual abuse. Therefore, their interests reach beyond those of the general public.

41. Without the input of the Victims Group, the outcome of the Inquiry dealing with future policies and practices to improve the response to allegations of sexual abuse will be grossly inadequate. It is imperative that the Victims Group be given the opportunity to articulate the effects of the lack of institutional response through a summary of evidence or direct testimony.
42. It is respectfully submitted that the testimony of the victims would be synergistically enhanced by that of experts, not instead of. This combination of victims' and expert evidence will fully enable the Commission to make effective and thorough recommendations.
43. However, it is not the intention of the Victims Group to turn the Inquiry into an advocacy forum. The Victims Group's interest in the Inquiry is not that of a lobbyist. As such, its intervention will not unduly delay or prejudice the outcome of the Inquiry.
44. Without their input, the Inquiry may have an adverse impact on these already fragile victims and render this process fruitless in the minds of those who have already suffered greatly.
45. As participants, the Victims Group could render great assistance to the Inquiry to aid in its understanding of the true impact of the lack of institutional response. It is not the intention of the Victims Group to render assistance to the Inquiry by way of argument. Therefore, this participation would not hinder the *lis* between the parties or create a new cause of action, as this is not a true adversarial process and many of these victims are already seeking other forms of redress.

46. If there is any doubt that intervenor status may impact the proceedings and have the potential to adversely affect the people of Cornwall, then it is respectfully submitted that this adverse affect would be significantly greater on the victims themselves.
47. It is respectfully submitted that the Victims Group meets all three of the criteria pursuant to Rule 13.01(1) of the *Rules of Civil Procedure, supra*. As such, it is abundantly clear that at minimum the Victims Group should be granted intervenor status at the Inquiry. This status will not be prejudicial or unjust to the rights of any other party at the Inquiry.
48. However, if it is determined that such intervention by the Victims Group may prejudice or delay the Inquiry then intervenor status may still be granted due to the counterbalance of the useful contribution made by the Victims Group.
49. With this intervenor status, it is essential that the Commissioner use his discretion and grant the Victims Group full participation in the Inquiry along with the privileges outlined in the *Rules of Practice and Procedure of the Inquiry*.

**E. PART II OF THE INQUIRY**

50. Part II of the Commission proceedings will focus on processes, services or programs that will encourage community healing and reconciliation in the Cornwall area.

**F. STANDING FOR PART II OF THE INQUIRY**

51. As firsthand victims, the Victims Group has a significant interest in the development of community programs, services and processes that are vital to foster healing and reconciliation in the community.
52. This fostering of healing and conciliation begins with the victims themselves.
53. Generally speaking, as a result of the sexual abuse, these victims have and will continue to experience great difficulties in trying to cope with the devastating effects of their abuse at such a young age. This was compounded by the fact that the perpetrators were authority figures in whom these victims were expected to place their trust. This is particularly true for those who were abused by clergy. As a result, these victims have lost their faith.
54. Many of the victims have turned to drugs and alcohol. They have experienced depression and anxiety. They have struggled to secure and maintain gainful employment as many of them unsuccessfully attempted to complete their high school education.

**Reference: Affidavits of Victims Group at Exhibit "B".**

55. Many of these victims have struggled to achieve and maintain normal relationships with family and friends. Their guilt is overwhelming and this adds to their level of anxiety and tension. They have feelings of worthlessness and hopelessness which further contributes to their anti-social behaviour.

**Reference: Affidavits of Victims Group at Exhibit "B".**

56. Many of the victims have experienced behavioural problems that have led to trouble with the law. This, in turn, has impacted their ability to attract and maintain gainful employment which in turn has hindered their ability to support themselves and their families.

**Reference: Affidavits of Victims Group at Exhibit "B".**

57. Currently, the psychiatric and psychological support available to these victims is inadequate. **Exhibit "B"** details the lack of support currently offered to these victims and the impact that it is having on them. The Inquiry must address the current lack of resources in order to comprehensively make meaningful future recommendations.
58. For the Inquiry to propose future processes, services or programs that will encourage community healing, it must hear from those who have been affected by the abuse firsthand as the interests of the Victims Group are distinct and ascertainable. They are not academic.
59. It is respectfully submitted that generally speaking, individuals who experience traumatic life events are best suited to assist others dealing with similar ordeals. Noteworthy examples of this principle include Alcoholics Anonymous and Narcotics Anonymous. Accordingly, the Victims Group is in the best position to assist the Commission in fulfilling its mandate under Part II of the Inquiry.
60. While the Victims Group is mindful of the need to minimize costs and avoid duplicity in these proceedings, its perspective must be brought before the Inquiry because the outcome of Part II of the Inquiry has practical consequences to these victims.

61. Therefore, in order to achieve this mandate, the Inquiry must grant standing to the Victims Group for it to participate in the creation and development of policies and practices for this future healing and reconciliation so desperately needed in Cornwall.

**G. EFFORTS AT CONSOLIDATION**

62. To avoid duplication of similar interests at the Inquiry, the Victims Group through its legal counsel, has attempted to join with other potential victims groups.
63. These attempts have included advertising in the Cornwall newspaper. Attached hereto and marked as **Exhibit "C"** is a copy of this advertisement in the Cornwall Standard-Freeholder which ran on October 17 and 18, 2005.
64. A letter was sent to The Men's Project in Cornwall informing them of the intentions of the Victims Group to seek standing and funding at the Cornwall Inquiry. The Men's Project provides counselling and clinical support to victims of sexual abuse. Attached hereto and marked as **Exhibit "D"** is a true copy of this letter to the Mens Project, dated October 17, 2005.
65. In furtherance of avoiding duplicity at the proceedings, contact has also been made with the Coalition For Action and The Citizens For Community Renewal in attempts to amalgamate similar interests. Attached hereto and marked as **Exhibit "E" and "F"** respectively, are the letters sent to Mr. Carson Chisholm of the Coalition For Action and to Mr. Paul Scott, president of the Citizens For Community Renewal.
66. As a result of the advertisement in the Cornwall Standard-Freeholder (**Exhibit "C"**), a public meeting was held on Tuesday, October 18,

2005 in Cornwall. Many of the victims of sexual abuse were in attendance. Numerous concerns were raised by these victims based on their knowledge of other victims who have yet to come forward based on fear and trepidation of how their participation in the Inquiry is likely to affect any gag orders or settlements previously entered into.

67. As such, we respectfully ask the Commission that this standing and funding application be considered a flexible document as the numbers of victims on whose behalf we seek standing and funding may increase.

#### **H. PARTICULARS OF STANDING**

68. With respect to a grant of full standing in Parts I & II of the Inquiry the Victims Group submit that such Standing include the following:
  - a. access to documents collected by the Commission, subject to the Rules of Procedure and Practice;
  - b. advance notice of documents which are proposed to be introduced into evidence;
  - c. advance provision of statements of anticipated evidence;
  - d. a seat at the counsel table;
  - e. the opportunity to suggest witnesses to be called by the Commission Counsel, failing which an opportunity to apply to the Commissioner to lead the evidence of a particular witness;
  - f. the opportunity to cross-examine witnesses on matters relevant

to the basis upon which standing was granted;

- g. an opportunity to review transcripts (a certified copy of the transcripts may be purchased from the court reporter); and
  - h. the opportunity to make closing submissions;
69. The above particulars of Standing are consistent with those granted to parties with Standing in at least Part I of the *Ipperwash Inquiry* as well as those granted to those with Standing at the *Walkerton Inquiry*.

**Reference: Ipperwash Inquiry, Ruling on Standing and Funding, May 7, 2004, p. 2-3.**

**Victims Group Application for Standing and Funding [Tab 4] of Brief of Authorities.**

**Reference: Walkerton Inquiry, Ruling on Standing and Funding, October 3, 2000, p. 64-65.**

**Victims Group Application for Standing and Funding [Tab 5] of Brief of Authorities.**

## **I. REQUEST FOR FUNDING**

70. Collectively, the Victims Group is a group of forty eight (48) individuals whose lives have been destroyed due to the effects of their abuse and the failure of the institutional response to assist them. As such, these poorly educated victims are of very limited or non-existent financial means. Many of the members of the Victims Group depend upon social assistance or other governmental benefits. Those who are employed are employed on an infrequent basis or are employed in low-wage jobs.

**Reference: Victims Group Affidavits at Exhibit "B".**

71. The financial means of the Victims Group ranges from \$0 to \$3000.00 per month. However, the average monthly wage of the Victims Group is \$1162.00. This corresponds to an annual income of \$13,944.00 per year.

**Reference: Victims Group Affidavits at Exhibit "B".**

72. Without the requisite funding, the Victims Group would not otherwise be able to participate in the Cornwall Inquiry. It recognizes that the Inquiry will be a lengthy and expensive process. The Victims Group respectfully submits that its participation is mandatory and funding is essential.
73. Furthermore, many of the victims of sexual abuse have the potential for civil or administrative remedies and are concerned that these remedies may be impacted by their participation at the Inquiry. Therefore, fair participation in the Inquiry will require access to legal counsel.
74. It is respectfully requested that the Victims Group be afforded, as a party to the Cornwall Inquiry, the funding resources, including all reasonable expenses for the Victims Group and fees and expenses for its legal counsel and assistants, to ensure its full and effective participation for the duration of the Inquiry, including necessary research, preparation, documentary review, expert retention, attendance and participation in all hearing and other activities of the Inquiry, commencing the date the Inquiry was effectively commissioned on April 14, 2005.

75. Collectively, the Victims Group has sought legal counsel from Ledroit Beckett Litigation Lawyers ("Ledroit Beckett"). Ledroit Beckett is an eleven lawyer law firm located in London, Ontario whose practice is restricted to civil litigation. Ledroit Beckett represents victims of sexual abuse throughout Ontario and currently has approximately ninety (90) victims as clients.
76. Ledroit Beckett represents a number of the individuals within the Victims Group with respect to civil litigation arising from the sexual abuse which they have experienced. Accordingly, Ledroit Beckett already has extensive involvement in the issues and facts underlining the Inquiry's mandate.
77. Ledroit Beckett's involvement includes investigative efforts and one of the only comprehensive collections of documented Cornwall victims' testimonials. Attached hereto and marked as **EXHIBIT "G"** is the Affidavit of Mr. Paul Maurice Ledroit which outlines the litigation activities of Ledroit Beckett with respect to issues before this Inquiry.
78. Victims of sexual abuse, especially by societal authority figures, have a resounding lack of trust. The members of the Victims Group, owing to their involvement with the staff of Ledroit Beckett and the pro-victim track record of that firm, adequately trust Ledroit Beckett to represent the Victims Group's interest in the Inquiry.
79. Ledroit Beckett is a small legal firm with limited resources to fund the representation of forty-eight (48) victims of sexual abuse at this lengthy Inquiry.
80. Funding for the Victims Group is based upon the involvement of three counsel and a law clerk. The participation of these counsel would be as follows:

- a. Senior Counsel Paul Ledroit (Called to the Bar in 1971) in a supervisory and advisory capacity for approximately 100 hours;
- b. Intermediate Counsel, Carolyn Brandow (Called to the Bar in 2000) as the primary legal counsel in attendance for approximately 1500 hours;
- c. Junior Counsel, Dallas Lee (Called to the Bar in 2005) as supporting counsel and researcher for Ms. Brandow participating for approximately 750 hours;

81. In the *Ipperwash Inquiry* the following was the quantum of legal representation funded by the Commission with respect to groups which the Victims Group submit are akin to victims groups:

- a. The Estate of Dudley George and George Family Group - two counsel and an articling student;
- b. The Aazhoodena and George Family Group - one senior counsel and one junior counsel;
- c. Residents of Aazhoodena - two counsel and an articling student or clerk;
- d. Chippewas of Kettle and Stoney Point First Nations - two counsel and a clerk;

**Reference: Ipperwash Inquiry, Ruling on Standing and Funding, May 7, 2004, p. 21-25.**

**Victims Group Application for Standing and Funding [Tab 4] of Brief of Authorities.**

82. Therefore, in the *Ipperwash Inquiry*, which involved the death of

Dudley George, a total of eight counsel, two articling students and a clerk were authorized funding by the Commission. The Victims Group submits that the depth of factual matters for this Inquiry to examine, with respect to victims is far greater in quantity than that of the *Ipperwash Inquiry*

83. Therefore, funding for participation in the Cornwall Inquiry would be based on an approximation of 2350 cumulative hours required by counsel to represent the applicants at the Inquiry. Attached and marked as **Exhibit "H"** is the detailed proposed budget for such legal representation.
84. With respect to expenses such as travel, accommodation, attendance and administration at the hearings, being expenses akin to disbursements, the Victims Group submits that consideration be given to the fact that its counsel of choice is located in London, Ontario.
85. The Victims Group submits that in those circumstances it may be more economical for the Commission to provide rental housing accommodations in the Cornwall area for its counsel rather than fund extensive travel, meals and temporary accommodation costs.
86. The Victims Group seeks retroactive funding for payment of the legal and related expenses associated with coordinating and organizing the victims and the preparation of these submissions, both of which took considerable effort and expense.
87. Most significantly, the Victims Group submits that the Commission consider as an immediate step the provision of independent clinical support for victims participating in the Inquiry owing to the re-traumatization resulting from their participation.

88. When the required funds are advanced, it is respectfully submitted that they be paid to Ledroit Beckett to be held in trust. When the work is completed and the expenses are incurred, Ledroit Beckett will administer and account for the funds in accordance with the requirements of the *Law Society of Upper Canada* relating to the rules and by-laws for accounting of trust funds and all other funds.
89. The individual at Ledroit Beckett who will be personally responsible for ensuring compliance with the requirement of the *Law Society of Upper Canada* with respect to these funds would be the firm administrator, Ms. Lesley McKeen. Her contact information is as follows:

Ms. Lesley McKeen  
Firm Administrator  
Ledroit Beckett Litigation Lawyers  
630 Richmond Street,  
London, Ontario  
N6A 3G6  
(519) 673-4994

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

On this 24th day of October, 2005



**PAUL M. LEDROIT**

LEDROIT BECKETT  
Litigation Lawyers  
630 Richmond Street  
London, Ontario  
N6A 3G6

Tel: (519) 673-4994  
Fax: (519) 432-1660

Counsel for Applicants,  
The Victims Group

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**BRIEF OF AUTHORITIES**

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P. M. LEDROIT  
LEDROIT BECKETT  
Litigation Lawyers  
630 Richmond Street  
London, Ontario  
N6A 3G6

Tel.: (519) 673-4994  
Fax: (519) 432-1660

Solicitors for the Plaintiffs

October 24, 2005



Français

## Public Inquiries Act

R.S.O. 1990, CHAPTER P.41

**Notice of Currency:**\* This document is up to date.

\*This notice is usually current to within two business days of accessing this document. For more current amendment information, see the Table of Public Statutes (Legislative History).

Amended by: 2000, c. 14.

### Definitions

1. In this Act,

“commission” means the one or more persons appointed to conduct an inquiry under this Act;  
 (“commission”)

“inquiry” means an inquiry under this Act. (“enquête”) R.S.O. 1990, c. P.41, s. 1.

### PART I

#### Appointment of commission

2. Whenever the Lieutenant Governor in Council considers it expedient to cause inquiry to be made concerning any matter connected with or affecting the good government of Ontario or the conduct of any part of the public business thereof or of the administration of justice therein or that the Lieutenant Governor in Council declares to be a matter of public concern and the inquiry is not regulated by any special law, the Lieutenant Governor in Council may, by commission, appoint one or more persons to conduct the inquiry. R.S.O. 1990, c. P.41, s. 2.

#### Procedure

3. Subject to sections 4 and 5, the conduct of and the procedure to be followed on an inquiry is under the control and direction of the commission conducting the inquiry. R.S.O. 1990, c. P.41, s. 3.

#### Hearings to be open, exceptions

4. All hearings on an inquiry are open to the public except where the commission conducting the inquiry is of the opinion that,

- (a) matters involving public security may be disclosed at the hearing; or
- (b) intimate financial or personal matters or other matters may be disclosed at the hearing that are of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public,

in which case the commission may hold the hearing concerning any such matters in the absence of the public. R.S.O. 1990, c. P.41, s. 4.

### **Rights of persons interested**

5. (1) A commission shall accord to any person who satisfies it that the person has a substantial and direct interest in the subject-matter of its inquiry an opportunity during the inquiry to give evidence and to call and examine or to cross-examine witnesses personally or by counsel on evidence relevant to the person's interest. R.S.O. 1990, c. P.41, s. 5 (1).

### **Rights of persons before misconduct found**

(2) No finding of misconduct on the part of any person shall be made against the person in any report of a commission after an inquiry unless that person had reasonable notice of the substance of the alleged misconduct and was allowed full opportunity during the inquiry to be heard in person or by counsel. R.S.O. 1990, c. P.41, s. 5 (2).

### **Stated case**

6. (1) Where the authority to appoint a commission under this Act or the authority of a commission to do any act or thing proposed to be done or done by the commission in the course of its inquiry is called into question by a person affected, the commission may of its own motion or upon the request of such person state a case in writing to the Divisional Court setting forth the material facts and the grounds upon which the authority to appoint the commission or the authority of the commission to do the act or thing are questioned. R.S.O. 1990, c. P.41, s. 6 (1).

### **Order directing stated case**

(2) If the commission refuses to state a case under subsection (1), the person requesting it may apply to the Divisional Court for an order directing the commission to state such a case. R.S.O. 1990, c. P.41, s. 6 (2).

### **Court to hear and determine stated case**

(3) Where a case is stated under this section, the Divisional Court shall hear and determine in a summary manner the question raised. R.S.O. 1990, c. P.41, s. 6 (3).

### **Proceedings stayed**

(4) Pending the decision of the Divisional Court on a case stated under this section, no further proceedings shall be taken by the commission with respect to the subject-matter of the stated case but it may continue its inquiry into matters not in issue in the stated case. R.S.O. 1990, c. P.41, s. 6 (4).

## **PART II**

### **Power to summon witnesses, papers, etc.**

7. (1) A commission may require any person by summons,

(a) to give evidence on oath or affirmation at an inquiry; or

(b) to produce in evidence at an inquiry such documents and things as the commission may specify,

relevant to the subject-matter of the inquiry and not inadmissible in evidence at the inquiry under section 11.

R.S.O. 1990, c. P.41, s. 7 (1).

#### **Form and service of summons**

(2) A summons issued under subsection (1) shall be in Form 1 and shall be served personally on the person summoned and he or she shall be paid at the time of service the like fees and allowances for attendance as a witness before the commission as are paid for the attendance of a witness summoned to attend before the Ontario Court (General Division). R.S.O. 1990, c. P.41, s. 7 (2).

#### **Stated case for contempt for failure to attend hearing, etc.**

8. Where any person without lawful excuse,

(a) on being duly summoned under section 7 as a witness at an inquiry, makes default in attending at the inquiry; or

(b) being in attendance as a witness at an inquiry, refuses to take an oath or to make an affirmation legally required by the commission to be taken or made, or to produce any document or thing in his or her power or control legally required by the commission to be produced to it, or to answer any question to which the commission may legally require an answer; or

(c) does any other thing that would, if the commission had been a court of law having power to commit for contempt, have been contempt of that court,

the commission may state a case to the Divisional Court setting out the facts and that court may, on the application of the commission or of the Attorney General, inquire into the matter and, after hearing any witnesses who may be produced against or on behalf of that person and after hearing any statement that may be offered in defense, punish or take steps for the punishment of that person in like manner as if he or she had been guilty of contempt of the court. R.S.O. 1990, c. P.41, s. 8.

#### **Protection of witnesses**

9. (1) A witness at an inquiry shall be deemed to have objected to answer any question asked him or her on the ground that his or her answer may tend to criminate the witness or may tend to establish his or her liability to civil proceedings at the instance of the Crown or of any person, and no answer given by a witness at an inquiry shall be used or be receivable in evidence against him or her in any trial or other proceedings against him or her thereafter taking place, other than a prosecution for perjury in giving such evidence. R.S.O. 1990, c. P.41, s. 9 (1).

#### **Right to object**

(2) A witness shall be informed by the commission of his or her right to object to answer any question

under section 5 of the *Canada Evidence Act*. R.S.O. 1990, c. P.41, s. 9 (2).

### **No discipline of employees**

9.1 (1) No adverse employment action shall be taken against any employee of any person because the employee, acting in good faith, has made representations as a party or has disclosed information either in evidence or otherwise to a commission under this Act or to the staff of a commission. 2000, c. 14, s. 1.

### **Offence**

(2) Any person who contrary to subsection (1) takes adverse employment action against an employee is guilty of an offence and on conviction is liable to a fine of not more than \$5,000. 2000, c. 14, s. 1.

### **Application**

(3) This section applies despite any other Act and the oath of office of a Crown employee is not breached where information is disclosed as described in subsection (1). 2000, c. 14, s. 1.

### **Effective date**

(4) This section applies to representations made, and information disclosed, on or after June 12, 2000. 2000, c. 14, s. 1.

### **Unsworn evidence admissible**

10. A commission may admit at an inquiry evidence not given under oath or affirmation. R.S.O. 1990, c. P.41, s. 10.

### **Privilege**

11. Nothing is admissible in evidence at an inquiry that would be inadmissible in a court by reason of any privilege under the law of evidence. R.S.O. 1990, c. P.41, s. 11.

### **Release of documents**

12. (1) Documents and things produced in evidence at an inquiry shall, upon request of the person who produced them or the person entitled thereto, be released to the person by the commission within a reasonable time. R.S.O. 1990, c. P.41, s. 12 (1).

### **Photocopies of documents**

(2) Where a document has been produced in evidence before a commission, the commission may or the person producing it may with the leave of the commission, cause the document to be photocopied and the photocopy may be filed in evidence in the place of the document produced, and a copy of a document produced in evidence, certified to be a true copy thereof by the commission, is admissible in evidence in

proceedings in which the document produced is admissible, as evidence of the document produced.  
R.S.O. 1990, c. P.41, s. 12 (2).

**Power to administer oaths and require evidence under oath**

13. A commission has power to administer oaths and affirmations for the purpose of an inquiry and may require evidence before it to be given under oath or affirmation. R.S.O. 1990, c. P.41, s. 13.

**Powers of each of two or more commissioners**

14. Where two or more persons are appointed to make an inquiry, any one of them may exercise the powers conferred by section 7, 12 or 13. R.S.O. 1990, c. P.41, s. 14.

**PART III**

**Application of Part III**

15. (1) This Part does not apply to an inquiry unless the Lieutenant Governor in Council declares that this Part does apply thereto. R.S.O. 1990, c. P.41, s. 15 (1).

**Idem**

(2) The Lieutenant Governor in Council may, if he or she is satisfied that it is necessary to achieve the purposes of an inquiry, in the order in council authorizing the issue of the commission for the inquiry, or by a subsequent order in council, declare that this Part applies to the inquiry and to the commission conducting it.  
R.S.O. 1990, c. P.41, s. 15 (2).

**Warrant for apprehension of witness**

16. (1) Upon proof to the satisfaction of a judge of the Ontario Court (General Division) of the service of a summons to appear at an inquiry upon a person and that,

- (a) such person has failed to attend or to remain in attendance at the inquiry in accordance with the requirements of the summons;
- (b) a sufficient sum for his or her fees and allowances has been duly paid or tendered to the person; and
- (c) his or her presence is material to achievement of the purposes of the inquiry,

the judge may, by warrant in Form 2 directed to any sheriff or police officer, cause such person to be apprehended anywhere within Ontario and forthwith to be brought before the commission conducting the inquiry and to be detained in custody as the judge may order until his or her presence as a witness before the inquiry is no longer required, or, in the discretion of the judge, to be released on a recognizance, with or without sureties, conditioned for appearance to give evidence. R.S.O. 1990, c. P.41, s. 16 (1).

**Idem**

(2) An application under subsection (1) may be made by the commission conducting the inquiry and the service of the summons and payment or tender of fees and allowances may be proved by affidavit. R.S.O. 1990, c. P.41, s. 16 (2).

### **Appointment of investigators**

17. (1) A commission may in writing appoint a person to make an investigation relevant to the subject-matter of the inquiry it is conducting. R.S.O. 1990, c. P.41, s. 17 (1).

### **Search warrant**

(2) Where a judge of the Ontario Court (General Division) is satisfied upon an application made without notice by a person appointed by a commission to make an investigation under this section,

(a) that the commission conducting the inquiry has appointed the applicant to make an investigation under this section; and

(b) that there are reasonable grounds for believing that there are in any building, receptacle or place, including a dwelling house, any documents or things relevant to the subject-matter of the inquiry,

the judge may issue a warrant in Form 3 authorizing the person making the investigation, together with such police officers as he or she calls upon to assist him or her, to enter and search if necessary by force, such building, receptacle or place, for such documents or things. R.S.O. 1990, c. P.41, s. 17 (2).

### **Removal of documents**

(3) A person making an investigation under this section may, upon giving a receipt therefor, remove any document or thing found in his or her investigation relevant to the subject-matter of the inquiry and deliver it to the commission which shall keep custody of it. R.S.O. 1990, c. P.41, s. 17 (3).

### **Release of documents, etc.**

(4) Documents and things delivered to a commission by a person appointed to make an investigation under this section shall upon request of the person from whose custody they were removed or the person entitled thereto be released to the person by the commission within a reasonable time. R.S.O. 1990, c. P.41, s. 17 (4).

### **Photocopies**

(5) Where a document has been delivered to a commission by a person making an investigation under this section, the commission may cause the document to be photocopied and the photocopy may be filed in evidence in place of the document delivered to the commission and a copy of such document certified by the commission to be a true copy thereof, is admissible in evidence in proceedings in which the document so delivered is admissible, as evidence of the document so delivered. R.S.O. 1990, c. P.41, s. 17 (5).

### **Powers re inquiries under other Acts are powers of commission under Part II**

18. Where, for the purpose of an investigation, inquiry or matter under any Act or regulation, any person or body is given the powers of or that may be conferred on a commissioner under *The Public Inquiries Act*, being chapter 379 of the Revised Statutes of Ontario, 1970, or the powers of a court in civil cases, such person or body may exercise the powers of a commission under Part II of this Act, which Part applies to such investigation, inquiry or matter as if it were an inquiry under this Act. R.S.O. 1990, c. P.41, s. 18.

**Forms**

19. The English or French version of Forms 1, 2 and 3 may be used. R.S.O. 1990, c. P.41, s. 19.

**FORM 1**

(Section 7)

Summons to Witness

R.:

To:

You are hereby summoned and required to attend before the .....(name of commission) at an inquiry conducted by the said commission to be held at..... in ..... of..... on ..... day, the..... day of....., 20.... at the hour of..... o'clock in the..... noon (local time) and so from day to day until the inquiry is concluded or the commission otherwise orders, to give evidence on oath touching the matters in question in the inquiry and to bring with you and produce at such time and place.....

Dated this..... day of....., 20.....(Name of Commission)

Commissioner

Note:

You are entitled to be paid the same personal allowances for your attendance at the hearing as are paid for the attendance of a witness summoned to attend before the Ontario Court (General Division).

If you fail to attend and give evidence at the inquiry, or to produce the documents or things specified, at the time and place specified, without lawful excuse, you are liable to punishment by the Ontario Court (General Division) in the same manner as if for contempt of that Court for disobedience to a summons.

R.S.O. 1990, c. P.41, Form 1.

**FORM 2**

(Section 6)

Bench Warrant

R.:

I, 4.B., Sheriff, etc.

Whereas proof has been made before me that C.D. was duly summoned to appear before (name of

commission)..... at the inquiry being conducted by the said commission at Toronto (or as the case may be) on the .....day of....., 20....; that the presence of the said C.D. is material to the advancement of the purposes of the inquiry, and that the said C.D. has failed to attend in accordance with the requirements of the summons.

These are therefore to command you to take the said C.D. to bring and have him or her before the said commission at Toronto (or as the case may be) there to testify what he or she may know concerning the matters in question in the said inquiry, and that you detain him or her in your custody until he or she has given his or her evidence or until the sittings of the said inquiry have ended or until other orders may be made concerning him or her.

Given Under My Hand this.....day of....., 20...., at.....

.....

Judge

R.S.O. 1990, c. P.41, Form 2.

FORM 3

(Section 17)

Search Warrant

Re:

To: A.B. (investigator) and to such police officers as he or she calls upon to assist him or her:

Whereas it appears on the oath of..... of the.....of..... in the.....of..... that there are reasonable grounds for believing that (describe things to be searched for and the inquiry in respect of which search is to be made) are in..... at..... (hereinafter called the premises);

This is, therefore, to authorize and require you between the hours of (as the judge may direct) to enter into the said premises and to search for the said things and to bring them before E.F., the commission conducting the said inquiry.

Given Under My Hand this.....day of....., 20...., at.....

.....

Judge

R.S.O. 1990, c. P.41, Form 3.

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Indexed as:

**Gosselin v. Ontario (Royal Commission of Inquiry into  
Certain Deaths at the Hospital for Sick Children  
- Grange Commission)**

IN THE MATTER OF the Royal Commission of Inquiry into the  
Certain Deaths at the Hospital for Sick Children and Related  
Matters  
AND IN THE MATTER OF the Public Inquiries Act, R.S.O. 1980, c.  
411  
AND IN THE MATTER OF an application by the parents of babies  
Gosselin, Gionas, Lutes, Turner, Inwood, Cook, Hines,  
Lombardo, Dawson and Pacsai pursuant to section 6(2) of the  
Public Inquiries Act that the Divisional Court order the  
stating of a case with respect to certain orders and rulings  
by the Honourable Samuel G.M. Grange, Commissioner

Between

The parents of babies Gosselin, Inwood, Cook, Hines, Lombardo,  
Dawson and Pacsai, applicants, and  
The Honourable Samuel G.M. Grange, Commissioner, respondent

[1984] O.J. No. 1302  
No. 577/84

**Ontario Supreme Court - High Court of Justice  
Divisional Court  
Southey, Saunders and Hollingworth JJ.**

Heard: June 28 and 29, 1984.

Judgment: July 4, 1984.

(17 pp.)

**Counsel:**

Morris Manning, Q.C. and S.M. Labow, for the parents of babies Gosselin, Gionas,  
Lutes, Turner, Inwood and Cook, applicants.

W.W. Tobias, for the parents of baby Hines, applicants.

F.J. Shanahan, for the parents of babies Dawson and Lombardo, applicants.

Jack Shinehoft, for the parents of baby Pacsai, applicants.

P.S.A. Lamek, Q.C., for the Commissioner, respondent.

D.M. Brown, for Susan Nelles, respondent.

D.S. Young, for Metropolitan Toronto Police, respondents.

L.A. Cecchetto, for the Attorney General for Ontario, respondent.

The judgment of the Court was delivered by

¶ 1 **SOUTHEY J.**— This is an application under Section 6(2) of the Public Inquiries Act for an order directing The Honourable Mr. Justice S.G.M. Grange, Commissioner, to state a case to the Divisional Court asking the following question:

Was I right in refusing the application on behalf of the parents of babies Gosselin, Gionas, Turner, Lutes, Inwood, Cook, Hines, Lombardo, Dawson and Pacsai for standing pursuant to Section 5(1) of the Public Inquiries Act in Phase II of this inquiry?

¶ 2 I need not describe the events that led to the appointment of the Commission. They are set out fully in the judgment of the Court of Appeal dated April 12 last, in which it was held that the Commissioner should not express his opinion as to whether the death of any child was a result of the action, accidental or otherwise, of any named person or persons.

¶ 3 The Commission was appointed by an Order-in-council dated April 21, 1983, and amended in May 1984. The Order in council, as amended, reads, in part, as follows:

WHEREAS concern has been expressed in relation to a number of deaths of infants in Cardiac Wards 4A and 4B at the Hospital for Sick Children, Toronto, between July 1st, 1980 and March 31st, 1981, and

WHEREAS concern has been expressed concerning the functioning of the justice system in respect of the instituting and of prosecuting of charges in relation to the said deaths, and

WHEREAS the Government of Ontario is of the view that there is a need for the parents of the deceased children and the public as a whole to be informed of all available evidence as to the deaths and the proceedings arising therefrom ...

NOW THEREFORE, pursuant to the provisions of the said Public Inquiries Act, R.S.O. 1980, Chapter 411, a commission be issued to appoint the Honourable Mr. Justice S.G.M. Grange who is, without expressing any conclusion of law regarding civil or criminal responsibility:

...

- 3) to inquire into and report on and make any recommendations with respect to how and by what means children who died in Cardiac Wards 4A and 4B at the Hospital for Sick Children between July 1st, 1980 and March 31st, 1981, came to their deaths;
- 4) to inquire into, determine and report on the circumstances surrounding the investigation, institution, and prosecution of charges arising out of the deaths of the above mentioned four infants; and without restricting the generality of the foregoing, the Commissioner may receive evidence and submissions and comment fully on the conduct of any person during the course of the investigation, institution, and prosecution of charges arising out of the deaths of the above-mentioned four infants, Provided that such comment does not express any conclusion of law regarding civil or criminal responsibility.

¶ 4 The applicants are the parents of babies who died at the Hospital at a time relevant to the inquiry. They were all granted standing at the Commission hearings, most of them at the outset, as persons having a direct and substantial interest in the subject matter of the inquiry. The Public Inquiries Act does not refer to persons having "standing", but s. 5(1) requires a commission to permit certain interested persons to participate to a limited extent in an inquiry. The sub-section reads as follows:

5.--(1) A commission shall accord to any person who satisfies it that he has a substantial and direct interest in the subject matter of its inquiry an opportunity during the inquiry to give evidence and to call and examine or to cross-examine witnesses personally or by his counsel on evidence relevant to his interest.

The Commissioner explained at the first session of the inquiry on May 31, 1983 that "standing" referred to the status of persons who would be "participating in the hearings more or less on a permanent basis."

¶ 5 Commission counsel explained at that first session that he would complete the evidence relating to paragraph no. 3 of the Commission's terms of reference before addressing the matters referred to in paragraph no. 4. He said there would likely be a measure of overlap in the evidence going to those two main areas of the inquiry, but that he hoped to keep it reasonably separate. In a ruling made on November 15 last, the Commissioner referred to the fact that the two issues were being heard separately "for convenience". The two parts of the inquiry became known as Phase I and Phase II, Phase I being the inquiry into how and by what means the children came to their deaths, and Phase II being the inquiry into the investigation, institution and prosecution of charges of murder against Susan Nelles in connection with the deaths of four of the babies.

¶ 6 The hearings began on June 21st, 1983 and the Commissioner has heard 147 days of evidence from 51 witnesses, all in connection with Phase I. Counsel for the applicant parents have participated fully in this part of the inquiry, cross-examining witnesses, making submissions, participating in the hearing of the stated case and appeal on the issue of naming names, and, in the words of their counsel "helping to bring before the Commissioner all facts which are relevant to the deaths of the children that they represent."

¶ 7 On June 4 last, the Commissioner heard applications for standing in Phase II of the inquiry. On June 12 last, he ruled that Susan Nelles, the Metropolitan Toronto Police, the Attorney General, the Solicitor General, the Hospital for Sick Children, Phyllis Trayner, some 40 doctors, and 39 individual nurses should have standing in Phase II, but that the applicant parents should not have standing in Phase II. His reasons for the ruling included the following:

What is being looked at in Phase II is the police investigation (assisted or prompted by the Coroners) into the deaths, particularly those of babies Estrella, Pacsai, Miller and Cook and the arrest by the police of Susan Nelles, and her subsequent prosecution by the Crown on charges of murder. That prosecution ended in the discharge of Miss Nelles after the Preliminary Inquiry. Miss Nelles has issued a writ against the Attorney-General and the Police Chief and others claiming negligence, false imprisonment and malicious prosecution. I am, of course, not trying that action, but inevitably some matters will come up in Phase II questioning the propriety of the action of the Coroners, the Crown Attorneys and the Police. At the same time, we have reason to expect that the Police or others may give evidence of lack of co-operation in the investigation on the part of certain doctors, certain nurses or even of the Hospital. The Attorney-General and the Police specifically disclaim any allegation of conspiracy or

combination to hinder or defeat the investigation or prosecution.

...

That leaves only the parents. I treat all the parents alike even though Justin Cook and Kevin Pacsai were 2 of the 4 babies for whose deaths Susan Nelles was prosecuted. The deaths of all of the children are within the Commission's mandate as to cause of death and the deaths of the other children were inevitably a part of the investigation and, in many cases, were introduced as similar fact evidence in the prosecution.

The parents' position is very difficult and evokes the greatest sympathy. They are, of course, immensely interested in the investigation and prosecution of the killer or killers (if there be any) of their children, but I cannot find that their interest (in a legal sense) is any greater than that of the public at large who are represented by Commission Counsel. It may be a delicate distinction but I held in effect that there was a direct and substantial interest for the parents in Phase I. One might say that the interest was largely emotional but it was nevertheless direct and substantial. They are the only representatives of the babies themselves. The interests of the parents in the investigation and prosecution is also natural and understandable but it is not in my view either a direct or substantial interest within the meaning of the statute. The legal interests of the parents cannot conceivably be affected either by the Inquiry or the Report.

I must, therefore, deny the application of the parents. I do so with reluctance recognizing as I do the very valuable contribution that their Counsel have made to the proceedings in Phase I. I assure the parents that Commission Counsel will be happy to consult with them or their Counsel at any time as to the conduct of the Commission in Phase II.

¶ 8 On June 13, the applicant parents requested the Commissioner to state a case to the Divisional Court under s. 6(1) of the Public Inquiries Act. That sub-section, and subsection (2) under which the application to this Court was brought, read as follows:

6.--(1) Where the authority to appoint a commission under this Act or the authority of a commission to do any act or thing proposed to be done or done by the commission in the course of its inquiry is called into question by a person affected, the commission may of its own motion or upon the request of such person state a case in writing to the Divisional Court setting forth the material facts and the grounds upon which the authority to appoint the Commission or the authority of the commission to do the act or thing are questioned.

(2) If the commission refuses to state a case under subsection (1), the person requesting it may apply to the Divisional Court for an order directing the commission to state such a case.

¶ 9 The Commissioner refused the request of the applicant parents to state a case, because he was not persuaded they had an arguable case that they had a substantial and direct interest in Phase II of the inquiry. He went on to say this:

Every interest that is involved in the Order-in-Council and the particular part of it concerning the Phase II is fully represented, not only by Commission Counsel, but by those who, in my view, do have a direct and substantial interest, namely Susan Nelles, the Police and the Attorney-General, therefore the Commission cannot in a legal sense suffer from the exclusion of the parents.

To me it is of vital importance for the efficiency of the Commission that I do not state a case when I ... do not entertain any doubts on the matter.

¶ 10 The parents then applied to this Court for an order directing the Commissioner to state a case by asking the question quoted at the beginning of these reasons.

¶ 11 In a succinct and persuasive argument, Mr. Manning advanced six reasons why, in his submission, the Commissioner had erred in failing to grant standing in Phase II to the applicants, and in refusing to state a case as requested. After carefully considering Mr. Manning's submissions and those of counsel for the other applicant parents, I have concluded that the Commissioner did not err in his ruling as to standing, and that he should not be directed to state the case requested. It will be convenient for me to state my reasons for that conclusion by dealing one after another with Mr. Manning's six submissions. I shall underline his submissions.

1. The Commissioner applied the wrong test by refusing to state the case because he was satisfied his ruling had been correct.

¶ 12 The Commissioner did not simply say that he thought his ruling was correct. He went much further. He said he entertained no doubts as to the correctness of his decision that the parents did not have a substantial and direct interest in a legal sense in Phase II, and that he thought they had no arguable case.

¶ 13 The certainty with which he expressed his decision was not lessened, in my view, by his later acknowledgment that he might be wrong, or by his courtesy in telephoning the Divisional Court office during a noon hour to find out when this motion could be heard. The former was nothing more than the recognition of a reality that all judges must accept; the latter was another manifestation of the sympathy and concern of the Commissioner for the parents.

¶ 14 A commissioner is not obliged to state a case under s. 6 whenever he is requested to do so, and I think it is obvious that he should not do so when he is satisfied there is nothing in the point that has been raised. That is what the Commissioner did in this case, and I think the rule he applied was a correct one.

2. The Commissioner erred in holding that all of the interests that need to be represented in Phase II of the inquiry would be adequately represented by counsel for the Commission, and the other persons to whom standing in Phase II had been granted, particularly Susan Nelles, the Police, and the Attorney General.

¶ 15 Mr. Manning relied on the statement in *Re Royal Commission on Conduct of Waste Management Inc. et al.* (1977), 17 O.R. (2d) 207, 209 that the right of a person having a substantial and direct interest in an inquiry to be accorded standing has important implications for such a person in that he is not dependent upon the decisions of Commission counsel in the placing of relevant evidence before the Commission. He also submitted, and I accept it to be the case, that the broad, general public interest represented by Commission counsel is different from the narrow interest of the parents of the

babies who died.

¶ 16 As I shall emphasize later in connection with another of Mr. Manning's points, the principal interest of the parents is in determining the cause of the death of their children. That interest was accommodated, as far as it could be, by their participation during the past year in Phase I of the Commission's inquiry. Apart from that interest, what interest have the parents, other than that which they share with all thoughtful citizens, in determining whether the Police, or the Crown attorney, acted improperly in charging Susan Nelles and in proceeding with a lengthy preliminary hearing? The practical consequences of Phase II to Miss Nelles and those responsible for her prosecution could be very great, whereas the parents will not be affected in any practical way. In that sense, their interest in Phase II is academic, except to the extent that the hearings might shed light on the cause of the deaths, the matter on which the parents have already been fully represented in Phase I.

¶ 17 I think the Commissioner was entirely correct in suggesting that whatever interest the parents may have in bringing out the true story respecting the prosecution of Miss Nelles will be much better served by counsel representing the opposing parties who have a practical interest in that matter than it would be by counsel for the parents. These other parties are adversaries in a very real sense, and the hearings have reflected, and will continue to reflect the adversary system in operation. That system is regarded in our legal tradition as the most effective way of determining the truth.

¶ 18 The situation would be quite different if Phase II involved the investigation of a suspected cover-up by the Police or the Attorney General. But it does not. Instead, the allegation is that the authorities were overly zealous in going ahead with the prosecution of Miss Nelles.

¶ 19 I have no doubt that the Commissioner was right in believing that it was unnecessary to have the participation of counsel for the parents in Phase II of the inquiry in order to be sure that no stone would be left unturned.

3. The Commissioner erred in considering the delay and expense that would result from stating a case.

¶ 20 Here Mr. Manning relied on the following statement in the decision of the Divisional Court in *Re Royal Commission On The Northern Environment*, [1983] 144 D.L.R. (3d) 416, 420:

The commissioner, in his reasons, was unduly influenced by his concern that, if he gave the Grand Council participation rights, he would be unable to prevent all of the other people of the north who might conceivably feel they have an interest from participating. This was not a proper factor to consider in determining whether an applicant has standing pursuant to s. 5(1). If participation rights are given to individuals by the statute, then they are entitled to exercise those rights, even though it may slow down the work of the commission. This is not to say that every person who wishes to participate fully may do so. Each person must establish to the satisfaction of the commissioner (reviewable by this court) that he has more than just a general interest, but that he has a direct and substantial interest.

¶ 21 I think it would be wrong, and completely unrealistic, to take this passage as meaning that a commissioner should close his eyes to the delay and expense involved in following a proposed course. There can be no doubt that the Commissioner in the case at bar has been deeply sympathetic at all times to the parents of the babies who died. This sympathy might well have led him to grant their

request for standing in Phase II, or to state the case they requested, regardless of the legal merits in so doing, if he had not thought there would be serious consequences prejudicial to the completion of the inquiry in following either of those courses.

¶ 22 I am satisfied, in any event, that there were other good and sufficient reasons for refusing the stated case, even if the Commissioner erred in considering the attendant delay and expense.

4. He erred in characterizing the concern and interest of the parents as "academic".

¶ 23 As stated above in connection with Mr. Manning's second submission, I think the interest of the parents in Phase II of the inquiry is academic in the sense that the outcome of that phase of the inquiry can have no practical consequences for them. The only way in which Phase II might affect them differently from other members of the public would be in shedding light on the cause of the deaths. But that is a matter on which the parents have already been fully heard.

¶ 24 Section 5(1) of the Public Inquiries Act requires the commission to permit persons to participate only in respect of evidence relevant to the substantial and direct interest that they have shown. A person granted standing in respect of a particular interest does not thereby acquire the right to participate in all aspects of the inquiry, regardless of whether that interest is involved. Furthermore, a commissioner must be able to control proceedings by preventing undue repetition. The parents have had the opportunity to be heard on matters relevant to their interest, the determination of the cause of the deaths. The inquiry into that subject has ended. Phase II is intended to deal with a different matter. The parents should not be permitted to use Phase II to go back over the matters relating to the cause of death that have been, or could have been, covered in Phase I. Yet that is the only matter in which they have a substantial and direct interest, different from that of all members of the public. There is, therefore, no reason why their counsel should be permitted to participate in Phase II.

5. The Commissioner erred in finding that the parents had no substantial and direct interest in Phase II, when it appeared that some of them had vital information to give in connection with Phase II.

¶ 25 Here again Mr. Manning relied on *Re Royal Commission On The Northern Environment*, supra, where Linden J. said at p. 419:

If a person has vital information to give or has made the charges that the commission is inquiring into, then that person may be considered to have a substantial and direct interest, whereas others might not: see *Re Public Inquiries Act and Shulman*, [1967] 2 O.R. (2d) 375, 63 D.L.R. (2d) 578.

¶ 26 Linden J. did not suggest that this factor was necessarily determinative of the question of whether a person should be granted standing, and I do not think it could be in a case like the one at bar where the outcome of Phase II can have no practical consequences for the parents. The *Shulman* case was one in which the person who was held to be entitled to the privilege of having his own counsel in giving evidence, which is one of the aspects of "standing", was a person who was in jeopardy of being discredited in the eyes of the public if certain findings were made by the commissioner. The parents are in no such position. They also have been assured by the Commissioner that they will be entitled to counsel, if they are called as witnesses.

6. The Commissioner erred in making a distinction between the interest of the parents in Phase I and their interest in Phase II.

¶ 27 It is apparent from what I have said in connection with the second, fourth and fifth submissions that I do not agree with this submission. The position of the parents would be entirely different if there had never been a Phase I, and the issue was whether they should have standing in a new inquiry into the investigation, institution, and prosecution of the charge of murder against Susan Nelles. They might well be accorded standing in such an inquiry, because of their interest in determining the cause of death of their children.

¶ 28 But, to repeat, full effect and recognition has been given to that interest in Phase I. They have had the day in court to which they were so clearly entitled, but that day is now over. If the Commissioner was right in holding that their interest in the narrow issue of whether Susan Nelles was fairly dealt with is no different from that of any concerned member of the public, then they should not participate through counsel in Phase II because they have no substantial and direct interest in that part of the inquiry. I think the Commissioner was right in refusing the parents standing in Phase II of the inquiry for that reason.

¶ 29 The argument on the application to our Court occupied a full morning and a full afternoon. It included a complete review of the Commissioner's decision not to grant standing to the applicant parents. If the time occupied in this Court shows that there may have been an arguable case, should we now direct a stated case, even though we have decided the Commissioner was right in his decision not to grant standing? Is it necessary that that question now be argued a second time before this Court? I think not. Section 6(2) appears to me to confer some discretion on the Divisional Court as to whether it will direct a commission to state a case. I think that such discretion can properly be exercised against making the direction in any case in which the court has heard full argument and has concluded that the commission was correct in what it did.

¶ 30 For the foregoing reasons, the application is dismissed. No one has suggested that there be an order as to costs.

**SOUTHEY J.**

**SAUNDERS J.:**— I concur.

**HOLLINGWORTH J.:**— I concur.

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qp/s/mes



**Shulman, Re**

**Re Public Inquiries Act and Shulman**

Ontario Court of Appeal

Aylesworth, Schroeder and McLennan, J.J.A.

Judgment: June 27, 1967

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Counsel: W. B. Williston, Q.C., and John Sopinka, for applicant, Dr. M. Shulman.  
F. W. Callaghan, Q.C., for Attorney-General of Ontario.  
P. B. C. Pepper, Q.C., for Dr. Cotnam.  
C. L. Dubin, Q.C., for the Commissioner.

Subject: Public

Administrative Law --- Public inquiries -- Practice and procedure -- Witnesses.

Investigation by Commissioner -- Allegations of misconduct by officials -- Advice of Court  
-- "Person affected" -- Rights -- Counsel -- Public Inquiries Act, R.S.O. 1960, c. 323, s. 5.

A Commissioner was appointed under the Public Inquiries Act to inquire into allegations by S. of misconduct in office of certain senior officials in the provincial Government. On a case stated by the Commissioner to the Court of Appeal, held, (1) S. was a "person affected" within s. 5 of the Act and, having made substantial allegations against persons in office, was liable to be discredited if those allegations should prove, on proper inquiry, to be unfounded. (2) The inquiry was, therefore, to be distinguished from one held to gather information to report to the Government on the desirability of proposed legislation or for other curative purposes, and S. should have his own counsel, rather than Commission counsel to bring out his evidence in chief and that of his other witnesses. However, they should be liable to cross-examination by counsel for the Commission or for other parties affected on all matters relevant to the allegations. (3) Counsel should have the right to make representations at the close of the evidence.

The judgment of the Court was delivered orally by Aylesworth, J.A.:

1 This is a case stated to this Court by Parker, J., Commissioner under the *Public Inquiries Act*, R.S.O. 1960, c. 323, and so appointed by Order in Council dated April 13, 1967. The case stated is dated May 30, 1967. The object of the inquiry directed to the learned Commissioner is in essence, if not altogether, concerned with allegations of misconduct in office on the part of certain senior Government officials, allegations made by one Dr. Shulman, formerly a Chief Coroner of the Province in Metropolitan Toronto.

2 In this Court counsel appeared for the applicant, Dr. Shulman, for the Attorney-General, for Dr. Cotnam, one of the persons against whom allegations were made, and at the request of the Court Commission counsel also was present during the argument of the stated case. In order to appreciate the extent and subject-matter of the questions specifically addressed to this Court by the learned Commissioner, it is necessary to quote

from the stated case the general ruling or rulings made by him at the outset of his inquiry and those rulings as they appear in the stated case, are as follows:

Since this is not a trial, all witnesses will be examined by the Commission counsel. Any person being examined, may be accompanied by his own counsel. If any evidence is given, which alleges any misconduct on the part of any person which could form the basis of civil or criminal proceedings, that person's counsel may request the Commission counsel to further examine the witness in regard to such allegations, or request the Commission to accord him the right to examine the witness with respect to such allegations. When the Commission counsel has examined all the witnesses, whom he proposes to call, the Commission will hear and examine any further witness or witnesses who wish to testify or whose testimony is requested by any person, and whose testimony the Commission believes to be relevant.

After all witnesses have been examined, an opportunity will be afforded to any witness or counsel whose right to attend has been recognized to make representations with respect to any matter under investigation.

The specific questions addressed to this Court in the case stated are as follows:

(1). Are the orders or directions that I gave as hereinbefore set forth as to the mode of the conduct of the inquiry valid?

(2). If the answer to question (1) is no then (a) was I right in ruling that all witnesses will be examined by the Commission counsel? (b) was I right in ruling that any person being examined may be accompanied by his own counsel and if any evidence is given which alleges any misconduct on the part of any person which could form the basis of civil or criminal proceedings that person's counsel may request the Commission counsel to further examine the witness in regard to such allegations or request the Commission to accord him the right to examine the witness with respect to such allegations? (c) was I right in ruling when the Commission counsel has examined all the witnesses whom he proposes to call the Commission will hear and examine any further witness or witnesses who wish to testify or whose testimony the Commission believes to be relevant?

(3). Am I entitled under the terms of the Commission to inquire into allegations made by Dr. Shulman at a time when he was (?page 377) not serving as chief coroner if they relate to allegations that the Government of Ontario and certain senior civil servants of the Department of the Attorney General for Ontario or any of them unlawfully or improperly (1) suppressed investigations or inquests, (2) interfered with investigations or inquests, (3) suppressed evidence relating to investigations or inquests conducted in the office of the chief coroner for Metropolitan Toronto during the period when Dr. Shulman served as chief coroner?

Before answering the questions it is desirable to state the views of this Court with respect to one aspect of s. 5 of the *Public Inquiries Act*. That section is the well-known section which confers a jurisdiction on this Court, a supervisory jurisdiction, if I may so term it, by way of stated case to this Court respecting the validity of any decision, order, direction or other act of the Commissioner called into question by any person affected. The meaning of that section is not at large. It has been passed upon more than once or at least once in a very exhaustive manner by this Court.

3 In the instant Commission it is our view that Dr. Shulman is a person affected within the meaning of the section. It is to be observed that that phrase "any person affected" occurs in the very first subsection of s. 5 in reference to any order, direction, decision or other act of the Commission so that if Dr. Shulman, for example, receives what he considers an adverse ruling upon some matter with respect to the inquiry of the learned

Commissioner, he, in our view, is a person affected by that ruling and clearly within the section. That is sufficient to bring him within the section. It is also said, and we think with substantial justification, that (in an inquiry of the sort being pursued by the learned Commissioner) Dr. Shulman, who has made substantial allegations against persons in office, really is liable to be discredited in the eyes of the public if those allegations upon proper inquiry should prove to be unfounded and in that aspect of the matter he may well be considered to be a person affected. Having said so much I now address myself to the answers to be given to the specific questions addressed to this Court.

4 We think the answer to Q. (1) is "No" and that will be the answer of this Court. The answer to Q. 2(a) is "No". The answer to Q. 2(b) is "Yes". The answer to Q. 2(c) is "Yes". The answer to Q. (3) is "Yes". The precise framework of Qs. 1 and 2, however, is such that in deference to the learned Commissioner and for purposes of clarity in reference to further hearings by the Commissioner and for the assistance not only of him but of counsel engaged on the inquiry, we feel it desirable to elaborate on the answers given.

5 In our view, the present inquiry is decidedly of the type with which this Court was called upon to deal in *Re Children's Aid Society of the County of York*, [1934] O.W.N. 418, and again in *Ontario (Crime Commission), Re*, (subnom. *Feeley, Ex parte*), [1962] O.R. 872, 133 C.C.C. 116, 34 D.L.R. (2d) 451 (C.A.) 116, and a type of inquiry, therefore, to be distinguished from an inquiry directed to the gathering of information for the purposes of reporting, for example, to a Government department as to the desirability or otherwise of enacting legislation upon a given subject, or as to other corrective measures. Accordingly, and within the principles enunciated in the two authorities to which reference has been made, Dr. Shulman should be accorded the privilege, if he so requests, of having his evidence-in-chief upon any allegation which he has made brought out through his own counsel and he should be subject to cross-examination not only by counsel for the Commission but by any person affected by his evidence. Cross-examination, wherever it is permitted, is not to be a limited cross-examination but is to be cross-examination upon all matters relevant to eliciting the truth or accuracy of the allegations or statements made. Similarly, any person affected by allegations made before the learned Commissioner should be accorded the privilege of examination as a witness by his own counsel and should be subject to a right of cross-examination, not only by counsel for the Commission but by any person affected by the evidence of that witness.

6 All these privileges of examination-in-chief and cross-examination, and particularly with respect to cross-examination, are, of course, subject to the discretion of the learned Commissioner as to relevancy, the avoidance of repetition and like matters. This Court is not under any apprehension that competent counsel appearing before the Commission will abuse the privileges which are to be accorded to them. They, as well as the learned Commissioner himself and the learned counsel for the Commission are, of course, engaged in furthering the very object, if not the sole object of the inquiry itself which is to elicit in the fullest and fairest manner all relevant information on the subject-matter thereof. It goes without saying that counsel for the Commission has a heavy responsibility in these matters and will be the proper person to call witnesses and to examine them in chief where those witnesses are not represented before the Commission by their own counsel.

7 One part of the ruling by the learned Commissioner should be mentioned. The last paragraph thereof refers to a right which may be termed a right of summing up or making representations to the Commissioner after all witnesses have been examined. That, of course, is a right which the learned Commissioner manifestly intends should be accorded, and we agree it should be, and although we have been compelled to answer the first question "no" it should be made plain that that answer does not in any way impugn the ruling lastly mentioned.

8 Because of the very nature of an inquiry of this character and of the duties of the learned Commissioner, much must be left to his discretion and to the common sense of competent counsel appearing before him. If proper co-operation is observed in seeing that all legitimate means are employed to bring out the very truth as to allegations made and being inquired into, there would appear at present, at least, to be but slight ground, if any, remaining for addressing further requests for stated cases to this Court with their consequent delays in the completion of the subject-matter of the inquiry.

9 It is, of course, for the Commissioner in his wisdom and the Commissioner alone to decide whether he will permit Dr. Shulman through his counsel to pursue without interruption the whole series of his allegations before any cross-examination takes place or whether, on the contrary, each allegation should be exhausted by examination and cross-examination before another allegation is investigated. Dr. Shulman's counsel should be permitted to examine in chief any witnesses whom he may call and any such witnesses, as has been more than amply demonstrated in what has been said, are subject to the fullest rights of cross-examination by other counsel participating in the inquiry.

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**IPPERWASH INQUIRY**



**COMMISSION D'ENQUÊTE  
SUR IPPERWASH**

## **RULING ON STANDING AND FUNDING**

### **I. THE INQUIRY PROCESS**

I have been appointed by Order in Council 1662/2003 dated November 12, 2003 to:

- a) inquire into and report on events surrounding the death of Dudley George; and
- b) make recommendations directed to the avoidance of violence in similar circumstances.

The Inquiry will be conducted in two parts. Part I will focus on the matters set out in paragraph (a) of the Order in Council. Part II will address the matters set out in paragraph (b) of the Order in Council.

The Rules of Procedure and Practice to govern Parts I and II of the Inquiry have been published on the Commission website at [www.ipperwashington.ca](http://www.ipperwashington.ca).

#### **A. Process – Part I**

Part I will be conducted by way of public hearings to be held in Forest and Toronto, at which witnesses will give evidence under oath or affirmation, and at which the witnesses will be examined and cross-examined. Parties with standing will make closing submissions at the end of Part I.

## **B. Process – Part II**

Part II will address primarily policy issues and will proceed concurrently with Part I. In Part II, the Commission will commission research and policy papers from experts, invite written and/or oral submissions from parties with standing and the public, convene meetings, symposia (the format of which may vary) and hold evidentiary hearings on relevant public policy topics.

## **II. STANDING AND FUNDING**

The Commission published a Notice of Hearing which invited interested parties to apply for standing and funding. The Commission received thirty-five applications for standing and seventeen applications for funding. The applications were heard in Forest from April 20 to 23, 2004. We also received two applications for standing after the standing hearings concluded and those are dealt with in this ruling.

### **A. Standing – Part I**

I have granted standing in Part I to persons or groups who have demonstrated that they have a substantial and direct interest in the subject matter of the Inquiry pursuant to section 5.1 of the *Public Inquiries Act*, R.S.O. 1990, c.P.41 (the "Act"). I have also granted standing, on a discretionary basis, to parties who do not have a direct and substantial interest in the subject matter of the Inquiry, but who represent distinct ascertainable interests, and whose expertise or perspective will be essential if the Commission is to fulfill its mandate.

A grant of standing for Part I will entitle a party to:

1. access to documents collected by the Commission, subject to the Rules of Procedure and Practice;
2. advance notice of documents which are proposed to be introduced into evidence;

3. advance provision of statements of anticipated evidence;
4. a seat at the counsel table;
5. the opportunity to suggest witnesses to be called by Commission Counsel, failing which an opportunity to apply to me to lead the evidence of a particular witness;
6. the opportunity to cross-examine witnesses on matters relevant to the basis upon which standing was granted; and
7. the opportunity to make closing submissions.

By seeking and being granted standing, a party is deemed to have attorned to the jurisdiction of the Commission and to abide by the Commission's Rules of Procedure and Practice.

#### **B. Standing – Part II**

I have granted standing for Part II of the Inquiry to parties that represent distinct ascertainable interests and perspectives that are likely to be helpful to me in considering policy-based or systemic "recommendations directed to the avoidance of violence in similar circumstances."

### **III. STANDING - REASONS**

#### **A. Standing – Parts I and II**

I have granted standing for both Parts I and II of the Inquiry to the following parties:

#### ***The Estate of Dudley George and George Family Group***

The Estate of Anthony "Dudley" George, Maynard "Sam" George, Reginald George, Pamela George, Joan Price, and Laverne George, representing five of Anthony "Dudley" George's ("Dudley George") seven siblings, have applied for and are hereby granted standing on their own behalf and on behalf of the estate of their brother, Dudley George,

for Parts I and II of the Inquiry. The interests of its members will be directly and substantially affected by the subject matters of both parts of the Inquiry, and their participation will be essential to the Commission if it is to fulfill its mandate.

*Aazhoodena and George Family Group*

The Aazhoodena and George Family Group (consisting of Perry Neil Watson George, Darryl Kerry Stonefish, Cheryl Fay Stonefish, Kevin Charles Daniel Simon, Laura Mia George, Christina Laura Wakefield, Robert Darryl Stonefish, Leanne Louise George, Cathryn May Mandoka, Graham Fletcher George, and Daniel Ray George, Jr.) have applied for and are hereby granted standing to participate in Parts I and II of the Inquiry. Members of the Aazhoodena and George Family Group are each related, by blood or marriage, to Dudley George, and include descendants of members of the former Stoney Point Reserve. The interests of the members of this group will be directly and substantially affected by the evidence led at the Inquiry. The participation of this group's members, through submissions, and as witnesses, will also assist the Commission in the fulfillment of its mandate.

*Residents of Aazhoodena*

This group consists of fifty residents of Camp Ipperwash, now referred to as Aazhoodena by its occupants. Several of its members were present at Ipperwash Provincial Park when Dudley George died, several are related to Dudley George, and each resides at Camp Ipperwash/Aazhoodena or Kettle and Stony Point First Nation. The members of this group have applied and are hereby granted standing for Parts I and II of the Inquiry. The members have a direct and substantial interest in the work of both Parts of the Inquiry and their participation will assist the Commission in fulfilling its mandate in both Parts of the Inquiry.

*Chippewas of Kettle and Stony Point First Nation*

The Chippewas of Kettle and Stony Point First Nation (the "First Nation") have applied for and are hereby granted standing for Parts I and II of the Inquiry. Dudley George was a member of the First Nation, as were many of the witnesses to his death and the circumstances surrounding his death. Ipperwash Provincial Park and Camp Ipperwash/Aazhoodena are lands previously held by the ancestors of many members of the First Nation. Its members have been and continue to be significantly affected by the events of September, 1995. Their interests will be directly and substantially affected by the work of this Commission, in both its Parts.

*Province of Ontario*

The Province of Ontario has applied for and is hereby granted standing to participate in both Parts I and II of the Inquiry. The involvement of several Crown ministries, including the Ministry of Natural Resources, the Ministry of the Attorney General (including the Special Investigations Unit and the Ontario Native Affairs Secretariat), and the Ministry of Community, Safety and Correctional Services (formerly the Ministry of the Solicitor General) in the events of September, 1995, is likely to be examined in both stages of the Inquiry. The Province therefore has a direct and substantial interest in the subject matter of both Parts of the Inquiry, and represents a distinct and ascertainable interest and perspective. Its participation is essential to the discharge of the Commission's mandate.

*The Honourable Michael D. Harris*

Mr. Harris has applied for and is hereby granted standing in Parts I and II of the Inquiry. At the time of the events giving rise to the Inquiry, Mr. Harris was the Premier of Ontario. The extent and nature of his participation in ministerial decision making at the time of Dudley George's death has been brought into question in previous civil

proceedings commenced by family members of Dudley George. Mr. Harris' interests are therefore directly and substantially affected by the subject matter of Part I of the Inquiry. Further, he has a substantial interest in the policy issues to be considered by the Inquiry.

*Charles Harnick*

Mr. Harnick has applied for and is hereby granted standing for Parts I and II of the Inquiry. At the time of the events that give rise to this Inquiry, Mr. Harnick was the Attorney General of Ontario and the Minister responsible for Native Affairs. In the civil action that preceded this Inquiry, his involvement in the events surrounding the death of Dudley George was put at issue, and his involvement is likely to be examined in this Inquiry. As such, he has a direct and substantial interest in the Commission's work in both Parts of the Inquiry.

*Robert Runciman*

Mr. Runciman has applied for and is hereby granted standing for Parts I and II of the Inquiry. At the time of the events at issue in this Inquiry, Mr. Runciman was the Solicitor General for Ontario and Minister for Correctional Services. In the civil action that preceded this Inquiry, it was alleged that Mr. Runciman's participated in the events leading up to the death of Dudley George. The same issues may arise in Part I of the Inquiry. Mr. Runciman therefore has a direct and substantial interest in the subject matter of Part I of the Inquiry. Similarly, the relationship between the OPP and the Solicitor General are likely to be at issue in Part II of the Inquiry, and Mr. Runciman therefore has a direct and substantial interest in the subject matter of Part II.

*Marcel Beaubien*

Mr. Beaubien has applied for and is hereby granted standing for Parts I and II of the Inquiry. At the time of the events that give rise to this Inquiry, Mr. Beaubien was the Member of the Legislative Assembly for the provincial riding encompassing Ipperwash

Provincial Park, as well as Kettle and Stony Point First Nation, the Town of Forest, and the surrounding lands. In his application for standing, Mr. Beaubien asserts that he was "an important participant" in events and activities relating to the occupation of Ipperwash Provincial Park and Camp Ipperwash/Aazhoodena in the months prior to and following the death of Dudley George in September, 1995. As such, he has a direct and substantial interest in the work of both Parts of the Inquiry.

***Ontario Provincial Police***

The Ontario Provincial Police ("OPP"), Commissioner Gwen Boniface, and the commissioned officers of the OPP have applied for and are hereby granted standing for Parts I and II of the Inquiry. They have a direct and substantial interest in both Parts of the Inquiry, arising from the direct involvement of the OPP and its officers in the events in question, and in relation to any policy recommendations relating to policing that may be made pursuant to the Commission's work in Part II of the Inquiry.

***Ontario Provincial Police Association***

The Ontario Provincial Police Association ("OPPA") has applied for and is hereby granted standing for Parts I and II on behalf of its present and past members, including Mr. Kenneth Deane, who may have had any involvement with any of the matters that are the subject matter of the Inquiry. The OPPA is the exclusive collective bargaining agent for all non-commissioned officers of the OPP and civilian members of the OPP not employed in supervisory or confidential capacity. Those members of the OPPA referred to above have a direct and substantial interest in the Part I of the Inquiry, in that they were present, on duty, and involved in the events giving rise to this Inquiry in September 1995 at Ipperwash Provincial Park. Further, its members have a direct and substantial interest in Part II of the Inquiry.

*Office of the Chief Coroner for Ontario*

The Chief Coroner of the Province of Ontario has applied for and is hereby granted standing for Parts I and II of the Inquiry. On September 7, 1995, shortly after the death of Dudley George, the Office of the Chief Coroner commenced an investigation into Mr. George's death. I anticipate that the report generated as a result of that investigation, as well as subsequent investigations conducted by the Chief Coroner, are likely to assist the Commission in fulfilling its mandate for Part I of the Inquiry. The Chief Coroner has the power to call an inquest; however, the Chief Coroner submitted that given the broad mandate of the Order-in-Council, he may determine that an inquest would be an unnecessary duplication of effort and expense and any benefit that an inquest would provide to address the considerations of section 20 of the *Coroner's Act* and issues arising from his investigation will be realized through the Inquiry. Further, the Chief Coroner's expertise with respect to both the fact finding process and in the development of policy recommendations directed to the avoidance of deaths in similar circumstances is likely to be of assistance to me in fulfilling my mandates under Parts I and II of the Inquiry.

*Municipality of Lambton Shores*

The Municipality of Lambton Shores has applied for and is hereby granted standing for Parts I and II of the Inquiry. Many of the events likely to be at issue in this Inquiry took place within the boundaries of the Municipality. The Municipality participated directly in negotiations with many of the affected and involved parties, both before and after Mr. George's death. The Municipality will be directly and substantially affected by the proceedings in Part I of the Inquiry, and has a direct interest in any policy recommendations arising from Part II of the Inquiry.

*Chiefs of Ontario*

The Indian Associations Co-ordinating Committee of Ontario Inc. ("Chiefs of Ontario") has applied for and is hereby granted standing for Parts I and II of the Inquiry. The Chiefs of Ontario is the umbrella organization for all status Indian communities in Ontario. Its mandate is to represent the interests of each of Ontario's 134 First Nations on issues of broad general significance. It was directly involved in the events immediately prior and subsequent to the death of Dudley George on September 6, 1995. The Chiefs of Ontario has a direct and substantial interest in the subject matters of both Parts of this Inquiry. Further, I anticipate that the perspective and expertise of the organization with respect to First Nations communities will assist the Commission in its work.

*Aboriginal Legal Services of Toronto*

Aboriginal Legal Services of Toronto ("ALST") has applied for and is hereby granted standing for Parts I and II of the Inquiry. ALST is a legal clinic established to serve the Aboriginal community in the Greater Toronto area. While ALST and its membership and clientele do not have direct and substantial interest in the subject matter of Part I of the Inquiry, they have developed considerable expertise with respect to Aboriginal people and the justice system, and particularly with respect to policing. As such, it represents a distinct and ascertainable interest. That expertise will assist the Commission in discharging its mandate in both Parts I and II of the Inquiry.

**B. Standing - Part I**

The following Parties have applied for and been granted standing for Part I only.

***Christopher D. Hodgson***

Mr. Hodgson has applied for and is hereby granted standing to participate in Part I of the Inquiry. At the time of the incidents that give rise to this Inquiry, Mr. Hodgson was the Minister of Natural Resources. The Ministry of Natural Resources had responsibility for Ipperwash Provincial Park, the site of the dispute that resulted in Dudley George's death. In the civil litigation that preceded this Inquiry, initiated by members of Dudley George's family, Mr. Hodgson's actions, responsibilities, and knowledge concerning the events at Ipperwash were put at issue. They are likely to arise in the course of the Inquiry. As such, Mr. Hodgson has a direct and substantial interest in the subject matter of Part I of the Inquiry.

***Debbie Hutton***

Ms. Hutton has applied for and is hereby granted standing with respect to Part I of the Inquiry. Ms. Hutton has asserted in her application for standing that she was the Executive Assistant -- Issues Management in the Office of the Premier at the time of the events in question in this Inquiry. She states that in the days immediately preceding and following the death of Dudley George, she communicated with the Premier and other senior advisors in the Office of the Premier regarding the protest at Ipperwash Provincial Park. She also attended Interministerial Committee and other Government meetings, as a representative of the Premier's Office, at which the situation at Ipperwash Provincial Park and possible Government responses to that situation were discussed. As such, she has a direct and substantial interest in the subject matter of Part I of the Inquiry.

**C. Standing - Part II**

I have granted standing for Part II to the following parties:

*Union of Ontario Indians*

The Union of Ontario Indians has applied for and is hereby granted, standing to participate in Part II of the Inquiry. The Union is the political organization representing 42 of the First Nations in Ontario. Kettle Point and Stony Point First Nation is a member of the Union. The Union represents a distinct and ascertainable interest. Its members have a direct and substantial interest in any policy recommendations I make at the culmination of the Inquiry. The experience and perspective of the Union are likely to assist the Commission in Part II of the Inquiry.

*Chippewas of Nawash Unceded First Nation*

The Chippewas of Nawash Unceded First Nation have applied for and are hereby granted standing to participate in Part II of the Inquiry. This First Nation has its own experiences with disputes concerning land and burial sites, involving circumstances with some similarities to the circumstances experienced by the occupants of Ipperwash Provincial Park and Camp Ipperwash/Aazhoodena. I believe those experiences, combined with the First Nation's involvement in policy initiatives and programs designed to minimize the potential for violence in the context of disputes concerning Aboriginal rights, give this applicant a level of expertise and a perspective that will assist the Commission in the fulfilment of its mandate in Part II of the Inquiry.

*Anishnabek Police Service*

The Anishnabek Police Service has applied for and is hereby granted standing to participate in Part II of the Inquiry. The Anishnabek Police Service is an Aboriginal police service with primary policing responsibility for seventeen First Nation territories in Ontario, including Kettle Point and Stony Point First Nation (although not during the time of events at issue in this Inquiry). The experience of the Anishnabek Police Service

in developing policies, practices and procedures for culturally appropriate police services will assist the Commission in Part II of the Inquiry.

*Nishnawbe-Aski Police Service*

The Nishnawbe-Aski Police Service ("NAPS") has applied for standing in Parts I and II of the Inquiry. I do not find that NAPS has a sufficiently direct and substantial interest in the subject matter of Part I of the Inquiry to be granted standing in that phase of the Inquiry's work. However, the experience and perspective of NAPS will assist the Commission in its work in Part II of the Inquiry, and I therefore grant NAPS standing for that part. NAPS has been involved in the development of culturally appropriate policing practices and the provision of policing services to First Nations communities in the Nishnawbe-Aski area in Northwestern Ontario.

I note that, in its application for standing, NAPS acknowledges the potential overlap between the assistance it may be able to provide to the Commission and the involvement of other Aboriginal police services. I urge Anishnabek Police Services and NAPS to collaborate, wherever possible, to the extent that their interests and experience coincide, to avoid any duplication of their work in Part II of the Inquiry.

*Centre Ipperwash Community Association*

The Centre Ipperwash Community Association ("CICA") has applied for and is hereby granted standing for Part II of the Inquiry. The CICA represents approximately 120 non-First Nations households in the area of Ipperwash Provincial Park, and therefore represents a distinct and ascertainable interest. Its members have a direct and substantial interest in any policy recommendations that I may make pursuant to the proceedings in Part II of the Inquiry. Further, the perspective of the CICA may assist the Commission in the fulfillment of its mandate in Part II.

*Aboriginal Peoples Council of Toronto*

The Aboriginal Peoples Council of Toronto has applied for standing in Parts I and II of the Inquiry. The Council is granted standing for Part II of the Inquiry but not for Part I of the Inquiry. The Council represents approximately 1000 members of the Aboriginal community in the Greater Toronto Area. Its mandate is to advocate on behalf of Aboriginal peoples in the Metropolitan Toronto area with respect to, among other things, policing issues and relations between police and Aboriginal people and organizations. The Council represents a distinct and ascertainable interest and perspective, and the involvement of the Council in Part II of the Inquiry may assist the Commission in the subject matter of that Part. I also encourage the Council to work, in whatever manner it deems appropriate, with Aboriginal Legal Services of Toronto, with respect to the subject matter of Part I of the Inquiry.

*Law Union of Ontario*

The Law Union of Ontario has applied for standing to participate in Parts I and II of the Inquiry. In its application materials, the Law Union demonstrated that, in the approximately 30 year history of the organization, it has developed considerable interest in and experience concerning policing issues. Further, the Law Union has involved itself in advocacy concerning issues affecting Aboriginal communities, including the events that give rise to this Inquiry. I do not find that the interests of the Law Union are sufficiently directly and substantially affected by the subject matter of Part I of the Inquiry to warrant granting the Law Union standing for that Part. I find, however, that the Law Union's interest and considerable experience with respect to policing issues may assist the Commission in Part II of the Inquiry. Accordingly, the Law Union is granted standing for Part II.

*African Canadian Legal Clinic*

The African Canadian Legal Clinic (the "ACLC") has applied for standing for Parts I and II of the Inquiry. In my view, the ACLC does not represent interests directly and substantially affected by the subject matter of Part I of the Inquiry, to warrant Part I standing. The ACLC provides advice and representation to African Canadians on legal matters involving issues of systemic and institutional racism and racial discrimination. In that capacity, ACLC represents a distinct and ascertainable interest and perspective that may be of assistance to the Commission in the fulfillment of its mandate in Part II of the Inquiry and they are granted Part II standing.

*Amnesty International Canada*

Amnesty International Canada has applied for standing for Parts I and II of the Inquiry. In addition to having a great deal of experience and involvement with international human rights issues and cases, the organization has engaged in advocacy and analysis concerning the events that are at issue in this Inquiry. I believe that its perspective and experience may assist the Commission in the fulfillment of its mandate in Part II of the Inquiry, and accordingly, I grant standing to Amnesty International Canada for Part II. In my view, Amnesty International does not have a sufficiently direct and substantial interest in the subject matter of Part I of the Inquiry to warrant my granting standing for that Part of the inquiry, but of course, they are free to attend the hearings that will constitute Part I of the Inquiry, in a non-participatory capacity and I encourage its members to do so.

*Canadian Civil Liberties Association*

The Canadian Civil Liberties Association ("CCLA") has applied for and is hereby granted standing to participate in Part II of the Inquiry. The CCLA has, in its approximately 40 year history, developed considerable expertise in the course of its

advocacy on policing and Aboriginal issues. This expertise may assist the Commission in the fulfillment of its mandate for Part II of the Inquiry.

*Mennonite Central Committee Ontario*

The Mennonite Central Committee Ontario ("MCC") has applied for and is hereby granted standing for Part II of the Inquiry. As stated in its application materials, the MCC is the relief and development agency of the Mennonite and Brethren in Christ Church. The MCC was involved with the people of Kettle Point and Stony Point First Nation prior to September, 1995, and directly after the death of Dudley George. Their experience and involvement in the de-escalation and resolution of conflict in this and other conflicts will assist the Commission in Part II of the Inquiry.

*George Simpson and Rowland Carey*

George Simpson and Rowland Carey have applied for standing for Part II of the Inquiry. Messrs. Simpson and Carey were Correctional Managers indicted and disciplined after a riot at the Bluewater Youth Centre. In their standing application, they state that political interference similar to that alleged to have occurred at Ipperwash also occurred during the police investigation of that riot. Messrs. Simpson and Carey are granted standing in Part II of the Inquiry, particularly with respect to the relationship between the executive branch of government and the police.

*The Ontario Federation for Individual Rights and Equality*

The Ontario Federation for Individual Rights and Equality has applied for standing for Parts I and II of the Inquiry. The Commission has been advised by Ms. Mary Lou LaPratte, the president of the Federation, that the Federation was incorporated in 1996 and has 350 members. The application states that the Federation was formed as a result of the tragedy in 1995 and the aftermath within the Ipperwash community. The application indicates that Ms. LaPratte is a long-time and active resident of the Ipperwash

area. In my view, the Federation, which was not formed until after the events of September 1995, does not have a direct and substantial interest in the subject matter of Part I of the Inquiry to warrant Part 1 standing. However, the application indicates that Ms. LaPratte in her individual capacity may have information that will assist the Inquiry in its work in Part I and Commission staff will be contacting Ms. LaPratte to discuss her potential participation as a witness. The members of the Federation do have an interest, based on the Federation's application, in the policy recommendations that I may make in Part II of the Inquiry and accordingly the Federation is granted standing in Part II of the Inquiry.

#### IV. OTHER APPLICANTS

The following parties have applied for standing in one or both Parts of the Inquiry. I have concluded that their interests are not directly and substantially affected by the mandate of either Part of the Inquiry, or that they do not represent a distinct and ascertainable interest. However, several of these applicants will be called upon to participate in the work of the Commission as witnesses and I encourage each of these parties to attend the hearings and proceedings that constitute each Part of the Inquiry, if they are so inclined.

##### *Jeffrey Bangs and Paul Rhodes*

Messrs. Bangs and Rhodes have applied for standing to participate in Part I of the Inquiry. They each allege that they have an interest which is directly and substantially affected by the subject matter of Part I. Mr. Bangs was Executive Assistant to the Minister of Natural Resources at the time of the events at issue in this Inquiry. Mr. Rhodes was Senior Media Advisor to the Office of the Premier at the same time. Mr. Bangs asserts that he was present at several Interministerial Committee meetings that took place on September 4 through September 6, during which time the situation at Ipperwash Provincial Park was discussed. Mr. Rhodes asserts that he was involved in strategic discussions throughout the same period of time, and was further involved in

communicating the position of the Premier's Office and the Government in the period following Mr. George's death. The participation of Mr. Bangs and Mr. Rhodes in the events of September, 1995 in their respective capacities will likely mean that both individuals will be called as witnesses in Part I of the Inquiry. However, in my view, neither Mr. Rhodes nor Mr. Bangs has sufficient a direct and substantial interest in the subject matter at issue in Part I of the Inquiry to warrant granting standing. If, during the course of the Inquiry, that situation changes, they will be given an opportunity to renew their application for standing.

### *The Golden Rule Society*

The Golden Rule Society, of Sarnia, Ontario, has applied for limited standing at the Inquiry. The Society has requested that it be permitted to pose the written question set out in its application to the OPP and First Nations representatives. The Society does not have a direct and substantial interest in the subject matter of either Part of the Inquiry, and accordingly, their request for standing is denied.

### *Munyonze Hamalengwa*

Munyonze Hamalengwa has applied, on his own behalf, for standing in Parts I and II of the Inquiry. Mr. Hamalengwa is a criminal lawyer practicing in the Greater Toronto Area. He is a prolific writer and has done considerable work in the area of systemic racism, through his writing and his legal advocacy. However, I find that Mr. Hamalengwa does not have a direct and substantial interest in the subject matter of either Part of the Inquiry distinct from the interests represented by other parties granted standing. I encourage Mr. Hamalengwa to work with the other organizations granted standing with a view to contributing to the process in whatever manner he and the particular organization deems appropriate.

*Maynard T. George*

Maynard T. George has applied for standing to participate in the Inquiry, in his individual capacity. In my view, Mr. Maynard does not have a direct and substantial interest in either Part of the Inquiry that is distinct from other parties granted standing. However, his involvement, at various points, in the occupation of Camp Ipperwash/Aazhoodena, and in other disputes, mean that his participation in the Inquiry as a witness will be of assistance to the Commission. Moreover, it was clear from Mr. George's oral submissions on standing that he has amassed a great deal of documentary, videotaped, and other evidence that will assist the Commission throughout Parts I and II of the Inquiry. Accordingly, Commission Counsel will work with Mr. George to ensure that any relevant evidence and information in his possession is brought to light at the Inquiry.

*Mike and Brenda Neuts*

Mike and Brenda Neuts have applied for standing in Part II of the Inquiry. In their application for standing, the Neuts draw parallels between the police and coroner's investigations into the death of Dudley George and comparable investigations into the death of their son, Myles Neuts. While both deaths were tragic, and gave rise to considerable controversy, I find that the interests of the Neuts are not sufficiently directly and substantially connected to the subject matter of this Inquiry to warrant my granting standing to the Neuts. Mr. and Mrs. Neuts are, of course, welcome to attend the hearings in Part I and the meetings, symposia, and other events in Part II of the Inquiry that are open to the public if they wish.

*Trevor Cloud*

Trevor Cloud has applied for standing to participate in the Inquiry, in his individual capacity. Mr. Cloud has stated in his application for standing that he is descended from the members of the former Stoney Point Reserve. While Mr. Cloud may be called as a

witness in Part I of the Inquiry, and as such he will be interviewed by Commission staff, I do not find that he has a direct and substantial interest in either Part of the Inquiry, pertaining to the events of September, 1995, that is distinct from other parties granted standing. Mr. Cloud is, of course, encouraged to attend any and all of the Part I hearings and Part II events that he wishes.

*Chief Ka-Nee-Ka-Neet*

An application for standing and funding was made on behalf of the Traditional, Inherent Head Chief of Anishinabe Nation, Ka-Nee-Ka-Neet. The application states:

1. the Chief is responsible to ensure that the provisions of Treaties and Bargains are upheld;
2. the Chief has extensive knowledge on Indian issues and as such would be able to expedite certain aspects of the Inquiry;
3. all servants of the Crown are trustees to non-enfranchised Indians and as such there exists a trustee/fiduciary relationship; and
4. the Chief has knowledge that William Robinson had no capacity to undertake Treaties and as such the Huron Robinson and the Huron Superior Treaties are of the defect (sic).

Chief Ka-Nee-Ka-Neet was unable to attend the standing hearing but requested that I consider his application on the basis of the written materials. I have done this and I am of the view that Chief Ka-Nee-Ka-Neet does not have a direct and substantial interest in the subject matter of the Inquiry nor does he represent a distinct ascertainable interest and perspective that are essential for the discharge of my mandate. Accordingly, his application for standing and funding is denied.

*Bruce Wilson Bressette*

Bruce Wilson Bressette, a member of Kettle and Stony Point First Nation, has applied for standing for Parts I and II of the Inquiry, on the basis of events that occurred at Kettle and

Stony Point First Nation in 1998. The events Mr. Bressette describes in his application for standing are not sufficiently temporally connected to the subject matter of this Inquiry to form a basis for granting standing to Mr. Bressette, or to give Mr. Bressette and his family a distinct and ascertainable interest with respect to the Commission's mandate. He is, however, welcome to make written submissions to the Commission if he believes these events are relevant and should be examined in either Part of the Inquiry, and he is also welcome to attend the proceedings as a member of the public.

## V. FUNDING

### A. Funding - Part I

Paragraph 6 of the Order in Council provides that:

The Commission may make recommendations to the Attorney General regarding funding to parties who have been granted standing, to the extent of the party's interests, where in the Commission's view the party would not otherwise be able to participate in the Inquiry without such funding.

The Commission is to follow Management Board of Cabinet Directives and Guidelines with respect to the expenses of the Commission and must follow the Ministry of the Attorney General's Fee Schedule for Private Sector Lawyers in recommending funding for participants.

To be considered for a funding recommendation, an applicant must:

- a. have obtained standing in at least one of Part I or Part II of the Inquiry;
- b. be able to demonstrate that it does not have sufficient financial resources to enable it adequately to represent its interests; and
- c. have a proposal as to the use it intends to make of the funds and how it will account for the funds.

In addition, I have also considered the following factors in making my recommendations:

- a. the nature of the applicant's interest and/or proposed involvement in the Inquiry;

- b. whether the applicant has an established record of concern for and a demonstrated commitment to the interest it seeks to represent;
- c. whether the applicant has special experience or expertise with respect to the Commission's mandate; and
- d. whether the applicant has attempted to form a group with others of similar interests.

The scope of the funding that I may recommend relates to the payment of counsel and reasonable disbursements in relation to the work of the counsel including reasonable travel and accommodation expenses. Funding, as recommended by me, includes preparation and work done after November 12, 2003.

Ten of the seventeen parties granted Part I standing by these reasons have not made a funding application. They are as follows: the Province of Ontario, the Ontario Provincial Police, Ontario Provincial Police Association, the Chief Coroner of the Province of Ontario, the former Premier and three former cabinet ministers, an MPP and an Assistant to the Premier.

The purpose of funding is to permit the party to adequately represent its interest at the Inquiry. The principle that should guide the funding decisions by the Ministry is one of fairness so that the parties for whom funding is recommended by these reasons should be treated equitably with those other parties for whom the Government is providing funding. There are 7 parties who have been granted Part I standing who have specifically asked for funding. These are as follows:

***The Estate of Dudley George and George Family Group***

The Estate of Dudley George and the George Family Group have requested funding. I am satisfied that the George Family Group meets the criteria for funding and the applicants would not otherwise be able to participate without such funding. As stated in its application, the George Family Group seeks funding for:

1. Legal counsel preparation and attendance fees, and disbursements. The applicants submit that they require and should be afforded a team of four more or less full time legal counsel (one of which may be an articling student), which is the scale of the legal team the applicants had assembled for the trial which was scheduled to begin on October 6, 2003. Three of the proposed counsel already have many years of highly intensive involvement in the issues in this inquiry, and are therefore likely able to make a significant contribution.
2. Prior to the hearing, to conduct a review of existing and new documentation arising out of the killing, to conduct research, to provide assistance to the Inquiry including through provisions of documents, information, analysis, facilitation of contact with various other parties, and for general preparation.
3. Preparation for effective and constructive participation in Inquiry hearings and other activities.
4. Retaining 2-4 experts for studies on historical or legal topics which the estate and family group has identified to this point as being especially significant, such as related to aboriginal burial grounds, and which could supplement or dovetail with the Inquiry's own work.
5. Expenses related to travel and attendance at all Inquiry hearings and other activities;
6. Partial or full payment of expenses for Sam George to attend the hearings in Toronto, such as for accommodation and related expenses. It is submitted that Mr. George is in a unique situation, given his extraordinary degree of participation over the eight years since the shooting, and that his day-to-day presence and participation, with financial contribution, would likely be of assistance to the Inquiry.

In my view, there is a difference in establishing a team for a trial in which the team represents the plaintiffs and a team of lawyers for a commission of inquiry. At this Inquiry, it is the Commission Counsel who will be calling most, if not all, of the witnesses on behalf of the Commission. While counsel will by necessity spend time preparing, it is important that the use of counsel funded at public expense be carefully utilized. Accordingly, I recommend funding for two counsel and an articling student or

clerk including reasonable disbursements and reasonable travel and related expenses in accordance with the Government of Ontario guidelines.

Funding is also sought for retaining experts. Pursuant to the Government guidelines, I am not recommending funding for experts, but I am asking counsel for the George Family Group to discuss with the Commission Counsel the names of the experts they wish to have called and the reason for calling the expert so that Commission Counsel may consider calling the experts.

Funding is also sought for the payment of Mr. Sam George's attendance at the hearings in Toronto, for accommodation and related expenses. I have not determined the location of the hearings yet and this application will be considered at the appropriate time.

*Aazhoodena and George Family Group*

This group includes Pierre George, one of Dudley George's brothers, and a number of his cousins.

I am satisfied after reviewing the submissions of counsel and the funding application that the group meets the criteria for funding.

Mr. Pierre George and the group seek funding for one senior counsel and one junior counsel plus disbursements including travel to Forest and related expenses. Funding is also sought for Mr. Pierre George to travel and stay in Toronto for hearings in Toronto.

I recommend that funding be provided for two counsel including reasonable disbursements and reasonable travel and related expenses in accordance with the Government of Ontario guidelines. I am not prepared to consider funding for Mr. Pierre George to attend the hearings in Toronto until I have made a determination regarding the location of future hearings.

*Residents of Aazhoodena*

One firm represents this group of fifty individuals. Many of these individuals participated in the events in question. I am satisfied from the materials supplied by counsel that the group meets the criteria for funding.

I recommend funding for two counsel and an articling student or clerk including reasonable disbursements and reasonable travel and related expenses in accordance with the Government of Ontario guidelines. The applicants submit that because of the large number of people involved, in their group, their counsel need help to communicate with them. Having such a large group of individuals represented by one firm will be very conducive to the efficient conduct of the hearing process. While I recognize that help will be needed to communicate with such a large group of clients, it should be possible for an articling student or a clerk on a part-time basis to do this.

*Chippewas of Kettle and Stony Pont First Nation*

The Chippewas of Kettle and Stony Pont First Nation seek funding for:

1. Preparation, participation, representation and submissions;
2. First Nation Community Impact (strategy); and
3. Public Relations.

The First Nation submits that it does not have sources of funding that it can secure for its participation in the Inquiry. It submits that in light of its many roles as a level of government, advocate and service provider, the First Nation has no funds available to it that it could reasonably or justifiably allocate for this purpose. In addition, Mr. Henderson, counsel for the First Nation, in his oral submissions advised me that the First Nation's financial statement shows a surplus. Mr. Henderson indicated that the surplus arose from funds received from Casino Rama under an agreement through which all First Nations in Ontario derive some benefit. However, there are rules attached to those funds

that would not contemplate the payment of fees for counsel or for any other activities of this type of legal nature.

I am satisfied that the First Nation meets the criteria for funding and I recommend funding for two counsel and a clerk including reasonable disbursements and reasonable travel and related expenses in accordance with the Government of Ontario guidelines. I am unable to recommend funding for the First Nation community impact strategy or for public relations. Notwithstanding the benefit to the First Nation of undertaking these activities, they are not within the mandate granted to me regarding recommending funding for counsel.

*Municipality of Lambton Shores*

The Municipality of Lambton Shores in its application submits that the Municipality is not in a financial position to fund its participation in the Inquiry. The Municipality seeks funding for a lawyer to be present at the hearing and for a law clerk and a lawyer to be available to review documentation, interview parties and prepare for the Inquiry.

In its application, the Municipality states that:

At the time of these events and subsequently, the Municipality could not afford the legal costs that were being incurred and conducted a fundraising activity in the community in order to assist.

The Municipality further submits that:

1. The Municipality has had to suffer the financial impact of the events surrounding Camp Ipperwash. Not only has tourism been affected, but businesses have been affected and the tax base of the Municipality has been seriously impaired.

2. Values of properties have been affected, declining business activity and the increased cost of providing services and maintenance to the area have had a profound effect on the Municipality budget.
3. The residents should not bear the burden of the costs of participation in this Inquiry. The residents rely on their elected officials to represent them and are relying on the Municipality to take an active and direct role in the Inquiry. They will be relying on the Municipality to represent their comprehensive interests.

The Mayor of Lambton Shores, Mr. Cam Ivey, stated as follows in his oral submissions:

We don't have any money in the budget. We like to think that we run a pretty tight ship here but we are a small rural municipality, and if I can just give you some sort of perspective: if it's going to cost us, say, \$200,000 to be - - have standing here as we go through the whole process, that's going to mean something in the order of three and one-half maybe as much as 4 per cent of our local budget - of our local tax dollar levy and that's quite significant for a community of our size.

While normally, one would expect a municipality to seek funding directly from the Province rather than through the Commission process, I am prepared to recommend funding for the Municipality for two counsel including reasonable disbursements and reasonable travel and related expenses in accordance with the Government of Ontario guidelines.

#### *Chiefs of Ontario*

The Chiefs of Ontario seek funding for three lawyers to participate in the hearings. The Chiefs of Ontario submit that it does not have sufficient resources to permit it to participate in the Inquiry. The Chiefs of Ontario propose to make maximum use of the resources which it can access without Commission funding.

The applications and submissions on behalf of the Chiefs of Ontario indicate that it receives core funding from the Governments of Canada and Ontario and project funding from both levels of government. As the project funding is tied to specific initiatives, the Chiefs of Ontario do not have discretionary resources for proper professional participation in the Inquiry. The Chiefs of Ontario have indicated that it does not have any independent sources of revenue.

The Chiefs of Ontario commit in its application that it will make every effort to make an independent contribution to its proposed intervention. It will contribute its office resources, which include files on First Nations policy issues. It will coordinate input from First Nations, elders and other First Nations organizations, both through direct consultation by counsel, and through the operation of a Steering Committee.

I am satisfied that the Chiefs of Ontario meet the requirement for funding. I recommend funding for two counsel including reasonable disbursements and reasonable travel and related expenses in accordance with the Government of Ontario guidelines.

*Aboriginal Legal Services of Toronto*

The Aboriginal Legal Services of Toronto ("ALST") is primarily funded by Legal Aid Ontario, although it does receive funding from other sources. ALST seeks funding for disbursements for out of town travel expenses for one lawyer and also to retain the services of an additional lawyer to assist in the preparation for participation in the proceedings. As noted in its application, ALST has one director, two staff lawyers and one community legal worker funded by Legal Aid Ontario. Legal Aid Ontario provides a limited amount of funding for disbursements. ALST indicates in its material that it assisted in the last calendar year 1391 clients through intake services and it presently has 379 open case files. ALST states that it requires two lawyers for the Inquiry but cannot use both its lawyers, as it will be unable to serve its clientele. I recommend:

1. funding for one counsel including reasonable disbursements for travel and related expenses in accordance with the Government of Ontario guidelines; and
2. funding for reasonable disbursements for travel and related expenses in accordance with the Government of Ontario guidelines for a second counsel.

### **B. Funding – Part II**

The purpose of funding in Part II is to encourage and facilitate research, submissions, projects and participation from a wide variety of perspectives. I will, therefore, recommend funding to Part II parties for one of two purposes. First, I will recommend project funding to parties to undertake research, prepare submissions, organize meetings, or for other relevant projects. Second, I will recommend disbursement funding to facilitate participation in Part II hearings or meetings. I will consider applications for Part II funding if parties make a written request to the Commissioner to the attention of Nye Thomas, Director of Policy and Research, describing their proposed research/submission/project and an explanation of how this work will assist the Inquiry. Parties will also be required to explain why this work could not be undertaken without public funding. Funding for advocacy groups will not always be granted if their mandates include participation in exercises like this Inquiry. I will make these decisions on a case-by-case basis in view of the need to coordinate projects and research and to ensure that the Inquiry receives the full benefit of the party's expertise.

### **SUMMARY AND CONCLUSION**

Standing for both Parts I and II of the Inquiry has been granted to the following parties:

1. The Estate of Dudley George and George Family Group;
2. Aazhoodena and George Family Group;
3. Residents of Aazhoodena;
4. Chippewas of Kettle and Stony Point First Nation;
5. The Province of Ontario;
6. The Honourable Michael D. Harris;

7. Charles Harnick;
8. Robert Runciman;
9. Marcel Beaubien;
10. Ontario Provincial Police;
11. Ontario Provincial Police Association;
12. Chief Coroner of the Province of Ontario;
13. Municipality of Lambton Shores;
14. Chiefs of Ontario; and
15. Aboriginal Legal Services of Toronto.

Standing for Part I only of the Inquiry has been granted to the following individuals:

1. Christopher D. Hodgson; and
2. Debbie Hutton.

Standing for Part II only of the Inquiry has been granted to the following parties:

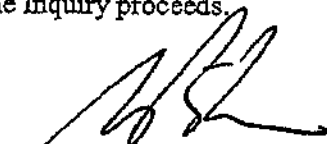
1. Union of Ontario Indians;
2. Chippewas of Nawash Unceded First Nation;
3. Anishnabek Police Services;
4. Nishnawbe-Aski Police Services Board;
5. Centre Ipperwash Community Association;
6. Aboriginal Peoples Council of Toronto;
7. Law Union of Ontario;
8. African Canadian Legal Clinic;
9. Amnesty International Canada;
10. Canadian Civil Liberties Association;
11. Mennonite Central Committee Ontario;
12. George Simpson and Rowland Carey; and
13. The Ontario Federation of Individual Rights and Equality.

In total, 17 parties have been granted standing to participate in Part I of the Inquiry, and 28 parties have been granted standing to participate in Part II of the Inquiry. The diverse

collection of interests and perspectives that will be represented in each Part of the Inquiry is necessary if the Commission is to fulfill its mandate. However, the large number of parties involved could potentially raise logistical and procedural difficulties. There is a danger that the proceedings, particularly in Part I of the Inquiry, will become bogged down by the number of parties with the right to cross-examine witnesses and make submissions. With that in mind, I am urging counsel for each of the parties granted standing to carefully assess where the interests, perspectives and expertise of their clients coincide with the interests, perspectives, and expertise of other parties, and, where possible, to work together with a view to avoiding duplication in the questioning of any witnesses or in any submissions that may be made. Clearly, the parties are in the best position to determine how, and to which issues, they are best aligned. However, if the parties with standing are unable to cooperate to avoid duplication, I will have to intervene to avoid repetitive questioning and submissions.

I was encouraged by the constructive tone of so many of the submissions made before me at the standing hearings in Forest and I am hopeful that the co-operative relationship between the parties and Commission Counsel will continue throughout the Inquiry. I am looking forward to working with all the parties as the Inquiry proceeds.

Date: May 7, 2004



The Honourable Sidney B. Linden  
Commissioner



## **RULING ON STANDING AND FUNDING**

### **APPENDIX E (II)**

THE WALKERTON INQUIRY

LA COMMISSION  
D'ENQUÊTE WALKERTON

## **Ruling on Standing and Funding**

### **I. The Inquiry Process**

I have been appointed by Order in Council 1170/2000 to conduct an inquiry into the following matters:

- (a) the circumstances which caused hundreds of people in the Walkerton area to become ill, and several of them to die in May and June 2000, at or around the same time as *Esherichia coli* bacteria were found to be present in the town's water supply;
- (b) the cause of these events including the effect, if any, of government policies, procedures and practices; and
- (c) any other relevant matters that the commission considers necessary to ensure the safety of Ontario's drinking water.

I will be conducting the Inquiry in two parts. Part I will focus on the matters set out in paragraphs (a) and (b) of the Order in Council. Part I will be further divided into two sub-parts: Part IA and Part IB. Part IA will focus on the circumstances and causes of the *E. coli* contamination in the Walkerton water supply, other than those causes set out in paragraph (b) of the Order in Council. Part IB will address the effect, if any, of government policies, procedures and practices on the cause of these events.

I recognize that there will be some overlap in the issues to be considered in Parts IA and IB. Nevertheless, I consider the division of the Inquiry into these parts important for making my decisions on standing and funding. I will be

flexible in allowing participation where the lines drawn would deny me the assistance which I consider important to a grant of standing.

In Part II of the Inquiry, I will be addressing the matters set out in paragraph (c) of the Order in Council.

### **A. Part I Process**

Part I will be conducted by way of public hearings to be held in Walkerton, at which witnesses will give evidence under oath or affirmation, and at which the witnesses will be examined and cross-examined. Parties with standing will make closing submissions at the end of Part I.

The Rules of Procedure and Practice which have been developed for Part I have been published on the Commission website at [www.walkertoninquiry.com](http://www.walkertoninquiry.com). These have been modelled on the rules used in other public inquiries. I thought that it would be useful to publish these Rules before the hearings on standing. However, if any party granted standing wishes to make submissions on the Rules, it should do so in writing by September 22, 2000. Any changes will be published on the Commission website. Parties granted standing should visit our website regularly for information on practical details and scheduling.

### **B. Part II Process**

Because of the policy nature of the issues, Part II will not proceed by formal evidentiary hearings. Instead, in order to make its work accessible and provide an opportunity for public participation, Part II will proceed in three phases. These three phases encompass Commission Papers, Public Submissions, and Public Meetings as discussed below. They will proceed concurrently with Part I.

#### *(i) Commission Papers*

In the first phase, the Commission will arrange for the preparation of papers (the “Commission Papers”) from recognized experts on a broad range of relevant topics. These Commission Papers will, among other things, describe current practices in Ontario, describe current practices in other jurisdictions, identify difficulties and review alternative solutions. A draft list of study topics has been published on the Commission website.

I have established a Research Advisory Panel (the “Panel”). The Panel will assist me in identifying the subject matter of the Commission Papers and who should be retained to prepare them. The Panel, under my direction, will also monitor the progress of Commission Papers and provide advice and direction to the various authors as needed. The Commission will set and publish a deadline by which all Commission Papers must be completed and the Papers will thereafter be published, in draft, on the Commission website.

(ii) *Public Submissions*

In the second phase, the Commission will invite any person or group with an interest in the subject matter of Part II of the Inquiry to make submissions in writing (the “Public Submissions”) to the Commission about any matter relevant to Part II, including the matters reviewed in the Commission Papers. The Commission will set and publish a deadline by which all Public Submissions must be received. The Public Submissions will be made available for public review.

(iii) *Public Meetings*

In the final phase of Part II, I will convene a number of public meetings relating to the major topics comprising Part II of the Inquiry. The format of the public meetings will be tailored to the topics discussed and may vary among meetings.

I will preside over the public meetings. They may also include participation by the relevant authors of Commission Papers, representatives of those who have been granted standing in Part II and who in my view will make a contribution to the meeting, and selected members of the Research Advisory Panel. Based upon the Public Submissions received, I may invite other persons or groups whom I conclude would make a useful contribution to the discussions.

## **II. Standing and Funding**

The Commission published a Notice of Hearing which invited interested parties to apply for standing. I received 47 applications for standing, some of them involving multiple individuals or organizations. The applications were heard in Walkerton from September 5 to 7, 2000.

## A. Part I Standing

There are two types of standing, full and special, in Part I. Both types may be specifically limited to those portions of the Inquiry that are relevant to the interests of the party which formed the basis for my decision to grant standing.

### (i) *Full Standing*

I have granted full standing in Part I to persons or groups who have demonstrated that they have a substantial and direct interest in the subject matter of the Inquiry pursuant to section 5(1) of the *Public Inquiries Act*, R.S.O. 1990, c.P.41 (the “Act”). In some cases I have also granted full standing, on a discretionary basis, even though the party does not have an interest under section 5(1). I have exercised this discretion on the basis of my assessment of the contribution that such a party will make to the Inquiry. In either case, I have limited full standing to those portions of the Inquiry that are relevant to the party’s interests. Parties will be advised by Commission counsel when issues relevant to their interests will arise. Full standing will include:

1. access to documents collected by the Commission subject to the Rules of Procedure and Practice;
2. advance notice of documents which are proposed to be introduced into evidence;
3. advance provision of statements of anticipated evidence;
4. a seat at counsel table;
5. the opportunity to suggest witnesses to be called by Commission counsel, failing which an opportunity to apply to me to lead the evidence of a particular witness;
6. the opportunity to cross-examine witnesses on matters relevant to the basis upon which standing was granted;
7. the opportunity to review transcripts at Commission offices (a copy of the transcript may be purchased from the court reporter);

8. the opportunity to make closing submissions; and
9. the opportunity to apply for funding to participate in Part I.

(ii) *Special Standing*

I have granted special standing in Part IA to some parties who have been granted full standing in Part IB. Even though these applicants do not have an interest in Part IA under s.5(1) of the Act, I consider that their involvement through special standing will be of assistance to me. Special standing will include:

1. the matters listed under numbers 1, 2, 3, 5, 7, 8 and 9 above; and
2. the opportunity to suggest areas for examination of a certain witness by Commission counsel, failing which an opportunity to request leave to examine the witness on such areas.

**B. Part II Standing**

I have granted standing to persons or groups who in my view are sufficiently affected by Part II of the Inquiry or who represent clearly ascertainable interests and perspectives that I consider ought to be separately represented before the Inquiry. Standing for Part II of the Inquiry will involve:

1. access to documents collected by the Commission which relate to Part II subject to the Rules of Procedure and Practice;
2. the opportunity to make Public Submissions on any matter relevant to the Commission's mandate in Part II, including papers which respond to Commission Papers;
3. the opportunity to participate directly in one or more public meetings where the Commissioner is of the view that such participation would make a contribution to the subject matter of the meeting; and
4. the opportunity to apply for funding to participate in Part II.

## C. Principles

### (i) *Standing*

Before separately addressing each of the applications, I think it is useful to summarize the general principles that have guided my decisions on standing and funding.

- It is essential that the Inquiry be full and complete and that I consider all relevant information and a variety of perspectives on the issues raised in the Order in Council.
- Commission counsel will assist me throughout the Inquiry. They are to ensure the orderly conduct of the Inquiry and have standing throughout. Commission counsel have the primary responsibility for representing the public interest, including the responsibility to ensure that all interests that bear on the public interest are brought to my attention. Commission counsel do not represent any particular interest or point of view. Their role is not adversarial or partisan.
- Applicants are granted standing only for those portions of the Inquiry that are relevant to their particular interest or perspective.
- Parties may be granted special standing in Part IA, rather than full standing, in order to make the work of the Commission accessible to parties who do not have a substantial and direct interest in the subject matter of Part IA, but who nevertheless represent interests and perspectives that I consider to be helpful to my mandate. Those parties will be able to participate in the Inquiry in a meaningful way through the provision of documents, the opportunity to suggest evidence and the opportunity to make closing submissions.
- In order to avoid repetition and unnecessary delay, I have grouped certain applicants into coalitions, as discussed below. I have done this in situations where the applicants have a similar interest or perspective, where there is no apparent conflict of interest and where I am satisfied that the relevant interest or perspective will be fully and fairly represented by a single grant of standing to the parties as a group.
- In the event of a change in circumstances affecting a grant of standing, a party whose participation has been limited to a particular portion of the

Inquiry, who was granted special standing or who has been grouped into a single grant of standing, may apply for a change in its standing.

- Witnesses in Part I who are not represented by counsel for parties with standing are entitled to have their own counsel present while they testify. The witness may be represented by counsel for the purposes of his or her testimony and to make any objections thought appropriate.

I mentioned the formation of coalitions as one of the principles that has guided my decisions on standing. There are a large number of applicants with an interest or perspective that I consider important in Part I. Many of these share common interests and perspectives. In order to make Part I manageable, I have formed coalitions comprised of applicants whose interests and perspective coincide and who do not have a conflict of interest that would render a coalition unworkable.

In directing that applicants participate through a coalition I recognize that circumstances may develop that result in a coalition becoming unsuitable for a member of a coalition on one or more issues. With this in mind, I have provided for flexibility, allowing members to request separate standing should such a situation arise.

In my view the formation of flexible coalitions achieves a fair balance between the desire to have important interests and perspectives represented and the need to have an inquiry that is manageable. I am asking that the counsel and principals of applicants who have been joined in a coalition make all efforts to work within the coalition. Cooperation and reasonableness are essential. Even with coalitions, the hearings in some stages of Part I will be complex and may be protracted. In my view, the alternative of separate standing for everyone is simply not acceptable.

#### (ii) *Funding*

The Order in Council provides that I may make recommendations to the Attorney General for funding for parties granted standing. To qualify for a funding recommendation, a party must be able to demonstrate that it would not be able to participate in the Inquiry without such funding. In addition, the party must have a satisfactory proposal as to the use it intends to make of the funds and how it will account for the funds.

In addition, I have considered the following:

- the nature of the party's interest and proposed involvement in the Inquiry;
- whether the party has an established record of concern for and a demonstrated commitment to the interest it seeks to represent;
- whether the party has special experience or expertise with respect to the Commission's mandate; and
- whether the party can reasonably be included in a group with others of similar interests.

At this time, I am not recommending payment for experts to be called by those with standing in Part I. The primary responsibility for calling experts lies with Commission counsel who will be open to suggestions from parties as to the types and names of experts to be called. Experts called by Commission counsel will be paid by the Commission.

The guidelines issued by the Attorney General for funding include the payment of counsel fees and disbursements. Disbursements for experts to assist counsel in preparing for cross-examination are not included in the guidelines.

I have decided not to make any recommendations for Part II funding at the present time although I anticipate that I will be doing so in the months to come. The Commission has published a list of proposed Commission Papers and welcomes suggestions for additions or changes. Parties with standing may suggest the names of experts to prepare papers, may offer to prepare some of the Commission Papers or may independently have papers prepared on subjects relevant to the Commission's mandate in Part II.

I anticipate that when the Commission Papers are published, parties with standing will respond with comments or criticism. At that time, I will consider applications for funding for the preparation of papers in response to Commission Papers and for attendance at public meetings. I will also consider applications for funding for counsel fees for Part II at that time. I would observe now, however, that given the nature of the Part II process, I do not foresee significant funding for legal fees.

### **III. Applications for Standing**

I turn now to the individual applications and I address them generally in the order they were heard, although in some areas I have generally grouped the applicants according to their interests and perspectives.

#### **A. Walkerton Groups and Residents**

There are four applicants who seek to represent the interests and perspectives of the residents of the Town of Walkerton. Each also asks that I make a recommendation for funding.

The residents of Walkerton were seriously affected by the water contamination and have a significant interest in the subject matter of Part I of the Inquiry. Given the tragedy that the residents have suffered, their interests must be represented. I have been told that many residents consider that they have different interests and perspectives than the Town and the Walkerton Public Utilities Commission (the “PUC”).

All four applicants have one important interest in common. In one form or another they seek to bring before the Inquiry the nature, scope and type of impact – physical, personal and economic – experienced by the residents of the Town. The impact of the contamination is an important part of the work of the Inquiry. In recognition of this, I held informal hearings in July during which I heard directly from over 50 individuals and groups about the impact of this tragedy on their lives. I anticipate that, in Part I, Commission counsel will be calling some evidence, including expert evidence, dealing with the physical and medical problems experienced by those who were affected by the contaminated water. In Part II, one of the proposed papers will examine the economic and other long term effects of the contamination.

The residents of Walkerton also have a significant interest in the circumstances that led to the contamination and the various causes that may have contributed to it. I expect that the evidence that relates to the issues of what happened and why will form a major part of the evidence that will be called in Part I.

I have asked applicants with similar interests or perspectives to attempt to form coalitions for purposes of standing and funding. I am satisfied from the

written material and the oral submissions that there is a sufficient difference in the perspective of two of the groups who have applied to represent the residents that requiring them to be represented by a single coalition would be unrealistic. The Walkerton residents have the greatest interest in Part I. Their voices must be heard even if those voices deliver somewhat different messages. As a result, I am prepared to make more than one grant of standing to represent the interests and perspectives of the residents.

The Concerned Walkerton Citizens (the “CWC”) is a group comprised of over 500 residents of Walkerton and the immediate area. It was formed specifically in response to the events of May 2000. It is represented by the Canadian Environmental Law Association (“CELA”) and seeks standing in Parts I and II and funding for counsel and experts in both. The CWC represents a large number of residents and importantly has demonstrated a serious, genuine and continuing concern about the issues raised by the Inquiry. I am satisfied that the CWC should be granted full standing for Parts I and II.

The Walkerton Community Foundation also seeks standing and funding for Parts I and II. This is a broadly based group comprised of the Walkerton Rotary Club, the Saugeen Masonic Lodge, the Knights of Columbus, the Knights of Columbus Auxiliary, the St. John Ambulance Society, the Walkerton Lions Club, the Walkerton Optimists Club, the Royal Canadian Legion Branch 102 and a “Community Members” group. The Foundation was also formed in response to the contamination. It is incorporated and registered as a charitable foundation. It appears that the Foundation has a different perspective than the CWC on the events that occurred in May of this year and in particular on the possible causes of the contamination of the water supply. The member organizations of the Foundation have contributed an enormous amount of time and service to the Walkerton community both before and after the tragedy. I am satisfied that the Foundation should also be granted full standing for Parts I and II.

The Walkerton District Chamber of Commerce has applied for standing in Parts I and II, specifically to examine “the existing communication mechanism for notifying of a boil water advisory and the economic implications of the absence of potable water.” I am satisfied that insofar as Part I is concerned the interests of the Chamber are congruent with those of the Foundation and, in my view, the interests of the Chamber can be fully and fairly represented within the standing granted to the Foundation. In this regard, I appreciate the efforts that the Foundation and the Chamber have made to join with one

another and encourage them to continue those efforts. I am not going to grant standing to the Chamber in Part I. However, if there is difficulty in arriving at a satisfactory arrangement between the two groups I may be spoken to. As to Part II, I see no need to join the two. I grant the Chamber separate standing in Part II for issues relating to the economic impact of the contamination upon the Walkerton community and issues relating to the communication of similar events by public authorities generally.

Finally, the law firm of Siskind Cromarty seeks standing in Part I for injured victims comprised of three separate groups:

- The putative plaintiffs in a proposed class action;
- parents of seriously injured children; and
- 200 individual residents of Walkerton who suffered losses as a result of the tragedy.

In its application the “Injured Victims” group says “... it is distinguishable from groups such as the Concerned Walkerton Citizen’s group which represents itself as a non-partisan group seeking intervenor status at the Inquiry.” The group states further that “[t]he Injured Victims of the contamination, while clearly partisan and motivated by personal interests, are, nonetheless, a critical voice to be represented at Part I of the Inquiry.”

The objective of the group is to ensure that the perspective of the injured victim is brought before the Inquiry. What defines this group is their membership in a proposed class action or the fact that they have retained the same lawyers to represent them. Neither of these characteristics gives them an interest in the Inquiry. The interest that entitles them to standing arises from the fact that they are residents of Walkerton and, like many others, have suffered injury and loss from the contamination.

As I have said above, the perspective of the residents and those who have suffered must be heard. However, it is not feasible for every resident, or indeed every group of residents, who has suffered to be represented separately. Lines must be drawn. I am satisfied that the interests of the members of this group in the issues of how and why the contamination occurred can and should be represented by either of the two parties to which I have granted standing. The CWC and the Foundation have shown a genuine and ongoing interest in the issues

raised by the Inquiry and between them, I believe, will fully and fairly represent the interests of all the residents.

While the impact of the contamination will undoubtedly be examined, it will not be a major focus of Part I. The relief sought by the Injured Victims in the lawsuit is something that will be addressed in a separate proceeding and involves issues that go beyond the mandate of this Inquiry. That said, I am nonetheless of the view that the Injured Victim group should be granted standing in Part IA, limited to issues relating to the impact of the contamination upon them.

In reaching this conclusion I expect that Commission counsel and counsel representing the CWC and the Foundation will be open to receiving suggestions and ideas from members of this group to ensure that their views are fully and adequately represented in those parts of the Inquiry in which they have been granted standing. If there is difficulty in this regard I may be spoken to.

I turn next to the question of funding for the residents of Walkerton. Paragraph 5 of the Order in Council provides that I may make recommendations for funding where in my view, “the party would not otherwise be able to participate in the Inquiry without such funding.” CELA has agreed to represent the CWC. Counsel provided by CELA will be paid through the Ontario Legal Aid Plan. CELA will be able to act for the CWC without funding from the Attorney General. As a result, the CWC has not met the requirements of the Order in Council and I am not authorized to make a recommendation for funding of a counsel fee. However, the funding CELA receives from Legal Aid does not include disbursements. I will therefore recommend the payment of disbursements by the Attorney General. CELA has requested payment of fees for a case worker and a community worker. I understand that the Attorney General’s guidelines do not include such expenses. In the circumstances, I will recommend the payment of disbursements for two counsel for CWC.

As to the request of the CWC for the payment of fees for experts to be called in Part I, I have suggested that CWC propose the names of the experts that it wishes to be called in Part I to Commission counsel.

I have granted standing to the CWC in Part II. It remains open to the CWC to make application for Part II funding.

I am satisfied that the Foundation has met all criteria for funding. I propose to recommend funding for one counsel for Part I for the Foundation.

I do not anticipate that the involvement of the “Injured Victims” will be extensive. Given the nature of the ties that bind this group I do not think it appropriate to recommend funding.

## **B. Government of Ontario**

In light of its clear interest in the issues raised in the Order in Council, I am satisfied that the Government of Ontario meets the criteria for standing for both Parts I and II.

## **C. Farming and Agricultural Groups**

The Commission received eight applications for standing from groups whose focus is on issues related to farming and agriculture. These groups have in common the fact that they are all interested in the potential impact of the Inquiry on issues relating to farming and agriculture. This interest encompasses an environmental perspective. Each also brings with it a different and potentially unique perspective. The groups are:

1. the Christian Farmers Federation, an organization with more than 4,400 family farm members that approaches agricultural issues from the perspective of “the Christian value system that motivates [its] members”;
2. the Dairy Farmers Federation of Ontario, which represents approximately 6,500 dairy farmers in the Province;
3. the Ontario Cattle Feeders Association, which represents feedlot operators who feed approximately 55 percent of the fed cattle in Ontario;
4. the Ontario Cattlemen’s Association, which represents 25,000 beef producers across Ontario;
5. the Ontario Farm Animal Council, a coalition of groups within the livestock and processing industry, whose mandate is to provide communication and education links between livestock producers, processors and the consumer;

6. the Ontario Federation of Agriculture, which is made up of 51 county and district federations representing 43,000 farm family members across Ontario;
7. the Ontario Pork Producers Marketing Board, which represents 5,100 pork producers in the Province; and
8. the Ontario Farm Environmental Coalition (“OFEC”), which is a coalition of agricultural groups (including many of the organizations mentioned above) formed principally to advance an agricultural and farming position on environmental issues.

All eight groups have agreed to be represented by OFEC should standing be granted to them in Part I of the Inquiry. However, each has applied for separate standing in relation to Part II.

I have no difficulty in concluding that these groups represent a clearly ascertainable interest and perspective in relation to farming and agricultural issues, which I consider important to my mandate in Part I. I am mindful of the fact that no individual or group which represents farming and agriculture and has a direct interest in Part I has applied for standing. As a result, if I do not grant standing to OFEC, the agricultural and farming perspective would not be directly represented. In these circumstances, I exercise my discretion and grant standing to OFEC for Part I in relation to farming and agricultural issues.

I do not have sufficient information on the financial position of OFEC and its members to determine whether they qualify for funding. If OFEC wishes to pursue funding, it should submit the necessary information to me by September 22.

In relation to Part II it is clear to me that the eight groups, taken together, have the type of interest in this part of the Inquiry which merits standing. I am told that the different perspectives which they represent may cause them to take different positions on the broader policy issues which will arise in Part II and that there may be issues in which some but not all groups wish to participate. I accept that there is a greater possibility for such divergence in Part II and I am prepared to grant standing separate to the extent necessary to accommodate their different perspectives.

As noted at the outset, I am not making any decisions with respect to funding in Part II of the Inquiry at this time.

#### **D. Members of CUPE Local 255**

CUPE Local 255 seeks standing on behalf of its members Allan Buckle, Robert McKay, Tim Hawkins, Steve Lorley, Vivian Slater and Ellen Dentinger. These are seven of the eight fulltime unionized employees of the Walkerton PUC. Mr. Frank Koebel, who is a member of CUPE Local 255, has been granted separate standing.

The Walkerton PUC bargaining unit includes employees whose duties involve both water and hydro-electric power services. Allan Buckle is the primary employee involved on the water side of the PUC and has been actively involved in maintenance and monitoring of the PUC's wells as well as water sample testing. Robert McKay, Tim Hawkins and Steve Lorley are primarily employed as hydro linespersons but from time to time have assisted employees working on the "water side" of the PUC. The other two applicants, Vivian Slater and Ellen Dentinger, are employed as clerical staff by the PUC. Their duties include sending water samples to the private sector laboratories for testing and forwarding telephone messages and faxes from the laboratories.

In my view, only Allan Buckle, who by virtue of the performance of his duties was intimately involved in the water side at the relevant time, should be granted standing personally. I grant standing to Mr. Buckle for Part I insofar as his personal interests are affected. I also recommend funding for one counsel, for Mr. Buckle, together with reasonable disbursements, but only for the purposes of representing Mr. Buckle's personal interests. If the other individual applicants are called as witnesses, they will be entitled to counsel and limited standing in accordance with Rule 17 of the Rules of Procedure and Practice. If they choose, the bargaining unit members may be represented by counsel for CUPE Local 255 at that time.

#### **E. The Bargaining Agents**

The Commission received applications for Part I standing from CUPE Local 255, and from two provincial bargaining agents, OPSEU and PEGO. I discuss these applications together, as I am directing a coalition be formed.

CUPE Local 255 seeks standing in Part I on its own behalf, as a separate institutional entity representing the collective interests of unionized employees of the Walkerton PUC. CUPE Local 255's written submissions state that "the Local represents the collective interests of the employees in pursuing the proper, efficient and safe operation of the workplace and in ensuring that the employees are properly trained and equipped for their jobs."

The Ontario Public Service Employees' Union ("OPSEU") has applied for full standing for Parts I and II of the Inquiry. OPSEU submits that it would bring three major interests or perspectives to the Inquiry, as it is:

- (a) the trade union representative for approximately 2000 employees particularly concerned with water quality and delivery issues, including Ministry of the Environment ("MOE") staff, Ontario Clean Water Agency ("OCWA") staff, employees dealing with agricultural issues, and technical and professional non-medical staff at local Health Units;
- (b) the trade union for most provincial government and public sector employees, who have concerns such as funding, downsizing, alternative service delivery and privatization; and
- (c) the representative of individual employees involved directly or indirectly in the events at Walkerton, including workers who work or reside in Walkerton.

Four employees of the MOE Owen Sound office for whom OPSEU acts as bargaining agent have retained other counsel. OPSEU has offered to provide legal representation to other OPSEU members at the Part I hearings, should this be necessary.

The Professional Engineers and Architects of the Ontario Public Service (PEGO) has applied for standing for Parts I and II of this Inquiry. PEGO represents those employed in the public service as engineers, including those employed by OCWA, the Ministry of the Environment and other directly involved government departments. PEGO's counsel, Mr. Fellows, noted that engineers in the public service are involved in all aspects of water regulation. They may be responsible for approval of water treatment and distribution facilities, the setting of standards, the imposition of conditions on the operation of water

facilities, and policy recommendations and advice to government with respect to the operation of water facilities. Mr. Fellows stated that the issue of how the Province regulates water treatment and distribution facilities will affect the role of engineers in the public service.

There is a significant congruence of interests among CUPE Local 255, OPSEU and PEGO in Part I of the Inquiry. I believe that all three bargaining agents will assist the Commission by providing valuable perspectives with respect to the operational aspects of government policies, procedures and practices. Further, I consider the experience and expertise of the union members to be valuable in the identification of systemic issues and solutions in this area. Given the congruence of interests, the valuable perspectives which the bargaining agents will bring, and the lack of conflict except as discussed below, I make a single grant of standing in Part I to CUPE Local 255, OPSEU and PEGO. In light of OPSEU's broad representation of provincial government employees, it may be appropriate for OPSEU to take the lead in this coalition. Other than potentially providing legal representation for their members who may be called as witnesses in Part IA, I do not find an interest which warrants full standing and therefore grant special standing to OPSEU in Part IA. I grant the Bargaining Agents Coalition full standing in Part IB. The grants of standing to this coalition in both Part IA and IB are limited to those issues affecting municipal, public sector and provincial government employees.

Counsel for PEGO identified a potential conflict with both CUPE and OPSEU, bargaining agents whose members are primarily involved in front-line field work, including testing and inspections. PEGO notes the potential difference that would arise with respect to issues of decredentialization. PEGO will be addressing issues regarding functions relating to water treatment and distribution requiring the professional judgment of engineers. In this regard alone, I grant separate standing to PEGO in Part IB; otherwise their participation is to be through the Bargaining Agent Coalition. I also recognize that certain issues may result in a different perspective for the Walkerton PUC employees as opposed to provincial employees. Should this situation arise, I am prepared to grant separate standing to Local 255 in Part IB on those issues only. If other conflicts arise, then any of the three coalition partners may apply for separate standing on an issue-specific basis in Part IB.

I grant separate standing to both PEGO and OPSEU in Part II.

PEGO has also requested funding. It is not a national body, but a small organization with 410 working members. The contingency fund referred to in the annual statements filed by PEGO is in fact PEGO's strike fund. In light of the relatively small number of members employed and the lack of a national organization, I recommend funding for PEGO for one counsel limited to Part IB issues involving decredentialization only. I defer my decision on Part II funding.

OPSEU made no request for funding and I make no recommendation in this regard.

I defer CUPE Local 255's request for funding for Part IB in the hope that its national union will see fit to support the Local. I note that if CUPE Local 255 represents its member Allan Buckle, Local 255 will receive funding for its representation of the interests of Mr. Buckle. In the event that Local 255 is granted separate standing for Part IB, it may apply to me for a recommendation for separate funding with respect to those limited interests at that time.

## **F. CUPE National**

CUPE National has applied for standing in Part II of the Inquiry. In Ontario, CUPE represents over 40,000 municipal employees. Within many of these municipal locals, CUPE members operate and maintain water and wastewater facilities. In 1997 CUPE National identified the issue of safe, clean public water as a primary focus for its activities. It has established a "Water Watch" campaign, the objective of which is to halt the privatization of municipal water services, to identify threats to water quality, to promote access to safe water for all local residents, and to promote water conservation. I am of the view that CUPE National is in a position to assist the Commission in Part II, in light of its expertise in water and wastewater services, privatization and employment relations, as well as the front-line expertise of its members in water delivery in Ontario. I grant CUPE National standing for Part II of the Inquiry.

## **G. Dr. McQuigge, Mr. Patterson and Ms. Sellars**

Dr. Murray McQuigge, David Patterson and Mary Sellars have applied for standing collectively in Parts I and II. Dr. McQuigge is the Medical Officer of Health for the Bruce Grey Owen Sound Health Unit (the "Health Unit"). David Patterson is the Assistant Director of Health Protection for the Health

Unit, and a public health inspector under the *Health Protection and Promotion Act*, R.S.O. 1990, c.H.7 (“HPPA”). Mary Sellars is Dr. McQuigge’s Executive Assistant. All three were involved in responding to the water contamination in Walkerton, the boil water advisory issued by the Medical Officer of Health, and the subsequent remediation efforts. Mr. Cherniak, co-counsel for the three applicants, submits that their interest is in determining the cause of the outbreak, the contributing factors and the solution to the problem. Mr. Cherniak also submits that the three applicants are substantially and directly affected, since they were in the “eye of the storm” as the contamination and its effects spread through the area served by the Health Unit.

Mr. Cherniak commented on the concurrent application of the Health Unit, which is a Local Board of Health under the HPPA and the employer of these three applicants. He noted that, pursuant to the statutory provisions of the HPPA, the role of the Medical Officer of Health is clearly separate and different from that of the Health Unit. Further, he said that Dr. McQuigge had duties placed upon him by the Ontario Drinking Water Objectives of the MOE that were not shared by the Health Unit.

Given the extensive personal involvement of Dr. McQuigge and the importance of his role as Medical Officer of Health in relation to the Walkerton contamination, I grant full standing to Dr. McQuigge on public health issues in Part I. I do not find it necessary to grant standing to Mr. Patterson or Ms. Sellars. I am also prepared to grant Dr. McQuigge standing in Part II although I would expect that his participation might usefully be joined with the Health Unit and ALPHA whose applications I discuss below. Dr. McQuigge, Mr. Patterson and Ms. Sellars have not sought funding and accordingly I make no recommendation in this regard.

## **H. Bruce Grey Owen Sound Health Unit**

The Health Unit has separately applied for standing in Parts I and II of the Inquiry. Mr. Middlebro’, counsel for the Health Unit, noted that it is named as a defendant in a \$1.3 billion civil suit relating to the Walkerton contamination. Mr. Middlebro’ stated that, under the HPPA, the Health Unit is not able to direct the nature of the Medical Officer of Health’s opinion, but remains responsible for his actions. Mr. Middlebro’ quite properly conceded that at this point in time there is no conflict between the interests of the Health Unit and those of Dr. McQuigge, Mr. Patterson and Ms. Sellars.

I do not find that the Health Unit has a substantial and direct interest in Part I within the meaning of s.5(1) of the *Public Inquiries Act*. Dr. McQuigge has been granted standing in Part IA. I expect that the Health Unit will have the same interest and perspective in Part IA issues as Dr. McQuigge. I am not prepared to grant the Health Unit standing in Part IA. If a conflict does arise, the Health Unit may reapply.

I grant the Health Unit standing in Part IB with respect to public health issues. I find that the Health Unit shares the same interest in Part IB as the Association of Local Public Health Agencies (“ALPHA”), whose application I address below. I grant these two applicants a single standing in Part IB limited to public health issues. These two applicants will probably share the same interest on many issues with Dr. McQuigge. Where there are such common interests, only one cross-examination may be conducted. I also grant standing to the Health Unit in Part II but would encourage it to participate jointly with Dr. McQuigge and ALPHA. No application was made for funding by the Health Unit and I make no recommendation in that regard.

### **I. Association of Local Public Health Agencies**

The Association of Local Public Health Agencies has applied for standing and funding in respect of both Parts I and II. ALPHA is a not-for-profit organization of professional public health care providers, whose primary membership consists of Medical Officers of Health and the 37 Boards of Health of Ontario. I note that the Health Unit is a member of ALPHA, and Dr. McQuigge has served as Treasurer of ALPHA. There are also seven affiliate member associations consisting of the Association of Supervisors of Public Health Inspectors of Ontario, Association of Ontario Public Health Business Administrators, Association of Public Health Epidemiologists of Ontario, Health Promotion Ontario, Ontario Association of Public Health Dentistry, Ontario Society of Nutrition Professionals in Public Health, and Public Health Nursing Management. ALPHA’s counsel noted that a primary contribution of ALPHA would be to assist the Commission in knowing expected procedures and practice in safe water delivery and protection.

I grant standing to ALPHA in Part IB jointly with the Health Unit, as described above. Given that the Health Unit has not applied for funding, I do not propose to provide funding for this group in Part I. I grant ALPHA’s application for

standing for Part II of the Inquiry, and will defer my decision as to funding for that part.

## **J. Ontario New Democratic Party**

A group comprised of the Ontario New Democratic Party (the “ONDP”), the New Democratic Party Caucus of the Ontario Legislature, Howard Hampton, Leader of the Ontario New Democratic Party and Leader of the New Democratic Party Caucus, and Bud Wildman, former Minister of the Environment and Energy (the “ONDP Group”) has applied for standing and funding in Parts I and II.

I recognize that the ONDP Group has demonstrated a serious and long-standing concern for environmental issues. However, I am not satisfied that it meets the criteria for standing set out in the *Public Inquiries Act* nor, for the reasons set out below, do I consider that this is a case in which I should exercise my discretion to grant standing.

In my view, the ONDP Group does not have a substantial and direct interest in the subject matter of the Inquiry as that term is used in s.5(1) of the Act. I do not anticipate that the interests of the members of this group will be substantially affected by findings or recommendations that may be made in my report.

Section 5(2) of the Act provides that no findings of misconduct can be made against any person in a report following a public inquiry unless that person has been provided reasonable notice of the alleged misconduct and is given an opportunity to participate in the inquiry. On the basis of information now available, Commission counsel do not intend to provide a s.5(2) notice to the ONDP Group.

This applicant makes two submissions in arguing that it has an interest that may be affected by findings to be made in Part I. First, it says that the Premier of Ontario has called the policies, practices and procedures of the pre-1995 ONDP government into question. In response to a question from the press, the Premier apparently said that certain changes in water testing and reporting standards had been made by the previous ONDP government. The ONDP Group suggests that this comment carried with it the innuendo that these

changes contributed to what happened in Walkerton. The ONDP Group submits that it should be afforded an opportunity to participate in the Inquiry in order to deal with this allegation. I do not think that the Premier's comment gives rise to the type of interest that warrants standing under s.5 of the Act. The comment seems to have been made as part of the political process in which one politician speaks on an issue and on which an opposing politician may respond in the same forum. It is clearly open to the members of this group to respond to this comment in a forum other than this Inquiry.

I am aware that a political party was granted standing in the Houlden Inquiry. In that inquiry, however, the mandate of the Commissioner included an allegation of wrongdoing involving the political party which was granted standing. The present Inquiry is different. There is no allegation of wrongdoing against the ONDP Group in my mandate. If there are allegations of misconduct, improper behaviour, or the like directed at this group during the Inquiry, I will entertain an application for standing to answer such allegations.

The second ground upon which the ONDP Group claims an interest for which it ought to be granted standing is that the ONDP was vocal in calling for the government to establish this Inquiry. In my view, the fact that a political party or its members call for the government to establish a public inquiry, without more, does not create an interest within the meaning of s.5(1) of the Act.

Finally, I do not think that this is a case in which I should exercise my discretion to grant standing. I say this for two reasons. First, parties who have been granted standing will bring a sufficiently broad range of perspectives to enable me to fulfil my mandate. In granting standing, I have attempted to ensure that all perspectives, and in particular those such as the ones held by this applicant, which question the effect of government policies, practices and procedures, are fully represented. It is essential that there be a thorough examination of these factors in relation to the events in Walkerton. I am satisfied that this will occur.

The second reason why I am not inclined to grant this group standing is that it is, in my view, generally undesirable to use public inquiries to have political parties advance their positions or policies. There are other more appropriate arenas for them to do so. Mr. Jacobs, counsel for the ONDP Group, recognized this concern and assured me that this was not the motivation underlying the application. I accept Mr. Jacobs' assurance without reservation. Nevertheless, I think there is a danger that this applicant's participation could be viewed

by the public as politicizing the Inquiry in a partisan way. To the extent possible, that result should be avoided.

Finally, I note that the considerations in granting standing to a political party differ from those which apply to a government. Governments play a different role and have different responsibilities than do political parties. Moreover, the ONDP, unlike any other applicant, will have an opportunity to participate in the subject matter of the Inquiry by responding to my report in the Legislature.

### **K. The Municipality of Brockton and Related Applicants and the Public Utilities Commission**

The Corporation of the Municipality of Brockton, the successor municipality to the Town of Walkerton, (referred to collectively as the “Town”) has applied for standing and funding in Part I of the Inquiry, together with a number of individuals who by employment, contract or office are associated with the Town. The co-applicants are: Mayor David Thomson of Brockton (“Mayor Thomson”); Audrey Webb, Deputy Mayor; Roland Anstett, David Jacobi, Wilfred Lane, Jack Riley and Glen Tanner, the present Councillors of Brockton; the Chief Administrative Officer of Brockton, Richard Radford; former Mayor James Bolden; Don Carroll, Clayton Gutscher, David Mullen and Mary Ramsay (with the exception of one individual, the 1988 Councillors of Walkerton); and Steven Burns, a Professional Engineer with B.M. Ross and Associates Limited, in his capacity as a consultant performing the role of the Town’s engineer. Mr. McLeod, counsel for the group, also proposed standing be granted to any other staff member or agent who falls within s.5(1) of the *Public Inquiries Act*, who wishes to be represented by him, and who executes a waiver and consent document and a retainer agreement. The Town and its co-applicants have applied for standing and funding in Part I of the Inquiry.

The PUC has also applied for standing and funding in Part I of the Inquiry.

Mr. McLeod has assured me that there is no conflict in his firm’s representation of the Town and the individuals. He further states that he has sought and received consents and waivers with respect to the joint retainer, and has established, with the consent of his clients, a mechanism pursuant to which future conflicts may be resolved in order of priority of representation.

I turn then to the interests of the Town. The Town owns the water treatment and distribution system, which is operated by the PUC pursuant to the terms of the *Public Utilities Act*, R.S.O. 1990, c.P.52. Section 2(1) of the *Public Utilities Act* provides that:

The corporation of a local municipality may, under and subject to the provisions of this Part, acquire, establish, maintain and operate waterworks, and may acquire by purchase or otherwise and may enter on and expropriate land, waters and water privileges and the right to divert any lake, river, pond, spring or stream of water, within or without the municipality, as may be considered necessary for waterworks purposes, or for protecting the waterworks or preserving the purity of the water supply.

Section 38 of the *Public Utilities Act* provides that:

... the council of a municipal corporation that owns or operates works for the production, manufacture or supply of any public utility or is about to establish such works, may, by by-law passed with the assent of the municipal electors, provide for entrusting the construction of the works and the control and management of the works to a commission to be called The Public Utilities Commission....

Pursuant to section 38(6), the control and management of the works are vested in the council and the PUC ceases to exist upon the repeal of a by-law establishing a PUC.

The powers of a PUC are set out in s. 41(1) of the *Public Utilities Act*:

Subject to subsection (4), where a commission has been established under this Part and the members thereof have been elected or where the control and management of any other public utility works are entrusted to a commission established under this Part, all the powers, rights, authorities and privileges that are by this Act conferred on a corporation shall, while the by-laws... remain in force, be exercised by the commission and not by the council of the corporation.

The *Public Utilities Act* establishes that there are to be three to five elected commissioners, including the head of council as a commissioner *ex officio*. The

PUC is required to report to council annually, providing a statement of revenue and expenditure.

Effective January 1, 1999, both the PUC and the Town of Walkerton were subject to a restructuring order by the Minister of Municipal Affairs under the *Municipal Act*, R.S.O. 1990, c.M.45 (the “Order”). Section 2(4) of the Order amalgamated the three former townships under the name “The Corporation of the Township of Brant-Greenock-Walkerton”, subsequently renamed “Brockton”.

Pursuant to sections 45-46 of the Order, the PUC of the Town of Walkerton was dissolved, and “The Walkerton Public Utilities Commission” was established. Section 46(2) of the Order provides that:

The commission established under subsection 1 shall distribute and supply electrical power and produce, treat, distribute and supply water to the geographic area of the former Town of Walkerton.

Section 46(3) provides that the commission is subject to the *Public Utilities Act*. Mr. McLeod states that, since May 25, 2000, the PUC has contracted with the Ontario Clean Water Agency to operate the water treatment and distribution system.

The relationship between the Town and the PUC can be fairly summarized by saying that the PUC operates the water treatment and distribution system on behalf of the owner, the Town.

Mr. McLeod identified the interest of the Town in Part I of the Inquiry in relation to the fact that it is the owner of the water treatment and distribution system. He identified specific attributes of ownership which he asserted are relevant to the Town’s interest. He noted that, as owner, the Town faces potential civil liability and is a defendant in a civil suit relating to the contamination. He also referred to the Town’s exposure to regulatory initiatives of government, and specifically noted that, since at least 1997, the MOE’s practice and policy has been to issue orders or enforce regulatory provisions under the *Ontario Water Resources Act*, R.S.O. 1990, c.O.40, against the Town as owner of the waterworks.

Mr. McLeod agreed that there was the possibility of some congruence of interests with the PUC with respect to events prior to May, 2000. He stated that,

since the contamination, the Town and the PUC have been working together on remediation and compliance issues. He also pointed out that, under the *Public Utilities Act*, the Mayor of the Town is an *ex officio* member of the PUC.

Mr. Prehogan, counsel for the PUC submits that, since the PUC was responsible for the provision of potable water in Walkerton, and operated the water treatment and distribution system at the time of the contamination, it is substantially and directly affected by this Inquiry and its recommendations. Mr. Prehogan stated that in his view there was no conflict of interest between the PUC and the Town with respect to determining what caused the contamination. He asserted, however, that the interest of the PUC is not identical to the interest of the Town, since the PUC has its own employees and its own statutory mandate. Mr. Prehogan said that, prior to May 2000, the Town was not involved in the events giving rise to this Inquiry except through the PUC. He also said the Town has been involved in remediation efforts since late May, 2000.

I am of the view that there is a significant congruence of interest between the Town and the PUC. However, Mr. McLeod raised the prospect that a conflict could arise. Recognizing this potential for conflict, I deem it prudent to grant separate standing to the Town and the PUC. Until such a conflict arises, I expect the Town and the PUC to cooperate. There will be only one set of cross-examinations to be shared by the two parties on all issues and evidence with respect to which there is no conflict.

I turn now to the fourteen individuals and the unnamed staff members and agents for whom Mr. McLeod also seeks standing. The Mayor, David Thomson, and former Mayor, James Bolden, were both *ex officio* members of the PUC during their time in office, and were also intimately involved in responding to water-related issues raised by the MOE. Both are, to a certain extent, in the “eye of the storm,” and are substantially and directly involved in the events preceding and subsequent to May, 2000. As a result, I grant both Mr. Thomson and Mr. Bolden standing in Part I of the Inquiry, limited to matters relating to their personal or official involvement.

Mr. Burns, in his capacity as a consultant performing the role of Brockton’s engineer, has a long history of direct involvement in engineering aspects of the Town’s wells. I consider that he has a substantial and direct interest in matters relating to his performance of water-related engineering functions for the Town. In the result, I grant him standing, limited according to his interest so described.

My comments in respect of a single set of cross-examinations for the PUC and the Town also apply to the three individuals granted standing.

I decline to grant standing to the other individual co-applicants. If they are called as witnesses, their counsel may have standing in accordance with s.17 of the Rules. I do not find that they have a substantial and direct interest.

In terms of funding, Mr. McLeod requested that I defer my decision regarding funding for the Town and the individuals represented by him. I will make my decision after Mr. McLeod has advised me of the outcome of the outstanding litigation between the Town and its insurers.

I propose to recommend funding for one counsel for the PUC.

## **L. The Association of Municipalities of Ontario**

The Association of Municipalities of Ontario (“AMO”) is a non-profit organization, made up of several hundred Ontario municipalities serving over 98 percent of Ontario’s population. Mr. Hamilton, counsel for AMO, stated that the primary interest of his client is in Part II of the Inquiry, but he also submitted that the members of AMO would be substantially and directly affected by the findings of this Inquiry in Part IB as government policies will affect other municipalities. With respect to Part IA, he stated that AMO has much less interest but suggested that AMO might help in determining systemic issues deserving a further examination. The materials filed by AMO set out AMO’s extensive involvement in drinking water issues from the municipal perspective, including AMO’s interest in the provincial downloading of drinking water responsibility and funding pressures posed in the area of drinking water as a result of downloading. AMO proposes to work closely with the Municipal Engineers Association and the Ontario Good Roads Association.

Mr. Hamilton has also requested funding on behalf of AMO, stating that there are no funds presently available for the Walkerton Inquiry, and that AMO has already done a cash call among its members to raise funds for the Town.

I grant standing to AMO in Part II. I also grant standing in Part IB, limited to the interests of municipalities in issues raised in Part IB. I grant special standing to AMO for Part IA, as its interests are attenuated with respect to the Walkerton-

specific issues given the standing of the Town. I suggest that any issues of concern in Part IA be raised with Commission counsel.

At this time I am not recommending funding for Part I of the Inquiry. AMO is a large and well-funded organization which has the ability to raise funds from its members. If indeed they are as committed to the issues as they have stated in their materials, I would expect the organization to devote the appropriate funds to represent its interests. I also note that reference is made to the fact that in this year's budget no priority had been set for the Inquiry. As Part IB will commence after Christmas, and thus after the year-end, there should be an opportunity to re-direct priorities. If funding is not possible for reasons not presently apparent to me, AMO may reapply. I defer my decision on funding with respect to Part II.

#### **M. Stan Koebel**

Stan Koebel was at all relevant times Manager of the PUC and his performance in this role gives him a substantial and direct interest, and therefore standing, for matters relating to his performance in this role in Part IA. Mr. Koebel also has standing in Part IB to the extent that the issues raised affect his substantial and direct personal interest. I recommend funding for one counsel for the limited interest described above.

#### **N. Frank Koebel**

Frank Koebel was at the relevant times the Foreman of the PUC and his performance in this role gives him a substantial and direct interest, and therefore standing, for matters relating to his performance in this role in Part IA. He also has standing in Part IB to the extent that the issues raised affect his substantial and direct personal interest. I recommend funding for one counsel for the limited interests described above.

#### **O. Office of the Chief Coroner**

The Chief Coroner of the Province of Ontario has applied for full standing in both Parts I and II. Ms. Cronk, on behalf of the Chief Coroner, indicated that given the broad mandate in the Order in Council creating the Inquiry, the

Chief Coroner considers that an inquest would involve an unnecessary duplication of effort and expense. Accordingly, the Chief Coroner does not, at present, intend to hold an inquest.

The Chief Coroner has made the results of his investigation available to Commission counsel.

I am pleased that the Chief Coroner wishes to be represented by counsel throughout the Inquiry. I appreciate the assistance the Chief Coroner has given the Inquiry to date and welcome the continued assistance of the Chief Coroner's counsel. The Chief Coroner has an interest in the work of the Inquiry and is able to contribute in a way I consider important. The Chief Coroner is therefore granted full standing in Parts I and II.

## **P. The Environmental Coalitions**

The Commission received applications for standing from four environmental groups including three coalitions representing a broad range of interests in environmental matters. Each of the groups has asked for full standing and for funding in Parts I and II of the Inquiry. I will deal first with the three coalitions.

### *(i) ALERT – Sierra Club Coalition*

This coalition is led by the Agricultural Livestock Expansion Response Team (ALERT) and the Sierra Club of Canada. The focus of the coalition is on the technical and regulatory issues surrounding intensive farming and manure management. Both ALERT and the Sierra Club have extensive experience with environmental concerns in the agricultural sector.

### *(ii) The Sierra Legal Defence Fund Coalition*

The Sierra Legal Defence Fund submitted an application for standing and funding on behalf of three organizations: the Canadian Association of Physicians for the Environment, whose overarching concern is children's environmental health; the Council of Canadians, a citizens' watchdog association which is focused on such issues as the safeguarding social programs, alternatives to free trade, and the commodification of fresh water; and Great Lakes United, a

coalition of environmental, conservation, labour and community groups whose mission is to develop and maintain a healthy ecosystem in the Great Lakes. In both its written and oral submissions the Sierra Legal Coalition stressed the fact that it could offer the Inquiry broad national and international perspectives on the issues it would address.

(iii) *The CEDF and Pollution Probe Coalition*

This coalition is made up of two national organizations: the Canadian Environmental Defence Fund (“CEDF”), an organization whose mandate is to intervene directly or to provide technical, legal, organizational and financial support to other organizations in relation to legal initiatives on environmental issues; and Pollution Probe, an organization focusing on a broad range of environmental issues including the enhancement of water quality. Both the CEDF and Pollution Probe have long and distinguished histories of involvement in environmental matters. They are joined in the coalition by nine other local organizations: CARD of Balsam Lake, Coalition of Concerned Citizens of Caledon, Four Corners Environmental Group, Mariposa Aquifer Protection Association, Save the Rouge Valley System, Stuart Hall Against Mismanaged Environment, Waring’s Creek Improvement Association, Fort Erie Water Advocacy Group and the Attawapiskat First Nation.

(iv) *Discussion*

On the issue of whether standing should be granted to any or all of these organizations, the three environmental coalitions in my view represent a clearly ascertainable interest and perspective which I consider important to my mandate in Part I. I do not believe that the interests of the environmental groups in Part I are accurately characterized as substantial and direct. In order to ensure that all important points of view are represented, however, I grant standing to an environmental group in Part IA to deal with environmental issues relating to farming and agriculture. I am also prepared to grant special standing with respect to the remaining issues in Part IA and full standing for Part IB. I note as well that the CWC will be represented by CELA, which brings a similar perspective to the Inquiry as this coalition. That perspective will indeed be well represented throughout Part I.

While I consider the involvement of the environmental groups in Part I to be both useful and important, I believe that the interests represented by these groups can be adequately accommodated by one grant of standing to be shared among them. In reviewing the material filed by the coalitions, it appears to me that the positions advanced by them, where they do not overlap, are at least complementary. When asked by me, none of the counsel for the groups could identify any areas of conflict among the three coalitions. Because of the special expertise in the area of agricultural and farming, I assume that the ALERT – Sierra Club Coalition will deal with environmental issues relating to farming and agriculture. When I asked them in oral argument, both Ms. Christie on behalf of the Sierra Legal Defence Fund Coalition and Mr. Sokolov on behalf of the CEDF-Pollution Probe Coalition stated that they would be able to work out a division of the remaining environmental issues among themselves. I would also recommend funding for one counsel in Part I of the Inquiry to be allocated among the three coalitions in accordance with my reasons above.

Further, the three coalitions will in my view make an important contribution to Part II. As with the agricultural groups, I am prepared to grant separate standing in Part II to the extent that, in their written submissions, they express a different interest or perspective.

On the issue of funding, it is my intention, by granting standing in Part II to each of the three coalitions, that each be entitled to provide me with a detailed application for funding setting out the nature of any papers such group intends to prepare as well as the details of the costs it expects to incur with regard to Part II.

### **Q. Energy Probe Research Foundation (EPRF)**

EPRF is an environmental and public policy research institute which traces its roots to Pollution Probe. I have not grouped EPRF with the other environmental groups because its focus is markedly different from the three coalitions discussed above. Specifically, EPRF advocates a drinking water system that is regulated by government, operated and managed by the private sector and in which consumers pay the full cost of the system. EPRF has applied for full standing and funding in Parts I and II of the Inquiry.

Dealing first with Part I, EPRF has a clearly ascertainable perspective which I believe will be helpful to me in fulfilling my mandate in Part IB of the Inquiry.

In my view, the unique perspective on which EPRF provides assistance is narrow. It centres on the issue of whether private ownership of the water system would have made a difference to what happened in Walkerton.

EPRF has also asked for standing in Part IA in order to ask questions of those officials in Walkerton with decision-making power over the water system. EPRF has informed me that these questions are necessary to assist in building its hypothesis about how a water utility should be structured. While I understand the reason for EPRF's request, I am of the view that its interest can be accommodated without granting it standing in Part IA. First, I understand that it is the intention of Commission counsel to call the evidence of local officials, not only in Part IA but also in Part IB. The evidence given by these officials in Part IB will focus on matters relating to government policies and procedures – the primary focus of EPRF. I therefore grant standing to EPRF in Part IB of the Inquiry for the limited perspective outlined above. I am not satisfied from the material presented that EPRF meets the funding criteria for Part IB. It is not clear to me what efforts, if any, it has made to raise funds for this Inquiry. EPRF may reapply in the future.

I am also prepared to grant standing to EPRF in Part II. As noted elsewhere in these reasons, I will defer consideration of the funding proposals for Part II.

## **R. Groups Applying for Part II Standing Only**

I heard from a number of groups and individuals who applied for standing only in Part II of the Inquiry. For the reasons set out below, I have granted standing to each of these applicants. As I have noted previously, I have deferred the issue of funding for the preparation and/or presentation of Public Submissions until after the Commission Papers have been published in draft. Those groups which have an interest in preparing or assisting in the preparation of Commission Papers should contact Mr. Harry Swain, the Chair of our Research Advisory Panel. I have granted standing in Part II of the Inquiry to the following applicants.

1. *Azurix North America (Canada) Corp.*

Azurix provides water and waste water services to more than 700 facilities in Canada and the United States, including 16 facilities in Ontario. It has offered to bring to Part II its perspective as a private operator of

water systems and I am of the view that this will assist me in the fulfillment of my mandate.

2. *Indian Associations Coordinating Committee of Ontario Inc. (Chiefs of Ontario)*

The Chiefs of Ontario is an umbrella organization for all status Indian communities in Ontario. It represents the interests of all of Ontario's 134 First Nations, comprising approximately 130,000 individuals, on a broad range of issues. I am most appreciative of the Chiefs of Ontario's offer to prepare a paper addressing First Nations water quality issues across the general topics proposed for the Inquiry. I also accept the Chiefs' offer to provide assistance on other drinking water-related issues affecting First Nations.

3. *Conservation Ontario and Saugeen Valley Conservation Authority*

Conservation Ontario represents Ontario's 38 conservation authorities and has applied for standing together with the Saugeen Valley Conservation Authority. The focus of these two organizations will be on the need for a comprehensive provincial framework for sustainable water management including submissions on current provincial policies and perceived program gaps. I note that Conservation Ontario and the Saugeen Valley Conservation Authority have offered to share standing with the Grand River Conservation Authority and Ducks Unlimited. While I am appreciative of the fact that this offer was made in an attempt to help shorten the length of the Inquiry, I do not have the same concerns about an unduly protracted process in Part II as I do in Part I. For this reason I have granted separate standing to all three applicants. I note, however, that when requests for funding are made, I will again be looking to avoid any unnecessary duplication and would strongly urge these groups (and, indeed, any groups with the same or similar interest) to find ways to combine their efforts on any research papers which they may wish to produce.

4. *Ducks Unlimited – Ontario*

Ducks Unlimited has a long-standing interest in the preservation and management of Ontario's wetlands. Through its Waterfowl and Wetlands Research Institute, Ducks Unlimited is currently preparing a report

outlining the science associated with wetlands, water quality and water management which they have kindly offered to provide to the Commission when it is complete. I am most appreciate of this offer and look forward to further assistance from this organization.

5. *The Grand River Conservation Authority*

The Grand River Conservation Authority works with watershed municipalities, the Province and a variety of other groups to help protect the quality of the water supply in the Grand River watershed. For the reasons noted in relation to Conservation Ontario, I have also granted standing in Part II to the Grand River Conservation Authority.

6. *The Ontario Municipal Water Association (OMWA)*

OMWA represents more than 160 public drinking water authorities in Ontario. Its role is to lobby on behalf of its members on policy, legislative and regulatory issues related to the provision of water. OMWA offers to bring its knowledge and experience in the governance and operation of municipal public water systems to the Inquiry.

7. *The Ontario Water Works Association (OWWA)*

The OWWA's membership includes approximately 70 large and small utilities responsible for the provision of drinking water in Ontario. While the focus of the OMWA is on the management and operation of water systems, the focus of the OWWA is on the science and technology of water treatment. The interests of the OMWA and the OWWA obviously overlap. While I have granted each of these organizations standing, I encourage them to work together on the many issues which I expect they share.

8. *The Ontario Society of Professional Engineers (OSPE)*

The OSPE is a new organization recently spawned by the Professional Engineers – Ontario to deal with many non-regulatory concerns shared by professional engineers in Ontario. The OSPE has established a task group which will examine issues related to water quality management in Ontario from an engineering perspective. The OSPE has offered to provide input to the Commission on the following four issues: (i) the extent of

engineering involvement in the production, treatment and delivery of drinking water; (ii) the gradual reduction in the extent of engineers' involvement in the drinking water process in Ontario; (iii) the value of having engineers involved in this process; and (iv) the fact that the quality of water systems is directly proportionate to the investment in such systems.

9. *The Professional Engineers – Ontario*

The Professional Engineers – Ontario is the organization which regulates and sets standards for engineers in Ontario. It has offered to bring its vast expertise in standard setting and the regulation of engineers to the Inquiry.

10. *The Ontario Medical Association*

The Ontario Medical Association intends to focus on the public health aspect of the Commission's mandate in Part II. Its particular interests are the roles of the Medical Officer of Health and the administrative structure and reporting requirements in the assurance of safe drinking water.

11. *Maureen Reilly/ Sludgewatch*

Ms. Reilly is involved in public interest research and public education on the agricultural application of wastewater sewage sludge, septage and other wastes. Ms. Reilly has offered her experience in these matters to Part II of the Inquiry and I am pleased to grant her standing.

## **S. Individuals**

Five individuals with different experiences and backgrounds and with different points of view also sought standing. They are:

Ernest Farmer

Mary Richter

Mary-Clare Saunders

Jacqueline Schneider-Stewart (People Opposed to Ontario Pollution)

Greta Thomson

These individuals have not satisfied either of the criteria for standing. Each, however, has a point of view or experience that will be considered by Commission counsel in making decisions on what evidence should be called. I thank each of them for their interest in the Inquiry.

## **Summary**

I have granted standing to six parties for all issues in Part I. I have also granted standing to 14 other parties, some of them coalitions, but have limited their participation because of the nature of their interest or perspective. I have granted standing to, at most, 35 applicants in Part II, some of whom I expect will form coalitions.

I have dealt with standing so as to ensure that all the relevant interests and perspectives are fully represented. My first criterion has been to ensure the Inquiry is thorough. When in doubt, I have opted in favour of inclusion. In doing so, I recognize there will be overlapping positions and a potential for duplication. I want to make two points clear about the process in Part I. I expect parties with the same interest to cooperate with one another and with Commission counsel to avoid repetition and delay. I also expect parties who have been granted standing in a limited area to stay within the permitted bounds. In light of these expectations, I will not hesitate to intervene where there is any departure from the approach I have set out above.

Finally, I want to thank the many individuals and groups who applied for standing. I appreciate your interest in the Inquiry and your willingness to help. I take great comfort from the enormous expertise that has been made available to the Inquiry through the grants of standing. I look forward to working with those granted standing on this endeavour that is so important to the people of Walkerton and the rest of Ontario.

## **Appendix - Appearances on behalf of applicants**

- Paul Muldoon and Theresa McClenaghan, Canadian Environmental Law Association, for Concerned Citizens of Walkerton

- John Gilbert and Clayton Gutscher for the Walkerton Community Foundation
- Rick Lekx and Tom Schulz for the Walkerton & District Chamber of Commerce
- Frank Marrocco, Glenn Hainey and Lynn Mahoney for the Government of Ontario
- Paul Vrklej for the Ontario Farm Environmental Coalition
- Robert Bedggood for Christian Farmers Federation of Ontario
- Gordon Coukell for the Dairy Farmers of Ontario
- Jim Clark for the Ontario Cattle Feeders Association
- Mike McMorris for the Ontario Cattlemen's Association
- G. Michael Cooper for the Ontario Farm Animal Council
- Cecil Bradley for the Ontario Federation of Agriculture
- Larry Skinner for the Ontario Pork Producers Marketing Board
- Donald K. Eady and Timothy G.R. Hadwen for the Ontario Public Service Employees Union
- Peter T. Fallis for Mary Clare Saunders
- Greta Thompson, in person
- John H.E. Middlebro' for the Bruce Grey Owen Sound Health Unit
- Paul Wearing and James LeNoury for the Association of Local Public Health Agencies
- Earl A. Cherniak, Q.C. and Douglas Grace for Dr. Murray McQuigge, David Patterson and Mary Sellars

- David Jacobs for the Ontario New Democratic Party *et al.*
- James Caskey, Q.C. and Mark Poland for the Injured Victims
- Mr. Ernest Farmer, via telephone
- Michael Epstein for Frank Koebel
- William Trudell for Stan Koebel
- Rod McLeod, Q.C. and Bruce McMeekin for the Municipality of Brockton *et al.*
- Kenneth Prehogan for the Walkerton Public Utilities Commission
- Frank J.E. Zechner for Azurix North America (Canada) Ltd.
- Paul G. Vogel and Dawn J. Kershaw for the ALERT – Sierra Club Coalition
- E.A. Cronk for the Office of the Chief Coroner of Ontario
- Mark Mattson for Energy Probe Research Foundation
- Louis Sokolov and Benson Cowan for the Canadian Environmental Defence Fund *et al.*
- Elizabeth Christie for the Canadian Association of Physicians for the Environment *et al.*
- Jacqueline Schneider-Stewart representing People Opposed to Ontario Pollution
- Howard Goldblatt for the Canadian Union of Public Employees, Local 255, individual named members, and CUPE National
- Ian Fellows for the Professional Engineers and Architects of the Ontario Public Service
- Jonathan W. Kahn and Allison A. Thornton for the Chiefs of Ontario

- Richard Hunter for Conservation Ontario
- Jim Coffey for the Saugeen Valley Conservation Authority
- J. Anderson for Ducks Unlimited - Ontario
- Douglas B. James and Barker Willson for the Ontario Municipal Water Association
- Paul Emerson for the Grand River Conservation Authority
- Joseph Castrilli for the Ontario Water Works Association
- Robert Goodings and Joyce Rowlands for the Ontario Society of Professional Engineers
- Doug Hamilton and Craig Rix for the Association of Municipalities of Ontario
- John D. Gamble and Johnny Zuccon for the Professional Engineers of Ontario
- B.T.B. (Ted) Boadway, M.D. for the Ontario Medical Association
- Maureen Reilly for Sludgewatch (Uxbridge Conservation Authority)
- Mrs. Mary Richter, in person

*The Honourable Dennis R. O'Connor,  
Commissioner*



## **SUPPLEMENTARY RULING ON STANDING AND FUNDING**

### **APPENDIX E (III)**

THE WALKERTON INQUIRY

LA COMMISSION  
D'ENQUÊTE WALKERTON

### **Supplementary Ruling on Standing and Funding**

I have received three written requests to reconsider my Ruling of September 11.

1. The Walkerton Public Utilities Commission (the “PUC”) requests that I amend my Ruling to allow the PUC to cross-examine all witnesses rather than sharing the right of cross-examination with the Town. At the standing hearing, Mr. Prehogan, for the PUC, took the position that there was no conflict of interest between the PUC and the Town with respect to the issue of what caused the contamination.

In making the present request Mr. Prehogan now points out five circumstances which he says will make co-operation between the Town and the PUC difficult. These circumstances primarily relate to the adversity in interest between the two with regard to issues of liability for damages resulting from the contamination. The Order in Council under which I was appointed precludes me from making findings of civil liability. Nonetheless, it would be naïve to think that the positions of the two parties in civil proceedings will not affect the manner in which they approach the Inquiry. I understand why co-operation may be difficult. Accordingly, I am prepared to accede to the request and permit the PUC and the Town separate cross-examinations. In doing so, however, I note that there will likely be a congruence of interest on many issues. In those instances, I encourage counsel to agree on a single cross-examination. In any event I will insist that there be no repetition.

The PUC also requests that I amend my recommendation for funding to include payment of a junior counsel fee. In addition to acting for the PUC, Mr. Prehogan will be acting for two of the PUC Commissioners in their personal capacities, both of whom will be called as witnesses.

In these circumstances, I am satisfied that there will be some portions of the evidence in Part IA for which a junior counsel is necessary. I therefore recommend the payment of a junior counsel fee for a maximum of 20 days during Part IA only.

2. Stanley Koebel requests that I alter my recommendation for funding to include payment of a junior counsel fee. In my view, this request should be granted. I am limiting the recommendation for funding for a junior counsel to a maximum of 20 days.

After my Ruling, Mr. Trudell, Mr. Koebel's counsel, described certain personal circumstances of Mr. Koebel which underlie this request. These circumstances were not included as part of the original application for funding. I accept Mr. Trudell's statement that these circumstances are such that it would be difficult, if not impossible, for him to continue to act for Mr. Koebel without the assistance of junior counsel. These circumstances are tied to the central role attributed to Mr. Koebel in the events of May, 2000, the likelihood that Mr. Koebel will be compelled to testify at the Inquiry, and the anticipated positions of other parties concerning the cause of the contamination. Mr. Trudell has requested that the details of these circumstances be kept confidential because of their personal nature. I am prepared to accede to that request.

I note that no similar application has been made by Frank Koebel, and that Mr. Epstein, his counsel, has specifically indicated that he will not be seeking alteration of the funding recommendation to include payment of a junior counsel fee. Mr. Epstein has, however, supported the request made by Stanley Koebel and, in doing so, has echoed the reasons advanced by Mr. Trudell.

I therefore recommend the payment of a junior counsel fee for Stanley Koebel for 20 days during Part IA only. I would point out that under the Attorney General's guideline, when junior counsel attends hearings with senior counsel, he or she will be paid 75% of the junior counsel's hourly rate under the Attorney General's Hourly Fee Schedule.

3. In my Ruling, I asked the Ontario Farm Environmental Coalition (OFEC) to submit additional information with respect to funding. OFEC has written to indicate that it requires funding for one counsel to represent OFEC for portions of the Inquiry hearings. OFEC indicates that it has

raised \$25,000 from organizations representing commercial livestock producers and from the two general farm organizations which are members of OFEC. OFEC is reluctant to ask farm family members to contribute additional funds, beyond what they have already paid in general contributions to OFEC member organizations, in light of the particularly low crop prices and poor crops that farm families face this year.

I am satisfied that OFEC has met the criteria for funding and will recommend funding for one counsel for OFEC for those portions of the hearings that relate to farming and agricultural issues. These issues are the basis upon which I granted standing to OFEC in Part I. However, I will qualify this recommendation to fund OFEC by indicating that funding should be provided only after OFEC has exhausted the \$25,000 that it has raised independently.

I note further that OFEC has indicated that it is seeking support through the Agricultural Adaption Council's Small Projects Initiative. To the extent that financial support is provided by this route, I will amend my recommendation to fund OFEC to reflect additional funding from the Agricultural Adaption Council. In particular, such additional funding should be exhausted before any funding is provided pursuant to my recommendation.

DATE RELEASED: October 3, 2000

*The Honourable Dennis R. O'Connor,  
Commissioner*

