



(Amended September 29, 2006)

Rules of Practice and Procedure

1. The Commission proceedings will be divided into two parts. Part I 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 historical 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.

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

In doing so, the Commission may provide community meetings or other opportunities apart from formal evidentiary hearings

for individuals affected by the allegations of historical abuse of young people in the Cornwall area to express their experiences of events and the impact on their lives.

A. RULES – PART I

I. General

2. Public Hearings will be convened at 709 Cotton Mill Street, Cornwall, Ontario.
3. All parties, witnesses and their counsel shall be deemed to undertake to adhere to these Rules. Any party may raise any issue of non-compliance with the Commissioner.
4. The Commissioner shall deal with a breach of these Rules as he sees fit including, but not restricted to, revoking the standing of a party, and imposing restrictions on the further participation in or attendance at (including exclusion) the hearings by any party, counsel, individual, or member of the media.
5. Insofar as it needs to gather evidence, the Commission is committed to a process of public hearings. However, applications on some aspects of its mandate may be made to proceed *in camera* and/or under a publication ban. Such applications should be made in writing at the earliest possible opportunity pursuant to the provisions of Section III (vi) below.
6. Subject to s. 4 and s. 5 of the *Public Inquiries Act*, the conduct of and the procedure to be followed on the Inquiry is under the control and discretion of the Commissioner.

7. The Commissioner may amend these rules or dispense with compliance with them, as he deems necessary to ensure that the inquiry is thorough, fair and timely.

II. STANDING FOR PART I

8. Commission counsel, who will assist the Commissioner throughout the Inquiry and are to ensure the orderly conduct of the Inquiry, have standing throughout the Inquiry. Commission counsel have the primary responsibility for representing the public interest at the Inquiry, including the responsibility to ensure that all interests that bear on the public interest are brought to the Commissioner's attention. Persons or groups may be granted standing by the Commissioner, if the Commissioner is satisfied that they:
 - (a) are directly and substantially affected by Part I of the Inquiry in which event the party may participate in accordance with s. 5 (1) of the *Public Inquiries Act*, or
 - (b) represent distinct ascertainable interests and perspectives that are essential to his mandate in Part I, which the Commissioner considers ought to be separately represented before the Inquiry, in which event the party may participate in a manner to be determined by the Commissioner.
9. The Commissioner will determine the extent to which a party granted standing might participate in Part I of the Inquiry.

10. The term “party” is used to convey the grant of standing and is not intended to convey notions of an adversarial proceeding.
11. Counsel representing witnesses called to testify before the Commission may participate during the hearing of such evidence as provided in these Rules.

III. Evidence and procedural matters

(i) General

12. In the ordinary course, Commission counsel will call and question witnesses who testify at the Inquiry. Counsel for a party may apply to the Commissioner for permission to lead a particular witness’ evidence in chief. If counsel is granted the right to do so, examination shall be confined to the normal rules governing the examination of one’s own witness.
13. The Commission is entitled to receive any relevant evidence at the Inquiry, which might otherwise be inadmissible in a court of law. The strict rules of evidence will not apply to determine the admissibility of evidence.
14. The Commission may, to the extent it considers advisable, refer to and rely on the material listed in paragraph 5 of the Order in Council establishing the Commission, and to such other related material as the Commission considers relevant to its duties.
15. Parties are encouraged to provide to Commission counsel the names and addresses of all witnesses they feel ought to be

heard, and to provide to Commission counsel copies of all relevant documentation, including statements of anticipated evidence, at the earliest opportunity.

16. Commission counsel have discretion to refuse to call or present evidence.

17. Where Commission counsel refuse to call a witness or present evidence, a party may apply to the Commissioner for an order that such witness be called or such evidence be presented. If the Commissioner is satisfied that the witness or evidence is needed, Commission counsel will call the witness or present the evidence.

(ii) Witnesses

18. Anyone interviewed by or on behalf of Commission counsel is entitled, but not required, to have one personal counsel present for the interview to represent his or her interests.

19. Witnesses will give their evidence at a hearing under oath or affirmation.

20. If special arrangements are desired by a witness in order to facilitate that witness' comfort in testifying, a request for accommodation shall be made to the Commission sufficiently in advance of the witness' scheduled appearance to reasonably facilitate such requests. While the Commission will make reasonable efforts to accommodate such requests, the Commissioner retains ultimate discretion as to whether, and to what extent, such requests will be accommodated.

21. Witnesses may request that the Commission hear evidence pursuant to a summons, in which case a summons shall be issued.

22. Witnesses who are not represented by counsel for parties with standing are entitled to be represented by their own counsel while they testify. Counsel for a witness will have standing for the purposes of that witness' testimony to make any objections thought appropriate.

23. Witnesses may be called more than once.

(iii) *Order of Examination*

24. The order of examination will be as follows:

(a) Commission counsel will adduce the evidence from the witness. Except as otherwise directed by the Commissioner, Commission counsel are entitled to adduce evidence by way of both leading and non-leading questions;

(b) Parties granted standing to do so will then have an opportunity to cross-examine the witness to the extent of their interest. The order of cross-examination will be determined by the parties having standing and if they are unable to reach agreement, by the Commissioner;

(c) counsel for a witness, regardless of whether or not counsel is also representing a party, will examine last, unless he or

she has adduced the evidence of that witness in chief, in which case there will be a right to reexamine the witness; and

(d) Commission counsel will have the right to re-examine.

25. Except with the permission of the Commissioner, no counsel other than Commission counsel may speak to a witness about the evidence that he or she has given until it is complete. Commission counsel may not speak to any witness about his or her evidence while the witness is being cross-examined by other counsel.

(iv) *Access to evidence*

26. All evidence shall be categorized and marked P for public sittings and, if necessary, C for sittings in camera and/or under a publication ban.

27. A daily transcript will be posted to a website transcript repository which will be fully accessible to the parties, the public and the media. It will be available by both direct access to the court reporting service's website transcript repository and via link from the Commission's website. Full access will be available for viewing, downloading and printing capability.

28. The P transcript will also be available on an expedited daily basis, but the cost of this service will be the responsibility of the party or person ordering it. The Commission will not pay for expedited transcripts for any party or member of the public

or media, nor will the cost be an assessable disbursement for parties with funded status.

29. One copy of the P exhibits will be available to be shared by the media.

30. Only those persons authorized by the Commission, in writing, shall have access to C transcripts and exhibits.

(v) *Documents*

31. The Commission expects, with the exception of documents over which solicitor-client privilege is claimed (in which case Rule 31A applies), all relevant documents to be produced to the Commission by any party with standing where the documents are in the possession, control or power of the party. Where a party objects to the production of any document on the grounds of privilege (except on grounds of solicitor-client privilege, in which case Rule 31A applies), the document shall be produced in its original unedited form to Commission counsel who will review and determine the validity of the privilege claim. The party and/or that party's counsel may be present during the review process. In the event the party claiming privilege disagrees with Commission counsel's determination, the Commissioner, on application, may either inspect the impugned document(s) and make a ruling or may direct the issue to be resolved by a judge assigned by the Chief Justice of the Superior Court of Justice.

31A. Where a party objects to production of any document on the grounds of solicitor-client privilege, the following procedures apply:

a) The party shall deliver a list setting out pertinent details of the documents over which claims for privilege are being asserted. This shall include date, author, recipient, and a brief description. The “description” must be as brief as possible so as not to destroy the claim for privilege.

b) Commission counsel shall review the list and decide if it accepts the claim for privilege. If it does not, then a party may file additional material, such as an affidavit, to support its claims.

c) If the dispute still cannot be resolved, the list and any further material shall be submitted forthwith to a judge of the Ontario Superior Court of Justice. If the judge is unable to make a determination based on that record, the judge may request a copy of the disputed document(s) for inspection.

d) If the claim for privilege is dismissed, the document(s) shall be produced to Commission counsel, subject to any subsequent appeal.

32. The term “documents” is intended to have a broad meaning, and includes the following mediums: written, electronic, audiotape, videotape, digital reproductions, photographs, maps, graphs, microfiche and any data and information recorded or stored by means of any device.

33. Originals of relevant documents are to be provided to Commission counsel upon request.
34. Counsel to parties and witnesses will be provided with documents and information, including statements of anticipated evidence, only upon giving a written undertaking that all such documents or information will be used solely for the purpose of the Inquiry and, where the Commission considers it appropriate, that its disclosure will be further restricted. The Commission may require that documents provided, and all copies made, be returned to the Commission if not tendered in evidence. Counsel are entitled to provide such documents or information to their respective clients only on terms consistent with the undertakings given, and upon the clients entering into written undertakings to the same effect. These undertakings will be of no force regarding any document or information once it has become part of the public record. The Commission may, upon application, release any party in whole or in part from the provisions of the undertaking in respect of any particular document or information.
35. Documents received from a party, or any other organization or individual, shall be treated as confidential by the Commission unless and until they are made part of the public record or the Commissioner otherwise declares. This does not preclude the Commission from producing a document to a proposed witness prior to the witness giving his or her testimony, as part of the investigation being conducted, or pursuant to Rule 33.
36. Subject to Rule 33 and to the greatest extent possible, Commission counsel will endeavour to provide in advance to

both a witness and the parties with standing relating to issues with respect to which the witness is expected to testify, documents that will likely be referred to during the course of that witness' testimony, and a statement of anticipated evidence.

37. Parties shall at the earliest opportunity provide Commission counsel with any documents that they intend to file as exhibits or otherwise refer to during the hearings, and in any event shall provide such documents no later than 24 hours prior to the day the document will be referred to or filed.

38. A party who believes that Commission counsel has not provided copies of relevant documents must bring this to the attention of Commission counsel at the earliest opportunity. The object of this rule is to prevent witnesses from being surprised with a relevant document that they have not had an opportunity to examine prior to their testimony. If Commission counsel decides the document is not relevant, it shall not be produced. This does not preclude such a document from being used in cross-examination by any of the parties. Before such a document may be used for the purposes of cross-examination, a copy must be made available to all parties by counsel intending to use it not later than 48 hours prior to the testimony of the witness.

(vi) *Confidentiality*

39. Without limiting the application of s. 4 of the *Public Inquiries Act*, the Commissioner may, in his discretion and in appropriate circumstances, conduct hearings in private, and/or

issue orders prohibiting the disclosure, publication, broadcast or communication of any testimony, document or evidence, when he is of the opinion that intimate medical or personal matters, or other matters, are of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure outweighs the desirability of adhering to the general principle that the hearings should be open to the public. Subject to the discretion of the Commissioner, only the Commissioner, Commission staff and counsel, counsel for parties with standing, counsel for the witness who has been granted Confidentiality and media representatives may be present during testimony being heard in private.

40. A witness may apply to the Commissioner for measures aimed at protecting his or her identity for a compelling reason as determined in the sole discretion of the Commissioner. Upon a successful application to the Commissioner the witness may be granted the status of “Confidentiality”. For the purposes of the Inquiry, Confidentiality may include the right to have his or her identity disclosed only by way of non-identifying initials. The witness may also request to testify before the Commission in private, and request the application of any other privacy measure that the Commissioner, in his discretion, may grant.

41. A witness who is granted Confidentiality will not be identified in the public records and transcripts of the hearing except by non-identifying initials. Any report of the Commission using the evidence of a witness who has been granted Confidentiality will use non-identifying initials only.

42. Media reports relating to the evidence of a witness granted Confidentiality shall avoid references that might reveal the identity of the witness. No photographic, audio, visual or other representation of the witness shall be made either during the witness' testimony or upon his or her entering and leaving the site of the Inquiry.

43. Any witness who is granted Confidentiality will reveal his or her name to the Commission and counsel participating in the Inquiry in order that the Commission and counsel can prepare to question the witness. The Commission and counsel shall maintain confidentiality of the names revealed to them. No such information shall be used for any other purpose either during or after the completion of the Commission's mandate.

44. Any witness who is granted Confidentiality may either swear an oath or affirm to tell the truth using the non-identifying initials given for the purpose of the witness's testimony.

45. All parties, their counsel and media representatives shall be deemed to undertake to adhere to the rules respecting Confidentiality.

B. Rules - Part II

I. General

46. Because of the policy nature of the issues, the Commission will utilize a range of research and policy development processes. The objectives of Part II are to promote an informed discussion and analysis of the policy issues raised by the Inquiry and to

ensure that parties with standing and the public have a meaningful and ongoing opportunity to participate. Amongst the various initiatives which may be adopted under Part II, the Commission will:

- a) commission a range of research and policy papers (the “Research and Policy Papers”) from recognized experts on a broad range of relevant topics;
- b) invite written and/or oral submissions from parties with standing and the public about any matter relevant to Part II, including the Research and Policy Papers;
- c) convene meetings or symposia (the format of which may vary) to discuss issues raised by the Inquiry. Parties with Part II standing and the members of the public will be invited to participate; and
- d) post commissioned research and policy material and public submissions on its website.

47. The Commission may call evidence during its hearings on matters relevant to Part II.

(i) *Commission Papers*

48. The Commission will establish one or more Research Advisory Panels (the “Panels”). The role of the Panels will be to make recommendations to the Commission on the subject matters of the Commission Papers and who should be retained to prepare them.

49. 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's website.

(ii) *Public Submissions*

50. Any interested person may make a public submission, in writing, to the Commission dealing with any matter related to Part II of the Inquiry including responses to any matter raised in the Commission Papers.

51. The Commission will set and publish a deadline by which all public submissions must be received. All public submissions will be made available for public review either on the Commission's website or at the Commission's offices.

(iii) *Public Meetings and Symposia*

52. The Commission will convene a number of symposia and/or public meetings to discuss issues raised in Part II of the Inquiry. The format of the public meetings will be tailored to the topics discussed and may vary. The public meetings may include the Commissioner, authors of relevant Research and Policy Papers, parties granted standing in Part II (and their counsel or representative if identified to Commission Counsel or the Director of Policy for the Commission), members of Research and Policy Panel, and any other persons invited by the Commission whom the Commissioner concludes would contribute to the discussion.

53. The public meetings shall be recorded unless, on application of a party or other invited persons, the Commissioner in his discretion determines otherwise.

II. Standing for Part II

54. Persons or groups may be granted standing by the Commissioner for Part II of the Inquiry if the Commissioner is satisfied that:

- a) they are sufficiently affected by Part II of the Inquiry; or
- b) they represent distinct ascertainable interests and perspectives that are essential to his mandate in Part II, and which the Commissioner considers ought to be separately represented before the Inquiry. In order to avoid duplication, groups of similar interest are encouraged to seek joint standing.

55. Because of the different nature of the proceedings in the two phases of the Inquiry, the nature and extent of a party's participation will be different in Part II than in Part I, except where evidence is called by the Commission in which case the Rules governing evidence and witness testimony adopted in Part I shall apply with any necessary modifications.

56. In addition to the ability of all members of the public to receive Commission Papers and make Public Submissions, those persons or groups who have been granted standing in Part II shall be entitled to participate directly in the public meetings.

III. Access to Evidence and Documents

57. **Rules 26 to 38** regarding access to evidence and documents apply to Part II of the Inquiry.

C. Funding

58. 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 interest, where in the Commission's view the party would not be otherwise able to participate in the Inquiry without such funding.

59. Further information is available on the Commission's website at www.cornwallinquiry.ca