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MEMORANDUM

TO: Parties with Part Two Standing

FROM: Nye Thomas
Director, Policy and Research
Ipperwash Inquiry

DATE: May 25, 2004

RE: Part Two of the Ipperwash Inquiry – Background and Overview

1) INTRODUCTION

The Ipperwash Inquiry is similar to many previous commissions or inquiries in that its mandate includes both a “fact-finding” component and a “systemic” component. The Order in Council establishing the Ipperwash Inquiry states that:

2. The Commission shall:
 - 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.

Part One of the Inquiry addresses the first part of the Commission’s mandate; Part Two addresses the second.

This memorandum summarizes key aspects of the Inquiry’s Part Two strategy and process.

2) OBJECTIVES

Part Two of the Inquiry has two, primary objectives:

- a) To undertake a forward-looking, purposeful, independent, and evidence-based analysis of relevant public policy issues.
- b) To ensure that parties with Part Two standing and interested members of the public have a meaningful and ongoing opportunity to participate.

Part Two also has a third, minor objective:

- c) To establish a research legacy on relevant public policy issues.

The first two objectives are self-evident. The purpose of the third objective may not be obvious. Simply put, public inquiries are unique opportunities to create, collect and organize research on important public policy issues. These issues are often being considered simultaneously in many jurisdictions across the world. The Inquiry believes, therefore, that it should create a research legacy accessible to interested policy-makers, academics, and/or organizations and individuals.

3) PRINCIPLES

The Ipperwash Inquiry has adopted five principles to govern its Part Two process and deliberations:

- a) Thoroughness
- b) Expedition
- c) Openness
- d) Fairness
- e) Proximity to the events surrounding the death of Dudley George and the avoidance of violence in similar circumstances.

4) PROCESS

a) General

The Inquiry believes that Part One-like evidentiary hearings alone are unlikely to foster the participatory and systemic analysis of the issues. As a result, the Inquiry will use a range of public policy tools in Part Two, including:

- Commissioning research and policy papers from experts on relevant topics. The structure and format of the research and policy papers will vary but will generally include a description of current practises, historical developments, an analysis of relevant issues, and potential options (if applicable) and a bibliography.
- Inviting written and/or oral submissions from parties with standing and the public about issues relevant to Part Two.
- Organizing conferences, meetings or consultations (the format of which may vary) to discuss issues raised by Part Two.
- Holding limited, non-adversarial evidentiary hearings on relevant public policy topics.

These processes are similar to those used in previous inquiries.¹

The Commissioner will attend and participate in all Part Two events.

b) Timing and Relationship to Part One

Part Two will proceed at the same time as Part One. Conferences, meetings, or other events will not be scheduled on the same days as Part One hearings. The Inquiry will ensure it provides reasonable notice of all public meetings.

Some counsel and parties have suggested that Part One should be completed before proceeding with Part Two. The Inquiry considered this issue carefully. We concluded that the overriding public interest in the timely conclusion of the Inquiry – coupled with our confidence in being able to discuss systemic issues appropriately – meant that the both parts should proceed simultaneously. This approach will also likely assist the Inquiry, counsel, and parties interpret the factual evidence more effectively. So too, the evidence in Part One will inform the policy decisions and analysis in Part Two. The Inquiry's final report will integrate the material from both parts.

c) Distribution of Material

The Inquiry will use the Internet extensively to distribute Part Two research and policy papers, submissions, summaries of conferences and meetings, and other materials and to seek comments from parties with Part Two standing and the public.

5) SCOPE

a) Topics

The Inquiry must balance the need for thoroughness with the need to be purposeful and expeditious.

The Inquiry is also mindful that some of the systemic issues implicated by the circumstances and events surrounding the death of Dudley George have been the subject of several well-regarded inquiries or reports in the past.

Taking these factors into consideration, the Inquiry has identified four broad topic areas to be considered in Part Two:

- The relationship between police and Aboriginal people.
- The relationship between police and government.
- The interaction between police and protestors.
- The avoidance of violent confrontations over Aboriginal land and treaty claims in Ontario.

¹ For example, the Walkerton Inquiry organized as a series of commissioned papers, town hall meetings, expert advisory group sessions, public consultations and provincial tours. By way of contrast, the Commission on Proceedings Involving Guy Paul Morin used limited, non-adversarial evidentiary hearings to investigate the policy issues regarding wrongful convictions.

b) Research and Consultation Plan

The Inquiry will seek assistance and recommendations from its Research Advisory Committee (discussed below) and from parties with Part Two standing to articulate and focus its research in these four areas. The result will be a comprehensive research and consultation plan that sets out the research projects and topics that will be addressed in Part Two.

The research and consultation plan has not been finalized. Indeed, we expect that it will be update periodically throughout the Inquiry to account for new issues. Our goal, however, is to have the major elements or projects of the research and consultation plan finalized by the end of the summer.

A draft research and consultation plan will be distributed to parties with Part Two standing by June 18th, 2004. The purpose of the plan is to identify potential background papers or projects that could assist the Inquiry fulfill its Part Two mandate. For example, the Inquiry could commission a background paper on the subject of police and protesters/occupiers or police race relations. The Inquiry could also organize consultations with organizations or individuals who have been involved in other burial ground disputes in order to identify practices that could resolve these situations peacefully.

The Ipperwash Inquiry would also like to include community meetings with First Nations and other communities in the Part Two process. We invite suggestions from parties with Part Two standing to help us identify the most appropriate locations and scope for such meetings. Community meetings are an opportunity for parties and members of the public to meet in an informal setting and discuss some of the systemic issues being addressed by the Inquiry.²

The Inquiry has already begun one major project: We are co-sponsoring a one-day academic research symposium on the subject of the relationship between the police and government with Osgoode Hall Law School. All parties with Part Two standing will be invited to the symposium. The symposium is discussed in more detail below in the section titled "Next Steps and Major Initiatives".

c) Involvement and Role of Parties With Part Two Standing

Part Two is a participatory, forward-looking process. The Inquiry will seek the assistance of all parties regularly and in a spirit of constructive cooperation. Our expectation is that parties will participate in the same manner.

Several parties have already provided us with helpful advice regarding our research and consultations.

² Both the Aboriginal Justice Inquiry of Manitoba and the Saskatchewan Commission on First Nations and Métis Peoples and Justice Reform held community meetings on justice issues. Mr. Justice Sinclair, one of the two commissioners for the Aboriginal Justice Inquiry has commented that one of the most useful parts of the consultation process were the community meetings with First Nations and other communities. The Walkerton Inquiry also conducted town hall meetings as part of its process.

All research and project work will be posted on our website and distributed to all parties with Part Two standing. All parties will be given an opportunity to comment on the material, as will the public at large.

6) RULES/STANDING

The Inquiry's procedural rules are published on our website. Sections 58-60 of the Rules govern standing for Part Two. The Inquiry may add parties or approve funding for Part Two parties in limited circumstances even though the formal standing hearings have concluded.

7) FUNDING

Funding for Part Two is not directly comparable to funding for Part One:

- Part Two is both wider in scope and different in process than Part One;
- Evidential hearings are only one of several approaches likely to be used in Part Two;
- Part Two will benefit from coordinated, multi-disciplinary analysis and research;
- There are more parties in Part Two (28) than Part One (17), including advocacy groups whose mandate arguably includes participation in – and funding for – public inquiries.

As a result, the Inquiry has developed dedicated funding rules for Part Two.

The Inquiry's May 7, 2004 *Ruling on Standing and Funding* sets out the basic rules regarding funding for Part Two. That decision specifies that the Inquiry will recommend funding for Part Two parties for one of two purposes: Submission/Project Funding or Participation Funding.³

a) Submission/Project Funding

The purpose of Submission/Project funding is to provide limited resources to parties to assist them to prepare sophisticated submissions or to undertake projects that are likely to benefit the Inquiry. As a result, the Inquiry will recommend Submission/Project Funding for parties with Part Two standing to *prepare submissions, undertake research, organize meetings or consultations, or for other relevant projects that advance the objectives of Part Two and assist the Inquiry to fulfill its mandate.*

The Inquiry will consider a wide range of proposals for funding. Indeed, the standing applications revealed that many parties anticipated this approach and have already considered potential projects.⁴ Joint applications are encouraged.

³ These rules are similar to those used at the Walkerton Inquiry.

⁴ The Walkerton Inquiry recommended funding to numerous groups for a variety of purposes. The Inquiry recommended funding for groups to carry out scientific research, to consult with their communities or stakeholders, or to hire staff or consultants to research and prepare written submissions on one or more topics. These projects and submissions proved to be a valuable resource to the Walkerton Inquiry.

Submission/Project Funding will not be limited to reimbursement of legal fees. The Inquiry hopes to encourage a wide range of submissions/research/projects from a wide range of parties. We hope to encourage multi-disciplinary approaches so that we may benefit from diverse approaches and perspectives. However, the Inquiry acknowledges that many – if not most – of the issues to be considered in Part Two will likely benefit from the assistance of legal counsel.

The Commissioner will consider applications for Submission/Project Funding if a party makes a written request to the Commissioner that describes the submission/project and explains how the submission/project will assist the Inquiry. The written request should include:

- A description of the submission/project and how the submission/project will assist the Inquiry.
- The project completion date.
- The name of the project manager/contact person.
- Potential project linkages and partnerships.
- A draft budget, including funding for counsel and others.
- An explanation of why this work could not be undertaken without public funding.

The Inquiry will confirm relevant details and expectations with all parties who receive funding.

Inquiry staff are committed to working with parties to develop successful submissions/projects.

b) Participation Funding

The Commissioner will also recommend disbursement funding to facilitate participation in Part Two hearings or meetings. This funding will include travel and related costs. It does not include counsel fees.

Once again, parties will have to make a written request specifying the nature of their request. The Inquiry will consider these applications and make recommendations in accordance with relevant provincial government guidelines.

c) Application and Decision-Making Process

The Commissioner will consider applications 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.

Funding proposals should be directed to my attention at the Inquiry's address.

The deadline for Project/Submission Funding is July 30th, 2004. Parties may apply to the Inquiry prior to the deadline if their submission/project requires considerable lead-time. The Inquiry may consider applications for Project/Submission Funding after this date if necessary to ensure the objectives of Part Two are fulfilled.

There is no set deadline for Participation Funding. Parties must, however, apply to the Inquiry prior to the relevant Part Two hearing or meeting.

The Commissioner will consider applications for funding as quickly as possible. Funding decisions will be confirmed in writing.

d) Distribution of Completed Submissions and Projects

Because the purpose of Part Two funding is to encourage research, submissions, projects and participation from a wide variety of perspectives, it is important that research/submissions be distributed widely for comment. As a result, the Inquiry expects that all research/submissions prepared by parties will be posted on our website to be reviewed and commented upon by other parties and the public.

8) RESEARCH ADVISORY COMMITTEE

The Ipperwash Inquiry has established a Research Advisory Committee to assist the Inquiry fulfill Part Two of its mandate. The committee has two key objectives:

- To assist the Inquiry to develop and manage a research/policy agenda.
- To provide expert, ongoing advice to the Commissioner and Inquiry staff in areas of individual expertise and as a group.

The committee's Terms of Reference are attached to this memo and will be posted on our website.

The committee will be composed of persons with subject-matter expertise and credibility in one or more subject areas including policing, police/government relations, land and treaty claims, and/or Aboriginal justice issues. Committee members will be expected to participate in their personal capacity, not as representatives of organizations they may be affiliated with. Membership details will be distributed shortly.

Committee members will be asked to sign agreements requiring them to keep their advice to the Inquiry confidential and to respect applicable rules regarding the confidentiality of Inquiry evidence.

The committee does not have independent powers to fund parties, commission research, or determine the Inquiry's recommendations or process. The Commissioner will make these decisions in consultation with commission staff.

9) PUBLIC PARTICIPATION

The Inquiry will ensure timely posting of all research papers, stakeholder and public submissions on the Inquiry website for public distribution and comment. The principal difference between the public and parties with standing will be access to some documentation and funding.

10) NEXT STEPS AND MAJOR INITIATIVES

Our major initiatives over the next two months include:

- The research and consultation plan;
- Commissioning background papers and other research;

- Meetings parties with Part Two standing;
- Organizing Osgoode Hall Law School symposium on police/government relations.

The symposium will be held on Tuesday, June 29, 2004. There will be an evening reception and dinner on the evening of Monday, June 28, 2004. The symposium and reception will be held in downtown Toronto.

Prior to the symposium, the Inquiry and Osgoode will commission six academic-quality research papers to be distributed and/or presented at the symposium. The researchers selected to author and present the commissioned papers represent a diverse mix of scholars who are leading experts in relevant areas of concern to the Inquiry. The Inquiry and Osgoode will also commission several subject-matter experts to attend the symposium and comment on the research papers.

We expect the papers and proceedings of the conference to be published in a background volume of symposium papers and related material.

The Inquiry will announce more details of the symposium shortly.

11) INQUIRY CONTACTS

The Inquiry will establish a distribution list for parties with Part Two standing to distribute material as it becomes available. For further information or questions about Part Two, please contact:

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