

COMMISSIONER LINDEN'S OPENING REMARKS
at
THE HEARINGS FOR STANDING & FUNDING FOR THE
IPPERWASH INQUIRY

April 20, 2004

Introduction

- Good Morning. My name is Sidney Linden and I was appointed Commissioner of this Inquiry by Order in Council of the Government of Ontario. I am also a judge of the Ontario Court of Justice and served as the Chief Justice of that court from 1990-99.
- Before making my opening remarks, I am going to call Lillian Pitawatikwat, an Elder to conduct a 'traditional opening'.
- The public inquiry process in Canada, inherently incorporates protocols and customs that are based on Anglo-Canadian heritage. By adding a 'traditional opening' we are also acknowledging the importance and significance of some of the traditions of Aboriginal Peoples.

[Traditional Opening]

- Today marks the first public session of the Inquiry. However, the Commission staff has been working full time over the last few months, putting our team in place, establishing our infrastructure, gathering evidence, identifying and interviewing witnesses and experts and sifting through the thousands of pages of documents.
- Today, and the balance of this week, have been designated to hear applications, by individuals and groups to obtain standing and possibly funding for the Inquiry.

- According to the Order in Council, the Commission was established to inquire into and report on events surrounding the death of Dudley George, in Ipperwash Provincial Park in September 1995. The Commission has also been asked to make recommendations aimed at avoiding violence in similar circumstances.
- The Inquiry will be undertaken in two parts: Part 1 will inquire into and report on events surrounding the death of Mr. George. Part 2 will make recommendations directed to the avoidance of violence in similar circumstances.
- Part 1 of the Inquiry will be conducted in the typical way of public hearings, at which witnesses will be called and examined by Commission counsel and, if necessary, will then be cross-examined by parties who have standing.
- Part 2 will be conducted differently. Although Part 2 will be informed by Part 1, evidentiary hearings alone are unlikely to foster the participation and analysis required to address the second part of the Inquiry's mandate. As a result, Part 2 of the Inquiry will use additional approaches to collect information on key issues identified, including research papers, expert panels, roundtables, community dialogues and advisory committees.
- Our intention is to proceed with both parts concurrently and we will ensure the timetables of the two parts do not conflict with one another.
- I invite everyone to consult the Inquiry website, which will be updated regularly, for the anticipated schedule for hearings and other events. Our website address is *www.ipperwashinquiry.ca*.

Making Application to the Commission for Standing & Funding

- Now I intend to briefly deal with the hearings of the next few days which are being held to hear applications for standing and funding.
- It is essential that an inquiry of this kind be as thorough as possible and that the Commissioner consider all relevant information, from a variety of perspectives. This is achieved through the participation of interested parties.
- In an inquiry of this kind, people or groups that have been given status are entitled to participate in the proceedings. This official status is called “standing”. Standing is granted to facilitate the orderly, timely and fair conduct of the Inquiry.
- Today’s hearings are intended to identify those people or groups that should have standing. As set out in the Rules of Procedure and Practice, this official status may be given to those who may have a direct and substantial interest in the proceedings of the Inquiry, or whose participation may be helpful.
- One of the advantages of a two-part process is that some individuals or groups that may not have sufficient connection to the events of September 1995 to warrant standing for Part 1 may be able to receive standing and participate in Part 2.
- Our intention is to interpret the criteria for Part 2 standing broadly to enable the participation of any individual or group who can contribute to the achievement of the Commission’s mandate.

- The Commission received 35 applications for standing. As in other Commissions of Inquiry, categories of standing will be either full, limited or special depending on the extent of the applicant's direct legal interest and/or contribution to the proceedings.
- Full standing entitles a party to: access documents; advance notice of documents that will be introduced in evidence; advance provision of statements of anticipated evidence; a seat at the counsel table; the right to examine or cross examine witnesses as appropriate; and, the right to make submissions.
- Limited or special standing will be determined based on the written and oral submissions and will entitle a party to some but not all of the rights as parties with full standing.
- The Order in Council provides that the Commissioner may make recommendations to the Attorney General for funding for parties who have been granted standing and who might otherwise be unable to participate in the Inquiry without funding.
- The Commission itself does not provide funding to parties with standing. It makes a recommendation to the government who may or may not accept the recommendation.
- I intend to reserve my decision regarding standing and funding and will send a copy of the decision to each applicant as soon as possible. These decisions will also be posted on our website.
- Any party granted standing should review the Rules and should visit our website regularly for information about the Inquiry, including scheduling details.

Rules of Procedure and Practice

- The Rules of Procedure and Practice for Part 1 and 2 of this Inquiry were modeled on the Rules used in other public inquiries. They were initially posted on the Inquiry website in early March, and comments were sought. Some of the suggestions we received have been incorporated and are reflected in the current version now posted.
- Any further comments regarding the Rules should be communicated to Commission counsel, whom I will be introducing shortly.
- The Commission will be completely transparent and disclosure of all relevant documents will be made available, on disc, to all parties that are granted standing and a paper copy will be available in the hearing room for witnesses as needed.

Importance of Public Inquiries in a Democracy

- I would like to spend a few minutes addressing the importance of public inquiries.
- Public inquiries are usually called in response to a matter of public interest; very often there is also some element of public controversy, involved.
- The purpose of an inquiry, in these circumstances is generally to find out what happened, what went wrong and to look at what can be done to avoid a similar occurrence. As a result, inquiries can look backward and forward at the same time.

- This dual mandate is what makes public inquiries both unique and perhaps unusual to some observers. This dual mandate, however, is also what makes public inquiries useful in our democracy and is why they provide a valuable public service.
- This particular Inquiry was borne out of a sense of anger and a feeling of frustration regarding unanswered questions as to what occurred at Ipperwash Provincial Park in September 1995. That sense of anger and that feeling of frustration are the foundation of the considerable and lengthy effort that was put forward by many groups and individuals requesting that a public inquiry take place.
- For these reasons, it is important to devote a few minutes to addressing what an inquiry is, and, just as importantly, what it is not.
- A public inquiry investigates and reports on matters of substantial *public* interest. In other words, it is not simply an inquiry; it is a *public* inquiry.
- An important aspect of our democracy is the right of all citizens to know what happened in a given situation – particularly in a situation where there has been loss of life and there remain unanswered questions.
- Although the events that we are inquiring about, took place almost 9 years ago, the Commission is committed to doing all it can, given our mandate and our legal authority, to gather all the relevant evidence and call all the necessary witnesses to make this Inquiry as complete as possible.
- Public inquiries can also serve the policy development process by considering public opinion, proposing and exploring policy options, and making recommendations.

- Among the advantages of the public inquiry process are its openness, its investigative capability and its independence.
- It is this openness and transparency of the inquiry system that distinguishes it from the policy development process carried on “in house” by government agencies.
- These factors, coupled with an inquiry’s independence, means that the inquiry should be free from the personal, political, partisan or organizational influences that often accompany public controversies.
- The investigative capability of an inquiry distinguishes it from a court of law where a judge or jury is confined to determining questions of guilt or innocence and fault or no fault and fact-finding is necessarily limited to the particular dispute in question.
- A public inquiry is not a trial and the Commission has not been established to revisit judgments already passed, nor to investigate criminal offences or to assign civil liability.
- While the Commission may determine wrong-doing, it does not find anyone guilty of a crime nor does it establish civil responsibility for monetary damages.
- However, an inquiry is expected to go beneath the surface of the controversy and to explore the factors and conditions that gave rise to the incident. A public inquiry can and should consider the broader context in which the events occurred.
- A key aspect of public inquiries - fact-finding in public - makes it possible for individual or organizational reputations to be at risk.

- Accordingly, principles of natural justice and procedural fairness require that due process safeguards are in place and these will be rigorously observed by this Commission.

Broad Goals of this Public Inquiry

- There has been a great deal already written and said about the events at Ipperwash Provincial Park in September 1995 and the causes. Among other things, there have been criminal trials, a civil action, an SIU and a Coroner's investigation. All of this has resulted in thousands of pages of transcripts, documents and other evidence.
- As we proceed to fulfill the specific mandate of the Commission, one of the broader goals is a desire to contribute to restoring good relations among the people affected and to restoring their faith in the institutions of government and of democracy.
- Our hope is that the process of this Inquiry will contribute to healing and to moving forward for those whose lives were affected by the events of September 1995.
- In due course, the Commission's recommendations will be submitted to the government and to the public at large. Our hope is that the report will be supported by most, if not all, of the people involved in this process and in that way, it will contribute to the shaping of public policy.
- This Inquiry should also contribute to public education and to a greater understanding of the many issues stemming from the shooting of Mr. George.

- We intend to be guided in our efforts by the same principles that have guided other commissions, namely: thoroughness, expedition, openness to the public and fairness.
- Timely information will be available on our website. Transcripts of the day's proceedings will be posted almost immediately and other means of sharing the proceedings are still being explored. The Inquiry will also use our website to distribute Part 2 research papers, public submissions, and to seek comments from the parties and the public.
- We expect that the media will actively report on the Inquiry, thereby informing those who are not able to attend in person. Commission staff will make every effort to ensure material is available for the media and to answer questions.
- Mr. Peter Rehak is the Commission's communications and media relations advisor. He held the same position with other recent inquiries including the Walkerton Inquiry and the Toronto Computer Leasing Inquiry.

Reasons for Holding Initial Hearings in the Ipperwash Area

- Before introducing some of the Commission staff, another important issue that I wish to speak to is the location, or locations, of the hearings.
- Selection of an appropriate location should be based on consideration of a number of factors. These include accessibility to the public, the preference of the parties, the location of the majority of the parties, any local interest in the proceedings, availability of suitable facilities, accommodation capacity and other logistical concerns and cost.
- The Commission has contemplated these factors and also considered the Rules of Civil Procedure. We have decided that some of the hearings

should be held in Forest – a location near where a substantial part of the events in September 1995 occurred – and some in Toronto.

- We will continue with the next stage of the Inquiry process, here in Kimball Hall. In July, we will begin with an examination of the historical context of the events of September 1995.
- However, the location of hearings beyond the end of this September has not yet been determined and I encourage anyone with a view on the merits of holding the hearings either here or in Toronto, to communicate their views to the Commission.

Commission Team

At this time, I would like to introduce the Commission's counsel. More detailed biographies are available on our website.

- Derry Millar is the Commission's lead counsel. He is a senior litigation partner with the Toronto law firm, WeirFoulds. Among other things, Mr. Millar is a Bencher of the Law Society of Upper Canada, the governing body for Ontario lawyers. His contribution to Ontario's legal community and profession is extensive and highly respected.
- Katherine Hensel is the Commission's Assistant Counsel. Katherine is a Secwepemc lawyer practicing in Toronto. She is in the litigation group of the law firm McCarthy Tetrault.
- Other Commission Counsel, who are not here today are Susan Vella and Todd Ducharme.
 - Susan is a partner in the law firm Goodman and Carr, also located in Toronto. She is recognized as one of Canada's top 15 women lawyers.

- Todd Ducharme, a Metis lawyer, is a sole practitioner and concentrates on criminal and quasi-criminal litigation. He practices in Toronto. Mr. Ducharme is also a Bencher of the law society.

- Nye Thomas is the Inquiry's Director of Policy and Research. He will be responsible for managing Part 2 of the Inquiry.

- I will now call upon our lead counsel, Mr. Millar.....