

**COMMISSIONER'S STATEMENT  
IPPERWASH INQUIRY HEARINGS**

**June 1, 2005**

- Having heard the parties' estimations of the anticipated time required to cross-examine this witness, I want to expand upon, a few points I have made previously.
- In conducting this Inquiry, I have studied the experiences of other inquiries and have emphasized my own goal that we be guided by the principles of fairness, comprehensiveness and efficiency.
- To this end, I read with interest Justice O'Connor's acknowledgement of counsels' success, during the Walkerton Inquiry, in ensuring cross-examinations were relevant, non-repetitive and focused. He said, "Counsel for the parties kept their cross-examinations focused, thus avoiding considerable duplication and delay".
- I believe we have also been successful, thus far, in this Inquiry.
- It is worthy of reminder that a public inquiry is not a civil nor a criminal trial. The Commissioner does not make findings of civil or criminal liability, nor does the Commissioner have the ability to impose penalties.
- An inquiry is an inquisitorial and not an adversarial proceeding. Notwithstanding the separate, and sometimes distinct interests of

parties with standing, I believe this fact should continue guide our behaviour during the course of this Inquiry.

- As Commissioner, I have a responsibility to the public to be thorough and fair, while, at the same time, mindful of time and cost. It is important for this, and indeed for any public inquiry to move at a consistent and efficient pace. As a publicly-funded process, the public has the right to expect the Inquiry to conduct its work with economy and efficiency.
- At this juncture, I want to re-iterate what I have said in the past: that counsel make every effort to ensure that their cross-examinations and interventions add value to the Inquiry's mandate. As I previously stated, the credibility of the Inquiry is potentially undermined if it is perceived as being unnecessarily lengthy.
- I am aware that it is not easy to estimate the length of time required for cross-examination or, indeed, examination-in-chief. Commission counsel's examination of Deputy Carson was longer than anticipated.
- However, in view of the responsibility of Commission Counsel and the role of Deputy Carson in these proceedings, in my view, this was appropriate. Further, I am confident that the thoroughness of Mr. Millar's examination will serve to conserve the time required for cross-examination.

- Again, citing Justice O'Connor's observation of his own proceedings, "Normally, cross-examinations in total took no more time than did an examination by commission counsel and often far less time".
- I am encouraged that counsels' estimates of the time required to cross-examine Inspector Carson will not exceed the examination-in-chief.
- Commissioners have the power to control their own proceedings. This is explicitly stated in our rules of procedure, the *Public Inquiries Act*, and in judicial decisions.
- As has been observed by legal academics, "...courts have taken a generally deferential approach to commissions of inquiry and allowed them considerable leeway in determining their own procedures...The courts seem to be aware of the need not to strangle public inquiries with procedures that are more appropriate in an adversarial setting, such as a civil or criminal trial".
- Generally, the number of witnesses and the extent of cross-examination, for example, are within the discretion of the Commission. The basis on which standing is granted to parties is one means through which this discretion may be exercised.
- Standing has been granted in Part 1 to persons or groups who have demonstrated that they have a substantial and direct interest in the

subject matter of this Inquiry pursuant to section 5(1) of the *Public Inquiries Act*.

- Standing has also been granted, on a discretionary basis, to some who, although they do not have a direct and substantial interest in the subject matter of the Inquiry, do represent distinct ascertainable interests, and whose expertise or perspective is important for the fulfillment of the Commission's mandate.
- It is my expectation that all counsel will keep in mind, the basis on which standing was granted and take steps to ensure that cross-examination is conducted accordingly.
- Counsel should be aware that, if in my view, estimations of time required exceed what I consider reasonable *or* , if cross-examination considerably exceeds estimate, I may intervene.
- And, once again, I urge all parties to continue their efforts to consult among themselves to avoid duplication.
- In conclusion, I would like to commend counsel for their efforts thus far, to work together, and with the Commission, co-operatively and professionally. It is important that we continue to do so.
- Thank you