

EARLY DECISIONS

4.1 Two-Part Process

The Walkerton Inquiry also had a two-part mandate. It was therefore an appropriate reference point, and I benefited immeasurably from the experience of my colleague, Associate Chief Justice Dennis O'Connor. The Walkerton Inquiry and the Ipperwash Inquiry were both called to investigate specific incidents, and both were required to make recommendations designed to prevent recurrences. It seemed to me that Justice O'Connor's decision to conduct his inquiry in two parts to reflect the two-part mandate made good sense for the Ipperwash Inquiry as well.

"Part 1" of my Inquiry would follow the evidentiary hearing model. It would be the fact-finding phase, through which I would make findings regarding the events surrounding the death of Dudley George. "Part 2" would be a policy-based review to fulfill the broader part of the Inquiry's mandate: to make recommendations on measures to avoid violence in similar circumstances. My recommendations would be based on research commissioned by the Inquiry, on the parties' projects or research, on extensive consultations, and on investigation of the underlying or systemic factors that might have contributed to the events investigated in Part 1.

It was a challenge to conduct the two parts of the Inquiry simultaneously, to maintain the separation necessary to achieve separate objectives while deriving the benefit available from allowing the fact-finding to inform the policy review and vice versa. A related challenge was simply a practical one. With the Part 1 hearings under way in Forest, commission counsel and I were sometimes not available to participate in unscheduled meetings in Toronto on Part 2 matters. We scheduled regular meetings for non-hearing days and we did our best to be available at other times when direction or decisions were required.

Despite the challenges, the two processes came together in a number of successful initiatives. One of these was the information sessions for commission counsel and staff, such as the one on Emergency Medical Preparedness, which the Inquiry sponsored jointly with the Chief Coroner of Ontario. Another was commission counsel's participation in the Part 2 consultations, including a Youth and Elders Forum on Aboriginal/Police Relations. Throughout the Inquiry,

the policy team followed the Part 1 testimony and often proposed questions to commission counsel to assist with eliciting evidence on systemic issues. Commission counsel also considered the research commissioned by the Inquiry in preparing to examine witnesses and, at the same time, the evidence brought out in the hearings guided the policy work.

4.2 Report Structure

I also needed to consider a number of questions regarding the structure of the report, long before the writing began. These included the possibility of issuing an interim report, the merits of a single volume to report on both parts of the Inquiry mandate versus addressing them separately, and the benefits and drawbacks of releasing multiple volumes sequentially or simultaneously.

Given the two distinct elements of my mandate, and the discrete yet simultaneous process established for each, one of my early decisions was to issue only a final report, with separate volumes on each part of the mandate, released simultaneously.

4.3 First Key Members of the Inquiry Team

Upon my appointment, I required immediate assistance with five major components of the Inquiry: the administrative organization, the fact-finding effort, the analysis of a great volume of evidence, the policy review, and the management of communications with the public and the media. Accordingly, my first recruitment efforts were directed to finding a chief administrative officer, lead commission counsel, a senior legal analyst, a director of policy and research, and a media and communications advisor.

A public inquiry is a temporary body, and this in itself presents a significant challenge in recruiting qualified people with appropriate experience. Moreover, when an inquiry is called, the commissioner is under enormous pressure to get the inquiry under way as quickly as possible, and at least some positions must be filled immediately. The positions exist for a limited time and they are often of uncertain duration. Finding highly qualified people, available at the right time for a short-term assignment, is a significant hurdle for any commissioner of a public inquiry. Given these difficulties, I was very fortunate to have been able to assemble a superb team.

4.3.1. Chief Administrative Officer

From my own experience in putting organizational structures in place, I knew that the first tasks for the Inquiry would be necessarily administrative. These first

tasks included securing office space (and perhaps hearing space), tendering contracts with suppliers, arranging for technology infrastructure, establishing a website, and many others. Therefore, my most urgent staffing priority was to find a senior administrator.

Fortunately, I was well acquainted with Dave Henderson, an experienced Ontario public servant, recently retired, who had launched a second career as an advisor to commissioners on the administration of inquiries. At the time, he was engaged in that capacity by Justice Bellamy⁴⁴ and Justice Campbell,⁴⁵ and he had recently provided the same service to Associate Chief Justice O'Connor.⁴⁶ His experience with inquiries and knowledge of the expenditure and other administrative guidelines of the Ontario government was invaluable. He also shared my commitment to financial responsibility and accountability. Regrettably, he was only available during the early stages of the Inquiry and on a part-time, as-needed basis. Nonetheless, Mr. Henderson was of great assistance with some of those first tasks.

My executive assistant, Debbie Strauss, assumed the additional responsibilities of a chief administrative officer for a number of months; however, as the Inquiry progressed, it became apparent that I required a full-time administrator to manage the many operational matters that continued to arise and the myriad administrative tasks that had to be carried out routinely. Most of my time was devoted to presiding over the hearings in Forest, but our main office was in Toronto. This added a further element of complexity to the administration of the Inquiry and I decided to have a full-time, experienced administrator. Having worked with Maureen Murphy for many years, most recently in the Ontario Court of Justice, I knew she had the necessary qualifications for the job.

4.3.2 Lead Commission Counsel

The newly appointed commissioner of an inquiry is naturally eager to get on with the work assigned — to “plunge into the meat of it.”⁴⁷ In my case, there was a further reason for urgency. The events at the heart of the Inquiry had taken place eight years before I was appointed, and it was important to get the Inquiry under way before the investigative trail grew even colder. I therefore moved quickly to retain my lead counsel.

44 Commissioner, Toronto Computer Leasing Inquiry and Toronto External Contracts Inquiry.

45 Commissioner, Commission to Investigate the Introduction and Spread of Severe Acute Respiratory Syndrome (SARS).

46 Commissioner, Walkerton Inquiry.

47 George K. Bryce & Patrick Lewis, “Basic Questions for Commissions of Inquiry” (1996) 2 *Administrative Agencies* 85.

Within one week of my own appointment, I appointed an experienced and highly respected civil litigator and Law Society of Upper Canada bencher, Derry Millar, to lead the legal team. I had the pleasure of working with Mr. Millar on the board of Legal Aid Ontario (LAO) and knew that, in addition to being a skilled litigator, he had exceptional administrative and organizational skills. These proved to be even more important than I could have foreseen. His ability to balance multiple pressures and disparate personalities was of great assistance. What occurs in the hearing room is only one part of the investigative process. He marshalled the evidence, but equally, he managed the sometimes competing interests and demands of counsel for the parties through countless emails and meetings. Throughout, he was a diplomatic and patient steward of the hearing process. He was able to facilitate the resolution of most issues outside the hearing room, thereby minimizing delays and avoiding derailment of the progress of the Inquiry inside the hearing room.

Commission counsel's primary responsibility is to represent the public interest at the inquiry and to ensure that all perspectives bearing on the public interest are brought to the commissioner's attention. Associate Chief Justice O'Connor characterized this as a "coincidence of roles," in that commission counsel also assists the commissioner in carrying out his or her mandate and acts on behalf of and under the direction of the commissioner.⁴⁸ It was imperative, therefore, that we be in agreement on the approach, tone, and general conduct of the Inquiry. Initially, of course, we were both more familiar with the traditional relationship between a judge and a lawyer than the altogether different relationship between a commissioner and counsel, but I believe we made the transition successfully. Given the span and intensity of the time we spent together, I was grateful for the excellent relationship I enjoyed with Mr. Millar from beginning to end.

4.3.3 *Senior Legal Analyst*

I knew that, at the conclusion of the evidentiary hearings, I would have a considerable volume of testimony to review. To make it possible to issue a timely report, I again followed the approach of Associate Chief Justice O'Connor and Madam Justice Bellamy⁴⁹ by hiring senior legal analyst, Ronda Bessner, to oversee the tasks of summarizing and organizing witness testimony as soon as the hearings began. Throughout the process, Ms. Bessner assisted me with analyzing the evidence

48 O'Connor, *supra* note 4.

49 Toronto Computer Leasing Inquiry and Toronto External Contracts Inquiry (Bellamy) and Walkerton Inquiry (O'Connor).

and preparing the Part 1 report. Her experience as a law professor and with other public inquiries made her a highly valued member of our team.

4.3.4 Director of Policy and Research

During my tenure as chair of LAO, I had the good fortune to work with, and highly respect, its policy director, Nye Thomas. I was grateful that LAO's chief executive officer was prepared to allow him to be seconded to the Inquiry to oversee the policy (Part 2) phase.

Mr. Thomas's legal credentials, his knowledge of the workings of government, and his significant experience in research, policy development, consultation, and report-writing (notably, the skill and experience he gained in crafting the 1999 blueprint published by Professor John McCamus on the future of legal aid in Ontario) were ideally suited to shaping and executing the Inquiry's policy research agenda. His skill and energy allowed him to "hit the ground running" to move the Inquiry forward.

4.3.5 Communications Coordinator/Media Relations Officer

Peter Rehak came to the Inquiry having worked in the media for many years, and subsequently on a number of public inquiries. He had excellent contacts with the media. As the communications coordinator/media relations officer, his duties included writing our press releases and ensuring that the media representatives assigned to cover the hearings and policy events had the information and facilities they needed to file their stories. Mr. Rehak was also responsible for working with our webmaster to design and maintain our website, and with the companies engaged to tape and webcast the proceedings. His experience with inquiries, his relationship with the media, and his skill in addressing the range of daily telecommunications challenges were invaluable assets, all of which contributed to ensuring open media access to the proceedings.

