

ADMINISTRATIVE INFRASTRUCTURE

Although inquiries are temporary bodies, they nevertheless require solid administrative structures and procedures. The government sets no restrictions on the system of administration and provides very little assistance. For this Inquiry, the Order-in-Council set out some very general guidelines for budgeting and procurement:

Within an approved budget, the commissioner may retain such counsel, staff, investigators and expert advisors it considers necessary in the performance of its duties at reasonable remuneration approved by the Ministry of the Attorney General.

The commission shall follow Management Board of Cabinet Directives and Guidelines and other applicable government policies in obtaining other services and goods it considers necessary ... unless, in the commissioner's view, it is not possible to follow them.⁵³

Administrative management can be a significant factor in the success or failure of an inquiry in fulfilling its mandate. At every stage, there are competing objectives to be weighed and decisions to be made.

As the Inquiry progressed, an administrative liaison developed with the Ministry of the Attorney General. Ministry staff made every effort to assist when asked, but my staff did most of the administrative groundwork. We obtained some guidance from the SARS Inquiry, which was still under way, but for the most part, we relied on our own public administration experience. In many ways, as we discovered, each public inquiry has to reinvent the wheel. Looking forward, I believe that much could be gained by establishing a permanent secretariat or repository of administrative best practices, somewhere within the government, to minimize the need to start from scratch each time a new public inquiry is called.⁵⁴

⁵³ Appendix 1, Order-in-Council 1662/2003.

⁵⁴ See section 15 herein, Inquiry Process Recommendations.

6.1 Location for Evidentiary Hearings

The principle of public accessibility informed one of my earliest decisions regarding the Inquiry: where to hold the evidentiary hearings. The locations I considered most seriously were Toronto and the Ipperwash Provincial Park area. Commission counsel and I examined the factors to be considered in determining the place of a trial, as set out in the Rules of Civil Procedure. These include the interest of a particular community in the subject of the proceeding and the convenience of the parties, witnesses, and the court.⁵⁵ We also considered relevant decisions,⁵⁶ and the factors set out by the Court of Appeal in cases involving *forum non conveniens* (inconvenient forum) such as the locations of the majority of parties and the key witnesses. We also took into account the preferences of the parties with standing in the Inquiry.

The opinion of Justice Borins with respect to the location of trials is, arguably, even more applicable to a public inquiry:

Litigation that directly affects the community should be heard in the court that serves the community. The interests of justice require that all parties be able to attend at the trial without unnecessary expense or inconvenience.⁵⁷

In the end, having examined all the options, and with the benefit of input from commission counsel and staff, I decided to begin the hearings in Forest, a town near Ipperwash Provincial Park.

The local communities were likely to have the greatest interest in attending the hearings. Thus, holding the hearings in Toronto would have considerably compromised access for the members of the public most concerned in the matter. As I said on the first day of hearings,⁵⁸ I also believed that close proximity to the site of the events under investigation would benefit both Inquiry participants and the broader public by heightening their awareness and understanding of the local circumstances.

Nevertheless, during the early months of the hearings, I was prepared to reconsider; in fact, the Rules explicitly stated that, at times, the public hearings might be held in Toronto.⁵⁹ The Estate of Dudley George and the George Family

⁵⁵ Rule 13.1.02(2), Rules of Civil Procedure (Ontario).

⁵⁶ For example, Mr. Justice A. Campbell in *First Real Property Ltd. v. Hamilton (City)* (2002), 59 O.R. (3d) 477 (Div. Ct.).

⁵⁷ *Chippewas of Sarnia Band v. Canada*, [1996] O.J. No. 627, per Borins J. at para. 14.

⁵⁸ July 13, 2004.

⁵⁹ Rule 2, Appendix 2, Rules of Procedure and Practice.

Group formally requested that I move part of the hearings to Toronto, but they later withdrew the motion in light of strong local support for keeping the hearings in Forest.

Once we had decided to conduct the hearings in the Ipperwash Provincial Park area, our next task was to find a suitable facility. We needed an appropriate hearing room, large enough to accommodate counsel for the parties granted Part 1 standing, commission counsel, the media, the court reporter, and the public. Although most of the hearing preparation work was done in our Toronto office, we also needed some office space and meeting rooms at the hearing site. The facility had to have appropriate entrances, to the building and to the hearing room itself, and the necessary public facilities.

The options were limited, but we were fortunate that the Municipality of Lambton Shores was prepared to make available Kimball Hall in the Forest Memorial Community Centre. We had a rental agreement, periodically renewed as hearing days were added, giving us access to the auditorium as needed and sole and unrestricted access to a small boardroom. The community centre contains a hockey arena, and we had access to the arena viewing room for media needs that could not be accommodated in Kimball Hall.

It was no small task to convert a community centre into a suitable site for a public inquiry. With the exceptional resourcefulness of my counsel and staff, and with willing cooperation and assistance from the community centre staff and the Municipality, the building was transformed into a well-functioning public hearing auditorium and office. It would have been a challenge to do it once, but the community centre staff and our technicians set up the hearing room at the beginning of each hearing week and then dismantled it at the end of each hearing week to make the auditorium available for community events. I am very grateful to everyone who worked for and participated in the Inquiry for their contribution to making the arrangements work as well as they did, and for their patience and understanding when conditions were less than ideal. Most of all, I am grateful to the people in the Forest area for accommodating the Inquiry in a building that is normally a focal point in their community activity.

6.2 Principal Office Space

For administrative purposes, it made sense to establish the Inquiry's principal offices in Toronto. An Ontario government department had office space under lease, no longer required and by then vacant, in downtown Toronto. The space needed some alteration, such as additional interior walls, telephone and computer lines, and furniture and equipment. Although we did our best to forecast

office space needs by estimating our likely complement of lawyers, investigators, policy analysts, and administrative support staff, we occasionally adjusted the space to accommodate unforeseen functions. We had originally reserved the space adjacent to our office as a possible hearing room, but when it became apparent that the hearings would continue in Forest, we converted that space into additional offices.

The Ministry of the Attorney General supplied the initial information technology (IT) infrastructure, but the Ministry had limited capacity to provide the necessary ongoing technical support. Despite the government's best efforts and intentions, technology-related difficulties sometimes hampered the Inquiry's activity. Many of these were related to the government's information security procedures and protocols and to limited Ministry staff resources for technical support. Two working locations, one of which was remote from the server and local network, amplified the IT challenges. Documents stored on our Toronto server could not be accessed electronically from off-site locations, including Forest. This challenge was mitigated, to some extent, by providing a CD containing the entire database, or by downloading the Inquiry document database to the stand-alone computers of commission counsel and counsel for the parties.

6.3 Financial Administration

Making some broad assumptions regarding the course of the Inquiry, and initially relying on the considerable experience of my chief administrative officer, Mr. Henderson, we developed budgets for each fiscal year. Mindful of the need to balance thoroughness with cost-efficiency, I closely monitored the Commission's actual expenditures against the forecast as the Inquiry progressed.

The Inquiry regularly submitted budgets and expenditure reports according to the government's planning and reporting cycle. Given the need for transparency in the stewardship of public funds, I welcomed scrutiny of these reports and I am pleased that the Commission stayed within its projected budget.

The costs of the Inquiry generally fell into two broad categories. One was the costs over which I had direct control, including my commission counsel, staff, investigators, and experts. It also included the overhead for the Toronto and Forest locations, costs associated with the hearing process (such as document management, hearing room facilities and staff, and the webcast of the proceedings) and certain costs related to the policy process (such as commissioned research and community meetings and symposia).⁶⁰

⁶⁰ Appendix 17, Inquiry Statistics.

The second category was the costs incurred by the Ministry of the Attorney General, which included the fees and disbursements of counsel for parties with standing in Part 1 for whom I recommended funding. To avoid any perception of my having a conflict of interest, I had no involvement in reviewing or approving these costs. Instead, the Ministry of the Attorney General and I jointly retained an independent assessor to review the billings of counsel for the parties for conformity with the Ministry of the Attorney General's fee schedule for outside counsel and with the criteria and guidelines for disbursements established by Management Board of Cabinet (and used by the Ministry) and to authorize payments by the Ministry. The Ministry also approved funding for research and participation in policy consultations for parties with standing in Part 2, case by case, upon my recommendation, which was based on a careful review of each funding application by my staff.

I was always conscious of the fact that an inquiry is publicly funded, and I regularly urged the parties with Part 1 standing, and their counsel, to be mindful of the cost of their participation and to contribute to efficiencies where possible. I reminded them that the public had a right to expect us to undertake our work not only with thoroughness, but also with economy and efficiency in mind.⁶¹

6.4 Staffing and Procurement

As the work of the Inquiry progressed, we added staff and services as required, and we reduced our complement as particular skills and services were no longer needed. Thus, in the interest of efficiency, our staff complement and range of services continually expanded and contracted according to our current needs. For that reason, and because I wanted to complete the Inquiry with reasonable speed, hiring and procurement decisions often had to be made quickly.

The pool of candidates and potential suppliers with the necessary combination of skills and experience to provide services to a public inquiry is limited. A further difficulty arises from the necessity to engage suitable staff and services on a short-term basis and on short notice. These factors limited the practicality of lengthy competitions, and we sometimes identified suitable candidates through reliable recommendations. Nevertheless, we made every effort to ensure accountability and transparency, and we adhered to Ontario government procurement and hiring procedures when feasible. On occasion, when it was not possible or practical to follow the guidelines to the letter, we incorporated the spirit and intent of the guidelines in our procedures.

⁶¹ For example, Appendix 14(j), Commissioner's Remarks on Attendance and Cross-Examination, January 9, 2006.

My staff created a variety of documents for use throughout the Inquiry, including oaths of confidentiality,⁶² detailed terms and conditions for the payment of service providers,⁶³ and guidelines and criteria for seeking reimbursement of out-of-pocket business expenses.⁶⁴ We also developed a number of internal procedures and protocols to guide us and to ensure consistency in our approach to administration.

Similar administrative systems and protocols are likely to be needed in most public inquiries. I was surprised that I often had to rely on my own administrative background, and that of my staff, to develop these basic mechanisms. Once again, I believe that the management of public inquiries could be simplified, and cost efficiencies could be realized, if the government developed administrative best practices and provided more comprehensive guidance and support in administrative matters.⁶⁵

62 Appendix 7, Confidentiality Undertakings.

63 Appendix 12, Sample Retainer Letter, Service Providers.

64 Appendix 11(c), Travel and Out-of-Pocket Expenses Guidelines.

65 See section 15 herein, Inquiry Process Recommendations.