
STANDING AND FUNDING

8.1 Standing Applications and Decisions

To be as thorough as possible, and to obtain all relevant information and perspectives, public inquiries invite individuals and groups to apply for standing in the inquiry. Typically, a notice of hearing is published, which serves as an invitation to individuals and groups to notify the commission formally if they are interested in participating in the inquiry and to state the basis on which they are requesting standing. As it is not possible to accommodate everyone interested in formally participating, the commissioner considers these applications and grants or denies standing.

The standing process is a mechanism for facilitating a fair, orderly, and timely process. Standing gives interested individuals or groups official status and the right to participate as parties. The tests for granting standing in this Inquiry were set out in the Rules.⁷⁰

For this Inquiry, the Notice of Hearing⁷¹ invited applications for standing in one or both parts of the Inquiry. In total, the Inquiry received thirty-seven written applications. I heard the applications for standing, in Forest, over four days in late April 2004.⁷²

I granted standing in Part 1, the fact-finding phase, to parties who demonstrated “an interest which is directly and substantially affected by the subject matter” in Part 1 of the Inquiry, or parties who represented “distinct ascertainable interest and perspectives ... essential to the discharge of the Part 1 mandate.”⁷³ Seventeen parties met these criteria. Although there was some duplication of interests and some natural alliances among those groups and organizations, I was satisfied that each represented a distinct interest and that each would assist in fulfilling the Inquiry’s mandate.⁷⁴ To fifteen of those parties, I also granted standing in Part 2, the policy phase, and I granted standing to an additional thirteen parties to participate only in Part 2. It was my view that each of those

⁷⁰ Rule 8 (Part 1) and Rule 58 (Part 2), Appendix 2, Rules of Procedure and Practice.

⁷¹ Appendix 3, Notice of Hearing.

⁷² Appendix 13(a), Commissioner’s Ruling on Standing and Funding, May 24, 2004.

⁷³ The entitlements and obligations of parties with standing are set out in sections A.II (Part 1) and B.II (Part 2), Appendix 2, Rules of Procedure and Practice.

⁷⁴ *Ibid.*, Rule 8(b).

parties ought to be represented, and granted standing separately, either because the policy matters under examination affected them or because they represented distinct ascertainable interests and perspectives essential to the fulfilling the policy component of the mandate.⁷⁵ To avoid duplication, our Rules provided for parties with similar interests to seek joint standing in Part 2. Just as each witness in Part 1 assisted me in drawing my conclusions, each of the parties with standing in the policy phase offered a point of view that needed to be considered.

Although I did not grant limited standing to any party, I did from time to time remind parties to bear in mind the basis on which they had been granted standing when considering their attendances at the Inquiry and their cross-examinations of witnesses. Counsel for a number of parties attended only selected parts of the Inquiry. Through the webcast and daily posting of the transcripts, they were able to limit their attendance to the parts that directly affected their clients, but without compromising the integrity of their representation.

The differences in the privileges of parties with standing in the evidentiary hearing phase and parties with standing in the policy phase reflected the difference in the nature of the proceedings. For example, a party granted Part 1 standing had the right to examine and cross-examine witnesses relevant to the party's interest. Part 2 standing included, among other things, the right to receive the Inquiry's research papers, participate in Inquiry consultations, and apply for project and participation funding.

The privileges of standing had accompanying responsibilities. For example, parties with Part 1 standing were entitled to receive all documents obtained by the Inquiry, but they were required to maintain the confidentiality of those documents unless and until the Inquiry made them public.⁷⁶

In my view, the parties with standing served this Inquiry well. Each party offered valuable perspective and dimension to the investigation and research and thereby enriched the overall process.

8.2 Funding Applications and Recommendations

The Order-in-Council stipulated that

[t]he Commission may make recommendations to the Attorney General regarding funding to parties who have been granted standing, to the extent of the party's interests where, in the Commission's view, the party would not otherwise be able to participate in the Inquiry.⁷⁷

⁷⁵ *Ibid.*, Rule 58(b).

⁷⁶ Appendix 7(a), Confidentiality Undertaking (Parties with Standing).

⁷⁷ Appendix 1, Order-in-Council 1662/2003.

The Notice of Hearing on standing also invited applications for funding.⁷⁸ I heard these applications concurrently with applications for standing. Seven of the seventeen parties granted standing in the evidentiary hearing phase applied for funding, which covered counsel fees and reasonable disbursements such as travel and accommodation expenses. In accordance with the Order-in-Council, I recommended to the Attorney General that these seven parties be granted funding to facilitate their participation. Acceptable fees and disbursements were based on Management Board of Cabinet/Ministry of the Attorney General guidelines for retaining outside counsel. Parties with a former or current employment or administrative relationship with the Government of Ontario did not apply to me for funding since the government funded counsel fees and disbursements for these parties directly.

The purpose of funding for parties with standing in the policy phase was to encourage and facilitate research, submissions, projects, and participation in seminars and other events initiated by the Inquiry. I made recommendations to the Attorney General on a case-by-case basis, only upon written request describing the project or event and the reason public funding for it was necessary, and only after my staff had carefully reviewed each proposal.⁷⁹

⁷⁸ Appendix 3, Notice of Hearing.

⁷⁹ See section 12.3 herein for a discussion of projects of parties with standing in Part 2.

