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March 28, 2018


The Honourable Richard D. LeBlanc
Commissioner
Commission of Inquiry
3rd Floor, 20 Crosbie Road
St. John's, NL
A1B 3Y8

Dear Sir:

RE: Commission of Inquiry Respecting the Muskrat Falls Project

Enclosed please find the Province's Application for Standing.

Yours truly,


Peter Ralph, QC
Solicitor
/rs
Encl.

[REDACTED]



COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

The Honourable Richard D. LeBlanc, Commissioner

APPLICATION FOR STANDING

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Department of Justice and Public Safety

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of Newfoundland and Labrador

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COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

The Honourable Richard D. LeBlanc, Commissioner

APPLICATION FOR STANDING

The Application of Her Majesty in Right of Newfoundland and Labrador ("the Province"), states that:

1. The Province hereby applies for standing in relation to the Commission of Inquiry Respecting the Muskrat Falls Project ("the Inquiry"). The Province intends to address three aspects to an application for standing in this Application: the procedure; the test for standing; and the level of participation to be granted to a party.
2. The Province submits that the substance and the procedure governing this Application are established by the *Public Inquiries Act* SNL c. P-38.1 ("the Act") and the *Rules of Procedure of the Inquiry* ("the Rules").
3. Pursuant to s. 5(1) of the Act, a commission of inquiry is required to give persons an opportunity to apply to participate if the commission believes that the persons have an interest in the subject of the inquiry.

4. With respect to the test for standing, Section 5(2) of the Act grants a commission authority to grant standing to a person. This section requires a commission to consider 3 factors before granting standing. This language suggests that the following factors listed in the section are not exhaustive:
 - a) whether the person's interest may be adversely affected by the findings of the Commission;
 - b) whether the person's participation would further the conduct of the Inquiry; and
 - c) whether the person's participation would contribute to the openness and fairness of the Inquiry.
5. Ed Ratushny, in his book "*The Conduct of Public Inquiries*" (2009), addressed the legal basis for the test for standing. (Page 186) "The basis for granting standing may be established by statute, the terms of reference, the principle of fairness, or the overriding discretion inherent in the role of the commissioner." (TAB 1)
6. In order to assess whether a person's interests may be *adversely affected* (s. 5(2)(a) of the Act) the Province suggests that it is necessary to consider this Inquiry's *Terms of Reference*. Section 4 of the *Terms of Reference* is as follows:

The commission of inquiry shall inquire into:

- (a) the consideration by Nalcor of options to address the electricity needs of Newfoundland and Labrador's Island interconnected system customers that informed Nalcor's decision to recommend that the government sanction the Muskrat Falls Project, including whether
 - (i) the assumptions or forecasts on which the analysis of options was based were reasonable;
 - (ii) Nalcor considered and reasonably dismissed options other than the Muskrat Falls Project and the Isolated Island Option; and

- (iii) Nalcor's determination that the Muskrat Falls Project was the least-cost option for the supply of power to Newfoundland and Labrador Island interconnected system over the period 2011-2067 was reasonable with the knowledge available at that time.
- (b) why there are significant differences between the estimated costs of the Muskrat Falls Project at the time of sanction and the costs by Nalcor during project execution, to the time of Commission of Inquiry established this inquiry together with reliable estimates of the costs to the conclusion of the project including whether:
 - (i) Nalcor's conduct in retaining and subsequently dealing with contractors and suppliers of every kind was in accordance with best practice, and, if not, whether Nalcor's supervisory oversight and conduct contributed to project cost increases and project delays,
 - (ii) the terms of the contractual arrangements between Nalcor and the various contractors retained in relation to the Muskrat Falls Project contributed to delays and cost overruns, and whether or not these terms provided sufficient risk transfer from Nalcor to the contractors,
 - (iii) the overall project management structure Nalcor developed and followed was in accordance with best practice, and whether it contributed to cost increases and project delays,
 - (iv) the overall procurement strategy developed by Nalcor for the project to subdivide the Muskrat Falls Project into multiple construction packages followed industry best practices, and whether or not there was fair and competent consideration of risk transfer and retention in this strategy relative to other procurement models,
 - (v) any risk assessments, financial or otherwise, were conducted in respect of the Muskrat Falls Project, including any assessments prepared externally and whether
 - (A) the assessments were conducted in accordance with best practice,
 - (B) Nalcor took possession of the reports, including the method by which Nalcor took possession,

- (C) Nalcor took appropriate measures to mitigate the risks identified, and
 - (D) Nalcor made the government aware of the reports and assessments, and
 - (vi) the commercial arrangements Nalcor negotiated were reasonable and competently negotiated;
 - (c) whether the determination that the Muskrat Falls Project should be exempt from oversight by the Board of Commissioners of Public Utilities was justified and reasonable and what was the effect of this exemption, if any, on the development, costs and operation of the Muskrat Falls Project; and
 - (d) whether the government was fully informed and was made aware of any risks or problems anticipated with the Muskrat Falls Project, so that the government had sufficient and accurate information upon which to appropriately decide to sanction the project and whether the government employed appropriate measures to oversee the project particularly as it relates to the matters set out in paragraphs (a) to (c), focusing on governance arrangements and decision-making processes associated with the project.
6. For the purposes of this Application, the Province would summarize the subject matter of Section 4 in the following manner:
- 1) Nalcor's recommendation of the Muskrat Falls Project for sanction by the Province;
 - 2) Project Management by Nalcor of the Muskrat Falls Project;
 - 3) Decision by the Province to exempt the Muskrat Falls Project from oversight by the Board of Commissioners of Public Utilities (PUB);
 - 4) The Sanction of the Muskrat Falls Project by the Province;
 - 5) Oversight of the Muskrat Falls Project by the Province.
7. In order to assess this Application, the Province suggests that the Commissioner must be mindful of Section 6 of the *Terms of Reference* which states that: "*The commission of inquiry shall make findings and recommendations that it considers necessary and advisable related to section 4.*"

8. Read together, the Province submits that the *Terms of Reference* and the Act grant the Commissioner the authority to make findings that could *adversely affect the interests* of the Province. The Pocket Oxford English Dictionary defines "adverse" to mean "harmful or unfavourable". **(TAB 2)** This dictionary defines "interest" as "a person's advantage or benefit". **(TAB 3)** The Province submits that adversely affect an interest means to engage in conduct which could be harmful or unfavourable to what is advantageous or beneficial to a person. A good reputation is clearly advantageous and beneficial to a crown corporation or a government. Any activity which is harmful or unfavourable to a reputation is adverse to an interest.
9. The Province submits that after considering s. 5(2)(a) the Commissioner should grant the Province standing. The *Terms of Reference* clearly authorize the Commissioner to make findings which could adversely affect Nalcor (see s. 4 of the Terms). This in turn could affect the interests of the Province as shareholder. (Nalcor is a Crown Corporation wholly owned by the Province by virtue of s. 3(3) of the *Energy Corporation Act* SNL 2001, c. E-11.01). **(TAB 4)** The findings against Nalcor would be in relation to the work that Nalcor has done on the Muskrat Falls Project including Nalcor's recommendation of the Muskrat Falls Project or Nalcor's management of the Project. Adverse findings against Nalcor could impact Nalcor's future operations in relation to the Muskrat Falls Project, other hydroelectricity activities, its oil and gas or fabrication activities. Any negative impact upon these activities would also have a negative impact upon the Province as the only shareholder of Nalcor.
10. The *Terms of Reference* also authorize the Commissioner to make findings which could adversely affect the interests of the Province more directly. The findings could be made in relation to the role of the Province in: i) the Sanction of the Muskrat Falls Project, ii) the exemption of the Muskrat Falls Project from oversight by the PUB, or iii) oversight of the Muskrat Falls Project. Any adverse finding could adversely impact the reputation of the Province and, thereby,

impact future activities carried out by the Province including in relation to the Muskrat Falls Project or other projects. Further, adverse findings could have an impact upon the political and economic life of the Province.

11. The Province's participation in the Inquiry would further the *conduct of the Inquiry*. (s. 5(2)(b) of the Act) The Province is furthering the work of the Inquiry by producing documents which are essential to the work of the Inquiry. The Province can also further the work of the Inquiry in a manner unlike any other party. The *Terms of Reference* focus on the operation of two related organizations: the Province and Nalcor. The Province is able to assist the Commission in understanding the operation of the Province including the relationship between the Premier's Office, Cabinet Secretariat, Government Departments and Crown Corporations.
12. The Province's participation would also contribute to the openness and fairness of the Inquiry. The Province created this Inquiry and the *Terms of Reference*. The goal of the Inquiry is to grant the Commissioner the power and authority to determine how and why the Muskrat Falls Project was the project chosen to address the energy demands of Newfoundland and Labrador and also to determine why the Project's costs were higher than projected. The answers to these questions are important to the Province for many reasons, not the least of which is to address the Province's role in the creation and supply of electricity in particular and the Province's role in the economy in general. Furthermore, large projects have historically played an important part in the economy of Newfoundland and Labrador whether these projects were carried out by the Province or private industry. The lessons learned regarding the Muskrat Falls Project may be important to the future of the economic and political life of Newfoundland and Labrador.
13. Finally, with respect to the test or criteria for being granted standing, Section 5 (4) of the Act states "A commission shall not make a report against a person until

the commission has given reasonable notice to the person of the charge of misconduct alleged against him or her and the person has been allowed full opportunity to be heard in person or by counsel." *Any person against whom a report* is made pursuant to this subsection is likely to be an employee, servant or officer with the Province or a person appointed by the Province to the board of Nalcor or appointed as the Chief Executive Officer with Nalcor, a Crown Corporation wholly owned by the Province. The Province submits that this circumstance reinforces the necessity of the Province participating as a party in all aspects of the Inquiry.

14. The last aspect of standing that the Province wishes to address is in relation to s. 14 of the Rules.

The Commissioner will determine the extent to which a party may participate. For example, a party may be granted standing for limited issues or portions of the hearings.

15. The Province hereby requests that the Commissioner order that the Province be granted standing that entitles it to fully participate in all aspects of the Inquiry.
16. The Inquiry is reviewing the conduct of 1) the Province including the Premier, the Cabinet, Departments, Agencies and Crown Corporations; and 2) the officers, servants or employees of the bodies listed in paragraph 1. It is probable that every document proffered and every witness called will be relevant to the Province's interests, be they in relation to the Province itself or a crown corporation or an agency of the Province.
17. The Province hereby applies for the right to fully participate in the Inquiry including the right to adduce documents and witnesses. The Province acknowledges that the Commissioner has the authority to determine what evidence will be adduced during the Inquiry including documents and witnesses.

This means that the Province must be granted leave by the Commissioner to adduce documents, call witnesses or cross examine witnesses. Finally, the Province seeks the right to file written argument and to make oral argument with respect to any issue which may arise during the course of the inquiry including issues in relation to the ultimate findings and recommendations by the Inquiry.

18. The Province further advises the Commission that, at the present time, the Premier and Ministers of the Crown will not apply for standing separate from the standing that may be granted Her Majesty in Right of Newfoundland and Labrador. The Premier and Ministers of the Crown understand that they are entitled to have counsel present while they are interviewed and during testimony before the Commission. Further, the Premier and the Ministers understand that counsel would also have standing before the Commission for the testimony of each of these individuals. Finally, the Premier and the Ministers wish to advise the Commission that they may subsequently apply for further standing if the need arises which need is not currently apparent. This standing would be further to the standing that they are granted as witnesses before the Commission pursuant to the *Rules of Procedure*.

DATED at the City of St. John's, in the Province of Newfoundland and Labrador this 28th day of March, 2018.



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The Conduct of Public Inquiries

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sorting out issues of relevance prior to the hearings. It appears that the hearings simply proceeded to cover, in chronological order, all events related to the commission's mandate.

In contrast, Commissioner Goudge reported: "Commission counsel did not follow every conceivable lead, interview everyone with any information that might be relevant, or collect all documents of possible relevance. Rather, we focused on what was significant." He observed that this approach was "instrumental" to the commission fulfilling its mandate expeditiously and that the proper balance had been achieved by using "proportionality" to guide "thoroughness." However, that balance will be different for each inquiry and for different issues within each inquiry. The Goudge Report acknowledges two key features of its terms of reference: "it was to be systemic in nature, and it had a strict time limit." Different considerations may have applied, or at least the same considerations in a different way, had the mandate included the examination of specific cases. For example, the Grange Inquiry into the unsolved murder of babies in a hospital did require an exhaustive investigation of every conceivable lead.

Once the "game plan" has been established, flexibility often will be required in its execution. But to quote the famous words of Yogi Berra: "If you don't know where you're going, you might not get there."

3) Standing and Funding

Standing determines who will participate in the proceedings and to what extent. Persons or institutions who are granted standing are described as "parties." They are usually represented by legal counsel and that raises the questions of funding for their participation. It is important to note that the participation of "parties" does not change the nature of a commission of inquiry. It is still an inquisitorial process conducted at the direction of the commissioner. Every witness is a witness of the commissioner, not of a party, although a party may request that a particular witness be called and may be allowed to lead the evidence of that witness.

The grant of standing allows a party's special interests to be protected and advanced. The participation of parties may also contribute to the thoroughness of hearings. Commissioner O'Connor reported in Walkerton that "I wanted to ensure that a broad range of interests and perspectives would be represented so that the Inquiry was inclusive and

thorough." At the same time, he recognized the need to proceed expeditiously. This means that the extent of participation by parties must be restricted:

[H]olding that the [town] council has standing, in general, does not mean that every single time the council wishes to produce a witness or ask a question in cross-examination that they have the right to do so indiscriminately. The commissioner remains in charge of the inquiry. He is in control of its process, thus he is obligated to rule on the relevance of any questions to the interest of the council (or such other individuals as are given standing).⁵⁹

The participation must be restricted by relevance to the terms of reference and the purpose for which standing was granted. Where the basis for standing is limited, counsel normally will not attend for unrelated hearings. Of course, commission counsel also have standing since they act according to the instructions given by the commissioner and are responsible for adducing the evidence before her.

The basis for granting standing may be established by statute, the terms of reference, the principle of fairness, or the overriding discretion inherent in the role of commissioner. The first category is represented by section 12 of the *Inquiries Act*, which provides:

The commissioners may allow any person whose conduct is being investigated under this Act, and shall allow any person against whom any charge is made in the course of an investigation, to be represented by counsel.

Section 13 provides that no finding of misconduct may be made unless notice and a full opportunity to be heard is provided. Where there is no statutory provision to this effect, such notice and opportunity to be heard still must be given under the principle of fairness.⁶⁰

A second and broader category requiring standing is represented by section 5(1) of the *Ontario Public Inquiries Act*:

A commission shall accord to any person who satisfies it that the person has a substantial and direct interest in the subject-matter of its

59 *Re Royal Commission on the Northern Environment* (1983), 144 D.L.R. (3d) 416 at 421-22 (Ont. Div. Ct.).

60 Lamer Inquiry.

inquiry an opportunity during the inquiry to give evidence and to call and examine or to cross-examine witnesses personally or by counsel on evidence relevant to the person's interest.

Although the *Inquiries Act* does not contain such a provision, the terms of reference of the Gomery Inquiry state:

the Commissioner be authorized to grant to any person who satisfies him that he or she has a substantial and direct interest in the subject-matter of the Inquiry an opportunity during the inquiry to give evidence and to examine or cross-examine witnesses personally or by counsel on evidence relevant to the person's interest.

The Arar terms of reference are almost identical. The Air India terms also speak of "a substantial and direct interest" but refer to "appropriate participation" rather than to giving evidence, examining, and cross-examining. It should be noted that the Air India terms of reference also specifically granted standing to the families of victims. Where there is no stated requirement to permit participation based on such an interest, a commissioner is still likely to do so as a matter of discretion.

What is a "substantial and direct interest in the subject matter" for the purpose of granting standing? Obviously, the interest must be measured against the terms of reference, which represent the "subject matter." In Arar, the commissioner ruled that merely being a witness, having a genuine concern, or having expertise in relation to the subject matter does not satisfy the test. Potential findings that could affect legal or property rights or interests would do so, but the standard is broader. Commissioner Gomery elaborated that the interest "may be as insubstantial as the applicant's sense of well-being or fear of an adverse affect upon his or her reputation. Even if such a fear proves to be unfounded, it may be serious and objectively reasonable enough to warrant party or intervener standing in the inquiry." The Walkerton Inquiry included in the definition: "anyone whose reputation might be damaged by the findings of the commissioner and who has a greater interest in the proceedings than that of an interested member of the public." In the end, even where there is a statutory requirement, there is a zone of broad discretion on the part of a commissioner to grant or deny standing.

Where standing is granted, based on a potential adverse finding or other special interest, the party is entitled to participate in the inquiry.

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Where standing is granted, based on a potential adverse finding or other special interest, the party is entitled to participate in the hearings.

If standing is limited, it is important that the commissioner articulate the scope of the interest on which standing is based. This will be the measure for the extent to which a particular party will be permitted to participate.

There are many diverse rulings on standing left by past commissions. An interesting example occurred in the Milgaard Inquiry into his wrongful conviction for murder. Larry Fisher was subsequently convicted of the same murder and received standing pending his appeal, to protect his legal interests in the event of a new trial. The inquiry might have uncovered evidence that would help in his defence, which meant he had a direct and substantial interest. However, during the inquiry's hearings, the Supreme Court denied leave to appeal and a new trial was no longer possible. Since the original basis for standing was gone, Fisher sought continued standing on the basis that he would be blamed by other parties for remaining silent while Milgaard had been convicted and imprisoned. In short, his reputation was at stake. Commissioner Edward McCallum said in his ruling: "Given the savagery of the Gail Miller murder and Fisher's notoriety as a violent sexual offender, I feel compelled to observe that reputation is not his most vulnerable asset. But the argument goes further . . . Procedural fairness is for all, not just the upright."⁶¹ Fisher was an ubiquitous presence throughout the course of events and no other party was likely to defend his interest. The commissioner further observed:

Even with inspired advocacy on his side, it will not likely be Fisher the person who lends moral force and legitimacy to the process. Rather the fact and appearance of procedural fairness in allowing standing to such a person might demonstrate that the Commission is determined to protect human dignity and self-respect wherever resident.

Fisher's standing was extended for the rest of the investigative, but not the systemic, phase of the inquiry.

Another category of standing is for "intervenor." The Arar Inquiry's rules of procedure and practice provide: "The Commissioner may grant intervenor standing to persons who satisfy the Commissioner that they have a genuine concern about issues raised by the Factual Inquiry mandate and have a particular perspective or expertise which may assist the

⁶¹ Milgaard Inquiry.

Commissioner." Commissioner Gomery described intervenors as having "clearly ascertainable interests and perspectives essential to the commission's mandate," even though they have no direct and substantial interest: he denied party status to the Conservative Party of Canada and the Bloc Québécois but he granted intervenor status to both. The Walkerton commissioner had denied standing to the Ontario New Democratic Party for two reasons. First, those who were granted standing would bring a sufficiently broad range of perspectives to the table. Secondly, it is undesirable to use public inquiries as a forum for political parties to advance their positions or policies. Although he accepted assurances that this was not the applicant's motivation, there remained a danger of the public perceiving the inquiry as becoming politicized in a partisan way. Commissioner Jeffrey Oliphant denied intervenor standing to the Bloc Québécois in the "factual" hearings since it failed to demonstrate it had a particular perspective or expertise that might assist.

The Association in Defence of the Wrongly Convicted⁶² was given standing before the Morin and Sophonow inquiries but denied standing in the Lamer Inquiry. Commissioner Lamer first explained that, in spite of its "national prominence and advocacy" for the wrongly convicted, it had no direct and substantial interest in any of the three cases under consideration. He added:

Two, AIDWYC has already made a substantial contribution to our understanding of wrongful convictions, especially with its work in the Morin and Sophonow Inquiries. Fortunately, the fruits of its efforts are available to me through the reports of those two inquiries and the literature on the subject. There was therefore no need for me to repeat what had already been done. Third, AIDWYC did submit a written submission on systemic issues, introduced through Jerome Kennedy's submission on behalf of Gregory Parsons, and James Lockyer of AIDWYC was called as a witness.

Indeed, Lockyer's testimony was referred to substantially and favourably in the report. Although standing had been denied, the association was still in a position to make a valuable contribution to the work of the commission.

Intervenors are subject to the commissioner's direction regarding their participation. Normally they do not participate in the hearings but

62 See Chapter 3, Section D.

make written submissions and may be called upon by the commissioner as required. Their contributions are likely to be more relevant to systemic aspects although they might also be able to bring perspectives to bear on the investigative side.

The number of parties granted standing may be reduced by grouping common interests. In the Walkerton Inquiry, Commissioner O'Connor reported: "In cases in which several applicants for standing appeared to have similar perspectives, they were given a single grant of standing on the understanding they would form a coalition." This approach can avoid duplication by encouraging cooperation. O'Connor ruled that there was "a significant congruence of interest" between the Walkerton Public Utilities Commission and the town. The possibility of a conflict arising was recognized but a single grant of standing was to be shared, with only one set of cross-examination between them. However, an adversity in interest did arise, making cooperation difficult, and the original ruling was amended to permit separate cross-examinations. At the same time, the commissioner encouraged these parties to agree on a single cross-examination in the many areas where a congruence of interest would continue to exist.

Along the same vein, for example, a police association might represent the interests of all of its members. As an inquiry progresses, the evidence might raise issues of possible misconduct by individual officers that had not been anticipated. Such individuals would have to obtain separate standing and representation to protect their specific interests.

Finally, a witness who is not represented as a party is usually permitted to have personal counsel present while testifying. Such counsel are allowed to address the commissioner but it is still within the discretion of the commissioner whether such counsel may question the witness. The Gomery Inquiry gave such counsel full standing while the witness/client was on the stand.

Before leaving the issue of standing, reference should be made to the Acts in Newfoundland and Labrador and in British Columbia. Both address the issues of findings of misconduct in substantially the same way as the federal and Ontario Acts. But, on standing, the language of "substantial and direct interest" in the Ontario Act and recent federal terms of reference is not adopted. The wording does refer to individual interests and also anticipates intervenor standing. The Newfoundland and Labrador Act permits persons who "believe they have an interest"

to apply to participate. In determining whether to permit participation, the commissioner must consider whether "the person's interests may be adversely affected by the findings"; whether participation would "further the conduct of the inquiry"; and whether it would contribute to its "openness and fairness." The British Columbia Act uses the phrases whether, "and to what extent, the person's interests may be affected by the findings"; whether it would "further the conduct of the inquiry"; and whether it would contribute to its "fairness." The Acts of Saskatchewan, Manitoba, Quebec, Nova Scotia, and Prince Edward Island make no reference to standing.

Beyond all of these approaches is an overarching discretion on the part of a commissioner to grant standing or participation in a variety of ways. In view of the common features of commissions of inquiry, that discretion is likely to be exercised in a similar way in similar circumstances.

Related to the issue of standing for parties is the funding of legal counsel to represent them. Section 5(5) of the Newfoundland and Labrador Act is the only statutory reference to such funding:

A commission may recommend that the government of the province provide funding for counsel and other expenses of a person who is permitted to participate in an inquiry.

Most terms of reference now authorize a commissioner to make recommendations regarding funding for parties with standing. Such recommendations are usually conditional on the commissioner's view that the party would not otherwise be able to participate. The extent of the recommendation is also restricted by the extent of the party's interest and government financial regulations.

In the absence of such a provision, there is nothing to prevent a commissioner from making such a recommendation anyway. But where such recommendations are expressly invited, there may be a greater obligation on the government to accept them. That obligation might extend to accepting them as long as they are reasonable in the circumstances. In practice, they are almost inevitably accepted.

The terms of reference for the Morin Inquiry contained no reference to funding. Commissioner Kaufman reported that this "proved to be a contentious issue" and "threatened to derail the Inquiry in its earliest stages." Funding was ultimately cobbled together from provincial and municipal

governments and the commission's budget (for intervenors). However, it was a rocky start for a complex and important commission of inquiry.

In contrast, the North Battleford Inquiry's terms of reference gave the commissioner authority to determine applications for funding and to set the rates for the services of counsel. This is unusual but proved to be successful as the commissioner acted in a fair but restrained manner. Usually, a member of the commission's staff, or an independent lawyer retained for that purpose, will serve as taxing officer to verify accounts for payment by the government. Funding also may be granted to parties for research or retaining expert witnesses. But most commissioners will prefer to engage such services directly rather than have parties do so.

The commission's rules of procedure and practice usually contain its criteria for granting standing and recommending funding. The recommendations for parties will depend upon the extent of their interest and expected involvement in the proceedings. The recommendations for intervenors will depend on such factors as expertise and experience in the subject area and any track record of contributing to public discussion and reform. Intervenors with similar interests and attributes may also be grouped together for the purpose of shared standing and funding.

The cost of participation in a commission of inquiry can be a huge burden for individuals who are not granted funding. Some may obtain legal representation through their employers or unions. The federal government has a policy of receiving requests for counsel from public servants who may be parties or called as witnesses. The Department of Justice reviews such requests to determine whether legal representation is required and, if so, whether departmental counsel should be assigned. If there is a potential conflict between the positions of the individuals and the government, private counsel may be retained. Where an individual has no such support for legal representation, fairness and the public interest in a full inquiry should dictate a large and liberal interpretation of the criterion "not otherwise able to participate." Commissioners are usually given a subjective discretion in this regard. Of course, they should also circumscribe the actual extent of participation in the interests of expedition as well as economy.

The Goudge Inquiry established rules of standing and funding separate from its rules of procedure. This is a good idea. It permits the commission to resolve this preliminary aspect very soon after the commission is established and the terms of reference are analyzed. This then creates

a "community" to work with commission counsel in preparation for the hearings and provides some certainty for the parties.

Notices of the standing and funding stages should be published in newspapers and on the commission's website. References could also be made on the website to the complete rules for standing and funding. The commission's criteria for granting standing and recommending funding should be specified. Most applications should be clear enough to be resolved through written or electronic submissions. Applicants who might be unsuccessful should be given an opportunity to make oral submissions. The rules of procedure and practice may specify that compliance with them is a condition of standing and that standing may be revoked for non-compliance. If that is the case, notice of this should also be contained in any separate rules for standing and funding.

4) Preparation for Opening Hearing

Once the issues of standing and funding have been resolved, two preliminary matters should be addressed with the assistance of the parties. These are the adoption of rules of procedure and practice and the interpretation of the terms of reference.

It has now become standard practice for investigative commissions of inquiry to adopt their own "rules" or "practices" to govern how they will carry out their business. The rules of procedure and practice of previous commissions are easily accessible on their websites as precedents for commission counsel to consider as they prepare a draft for consultation with the commissioner. The draft is circulated for comment and suggestions from the parties and can then be revised and adopted by the commissioner. There is no need to use hearing time for this purpose since there is likely to be little public interest in such matters. Submissions simply can be made in writing and copied to all parties. The media-relations officer likely will discuss with media representatives those aspects of the draft rules that affect them. These rules are usually flexible in providing the commissioner an overriding discretion to deal with unanticipated circumstances. They also reflect the "generous interpretation" given by the courts to the powers of commissioners to control their own proceedings.⁶³

⁶³ *Phillips v. Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy)*, [1995] 2 S.C.R. 97 at para. 175, Cory J. [*Phillips*].

Pocket Oxford English Dictionary

TENTH EDITION

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Catherine Soanes
with Sara Hawker
and Julia Elliott

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- a**
- 2 choose an option or course of action.
3 take on an attitude or position: *he adopted a patronizing tone.*
- DERIVATIVES **adopter** *n.* **adoption** *n.*
- ORIGIN Latin *adoptare*.
- adoptive** • *adj.* (of a child or parent) in that relationship by adoption.
- adorable** • *adj.* very lovable or charming.
- DERIVATIVES **adorably** *adv.*
- adore** • *v.* (adores, adoring, adored)
1 love and respect deeply. 2 informal like very much.
- DERIVATIVES **adoration** *n.* **adorer** *n.*
- ORIGIN Latin *adorare* 'to worship'.
- adorn** • *v.* make more attractive or beautiful; decorate.
- DERIVATIVES **adornment** *n.*
- ORIGIN Latin *adornare*.
- adrenal** /uh-dree-n'l/ • *adj.* relating to a pair of glands found above the kidneys which produce adrenalin and other hormones.
- adrenalin** /uh-dre-nuh-lin/ (also **adrenaline**) • *n.* a hormone produced in response to stress, that increases rates of blood circulation, breathing, and metabolism.
- adrift** • *adj. & adv.* 1 (of a boat) drifting without control. 2 no longer fixed in position.
- adroit** /uh-droyt/ • *adj.* clever or skilful.
- ORIGIN from French *à droit* 'according to right, properly'.
- adsorb** /uhd-zorb/ • *v.* (of a solid) hold molecules of a gas or liquid in a layer on its surface.
- DERIVATIVES **adsorption** *n.*
- adsorbent** • *n.* a substance which adsorbs another.
- adulation** /ad-yuu-lay-sh'n/ • *n.* excessive admiration.
- DERIVATIVES **adulatory** *adj.*
- ORIGIN Latin.
- adult** /ad-ult, uh-dult/ • *n.* a person who is fully grown and developed.
• *adj.* 1 fully grown and developed. 2 suitable for or typical of adults.
- DERIVATIVES **adulthood** *n.*
- ORIGIN Latin *adultus*.
- adulterate** /uh-dul-tuh-rayt/ • *v.* (adulterates, adulterating, adulterated) make something poorer in quality by adding another substance.
- DERIVATIVES **adulterant** *adj.* **adulteration** *n.*
- ORIGIN Latin *adulterare* 'to corrupt'.
- adulterer** • *n.* (fem. **adulteress**) a person who has committed adultery.
- ORIGIN Latin *adulterare* 'to corrupt'.
- adultery** • *n.* sexual intercourse between a married person and a person who is

- not their husband or wife.
- DERIVATIVES **adulterous** *adj.*
- adumbrate** /ad-um-brayt/ • *v.* (adumbrates, adumbrating, adumbrated) formal 1 give a general idea of; outline. 2 be a warning of something to come.
- DERIVATIVES **adumbration** *n.*
- ORIGIN Latin *adumbrare* 'shade, overshadow'.
- advance** • *v.* (advances, advancing, advanced) 1 move forwards. 2 make progress. 3 put forward a theory or suggestion. 4 hand over payment to someone as a loan or before it is due.
• *n.* 1 a forward movement. 2 a development or improvement. 3 an amount of money advanced to someone. 4 (advances) approaches made to someone with the aim of beginning a sexual or romantic relationship.
• *adj.* done or supplied beforehand.
- ORIGIN Old French *avancer*.
- advanced** • *adj.* 1 far on in development or progress. 2 complex; not basic.
- advanced level** • *n.* = **A LEVEL**.
- advanced subsidiary level** • *n.* (in the UK except Scotland) a GCE exam at a level between GCSE and advanced level.
- advancement** • *n.* 1 the process of helping something to progress. 2 the promotion of a person in rank or status. 3 a development or improvement.
- advantage** • *n.* 1 something that puts you in a favourable position. 2 tennis a score marking a point between deuce and winning the game.
- PHRASES **take advantage of** 1 make unfair use of someone or something for your own benefit. 2 make good use of the opportunities available.
- DERIVATIVES **advantageous** /ad-vuhn-tay-juhss/ *adj.*
- ORIGIN Old French *avantage*.
- advent** /ad-vent/ • *n.* 1 the arrival of an important person or thing. 2 (Advent) (in Christian belief) the coming or second coming of Jesus. 3 (Advent) (in the Christian Church) the period of time leading up to Christmas.
- ORIGIN Latin *adventus*.
- Adventist** • *n.* a member of a Christian sect which believes that the second coming of Jesus is about to happen.
- adventitious** /ad-vuhn-ti-shuhs/ • *adj.* happening by chance.
- ORIGIN Latin *adventicius* 'coming from abroad'.
- adventure** • *n.* 1 an unusual, exciting, and daring experience. 2 excitement arising from danger or risk.
- DERIVATIVES **adventuresome** *adj.*

- ORIGIN Latin *adventurus* 'about to happen'.
- adventurer** • *n.* (fem. **adventuress**) 1 a person willing to take risks or use dishonest methods to gain wealth or power: a *political adventurer*. 2 a person who looks for adventure.
- adventurism** • *n.* willingness to take risks in business or politics.
- adventurous** • *adj.* open to or involving new, interesting, or exciting experiences: *more adventurous meals.*
- adverb** • *n.* a word or phrase that gives more information about an adjective, verb, other adverb, or a sentence (e.g. *gently, very, fortunately*).
- DERIVATIVES **adverbial** *adj.*
- ORIGIN Latin *adverbium*.
- adversarial** /ad-ver-sair-i-uhl/ • *adj.* involving conflict or opposition.
- adversary** /ad-ver-suh-ri/ • *n.* (pl. **adversaries**) an opponent or enemy.
- ORIGIN Latin *adversarius* 'opposed, opponent'.
- adverse** /ad-verss/ • *adj.* harmful; unfavourable.
- DERIVATIVES **adversely** *adv.*
- ORIGIN Latin *adversus* 'against, opposite'.
- USAGE:** Do not confuse *adverse* with *averse*. *Averse* means 'harmful' or 'unfavourable' (*adverse publicity*), whereas *averse* means 'strongly disliking' or 'opposed' (*I am not averse to helping out*).
- adversity** • *n.* (pl. **adversities**) a difficult or unpleasant situation.
- advert** • *n.* Brit. informal an advertisement.
- advertise** • *v.* (advertises, advertising, advertised) 1 present or describe a product, service, or event in the media in order to increase sales. 2 publicize information about a vacancy for a job. 3 make a fact known.
- DERIVATIVES **advertiser** *n.* **advertising** *n.*
- ORIGIN Latin *advertere* 'turn to'.
- advertisement** • *n.* a notice or display advertising something.
- advice** • *n.* recommendations offered to someone about what they should do.
- ORIGIN Old French *avis*.
- USAGE:** Do not confuse *advice* and *advise*. *Advice* is a noun meaning 'recommendations about what someone should do' (*your doctor can give you advice on diet*), whereas *advise* is a verb that means 'recommend that someone should do something' (*I advised him to go home*).
- advisable** • *adj.* to be recommended; sensible.
- DERIVATIVES **advisability** *n.*

- a**
- advise** • *v.* (advises, advising, advised)
1 suggest that someone should do something. 2 inform someone about a fact or situation.
- DERIVATIVES **adviser** (also **advisor**) *n.*
- ORIGIN Old French *aviser*.
- USAGE:** On the confusion of *advise* with *advice*, see the note at **ADVICE**.
- advised** • *adj.* behaving as someone would recommend; sensible.
- DERIVATIVES **advisedly** *adv.*
- advisory** • *adj.* having the power to make recommendations but not to make sure that they are carried out.
- advocaat** /ad-vuh-kah/ • *n.* a liqueur made with eggs, sugar, and brandy.
- ORIGIN Dutch, 'advocate'.
- advocate** • *n.* /ad-vuh-kuht/ 1 a person who publicly supports or recommends a particular cause or policy. 2 a person who pleads a case on someone else's behalf. 3 Scottish = **BARRISTER**. • *v.* /ad-vuh-kayt/ (advocates, advocating, advocated) publicly recommend or support something.
- DERIVATIVES **advocacy** *n.*
- ORIGIN Latin *advocare* 'call to your aid'.
- adze** (US **adz**) • *n.* a tool similar to an axe, with an arched blade.
- ORIGIN Old English.
- aegis** /ee-jiss/ • *n.* the protection, backing, or support of someone: *talks conducted under the aegis of the UN*.
- ORIGIN Greek *aigis* 'shield of Zeus'.
- aeon** /ee-on/ (US or tech. also **eon**) • *n.* 1 a very long period of time. 2 a major division of time in geology, subdivided into eras.
- ORIGIN Greek *aiōn* 'age'.
- aerate** /air-zyt/ • *v.* (aerates, aerating, aerated) introduce air into something.
- DERIVATIVES **aeration** *n.* **aerator** *n.*
- ORIGIN Latin *aer* 'air'.
- aerial** • *n.* a structure that sends out or receives radio or television signals.
• *adj.* 1 existing or taking place in the air. 2 involving the use of aircraft.
- ORIGIN Greek *aēr* 'air'.
- aerie** • *n.* US = **EYRIE**.
- aero-** /air-oh/ • *comb. form* 1 relating to air: **aerobic**, 2 relating to aircraft: **aerodrome**.
- ORIGIN Greek *aēr* 'air'.
- aerobatics** • *n.* exciting and skilful movements performed in an aircraft for entertainment.
- DERIVATIVES **aerobatic** *adj.*
- aerobic** /air-oh-bik/ • *adj.* relating to physical exercise intended to improve the intake of oxygen and its movement

intact | intent

intact • adj. not damaged.

— ORIGIN Latin *intactus* 'untouched'.

intaglio /in-ta-li-oh/ • n. (pl. *intaglios*) an incised or engraved design.

— ORIGIN Italian.

intake • n. 1 an amount or quantity taken in. 2 an act of taking in.

intangible • adj. 1 unable to be touched; not solid or real. 2 vague and abstract. • n. an intangible thing.

— DERIVATIVES *intangibly* adv.

integer /in-tij-er/ • n. a whole number.

— ORIGIN Latin, 'whole'.

integral • adj. /in-ti-gruhl, in-teh-ruhl/ 1 necessary to make a whole complete; fundamental. 2 included as part of a whole. • n. /in-ti-gruhl/ Math. a function of which a given function is the derivative, and which may express the area under the curve of a graph of the function.

— DERIVATIVES *integrally* adv.

integral calculus • n. Math. the part of calculus concerned with the integrals of functions.

integrate • v. /in-ti-grayt/ (integrates, integrating, integrated) 1 combine or be combined to form a whole. 2 make someone accepted as part of a group.

— ORIGIN Latin *integrare* 'make whole'.

integrated circuit • n. an electronic circuit on a small piece of semiconducting material, performing the same function as a larger circuit of separate components.

integration • n. 1 the action of combining things to form a whole. 2 the mixing of peoples or groups previously kept apart.

integrity /in-teg-ri-ti/ • n. 1 the quality of being honest and morally upright. 2 the state of being whole or unified.

— ORIGIN Latin *integritas*.

integument /in-teg-yu-muhnt/ • n. a tough outer protective layer, especially of an animal or plant.

— ORIGIN Latin *integumentum*.

intellect • n. the ability to use the mind to think logically and understand things.

— ORIGIN Latin *intellectus*.

intellectual /in-tuh-lek-chyuu-uhl/ • adj. 1 having a highly developed ability to think logically and understand things. 2 relating to a person's mental powers. • n. a person with a highly developed intellect.

— DERIVATIVES *intellectually* adv.

intellectualize (or *intellectualise*) • v. (intellectualizes, intellectualizing, intellectualized) talk or write in an intellectual way.

intelligence • n. 1 the ability to gain and apply knowledge and skills. 2 secret information collected about an enemy or competitor.

— ORIGIN Latin *intelligentia*.

intelligence quotient • n. a number representing a person's reasoning ability, 100 being the average.

intelligent • adj. 1 having intelligence, especially of a high level. 2 (of a device) able to vary its state or action in response to varying situations and past experience.

— DERIVATIVES *intelligently* adv.

intelligentsia /in-tel-li-jent-si-uh/ • n. intellectuals or highly educated people.

intelligible /in-tel-li-jih-b'l/ • adj. able to be understood.

— DERIVATIVES *intelligibility* n.

intelligibly adv.

— ORIGIN Latin *intelligibilis*.

intemperate • adj. lacking self-control.

intend • v. 1 have something as your aim or plan. 2 plan that something should be, do, or mean something: *the book was intended as a satire*. 3 (intend something for/to do) design or plan something for a particular purpose.

— ORIGIN Latin *intendere* 'intend, extend'.

intended • adj. planned or meant.

• n. (your intended) informal your fiancé(e).

intense • adj. (intenser, intensest) 1 very great in force, degree, or strength. 2 very earnest or serious.

— DERIVATIVES *intensely* adv.

— ORIGIN Latin *intensus* 'stretched tightly'.

intensify • v. (intensifies, intensifying, intensified) increase in degree, force, or strength.

— DERIVATIVES *intensification* n.

intensity • n. (pl. *intensities*) the quality of being great in force, degree, or strength.

intensive • adj. 1 very thorough or vigorous. 2 (of agriculture) aiming to achieve maximum production within a limited area. 3 (in combination) making much use of something: *labour-intensive methods*.

— DERIVATIVES *intensively* adv.

intensive care • n. special medical treatment given to a dangerously ill patient.

intent • n. an aim, plan, or purpose.

• adj. 1 (intent on) determined to do. 2 (intent on) concentrating hard on an

activity. 3 showing earnest and eager attention.

— DERIVATIVES *intently* adv.

— ORIGIN Old French *entent*.

intention • n. 1 an aim or plan. 2 (your intentions) your plans in respect to marriage.

intentional • adj. deliberate.

— DERIVATIVES *intentionally* adv.

inter /in-ter/ • v. (inters, interring, interred) place a dead body in a grave or tomb.

— ORIGIN Old French *enterrer*.

inter- prefix 1 between: *interbreed*. 2 so as to affect both: *interact*.

— ORIGIN Latin *inter*.

interact • v. (of two people or things) act so as to affect each other.

— DERIVATIVES *interaction* n.

interactive • adj. 1 influencing each other. 2 (of a computer or other electronic device) allowing a two-way flow of information between it and a user.

inter alia /in-ter ay-ti-uh/ • adv. among other things.

— ORIGIN Latin.

interbreed • v. (interbreeds, interbreeding, interbred) breed with an animal of a different race or species.

intercede /in-ter-seed/ • v. (intercedes, interceding, interceded) intervene on behalf of someone.

— ORIGIN Latin *intercedere*.

intercept • v. /in-ter-sept/ stop a person, vehicle, or communication and prevent them from continuing to a destination.

• n. /in-ter-sept/ Math. the point at which a line cuts the axis of a graph.

— DERIVATIVES *interception* n.

interceptor n.

— ORIGIN Latin *intercipere* 'catch between'.

intercession /in-ter-sesh-uhn/ • n. the action of intervening on behalf of someone.

— ORIGIN Latin.

interchange • v. /in-ter-chaynj/ (interchanges, interchanging, interchanged) 1 (of people) exchange things with each other. 2 put each of two things in the other's place. • n. /in-ter-chaynj/ 1 the action of exchanging things. 2 an exchange of words. 3 a road junction on several levels so that traffic streams do not intersect.

— DERIVATIVES *interchangeability* n.

interchangeable adj. interchangeably

adv.

intercity • adj. existing or travelling between cities.

intercom • n. an electrical device

intention | interfere

allowing one-way or two-way communication.

— ORIGIN short for *intercommunication*.

intercommunication • n. the process of communicating between people or groups.

interconnect • v. connect with each other.

intercontinental • adj. relating to or travelling between continents.

intercourse • n. 1 communication or dealings between people. 2 the act of having sex.

— ORIGIN Latin *intercursus*.

intercut • v. (intercuts, intercutting, intercut) alternate scenes with contrasting scenes in a film.

interdenominational • adj. relating to more than one religious denomination.

interdepartmental • adj. relating to more than one department.

interdependent • adj. dependent on each other.

interdict • n. /in-ter-dikt/ an order forbidding something. • v. /in-ter-dikt/ esp. N. Amer. prohibit or forbid.

— DERIVATIVES *interdiction* n.

— ORIGIN Latin *interdictum*.

interdisciplinary • adj. relating to more than one branch of knowledge.

interest • n. 1 the state of wanting to know about something or someone. 2 the quality of arousing someone's curiosity or holding their attention. 3 a subject about which you are concerned or enthusiastic. 4 money paid for the use of money that is being lent. 5 a person's advantage or benefit: *it is in his own interest*. 6 a share, right, or stake in property or a business. • v. 1 arouse someone's curiosity or attention. 2 (interest someone in) persuade someone to do or obtain. 3 (as adj. interested) not impartial: *interested parties*.

— ORIGIN Latin *interesse* 'be important'.

interesting • adj. arousing curiosity or attention.

interface • n. 1 a point where two things meet and interact. 2 a device or program enabling a user to communicate with a computer, or for connecting two items of hardware or software. • v. (interfaces, interfacing, interfaced) (interface with) Computing connect with something by an interface.

interfacing • n. an extra layer of material or an adhesive stiffener, applied to the facing of a garment to add support.

interfere • v. (interferes, interfering,

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Important Information

(Includes details about the availability of printed and electronic versions of the Statutes.)

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ENERGY CORPORATION ACT

Amended:

2008 c31; 2010 c31 s7; 2012 c47 ss4 to 10; 2015 cA-1.2 s125;
2016 cP-41.001 s30 (not in force-not included)

CHAPTER E-11.01

**AN ACT TO ESTABLISH AN ENERGY CORPORATION FOR THE
PROVINCE**

(Assented to June 14, 2007)

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