

**Commission of Inquiry into the conduct of the investigations into the deaths of Catherine Carroll and Brenda Young and the circumstances surrounding the resulting criminal proceedings commenced against Gregory Parsons and Randy Druken, the delay in the appeal of Ronald Dalton, issues of compensation with respect to Randy Druken and Ronald Dalton, and any related systemic issues.**

## **RULES OF PRACTICE AND PROCEDURE**

### **1. Definitions**

1. *The Commissioner* means The Right Honourable Antonio Lamer, P.C., C.C., C.D.
2. *Inquiry Counsel (Advisory)* means Ed Ratushny, Q.C.
3. *Inquiry Counsel (Hearings)* means Nick Avis, Q.C. or, if he so designates in writing, Ed Ratushny, Q.C. or Rosellen Sullivan.
4. *Inquiry counsel* means any one of Ed Ratushny, Q.C., Nick Avis, Q.C. or Rosellen Sullivan.
5. *Counsel* means counsel for any person, organization or office with standing for a particular phase of the Inquiry.
6. *A person, organization or office with standing* means any person, organization or office granted standing by the Commissioner for a particular phase of the Inquiry.
7. *Documents* mean every kind of printed or hand-written matter regardless of the means of creation, storage or reproduction, electronic images, tape recordings, videotapes and photographs. Documents include, without limiting their definition, affidavits, witness statements, correspondence, notes, transcripts, legislation, regulations, books, reports, pleadings, diagrams, plans, decisions or orders of any court, board, tribunal, commission or inquiry, and images or descriptions of exhibits.
8. *The list of documents* is a list of documents potentially relevant to a particular phase of the Inquiry and is subject to ongoing revision by the Commission.
9. *The public record* means any document that is already generally available to the public, any exhibit filed at the hearings or at the hearing of an application, and includes any document on the list of documents that the Commissioner directs to become part of the public record.

## 2. General

1. The Commissioner may depart from these rules when he considers it appropriate to do so.
2. These rules may be amended by the Commissioner and all counsel will be notified of any such amendments.
3. Directions may be provided by the Commissioner to supplement these rules and all counsel will be notified of any such directions.
4. All proceedings of the Inquiry will be dealt with as informally and expeditiously as possible but in accordance with the principle of fairness.
5. The Commissioner may postpone any date set for any hearings or application or the doing of any thing. Inquiry counsel shall notify all counsel and any person, organization or office affected by the postponement, of the new date.

## 3. Notice and Service

1. Notice shall always be in writing.
2. A subpoena issued pursuant to these rules and the *Public Investigations Evidence Act* shall be served personally.
3. Unless otherwise specified, anything that has to be served, except a subpoena, must be served on all counsel and Inquiry Counsel (Hearings).
4. Unless otherwise specified and except for a subpoena, service or notice may be personal, by registered mail or facsimile or e-mail. Service or notice after 5 p.m. shall be deemed to be the next business day.

## 4. Terms of Reference and Phases of the Inquiry

The Inquiry will be divided into 6 distinct phases dealing with the 6 terms of reference in the Order in Council. The 6 phases will be heard in the following order:

Phase I	Term 1(d):	Delay in the Dalton appeal.
Phase II	Term 1(a):	Carroll investigation and Parsons criminal proceedings.
Phase III	Term 1(b):	Young investigation and Druken criminal proceedings.
Phase IV	Term 1(e):	Dalton compensation issues.
Phase V	Term 1(c):	Druken compensation issues.
Phase VI	Term 4:	Systemic issues.

## 5. Hearings

1. The Commission will hold public hearings at:

**PO Box 8700, Atlantic Place  
3d Floor, 215 Water Street,  
St. John's, NL, A1B 4J6**

or such other place as the Commissioner directs on dates to be determined by the Commissioner including the following dates in 2003 and 2004:

23 September to 26 September. (Dalton 1(d))  
30 September to 3 October. (Dalton 1(d))  
28 October to 31 October. (Submissions/Applications)  
9 December to 17 December (Parsons 1(a))  
20 January to 23 January (Parsons 1(a))  
26 January to 30 January (Parsons 1(a))  
3 February to 6 February (Parsons 1(a))  
4 May to 7 May (Druken 1(b))  
11 May to 14 May (Druken 1(b))  
25 May to 28 May (Druken 1(b))  
1 June to 4 June (Druken 1(b))  
15 June to 18 June (Druken 1(b))  
22 June to 25 June (Druken 1(b))  
**[Amended 2 January 2004]**

2. Notice of dates of subsequent hearings will be provided in a timely manner.
3. Unless otherwise directed by the Commissioner hearings will commence at 10:00 a.m. and conclude at 5:30 p.m. or later, if required, except Fridays in which case hearings will commence at 9:30 a.m. and conclude at 12:30 p.m. sharp. There will be a mid-morning break of approximately 15 minutes, a lunch break from 1:00 p.m. to 2:00 p.m., and an afternoon break of approximately 15 minutes. **[Amended 16 September 2003]**
4. The dates set for hearings are intended for the evidence of witnesses only.
5. Due to the scope of the Inquiry, the number of witnesses involved, the anticipated number of counsel and the deadline for completion of the Inquiry, it will not be possible to accommodate the schedules of counsel. Inquiry Counsel (Hearings) will however make every effort to accommodate witnesses.

6. The hearings shall be recorded and transcriptions created electronically (the Inquiry transcript) which shall be added to the list of documents.
7. The Commission is committed to a process of public hearings but may conduct proceedings *in camera*, direct who may be present and what conditions will be imposed on anyone in attendance. The Commissioner may also refuse permission to televise certain portions of the proceedings. Counsel or Inquiry counsel may apply to have any portion of the proceedings *in camera* or not televised.
8. Any applications, replies, documents, exhibits or transcripts pertaining to *in camera* proceedings shall be marked with the letters IC and shall not form part of the public record unless otherwise directed by the Commissioner.

## **6. Standing**

1. Applications for standing in respect of any given phase of the Inquiry must be served on Inquiry Counsel (Hearings) on the dates specified in any Notice of Hearings published by the Commission or on any date set by the Commissioner of which the applicant has been notified.
2. Dates for the hearing of applications for standing shall be specified in the Notice of Hearings.
3. The Commissioner may deal summarily with any application for standing without a hearing and may direct Inquiry counsel to respond on his behalf.
4. An application for standing must indicate the phases for which standing is sought and the reasons why standing should be granted. The test to be applied is whether or not the applicant has a direct and substantial interest in a given phase of the Inquiry. The application should also address what contribution the applicant can make to the Inquiry.
5. Any applicant for standing may be granted full or limited standing at the discretion of the Commissioner.
6. Any person, organization or office added to an application by Inquiry Counsel (Hearings) or the Commissioner shall have limited standing for the purpose of participating in the application.
7. Any witness not a person with standing and not belonging to an organization or office with standing shall have limited standing for the duration of their testimony and for the purpose of serving an application or a reply in respect of their testimony.

8. Any person, organization or office given notice under rule 13 shall have limited standing for the purpose of exercising their rights under rule 13.
9. An application for standing may be made through Inquiry counsel (Hearings) at any time due to unforeseeable circumstances.

## **7. Applications**

1. Counsel who wish to be heard by the Commissioner on any matter except those arising during the actual hearings, must serve an application. The right to serve an application is not limited to those rules that make specific reference to applications.
2. The Commissioner relies primarily on Inquiry Counsel (Hearings) to marshal, present and test the evidence and expects the co-operation of all counsel to ensure that this is done as fairly and expeditiously as possible. However, as a last resort, if counsel are unable to resolve issues by agreement, any decision of Inquiry Counsel (Hearings) may be the subject of an application to the Commissioner.
3. Inquiry counsel may serve an application and shall be governed by the same rules as apply to other counsel.
4. Inquiry Counsel (Hearings) may direct that any counsel must file an application on any issue by a specified date.
5. Inquiry Counsel (Hearings) may notify counsel that certain evidence is not relevant or certain facts are to be admitted in a particular phase of the Inquiry. The notice shall specify a date by which an application to object must be served. Anyone who fails to bring an application as required is deemed to have accepted that the specified evidence is not relevant or admitted the specified facts in the phase(s) of the Inquiry specified in the notice.
6. The rules regarding applications are intended to ensure that any issues that might affect the evidence to be introduced in a particular phase of the Inquiry are resolved as far in advance of the hearings as possible to allow all counsel to properly prepare and to make optimum use of the times set aside for the hearing of witnesses. It is imperative therefore that applications be brought as soon as an issue is known and cannot be resolved.
7. Applications shall be heard by telephone or video-conferencing on days the Commission is not sitting. The scheduled hearing of evidence will not be modified to accommodate applications except in extreme

circumstances. It is imperative, therefore, that applications be served as soon as an issue is known and cannot be resolved.

8. An application must be in writing and may be in the form of a letter. It must concisely state the facts upon which the application is based, the relief sought and include a brief argument. Any supporting documentation or affidavits and any authorities or legislation to be relied upon shall be included and served with the application.
9. The Commissioner or Inquiry Counsel (Hearings) may add any person, organization or office to an application who shall be served with all replies and other documents by counsel serving those replies or other documents, and shall have standing for the limited purpose of participating in the application.
10. All counsel must serve a reply to any application by midday on the 3<sup>rd</sup> business day after service. A reply shall be in similar form to an application. Failure to reply in accordance with these rules may result in the application proceeding without further notice.
11. Inquiry Counsel (Hearings) may request further information, documents or affidavits, authorities or written argument from any applicant or respondent. The Commissioner may direct that such further information, documents or affidavits, authorities or written argument be provided and served. Failure to follow the Commissioner's directions may result in the application being dismissed or a given reply not being considered or heard.
12. The Commissioner may deal with any application summarily and without a hearing and may direct Inquiry counsel to respond on his behalf.
13. The Commissioner may direct that an application be set down for a hearing and Inquiry Counsel (Hearings) shall notify the applicant and all respondents of the time, date and place for the application to be heard.
14. If an applicant or respondent wishes to call a witness or witnesses at the hearing of an application they must state this in the application or reply and give reasons. If an applicant or a respondent wishes to cross-examine any deponent of any affidavit filed in an application, they must forthwith notify all counsel and Inquiry Counsel (Hearings). The Commissioner shall decide if any witnesses are to be called and upon what terms.
15. Unless otherwise directed by the Commissioner, in an application the order of examination and argument shall be as follows:

(1<sup>st</sup>) The applicant.

- (2<sup>nd</sup>) Respondents in an order to be determined by Inquiry Counsel (Hearings).
  - (3<sup>rd</sup>) Inquiry counsel.
  - (4<sup>th</sup>) The applicant.
16. Applications that are heard shall be recorded and transcriptions created electronically (the Inquiry transcript) which shall be added to the list of documents.
  17. All applications and supporting documents, and any written submissions of counsel directed to be filed by the Commissioner shall be treated as confidential and shall not form part of the public record until they are dealt with by the Commission or the Commissioner directs that they become part of the public record. **[Amended 1 October 2003]**

## **8. Documents, Materials and Exhibits**

1. Images of all exhibits that are real evidence intended to be introduced at the hearings will be created with some verbal description and shall be deemed to be documents.
2. Some documents in the list of documents will list exhibits collected or used in earlier investigations or proceedings together with visual reproductions and/or verbal descriptions of the exhibit. The exhibit itself is deemed to be a document.
3. There shall be full and complete disclosure of all relevant documents by Inquiry Counsel (Hearings) and counsel subject to any restrictions the Commissioner deems necessary and fair.
4. Counsel who wish to have access to the original of any document or exhibit should explain their request in writing to Inquiry Counsel (Hearings).
5. Inquiry counsel may receive or examine documents subject to such confidentiality as they may determine is consistent with the Terms of Reference and the principle of fairness. Documents received from any person, witness, counsel, organization or office shall be treated as confidential by the Commission unless or until they become part of the public record or the Commissioner declares otherwise. This does not preclude Inquiry counsel from using such documents as part of the

investigation, including showing them to witnesses, and providing copies subject to the undertaking referred to in rule 8.13.

6. At the commencement of the hearings into a particular phase of the Inquiry a list of documents, which the Commission may rely on or refer to at any time without further notice, will be filed. In the event of additional disclosure or the discovery of additional documents the list of documents may be revised. All documents in the list of documents that are already part of the public record shall be clearly identified as such. The Inquiry transcript shall be added to the list of documents as it becomes available.
7. The documents contained in the list will be electronically stored and one paper copy will be produced and kept by the Commission.
8. Full disclosure by means of computer disc of all documents contained in the list of documents shall be made to all counsel at the earliest opportunity and, with the exception of the Inquiry transcript, no later than the commencement of the phase of the Inquiry in which the materials may be relied upon or referred to.
9. Counsel who wish to have access to or be provided with a paper copy of any document should make a written request to Inquiry Counsel (Hearings). The Commissioner may direct that access be granted or paper copies be made available upon such terms and conditions as he sees fit, including the cost of reproducing the documents.
10. Counsel must at the earliest opportunity provide Inquiry Counsel (Hearings) with a list of any documents and exhibits they believe are relevant to the Inquiry. Originals or copies of any document or any exhibit so listed are to be provided to Inquiry counsel upon request. Inquiry Counsel (Hearings) may add any of these documents or exhibits to the list of documents and tender them as exhibits at the hearings.
11. Inquiry Counsel (Hearings) shall prepare a list and book of exhibits for each phase of the Inquiry and at the earliest opportunity, and no later than the commencement of the hearings of that particular phase, shall provide all counsel with the list of exhibits. The book of exhibits, or the necessary volume of it, shall be provided no later than the commencement of the witness's testimony during which the exhibits are relevant.
12. Counsel who intend to make use of or refer to any document at the hearings that is not in the book of exhibits shall ensure there are a sufficient number of copies of the document for the witness, counsel, all 3 Inquiry counsel and the Commissioner.

13. Anyone who receives disclosure from Inquiry Counsel (Hearings) shall sign an undertaking that the disclosure will be used solely for the purposes of the Inquiry. This undertaking ceases with respect to any particular document once that document is filed as an exhibit. Any document that is part of the public record is not intended to be subject to this undertaking. Documents on the list of documents are not exhibits unless filed at the hearings as exhibits. The Commissioner may direct that any document be released from the provisions of this undertaking and that any document on the list of documents become part of the public record.

## **9. Interviews and Statements**

1. Anyone interviewed by or on behalf of Inquiry counsel may, but need not, have counsel present. All interviews will be recorded unless the witness declines.
2. Anyone may decline to be interviewed and may provide a written statement in lieu of or in addition to being interviewed.
3. Subject to rules 9.4 and 9.5, all statements taken by Inquiry counsel shall be added to the list of documents.
4. Statements on the list of documents may be edited or portions may be selected for use as exhibits.
5. Any statement taken by Inquiry counsel from someone who will not be called as a witness need not be disclosed to counsel or placed on the list of documents.
6. All witnesses shall be provided with a transcribed copy of their statement(s) as soon as possible. Witnesses shall also be provided with a copy of the recording of their statement(s) if requested

## **10. Calling Witnesses**

1. Inquiry Counsel (Hearings) shall at the earliest opportunity provide all counsel with a list of witnesses intended to be called during a particular phase of the Inquiry and in the case of any additional witness, except with leave of the Commissioner, no later than 48 hours before that witness is called.
2. Counsel must provide Inquiry Counsel (Hearings) at the earliest opportunity with the names and addresses of any witnesses they feel ought to be heard. Inquiry Counsel (Hearings) may decline to call any witness

whose evidence does not appear to be relevant or will be covered by other witnesses.

3. Witness may be called only with leave of the Commissioner.
4. If at the end of any phase of the Inquiry there are persons who any counsel believes must be heard that counsel may apply for leave to have that person called. The Commissioner may direct that such applications be made orally and forthwith, and upon such other terms and conditions as he deems just and appropriate.
5. Inquiry counsel may subpoena any witness and shall do so when requested by a witness.
6. Witnesses may be called more than once.

## **11. Testimony**

1. All witnesses called to testify are witnesses of the Commissioner and shall be treated with the same courtesy and respect as the Commissioner.
2. Inquiry Counsel (Hearings) shall provide at the earliest opportunity to any witness or their counsel a copy of all documents to be referred to during that witness's testimony.
3. No witness shall be examined or cross-examined on any document that is not in the book of exhibits that has not been disclosed at least 24 hours in advance of that witness's testimony unless the witness consents or the Commissioner directs otherwise. This does not apply to police officer's notes, previous statements, testimony or affidavits in the list of documents.
4. Witnesses shall testify under oath or affirmation.
5. All witnesses without standing are entitled to have counsel present at the hearing while they testify. Counsel may make objections during the witness's testimony and may question the witness.
6. Except with the permission of the Commissioner, no counsel other than Inquiry counsel may speak to a witness concerning that witness's evidence during that witness's testimony. Except with the permission of the Commissioner, Inquiry counsel may not speak to a witness while that witness is being cross-examined by other counsel.

**12. Evidence**

1. The Commission may receive any relevant evidence which might otherwise be inadmissible in a court of law under the strict rules of evidence, subject to the principle of fairness.
2. Counsel may use leading and non-leading questions with any witness subject to the direction of the Commissioner but are expected not to use leading questions in controversial or disputed areas of evidence.
3. Unless otherwise directed by the Commissioner, the order of examination shall be as follows:
  - (1<sup>st</sup>) Inquiry counsel.
  - (2<sup>nd</sup>) Counsel for any witness who, alternatively, may elect to question in the fifth place.
  - (3<sup>rd</sup>) Counsel with a substantial commonality of interest.
  - (4<sup>th</sup>) Remaining counsel.
  - (5<sup>th</sup>) Counsel for any witness should they so elect.
  - (6<sup>th</sup>) Inquiry counsel.
4. Inquiry counsel shall determine and indicate prior to each witness's testimony the order of counsel in the third and fourth places.
5. The Commissioner may strike any question, remark or evidence from the record and direct that the question, remark or evidence not be published in any document or broadcast in any way.

**13. Notice of Possible Findings of Misconduct**

1. The Commission shall, before making any finding of misconduct against any person, organization or office, notify that person, organization or office of the potential finding unless, in the opinion of the Commissioner, that person, organization or office is aware of the potential finding and has had a full opportunity to respond.
2. Any person, organization or office that receives a notice under rule 13 may apply for leave to adduce evidence in response to that allegation or to have Inquiry Counsel (Hearings) adduce evidence in response to that allegation.

3. Other counsel may cross-examine any witness called in response to a notice under rule 13 only with respect to matters adduced in evidence during examination by Inquiry counsel or counsel for the recipient of a notice under rule 13.

**14. Submissions**

1. All counsel may make submissions at the conclusion of a particular phase of the Inquiry subject to any restrictions that the Commissioner deems appropriate.
2. The Commissioner will direct when submissions are to be made and whether they are to be made orally and/or in writing.

**15. Public and Media Access to Information**

Anyone, including members of the media, who wishes to have access to or copies of any information in the possession of the Commission must put their request in writing to Inquiry Counsel (Hearings). Requests will be dealt with on a case by case basis. The Commissioner may set the terms and conditions upon which any person may have access to or copies of any such information.