

## Memorandum

### Submissions on the Terms of Reference

The directions contained in this memorandum are those of the Commissioner.

#### **ISSUE NO 1: Terms 1(a) and (b): Parsons and Druken:**

The language that needs to be interpreted is the following: *to inquire into . . . the circumstances surrounding the subsequent criminal proceedings. . . .*

At issue is what crown and defence conduct should be examined.

Counsel must articulate the specific conduct they wish to examine and why, and whether or not it was serious enough to have affected either the investigation or the verdict.

Of concern is the Commission's jurisdiction to examine judicial conduct and in particular crown and defence conduct *in the face of the court*. Specifically, conduct that was dealt with by the trial judge, crown conduct that was the subject of grounds of appeal but not dealt with by the Court of Appeal, and crown conduct that was dealt with by the Court of Appeal.

Counsel should also address in their submissions any other areas they feel the Commission should be investigating.

#### **ISSUE NO 2: Terms 1(b) and (c): Druken**

In light of the fact that there is no consensus or acceptance that Druken is factually innocent and a stay of proceedings was filed in relation to the charge of murder against him, can or should the Commission inquire into the subject matter of these terms of reference?

#### **ISSUE NO 3: Term 1(e): Dalton**

Assuming it is determined that the Government should compensate Dalton, can or should the Commission determine compensation in light of the fact that there is no consensus or acceptance that Dalton is factually innocent? If compensation can or should be determined without determining factual innocence, how should compensation be calculated and on what basis?

**1. Standing:** Obviously counsel must have standing for a particular Term of Reference in order to make a submission on that Term of Reference, although the Commissioner has invited submissions from persons and groups who may have an interest in the interpretation of the Terms of Reference. They include AIDWYC, the Federal Department of Justice, the RCMP and the Medical Examiner for Newfoundland and Labrador. The lists of counsel with standing in a particular phase can be found on the Commission's website at: [www.gov.nl.ca/nlcoi](http://www.gov.nl.ca/nlcoi)

**2. Redundancy and Repetition:** Issues 2 and 3 overlap to some extent, so submissions need

not be repeated. It is also recommended that counsel with similar interests confer with each other to avoid unnecessary repetition. Any given counsel may submit or argue on a particular issue on behalf of other counsel if agreed between counsel. In other words, counsel may divide the submissions up amongst themselves if they wish.

**3. Length of Submissions:** Counsel addressing one issue must do so in 15 double spaced pages or less and will have a maximum of 20 minutes to make their oral argument. Counsel addressing two issues must do so in 20 double spaced pages or less and will have a maximum of 30 minutes to make their oral argument. Counsel addressing all three issues must do so in 25 double spaced pages or less and will have a maximum of 40 minutes to make their oral argument.

In light of the fact that Inquiry counsel will have to respond to at least 12 submissions, Inquiry counsel will not be subject to these restrictions.

**4. Deadlines:** Submissions must be filed with Inquiry Counsel (Hearings) no later than Friday, 17 October at 5:00 pm.

As noted above, Inquiry counsel will have 12 or more submissions to respond to. In particular, submissions in respect of Issue No 1 may be very detailed and will require a detailed response. Inquiry counsel's submission in response will therefore be filed no later than Friday, 24 October at 5:00 pm.

**5. Supporting Documentation** should be kept to a minimum. If cases are cited, only head notes and the relevant pages or paragraphs should be filed. If articles are cited, only the relevant portions should be filed.

**6. Confidentiality:** In light of the new rule added by the Commissioner, Rule 7.17, counsel are reminded that these submissions are confidential and do not form part of the public record. These submissions are not public information and cannot therefore be provided to the press until heard or dealt with by the Commission. This concern is particularly acute considering that counsel in Issue No 1 are being invited to make allegations against crown and defence counsel, which may not be dealt with during the hearings. It would be most unfair for such allegations to become public and the person whose conduct is being questioned will not have an opportunity to respond.

**7. In camera proceedings:** Since Issue No 1 involves allegations against individuals who may not ultimately be able to respond, the hearing of Issue No 1 will have to be *in camera*, the details of which will follow soon.

**8. Prohibited Subject Matter:** The October hearings in part are to determine if the Commission should consider determining factual innocence in the cases of Druken and Dalton. Submissions that contain arguments that Druken or Dalton are innocent or guilty will therefore be rejected and returned nor will oral arguments to that effect be entertained.

**9. Terminology:** We all must be on the same page regarding the terms we are using. Counsel must therefore define what they mean by guilt, innocence, wrongful conviction, factual innocence etc. and this may be a topic of argument in the submissions.

**10. Inquiry Counsel (Hearings)** for the processing and reception of these submissions will be Rosellen Sullivan.

**11. Service** upon any counsel can be by e-mail with attachments. The Commission would much prefer to be served by e-mail and will be serving all counsel by e-mail. The Commission will advise all counsel of the address of any individual or group invited to make submissions.

**12. Colour Coding:** Due to the vast amount of materials the Commission is processing, a colour code has been established for various matters including the three murder cases the Commission is investigating. Counsel must follow the colour coding used by the Commission, which is as follows: Blue for Ronald Dalton, Yellow for Gregory Parsons and Burgundy for Randy Druken. Therefore if counsel provide hard copies of materials to the Commission, they should have covers with the appropriate colour.