

RULES OF PROCEDURE AND PRACTICE

APPENDIX D (I)

THE WALKERTON INQUIRY



LA COMMISSION
D'ENQUÊTE WALKERTON

Rules of Procedure and Practice

1. Commission proceedings will be divided into two phases. Part I will focus on:
 - (a) The circumstances which caused hundreds of people in the Walkerton area to become ill and several of them to die, in May and June 2000, at or around the same time as *E. coli* bacteria were found to be present in the Town's water supply; and
 - (b) The cause of these events including the effect, if any, of government policies, procedures and practices.

Part II of the Inquiry is concerned with the policy issues related to ensuring the safety of Ontario's drinking water. It will involve a review of a broad range of factors which impact on the safety of drinking water including a review of the public health, technological and management factors associated with the production, treatment and distribution of drinking water as well as the contamination of source waters, where the primary focus will be on microbial contaminants capable of causing acute threats to public health.

A. Rules - Part I

I. General

2. Public hearings will be convened in Walkerton to address issues related to Part I of the Inquiry.

3. All parties and their counsel shall be deemed to undertake to adhere to these Rules, which may be amended or dispensed with by the Commission as it sees fit to ensure fairness. Any party may raise any issue of non-compliance with the Commissioner.
4. Insofar as it needs to gather evidence, the Commission is committed to a process of public hearings. However, applications on some aspects of its mandate may be made to proceed *in camera* in accordance with section 4 of the *Public Inquiries Act*. Such applications should be made in writing at the earliest possible opportunity pursuant to the provisions of Section III(vi) below.

II. Standing for Part I

5. Commission counsel, who will assist the Commission throughout the Inquiry and are to ensure the orderly conduct of the Inquiry, have standing throughout the Inquiry. Commission Counsel have the primary responsibility for representing the public interest at the Inquiry, including the responsibility to ensure that all interests that bear on the public interest are brought to the Commissioner's attention. Persons or groups may be granted standing by the Commissioner if the Commissioner is satisfied that they:
 - (a) are directly and substantially affected by Part I of the Inquiry in which event the party may participate in accordance with section 5(1) of the *Public Inquiries Act*; or
 - (b) represent clearly ascertainable interests and perspectives that are essential to his mandate in Part I, which the Commissioner considers ought to be separately represented before the Inquiry, in which event the party may participate in a manner to be determined by the Commissioner.
6. The Commissioner will determine those parts of the Inquiry in which a party granted standing may participate.
7. The term "party" is used to convey the grant of standing and is not intended to convey notions of an adversarial proceedings.

8. Counsel representing witnesses called to testify before the Commission may participate during the hearing of such evidence as provided in these Rules.

III. Evidence

(i) *General*

9. In the ordinary course Commission counsel will call and question witnesses who testify at the Inquiry. Counsel for a party may apply to the Commissioner to lead a particular witness's evidence in-chief. If counsel is granted the right to do so, examination shall be confined to the normal rules governing the examination of one's own witness.
10. The Commission is entitled to receive any relevant evidence which might otherwise be inadmissible in a court of law. The strict rules of evidence will not apply to determine the admissibility of evidence.
11. Parties are encouraged to provide to Commission counsel the names and addresses of all witnesses they feel ought to be heard, and to provide to Commission counsel copies of all relevant documentation, including statements of anticipated evidence, at the earliest opportunity.
12. Commission counsel have a discretion to refuse to call or present evidence.
13. When Commission counsel indicate that they have called the witnesses whom they intend to call in relation to a particular issue, a party may then apply to the Commissioner for leave to call a witness whom the party believes has evidence relevant to that issue. If the Commissioner is satisfied that the evidence of the witness is needed, Commission counsel shall call the witness, subject to Rule 9.

(ii) *Witnesses*

14. Anyone interviewed by or on behalf of Commission counsel is entitled, but not required, to have one personal counsel present for the interview to represent his or her interests.
15. Witnesses will give their evidence at a hearing under oath or affirmation.
16. Witnesses may request that the Commission hear evidence pursuant to a subpoena in which case a subpoena shall be issued.
17. Witnesses who are not represented by counsel for parties with standing are entitled to have their own counsel present while they testify. Counsel for a witness will have standing for the purposes of that witness' testimony to make any objections thought appropriate.
18. Witnesses may be called more than once.

(iii) *Order of Examination*

19. The order of examination will be as follows:
 - (a) Commission counsel will adduce the evidence from the witness. Except as otherwise directed by the Commissioner, Commission counsel are entitled to adduce evidence by way of both leading and non-leading questions;
 - (b) parties granted standing to do so will then have an opportunity to cross-examine the witness to the extent of their interest. The order of cross-examination will be determined by the parties having standing and if they are unable to reach agreement, by the Commissioner;
 - (c) counsel for a witness, regardless of whether or not counsel is also representing a party, will examine last, unless he or she has adduced the evidence of that witness in-chief, in which case there will be a right to re-examine the witness; and

(d) Commission counsel will have the right to re-examine.

20. Except with the permission of the Commissioner, no counsel other than Commission counsel may speak to a witness about his or her evidence while the witness is giving any part of his or her evidence. Commission counsel may not speak to any witness about his or her evidence while the witness is being cross-examined by other counsel.

(iv) *Access to Evidence*

21. All evidence shall be categorized and marked P for public sittings and, if necessary, C for sittings *in camera*.
22. One copy of the P transcript of evidence and a list of P exhibits of the public hearings will be available to be shared by counsel for the parties. The transcript will be kept in an office outside the hearing room. A disk version of the transcript or an additional copy may be ordered by anyone prepared to pay its cost.
23. Another copy of the P transcript of the public hearings and a copy of P exhibits will be available to be shared by the media.
24. Only those persons authorized by the Commission, in writing, shall have access to C transcripts and exhibits.

(v) *Documents*

25. The Commission expects all relevant documents to be produced to the Commission by any party with standing.
26. Originals of relevant documents are to be provided to Commission counsel upon request.
27. Counsel to parties and witnesses will be provided with documents and information, including statements of anticipated evidence, only upon giving an undertaking that all such documents or information will be used solely for the purpose of the Inquiry and, where the Commission considers it appropriate, that its disclosure will be

further restricted. The Commission may require that documents provided, and all copies made, be returned to the Commission if not tendered in evidence. Counsel are entitled to provide such documents or information to their respective clients only on terms consistent with the undertakings given, and upon the clients entering into written undertakings to the same effect. These undertakings will be of no force regarding any document or information once it has become part of the public record. The Commission may, upon application, release any party in whole or in part from the provisions of the undertaking in respect of any particular document or other information.

28. Documents received from a party, or any other organization or individual, shall be treated as confidential by the Commission unless and until they are made part of the public record or the Commissioner otherwise declares. This does not preclude the Commission from producing a document to a proposed witness prior to the witness giving his or her testimony, as part of the investigation being conducted, or pursuant to Rule 27.
29. Subject to Rule 27 and to the greatest extent possible, Commission counsel will endeavour to provide in advance to both the witness and the parties with standing relating to issues with respect to which the witness is expected to testify, documents that will likely be referred to during the course of that witness' testimony, and a statement of anticipated evidence.
30. Parties shall at the earliest opportunity provide Commission counsel with any documents that they intend to file as exhibits or otherwise refer to during the hearings, and in any event shall provide such documents no later than the day before the document will be referred to or filed.
31. A party who believes that Commission counsel has not provided copies of relevant documents must bring this to the attention of Commission counsel at the earliest opportunity. The object of this rule is to prevent witnesses from being surprised with a relevant document that they have not had an opportunity to examine prior to their testimony. If Commission counsel decides the document is not relevant, it shall not be produced as a relevant document.

This does not preclude the document from being used in cross-examination by any of the parties. Before such a document may be used for the purposes of cross-examination, a copy must be made available to all parties by counsel intending to use it not later than the day prior to the testimony of that witness, subject to the discretion of the Commissioner.

(vi) *Confidentiality*

32. If the proceedings are televised, applications may be made for an order that the evidence of a witness not be televised or broadcast.
33. Without limiting the application of section 4 of the *Public Inquiries Act*, any witness who acquired hemolytic uremic syndrome (“HUS”), or who is related to someone who acquired HUS or died as a result of the Walkerton water contamination, shall upon application to the Commissioner be granted “Confidentiality”. For the purposes of the Inquiry, Confidentiality shall include the right to have his or her identity disclosed only by way of non-identifying initials, and, if the individual so wishes, the right to testify before the Commission in private. Subject to the discretion of the Commissioner, only the Commissioner, Commission staff and counsel, counsel for parties with standing, counsel for the witness who has been granted Confidentiality and media representatives may be present during testimony being heard in private.
34. A witness who is granted Confidentiality will not be identified in the public records and transcripts of the hearing except by non-identifying initials. Any reports of the Commission using the evidence of witnesses who have been granted Confidentiality will use non-identifying initials only.
35. Media reports relating to the evidence of a witness granted Confidentiality shall avoid references that might reveal the identity of the witness. No photographic or other reproduction of the witness shall be made either during the witness’ testimony or upon his or her entering and leaving the site of the Inquiry.

36. Any witness who is granted Confidentiality will reveal his or her name to the Commission and counsel participating in the Inquiry in order that the Commission and counsel can prepare to question the witness. The Commission and counsel shall maintain confidentiality of the names revealed to them. No such information shall be used for any other purpose either during or after the completion of the Commission's mandate.
37. Any witness who is granted Confidentiality may either swear an oath or affirm to tell the truth using the non-identifying initials given for the purpose of the witness's testimony.
38. All parties, their counsel and media representatives shall be deemed to undertake to adhere to the rules respecting Confidentiality. A breach of these rules by a party, counsel to a party or a media representative shall be dealt with by the Commissioner, as he see fit.

B. Rules - Part II

I. General

39. Because of the policy nature of the issues, Part II will not proceed by way of evidentiary hearings. Instead, in order to make its work accessible and to provide an opportunity for public participation, the Commission will proceed in three phases:
 - (a) It will arrange for the preparation of papers (the "Commission Papers") from recognized experts on a broad range of relevant topics. These Commission Papers will, among other things, describe current practices in Ontario; describe current practices in other jurisdictions; identify difficulties; and review alternative solutions.
 - (b) Any person or group with an interest in the subject matter of Part II of the Inquiry is invited to make submissions in writing (the "Public Submissions") to the Commission about any matter relevant to Part II including the matters reviewed in the Commission Papers.

- (c) The Commission will convene public meetings (the format of which may vary) to discuss the matters raised in the Commission Papers. The participants in the public meetings may include representatives of those parties who have been granted standing in Part II of the Inquiry and, at the Commissioner's discretion, any other person or group whom the Commission concludes will contribute to the process.

(i) *Commission Papers*

- 40. The Commission has established a Research Advisory Panel (the "Panel"). The role of the Panel will be to assist the Commission in identifying the subject matters of the Commission Papers and who should be retained to prepare them. The Panel will also monitor the progress of Commission Papers and provide advice and direction to the various authors as needed.
- 41. The Commission will set and publish a deadline by which all Commission Papers must be completed and the Papers will thereafter be published, in draft, on the Commission's web-site.

(ii) *Public Submissions*

- 42. Any interested person may make a Public Submission, in writing, to the Commission dealing with any matter related to Part II of the Inquiry including responses to any matter raised in the Commission Papers.
- 43. The Commission will set and publish a deadline by which all Public Submissions must be received and the Public Submissions will be made available for public review either on the Commission's web-site or at the Commission's offices.

(iii) *Public Meetings*

44. Once all Public Submissions have been reviewed by the Commission, the Commission will convene a number of informal public meetings relating to the major topics comprising Part II of the Inquiry. The format of the public meetings will be tailored to the topics discussed and may vary among meetings. The public meetings may include the Commissioner, the relevant authors of Commission Papers, representatives of the parties which have been granted standing in Part II of the Inquiry, relevant members of the Panel and, based upon the contents of the Public Submissions received, other persons invited by the Commission, whom the Commissioner concludes would contribute to the discussion.
45. The public meetings shall be recorded.

II. Standing for Part II

46. Persons or groups may be granted standing by the Commissioner for Part II of the Inquiry if the Commissioner is satisfied that:
 - (a) They are sufficiently affected by Part II of the Inquiry; or
 - (b) They represent clearly ascertainable interests and perspectives that are essential to his mandate in Part II, which the Commissioner considers ought to be separately represented before the Inquiry. In order to avoid duplication, groups of similar interest are encouraged to seek joint standing.
47. Because of the different nature of the proceedings in the two phases of the Inquiry, the nature and extent of a party's participation will be different in Part II than in Part I. In addition to the ability of all members of the public to receive Commission Papers and make Public Submissions, those persons or groups who have been granted standing in Part II shall be entitled to participate directly in the public meetings.

III Access to Evidence and Documents

48. Rules 21 to 31 regarding access to evidence and documents apply to Part II of the Inquiry.

C. Funding

This information will be available on our website at www.walkertoninquiry.com the week of August 14, 2000.

