

SUPPLEMENTARY RULING ON STANDING AND FUNDING

APPENDIX E (III)

THE WALKERTON INQUIRY

LA COMMISSION
D'ENQUÊTE WALKERTON

Supplementary Ruling on Standing and Funding

I have received three written requests to reconsider my Ruling of September 11.

1. The Walkerton Public Utilities Commission (the “PUC”) requests that I amend my Ruling to allow the PUC to cross-examine all witnesses rather than sharing the right of cross-examination with the Town. At the standing hearing, Mr. Prehogan, for the PUC, took the position that there was no conflict of interest between the PUC and the Town with respect to the issue of what caused the contamination.

In making the present request Mr. Prehogan now points out five circumstances which he says will make co-operation between the Town and the PUC difficult. These circumstances primarily relate to the adversity in interest between the two with regard to issues of liability for damages resulting from the contamination. The Order in Council under which I was appointed precludes me from making findings of civil liability. Nonetheless, it would be naïve to think that the positions of the two parties in civil proceedings will not affect the manner in which they approach the Inquiry. I understand why co-operation may be difficult. Accordingly, I am prepared to accede to the request and permit the PUC and the Town separate cross-examinations. In doing so, however, I note that there will likely be a congruence of interest on many issues. In those instances, I encourage counsel to agree on a single cross-examination. In any event I will insist that there be no repetition.

The PUC also requests that I amend my recommendation for funding to include payment of a junior counsel fee. In addition to acting for the PUC, Mr. Prehogan will be acting for two of the PUC Commissioners in their personal capacities, both of whom will be called as witnesses.

In these circumstances, I am satisfied that there will be some portions of the evidence in Part IA for which a junior counsel is necessary. I therefore recommend the payment of a junior counsel fee for a maximum of 20 days during Part IA only.

2. Stanley Koebel requests that I alter my recommendation for funding to include payment of a junior counsel fee. In my view, this request should be granted. I am limiting the recommendation for funding for a junior counsel to a maximum of 20 days.

After my Ruling, Mr. Trudell, Mr. Koebel's counsel, described certain personal circumstances of Mr. Koebel which underlie this request. These circumstances were not included as part of the original application for funding. I accept Mr. Trudell's statement that these circumstances are such that it would be difficult, if not impossible, for him to continue to act for Mr. Koebel without the assistance of junior counsel. These circumstances are tied to the central role attributed to Mr. Koebel in the events of May, 2000, the likelihood that Mr. Koebel will be compelled to testify at the Inquiry, and the anticipated positions of other parties concerning the cause of the contamination. Mr. Trudell has requested that the details of these circumstances be kept confidential because of their personal nature. I am prepared to accede to that request.

I note that no similar application has been made by Frank Koebel, and that Mr. Epstein, his counsel, has specifically indicated that he will not be seeking alteration of the funding recommendation to include payment of a junior counsel fee. Mr. Epstein has, however, supported the request made by Stanley Koebel and, in doing so, has echoed the reasons advanced by Mr. Trudell.

I therefore recommend the payment of a junior counsel fee for Stanley Koebel for 20 days during Part IA only. I would point out that under the Attorney General's guideline, when junior counsel attends hearings with senior counsel, he or she will be paid 75% of the junior counsel's hourly rate under the Attorney General's Hourly Fee Schedule.

3. In my Ruling, I asked the Ontario Farm Environmental Coalition (OFEC) to submit additional information with respect to funding. OFEC has written to indicate that it requires funding for one counsel to represent OFEC for portions of the Inquiry hearings. OFEC indicates that it has

raised \$25,000 from organizations representing commercial livestock producers and from the two general farm organizations which are members of OFEC. OFEC is reluctant to ask farm family members to contribute additional funds, beyond what they have already paid in general contributions to OFEC member organizations, in light of the particularly low crop prices and poor crops that farm families face this year.

I am satisfied that OFEC has met the criteria for funding and will recommend funding for one counsel for OFEC for those portions of the hearings that relate to farming and agricultural issues. These issues are the basis upon which I granted standing to OFEC in Part I. However, I will qualify this recommendation to fund OFEC by indicating that funding should be provided only after OFEC has exhausted the \$25,000 that it has raised independently.

I note further that OFEC has indicated that it is seeking support through the Agricultural Adaption Council's Small Projects Initiative. To the extent that financial support is provided by this route, I will amend my recommendation to fund OFEC to reflect additional funding from the Agricultural Adaption Council. In particular, such additional funding should be exhausted before any funding is provided pursuant to my recommendation.

DATE RELEASED: October 3, 2000

*The Honourable Dennis R. O'Connor,
Commissioner*

