

DECISION ON APPLICATION FOR STANDING AND FUNDING OF THE BLOC QUEBECOIS IN PART I OF THE INQUIRY

The applicant, the Bloc Québécois (“the Bloc”), has applied for standing as an intervenor and for funding to enable it to participate in Part I of the Inquiry (“the Factual Inquiry”) being conducted by this Commission.

The Terms of Reference for the Inquiry are set forth in Order-in-Council 2008-1092.

Amongst other things, those Terms of Reference authorize the Commissioner:

(e)...to adopt any procedures and methods that he considers expedient for the proper and efficient conduct of the Inquiry, including the holding of hearings in private, at any times and in any places in or outside of Canada;

(f) ...to recommend to the Clerk of the Privy Council that funding be provided, in accordance with terms and conditions approved by the Treasury Board, to ensure the appropriate participation of any person granted standing under paragraph (e), to the extent of the person’s interest, if the Commissioner is of the view the person would not otherwise be able to participate in the Inquiry;

The Draft Rules of Procedure and Practice of the Commission include the following:

12. 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 that may assist the Commissioner. Persons with intervenor standing are referred to as intervenors in these Rules.

13. The Commissioner will determine on what terms and in which parts of the Factual Inquiry a party or intervenor may participate, and the nature and extent of such participation.

The Commission's Draft Rules of Procedure and Practice also provide for applications for funding. Those Rules state:

16. The Commissioner may recommend funding for a party or intervenor to the extent of their interest, where in the Commissioner's view the party or intervenor would not otherwise be able to participate in the Factual Inquiry.

17. A party or intervenor seeking funding shall apply to the Commissioner in writing, demonstrating that he or she does not have sufficient financial resources to participate in the Factual Inquiry without such funding.

18. Where the Commissioner's funding recommendation is accepted, funding shall be in accordance with terms and conditions approved by the Treasury Board respecting rates of remuneration and reimbursement and the assessment of accounts.

The Bloc, in support of its application for standing as an intervenor in the Factual Inquiry, submits that it has a real interest or a particular expertise in the matters being investigated by this Commission including, by way of examples, the actions of a former Prime Minister and the interaction between lobbyists and members or former members of government.

Although the application by the Bloc is for standing as an intervenor in the Factual Inquiry, more than once its counsel referred to meeting the test for an applicant applying for full standing, as opposed to intervenor status, before the Commission. The Bloc has failed, in my view, to demonstrate that it has a direct and substantial interest in the matters that are the subject of this Inquiry. That said, the test to be met by an applicant for full standing, as alluded to more than once by counsel for the Bloc, is not the applicable test when one is applying for standing as an intervenor.

As Me Pratte, counsel for Mr. Mulroney, pointed out in his submission in response to that of counsel for the Bloc, in order to obtain standing as an intervenor, an applicant such as the Bloc must demonstrate that it has both a genuine concern about issues to be investigated in the course of the Factual Inquiry and that it has a particular perspective or expertise that may assist the Commissioner. Rule 12, as noted above, employs the conjunctive “and”, not the disjunctive “or”.

In my view, it is not sufficient that the Bloc has demonstrated a real and abiding concern regarding the matters being investigated by this Commission thereby meeting first part of the applicable two-fold test. Both parts of that test must be met.

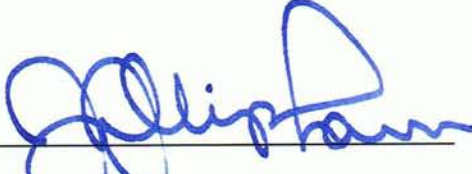
In order to achieve standing as an intervenor, the Bloc also bears the onus of meeting the second part of the two-fold test, namely, that it may assist me as Commissioner because of a particular perspective or expertise it possesses regarding those matters being investigated during the course of the Factual Inquiry.

Having carefully considered the submissions of counsel for the Bloc and for Mr. Mulroney, I have concluded that the Bloc has not met the second part of the test because it failed to demonstrate to my satisfaction that it has a particular perspective or expertise that may be of assistance to me in the course of Part I of this Inquiry.

For all of the foregoing reasons, the application of the Bloc Québécois for standing as an intervenor in Part I of the Inquiry is dismissed.

Because I have dismissed the Bloc's application for standing, it is not necessary for me to deal with its application for funding.

Signed this 9th day of October, 2008.



Jeffrey J. Oliphant
Commissioner