



## **RULING ON APPLICATION BY JEFFORD INDUSTRIES LIMITED AND ARTHUR JEFFORD FOR STANDING FOR PART II (THE POLICY REVIEW)**

### **INTRODUCTION**

[1] Jefford Industries Limited and Arthur Jefford both seek full standing as parties and for funding to enable them to participate fully in Part II (Policy Review) of the Inquiry being conducted by this Commission. In addition to the written materials filed by Mr. Jefford, I had the benefit, on January 21, 2009, of hearing his oral submission in support of the application he filed for standing and funding.

### **THE RULES OF PROCEDURE AND PRACTICE**

[2] The Commission operates under a set of rules called the “Rules of Procedure and Practice” (the “Rules”). The Rules provide that an applicant seeking standing as a party to Part II (Policy Review) must satisfy me, as the Commissioner, that the applicant is directly and substantially affected by the Part II (Policy Review) of the mandate of the Commission.

[3] The Rules also allow an applicant to apply to be an intervenor. In order to obtain status as an intervenor respecting Part II (Policy Review) of the Inquiry, an applicant must satisfy me that he, she or it, as the case may be, has a genuine concern about the issues raised by the Policy Review and has a particular

perspective or expertise that may assist me in carrying out the mandate of this Commission.

## **POSITION OF JEFFORD INDUSTRIES LIMITED AND ARTHUR JEFFORD**

[4] Mr. Jefford contends he is representative of the average Canadian, the little guy who he calls “Joe Canadian” or “Joe Six Pack”. At the same time, however, Mr. Jefford describes himself as a man who once controlled companies having a value of \$120,000,000.00

[5] As I understand Mr. Jefford’s submission, he was involved in running a urea formaldehyde foam insulation (“UFFI”) business; that the Government of Canada banned the use of that product on or about December 17, 1980, as a result of which Mr. Jefford lost everything. Mr. Jefford alleges, without providing any supporting evidence, that the government’s banning of the use of UFFI would not have occurred but for the fact that he refused to pay bribes demanded of him, or that he was pressured to pay, by several unnamed but highly placed bureaucrats employed by the Government of Canada at that time and by cabinet ministers, also unnamed, in the government headed by the Right Honourable Pierre Trudeau.

[6] Mr. Jefford asserts that as a result of his experience, he is able to provide me with a “completely different perspective” on the issues raised by the Policy Review.

[7] At the oral hearing, I asked Mr. Jefford to tell me about the different perspective from which he would approach the pertinent issues. Mr. Jefford responded by expressing a concern that the information I was going to receive, upon which I may be recommending changes respecting the ethics by which the holders of public office ought to be governed, would come from the Right Honourable Brian Mulroney and his lawyer, from Mr. Schreiber and his lawyer and from Fred Doucet and his lawyer. Mr. Jefford emphasized that his viewpoint of ethics would be completely different from those of Messrs. Mulroney, Schreiber and Doucet.

[8] Mr. Jefford then contended that he could assist me by providing me with the particular perspective of a person whose life has been devastated by a lack of ethics in government. As I have already pointed out, the event that devastated Mr. Jefford's life was the banning of the use of UFFI by the Government of Canada in late 1980.

[9] Mr. Jefford also told me that he wanted standing as a party to participate in Part II (Policy Review) so that he could comment upon how the Prime Minister's mail is handled. Mr. Jefford wants to participate in this aspect of Part II because, going back as far as Prime Minister Trudeau, he has written to various Prime Ministers without receiving a response.

### **GUIDING PRINCIPLES FOR GRANTING STANDING**

[10] In approaching the issue of standing, I am guided by rulings made by commissioners in the course of other public inquiries concerning the principles to

be applied when deciding upon an application for standing as a party or intervenor.

[11] Those commissioners whose rulings I considered include Justice Gomery, who led the Commission of Inquiry into the Sponsorship Program and Advertising Activities (the “Sponsorship Inquiry”), and Associate Chief Justice O’Connor who was the Commissioner of Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar (the “Arar Inquiry”). Both of those inquiries were mandated under the *Inquiries Act*, R.S.C. 1985, c. I-11.

[12] The first and foremost principle by which I am guided is that the Inquiry must be fair, open and thorough. In order to be fair, open and thorough, it is important that I receive all relevant information pertaining to the issues with which I must deal and that I consider a variety of perspectives on the issues raised in the Terms of Reference of this Inquiry.

[13] As noted earlier in this ruling, the Rules governing this Commission provide that to be granted standing as a party, an applicant must demonstrate that he, she or it is directly and substantially affected by the mandate of the Policy Review or portions of the Policy Review.

[14] What does the phrase “directly and substantially affected by the mandate of the Policy Review” mean?

[15] Justice Gomery commented on this in his ruling on applications for standing at the Sponsorship Inquiry under the heading “Guiding Principles on Standing”. He said:

Based upon what has been decided in comparable cases, the interest of the applicant may be the protection of a legal interest in the sense that the outcome of the Inquiry may affect the legal status or property interests of the applicant, or it may be as insubstantial as the applicant's sense of well-being or fear of an adverse effect upon his or her reputation. Even if such a fear proves to be unfounded, it may be serious and objectively reasonable enough to warrant party or intervenor standing in the Inquiry. What does not constitute a valid reason for a participant's standing is mere concern about the issues to be examined, if the concern is not based upon the possible consequences to the personal interests of the person expressing the concern.

[16] Associate Chief Justice O'Connor also dealt with the factors to be considered on applications for standing when he headed the Arar Inquiry. He said this at p.6 of his Ruling on Standing and Funding:

It is neither possible nor desirable to set out a comprehensive list of the types of interests that will come within this test for public inquiries. In each case, a commissioner conducting a public inquiry will have to consider a number of factors including his or her mandate, the nature of that aspect of the public inquiry for which standing is sought, the type of interest asserted by the applicant, and the connection of the particular applicant to the Inquiry's mandate.

[17] I agree with and adopt these statements made by Justice Gomery and Associate Chief Justice O'Connor.

[18] That said, from my reading of the Ruling on Standing and Funding made by Associate Chief Justice O'Connor in the Arar Inquiry, I have concluded there are some specific guiding principles to be considered as being applicable in the course of my determining whether or not Jefford Industries Limited and/or Mr. Jefford ought to be granted standing as a party to Part II (Policy Review) of this Inquiry. These principles are in addition to the general principles articulated by both former Justice Gomery and Associate Chief Justice O'Connor.

[19] First, having a concern, however deep or genuine, about the issues raised in the Policy Review, or having an expertise in those issues, does not necessarily mean the applicant is directly and substantially affected by the mandate of the Policy Review. Nor does having an interest in those issues mean the applicant is so affected.

[20] Second, an applicant may be able to demonstrate that he, she or it is directly and substantially affected, as required by the Rules, where it is shown that the subject matter of the inquiry may seriously affect the applicant's interest.

[21] Third, an applicant may demonstrate that he, she or it is affected, directly and substantially, by the mandate of the Policy Review, if it is shown that the findings of the Inquiry will affect the legal rights or the property interests of the applicant, at least so far as those rights are implicated.

[22] Fourth, there is no question that an applicant whose interests may be adversely affected by the report of an Inquiry as set out in section 13 of the

*Inquiries Act*, R.S.C. 1985, c. I-11, is directly and substantially affected by the mandate of the Policy Review.

## **ANALYSIS AND CONCLUSIONS**

[23] According to Mr. Jefford, both he and Jefford Industries Limited were devastated, financially and otherwise, by the actions of the government led by Prime Minister Pierre Trudeau in December of 1980 when that government banned the use of UFFI in Canada. The impact of that loss has obviously traumatized Mr. Jefford for whom I have a great deal of sympathy.

[24] The consequences that flowed from the Government of Canada's banning of the use of UFFI, so far as those consequences affected Mr. Jefford and his company, appear to be the sole reason for their application for standing as parties to the Policy Review of this Inquiry.

[25] Mr. Jefford attributes the ban of UFFI to his refusal to pay bribes demanded of him or that he was pressured to pay by bureaucrats and cabinet ministers in the Trudeau Government.

[26] Mr. Jefford and his company, Jefford Industries Limited, have failed to satisfy me that their legal status or property interests will be seriously affected by the outcome of this Inquiry. It is important to remember that the issue that brings Mr. Jefford and his company to the table occurred some twenty-eight years ago. Nor will Mr. Jefford's good name or reputation be affected by the mandate of or recommendations made as a result of the Policy Review.

[27] While Mr. Jefford has made serious allegations about the actions of certain bureaucrats and politicians of the day, he has offered no proof whatsoever in support of his allegations. An allegation without proof can be based, and most often is, on an unfounded suspicion, fear or concern.

[28] I have concluded that an allegation such as that made by Mr. Jefford, unsupported by credible evidence, is not capable of satisfying me that the mandate of the Policy Review will directly and substantially affect either Mr. Jefford or his company.

[29] Put simply, neither Mr. Jefford nor Jefford Industries Limited has satisfied me that they are directly and substantially affected by the mandate of the Policy Review or any portion of that Policy Review. Accordingly, each of their applications for standing as a party to the Policy Review is dismissed.

[30] Although it is not clear from his written materials whether Mr. Jefford and Jefford Industries Limited are also applying for standing as an intervenor, I have considered whether they or either one of them should be granted intervenor status. For the reasons set out below, I am not going to grant standing as intervenors to either Jefford Industries Limited or Mr. Jefford in the Policy Review.

[31] As I noted earlier in this ruling, in order to be granted standing as an intervenor, an applicant must demonstrate to my satisfaction a genuine concern about the issues raised by the Policy Review. To be genuine, a concern must be based upon possible consequences to the applicant's personal interests. No



such consequences have been demonstrated by either Mr. Jefford or Jefford Industries Limited.

[32] Even if I were to have concluded that their concern was genuine in that the possible consequences might affect their personal interests, neither Jefford Industries Limited nor Mr. Jefford has satisfied me that it or he has a particular perspective or expertise that would be of assistance to me in carrying out my mandate. The Rules governing applications for standing as an intervenor say there must be both a genuine concern and a particular perspective or expertise. Here, in my view, neither exists.

[33] The foundation for the application of both Jefford Industries Limited and Mr. Jefford appears to be based on the premise that I will be basing my findings and recommendations on perspectives offered by three individuals only, namely, Messrs Mulroney, Schreiber and Doucet. That premise is demonstrably false. I note that neither Mr. Mulroney nor Mr. Doucet have applied for standing in the Part II Policy Review. The Commission will hear evidence from three experts who have been commissioned to provide papers on the policy issues that arise in the Policy Review. A forum will be held where the parties and their experts, if any, will be able to question the Commission's experts and offer their own perspective on the issues in the Policy Review. Submissions are being sought from the public in response to the Consultation Paper that has been prepared and a public hearing will be held to hear submissions from the public.

[34] In terms of how the Prime Minister's correspondence is handled, the fact that Mr. Jefford may have written to more than one Prime Minister without receiving a response does not, in my opinion, clothe him with a particular perspective or expertise that may assist me in fulfilling my mandate.

[35] For the foregoing reasons, I will not grant standing to Jefford Industries Limited or Mr. Jefford as intervenors in the Policy Review.

[36] I conclude this ruling by reminding Mr. Jefford that he is welcome to make a public submission in writing to the Commission dealing with any matter related to the Policy Review and may comment on any matters raised in the Consultation Paper published by the Commission and posted on the Commission's website. Any such public submission in writing must be received by the Commission no later than March 31, 2009.

Signed at Ottawa, Ontario this \_\_\_\_ day of February, 2009.

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Jeffrey J. Oliphant, Commissioner