

**OPENING STATEMENT BY JUSTICE OLIPHANT AT HEARINGS OF
STANDING/FUNDING APPLICATIONS**

THURSDAY, OCTOBER 2, 2008

WELCOME

Good Morning. Bonjour Mesdames et Messieurs.

Welcome to the first session of this Inquiry. The purpose of today's hearing is to hear applications for standing and funding for Part One of the Inquiry. Part One will focus on factual questions relating to the business and financial dealings between Karlheinz Schreiber and the Right Honourable Brian Mulroney as set out in paragraph (a) sections 1 through 16 of the Terms of Reference. Before we begin with the applications for standing and funding, I would like to make some preliminary remarks.

INTRODUCTION

My name is Jeff Oliphant. I am a Judge of the Court of Queen's Bench of Manitoba, having been on that court for 23 years, approximately 18 of which I served as Associate Chief Justice.

By virtue of Order-in-Council 2008-1092, the Government of Canada appointed me to conduct an Inquiry under Part I of the *Inquiries Act* into certain allegations respecting certain business and financial dealings between Karlheinz Schreiber and the Right Honourable Brian Mulroney.

La Gouverneure générale en conseil m'a chargé de mener une enquête concernant les allégations au sujet des transactions financières et commerciales entre Karlheinz Schreiber et le très honorable Brian Mulroney.

THE INQUIRY

By virtue of two earlier Orders-in-Council, Dr. David Johnston, the President and Vice-Chancellor of the University of Waterloo, was appointed as a Special Advisor to the Prime Minister to conduct an independent review of certain allegations made about the business and financial dealings as between Messrs. Mulroney and Schreiber and to provide reports to the Prime Minister with his recommendations on the appropriate mandate for a public inquiry into those allegations.

Dr. Johnston submitted two reports. Dans ses rapports, Dr. Johnston a conclu que la question d'intérêt public dans la présente affaire reste la nécessité d'établir s'il y a eu violation des règles imposées aux titulaires de haute charge publique, et si ces règles sont adéquates sous leur forme actuelle.

Dr. Johnston a conclu aussi que certaines de ces allégations ont déjà fait l'objet d'examens ou d'enquêtes.

Dr. Johnston concluded that the public interest issue to which the allegations of financial dealings give rise is the integrity of Government and whether there was

a breach of the existing constraints on the activities of holders of high government office or, if not, whether there is a need for further constraints on former high office holders after they leave office. He recommended, further, that the inquiry be a focused inquiry into specific matters of legitimate public interest rather than a further, extensive examination of matters already considered by others.

The Terms of Reference of this Inquiry reflect the recommendations made by Dr. Johnston in his reports.

The mandate of the Inquiry is fixed by the Terms of Reference. As noted earlier, the Terms of Reference reflect the recommendations of Dr. Johnston that this be a focused inquiry, and incorporate the 17 questions as formulated by Dr. Johnston. Having reviewed the Terms of Reference carefully, I have concluded that this Inquiry is to focus upon the financial and business dealings of Messrs. Mulroney and Schreiber in relation to the Bear Head Project and the payments made to Mr. Mulroney by Mr. Schreiber in 1993 and 1994.

This Inquiry will be conducted in two parts. During Part One, I will hear testimony regarding the factual matters raised in the Terms of Reference.

Part Two will deal with the policy issues identified in the Terms of Reference.

The applications for standing and funding concerning Part Two of the Inquiry will not be dealt with today. They will be heard at a later date.

At this time, I propose to conduct all hearings in public. Following the Part One and Part Two hearings, I will prepare and submit my report to the government. Hopefully, that report will shine a light upon the factual issues that are of interest to both the public and the government and will make useful recommendations regarding the policy issues that have been referred to me.

RULES OF PROCEDURE AND PRACTICE

Each public inquiry establishes its own rules. As the Commissioner of this public inquiry, I have the authority to set the procedures and practices that will be followed by the Inquiry. My goal is to ensure that the process we follow will be fair. Commission counsel have drafted a set of procedural rules. Those draft procedural rules appear on the Commission's website.

I will invite those parties who are granted standing to make submissions respecting anything in the draft rules that they believe should be changed. After receiving comments on the draft rules from parties who are granted standing, I will finalize the rules. The final rules will be posted on the Commission's website.

WHAT AN INQUIRY IS

Let me briefly say what an Inquiry is and what it is not.

While this Inquiry has broad powers of subpoena, it is not a court of law. A public inquiry is not a trial. A public inquiry is meant to investigate and report upon matters of substantial public interest. I am not empowered to find anyone guilty of a criminal offence or liable for a civil law matter, nor does my mandate permit me to make any award of damages as may occur in a civil lawsuit.

I am committed to conducting this Inquiry independent of government. Having been a judge for 23 years, I am mindful of the fact that the need for me to be independent of the government in my capacity as Commissioner of this Inquiry is as crucial as the requirement that in a democracy, the judicial branch must be independent from the Executive and Legislative branches of government. Judicial independence as well as my being independent from government as Commissioner is for the benefit of the public.

I am also committed to conduct this Inquiry in a manner that is seen to be impartial and fair to all concerned. While it is true that this Commission cannot make findings of liability, either civil or criminal, I am sensitive to the fact that it

has the capacity to have an adverse impact on reputations. That is why I want to be fair to all who appear before this Commission as parties or witnesses.

That is also why, to the extent possible, I intend the Part One hearings of this Commission to be open and public. Enabling public access to the hearings of the Inquiry contributes, in my opinion, to both impartiality and fairness.

I have assembled an outstanding legal team to assist me with the work of this Commission. Richard Wolson, Q.C. of Winnipeg is the lead counsel. He is supported by three senior counsel, Nancy Brooks of Ottawa, Evan Roitenberg of Winnipeg and Giuseppe Battista of Montreal

I am pleased to see members of the media here today because not everyone can physically be present to attend the public hearings. It is through the media that most members of the public will learn what is transpiring on a day-to-day basis.

Given the nature and importance of these proceedings, during the course of this Inquiry, it would be improper for me to speak to the media. Commission counsel will not be granting interviews on any matters under investigation. Any media requests for information are to be directed to the commission's communications consultant, Barry McLoughlin.

I can assure members of the media that where appropriate, I will do whatever I am able to ensure that you have timely access to all public documents that are filed with and form part of the record of this Commission and to such other information to which you are entitled.

In terms of providing the public access to the workings of the Commission, we have established a website. The Commission's website can be found at www.oliphantcommission.ca.

STANDING HEARINGS

Today, I will be hearing applications to determine which individuals or organizations will be granted what is known as "standing" in Part One of the Inquiry, which will deal with the factual issues. I may grant an applicant one of two types of standing: party standing or intervenor standing.

For party standing, an applicant must demonstrate that it will be directly and substantially affected by the matters to be investigated in Part One of the Inquiry.

I can grant either full or partial party standing, depending on the extent of the applicant's interest.

I may grant intervenor standing if the applicant satisfies me it has a genuine concern about issues raised by the factual inquiry and it has a particular perspective or expertise that may assist me in carrying out my mandate.

After I have heard all of the applications for standing, I will give each of the applicants an opportunity to comment upon whether they think any other applicant should or should not be granted standing.

Under the Terms of Reference, I am authorized to make a recommendation that funding be provided in accordance with terms and conditions approved by Treasury Board. Those terms and conditions have been posted on the Commission website. I will hear today from any applicant who wishes to apply for funding.

If I am unable to decide today whether or not standing ought to be granted to any one or more of the applicants, I will reserve my decision and provide to the parties, as soon as possible, a written decision on standing and, if applicable, on funding. I will ensure that the media and the public will be made aware of any decision on the day it is released. The decisions will be posted on the Commission's website.

We will now move to that part of today's proceedings where I will hear from applicants for standing and funding.

