



**COMMISSION OF INQUIRY INTO CERTAIN ALLEGATIONS
RESPECTING BUSINESS AND FINANCIAL DEALINGS BETWEEN
KARLHEINZ SCHREIBER AND THE RIGHT HONOURABLE BRIAN MULRONEY**

RULES OF PROCEDURE AND PRACTICE

1. The Commission proceedings will be divided into two parts. The first part, the “Factual Inquiry”, will focus on 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.
2. The Commissioner will conduct hearings in relation to the Factual Inquiry as set out in Part I of these Rules.
3. The second part of the Inquiry is a “Policy Review” directed at making recommendations for ethical rules or guidelines concerning the activities of politicians as they transition from office or after they leave office and regarding procedures followed by the Privy Council Office as specified in paragraph (a) sections 14 and 17 of the Terms of Reference. The Commissioner will conduct consultations in relation to the Policy Review as set out in Part II of these Rules.
4. Whenever practicable, applications should be made in writing on notice to the parties and intervenors, as defined in these Rules. The Commissioner may determine in any case whether the length of notice provided, if any, was reasonable. Applicants will be expected to justify notice periods of less than seven clear days. Parties and intervenors wishing to receive notice of applications shall provide the Commission with an e-mail address for delivery. The e-mail addresses will be posted on the Commission’s web site. Notice to a party will be sufficient if e-mailed to the e-mail address provided on the Commission’s web site.

**PART I
FACTUAL INQUIRY**

A. GENERAL

5. The Commissioner may amend these Rules or dispense with compliance with them as he deems necessary to ensure that the Inquiry is thorough, fair and timely.
6. All parties, intervenors, witnesses and their counsel shall be deemed to undertake to adhere to these Rules, and may raise any issue of non-compliance with the Commissioner.

7. The Commissioner shall deal with a breach of these Rules as he sees fit including, but not restricted to, revoking the standing of a party, and imposing restrictions on the further participation in or attendance at (including exclusion from) the hearings by any party, intervenor, counsel, individual, or member of the media.
8. Subject to the provisions of the *Inquiries Act* (Canada), the conduct of and the procedure to be followed on the Inquiry is under the control and discretion of the Commissioner.
9. In these Rules, the term “documents” is intended to have a broad meaning, and includes the following formats: written, electronic, audiotape, videotape, digital reproductions, photographs, maps, graphs, microfiche and any data and information recorded or stored by means of any device.

B. STANDING – FACTUAL INQUIRY

10. Commission counsel, who will assist the Commissioner to ensure the orderly conduct of the Factual Inquiry, have standing throughout the Factual Inquiry. Commission counsel have the primary responsibility for representing the public interest at the Factual Inquiry, including the responsibility to ensure that all matters that bear upon the public interest are brought to the Commissioner’s attention.
11. A person may be granted full or partial standing as a party by the Commissioner if the Commissioner is satisfied that the person is directly and substantially affected by the matters investigated in the Factual Inquiry or portions thereof. Persons with party standing are referred to as parties in these Rules.
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.
14. Applicants for standing will be required to provide written submissions explaining why they qualify for standing, and how they propose to contribute to the Factual Inquiry. Applicants for standing will also be given an opportunity to appear in person before the Commissioner in order to explain why standing ought to be granted to them.
15. The Commissioner may direct that a number of applicants share in a single grant of standing.

C. FUNDING – FACTUAL INQUIRY

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.

D. PRE-HEARING WITNESS INTERVIEWS

19. Commission counsel may interview any person who has information or documents that have any bearing upon the subject matter of the Factual Inquiry. A person may be interviewed more than once. Persons who are interviewed are entitled, but not required, to have legal counsel present. No person or organization is required to submit to such interviews.
20. If the witness agrees to be interviewed, he or she may elect to have the interview proceed on the basis that:
 - (a) a written transcript of the interview shall be made, in which case, the transcript will be subject to disclosure and use as described in Rule 21(a);
or
 - (b) a summary of the gist of the witness' expected testimony, based on the interview ("Summary"), shall be made, in which case the Summary shall be subject to disclosure as described in Rule 21(b).
21. If Commission counsel determines that a person will be called as a witness following an interview:
 - (a) that has been transcribed, Commission counsel will provide a transcript of the interview to the witness, the parties and the intervenors having an interest in the subject matter of the witness' evidence, before the witness testifies before the Commission. At the Part I hearing, the transcript may be used for cross-examination on prior inconsistent statements;
 - (b) that has not been transcribed, Commission counsel will provide a copy of the Summary to the witness, the parties and the intervenors having an interest in the subject matter of the witness' evidence, before the witness testifies before the Commission.
22. Commission counsel will provide to the parties and intervenors the names of all other persons who were interviewed by Commission counsel but who will not be called as witnesses.

23. Transcripts of interviews shall only be released to a party or intervenor upon execution of a confidentiality undertaking by such party or intervenor, and his or her counsel.

E. EVIDENCE

24. The Commissioner may receive any evidence that he considers helpful in fulfilling the mandate of the Inquiry whether or not such evidence would be admissible in a court of law.
25. The Commissioner may consider findings, as he considers appropriate, of other examinations or investigations that may have been conducted into any of the questions set out in paragraph (a) of the Terms of Reference, and to give them any weight, including accepting them as conclusive.

(a) Production of Documentary Evidence

26. As soon as possible after being granted standing, all parties and intervenors shall provide to the Commission all documents in their possession or under their control having any bearing on the subject matter of the Factual Inquiry.
27. Where a party or intervenor objects to the production of any document on the grounds of privilege, the document shall be produced in its original unedited form to Commission counsel who will review and determine the validity of the privilege claim. Production of the document for this purpose will not constitute a waiver of any applicable privilege. The objecting party, intervenor and/or counsel may be present during the review process. In the event the party or intervenor claiming privilege disagrees with Commission counsel's determination, the Commissioner, on application, may either inspect the impugned document(s) and make a ruling, or may direct the issue to be resolved by the Federal Court.
28. Upon the request of Commission counsel, parties and intervenors shall provide originals of relevant documents.
29. Documents received from a party, intervenor, 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 Commission counsel 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 in respect of to an interview pursuant to Rule 19.

(b) Witnesses

30. All Government entities, agencies and officials and all witnesses shall cooperate fully with the Commission and shall make available all documents and witnesses relevant to the mandate of the Commission.
31. Witnesses who testify will give their evidence at a hearing under oath or upon affirmation.

32. Commission counsel may issue and serve a subpoena or summons upon each witness before he or she testifies. A witness may be called more than once.
33. Witnesses are entitled to have their own counsel present while they testify. Counsel for a witness will have standing for the purpose of that witness' testimony to make any objections thought appropriate and for other purposes set out in these Rules.
34. Parties and intervenors are requested to advise Commission counsel of the names, addresses and telephone numbers of all witnesses they wish to have called and, if possible, to provide summaries of the information the witnesses may have.
35. If the proceedings are televised, applications may be made for an order that the evidence of a witness not be televised or broadcast.

(c) Oral Examination

36. 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' 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 in court proceedings, unless otherwise directed by the Commissioner.
37. Commission counsel have a discretion to refuse to call or present evidence.
38. The order of examination in the ordinary course will be as follows:
 - (a) Commission counsel will lead the evidence from the witness. Except as otherwise directed by the Commissioner, Commission counsel are entitled to ask both leading and non-leading questions. Commission counsel have an obligation to ascertain the truth and are free to test and challenge the witness or evidence (cross-examination);
 - (b) Parties will then have an opportunity to cross-examine the witness to the extent of their interest. The order of examination will be determined by the parties and, if they are unable to reach agreement, by the Commissioner;
 - (c) After the examinations in paragraph (b), counsel for a witness may then examine the witness. Except as otherwise directed by the Commissioner, counsel for the witness is entitled to ask both leading and non-leading questions;
 - (d) Commission counsel will have the right to re-examine last.
39. After a witness has been sworn or affirmed at the commencement of giving evidence, no counsel other than Commission counsel may speak to a witness about the evidence that he or she has given until the evidence of such witness is complete except with the permission of the Commissioner. Commission counsel

may not speak to any witness about his or her evidence while the witness is being cross-examined by other counsel.

40. 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 further 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 36.

(d) Use of Documents at Hearings

41. In advance of a witness' testimony, Commission counsel will endeavour to provide to the parties and the intervenors having an interest in the subject matter of the proposed evidence documents associated with the witness upon execution of a confidentiality undertaking by such party or intervenor, and his or her counsel. Such undertakings will be of no force regarding any document or information once it has become an exhibit. The Commissioner may, upon application, release any party or intervenor in whole or in part from the provisions of the undertaking in respect of any particular document or other information.
42. Parties shall provide Commission counsel with any documents that they intend to file as exhibits or otherwise refer to during the hearings at the earliest opportunity, and in any event shall provide such documents to Commission counsel no later than two business days before the document will be referred to or filed at the hearing.
43. Before using a document for purposes of cross-examination, counsel shall provide a copy to the witness and to all parties having an interest in the subject matter of the proposed evidence not later than two business days prior to the commencement of that witness' testimony.

(e) Personal Confidentiality

44. Upon application, the Commissioner may make an order for a grant of "Personal Confidentiality", aimed at protecting the identity of a witness. For the purposes of the Factual Inquiry, Personal Confidentiality shall include the right of the witness to have his or her identity disclosed only by way of non-identifying initials, and, if the Commissioner so rules, the right to testify before the Commission *in camera*, together with any other privacy measures which the Commissioner grants.
45. Upon application, the Commissioner may make an order to conduct hearings *in camera* when he is of the opinion that intimate financial, personal or other matters are of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure outweighs the desirability of adhering to the general principle that the hearings should be open to the public.
46. A witness who is granted Personal Confidentiality will not be identified in the public records and transcripts of the hearing except by non-identifying initials, and the public transcripts may be redacted to exclude any identifying details. Any reports of the Commission using the evidence of witnesses who have been

granted Personal Confidentiality will use non-identifying initials only, and may exclude reference to identifying details.

47. Media reports relating to the evidence of a witness granted Personal 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.
48. Any witness who is granted Personal Confidentiality may either swear an oath or affirm to tell the truth using the non-identifying initials given for the purpose of the witness' testimony.
49. Any party, intervenor or witness may apply to the Commissioner to have intimate financial or personal information that is not relevant to the subject matter of the Inquiry redacted from documents proposed to be introduced into evidence and may apply to the Commissioner to have the issue heard at an *in camera* hearing.
50. All media representatives shall be deemed to undertake to adhere to the rules respecting Personal Confidentiality. A breach of these Rules by a media representative shall be dealt with by the Commissioner as he sees fit.

(f) Access to Evidence

51. All evidence shall be categorized and marked P for public sittings and C for sittings *in camera*.
52. Copies of the P transcript of evidence will be made available on the Inquiry's website. One copy of the P transcript and the P exhibits of the public hearings will be made available for public review at the Commission offices.
53. Only those persons authorized by the Commission, in writing, shall have access to C transcripts and exhibits.

**PART II
POLICY REVIEW**

A. GENERAL

54. The Policy Review will proceed in four phases:
 - (a) The Commission will publish a consultation paper (the "Consultation Paper"). The Consultation Paper will examine ethical rules or guidelines that would currently cover the business and financial dealings concerning the activities of politicians as they transition from office or after they leave office, and procedures of the Privy Council Office applicable in the circumstances in this case, which might serve as a basis for an assessment of whether they are sufficient or whether there should be

additional ethical rules, guidelines or procedures applicable in such situations.

(b) The Commission will receive submissions in writing from members of the public (the “Public Submissions”) dealing with any matter related to the Policy Review including comments on any matter raised in the Consultation Paper and including specific proposals for the recommendations to be made by the Commissioner.

(c) The Commissioner, in his discretion, may authorize the commissioning of expert research papers, and/or the convening of Expert Policy Forums for use in the preparation of the recommendations to be made by the Commissioner.

(d) The Commissioner will convene public and private consultations (the format of which may vary) to hear submissions from parties and intervenors on the matters raised in the Policy Review.

B. CONSULTATION PAPER

55. The Commission will publish the Consultation Paper on the Commission’s web site.

C. PUBLIC SUBMISSIONS

56. Any member of the public and any party or intervenor may make a Public Submission, in writing, to the Commission dealing with any matter related to the Policy Review including comments on any matter raised in the Consultation Paper.

57. The Commissioner will set a deadline by which all Public Submissions must be received.

D. EXPERT POLICY FORUMS

58. Where the Commissioner convenes Expert Policy Forums for use in the preparation of the recommendations to be made by the Commissioner, the Commissioner may modify the Rules for oral examination of witnesses applicable to Part I – Factual Inquiry as he deems appropriate, so as to allow persons with standing in relation to the Policy Review to participate appropriately in relation to the evidence of the panel in question.

E. CONSULTATIONS

59. Once all Public Submissions have been reviewed, the Commissioner will convene a public consultation or consultations relating to the major topics addressed in the Policy Review. The format of the public consultations will be tailored to the topics discussed, and may vary.

60. The Commissioner will determine whether, on what terms and on what basis persons who have submitted a written Public Submission may participate in the public consultations.
61. The public consultations shall be recorded.
62. At his discretion, the Commissioner may also conduct private consultations.

F. STANDING – POLICY REVIEW

63. A person may be granted full or partial standing as a party by the Commissioner if the Commissioner is satisfied that the person is directly and substantially affected by the mandate of the Policy Review or portions thereof. Persons with party standing are referred to as parties in these Rules.
64. The Commissioner may grant intervenor standing to persons who satisfy the Commissioner that they have a genuine concern about issues raised by the Policy Review and have a particular perspective or expertise that may assist the Commissioner. Persons with intervenor standing are referred to as intervenors in these Rules.
65. The Commissioner will determine on what terms and in which parts of the Policy Review a party or intervenor may participate, and the nature and extent of such participation.
66. Persons who apply for standing will be required to provide written submissions explaining why they wish standing, and how they propose to contribute to the Policy Review. Persons who apply for standing will also be given an opportunity to appear in person before the Commissioner in order to explain the reasons for their application.
67. The Commissioner may direct that a number of applicants share in a single grant of standing.

G. FUNDING – POLICY REVIEW

68. 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 Policy Review.
69. 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 Policy Review without such funding.
70. 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.