



PUBLIC INQUIRY RESPECTING GROUND SEARCH AND RESCUE FOR LOST AND MISSING PERSONS

RULES OF PROCEDURE AND PRACTICE

GENERAL

1. This Public Inquiry Respecting Ground Search and Rescue for Lost and Missing Persons has been established in accordance with Part II of the *Public Inquiries Act, 2006*, SNL 2006, c. P-38.1.
2. The Public Inquiry is an independent inquiry established by the Government of Newfoundland and Labrador by way of an Order-in-Council (O.C. 2021-004) dated the 14th day of January, 2021. Mr. James Igloliorte, retired Provincial Court Judge, has been appointed to conduct the Inquiry.
3. Throughout these Rules the words “Public Inquiry” and “Inquiry” are used interchangeably and both refer to the Public Inquiry Respecting Ground Search and Rescue for Lost and Missing Persons.
4. These Rules shall throughout be interpreted in a manner consistent with the *Public Inquiries Act, 2006*, and with Order-in-Council 2021-004.
5. (a) Throughout these Rules the term “evidence” shall be given a broad and liberal construction and, for greater particularity, shall include but not be limited to all documents, information and testimony obtained by the Inquiry through informal hearings, written and oral submissions, research conducted by the Commissioner and persons retained by the Commissioner and other information the Commissioner considers necessary to address its mandate as established by Order-in-Council 2021-004.

(b) The Inquiry will be conscious of the need to act efficiently so as to ensure that costs incurred are only those that are reasonable and necessary to address its mandate as established by Order-in-Council 2021-004. The Commissioner shall have the authority to do such things as are necessary in this regard including, but not limited to, determining who shall participate, in full or in part of the Inquiry; who shall be heard and in what manner and to what extent they need to be heard, including, where necessary, the power to compel the production of testimony and evidence; setting limits to the presentation of evidence; and specifying the manner in which documents and other information are to be provided and received. As well, the Commissioner will be mindful that the final

report from the Inquiry is required to be submitted to the Minister for Justice and Public Safety on or before June 30, 2021.

6. The Commissioner has appointed Geoffrey E. Budden as Inquiry Counsel to assist him throughout the Inquiry in such matters as he shall direct including, but not limited to, ensuring that all matters that bear on the public interest are brought to the attention of the Commissioner.
7. The Commissioner shall take into account in conducting the Inquiry that the Inquiry process is, to the extent possible, to be trauma-informed; respectful of the persons, families and communities concerned; culturally appropriate; and that it shall consider the risks of traditional activities engaged by Indigenous people and other peoples on the land. Further, this Inquiry will at all times consider that some Inquiry participants will be participating without the assistance of counsel.

THE EVIDENTIARY PROCESS: GENERAL

8. The Inquiry shall be conducted and informed by means of any of informal hearings; research studies; interviews and surveys; and written submissions.
9. The rules of evidence used in a court of law to determine admissibility of evidence shall not be binding on the Commissioner.
10. In the ordinary course, hearings shall take place in a roundtable format, with discussions to be facilitated by such person or persons as the Commissioner may, from hearing to hearing, direct. Further, it is anticipated that, generally speaking, roundtable participants will give their evidence through submissions and ensuing discussion rather than through examination and cross-examination.
11. The Inquiry will be conducted in stages. The first stage will involve the preparation and distribution of a draft discussion paper on the organization and operation of ground search and rescue in the province. The discussion paper will describe how ground search and rescue is conducted in the province and also describe the organizations that conduct, fund and otherwise participate in ground search and rescue.
12. The draft discussion paper will be posted to the website of the Inquiry. The Commissioner will subsequently invite individuals and entities who are involved with or have an interest in how ground search and rescue is conducted in the province to provide comments upon the draft discussion paper. This discussion paper will not address the shortcomings or the strengths of ground search and rescue, and individuals or entities providing comments upon the draft discussion

paper should limit their comments to the contents of the paper. (The Inquiry will provide the opportunity to make recommendations to improve ground search and rescue in other stages.) Any comment which addresses recommendations or other matters not relevant to the discussion paper may not be considered in the preparation of the final draft of the discussion paper.

13. The Inquiry will consider the input and comments received from individuals and entities regarding the draft discussion paper. Subsequently, the Inquiry will prepare a final draft of the discussion paper and the paper will be posted to the website. The discussion paper will be relied upon by the Commissioner during the conduct of roundtables and also in other stages of the Inquiry, including the final report.
14. The Government of Newfoundland and Labrador shall have the opportunity to participate in all of the roundtables and such other stages of the Inquiry as may take place.

THE BURTON WINTERS' HEARINGS

15. It is anticipated that, if consistent with public health measures in relation to the Covid-19 pandemic and with community health and safety, this Inquiry will, at an early opportunity, travel to and sit in the community of Makkovik, Labrador.
16. This Inquiry will, while in Makkovik, conduct a roundtable which will examine the search for Burton Winters. If so required by the number of participants and the limits of available facilities, more than one roundtable may be held.
17. The Commissioner will invite representatives of the entities which were engaged in the search for Burton Winters in 2012 to participate in the roundtable. He will also invite other entities who have an interest in the manner in which the search for Burton Winters was conducted. The entities that the Commissioner will invite include but are not limited to the following: the Royal Canadian Mounted Police ("RCMP"), Newfoundland and Labrador Search and Rescue Association (NLSARA), the Makkovik Search and Rescue Volunteers, the Government of Newfoundland and Labrador, CASARA and entities of the Federal Government.
18. The family of Burton Winters will be provided an opportunity to participate in any and all roundtables. The roundtables shall be conducted in a manner that is informed by trauma. The Inquiry will provide members of the Burton Winters family with the opportunity to participate directly in the proceedings of the roundtable or indirectly through counsel for the family, as they may choose.

19. The Nunatsiavut Government, the Innu Nation and the Nunatukavut Community Council will also be invited to participate in the roundtable in relation to Burton Winters.
20. Any individual or entity that has not been invited to participate in the roundtable in relation to Burton Winters but wishes to participate must submit an application to the Inquiry at least 30 days prior to the date that the roundtable is scheduled to commence. The application may be informal but should address whether participation by that individual or entity would further the conduct of the Inquiry.
21. The Commissioner shall advise applicants whether they will be granted an opportunity to participate in the roundtable as soon as reasonably practicable.
22. The Commissioner will participate in such memorials or remembrances of Burton Winters as the family of Burton Winters and the community of Makkovik wish to conduct.

FURTHER ROUNDTABLES

23. It is anticipated that the Inquiry will hold additional roundtables to examine further matters including other ground search and rescue operations relevant to the mandate of the Inquiry as established by Order-in-Council 2021-004. The scheduling and locale of these hearings will proceed in a manner consistent with public health measures in relation to the Covid-19 pandemic and with community health and safety.
24. In determining the specific operations to be examined the Commissioner may consult with the organizations which conduct ground search and rescue in the province including the RNC, the RCMP and NLSARA. The Inquiry intends to conduct certain roundtables in communities that are in close proximity to the area in which the search and rescue operation was conducted (provided that the conduct of the roundtables is consistent with public health measures in relation to the Covid-19 pandemic and with community health and safety). The families of lost or missing loved ones will be provided an opportunity to participate in these roundtables, which shall be conducted in a manner that is informed by trauma.
25. The Inquiry shall, in a timely manner, invite individuals and other entities to participate in such roundtables. Such invitees shall include but not be limited to the Miawpukek Mi'kmaq First Nation and the Qalipu Mi'kmaq First Nation.
26. Any individual or entity that has not been invited to participate in the roundtable in which they are interested but wishes to participate must submit an application

to the Inquiry at least 30 days prior to the date that the roundtable is scheduled to commence. The application may be informal but should address whether the person's participation would further the conduct of the Inquiry.

27. The Commissioner shall advise such applicants if they will be granted an opportunity to participate in the roundtable as soon as is reasonably practicable.
28. The Inquiry shall conduct at least one roundtable which addresses ground search and rescue policy. The Commissioner will conduct this roundtable in the location and in a manner so as to facilitate participation from interested persons and entities and the general public. However, the location and the manner in which this roundtable is conducted will be consistent with public health measures in relation to the Covid-19 pandemic and with community safety.
29. Any individual or entity who has participated in an earlier roundtable will be given an opportunity to participate in the roundtable on policy.
30. At the request of the Commissioner, Thomas Williams, Q.C., counsel for the family of Burton Winters, has agreed to offer assistance to other families at roundtables where a search and rescue operation in relation to lost or missing persons of that family is being examined. The cost of these services shall be borne by the Government of Newfoundland and Labrador.
31. Prior to the commencement of each roundtable, the Commissioner will post to the website a notice which will outline the manner in which individuals and entities will participate in a roundtable.

PRODUCTION AND DISCLOSURE OF EVIDENCE

32. Any participant or other person or entity who possesses or is aware of evidence which they believe relevant to ground search and rescue for lost and missing persons in Newfoundland and Labrador is requested to provide same, in a timely manner, to the Inquiry.
33. The Commissioner may exercise his authority to compel the production of evidence (inclusive of documents and information). Any person or other entity served with a summons to produce shall provide all requested information within their possession, control or power by such time and in such form as is directed by the said summons.
34. The terms "document" or "documents" are intended to have a broad meaning and include, without limitation, the following mediums: written, electronic, text,

cellular or social media messaging, audiotape, videotape, digital reproductions, photographs, films, slides, maps, graphs, microfiche, metadata, and any data and information recorded or stored by means of any device.

35. (a) Documents or other things received by the Inquiry pursuant to a summons shall be treated as confidential by the Inquiry unless and until they are made part of the public record or the Commissioner otherwise declares. This does not preclude the Inquiry from producing a document or other thing to participants, their counsel, or a proposed witness prior to the witness giving his or her testimony or as part of the investigation being conducted. Nor does it preclude the Inquiry from providing a document or other thing to experts or consultants retained by it.
- (b) Individuals or entities which oppose the public disclosure of all or part of a document will be provided an opportunity to express their position to the Inquiry and seek relief pursuant to the within paragraphs 37-39 before the said public disclosure, or disclosure to participants, takes place.
36. The Inquiry will endeavour to provide all participants and counsel with all relevant evidence in advance of the roundtable at which the said evidence will be discussed or tendered.
37. The Commissioner may restrict the distribution of any document or other form of evidence on such terms as he may consider just and expedient, including the power to seal or otherwise make confidential such documents and, further, to require confidentiality undertakings from participants, counsel and other parties.
38. (1) A person or other entity has the same privileges in relation to the disclosure of information and the production of records, documents or other things as the person or other entity would have in relation to the same disclosure in a court of law.
- (2) Notwithstanding subsection (1), a rule of law that authorizes or requires the withholding of records, documents or other things or a refusal to disclose information, on the grounds that the disclosure would be injurious to the public interest or would violate Crown privilege, does not apply in respect of an inquiry.
- (3) Notwithstanding subsection (1), a person or other entity shall not refuse to disclose information to the Inquiry on the grounds that the disclosure is prohibited by another *Act* or regulation.
39. (1) A person may apply to the Supreme Court of Newfoundland and Labrador, General Division for an order excluding a person or a record, document or thing from the operation of subsections 38(2) and (3), and the Court may, after

considering the application and the submission of the Inquiry and other interested parties, order that:

- (a) the person may refuse to disclose information;
- (b) a record, document or thing may be withheld from the Inquiry; or
- (c) the information shall be disclosed or the record, document or thing produced on conditions that the court may provide.

(2) There is no right of appeal from a decision of a judge made under this section.

40. The Inquiry shall maintain a webpage where matters relevant to the mandate of the Inquiry, including these Rules of Procedure, discussion papers, evidence, schedules and submissions may, within the sole and absolute discretion of the Commissioner, be posted.

SUBMISSIONS

41. Prior to inviting closing submissions, the Inquiry may release draft recommendations that the Commissioner may recommend in the final report to be submitted to the minister. The draft recommendations will be posted on the website.
42. The Commissioner will invite closing submissions which should address the draft recommendations posted on the website. Furthermore, the Commissioner will invite certain individuals or entities to make oral submissions where the Commissioner concludes that it is necessary to hear from those individuals or entities in person. Any individual or entity that has not been invited to make oral submissions but wishes to appear in person to make oral submissions must submit an application to the Inquiry. The application may be informal but should address why it is necessary for the individual or entity to appear in person before the Commissioner and make oral submissions.

FUNDING

43. Unless otherwise noted herein, applications for funding to participate in the proceedings of the Inquiry shall be made to the Department of Justice and Public Safety of the Government of Newfoundland and Labrador. They must be made at the earliest practical opportunity and must comply with Order-in-Council 2021-004.

FURTHER MATTERS

44. The Inquiry is mindful that it has no constitutional authority to compel the participation of agencies of the Government of Canada. It will, however, invite the participation of such agencies if the Commissioner determines that their participation will assist the Inquiry in addressing its mandate as established by Order-In-Council 2021-004.
45. The Commissioner shall prepare a final report which shall:
- a) Review the organization and operation of ground search and rescue in the province including air support for ground search and rescue.
 - b) Make recommendations that the Commissioner considers necessary and advisable related to ground search and rescue in the province.
 - c) In preparing the final report the Commissioner may consider:
 - i. information gathered during the informal hearings;
 - ii. written and oral submissions;
 - iii. research conducted by the Commissioner and persons retained by the Commissioner; and
 - iv. other information the Commissioner considers necessary.
 - d) The final report shall not:
 - i. express any conclusions or recommendations regarding the civil or criminal responsibility of any persons or organization; or
 - ii. make a finding of misconduct against a person or organization.
 - e) The final report shall be submitted to the minister on or before June 30, 2021.

AMENDMENT TO RULES OF PROCEDURE

46. These Rules may be amended and new rules may be added if the Commissioner finds it necessary to do so to fulfill the Inquiry's mandate and to ensure that the process is thorough and fair.
47. The Commissioner may extend or abridge any time prescribed by these Rules.

BREACHES OF RULES OF PROCEDURE

48. The Commissioner shall deal with a application of these Rules as he sees fit including, but not restricted to, revoking the participation of a person or entity or imposing restrictions on the further participation in or attendance at the hearings by any counsel, individual or entity. These Rules shall, however, at all times be applied in a manner which recognizes that many Inquiry participants will be participating without the assistance of counsel.

SERVICE

49. Documents may be served on a participant by:
- a) Email or facsimile to the participant or participant's legal counsel with acknowledgement of receipt;
 - b) Personal service or an alternative to personal service in accordance with the Rules of the Supreme Court, 1986, SNL 1986 c 42, Sch D.;
 - c) Any other such method as mutually agreed between Inquiry counsel and the participant or the participant's legal counsel;
 - d) Or as otherwise directed by the Commissioner.

Public Inquiry Respecting Ground Search and Rescue for Lost and Missing Persons

Address: 3rd Floor, Beothuck Building
20 Crosbie Place,
St. John's, NL
A1B 3Y8

Telephone: 1-709-729-7589

Toll Free: 1-833-667-0679

Fax: 1-709-729-5618

Website: www.nlgsarinquiry.ca

E-mail: admin@nlgsarinquiry.ca