Commission of Inquiry on Hormone Receptor Testing

Commissioner Cameron's Opening Remarks
At the Hearings for Standing and Funding

September 19, 2007

Introduction

- Good morning. My name is Margaret Cameron. On July 3, 2007, I was appointed as Commissioner of the Inquiry on Hormone Receptor Testing. I am also a Justice of the Supreme Court of Newfoundland and Labrador, Court of Appeal.

- On this, the first public session of the Commission, I want to tell you what has been happening since the Commission was established and how I plan to proceed with the work of the Commission in the future. Let me begin by saying a little about the nature of Commissions of Inquiry.

- In this Province, Commissions of Inquiry are established by Orders-in-Council issued under the authority of the *Public Inquires Act, 2006*. While Government makes the decision to appoint a Commission of Inquiry, the Commission is independent of Government.

- Public Inquiries are designed to expose certain events to public scrutiny. Usually, a Commission is asked to determine what went wrong in the past and how to avoid such errors in the future.

- A word about what a public inquiry does not do. The Commission may determine wrong-doing, but it does not find anyone guilty of a crime. Nor does it establish civil responsibility for monetary damages. However, the fact finding role of the Inquiry means that individuals or organizations may find their reputations at risk. Consequently, the principles of natural justice require that due process safeguards be in place. These will be observed by this Commission.

- The precise tasks of this Commission are set out in the Terms of Reference. Broadly speaking, its purpose is to find out why there were a high number of different results when certain hormone receptor tests, done between 1997 and 2005, were retested in 2005 and 2006, and to consider what can be done

to avoid similar occurrences in the future. In that sense, the mandate of the Commission is directed, in part, to the past and, in part, to the future. I am to examine the response of authorities when the problems were discovered, including the communications with affected patients and others. I am also asked to examine present practices related to estrogen and progesterone hormone receptor testing systems, a task which is no doubt designed to restore public confidence in the current testing. In addition, there is a policy development role for this Inquiry. I am to make recommendations as to how matters of this nature should be handled.

How the Inquiry is to Proceed

- The Order-in-Council which created the Commission provided its terms of reference. It is that document which states the parameters of the work which may be performed and the time in which it is to be done. Since the creation of the Commission, key members of the team have been put in place. On the administrative side, they have been working to obtain and set up our office. Commission Counsel have begun the task of gathering of evidence, and the identification of potential witnesses. Rules of Procedure and Practice have been developed and are published on our website (www.cihrt.nl.ca). The Rules of Procedure and Practice are particularly relevant to those who receive standing to participate in the hearings.

- The Inquiry will be divided into two parts. In Part I, the Commission will inquire into problems with estrogen and progesterone hormone receptor tests conducted between 1997 and 2005 in the Newfoundland and Labrador health care system. This will include inquiry into what happened to cause or contribute to the problems, when the problems came to light, and whether they could have been detected earlier. Part I will also examine any protocols in place during the relevant time frame and what steps, if any, were taken by responsible authorities when they became aware of the problems. In addition there will be evidence respecting the current systems and processes and quality assurance systems.

- Part II of the Inquiry will have a policy focus and will include a review of both policy and legal issues raised by the Terms of Reference. Part II is expected to canvass the duties, if any, of the responsible authorities to patients, to other parties within the health care system, and to the public respecting differences in test results on re-testing. Part II will also examine whether the estrogen and progesterone hormone receptor testing systems and processes and quality assurances systems currently in place are reflective of “best practices.”

- Part I of the Inquiry will be conducted in the traditional method of public inquiries. Witnesses will be called, examined by Commission Counsel and, if

necessary, cross-examined by parties who have standing. Part I hearings, which will commence early in January of 2008, will be held in this building at 50 Tiffany Lane, St. John's. The public is welcome and indeed, encouraged to attend. In addition, the hearings will be webcast. Prior to the commencement of the hearings our website will provide further information regarding the webcasting of the hearings.

- Part II will take a different approach. The Commission is in the process of engaging a number of experts who will be preparing papers considering legal and ethical issues raised by the Terms of Reference. These papers will be placed on our website in the spring of 2008. As well, in April of 2008 there will be a symposium which will include presentations by the persons who have prepared papers and others on relevant topics. There will also be opportunity for Commission Counsel and those with standing to ask question of the presenters.

- While those who have standing for Part II will be expected to make written submissions to the Commission, the public is also invited to make written submissions respecting the issues raised in Part II. All submissions respecting Part II must be made on or before May 15, 2008.

Introduction of Commission Staff

- Shortly after I was appointed I began to assemble a team to assist in the work of the Commission. Ms. Virginia Connors is our Chief Administrative Officer who oversees our office staff of four.

- Co-counsel are Bernard Coffey, Q.C. and Sandra Chaytor, Q.C. Both are experienced barristers. As I have already mentioned, they have begun the process of meeting with persons who can provide us with information and gathering documentation. Not with us this morning is Timothy Caulfield who is our Director of Research. Mr. Caulfield is the Research Director of the Health Law Institute at the University of Alberta. His work will primarily relate to Part II of the Commission's work. More detailed biographies of Mr. Coffey, Ms. Chaytor and Mr. Caulfield are available on our website. We expect to add others to the team as we move through the various phases of the Inquiry.

Standing and Funding

Section 5(2) of the *Public Inquiries Act, 2006* says:

> *(2) A commission shall determine whether a person may participate in an inquiry, and how he or she may participate, after considering*

(a) whether the person's interests may be adversely affected by the findings of the commission;
(b) whether the person's participation would further the conduct of the inquiry; and
(c) whether the person's participation would contribute to the openness and fairness of the inquiry.

- When I refer to persons who are granted standing, I am referring to those who, after consideration of the three factors enumerated in the *Act*, are permitted to participate. Today is the first of two days during which applications for standing will be heard. It is through the participation of interested parties that the Commission is able to consider different perspectives on the information received. I would add that the Commission is charged with completing its work by July of 2008. It is, therefore, desirable to avoid duplication where possible.

- It is possible that some decisions respecting standing will be made immediately. Others may be reserved. It is also possible that an applicant will be granted standing for only one part of the Inquiry. Please do not read anything more into a reservation of a decision than my need to consider the application further, perhaps in light of the existence of other applications from other groups or persons who might be expected to provide similar assistance to the Commission in its work.

- Three of the applications for standing also seek funding. Under the *Public Inquires Act, 2006* , s. 5(5), I do not determine who receives funding. I may, however, for persons or organizations which have been granted standing make recommendations that funding be provided by the Government. Government may or may not accept the recommendation. On questions of funding, I will not be making my recommendations known today. Rather, these will be made in writing and communicated to the parties and the Government. Where decisions on either standing or funding are reserved, applicants will be notified, in writing, of the decision or recommendation. This information will also be posted on the website.

- Prior to the hearings for Part I, Commission Counsel and our advisors on technology will meet with those who have been granted standing to discuss the Rules of Practice and Procedure, as well as some of the practical measures we propose to take (largely through the use of technology) to try to have the hearings conducted as efficiently as possible.