

Appendix H

RULING #3
Participant Status of
Police Complaint Commissioners
January 29, 2008

THE FRANK PAUL INQUIRY
WILLIAM H. DAVIES, Q.C., COMMISSIONER
APPOINTED UNDER THE PUBLIC INQUIRY ACT,
S.B.C. 2007, C. 9

Commission Counsel: Geoffrey Cowper, Q.C.

Associate Commission Counsel: Brock Martland

<u>Participant</u>	<u>Counsel</u>
Aboriginal Legal Services of Toronto	Kimberly Murray and Jonathan Rudin
Ambulance Service/EHS Commission	Douglas Eastwood
Benjamin Casson	Terrence Robertson, Q.C.
BC Civil Liberties Association	Michael Tammen and Grace Pastine
BC Coroners Service	Rodrick MacKenzie
Criminal Justice Branch, Ministry of Attorney General	Richard Peck, Q.C., and Tim Hinkson

<u>Participant</u>	<u>Counsel</u>
First Nations Leadership Council	Steven Kelliher
David Instant	David Crossin, Q.C.
Don Morrison	Joseph Arvay, Q.C.
Paul Family	Steven Kelliher
Police Complaint Commissioner (Ryneveld)	Frank Falzon
Russell Sanderson	Kevin Woodall
United Native Nations Society	Cameron Ward and David Eby
Vancouver Police Department and Vancouver Police Board	George Macintosh, Q.C., and Sean Hern

Introduction

1. On October 17 and on November 26, 2007, I made my first two Rulings on applications for participant status. Those Rulings are available on the Inquiry website: www.frankpaulinquiry.ca.

Further applications

2. In my first Ruling, I granted participant status to the Office of the Police Complaint Commissioner. Since then, I have been made aware of several changes in circumstances, which necessitate a reconsideration of that aspect of my first Ruling:
 - the current Police Complaint Commissioner is Mr. Ryneveld. His counsel (Mr. Falzon) has advised Commission Counsel that there is at law no office known as “The Office of the Police Complaint Commissioner.” Rather, the *Police Act* refers only to the “Commissioner” in a personal sense. Consequently, he takes the position that he acts only for the current Commissioner, Mr. Ryneveld, and he has advised the former Commissioners to that effect.

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- Three other individuals held the office of Commissioner prior to Mr. Ryneveld. In order of appointment, they are Mr. Donald Morrison, Ms. Barbara Murphy and Mr. Benjamin Casson. Messrs. Morrison and Casson now seek full participant status for Phase 2 of this Inquiry's proceedings.
3. For convenience, I have divided the Inquiry's proceedings into various Phases. Phase 2 relates to paragraph (b) of the Terms of Reference, which states:
 - (b) to make findings of fact regarding circumstances relating to Mr. Paul's death, including findings of fact respecting the response of British Columbia Ambulance Service, the Vancouver Police Department, the BC Coroners Service, the Office of the Police Complaints Commissioner and the Criminal Justice Branch of the Ministry of Attorney General to the death of Mr. Paul.

Legislation

4. Subsection 11(4) of the *Public Inquiry Act* states:

On receiving an application under subsection (3), a commission may accept the applicant as a participant after considering all of the following:

 - (a) whether, and to what extent, the person's interests may be affected by the findings of the commission;
 - (b) whether the person's participation would further the conduct of the inquiry;
 - (c) whether the person's participation would contribute to the fairness of the inquiry.
5. These are the criteria that have guided my analysis and determination of who should be accepted as participants for this Commission of Inquiry.
6. As I stated in Ruling #1, the legislation does not specify what rights may be granted to participants, but it is uncontroversial to say that participation would typically include access to documents (according to the commission's procedural rules); a seat at counsel table; and the opportunity to make closing submissions. Depending on the extent of participation authorized, a participant might or might not be permitted to apply to call witnesses or suggest what witnesses should be called; and might or might not be permitted to cross-examine witnesses.

Analysis

The current Commissioner, Mr. Ryneveld

7. For the reasons stated in my first Ruling (see para. 18), I am satisfied that the interests of the current Commissioner are directly affected (the first statutory criterion), that his participation will further the conduct of the inquiry (the second criterion) and that his participation will contribute to the fairness of the inquiry (the third criterion).
8. However, in light of Mr. Falzon's assertion that there is at law no "Office", and that each Commissioner's position is of a personal nature, I have concluded that the current Commissioner's participant status should be restricted as follows:
 - During Phase 2, the current Commissioner is granted participant status respecting only those matters that relate to or arise out of his tenure as Commissioner,
 - During Phase 4 (which will involve an examination of the rules, policies and procedures of several public bodies, including the Police Complaint Commissioner), the current Commissioner is granted participant status as it relates to his role as Commissioner.

Applications by former Commissioners Morrison and Casson

9. I am satisfied that the interests of each of these two former Commissioners are directly affected (the first statutory criterion), that his participation will further the conduct of the inquiry (the second criterion) and that his participation will contribute to the fairness of the inquiry (the third criterion).
10. However, I have concluded that the participation of each of these two former Commissioners should be restricted to those matters that relate to or arise out of his tenure as Commissioner.
11. If either or both of these former Commissioners would like to make representations or submissions during Phase 4, I invite them to contact Commission Counsel.

Extent of participation

12. As to the extent of the participation of the current Commissioner and of these two former Commissioners, as the Act makes clear (sections 11–13), I may make orders respecting the manner and extent of a participant’s participation. They may, with respect to the matters to which their participation relates, attend the hearings, receive disclosure of records (according to the commission’s procedural rules), and make submissions. I will decide at a later date the extent to which they may call witnesses and/or cross-examine witnesses.

Production of Police Complaint Commissioner documents

13. Commission Counsel requested documents from the Police Complaint Commissioner in late 2007. Commission Counsel has advised me that substantial production has been made as of today’s date. If any further production is required, I request that it be done forthwith, so as not to prejudice the interests of other participants, and so as to ensure the timely conduct of the Phase 2 hearings.

A handwritten signature in black ink, appearing to read 'W. Davies', written in a cursive style.

Commissioner W. Davies, Q.C.
Frank Paul Inquiry