

Subject: Suggested Revisions to Rules

From: Shawn Buckley [REDACTED]

Date: 14/02/2023, 11:59 a.m.

To: Ches Crosbie <[REDACTED]>, Michael Collins <[REDACTED]>

CC: Andrej Litvinjenko <[REDACTED]>, "D.S. Andersson" <[REDACTED]>

<[REDACTED]>

Ches, Michael, Andrej and Dale

I am attaching a draft of the Rules where I have made some significant changes and additions. The changes and additions are all in red text.

The main changes are:

- to ensure that it is the Support Group that maintains discretion over the Rules;
- to add definitions so the Rules are meaningful;
- to set out a quorum and rules if a Commissioner cannot attend a hearing;
- to set out Rules for voir dieres and similar proceedings for lay witnesses;
- to set out Rules for the taking of evidence by a single commissioner;
- to amend the Summons so that it is clear the person receiving the summons can schedule a hearing time that will accommodate them during the course of hearings.

There are also minor changes.

All the best.

Shawn

On 10/02/2023 7:43 a.m., Ches Crosbie wrote:

Michael, I think you can see from Shawn's message below what changes to the Summons at appendix C he wishes. Would you be able to make suitable changes and send us a draft? Much obliged.

From: Shawn Buckley [REDACTED] **Date:** Friday,

February 10, 2023 at 12: [REDACTED]
To: Andrej Litvinjenko <[REDACTED]>, Ches Crosbie <[REDACTED]>

Cc: D.S. Andersson <[REDACTED]>

Subject: Re: Email [REDACTED]

Andrej

I am including Ches.

The Legal Committee reviewed the Rules yesterday. The Rules contain a Summons for public officials. We are going to tweak the Summons so that it makes it clear the officials can attend virtually and that we are running for a couple of months. If they cannot attend at the one in their province or region, they can attend a later one. That should deal with any objection by officials they were not given enough time.

Our plan is to have the Rules finished by Sunday. We can then send out the Summons for the public health officials in the provinces and the federal one. We are also compiling a few other lists. So they should go next week.

All the best.

Shawn

On 09/02/2023 5:37 p.m., Andrej Litvinjenko wrote:

Will do tomorrow.

Has the invite to public officials been finalized, is there a set ETA?

Thank you,
Andrej

On Thu, Feb 9, 2023 at 7:33 PM Shawn Buckley  wrote:

Andrej

At the Legal/Witness Committee meeting this afternoon we decided it would be a good idea to send out a call for witnesses for the Maritimes and Quebec. Below is the text of a proposed email.

If you could send the email out it would be appreciated.

All the best.

Shawn.

SUBJECT: Exciting News about the Nova Scotia and Quebec Hearings - and if you want to be a witness apply now!

Hello NCI Supporters

We are excited about the first two hearing venues for the National Citizens Inquiry. The Inquiry will start in Turo Nova Scotia from March 16 to 18. The Inquiry will then move to Montreal on March 23 to 25. This is history in the making. Never in Canada have citizens banded together to run a formal inquiry into government conduct. For more information visit our website at <https://nationalcitizensinquiry.ca/>. Be sure to **sign the petition to show public support for the Inquiry.**

We are working on selecting and scheduling our witnesses for the Turo and Montreal hearings. If you are in the Maritimes or Quebec and have not yet applied to be a witness, please fill in our witness forms at <https://nationalcitizensinquiry.ca/witnesses/>.

Also, **please share this with your network who may not know about the NCI.** We want everyone to participate in this fact finding mission. Let them know that we are a citizen run and funded independent Inquiry into how all levels of government handled the covid crisis. We aim to find out what really happened, and then to make positive recommendation on how we can do things better in the future.

Thank you for your support. Together we can make history!

The NCI Team.

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Andrej Litvinjenko, JD, MA (Economics), MA (Poli Sci)



Persistence.

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PLEASE NOTE THAT OUR MAILING ADDRESS HAS CHANGED *Subject to solicitor-client privilege* Power concedes nothing without a demand. It never did and it never will. Find out just what any people will quietly submit to and you have found out the exact measure of injustice and wrong which will be imposed upon them. Frederick Douglass (1818-1895), author, former slave.

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Attachments:

Amended No.. 2 2023.02.07 Preliminary Draft Rules of Practice and
Procedure.docx

126 KB

NATIONAL CITIZENS INQUIRY

Rules of Practice and Procedure

Introduction

Canada's federal and provincial governments' COVID-19 policies were unprecedented. These interventions into Canadians' lives, families, businesses, and communities were, and to great extent remain, significant. These interventions impacted the physical and mental health, civil liberties and fundamental freedoms, jobs and livelihoods, and overall social and economic wellbeing of nearly all Canadians.

These circumstances demand a comprehensive, transparent, and objective national inquiry into the appropriateness and efficacy of these interventions, and to determine what lessons can be learned for the future. Such an inquiry cannot be commissioned or conducted impartially by our governments as it is their responses and actions to the COVID-19 which would be under investigation.

The National Citizen's Inquiry ("Inquiry") is a citizen-led and citizen-funded initiative that is completely independent from government and operates without legal compulsion or coercion. Legally, it is organized as a non-profit corporation with a Board of Directors to manage financial and compliance issues; however, the Inquiry is led by a Support Group and Commissioners.

The Support Group is an all-volunteer citizen committee represented across Canada by Regional Subcommittees. Its role is primarily administrative and logistical. It drafted the Inquiry's Terms of Reference ("Terms of Reference) and these Rules of Practice and Procedure (the "Rules") and appointed the Commissioners. The Support Group will continue in its role in running the administration of the Inquiry, and as necessary adjusting the Rules to ensure the Inquiry responds to the demands of Canadians to have a fair and inquiry. The Commissioners have the role, independent of the Support Group of running the Inquiry hearings, approaching all evidence with an open mind, and independently finding facts and making recommendations.

The Inquiry's Commissioners are selected for objectivity, independence, and competence. They will select their own Chairperson and direct Commission counsel. They have the power to direct the Inquiry, to decide any procedural or substantive question that arises, and to produce interim or final reports and recommendations.

RULES OF PRACTICE AND PROCEDURE

General

1. Subject to the Terms of Reference **and the Rules**, the conduct of, and procedure to be followed at, the Inquiry is under the control and at the discretion of the Commissioners.
2. **If the Commissioners believe a change in these Rules is necessary, they are to request the change in writing to the Support Group. During an actual hearing day, the Commissioners may deviate from a Rule as they deem necessary to ensure that the Inquiry is complete, fair and timely.**
3. The Commissioners may make such orders or give such directions as they consider proper to maintain order and to prevent the abuse of the Inquiry's process.
4. In the computation of time under these Rules, except where a contrary intention appears,
 - a. time will be computed using Eastern Standard Time, except that the time of any event during a hearing or within the 72 hours preceding a scheduled hearing will be computed according to the prevailing time zone in the location of the hearing;
 - b. where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, even if the words "at least" are used;
 - c. where a period of seven days or less is prescribed, holidays shall not be counted; and
 - d. where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.
5. For the purpose of these Rules, the Commissioners will have discretion to determine what constitutes "reasonable notice" or "at the earliest opportunity" in all of the circumstances.
6. **All Parties and their legal representatives are bound by the Rules. They may raise any issues of non-compliance with the Commissioners, if unresolved in consultation with Commission counsel. Witnesses and attendees are bound by the Rules, to the extent applicable.**
7. The Commissioners shall deal with a breach of these Rules as they sees fit including, but not restricted to,
 - a. revoking the standing of a Party;

- b. imposing restrictions on the further participation in or attendance at (including exclusion from) the hearings by any Party, legal representative, individual, or member of the media;
 - c. an adverse inference against the Party or summons recipient;
 - d. issuing a charge of misconduct under Rule 26; or
 - e. making findings about a Party or summons recipient in an interim or final report.
8. In these Rules,
- “holiday” means “holiday” as defined in s. 35 of the *Interpretation Act*, R.S.C., 1985, c. I-21.
 -
 - “persons” refers to individuals, organizations, governments, agencies, institutions, associations or any other entity;
 - “Party” refers to a person who has been granted standing to participate in the Inquiry pursuant to the Rules of Standing and Funding; and
 - “documents” is intended to have a broad meaning, and includes all technical, corporate, financial, economic and legal information and documentation, financial projection and budgets, plans, reports, opinions, models, photographs, recordings, personal training materials, memoranda, notes, data, analysis, minutes, briefing materials, submissions, correspondence, records, sound recordings, videotapes, films, charts, graphs, maps, surveys, books of account, social media content, or any other notes or communications in writing, and data and information in electronic form, any data and information recorded or stored by means of any device.
 - “Commission counsel” means counsel for the Commission appointed by the Support Group to act as Commission counsel;
 - “Support Group” means the collection of individuals forming the Support Group which started and manages both the National Citizens’ Inquiry and the non-profit corporation started for the management of National Citizens’ Inquiry funds.
 - The terms “Commission” and “Inquiry” are interchangeable and refer to the same thing.
 - “Commission website” means the website of the National Citizens’ Inquiry or any other website set up by the Support Group as the Commission website.

Procedural Principles

9. The conduct of the Public Hearings and these Rules are informed by the following Procedural Principles:
 - **Proportionality:** The Inquiry will allocate investigative and hearing time in proportion to the importance and relevance of the issue to the Inquiry's mandate and the time available to fulfill that mandate so as to ensure that all relevant issues are fully addressed and reported on;
 - **Transparency:** The Inquiry proceedings and processes must be as open and available to the public as is reasonably possible, consistent with the requirements of national security and other applicable confidentiality and privileges;
 - **Fairness:** The Inquiry must balance the interests of the public to be informed with the rights of those involved to be treated fairly;
 - **Timeliness:** The Inquiry must proceed in a timely fashion to engender public confidence and ensure that its work remains relevant; and
 - **Expedition:** The Inquiry is operating under a strict deadline and must conduct its work accordingly.
10. Parties and their legal representatives, as well as those otherwise taking part in the Public Hearings shall conduct themselves, and discharge their responsibilities under the Rules, in accordance with the Procedural Principles.

Investigation

11. The Inquiry will commence with a preliminary investigation by Commission counsel. The goal of the investigation is, in part, to identify the core or background facts and to identify witnesses.
12. The investigation will consist primarily of document review, engagement with interested persons, and interviews by Commission counsel and staff **including volunteers**.

Standing

13. The Commissioners will retain and direct Commission Counsel to ensure the orderly conduct of the Inquiry. Commission Counsel have standing at the Inquiry and have the primary responsibility of representing the public interest throughout the Inquiry, including the responsibility of ensuring that all matters that bear upon the public interest are brought to the Commissioners' attention. Together, the Commissioners and Commission Counsel constitute the Commission.
14. Applicants may seek standing at the Inquiry by submitting an application form with any supporting materials, in electronic format, with the Commission on or before **April 15, 2023**, or at the discretion of the Commission, on any other date.
15. Application forms can be found in Appendix A.
16. Completed application forms for standing must include the following information:

- a. The Applicant's name, address, telephone number, and email address;
 - b. The name(s) of the legal representative(s), if any, representing the Applicant, together with the legal representative(s)'s address, telephone number, and email address;
 - c. The substantial and direct nature of the Applicant's interest in the subject matter of the Inquiry, why the Applicant wishes standing, and how the Applicant's participation would provide the necessary contributions to the Inquiry, having specific regard to the Terms of Reference; and
 - d. Whether the Applicant is seeking full standing or standing on one or more specific issues as outlined in the Terms of Reference.
17. The Commissioners will make decisions about participation in the Inquiry's proceedings based on the completed application forms and supporting documentation. Should oral submissions be required for any Applicant, which will be determined by the Commissioners, the Commissioners will communicate an appropriate time and format. **The Support Group has standing to make representations to the Commisisoners concerning standing applications**
18. Supporting documentation shall be limited to 10 pages.
19. Standing will be granted in the discretion of the Commissioners, in accordance with the Terms of Reference and the desirability of a transparent, fair and timely proceeding. The Commissioners will consider, among other things, the following criteria:
 - a. whether an Applicant has a substantial and direct interest in the subject matter of the Inquiry;
 - b. whether an Applicant's participation would provide necessary contributions to the conduct of the Inquiry; and
 - c. whether an Applicant's participation would contribute to the openness and fairness of the Inquiry.
20. The Commissioners may determine the manner and scope of the participation of Applicants granted standing, as well as their rights and responsibilities.
21. The Commissioners may direct that a number of applicants share participation with those with whom they have a common interest.
22. Those granted standing will be designated as "Parties" before the Inquiry.
23. The Commissioners may decide, in their discretion, that one or more Applicants for standing will have more limited rights of participation than others. They may also decide that two or more Applicants for standing will be required to participate as a group and be required to exercise their rights of participation jointly.
24. From time to time, the Commissioners may, at their discretion, modify, rescind or grant standing.

25. Any material or information filed in support of an Applicant's standing application may be available to the public on the Inquiry's website or cited in a publicly available document, such as a decision on standing.

Notice to Persons Charged

26. No report shall be made against any person until reasonable notice has been given to the person of the charge of misconduct alleged against him and the person has been allowed full opportunity to be heard in person or by counsel.
27. Notice of a charge of misconduct may be issued in the form attached as Appendix B with appropriate changes and delivered as directed by the Commissioners.

Summonses and Requests

28. The Commissioners may issue a summons in the form attached as Appendix C with appropriate changes.
29. A summons may be served by **email, registered mail, personal service, regular mail, or any other** means approved by the Commissioners.
30. If there is any doubt about whether service was effective, the Commissioners may make an appropriate order.

Document Production

31. Subject to Rules 32, 33, and 37, within 10 days of receiving a summons or being granted standing, any Party or recipient of a summons must produce copies of all documents in their possession or under their control relevant to the subject-matter of the Inquiry.
32. The Commission may request from a Party or require from a recipient of a summons to produce only certain categories or types of documents. In that case, the Party or summons recipient shall only provide the Commission with the categories or types of documents specifically requested, and these shall be organized and provided in batches according to document category or type, as set out in the Commission's request. The Party or recipient of a summons shall comply with the Commission production request within 10 days.
33. The Commission may require a Party or recipient of a summons to first provide a list of categories or types of documents in that person's possession or control relevant to the subject-matter of the Inquiry prior to producing any documents. The Commission may then request some or all of the categories or types of documents for production. The Party or summons recipient shall only provide the Commission with the categories or types of documents specifically requested, and these shall be organized and provided in batches according to document category or type, as set out in the Commission's request. Where a Party or a recipient of a summons is required to first provide a list as set out above, it shall be produced within 5 days. The documents themselves outlined in the Commission's subsequent request shall be produced within 5 days of the request.

34. At the earliest opportunity, each Party or summons recipient must certify in writing that its document production obligations, as outlined in these Rules, have been complied with. If the Party or summons recipient is an organization, the person with authority to certify on behalf of the organization must certify in writing that the organization has complied with its document production obligations, as outlined in these Rules. Document production is an ongoing obligation. If additional documents are discovered or obtained subsequent to initial production, they must be disclosed as soon as possible after they are discovered or obtained.
35. Upon the request of Commission counsel, Parties and summons recipients shall provide relevant documents in the format and manner requested. Parties and summons recipients will preserve originals of relevant documents until such time as the Commissioners have fulfilled their mandate or have ordered otherwise.
36. Production to the Commission will not be treated as a waiver of any objection to its disclosure, use, or admission into evidence.
37. If a Party or summons recipient objects to the production of any document, or part thereof, or to disclosure to Parties of any document, or part thereof, the following procedures will apply:
 - a. The Party or summons recipient shall, within 10 days, deliver to Commission counsel a written objection describing the nature and scope of the objection along with any appropriate supporting material, such as an affidavit or authorities;
 - b. Commission counsel shall review the objection and determine whether they intend to seek access to the document(s);
 - c. If Commission counsel **does** seek access to the document(s), the list and any further material filed by the Party or summons recipient, including submissions, shall, if the objecting Party or recipient consents, be submitted forthwith, together with written submissions on behalf of Commission counsel, to the Commissioners or, at the Commissioners' option, to another adjudicator designated by the Commissioners, for determination. If the Commissioners or designated adjudicator are unable to make a determination based on the record before them, they may request further information about the disputed document(s);
 - d. If the objection is dismissed, the document(s) shall be produced to Commission counsel forthwith and, subject to relevance and any conditions imposed by the Commissioners or designated adjudicator, may be used by the Commission and Parties in the inquiry.
38. Except as agreed with Commission counsel, documents shall be produced to the Commission in unredacted form. Persons producing documents will be given an opportunity to redact irrelevant personal information before the Commission shares those documents with Parties or the public.
39. Where a person producing a document has redacted personal information pursuant to Rule 38, and Commission counsel disagree that the information is irrelevant

personal information, the following procedures will apply:

- a. Commission counsel shall identify for the producing party the redaction or categories of redactions that it does not accept and direct them to produce a version of the document without that redaction or categories of redactions. Commission counsel may also explain the relevance of the redacted information;
 - b. Within two days, the person producing the document shall either comply with the direction of Commission counsel by producing a new version of the document with the redactions identified by Commission counsel removed or else inform Commission counsel that they intend to challenge Commission Counsel's direction before the Commissioners;
 - c. A party seeking to challenge a direction of Commission counsel shall, within three days of informing Commission counsel of this, bring an application to the Commissioners for an order under Rule 104(a) to redact irrelevant personal information in the document. The requirement under rules 92 and 93 for Parties to be provided with copies of applications and to have the right to respond do not apply to an application under this rule;
 - d. The application shall include both a redacted and unredacted version of the document at issue and, where the producing party is aware of it, the contact information of the person whose personal information is implicated by the redactions, or their counsel;
 - e. The Commissioners may notify a third party of the application and permit them to file submissions;
 - f. The application shall be heard in writing unless the Commissioners direct otherwise;
 - g. With the agreement of the producing party, the application may be heard and determined by another adjudicator designated by the Commissioners.
40. A Party may bring an application to challenge a redaction to a document that has been made on the basis of irrelevant personal information. Rules 92 and 93 shall not apply to such an application unless the Commissioners direct otherwise. On receipt of an application, the Commissioners may make directions as to how the application shall be determined. The Commissioners may summarily dismiss an application under this rule if they are satisfied that redacted information is clearly irrelevant personal information.
41. Documents received from a Party 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 Commissioners otherwise declare. This does not preclude Commission counsel from producing a document to a proposed witness prior to the witness giving their testimony, as part of the investigation being conducted, or

pursuant to Rules 85 and 86.

42. Legal representatives to the Parties and witnesses will be provided with relevant documents and information, including statements of anticipated evidence, only upon entering into the written Confidentiality Undertaking at Appendix D to these Rules.
43. Legal representatives are entitled to provide those documents or information to their clients only on terms consistent with the undertakings given, and after the clients have entered into the written Confidentiality Undertaking at Appendix E to the same effect.
44. Parties and witnesses who are unrepresented will be provided with documents and information, including statements of anticipated evidence, only upon entering into the written Confidentiality Undertaking at Appendix F to these Rules.
45. Each person who has entered into a written undertaking in the form set out at Appendix D, Appendix E or Appendix F shall comply with its terms.
46. These undertakings will be of no force regarding any document or information once it has become an exhibit. The Commissioners may, upon application, release any Party in whole or in part from the provisions of the undertaking in respect of any particular document or other information.
47. If a party believes that a document that has been shared with them pursuant to these rules contains either privileged information or irrelevant personal information that they believe should be redacted, they shall notify Commission counsel immediately. The Commissioners may make directions on how to address this issue, including but not limited to directing the notifying party to comply with the procedures set out in Rules 37 or 38. A document that is subject to notice under this rule shall not be made public until the issue respecting privilege or personal information is resolved, unless the Commissioners direct otherwise.
48. The Commissioners may require documents provided to Parties, and all copies made, be returned to the Commission if not tendered in evidence. Alternatively, the Commission may require the destruction of those documents, and all copies made, such destruction to be proven by certificate of destruction. Any confidentiality undertaking or request for deletion provided for in these Rules is limited by any requirement to retain or disclose records and information as may be provided for by law.
49. The Commission may, at any time and at its discretion, request further disclosure from any Party or summons recipient and that request shall be complied with within the time specified by Commission counsel.

Witness Interviews

50. Commission counsel, **and persons under the direction of Commission counsel**, may interview people who have information or documents relevant to the subject-matter of the Inquiry. People who are interviewed are

entitled, but not required, to have a legal representative present.

Public Hearings

51. Public Hearings will be convened anywhere in Canada as the **Support Group** may determine to address issues related to the Inquiry. Hearings may proceed virtually or in hybrid form, with details to follow.
52. **The Support Group will, in consultation with the Commissioners, set the dates, hours and place of the Public Hearings.**
53. The Commissioners may receive any evidence or information that they consider reliable and helpful in fulfilling their mandate whether or not such evidence or information might otherwise be admissible in a court of law. The strict rules of evidence will not apply to determine the admissibility of evidence at the Inquiry.
54. The Commission may rely on representative witnesses on behalf of institutions. A representative witness is typically a senior official of an institution, and/or an expert in the subject area and procedures, designated to appear on behalf of their institution.
55. Commission counsel may call witnesses or experts, who may, among other things, support, challenge, comment upon or supplement **any documents provided to the Commission under the Rules including Overview Reports.**
56. Parties may also propose witnesses or experts to be called to support, challenge, comment upon or supplement **any documents provided to the Commission under the Rules including Overview Reports** in ways that are likely to significantly contribute to an understanding of the issues relevant to this Inquiry.
57. Evidence may be received at the Inquiry from one or more panels of expert witnesses.
58. The Commissioners are committed to hearing evidence in a process that is public to the greatest extent possible.
59. Applications may also be made for a grant of confidentiality. The procedure that will govern orders for a grant of personal confidentiality is addressed in the section on “Personal Confidentiality of Witnesses”.
60. **Subject to Support Group resources, Public Hearings will be webcast. A webcast of all Public Hearings will be posted to the Commission website and Public Hearings will be transcribed. Public Hearings will be accessible simultaneously in both official languages.**

Overview Reports

61. Commission counsel may prepare Overview Reports, which may contain summaries of core or background facts, together with attributed sources. The source documents may be appended to, and form part of, the Overview Reports. Overview Reports allow facts to be placed in evidence without requiring such core or background facts or relevant documents to be presented orally by a witness during

a public hearing. Overview Reports may be presented by various methods, including audiovisual presentation. Overview Reports may include summaries or reproductions of a wide range of documents, including relevant statutory or regulatory provisions and frameworks, existing policies, procedures and practices, organizational charts and descriptions, chronologies, and any other information or documents within the definition of these Rules.

62. Commission counsel will provide an opportunity to the Parties, in advance of the filing of Overview Reports as evidence, to comment on the accuracy of the Overview Reports within a time specified by Commission counsel after consultation with the Parties, and Commission counsel may modify the Overview Reports in response.
63. The Overview Reports may be used to assist in identifying the issues that are relevant to this Inquiry, to make findings of fact and to enable recommendations to be made by the Commission.
64. Once final, Overview Reports can be entered into evidence without the necessity of being introduced into evidence through oral testimony of a witness.
65. After being entered into evidence, Overview Reports will be posted on the Commission website.

Witness Evidence

66. Subject to applicable privileges and immunities, all Parties and persons shall cooperate fully with the Commission and shall make available all documents and witnesses relevant to the mandate of the Commission.
67. Witnesses who testify will give their evidence at a hearing under oath or upon affirmation, and may swear or affirm on an eagle feather.
68. Commission counsel may issue and serve a summons upon each witness before he or she testifies. Witnesses may be called more than once.
69. Commission counsel and a witness or their legal representative may prepare an affidavit of the witness's evidence. A witness affidavit may include the witness's answers to written questions from Commission counsel. At the Commissioners' discretion, the affidavit can be admitted into evidence in place of part or all of the individual's oral testimony. **Witnesses can also adopt written evidence that is not in affidavit form as true while appearing under oath at the Commission.**
70. At the Commissioners' discretion, all or part of a witness's interview transcript, a witness's interview summary or, if adopted by the witness as accurate, the statement of anticipated evidence may be admitted into evidence in lieu of that witness's oral evidence. Parties may request that the witness be called for the purpose of cross-examination, however, the witness may not be cross-examined on the statement of anticipated evidence or their interview summary except with leave of the Commissioners, as provided in Rule 88. Commission counsel may also call the witness to testify, and may seek to supplement or have the witness comment upon the witness interview transcript, statement of anticipated evidence or interview

summary.

71. Commission Counsel can enter sworn evidence from other proceedings, whether in Canada or in other countries, as sworn evidence before the Commission.
72. At the request of Commission counsel, Parties may prepare Institutional Reports, which may be admitted into evidence if adopted by a representative witness as accurate, or earlier, if admitted into evidence in accordance with Commission's procedures for admitting documents.
73. Witnesses who are not represented by the legal representative of a Party are entitled to have their own representative present while they testify. The legal representative for a witness will have standing for the purpose of that witness's testimony to make any objections considered appropriate and for other purposes set out in these Rules.
74. Parties must advise Commission counsel of the names, addresses and telephone numbers of all witnesses they wish to have called and provide summaries of the information the witnesses may have.
75. If special arrangements are desired by a witness in order to facilitate their testimony, a request for accommodation shall be made to the Commission sufficiently in advance of the witness's scheduled appearance to reasonably facilitate such requests. While the Commission will make reasonable efforts to accommodate such requests, the Commissioners retain the ultimate discretion as to whether, and to what extent, such requests will be accommodated.

Rules of Examination

76. In the ordinary course Commission counsel, or counsel appointed by Commission counsel, will call and question witnesses who testify at the Inquiry.
77. The legal representative for a Party may apply to the Commissioners to lead a particular witness's evidence in-chief. If the representative 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 Commissioners. In addition, prior to that witness's evidence in chief, the witness's legal representative shall provide the Parties and Commission counsel with reasonable notice of the areas to be covered in the witness's anticipated evidence in chief and a list of the documents associated with that evidence.
78. Commission counsel, or counsel appointed by Commission counsel, have discretion to refuse to call or present evidence.
79. 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;
 - b. Parties will then have an opportunity to cross-examine the witness to the extent

- of their interest. The order of cross-examination will be determined by the Parties and, if they are unable to reach agreement, by the Commissioner;
- c. After cross-examinations, the legal representative for a witness may then examine the witness. Except as otherwise directed by the Commissioner, the legal representative for the witness may only ask non-leading questions;
 - d. Commission counsel will have the right to re-examine.
80. If a representative for a witness intends to adduce evidence in chief not adduced by Commission counsel, the representative will examine the witness immediately following Commission counsel, and then will have a right to re-examine the witness following questioning by the other Parties.
81. The Commissioners may direct any legal representative whose client shares a commonality of interest with the witness only to adduce evidence through non-leading questions.
82. After a witness has been sworn or affirmed at the commencement of giving evidence, no legal representative 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 Commissioners. Commission counsel may not speak to any witness about his or her evidence while the witness is being cross-examined by others but may speak to the witness after cross-examination and before any re-examination.
83. In keeping with the Commission's urgency and the principles of expedition and timeliness, the Commissioners will set time allocations for the conduct of examinations and cross-examinations.
84. 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 Commissioners for leave to call a witness whom the Party believes has evidence relevant to that issue. If the Commissioners are satisfied that the evidence of the witness should be received, Commission counsel shall call the witness, subject to Rules 76 and 77.
85. Subject to the Commissioners' discretion, Commission counsel may choose to call witnesses, whether on factual or policy issues, in panels, if doing so would not detract from the Commissioners' ability to make relevant findings of fact or policy recommendations.

Use of Documents at Hearings

86. In advance of the testimony of a witness, Commission counsel shall provide the Parties, with reasonable notice, a list of the documents associated with the witness's anticipated evidence in chief. When possible, in advance of a witness's testimony, Commission counsel shall provide the Parties with an anticipated evidence statement, or a witness interview summary or affidavit.
87. 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 days before the document will be referred to or filed, other than those documents for which notice has previously been provided pursuant to Rule 86.

88. Before using a document for purposes of cross-examination, legal representatives 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 days prior to the commencement of that witness's testimony.
89. Neither Parties nor Commission counsel will be entitled to cross-examine a witness on any "will-say statement" (anticipated evidence statement or witness interview summary) that may be provided except with leave of the Commissioners.
90. The Commissioners may grant the legal representative for a Party or witness leave to introduce a document to a witness at any point during the hearing upon such terms as are just and fair.
91. Commission counsel may introduce any document to a witness at any point during the hearing without the need for leave to do so.

Applications

92. A person may apply to the Commissioners for an order by:
 1. Preparing an application in writing;
 2. Attaching to the application any supporting materials; and
 3. Delivering the application and supporting materials to the Commission by email at **ADDRESS TO BE INSERTED**.
93. Unless the Commissioners otherwise direct, the Commission shall promptly deliver the application and supporting materials to each other Party.
94. Parties are entitled to respond to an application if their grant of standing identifies them as having an interest in the subject matter of the application.
95. Commission counsel may provide the Commissioners with any submissions or materials Commission counsel consider relevant and necessary to the proper resolution of the application. Due to time constraints, if there is an oral hearing on the application, Commission counsel need not file responding materials prior to the hearing of the application but should, as much as is practicable, advise the Parties of Commission counsel's position on each application in advance of the hearing of the application.
96. The Commissioners will determine the schedule for the filing of submissions and materials and for the hearing of oral argument, if any. Applications will be dealt with primarily in writing.
97. Commission counsel, and each Party authorized to do so, may make submissions to the Commissioners as permitted by the Commissioners.

98. The Commissioners may make an order or direction based on the written material filed or, at their discretion, after hearing oral argument.
99. Subject to any order from the Commissioners, submissions will be posted to the Commission website.
100. All application materials shall be served by email.
101. If a Party has a legal representative, service on the Party shall be by email to its legal representative. If a Party does not have a legal representative, service on the Party shall be by email to the Party's designated contact person.
102. Application materials to be provided to, or served on, the Commission shall be delivered electronically no later than 8:00 p.m. on the specified date, to **INSERT EMAIL ADDRESS**.

Government Confidentiality

103. On the application of any federal, provincial, or Indigenous government Party, the Commissioners may issue guidance concerning the treatment of information or documents that constitute a confidence of a federal or provincial Cabinet or an Indigenous government; information that could be injurious to a government's intergovernmental or international relations, defence, or security; or information that should not be disclosed on the basis on the grounds of a specified public interest.

Personal Confidentiality of Witnesses

104. In exceptional circumstances, a witness's personal private interests may require the Commissioners, in the exercise of their discretion, to deviate from the general principle that all information relating to that witness be disclosed to the public, either through testimony or through documents made available.
105. In the exercise of the Commissioners' discretion, they may, among other measures:
 - a. Direct or permit the redaction of irrelevant personal information from otherwise public documents;
 - b. Direct the extent to which such information should be referred to in testimony;
 - c. Direct that a witness not be identified in the public records and transcripts of the hearing except by non-identifying initials, and that the public transcripts and public documents be redacted to exclude any identifying details;
 - d. Permit a witness to swear an oath or affirm to tell the truth using non-identifying initials;
 - e. Use non-identifying initials and exclude any identifying details in his report; and
 - f. Hold an *in camera* hearing, as a last resort, in circumstances in which the desirability of avoiding disclosure outweighs the desirability of adhering to the

general principle that hearings should be open to the public.

106. If the Commissioners have exercised their discretion pursuant to Rule c), no photographic or other reproduction of the witness that might lead to his or her identification shall be made at any time and there shall be no publication of information that might lead to the identification of the witness.
107. All media representatives shall be deemed to undertake to adhere to the rules respecting personal confidentiality as set out herein. A breach of these rules by a media representative shall be dealt with by the Commissioners as they sees fit.

Access to Evidence

108. All evidence shall be categorized and marked P for public proceedings and C for *in camera* proceedings.
109. **Subject to Support Group resources, unless the Commissioners otherwise order, a video of all public proceedings, a list of P exhibits of the public proceedings and a summary of the C proceedings, will be available on the Commission website. Prior to a summary of C proceedings being available on the Commission website, the Party to the *in camera* hearing will be permitted to review the contents of that summary.**
110. Only those persons authorized by the Commission, in writing, shall have access to C transcripts and exhibits.

Quorum for hearings

111. For all in person public hearings, subject to Rules 112 and 113, the quorum is the number of Commissioners appointed by the Support Group prior to the first in person hearing scheduled for March 16, 2023.
112. If a Commissioner is unable to attend an in person public hearing in person, that Commissioner may attend the hearing virtually.
113. Providing there is a minimum of three Commissioners attending an in person public hearing, the proceeding can continue. In such an event the Commissioner(s) who could not attend must watch the video of any proceedings missed and read any documents entered.
114. The Commission has the discretion to hold virtual hearings in addition to in person public hearings scheduled by the Support Group where necessary to accommodate a witness that cannot testify at a in person public hearing date. The Support Group may direct the Commission to hold virtual hearings for any purpose necessary to advance the purpose of the Commission.
115. Voir dres for the qualification of experts may be held virtually in front of a single Commissioner. Qualification voir dres may occur before or after the witness testifies at in person public hearings.

116. Evidence of lay witnesses that is necessary to support the credibility of their testimony at in person public hearings, such as medical background, may be held virtually in front of a single Commissioner. This may occur before or after the witness testifies at in person public hearings.

Testimony before a single Commissioner

117. Recognizing that one of the purposes of the National Citizens' Inquiry is for the voices of citizens to be heard, a single Commissioner may hear evidence of a witness. Subject to Support Group resources, this evidence is also to be posted to the Commission website.
118. Subject to Rule 119, evidence taken before a single Commissioner is not to be relied upon by the Commission for making its findings or making recommendations.
119. If all Commissioners watch the video of the evidence of a witness taken before a single Commissioner, the evidence can be used for all purposes by the Commission.

Review of Commission Reports

120. The Commissioners are encouraged, at their discretion, to have all reports reviewed by counsel prior to public release.

Insert Letterhead

APPENDIX A

Application for Standing

NATIONAL CITIZENS' INQUIRY

Application to Participate

All Applicants seeking standing must use this form and may file supporting materials related to the topics set out below. All applications, along with any supporting materials, must be sent via email to EMAIL no later than **April 15, 2023**, or on any other date with leave of the Commissioners.

The Inquiry's Rules of Procedure and Terms of Reference can be accessed at <https://nationalcitizensinquiry.ca/>.

1. The Applicant

a. Individual (if applicable)

- i. Name:
- ii. Email address:
- iii. Mailing address:
- iv. Telephone number:

b. Organization, government, agency, institution, association or other entity (if applicable)

- i. Name:
- ii. Contact person (name and position)
- iii. Email address:
- iv. Mailing address:
- v. Telephone number:

c. Legal representative (if applicable)

- i. Representative's name:
- ii. Firm:
- iii. Email address:
- iv. Mailing address:

v. Telephone number:

2. Standing to Participate

a. Participation is based on the following criteria:

- (i) A substantial and direct interest in the subject matter of the Inquiry;
- (ii) The Applicant's participation would provide necessary contributions or otherwise further the conduct of the Inquiry; and
- (iii) The Applicant's participation would contribute to the openness and fairness of the Inquiry.

In relation to (i) above, please specify the nature of the Applicant's "substantial and direct interest" in the subject matter of the Inquiry, with reference, where applicable, to the Terms of Reference.

Also address whether the Applicant seeks standing in relation to the fact-finding and/or policy-related functions of the Inquiry, and identify those factual, legal or policy issues falling within the Inquiry's mandate that the Applicant wishes to address as a Party.

With respect to (ii) and (iii) above, please explain how these criteria are met, to the extent it is not already been addressed in relation to (i).

b. Is the Applicant willing to share a single grant of standing with others with whom the Applicant shares a common interest? Check one box only.

Yes No

Please explain your answer in the box below and indicate whether the Applicant formed or have attempted to form a group or coalition with others of similar interests.

c. Please indicate if the Applicant is seeking standing only on one or more of the following issues:

TO DISCUSS

1. other aspects of the Commission's [Terms of Reference](#) (please specify).

Please explain in the box below.

c. If granted standing, how would the Applicant like to contribute to the Inquiry's work, in light of the scope and nature of the Applicant's interest? Please check all that apply:

- By producing factual documents relevant to the Inquiry's mandate
 - By creating or participating in the creation of factual summaries to be introduced into evidence
 - By identifying, tendering or representing witnesses who may testify on factual issues
 - By examining or cross-examining witnesses
 - By making submissions on factual issues and related evidentiary issues
 - By creating or producing policy papers to the Inquiry relevant to its policy-related function
 - By participating in policy roundtables or discussions
 - By making submissions on policy-related issues
 - Other (Specify):
-

- d. Please list and provide any documentation or other evidence you would like the Commissioners to consider below and attach copies of all supporting materials to the application. **Please note there is a 10-page limit for supporting documents.**

I hereby certify and declare that the information set out by me in this document is true and correct to the best of my knowledge and belief.

Date: _____

Signature: _____

APPENDIX B

Notice of a Charge of Misconduct

TO _____

The National Citizens Inquiry is a citizen-led and citizen-funded inquiry into Canada's response to Covid-19. The Inquiry is independent of government and operates without legal compulsion or coercion.

TAKE NOTICE that the National Citizens Inquiry *may* make a finding of misconduct against you in their report. This does not necessarily mean that a finding of misconduct will be made against you, but the Inquiry is required as a matter of fairness to send this notice if such a finding might be made. The substance of the charge of misconduct is set out in the attachment to this letter.

The Inquiry's Rules of Procedure state that the Commissioners will not make a report of misconduct against any person unless that person has had reasonable notice of the substance of the alleged misconduct and a full opportunity to be heard. Having received this notice, you have an opportunity to respond to the charge in person or by counsel during the Inquiry. A copy of the Rules can be obtained from our website at <https://nationalcitizensinquiry.ca/> or by contacting our office. Do not hesitate to contact me regarding any questions you may have on the application of the Rules of Procedure.

It is possible that during the course of the Inquiry, the Commission, through its counsel, may modify the particulars of the substance of the alleged misconduct as circumstances change or as new information or evidence becomes available.

Yours very truly,

NAME

Commission Counsel

Encl.

APPENDIX C

Summons

TO _____

You are hereby summoned to attend before the National Citizens Inquiry at (location) on (date) and to remain there until the examination is finished or the Commissioners order.

Please note that the Inquiry will be conducting hearings for several months. Witnesses can also attend virtually. If you are not able to attend on the Summons date, please email Commission counsel at.....[email] to arrange a time when you can attend. Please also note that the Commission has the discretion to schedule a virtual hearing for the purpose of accommodating a witness such as yourself who may not be able to attend any of the scheduled hearing dates.

The National Citizens Inquiry is a citizen-led and citizen-funded inquiry into Canada's response to Covid-19. Its Rules of Procedure and Terms of Reference are available at <https://nationalcitizensinquiry.ca/>.

The Inquiry is independent of government and operates without legal compulsion or coercion. A failure to comply with this Summons or with the Inquiry's Rules of Procedure cannot lead to civil or criminal liability, but it could result in the Commissioners making a finding of misconduct against you.

The Inquiry's Rules of Procedure require you to produce copies of all documents in your possession or under your control relevant to the subject-matter of the Inquiry within 10 days of receiving this summons. If you object to producing documents, the Inquiry's Rules of Procedure require you to deliver to Commission Counsel at [INSERT EMAIL] within 10 days a written objection describing the nature and scope of your objection along with any appropriate supporting material, such as an affidavit or authorities.

If you have questions about this summons or about the application of the Rules of Procedure, please contact the Inquiry's Commission Counsel at [INSERT EMAIL].

Dated at _____

Signatures

The Commissioners

APPENDIX D

Confidentiality Undertaking for Legal Representatives to Parties, Potential Witnesses and Experts in the National Citizens Inquiry

For the purpose of this Undertaking, the term “document” is intended to have a broad meaning, and includes any and all documents and information in connection with the proceedings of the National Citizens Inquiry (the “Inquiry”), including without limitation, any and all technical, corporate, financial, economic and legal information and documentation, financial projection and budgets, plans, reports, opinions, models, photographs, recordings, personal training materials, memoranda, notes, data, analysis, minutes, briefing materials, submissions, correspondence, records, sound recordings, videotapes, films, charts, graphs, maps, surveys, books of account, social media content, or any other notes or communications in writing, and data and information in electronic form, any data and information recorded or stored by means of any device and any other information pertaining to the Inquiry, irrespective of whether such information or documentation has been identified as confidential, and includes all other material prepared containing or based, in whole or in part, on any information included in the foregoing, including any anticipated evidence statements, witness interview summaries statements or Overview Reports prepared by Commission counsel.

I, _____, undertake to the Commission that any and all documents which are produced to me in connection with the Inquiry’s proceedings will not be used by me for any purpose other than those proceedings, with the exception of any documents which are otherwise publicly available. I further undertake that I will not disclose any such documents to anyone for whom I do not act or who has not been retained as an expert for the purposes of the Inquiry. In respect of anyone for whom I act, or any witness, or any expert retained for the purposes of the Inquiry, I further undertake that I will only disclose such documents upon the individual in question giving the written undertaking annexed as Appendix “C” to these Rules.

I understand that this undertaking has no force or effect with respect to any document which has become part of the public proceedings of the Inquiry, or to the extent that the Commissioners have provided a written release to me from the undertaking with respect to any document. For greater certainty, a document is only part of the Public Hearings once the document is made an exhibit at the Inquiry. In addition, this undertaking and any requests for deletion are limited by any requirement to retain or disclose records and information as may be provided for by law.

With respect to those documents which remain subject to this undertaking at the end of the Inquiry, I undertake to either destroy those documents, and provide a certificate of destruction to the Commission, or to return those documents to the Commission for destruction. I further undertake to collect for destruction such documents from anyone to whom I have disclosed any documents which were produced to me in connection with the Commission’s proceedings.

I understand that a breach of any of the provisions of this Undertaking is a breach of an order made by the Commission, and of the Rules of Practice and Procedure.

_____ Signature

_____ Witness

_____ Date

_____ Date

APPENDIX F

Confidentiality Undertaking for Unrepresented Parties, Potential Witnesses, and Experts in the Public Order Emergency Commission

For the purpose of this Undertaking, the term “document” is intended to have a broad meaning, and includes any and all documents and information in connection with the proceedings of the National Citizens Inquiry (the “Inquiry”), including without limitation, any and all technical, corporate, financial, economic and legal information and documentation, financial projection and budgets, plans, reports, opinions, models, photographs, recordings, personal training materials, memoranda, notes, data, analysis, minutes, briefing materials, submissions, correspondence, records, sound recordings, videotapes, films, charts, graphs, maps, surveys, books of account, social media content, or any other notes or communications in writing, and data and information in electronic form, any data and information recorded or stored by means of any device and any other information pertaining to the Inquiry, irrespective of whether such information or documentation has been identified as confidential, and includes all other material prepared containing or based, in whole or in part, on any information included in the foregoing, including any anticipated evidence statements, witness interview summaries statements or Overview Reports prepared by Commission counsel.

I, _____, undertake to the Commission that any and all documents which are produced to me in connection with the Inquiry’s proceedings will not be used by me for any purpose other than those proceedings, with the exception of any documents which are otherwise publicly available. I further undertake that I will not disclose any such documents to anyone.

I understand that this undertaking has no force or effect with respect to any document which has become part of the Public Hearings of the Inquiry, or to the extent that the Commissioners have provided a written release to me from the undertaking with respect to any document. For greater certainty, a document is only part of the Public Hearings once the document is made an exhibit at the Inquiry. In addition, this undertaking and any requests for deletion are limited by any requirement to retain or disclose records and information as may be provided for by law.

With respect to those documents that remain subject to this undertaking at the end of the Inquiry, I further understand that such documents will be collected from me by the person who disclosed them to me: Commission counsel or a person designated by Commission counsel, as the case may be.

I understand that a breach of any of the provisions of this Undertaking is a breach of an order made by the Commission and of the Rules of Practice and Procedure.

_____ Signature _____ Witness

_____ Date _____ Date