



## Commission of Inquiry Respecting the Death of Donald Dunphy

### **Via Email**

November 8, 2016

### **TO: Counsel for Parties with Standing**

Nicholas Avis, Q.C., Browne Fitzgerald Morgan & Avis  
Erin Breen, Sullivan Breen King  
John Drover, Roebothan, McKay Marshall  
Cletus Flaherty, Rogers Bristow Moyse  
Mark Freeman, Justice Canada  
Jerome Kennedy, Q.C., Roebothan McKay Marshall  
Lori Rasmussen, Justice Canada  
Robert Simmonds, Q.C., Sullivan Breen King  
Thomas Williams, Q.C., O'Dea Earle

### **RE: Decision on Phases**

At the first public sitting of the Commission on October 19, 2016, I suggested that the Inquiry might most efficiently proceed by way of two stages, or phases. The first dealing directly with the circumstances surrounding the death of Donald Dunphy, and the second dealing with a number of other matters, at that time, left to be determined.

On October 26, 2016, Commission counsel emailed counsel for the parties with standing to further particularize the two phases under consideration. Commission counsel requested your input on the proposed phases by November 1, 2016.

Thank you to those who responded. We received some helpful and considered feedback. Having considered your submissions, I write now to advise you of my decision.

The Inquiry will proceed in two phases:

#### ***Phase 1 - Fact Finding Phase***

The first phase will be a fact finding phase focused on the circumstances leading up to and surrounding the death of Donald Dunphy. This phase will proceed as a public hearing, with witnesses being called, examined under oath by Commission counsel, and cross-examined by counsel for parties with standing. It is expected that this stage will also include expert evidence.

***Phase 2 - Policy Phase***

The second phase will be a policy phase. The word “policy” is not limiting and may include systemic issues. The following issues will be examined during this phase:

1. Communications to the public or media by the police following serious incidents and during active investigations.
2. The use of social media in promoting the public’s right to free expression and as a tool for critiquing government policy and action.
3. The monitoring of and response to social media by Government or the Royal Newfoundland Constabulary and, specifically, the potential risk of such activities having a chilling effect on freedom of expression.
4. Use of Force by police including De-escalation Techniques, particularly in dealing with persons in crisis.
5. Policies and protocols of Government or the Royal Newfoundland Constabulary with respect to the security of the Premier and Cabinet Members.

In particular, some concern was raised with respect to issues 2 and 3 above, which address social media. I am satisfied that the Terms of Reference, including s. 3(1)(h)(ii) and s. 3(2)(b), give me jurisdiction to examine these issues.

The issues to be explored in the second phase may be expanded upon following the conclusion of the fact finding phase. Parties with standing may make further submissions to the Commission through Commission counsel if they believe that additional issues arise during the fact finding phase that merit further consideration in the second phase.

The format of the second phase has yet to be finalized. It may include presentations by experts, paper presentations, or panel discussions. It is contemplated that there will be opportunity for Counsel for parties with standing to pose questions to presenters during the second phase. The Commission will determine the experts or presenters but parties are welcome to identify to Commission counsel for consideration any persons they believe would add value to the second phase.

Yours truly,



Leo Barry  
Commissioner