

ELLIOT LAKE COMMISSION OF INQUIRY
(Established pursuant to Order In Counsel 1097/2012)

THE CORPORATION OF THE CITY OF ELLIOT LAKE

AN INTERESTED PERSON

RESPONDING SUBMISSIONS RE: CONFIDENTIALITY APPLICATION

**Responding Submissions of Elliot Lake re: Confidentiality Application by
Eastwood Mall Inc., Robert Nazarian and Levon Nazarian**

1) The City of Elliot Lake opposes the Confidentiality Application of Eastwood Mall Inc., Robert Nazarian and Levon Nazarian.

FACTS

2) On October 17, 2012, Eastwood Mall Inc., Robert Nazarian and Levon Nazarian filed an Application for Standing and Funding. The Application was supported by various documents which may be characterized as follows:

Personal

- i) Financial Records of Robert Nazarian including income tax returns, a tax assessment and three (3) bank account statements, the owners of the accounts are not clearly shown;
- ii) Financial Records of Levon Nazarian including an income tax return for 2011;

Corporate

- iii) Financial Statements of Eastwood Mall Inc. for 2010, 2011 and 2012 and a corporate income tax return for 2011;
 - iv) Financial Information of Yorkdale Group Inc. for 2011 and 2012;
 - v) Financial Information of Yorkdale Centre Inc. for 2011 and 2012;
3. The City notices that in essence there are two (2) types of documents disclosed, personal information for the Nazarian's and corporate financial information for Eastwood Mall Inc. and related corporations.
4. The financial information generally shows money transferring between the corporations and Robert Nazarian as the 100% shareholder of Eastwood Mall Inc. The full picture of those financial relationships is not disclosed.
5. The corporate financial information shows monies expended on maintenance and specifically shows monies expended on roof repairs. This information is entirely relevant for the investigation of the roof collapse.
6. It is not clear from the financial information what the relationship is between Eastwood Mall Inc., Yorkdale Group Inc. or Yorkdale Centre Inc. Another company called West Gate appears in the Eastwood Mall Inc. financial information. The relationship between Eastwood Mall Inc. and West Gate is not explained.
7. It is the City's position that this financial information is relevant and indeed necessary for the investigation of the cause of collapse when considering the

maintenance work that was or was not done on the roof by Eastwood Mall Inc. and whether the finances of that company were adversely impacted by transfers to related companies or the Nazarians.

8. The City therefore opposes the Confidentiality Order sought by Eastwood Mall Inc., Robert Nazarian and Levon Nazarian.

LAW

9. Pursuant to Section 34(4) of the *Public Inquiries Act*, 2009, S.O. 2009, c 33, Schedule 6, the Commissioner has jurisdiction to award a Confidentiality Order.

“All hearings on an inquiry are open to the public except where the person or body conducting the inquiry is of the opinion that,

(a) matters involving public security may be disclosed at the hearing; or

(b) intimate financial or personal matters or other matters may be disclosed at the hearing that are of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public,

in which case the person or body may hold the hearing concerning any such matters in the absence of the public. 2009, c.22, Sched. 6, s. 34(4).”

10. The Ontario Court of Appeal has pronounced on the issue of a Publication Ban in a Public Inquiry in the *Cornwall* Case. The test from *Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 S.C.R. 835, and *R. v. Mentuck*, [2001] 3 S.C.R. 442 which reads as follows:

“A publication ban should only be ordered when:

- a) *Such a ban is necessary in order to prevent a real and substantial risk to the fairness of the trial, because reasonably available alternative measures will not prevent the risk; and*
- b) *The salutary effects of the publication ban outweigh the deleterious effects to the free expression of those affected by the ban.”*

Reference: *Episcopal Corp. of the Diocese of Alexandria-Cornwall v. Cornwall* (Public Inquiry), [2007] O.J. No. 100 (Ont. C.A.) at paragraphs 14, 15 and 35

11. The Court of Appeal went on to note that this is not a mechanically applied test but that especially in the circumstances of a Public Inquiry,

“the test is a “flexible and contextual one that must be tailored to fit the character of the interests at stake and the nature of the process in which the request for a publication ban arises.”

Reference: *Episcopal Corp. of the Diocese of Alexandria-Cornwall v. Cornwall* (Public Inquiry), [2007] O.J. No. 100 (Ont. C.A.) at paragraph 33

12. The Court of Appeal indicated that in a Public Inquiry there is strong reason to avoid Confidentiality Orders.

“The “open court” principle takes on particular importance in relation to this type of public inquiry, the purpose of which is to educate the public about the events leading up to a tragedy or worrisome community problem. In Phillips, supra, at para. 62 (a passage adopted in Canada (Attorney General) v. Canada (Commission of Inquiry on the Blood System in Canada – Krever Commission), [1997] 3 S.C.R. 440 at para. 30), Cory J. described the purpose of public inquiries:

One of the primary functions of public inquiries is fact-finding. They are often convened, in the wake of public shock, horror, disillusionment, or scepticism, in order to uncover "the truth" ... In times of public questioning, stress and concern they provide the means for Canadians to be apprised of the conditions pertaining to a worrisome community problem and to be a part of the recommendations that are aimed at resolving the problem. Both the status and high public respect for the commissioner and the open and public nature of the hearing help to restore public confidence not only in the institution or situation investigated but also in the process of government as a whole.

They are an excellent means of informing and educating concerned members of the public.

The public's special interest and right to know take on added significance as the Commission's mandate is not restricted to fact-finding but also includes community healing. As Cory J. stated in Phillips, supra, at para. 117, open hearings "function as a means of restoring the public confidence" and act as a "type of healing therapy for a community shocked and angered by a tragedy." In my view, these observations are apposite to this case."

Reference: *Episcopal Corp. of the Diocese of Alexandria-Cornwall v. Cornwall* (Public Inquiry), [2007] O.J. No. 100 (Ont. C.A.) at paragraphs 48 and 49

13. Accordingly, it is the City's position that in light of this being a Public Inquiry, there is a strong reason to tend toward disclosure of this information.

SUMMARY/ARGUMENT

14. The financial information sought to be kept confidential is both personal and

corporate. This fact is not addressed by Eastwood Mall Inc., Robert Nazarian or Levon Nazarian.

15. While private and irrelevant information such as the Nazarian's social insurance numbers, marital status and home addresses may not be relevant and perhaps should be redacted from the financial information, the fact is that the financial information disclosed shows a picture of the flow of and expenditure of monies by the controlling minds of the owners in the time prior to the collapse.

16. It is the City's submission therefore that this information must be made public in the context of this Inquiry, that it is relevant to and instructive on the question of what happened to cause of the roof of the mall to collapse.

17. The corporate entities do not have the same potential for embarrassment should personal information such as SIN numbers, Home addresses and marital status be disclosed. Further, there is good reason to disclose the financial information of the corporations so that the financial nature and activities of this business (or these businesses in the case of the apparently related parties) can be subject to the public scrutiny and can be used in the process of "educating the public about the events leading up to [the] tragedy" caused by the mall roof collapse.

Reference: *Episcopal Corp. of the Diocese of Alexandria-Cornwall v. Cornwall* (Public Inquiry), [2007] O.J. No. 100 (Ont. C.A.) at paragraph 48

18. As such, the City of Elliot Lake opposes Eastwood Mall Inc./Nazarian Application for a Confidentiality Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated: December 7, 2012



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