

**THE ELLIOT LAKE  
COMMISSION OF INQUIRY**

The Honourable Paul R. Bélanger,  
Commissioner



**LA COMMISSION  
D'ENQUÊTE ELLIOT LAKE**

L'honorable Paul R. Bélanger,  
Commissaire

Delivered by Email

November 27, 2012

Mr. Phil Tunley and Ms. Luisa Ritacca  
Stockwoods  
Barristers  
Royal Trust Tower  
77 King Street West  
Suite 4130, P.O. Box 140  
Toronto-Dominion Centre  
Toronto, Ontario, M5K 1H1

Dear Mr. Tunley and Ms. Ritacca,

I am writing, further to our telephone conversation of yesterday, in respect of the issue of whether the Commission ought to make an order as described in paragraph 7 of your written submissions. As you know, that paragraph is as follows:

7. To that end, the PEO seeks an order pursuant to sections 10(4) and 17 of the *PIA* and rule 17 of the Commission's *Rules of Procedure* as follows:

- (a) Prior to the disclosure of the Confidential Documents to other parties or the public, the following persons be given the opportunity to review the Confidential Documents and make submissions to the Commissioner as to the appropriateness of any further disclosure and/or use of such documents by the Commission:
- i. PEO;
  - ii. Each of [REDACTED] in respect of all Confidential Documents relating to them;

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- iii. The following complainants, in respect of Confidential Documents from the files relating to complaints by them;

- 1. [REDACTED]
- 2. [REDACTED]
- 3. [REDACTED]
- 4. [REDACTED]
- 5. [REDACTED]
- 6. [REDACTED]

- iv. Anyone else to whom information contained in any of the Confidential Documents relates.

The persons listed above are members of the PEO, or individuals or organizations who were involved in the making or investigation of complaints as against the members.

It is your submission that this order is "consistent with the statutory framework under which both the Commission and the PEO operate and will ensure procedural fairness to all participants at the inquiry. Further, the order sought is consistent with the intent of Section 38 of the *PEA*—the documents or information collected in the course of the administration of that act are to be kept strictly confidential."

Section 38 of the *Professional Engineers Act*, RSO 1990, Chapter p28 provides that "every person engaged in the administration of this act... shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of his or her duties, employment, examination, review or investigation and shall not communicate any such matters to any other person" except in certain specified circumstances.

Subsection 10(3) of the *Public Inquiries Act, 2009*, provides that "a Commission may require the provision or production of information that is considered confidential or inadmissible under another act or a regulation and that information shall be disclosed to the commission for the purposes of the public inquiry."


Subsections 14(2) and 14(3) of the *Public Inquiries Act, 2009* provide as follows:

- (2) Subject to subsection (3), a commission that is conducting a hearing shall
  - (a) give reasonable advance notice to the public of the schedule and location of the hearing;
  - (b) ensure that the hearing is open to the public, either in person or by electronic means; and
  - (c) give the public access to the information collected or received in the hearing.
- (3) A Commission may exclude the public from all or part of a hearing or take other measures to prevent the disclosure of information if it decides that the public's interest in the public inquiry or the information to be disclosed in the public inquiry is outweighed by the need to prevent the disclosure of information that could reasonably be expected to be injurious to,

- (a) the administration of justice;
- (b) law enforcement;
- (c) national security; or
- (d) a person's privacy, security or financial interests.

It is our preliminary view, subject to hearing further from you on this point, that the provisions of the two statutes, read together, require that your clients provide, as they have, the documents required to be produced by the summons served on them, despite the obligation of secrecy in other circumstances imposed by s. 38. The commission is then required to give the public access to that information, to the extent that it is relevant. Any person seeking to prevent the provision of public access is required to apply for a confidentiality order pursuant to subsection 14(3). That is what your client has done.

The Commission does not object if you wish to give to the persons set out in paragraph 7 of your submissions notice of the confidentiality order which you are seeking. . Indeed, it may very well be that none of the persons to whom you refer object to the disclosure of their identity or information relating to them.

 Furthermore, your application, redacted to remove the information which you assert to be confidential, has been posted on the Commission website.

The Commission is not, at the present time, of the view that it ought to give notice to the persons set out in paragraph 7 of your submissions.

In preparing for the hearing in respect of your application for a confidentiality order, we would appreciate it if you would consider, and make submissions with respect to, the following decisions:

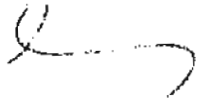
- *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002] 2 S.C.R. 522;
- *M.E.H. v. Williams*, [2012] O.J. No.525(C.A.);
- *Vancouver Sun (Re)*, 2004 2 SCC 43;
- *Episcopal Corporation of the Diocese of Alexandria-Cornwall v. Cornwall Public Inquiry*, 2007 ONCA 20.

We are also interested in your submissions with respect to the applicability and effect of the following decisions of commissions of inquiry:

- Ruling by Commissioner Goudge on request for non-publication orders, November 1, 2007 (Appendix 22 to volume 4 of the Goudge Report);
- Ruling of O'Connor, A.C.J.O, November 20, 2007 in respect of an application by the Kingston Police Service to protect two documents from disclosure by a claim of privilege (Appendix 17 of volume 4 of the Goudge Report);
- Ruling of Commissioner Goudge on the CPSO motion for directions, October 10, 2007 (Appendix 16 of volume 4 of the Goudge Report); and

- Ruling by Commissioner Gomery on March 29, 2005 in respect of the publication bans sought by three witnesses and on April 13, 2005 in respect of the application by two persons for a confidentiality order.

Yours very truly,



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